CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JEFFREY S. CHIESA
Attorney General

ATTORNEY GENERAL
LAW ENFORCEMENT DIRECTIVE NO. 2012-2
(Investigation of Human Trafficking)

Human trafficking is a form of modern-day slavery. It is not only a violation of fundamental human rights but also a serious crime under New Jersey law codified at N.J.S.A. 2C:13-8. Unfortunately, this crime often goes undetected and unreported. Human trafficking victims, given the coercive nature of the crime, feel isolated and powerless, and often are unable, afraid, or otherwise unwilling to seek assistance from law enforcement. Some of these victims feel ashamed, and many are reluctant to identify themselves as victims.

Law enforcement agencies and officers, meanwhile, may not have the training and experience to recognize the telltale indicators of human trafficking when conducting investigations of other offenses that may be associated with human trafficking enterprises, such as prostitution. As a result, some law enforcement officers may not know to pose questions during the course of their investigations that might expose a human trafficking violation.

Police officers in this State should be aware of and watchful at all times for the indicators of human trafficking activity. Vigilance by law enforcement officers is especially important when their duties bring them into contact with the kinds of commercial establishments or places that, past experience has shown, may be used to harbor and conceal human trafficking activities, such as "strip clubs" and other sexually oriented businesses, massage parlors, or nail salons. By way of example, a police officer should know to take note if he or she were to see evidence that suggests that persons are living or sleeping at a commercial establishment that is not ordinarily considered to be a residential premises.

For the foregoing reasons, it is appropriate to enhance and coordinate the State's efforts to identify, investigate, and prosecute this form of criminal activity. Accordingly, by virtue of the authority vested in me by the Constitution and the laws of this State, and in furtherance of securing the benefits of a uniform and efficient enforcement of the criminal law pursuant to N.J.S.A. 52:17B-97 *et seq.*, I hereby promulgate the following DIRECTIVE to all law enforcement agencies and officers operating under the authority of the laws of this State:

I. GENERAL POLICY

It shall be the law enforcement policy of this State to fully and fairly investigate and prosecute violations of N.J.S.A. 2C:13-8 with a view toward deterring human trafficking violations to the greatest extent possible. All law enforcement agencies and officers shall be required: to promptly and thoroughly investigate possible violations of human trafficking; to keep State and county prosecution authorities apprised of human trafficking investigations to ensure that all investigative leads are pursued as appropriate; to make certain that all investigations are properly coordinated; to protect the immediate safety and security of human trafficking victims; and to respect and safeguard the rights of these victims.

II. HUMAN TRAFFICKING LIAISONS

Every County Prosecutor shall designate at least one detective/investigator and at least one assistant prosecutor to serve as the County Prosecutor's Office liaisons to the Division of Criminal Justice on human trafficking matters, and to facilitate and oversee the implementation and compliance with the policies, standards, and procedures set forth in this Directive and in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to Section IV of this Directive. These designated Human Trafficking Liaisons will also serve as points of contact for police agencies for purposes of the notification, referral, and reporting requirements of this Directive.

Each County Prosecutor shall within 30 days of the effective date of this Directive provide to the Director, or his designee, the names and contact information of the designated detective(s)/investigator(s) and assistant prosecutor(s), and shall thereafter promptly notify the Director or his designee of any changes in the names or contact information of these liaisons. All designated liaisons will receive training pursuant to Section VI(B)(1) of this Directive.

III. REQUIREMENT TO CONDUCT PROMPT AND THOROUGH INVESTIGATIONS OR TO PROMPTLY REFER MATTERS FOR INVESTIGATION BY ANOTHER AGENCY

A. Investigation or Referral of Possible Human Trafficking Violations

Whenever a law enforcement officer: a) develops reasonable articulable suspicion to believe that the crime of human trafficking is being or has been committed; b) receives any information from an anonymous or confidential source concerning a possible human trafficking violation under circumstances where the information does not on its face constitute reasonable articulable suspicion; or c) determines, while in the course of investigating a prostitution-related offense pursuant to Section IV(B) of this Directive, that any of the relevant circumstances that are specified in the

investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of Section IV(A) of this Directive exist; the officer or another member of the officer's agency shall either:

(1) promptly investigate the possible human trafficking violation in accordance with the provisions of this Directive; or

(2) promptly refer the matter to the appropriate County Prosecutor's Office, or to the Division of Criminal Justice, for investigation by the County Prosecutor or the Division.

B. Reports on Investigations Conducted By Police Departments

Where an officer or another member of the officer's agency pursues the investigation of a possible violation of N.J.S.A. 2C:13-8 without referring the matter to the County Prosecutor's Office or the Division of Criminal Justice for investigation by the County Prosecutor or Division, the agency shall, within 24 hours of initiating its investigation, notify the County Prosecutor's Human Trafficking Liaison that a human trafficking investigation has been initiated, the circumstances that prompted the investigation, and the results of the investigation to date. Unless and until the agency refers the matter for investigation by the County Prosecutor or Division, or unless and until the County Prosecutor or Division otherwise assumes responsibility for conducting the investigation, the agency or officer shall have a continuing obligation to report on a monthly basis to the County Prosecutor's Human Trafficking Liaison on the status of its investigation.

IV. INVESTIGATION STANDARDS

A. Promulgation of Investigation Standards and Protocols

The Director of the Division of Criminal Justice shall within sixty days of the effective date of this Directive develop and disseminate to all law enforcement agencies investigation standards and protocols to be used by law enforcement agencies and officers when investigating a possible human trafficking violation. These standards shall be designed to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions, and shall include:

1. A detailed description of specific circumstances that are relevant to a possible violation of N.J.S.A. 2C:13-8, which specified relevant circumstances must be investigated to the extent feasible;

2. Guidelines on the specific questions to be posed during an investigation so as to obtain evidence or information concerning the relevant circumstances specified in the

investigation standards and protocols promulgated pursuant to paragraph (1) of this subsection; and

3. A detailed description of the methods of investigation to be used to ensure the integrity and effectiveness of the investigative process. Those investigative methods shall, among other things, specifically address the fear and intimidation that often silences victims of human trafficking. For example, whenever practical, all possible victims and witnesses should be interviewed separately, in the individual's same language, and well outside the presence of the individual's employer, landlord, or any other person who may intimidate or inappropriately influence the possible victim/witness.

B. Special Responsibilities When Investigating Prostitution Offenses

1. Whenever a law enforcement officer has probable cause to believe that a prostitution-related offense has been committed in violation of any provision of N.J.S.A. 2C:34-1, as part of the investigation and handling of the suspected prostitution offense, the officer or another member of the officer's agency shall, whenever feasible, pose questions or otherwise seek to obtain evidence concerning the relevant circumstances that are specified in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of subsection A of this Section. If information learned during the course of the prostitution investigation indicates that any of those specified relevant circumstances exist, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

2. Where the prostitution offense involves a "house of prostitution" as defined in N.J.S.A. 2C:34-1(a)(3) or is otherwise associated with a specific commercial premises (*e.g.*, a massage parlor, "strip club," bar, restaurant, etc.), the agency or officer shall, whenever feasible and lawful, examine the physical premises to determine whether it is being used for residential purposes. If the prostitution investigation reveals that persons may have used a commercial premises as a place of residence, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

3. Nothing in this subsection should be construed to suggest that the obligation to be watchful for indications of human trafficking is limited to circumstances where an agency or officer is investigating the offense of prostitution. The training provided to law enforcement officers pursuant to Section VI of this Directive shall instruct officers to be watchful at all times for indicators of human trafficking activity, and especially whenever police go to places that, past experience has shown, are more frequently associated with human trafficking activity (*e.g.*, sexually oriented businesses, massage parlors, nail salons, etc.). The training shall also instruct officers to be watchful for the indicators of human trafficking activity when present at premises where

legitimate as well as illegitimate commercial activity is occurring, and when investigating other forms of unlawful activity, including but not limited to sexual assault, domestic violence, assault, and robbery, and fire/housing code and labor law violations.

C. Special Responsibilities When Interacting with PossibleVictims

1. All law enforcement officers shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be the victims of human trafficking.

2. If a person reports to a law enforcement officer that he or she is a victim of human trafficking, or relates to a law enforcement officer facts that, if true, would make the person a victim of human trafficking, the law enforcement officer and other members of the officer's agency shall treat the person making the report or relating the information as a human trafficking victim for purposes of this Directive, notwithstanding that the person may have committed an offense (*e.g.*, prostitution), unless and until an investigation determines that any such report or information is false or unfounded.

3. Notwithstanding any other time period for notifying the County Prosecutor's Office or Division of Criminal Justice set forth in this Directive, a law enforcement officer, or another member of the officer's agency, shall notify the County Prosecutor's Human Trafficking Liaison as soon as practicable after receiving the report or information from the possible human trafficking victim so that the County Prosecutor's Office can arrange for any appropriate referrals for victim services.

4. Pursuant to the provisions of N.J.S.A. 52:4B-44.1, the Division of Criminal Justice, working in conjunction with the County Prosecutors, and in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Children and Families, the Superintendent of State Police, and representatives of providers of services to victims of human trafficking and sexually exploited minors, shall develop standards and protocols for providing information and services to these persons. Such standards and protocols shall include coordination of efforts with appropriate federal authorities pursuant to the "Trafficking Victims Protection Reauthorization Act of 2003," 22 U.S.C. Sec. 7101 *et seq*.

5. The training provided pursuant to Section VI of this Directive shall provide instruction on how to protect human trafficking victims, and on how to implement the provisions of this subsection so as to encourage possible victims to fully cooperate in human trafficking investigations. The training programs shall include instruction on the appropriate handling of possible human trafficking victims who may have committed an offense, including instruction on the affirmative defense to the offense of prostitution established in N.J.S.A. 2C:34-1(e). The training programs shall also include information concerning referrals for medical treatment, counseling and advocacy services, and housing/shelter.

D. Supplemental Investigation Standards

The Director of the Division of Criminal Justice may from time to time issue supplemental investigation standards or protocols to be followed by law enforcement agencies and officers to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

V. REPORTING REQUIREMENTS

A. Reporting by Police Upon Arrest or Determination of Probable Cause

Notwithstanding any other time period for making notifications or reporting information set forth in this Directive, when a law enforcement officer makes an arrest or otherwise develops probable cause to believe that the crime of human trafficking has been or is being committed, the arresting officer or another member of the officer's agency shall immediately report the matter to the designated County Prosecutor's Office Human Trafficking Liaison, who shall as soon as practicable, but in no event later than 12 hours, report the matter to the Division of Criminal Justice.

B. Reporting by County Prosecutor of Existing Case Inventory

Each County Prosecutor shall within 60 days of the effective date of this Directive provide to the Director of the Division of Criminal Justice or his designee a listing of all currently pending cases or investigations involving a charge of human trafficking. This list shall include such information as shall be determined by the Director.

C. Reporting by County Prosecutor of Significant Case Events

It shall be the responsibility of the County Prosecutor to promptly notify the Division of Criminal Justice of the following events concerning the investigation or prosecution of a suspected violation of N.J.S.A. 2C:13-8:

1. application for or issuance of an arrest warrant;

2. filing of a criminal complaint;

3. indictment;

4. any disposition of pending charges;

5. application to the Department of Homeland Security for Continued Presence Status or a T Visa for a possible human trafficking victim; and

6. any referral of a human trafficking investigation or prosecution for handling by or in cooperation with the United States Attorneys Office or any federal law enforcement agency, or by a law enforcement or prosecuting agency in any other State.

Such notifications of significant case events to the Division shall be done in a manner as shall be prescribed by the Director.

D. Reports of Aggregate Data and Additional Information

In addition to the notification of significant case events pursuant to subsection C of this Section, each County Prosecutor shall provide to the Division of Criminal Justice such aggregate data and information about human trafficking enforcement activities and services as may be needed to prepare reports for the United States Department of Justice, Bureau of Justice Assistance, or for such other purposes as may be determined by the Director of the Division of Criminal Justice.

E. Implementation of Notification and Reporting Requirements

The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop standardized forms and procedures to facilitate the efficient and uniform implementation by all law enforcement agencies of the notification and reporting requirements of this Directive.

VI. TRAINING

A. In-Service Training Program

The Division of Criminal Justice shall within ninety days of the effective date of this Directive develop human trafficking training programs for law enforcement officers and prosecutors. The Division shall to the extent feasible make the training programs available on-line through the NJLEARN system. The Division may from time to time develop additional human trafficking training programs and aids to facilitate implementation of this Directive and to achieve the goals of enhancing the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

B. Selection of Officers to Receive In-Service Training

1. All Human Trafficking Liaisons designated pursuant to Section II of this Directive shall receive the training developed pursuant to subsection A of this Section, and such additional

training as the Director of the Division of Criminal Justice may from time to time prescribe.

2. The chief executive of every State, county and local law enforcement agency shall identify those sworn officers who would benefit from receiving training on human trafficking based upon their duty assignment, and shall within sixty days of the effective date of this Directive provide to the appropriate County Prosecutor and the Division of Criminal Justice a list of those officers to be trained. Those officers should complete the training, whether through the NJLEARN system or by other means, within ninety days of the training program being made available pursuant to subsection A of this Section. The chief executive of each department shall report to the County Prosecutor and the Division of Criminal Justice on the number of officers who have completed training. This reporting shall be done in a manner and at such times as shall be prescribed by the Director.

3. The Director of the Division of Criminal Justice shall report annually to the Attorney General on the number of officers who have completed human trafficking in-service training, and shall make recommendations as appropriate as to whether the Attorney General should require that additional officers receive in-service training. Nothing herein should be construed to prevent a County Prosecutor from requiring officers who are subject to his or her authority to receive the human trafficking training developed by the Division of Criminal Justice, or to receive additional training developed or approved by the County Prosecutor.

C. Pre-Service Training

1. The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop curricula on the subject of human trafficking for use in the Basic Course for Police Officers and the Basic Course for Investigators. The Division shall submit this curricula to the Police Training Commission for use at all police academies that are subject to the jurisdiction of the Police Training Commission.

2. The Division of State Police shall include human trafficking curricula developed pursuant to paragraph (1) of this subsection in the pre-service training of Trooper recruits in the State Police Training Academy.

VII. AUTHORITY OF COUNTY PROSECUTOR

Nothing in this Directive shall be construed to prevent a County Prosecutor from issuing supplemental directives, procedures or standards governing the investigation and prosecution of human trafficking cases by law enforcement agencies that are subject to the County Prosecutor's authority, provided that those supplemental standards and procedures do not conflict with the standards and procedures set forth in this Directive.

VIII. QUESTIONS

Any questions concerning the interpretation or implementation of this Directive shall be directed to the Director of the Division of Criminal Justice, or his designee.

IX. EFFECTIVE DATE

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superseded by Order of the Attorney General.

Jeffrey S. Chiesa
Attorney General

ATTEST:

Phillip H. Kwon
First Assistant Attorney General

Dated: July 12, 2012

ALCOHOLIC BEVERAGE CONTROL HANDBOOK

FOR RETAIL LICENSEES

State of New Jersey

DEPARTMENT OF LAW & PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

140 EAST FRONT STREET
P.O. BOX 087
TRENTON, NJ 08625-0087
(609) 984-2830

www.nj.gov/oag/abc

ALCOHOLIC BEVERAGE CONTROL HANDBOOK
For Retail Licensees
(Revised June, 2014)

TABLE OF CONTENTS

SUBJECT	PAGE
STAFF DIRECTORY	vi
PUBLICATIONS	viii
A.B.C. BULLETINS & INFORMATION	viii
A.B.C.	1
A.B.C. BULLETINS	1
A.B.C. INVESTIGATIONS BUREAU	1
AD INTERIM PERMIT	1
ADVERTISING	1
AGE LIMITS	2
AGE TO PURCHASE	3
ALCOHOL CONTENT	4
ALCHOLIC BEVERAGE CONTROL BOARDS	4
ALCOHOLIC BEVERAGES	4
APPEALS FROM DIRECTOR'S DECISIONS	5
APPEALS FROM LICENSING ACTION BY MUNICIPALITIES	5
APPEALS FROM MUNICIPALLY-IMPOSED LICENSE SUSPENSIONS	5
APPLICATION FORM	6
ATHLETIC TEAM SPONSORS	6
ATLANTIC CITY CASINOS	6
ATLANTIC CITY LICENSES	6
AUTOMATIC DISPENSERS	7
BACKING UP DRINKS	7
BANKRUPTCY OF LICENSEE	7
BARRING PATRONS	8
BARROOM	8
BINGO	8
BOATS	8
BOOKS OF ACCOUNT	8
BORROWING ALCOHOLIC BEVERAGES	9
BOWLING TOURNAMENTS	9
BRAND REGISTRATION	9
BREW PUBS	10
BROAD PACKAGE PRIVILEGE	10
BULLETINS	10
BUS TRIPS	11
BUYING A LICENSE	11
B.Y.O.B. (BRING YOUR OWN BOTTLE)	12
CANDY, LIQUORED	12
CARD PLAYING/DART GAMES	13
CATERING	13

SUBJECT **PAGE**

CHECK CASHING 14
CLAW AND CRANE MACHINES 14
CLOSE-OUT SALES 14
CLOSING AND OPENING TIME 15
CLUB LICENSE 15
C.O.D 16
COMBINATION SALES 17
COMPLAINTS 17
COMPLIMENTARY DRINKS 17
CONCESSIONAIRE'S AGREEMENT 18
CONFLICT LICENSE 19
CONSUMPTION OFF LICENSED PREMISES 19
CONTENT AND SIZE OF DRINK 19
CONTEST PRIZES 19
CONTESTS 20
CONTRIBUTIONS 20
COOKING ALCOHOL 20
CO-OP ADVERTISING 20
CO-OP PURCHASING 20
CORPORATE STRUCTURE CHANGE 21
COST 21
COUPONS 22
COVER CHARGES 22
CRANE MACHINES 22
CREDIT CARDS 23
CREDIT PRACTICES 23
CREDIT COMPLIANCE INFORMATION 24
CURRENT PRICE LIST 24
DEATH OF LICENSEE 24
DISPLAYS 24
DIVISION OF ALCOHOLIC BEVERAGE CONTROL 25
DOCUMENTS AND RECORDS 25
DONATIONS OF ALCOHOLIC BEVERAGES 26
DRESS CODE 26
DRIVE-IN WINDOW SALES 27
E-141-A FORM 27
ELIGIBILITY, DETERMINATION OF 28
EMPLOYEE 29
EMPLOYEE LIST 30
EMPLOYER RESPONSIBILITY. 30
ENTERTAINERS 30
EXCLUDING PATRONS 30
EXTENSION OF LICENSE 30
EXTENSION OF PREMISES 31
FALSE IDENTIFICATION 31
FEES 32
FETAL ALCOHOL WARNING 32

SUBJECT **PAGE**

FINGERPRINTING 32
FOOTBALL POOLS 32
FREE DRINKS 32
FREE FOOD 33
GAMBLING 33
GIFT CERTIFICATES 33
GO-GO DANCERS 34
HAPPY HOURS 34
HEARING FOR LICENSEES 34
HOME DELIVERIES 35
HOTEL/MOTEL 35
INACTIVE LICENSE 35
INSPECTIONS – REVIEW OF BUSINESS RECORDS 36
INTOXICATED PATRONS 36
INVESTIGATIONS OF THE APPLICANT 37
I.R.S. SEIZURE 37
ISSUING AUTHORITY 37
LAPSED LICENSE 37
LAST CALL 38
LEASING OF LICENSE 38
LEFTOVER ALCOHOLIC BEVERAGES 38
LEWD OR IMMORAL ACTIVITY 38
LICENSE CERTIFICATE 39
LICENSE FEES 39
LICENSE NUMBER 39
LICENSE RENEWAL 40
LICENSE TRANSFER 41
LICENSED PREMISES 42
LICENSES – MANUFACTURING 42
LICENSES – RETAIL 42
LICENSES – WHOLESALE 44
LIENS ON LICENSES 45
LOCAL A.B.C. BOARD 45
LOCAL CONTROL 45
LOCAL PROHIBITION 46
MAGAZINES 46
MANUFACTURER'S REBATES 46
MEASUREMENT OF ALCOHOLIC CONTENT 46
MERCHANDISE – SALE BY RETAIL LICENSEES 46
MINI-BARS 47
MIXED CASE SALES 48
MORAL TURPITUDE 48
MUNICIPAL FEES 48
NON-ALCOHOLIC BEVERAGES 49
NOTICE AND PETITION OF APPEAL 49
NUMBER OF LICENSES 50
OPEN BARS 50
OTHER MERCANTILE BUSINESS 50

SUBJECT **PAGE**

PACKAGE GOODS SALES BY RETAIL CONSUMPTION LICENSEES 50
PATRONS, EXCLUDING 51
PAYMENT OF FEES 51
PENALTY – EFFECT ON MULTIPLE LICENSEES 52
PENALTY – EFFECT ON USE OF PREMISES 52
PENALTY SCHEDULE 53
PERSON 59
PERSON-TO-PERSON TRANSFER 59
PLACE-TO-PLACE TRANSFER 59
POCKET LICENSE 59
POLICE OFFICER EMPLOYMENT 59
PRECEDENT PENALTIES 60
PRE-MIXED DRINKS 60
PRIZES 61
PROMOTIONS 61
PROOF 62
PROOF GALLON 62
PURCHASE FROM UNAUTHORIZED SOURCE 62
RAFFLE BY LICENSEE 62
RAFFLE TICKETS 62
REBATES 62
RECORDS – PERMIT FOR OFF-PREMISE STORAGE OF BUSINESS RECORDS 63
REHABILITATION EMPLOYMENT PERMIT/DISQUALIFICATION REMOVAL 63
REQUESTING INTERIM RELIEF 65
RESTAURANT 66
RETAIL LICENSE APPLICATION 66
RETAIL SAMPLES 67
RETAILER TO RETAILER SALE 67
RETIREMENT OF CONSUMPTION LICENSES 67
RUM COOLERS 67
SACRAMENTAL WINE 68
SALES TAX 68
SAMPLES FROM WHOLESALERS 68
SEARCH WARRANTS 69
SEIZURE OF LICENSES 69
SEVEN DAY NOTICE TO PRODUCE RECORDS 69
SILENT PARTNER 69
SOCIAL AFFAIR PERMIT 69
SOLICITOR OR SALESMAN 70
SPECIAL ANNUAL CONCESSIONAIRE PERMIT 70
SPORTS POOL 70
SPORTS TEAMS SPONSORSHIP 70
STATE BEVERAGE DISTRIBUTOR'S LICENSE 70
STOCKHOLDER CHANGE 71
STORAGE OF ALCOHOLIC BEVERAGES 71
SUBSTITUTING BEVERAGES 72
SUPER BOWL POOLS 72
SUPPLIER 72
SUSPENSION 72

SUBJECT **PAGE**

TAP MARKERS 72
TASTING EVENTS AND SAMPLINGS 72
TEEN NIGHTS OR 18 TO PARTY, 21 TO DRINK 74
TEMPORARY RETAIL STORAGE 75
TIED AND COMBINATION SALES 75
TIED-HOUSE STATUTE 75
TOURNAMENTS 75
TRADE ASSOCIATION 76
TRADE NAME 76
TRANSIT INSIGNIA PERMIT 76
TRANSPORTATION OF ALCOHOLIC BEVERAGES FOR PERSONAL USE 77
TWO-LICENSE LIMITATION 77
UNDISCLOSED INTEREST 78
VIDEO GAMES 78
WINE COOLERS 79
WINE “DOGGY BAGS” 79
WINE GALLON 79

FEDERAL REGULATIONS

CLOSURE ON LIQUOR BOTTLES 79
COMMERCIAL BRIBERY (FEDERAL) 80
CONSIGNMENT SALES (FEDERAL) 80
EXCLUSIVE OUTLET (FEDERAL) 80
FEDERAL ALCOHOL ADMINISTRATION ACT 81
LIQUOR BOTTLES 81
RETAIL DEALER 81
SPECIAL OCCUPATIONAL TAX STAMP 82
TIED-HOUSE (FEDERAL) 82
WHOLESALE DEALER 83

FEE SCHEDULE 84

IF YOU HAVE A QUESTION . . . CALL US!
(609) 984-2830

If you are not sure which Bureau can be of assistance, call our main number shown above. If you need specific help from a member of a Bureau's staff, dial that person direct via the following telephone numbers.

DIRECTOR'S OFFICE

Michael I. Halfacre, Director . . . . . (609) 984-3230
Debi Leckie, Administrative Analyst . . . . . (609) 984-2692
Director's Office Fax . . . . . (609) 943-5302

OFFICE OF COUNSEL TO THE DIRECTOR

Assistant Attorney General
J. Wesley Geiselman . . . . . (609) 292-5296
Deputy Attorneys General
Lisa Barata . . . . . (609) 633-6079
Susan K. Dolan . . . . . (609) 633-6081
Donna Luhn . . . . . (609) 984-1914
Alyssa Wolfe . . . . . (609) 633-6076
Executive Assistant
Chris Margounakis . . . . . (609) 292-9301
Counsel's Office Fax . . . . . (609) 633-6078

ENFORCEMENT BUREAU

Senior Deputy Attorney General
Kevin M. Schatz . . . . . (609) 984-1975
Deputy Attorneys General
Alyssa Bloom . . . . . (609) 984-3802
Jennifer Huege . . . . . (609) 984-3801
Richard Karczewski . . . . . (609) 292-5901
Marita Navarro . . . . . (609) 984-2831
Andrew Sapolnick . . . . . (609) 292-0094
Enforcement Bureau Fax . . . . . (609) 633-6078

LICENSING BUREAU

Bureau Chief

Patti Valsac . . . . . (609) 984-2736

Executive Assistants

Rose Bonney (State Licenses) . . . . . (609) 984-2673

Joann Frascella (Retail) . . . . . (609) 984-2810

Sandra Garcia (State Licenses) . . . . . (609) 984-1980

Tia Johnson (State Licenses) . . . . . (609) 984-2754

Kelly Troilo (Permits) . . . . . (609) 984-1954

Licensing Bureau Fax . . . . . (609) 292-0691

INVESTIGATIONS BUREAU

Bureau Chief

Kevin Barber . . . . . (609) 984-2648

Investigators / Detectives . . . . . TOLL FREE (866) 713-8392

Investigations Bureau Fax . . . . . (609) 633-9150

PUBLICATIONS

Certain publications, which are the authoritative sources of the laws and regulations governing the commerce of alcoholic beverages in New Jersey, are available. These publications are legal in nature, but they should also be considered an important source material for a licensee. Of particular importance are the A.B.C. Bulletins which are described in greater detail in the Handbook itself. These publications are frequently referenced in the Handbook.

NEW JERSEY ALCOHOLIC BEVERAGE CONTROL ACT

Title 33, "Intoxicating Liquors," New Jersey Statutes Annotated

Available From: West Publishing Company
610 Opperman
Eagan, Minnesota 55123
1-800-328-2209
www.west.thomson.com

ALCOHOLIC BEVERAGE CONTROL REGULATIONS

Title 13, Chapters 2, New Jersey Administrative Code (Alcoholic Beverages)

Available From: Lexis Nexis/Matthew Bender
136 Carlin Road
Conklin, New York 13748
1-800-833-9844

A.B.C. BULLETINS & INFORMATION

Described in detail in the text of the Handbook. See "Bulletins."

Available From: Lori Rosati
Licensing Bureau
Division of Alcoholic Beverage Control
140 East Front Street
P.O. Box 087
Trenton, New Jersey 08625-0087
(609) 292-0322

Cost: Previous Bulletins can be obtained for $5.00 each.

A.B.C.

WHAT DOES "A.B.C." STAND FOR?

The abbreviation "A.B.C." stands for "Alcoholic Beverage Control" and is frequently used to indicate the Division of Alcoholic Beverage Control. (See "Division of Alcoholic Beverage Control.")

A.B.C. BULLETINS – *See "Bulletins"*

A.B.C. INVESTIGATIONS BUREAU

WHAT IS THE "A.B.C. INVESTIGATIONS BUREAU," AND WHAT ARE ITS FUNCTIONS?

The Division of Alcoholic Beverage Control Investigations Bureau is within the Division of Alcoholic Beverage Control and is responsible for investigating criminal and administrative violations of the Alcoholic Beverage Control Act (N.J.S.A. 33:1-1 et seq.) and the attendant regulations (N.J.A.C. 13:2-1.1 et seq.).

The investigators assigned to the A.B.C. Investigations Bureau have the full authority of the Director of the Division of A.B.C. to inspect and investigate licensees and the conduct of activities under the license and on the licensed premises. They may do so without a search warrant and all records must be available and produced to them upon demand. Failure to do so can result in a charge of hindering an investigation. The Investigations Bureau is also staffed with Detectives from the Division of Criminal Justice (which, just as the Division of Alcoholic Beverage Control, is in the Department of Law and Public Safety under the authority of the Attorney General). The Detectives have the authority to arrest persons for violations of any criminal laws of the State of New Jersey. The Investigations Bureau may be contacted by calling (866) 713-8392.

AD INTERIM PERMIT – *See "License Renewal"*

ADVERTISING

ARE THERE ANY RESTRICTIONS ON ADVERTISING BY A RETAIL LICENSEE?

Retail licensees may individually run advertisements in newspapers, circulars, coupon packages, radio, television or any other media that regularly promotes business to potential customers. The contents of the advertising can be anything that is not prohibited or which would cause a violation of law or regulation. (See A.B.C. Bulletin 2430, Item 4.)

Certain matters are specifically prohibited in advertising. No matter may be included that is in any way false, misleading, deceptive or in any way designed to suggest that a special value can be obtained when in reality it is not a special value (for example, "bait and switch"). Nor may any matter be included in advertising if it is lewd or obscene or suggests that the use of any alcoholic beverage will result in health or athletic benefits. Additionally, no improper use may be made of religious characters or symbols, nor may any portrayal of or reference to minors or children be made. (N.J.A.C. 13:2-24.10.)

Prices can be advertised provided they are not below cost. (N.J.A.C. 13:2-24.8.) (See "Cost.") An advertisement may also indicate that a manufacturer=s rebate is available. (N.J.A.C. 13:2-24.11.) (See "Coupons.")

Where sale prices are advertised, a retailer will generally not be able to compare the sale price to a "regular price." (See A.B.C. Bulletin 2432, Item 5.)

A licensee may join with other licensees in advertising. This is commonly referred to as cooperative advertising or "co-op advertising." When this is done, the advertised prices must be set by only one of the licensees taking part in the ad, and the ad must prominently indicate the identity of that licensee. There must also be language to the effect that those prices and the products pertain only to that one licensee and may not be available, or available at that price, from other licensees listed in the advertisement. (N.J.A.C. 13:2-24.10.)

The Alcoholic Beverage Control Law prohibits a manufacturer, supplier or importer from having an interest, directly or indirectly, in a retail license in New Jersey or in the retailing of alcoholic beverages. Therefore, advertising support or inclusions of a retailer=s name in a supplier=s ad could be considered a violation of this statute as well as a discriminatory offering of a service to certain retailers. Thus, the selection of one or several retailers for a particular advertising service by a supplier is not only discriminatory but would constitute a tied-house violation. (See A.B.C. Bulletin 2451, Item 3.) (See "Tied-House Statute.")

AGE LIMITS

HOW OLD MUST SOMEONE BE TO PURCHASE OR DRINK ALCOHOLIC BEVERAGES ON A LICENSED PREMISES?

A person must be 21 years of age or older to legally purchase or consume any alcoholic beverage on a licensed premise. There is absolutely no exception to this. (N.J.S.A. 9:17B-1.)

HOW OLD MUST SOMEONE BE TO OWN A LICENSE?

The lawful age to own a license and to purchase alcoholic beverage products for resale under a license privilege is 18 years of age. (N.J.S.A. 9:17B-1.)

HOW OLD MUST SOMEONE BE TO BE EMPLOYED BY A LICENSEE?

For all on-premise consumption licenses, no person under 18 years of age may be employed to work on the licensed premises (this includes entertainers, etc.) except you may employ someone 16 years of age or older as:

(1) a pin setter or lane attendant at a public bowling alley or

(2) a busboy (or someone who does not prepare, sell or serve alcoholic beverages) in a restaurant,

bowling alley, hotel, motel or guest house.

Any on-premise consumption licensee may employ any person 14 years of age or older who will be exclusively used to perform duties as a golf caddy and/or pool attendant.

For all off-premise consumption licensees, no person under 18 years of age may be employed to work on the licensed premises except you may employ someone 15 years of age or older to act as a stock clerk or in a similar position that does not involve the sale of alcoholic beverages to customers.

Alcoholic Beverage Control Regulations require all retail licensees, except those operating in conjunction with a *bona fide* hotel or public restaurant, to obtain an Employment Permit from the Division of Alcoholic Beverage Control for any employee who is less than 18 years of age. Such permit must be obtained no later than 10 days from the commencement of employment. The Alcoholic Beverage Control will issue a Blanket Permit to licensees that will cover employment of more than one person under the age of 18. Inquiries should be made to the Division~~s~~ Licensing Bureau. (See "Fee Schedule" at the end of this Handbook.)

AGE TO PURCHASE

WHAT ARE THE CRITERIA FOR AVOIDING AN UNDERAGE SALE VIOLATION?

A licensee with retail license privileges **cannot** sell to a person under the legal age (21 years), which is often abbreviated as "PULA." A bartender or sales clerk who violates this law will be subject to a disorderly persons charge under N.J.S.A. 33:1-77, and the license itself will be subject to administrative charges under that statute or N.J.A.C. 13:2-23.1. The law does recognize a valid defense to a charge that a person or licensee sold to someone under the legal age. For this defense, **all** of the following criteria must be established:

(1) that the purchaser falsely represented his or her age by producing

(a) a photo driver~~s~~ license of any state; or an identification card issued by the New Jersey Motor Vehicle Commission or

(b) an official photo identification card issued by any state or the federal government; **AND**

(2) that the purchaser falsely represented in writing that he or she was of legal age to make the purchase; **AND**

(3) that the purchaser appeared to be 21 years of age or older **AND**

(4) that the purchaser appeared to be the person described in the about proof of age.

The three elements together are necessary to establish a valid defense to a charge of sale to a person under

the legal age. Any forms of identification other than those listed in (1) a or b above which may be presented, will not be recognized as a defense. Licensees are encouraged to also request alternative types of identification in addition to the photographic identification to verify the true age and identity of the purchaser. This should also be done if the written representation is used and such alternative types of identification, together with numbers, etc., should be noted on the written representation paper. (See A.B.C. Bulletin 2457, Item 5.) (A suggested format for the written representation can be found on the ABC Website.) (See A.B.C. Bulletin 2445, Item 3.)

If there is any doubt that the purchaser is under 21 years of age, the sale should not be made. Licensees have the right to refuse a sale if they believe a purchaser is under the age of 21. (See also "False Identification" and "Patrons, Excluding.")

A license which has four (4) such violations within two (2) years presumptively will be revoked.

ALCOHOL CONTENT – *See "Content and Size of Drink"*

ALCOHOLIC BEVERAGE CONTROL BOARDS

WHAT ARE "ALCOHOLIC BEVERAGE CONTROL BOARDS" OR "A.B.C. BOARDS?"

The Alcoholic Beverage Control Law provides for an issuing authority in each municipality to issue, renew and transfer retail licenses and provides for enforcing that law, A.B.C. rules and regulations and local ordinances pertaining to the control of alcoholic beverages. The issuing authority is the governing body of the municipality unless the municipality establishes a municipal board, which is commonly known as an "Alcoholic Beverage Control Board" or "A.B.C. Board." An A.B.C. Board may be established in any municipality which has a population of at least 15,000. The A.B.C. Board consists of three members appointed on a bipartisan basis for 3-year terms. Currently, there are 20 municipalities with A.B.C. Boards. They are: Atlantic City, Camden, Clifton, East Orange, Elizabeth, Galloway, Garfield, Hillside, Hoboken, Jersey City, Linden, Newark, North Bergen, Orange, Passaic, Paterson, Rahway, Secaucus, West New York and West Orange.

Once a municipal A.B.C. board has been created, it has all of the powers, duties and obligations that the governing body of the municipality would ordinarily exercise relative to the issuance, transfer, enforcement and discipline of retail licenses within the municipality. (N.J.S.A. 33:1-5 and 33:1-24.)

ALCOHOLIC BEVERAGES

WHAT IS AN "ALCOHOLIC BEVERAGE?"

Any liquid (or solid that can be converted into a liquid) that is fit to drink and has an alcoholic content of more than ½ of 1 percent by volume is an alcoholic beverage and is subject to control by the Division of A.B.C. A license or permit is required to make, distribute or sell any such alcoholic beverage. If a beverage contains ½ of 1 percent or less alcohol, it is not controlled by the Alcoholic Beverage Control Act or A.B.C. rules and regulations and may be sold without an alcoholic beverage license. (See "Non-alcoholic

Beverages.")

APPEALS FROM DIRECTOR'S DECISIONS

CAN A DECISION OR RULING OF THE DIRECTOR OF THE DIVISION OF A.B.C. BE CHALLENGED?

Any final action or ruling of the Director of the A.B.C. can be challenged by means of an appeal to the Appellate Division of the Superior Court of New Jersey. In filing such an appeal there are rules of practice and procedure that must be carefully and strictly followed. When such an appeal is filed, application can be made to "stay" (that is, delay the effective date of) the action appealed from until the appeal is completed.

APPEALS FROM LICENSING ACTION BY MUNICIPALITIES

WHEN A MUNICIPALITY ISSUES, RENEWS, TRANSFERS OR PLACES SPECIAL CONDITIONS ON A LICENSE, OR FAILS TO DO SO, AND SOMEONE DISAGREES WITH THAT ACTION, WHAT CAN BE DONE?

If a license is denied renewal or if special conditions are imposed on a license, the licensee can appeal the municipality's action to the Director of the A.B.C. This appeal must be received by the A.B.C., either by personal service or by registered mail, within 30 days after the licensee has received notice of the action. An appeal is started by filing a document called a "Notice and Petition of Appeal" (see "Notice and Petition of Appeal") and the $100 filing fee with the Division of A.B.C. The licensee must also serve the municipality with a copy of the "Notice and Petition of Appeal" and furnish proof of such service to the Division of A.B.C. When an appeal is filed, the A.B.C. Director can extend the license privilege while the appeal is pending or stay (postpone the effective date of) a suspension or special conditions imposed by the town if good reason is shown for the Director to do so. (See "Notice and Petition of Appeal.")

If the municipality does not act on a renewal application within 90 days after the expiration of the previous license term, within 45 days on an application for a new license or within 60 days on an application for a transfer, the licensee may treat this failure to act as a denial; and may file an appeal with the Director of the A.B.C.

The same appeal procedure applies to a person whose application for a new license or transfer has been denied or to a taxpayer who objects to the issuance or renewal of a license or to its transfer. In such cases, however, no temporary relief will be granted while the appeal is being heard.

Detailed rules governing appeals are found in N.J.A.C. 13:2-7 and 13:2-17. (See "Fee Schedule" at the end of this Handbook.)

APPEALS FROM MUNICIPALLY-IMPOSED LICENSE SUSPENSIONS

IF A MUNICIPALITY SUSPENDS OR REVOKES A RETAIL LICENSE, CAN IT BE APPEALED AND WHAT MUST BE DONE?

Yes. Within 30 days after a municipality adopts a resolution suspending or revoking a license, the licensee

may file an appeal by filing a document called a "Notice and Petition of Appeal" with the Division of A.B.C. Proof that the appeal papers were also filed with the municipality must be provided to the Division of A.B.C. along with a $100 filing fee. (See "Payment of Fees" and "Notice and Petition of Appeal;" see also "Fee Schedule" at the end of this Handbook.)

At the time the Division receives a properly filed appeal, the Director will issue an order staying (delaying the effective date of) the suspension or revocation pending the outcome of the appeal unless the Director finds good reason not to do so. This will permit the licensee to continue to operate while the appeal is pending. (See "Fines.")

APPLICATION FORM – *See "Retail License Application"*

ATHLETIC TEAM SPONSORS

WHAT ARE THE RULES THAT GOVERN THE SPONSORSHIP OF ATHLETIC TEAMS BY LICENSEES?

Athletic teams can be sponsored by licensees of any class. When the sponsored team consists of players under the age of 18 years, such as a Little League or Babe Ruth League team, the use of words "liquor," "cocktail," "package goods," "bar," "tavern" or similar words or terms which are associated with the sale or consumption of alcoholic beverages, is prohibited. This is a result of the strong public policy against drinking by minors. When the players are at least 18 years of age, such words as described above can be utilized in the team identification or on uniforms. This is because 18-year old individuals can legally own or be employed by taverns, restaurants or liquor stores.

ATLANTIC CITY CASINOS

WHO REGULATES THE RETAIL SALE OF ALCOHOLIC BEVERAGES IN ATLANTIC CITY CASINO-HOTELS?

The Casino Control Commission, not the Atlantic City Board of Alcoholic Beverage Control or the New Jersey Division of Alcoholic Beverage Control, licenses and regulates the retail sales and service of alcoholic beverages in the Atlantic City casino-hotels. The Casino Control Act directs that the Casino Control regulations shall be as consistent as possible with the A.B.C. rules and regulations and shall deviate only as necessary because of the unique character of the casino-hotel premises and operations. (N.J.S.A. 5:12-103.)

ATLANTIC CITY LICENSES

ARE NON-CASINO ALCOHOLIC BEVERAGE LICENSEES IN ATLANTIC CITY REGULATED DIFFERENTLY THAN LICENSEES IN OTHER NEW JERSEY COMMUNITIES?

While the same rules and regulations generally apply, the issuance or transfer of any non-casino license in Atlantic City must first be investigated by the Atlantic City Joint Liquor Task Force. The Director of the Division of A.B.C. must then determine whether or not the grant of the application for the license or transfer is in the public interest. If the Director=s approval is granted, the A.B.C. Board of Atlantic City will then

consider the application. In all other respects, these retail licenses have the same privileges and are subject to the same restrictions as other retail licenses in the State. (N.J.A.C. 13:2-3.10.)

AUTOMATIC DISPENSERS

CAN AUTOMATIC OR ELECTRONIC DISPENSING EQUIPMENT BE USED?

Yes. Where such a system is used, the label on the container or on the tap must be visible to the patron, or some alternative device or sign must be used to indicate the type and brand of alcoholic beverage. When dispensing pre-mixed drinks, the sign must also identify all other ingredients by generic or brand name and give an approximate percentage by volume of alcohol of each drink at the time of service. (N.J.A.C. 13:2-23.22(b).) (See "Tap Markers," "Pre-mixed Drinks" and "Mini-Bars;" see also A.B.C. Bulletin 2427, Item 1, and A.B.C. Bulletin 2454, Item 3.)

BACKING UP DRINKS

IF A PATRON HAS A DRINK, CAN ANOTHER DRINK BE SERVED TO THAT PATRON?

If a patron has a drink, it is permissible to serve another drink, either at the patron~~'~~s request, one purchased by someone else or to use a token or other indication of such purchase. However, care must be taken to prevent over consumption by such patron. If necessary, the licensee should refuse to serve any actually or apparently intoxicated patron a drink, and if drinks have been previously purchased, must refund the patron his or her money. **NOTE ALSO THAT THIS PRACTICE CANNOT BE USED TO AVOID A CLOSING HOUR RESTRICTION.** (See A.B.C. Bulletin 2381, Item 2; see also "Complimentary Drinks" and "Happy Hours.")

BANKRUPTCY OF LICENSEE

IF A LICENSEE FILES FOR BANKRUPTCY, WHAT CHANGES MUST BE MADE ON THE LICENSE APPLICATION?

When a licensee files for relief under the United States Bankruptcy Code, several changes to the license application are required.

If the licensee files for bankruptcy relief pursuant to **CHAPTER 7** (Corporations) or **CHAPTER 13** (Individuals), the intent and purpose of such a filing is to completely liquidate the assets of the estate to pay the various debts. Under this provision a Trustee is appointed by the Bankruptcy Court to accomplish the actual liquidation of the business and the sale of its assets. In this situation, the regulations require that the license be "extended" to the Trustee by the local issuing authority. This means that the Trustee must file a full application with the local issuing authority so as to be listed as the holder of the license. This mechanism authorizes the Trustee to exercise the privileges of the license.

If the licensee files for bankruptcy relief pursuant to **CHAPTER 11**, the intent or purpose is to continue active operation while formulating a plan to pay off all of the debts. During this reorganization period most actions against the licensee are stayed until certain determinations are made by the Bankruptcy Court. At

the same time the licensee files for bankruptcy relief pursuant to Chapter 11, the licensee must also file an amendment to the license application demonstrating that the licensee has filed for protection with the United States Bankruptcy Court. This is done by amending the holder of the license to the debtor in possession (for example, "XYZ" Corporation as debtor in possession). The purpose of this amendment is to ensure that anyone having an interest in this license (especially the municipality) is aware that the license is in Chapter 11 and that any sale, transfer or change affecting the license must have prior approval of the Bankruptcy Court.

It is highly recommended that, should a licensee petition and file with the Bankruptcy Court, it should also seek legal advice to ensure that all legal requirements are fulfilled. (N.J.S.A. 33:1-26; N.J.A.C. 13:2-6.1) (See "Credit Practices," "Extension of License," "License Transfer" and "Retail License Application.")

BARRING PATRONS – *See "Patrons, Excluding"*

BARROOM – *See "Licenses – Retail" and "Package Goods Sales by Consumption Licensees"*

BINGO

IS THE PLAYING OF BINGO PERMITTED IN A LICENSED ESTABLISHMENT?

Yes, provided the game has been licensed under the "Bingo Licensing Law" (N.J.S.A. 5:8-24, et seq.). No alcoholic beverages, however, may be sold or consumed in the part of the licensed premises during the period of time when the game is being played. (N.J.A.C. 13:2-23.7(b).)

BOATS – *See "License – Retail, Plenary Retail Transit License"*

BOOKS OF ACCOUNT

WHAT BUSINESS RECORDS ARE REQUIRED BY THE A.B.C. TO BE MAINTAINED BY A LICENSEE?

Holding an A.B.C. license allows you to conduct a business involving the sale and service of alcoholic beverage products to retail consumers in the State of New Jersey. As such, the A.B.C. requires that you maintain certain business records in the English language which accurately reflect the business conducted. The records must be provided for review at the demand of the A.B.C. These records are commonly referred to as "books of account." The following is a synopsis of the records:

(1) The licensee shall have and keep, for an unlimited period of time, permanent records which shall truly and accurately contain a record of all moneys invested in the licensed business, including loans, the source of all such investments and the disposition of such investments.

(2) The licensee shall maintain for a period of five years, a record of all money, or any other thing of value, received in the ordinary course of business or received outside the ordinary course of business, including, but not limited to, sales of alcoholic beverage products, food sales, rebates, Retail Incentive Program Payments, (RIPs), merchandise received as a "dealer loader" and

miscellaneous income.

(3) The licensee shall maintain for a period of five years, records which show the payment of all expenses. The records shall indicate the name of the person or entity receiving such payment, the amount of the payment and the reason that the payment was made. Payment records shall include payments made for:

(a) the purchase of alcoholic beverages;
(b) the purchase of food items;
(c) the purchase of supplies and use of utilities;
(d) the purchase or lease of equipment;
(e) the payment of all employees' compensation, including all required withholding taxes;
(f) the payment of all local, state and federal taxes and license fees;
(g) the payment of rents, mortgages, loans and/or a reduction of an owner's equity and
(h) all other disbursements.

WHERE MUST THE BUSINESS RECORDS BE PHYSICALLY MAINTAINED?

All of the records are required to be maintained on the licensed premises and must be available for inspection by either the A.B.C. or by the local issuing authority. The A.B.C. will allow a licensee to maintain the business records off the licensed premises at another location if a Permit for Off-Premise Storage of Business Records is first obtained from the A.B.C. Licensing Bureau. The permit is valid from July 1 through June 30 of the following year. It must be renewed on an annual basis in conjunction with the alcoholic beverage license renewal. The permit must be displayed on the A.B.C. alcoholic beverage license.

BORROWING ALCOHOLIC BEVERAGES

IF A RETAILER RUNS OUT OF PRODUCT, CAN THAT RETAILER BORROW SOME FROM ANOTHER RETAILER AND LATER REPLACE IT?

No. Borrowing or trading alcoholic beverages between retailers is prohibited. Retailers can only obtain alcoholic beverages from a New Jersey licensed wholesaler. (See "Retailer to Retailer Sale.")

BOWLING TOURNAMENTS – *See "Card Playing/Dart Games"*

BRAND REGISTRATION

WHAT IS "BRAND REGISTRATION," AND HOW DOES IT AFFECT A RETAIL LICENSE?

Every alcoholic beverage product sold in New Jersey must be registered with the Division of A.B.C. before being sold. A separate annual registration is required for each type and brand of alcoholic beverage. The registrations are filed by the brand owners or agents designated by the brand owners. Retailers that have private labels are generally considered the brand owners and must register their brands, although they may,

and in most cases do, appoint the wholesaler through whom the product is supplied as the agent to register that product. (N.J.S.A. 33:1-2; N.J.A.C. 13:2-33.) Retail licensees may generally assume that a product is properly registered if it is offered for sale by an authorized and licensed New Jersey wholesaler. However, a retail licensee who had knowledge that a product was not brand registered would be subject to disciplinary action for selling such unregistered product.

BREW PUBS

WHAT ARE "BREW PUBS," AND WHAT ARE THEIR PRIVILEGES?

A brew pub, referred to in the A.B.C. law as a Restricted Brewery License, is a manufacturing license that permits the license holder to brew malt alcoholic beverages in quantities not to exceed 3,000 barrels per license term. This license can only be issued to a person or entity that identically owns a Plenary Retail Consumption License which is operated in conjunction with a restaurant regularly and is principally used for the purpose of providing meals to its customers and having kitchen and dining facilities. The restricted brewery licensed premises must be immediately adjoining the retail consumption licensed premises. The holder of this license shall only be entitled to sell or deliver its product to that restaurant premises. The purpose of this type of license is to allow the holder of the license to manufacture product and to sell it at its retail licensed premises. No more than two Restricted Brewery Licenses shall be issued to a person or entity which holds identical interests in two plenary retail consumption licenses, used in conjunction with restaurants, as previously discussed.

Since this is a manufacturing license, it will also need certain approval from the federal Alcohol and Tobacco Tax and Trade Bureau and from the New Jersey Department of Environmental Protection and may also require additional approval from the municipality in which it is located.

BROAD PACKAGE PRIVILEGE – *See "Licenses – Retail"*

BULLETINS

WHAT ARE "A.B.C. BULLETINS?"

A.B.C. Bulletins contain information regarding changes in laws and regulations, notices from the Director, directives to licensees, opinions of the Director and other pertinent information that is important to the licensee and reflect the policy of the Division of A.B.C. Bulletins also contain appellate and disciplinary opinions of the Director which can be used as precedent in future cases. Failure to follow a directive published in a Bulletin can result in disciplinary action against a license.

Bulletins are promulgated and published by the Division of A.B.C. They have been published since the Department of Alcoholic Beverage Control was established in 1933.

The A.B.C. Bulletins are accumulated and bound by the A.B.C., and the Bulletins may be viewed at the offices of the Division of A.B.C. Bound Bulletins have been furnished to the New Jersey State Library in Trenton, the Division of Law Library within the Richard J. Hughes Justice Complex and the law school

libraries in the State of New Jersey. The Casino Control Commission also has the Bulletins.

Copies of current Bulletins may be obtained from the Division of A.B.C. Details regarding ordering and cost are contained in the information at the beginning of this Handbook.

BUS TRIPS

CAN A LICENSEE SPONSOR A BUS TRIP WHERE ALCOHOLIC BEVERAGES ARE SERVED OR ARE MADE AVAILABLE ON THE BUS?

No. If there is a charge for a bus trip where alcoholic beverages are served or made available on the bus, it would be considered a sale off the licensed premises and is, therefore, prohibited. (N.J.S.A. 33:1-12.) On any bus trip, however, under current Motor Vehicle law, passengers may bring their own alcoholic beverage package goods which were purchased at retail. Additionally, if a non-licensee were to charge for the bus trip which included alcoholic beverages, it would be considered an unlawful sale of alcoholic beverages constituting a criminal offense. (N.J.S.A. 33:1-50.) Moreover, retail consumption licensees who sponsor such trips would be subject to sanctions for unlawfully conducting an "other mercantile business" as well as a "sale beyond the scope of their license."

BUYING A LICENSE

HOW CAN A PERSON OBTAIN AN ALCOHOLIC BEVERAGE LICENSE?

Since 1948, new retail consumption and distribution licenses can only be issued by a municipality if its population, by last federal census, exceeds certain limits. With certain limited exceptions, for every 3,000 persons a town can issue one consumption license, and it can issue one distribution license for every 7,500 persons. (N.J.S.A. 33:1-12.14.) Licenses issued in excess of that population cap under previous laws were allowed to continue in existence under a grandfather clause. (N.J.S.A. 33:1-12.16.) Every town is entitled to issue one consumption license and one distribution license even if the population is less than one thousand. (N.J.S.A. 33:1-12.15.)

Because of the population caps, new licenses generally are only issuable in growing municipalities. Those municipalities often auction off their new licenses to the highest bidder, although they can also set certain conditions (operate a restaurant, public accommodation or other facility) and accept applications meeting same conditions. (N.J.S.A. 33:1-19.1, et seq.) (See A.B.C. Bulletin 2457, Item 6.)

As a result of the relatively few Anew@licenses being issued, most persons obtain a license by purchasing an existing license and having it transferred to the purchaser by filing a "person-to-person" transfer application with the local issuing authority. The purchase price of the license is a private agreement between the buyer and the seller. The buyer, however, is not entitled to utilize the license unless and until it is transferred to him by formal action of the local issuing authority. In making its determination of whether or not to approve the transfer, the issuing authority is under the legal obligation to ensure that the purchaser is not disqualified to hold a license, is reputable and will operate in a reputable manner, that the transfer does not violate any State laws, regulations, local ordinances or conditions and that the licensee has disclosed and the

issuing authority has determined that all funds used to purchase the licensed business came from legitimate sources. (N.J.A.C. 13:2-7.7(b); 13:2-9.2(a).) (See "License Transfer" and "Licenses – Retail.")

B.Y.O.B. (BRING YOUR OWN BOTTLE)

CAN "B.Y.O.B." BE ADVERTISED?

Under no circumstances may any "B.Y.O.B." (Bring Your Own Bottle) be advertised in any fashion by an unlicensed restaurant or other public place where food or beverages are sold to the general public. A person who is found guilty of violating this prohibition is considered a disorderly person. By definition (N.J.S.A. 2C:33-27), B.Y.O.B. prohibits sales of alcohol and relates to unlicensed premises. Accordingly, questions relating to B.Y.O.B. are generally not within the purview of the ABC and should be directed to appropriate local law enforcement officials.

CAN A CUSTOMER BRING ALCOHOLIC BEVERAGES INTO A LICENSED PREMISES?

There is no regulation prohibiting this practice, however, the licensee has the right to permit or prohibit this practice as a matter of business policy. (See "Penalty – Effect on Use of Premises.")

ARE NON-LICENSED RESTAURANTS PERMITTED TO ALLOW CUSTOMERS TO BRING THEIR OWN ALCOHOLIC BEVERAGES ("B.Y.O.B.") FOR CONSUMPTION WITH THEIR MEALS?

Unless there is a local ordinance prohibiting it, customers of an unlicensed restaurant may be permitted by the ownership of the restaurant to bring and consume only wine and beer. The restaurant can supply glasses, ice, etc., but may not impose a cover, corkage or service charge. Also, under no circumstances may spirituous liquors be permitted. There may be no advertising whatsoever of the fact that wine or beer may be permitted. Additionally, the owner may not permit wine or beer to be consumed during hours in which the sale of these products is prohibited by licensees in that municipality, nor allow consumption of beer or wine by persons under 21 years or by persons who are actually or apparently drunk or intoxicated. (N.J.S.A. 2C:33-27.)

WHERE SHOULD VIOLATIONS OF THE "B.Y.O.B." LAW BE REPORTED?

Since the statute (N.J.S.A. 2C:33-27) applies to non-licensed premises, violations should be reported to the police department of the municipality in which the offending restaurant is located.

CANDY, LIQUORED

CAN NON-LICENSEES SELL LIQUORED CANDY?

Yes. Due to a change in the law made in 1984, the manufacturing and sale of confectionery containing less than 5 percent alcohol by volume was allowed. That law also provided, however, that selling confectionery containing more than ½ of 1 percent by volume to persons under the legal age (to purchase alcoholic beverages) is a disorderly persons offense. Additionally, there must be either a label on the package or a

sign posted which states “Sale of this product to a person under the legal age for purchasing alcoholic beverages is unlawful.”

CARD PLAYING/DART GAMES

MAY A LICENSEE ALLOW CARD PLAYING OR DART GAMES TO BE PLAYED ON A LICENSED PREMISES?

Card playing is permitted provided that no gambling takes place or there is no play for money, prizes or other things of value. Dart playing is permitted on the same basis, except that the Division of A.B.C. will grant permission for a dart tournament which can include an entry fee and the awarding of prizes other than alcoholic beverages. Other skill tournaments (bowling, golf, billiards, etc.) will be treated similarly. No prizes or anything of value may be awarded to anyone other than actual participants in such tournaments. (See also "Gambling.") While the Division allows decks of cards on a licensed premises, licensees are cautioned that any other paraphernalia used or usable in the playing phases of any gambling activity are prohibited. (See, e.g., N.J.S.A. 2C:37-1(e) and N.J.A.C. 13:2-23.5(a).)

CATERING

CAN ALCOHOLIC BEVERAGES BE SOLD AND SERVED BY A LICENSEE WHO IS CATERING AN EVENT AWAY FROM THE LICENSED PREMISES?

Yes, but only by a Plenary Retail Consumption Licensee, provided a Special Permit to Cater is first obtained from the Licensing Bureau of the Division of A.B.C. **No Catering Permit can be issued to a Retail Distribution Licensee.** The permit fee and application must be made on a form prescribed by the Division of A.B.C. This application must contain the written consent of the Municipal Clerk and the Police Chief of the municipality in which the event is taking place and the written consent of the owner of the premises on which the event is being held. **NO MORE THAN 25 PERMITS TO PERMIT THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES IN ANY ONE LOCATION MAY BE ISSUED IN A CALENDAR YEAR.** If the area on which the alcoholic beverages will be sold and served is contiguous to or adjoins the licensee=s premises, an Extension of Premises Permit, rather than a Catering Permit, must be obtained. The fact that catering business is occurring should be noted on page 4 of the license application. (See "Extension of Premises" and "Fee Schedule" at the end of this Handbook.)

WHAT TYPES OF EVENTS WOULD QUALIFY FOR A CATERING PERMIT?

Events which qualify for Catering Permits must be for a **SINGLE, SPECIAL, NON-RECURRING PURPOSE**, such as a wedding reception, anniversary dinner, Bar Mitzvah dinner or grand opening. The Division will not issue a Catering Permit to authorize the sale/service of alcoholic beverages at a location if such issuance will create the impression to the general public that the permitted premises may be licensed. No catering permits may be issued where other mercantile business is taking place.

CHECK CASHING

MAY A LICENSEE CASH PAYROLL OR OTHER PERSONAL CHECKS FOR PATRONS?

Yes, if the service is not advertised and if no service charge or fee is charged. Because of the prohibition of other mercantile business activity by a retail consumption licensee, a check cashing service where a fee is charged is prohibited by that class of license.

A retail distribution licensee (liquor store) can provide check cashing services for a fee if issued a "Check Casher License" by the New Jersey Department of Banking and Insurance as required by N.J.S.A. 17:15A-30, et seq., unless there is a municipal ordinance prohibiting mercantile activity of this type. A fee is defined to include any fee, charge, cost expense or other consideration. Unlicensed check cashing involving a fee is a crime. Additional information on a Check Casher License is available on the New Jersey Department of Banking and Insurance Internet website at: http://www.state.nj.us/dobi/banklicensing/checkcasher.html.

CLAW AND CRANE MACHINES

MAY A LICENSEE HAVE ON THEIR LICENSED PREMISES AMUSEMENT GAME MACHINES KNOWN AS "CRANE OR CLAW MACHINES" OR "ROTISSERIES," WHERE A PLAYER CAN OBTAIN A STUFFED ANIMAL OR SIMILAR PRIZE BY MANEUVERING THE CLAW OR ARM?

No. While such machines can be licensed under the Amusement Games Act, the applicable regulations prohibit their placement at a location that has an alcoholic beverage license. N.J.A.C. 13:3-1.7. These types of machines allow a player to maneuver the claw or crane on a rotisserie device over an intended prize. The player may then lower the claw, pick-up the prize and drop it into a chute that delivers the stuffed animal or plush toy to the successful player. Because the ultimate success of the player depends on the tension at which the claw or crane is set, the Division has determined that this is not a game of skill but rather a gambling device. Consequently, placement of this type of a device on a licensed premises without the prior approval of the Director of the Division of Alcoholic Beverage Control would constitute a violation of the Alcoholic Beverage Control Act and would place the license in jeopardy of suspension or possible revocation. To date, several claw or crane type machines that allow a player to win every time have been approved by the Director for placement on licensed premises. Those machines are:

(1) The Snack Attacker;
(2) The Challenger Crane, manufactured by Coast to Coast Entertainment;
(3) The Talon Crane, manufactured by Talon Manufacturing, Inc.,
(4) The Toy Soldier Crane, manufactured by Coastal Amusements, Inc., and
(5) Prize Time Crane, manufactured by Smart Industries Corp.

CLOSE-OUT SALES

MAY A RETAIL LICENSEE CONDUCT A "CLOSE-OUT" SALE OF ALCOHOLIC BEVERAGES TO ANOTHER LICENSEE?

Generally speaking, the answer is no. In cases involving a license transfer, bankruptcy or court ordered sale however, a Special Permit to authorize such sale may be secured from the A.B.C. (N.J.A.C. 13:2-5.4.) If the retail licensee is transferring the license, a "Bulk Sale Permit" will be issued to authorize the sale of existing inventory to the purchaser of the license. If the licensee is going out of business and wishes to sell the inventory to another retail licensee, a "Retailer to Retailer Permit" may be issued by the A.B.C. for good cause. (N.J.A.C. 13:2-23.12.)

CLOSING AND OPENING TIME

HOW ARE "CLOSING HOURS" AND HOURS OF OPERATION ESTABLISHED, AND BY WHOM?

Generally, a municipality, by ordinance, establishes the lawful hours during which alcoholic beverages may be sold. In some municipalities, referenda have been held to establish or limit the hours or days of sale.

By A.B.C. regulation (N.J.A.C. 13:2-38), no retail licensee may sell spirituous liquors in original containers (package goods) before 9:00 a.m. and after 10:00 p.m. on any day of the week. Municipalities can further limit these hours by ordinance or referendum and frequently do so as far as Sunday mornings are concerned. However, by State statute (N.J.S.A. 33:1-40.3), retail licensees can sell wine and malt beverage products in original containers (package goods) at any time the municipality has permitted the sale of alcoholic beverages by the drink. Cities of the first class (namely, Jersey City and Newark), however, pursuant to N.J.S.A. 33:1-40.3, may establish laws by ordinance for each type of retail license and for sales for on or off premises consumption. To be certain as to restrictions on hours of sale, licensees must check with their respective municipalities.

WHAT IS A LICENSEE REQUIRED TO DO AT CLOSING TIME?

Hours ordinances have uniformly been interpreted by the Division of A.B.C. to mean that, if there is anyone on the license premises after the closing hour other than employees who are in the process of cleaning up, it is a violation of the local ordinance, unless specifically otherwise provided. (Even employees are not permitted to consume alcoholic beverages before or after the closing hour.) At closing time, all sales and consumption of alcoholic beverages must stop and all members of the general public must be off the premises. In order for a licensed premises to stay open to the public after closing hours to engage in some other type of business (generally hotel or diner), there must be a specific provision in the local ordinance allowing that activity.

CLUB LICENSE

WHAT IS A "CLUB LICENSE," AND WHAT ARE ITS PRIVILEGES AND RESTRICTIONS?

A "Club License" is one that is issued by a municipality to a corporation, association or organization that is non-profit and operating for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes. To be eligible to receive the club license, the club must also comply with all conditions that the A.B.C. Director has established by rules and regulations. See N.J.A.C. 13:2-8; N.J.S.A. 33:1-12, Item #5. There is no limit to the number of club licenses that may be issued in a municipality except the

municipality may, by ordinance, either decide not to issue any club licenses or limit the number that will be issued.

The club license authorizes the club to sell and serve alcoholic beverages but only for immediate consumption on the licensed premises and only to *bona fide* club members and their guests. This means that all alcoholic beverages sold or served must be consumed on the licensed premises by actual club members and those who are truly their guests. No one else may be served. A club member is any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the by-laws of the club, who maintains such membership in a *bona fide* manner and whose name and address is listed on the list of members. There is a minimum three-day time limit for admission into the club so that no member may be admitted by a means of an instant membership. Persons holding limited or auxiliary club membership shall not be deemed to be club members. Persons who are members of an organization of which the club license is an affiliated chapter and where the organization~~s~~ members have reciprocal privileges in any affiliated club, may be considered guests of the club licensee itself and may therefore purchase and consume alcoholic beverages on the club licensed premises.

The only other group that may be sold or served alcohol by the licensee are guests of *bona fide* members. Each club member is permitted nine guests on the premises at any one time. These guests must be invited to the club licensed premises by an individual *bona fide* member of the club and sponsored by and personally attended by the member at the premises. Also, no alcoholic beverages in original containers (package goods) may be sold and removed from the licensed premises.

When an organization which has a club license wishes to hold an event such as a fund raiser which is open to the public or to persons other than *bona fide* club members, the club may not sell alcoholic beverages at the event unless it first obtains a Social Affair Permit (N.J.A.C. 13:2-5.1). If such permit is not obtained, the club license is in violation if alcoholic beverages are sold at the event. A *bona fide* club member may have a private function at the club such as a wedding, anniversary, bar mitzvah or other social function. In these instances, the club member may rent or use the club's licensed premises in order to have the function where the club may sell the alcohol to be consumed at the social function to the member. The club cannot run affairs or rent its hall for or cater such events as weddings, birthday parties or the like for anyone other than a *bona fide* member of the club and serve alcoholic beverages at the affair. The only way for alcoholic beverages to be served at such affair where the host is anyone other than a *bona fide* member of the club is for the host to purchase them at a liquor store or from a retail licensee who is permitted to sell package goods and bring them into the club licensed premises for use at the affair. The club licensee cannot sell or in any way provide alcoholic beverages nor can it impose a charge related to those alcoholic beverages. The club may only sell food and non-alcoholic beverages to the host renting the facility. The host, if it is an organization conducting a fundraiser, is required to obtain a Social Affair Permit. (See "Social Affair Permit.")

All other rules and regulations which apply to plenary retail licenses, such as those dealing with the purchase of alcoholic beverages, keeping records, etc., apply to club licensees. (See N.J.S.A. 33:1-12; N.J.A.C. 13:2-8.1 through 8.14; and for a comprehensive discussion of club licenses and privileges, see

A.B.C. Bulletin 2431, Item 7, and A.B.C. Bulletin 2468, Item 1.)

C.O.D. – *See "Credit Practices" and "Credit Compliance Information"*

COMBINATION SALES – *See "Tied and Combination Sales"*

COMPLAINTS

HOW SHOULD SOMEONE REPORT A VIOLATION OR SUSPECTED VIOLATION OF AN ALCOHOLIC BEVERAGE CONTROL LAW, RULE OR REGULATION?

A suspected violation of an Alcoholic Beverage Control Law, statute, regulation or rule may be reported to the local police department or to the Division of A.B.C. Investigations Bureau.

Complaints made to the A.B.C. Investigations Bureau may be made telephonically by dialing 866-713-8392 during normal business hours. Anonymous complaints are accepted.

Complaints are also accepted by letter addressed to:

NJ Division of Alcoholic Beverage Control
Investigations Bureau
140 East Front Street
P.O. Box 087
Trenton, NJ 08625-0087.

In addition, complaints are also accepted through the A.B.C. Internet website at:

http://www.nj.gov/oag/abc/feedback.html.

COMPLIMENTARY DRINKS

CAN A CONSUMPTION LICENSEE OR EMPLOYEE BUY A CUSTOMER A DRINK OR GIVE THE CUSTOMER A DRINK "ON THE HOUSE?"

Yes, with certain qualifications. The general rule is that a licensee cannot sell any alcoholic beverage, whether in original package or by the drink, which would fall below the cost of that beverage. Generally, the offering of a free drink would cause it to be below cost and thus would be prohibited. There are, however, certain exceptions which permit a complimentary alcoholic beverage to be served to a patron. (See A.B.C. Bulletin 2440, Item 2.) The three exceptions are:

(1) The Division of A.B.C. recognizes the long-standing practice of allowing a retail licensee to "buy a drink" for a patron as a gesture of good will. This activity is permitted so long as there is no advertising of the fact that the retail licensee will "buy" a patron a drink at any established interval or based on the purchase by the patron of a certain number of drinks or other products. Where a

licensee engages in this practice of "buying a drink" for a patron, the licensee must be careful that it does not result in over consumption by the patron.

It should be noted that where someone identified other than the licensee, such as the band or the DJ, offers a free drink for certain patrons or during certain times, these activities will only be permitted if the licensee can lawfully conduct such a promotion. The band or the DJ is considered for alcoholic beverage control purposes as the licensee's employees since their services are in furtherance of the licensee's business. Accordingly, the licensee is responsible for their actions. Thus, a promotion that limits the offer to one free drink on the DJ would be lawful because the licensee itself could conduct such a promotion. In contrast, a promotion advertising "free drinks to all ladies for two hours on the DJ" is not permitted because it involves giving away more than one free drink, and since that cannot be done by the licensee, it also cannot be done by the licensee's employees.

(2) The Division also permits retail licensees to utilize a "free drink coupon." The Division has permitted retail licensees to offer a patron one open container drink per day per patron by utilization of a coupon or other similar advertising device.

(3) The Division also permits a licensee to include one alcoholic beverage drink to be given complimentary with or to be included in the price of a meal. In such situations, the licensee may advertise that the beverage is included with the meal or is complimentary with the meal. The Division also requires that the patron have the opportunity to choose a non-alcoholic beverage in lieu of the included or complimentary drink. Promotions which offer to the general public unlimited alcoholic beverages such as "champagne brunches" are not allowed. Only one free or complimentary drink can be offered with the meal.

WHAT IS THE PERMISSIBLE SIZE OR APPROPRIATE CONTAINER FOR FREE OR COMPLIMENTARY DRINKS?

Free or complimentary alcoholic beverage drinks with a meal can only be offered in a glass from which patrons drink or in a "split" (187 ml) of wine. Except for the "split," other intermediate containers such as carafes and pitchers from which the beverage is then poured into drinking glasses are not permitted.

For hotel and motel licensees only, it has been recognized that, under certain limited circumstances, a 750 ml bottle of champagne or similar sparkling or still wine may be offered. Such licensees are permitted to offer a complimentary bottle of champagne or wine not to exceed 750 ml in size in its original container to their hotel guests who are there as a result of a weekend, honeymoon or other specialty package which is provided by such retail licensees, provided that those guests are at least 21 yeas of age. (See A.B.C. Bulletin 2452, Item 4.)

CONCESSIONAIRE'S AGREEMENT

WHAT IS A "CONCESSIONAIRE'S AGREEMENT?"

A "concessionaire=s agreement" is a written agreement between a licensee and a non-licensed entity wherein the non-licensed entity sells food and non-alcoholic beverages on a licensed premises. This agreement is used when the licensee does not want to operate the food portion of the business. Licensees who are considering such type of operation on their premises should contact the Division and request a copy of the informational letter discussing "concessionaire's agreements." The fact that a restaurant is being conducted on the licensed premises should be noted on page 4 of the license application.

CONFLICT LICENSE

WHAT IS A "CONFLICT LICENSE?"

No retail license other than a Club License, may be issued, transferred or renewed by a local issuing authority if a member of that issuing authority (i.e., Mayor, Council Member, Committee Member) has an interest, either direct or indirect, in that license. In such instances, applications for transfer or renewal, must be made directly to the Director of the Division of Alcoholic Beverage Control for his/her approval. (N.J.S.A. 33:1-20; N.J.A.C. 13:2-4.1 through 13:2-4.10.)

CONSUMPTION OFF LICENSED PREMISES

IS IT A VIOLATION FOR A CUSTOMER TO PURCHASE AN ALCOHOLIC BEVERAGE, GO OUTSIDE AND CONSUME IT?

If a patron purchases a drink in an open container, he cannot remove it from the licensed premises. If a patron purchases package goods, the unopened containers can be taken outside. Once off the licensed portion of a premises, the patron can legally open and consume it (unless there is a municipal ordinance prohibiting it). If this is done in the area of the licensed premises, it can easily lead to problems and possible restrictions being placed on the license at renewal time. A wise licensee will take steps to ensure that this practice does not occur since it can only lead to a variety of problems. The licensee should also be aware that if it offers smoking outside the licensed premises or on an unlicensed deck, the patron cannot remove open containers from the licensed premises to these areas to consume while smoking.

CONTENT AND SIZE OF DRINK

HOW MUCH LIQUOR OR WINE MUST BE USED IN A DRINK?

There is no regulation regarding the amount of an alcoholic beverage that must be included in a drink unless it is advertised that the drink includes a certain amount of liquor or wine. In pouring or mixing drinks, however, one should always be conscious of over consumption by a patron. (See "Complimentary Drinks" and "Happy Hours.")

CONTEST PRIZES

MAY ALCOHOLIC BEVERAGES BE GIVEN AS PRIZES IN ANY CONTEST OR SWEEPSTAKES ON A LICENSED PREMISES?

No. A licensee is not permitted to offer a free drink or alcoholic beverage as a prize or reward. A licensee is also prohibited from offering as a prize or reward a gift certificate which includes alcoholic beverages. If it were done, it would be considered a sale below cost. (N.J.A.C. 13:2-24.8.)

CONTESTS

MAY A LICENSEE CONDUCT DANCE, SINGING OR OTHER SIMILAR CONTESTS?

Yes. Generally speaking, a licensee may conduct contests (dance, singing, costume, etc.) so long as the activity does not involve something that would violate a law or regulation and no purchase of alcoholic beverages is required as a condition of entry. No alcoholic beverage can be offered or given as a prize. (See A.B.C. Bulletin 2381, Item 4; see also "Card Playing/Dart Games.")

CONTRIBUTIONS – *See "Donations of Alcoholic Beverages"*

COOKING ALCOHOL

WHAT IS "COOKING ALCOHOL," AND CAN IT BE USED BY A LICENSEE WHO IS UNDER SUSPENSION?

Cooking alcohol is an alcohol product which has been made unfit for beverage or drinking purposes, usually by the addition of salt. It is no longer an alcoholic beverage and is therefore not subject to Alcoholic Beverage Control Laws and regulations. Consequently, it can be utilized by a licensee whose license is under suspension even though no alcoholic beverage activity is permitted on the licensed premises.

A licensee under suspension, however, may not utilize any alcoholic beverage, even for cooking purposes.

CO-OP ADVERTISING

A licensee may join with other licensees in advertising. This is commonly referred to as cooperative advertising or "co-op advertising." When this is done, the advertised prices must be set by only one of the licensees taking part in the ad, and the ad must prominently indicate the identity of that licensee. There must also be language to the effect that those prices and the products pertain only to that one licensee and may not be available, or available at that price, from other licensees listed in the advertisement. (N.J.A.C. 13:2-24.10.) (See "Advertising.")

CO-OP PURCHASING

WHAT IS INVOLVED IN COOPERATIVE PURCHASING?

A retail licensee may join with other retail licensees to cooperatively purchase alcoholic beverages. Before actually making any such cooperative purchase, the licensees must enter into a written agreement among themselves and must file such agreement with the Division of A.B.C. In addition, all the licensees must apply for a Cooperative Purchasing Permit with the Division and obtain a cooperative registration number. Each cooperative must renew its registration by August 1 of each year and pay an annual fee for each retail licensee in the cooperative. Licensees may be added or deleted from the co-op during the term of authorization provided that the request for either action contains each licensee~~s~~ written acknowledgment and proof of participation in the written cooperative agreement.

The total number of retail licensees that may participate in a purchasing cooperative is limited to the largest number of plenary retail distribution licenses issued to any one person as of the previous July 1st. A retail licensee may belong to more than one cooperative.

Retail licensees who are members of a cooperative must be sure that the restrictions that are contained in the applicable regulations (e.g., participation, delivery and transportation restrictions, etc.) are carefully followed. (N.J.A.C. 13:2-26.1; N.J.A.C. 13:2-23.21.) (See A.B.C. Bulletin 2430, Item 5, and A.B.C. Bulletin 2435, Item 5.) (See "Storage of Alcoholic Beverages.")

WHAT IS THE EFFECT WHEN ONE MEMBER OF THE CO-OP DOES NOT PAY ITS INVOICE?

When a retailer joins a co-op, it signs an agreement that it will be individually and jointly liable for payment of all alcoholic beverages purchased by any member of the co-op which are part of the co-op purchase. This means that if any member of the group does not pay pursuant to the terms of sale of a co-op purchase, the wholesaler can look to and seek payment from every other member of the co-op. Wholesalers efforts to collect such moneys are only enforceable in a competent court of law. Nevertheless, some co-ops post a bond with the wholesaler and require every member to contribute toward the premium.

Besides such provisions, the Division, by regulation, has established certain requirements regarding credit terms between wholesalers and retailers. Under these regulations, unless specifically stated in the agreement between the co-op and the individual wholesaler, only the defaulting retailer will be placed on C.O.D. status and not the entire co-op. In this case, if a defaulted member wishes to participate in a co-op purchase, arrangements must be made for cash payment at the delivery site. Therefore, the defaulting member must either prepay to the wholesaler or have its payment at the delivery site before its portion of the purchase can be delivered.

CORPORATE STRUCTURE CHANGE – *See "Stockholder Change"*

COST

HOW IS "COST" DETERMINED WITH REFERENCE TO THE REGULATION WHICH PROHIBITS A SALE BELOW COST?

"Cost" to the retail licensee is determined by the actual total price shown on the invoice from the wholesaler, including all applicable taxes. The cost of a bottle or drink is then determined by dividing the total price by the number of bottles or single drinks included in the total figure. If the "cost" figure works out to a fractional cent, the lowest amount at which the bottle or drink may be sold by the retailer is the next highest cent. (See A.B.C. Bulletin 2429, Item 3.) The actual invoice price shall be determined by the "last-in-first-out" method of applying generally accepted accounting principles.

The serving of a complimentary drink (see "Complimentary Drinks") is an exception to the prohibition of sales below cost.

COUPONS

ARE COUPONS ALLOWED?

It is permissible for a retail licensee to establish his own coupon program which offers a percentage discount (not based on any minimum purchase), a fixed dollar amount discount or a special price on alcoholic beverages upon presentation. (See A.B.C. Bulletin 2381, Item 3.) Such coupons may be made available by distribution on the licensed premises or by printing in news media or through a general resident mailing service. A coupon for a future purchase may not be given with or conditioned on the purchase of an alcoholic beverage product. Also, when a coupon is utilized, the licensee must make certain that a sufficient quantity of the offered product is on hand or immediately available to meet the anticipated demand. Additionally, when using a coupon, a retailer must make certain that the price of the item will not fall below its cost. (See "Cost;" see also "Advertising" and "Complimentary Drinks.")

Coupons of another type, which are commonly called "manufacturers' coupons," are not permitted for the purchase of alcoholic beverages. These are the "cents off" coupons which are generally distributed by manufacturers and would be redeemable in the retail store by a customer and later presented to the manufacturer by the retailer for reimbursement. Manufacturers of alcoholic beverages should know that these are not permitted in New Jersey and any such cents off coupons that they utilize should indicate thereon that they are not valid in New Jersey, and they should not be distributed in this State.

In contrast, mail-in manufacturer rebate offers are permitted in New Jersey, but such rebate coupons can only be handled through the mail between the consumer and the manufacturer. (N.J.A.C. 13:2-24.11.) (See "Rebates.")

COVER CHARGES

ARE "COVER" OR ADMISSION CHARGES PERMITTED FOR ADMISSION TO LICENSED PREMISES?

Yes. The "cover" or admission charge may also include one, but not more than one, drink. Also, it may not in any manner allow a patron to participate in a drawing or anything similar since that would be considered gambling. (N.J.A.C. 13:2-23.7 and 23.16.) (See "Complimentary Drinks" and "Gambling.")

HOW DO I REFLECT THE COLLECTION OF COVER CHARGES IN MY BOOKS AND RECORDS?

All cover charges are considered income of the licensed establishment and must be reflected in the books of account. (See "Books of Account.") If cover charges are used to pay for a band, a promoter or other entertainment, the total amount of the collected cover charges should be deposited into the business accounts and recorded as income. The payment for the entertainment should be in the form of a business check and recorded as an expense.

CRANE MACHINES – *See "Claw and Crane Machines"*

CREDIT CARDS

MAY A LICENSEE ACCEPT CREDIT CARDS FOR PURCHASES, AND MAY THAT FACT BE ADVERTISED?

Yes. A licensee may accept credit cards in payment and may advertise that fact in newspapers or other media. (See A.B.C. Bulletin 2224, Item 7; see also "Home Deliveries.")

CREDIT PRACTICES

HOW MUCH CREDIT MUST A WHOLESALER EXTEND TO A RETAILER, AND WHAT HAPPENS IF THE BILL IS NOT PAID IN THAT TIME?

A wholesaler is not required to give credit but may extend credit to a retailer up to a maximum of 30 days of delivery. The wholesaler must set forth its credit terms both in its "Current Price List" ("C.P.L.") filed monthly with the Division of A.B.C. and on invoices. Credit terms must be the same for all retailers unless different terms are justified by the financial or credit history or risk of a particular retail account.

If the wholesaler has not been paid within the established credit period, the wholesaler is required to give or send a retailer a Notice of Obligation within three (3) business days. This Notice of Obligation is a reminder of the bill and must basically identify the terms of the debt and advise the retailer of the right to dispute the debt by notifying the Division of A.B.C. If still not paid within three (3) more business days, the wholesaler must give the overdue licensee and all other wholesalers who sell to retailers a Notice of Delinquency. This Notice advises the other wholesalers of the debt and of the fact that no credit may be extended until the debt is paid and the wholesaler issues a Notice of Satisfaction. Until that time, a licensee may only purchase alcoholic beverages on a prepaid or cash on delivery (C.O.D.) basis. The Notice of Satisfaction must be given to the other wholesalers within three (3) business days after the debt is paid. (N.J.A.C. 13:2-24.4.) In addition to the sanctions described above, the wholesaler must also charge any interest or penalties that were set forth in its C.P.L. and which appeared in the terms set forth on the invoice for the alcoholic beverages for which payment was not made on time.

HOW IS A LICENSEE'S C.O.D. STATUS REMOVED?

In most instances, licensees can have their C.O.D. status removed only by paying the amount of the unpaid invoice together with interest and penalties. However, a licensee may be taken off C.O.D. status by the Director if the licensee submits a written petition with notice to all creditor wholesalers in such instances where:

(1) the licensee and wholesalers to whom money is owed have executed among themselves a written repayment plan; or

(2) the license has been the subject of a formal debt liquidation plan pursuant to federal or State insolvency proceedings where notice of the proceedings was given to all the creditor wholesalers or

(3) the licensee has received a transfer of the license from the issuing authority pursuant to a sale approved under (a) federal or State insolvency proceedings, (b) State receivership HIP action, (c) New Jersey Division of Taxation seizure of the license or (d) IRS seizure of the license where the petitioner is not connected to the old licensee who incurred the debts.

In all other instances, the C.O.D. status will follow the license through subsequent person-to-person transfers. See N.J.A.C. 13:2-24.4.

CREDIT COMPLIANCE INFORMATION

To check if a license is on C.O.D. status, please contact Credit Compliance at (609) 585-8000. Their address is 941 Whitehorse Avenue, Hamilton, New Jersey 08610.

CURRENT PRICE LIST

WHAT IS THE "CURRENT PRICE LIST?"

The "Current Price List," commonly referred to as the "C.P.L.," is the list of prices and terms of sale which each wholesaler who sells to retailers is required to maintain and to file monthly with the Division of A.B.C. The monthly filing must be made by the 15th day of each month with the prices that are in effect for the entire calendar month that follows. On the third business day following the filing of the C.P.L.s, they are made available for inspection by the members of the industry at the offices of the Division of A.B.C.

A retail licensee may not purchase alcoholic beverages on any terms or for any price that differs from those listed in the C.P.L. See N.J.A.C. 13:2-24.6(9)3-7.

DEATH OF LICENSEE – *See "Extension of License"*

DISPLAYS

WHAT DISPLAYS OR PROMOTIONAL MATERIALS CAN A RETAILER LEGALLY RECEIVE FROM WHOLESALERS, MANUFACTURERS AND OTHER SUPPLIERS?

The Division of A.B.C., with some exceptions, generally does not specify by type what displays or promotional materials are permitted or prohibited. Wholesaler, manufacturers and other suppliers may provide advertising material and product displays for use on retail licensed premises provided those offerings are not conditioned upon future purchases of alcoholic beverages and further provided that the supplier of the materials maintains certain records and does not discriminate between licensees.

These displays may include wine racks, bins, barrels, casks, shelving and the like from which alcoholic beverages can be displayed and sold. They may involve product advertisement by banners, consumer self-liquidating offers, case cards, advertising of consumer novelties, recipe books, napkins, etc. These items are supplied by manufacturers or wholesalers generally at their own expense. A retailer may not be paid or charged for placing or permitting a display on the licensed premises or for using advertising materials.

Retailers should be aware that the providing of advertising display material at retail licensed premises can be done by either a licensed New Jersey wholesaler utilizing its own employees or by a display service company registered under N.J.A.C. 13:2-24.12. When the display is placed by a registered display service company, the retail licensee must receive a copy of the placement invoice. The retailer can refuse to have a display placed in its establishment but it cannot refuse to permit one company to place the display and thereafter accept it from another company it favors. Nor can the retail licensee state that it will only accept displays booked with certain display companies. (See A.B.C. Bulletin 2441, Item 7.)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

WHAT IS THE "DIVISION OF ALCOHOLIC BEVERAGE CONTROL?"

The Division of Alcoholic Beverage Control ("Division of A.B.C." or "A.B.C.") is the unit of State Government that is charged with regulating the commerce of alcoholic beverages within the State of New Jersey. The 21st Amendment to the United States Constitution gave each state the right to determine whether to allow alcoholic beverages, and, if so, how to regulate them. As soon as the amendment was adopted in 1933, New Jersey enacted its Alcoholic Beverage Control Law, which is commonly known as Title 33 (since the Alcoholic Beverage Control Law is contained in the Revised Statutes as the 33rd title listed alphabetically by major subject matter and under the title of "Intoxicating Liquors"). In that law, a Department of Alcoholic Beverage Control was established under a Commissioner. In the late 1940's, after New Jersey's 1947 Constitution was adopted, some departments were consolidated and the Department of Alcoholic Beverage Control was absorbed into and became a division of the Department of Law and Public Safety under the New Jersey Attorney General.

The Division of A.B.C. is headed by a Director, whose function is to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of the Alcoholic Beverage Control Law. (N.J.S.A. 33:1-1.1 and 33:1-3.) (See A.B.C. Bulletin 2443, Item 1.)

A listing of personnel within each of the Division=s Bureaus is found at the beginning of this Handbook.

DOCUMENTS AND RECORDS

WHAT DOCUMENTS AND RECORDS MUST A LICENSEE KEEP ON THE LICENSED PREMISES AND MAKE AVAILABLE FOR INSPECTION BY PERSONS AUTHORIZED TO ENFORCE THE ALCOHOLIC BEVERAGE CONTROL LAWS?

The following documents and records must be maintained on the licensed premises in such manner as to be readily available upon demand to persons authorized to enforce the Alcoholic Beverage Control Laws:

(1) current license certificate (which must also be conspicuously displayed in plain view of customers) (N.J.A.C. 13:2-23.13(a)1);

(2) a copy of the current license application with any amendments filed, if applicable, together with a copy of the last full retail license application filed by the licensee (N.J.A.C. 13:2-23.13(a)2) (see "Twelve-Page Application");

(3) a fully completed and up-to-date list of all persons currently working on the licensed premises (commonly known as the "E-141-A" form or "Employee List") (N.J.A.C. 13:2-23.13(a)3);

(4) copies of delivery slips, invoices or similar documents which must be retained for a period of one (1) year (see N.J.A.C. 13:2-20.4(b));

(5) true books of account and other records including all business receipts, disbursements and funds which, when used in connection with the licensed business, must be retained for a period of five (5) years and, with respect to all moneys invested in the licensed business, all such records must be retained for an unlimited period of time (see N.J.A.C. 13:2-23.32) (for additional information, see "Books of Account");

(6) records of transactions with or placements by a registered display service (N.J.A.C. 13:2-24.12) and

(7) N.J. Sales Tax Certificate of Authority number (see A.B.C. Bulletin 2457, Item 4, and see "Inspections.")

NOTE: At the time of the latest revisions to this *Handbook*, the required annual Federal Special Tax Stamp was suspended by Congress. Should the Special Tax Stamp be re-instituted by the Federal government at some future date, the current stamp must be displayed in the same manner as the A.B.C. license. In addition, the licensee should be able to show proof of the Special Tax Stamp payment.

DONATIONS OF ALCOHOLIC BEVERAGES

CAN A RETAIL LICENSEE GIVE ALCOHOLIC BEVERAGES AS DONATIONS OR CONTRIBUTIONS?

No. It is prohibited for a retail licensee to donate any alcoholic beverage product in any form. Thus, if an organization requests a donation of an alcoholic beverage product or gift certificate for an alcoholic beverage product to be used as a door prize, etc., the licensee must refuse. Since a "gift" of alcoholic beverages by a licensee is by definition a "sale," to give such a donation would be a sale below cost and is prohibited. (N.J.A.C. 13:2-24.8; see also "Cost.")

DRESS CODE

MAY A LICENSEE ESTABLISH A DRESS CODE?

Nothing in the Alcoholic Beverage Control Laws or regulations prohibits a licensee from establishing a dress code. There may, however, be requirements imposed by other agencies that must be observed.

DRIVE-IN WINDOW SALES

ARE "DRIVE-IN WINDOW" OR "CURB SALES" PERMITTED?

The concept of a "drive-in window" or "curb service" is not permitted for a retail licensee. In most cases, to provide such service, the actual sale would occur off the licensed premises. In addition, the Division, for obvious public policy reasons, disapproves of this type of operation. The sensitivity of the relationship between alcoholic beverages and motor vehicle operations is such that this is not a prudent practice, nor does it provide to the licensee the best opportunities to visually observe the patron to ascertain whether that patron is of legal age or is actually or apparently intoxicated. (See A.B.C. Bulletin 1031, Item 3.)

E-141-A FORM

WHAT IS THE "E-141-A FORM?"

The "E-141-A form" is the employment list and form prescribed by the Director of the A.B.C. containing names, addresses and other required information of all persons employed on retail licensed premises. All persons defined as an employee by the A.B.C. must be listed on the employment list. (See "Employee" for additional details.) The form must be maintained in an up-to-date manner at all times. A blank form is available from the Division of A.B.C. or through the Internet at the A.B.C. Internet site www.nj.gov/lps/abc/downloads/e141a.pdf. It is permissible for photocopies of the form to be utilized. (N.J.A.C. 13:2-23.13(a)3.) (See "Documents and Records.")

The E-141-A form must be maintained by every retail licensee and kept on the licensed premises unless specific written permission to utilize an alternative format or place is given by the A.B.C. Director. This permission will only be given in exceptional circumstances such as when the licensee has several thousand employees. (See A.B.C. Bulletin 2431, Item 5.) Licensees who have a computer which is programmed to list all of the information required on the E-141-A form in substantially the same format, may utilize same as long as the information contained therein is current, accurate, up-to-date and capable of being immediately printed out upon request by authorized officials. (See A.B.C. Bulletin 2447, Item 2.) The employment list must be produced when requested by any law enforcement officer or employees of the A.B.C.

Employees under 18 years of age in most instances must have a "Minor's Permit" issued by this Division and that such permit number must be listed on the form. (See "Age Limits.")

Employees convicted of a crime must indicate same on the E-141-A form and are presumptively prohibited from working until written authorization is received from the Division. If issued, the employee's Rehabilitation Employment Permit Number or Eligibility Determination Number must be listed on the E-141-A form. (See "Rehabilitation Employment Permit/Disqualification Removal.")

ELIGIBILITY, DETERMINATION OF

WHAT IS A "DETERMINATION OF ELIGIBILITY," AND WHEN IS IT NECESSARY?

Under New Jersey Alcoholic Beverage Control Law, persons convicted of a crime involving moral turpitude are unable to have any interest in or **BE EMPLOYED BY AN A.B.C. LICENSEE**. (See Rehabilitation Employment Permit/Disqualification Removal.") In some instances, it may be unclear whether a conviction involves an element of moral turpitude. In those instances the convicted person can petition the Division to render a determination of eligibility as to whether or not the crime does involve an element of moral turpitude.

Generally, crimes involving moral turpitude are those deemed serious by society.

In order to obtain a determination of eligibility, it will be necessary for the petitioner to submit a copy of the following documents:

(1) a copy of an indictment, if one was issued;

(2) minutes of the Grand Jury presentation, if one was conducted;

(3) any probation or pre-sentence report issued;

(4) a certified true copy of the Judgement of Conviction;

(5) an Affidavit executed by the petitioner containing:

  (a) all the facts and circumstances surrounding the arrest, indictment (if applicable), conviction and sentencing;

  (b) an affirmative statement if there was no indictment, Grand Jury minutes and/or probation/pre-sentence report that either same were never issued or else a justifiable reason is provided as to why such documents were not submitted for review and

  (c) a statement of whether or not the petitioner has been convicted of any other criminal matters or if there are any pending criminal dispositions at the present time;

(6) any other official reports that may have been prepared relative to this matter **AND**

(7) any other documents or matters the petitioner believes would have relevance to the decision in this matter.

Upon receipt of the submitted documents, the matter will first be reviewed by the Director who may be able to determine whether the conviction was not for a crime involving moral turpitude; and, therefore, the

petitioner is eligible to have an interest in an alcoholic beverage license. The petitioner may be required to divest any interest in the license pending such final determination. (See "Rehabilitation Employment Permit/Disqualification Removal" and "Moral Turpitude;" see also "Fee Schedule" at the end of this Handbook.)

It should be noted that, by definition, convictions for disorderly persons offenses are not crimes, and therefore, such convictions do not render a person criminally disqualified for licensure. Such convictions can bear on whether or not a person is reputable, however, and in such instance an issuing authority could decline to issue or transfer an alcoholic beverage license to a person who has not established that she/he is a reputable person who will operate the business in a reputable manner.

EMPLOYEE

WHO IS CONSIDERED TO BE AN "EMPLOYEE" OF A LICENSEE?

Any person who performs services in connection with the licensed business is considered to be an "employee." This covers people that are included on the payroll of the licensee, persons who perform services on the licensed premises pursuant to a contract (independent contractor) and who are not included on the licensee=s payroll and even people who are not paid for their work or services, including family members who may temporarily be "minding" the business while the owner is away from the premises. Some common examples of persons considered "employees" include those regularly employed such as managers, bartenders, waiters and waitresses, cooks, janitors, door-persons, bouncers, cashiers, dishwashers, bus-persons, clerks, stock clerks, delivery people and those hired under a contract, such as a promoter, a band member, singer, disc jockey, dancer, private security guard, private parking attendant, janitorial service person and others who regularly perform services required in the operation of the licensed business. Persons who are engaged to perform extraordinary repairs to the licensed premises, such as an electrician or plumber, provided they are independent business persons and are not under the direct supervision of the licensee, are not generally considered employees for A.B.C. purposes.

All persons who are considered employees must be listed on the "E-141-A" form. (See "Documents and Records" and "E-141-A Form.")

Each employee must meet the following qualifications:

(1) must be at least 18 years of age or have the necessary employment permit (see "Age Limits");

(2) has not been convicted of a crime (with certain limited exceptions) unless the disqualification has been removed or a Rehabilitation Employment Permit (or temporary work letter) has been issued by the A.B.C. Director (see "Rehabilitation Employment Permit/Disqualification Removal");

(3) is not a full-time law enforcement officer in the community in which the license is located (see "Police Officer Employment");

(4) does not have an interest in any manufacturer or wholesaler of alcoholic beverages (N.J.S.A. 33:1-43) and is not employed as a solicitor (N.J.A.C. 13:2-16.7) (see "Tied-House Statute");

(5) has no disqualification resulting from having had an interest in a revoked license (N.J.S.A. 33:1-31) and

(6) does not have an interest in more than two retail licenses, unless grandfathered or covered by an exception (N.J.S.A. 33:1-12.31) (see "Two-License Limitation").

EMPLOYEE LIST – *See "E-141-A Form"*

EMPLOYER RESPONSIBILITY

CAN THE OWNER OF A LICENSE BE CHARGED WITH A VIOLATION BASED SOLELY ON SOMETHING AN EMPLOYEE DOES OR DOES NOT DO?

Yes. The licensee is responsible for the acts of employees even if those acts are contrary to specific instructions and even if it occurs during the absence of the licensee. It is the licensee=s responsibility to monitor and control the activities and performance of employees. (N.J.A.C. 13:2-23.28.)

ENTERTAINERS

MUST A LICENSEE OBTAIN APPROVAL TO HIRE A BAND, SINGER, DANCER OR OTHER ENTERTAINER?

There is no State A.B.C. regulation or law that requires approval for a licensee to hire an entertainer, but some municipalities have ordinances requiring an entertainer to be licensed or registered. There are also certain age requirements, and in most instances, entertainers must be at least 18 years of age. (See "Age Limits.") Entertainers are considered employees of the licensee for A.B.C. purposes. (See "E-141-A Form" and "Employee;" see also "Go-Go Dancers.")

Licensees should note, however, that if a band member or other entertainer is a police officer, approval for such employment is required. N.J.A.C. 13:2-23.31. (See "Police Officer Employment.")

EXCLUDING PATRONS – *See "Patrons, Excluding"*

EXTENSION OF LICENSE

WHAT MUST BE DONE IF A LICENSEE DIES OR A LICENSE IS INVOLVED IN INSOLVENCY COURT PROCEEDINGS?

If a license is held solely by an individual who dies, the licensed business cannot be operated until the license is extended to an executor or administrator by the local issuing authority. In order to keep the licensed business operating immediately following the licensee=s death, pending appointment of the executor or administrator, the prospective executor or administrator may petition the Division of A.B.C. for

a Special Permit to operate. (N.J.S.A. 33:1-26; N.J.A.C. 13:2-6.) When a partner or stockholder dies, the license can continue to operate. The license application, however, must be amended to indicate assignment of the deceased=s interest to an executor or administrator. When a licensee goes into bankruptcy, receivership or similar court-supervised insolvency proceedings, the license must be extended to the trustee, receiver or other court-appointed person by the issuing authority. Until that is done, the licensed business can only continue to operate on a special permit issued by the Division of A.B.C.

In extending licenses, a complete 12-page license application is required. (See "Retail License Application.")

When the licensee's estate is settled or the insolvency proceedings are concluded, a person-to-person transfer from the executor, administrator, trustee, etc., to the person or persons legally entitled to the license at that point is required. (See "License Transfer.")

EXTENSION OF PREMISES

HOW CAN A RETAIL CONSUMPTION LICENSEE USE AN UNLICENSED AREA FOR A SPECIAL EVENT WHERE THE LICENSED PREMISES IS TOO SMALL?

A retail consumption licensee may apply for an "Extension of Premises" Permit to extend or expand the area on which alcoholic beverages for consumption on the premises may be sold and served. The extension area must be contiguous to or adjoin the permanently licensed premises. It is usually issued to allow the sale and service in a parking lot, outside lawn area, etc. The sale of any package goods on the extension area is prohibited.

Application is made to the Division of A.B.C., which must include a description and sketch of the extension area, security measures, reason for the extension and the date and hours the permit is to be in effect. This application must contain written consent of the municipal clerk and the police chief of the municipality in which the license is situated and of the owner of the extension area, if other than the licensee. **NO MORE THAN 25 PERMITS MAY COVER ANY ONE AREA OR LOCATION IN EACH CALENDAR YEAR**. (See "Fee Schedule" at the end of this Handbook.)

Any permanent enlargement of the area that constitutes the licensed premises as initially or previously approved requires a place-to-place transfer.

FALSE IDENTIFICATION

WHAT SHOULD A RETAIL LICENSEE DO WHEN AGE IDENTIFICATION IS PRESENTED?

See "Age to Purchase" where the permissible forms of age identification are discussed. Licensees are cautioned that many young people have obtained counterfeit photo driver's licenses or photo identification cards or they have made alterations to their own licenses or identification cards. Thorough inspection should be made of any identification presented, and the person presenting it should be carefully questioned and compared to the photograph and written information on the identification. Other pieces of

identification and comparison of signature may also be utilized in addition to the photo driver's license or photo identification card. This is especially true if the licensee is using an electronic swiping device to determine if the individual is underage.

FEES – *See "Fee Schedule" at the end of this Handbook or Check the Division of ABC's website at www.nj.gov/lps/abc/index.html for current applications and fee schedule.*

FETAL ALCOHOL WARNING

AS A RETAIL LICENSEE, MUST I DISPLAY A FETAL ALCOHOL SYNDROME WARNING IN MY ESTABLISHMENT?

Any establishment with a Class C license, except a Plenary Retail Transit License or a Club License, shall ensure that a warning notice prepared by the New Jersey Department of Health is posted prominently in any service area as well as on a wall, towel dispenser or other appropriate location in any public restroom for women patrons. The notice warns patrons that alcohol consumption during pregnancy has been determined to be harmful to the fetus and can cause birth defects, low birth weight and Fetal Alcohol Syndrome, which is one of the leading causes of mental retardation. Warning notices are available from your local health department or the A.B.C. Internet site in the Investigations Bureau "Forms and Publications" section. (See N.J.S.A. 33:1-12a.)

FINGERPRINTING

MUST APPLICANTS FOR RETAIL LICENSES AND EMPLOYEES OF RETAIL LICENSEES BE FINGERPRINTED?

A person who has been convicted of a crime is usually prohibited from holding an interest in an alcoholic beverage license, and the municipality often requires fingerprinting of applicants to verify that such individuals are not criminally disqualified.

The same prohibition exists for employees (unless they have applied for and received written authorization from the Division of A.B.C.). (See "Rehabilitation Employment Permit/Disqualification Removal.") Also, some municipalities have adopted ordinances requiring the municipal licensing of some employees. Fingerprinting is often required to verify that the potential employee is not criminally disqualified. (N.J.A.C. 13:2-23.26.)

An applicant or employee may be required to pay a fee for the fingerprint check.

FOOTBALL POOLS – *See "Gambling"*

FREE DRINKS – *See "Complimentary Drinks"*

FREE FOOD

IS IT PERMISSIBLE TO SERVE FREE FOOD IN A TAVERN OR RESTAURANT?

Yes, as long as the free food or snacks are available to everyone and the purchase of an alcoholic beverage is not required in order for a patron to be served the free food or snacks. (N.J.A.C. 13:2-23.16.) There is no limitation on the type or quantity of free food or snacks that can be provided. (See "Happy Hours.")

GAMBLING

IS GAMBLING ALLOWED ON LICENSED PREMISES?

Generally, neither gambling nor gambling paraphernalia is allowed on licensed premises. Those games or activities, however, which are licensed under the New Jersey laws dealing with bingo, raffles or lotteries and charity sponsored "casino nights" may be conducted on a licensed premises. (If you have a N.J. Lottery machine, you must indicate same on page 4 of your license application.)

Any other unlicensed game or activity where chance and not skill is the primary element and a person pays money or anything else of value in the hope or expectation of winning money, a prize or some other valuable thing, is prohibited. This prohibition does not apply to the holding of a tournament, such as darts or bowling, where skill, and not chance, is the determining factor. (N.J.A.C. 13:2-23.7.)

A sweepstakes is permitted provided no fee or purchase is required to enter. The prize, however, may not include or be any alcoholic beverage. For example, if the prize is a free meal, that meal may not include alcoholic beverages.

The Division has found that "football pools," "sports pools" and "Super Bowl pools" constitute gambling under the above definition, and are, therefore, prohibited on the licensed premises by both the licensee, its employees and its customers.

Licensees are accountable for any prohibited gambling activity by patrons on the licensed premises. (See "Bingo," "Card Playing/Dart Games," "Claw and Crane Machines," "Contest Prizes" and "Raffle Tickets.")

GIFT CERTIFICATES

ARE LICENSEES PERMITTED TO SELL GIFT CERTIFICATES TO BE USED FOR FOOD AND ALCOHOLIC BEVERAGES?

Yes. Gift certificates are permitted as long as they are redeemable only at face value. They are permitted for package goods as well as for food and alcoholic drinks to be consumed at a bar or restaurant, such as a "dinner certificate."

When a gift certificate is made available by a member of an advertising co-op or group of affiliated but not identically owned stores and the certificate can be redeemed at any of the stores in that co-op or group, there must be provision for full payment to be paid to the store where the certificate is redeemed if it is not the

store where the gift certificate was purchased. In such case, no profit may be made on the sale by anyone other than the redeeming store, except that a flat service charge, which was pre-established, may be charged. The service charge may not be a percentage of the value of the gift certificate or in any way based on its value. (See A.B.C. Bulletin 2381, Item 6; see also "Contest Prizes.")

GO-GO DANCERS

WHAT ARE THE RESTRICTIONS ON GO-GO DANCING?

Go-Go dancing, just as other live entertainment, cannot involve persons under the age of 18 years (see "Age Limits") and cannot involve "lewd or immoral activity." (N.J.A.C. 13:2-23.6.) Such lewd or immoral activity generally involves the lack of attire or covering on genitals or "private parts," as well as female breasts. See-through garments and the use of "pasties" are not considered sufficient covering. Simulation of sexual activity, even if clothed, is also prohibited. Dancers are not permitted to touch or be touched by patrons, and this includes the placing of tips in the costume of the dancer. A dancer also cannot solicit drinks from patrons.

HAPPY HOURS

ARE "HAPPY HOUR" PROMOTIONS PERMITTED?

There is no prohibition on promotions, be they called "happy hours," "attitude adjustment hours," etc., provided they do not unduly promote the consumption of alcoholic beverages.

Certain practices, however, which do unduly promote the consumption of alcoholic beverages, are absolutely prohibited. These include the offering or serving of "2 for 1," increasing the size of a drink over its usual size, any other multiple drink offer such as "all you can drink for a set price" or anything else that gives something of value based on the purchase of an alcoholic beverage drink. (N.J.A.C. 13:2-23.16.)

The price of a drink can be reduced for a promotional purpose, but it cannot be brought down to where the price is less than the cost of the drink. (N.J.A.C. 13:2-24.8; see also "Cost.")

Free or reduced-price food or snacks can be given as long as the purchase of an alcoholic beverage is not required. The Division of A.B.C., in fact, encourages that "happy hour" promotions be along this line, if they are to take place at all. A detailed discussion concerning prohibited promotions is contained in A.B.C Bulletin 2440, Item 2. (See "Complimentary Drinks.")

HEARING FOR LICENSEES

WHEN DOES A LICENSEE HAVE THE RIGHT TO A HEARING CONCERNING A LICENSE?

Any time an application is made for the issuance of a license, a transfer of the license or the renewal of it, the applicant must be given the opportunity to present its case or position before the issuing authority. If there is no objection, it might not be necessary to do so. However, where there is an objection, the applicant must be notified of that fact and must be given the chance to appear and present its case.

When a licensee is charged with a violation, the licensee must be given no less than five (5) days notice of the charges and hearing date in order to have a reasonable opportunity to be heard, to present evidence and to cross-examine witnesses.

The above applies to both proceedings before the Division of A.B.C. and before the municipality.

HOME DELIVERIES

ARE HOME DELIVERIES PERMITTED?

A licensee with plenary retail privileges may deliver alcoholic beverages (with or without a fee) to the residence of a customer who has purchased the beverages at the New Jersey licensed premises. Such purchase may take the form of either the customer actually being in the licensed premises and paying for the beverage so that they actually become the customer=s property at that point, or it may be by a telephone order, placed during the permitted hours of sale, where the cost is immediately charged to the customer=s credit card or pre-established credit account so that the ordered beverage actually becomes the ordering customer=s property at that point. It is not permitted to receive an order by telephone and then take the alcoholic beverage to the ordering customer=s home with payment to be collected there. This would be a sale at the home of the customer, which is off the licensed premises, and therefore, beyond the scope of the license.

In making a permissible home delivery, a licensee must be sure that the alcoholic beverage is not delivered into the hands of a person under the age of 21 years. Also, such deliveries may only be made during the hours in which the licensee may legally sell alcoholic beverages. The licensee may legally transport alcoholic beverages only in A.B.C. licensed vehicles. (See "Credit Cards" and "Transit Insignia Permit.")

HOTEL/MOTEL – *See "License – Retail"*

You must indicate same on page 4 of your license application.

INACTIVE LICENSE

WHAT IS AN "INACTIVE LICENSE?"

An inactive license may be renewed by a municipality two times after the term in which the license became inactive. If the license has been inactive for more than two license terms, the licensee must file a Verified Petition in affidavit form and a filing fee with the Director (with a copy to the issuing authority), setting forth what efforts have been made to site the license at an operating place of business or what specific plans are in place for activating the license in the future. A licensee holding a license which has been inactive for two full license terms or more should contact the Office of Counsel to the Director in the Division of A.B.C. for the procedure to apply for relief pursuant to N.J.S.A. 33:1-12.39. Such licensees should also note that a timely filed renewal application must be filed with the issuing authority and all fees paid before the Director will act on a petition. (See "License Renewal" and "Lapsed License;" see also "Fee Schedule" at the end of

this Handbook.)

In all cases, municipal clerks should accept timely filed applications and fees and forward them to the Licensing Bureau of the Division of A.B.C. but defer passing a resolution renewing the license until the Special Ruling is issued by the Director and the issuing authority is in receipt of same. (N.J.S.A. 33:1-12.39.) (See "Pocket License.")

INSPECTIONS – REVIEW OF BUSINESS RECORDS

IF THE LICENSEE OR A MANAGER IS NOT PRESENT WHEN EITHER A.B.C. INVESTIGATIONS BUREAU PERSONNEL OR LOCAL LAW ENFORCEMENT PERSONNEL VISIT THE LICENSED PREMISES, MUST DOCUMENTS AND RECORDS BE AVAILABLE?

Yes, records generally must be made immediately available upon demand. Employees should be instructed as to where such records are located, and at least one of the employees on duty at all times should have access to them.

If a licensee has a business reason to maintain the business records off the licensed premise, an application can be made to the ABC Licensing Bureau for an annual "Off-Premise Storage of Business Records" permit. The licensee must disclose to the A.B.C. the actual location where the business records are maintained and stored and agree to produce any requested business record within seven days of the request. Once approved by the A.B.C., a permit sticker will be issued. The licensee must display the sticker on the A.B.C. license certificate. This will indicate to both the A.B.C. and local law enforcement that the business records are maintained off the licensed premise. ("See Records – Permit for Off-Premise Storage of Business Records.")

A licensee can be cited for a violation if the records are not available or if a permit is issued, for not producing the records within the time allowed. (See "Documents and Records" and "A.B.C. Investigations Bureau.")

INTOXICATED PATRONS

WHAT ARE A LICENSEE'S RESPONSIBILITIES TOWARD AN INTOXICATED PATRON?

The regulations prohibit a licensee from selling, serving or delivering any alcoholic beverage to a person who is actually or even appears to be drunk or intoxicated. The licensee may not allow such a person to consume any alcoholic beverage on the licensed premises. (N.J.A.C. 13:2-23.1(b).)

If the patron who is intoxicated or who appears to be intoxicated becomes unruly or insists that he be served an alcoholic beverage, the local police should be called for assistance. In any event, such person should never be served or allowed to continue to drink an alcoholic beverage while in such condition. It is permissible, however, for such person to be served food, coffee or a non-alcoholic beverage. The licensee should also do everything reasonably possible to prevent such person from driving. (See "Substituting Beverages.")

INVESTIGATIONS OF THE APPLICANT

WHAT INVESTIGATION IS CONDUCTED OF AN APPLICANT FOR A RETAIL LICENSE?

The Alcoholic Beverage Control Law requires the local issuing authority to investigate applicants and premises for licensure and to review licensees (and premises) at the time of renewal. This is generally done by the local police department at the direction of the governing body or by investigators specifically employed by a local A.B.C. Board. Regulations of the Division of A.B.C. require that at the time of the issuance, transfer or renewal of a retail license, the municipal issuing authority affirmatively find and state in a resolution the following:

(1) that the application is fully completed;

(2) that the applicant is qualified to be licensed according to all standards established under the Alcoholic Beverage Control Law, A.B.C. regulations, local ordinances and conditions established for the license, provided those conditions are consistent with State law **AND**

(3) that the applicant has disclosed and that the local issuing authority has reviewed the source of all funds used to purchase the license and the licensed business and any additional financing obtained in connection with the licensed business. (N.J.S.A. 33:1-24; N.J.A.C. 13:2-2.9 and 13:2-7.10.)

In the course of the investigation the applicant may also be required to produce documents such as personal or business tax returns, contracts, leases, etc., and to furnish sworn statements regarding matters relevant to the application.

I.R.S. SEIZURE – *See "Liens on Licenses"*

ISSUING AUTHORITY

WHO IS THE ISSUING AUTHORITY FOR A RETAIL LICENSEE?

For retail licenses, other than Plenary Retail Transit Licenses, the issuing authority is the governing, body of the municipality or the local A.B.C. Board. These entities are referred to as the "issuing authority" or the "governing body." However, if a member of the issuing authority has an interest in the license, the license must then be issued by the Director of the Division of A.B.C. and is then called a "Conflict License." (N.J.S.A. 33:1-19 and 1-20; N.J.A.C. 13:2-4.) (See "Conflict License.")

LAPSED LICENSE

WHAT CAN I DO IF I HAVE NOT RENEWED MY LICENSE BY THE TIME REQUIRED WITH THE LOCAL ISSUING AUTHORITY?

Most retail licenses must be renewed with the local issuing authority by June 30th of the year ending the current license term. If your license has not been renewed by June 30th, absent receipt of an Ad Interim Permit from the Division of A.B.C., you must shut down your business. The law states that you must file

your renewal application and filing fees with the local issuing authority by June 30th or within 30 days thereafter. As a result, if you do not file within that time, the issuing authority can no longer act upon your application because your license has lapsed. You then have until July 30th of the year ending the new license term to file a renewal application and filing fees with the issuing authority and file a Verified Petition and filing fee with the Director of the Division of A.B.C. to request the issuance of a new license. You must file a Verified Petition with the Division which establishes that the reason you did not file the renewal application and fees within the time required was due to circumstances beyond your control. If you do not file your renewal application and fees with the issuing authority and file your Verified Petition and filing fee with the Division by July 30th of the year ending the new license term, the Division no longer has jurisdiction to consider your petition and your license lapses and ceases to exist. (N.J.S.A. 33:1-12.18.) (See "License Renewal;" see also "Fee Schedule" at the end of this Handbook.)

LAST CALL

MUST A LICENSEE OR EMPLOYEE OF A BAR OR TAVERN ANNOUNCE "LAST CALL?"

There is no requirement that "last call" be announced unless there is a local ordinance that requires it. In any event, there must be strict compliance with the rules governing closing hours especially when consumption must end and all patrons must be off the premises. (See "Closing Time.")

LEASING OF LICENSE

CAN A LICENSEE ALLOW SOMEONE ELSE TO USE THE LICENSE TO OPERATE A BUSINESS?

No. The person who operates the business must be an actual disclosed licensee (who has at least a one percent interest) to whom the license was issued. It is a serious violation for a licensee to lease or "farm out" the license to anyone else. (N.J.S.A. 33:1-26.)

LEFTOVER ALCOHOLIC BEVERAGES

MAY A LICENSEE WHO OPERATES UNDER A SEASONAL RETAIL CONSUMPTION LICENSE RETURN LEFTOVER ALCOHOLIC BEVERAGES AFTER CLOSING FOR THE SEASON?

If the goods are likely to spoil during the closed season, the licensee should contact the wholesalers or distributors from whom the goods were purchased. It is permissible for them to take back those products. The final decision, however, is a business decision that rests with the wholesaler or distributor, and there is no requirement that they must, in fact, take them back. (N.J.A.C. 13:2-39.1.)

LEWD OR IMMORAL ACTIVITY

WHAT IS THE NATURE OF LEWD OR IMMORAL ACTIVITY THAT IS PROHIBITED ON LICENSED PREMISES?

Live entertainment, as described under the heading "Go-Go Dancers," is generally prohibited. (See "Go-Go Dancers.")

LICENSE CERTIFICATE

WHAT IS THE "LICENSE CERTIFICATE" AND HOW MUST IT BE DISPLAYED ON THE LICENSED PREMISES?

The License Certificate is the single-page document that evidences the issuance of an alcoholic beverage license. The certificate contains information as to the License Number, Expiration Date, Name of County and Municipality, Type of License, Name of Licensee, Address of Licensed Premises, Effective Date, Amount of Fee Paid to the Municipality and Signature of the Municipal Clerk or Secretary of the Municipal A.B.C. Board, if one exists (unless the licensee is a member of the governing body, in which case the license is issued by and the certificate signed by the A.B.C. Director). The municipal seal should also be affixed (or the seal of the Division of A.B.C. if issued by the Director).

The certificate also contains the legend, "This license confers all rights and privileges pertaining thereto as set forth in Title 33 of the New Jersey Statutes, and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth therein in any rules and regulations promulgated heretofore and hereafter by the Director of the Division of Alcoholic Beverage Control pursuant to Title 33 of the New Jersey Statutes. This license is further subject to the provisions of all municipal ordinances and/or resolutions pertaining thereto which have been or shall have been duly enacted under law."

The License Certificate must be prominently displayed where it can readily be seen by customers. The licensee may be cited for a violation if it is not so displayed. (See "Documents and Records.") If your license is destroyed or your license is seized by the I.R.S., you can go to the local issuing authority and request a copy of it with the proper notations (as to what happened to your original certificate) typed thereon.

LICENSE FEES – *See "Licenses – Retail" and "Municipal Fees"*

LICENSE NUMBER

WHAT IS THE "LICENSE NUMBER" AND WHAT INFORMATION DOES IT GIVE?

Every alcoholic beverage license issued in New Jersey has a 12-digit license number assigned to it. It is always in the format: 0000-00-000-000.

The first set of 4 digits shows the county and municipality in which the municipal license is issued. Digits 1 and 2 are the number of the county, assigned alphabetically, and digits 3 and 4 are the number assigned alphabetically to the municipality within the county. (In the case of State-issued wholesale, manufacturing and retail transit licenses – except those issued to limousines – the first digits are 3400, 3401, 3402, etc.)

The second set of digits tells the type of license. In the case of municipally-issued retail licenses, the numbers will be "31" for a Club License, "32" for a Plenary Retail Consumption License with the "Broad Package Privilege," "33" for a Plenary Retail Consumption License without the broad package privilege,

"34" for a Summer Seasonal Retail Consumption License, "36" for a Plenary Retail Consumption License issued as a Hotel/Motel Exception, "37" for a Plenary Retail Consumption License issued as a 1,000 Seat Theater Exception, "38" for a Plenary Retail Consumption License w/Brew Pub, "43" for a Limited Retail Distribution License and "44" for a Plenary Retail Distribution License. (See "Licenses – Retail.")

The third set of digits indicates the number of the license within the municipality. All retail licenses issued by that municipality, regardless of type, are assigned consecutive numbers beginning with 001.

The fourth and final set of digits indicates the generation number of the license. When the 12-digit number was established in the late 1970's, all licenses then in existence were assigned generation number 001. Any new license is also assigned generation number 001. Thereafter, whenever a transfer or change in corporate structure for which an application must be filed takes place, the generation number is increased.

LICENSE RENEWAL

WHAT STEPS ARE REQUIRED FOR THE ANNUAL RENEWAL OF A RETAIL LICENSE?

All retail licenses must be renewed annually effective July 1st, except Summer Seasonal Retail Consumption Licenses, which must be renewed May 1st. The governing body or local A.B.C. Board issuing the retail licenses establish their time schedules for filing the renewal applications prior to July 1st so that the renewals can be acted upon and approved by that date.

Renewal application forms for each license are provided by the Division of A.B.C. to the municipal clerks or A.B.C. Boards.

Licensees must complete the application, attaching pages to correct the full application on file as necessary and file it with the municipal clerk or secretary of the A.B.C. Board together with the applicable municipal fee and a separate check or money order made payable to the Division of Alcoholic Beverage Control. The licensee need not publish a notice of renewal as this is taken care of by the Division of A.B.C. on behalf of all licensees. After the renewal application is filed with the municipality, if no objection to the renewal is raised and the municipality has received the required Alcoholic Beverage Retail License Clearance Certificate for renewal from the Division of Taxation, the governing body or A.B.C. Board may approve the renewal. If there is an objection, a hearing is held, and then the governing body or A.B.C. Board can act on the license renewal. If approved, it must be done by resolution. After approving the renewal, the municipal clerk or secretary of the A.B.C. Board forwards the resolution to the Division of A.B.C.

Licensees should note that it is their obligation to be sure that they receive the renewal application and file it together with the required fees in sufficient time to have the license renewal process completed by July 1st. If the licensee does not receive the application by May 15th, the licensee should contact the municipal clerk or, where applicable, the secretary of the local A.B.C. Board. (See "Lapsed License" regarding renewal applications that are filed late.) Licensees should further note that it is their responsibility to be in tax compliance in order for the municipality to receive a tax clearance certificate for renewal. (See "Sales Tax.")

If, for some reason the local renewal process is delayed so that a license renewal is not approved by municipal resolution by July 1st, all alcoholic beverage activity on the licensed premises must cease unless the licensee has filed the renewal application, paid the applicable fees and applies to and has issued by the Division of A.B.C. an "Ad Interim" Permit. The application for the permit is on a form supplied by the Division of A.B.C. and requires the signature from the issuing authority that there is no objection to the issuance of the permit. The fee should be made payable to the Division of A.B.C. (N.J.A.C. 13:2-2.10.) (See "Fee Schedule" at the end of this Handbook.)

When a municipal issuing authority does not finally act on the renewal of a license within 45 days of the date of a timely filed renewal application, that failure to act is deemed a denial, and the licensee may file an appeal. (See "Appeals from Licensing Action by Municipalities.") The holder of an inactive license or pocket license must file a renewal application in the same manner and at the same time as active licenses. (See "Inactive License" and "Pocket License.")

A municipal resolution renewing a license that requires, but has not obtained, relief pursuant to N.J.S.A. 33:1-12.18 (see "Lapsed License") is null and void.

LICENSE TRANSFER

WHEN IS IT NECESSARY TO "TRANSFER" A LICENSE?

A "transfer" must be approved by the issuing authority whenever a licensee sells or conveys their license to another person, adds or deletes a general partner, changes the location of the license or increases the size of the premises under the license. There are two types of transfers: "person-to-person" and "place-to-place." Note that if a corporation which holds a license merely changes stockholders, no matter how much of the stock changes hands, it constitutes a "change in corporate structure" and is not considered a "transfer." (See "Stockholder Change;" see also "Extension of License.")

HOW IS A TRANSFER ACCOMPLISHED?

The transfer of a license must be approved by the local issuing authority. The licensee, or the person to whom the license will be transferred, must file a full retail license application and publish two legal notices of intent to transfer the license. The licensee must also provide a written consent to transfer to the issuing authority before they consider approval of the transfer. An Alcoholic Beverage Retail Licensee Clearance Certificate for Transfer must be received by the issuing authority to consider approval of the transfer. The transferee (buyer) must contact the New Jersey Division of Taxation's Licensing Unit to apply for a Certificate of Sales Tax Authority and an Alcoholic Beverage Retail License Clearance Certificate. A fee equal to 10% of the annual license fee must be paid to the municipality (or 20% if both a person-to-person and a place-to-place transfer is to take place), along with a filing fee made payable to the Division of A.B.C. If there is any written objection to the license transfer, the local issuing authority must hold a hearing. The governing body or A.B.C. Board must grant their approval or disapproval of the license transfer in the form of a resolution.

If a transfer is granted, the current license certificate is then endorsed by the issuing authority to reflect the transfer, if that is necessary. (See N.J.A.C. 13:2-7, and, for those licenses where a member of the governing body or A.B.C. Board has an interest, N.J.A.C. 13:2-4.)

If the transfer includes the transfer of alcoholic beverages inventory, a Bulk Sale Permit must be issued to the transferee by the Division of A.B.C. (See "Close-out Sales.")

LICENSED PREMISES

WHAT IS THE "LICENSED PREMISES?"

The "Licensed Premises" is that portion of the licensee's property on which or from which alcoholic beverages may be sold, served or stored. The licensed premises is defined by the licensee at the time an initial license application is filed and finally determined by the approval of the issuing authority. On page 3 of the retail license application, there are questions which require a description of the area to be licensed. In addition, every licensee is required to submit and keep current a sketch of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license. Any sale, service or storage of alcoholic beverages outside of the licensed premises is "beyond the scope of the license" and is a violation. Additionally, licensees are cautioned that in some instances they may be responsible for activities which occur off, but near, their premises.

Once the licensed premises is established, any expansion or reduction requires a place-to-place transfer with a complete retail application, publication of notice, payment of fee and approval by the issuing authority. For a temporary extension for a particular function see "Extension of Premises."

LICENSES – MANUFACTURING

WHAT ARE MANUFACTURING LICENSES?

Alcoholic beverage licenses issued to manufacturers – commonly known in the alcoholic beverage industry as "suppliers" – are "Class A" licenses and are set forth in N.J.S.A. 33:1-10. They include Plenary Brewery (identified in the second set of digits in the license number as a "10"), Limited Brewery ("11"), Plenary Winery ("21"), Farm Winery ("22"), Plenary Distillery ("16"), Limited Distillery ("17"), Supplementary Limited Distillery ("18"), Rectifier and Blender ("15") and Bonded Warehouse Bottling ("29") licenses. Any supplier engaging in the actual manufacture or bottling of alcoholic beverage in New Jersey must have one of these licenses. They are issued by the Director of the Division of A.B.C. (See "Brew Pubs.")

LICENSES – RETAIL

WHAT ARE THE DIFFERENT TYPES OF RETAIL LICENSES AND WHAT ARE THEIR PRIVILEGES AND RESTRICTIONS?

All retail licenses are "Class C" licenses and are identified in N.J.S.A. 33:1-12 or N.J.S.A. 33:1-19, which establish the privileges and restrictions of the different types of licenses. In the order they are established by

statute, the types of retail licenses are:

PLENARY RETAIL CONSUMPTION LICENSE ("33"). This license authorizes the sale of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle and also allows the sale of alcoholic beverages in original containers for consumption off the licensed premises. Such sales of package goods, however, may only take place from the public barroom, and the package goods may only be displayed for sale on its perimeter walls unless a floor plan was approved by the A.B.C. Director prior to the late 1970's. Where this license is granted, no other mercantile or commercial activity may take place on the licensed premises except for certain activities such as a restaurant or the sale of snack or certain other items enumerated in the statute. The fee for this license is set by the municipality between **$250** and **$2,500** per year. Since 1947 only one retail consumption license, with certain exceptions, can be issued in a municipality for each 3,000 of its population, although licenses in excess of this limit before 1947 were grandfathered.

PLENARY RETAIL CONSUMPTION LICENSE WITH "BROAD PACKAGE PRIVILEGE" ("32"). This license is another Plenary Retail Consumption License except the sale of package goods is not restricted to the public barroom. This "broad package privilege" was added to certain Plenary Retail Consumption Licenses in 1948, and those licenses continue to retain that privilege. These licenses are counted as Plenary Retail Consumption Licenses for the purpose of the population limitation. The fees are the same for Plenary Retail Consumption Licenses. (See N.J.S.A. 33:1-12.33; N.J.A.C. 13:2-35.) (See also "Merchandise – Sale by Retail Licensees.")

SEASONAL RETAIL CONSUMPTION LICENSE ("34"). This license allows all the privileges of a Plenary Retail Consumption License but is issued for the summer season extending from May 1 through November 14. The same restrictions that apply to a Plenary Retail Consumption License also apply to this seasonal license and these licenses also are counted in the total number permitted by population. The fee for this license is 75% of the fee established for the Plenary Retail Consumption License. (Although the statute also authorizes a winter season license from November 15 to April 30, no such license has been issued in the State.)

HOTEL/MOTEL LICENSE ("36"). This license is a Plenary Retail Consumption License issued to a hotel or motel with 100 or more guest sleeping rooms. It is an exception to the population restrictions. The license may only be used in connection with a facility which meets the 100 room condition. Other Hotel/Motel licenses issued prior to 1969 are conditioned that they may be used only in connection with a facility with 50 or more guest sleeping rooms.

THEATER LICENSE ("37"). This license is a Plenary Retail Consumption License which may be issued to a non-profit corporation which conducts musical or theatrical performances in a theater with a seating capacity of 1,000 or more persons. It is an exception to the population restrictions. The license authorizes the sale of alcoholic beverages for on-premises consumption during performances and for two hours immediately preceding and following performances.

PLENARY RETAIL CONSUMPTION LICENSE W/BREW PUB LICENSE ("38"). (See "Brew Pubs.")

PLENARY RETAIL DISTRIBUTION LICENSE ("44"). This license permits only the sale of alcoholic beverages in original containers for consumption off the licensed premises (package goods). Other mercantile or commercial activity is permitted on the license premises unless it is prohibited by municipal ordinance. The fee for this license is set by the municipality between **$125** and **$2,500** per year. Only one Plenary Retail Distribution License may be issued for each 7,500 of population in a municipality, although Plenary Retail Distribution Licenses in excess of this number at the time the limitation came into effect are grandfathered.

LIMITED RETAIL DISTRIBUTION LICENSE ("43"). This license permits only the sale of warm beer and other malt alcoholic beverages in quantities of not less than 72 fluid ounces (equal to a "six-pack") in original containers for consumption off the licensed premises. This license is no longer being issued. The existing licenses can be renewed or transferred but must be located on premises operated and conducted by the licensee primarily as a food store where groceries or other foodstuffs, such as meat, are sold. The fee for this license is set by the municipality between **$31** and **$63** per year.

PLENARY RETAIL TRANSIT LICENSE ("13"). This license is the only retail license which is solely issued by the Director of the Division of A.B.C. rather than by a municipality. It permits the sale of alcoholic beverages in open containers for immediate consumption on railroad trains, airplanes, boats and in limousines only while they are in transit. This license is necessary for trains to serve alcoholic beverages in club cars, etc., while traveling through New Jersey, for airplanes to serve alcoholic beverages on aircraft in New Jersey or to stock the aircraft with the alcoholic beverages while in New Jersey, for limousines to provide alcoholic beverages while traveling on New Jersey roadways and for boats that dock or travel on New Jersey waterways to serve alcoholic beverages. The fees are **$375** per year for a railroad or airline company. Boats are licensed per boat, with the fee depending on the length of the boat and ranging from **$63** to **$375**. Limousines are licensed per vehicle at a fee of **$31** per year. This Plenary Retail Transit License is necessary whether the drinks are sold on a per drink basis or are included "gratuitously" in the price of the transportation.

CLUB LICENSE ("31"). The fee for this license is set by the municipality between **$63** and **$188** per year. (See "Club License.")

LICENSES – WHOLESALE

WHAT ARE WHOLESALE LICENSES?

Alcoholic beverage licenses issued for the purpose of wholesaling or distributing alcoholic beverages exclusively to retail licensees are "Class B" licenses and are set forth in N.J.S.A. 33:1-11. They include Plenary Wholesale ("23"), Limited Wholesale ("25"), Wine Wholesale ("26") and State Beverage Distributor~~s~~ ("19") licenses. These licenses are issued by the Director of the Division of A.B.C. at fees ranging from **$1,031** to **$8,750** per year. (See "State Beverage Distributor's License.")

LIENS ON LICENSES

CAN A LIEN, ATTACHMENT OR WRIT OF EXECUTION BE ISSUED AGAINST A RETAIL LICENSEE?

An alcoholic beverage license is not generally subject to lien, levy or attachment and subsequent sale to satisfy a creditor's debt or judgment. It can be sold as an asset in certain federal or State bankruptcy or insolvency proceedings. A creditor seeking to collect a judgment can levy upon fixtures and equipment that are located within the licensed premises and also on any alcoholic beverages contained therein, subject to whatever rights other persons may have. In the event that alcoholic beverages are sold to satisfy a judgment, the seller must obtain a special permit from the Division of A.B.C. to authorize their sale. (See "Close-out Sales.")

There is one other situation when the rights to sell a license can be attached and that occurs when the Internal Revenue Service or the New Jersey Division of Taxation serves a notice of lien and levy for nonpayment of federal taxes or State taxes. When the I.R.S. or the New Jersey Division of Taxation does serve such notice upon the licensee, with copies to the municipal issuing authority and the Division of A.B.C., the law permits the I.R.S. and the New Jersey Division of Taxation to offer the license for sale at public auction. The successful bidder will receive from the I.R.S. or the New Jersey Division of Taxation the right to apply for a transfer of the license. Thereafter, the local issuing authority may either approve or disapprove the transfer in the reasonable exercise of its powers. Once the lien and levy by the I.R.S. or by the New Jersey Division of Taxation has been served, the current licensee cannot attempt to transfer its interest in the license to anyone else until the lien or levy has been released. A licensee, however, can continue to operate after the lien or levy is served; and, if the license certificate was seized, a copy identified as a duplicate should be obtained from the issuing authority.

Finally, some private contracts for the sale of the license contain provisions which require the re-transfer of the license under various conditions. The Division considers such provisions to be void and unlawful attempts to prevent the free and unfettered transfer of the license in violation of N.J.S.A. 33:1-26 and subjects the license to sanction.

LOCAL A.B.C. BOARD – *See "Alcoholic Beverage Control Boards"*

LOCAL CONTROL

WHAT CONTROLS AND RESTRICTIONS CAN A LOCAL MUNICIPALITY ADD IN ADDITION TO THOSE REQUIRED BY THE STATE?

Any municipality may, without prior approval, pass laws (ordinances) which regulate the number and types of licenses to be issued, the hours between which the sale of alcoholic beverages may be made and whether Sunday sales are permitted. Subject to the approval of the A.B.C. Director, a municipality can also regulate the conduct of any business licensed to sell alcoholic beverages and all the activities that take place on the premises. The municipality may also prohibit anyone from having an interest in more than one retail license in that community, exceptions are provided for individuals appointed by court order to operate a licensed business. (N.J.S.A. 33:1-12, 1-32 and 1-40.)

LOCAL PROHIBITION

MAY THE GOVERNING BODY OF A MUNICIPALITY REFUSE OR FAIL TO ENACT AN ORDINANCE ESTABLISHING THE NUMBER, KIND AND CLASSIFICATION OF LICENSES FOR THE PURPOSES OF ALCOHOLIC BEVERAGE ACTIVITY IN THAT COMMUNITY?

The Alcoholic Beverage Control Law permits the governing body of a municipality to determine whether or not any retail sales of alcoholic beverages will be permitted in that community. The governing body may determine that no retail licenses will be issued. Even if it does this, however, there is a provision in State law for the Director to issue a permit in lieu of a club license to a local chapter of a non-profit national or state organization or to a non-profit golf and country club, provided certain requirements are met.

MAGAZINES

ARE LICENSEES PERMITTED TO SELL MAGAZINES ON THEIR LICENSED PREMISES?

Consumption licensees are prohibited from selling magazines or newspapers as such sales would be considered "other mercantile businesses" not permitted under the specific restrictions of the consumption licensed privilege. On the other hand, distribution licensees, unless prohibited by local ordinance, can have other mercantile businesses in or upon the licensed premises. (See "Merchandise – Sale by Retail Licensees.")

MANUFACTURER'S REBATES – *See "Advertising" and "Coupons"*

MEASUREMENT OF ALCOHOLIC CONTENT

HOW IS THE QUANTITY OF ALCOHOL INDICATED IN THE DIFFERENT TYPES OF ALCOHOLIC BEVERAGES?

In distilled spirits, the alcohol content is indicated in "Proof," which is equal to twice the actual percentage of alcohol. For example, a distilled spirit which is shown to be 60 proof contains 30% alcohol. The alcoholic content of wine is indicated in percentage by volume. This gives the actual percentage of the beverage that is alcohol. For beer and other malt alcoholic beverages, although the percentage of alcohol is not shown on the label, the alcohol content is usually given in percentage of alcohol by weight. This percentage number will usually appear to be slightly less than it would if the alcohol content were shown by volume.

MERCHANDISE – SALE BY RETAIL LICENSEES

IS THERE ANY LIMITATION AS TO WHAT A RETAIL LICENSEE CAN SELL BESIDES ALCOHOLIC BEVERAGES?

Unless prohibited by local ordinance, there is no restriction on the sale of other items or the conduct of other business by Plenary Retail Distribution licenses. No ordinance can prohibit the Plenary Retail Distribution licensee from selling certain items such as prepackaged gift merchandise with glassware, novelty wearing apparel (T-shirts, caps, etc.) identified with the name of the licensed establishment, cigars, cigarettes,

packaged crackers, chips, nuts and other similar snacks, ice and non-alcoholic beverage mixers. (N.J.S.A. 33:1-12.)

Plenary and Seasonal Retail Consumption Licensees, including those with the "Broad Package Privilege" ("32"), do not have a similar privilege. Under the statute, they may not conduct any "other mercantile business" except certain related activities which the law enumerates: running a hotel or restaurant (including the sale of mercantile items incidental to such businesses), the sale of prepackaged gift merchandise, novelty wearing apparel (T-shirts, caps, etc.) identified with the name of the licensed establishment, cigars, cigarettes, packaged crackers, chips, nuts and other similar snacks, ice and non-alcoholic beverage mixers; and, if the premises is also a bowling alley, the sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and non-alcoholic beverages. (N.J.S.A. 33:1-12.) Division of A.B.C. policy has also considered certain entertainment and amusement activity, including live performances, bands, singers, dancers, juke boxes, pinball and shuffleboard machines, video game machines, pool tables, etc., as intrinsic items to the operation of a bar or tavern and they are, therefore, not prohibited "mercantile business." Note that other businesses conducted on the licensed premises must be disclosed on page 4 of the license application. (See "Licenses – Retail.")

MINI-BARS

ARE MINI-BARS OR IN-ROOM SYSTEMS DEVICES PERMITTED IN HOTELS IN NEW JERSEY, AND IF SO, WHAT CRITERIA MUST BE MET?

Use of mini-bars and similar devices in hotel or motel rooms which are basically small, sometimes refrigerated cabinets which contain alcoholic beverages normally in containers of 12 ounces for malt alcoholic beverages, 375 ml for wine and 50 ml for spirits are permitted in hotel and motel rooms in New Jersey. They are Bell Captain (A.B.C. Bulletin 2014, Item 1), RoboBar (A.B.C. Bulletin 2451, Item 2) and ServiComm (A.B.C. Bulletin 2455, Item 2).

The criteria that mini-bars must meet are as follows:

(1) The system can only be utilized by a plenary retail consumption licensee having a hotel or motel as part of the licensed premises.

(2) The rooms in which the dispensing units are located must be part of the licensed premises.

(3) The dispensing units must be electronically connected to the front desk and must be capable of individual lock-out. This is necessary to prevent access to any alcoholic beverages contained therein where any of the primary parties to whom the room is rented are under the age of 21.

(4) Automatic timing or similar device must be utilized to lock-out the entire system during the hours when the sale of alcoholic beverages for consumption on the premises is prohibited.

(5) The licensee must, before utilizing the system, advise the Division of A.B.C. and local issuing authority of its existence, the rooms in which the units are located and the specific nature of the system.

Licensees are reminded that ultimate responsibility for any violation of their use rests with the licensee and care should be taken to ensure that no violations of the Alcoholic Beverage Control Act occur as a result of misuse of these systems.

MIXED CASE SALES

MAY RETAIL LICENSEES OFFER DISCOUNTS ON CASES AND MIXED CASES?

A package store retailer is permitted to offer a discount to a consumer for the purchase of a same or mixed case of either all wine, all beer or all distilled spirits. N.J.A.C. 13:2-23.16(a)(2)(iv). The discount may not drop the price of the product below the retailer's cost.

MORAL TURPITUDE

WHAT IS A CRIME INVOLVING AN ELEMENT OF "MORAL TURPITUDE?"

The term "moral turpitude" denotes a serious crime from the viewpoint of society in general and usually contains elements of dishonesty, fraud or depravity. Such crimes are generally but not exclusively contained in the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1, et seq., and are subject to indictment and punishment by confinement for over one year in state prison. (See "Eligibility, Determination of" and "Rehabilitation Employment Permit/Disqualification Removal.")

MUNICIPAL FEES

HOW ARE LICENSE FEES DETERMINED?

Annual renewal fees for retail licenses are established by local ordinance in accordance with the provisions of State law. (N.J.S.A. 33:1-12.) (See "Licenses – Retail.") Some retail licenses are issued and renewed by the ABC Director because it is considered a "conflict license." (See "Conflict License.") In all such cases the municipality may still collect all applicable fees at time of renewal. If the municipality wishes to increase the annual renewal fee, it may adopt an ordinance doing so, but the increase cannot exceed 20% of the fee for the prior year. (N.J.S.A. 33:1-12.)

In addition to the annual fee for the retail license, the governing body may, by ordinance, also impose a fee of up to $50 to fund a Tourist Development Commission (N.J.S.A. 40:52-7) and, for Retail Consumption Licenses, an additional fee of up to $200 to fund a municipal license retirement program (N.J.S.A. 40:48-2.42.) (See "Retirement of Consumption Licenses.")

NON-ALCOHOLIC BEVERAGES

MAY A LICENSEE ENGAGE IN THE SALE OF NON-ALCOHOLIC BEVERAGES, AND MAY THESE BEVERAGES BE SOLD TO AN INDIVIDUAL UNDER THE AGE OF 21?

Yes. Non-alcoholic and alcohol-free beverage products may be sold by licensees as well as non-licensees. Non-alcoholic beverages are products that contain ½ of 1% or less of alcohol. Alcohol-free beverage products contain NO alcohol. Neither are governed by the Alcoholic Beverage Control Act. Since they are not "alcoholic beverages," these products may be sold to an individual under the age of 21. If there is any question whether or not a product is considered a non-alcoholic or alcohol-free beverage, a licensee should contact the Division of Alcoholic Beverage Control. (See "Alcoholic Beverages.")

NOTICE AND PETITION OF APPEAL

WHAT IS A "NOTICE AND PETITION OF APPEAL?"

Procedurally, you must send the Director of the Division of ABC three items:

(1) A **"Notice and Petition of Appeal"** must contain the following information:

(a) The license=s legal name (i.e., Joe=s Bar, Inc.); 12-digit license number; trade name (i.e., Tic Tack Club) and a phone number and address where the licensee can be reached.

(b) The full name, address and telephone number of the city or town=s municipal office.

(c) If the appeal is from a denial of a license transfer or issuance and a written objection was submitted, the objector=s full name, address and phone number must be stated in the Notice and Petition of Appeal.

(d) The proceedings below must be described. For example, A a 15-day suspension was imposed upon the licensee for sale to a minor.@ Where a suspension is involved, please state the date the suspension is to start and when it is to finish.

(e) A copy of the Municipal Resolution setting forth the action must be attached to the Notice and Petition of Appeal. If you do not have the Resolution, state the date of the action being appealed from.

(f) The grounds for the appeal must be stated. For example, A the decision of the municipality was erroneous.@

(g) The relief (both interim and final) you are asking for must be stated.

X For example, for ***Interim Relief***, a licensee might request a stay of a suspension or an Order extending a prior license where renewal has been denied.

X For example, for ***Final Relief***, a licensee might request reversal of a finding of guilt and/or payment of a monetary penalty in compromise of the penalty imposed by the municipality.

NOTE: The Notice and Petition of Appeal must be signed by either the licensee (sole proprietor, general partner, president, vice-president) or an attorney who represents the licensee in the appeal.

(2) An **Affidavit of Service** which states that a copy of the Notice and Petition of Appeal has been served upon the local issuing authority (either personally or by way of regular mail).

(3) A **$100 Filing Fee** (check or money order made payable to "Division of ABC@

NUMBER OF LICENSES – *See "Licenses - Retail" and "Two-License Limitation"*

OPEN BARS

ARE LICENSEES PERMITTED TO HOLD AND ADVERTISE "OPEN BAR" EVENTS?

An "Open Bar" event offering the public unlimited availability of any alcoholic beverages for a set price is generally prohibited. (N.J.A.C. 13:2-23.16(a)1.) The Division of A.B.C. has recognized an exception for New Year's Eve parties where tickets are not available for purchase at the door.

If the event is a private party or an event for which tickets are sold by a non-profit organization and the licensee has not advertised the event to the general public, an "open bar" may be included in the package furnished by the licensee to the organization or private party. (See A.B.C. Bulletin 2440, Item 2.) Licensees are reminded that they continue to be responsible for the alcoholic beverage activity which takes place at such functions or parties held on their licensed premises, including, but not limited to, the obligation to ensure that no underage persons or people who are actually or apparently drunk or intoxicated are served or consume alcoholic beverages.

Licensees are further reminded that, with an open bar event, they are still responsible for including the sales tax in the billing and remitting same to the Division of Taxation.

OTHER MERCANTILE BUSINESS – *See "Merchandise – Sale by Retail Licensees"*

PACKAGE GOODS SALES BY RETAIL CONSUMPTION LICENSEES

WHAT RESTRICTIONS ARE THERE ON THE SALE AND DISPLAY OF PACKAGE GOODS BY RETAIL CONSUMPTION LICENSEES?

Unless the license carries the "Broad Package Privilege" ("32"), package goods can only be displayed for sale in and sold from the principal public barroom. The Regulations contain many restrictions. For example, they specify that package goods may only be displayed in an area behind the principal bar or on two-foot wide shelving along perimeter walls of that principal barroom. Unless the licensee has an

approved floor plan that was approved by the A.B.C. Director prior to the late 1970's, the stacking of package goods on the floor or in bins or by placing gondolas within the interior area of the barroom is not allowed. The burden is on the licensee to produce a copy of the approved floor plan, and absent same, it must strictly adhere to the restrictions contained in the regulations. (N.J.S.A. 33:1-12.23; N.J.A.C. 13:2-35.) (See "Closing Time.")

Within the above noted limitations, all Plenary and Seasonal Retail Consumption Licensees may sell package goods unless they operate restaurants, bowling alleys with at least 20 lanes or at an international airport and hold their licenses as exceptions to the law which limits anyone from having an interest in more than two retail licenses. These licenses are prohibited from selling any package goods. (N.J.S.A. 33:1-12.32.) (See "Two-License Limitation.")

Club Licensees and Plenary Retail Transit Licensees are prohibited from selling package goods at all times. (N.J.S.A. 33:1-12.)

PATRONS, EXCLUDING

CAN I EXCLUDE PERSONS UNDER 21 YEARS OF AGE OR OLDER OR ANY OTHER PERSON I BELIEVE IS UNDESIRABLE TO MY BUSINESS?

Because of the near strict liability imposed upon licensees for failure to rigidly adhere to all A.B.C. laws and regulations (such as for sale to underage persons, or to persons apparently intoxicated, or allowing a brawl, etc.), the Division of A.B.C. has had a long history of treating the licensee as the master of his premises, with the right to exclude anyone he chooses. Notwithstanding that such exclusion may not violate A.B.C. laws or regulations, however, licensees should be aware that other State or federal laws (most likely Civil Rights Laws) can be implicated by such decisions. It is our understanding that age is not a part of the Civil Rights Laws, and therefore, licensees can generally exclude persons under any selected age. The licensee can impose a minimum dress code and exclude patrons that do not comply (for example: no shirt, no shoes, no service). In addition, a licensee can exclude any patron that exhibits signs of intoxication, is under the influence of narcotics, is unruly or causes a disturbance.

PAYMENT OF FEES

HOW MUST FEES OR MONETARY PENALTIES BE PAID TO THE DIVISION OF A.B.C.?

All fees or monetary penalties due to the Division of A.B.C. must be paid by certified check, money order, cashier's check or treasurer's check issued by a bank. Trust or business checks drawn on accounts of New Jersey attorneys will also be accepted. All checks should be made payable to the Division of Alcoholic Beverage Control and should identify the purpose of the check and reference a license or file number if one is involved. No cash will be accepted. (See "Fee Schedule" at the end of this Handbook.)

PENALTY – EFFECT ON MULTIPLE LICENSES

IF A LICENSEE OWNS OR HAS AN INTEREST IN MORE THAN ONE RETAIL LICENSE AND ONE OF THE LICENSES IS SUBJECT TO AN ORDER OF SUSPENSION OR REVOCATION, DOES THIS AFFECT ANOTHER RETAIL LICENSED BUSINESS?

An Order of Suspension generally applies to the specific license and the specific location where that particular license is sited. Other retail licenses owned by the same licensee are usually not directly affected by an Order of Suspension.

Generally, an Order of Revocation does have consequences involving other licenses that may be owned by the person(s) whose license has been revoked. The Alcoholic Beverage Control Law prohibits any person who has an interest in an alcoholic beverage license which is revoked from having any interest in any other license for a period of two years from the effective date of revocation. Therefore, if a license is revoked, the individuals who have an interest in that license must immediately divest the interest in any other licenses that they held. Additionally, a second revocation forever prohibits a person from having any interest in an alcoholic beverage license in New Jersey. (N.J.S.A. 33:1-31.) (See "Penalty Schedule.")

PENALTY - EFFECT ON USE OF PREMISES

IF A RETAIL LICENSE IS SUSPENDED, WHAT ACTIVITY, IF ANY, MAY BE CONDUCTED ON THE LICENSED PREMISES?

An Order of Suspension prohibits the licensee from engaging in any alcoholic beverage activity in or upon the licensed premises, except for the storage of alcoholic beverages on hand or, with the written permission of the A.B.C. Director, for the return of alcoholic beverages to wholesalers or manufacturers. This prohibition means that the suspended licensee cannot sell, serve, deliver or permit the consumption of any alcoholic beverages on the licensed premises. There can be no "bring your own bottle – B.Y.O.B." activity. The licensee cannot receive delivery of any alcoholic beverages nor can the licensee advertise that the licensed premises are closed for any reason, such as "closed for repairs" or "closed for vacation," other than that the license has been suspended by order of the Division of Alcoholic Beverage Control. A sign that states only that the premises are closed and will re-open on a stated date is permitted. (N.J.A.C. 13:2-23.27.) Penalties assessed against the license or a person having an interest in the license must be noted on page 6 of the license application.

Other regular, *bona fide* non-alcoholic business activities which can lawfully be conducted on the retail licensed premises can continue while a license is under suspension. For example, a license suspension for a retail licensee which operates a bowling establishment would not prohibit the continued operation of the bowling facilities; a *bona fide* restaurant could continue to serve food and non-alcoholic beverages to the general public during a period of suspension. (Make certain that you have noted that you have such other businesses being conducted on your licensed premises on page 4 of the license application.) Caution is advised that no alcoholic beverage consumption is allowed on a suspended premises. Therefore, patrons cannot bring in and consume their own alcoholic beverages. Additionally, no activity is permitted which is not allowed on a licensed premises when the license is not suspended.

PENALTY SCHEDULE

On December 3, 2001, the Division adopted various amendments to Subchapter 19 regarding how the Division conducts disciplinary proceedings against licensees. These regulations detailed specific penalties and defined what constituted a violation for the purpose of penalty enhancement for repeat violations. This regulation replaced the prior penalty schedule in ABC Bulletin No. 2450, Item 2 (June 2, 1987). The new schedule applies to all violations occurring after December 3, 2001. When an investigation or inspection is conducted, a report will be presented to the ABC Enforcement Bureau. The licensee will receive notice of required corrective action in a warning letter or a notice of a fine in lieu of prosecution or formal charges. Warning letters or notices of a fine in lieu of prosecution are issued for administrative violations involving minor infractions such as missing or incorrect documents or failure to receive or maintain certain permits. Normally, warning letters and fine notices are issued when the individual violations do not exceed a one-day suspension and cumulatively do not exceed five suspension days as set forth in the penalty schedule in N.J.A.C. 13:2-19.11.

For more serious violations, charges will be filed against the licensee. The Notice of Charges will specifically identify the nature of the charge and the amount of suspension the Enforcement Bureau is seeking, should the charges be proven. The licensee will have 30 days to enter a plea which can be extended an additional 30 days for good cause. If the licensee fails to enter a plea within that time period, the regulations provide that a plea of non-vult will automatically be entered, and the Enforcement Bureau will seek from the Director of the Division of A.B.C. an Order of Suspension in the amount of days as set forth in the original Notice of Charges. For example, if the licensee is charged with sale to an underage person, the Division of A.B.C. would seek a 15-day suspension which the Director could issue without any further notice. Therefore, it is extremely important that a licensee follow the instructions and enter a necessary plea.

The penalty schedule also sets forth penalties for first, second, third and fourth violations. A violation is defined as any breach of duty or responsibility imposed by the Alcoholic Beverage Control Act and its regulations. These breaches of duty are set forth as specific violations on the penalty schedule. Each violation constitutes a separate chargeable offense.

Therefore, if an individual serves 3 underage persons, each sale to each underage person will constitute a separate violation, or a 15-day suspension for each underage person for a total of 45 days. If an individual should serve an underage on Monday and then serve another underage person on Wednesday, the second violation would constitute a successive violation since it occurred outside a 24-hour period. The penalty for a successive violation would be treated as a second offense. The penalty for a second successive violation according to the penalty schedule is 30 days. This penalty schedule is not binding upon the Director, and depending on aggravating or mitigating circumstances, the penalty can be increased or decreased. The penalty imposed is within the sole discretion of the Director.

The regulations set forth that the Director may, in his sole discretion, accept a monetary offer in compromise for all or part of the suspension. The Director is under no obligation to accept an offer in compromise. When deciding whether to accept a monetary offer in compromise, the Director may consider factors such as the nature of the offense, whether it constitutes a first, second or third offense, mitigating or aggravating circumstances and the stage of the proceedings at which the monetary offer in compromise is requested.

Generally, if the Director accepts a monetary offer in compromise, it will be based on a formula used to determine the per diem profit the licensee would make if it were open for that day. The Division accepts a minimum of $100 per diem for retail licensees. In determining what type of plea to enter, the licensee can enter a plea of non-vult and request that the Director accept a compromise offer and deduct 20% of the proposed suspension. All questions regarding the specific penalties are set forth in the Penalty Schedule[1] which follows:

Statute, Regulation or Bulletin Item	Code	Description	First Violation[2]	Second Violation[2]	Third Violation[2]	Fourth Violation[2]
N.J.S.A. 33:1-25, 26, 31a and 52	A&A	Aiding and abetting	10	20	30	
N.J.A.C. 13:2-23.5(c)	ACTIV	Illegal activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-24.10(a)1-6	ADV1	Improper advertising	5	10	20	
N.J.A.C. 13:2-24.10(a)7	ADV2	Improper cooperative advertising	5	10	20	
N.J.A.C. 13:2-23.13(a)2	APP1	Failure to provide a copy of the most recent full application and/or current renewal application	1	3	5	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(a)	APP2	Failure to timely notify of change in fact on the license application	1	3	5	
N.J.S.A. 33:1-25 and N.J.A.C. 13:2-2.14(b)	APP3	Failure to notify of corporate structure change	1	3	5	
N.J.S.A. 33:1-25	APP4	Failure to disclose or false, misleading or inaccurate answer to a question on an application, which would not by itself result in a disqualification for licensure	10	20	30	

[1] The description of the penalties in this schedule is not intended to provide a complete description of the violation. The governing standard is set forth in the referenced statute or regulation.

[2] Number refers to days of license suspension.

N.J.S.A. 33:1-25	APP5	Failure to disclose or false, misleading or inaccurate answer to a question of material fact on an application	45	90	Revocation	
N.J.S.A. 33:1-26	APP6	Lease out of the license	45	90	Revocation	
N.J.A.C. 13:2-23.32	BOOKS1	Failure to have true book or books of account available on the licensed premises, but produced within 7 business days of demand	2	10	20	
N.J.A.C. 13:2-23.32	BOOKS2	Failure to maintain true book or books of account or failure to produce true book or books of account within 7 business days of demand	30	60	Revocation	
N.J.A.C. 13:2-23.15 or 23.23	BOT1A	Contaminated or low proof bottles (1-5 bottles)	1	5	10	
N.J.A.C. 13:2-23.15 or 23.23	BOT1B	Contaminated or low proof bottles (6 or more bottles)	5	10	20	
N.J.A.C. 13:2-23.19	BOT2	Substitution of beverages	5	10	20	
N.J.A.C. 13:2-23.9(a)	BOT3	Tampering/adulterated alcohol	5	10	20	
N.J.A.C. 13:2-35.1 and 35.5 or 35.2 and 35.4	BPP1	Broad package privilege violation (improper sale or display)	10	30	60	
N.J.A.C. 13:2-35.1 and 35.2	BPP2	Broad package privilege violation (insufficient equipment and/or bar)	10	30	60	
N.J.A.C. 13:2-23.12	BULK	Transfer of inventory without a bulk permit	1	5	10	
N.J.A.C. 13:2-23.13(a)1	CERT	License certificate not conspicuously displayed	1	3	5	
N.J.A.C. 13:2-1.9(d)	CHECK	Return of an unpaid check to Division or issuing authority (penalties will include original check amount and administrative costs)	5	10	20	
N.J.A.C. 13:2-8.13	CLUB1	Advertising availability of alcoholic beverages to the public	5	10	20	
N.J.A.C. 13:2-8.8, 9 and 11	CLUB2	Sale beyond the scope of the club license, including, but not limited to, sale to non-member or social affair permittee	10	20	30	
N.J.A.C. 13:2-26.1	COOP1	Purchase of alcoholic beverages by a non-member	10	20	30	
N.J.A.C. 13:2-26.1	COOP2	Allowed a person not qualified and/or minor permittee to order for member or employee of cooperative	10	20	30	
N.J.A.C. 13:2-26.1	COOP3	Allowed a purchase by a non-member retailer under cooperative	10	20	30	
N.J.A.C. 13:2-24.8	COST	Sale of alcoholic beverages below cost	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL1	Sale of alcoholic beverages not listed on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)6	CPL2	Sale or acceptance of alcoholic beverages upon terms other than set forth on a "Current Price List"	15	30	45	
N.J.A.C. 13:2-24.6(a)1 and 2	CPL3	Failure to maintain an "Historical Price List" and "Marketing Manual"	15	30	45	
N.J.A.C. 13:2-24.4	CRED1	Wholesaler extended credit to retailer on COD status	15	30	45	
N.J.A.C. 13:2-24.4	CRED2	Retailer received credit from wholesaler while on COD status	15	30	45	

N.J.A.C. 13:2-24.1	DISC1	Terms of sale of alcoholic beverages offered in discriminatory manner	15	30	45	Revocation
N.J.A.C. 13:2-24.2	DISC2	Offers service to a licensee in a discriminatory manner	15	30	45	Revocation
N.J.S.A. 33:1-26 and N.J.A.C. 13:2-14.5	DISQ1	Employed a criminally disqualified person	30	60	90	Revocation
N.J.S.A. 33:1-25, 26	DISQ2	Criminally disqualified licensee	Revocation			
N.J.A.C. 13:2-23.13(a)3	E141-A1	Employees list not complete or available on the licensed premises	1	5	10	
N.J.A.C. 13:2-23.13(a)3	E141-A2	Employees list not complete or available on the licensed premises and criminally disqualified employee	15	30	45	
N.J.A.C. 13:2-14.1 and/or 14.2	EMIN	Employing a minor without a permit	1	5	10	
N.J.A.C. 13:2-23.31(b)2i	EPOL1	Employed a law enforcement officer without approval	10	20	30	
N.J.A.C. 13:2-23.31(b)2ii	EPOL2	Employed a law enforcement officer in jurisdiction where law enforcement officer serves	15	30	45	Revocation
N.J.A.C. 13:2-23.25	ESOL	Employment of a solicitor by a retailer	15	30	45	Revocation
N.J.S.A. 33:1-12a	FETAL	Failure to display Fetal Alcoholic Syndrome warning poster	1	3	5	
N.J.S.A. 2A:40-1/ N.J.A.C. 13:2-23.7 Bull. 2430, Item 3/ Bull. 2437, Item 4	GAMB1	Failure to notify of placement of approved video game within 48 hours of placement	5	10	20	
N.J.A.C. 13:2-23.7	GAMB2	Raffling of sealed containers of alcoholic beverages without a permit	5	10	20	
N.J.A.C. 13:2-23.7(a)5	GAMB3	Gambling paraphernalia on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4A	Non-criminal gambling activity on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)	GAMB4B	Criminal gambling activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.7(a)	GAMB5	Unapproved video or slot machine or other gambling device on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.7(a)4	GAMB6	Video or slot machine or other gambling device playing for money or other valuable thing	30	60	90	Revocation
N.J.A.C. 13:2-23.7	GAMB7A	Criminal gambling activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.7	GAMB7B	Criminal gambling activity on the licensed premises involving a licensee	Revocation			
N.J.A.C. 13:2-23.7	GAMB7C	Non-criminal gambling activity on the licensed premises involving an employee	10	20	30	
N.J.A.C. 13:2-23.7	GAMB7D	Non-criminal gambling activity on the licensed premises involving a licensee	10	20	30	Revocation
N.J.S.A. 33:1-35/ N.J.A.C. 13-2-23.30	HIND1	Employee hindering an investigation	30	60	90	Revocation
N.J.S.A. 33:1-35/ N.J.A.C. 13:2-23.30	HIND2	Licensee hindering an investigation	45	90	Revocation	
N.J.A.C. 13:2-38.1 or 38.2	HRS1	Sale of alcoholic beverages before or after the legal hour or in violation of a municipal ordinance	10	20	30	

N.J.S.A. 33:1-31h and N.J.A.C. 13:2-38.1 or 38.2	HRS2	Presence of non-employee(s) after the legal hour set by a municipal ordinance	10	20	30	
N.J.A.C. 13:2-20	INSIG	Alcoholic beverages transported without a transit insignia	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV1	Failure to have invoices available at the licensed premises, but produced within 7 business days of demand	1	5	10	
N.J.A.C. 13:2-20.4(b) or 23.32	INV2	Failure to maintain invoices or failure to produce invoices within 7 business days of demand	30	60	Revocation	
N.J.A.C. 13:2-23.6(a)1	LEWD1	Lewd activity on the licensed premises	30	60	90	Revocation
N.J.A.C. 13:2-23.6(a)1	LEWD2	Lewd activity with audience participation on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.14	LEWD3	Lewd material on the licensed premises	10	20	30	
N.J.S.A. 33:1-12	MERC	Conducted other mercantile business on the licensed premises	5	10	20	
N.J.A.C. 13:2-23.5(b)	NARC1	Narcotic activity on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC2	Narcotic paraphernalia on the licensed premises	45	90	Revocation	
N.J.A.C. 13:2-23.5(b)	NARC3	Narcotic activity on the licensed premises involving an employee	90	Revocation		
N.J.A.C. 13:2-23.5(b)	NARC4	Narcotic activity on the licensed premises involving a licensee	Revocation			
N.J.A.C. 13:2-23.6(a)3	NUIS1	Licensed business conducted in such a manner to become a nuisance (quality of life – noise, litter, urination, etc.)	10	20	30	
N.J.A.C. 13:2-23.6(a)3	NUIS2	Licensed business conducted in such a manner to become a nuisance (police intervention – public safety or rights being violated)	30	60	90	Revocation
N.J.S.A. 33:1-31(h)	ORDIN	Violation of any ordinance, resolution or regulation of an issuing authority or governing body	10	20	30	
N.J.S.A. 33:1-31	ORDER	Violation of an order of the Director or of an issuing authority	10	20	30	
N.J.A.C. 13:2-9.3	POSS	Failure to maintain continuing possession and exclusive control of licensed premises	Indefinite Suspension + 10 Days	Indefinite Suspension + 20 Days	Indefinite Suspension + 30 Days	Revocation
N.J.A.C. 13:2-23.16	PP	Prohibited promotion	10	20	30	
N.J.A.C. 13:2-23.10	PROHD	Accepted delivery from a non-licensed carrier	5	10	20	
N.J.A.C. 13:2-23.12(a) or (b)	PROHP	Purchased alcoholic beverages from a prohibited source	10	20	30	
N.J.A.C. 13:2-23.12(b)	PROHS	Sale of alcoholic beverages to a prohibited receiver (retailer-retailer)	10	20	30	
N.J.A.C. 13:2-23.1(a)	PULA	Sale to a person under the legal age, but over the age of 18	15	30	45	Revocation
N.J.A.C. 13:2-23.1(a)	PULA/M	Sale to a person under the age of 18 years	30	60	90	Revocation
N.J.A.C. 13:2-24.11	REBATE	Prohibited consumer rebate	5	10	20	
N.J.A.C.13:2-23.24	RET	Retailer received – parallel to SOL3	30	60	90	Revocation
N.J.S.A. 33:1-11, 2c	SBD1	Sale of less than 144 fluid ounces of malt alcoholic beverages in original containers	5	10	20	
N.J.S.A. 33:1-11, 2c	SBD2	Sale of "chilled" malt alcoholic beverages	5	10	20	

N.J.S.A. 33:1-12	SCOPE	Sale or consumption beyond the scope of the license	10	20	30	
N.J.S.A. 33:1-52/ N.J.A.C. 13:2-16.11(a) and/or 16.11(c)	SOL1	Solicitor offered an order of alcoholic beverages for purchase or sale, other than allowed by law and the license of employer and/or to retail licensee with family member involved	15	30	45	Revocation
N.J.A.C. 13:2-16.12	SOL2	Solicitor employed by or connected in business capacity to a retail licensee	15	30	45	Revocation
N.J.A.C. 13:2-16.11(b)	SOL3	Solicitor offered a cash rebate, free goods or other incentive not contained on Current Price List	30	60	90	Revocation
N.J.S.A. 33:1-31(e)	STAMP	Federal Tax Stamp not available	1	3	5	
N.J.A.C. 13:2-23.21	STOR1	Storage of alcoholic beverages off the licensed premises without a permit or not in a licensed warehouse	5	10	20	
N.J.A.C. 13:2-23.21	STOR2	Storage of alcoholic beverages for a time period exceeding 72 hours following receipt of a delivery for a fellow co-op member	5	10	20	
N.J.A.C. 13:2-23.27	SUSPV	Prohibited activity during license suspension	10	20	30	
N.J.A.C. 13:2-23.22(a)	TAP	Tap connected to a container of malt alcoholic beverages not truly indicating name or brand	5	10	20	
N.J.S.A. 33:1-31(d)	TAX	Knowing failure to pay taxes described in N.J.S.A. 33:1-31	15	30	60	
N.J.A.C. 13:2-23.1(b)	TOX1	Sale of alcoholic beverages to an intoxicated patron	15	30	45	Revocation
N.J.A.C. 13:2-23.20	TOX2	Licensee or employee working at licensed premises while intoxicated	15	30	45	Revocation
N.J.A.C. 13:2-20.4(a)	TRANS	Transporting alcoholic beverages without proper documents	10	20	30	
N.J.S.A. 33:1-25	UI1	Undisclosed person, not otherwise disqualified, with a beneficial interest in a liquor license or licensed business	30	60	90	Revocation
N.J.S.A. 33:1-26	UI2	Person under the age of 18 or criminally disqualified person with an undisclosed beneficial interest a liquor license or licensed business	Revocation			
N.J.S.A. 33:1-12.31	UI3	Acquiring a beneficial interest in more than two retail liquor licenses	Revocation			
N.J.S.A. 33:1-43/N.J.A.C. 13:2-16.12	UI4	Solicitor with an undisclosed business relationship to or a beneficial interest in a retail license	Revocation			
N.J.A.C. 13:2-23.31	UI5	Police officer, peace officer or any other person whose power or duties include the enforcement of the Alcoholic Beverage Law or regulations with an undisclosed beneficial interest in a liquor license	Revocation			
N.J.S.A. 33:1-43	UI6	A brewery, winery, distillery, rectifying and blending plant or wholesale licensee with an undisclosed interest in a retail liquor license	Revocation			
N.J.A.C. 13:2-16.11 and 23.28	WHOL	Wholesaler responsible for solicitor violating N.J.A.C. 13:2-16.11(a), (b) and/or (c)	30	60	90	Revocation

PERSON

WHO IS A "PERSON" UNDER THE ALCOHOLIC BEVERAGE CONTROL LAWS?

When used in any of the Alcoholic Beverage Control Laws or regulations, as well as in the Handbook, the term "person" generally refers to an individual, partnership, corporation or any group or association of individuals or the manager, agent, security officer or employee of any of them. (N.J.S.A. 33:1-1.)

PERSON-TO-PERSON TRANSFER – *See "License Transfer" and "Buying a License"*

PLACE-TO-PLACE TRANSFER – *See "License Transfer"*

POCKET LICENSE

WHAT IS A "POCKET LICENSE?"

A "Pocket License" is a type of inactive license which does not have a site or licensed premises. Therefore, it is said to be "in the licensee's pocket" until a place-to-place transfer is approved by the issuing authority to a licensed premises. (See "Inactive License.")

POLICE OFFICER EMPLOYMENT

CAN A REGULAR POLICE OFFICER BE EMPLOYED ON A LICENSED PREMISES WHEN OFF DUTY?

The Alcoholic Beverage Control Law requires that local police shall use "all due diligence to detect violations" of that law (N.J.S.A. 33:1-71). Given this mandate, employment of local police officers on a licensed premises could easily present the appearance of (if not an actual) conflict of interest. Consequently, a licensee may not employ a regular police officer who is a member of the local police or who has regular duties and responsibilities in the municipality where the license is located.

A licensee, however, may request permission to employ a regular police officer who does not have duties and responsibilities in that community. Before doing so, the police officer must obtain the written consent of his or her police chief and must also give notice of the intended off-duty employment to the chief of police in the municipality where the licensed premises is located. The licensee, in requesting permission of the A.B.C. Director to employ such police officer, should write or send the Division copies of the consent of and notice to the chiefs of police and identify the period and type of employment.

If the police officer will sell, serve, possess or deliver any alcoholic beverages during the course of the employment by the licensee, such officer cannot be armed or wear any uniform or badge identifying him or her as a police officer. Additionally, no police officer may be employed by a licensee in excess of 24 hours a week.

When a licensee has circumstances that require the use of trained police officers to provide crowd or traffic control or security for money, the municipality may assign regular police officers to the licensed premises

for these purposes. The municipality may either bill the licensee for such cost or may require the licensee to prepay for the services. In no event, however, may the licensee directly hire or pay these police officers. (See N.J.A.C. 13:2-23.31; N.J.S.A. 33:1-26.1.)

It must be emphasized that the Division of A.B.C. regulates licensees, not police officers. If a police officer has a question about his or her employment regarding a licensed premises, the officer should direct his/her questions to the New Jersey State Division of Criminal Justice, Police Services Bureau.

PRECEDENT PENALTIES

WHAT ARE THE "PRECEDENT PENALTIES" FOR A.B.C. VIOLATIONS?

The Division published a penalty schedule listing the presumptive penalties for the most common violations of the A.B.C. laws and regulations. Those penalties are the starting point for a first offense of that type. They can be increased or decreased based upon aggravating or mitigating circumstances. A second, similar offense within two years resulting in the doubling of the penalty; a third, similar offense resulting in the tripling of the penalty. Generally a fourth (and in some cases a third) similar violation results in the presumptive penalty of revocation. It should further be noted that some violations are so serious that revocation is presumed for a first violation. (See "Penalty Schedule.")

PRE-MIXED DRINKS

MAY A LICENSEE PRE-MIX DRINKS TO BE SERVED TO THE GENERAL PUBLIC? IF SO, WHAT ARE THE REQUIREMENTS?

Yes. A licensee may offer pre-mixed drinks (drinks that are made in quantity before service), however, it must meet the following requirements:

(1) All pre-mixed drinks not consumed during the day they are mixed must be destroyed prior to the commencement of the licensee's next business day.

(2) The licensee must affix a label to any open or sealed container of pre-mixed drinks describing its contents. The minimum label requirements are:

(a) identification of the type(s) and brand(s) of alcoholic beverages,

(b) identification of all other ingredients either by generic or brand names and

(c) an approximation of percentage by volume of alcohol that each drink will contain at the time of service to a consumer.

(3) In the event that pre-mixed drinks are dispensed through an automatic system including fountains, electronic systems or pressurized systems, the label requirements as described in (2) above or its equivalent must also be conspicuously displayed where the consumer ordering the pre-mixed drink can see it.

(4) Under no circumstance may a licensee use as a container for the pre-mixed drink a previously filled or emptied originally labeled alcoholic beverage container. (See A.B.C. Bulletin 2454, Item 3; see also "Automatic Dispensers.")

PRIZES – *See "Contest Prizes" and "Contests"*

PROMOTIONS

WHAT PROMOTIONS MAY A RETAIL LICENSEE PARTICIPATE IN?

N.J.A.C. 13:2-23.16 permits a licensee to engage in promotional activities. However, a licensee cannot offer a free drink, gift, prize or anything of value conditioned upon the purchase of an alcoholic beverage. A licensee can offer a branded or unique glassware or souvenir in connection with a single purchase, consumer mail-in rebates (in accordance with N.J.A.C. 13:2-24.11), permitted manufacturer's sweepstakes and contests and discounts offered on the purchase of alcoholic beverages for off-premises consumption to consumers by retailers. A licensee can also offer a set price for a meal which includes a single alcoholic beverage drink and a single bottle of wine or champagne to guests staying at a licensed hotel or motel as part of a specialty package.

A licensee may not offer more than one free drink per patron or one free drink coupon ticket in a twenty-four hour period. A licensee cannot offer an unlimited availability of alcoholic beverages for a set price except for private parties that are not sponsored by the licensee (such as weddings, birthday parties), events held by social affair permittees or New Years Eve parties sponsored by a licensee whereupon a set price for attendance includes an open bar.

It is prohibited to require or allow a consumer to pre-purchase more than one drink at a time by tickets, tokens or admission fees as a condition for entrance into a licensed premises or as a requirement for service or entertainment. A price, gift or award cannot be offered which consists of alcoholic beverages, coupons or gift certificates redeemable for alcoholic beverages (except for a prize consisting of alcoholic beverages in sealed containers offered in a raffle licensed pursuant to N.J.S.A. 5:8-50).

All prizes and promotions shall not be given to, nor shall any contest be open to, any individual under the legal age to purchase or consume alcoholic beverages, any supplier, wholesaler, distributor, retailer, affiliates, employees or members of their immediate family.

PROOF – *See "Measurement of Alcoholic Content"*

PROOF GALLON

WHAT IS A "PROOF GALLON?"

"Proof Gallon" is a term used to describe the alcoholic strength of distilled spirits. The term "Proof Gallon" is strictly one gallon of distilled spirits at 100 proof, which is therefore half alcohol. The term can also be used to describe the alcohol equivalence, or the ratio of volume to percentage of alcohol. Thus, two gallons of distilled spirits of 50 proof is also one proof gallon. (See "Measurement of Alcoholic Content" and "Wine Gallon.")

PURCHASE FROM UNAUTHORIZED SOURCE

FROM WHOM CAN A RETAIL LICENSEE PURCHASE ALCOHOLIC BEVERAGES?

A retail licensee is permitted to purchase alcoholic beverages for resale only from New Jersey licensed wholesalers or suppliers. If such New Jersey distributor lists an alcoholic beverage product in its C.P.L. or offers it for sale to retail licensees, the retailer may presume it is properly authorized to be sold and the retailer may then purchase it and offer it for sale to the consumer unless the retail licensee has actual knowledge to the contrary.

Generally, a retail licensee may not purchase alcoholic beverage products from any wholesaler or any other person who is not properly licensed by the New Jersey Division of A.B.C., nor may any such products be purchased from another retail licensee. (N.J.S.A. 33:1-2; N.J.A.C. 13:2-33.1.) (See "Brand Registration" and "Retailer to Retailer Sale.")

RAFFLE BY LICENSEE – *See "Gambling"*

RAFFLE TICKETS

CAN A LICENSEE ACTIVELY PROMOTE AND SELL CHANCES FOR A RAFFLE BEING RUN BY A BONA FIDE, NON-PROFIT OR CHARITABLE ORGANIZATION?

Yes. Raffle tickets for a raffle properly licensed by the Legalized Games of Chance Commission, N.J.S.A. 5:8-50, may be sold on a licensed premises by a patron or by a licensee provided that the licensee is not compensated for selling or permitting the sale of the tickets. (See "Gambling.")

REBATES

ARE MANUFACTURERS' REBATES PERMITTED BY A RETAILER ADVERTISING THE REDUCTION IN COST?

The rebate regulation allows manufacturers to offer rebates on purchases. N.J.A.C. 13:2-24.11. Retailers may also advertise a reduction in the cost of an alcoholic beverage product based on a manufacturer's rebate provided the retailer has the rebates to distribute and if the retailer conspicuously advertises that the reduction in cost is because of the manufacturer's rebate. (See "Coupons.")

RECORDS – PERMIT FOR OFF-PREMISE STORAGE OF BUSINESS RECORDS

I DON'T HAVE THE SPACE OR THE FACILITIES TO MAINTAIN MY BUSINESS RECORDS ON THE LICENSED PREMISE. IS THERE A PROCEDURE THAT WOULD ALLOW ME TO MAINTAIN THE

RECORDS AT A LOCATION OTHER THAN THE LICENSED PREMISE?

A.B.C. regulations require that all business records be maintained on the licensed premise and be available for inspection by either A.B.C. personnel or the local police (N.J.A.C. 13:2-23.32). Failure to maintain the records on the licensed premise may result in the suspension or revocation of the license. However, the A.B.C. recognizes that there are business circumstances where maintaining the records in this manner is impracticable and not cost effective. A.B.C. regulation N.J.A.C. 13:2-29.4 allows a licensee to petition the Director to relax the records rule. The Director may, in the sound exercise of his or her discretion, issue a permit for the off-premise storage of business records listed in N.J.A.C. 13:2-23.32(a)(5), (b) and (c) that will permit the storage of these records at a specifically identified location. When granted by the A.B.C., the licensee is issued a permit that must be affixed to the publicly displayed alcoholic beverage license.

Should the A.B.C. or the local police department want to see all or a portion of the licensee's records, the licensee shall produce the records within seven days of receiving the request. Production within this timeframe will be considered a timely access to the records and will not subject the licensee to penalty for failure to produce the records.

The permit is valid for one year, running concurrently with the alcoholic beverage license (July 1st through June 30th). The application for the permit is available on the A.B.C. Internet web site at: http://www.nj.gov/oag/abc/downloads/Off-Premise-Storage-Form.pdf.

REHABILITATION EMPLOYMENT PERMIT/DISQUALIFICATION REMOVAL

CAN A LICENSE BE HELD BY OR CAN A LICENSEE EMPLOY SOMEONE WHO HAS BEEN CONVICTED OF A CRIME?

A person who has been convicted of a crime containing an element of moral turpitude (which, by definition, excludes a disorderly persons offense) cannot have an interest in an alcoholic beverage license nor can they be employed by a licensee unless:

(1) The Director has issued an Order Removing Criminal Disqualification or

(2) A *Rehabilitation Employment Permit*, or a *Temporary Work Letter* has been issued by the Division of A.B.C. to authorize such employment.

CRIME OF MORAL TURPITUDE

The term "moral turpitude" denotes a serious crime from the viewpoint of society in general and usually contains elements of dishonesty, fraud or depravity. Such crimes are generally but not exclusively contained in the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and are subject to indictment and punishment by confinement for over one year in State prison. Conviction of a disorderly persons offense, an arrest without conviction or placement in a pretrial intervention (P.T.I.) program, does not cause a person to be statutorily disqualified from holding an interest in a license or being employed by a licensee,

provided such person is otherwise qualified.

ORDER REMOVING CRIMINAL DISQUALIFICATION

In order for the disqualification to be removed, a convicted person must wait at least five years after the date of the conviction or release from confinement (whichever is later) and then must file an application along with the appropriate fee with the Division of A.B.C. The petition must establish that the person has conducted himself/herself in a law-abiding manner during the period after his/her conviction and that his or her association with the alcoholic beverage industry of the State would not be contrary to the best interests of the public. If these facts are verified after investigation by the A.B.C. Investigations Bureau, the A.B.C. Director may issue an *Order Removing Criminal Disqualification*. Once that disqualification is removed, there is no prohibition from holding a license or being employed by a licensee, if otherwise qualified. If it is later determined that the removal was based upon false or fraudulent statements by the petitioner, such disqualification removal will be revoked and the petitioner may be subject to criminal sanctions. (N.J.S.A. 33:1-31.2; N.J.A.C. 13:2-15.1 to 15.4.)

A person who receives an *Order Removing Criminal Disqualification* must continue to disclose the underlying crimes that are the subject of the order in any license application as well as the A.B.C. Agency Docket Number assigned to the order. In addition, when completing the A.B.C. Employee List (E-141-A), the person would answer "Yes" to "Convicted of a Crime – Yes/No" and list the Agency Docket Number assigned to the order in the column "A.B.C. Employment Permit No. (If Held)."

REHABILITATION EMPLOYMENT PERMIT

For a convicted person to be employed by a licensee, such person must first apply to the Division of A.B.C. for a *Rehabilitation Employment Permit* by filing an application together with the appropriate fee. Generally, there is no minimum waiting period after the date of conviction to file such application, except that no application will be accepted if the person is still in jail, even if in a work release program. The applicant may also file an application to receive a "temporary work letter" to authorize employment upon a licensed premises pending a determination on their permit application. Whether or not such temporary work letter is issued is up to the sole discretion of the Director and, if issued, can be made subject to conditions and can be revoked or canceled.

After completion of an investigation by the A.B.C. Investigations Bureau, the A.B.C. Director will review the matter. If the Director is satisfied that permitting the applicant to be employed would not be contrary to the best interests of the public, the Division of A.B.C. will issue a *Rehabilitation Employment Permit* which will be effective until December 21st of the year in which issued. The permit may have conditions which limit the license location and/or type of work authorized. If employment is to continue after the expiration of the permit, the permittee must apply to the Division of A.B.C. for an annual renewal. After a five-year (minimum) period (from the date of conviction or release from confinement), an application can be made to remove the disqualification for issuance of an *Order Removing Criminal Disqualification.* Once removal is granted, no further *Rehabilitation Employment Permit* renewals are necessary. (N.J.A.C. 13:2-14.)

A person who receives a *Rehabilitation Employment Permit* must continue to disclose the underlying crimes

that are the subject of the permit on the A.B.C. *Employee List* (E-141-A), as well as the A.B.C. Agency Docket Number assigned to the permit. When completing the A.B.C. *Employee List* (E-141-A), the person would answer "Yes" to "Convicted of a Crime – Yes/No" and list the Agency Docket Number assigned to the permit in the column "A.B.C. Employment Permit No. (If Held)."

A person holding a *Rehabilitation Employment Permit* cannot own a license.

DUTIES OF LICENSEES

When employing someone, a licensee must inquire as to whether that person has been convicted of a crime. If so, the licensee should require the person to present a removal of disqualification, valid Rehabilitation Employment Permit or determination of eligibility prior to the start of the employment. While a disqualification removal or Rehabilitation Employment Permit application is being processed, the Division of A.B.C. can issue a "temporary work letter" which the licensee must keep on file. To knowingly allow a criminally disqualified person to work upon the premises without authorization from this Division subjects the license to a presumptive suspension for at least 30 days. (See "Eligibility, Determination of" and "Fee Schedule" at the end of this Handbook.)

REQUESTING INTERIM RELIEF

WHAT IS INTERIM RELIEF?

(Regarding interim relief, see N.J.S.A. 33:1-22, 31 and N.JA.C. 13:2-17.8 to 17.10.)

If you are requesting Interim Relief, the ABC requires a signed copy of the Resolution from the issuing authority (city/town). If you are unable to provide the ABC with a copy of the Resolution, someone who has personal knowledge of the facts must submit an affidavit that the issuing authority~~'s~~ action against the license was as follows: (then explain in detail).

WHAT ARE THE TIME LIMITS FOR REQUESTING INTERIM RELIEF?

(See N.J.S.A. 33:1-22, 31 and N.J.A.C. 13:2-17.3.)

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a license must be filed within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be filed within 30 days after the personal service or mailing by registered mail of a written Notice by the municipal issuing authority of the action taken against the licensee or the applicant. **Non-action on the part of the issuing authority (city/town) may appealed as follows:**

(1) Application for **Issuance**: 45 days from the date of a duly filed application for issuance of a new license, unless applicant consents to an extension. N.J.A.C. 13:2-2.10(a).

(2) Application for **Renewal**: 90 days after expiration of term. N.J.A.C. 13:2-2.10(b).

(3) Application for **Transfer**: 60 days of the date of filing the application. N.J.A.C. 13:2-7.7(d).

NOTE: For the time period to begin, the application filed must be fully complete, all fees must be paid and all required disclosures must have been made by the applicant. Appeals should be sent to:

Jose Rodriguez, Deputy Attorney General
New Jersey Division of Alcoholic Beverage Control
140 East Front Street, 5TH Floor
*P.O. Box 087
Trenton, New Jersey 08625-0087

***NOTE:* IF SENDING VIA OVERNIGHT MAIL SERVICE, *DO NOT* INCLUDE P.O. BOX NUMBER!**

RESTAURANT – *See "Concessionaire's Agreement"*

Also, make certain that you have indicated you are conducting this type of business on page 4 of the license application.

RETAIL LICENSE APPLICATION

WHAT IS THE "RETAIL LICENSE APPLICATION?"

The completed license application form constitutes the official license file and is the document used to establish the record ownership of the license, to identify the licensed premises and to set forth all other information necessary to the issuance of the license and the operation of the licensed business. The license application form is the means by which all licenses, both Division of A.B.C. and municipally-issued, file for the following transactions: person-to-person transfer; place-to-place transfer (including expansion or reduction of premises); dissolution of partnership; change of corporate structure; extension to executor, administrator, trustee or other court-appointed fiduciary and new license, Special Concessionaire Permit or Special Permit for a Golf Facility. In addition, it is used for annual renewal of the license, Special Concessionaire Permit or Special Permit for a Golf Facility unless a short form renewal application is issued by the Division of A.B.C.

The individual pages of the license application form are also used to amend information when completion of the full application is not required. A copy of the last full twelve-page application filed and any amendments thereto must be kept at all times on the licensed premises and be available for inspection by an authorized official. (N.J.S.A. 33:1-25.) (See "Documents and Records.")

RETAIL SAMPLES

ARE RETAIL LICENSEES PERMITTED TO GIVE SAMPLES OF ALCOHOLIC BEVERAGES TO THEIR CUSTOMERS?

No. Generally, any giving of alcoholic beverages is a "sale" under the definition in the Alcoholic Beverage Control Law. Therefore, giving a sample to a customer, whether by drink or in a sealed container, would be a sale below cost, which is prohibited by regulation. (N.J.A.C. 13:2-24.8.) Complimentary drinks and samples, however, are allowed under certain circumstances. (See "Complimentary Drinks" and "Tasting Events and Samplings.")

RETAILER TO RETAILER SALE

CAN A RETAIL LICENSEE SELL TO OR PURCHASE ALCOHOLIC BEVERAGES FROM ANOTHER RETAIL LICENSEE?

No. Generally, a retail licensee is not permitted to sell alcoholic beverages to or purchase alcoholic beverages from another retail licensee. (N.J.A.C. 13:2-23.12.) (See "Borrowing Alcoholic Beverages." Also see "Close-out Sales.")

RETIREMENT OF CONSUMPTION LICENSES

WHAT IS A "LICENSE RETIREMENT PROGRAM," AND DOES IT APPLY TO ALL LICENSES?

The municipal issuing authority may, by ordinance, establish a license retirement program but only for retail consumption licenses and only in municipalities where the number of existing retail consumption licenses exceeds one for every 2,000 of population. Under this program, the municipality can contract with existing licensees and pay them up to $30,000.00 to retire or return their license to the municipality. This license cannot be reissued to any applicant and the program cannot be used when the number of licenses reaches one for every 3,000 in population. The program is funded by imposing a $200.00 surcharge over and above the annual licensing fee. The actual payment to the retiring licensee is spread over several years depending on the amount of money in the fund.

An interested licensee should contact the municipal clerk to find out if such a program exists in its town and the terms and procedures of the program. It should be noted, however, that this program *only* applies to Plenary Retail Consumption Licenses and no other retail license. (N.J.S.A. 40:48-2.40 through 2.43.)

RUM COOLERS

ARE "RUM COOLERS" THE SAME AS WINE COOLERS?

No. Rum coolers, while relatively low in proof of alcohol, nevertheless are made from distilled spirits, while wine coolers are made from wine. As a result, in most municipalities, wine coolers can be sold for off premises consumption before 9:00 a.m. and after 10:00 p.m. (which are the hours that package goods of distilled spirits are prohibited by State regulation) while rum coolers can only be sold between 9:00 a.m. and 10:00 p.m. (See "Closing Time" and "Package Goods Sales by Retail Consumption Licensees.")

SACRAMENTAL WINE

CAN A RETAIL LICENSEE SELL WINE DIRECTLY TO A CHURCH OR SYNAGOGUE FOR CEREMONIAL PURPOSES?

Yes, but the sale price must not be below cost. Additionally, no church or synagogue can then re-sell such wine to its parishioners since same would be a sale of alcoholic beverages without a license. (See "Cost" and "Sales Tax.")

SALES TAX

WHEN IS A RETAIL LICENSEE REQUIRED TO COLLECT SALES TAX?

As of July 1, 1990, all retail sales of alcoholic beverages are subject to New Jersey sales and use tax. This includes package goods as well as alcoholic beverages sold for on-premises consumption. The tax is on all types of alcoholic beverages. The tax is generally charged on all retail purchases. However, some parties may be exempt (non-profit organizations, i.e., churches). In those cases, certain permits must be presented and recorded. For the correct procedure, the licensee should contact the Division of Taxation.

HOW MUST THE SALES TAX BE LISTED?

Generally, the sales tax must be separately stated on all bills, receipts or sales slips issued to customers. If bills or sales slips are not issued to customers, the sales tax must be included in the unit price of the alcoholic beverages. ("Unit Price" is the total amount of the item, including the sales tax, which is either rung up on the cash register or recorded in some other system of accounting for sales.) If sales tax is included in the unit price of the alcoholic beverages, a sign must be displayed in the place of business that states, "*The price of all alcoholic beverages includes the appropriate New Jersey sales and use tax."*

All sales tax must be remitted to the New Jersey Division of Taxation either quarterly or monthly depending on the amount of tax collected.

WHAT DOCUMENTS DO YOU NEED TO COLLECT SALES TAX?

Since all licensees must collect and remit sales tax, the law requires that the licensees must register with the Division of Taxation as a collecting entity and receive a Sales Tax Certificate of Authority number. Failure to register and receive a Sales Tax Certificate of Authority number is a violation of the Division regulation which could lead to suspension of the license. All questions should be directed to the Division of Taxation. (See A.B.C. Bulletin 2457, Item 5; see also "Documents and Records.")

SAMPLES FROM WHOLESALERS

CAN A WHOLESALER PROVIDE SAMPLES TO A RETAIL LICENSEE?

Yes, a wholesaler, through its solicitors, may provide to a retail licensee samples of alcoholic beverages sold

by the wholesaler. However, the wholesaler is required to obtain from the Division of A.B.C. an Omnibus Permit or a separate Sampling Permit to provide samples. The samples will usually be given by a licensed solicitor employed by the wholesaler. The solicitor, in transporting the product, must have the correct paperwork identifying the products as samples. The samples given to the retail licensee or his employee may not be resold. The wholesaler or solicitor is also required to maintain a record of the persons and licensees to whom samples are given. A retailer might be asked to sign or acknowledge receipt of such samples. (See A.B.C. Bulletin 2441, Item 5.) (See "Tasting Events and Samplings.")

SEARCH WARRANTS – *See "A.B.C. Investigations Bureau"*

SEIZURE OF LICENSES

WHO CAN SEIZE A LICENSE?

Both the U.S. Internal Revenue Service and the N.J. Division of Taxation are authorized to seize alcoholic beverage licenses for failure to pay outstanding tax liabilities. If seized, the licensee may continue in business by obtaining a copy of the license certificate from the issuing authority with it being endorsed by the municipal clerk/A.B.C. Secretary as follows:

"The original certificate has been seized on _____ by the (Internal Revenue Service) (NJ Division of Taxation).

/s/ _____
(Municipal Clerk/A.B.C. Secretary)"

The license cannot be transferred by the licensee while the seizure continues.

SEVEN DAY NOTICE TO PRODUCE RECORDS

MY BUSINESS WAS INSPECTED BY THE A.B.C. OR LOCAL POLICE. DURING THE INSPECTION, THE OFFICERS REQUESTED DOCUMENTS OR OTHER PHYSICAL ITEMS THAT I COULD NOT IMMEDIATELY PRODUCE. AS A RESULT, THEY ISSUED A "SEVEN DAY NOTICE" REQUIRING ME TO PRODUCE THE RECORDS OR ITEMS. WHAT MUST I DO?

The licensee is required to contact the requesting agency within seven days of receipt of the notice and arrange for the production of the requested records or items. Failure to produce the records or items may result in the suspension or revocation of the alcoholic beverage license.

SILENT PARTNER – *See "Undisclosed Interest"*

SOCIAL AFFAIR PERMIT

WHAT IS A "SOCIAL AFFAIR PERMIT," AND WHEN IS ONE REQUIRED?

A Social Affair Permit allows an organization operating solely for civic, religious, educational, charitable, fraternal, social or recreational purposes, and not for private gain, to apply for a Special Permit to serve

alcoholic beverages at a fund-raising event. **NO MORE THAN TWELVE SUCH DAILY PERMITS WILL BE ISSUED TO ANY ONE ORGANIZATION IN A CALENDAR YEAR, AND NO MORE THAN 25 PERMITS CAN BE ISSUED FOR ANY ONE PREMISES OR LOCATION IN A CALENDAR YEAR.** (N.J.S.A. 33:1-74; N.J.A.C. 13:2-5.1.)

The terms of the Social Affair Permit allows the permittee to purchase the alcoholic beverages to be served at the function from either a wholesaler or from a retail licensee who can sell package goods. Other terms, including hours of sale, responsibilities, transportation, storage and return of the alcoholic beverages are specifically identified within the language of the permit itself.

In order for a Club Licensee to conduct affairs that are open to non-members or the general public, the Club can be issued a Social Affair Permit and, in fact, must obtain one if alcoholic beverages are to be sold at the affair. In such case, however, the Club Licensee may draw the alcoholic beverages from its regular inventory. (See "Club License" and "Fee Schedule" at the end of this Handbook.)

SOLICITOR OR SALESMAN – *See "Advertising"*

SPECIAL ANNUAL CONCESSIONAIRE PERMIT

WHAT IS A "SPECIAL ANNUAL CONCESSIONAIRE PERMIT," AND WHEN IS ONE REQUIRED?

The sale of alcoholic beverages in any public building belonging to, or under the control of the State or any political subdivision except the National Guard, requires the issuance of a "Special Concessionaire Permit" by the A.B.C. Director. This annual permit is issued to a private vendor who has a contract with the unit of government to provide services to the public. The permit, for example, is issued to a vendor to provide alcoholic beverages for consumption on premises such as the Meadowlands, state college pubs, municipally-owned golf courses, marinas or similar facilities. (N.J.S.A. 33:1-42; N.J.A.C. 13:2-5.2.)

SPORTS POOL – *See "Gambling"*

SPORTS TEAMS SPONSORSHIP – *See "Athletic Team Sponsors"*

STATE BEVERAGE DISTRIBUTOR'S LICENSE

WHAT IS A "STATE BEVERAGE DISTRIBUTOR'S (S.B.D.) LICENSE?"

A State Beverage Distributor's License is a "Class B" wholesale license which permits the sale of un-chilled beer and other malt alcoholic beverage products in quantities of at least 144 fluid ounces (equal to two six-packs) and chilled kegs of draught beer in specified sizes.

The S.B.D. licensee may operate as a wholesaler and sell to retailers. At the same time, or without wholesaling, the S.B.D. licensee can also sell to consumers at retail. Nothing else, however, other than the malt alcoholic beverage products and non-alcoholic beverages, may be sold on the licensed premises.

As a "Class B" license, the S.B.D. License is issued by the Division of A.B.C. It can be located anywhere in the State. No more than 72 S.B.D. licenses can be issued. These licenses are also subject to petitioning the Director for renewal if they have been inactive for two full license terms just as an inactive retail license must do. (N.J.S.A. 33:1-11.6.) (See "Inactive License.")

STOCKHOLDER CHANGE

WHAT MUST A CORPORATE RETAIL LICENSEE DO WHEN THERE IS A CHANGE IN THE PERSONS WHO OWN THE CORPORATION'S STOCK?

Any change that involves one percent or more of the stock of a corporation that holds a retail license must be reported to the issuing authority within 10 days after the stock change takes place. If the change affects less than one-third of the stock of the corporation, the licensee need only amend the application by filing an amended page 11 and also 7 and 8, if applicable. If the change affects one-third or more of the stock, a full 12-page application is required. Changes in partnerships and other types of legal entities are treated in the same manner as a stockholder change of a corporate license. Publication of a legal notice advising of the change is required if the new holder of the stock does not already hold one percent or more of the stock at the time of transfer. The issuing authority is not required to approve a stockholder change by resolution and no approval prior to the change in stockholders is needed. No fee is required. (N.J.A.C. 13:2-2.14 through 2.16.)

All new shareholders holding one percent or more corporate stock must be fully qualified to hold an alcoholic beverage license, and they will be investigated by the issuing authority. When the stock of a corporate licensee is owned in whole or in part by other corporations, information on each corporation with an interest must be submitted on pages 7, 8 and 11.

When a full license application is filed indicating a change in one-third or more of the corporate stock, the Division of A.B.C. will alter the license number to show an increase in the 4th set of digits, which shows the generation number of the license. (See "Retail License Application" and "License Number.")

STORAGE OF ALCOHOLIC BEVERAGES

MAY A RETAIL LICENSEE STORE ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES?

Generally, alcoholic beverages can only be stored in an area that is included in the licensed premises or in a licensed public warehouse. In case of a temporary need to store alcoholic beverages elsewhere, a licensee may apply to the Division of A.B.C. for a special permit to store off the licensed premises.

A member of a cooperative is authorized to accept the delivery of the cooperative's purchase order and to keep same on his/her premises for a period not to exceed 72 hours following the delivery so that fellow members may pick up their portion of the order. (N.J.A.C. 13:2-23.21.)

If a retail licensee is required to place alcoholic beverages into inactive or "dead" storage, usually as the result of a fire, flood, eviction or the like, a permit may be issued for this purpose. Application is made to

the Division of A.B.C. by letter explaining the circumstances. The permit will only be issued through the following June 30th. (See "Fee Schedule" at the end of this Handbook.)

SUBSTITUTING BEVERAGES

MAY A LICENSEE SUBSTITUTE ONE BRAND OF ALCOHOLIC BEVERAGES WHEN ANOTHER HAS BEEN ORDERED BY A CUSTOMER?

No alcoholic beverage or non-alcoholic beverage other than what has been ordered may be substituted by a licensee or employee. If an ordered brand is not available, the patron must be so informed and the order re-taken. (N.J.A.C. 13:2-23.19.)

MAY A LICENSEE REFUSE TO SELL OR SERVE ALCOHOLIC BEVERAGES TO A PERSON IT BELIEVES IS ACTUALLY OR APPARENTLY INTOXICATED AND AT THE SAME TIME OFFER AN ALTERNATIVE NON-ALCOHOLIC BEVERAGE SUCH AS COFFEE OR SODA?

The licensee not only is permitted but required to refuse to serve alcoholic beverages to a patron it believes is intoxicated. A licensee may offer this patron a non-alcoholic beverage such as coffee or soda. However, a licensee cannot make this sale if the only way to do so is to represent it as an alcoholic beverage. Therefore, if an apparently intoxicated patron only wants an alcoholic beverage, the licensee should not serve him anything. (See A.B.C. Bulletin 2450, Item 4; see also "Intoxicated Patrons.")

SUPER BOWL POOLS – *See "Gambling"*

SUPPLIER

WHAT IS A "SUPPLIER?"

"Supplier" is a term used in the alcoholic beverage industry to collectively refer to manufacturers or producers (brewers, vintners, distillers and rectifiers and blenders), bottlers and importers of alcoholic beverages. (See "Licenses – Manufacturing.")

SUSPENSION – *See "Penalty - Effect on Use of Premises"*

TAP MARKERS

MUST EACH TAP MARKER ON A LICENSED PREMISES ACCURATELY BEAR THE BRAND WHICH IS TRULY BEING SERVED FROM THAT TAP?

Yes, tap markers must indicate the name of the brand of the alcoholic beverage product being drawn from the tap and must be in full view of the purchaser when the tap is located at a bar at which consumers are served. (N.J.A.C. 13:2-23.22(a).) (See "Automatic Dispensers.")

TASTING EVENTS AND SAMPLINGS

MAY RETAIL LICENSEES PARTICIPATE IN TASTING EVENTS AND SAMPLINGS?

A ATasting event@is a scheduled event hosted by a licensee or permittee, which is not open to the public and for which invitations are provided to guests 24 hours in advance. A ASampling@is an act by a licensee or permittee where a small amount of an alcoholic beverage is offered to a consumer for the purpose of inducing or promoting a sale.

For licensees and permittees who are allowed to sell alcoholic beverages in open containers (such as consumption licensees), the parameters for conducting tasting events and samplings include:

(1) Tasting events are not to be open to the general public but are to be limited to invitations given 24 hours in advance.

(2) Tasting events and samplings are not to be offered to or allowed to be consumed by any person under the legal age to consume alcoholic beverages or by any intoxicated persons.

(3) Tasting events and samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.

(4) All tasting events and samplings must be from the inventory of the licensee.

For retail distribution licensees (package goods stores), the parameters for conducting tasting events and samplings include:

(1) Tasting events and samplings are confined to the licensed premises and all wine used in the tasting events and samplings shall be from the inventory of the licensee conducting the tasting or sampling.

(2) Seating of any kind and any bars for the purpose of samplings or tasting events on a distribution licensed premises are prohibited.

(3) Only cheese, crackers, chips, dips and similar snack foods are permitted to be served at a tasting and only cheese and crackers are permitted to be served at a sampling.

(4) Distribution licensees holding a tasting event must notify the Division of Alcoholic Beverage Control, in writing, at least ten days in advance of conducting a tasting event. (The notice shall describe the place, time and products to be featured at the event.)

(5) Only 12 bottles of wine may be open and offered at each tasting event. (For purposes of this regulation, an alcoholic beverage product means each specific individual brand registered alcoholic beverage product being offered.)

(6) Only one tasting event is permitted in a 24-hour period.

(7) At a tasting event, each patron/customer is limited to four one-and one-half ounce samples.

(8) Samplings on a retail distribution licensed premises are limited to the hours of 9:00 a.m and 10:00 p.m.

(9) Patrons/customers are limited to four one-and one-half ounce samplings in any 24-hour period.

(10) Samplings may not be offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic beverages or intoxicated persons.

(11) Samplings are not to be offered when the sale of alcoholic beverages is otherwise prohibited.

(12) Only six bottles of wine may be open at any one time on a plenary retail distribution licensed premise for the purpose of sampling.

(13) When a bottle is opened for the purpose of a sampling, a form supplied by the Division identifying the brand, size and the date the bottle was opened must be completed by the licensee. (This form must be maintained on the licensed premises and available for inspection.)

(14) When a bottle is opened for the purpose of a sampling, the bottle must be marked SAMPLE and with the date the bottle was opened which coincides with the completed form.

(15) Once a bottle is opened for the purpose of sampling, it cannot be returned to the supplier.

(16) No samplings of distilled spirits, beers or malt alcoholic beverages may be provided by a Plenary Retail Distribution Licensee.

Suppliers, manufacturers or wholesalers of alcoholic beverages holding an annual special permit as provided in current regulation N.J.A.C. 13:2-37.1(a)(7) may participate in consumer tasting events and samplings hosted by licensees and permittees who are allowed to sell alcoholic beverages in open containers as well as distribution licensees. As provided in this existing regulation, each solicitor or duly authorized representative participating in consumer tasting events must hold an additional **$200.00** permit and comply with the 10-day advance reporting requirement.

TEEN NIGHTS OR 18 TO PARTY, 21 TO DRINK

CAN A LICENSEE HOLD A "TEEN NIGHT," A TEENAGE DANCE OR AN "18 TO PARTY, 21 TO DRINK" ON LICENSED PREMISES? WHAT RESPONSIBILITIES DOES THE LICENSEE HAVE?

"TEEN NIGHT" OR TEENAGE DANCES

Teen only nights are permitted if they do not violate local ordinances. Even though alcoholic beverages are not being sold, the licensee is still under the same restrictions and has the same responsibilities that it would have if alcoholic beverages were being served. The licensee must be sure that no State laws, rules, regulations or local ordinances are being violated by anyone on the licensed premises at any time.

"18 TO PARTY, 21 TO DRINK" EVENTS

These events are permitted, provided they do not violate local ordinances. During these events, the greatest risk facing the licensee is the "pass-off" of alcoholic beverages from persons of legal age to those that are not of legal age. While not prohibited, the A.B.C. does not condone these events. Any possession or consumption of alcoholic beverages by persons under the legal age may result in the arrest of the person(s) involved and in an administrative action to suspend or revoke the license. The A.B.C. will consider the "18 to party, 21 to drink" event as an aggravating factor when determining the penalty against the license.

TEMPORARY RETAIL STORAGE – *See "Storage of Alcoholic Beverages"*

TIED AND COMBINATION SALES

WHAT IS A "TIED SALE," AND ARE THERE ANY RESTRICTIONS?

A "tied sale" is the offering or selling of any alcoholic beverage product conditioned on the purchase of another product. For example, if a retailer offered a decanter bottle that could only be purchased by buying a 1.75 liter bottle of the same or a different alcoholic beverage, it would be a "tied sale" since the sale of the decanter is "tied" to the purchase of the 1.75 liter bottle. Such a practice is prohibited. (N.J.A.C. 13:2-24.9(a); see also N.J.A.C. 13:2-23.16.)

WHAT IS A "COMBINATION SALE," AND ARE THERE ANY RESTRICTIONS?

A "combination sale" is the offering or selling of any alcoholic beverage together with another alcoholic beverage or with some other suitable object, at a single price for the unit. Retailers (not wholesalers) may sell any combination of alcoholic beverages, with or without other suitable objects, provided that the selling price is not below the cost of the alcoholic beverages to the retailer. Retailers may offer discounts to consumers on combinations of products for off premises consumption.

It should be carefully noted that the restrictions on "tied" and "combination" sales do not apply to the sale of a prepackaged gift item (such as a liqueur packaged with cordial glasses or two or more bottles of wine packed in a wooden gift case) if it comes from the manufacturer. (N.J.A.C. 13:2-24.9(b).)

TIED-HOUSE STATUTE

WHAT IS MEANT BY "TIED-HOUSE?"

"Tied-house" is a term used to describe a mutual interest between a producer or wholesaler of alcoholic

beverages and a retailer of alcoholic beverages. With certain very limited exceptions, no "tied-house" interest is permitted. This means that a retail licensee, unless covered by those very limited exceptions enumerated in the "tied-house" statute, may not have any interest, even in an indirect way, in any producer or wholesaler of alcoholic beverages, and such a producer or wholesaler may not have any retail interest in New Jersey. (N.J.S.A. 33:1-43; N.J.A.C. 13:2-23.25.) (See A.B.C. Bulletin 2432, Item 3.)

The "tied-house" restrictions limit what activities and services a solicitor or salesperson can undertake on a retail licensed premises or for a retail licensee. (See A.B.C. Bulletin 2437, Item 6, and A.B.C. Bulletin 2452, Item 3; see also Advertising.")

TOURNAMENTS – *See "Card Playing/Dart Games" and "Gambling"*

TRADE ASSOCIATION

WHAT IS A "TRADE ASSOCIATION?"

A trade association is an organization of licensees which is designated to promote their common interests. There is no requirement that licensees join or belong to a trade association, but the Division of A.B.C. encourages participation of licensees in trade associations since it simplifies and facilitates communication with licensees concerning their problems and responsibilities.

TRADE NAME

WHAT REQUIREMENTS AFFECT A RETAIL LICENSEE'S USE OF A TRADE NAME?

A "trade name" may be used by any retail licensee, whether such licensee is a corporation, partnership or sole proprietor. If a corporation, the licensed corporation must file a "certificate of registration of fictitious name" with the Secretary of State of New Jersey every five years. (N.J.S.A. 14A:2-2.1.) A partnership or sole proprietorship must file a trade name with the county clerk of the county in which the licensed premises is or will be located. (N.J.S.A. 56:1-1 and 1-2.)

The trade name must also be identified on page 2 of the license application and any change must be reported to the issuing authority upon its occurrence by amending that page of the application. (See "Retail License Application.") Any trade name used by a licensee must not be misleading as to the nature of business being conducted (for example, a Plenary Retail Consumption Licensee ("33") may not use the trade name, "XYZ Liquor Store," but "XYZ Bar & Liquors" would be permitted).

If the name under which the licensed business operates is the same as the actual name of the licensed person, partnership or corporation, no fictitious name registration is necessary, nor is it required to show a trade name on the Retail License Application.

TRANSIT INSIGNIA PERMIT

WHAT PERMIT IS REQUIRED BY A RETAIL LICENSEE TO BE ABLE TO DELIVER ALCOHOLIC BEVERAGES TO A CUSTOMER?

A retail licensee's Retail Distribution License or Retail Consumption License, which is not restricted from selling package goods, allows the licensee to deliver the alcoholic beverages to a customer. (See "Home Deliveries.") Such deliveries, however, must be made in a vehicle owned or leased by and under the control of the retail licensee and must have a Transit Insignia properly affixed. The Transit Insignia is issued for a 12-month period ending August 31 of each year. The insignia is issued for a specific vehicle and may not be transferred to another vehicle. If a vehicle having a Transit Insignia is sold or disposed of, the insignia or sticker must first be removed and the Division must be notified of the sale. (N.J.A.C. 13:2-20.1 through 20.10.) (See "Fee Schedule" at the end of this Handbook.)

TRANSPORTATION OF ALCOHOLIC BEVERAGES FOR PERSONAL USE

IS THERE ANY LIMITATION ON THE AMOUNT OF ALCOHOLIC BEVERAGES A PERSON CAN TRANSPORT FOR PERSONAL USE?

There are no quantity limits on the amount of alcoholic beverages a person can transport within this State for his/her own personal use. There are still limits on the amount of alcoholic beverages a person can personally carry into the State (1/4 barrel or one case not in excess of 12 quarts of malt alcoholic beverages, one gallon of wine and two quarts of other alcoholic beverages) within one 24-hour period even if it is for their own personal use. To transport more than this, a person can obtain an Import for Personal Consumption Permit from the Division. (See "Fee Schedule" at the end of this Handbook.)

Lawful transportation of alcoholic beverages for one's personal use out of the State is dependant upon the laws of the State into which the alcoholic beverages are transported.

Transportation of any quantity of alcoholic beverages for commercial purposes without the proper license, permit or insignia is strictly prohibited. (See "Transit Insignia Permit.")

TWO-LICENSE LIMITATION

IS THERE A LIMIT TO THE NUMBER OF RETAIL LICENSES IN WHICH A PERSON MAY HAVE AN INTEREST?

Unless a person held an interest in more than two retail licenses (except plenary retail transit licenses) prior to August 3, 1962, a person may not have any interest in more than a total of two retail licenses. There are some exceptions which permit the acquiring of more than two licenses if such licenses are retail consumption licenses and are used for a hotel of at least 50 sleeping rooms, a restaurant, a bowling facility of 20 lanes or more or at an international airport. Where this exception applies, except for hotels, no package goods can be sold. (N.J.S.A. 33:1-12.31 to 12.37.) (See "Local Control" and "Package Goods Sales by Retail Consumption Licensees.")

Being a member of a club which holds a Club License or holding less than 10 percent or less of the stock of a publicly-traded corporation which owns a retail license does not constitute an interest for the purpose of this two-license limitation.

See also "Local Control" for an explanation of a municipal restriction that can be placed on the number of retail licenses that a person may hold in a community.

UNDISCLOSED INTEREST

WHAT IS AN "UNDISCLOSED INTEREST?"

The Alcoholic Beverage Control Laws require that every person who has an interest in the alcoholic beverage license must be disclosed, unless that interest amounts to less than one percent of the stock of a corporation. This disclosure is made by completing page 10A of the retail license application with each person's name, address, date of birth and social security number, together with an identification of the nature of the interest. If a person who has an interest is not so disclosed on page 10A of the retail license application, that person holds an "undisclosed interest" in the license, and the license is thereby in violation. Persons deemed to have equitable or beneficial interests in the license must have same disclosed, even if technically they are not considered stock holding interests.

Often an undisclosed interest exists because the person who has the interest which is not disclosed is disqualified from having an interest in an alcoholic beverage license. This could be by reason of having been convicted of a crime (N.J.S.A. 33:1-25; see "Rehabilitation Employment Permit/Disqualification Removal"), already having an interest in two retail licenses (N.J.S.A. 33:1-12.31; see "Two License Limitation"), having an interest or being employed in violation of the "tied-house" statute (N.J.S.A. 33:1-43; see "Tied-House Statute") or having had an interest in a license that was revoked within the last two years or having twice had an interest in a license that was revoked. (N.J.S.A. 33:1-31.) Where the interest in a license was not disclosed due to one of these reasons and that interest is a substantial or controlling one, absent mitigating circumstances, the license is subject to revocation. (See A.B.C Bulletin 2443, Item 6.)

It is also a violation to not disclose an interest for any other reason. Where, however, the person holding the undisclosed interest is not disqualified from holding an interest in an alcoholic beverage license, that situation will generally not result in a revocation penalty, but the license may still be subject to a substantial suspension. Each such case will be determined based on the facts and circumstances surrounding the non-disclosure.

VIDEO GAMES

WHAT VIDEO GAMES ARE PERMITTED ON A LICENSED PREMISES?

Video games which are for entertainment purposes only and whose outcome depends on skill as opposed to chance are permitted on licensed premises. Most video games which have a card, horse racing, dice, roulette, slot machine or similar format have been prohibited. Some video games have been permitted if they have been pre-approved by the Director. Approval is only given to a game which cannot be used for gambling purposes and has no means to accumulate and erase credits. The approved games generally accept only four coins or two one dollar bills at a time. These machines also have lock out coils which prohibit the machine from accepting additional coins or bills. Where a game of this nature is approved, a licensee must,

within 48 hours of the placement of a game on the premises, notify the Division of A.B.C. of the placement, giving the name of the machine, its serial number, the name and address of who placed the machine, as well as the name, address and license number of the licensee. (See A.B.C. Bulletin 2434, Item 9; 2435, Item 4; and 2437, Item 4.) Also, make certain the license application indicates on page 4 that such amusement games are on the licensed premises.

Having a non-approved video game on the premises is a violation which will subject the license to sanction for a gambling violation; individuals holding the license may be subject to criminal penalties and civil forfeiture of the video machine as well as the penalties lodged against the license by this Division. (See "Gambling" and "Penalty Schedule.")

WINE COOLERS – *See "Rum Coolers"*

WINE "DOGGY BAGS"

MAY A PATRON TAKE FROM A RESTAURANT AN UNFINISHED PORTION OF A BOTTLE OF WINE IN AN ALCOHOLIC BEVERAGE VERSION OF A "DOGGY BAG?"

Yes. It is the policy of the State to encourage moderation in the consumption of alcoholic beverages. To permit a diner to take home an unfinished portion of the bottle of wine, rather than consume it all to prevent "waste" of his purchase, furthers that policy. Thus, an unfinished bottle of wine may be re-corked and the patron can take it with him. Removal of other open containers of alcoholic beverages from the licensed premises, such as a glass of wine, a mixed drink or an opened bottle or can of beer, is still prohibited.

Licensees should caution patrons using wine "doggy bags" that the wine should be placed in the trunk of the patron's car while in transit because Motor Vehicle Law prohibits the consumption of alcoholic beverages in a car and the presence of a container with its original seal broken in a motor vehicle (buses, taxi cabs and limousines are excluded) can give rise to a presumption that the unfinished bottle was consumed in the car.

WINE GALLON

WHAT IS MEANT BY THE TERM "WINE GALLON?"

The term "Wine Gallon" is nothing more than the name given by the alcoholic beverage industry to an ordinary liquid gallon (128 fluid ounces). (See "Proof Gallon.")

FEDERAL REGULATIONS

CLOSURE ON LIQUOR BOTTLES

WHAT TYPE OF CLOSURES ARE REQUIRED TO BE ON LIQUOR BOTTLES?

Distilled spirits products bottled after July 1, 1985, no longer bear federal paper strip stamps over the caps.

These bottles must have tamper-evident closures which are designed to require breaking in order to gain access to the contents of the bottles. Examples of these types of closures are paper seals, metal roll-on caps, cello-seals with tabs and foil capsules with zip tabs.

COMMERCIAL BRIBERY (FEDERAL)

WHAT ACTIVITIES ARE PROHIBITED BY THE COMMERCIAL BRIBERY PROVISIONS IN THE FAA ACT?

An industry member is prohibited from inducing, either directly or indirectly, a retailer to purchase that industry member's products to the exclusion of other products sold in interstate or foreign commerce. Industry members include manufacturers, importers and wholesalers of alcoholic beverage products. Inducements considered to be commercial bribery would include the offering or giving of a bonus, premium, compensation or other thing of value to any officer, employee or representative of the retailer.

CONSIGNMENT SALES (FEDERAL)

WHAT IS A "CONSIGNMENT SALE?"

"Consignment sales" are arrangements in which the retailer is under no obligation to pay for alcoholic beverage products until they are sold by that retailer.

WHAT TYPE OF ACTIVITIES ARE RETAILERS PROHIBITED TO BE INVOLVED IN CONCERNING CONSIGNMENT SALES?

Retailers are prohibited to purchase, offer to purchase or contract to purchase alcoholic beverage products on consignment, under conditional sale, with the privilege of return or on any basis other than a *bona fide* sale. Additionally, a retailer cannot be required by a supplier to purchase other products from such supplier as part of any sale.

MAY A RETAILER RETURN PRODUCTS TO A SUPPLIER FOR ANY REASON?

Under certain circumstances, retailers may return products to a supplier. These include: defective products; errors in products delivered; products which may no longer be lawfully sold (e.g., size of the bottle is no longer allowed); termination of the retailer's business or franchise; change in product (e.g., formula, proof); discontinued products and return from seasonal dealers if the products are likely to spoil during the off season. The return of overstocked or slow-moving products and the return of seasonal products (e.g., holiday decanters) are not considered allowable returns for "ordinary and unusual commercial reasons."

EXCLUSIVE OUTLET (FEDERAL)

WHAT IS PROHIBITED UNDER THE EXCLUSIVE OUTLET PROVISIONS OF THE FAA ACT?

Industry members are prohibited from requiring, by agreement or otherwise, that a retailer purchase alcoholic beverage products from such industry member to the exclusion of other products sold in interstate or foreign commerce. As used here, industry members include manufacturers, importers and wholesalers of alcoholic beverages. This provision includes purchases coerced by industry members through acts or threats of harm as well as voluntary purchase agreements.

FEDERAL ALCOHOL ADMINISTRATION ACT

WHAT TYPES OF ACTIVITIES ARE ENFORCED BY THE FEDERAL ALCOHOL ADMINISTRATION ACT (FAA ACT)?

The FAA Act enforces basic permit, trade practice, labeling and advertising requirements of the alcoholic beverage industry. Although retail dealers should be aware of all the trade practice provisions in their dealings with wholesalers, only the consignment sale provisions specifically impose restrictions on their business practices.

BRIEFLY, WHAT TOPICS ARE INCLUDED IN THE TRADE PRACTICE PROVISIONS OF THE FAA ACT?

The four types of trade practice activities enforced by the FAA Act include tied houses, exclusive outlets, commercial bribery and consignment sales.

LIQUOR BOTTLES

ARE THERE ANY FEDERAL REQUIREMENTS REGARDING EMPTY LIQUOR BOTTLES?

Liquor bottles may not be refilled. Refilling a liquor bottle or adding any substance (including water) to a liquor bottle is subject to a fine of not more than $1,000 or imprisonment for not more than one (1) year, or both. With certain exceptions, it is prohibited for anyone other than the retailer who emptied the contents of a liquor bottle to possess used liquor bottles. These exceptions include:

X the assembly of used liquor bottles for delivery back to a bottler or importer;
X the assembly of used liquor bottles for destruction;
X the disposition or sale of unusual or distinctive bottles as collector's items or for other purposes not involving the packaging of any product for sale or
X the assembly of used bottles for recycling the glass.

RETAIL DEALER

WHO IS CONSIDERED A "RETAIL DEALER" UNDER FEDERAL LAW?

Every person who sells, or offers for sale, distilled spirits, wine or beer to any person other than a dealer is considered a retail dealer.

WHAT FEDERAL REQUIREMENTS ARE IMPOSED ON RETAIL DEALERS?

Retailers must obtain a special tax stamp. Also, they are required to maintain records of receipt of all liquor, wine and beer showing the quantities received, from whom received and the date received. Retailers that sell liquor, wine or beer in quantities of 20 gallons or more to one person at one time are required to prepare and keep a record of such sale, showing the date, name and address of the purchaser, kind and quantity of products sold and the serial number of all full cases of liquor involved. The Federal Alcohol

Administration Act prohibits retailers from entering into consignment sale agreements with industry members.

SPECIAL OCCUPATIONAL TAX STAMP

WHAT IS A "SPECIAL TAX STAMP?"

NOTE: AS OF OCTOBER 1, 2005, CONGRESS HAS SUSPENDED THE REQUIREMENT FOR A LICENSEE TO OBTAIN A SPECIAL OCCUPATIONAL TAX STAMP.

A "special tax stamp" is the receipt for payment of the special occupational tax. It is not a federal license and does not offer any privileges to the retailer.

ARE RETAILERS LIABLE FOR THE SPECIAL TAX?

Yes. Every retail dealer must pay the special tax before commencing business *and* before July 1 of each year thereafter, at the following rates depending on the products sold:

- Distilled spirits, wine & beer
- Beer only.

HOW IS THE SPECIAL TAX PAID?

Every retailer is required to file a special tax return (TTB Form 5630.5) with payment to the federal Tax and Trade Bureau, P.O. Box 371962, Pittsburgh, Pennsylvania, 15250-7962. Payment by check or money order should be made payable to "Tax and Trade Bureau." Form 5630.5 must be filed with payment before commencing business *and* before July 1 each year thereafter.

WHAT IS REQUIRED FOR RETAIL LICENSEES WHO CHANGE THEIR LOCATION OR HAVE A CHANGE IN CONTROL OR OWNERSHIP OF THEIR BUSINESS?

Changes in the location of a business must be registered with the TTB within 30 days of the change by completing a new Form 5630.5 (marked "Amended Return") and surrendering their special tax stamp or endorsement. A special tax stamp may not be sold or transferred to a new owner of the business unless there is only a change in control to any of the following persons:

X the widow (or widower), child, executor or other legal representative of a deceased retailer;
X the husband or wife succeeding to the business of his or her living spouse;
X receiver or trustee in bankruptcy, or an assignee for benefit of creditors or
X partners remaining after the death or withdrawal of a member of the partnership.

TIED-HOUSE (FEDERAL)

WHAT IS PROHIBITED UNDER THE TIED-HOUSE PROVISIONS OF THE FAA ACT?

An industry member (manufacturer, wholesaler or importer of alcoholic beverages) is prohibited from inducing a retailer to purchase products from such industry member to the exclusion of other products sold in interstate or foreign commerce. With certain exceptions, industry members are prohibited from the following activities:

X acquiring or holding interest in any retail license;
X acquiring any interest in the property owned, occupied or used by a retailer;
X furnishing, giving, renting, lending or selling to a retailer any equipment, fixtures, signs, supplies, money, services or other thing of value;
X paying or crediting a retailer for any advertising, display or distribution service;
X guaranteeing any loan or repayment of any financial obligation of a retailer;
X extending credit to a retailer in excess of the usual and customary credit period and
X requiring a retailer to take and dispose of a certain quota of products.

WHOLESALE DEALER

WHO IS CONSIDERED A "WHOLESALE DEALER" UNDER FEDERAL LAW?

Every person who sells, or offers for sale, distilled spirits, wine or beer to another dealer is considered a wholesale dealer. Wholesale dealers are required to pay the special tax, obtain a basic operating permit and adhere to certain trade practice, operational and record-keeping requirements.

FEE SCHEDULE

FEE SCHEDULE

PERMIT	FEE
AD INTERIM PERMIT	$ 75.00 plus $5.00 per day
ANNUAL PLENARY RETAIL CONSUMPTION LICENSE RENEWAL FEE	$200.00
APPEAL	$100.00
CATERING PERMIT	$100.00 for each 24-hour period
CO-OP PURCHASING	$ 15.00 per member
EXTENSION OF PREMISES	$ 75.00 for each 24-hour period
IMPORT FOR PERSONAL CONSUMPTION	$ 50.00
MINORS EMPLOYMENT PERMIT	$ 15.00
REHABILITATION EMPLOYMENT PERMIT/ DISQUALIFICATION REMOVAL	$125.00
SOCIAL AFFAIR PERMIT	$100.00/$150.00 per day
STORAGE OF ALCOHOLIC BEVERAGES PERMIT	$25.00 plus $2.00 per day
TRANSFER FEE – PERSON-TO-PERSON	$200.00
TRANSFER FEE – PLACE-TO-PLACE	$200.00
TRANSFER FEE – COMBINATION OF PERSON-TO-PERSON AND PLACE-TO-PLACE	$200.00
TRANSIT INSIGNIA PERMIT	$ 50.00 per vehicle

Most permit applications can be found on the Division of Alcoholic Beverage Control's Website at: www.nj.gov/lps/abc, or contact the Division at 609-984-2830, and an application will be sent to you.

ASSET FORFEITURE
Attorney General's Guidelines for Forfeiture

Issued October 1992

(1) Seizure of Residences

When a prosecuting agency seeks to forfeit real property in residential use, the least intrusive means that will preserve the property for forfeiture shall be employed. A notice of lis pendens or an order restraining alienation should suffice to preserve the government's interest in forfeiture pending final judicial determination of the forfeiture action. This policy recognizes that immediate dispossession from a residence may affect innocent individuals, that dispossession is not always required to preserve the property for forfeiture, and that the home is afforded special significance in American jurisprudence. In cases in which public health, safety or welfare is at risk, full seizure may be accomplished upon obtaining judicial sanction.

(2) Court Approval Required for Forfeiture of Certain Property

In all cases in which real property or in which property having a value of $10,000 or more is the subject of a forfeiture, such forfeiture action shall proceed by a complaint filed in Superior Court as authorized by N.J.S.A. 2C:64-3. This policy will ensure that a public record is established for property having significant value, when that property is subject to a forfeiture. Further, a Superior Court Judge, as a neutral judicial officer, can adjudicate claims by parties asserting an interest in the property and must sanction any final disposition of the forfeiture complaint.

(3) Forfeiture and The Underlying Criminal Offense

Forfeiture is a remedy that seeks to take unlawfully obtained proceeds of criminal activity and to take instrumentalities used to aid in criminal activities. In the case of proceeds, the limit of the forfeiture remedy is defined by the prosecuting agency's ability to prove the nexus between instrumentalities, the degree to which the instrumentality is employed in any criminal transaction or enterprise, the importance of the instrumentality to accomplishing the illegal end and the nature and seriousness of the illegal activities should all be evaluated in determining whether the forfeiture remedy should be employed to its full limit.

(4) Disposition of Forfeiture and Criminal Charges Not Dependent

It is legitimate to negotiate a forfeiture settlement when negotiating a criminal disposition. However, a reasonable disposition of possible or pending criminal charges should not be comprised to obtain a greater forfeiture of property.

ATTORNEY GENERAL DIRECTIVE, 2006-4

SUPERSEDING DIRECTIVE REGARDING ELECTRONIC RECORDATION OF STATIONHOUSE INTERROGATIONS

(October 10, 2006)

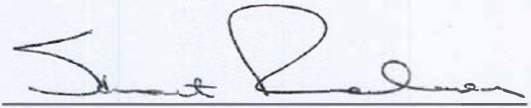
On October 14, 2005, the New Jersey Supreme Court adopted the recommendations of its Special Committee on the Recordation of Custodial Interrogations. The recommendations included a requirement that police electronically record the entirety of all custodial interrogations occurring in a place of detention for cases in which the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to R. 3:3-1c. The effective dates for that requirement are staggered so as to go into effect for all covered homicide cases on January 1, 2006, and for all other offenses specified in R. 3:3-1c on January 1, 2007. The new Rule is codified at R. 3:17.

On January 17, 2006, the Attorney General issued Directive No. 2006-2, which mandated the electronic recordation of all custodial interrogations conducted in a place of detention for all first, second and third degree crimes, for adult and juvenile suspects alike. That directive set up its own staggered implementation schedule which differed in some ways from that established by R. 3:17. Its implementation schedule was as follows: (1) the recording requirement for homicides listed in R. 3:17 was to go into effect on January 1, 2006; (2) the recording requirement for all other first and second degree crimes was to go into effect on October 1, 2006; and (3) the recording requirement for all third degree crimes was to go into effect on January 1, 2007.

Upon review and consideration of these two sets of requirements, the Attorney General and the County Prosecutors' Association have determined that having differing time frames in the Court Rule and the Attorney General Directive may be difficult to implement and may cause confusion in the law enforcement community. Accordingly, the Attorney General, the Director of the Division of Criminal Justice, and the County Prosecutors have jointly determined that the two sets of requirements must be harmonized to the greatest extent possible.

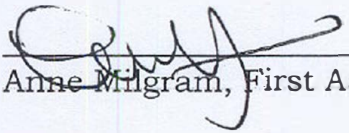
Therefore, it is hereby adopted that the effective date regarding the recording requirement for all homicides listed in R. 3:17 shall remain as it is, at January 1, 2006, particularly as that date is mandated by R. 3:17. However, for all other first and second degree crimes, the recording requirement is hereby amended so as to now go into effect on January 1, 2007. The recording requirement for all third degree crimes shall remain as it is, at January 1, 2007.

All existing policy statements and Directives that are in any way inconsistent with the foregoing provisions are hereby superseded and rescinded.



Stuart Rabner, Attorney General

ATTEST:



Anne Milgram, First Assistant Attorney General

Dated: October 10, 2006

THIS SECTION PREPARED BY THE

DIVISION OF CRIMINAL JUSTICE

This section has not been reviewed or endorsed by the Judiciary.

THIS SECTION PREPARED BY THE DIVISION OF CRIMINAL JUSTICE; not reviewed or endorsed by the Judiciary.

A. INTRODUCTION

DOMESTIC VIOLENCE STANDARDS

Domestic violence, a serious crime against society, must be affirmatively addressed by both law enforcement and the courts so that the victims and society are protected.

Prescribed procedures are necessary so that both law enforcement officers and the courts can promptly and effectively respond to domestic violence cases.

Because of the diversity **of** police resources in this State, county prosecutors, who are the chief law enforcement officers of their counties, should be responsible for procedures used in all the law enforcement agencies of their counties.

To promote uniformity in police response statewide, the county response procedure should conform to the format of the attached Standard.

The General Guidelines on Police Response in Domestic Violence Cases, promulgated by the Attorney General on April **12,1988** have been expanded and revised. The revised Guidelines have been incorporated into this Standard.

The response procedures to be developed by county prosecutors for law enforcement officers should then be included in this Domestic Violence Procedures Manual. The Manual was jointly developed by the Administrative Office of the Courts and a committee of law enforcement officials convened by the Attorney General.

The Manual is intended to secure appropriate responses to domestic violence in this State. The unique unified approach will assure prompt assistance to the victims of domestic violence **and** demonstrate New Jersey's resolve that violent behavior will not be tolerated in public or in private.

Any questions regarding law enforcement procedures should be directed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau, Justice Complex, Trenton.

THIS SECTION PREPARED BY THE DIVISION OF CRIMINAL JUSTICE; not reviewed or endorsed by the Judiciary.

PERFORMANCE STANDARDS

GOAL: The goal **of** this standard is to establish procedures for the proper and consistent handling of domestic violence incidents. The procedures will be established by the county prosecutor or by municipal law enforcement agencies as needed. Exceptions will be made for municipal law enforcement agencies as approved by the county prosecutor.

3. DOMESTIC VIOLENCE

3.1 Domestic violence policy and procedures. The agency shall adopt specific procedures for the handling of domestic violence and codify these procedures through policy.

3.1.1 The agency shall develop and implement written policy governing the handling **of** domestic violence incidents.

3.1.2 The agency shall develop and implement specific procedures for:

A. Response to domestic violence incidents;

B. Receipt and processing of domestic violence complaints and restraining orders;

C. Domestic violence arrests;

D. Weapons relating to domestic violence complaints and restraining orders;

E. Reporting of domestic violence incidents;

F. Training of officers in response to domestic violence incidents.

3.1.3 The agency shall clearly define and explain all relevant terms used in its domestic violence policy, including but not limited to:

A. Domestic violence;

B. Victim **of** domestic violence.

3.1.4 The agency shall insure that its domestic violence policy and procedures are in compliance with United States Constitution, New Jersey Constitution **and** statutes, court decisions, and Attorney General and county prosecutor directives and guidelines.

3.2 Response to domestic violence incidents. The agency shall have clear policy and procedures on the response to domestic violence incidents realizing the importance and potential for additional violence of such incidents.

3.2.1 The agency shall insure that all allegations of domestic violence are responded to promptly and investigated thoroughly.

3.2.2 The agency shall insure that the safety of the victim and all individuals at the scene of domestic violence, including the officers, is of primary concern.

3.2.3 The agency shall insure that victims are notified of their domestic violence rights as required by statute.

3.2.4 The agency shall insure that all officers who respond to domestic violence incidents shall have available current and accurate information for referrals to appropriate social service agencies.

3.2.5 The agency shall establish or participate in an established domestic violence crisis team.

3.3 Receipt and processing of domestic violence complaints. When domestic violence incidents generate criminal or civil domestic violence complaints, or both, the processing of those complaints shall be explicitly defined.

3.3.1 The agency shall specify the procedure to be followed in filing of criminal charges stemming from domestic violence incidents.

3.3.2 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is open.

3.3.3 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is closed but the Municipal Court is open.

3.3.4 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division and the Municipal Court are closed.

3.4 Domestic violence arrests. The agency shall delineate, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, those domestic violence incidents in which the arrest of the actor is mandatory.

3.4.1 The agency shall specify those domestic violence incidents which require mandatory arrests:

A. Act involving signs of injury;

B. Violation of a restraining order;

C. A warrant is in effect;

D. There is probable cause to believe a weapon was involved in the act of domestic violence.

3.4.2 The agency shall specify those domestic violence incidents in which arrest is discretionary.

3.4.3 The agency shall clearly delineate the procedure to be followed in cases involving violation of an existing restraining order.

3.4.4 The agency shall specify the procedure to be followed in processing an arrest for domestic violence, including:

A. Signing of complaint;

B. Fingerprinting;

C. Photographing;

D. Bail.

3.4.5 The agency shall specify the procedure to be followed when a charge of domestic violence is filed against a law enforcement officer.

3.5 Weapons relating to domestic violence incidents. The agency shall identify the procedures to be followed by officers when weapons are involved in domestic violence incidents, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, and accepted police practice.

3.5.1 The agency shall specify the procedures to be followed by investigating officers when:

A. Weapon(s) are used or threatened to be used in the domestic violence incident;

B. Weapon(s) are not used in the domestic violence incident but are in plain view to the officer;

C. Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

3.6 Reporting of domestic violence incidents. The agency shall fully document all complaints of and responses to domestic violence incidents.

3.6.1 The agency shall insure that all domestic violence incidents are fully recorded and documented within the departmental reporting system.

3.6.2 The agency shall insure that all domestic violence incidents are reported in accordance with state statute. This includes, but is not limited to, completion and submission of the UCR DV#1 form or its electronic data equivalent.

3.7 Training. The agency shall train its officers in the handling of domestic violence incidents as a matter of policy and procedure, and also from the standpoint of proper police protocol.

3.7.1 The agency shall provide for the training of all officers in the appropriate handling, investigation and response procedures concerning reports of domestic violence.

B. GUIDELINES ON POLICE RESPONSE PROCEDURES IN DOMESTIC VIOLENCE CASES

Introduction. These general guidelines consolidate the police response procedures for domestic violence cases, including abuse and neglect of the elderly and disabled, based on State law, **Court** Rules, and prior editions of the Domestic Violence Procedures Manual which was jointly prepared by the New Jersey Supreme Court and the Attorney General through the Division of Criminal Justice.

3.8 Mandatory Arrest

3.8.1 **A** police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if there exists probable cause to believe an act of domestic violence has occurred and

3.8.2 The victim exhibits signs of injury caused by an act of domestic violence. *N.J.S.A.* 2C:25-21a(**1).**

A. The word, "exhibits," is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or impairment of physical condition. Probable cause to arrest also may be established when the police officer observes manifestations of an internal injury suffered by the victim. ***N.J.S.A.*** 2C:25-21c(1)

B. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest. ***N.J.S.A.*** 2C:25-21c(1)

C. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

1. the comparative extent of injuries suffered;

2. the history of domestic violence between the parties, if any;

3. the presence of wounds associated with defense, or considered defensive wounds; or

4. other relevant factors, including checking the DV Central Registry. ***N.J.S.A.*** 2C:25-21c(2).

5. **NOTE:** The investigating officer must insure that "[n]o victim shall be denied relief or arrested or charged under this act with an

offense because the victim used reasonable force in self-defense against domestic violence by an attacker." *N.J.S.A.* 2C:25-21c(3).

D. If the officer arrests both parties, when each exhibit signs of injury, the officer should explain in the incident report the basis for the officer's action and the probable cause to substantiate the charges against each party.

E. Police shall follow standard procedures in rendering or summoning emergency treatment for the victim, if required.

3.8.3 There is probable cause to believe that the terms of a **TRO** have been violated. If the victim does not have a copy of the restraining order, the officer may verify the existence of an order with the appropriate law enforcement agency. The officer should check the DVCR. N.J.S.A. 2C:25-21(a)(3)

3.8.4 **A** warrant is in effect. *N.J.S.A.* 2C:25-21a(2)

3.8.5 There is probable cause to believe that a weapon as defined in N.J.S.A. 2C:39-1r has been involved in the commission of an act of domestic violence. N.J.S.A. 25-21a(4)

3.9. DISCRETIONARY ARREST.

3.9.1 **A** police officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed but none of the conditions in Section. 3.8 above applies. N.J.S.A. 2C:25-21b

In any situation when domestic violence may be an issue, but there's no probable cause for arrest and the victim does not wish to file a TRO, the police officers must give and explain to the victim the domestic violence notice of rights as contained in the Victim Notification Form. N.J.S.A. 2C:25-23

3.10 SEIZURE OF WEAPONS.

3.10.1 Seizure of a Weapon for Safekeeping.

A police officer who has probable cause to believe that **an** act of domestic violence has been committed shall pursuant to N.J.S.A. 2C:25-21d(1):

A. Question all persons present to determine whether there are weapons, as defined in ***N.J.S.A.*** 2C:39-1r, on the premises. ***N.J.S.A.*** 25:21d(1)(a)

B. If an officer sees or learns that a weapon is present within the premises of a domestic violence incident and reasonably believes that the weapon would expose the victim to a risk of serious bodily injury, the officer shall attempt to gain possession of the weapon. **If** a law enforcement officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence. ***N.J.S.A.*** 2C:25-21d(1)(b)

C. If the weapon is in plain view, the officer should seize the weapon.

D. If the weapon is not in plain view but is located within the premises possessed by the domestic violence victim or jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain the consent, preferably in writing, of the domestic violence victim to search for and to seize the weapon.

E. If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and domestic violence assailant but is located **upon** other premises, the officer should attempt to obtain possession of the weapon from the possessor of the weapon, either the domestic violence assailant or a third party, by a voluntary surrender **of** the weapon.

F. If the domestic violence assailant or the possessor **of** the weapon refuses to surrender the weapon or to allow the officer to enter the premises to search for the named weapon, the officer should obtain a Domestic Violence Warrant for the Search and Seizure **of** Weapons. [See Appendix 19]

3.10.2 Seizure of a Weapon Pursuant to Court Order. ***N.J.S.A.*** 2C:25-26 and *N.J.S.A.* 2C:25-28j.

A. If a domestic violence Victim obtains a TRO or FRO directing that the domestic violence assailant surrender a named weapon, the officer should demand that the person surrender the named weapon.

B. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should:

1. inform the person that the court order authorizes a search and seizure of the premises for the named weapon, and

2. arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, ***N.J.S.A.*** 2C:29-9, and

3. conduct a search of the named premises for the named weapon.

3.10.3. The officer must append an inventory of seized weapons to the domestic violence offense report. ***N.J.S.A.*** 2C:25-21d(2)

3.10.4 Weapons seized by a police officer, along with any seized firearms identification card or permit to purchase a handgun, must be promptly delivered to the county prosecutor along with a copy of the domestic violence offense report and, where applicable, the domestic violence complaint and temporary restraining order. ***N.J.S.A.*** 2C:25-21d(2)

3.11 DOMESTIC VIOLENCE COMPLAINT PROCESS.

DEFINITIONS USED IN THIS SECTION

A. Domestic Violence Civil Complaint means the multi page application and temporary restraining order issued by the Superior or Municipal Court. See Section 1.6. Referred to as TRO/Complaint.

B. Criminal Complaint refers to the criminal charges placed on a CDR-1 (summons) or CDR-2 (warrant). See Section 1.2.

3.11.1 Notice. When a police officer responds to a call of a domestic violence incident, the officer must give and explain to the victim the domestic violence notice of rights which advises the victim of available court action, ***N.J.S.A.*** 2C:25-23. The victim may file:

A. A Complaint/TRO alleging the defendant committed an act of domestic violence and asking for court assistance to prevent its recurrence by asking for a temporary restraining court order (TRO) or other relief;

B. A criminal complaint alleging the defendant committed a criminal act. See Section, **3.8** Mandatory Arrest above as to when a police officer must sign the criminal complaint (CDR-1 (summons) or CDR-2 (warrant).); or

C. Both of the above.

3.11.2 Jurisdiction for filing domestic violence Complaint/TRO by the victim. *N.J.S.A.* 2C:25-28 -

A. During regular court hours,

1. The victim should be transported or directed to the Family Part of Superior Court. See Section 4.2.

2. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the designated court by telephone for an emergent temporary restraining order in accordance with established procedure.

B. On weekends, holidays and other times when the court is closed,

1. The victim may file the domestic violence complaint with the police and request a TRO from a Municipal Court Judge specifically assigned to accept these complaints. ***N.J.S.A.*** 2C:25-28a.

C. The victim may file a domestic violence complaint ***.N.J.S.A.*** 2C:25-28a:

1. where the alleged act of domestic violence occurred,

2. where the defendant resides, or

3. where the victim resides or is sheltered.

3.11.3. Jurisdiction for filing criminal complaint (CDR-1 or CDR-2) by the victim in connection with filing domestic violence complaint.

A. **A** criminal complaint may be filed against the defendant in locations indicated in Paragraph 3.11.2 C above.

B. **A** criminal complaint filed pursuant to Paragraph 3.11.2 **A** above shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.

3.11.4 Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.

A. The victim may file a criminal complaint as stated in section 3.11.2C above.

B. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim and shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to

the law enforcement agency where the offense occurred. That law enforcement agency shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. Where a victim has exhibited signs of physical injury, the agency receiving the documentation shall arrest the suspect in accordance with existing domestic violence procedure.

C. **If** the police officer believes that a no-contact order should be issued, **as** a condition of bail, the officer should **inform** the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.

D. If the officer believes that weapons should be seized, the officer should inform the court of the circumstances justifying such request that as a condition of bail, the defendant's weapons must be surrendered to the police for safe-keeping. All weapons seized must be safely secured or turned over to the county prosecutor.

3.11.5 Victim Notification Form [see appendix 5]

A When either a criminal or domestic violence complaint is signed, a Victim Notification Form is to be completed by the person assisting the victim, either the police officer or other appropriate staff.

B. The victim should be informed that, for the victim's protection, the prosecutor or the court must have the ability to contact the victim on short notice to inform the victim about the defendant's

1. impending release **from** custody, or

2. application to reduce bail.

C. The victim should be provided with the telephone number of the

1. Victim Witness Unit of the Prosecutor's Office when a criminal complaint or domestic violence contempt complaint is signed, or

2. Family Division Domestic Violence Unit when a domestic violence complaint is signed.

D. The victim should be instructed to contact the appropriate office to provide new telephone numbers if the victim changes telephone numbers

from the numbers listed on the Victim Notification Form.

E. Whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim immediately.

3.12. PROCEDURE FOR FILING REPORTS.

3.12.1 A copy of the domestic violence offense report and Victim Notification Form must be attached to all criminal complaints and to the TRO when these documents are forwarded to the appropriate court. *N.J.S.A.* 2C:25-24a

3.13 TEMPORARY RESTRAINING COURT ORDERS.

3.13.1. When a victim requests a court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer should:

A. Assist the victim in preparing the complaint and a statement to be made to the judge.

B. Explain that the judge will place the person under oath and will ask questions about the incident.

C. **If** the judge issues a temporary restraining order, the police officer will be instructed to enter the judge's authorization on a prescribed form.

D The officer also will be instructed to print the judge's name on the temporary restraining order.

E. The officer also will be instructed to serve the TRO upon the alleged offender.

3.14 SERVICE OF TEMPORARY RESTRAINING ORDER

3.14.1 When the victim obtains a restraining order but the defendant had not been arrested by police and is present at the scene, the officer should:

A. Escort the victim to his or her home.

B. Read the conditions of the court order to the defendant if the defendant is present.

C. Order the defendant to vacate the premises, where that is part of the Order.

D. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration. *N.J.S.A.* 2C:25-28k. The officer shall remain with the defendant as he or she gathers personal belongings pursuant to the terms of the temporary restraining order

E. Arrest the defendant if required by the TRO or if defendant refuses to comply with' the order.

3.14.2 Where a TRO had been issued but was not served upon the defendant because the defendant could not then be located but the defendant is now at the scene, police should follow Paragraphs **3.14.1 A-E.**

3.14.3 When a temporary or final restraining order is issued that requires service outside the issuing county,

A. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be brought or transmitted by facsimile to the sheriffs department in the issuing county.

1. The sheriffs department in the issuing county must similarly bring or transmit by facsimile the order and related documents to the sheriffs department in the county of the defendant's residence or business.

2. The sheriffs department in the receiving county, pursuant to local policy, will either

   a. execute service on the defendant or

   b. will immediately bring or transmit by facsimile the order and related documents to the police department in the municipality in which the defendant resides or works so that it can execute service accordingly.

3. The return of service should then be transmitted by facsimile back to the sheriffs department in the issuing county, which in turn must immediately deliver or transmitted by facsimile the return of service to the Family Division in the issuing county.

B. When the service of a restraining order results in the seizure of weapons;

1. The weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.

2. The weapons themselves, along with any licenses, I.D. cards, or other paperwork or documentation shall be secured by the prosecutor in the seizing county for storage. At such time that the seized property is needed by the prosecutor or Family Division in the issuing county, the prosecutor in the seizing county shall forward same.

C. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the police or sheriffs department and immediately returned to the Family Division **prior** to the scheduled final hearing date.

3.15 COURT ORDER VIOLATIONS.

3.15.1. Where a police officer determines that a party has violated an existing restraining order either by committing a new act of domestic violence or by violating the terms of a court order, the officer must

A. Arrest and transport the defendant to the police station.

B. Sign a criminal contempt charge concerning the incident on a complaint-warrant (CDR-2).

C. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint (CDR-2) form that contain the contempt charge.)

D. Telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt charge. ***N.J.S.A.*** 2C:25-31b.

1. During regular court hours, bail should be set by the emergent duty Superior Court judge that day. ***N.J.S.A.*** 2C:25-31d.

2. On weekends, holidays and other times when the court is closed, bail should be set by the designated emergent duty Superior **Court** judge except in those counties where a Municipal Court judge has been authorized to set bail for non-indictable contempt charges by the assignment judge.

3. When bail is set by a judge when the courts are closed, the officer shall mange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. ***N.J.S.A.*** 2C:25-25-31d.

4. If a Municipal Court judge sets the bail, the arresting officer shall notify the clerk of that Municipal Court of this information. ***N.J.S.A.*** 2C:25-31d.

5. The DVCR must be checked prior to bail being set. ***N.J.S.A.*** 2C:25-31a.

E. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at police headquarters or the county jail. ***N.J.S.A.*** 2C:25-31c.

3.15.2 Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO, the officer must advise the victim of the procedure for completing and signing a

A. Criminal complaint alleging a violation of the court order. ***N.J.S.A.*** 2C:25-32

1. During regular court hours, the officer should advise the victim that the complaint must be filed with the Family Part of the Chancery Division of Superior Court. ***N.J.S.A.*** 2C:25-32

2. On weekends, holidays and other hours when the court is closed.

a. the officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint;

b. the alleged offender shall be charged with contempt of a domestic violence restraining court order, ***N.J.S.A.*** 2C:29-9;

c. the officer in charge shall check the DVCR prior to contacting the on duty Superior Court Judge for a probable cause determination for the issuance of the criminal complaint. If the judge finds sufficient probable cause for the charges, the officer must prepare a complaint-warrant (CDR-2).

d. the officer in charge shall follow standard police procedure in arranging to have a court set bail.

e. the officer who had determined that there was no probable cause to arrest or sign a criminal complaint

against the defendant for a violation of a TRO must articulate in the officer's incident report the reasons for the officer's conclusions.

B. Civil complaint against the defendant for violations of a court order pertaining to support or monetary compensation, custody, visitation or counseling. The victim should be referred to the Family Division Domestic Violence Unit to pursue enforcement of litigant's rights.

3.16 CRIMINAL OFFENSES AGAINST THE ELDERLY AND DISABLED.

3.16.1 Where an elderly or disabled person is subjected to a criminal offense listed as an act of domestic violence, police shall follow the appropriate procedure listed above.

3.16.2 Where the actions or omissions against an elderly or disabled person do not meet the domestic violence conditions, police may file appropriate criminal charges against the offender.

3.16.3 A person may be charged with Endangering the Welfare of the Elderly or Disabled, *N.J.S.A.* 2C:24-8, if the person has a legal duty to care for or has assumed continuing responsibility for the care of a person who is:

A. 60 years of age or older, or

B. emotionally, psychologically or physically disabled, and

C. the person unreasonably neglects or fails to permit to be done any act necessary for the physical or mental health of the elderly or disabled person.

3.17 Guidelines on Prosecutorial Procedure Regarding Weapons Seized in Domestic Violence Cases

Introduction. These general guidelines outline the procedure a County Prosecutor should establish regarding the disposition of weapons seized in domestic violence cases.

3.17.1. Seizure of Weapons Used in Commission of a Criminal Offense.

Any weapon used in the commission of a criminal offense or is contraband or evidence of criminal activity shall be seized by police and processed in accordance with established procedures for the handling of such evidence.

3.17.2. Seizure of Weapons for Safekeeping Purposes.

Any weapon seized by police in a domestic violence incident pursuant to *N.J.S.A.* 2C:25-21d cannot be returned to the owner by the police.

A. The police must promptly deliver to the County Prosecutor's Office:

1. the weapon involved in a domestic violence incident; along with any seized firearms identification card or permit to purchase a handgun;

2. the domestic violence offense report which includes **an** inventory **of** all weapons seized, and

3. where applicable, a copy of the TRO or FRO, the criminal complaint, the Victim Notification Form and the police incident report.

4. where seizure of weapons is pursuant to a TRO or FRO, the weapon inventory should also be forwarded to the Family Division Domestic Violence Unit.

B. When a weapon **was** seized at the scene pursuant to *N.J.S.A.* 2C:25-21d,

1. the County Prosecutor shall determine within **45** days **of** the seizure:

   a. whether the weapon should be returned to the owner of the weapon, or

   b. whether to institute legal action against the owner of the weapon.

2. If the County Prosecutor determines not to institute action to seize the weapon and does not institute an action within 45 days of seizure, the seized weapon shall be returned to the owner. *N.J.S.A.* 2C:25-21d(3).

3. If the County Prosecutor determines to institute action to seize the weapon, the Prosecutor shall, with notice to the owner of the weapon,

   a. file a petition with the Family **Part** of the Superior Court, Chancery Division, to obtain title to the weapon, or

b. seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license and other authorization for the use, possession, or ownership of such weapons. (See *N.J.S.A.* 2C:58-3f, 2C:58-4f and/or 2C:58-5 governing such use, possession, or ownership), or

c. object to the return of the weapon on such grounds:

(1) as are provided for the initial rejection or later revocation of the authorizations pursuant to *N.J.S.A.* 2C:58-3c; or

(2) that the owner is unfit or that the owner poses **a** threat to the public in general **or** a person or persons in particular; or

(3) seek a court order that defendant must dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.

C. Any weapon seized by police:

1. pursuant to a temporary or final domestic violence restraining order, or

2. pursuant to a Domestic Violence Warrant for the Search & Seizure **of** Weapons, or

3. **as** a condition of bail for a criminal offense involving domestic violence,

should be returned to the owner **by** the appropriate **court** specifically authorizing the return of the weapon if the order or criminal complaint is in effect. If the order or complaint is withdrawn or dismissed prior to a hearing, the provisions in Paragraph, 3.17.2B2 ***supra,*** should be followed.

3.17.3 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order Was Issued.

When the service of a domestic violence restraining order results in the seizure of weapons,

A. the weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.

B. the weapons themselves, along with any firearms identification card, purchasers permit, licenses, identification cards, or other paperwork or documentation shall be secured by the County Prosecutor in the seizing county for storage. At such time that the seized property is needed by the County Prosecutor or Family Division in the issuing county, the Prosecutor in the seizing county shall make arrangements for the delivery of same.

3.17.4 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident. See Attorney General Directives 2000-3 and 2000-4 (Appendix 17)

When a law enforcement officer, who is authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6, is involved in an act of domestic violence, the seizure of weapons shall be governed by the Attorney Generals Directives 2000-3 and 2000-4. (See Appendix 17.)1

A. If a law enforcement officer is required by departmental regulations to personally purchase his or her official duty firearm, that firearm shall be considered the same as if it had been departmentally issued for purposes of applying the provisions of the Attorney General Directives 2000-3 and 2000-4 and the provisions of the federal gun control law, **18 *U.S.C.A.*** 922(g).

C. When a personal firearm is seized from a member of a state law enforcement officer, which includes members of the State Police, the State Department **of** Corrections, the Division of Criminal Justice, Rutgers University Campus Police, state college and university police, N.J. Transit Police, Division of Parole, Juvenile Justice Commission, Human Services Police, any officer of Fish, Game and Wildlife

---

1 The Directives are similar in content: Directive 2000-3 ***Revision to August 14, 1995, Directive Implementing Procedures for the Seizure*** of ***Weapons$-om Municipal and*** *County* ***Law Enforcement Officers*** is applicable to municipal and county law enforcement and requires the county prosecutor to investigate whether **a** police officer, having his firearms seized pursuant to the Prevention of Domestic Violence Act of 1990, should and under what conditions, would have his firearms, agency owned and personal, returned to him. Directive 2000-4, ***Revision*** *to* ***August 14, 1995, Directive Implementing Proceduresfor the Seizure of Weapons from All State Law Enforcement Officers Involved in Domestic Violence Incidents*** places the responsibility **of** determining the conditions upon which a state law enforcement officer would have his right to carry a firearm restored with the Division of Criminal Justice.

authorized to carry a firearm, State Commission of Investigation, and Division of Taxation;

1. the county Prosecutor's Office must inform the Division of Criminal Justice whether it will or will not institute forfeiture proceedings pursuant to *N.J.S.A.* 2C:25-21d for the seizure of the member's approved off-duty firearms and other personally owned firearms,
2. the Division of Criminal Justice will determine whether that officer shall be authorized to carry that firearm or any firearm either on duty or off duty and whether conditions should be imposed for such authorization pursuant to the Attorney General Directive 2000-4 at IVD.
3. the Division of Criminal Justice will inform the County Prosecutor's Office of its decision whether that officer would be authorized to carry a firearm either on duty or off duty and whether conditions had been imposed for carrying a firearm.

3.17.5 Restrictions on Return of Firearms.

A. If a final domestic violence restraining order is issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g), the named defendant shall not be permitted to possess, purchase, own, or control any firearm for the duration of the order or for two years, whichever is greater. *N.J.S.A.* 2C:25-29b

B. If a law enforcement officer is subject to a temporary or final restraining order issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g)and sec 925, the County Prosecutor may permit a municipal or county police officer to be armed while actually on duty provided that the restraining order specifically permits the possession of a firearm on duty, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty. In the event a state law enforcement officer is subject to a final restraining order, the Attorney General, by the Division of Criminal Justice, may permit a subject officer to be armed while on duty provided said restraining order specifically permits, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty.

C. A law enforcement officer who has been convicted of a misdemeanor domestic violence offense anywhere in the nation is prohibited from possessing a firearm pursuant to 18 *U.S.C.* 922(g)(8). This federal law applies to offenses that have as an element (1) the use or attempted use of physical force, or (2) the threatened use of a deadly weapon. Under New Jersey law, a disqualifying offense would

be:

1. Harassment, ***N.J.S.A.*** 2C:33-4b by striking, kicking, shoving

2. Simple assault, ***N.J.S.A.*** 2C:12-1a(1) by attempting to or purposely knowingly or recklessly causing bodily injury

3. Simple assault, ***N.J.S.A.*** 2C:12-1a(2) by negligently causing bodily injury to another with a deadly weapon

D. A law enforcement officer who has been convicted of stalking, or a crime or disorderly persons offense involving domestic violence may not purchase, own, possess or control a firearm, and may not be issued a permit to purchase a handgun or firearms identification card. ***N.J.S.A.*** 2C:39-7 & 2C:58-3.

Click here for Table of Contents

STATE OF NEW JERSEY

DOMESTIC VIOLENCE PROCEDURES MANUAL

Issued under the Authority of the
Supreme Court of New Jersey
and the Attorney General of the
State of New Jersey
July 2004
October 2008 Amended Edition

Domestic Violence Procedures Manual

ANNOUCEMENT OF AMENDED EDITION

October 9, 2008

This announces an amended edition of the Domestic Violence Procedures Manual ("DVPM"). This amended edition replaces in its entirety the last revised edition of the DVPM promulgated in 2004 under the joint authority of the Supreme Court and the Attorney General. **Prior hard copy editions of the DVPM are outdated and should be discarded.**

This also announces that beginning with this amended edition, the method of publication will be exclusively Internet based. No hard copies of the DVPM will be distributed. The new DVPM can be found on the Infonet and on the Judiciary's Internet Web site at http://www.njcourts.com/family/index.htm. Using the Internet as a medium of publication represents a significant step forward in the way this important information is made available to those who need it. Just four years ago, the Judiciary published the DVPM in hard copy. It was necessary to print and distribute more than 3,000 copies of the DVPM at that time. Relying on Internet publication saves time and money, and ensures that users will always have access to the most up-to-date version.

The current amendments to the DVPM relate almost exclusively to matters within the Judiciary's purview resulting from new legislation, changes to court rules, new policy initiatives, and editorial corrections and clarifications[1]. The amendments were reviewed and endorsed by the Conferences of Family Presiding Judges and Family Division Managers.

Manual Sections (New or Amended)

- Sections 4.1.6 and 4.1.8 – amended to add information on the electronic Temporary Restraining Order (E-TRO) procedure by which domestic violence complaints and temporary restraining orders may be filed electronically. These amendments were made in accordance with statewide implementation of the E-TRO Project as described in the Administrative Director's July 5, 2007 memorandum to Assignment Judges and Trial Court Administrators.

- Sections 4.3.10 to 4.3.13 (new) – Sets out the existing procedures for determining paternity and child support prior to issuance of a Final Restraining Order (FRO).

[1] The Attorney General's Office provided amended Appendices 5, 18 and 23. That is the extent of its involvement in these DVPM amendments.

- Section 4.5.7 – amended to add a new paragraph setting out a uniform procedure for amending Temporary Restraining Orders.

- Section 4.11 – amended to bring text into conformity with Rule 5:7A, regarding transfers, as amended in 2005, and Directive #3-05 (Intercounty Child Support Case Management Policy).

- Section 4.14.9 – amended to add procedures from the Non-Dissolution Operations Manual, section 1104, for processing a domestic violence case when there is an existing non-dissolution case.

- Section 4.15.1 – amended to provide information about the surcharge imposed on domestic violence offenders pursuant to N.J.S.A. 2C:25-29.4.

- Section 4.17.3 – amended to add information regarding the Uniform Summary Support Order, R. 5:7-4 and Appendix XVI of the Rules of Court, which also has been added as Appendix 31 to the DVPM.

Appendices (New or Amended)

- Appendix 1, Confidential Victim Information Sheet – amended as directed by the Supreme Court, as promulgated by the Administrative Director's June 11, 2008 memorandum to Assignment Judges and Trial Court Administrators.

- Appendix 2, Temporary Restraining Order and Instructions – amended to reflect that the name of the Victims of Crimes Compensation Board has been legislatively changed to the Victims of Crimes Compensation Agency.

- Appendix 3, Domestic Violence Hearing Officer Standards – amended to include the Backup Domestic Violence Hearing Officer Standards promulgated by Directive #2-06 as a Supplement to Directive #16-01.

- Appendix 6, Summary of Electronic TRO – see amendments to Sections 4.1.6 and 4.1.8 above. Amended to reflect the statewide expansion of the program in July 2007.

- Appendix 6A, Recording Complete Incident Description in FACTS – new appendix to provide instructions for capturing full incident description text in FACTS. Please note that this is a temporary solution pending modifications to the Judiciary's automated system.

- Appendix 8, Appeal of Ex Parte Order – Application for Appeal and Order pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-28i – amended to allow for the signature and printed name of either plaintiff or defendant on the Certification. The prior form only provided for defendant's signature. This change was recommended by the Conference of

Family Presiding Judges to accurately reflect the fact that both plaintiff and defendant have the right to appeal the Temporary Restraining Order.

- Appendix 9, Continuance Order – amended to delete the phrase,"The Temporary Restraining Order is further amended as follows." The Continuance Order is not to be used for TRO amendments, which should be made in accordance with the procedures described in amended Section 4.5.7 (above).

- Appendix 10, Final Restraining Order – amended to show the correct court Seal.

- Appendix 14, Order of Dismissal – amended to clarify that if the Temporary or Final Restraining Order is dismissed, any criminal charges filed by either plaintiff or the police are not affected by the dismissal and shall remain pending until addressed separately in the appropriate court.

- Appendix 31, Uniform Summary Support Order, R. 5:7-4 and Appendix XVI of the Rules of Court – New appendix.

- Appendix 32, Address Confidentiality Statute, N.J.S.A. 47:4-2, et. seq. – New appendix.

Any questions concerning these amendments to the DVPM or regarding the DVPM generally may be directed to Harry T. Cassidy, Assistant Director, Family Practice Division at 609-984-4228 or Harry.Cassidy@judiciary.state.nj.us.

SUPREME COURT OF NEW JERSEY

DEBORAH T. PORITZ
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
POST OFFICE BOX 023
TRENTON, N.J. 08625-0023

This revised edition of the New Jersey Domestic Violence Procedures Manual provides procedural guidance for law enforcement officials, judges and judiciary staff in implementing the Prevention of Domestic Violence Act. It is designed to facilitate the prompt resolution of domestic violence matters and provide effective relief to the victims of domestic violence. The Manual is issued jointly by the Judiciary and the Department of Law and Public Safety to provide a seamless system of case handling.

Since it was first issued in 1991, the Domestic Violence Procedures Manual has been updated periodically to reflect amendments to the statute, changes to court rules, and new practices designed to ensure the most efficient management and disposition of these important matters. This edition supersedes the 1998 Manual in its entirety, as well as all previous editions. The changes from the 1998 edition are summarized in the Introduction.

New Jersey has strong laws and protective processes for victims of domestic violence. Users of this Manual will find that it will enable them to implement those laws effectively. Your continued support of this program is very much appreciated.

Deborah T. Poritz
Chief Justice

Peter C. Harvey
Attorney General

July 2004

NOTICE NOTICE NOTICE NOTICE

The New Jersey Domestic Violence Procedures Manual is intended to provide procedural and operational guidance for two groups with responsibility for handling domestic violence complaints in the state of New Jersey – judges and Judiciary staff and law enforcement personnel. The bulk of the Manual (i.e., all except Section III and associated appendices) sets forth procedures to guide Judiciary staff in the management of cases within their area of responsibility. Section III and its associated appendices provide guidance to law enforcement personnel. The procedures for law enforcement and the Judiciary are presented in a single volume in order to provide for both groups a seamless description of the management of domestic violence cases from initiation to conclusion.

The Judiciary portion of the Manual was prepared by the Conference of Family Presiding Judges, working with the Conference of Family Division Managers and the Family Practice Division of the Administrative Office of the Courts (AOC) with input from judges and staff of the Municipal and Criminal Divisions as well as the Supreme Court State Domestic Violence Working Group. It is intended to embody the policies and procedures adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Family Presiding Judges, in order to promote uniform case management statewide. As such, court staff is required to adhere to its provisions.

While the Judiciary portion of the Manual reflects court policies existing as of the date of its preparation, in the event there is a conflict between the Manual and any statement of policy issued by the Supreme Court, the Judicial Council or the Administrative Director of the Courts, that statement of policy, rather than the Manual, will be controlling. Other than in that circumstance however, the Judiciary portion of this Manual is binding on court staff. This Manual is not intended to change any statute or court rule, and in the event a statute or court rule differs from this manual, the statute or rule will control.

Section III, the Law Enforcement portion of the Manual, and its associated appendices were prepared by the Department of Law and Public Safety, Division of Criminal Justice and are intended to provide procedural and operational guidelines for the New Jersey law enforcement community. This material is specifically intended for law enforcement use. While its inclusion in this Manual provides useful information to judges and court staff as well, it is not binding on them. The law enforcement section has not been reviewed or endorsed by the Judiciary.

DOMESTIC VIOLENCE PROCEDURES MANUAL

TABLE OF CONTENTS

Go directly to the item in the table by clicking on it.

Introduction

Section I – Definitions

Section II – Initial Procedures

2.1 Where, When and How Domestic Violence Complaints Are To Be Filed

2.2 Application for a Temporary Restraining Order (TRO)

2.3 Where to File a Criminal Complaint with an Accompanying TRO Application and Complaint

2.4 Where to File a Criminal Complaint When There Is No Accompanying Complaint/TRO

Section III – Law Enforcement

A. Introduction -- Domestic Violence Performance Standards

3.1 Domestic Violence Policy and Procedures

3.2 Response to Domestic Violence Incidents

3.3 Receipt and Processing of Domestic Violence Complaints

3.4 Domestic Violence Arrests

3.5 Weapons Relating to Domestic Violence Incidents

3.6 Reporting of Domestic Violence Incidents

3.7 Training

B. Guidelines on Police Response Procedures in Domestic Violence Cases

3.8 Mandatory Arrest

3.9 Discretionary Arrest

3.10 Seizure of Weapons

3.11 Domestic Violence Complaint Process

3.12 Procedure for Filing Reports

3.13 Temporary Restraining Court Orders

3.14 Service of Temporary Restraining Order

3.15 Court Order Violations

3.16 Criminal Offenses Against the Elderly and Disabled

3.17 Guidelines on Prosecutorial Procedure Regarding Weapons Seized in Domestic Violence Cases

Section IV – Court Procedures

4.1 Municipal Court Procedure

4.2 Superior Court, Family Division Processing

4.3 Taking a Complaint in Superior Court, Family Division

4.4 Access in Special Circumstances

4.5 Initial/Emergent Hearing

4.6 Procedures for Service of Complaint/TRO/FRO

4.7 Service Out of County

4.8 Appeals of *Ex Parte* Orders

4.9 Procedures for Final Hearings

4.10 Appearance by Both Parties

4.11 Transfer of Matters Between Counties

4.12 Final Hearing

4.13 Dispositions

4.14 Remedies Available Under the Act

4.15 Civil Penalty

4.16 Fingerprinting and Processing

4.17 After an FRO Has Been Entered

4.18 Service of FRO

4.19 Requests for Dismissal or Reopening

Section V – Weapons

5.1 Weapons in General

5.2 Mandatory Arrest

5.3 Seizure of Weapon for Safekeeping

5.4 Seizure of Weapons Pursuant to Court Order

5.5 Seizure of Weapons Used in Commission of a Criminal Offense

5.6 Seizure of Weapons Pursuant to *N.J.S.A.* 2C:25-21d

5.7 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order was Issued

5.8 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident

5.9 Restrictions on Return of Firearms

5.10 Warrant for the Search and Seizure of Weapons

5.11 Notice to the Prosecutor

5.12 Hearing Regarding Weapons

Section VI – Enforcement and Modification of Restraining Orders

6.1 Enforcement and Modification

6.2 Criminal Contempt

6.3 Enforcement of Litigant's Rights Proceeding

6.4 Contempt in Superior Court, Family Division

Section VII – Full Faith and Credit of Out of State Orders

7.1 Federal Statutory Overview

7.2 Protection Orders Covered by Section 2265

7.3 New Jersey Law and Procedure

7.4 Process

7.5 Outgoing Orders

Section VIII – Working Groups

Appendix List

SECTION I

DEFINITIONS

DEFINITIONS

1.1 "Child in common" – the child of the plaintiff and the defendant.

1.2 "Criminal Complaint" – formal process under the Code of Criminal Justice of New Jersey (*N.J.S.A.* 2C) using a CDR-1 (summons) or CDR-2 (warrant); must comport with all rules and procedures under the criminal code.

1.3 "Defendant" – A person at least 18 years old or emancipated who is alleged to have committed or has been found to have committed an act(s) of domestic violence under the Prevention of Domestic Violence Act (PDVA). See also sections 1.8 and 2.1.3C.

1.4 "Domestic Violence" – the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act of 1991:

Homicide	*N.J.S.A.* 2C:11-1 *et seq.*
Assault	*N.J.S.A.* 2C:12-1
Terroristic threats	*N.J.S.A.* 2C:12-3
Kidnapping	*N.J.S.A.* 2C:13-1
Criminal restraint	*N.J.S.A.* 2C:13-2
False imprisonment	*N.J.S.A.* 2C:13-3
Sexual assault	*N.J.S.A.* 2C:14-2
Criminal sexual contact	*N.J.S.A.* 2C:14-3
Lewdness	*N.J.S.A.* 2C:14-4
Criminal mischief	*N.J.S.A.* 2C:17-3
Burglary	*N.J.S.A.* 2C:18-2
Criminal trespass	*N.J.S.A.* 2C:18-3
Harassment	*N.J.S.A.* 2C:33-4
Stalking	*N.J.S.A.* 2C:12-10

1.5 "Domestic Violence Central Registry" or DVCR – Statewide registry established under *N.J.S.A.* 2C:25-34 (See Appendix 22).

1.6 "Domestic Violence Civil Complaint" – A multi page application (the civil complaint) and temporary restraining order issued by the Superior Court or Municipal Court. Referred to as "Complaint/TRO."

1.7 "Domestic Violence Response Team" – Law Enforcement agencies are required by *N.J.S.A.* 2C:25-20b(3) to establish such teams of persons trained in counseling, crisis intervention or in the treatment of domestic violence and neglect and abuse of the elderly and disabled victims. Also known as Domestic Violence Crisis Teams.

1.8 "Emancipated Minor" – Under the PDVA, a minor is considered emancipated from his or her parents when the minor:

A. Is or has been married,

B. Has entered military service,

C. Has a child or is pregnant, or,

D. Has been previously declared by the court or an administrative agency to be emancipated.

1.9 "*Ex parte*" – as used in this manual, an application for a TRO where the judge or hearing officer takes testimony only from the plaintiff without notice to the defendant of the application.

1.10 "Final Restraining Order" or FRO – A civil order under the PDVA restraining defendant (Appendix 10); entered after a hearing when defendant has been served with a TRO; remains in effect until further order of the court and is enforceable under the federal full faith and credit provision of Violence Against Women Act (VAWA), see Section VII.

1.11 FM or FD docket – A case which is opened by a complaint for divorce or separate maintenance is given a docket number by Family Court starting with FM; a case which is opened by a complaint for custody, support, paternity or parenting time is given an FD docket number.

1.12 FV or FO docket number – A case that is opened by signing and filing a civil complaint under the PDVA is given an FV docket number. A case which is opened by filing of criminal charges for a violation of an order issued under the PDVA is given an FO docket number; a weapons forfeiture matter is also given an FO docket.

1.13 "Law Enforcement Officer" – A person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

1.14 "Prevention of Domestic Violence Act" or PDVA– *N.J.S.A.* 2C: 25-18 to 2C:25-35.

1.15 "Plaintiff" – A person who seeks or has been granted relief under the PDVA.

1.16 "Personal Service" – Service that requires a law enforcement officer or other authorized person to personally serve the defendant and/or plaintiff with a TRO, FRO or other order issued under the PDVA.

1.17 "Petitioner" – Plaintiff or victim who seeks to enforce or register an out of state Order of Protection in New Jersey.

1.18 "Temporary Restraining Order" or TRO an order entered pursuant to a complaint under the PDVA; is temporary by its terms and requires that a full hearing be scheduled within 10 days. A TRO shall continue in effect until further order of the court (Appendix 2).

1.19 "Victim Advocate" – also known as domestic violence program liaison; a person who is specially trained in domestic violence, both the dynamics and the law, employed by or

working as a volunteer of any domestic violence project, shelter, woman's program or the like.

1.20 "Victim of Domestic Violence" – a person protected by the PDVA and includes any person:

A. Who is 18 years of age or older, **or** who is an emancipated minor, **and** who has been subjected to domestic violence by:

- Spouse
- Former spouse
- Any other person who is a present or former household member, or

B. Who, regardless of age, has been subjected to domestic violence by a person:

- With whom the victim has a child in common, or
- With whom the victim anticipates having a child in common, if one of the parties is pregnant, or

C. Who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

1.21 Weapons - means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air. *N.J.S.A* 2C:39-1r.

SECTION II

INITIAL PROCEDURES

2.1 WHERE, WHEN AND HOW DOMESTIC VIOLENCE COMPLAINTS ARE TO BE FILED

2.1.1 A victim of domestic violence must have access to the courts at all times. Law enforcement, Municipal and Superior Court staff must be advised that victims should never be turned away because of the inconvenience of arranging off-hours emergency relief.

2.1.2 A law enforcement officer responding to a domestic violence call must provide the victim with assistance to file either a criminal or civil Complaint/TRO or both. Under no circumstances should an officer prevent or discourage a victim from seeking immediate temporary relief merely because the domestic violence occurs after regular business hours.

2.1.3 Special Provisions for persons under 18 years of age:

A. A victim may be below the age of 18, may sign the Complaint/TRO and does not need the consent of a parent or guardian to file or withdraw a complaint or to request a modification of an existing order.

B. The domestic violence defendant must be over the age of 18 or emancipated at the time of the offense. (See emancipated minor definition, Section 1.8, for criteria in determining whether a person is emancipated.)

C. A person under 18 years of age and not emancipated who commits an act of violence may not be a defendant in a civil domestic violence case but can be charged with specific acts of domestic violence (e.g., assault) under the Code of Juvenile Justice. The entry of pre or post-dispositional restraints can also be considered for use in the juvenile delinquency case.

2.2 APPLICATION FOR A TEMPORARY RESTRAINING ORDER (TRO)

2.2.1 A victim may file a domestic violence complaint:

A. Where the alleged act of domestic violence occurred;

B. Where the defendant resides;

C. Where the victim resides; or,

D. Where the victim is sheltered or temporarily staying.

2.2.2 During Court hours for domestic violence matters (Monday through Friday, 8:30 AM to at least 3:30 PM):

A. The victim should be transported or directed to the Family Division of

Superior Court, provided the victim can arrive prior to 3:30 PM.

B. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the Family Division, Domestic Violence Unit. There are occasions when a person seeking to file a domestic violence Complaint/TRO arrives too late in the day for it to be processed and heard during regular court hours. During the interim period between the Domestic Violence Unit's close of business and when the courthouse actually closes, victims shall not be turned away. Each county shall develop a procedure in such instances for either in-person or telephonic communication under *Rule* 5:7A between the victim and an on-site or emergent duty judge, so that the request for emergent relief can be handled without the necessity of the victim having to go to the local police station or the Municipal Court. (See section 4.4)

2.2.3 On weekends, holidays and weekdays after 3:30 PM and other times when the Superior Court is closed,

A. A victim may sign the domestic violence complaint with a law enforcement agency as set forth in 2.2.1.

B. The victim's complaint shall be processed promptly. Under no circumstances should the victim be advised to appear in the Superior Court, Family Division the next business day in order to apply for a TRO.

C. If a TRO is denied by a Municipal Court judge, the denial and the Complaint/TRO must still be faxed or forwarded to the Family Division within 24 hours for an administrative dismissal. A victim whose Complaint/TRO has been dismissed in this manner is not barred from refiling in the Family Division based on the same incident and receiving an emergency *ex parte* hearing *de novo*. Every denial of relief by a Municipal Court judge must so state, with specificity in the "Comments" portion of the TRO and the victim must be advised of the right to refile with the Superior Court, Family Division.

2.3 WHERE TO FILE A CRIMINAL COMPLAINT WITH AN ACCOMPANYING TRO APPLICATION AND COMPLAINT

2.3.1 When a victim is seeking a TRO, a companion criminal complaint may also be signed against the defendant in one of the following locations:

A. Where the alleged act of domestic violence occurred, or

B. Where the defendant resides, or

C. Where the victim resides, or

D. Where the victim is sheltered or temporarily staying.

2.3.2 The out-of-jurisdiction complaint (i.e., one taken not where the incident occurred) should be prepared on a blank CDR and the court accepting the complaint for filing shall have the authority to issue process and set bail as if the alleged offense had occurred in that jurisdiction. A "blank" CDR is one without the court's name or municipality code in the caption.

2.3.3 The companion criminal complaint shall be forwarded to the jurisdiction where the offense is alleged to have occurred for investigation and prosecution.

2.3.4 A criminal complaint does not preclude the victim from filing a domestic violence complaint and seeking a TRO. A person may also file criminal charges without seeking a TRO.

2.4 WHERE TO FILE A CRIMINAL COMPLAINT WHEN THERE IS NO ACCOMPANYING COMPLAINT/TRO

2.4.1 The victim may file a criminal complaint with the Municipal Court or police department where the alleged act occurred. See also Section 3.11.4.

2.4.2 If the police officer believes that no-contact provisions should be issued as a condition of bail, the officer should inform the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. This section shall be checked off on the appropriate form (the bail recognizance form). The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request. This order must be in writing and given to the victim consistent with *N.J.S.A.* 2C:25-26.

SECTION III

LAW ENFORCEMENT

THIS SECTION PREPARED BY THE

DIVISION OF CRIMINAL JUSTICE

This section has not been reviewed or endorsed by the Judiciary.

A. INTRODUCTION - DOMESTIC VIOLENCE STANDARDS

Domestic violence, a serious crime against society, must be affirmatively addressed by both law enforcement and the courts so that the victims and society are protected.

Prescribed procedures are necessary so that both law enforcement officers and the courts can promptly and effectively respond to domestic violence cases.

Because of the diversity of police resources in this State, county prosecutors, who are the chief law enforcement officers of their counties, should be responsible for procedures used in all the law enforcement agencies of their counties.

To promote uniformity in police response statewide, the county response procedure should conform to the format of the attached Standard.

The General Guidelines on Police Response in Domestic Violence Cases, promulgated by the Attorney General on April 12, 1988 have been expanded and revised. The revised Guidelines have been incorporated into this Standard.

The response procedures to be developed by county prosecutors for law enforcement officers should then be included in this Domestic Violence Procedures Manual. The Manual was jointly developed by the Administrative Office of the Courts and a committee of law enforcement officials convened by the Attorney General.

The Manual is intended to secure appropriate responses to domestic violence in this State. The unique unified approach will assure prompt assistance to the victims of domestic violence and demonstrate New Jersey's resolve that violent behavior will not be tolerated in public or in private.

Any questions regarding law enforcement procedures should be directed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau, Justice Complex, Trenton.

PERFORMANCE STANDARDS

GOAL: The goal of this standard is to establish procedures for the proper and consistent handling of domestic violence incidents. The procedures will be established by the county prosecutor or by municipal law enforcement agencies as needed. Exceptions will be made for municipal law enforcement agencies as approved by the county prosecutor.

DOMESTIC VIOLENCE

3.1 DOMESTIC VIOLENCE POLICY AND PROCEDURES

The agency shall adopt specific procedures for the handling of domestic violence and codify these procedures through policy.

3.1.1 The agency shall develop and implement written policy governing the handling of domestic violence incidents.

3.1.2 The agency shall develop and implement specific procedures for:

A. Response to domestic violence incidents;

B. Receipt and processing of domestic violence complaints and restraining orders;

C. Domestic violence arrests;

D. Weapons relating to domestic violence complaints and restraining orders;

E. Reporting of domestic violence incidents;

F. Training of officers in response to domestic violence incidents.

3.1.3 The agency shall clearly define and explain all relevant terms used in its domestic violence policy, including but not limited to:

A. Domestic violence;

B. Victim of domestic violence.

3.1.4 The agency shall insure that its domestic violence policy and procedures are in compliance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines.

3.2 RESPONSE TO DOMESTIC VIOLENCE INCIDENTS

The agency shall have clear policy and procedures on the response to domestic violence incidents realizing the importance and potential for additional violence of such incidents.

3.2.1 The agency shall insure that all allegations of domestic violence are responded to promptly and investigated thoroughly.

3.2.2 The agency shall insure that the safety of the victim and all individuals at the scene of domestic violence, including the officers, is of primary concern.

3.2.3 The agency shall insure that victims are notified of their domestic violence rights as required by statute.

3.2.4 The agency shall insure that all officers who respond to domestic violence incidents shall have available current and accurate information for referrals to appropriate social service agencies.

3.2.5 The agency shall establish or participate in an established domestic violence crisis team.

3.3 RECEIPT AND PROCESSING OF DOMESTIC VIOLENCE COMPLAINTS

When domestic violence incidents generate criminal or civil domestic violence complaints, or both, the processing of those complaints shall be explicitly defined.

3.3.1 The agency shall specify the procedure to be followed in filing of criminal charges stemming from domestic violence incidents.

3.3.2 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is open.

3.3.3 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is closed but the Municipal Court is open.

3.3.4 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division and the Municipal Court are closed.

3.4 DOMESTIC VIOLENCE ARRESTS.

The agency shall delineate, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, those domestic violence incidents in which the arrest of the actor is mandatory.

3.4.1 The agency shall specify those domestic violence incidents which require mandatory arrests:

A. Act involving signs of injury;

B. Violation of a restraining order;

C. A warrant is in effect;

D. There is probable cause to believe a weapon was involved in the act of domestic violence.

3.4.2 The agency shall specify those domestic violence incidents in which arrest is discretionary.

3.4.3 The agency shall clearly delineate the procedure to be followed in cases involving violation of an existing restraining order.

3.4.4 The agency shall specify the procedure to be followed in processing an arrest for domestic violence, including:

A. Signing of complaint;

B. Fingerprinting;

C. Photographing;

D. Bail.

3.4.5 The agency shall specify the procedure to be followed when a charge of domestic violence is filed against a law enforcement officer.

3.5 WEAPONS RELATING TO DOMESTIC VIOLENCE INCIDENTS

The agency shall identify the procedures to be followed by officers when weapons are involved in domestic violence incidents, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, and accepted police practice.

3.5.1 The agency shall specify the procedures to be followed by investigating officers when:

A. Weapon(s) are used or threatened to be used in the domestic violence incident;

B. Weapon(s) are not used in the domestic violence incident but are in plain view to the officer;

C. Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

3.6 REPORTING OF DOMESTIC VIOLENCE INCIDENTS

The agency shall fully document all complaints of and responses to domestic violence incidents.

3.6.1 The agency shall insure that all domestic violence incidents are fully recorded and documented within the departmental reporting system.

3.6.2 The agency shall insure that all domestic violence incidents are reported in accordance with state statute. This includes, but is not limited to, completion and submission of the UCR DV#l form or its electronic data equivalent.

3.7 TRAINING

The agency shall train its officers in the handling of domestic violence incidents as a matter of policy and procedure, and also from the standpoint of proper police protocol.

3.7.1 The agency shall provide for the training of all officers in the appropriate handling, investigation and response procedures concerning reports of domestic violence.

B. GUIDELINES ON POLICE RESPONSE PROCEDURES IN DOMESTIC VIOLENCE CASES

Introduction These general guidelines consolidate the police response procedures for domestic violence cases, including abuse and neglect of the elderly and disabled, based on State law, Court Rules, and prior editions of the Domestic Violence Procedures Manual which was jointly prepared by the New Jersey Supreme Court and the Attorney General through the Division of Criminal Justice.

3.8 MANDATORY ARREST

3.8.1 A police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if there exists probable cause to believe an act of domestic violence has occurred and

3.8.2 The victim exhibits signs of injury caused by an act of domestic violence. *N.J.S.A.* 2C:25-21a(1).

A. The word, "exhibits," is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or impairment of physical condition. Probable cause to arrest also may be established when the police officer observes manifestations of an internal injury suffered by the victim. *N.J.S.A.* 2C:25-21c(1)

B. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest. *N.J.S.A.* 2C:25-21c(1)

C. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

1. The comparative extent of injuries suffered;

2. The history of domestic violence between the parties, if any;

3. The presence of wounds associated with defense, or considered defensive wounds; or

4. Other relevant factors, including checking the DV Central Registry. *N.J.S.A.* 2C:25-21c(2).

5. **NOTE:** The investigating officer must insure that "[n]o victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self-defense against domestic violence by an attacker." *N.J.S.A.* 2C:25-21c(3).

D. If the officer arrests both parties, when each exhibit signs of injury, the officer should explain in the incident report the basis for the officer's action and the probable cause to substantiate the charges against each party.

E. Police shall follow standard procedures in rendering or summoning emergency treatment for the victim, if required.

3.8.3 There is probable cause to believe that the terms of a TRO have been violated. If the victim does not have a copy of the restraining order, the officer may verify the existence of an order with the appropriate law enforcement agency. The officer should check the DVCR. *N.J.S.A.* 2C:25-21(a)(3)

3.8.4 A warrant is in effect. *N.J.S.A.* 2C:25-21a(2)

3.8.5 There is probable cause to believe that a weapon as defined in *N.J.S.A.* 2C:39-1r has been involved in the commission of an act of domestic violence. *N.J.S.A.* 25-21a(4)

3.9. DISCRETIONARY ARREST

3.9.1 A police officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed but none of the conditions in Section. 3.8 above applies. *N.J.S.A.* 2C:25-21b

In any situation when domestic violence may be an issue, but there's no probable cause for arrest and the victim does not wish to file a TRO, the police officers must give and explain to the victim the domestic violence notice of rights as contained in the Victim Notification Form. *N.J.S.A.* 2C:25-23

3.10 SEIZURE OF WEAPONS

3.10.1 Seizure of a Weapon for Safekeeping. A police officer who has probable cause to believe that an act of domestic violence has been committed shall pursuant to *N.J.S.A.* 2C:25-21d(1):

A. Question all persons present to determine whether there are weapons, as defined in *N.J.S.A.* 2C:39-1r, on the premises. *N.J.S.A.* 25:21d(1)(a)

B. If an officer sees or learns that a weapon is present within the premises of a domestic violence incident and reasonably believes that the weapon would expose the victim to a risk of serious bodily injury, the officer shall attempt to gain possession of the weapon. If a law enforcement officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence. *N.J.S.A.* 2C:25-21d(1)(b)

C. If the weapon is in plain view, the officer should seize the weapon.

D. If the weapon is not in plain view but is located within the premises possessed by the domestic violence victim or jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain the consent, preferably in writing, of the domestic violence victim to search for and to seize the weapon.

E. If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and domestic violence assailant but is located upon other premises, the officer should attempt to obtain possession of the weapon from the possessor of the weapon, either the domestic violence assailant or a third party, by a voluntary surrender of the weapon.

F. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon or to allow the officer to enter the premises to search for the named weapon, the officer should obtain a Domestic Violence Warrant for the Search and Seizure of Weapons. [See Appendix 19]

3.10.2 Seizure of a Weapon Pursuant to Court Order. *N.J.S.A.* 2C:25-26 and *N.J.S.A.* 2C:25-28j.

A. If a domestic violence victim obtains a TRO or FRO directing that the domestic violence assailant surrender a named weapon, the officer should demand that the person surrender the named weapon.

B. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should:

1. Inform the person that the court order authorizes a search and seizure of the premises for the named weapon, and

2. Arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, *N.J.S.A.* 2C:29-9, and

3. Conduct a search of the named premises for the named weapon.

3.10.3. The officer must append an inventory of seized weapons to the domestic violence offense report. *N.J.S.A.* 2C:25-21d(2)

3.10.4 Weapons seized by a police officer, along with any seized firearms identification card or permit to purchase a handgun, must be promptly delivered to the county prosecutor along with a copy of the domestic violence offense report and, where applicable, the

domestic violence complaint and temporary restraining order. *N.J.S.A.* 2C:25-21d(2*)*

3.11 DOMESTIC VIOLENCE COMPLAINT PROCESS

DEFINITIONS USED IN THIS SECTION

A. Domestic Violence Civil Complaint means the multi page application and temporary restraining order issued by the Superior or Municipal Court. See Section 1.6. Referred to as TRO/Complaint.

B. Criminal Complaint refers to the criminal charges placed on a CDR-1 (summons) or CDR-2 (warrant). See Section 1.2.

3.11.1 Notice. When a police officer responds to a call of a domestic violence incident, the officer must give and explain to the victim the domestic violence notice of rights which advises the victim of available court action, *N.J.S.A.* 2C:25-23. The victim may file:

A. A Complaint/TRO alleging the defendant committed an act of domestic violence and asking for court assistance to prevent its recurrence by asking for a temporary restraining court order (TRO) or other relief;

B. A criminal complaint alleging the defendant committed a criminal act. See Section, 3.8 Mandatory Arrest above as to when a police officer must sign the criminal complaint (CDR-1 (summons) or CDR-2 (warrant).); or

C. Both of the above.

3.11.2 Jurisdiction for filing domestic violence Complaint/TRO by the victim. *N.J.S.A.* 2C:25-28 -

A. During regular court hours,

1. The victim should be transported or directed to the Family Division of Superior Court. See Section 4.2.

2. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the designated court by telephone for an emergent temporary restraining order in accordance with established procedure.

B. On weekends, holidays and other times when the court is closed,

1. The victim may file the domestic violence complaint with the police and request a TRO from a Municipal Court Judge specifically assigned to accept these complaints. *N.J.S.A.* 2C:25-28a.

C. The victim may file a domestic violence complaint . *N.J.S.A.* 2C:25-28a:

1. Where the alleged act of domestic violence occurred,

2. Where the defendant resides, or

3. Where the victim resides or is sheltered.

3.11.3. Jurisdiction for filing criminal complaint (CDR-1 or CDR-2) by the victim in connection with filing domestic violence complaint.

A. A criminal complaint may be filed against the defendant in locations indicated in Paragraph 3.11.2 C above.

B. A criminal complaint filed pursuant to Paragraph 3.11.2 A above shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.

3.11.4 Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.

A. The victim may file a criminal complaint as stated in section 3.11.2C above.

B. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim and shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to the law enforcement agency where the offense occurred. That law enforcement agency shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. Where a victim has exhibited signs of physical injury, the agency receiving the documentation shall arrest the suspect in accordance with existing domestic violence procedure.

C. If the police officer believes that a no-contact order should be issued, as a condition of bail, the officer should inform the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.

D. If the officer believes that weapons should be seized, the officer should inform the court of the circumstances justifying such request that as a condition of bail, the defendant's weapons must be surrendered to the police

for safe-keeping. All weapons seized must be safely secured or turned over to the county prosecutor.

3.11.5 Victim Notification Form [see appendix 5]

A When either a criminal or domestic violence complaint is signed, a Victim Notification Form is to be completed by the person assisting the victim, either the police officer or other appropriate staff.

B. The victim should be informed that, for the victim's protection, the prosecutor or the court must have the ability to contact the victim on short notice to inform the victim about the defendant's

1. Impending release from custody, or

2. Application to reduce bail.

C. The victim should be provided with the telephone number of the

1. Victim Witness Unit of the Prosecutor's Office when a criminal complaint or domestic violence contempt complaint is signed, or

2. Family Division Domestic Violence Unit when a domestic violence complaint is signed.

D. The victim should be instructed to contact the appropriate office to provide new telephone numbers if the victim changes telephone numbers from the numbers listed on the Victim Notification Form.

E. Whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim immediately.

3.12. PROCEDURE FOR FILING REPORTS

3.12.1 A copy of the domestic violence offense report and Victim Notification Form must be attached to all criminal complaints and to the TRO when these documents are forwarded to the appropriate court. *N.J.S.A.* 2C:25-24a

3.13 TEMPORARY RESTRAINING COURT ORDERS

3.13.1 When a victim requests a court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer should:

A. Assist the victim in preparing the complaint and a statement to be made to the judge.

B. Explain that the judge will place the person under oath and will ask questions about the incident.

C. If the judge issues a temporary restraining order, the police officer will be instructed to enter the judge's authorization on a prescribed form.

D The officer also will be instructed to print the judge's name on the temporary restraining order.

E. The officer also will be instructed to serve the TRO upon the alleged offender.

3.14 SERVICE OF TEMPORARY RESTRAINING ORDER

3.14.1 When the victim obtains a restraining order but the defendant had not been arrested by police and is present at the scene, the officer should:

A. Escort the victim to his or her home.

B. Read the conditions of the court order to the defendant if the defendant is present.

C. Order the defendant to vacate the premises, where that is part of the Order.

D. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration. *N.J.S.A.* 2C:25-28k**.** The officer shall remain with the defendant as he or she gathers personal belongings pursuant to the terms of the temporary restraining order

E. Arrest the defendant if required by the TRO or if defendant refuses to comply with the order.

3.14.2 Where a TRO had been issued but was not served upon the defendant because the defendant could not then be located but the defendant is now at the scene, police should follow Paragraphs 3.14.1 A-E**.**

3.14.3 When a temporary or final restraining order is issued that requires service outside the issuing county,

A. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be brought or transmitted by facsimile to the sheriff's department in the issuing county.

1. The sheriff's department in the issuing county must similarly bring or transmit by facsimile the order and related documents to the sheriff's

department in the county of the defendant's residence or business.

2. The sheriff's department in the receiving county, pursuant to local policy, will either

   a. Execute service on the defendant or

   b. Immediately bring or transmit by facsimile the order and related documents to the police department in the municipality in which the defendant resides or works so that it can execute service accordingly.

3. The return of service should then be transmitted by facsimile back to the sheriff's department in the issuing county, which in turn must immediately deliver or transmitted by facsimile the return of service to the Family Division in the issuing county.

B. When the service of a restraining order results in the seizure of weapons;

1. The weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.

2. The weapons themselves, along with any licenses, I.D. cards, or other paperwork or documentation shall be secured by the prosecutor in the seizing county for storage. At such time that the seized property is needed by the prosecutor or Family Division in the issuing county, the prosecutor in the seizing county shall forward same.

C. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the police or sheriff's department and immediately returned to the Family Division prior to the scheduled final hearing date.

3.15 COURT ORDER VIOLATIONS

3.15.1. Where a police officer determines that a party has violated an existing restraining order either by committing a new act of domestic violence or by violating the terms of a court order, the officer must

A. Arrest and transport the defendant to the police station.

B. Sign a criminal contempt charge concerning the incident on a complaint-warrant (CDR-2).

C. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint (CDR-

2) form that contains the contempt charge.)

D. Telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt charge. *N.J.S.A.* 2C:25-31b.

1. During regular court hours, bail should be set by the emergent duty Superior Court judge that day. *N.J.S.A.* 2C:25-31d.

2. On weekends, holidays and other times when the court is closed, bail should be set by the designated emergent duty Superior Court judge except in those counties where a Municipal Court judge has been authorized to set bail for non-indictable contempt charges by the assignment judge.

3. When bail is set by a judge when the courts are closed, the officer shall arrange to have the clerk of the Family Division notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. *N.J.S.A.* 2C:25-25-31d.

4. If a Municipal Court judge sets the bail, the arresting officer shall notify the clerk of that Municipal Court of this information. *N.J.S.A.* 2C:25-31d.

5. The DVCR must be checked prior to bail being set. *N.J.S.A.* 2C:25-31a.

E. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at police headquarters or the county jail. *N.J.S.A.* 2C:25-31c.

3.15.2 Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO, the officer must advise the victim of the procedure for completing and signing a

A. Criminal complaint alleging a violation of the court order. *N.J.S.A.* 2C:25-32

1. During regular court hours, the officer should advise the victim that the complaint must be filed with the Family Division of the Chancery Division of Superior Court. *N.J.S.A.* 2C:25-32

2. On weekends, holidays and other hours when the court is closed.

a. The officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint;

b. The alleged offender shall be charged with contempt of a domestic violence restraining court order, *N.J.S.A.* 2C:29-9;

c. The officer in charge shall check the DVCR prior to contacting the on duty Superior Court Judge for a probable cause determination for the issuance of the criminal complaint. If the judge finds sufficient probable cause for the charges, the officer must prepare a complaint-warrant (CDR-2).

d. The officer in charge shall follow standard police procedure in arranging to have a court set bail.

e. The officer who had determined that there was no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO must articulate in the officer's incident report the reasons for the officer's conclusions.

B. Civil complaint against the defendant for violations of a court order pertaining to support or monetary compensation, custody, visitation or counseling. The victim should be referred to the Family Division Domestic Violence Unit to pursue enforcement of litigant's rights.

3.16 CRIMINAL OFFENSES AGAINST THE ELDERLY AND DISABLED

3.16.1 Where an elderly or disabled person is subjected to a criminal offense listed as an act of domestic violence, police shall follow the appropriate procedure listed above.

3.16.2 Where the actions or omissions against an elderly or disabled person do not meet the domestic violence conditions, police may file appropriate criminal charges against the offender.

3.16.3 A person may be charged with Endangering the Welfare of the Elderly or Disabled, *N.J.S.A.* 2C:24-8, if the person has a legal duty to care for or has assumed continuing responsibility for the care of a person who is:

A. 60 years of age or older, or

B. Emotionally, psychologically or physically disabled, and

C. The person unreasonably neglects or fails to permit to be done any act necessary for the physical or mental health of the elderly or disabled person.

3.17 GUIDELINES ON PROSECUTORIAL PROCEDURE REGARDING WEAPONS

SEIZED IN DOMESTIC VIOLENCE CASES

Introduction These general guidelines outline the procedure a County Prosecutor should establish regarding the disposition of weapons seized in domestic violence cases.

3.17.1 Seizure of Weapons Used in Commission of a Criminal Offense. Any weapon used in the commission of a criminal offense or is contraband or evidence of criminal activity shall be seized by police and processed in accordance with established procedures for the handling of such evidence.

3.17.2 Seizure of Weapons for Safekeeping Purposes. Any weapon seized by police in a domestic violence incident pursuant to *N.J.S.A.* 2C:25-21d cannot be returned to the owner by the police.

A. The police must promptly deliver to the County Prosecutor's Office:

1. The weapon involved in a domestic violence incident; along with any seized firearms identification card or permit to purchase a handgun;

2. The domestic violence offense report which includes an inventory of all weapons seized, and

3. Where applicable, a copy of the TRO or FRO, the criminal complaint, the Victim Notification Form and the police incident report.

4. Where seizure of weapons is pursuant to a TRO or FRO, the weapon inventory should also be forwarded to the Family Division Domestic Violence Unit.

B. When a weapon was seized at the scene pursuant to *N.J.S.A.* 2C:25-21d,

1. The County Prosecutor shall determine within 45 days of the seizure:

a. Whether the weapon should be returned to the owner of the weapon, or

b. Whether to institute legal action against the owner of the weapon.

2. If the County Prosecutor determines not to institute action to seize the weapon and does not institute an action within 45 days of seizure, the seized weapon shall be returned to the owner. *N.J.S.A.* 2C:25-21d(3).

3. If the County Prosecutor determines to institute action to seize the weapon, the Prosecutor shall, with notice to the owner of the weapon,

a. File a petition with the Family Division of the Superior Court, Chancery Division, to obtain title to the weapon, or

b. Seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license and other authorization for the use, possession, or ownership of such weapons. (See *N.J.S.A.* 2C:58-3f, 2C:58-4f and/or 2C:58-5 governing such use, possession, or ownership), or

c. Object to the return of the weapon on such grounds:

(1) As are provided for the initial rejection or later revocation of the authorizations pursuant to *N.J.S.A.* 2C:58-3c; or

(2) That the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular; or

(3) Seek a court order that defendant must dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.

C. Any weapon seized by police:

1. Pursuant to a temporary or final domestic violence restraining order, or

2. Pursuant to a Domestic Violence Warrant for the Search & Seizure of Weapons, or

3. As a condition of bail for a criminal offense involving domestic violence,

should be returned to the owner by the appropriate court specifically authorizing the return of the weapon if the order or criminal complaint is in effect. If the order or complaint is withdrawn or dismissed prior to a hearing, the provisions in Paragraph, 3.17.2B2 *supra*, should be followed.

3.17.3 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order Was Issued. When the service of a domestic violence restraining order results in the seizure of weapons,

A. The weapons inventory should be attached to the return of service that is

brought or transmitted by facsimile back to the issuing county.

B. The weapons themselves, along with any firearms identification card, purchasers permit, licenses, identification cards, or other paperwork or documentation shall be secured by the County Prosecutor in the seizing county for storage. At such time that the seized property is needed by the County Prosecutor or Family Division in the issuing county, the Prosecutor in the seizing county shall make arrangements for the delivery of same.

3.17.4 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident. See Attorney General Directives 2000-3 and 2000-4 (Appendix 17).

When a law enforcement officer, who is authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6, is involved in an act of domestic violence, the seizure of weapons shall be governed by the Attorney Generals Directives 2000-3 and 2000-4. (See Appendix 17)[1]

A. If a law enforcement officer is required by departmental regulations to personally purchase his or her official duty firearm, that firearm shall be considered the same as if it had been departmentally issued for purposes of applying the provisions of the Attorney General Directives 2000-3 and 2000-4 and the provisions of the federal gun control law, 18 *U.S.C.A.* 922(g).

B. When a personal firearm is seized from a member of a state law enforcement officer, which includes members of the State Police, the State Department of Corrections, the Division of Criminal Justice, Rutgers University Campus Police, state college and university police, N.J. Transit Police, Division of Parole, Juvenile Justice Commission, Human Services Police, any officer of Fish, Game and Wildlife authorized to carry a firearm, State Commission of Investigation, and Division of Taxation;

1. The county Prosecutor's Office must inform the Division of Criminal Justice whether it will or will not institute forfeiture proceedings pursuant to *N.J.S.A.* 2C:25-21d for the seizure of the member's approved off-duty firearms and other personally owned firearms,

[1] The Directives are similar in content: Directive 2000-3 *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers* is applicable to municipal and county law enforcement and requires the county prosecutor to investigate whether a police officer, having his firearms seized pursuant to the Prevention of Domestic Violence Act of 1990, should and under what conditions, would have his firearms, agency owned and personal, returned to him. Directive 2000-4, *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers Involved in Domestic Violence Incidents* places the responsibility of determining the conditions upon which a state law enforcement officer would have his right to carry a firearm restored with the Division of Criminal Justice.

2. The Division of Criminal Justice will determine whether that officer shall be authorized to carry that firearm or any firearm either on duty or off duty and whether conditions should be imposed for such authorization pursuant to the Attorney General Directive 2000-4 at IVD.

3. The Division of Criminal Justice will inform the County Prosecutor's Office of its decision whether that officer would be authorized to carry a firearm either on duty or off duty and whether conditions had been imposed for carrying a firearm.

3.17.5 Restrictions on Return of Firearms

A. If a final domestic violence restraining order is issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g), the named defendant shall not be permitted to possess, purchase, own, or control any firearm for the duration of the order or for two years, whichever is greater. *N.J.S.A.* 2C:25-29b

B. If a law enforcement officer is subject to a temporary or final restraining order issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g)and sec 925, the County Prosecutor may permit a municipal or county police officer to be armed while actually on duty provided that the restraining order specifically permits the possession of a firearm on duty, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty. In the event a state law enforcement officer is subject to a final restraining order, the Attorney General, by the Division of Criminal Justice, may permit a subject officer to be armed while on duty provided said restraining order specifically permits, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty.

C. A law enforcement officer who has been convicted of a misdemeanor domestic violence offense anywhere in the nation is prohibited from possessing a firearm pursuant to 18 *U.S.C.* 922(g)(8). This federal law applies to offenses that have as an element (1) the use or attempted use of physical force, 9r (2) the threatened use of a deadly weapon. Under New Jersey law, a disqualifying offense would be:

1. Harassment, *N.J.S.A.* 2C:33-4b by striking, kicking, shoving

2. Simple assault, *N.J.S.A.* 2C:12-1a(1) by attempting to or purposely knowingly or recklessly causing bodily injury

3. Simple assault, *N.J.S.A.* 2C:12-1a(2) by negligently causing bodily injury to another with a deadly weapon

D. A law enforcement officer who has been convicted of stalking, or a crime or disorderly persons offense involving domestic violence may not purchase, own, possess or control a firearm, and may not be issued a permit to purchase a handgun or firearms identification card. *N.J.S.A.* 2C:39-7 & 2C:58-3.

SECTION IV

COURT PROCEDURES

4.1 MUNICIPAL COURT PROCEDURE

4.1.1 A Municipal Court judge hearing applications for temporary restraining orders shall:

A. Be available by telephone when the Superior Court is not in session and when directed by the Vicinage Presiding Judge of the Municipal Court.

B. Speak directly with the applicant in person, or by telephone, radio or other means of electronic communication per *Rule* 5:7A. Speaking only to the police officer does not satisfy this rule.

C. Ensure that the police or staff fully sets forth the victim's allegations of domestic violence in the body of the domestic violence complaint, including past history of domestic violence between the parties, whether reported or unreported.

D. Comply with all of the provisions set forth below.

E. Confirm with the police officer assisting with the TRO whether or not they are on a taped line. If not on a taped line, the judge must make detailed notes of the victim's testimony and the reasons for issuing the TRO and any weapons seizure.

4.1.2 The judge upon *ex parte* application shall administer an oath to the applicant and take testimony regarding:

A. The alleged domestic violence;

B The past history of domestic violence between the parties, whether reported or unreported;

C. The reason the applicant's life, health, or well-being is endangered;

D. Whether defendant possesses or has access to weapons, firearms or a firearms identification card;

E. The judge shall state with specificity the reasons for and scope of any search and seizure to be authorized by the Order (see weapons section).

4.1.3 The judge shall review all available information involving the parties; confirm that the plaintiff has been informed about legal rights and options and available protective services, including shelter services, safety plans, etc (see sample safety plan, Appendix 26); explain to the plaintiff the domestic violence legal procedures; establish a record, including findings of fact; amend the complaint to conform to the testimony, where appropriate; inquire as to all relief requested by the applicant to determine the appropriateness of same; and prepare a case specific TRO, where one

is to be entered. The court should ensure that the victim has been offered the services of the Domestic Violence Response Team.

4.1.4 The judge or law enforcement officer shall ensure that a tape recording or stenographic record is made of the testimony; if neither is available, the judge shall prepare adequate long-hand notes summarizing what has been said by the applicant, police officer and any witnesses.

4.1.5 Where the Municipal Court judge determines that defendant possesses or has access to weapons, firearms, a firearms identification card or purchaser permit, the judge shall also comply with the weapons procedure Section V of this manual.

4.1.6 After hearing testimony from the victim, the judge shall issue or deny the TRO. If the TRO is denied, the judge shall state the reasons. When a TRO is entered, a return date for the Final Hearing is to be set within ten (10) days. Whether granted or denied, the judge should check the appropriate box and sign the TRO or direct the law enforcement officer to check the box and print the judge's name on the order as authorized by *Rule* 5:7A, or as authorized by E-TRO procedures (Appendix 6).

4.1.7 Contemporaneously, the judge shall issue a written Confirmatory Order (See Appendix 7) and shall enter the exact time of issuance, as required by *Rule* 5:7A(b).

4.1.8 When a TRO is granted, copies of the Complaint/TRO shall be provided to:

A. The victim;

B. The law enforcement agency of the municipality in which the victim resides or is sheltered;

C. The law enforcement agency that will serve the defendant with the Complaint/TRO;

D. The Domestic Violence Unit of Superior Court. This copy should be faxed immediately, or sent via electronic mail, where E-TRO procedures are in place; and,

E. The Municipal Court judge.

4.1.9 When a TRO is denied, the plaintiff shall receive a copy of the Complaint/TRO but the defendant shall not. It shall be forwarded to the Domestic Violence Unit of the Family Division.

4.1.10 When the defendant is arrested for a crime or offense arising out of a domestic violence situation, the Municipal Court judge or court administrator shall fix bail when requested to do so pursuant to *Rule* 5:7A-1 and *N.J.S.A.* 2B:12-21a, except when a Superior Court Judge must set bail pursuant to *Rule* 3:26-2(a).

4.1.11 When the Superior Court is closed, the Municipal Courts must be accessible to victims in need of emergent relief. Each Municipal Court shall ensure that there is adequate backup coverage for domestic violence cases and other emergent matters for each Municipal Court in that vicinage. The Court Administrator of each Municipal Court in each vicinage should provide the police or other law enforcement officers covering that municipality with a list of names and phone numbers (in order of priority) to be contacted in domestic violence cases, starting with the sitting Municipal Court judge, the back up judge, the Presiding Judge of the Municipal Court (where applicable) and the emergent duty Superior Court judge.

4.1.12 Municipal Court Costs. Municipal Court costs shall not be imposed against a plaintiff/complainant who seeks the dismissal of a disorderly or petty disorderly complaint arising out of a domestic violence matter except if imposed pursuant to *N.J.S.A.* 2B:12-24.

4.2 SUPERIOR COURT, FAMILY DIVISION PROCESSING

During court hours for Domestic Violence matters (Monday through Friday, 8:30 AM to at least 3:30 PM), a victim of domestic violence will be referred to the Superior Court, Family Division to sign a domestic violence complaint. When a criminal complaint is also signed, it is to be processed separately for investigation and prosecution through the Criminal/Municipal Courts.

4.3 TAKING A COMPLAINT IN SUPERIOR COURT, FAMILY DIVISION

4.3.1 When a victim arrives, the victim should be directed to the Domestic Violence Unit. A victim shall be given a Victim Information Sheet (VIS) to complete (See Appendix 1). At this time, the victim should be fully informed about her/his right to file a criminal complaint, a domestic violence complaint, or both types of complaints. The victim should be told about the differences between the two proceedings and about the relief available under each. The victim can then make an informed decision based on her/his own needs and a clear understanding of the options available.

4.3.2 The victim should be assisted and accompanied by a victim advocate whenever possible. A victim advocate should be available to speak with all victims or potential victims at all stages of the court process. The victim advocate should be given as much support as possible (e.g. space for interviewing, immediate referrals), as well as access (with the victim) to the courtroom. The victim advocate should be advised when every initial intake or application for dismissal is presented to offer assistance to the victim at this early stage in the process. When a victim advocate is not available, courts, police, prosecutors and law enforcement should have contact names and numbers readily available to give to all victims, preferably in the form of a card or pamphlet.

4.3.3 A domestic violence staff person shall interview the victim in a private area and

advise and inform the victim of rights, options and appropriate referrals.

4.3.4 Based upon the information provided by the victim on the VIS, the staff person will search FACTS for both parties' history and case history. The case is established and docketed on FACTS, where appropriate, which results in the production of the Complaint/TRO. The party case history should be made part of the court's file. If it is determined while searching FACTS that plaintiff has an active restraining order against defendant or that taking a complaint is inappropriate for any other reason, the complaint should not be docketed.

4.3.5 Staff should be certain that the victim's allegations are fully set forth in the body of the domestic violence complaint, as well as any prior history or acts of domestic violence, whether or not reported.

4.3.6 The determination of whether the incident constitutes domestic violence is a legal issue to be determined by a judge or Domestic Violence Hearing Officer (DVHO). A victim should rarely be turned away. Legal sufficiency or jurisdiction, applicability of definitions such as "household member" or "dating relationship," or the appropriateness of using the domestic violence process to address a particular problem are all decisions for a judge or DVHO. Screening by staff should be concentrated on information gathering, and only those cases that clearly fall outside the scope of the law should be rejected at the staff level. In these situations, the rejection of a complaint by staff should be reviewed by a supervisor who should ensure that appropriate alternate remedies-are explained to the victim.

4.3.7 When available and in appropriate cases, a victim can choose to have their complaint heard by a DVHO. Proceedings before a DVHO shall be in accordance with the approved DVHO Standards (See Appendix 3). Those cases that are not heard by a DVHO shall be brought to a judge.

4.3.8 When a TRO is not recommended by the DVHO, the DVHO must advise the plaintiff of his/her option to see a judge for a hearing *de novo*, in accordance with the DVHO Standards.

4.3.9 The judge or DVHO must follow Section 5.10 regarding weapons if there is any allegation that the defendant owns or has access to a weapon(s), a firearms identification card or permit to purchase a handgun.

4.3.10 When an applicant seeks a TRO, she or he must be asked if he or she wishes to request ongoing child support at the FRO hearing. If he or she wishes to pursue this relief, Intake must provide the applicant with a IV-D application to be completed during the intake process. Parts E–H should be placed in the court file. Parts A-C should be provided to the Plaintiff as reference information.

4.3.11 The appropriate reliefs should be added to FACTS (i.e., paternity and/or child support.) If paternity has not been previously established for the child(ren), a request to establish paternity at the final hearing must be entered on line 13 of the TRO.

Paternity need not be established if the parties are married or if a legal determination of paternity has been made previously. If a Certificate of Paternity has been signed, this can be indicated on the TRO and a copy maintained in the file.

4.3.12 When a child support obligation is established, the information regarding paternity and the monetary amount must be entered on both the FRO and the Uniform Summary Support Order (USSO, Appendix 31). Paternity determination is required to be recorded on the FRO at line 1 of Part 2 relief and on the appropriate check-off boxes on the USSO.

4.3.13 When a defendant comes to the Intake Office, FACTS should be searched to determine if service of the FRO and the USSO has been accomplished. If these orders have not been served on defendant, service shall be documented by requesting the defendant to sign the orders or court staff may initial the orders with the current date indicating that the defendant received the orders. Service by a law enforcement officer is documented by signature on the FRO.

4.4 ACCESS IN SPECIAL CIRCUMSTANCES

4.4.1 Victims shall personally appear during regular court hours. A procedure shall be implemented by the Family Division Manager to allow victims to obtain emergent relief through telephonic contact with a judge pursuant to *Rule* 5:7A where a victim is unable to personally appear. Telephonic testimony may be permitted at the TRO or FRO hearing in the discretion of the court.

4.4.2 If a victim is physically or mentally incapable of filing personally, a judge may issue a temporary restraining order requested by a person who represents the applicant provided the judge is satisfied that (1) exigent circumstances exist to excuse the failure of the applicant to appear personally and (2) that sufficient grounds for granting the application have been shown.

4.4.3 The Family Division shall be prepared to accept domestic violence complaints until at least 3:30 PM during days when the Superior Court is in session. The regular business hours of the Domestic Violence Unit or other office accepting domestic violence complaints shall be clearly posted and disseminated to all Municipal Courts and law enforcement personnel in the vicinage. See sections 2.2.2 and 2.2.3.

4.4.4 There are occasions when a person seeking to file a domestic violence Complaint/TRO arrives too late in the day for it to be processed and heard during regular court hours. During the interim period between the Domestic Violence Unit's close of business and when the courthouse actually closes, victims shall not be turned away. Each county shall develop a procedure in such instances for either in-person or telephonic communication under *Rule* 5:7A between the victim and an on-site or emergent duty judge, so that the request for emergent relief can be handled without the necessity of the victim having to go to the local police station or the Municipal Court.

4.4.5 On weekends, holidays or during those hours when the Superior Court is not in session, a victim should be referred to local law enforcement officials, so that her/his Complaint/TRO can be processed by a law enforcement officer and heard by a Municipal Court judge.

4.5 INITIAL/EMERGENT HEARING

4.5.1 Once a domestic violence victim has been interviewed and the necessary paperwork has been processed and is ready for court, every effort should be made for the case to be heard within one hour.

4.5.2 In those cases where both parties appear at the courthouse and each seeks a temporary restraining order against the other, a judge should hear each Complaint/TRO separately and grant relief where appropriate. The same judge should consider these complaints to ensure that the orders do not contain conflicting provisions for such matters as possession of the residence and custody of the children.

4.5.3 At the initial hearing, the court upon *ex parte* application shall administer an oath to the applicant and take testimony regarding (a) the alleged domestic violence; (b) the past history of domestic violence between the parties, if any; (c) the reason the applicant's life, health, or well-being is endangered; (d) whether firearms or weapons are present or available to the defendant; and shall (e) state with specificity the reasons for and scope of any search and seizure authorized by the Order (See Section on Weapons); and (f) make general inquiry as to all relief requested by the applicant to determine the appropriateness of same.

4.5.4 The judge or DVHO shall review all related case files involving the parties; ensure that plaintiff is informed about legal rights and options and available protective services, including shelter services, safety planning, etc.; explain to the plaintiff the domestic violence legal process and procedures; establish a record, including findings of fact and conclusions of law forming the basis of any determination; rule on the admissibility of evidence; amend the complaint to conform to the testimony, where appropriate; and prepare a comprehensive case specific TRO, where one is to be entered. When a TRO is granted, the order must be completed and signed in accordance with *Rule* 5:7A.

4.5.5 After hearing testimony from the victim, the judge will issue or deny the TRO, setting forth the reasons therefore. Unless the judge denies the TRO and dismisses the Complaint/TRO, a return date for the Final Hearing is to be set within ten (10) days.

4.5.6 When a TRO is granted, the Order must be completed and signed by the judge. Copies shall be provided to:

A. The victim;

B. The law enforcement agency of the municipality in which the victim resides or is sheltered; and

C. The law enforcement agency which will serve the defendant with the Complaint/TRO.

4.5.7 When a TRO is not granted, the court must check the box stating that the TRO was denied and sign the order. This automatically dismisses the Complaint/TRO. (NOTE: If the TRO is denied, no copy of the Complaint/TRO is to be provided to the defendant. If a later TRO refers to the prior complaint, a copy of the prior complaint can be provided to the defendant upon request even though the prior complaint was dismissed.)

If after the entry of a TRO, the plaintiff returns to court to amend the TRO/Complaint, an amended complaint containing the additional allegation(s) should be taken. The defendant shall be served with the amended TRO complaint in accordance with the procedures in section 4.6. If the defendant has not been served with the amended complaint prior to the Final hearing an adjournment may be granted and a continuance order or amended TRO be issued if defendant needs additional time to prepare.

4.6 PROCEDURES FOR SERVICE OF COMPLAINT/TRO/FRO

4.6.1 The Complaint/TRO shall be served on the defendant by **personal service,** immediately following the entering of such order. This service is effectuated by the procedures outlined in each county, through the Municipal or State police, Sheriff's Department or both. Substituted service is permitted only by specific court order.

4.6.2 The Sheriff's Officer or court staff member will provide the plaintiff two copies of the Complaint/TRO. The plaintiff may, but is under no circumstances required, to provide a copy to the police department or residence or where sheltered. The plaintiff shall be advised to keep a copy of the TRO on with them at all times.

4.6.3 If the parties reside together and the defendant is being removed from the home, the plaintiff will be instructed to report to the appropriate law enforcement agency for accompaniment to the residence if appropriate.

4.6.4 The Family Division, Domestic Violence Unit must immediately fax a copy of the Complaint/TRO to the municipality where the defendant resides or may be served, and to all law enforcement agencies that can or may assist in the service and enforcement of the Order. This can be specified in the Comments section of the TRO.

At no time shall the plaintiff be asked or required to serve any order on the defendant. *N.J.S.A.* 2C:25-28.

4.6.5 Once service on the defendant is attempted (successfully or unsuccessfully), the return of service portion of the TRO must be completed by the appropriate law enforcement agency and immediately faxed to Family Court (Domestic Violence Unit) and if issued by a Municipal Court, the court which issued the TRO. The original shall be returned to the Domestic Violence Unit.

4.7 SERVICE OUT OF COUNTY

4.7.1 When a temporary or final restraining order is issued that requires service outside the issuing county, the restraining order must immediately be brought or faxed to the Sheriff's Department or other designated law enforcement agency in the issuing county.

A. The Sheriff's Department or other designated law enforcement agency in the issuing county must bring or fax the order and related documents to the sheriff's department or other designated law enforcement agency in the county of the defendant's residence or business.

B. The Sheriff's Department or other designated law enforcement agency in the receiving county, pursuant to local policy, will either:

(1) Execute service on the defendant, or

(2) Immediately bring or fax the order and related documents to the sheriff or other designated law enforcement agency in the municipality in which the defendant resides or works so that it can execute service accordingly.

C. The return of service should then be faxed back to the sheriff's department or other designated law enforcement agency in the issuing county, which in turn must immediately deliver or fax the return of service to the Family Division in the issuing county.

4.7.2 Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the sheriff's department or other designated law enforcement agency and immediately faxed or returned to the Family Division prior to the scheduled final hearing date.

4.7.3 When an order must be served on a defendant who is out-of-state, the law enforcement officer or agency or court staff should contact the State Police or Family Court in the other state to determine the procedures for service in that state (Appendix 29 and 30).

4.8 APPEALS OF *EX PARTE* ORDERS

4.8.1 *N.J.S.A.* 2C:25-28(i) provides that any TRO is immediately appealable by plaintiff or defendant for a plenary hearing *de novo,* not on the record below, before any Superior Court, Family Division Judge in the county where the TRO was entered if that judge issued the temporary order or has access to the reasons for the issuance of the TRO and sets forth on the record the reason for the modification or dissolution.

4.8.2 Upon receipt of a request for an emergent appeal, staff shall obtain the reasons for the request of appeal and assist the appealing party in completing the "Appeal of *Ex Parte* Order" (See Appendix 8), and present the request with the file to the judge for consideration.

4.8.3 If the application is granted, an emergent hearing will be scheduled with adequate notice to both parties as to the purpose of the hearing and the issues to be addressed. The judge must place the reasons for continuing, modifying or dissolving the TRO on the record.

4.8.4 If the application is denied, the reasons shall be set forth by the judge on the "Appeal of *Ex Parte* Order" form and the FRO hearing will proceed as initially scheduled.

4.9 PROCEDURES FOR FINAL HEARINGS

4.9.1 A final hearing must be scheduled within ten days of the filing of the Complaint/TRO in the county where the Complaint/TRO was issued unless good cause is shown for the hearing to be held elsewhere. Each county shall provide the police and Municipal Courts with the designated days and times for final hearings.

4.9.2 If the return of service on the defendant has not been received by the day before a final hearing, a designated domestic violence team member shall check with the appropriate law enforcement agency responsible for service (such as sheriff or local police) to ascertain whether the defendant was successfully served. The return of service portion of the TRO must be immediately faxed to the domestic violence team by law enforcement.

4.9.3 The Continuance Order may be used when a new date must be scheduled and there are no substantive changes to the TRO. When substantive changes, including amendments to the complaint, are needed, an Amended TRO shall be used, which shall set forth the changes. The TRO must be attached to the Continuance Order for service. If the defendant has been served with the TRO, notice of the new date may be made by mail, if an address is known.

4.9.4 Any defendant who qualifies under the Servicemembers Civil Relief Act, 50 *U.S.C.* 501, *et. seq.*, is entitled to have the proceedings stayed while the member is either in military service or within 90 days after termination or release from such service for a servicemember who has received notice of such proceedings, if the court receives a

letter or other communication: (1) stating that current duty requirements materially affect the servicemember's ability to appear; or (2) from the servicemembers commanding officer stating that current duties prevent the servicemember's appearance and that military leave is not authorized. This also permits a servicemember granted a stay from such proceedings to apply for an additional stay based on continuing material effect of military duty on the ability to appear. This shall be entered into FACTS as an extended TRO.

The restraining order shall stay in effect until such stay is lifted.

4.9.5 Nonappearance By Either Party: If no one appears for the final hearing, a domestic violence team member shall attempt to contact the plaintiff and defendant and collect as much information as practicable about the reasons for nonappearance and present same to the court for consideration prior to the dismissal of any Order.

The matter shall be rescheduled where there is no appearance by either party unless the court is fully satisfied that a dismissal meets the standards as set forth on the Order of Dismissal (See Appendix 14).

4.9.6 Nonappearance by the plaintiff: The domestic violence team member shall attempt to contact the plaintiff to collect as much information as practicable about the plaintiff's nonappearance and present the information to the court. Communications about the plaintiff shall be made outside the presence of the defendant. The file and notes reflecting the findings shall then be brought to the judge. If only the defendant appears, [s]he should be questioned under oath concerning knowledge of the plaintiff's whereabouts. The court shall inquire if the defendant caused or is responsible for the nonappearance of the plaintiff.

If (1) the plaintiff can be contacted, and (2) the judge is satisfied (after hearing both parties' explanations) that the plaintiff's failure to appear was not the result of coercion and duress, and (3) the findings required as per the Order of Dismissal were made, the court may issue an Order of Dismissal. If not, or if the plaintiff cannot be contacted, the matter shall be rescheduled.

Any dismissal order shall be without prejudice, and any Order of Dismissal or order modifying the TRO shall be faxed or otherwise transmitted to the applicable law enforcement agency.

4.9.7 Warrants shall not be used to secure the presence of the plaintiff in court under any circumstances when the plaintiff has failed to appear or has allowed the defendant back into the residence.

When a plaintiff is unable to appear at the final hearing for good cause shown, arrangements shall be made for a telephonic appearance on the record.

4.9.8 Nonappearance by the Defendant: If only the plaintiff appears, the plaintiff's request for relief should be identified in accordance with the domestic violence procedures.

A. Where the defendant does not appear at the final hearing, and proof of service has been provided, the court should proceed with the final hearing and may enter a final order in default.

B. If the court file does not contain proof of service, the court should conduct a hearing in the presence of the plaintiff to determine the following:

- Whether the plaintiff has seen the defendant in the court house or knows of the defendant's whereabouts;
- Whether the plaintiff is aware of whether the defendant was served and the basis for such knowledge;
- Whether the defendant has had any contact with the plaintiff since execution of the temporary restraining order; and
- Whether the same or different conditions exist in comparison to those at the time of the initial hearing.

C. If the court determines that the defendant had actual knowledge of the restraining order and hearing date, after making such finding on the record, the court may proceed with the final hearing and may enter a final order by default.

4.9.9 Defendant Not Served: If the court determines that the defendant has not been served but finds there is reasonable likelihood of service on the defendant within a reasonable amount of time (e.g. the defendant's whereabouts are known, but the defendant is on vacation), a short postponement shall be granted and a date certain scheduled, which shall be memorialized in a Continuance Order (See Appendix 9) or Amended TRO. The Continuance Order shall be served on the defendant with the Complaint/TRO.

In the event that it is unlikely the defendant can be served within a reasonable period of time, then the court can issue an indefinite TRO. This TRO shall continue the reliefs requested by the plaintiff until further order of the court and contain a provision that a final hearing shall be rescheduled upon service on the defendant. The case will be recorded as disposed of in FACTS with the case status reason code of "extended TRO."

4.10 APPEARANCE BY BOTH PARTIES

4.10.1 When both parties appear for a Final Hearing, the victim and defendant should be kept in different locations and directed to the appropriate intake or waiting area for

case processing by the domestic violence unit. Separate waiting areas must be available for victims to avoid potential contact, intimidation, or additional violence or victimization.

4.10.2 Information Gathering

A. A domestic violence staff person should meet with each party, separately, prior to court to review identifying information and to determine if the case is likely to be a contested trial or a dismissal. The domestic violence staff person should review with the plaintiff what relief is being sought and explain the procedure to be followed in a trial, including the right to call witnesses and present evidence. In addition, a victim advocate should be available to confer with the plaintiff before the court session.

B. Court staff shall not meet with the parties together or conduct mediation of any sort on any issue, such as custody or parenting time, per *N.J.S.A.* 2C:25-29a(6) and *Rule* 1:40-5(a).

C. If support is being sought as a relief, staff should ensure that both parties have completed the required forms with complete identifying and financial information. Staff support should be provided to the judge to calculate Child Support Guidelines.

D. Counsel for the parties may participate in the staff held meetings. No party shall be required to meet with opposing counsel without his/her clear, express consent.

4.10.3 No Mediation. There shall be no mediation of any kind in domestic violence cases.

4.10.4 Request for Continuance.–The court may grant an adjournment or continuance if either party requests an adjournment for the purpose of obtaining or consulting with an attorney, securing witnesses, or other good cause, unless the delay would create an extreme hardship on the other party, or there has been an inordinate delay in seeking counsel.

4.10.5 Court Files. At the time of the Final Hearing, the court's file should contain the Complaint/TRO; the Victim Information Sheet; FACTS history of the parties and children; and prior domestic violence history, if any; and relevant financial, social and criminal record history.

4.10.6 Confidentiality. All records maintained pursuant to the PDVA are confidential as specified by *N.J.S.A.* 2C:25-33. However, all court proceedings under the Act are open unless closed by the court in accordance with the Rules.

4.11 TRANSFER OF MATTERS BETWEEN COUNTIES

Pursuant to *N.J.S.A.* 2C:25-29 and Rule 5:7A, a final hearing is to be held "in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere." A Domestic Violence matter may be transferred between vicinages by order of the presiding judge or his or her designee in the following situations:

A. Plaintiff or defendant works in family court in the original county of venue, consistent with the judiciary "Policy and Procedures for Reporting Involvement in Criminal/Quasi- Criminal Matters";

B. There is an FM or FD matter pending in the other county;

C. The filing of the TRO and FRO are where the act(s) occurred but plaintiff or both parties reside in another county, upon application by either party;

D. Such other matters for good cause shown.

See also Directive #3-05, "Intercounty Child Support Case Management Policy."

4.12 FINAL HEARING

A final hearing is described in *N.J.S.A.* 2C:25-29a as follows:

> A hearing shall be held in the Family Division of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of this act in the county where the *ex parte* restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident that is the subject matter of a complaint brought under N.J.S.A. 2C:25-28a has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the Rules of Evidence that govern unavailable parties. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:
>
> (1) The previous history of domestic violence between the plaintiff and defendant including threats, harassment and physical abuse;
>
> (2) The existence of immediate danger to person or property;
>
> (3) The financial circumstances of the plaintiff and defendant;
>
> (4) The best interests of the victim and any child;

(5) In determining custody and visitation, the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

When the allegations in the plaintiff's complaint are incomplete and/or it becomes evident at the final hearing that the plaintiff is seeking a restraining order based upon acts outside the complaint, the court, either on its own motion or on a party's motion, shall amend the complaint to include those acts, which motion shall be freely granted. Due process requires that the judge make an inquiry as to whether the defendant needs additional time to prepare in light of the amended complaint. A brief adjournment may be required if the judge determines that the defendant did not have adequate notice and needs time to prepare. If an adjournment is granted, a continuance order or an amended TRO shall be entered.

If there is a verifiable order for protection from another state and the court has jurisdiction over the defendant then the acts of violence that lead to that Order may be viewed as providing adequate basis for the issuance of like restraints in New Jersey, without a need for alleging additional acts of violence (See Section VII on Full Faith and Credit.)

4.13 DISPOSITIONS

4.13.1 Following a final hearing, the court should either enter an FRO with appropriate relief upon a finding of domestic violence, or an admission of an act of domestic violence by the defendant; or, dismiss the Complaint/TRO and dissolve all restraints if domestic violence has not been established; or, if appropriate, adjourn the final hearing and continue the restraints on an interim basis until a final determination can be made.

4.13.2 The court only has jurisdiction to enter restraints against a defendant after a finding by the court or an admission by the defendant that the defendant has committed an act(s) of domestic violence. A defendant's admission or stipulation to committing an act of domestic violence must comply with the following:

A. The parties must be sworn before any action is taken on the complaint, particularly when one or both of the parties appear *pro se*;

B. The defendant must provide a factual basis for the admission that an act of domestic violence has occurred; and

C. Where it becomes clear that defendant does not agree that the conduct constituted an act of domestic violence, the hearing must proceed.

4.13.3 If prior to or during the final hearing, a defendant alleges that the plaintiff committed an act(s) of domestic violence, defendant should be instructed to file a separate

domestic violence Complaint/TRO. The complaint should receive a separate docket number and, if practicable, both cases should be heard that day unless continued for good cause.

4.13.4 Where each party has a separate Complaint/TRO: If both parties admit to or are found to have committed an act or acts of domestic violence, a final order must be entered on each separate docket number where each party is the defendant. "Mutual Restraints" cannot be issued on a single restraining order.

4.14 REMEDIES AVAILABLE UNDER THE ACT

Following a hearing and a finding of domestic violence, the court may issue an order granting any or all of the following relief, including any relief "necessary to prevent further abuse," pursuant to *N.J.S.A.* 2C:25-29b.

4.14.1	Weapons
4.14.2	Further acts of violence
4.14.3	Exclusive possession of residence
4.14.4	Parenting Time and Risk Assessments
4.14.5	Monetary compensation, including support
4.14.6	Professional domestic violence counseling
4.14.7	Restraints from certain locations
4.14.8	Communication restraints
4.14.9	Other support and personal property
4.14.10	Temporary custody
4.14.11	Law enforcement accompaniment
4.14.12	No in-house restraints
4.14.13	Any other appropriate relief, including monitoring that relief
4.14.14	Prohibition from possessing weapons
4.14.15	Prohibition against stalking

4.14.1 Weapons – In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to *N.J.S.A.* 2C:58-3 during the period in which the restraining order is in effect, or two years whichever is greater, except that this provision shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. [*N.J.S.A.* 2C:25-29b, effective January 14, 2004.]

4.14.2 Further acts of violence – An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act. [*N.J.S.A.* 2C:25-29b(1).]

4.14.3 Exclusive possession of residence – An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or

household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing. [*N.J.S.A.* 2C:25-29b(2).]

4.14.4 Parenting Time and Risk Assessments - An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time. [*N.J.S.A.* 2C:25-29b(3).]

The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious. [*N.J.S.A.* 2C:25-29b(3)(a).]

The custodial parent can request an assessment of risk of harm to the child or children posed by unsupervised parenting time with the defendant prior to the entry of an order for parenting time. When this request is noted as a desired form of relief on the Complaint/TRO, or when the request is made either at the emergent or final hearing, a risk assessment must be ordered unless, on the record, the judge finds the request to be arbitrary or capricious and thus denies the request.

Risk Assessment reports must be completed on the "Visitation Risk Assessment Sheet" (See Appendix 15) and may be completed by in-court professional staff person or by an outside professional. The assessment shall serve as a minimum standard for assessing the potential risk of harm to children posed by establishing a parenting time schedule with the defendant. The order for a Risk Assessment should also prompt the setting of a return date before the court in approximately three weeks. The Risk Assessment report should be completed prior to the scheduled date and provided to the parties and counsel along with a "Protective Order" pursuant to the standards adopted by the Judiciary (See Appendix 16).

If interim parenting time is ordered during the initial three week period, and the vicinage has a court-sponsored or approved supervised visitation site, the parenting time should be supervised by an individual designated by the court or through the auspices of the supervised parenting time program and should have clear instructions regarding the arrival and departure of the victim, children and defendant

so as not to compromise the safety of the victim in any way. Security must be available at the parenting-time site, and the individual(s) who is (are) supervising the parenting time must be advised as to the emergency procedures that must be employed if a particular parenting time session appears dangerous. If the Risk Assessment has not been completed before the return date, the court may enter an interim order to continue supervised visitation or hold the hearing to consider any additional applications or evidence that relates to the issue of parenting time.

The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child. [*N.J.S.A.* 2C:25-29b(3)(b).]

Pursuant to *N.J.S.A.* 2C:25-29b(3)(b), a plaintiff in a domestic violence matter may, as a form of pre- or post-dispositional relief, request that an order for parenting time issued pursuant to *N.J.S.A.* 2C:25-29b(3) be suspended. A hearing must then be held upon the plaintiff's application that the defendant's continued access to the child or children pursuant to the parenting time order has threatened the safety and well-being of the child or children.

This request may be made immediately upon the entry of an order for parenting time or at any point subsequent to the entry of such an order.

4.14.5 Monetary Compensation, including Support - An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victim of Crime Compensation Agency for any and all compensation paid by the Victim of Crime Compensation Agency directly to or on behalf of the victim, and require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but are not limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages. [*N.J.S.A.* 2C:25-29b(4).]

Each county shall establish a procedure for the collection and distribution of emergent monetary relief, whether ordered by the Superior Court or Municipal Court. Special care should be taken to avoid the entry of an order that requires the victim to have contact with the defendant in order to receive money under this section. Courts. Courts should give consideration to all forms of monetary relief listed in the statute, above.

Support may be ordered in an FRO pursuant to *N.J.S.A.* 2C:25-29b (4) and (10), which provides for both emergent monetary relief that includes emergency support for minor children and compensatory losses in the form of child or spousal support. An order for emergency monetary relief or child support or spousal support may be entered without prejudice to a pending dissolution case, particularly when done on an *ex parte* basis. Monetary compensation in the form of ongoing support utilizing the child support guidelines, where applicable, should be issued at the final hearing if the court is able to consider testimony. All child support shall be paid by income withholding from any source of funds or income.

4.14.6 Professional domestic violence counseling - An order requiring the defendant to receive professional domestic violence counseling from either a private or court-appointed source and, in that event, at the court's discretion requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. [*N.J.S.A.* 2C:25-29b(5).]

This section permits the court to order the defendant into a batterers intervention program as part of the professional domestic violence counseling option. Victims shall never be ordered into counseling of any kind.

4.14.7 Restraints from certain locations - An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members. [*N.J.S.A.* 2C:25-29b(6).]

A victim shall not be required to disclose any residence or place of employment nor shall the court require such disclosure on the record. The FRO should include (where appropriate) specific names and addresses identifying the locations from which the defendant is barred and the people that the defendant is restrained from contacting, communicating with, harassing, or stalking.

4.14.8 Communication restraints - An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim. [*N.J.S.A.* 2C:25-29b(7).]

4.14.9 Other support and personal property - An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action. [*N.J.S.A.* 2C:25-29b(8).]

An order granting either party temporary possession of specified property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

An order awarding emergency monetary relief, including emergency support for minor children, to the victim, and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law. [*N.J.S.A.* 2C:25-29b(10).]

The court should determine, where necessary, the issue of paternity and the duty to support. If the defendant has a duty to support, as established by a prior finding of paternity, a Certificate of Paternity, an admission of paternity, or a presumption of paternity based on marriage, the court should review the available information, apply the Child Support Guidelines if appropriate and enter a support order payable through income withholding. The order should be referenced in the FRO and entered on the two page support order form, payable and enforced through probation. In the event paternity of defendant is not established, any money paid for child support may be refunded to the defendant in accordance with applicable case law. The method by which the court determined paternity shall be indicated on the order.

If paternity has not been established, the court may order genetic testing and employ the same procedures used by the county in FD matters. In this instance the judge should enter an FRO including all of the other reliefs and restraints. This case will be "disposed" in FACTS with a standing FRO. When the results of the genetic test are received, the case should be reopened on the court's motion for a hearing on the paternity and support issues. All proceedings are held on the FV docket before a judge.

Following the entry of an order under the FV docket, all subsequent applications between the parties involving paternity, custody, parenting time and support shall be taken and heard under the FV docket. A separate FD complaint should not be opened to address these issues. However, this section should not be construed to prevent a party from filing a dissolution complaint.

If an FRO has been entered with relief granted and there is an FD which has been filed but no orders yet entered, the FD will be dismissed and all subsequent applications/modifications (e.g., support, custody, parenting time) shall be made under the FV, so long as the FV is still in effect. If there is a pending FM, all reliefs except the restraints shall be incorporated into the FM with the restraints continuing in the FV docket and on the FRO. Subsequent applications or modifications for support, custody or parenting time should take place within the FM docket number. The FV should be reopened and modified as needed so the FM and FV are consistent.

After support has been entered on the FV, an application to dismiss the FRO and continue the support order should be addressed pursuant to the procedures in the FD manual (section 1104) to ensure that the support continues.

In processing an FV case where there is an existing FD case, the following provisions of the FD manual should be employed. The following is what is stated in Section 1104 of the Non-Dissolution Manual, Standing/Pre-Existing FD Order Prior to an FV Case which has been approved by the Conference of Family Presiding Judges:

> If there exists a previous FD order addressing custody/parenting time and/or child support, prior to the filing of a domestic violence action, that order shall be preserved under the FD docket. The FD court file must be forwarded to the judge hearing the FRO or continued TRO for review and any adjustment to the FD order to insure conflicting orders do not exist. The FD order should be referenced in the FV order to insure all affected parties, divisions and agencies are aware of the multiple orders. The FD file shall be joined to the FV file for as long as the FV case is active. For tracking purposes, a comment should placed in FACTS indicating that the FD court jacket is with the FV team. The FV team should link the cases in FACTS to so that the FD and FV cases are scheduled at the same time for any future court action.
>
> When any party wishes to file for a modification of the FD order during the life of the domestic violence restraining order, that case must be heard by the judge hearing the current FV matter. Parties should be referred to the FV team for scheduling of their FD case while the restraining order is active. A reference to the FV restraining order should be visible on any revised FD order and provided to all entities that might be affected by the revision (i.e., parties, child support enforcement, supervised visitation).
>
> If the FV action is dismissed the judge will determine the continued status of the FD order and note that determination on the FV dismissal order, and on a new FD order, if necessary. At that time the jacket shall be returned to the FD team and noted in FACTS case comments.
>
> If the FV case has child support, the Probation Division should be sent copies of all modified FRO and indefinite TRO orders. If the retraining order is dismissed, the DV indicator must be updated by Family staff and a copy of the dismissed restraining order must be forwarded to Probation.
>
> If there is a restraining order in effect and the plaintiff begins to

receive welfare, the County Board of Social services shall be able to file a complaint for support under a new FD docket.

NOTE: Normal FACTS/ACSES data entry procedures must be completed.

End of quotation from the Non-Dissolution Manual.

It is important to note that enforcement of support obligations or emergent monetary relief can be civil or criminal. If emergent monetary relief is entered under Part I of the FRO, then enforcement is by way of criminal contempt and mandatory arrest pursuant to *N.J.S.A.* 2C:29-9b. (See Section VI)

4.14.10 Temporary Custody - An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent. [*N.J.S.A.* 2C:25-29b(11).]

Violations of orders for temporary custody issued pursuant to this section are included within the scope of *N.J.S.A.* 2C:29-9b, Contempt. Arrest and criminal charges are mandatory when such an order is violated.

As set forth in the statute, when making custody decisions in domestic violence cases, the court must presume that "the best interests of the child are served by an award of custody to the non-abusive parent." This mandate reflects the policy stated in the legislative findings section, *N.J.S.A.* 2C:25-18, "that there is a positive correlation between spousal abuse and child abuse, and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence."

4.14.11 Law Enforcement accompaniment - An order requiring that a law enforcement officer accompany either party to the residence or to any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration. [*N.J.S.A.* 2C:25-29b(12).]

4.14.12 No in-house restraints - Notwithstanding any provision of 2C:25-17, *et seq.* to the contrary, no order issued by the Family Division of the Chancery Division of the Superior Court pursuant to 2C:25-28 or 2C:25-29 regarding emergency, temporary or final relief shall include an in-house restraining order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises**.** [*N.J.S.A.* 2C:25-28.1]

In-house restraining orders are specifically prohibited.

4.14.13 Any other appropriate relief, including monitoring that relief - An order granting any other appropriate relief for the plaintiff and dependent children, provided that the

plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order. [*N.J.S.A.* 2C:25-29b(14).]

The Plaintiff should not be denied any relief on the basis that it was not sought at the emergent hearing.

An order that requires that the defendant report to the intake unit of the Family Division of the Chancery Division of the Superior Court for monitoring of any other provision of the order. [*N.J.S.A.* 2C:25-29b(15).]

An order requiring the defendant to undergo a psychiatric evaluation. [N.J.S.A. 2C:25-29b(18).]

4.14.14 Prohibition from possessing weapons - In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of *N.J.S.A.* 2C:39-1, and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order. [*N.J.S.A.* 2C:25-29b(16).] See Section 5.10 for procedure.

A specific description of the weapon and its believed location should be set forth with as much detail as is known. The court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. (See also Section on Weapons.)

4.14.15 Prohibition against stalking An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to behavior prohibited under the provisions of *N.J.S.A.* 2C:12-10. [*N.J.S.A.* 2C:25-29b(17).]

4.15 CIVIL PENALTY

4.15.1 Upon the finding of an act of domestic violence and the entry of a FRO, the court is required to assess a civil penalty of $50.00 to $500.00 against the defendant under *N.J.S.A.* 2C:25-29.1. This fee may be waived due to "extreme financial hardship." Such a finding must be made on the record. The court may order the payment to be made immediately, within 30 days, or within some other specific period of time. All

orders must also include a provision for the payment of a $2.00 Comprehensive Adult Probation System (CAPS) transaction fee for each payment. For example, if one payment of $50 is ordered, a $2 transaction fee is assessed, for a total of $52. If a penalty of $500 is ordered to be paid in five installments of $100 each, a $2 transaction fee must be added to each payment, for a fee of $10 (five payments, $2 each) and a total penalty of $510. There is no provision for a refund of the penalty or the transaction fee after dismissal of a FRO.

See section 6.4.8 regarding the Surcharge for domestic violence offender to fund grants pursuant to N.J.S.A. 2C:25-29.4. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

4.15.2 Each county should prepare a set of specific instructions to defendants setting out the location and address of the Finance Office where the payments are to be made. The defendant should be provided with these instructions and directed to that office to make payments pursuant to the court's order. If the defendant does not appear at the final hearing, payment instructions shall be served on the defendant along with the FRO. The Family Division should send a copy of the order to the appropriate finance office to enter into the CAPS system.

4.15.3 When the penalty is not paid in accordance with the Court's order, the Comprehensive Enforcement Program (CEP) in the Probation Division will serve as the enforcement mechanism. These cases will be included in the normal CEP process.

4.16 FINGERPRINTING AND PROCESSING

All persons against whom a FRO has been entered shall submit to fingerprinting and photographing either on the same day as the entry of the final order or within a reasonable time thereafter. Failure to do so is a disorderly persons offense under *N.J.S.A.* 53:1-15. Each county must establish its own procedure to fingerprint, photograph and enforce these provisions against those who do not comply (See Appendix 11).

4.17 AFTER AN FRO HAS BEEN ENTERED

4.17.1 Where an FRO includes provisions for emergent monetary relief, monetary compensation, including child support or spousal support, custody, visitation (particularly supervised visitation), counseling or other evaluations, or where the order relates to third parties for whom addresses and other information are needed, or where intake monitoring is ordered, each party should be referred to the Family staff for their separate post-court interview. Care should be taken by staff that the parties have no contact during the interview process. Staff can facilitate any of these items, including the collection of the IV-D application, the initiation of Title IV-D procedures, where applicable, and can make other appropriate arrangements. Family staff can facilitate providing the defendant with a Child Support Probation Account

Number for payments made to the New Jersey Family Support Payment Center (P.O. Box 4880, Trenton, NJ 08625-4880).

4.17.2 Professional domestic violence counseling for defendant should be considered whenever there has been a finding of domestic violence. Whenever possible, the order should also include provisions for monitoring or periodic court review.

4.17.3 Orders for ongoing support as a form of monetary compensation in a FRO pursuant to *N.J.S.A.* 2C:25-29b(4) should be made payable to the New Jersey Family Support Payment Center (P.O. Box 4880, Trenton, NJ 08625-4880) and the order shall be enforced by the Probation Division in the county in which the order was entered. The probation division will use all enforcement mechanisms applicable to the case. Staff should ensure that the "family violence indicator" in ACSES is correctly coded.

When ongoing child support is entered, or paternity established, the court must enter the child support, medical support and paternity decisions on the IV-D Uniform Summary Support Order (USSO, Appendix 31), which shall be referenced in the FRO, using the same FV docket number. The USSO must indicate whether the child support obligation is based on the New Jersey Child Support Guidelines or if there was a deviation from the Guidelines.

4.17.4 Each county shall develop and implement procedures to monitor compliance with court ordered provisions, including counseling and evaluation.

4.18 SERVICE OF FRO

The defendant shall be personally served in court if present for the final hearing. If the defendant is not present, service shall be in accordance with the procedures set forth in the section entitled "Procedures for Service of Complaint/TRO/FRO."

4.19 REQUESTS FOR DISMISSAL OR REOPENING

4.19.1 Withdrawals of Complaint/TRO by the plaintiff - When a victim seeks to withdraw a civil Complaint/TRO after a TRO has been entered but prior to the entry of a final order, the victim should do so in person and before a judge. When the request is made by telephone, the victim should be directed to come to the courthouse and report to the domestic violence unit. Whether the request is made in person on a walk-in basis or on the scheduled final hearing date, the victim should be directed to the appropriate domestic violence staff person or intake. Victims do not need to wait until the final hearing to request a dismissal.

Where a municipal TRO was issued and the paperwork has not reached the Family Division, the staff person should contact the police to obtain information about the Complaint/TRO, preferably receiving a FAXED copy. The matter must be docketed and a file prepared prior to the matter being brought before the judge.

A victim advocate should be available to speak to the plaintiff, in person or by telephone. Where this is not possible, the staff should make the plaintiff aware of the existence of an advocate along with a name and telephone number, preferably in writing.

A professional staff person is to meet with the victim to ascertain that:

A. The victim has read and understood "What Dissolving a Restraining Order Means" (See Appendix 12);

B. The victim has not been coerced or placed under duress to withdraw the Complaint/TRO;

C. The victim understands the cycle of domestic violence and its probable recurrence;

D. The victim is aware of the protective resources available through the court and the local domestic violence program, especially with regard to housing and court-ordered emergency custody and support;

E. The victim clearly understands that withdrawal of the Complaint/TRO and dismissal of the TRO will eliminate the protections that had been issued;

F. The victim is aware that such withdrawals, while they should not be done without careful thought, are not prejudicial if [s]he should need to seek protection in the future; and

G. The victim is informed that any parallel criminal matters are separate and distinct and must be addressed in a separate venue. Victims should be advised to discuss the matter with the appropriate prosecutor.

Once the victim has been counseled as described above, if [s]he wishes to pursue withdrawal of the complaint, [s]he must fill out a Certification to Dismiss Complaint/ TRO (See Appendix 13). The completed form should be placed in the file and an available judge should be located. The victim should then be sent to the appropriate waiting area.

The judge should complete a review of the file and certification and question the victim, on the record, using the same procedure as a request for dismissal of a final order.

After reviewing the file and the Certification to Dismiss, the judge should review the above with the victim on the record. If the judge finds that the request for withdrawal is an informed one and not made under duress, the withdrawal shall be granted.

When the complaint has been withdrawn and the TRO dismissed, copies of the order of dismissal should be distributed to the plaintiff and any law enforcement agency that received the TRO, and served on the defendant in the same manner as the TRO, where it has been served, unless otherwise designated by the court.

Where the defendant was not served with the TRO, the dismissal shall not be served on the defendant.

4.19.2 Dismissals with "Civil Restraints" - The court should not initiate or suggest the use of "civil restraints" in domestic violence cases. If civil restraints are requested by the plaintiff, the court should question the victim on the record using the same standards as a request for a dismissal and in addition, ascertain the following:

A. Whether the victim is aware that the "civil restraints" in an FM (dissolution) or FD (nondissolution) matter will not provide the same protection as a TRO or FRO;

B. Whether the victim understands that the police must arrest for a violation of a domestic violence restraining order but there will be no arrest for the violation of "civil restraints" and the police are unlikely to respond to a call regarding such a violation;

C. Whether the victim will feel safe with the protections offered by the "civil" restraining order; and

D. Whether the victim understands [s]he has a right to obtain a new restraining order if another act of domestic violence occurs, even if "civil restraints" are in effect.

Under no circumstances shall an FD matter be opened for the sole purpose of effectuating "civil restraints."

4.19.3 Dismissal of FRO at the Request of the Plaintiff

> Upon good cause shown, any final order may be dissolved or modified upon application to the Family Division of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or the judge dissolving the order has available a complete record of the hearing or hearings on which the order was based. [*N.J.S.A.* 2C:25-29d]

A request for dismissal of a final order should be handled in the same manner as a request for withdrawal of a Complaint/TRO (see section 4.19.2). The dismissal must be requested in person, and before the judge who entered the order or a judge who has available the complete court file, after the victim has been counseled

concerning her/his rights and the ramifications of a dismissal. The court should determine whether an order for child support, custody and/or visitation was entered as part of the FRO and if so, determine whether the victim wants the relief to continue. If so, these provisions should be made part of an FD order, then and there, without undue waiting and refiling by the plaintiff.

4.19.4 Dismissal of FRO at Request of the Defendant - An FRO may be dissolved upon "good cause shown," *N.J.S.A.* 2C:25-29(d). A request by the defendant for dismissal of an FRO shall be brought to the court by Notice of Motion accompanied by an appropriate certification and brief. Service of the motion and supporting documents on plaintiff shall be through the Family Division and not served directly by the defendant. The motion shall be heard by the judge who entered the FRO if that judge is available. If that judge is not available, the motion shall be heard by another judge who shall read and consider the transcript of the final hearing and the findings by the original judge. The transcript, where needed, shall be provided by the defendant.

The court shall consider the following as part of the determination of whether the defendant has established good cause to dissolve the FRO:

A. As required by *N.J.S.A.* 2C:25-29(b)(5), determine whether the defendant attended and completed all court ordered counseling. If not, the motion must be denied.

B. Past history of domestic violence. If no findings were made by the court at a final hearing regarding any past history of domestic violence, the record may be supplemented with regard to such past history.

C. Any other factors the court deems appropriate to assess whether the defendant has shown good cause that the FRO should be modified or dissolved.

D. To protect the victim, courts should consider a number of factors when determining whether good cause has been shown that the FRO should be dissolved upon request of the defendant, including:

(1) Whether the victim consented to dismiss the restraining order;

(2) Whether the victim fears the defendant;

(3) The nature of the relationship between the parties today;

(4) The number of times that the defendant has been convicted of contempt for violating the order;

(5) Whether the defendant has a continuing involvement with drug or alcohol abuse;

(6) Whether the defendant has been involved in other violent acts with other persons;

(7) Whether the defendant has engaged in counseling;

(8) The age and health of the defendant;

(9) Whether the victim is acting in good faith when opposing the defendant's request;

(10) Whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and,

(11) Any other factors deemed relevant by the court.

The court shall make reasonable efforts to find and notify the plaintiff of the request for dismissal, but unless good cause is shown, the court cannot hold a hearing on this application unless the plaintiff is given notice and an opportunity to be heard.

4.19.5 Request to Reopen Dismissed Matter by the Plaintiff - If there is no new act of domestic violence since the filing of the initial Complaint/TRO and the plaintiff seeks to reopen a TRO or FRO which has been dismissed, a notice of motion must be filed pursuant to *Rule* 4:50-1.

Once the application has been filed, the case is only opened for the purpose of scheduling the motion hearing. The restraining order is still dismissed on FACTS and the DVCR.

An application to reinstate the Complaint/TRO and restraining order does not "activate" the restraining order. The order is not activated until and unless both parties are notified, the court reviews the file, conducts a hearing, makes findings and then reinstates the order.

At the hearing, the judge may reinstate the order or let the dismissal stand. If reinstated, the status of the order would be "active" in FACTS and on the DVCR.

4.19.6 Request to Reopen Due to Duress

When a plaintiff seeks to reopen a domestic violence matter that [s]he has withdrawn or asked to have dismissed, and alleges that [s]he made such a request because [s]he was put in fear by the defendant of proceeding with the case, a new complaint shall be taken. The original allegations of violence, coupled with the threats or other acts of duress, should be listed on the new complaint.

4.19.7 Conditional Dismissals - The conditional dismissal of a domestic violence Complaint/TRO or FRO is prohibited. Whether done at the request of the plaintiff, with the agreement of the defendant, or at the discretion of the judge at the end of trial, conditions may not be imposed on the dismissal of a Complaint/TRO or FRO. That is, no TRO/FRO shall be dismissed conditioned upon either party performing any specific act or upon the occurrence of any particular event.

4.19.8 Dismissal of TRO for Failure of the Plaintiff to Appear at Final Hearing

See section 4.9.3 or 4.

4.19.9 Judge to Advise that Municipal and/or Criminal Complaints Continue - At the time of the dismissal of the complaint and vacating of a TRO or FRO, the judge shall advise the parties who are present that any related municipal or criminal complaint(s) arising out of the incident shall continue and are in no way affected by the dismissal of the domestic violence Complaint/TRO. All parties present shall be advised of the need to comply with the conditions of bail and participate in all future court hearings related to such municipal or criminal actions. The parties should be advised to speak to the appropriate prosecutor.

SECTION V

WEAPONS

5.1 WEAPONS IN GENERAL

5.1.1 Weapons of varying types are defined generally in *N.J.S.A.* 2C:39-1, and more specifically in *N.J.S.A.* 2C:39-1r. The Attorney General and County Prosecutors delineate law enforcement procedures through directives and guidelines in accordance with the United States Constitution, New Jersey Constitution, statutes and court decisions.

5.1.2 Weapons relating to domestic violence incidents can be categorized in several ways including but not limited to:

A. Weapon(s) used or threatened to be used in a domestic violence incident.

B. Weapon(s) not used in a domestic violence incident but in plain view of an officer.

C. Weapon(s) not used in a domestic violence incident, not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

5.2 MANDATORY ARREST

See Sections 3.10 and 3.17.

5.3 SEIZURE OF WEAPONS FOR SAFEKEEPING

See Sections 3.10 and 3.17.

5.4 SEIZURE OF WEAPONS PURSUANT TO COURT ORDER

See Sections 3.10 and 3.17.

5.5 SEIZURE OF WEAPONS USED IN COMMISSION OF A CRIMINAL OFFENSE

See Sections 3.10 and 3.17.

5.6 SEIZURE OF WEAPONS PURSUANT TO *N.J.S.A.* 2C:25-21d

See Sections 3.10 and 3.17.

5.7 SEIZURE OF WEAPONS OUTSIDE THE COUNTY WHERE THE DOMESTIC VIOLENCE RESTRAINING ORDER WAS ISSUED

See Sections 3.10 and 3.17.

5.8 SEIZURE OF WEAPONS FROM LAW ENFORCEMENT OFFICERS INVOLVLED IN A DOMESTIC VIOLENCE INCIDENT

See Sections 3.10 and 3.17.

5.9 RESTRICTIONS ON RETURN OF FIREARMS

5.9.1 Where the defendant is a Law Enforcement Officer: If a law enforcement officer is subject to an FRO, pursuant to the provisions of the federal gun control law, 18 *U.S.C.A.* 922(g), the court may, if necessary for the protection of the plaintiff, prohibit any defendant who is a law enforcement officer from possessing any weapon, firearm or firearm identification card, including those provided by his/her department. If the court determines that a prohibition on possession of weapons by defendant who is a law enforcement officer is not necessary, the provisions of the Attorney General's *Directive Implementing Procedures for the Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents* shall apply. Where the court permits the return of weapons while on duty, the procedures in section 3.17 still apply. See Appendix 17.

5.9.2 All Others: If an FRO is issued, the named defendant may not be permitted to own or possess any firearm for the duration of the order or for two years, whichever is greater.

5.10 WARRANT FOR THE SEARCH AND SEIZURE OF WEAPONS

5.10.1 The purpose of the issuance of a search warrant is to protect the victim of domestic violence from further violence and not to discover evidence of criminality. There must be sufficient facts and information presented to satisfy the judicial *reasonable cause* requirement. The scope of the warrant and the times during which it may be served must be set forth with specificity on the warrant.

5.10.2 When granting a TRO, the court should grant relief that includes forbidding the defendant from possessing any firearm or other weapon as defined by *N.J.S.A.* 2C:39-1r. The possession of a weapon by a defendant may pose a danger to the victim even though the alleged act of domestic violence did not involve the use or threatened use of a weapon and even though there was no testimony or evidence that the defendant had previously used or threatened to use a weapon against the victim.

5.10.3. *N.J.S.A.*2C:25-28j authorizes the issuance of a search warrant as a form of *ex parte* relief at the time of the issuance of a TRO. *N.J.S.A* 2C:25-29b(16) contains identical language authorizing similar relief at the time of the issuance of a FRO. Both statutes are intended to protect the victim from the risk of serious bodily injury.

5.10.4 The test to be applied by the Court is whether there exists *reasonable cause* to believe that:

A. The defendant has committed an act of domestic violence;

B. The defendant possesses or has access to a firearm or other weapon(s) as enumerated in *N.J.S.A.* 2C:39-1r; and

C. The defendant's possession or access to the weapon poses a heightened or increased risk of danger or injury to the victim.

5.10.5 A specific description of the weapon and its believed location should, as much as practical, be set forth in the Order. The Court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. The original return of the search warrant shall be delivered to the Court within ten (10) days.

5.10.6 When a search warrant is recommended by a Domestic Violence Hearing Officer (DVHO), the affidavit in support of the warrant shall set forth precise facts constituting the basis for the conclusion that the defendant's possession of a weapon exposes the plaintiff/victim to a risk of serious bodily injury. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and signature. After reviewing the TRO, affidavit and DVHO Case Notes, any questions regarding the sufficiency of the information contained in the affidavit should be resolved by sworn testimony by the victim before the judge. If the affidavit in support of the warrant for the search and seizure of weapons recommended by the DVHO contains sufficient information, the judge shall confirm with appropriate findings on the record and enter the order. The reasonable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information.

5.10.7 After reviewing the TRO, affidavit and DVHO Case Notes, the judge shall consider and be satisfied as to the following:

A. The basis upon which plaintiff believes that the defendant possesses a prohibited weapon or firearm;

B. The reasons plaintiff believes that the defendant's possession of a prohibited weapon or firearm poses a heightened or increased risk of danger or injury to the plaintiff, which may include the past history if any of domestic violence between the parties;

C. A description of the weapon or firearm which the defendant possesses;

D. A specific description of the location where the weapons or firearms are located, the owner of those premises, if not the defendant; and,

E. Other relevant factors that the particulars of the circumstances require.

5.10.8 When an *ex parte* application is made regarding seizure of weapons, whether before the Court or the DVHO, the affidavit must be completed with the reasons for the seizure specified.

5.10.9 When the service of a restraining order results in the seizure of weapons, the weapons inventory should be attached to the return of service that is brought/faxed back to the Family Division in the issuing county. The weapons themselves, along with any licenses, identification. cards, other paperwork or documentation shall be secured for storage by the prosecutor in the seizing county. At such time that the seized property is needed by the prosecutor or the Family Court in the issuing county, the prosecutor in the seizing county shall make arrangements for the delivery of forward same.

5.11 NOTICE TO THE PROSECUTOR

In order to ensure that the prosecutor is aware of the existence of the pending domestic violence Complaint/TRO, in addition to having received the seized weapon(s), a copy of every TRO or FRO in which the "seizure" box is checked should be forwarded immediately to the County Prosecutor's Office. In addition, where seizure has not yet occurred but is ordered as part of an order prohibiting weapons possession pursuant to *N.J.S.A* 2C:25-29b(1), a copy of that order, with the appropriate boxes checked, should also be forwarded immediately to the Prosecutor's Office.

5.12 HEARING REGARDING WEAPONS

5.12.1 When the prosecutor intends to proceed with forfeiture, notice shall be provided to the plaintiff, the defendant and the Family Division. The court shall hold a hearing within 45 days of receipt of the notice provided by the prosecutor, as set forth in *N.J.S.A.* 2C:25-21d(3). No formal pleading and no filing fee shall be required. The hearing shall be summary in nature. The hearing must be held even if the plaintiff withdraws or seeks dismissal of the domestic violence Complaint/TRO or FRO.

5.12.2 At the hearing, the Family Division Judge must decide whether the weapon(s) should be forfeited, along with any related permit(s) or license(s), or whether the weapon(s) should be returned; or whether legal rights to own should be revoked and/or defendant should be ordered to dispose of the weapon, based on the factors contained in *N.J.S.A.* 2C:25-21d.

5.12.3 In addition to any other provisions, any FRO issued shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or

retaining a firearms purchaser identification card or permit to purchase a handgun pursuant during the period in which the restraining order is in effect or two years, whichever is greater, except for military and law enforcement personnel, see *N.J.S.A.* 2C:25-29b.

SECTION VI

ENFORCEMENT AND MODIFICATION OF RESTRAINING ORDERS

6.1 ENFORCEMENT AND MODIFICATION

6.1.1 The enforcement of a TRO or FRO occurs when the plaintiff seeks to have the defendant comply with an existing order. A modification occurs when one party seeks to add or change provisions to an existing order.

6.1.2 Enforcement of TRO and FRO is governed by *N.J.S.A.* 2C:25-30 and 2C:29-9b, depending on the conduct and the provision violated. All relief contained in Part I of the restraining order can be enforced by way of criminal or civil remedies. All relief contained in Part II must be enforced by civil remedies, i.e., by filing an application with the Superior Court, Family Division.

6.1.3 Violations of *N.J.S.A.* 2C:25-29(b) (which covers Part II relief) includes:

A. An order for parenting time;

B. An order requiring the defendant to pay monetary compensation;

C. An order requiring the defendant to receive professional domestic violence counseling;

D. An order requiring the defendant to make rent/mortgage payments; and/or

E. An order granting either party temporary possession of personal property.

These may be enforced in a civil action initiated by the plaintiff, generally under *Rule* 1:10-3 and *Rule* 5:3-7 by way of motion, affidavit, or in emergent circumstances, an order to show cause.

6.1.4 A defendant who "purposely or knowingly violates any provision" of a TRO or FRO is guilty of a crime of the fourth degree if the conduct that constitutes the violation also constitutes a crime or disorderly persons offense under *N.J.S.A.* 2C:29-9(b). In all other cases, the defendant is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of the PDVA.

6.1.5 These distinctions apply even when the restraining order is no longer in effect, so long as the conduct which constitutes the offense occurred while the order, temporary or final, was in effect.

6.1.6 In connection with enforcement applications or reports of violations by the victim, the victim advocate or the Victim Witness Unit should be involved in the interview, whenever possible. If the advocate is not available, the victim should be given the victim advocate's card and told to contact her/him prior to the hearing.

6.2 CRIMINAL CONTEMPT

See section III.

6.3 ENFORCEMENT OF LITIGANT'S RIGHTS PROCEEDINGS

6.3.1 When a plaintiff alleges that the defendant violated a portion of Part II of a restraining order (i.e., pertaining to parenting time, monetary compensation, professional domestic violence counseling, rent or mortgage payments or possession of personal property), the plaintiff should be directed to Family Division, during normal court hours to file an application (by motion or affidavit) to enforce these provisions. A domestic violence advocate should be available to speak to the plaintiff.

6.3.2 The designated domestic violence staff person should speak to the plaintiff to determine (a) whether a restraining order violation has occurred; (b) if the person is seeking the type of relief that civil enforcement can provide; and (c) if another type of procedure is more appropriate. If the plaintiff is seeking enforcement of issues in Part I (other than parenting time, monetary compensation, receipt of professional domestic violence counseling, rent or mortgage payments or possession of personal property), staff should explain the criminal procedures regarding filing criminal complaints and advise the party of the option to initiate criminal procedures with the appropriate police department or the prosecutor's office. In addition, plaintiff should be told of the option to have any of these issues addressed by Family Court.

6.3.3 When a defendant alleges that the plaintiff has not abided by the terms of a restraining order, for example, parenting time or possession of personal property, the defendant should be directed to Family Division, during normal court hours to file an application (by motion or affidavit) to enforce these provisions.

6.3.4 If the issue is appropriate for civil enforcement, the court, should provide forms to the plaintiff to prepare an application to the court (motion or affidavit) pursuant to *Rule* 1:10-3 or *Rule* 5:3-7. Where available, the plaintiff should be assisted by the victim advocate or victim witness representative. If the issue is the modification or enforcement of child support, the matter can be scheduled before a Child Support Hearing Officer (CSHO), pursuant to CSHOP Standard 7 (See Appendix 20). Otherwise, the matter should be listed before the judge who granted the order, where possible. The matter should be reopened using the same docket number and case file. The judge hearing the matter should have the complete file.

6.3.5 If the litigant (either plaintiff or defendant) believes that the matter is emergent, the domestic violence staff person should provide the necessary forms to assist the litigant in preparing an Order to Show Cause (OTSC), which should be presented to the judge forthwith to determine whether the request is emergent. Whenever possible, the judge who issued the original order should review the proposed OTSC, grant any or all relief, and set a return date, or deny the application. If a return date is set for the OTSC, the matter should be scheduled on the next designated domestic

violence enforcement day for which regular notice can be arranged. If the OTSC is denied, the litigant can be referred back to intake to file a motion/affidavit.

6.3.6 After the matter is reopened and processed, a request for an OTSC shall be brought to the judge as quickly as possible, so that the OTSC can be signed if the judge is satisfied with the sufficiency of the application and a return date for the enforcement hearing can be set on short notice. Wherever possible, the judge who issued the original order should review the proposed OTSC. That judge can also hold the enforcement hearing. Motions made pursuant to *Rule* 1:10-3 should be returnable for the next designated domestic violence enforcement day for which regular notice can be arranged, but in any event no longer than two weeks.

6.3.7 The moving party will receive a copy of the OTSC while in court and the other party shall be served with the OTSC, motion or affidavit pursuant to court rules. Service of papers and notice of hearing shall be prepared by Family Division. Family Division staff should ensure that the plaintiff's address is not disclosed to the defendant. The notice should state to the responding party that non-appearance may result in the requested relief being granted.

6.3.8 Any modifications granted by the court should be recorded in a new final order that also includes all the non-amended prior relief, recorded on an Amended FRO. This must be served in the same manner as an FRO. This order should also specifically set forth all prior relief which was not modified, and not just refer to the former order, to ensure that there is only one final order that sets forth all of the relief. If the only relief being amended is the child support provisions, then a new USSO may be used instead of an amended FRO.

6.4 CONTEMPT IN SUPERIOR COURT

Processing of 2C:29-9(b) Complaints

6.4.1 When a Defendant has been arrested for Violating a TRO or FRO - Upon allegation of a violation of a restraining order, a warrant should be issued immediately and the CDR should be completed at that time. Upon arrest, the CDR-2 should be immediately forwarded to the Criminal Division, the Prosecutor's Office and as otherwise described at the bottom of the CDR. Initial screening by the Assistant Prosecutor assigned to the Domestic Violence unit should be at the first appearance, or no later than the plea hearing date. If the contempt is non-indictable and/or downgraded, it shall be sent to Family Court and docketed as an FO case. This should be done at the first appearance.

6.4.2 Bail

A. An initial bail must be set by a Superior Court Judge pursuant to *Rule* 3:26-2. The CDR should be provided, along with the DV Incident/Police Report.

B. During regular court hours, bail should be set by a Family Division Judge, who will have access to the underlying FV file along with other relevant FV, FO and FD files, and the FACTS printout regarding other Family Court history.

C. When the Superior Court is not in session, the on-call bail judge should be contacted and provided with all available information on the defendant and the underlying case information from the DVCR.

NOTE: If the contempt has been initially screened as a disorderly persons offense, bail may be set by a Municipal Court Judge if the Assignment Judge in that vicinage has issued a directive/order allowing this practice.

D. The CDR shall serve as the moving document as the case proceeds through the court. In Municipal Court, all bail decisions are reflected on the CDR, along with all screening and downgrade decisions, which must be dated. Conditions of bail or release such as prohibitions against contact should be noted in the appropriate section of the CDR as well. (In Superior Court, Criminal Division, there are separate court orders for bail decisions.)

6.4.3 Responsibility for arraignments/bail reviews/first appearances - Responsibility for arraignments/bail reviews/first appearances should rest with the Division or Part of the Superior Court that has jurisdiction over the case at that time, either the Family Division or in Criminal Division so long as the Assistant Prosecutor assigned to the Domestic Violence Unit is available. Daily jail lists should be provided to both the Criminal Division and the Family Division each morning with *N.J.S.A.* 2C:29-9b indictable and non-indictable violations identified as such. The judge conducting the hearing should be provided with pertinent information from the underlying FV file as required by *N.J.S.A.* 2C:29-26e.

The prescreening of matters, to determine whether the matter is indictable is strongly encouraged where at all possible.

6.4.4 Scheduling of Subsequent Proceedings - As contempt cases are high impact offenses, each county Prosecutor should screen these cases as expeditiously as possible.

A. Following arrest, defendants should be given the CDR with the first appearance/arraignment date noted in the appropriate section, along with any other Notice to Appear, where applicable. Thus, even if bail is posted, the defendant has the date of the first appearance/arraignment.

B. If the defendant is in custody the first appearance and bail review must be scheduled within 72 hours in accordance with *Rule* 3:4-2.

C. Where defendant is not incarcerated, the first appearance/arraignment/case management conference should be scheduled no later than 20 days after the

issuance of a contempt complaint. Notice of the court date should be sent to the defendant by the appropriate court.

D. An assistant prosecutor should be required to appear at the first appearance/arraignment and should provide the court with a preliminary determination as to whether the case is being referred to the Criminal Division as an indictable case or is being graded/downgraded and heard in the Family Division. Scheduling of subsequent hearings**,** including bail review hearings at regular intervals, is the responsibility of the Part or Division in which the case will be heard.

E. All contempt matters are subject to Speedy Trial Guidelines, and must be scheduled accordingly. There is a 90-day disposition guideline that applies as well in Family and Municipal Court.

F. When the case is referred to the Family Division, the 5A (Financial Questionnaire to Establish Indigency) should be completed, counsel appointed and a pretrial conference scheduled at the first appearance/arraignment. These cases will then be docketed in FACTS, tracked accordingly and disposed within 90 days of docketing.

6.4.6 Where there is more than one charge on a CDR -2.

A. If, upon screening, there is a determination that there is no basis for a contempt charge, the companion charges may be referred to the Criminal or Municipal Court for disposition.

B. Where the matter is docketed in Family Division, and there are both contempt and underlying charges, if the contempt is dismissed as part of a plea, the Family Division judge shall dispose of the underlying charge.

C. The contempt charge and the underlying charge should never be bifurcated and heard by different courts.

D. After the bail review/first appearance, these matters must be promptly scheduled for a plea hearing/calendar. In Family Division, the plea hearing should be held within two weeks if the defendant is incarcerated, and within four weeks if the defendant is out on bail.

E. At the plea hearing, the defendant should, after consultation with counsel, enter a plea.

F. Where defendant pleads guilty, [s]he should be sentenced immediately, unless the court needs additional information and adjourns the sentencing to a date certain.

G. Where a defendant pleads not guilty, a non-jury trial must be scheduled expeditiously before a Family Division Judge, keeping the 90-day disposition guideline in mind.

H. At the trial, the Prosecutor's Office will present the case against the defendant. Discovery must be obtained by the prosecutor. Subpoenas for witnesses must be issued by the prosecutor.

I. At sentencing, the disposition must be noted in the FO file and entered into FACTS.

J. The completed CDR-2 and any ancillary paperwork must immediately be forwarded by Family Division for routing of orders of commitment, probation, fines, VCCA payments to the appropriate case management clerical or probation office.

6.4.7 Incarceration of Sole Caretaker of Children - Whenever a person has been convicted of a violation which will result in incarceration, the court must follow the procedures set forth in *N.J.S.A.* 2C:44-6.2, *et.seq*., and Directives 4-04 and 8-95.

6.4.8 Domestic Violence Surcharge - Pursuant to *N.J.S.A.* 2C:25-29.4, any person convicted of an act of domestic violence (as that term is defined in *N.J.S.A.* 2C:25-19) shall be subject to a surcharge in the amount of $100. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

SECTION VII

FULL FAITH AND CREDIT OF OUT OF STATE ORDERS

7.1 FEDERAL STATUTORY OVERVIEW

7.1.1 The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 *U.S.C.A.* 2265, *et seq*., requires states and Indian tribes to enforce protection orders issued by other states and Indian tribes as if the orders had been issued by the non-issuing/enforcing state or Indian tribe. In addition, an enforcing state must enforce a protection order from another state even if the petitioner would not be eligible for a protection order in the enforcing state.

7.1.2 Additionally, all orders of protection shall have the same force and effect on military installations as such order has within the jurisdiction of the court that issued the order under the Armed Forces Domestic Security Act, 10 *U.S.C.* 1561a.

7.2 PROTECTION ORDERS COVERED BY §2265

7.2.1 Definition of Protection Order - The Full Faith and Credit provision applies to any injunction or other order issued for the purpose of preventing violent or threatening acts, or harassment against, contact or communication with, or physical proximity to another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking the protection. In other words, it extends to temporary and final, civil and criminal protection orders (e.g., stay away or no-contact orders that are part of a defendant's conditions of release or bail).

7.2.2 Final and *Ex Parte* Orders

A. Every state, subdivision thereof, and Indian tribe must accord full faith and credit to both final and *ex parte* protection orders.

B. In terms of final protection orders, the statute provides that a final order must be enforced if:

1. It was issued by a court that had personal and subject matter jurisdiction to issue the order, and

2. The respondent was provided with reasonable notice and the *opportunity* to be heard sufficient to protect that person's right to due process.

C. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state or tribal law and, in any event, within a reasonable period of time after the order is issued, sufficient to protect the opposing party's right to due process.

7.2.3 Mutual Protection Orders - Should the issuing court enter a protection order with

prohibitions against both the respondent and the petitioner, only the provisions in favor of the petitioner (those constraining the respondent) are entitled to enforcement in another state, tribe, or territory unless:

A. the respondent filed a separate petition or pleading seeking such an order, and

B. the court made specific findings that both parties were entitled to such a protection order.

Pursuant to §2265, a court in a jurisdiction other than the jurisdiction that issued the order shall not enforce a mutual order against a petitioner unless the portions that impose prohibitions on the petitioner meet the above legal criteria.

7.3 NEW JERSEY LAW AND PROCEDURE

7.3.1 In May 2000, the New Jersey Judiciary adopted procedures to implement the registration of out of state orders (Appendix 21). The procedures include:

A. Procedures for Family Division staff to follow to register the orders.

B. FACTS codes and procedures (part of the FACTS FV Docket User's Guide distributed by the Automated Trial Court Systems Unit).

C. Certification forms for incoming orders and for outgoing New Jersey orders.

7.3.2 The procedures accommodate the out-of-state order's expiration date in FACTS and the practice of other states concerning certification for Restraining Orders. The primary benefit to registration for the victim is that the order will be on the statewide DVCR to which police throughout the state have access on an immediate, round-the-clock basis.

7.3.3 These procedures:

A. Establish these registered cases without adding new cases to the Family Division statistical report;

B. Accommodate the expiration date of out-of-state orders;

C. Identify out-of-state orders to users, particularly law enforcement users of the DVCR;

D. Prohibit an out-of-state order to be reopened or modified; and

E. Continue to require that Full Faith and Credit be honored by law enforcement and the courts on those orders that have not been registered.

7.4 PROCESS

7.4.1 The victim (plaintiff) who elects to register an out-of-state restraining order will present the order at a county Family Division Intake Domestic Violence Unit. The plaintiff will complete a Victim Information Sheet and complete an Out-of-State certification form (See Appendix 21).

7.4.2 The Domestic Violence Unit will review the order, certification and Victim Information Sheet. The staff member will call the issuing court immediately or within one business day. The staff member will send by facsimile the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager or the Domestic Violence Team Leader may review the contact with the issuing court to resolve questions concerning confirmation.

7.4.3 Upon confirmation, the staff member will complete the confirmation form, which will allow for the establishment and docketing of the case on FACTS.

7.4.4 The establishment process will include:

A. A new initiating document, the OUT-OF-STATE DV RO, entered in the initiating document field, will be combined with a case status reason code that identifies the case as an Out-of-State Order;

B. The field MUNICIPALITY OF OFFENSE becomes a required field with a change from numeric to alphanumeric to allow the state to be identified, e.g. A9901 for an Out-of-State order from Pennsylvania;

C. All OUT-OF-STATE DV RO initiating document cases would be ignored in the statistical count and cannot be reopened.

7.4.5 The expiration date will be identified in the system and appear on the registry based on the use of a relief code that is unique to this case type. The expiration date will be entered by the user and appear in the registry in the COMMENTS field.

7.4.6 Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered as of the case establishment date and providing the New Jersey docket number. The victim/plaintiff should be provided with the order, a copy faxed to the police departments identified by the plaintiff, and a copy placed in the Family Division file that was created when the system assigned the New Jersey number as part of the registration process.

7.4.7 **The Attorney General's guidelines to law enforcement officers state that the registration of an order <u>is not required</u> to enforce the order.** The Division of Criminal Justice has assured that Full Faith and Credit will be emphasized in all

police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out-of-state order with New Jersey.

7.5 OUTGOING ORDERS

7.5.1 All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute. As a further aid to victims, the federal VAWA office has promulgated a form of Certification, if completed by the issuing court, intended to encourage the enforcement of these orders in all states. At this time, it is not a recommended practice to provide this certification for orders issued on a routine basis. Rather, the form should be completed upon the request of a victim, or another state's court or law enforcement agency that has requested verification of the New Jersey FRO. (See Appendix 21)

7.5.2 The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, upon request of the victim.

SECTION VIII

WORKING GROUPS

DOMESTIC VIOLENCE WORKING GROUPS

On September 24, 1991, then Chief Justice Wilentz and Attorney General Del Tufo charged that each Presiding Judge and County Prosecutor convene or reconvene a County Domestic Violence Working Group to assist in the design of a county implementation and monitoring strategy, and provide an ongoing forum for identification and resolution of problems in the domestic violence prevention and protection process in each county. The Presiding Judge (or Family Division Judge, in a multi-county vicinage) and County Prosecutor should serve as co-chairpersons. The working group meetings are a productive resource for discussing domestic violence processes and procedures.

The group shall also consist of the Family Division Manager; Domestic Violence Team Leader; the DVHO; the Sheriff; the President of the Municipal Prosecutor's Association; the President of the County Chiefs' Association; a Criminal Division Liaison; a Municipal Court Liaison; the Director and Court Liaison of the local domestic violence program; a representative from each Municipal Court and County Prosecutor's Office (who handles domestic violence cases); the County Victim Witness Coordinator; the local batterer's group; DYFS; the County Bar Association Family Law Section; and any other appropriate service provider. Working Groups shall meet at least quarterly.

APPENDIX LIST

DOMESTIC VIOLENCE PROCEDURES MANUAL
APPENDIX LIST

1. Victim Information Sheet
1a. Spanish Victim Information Sheet
2. Temporary Restraining Order and Instructions
3. Domestic Violence Hearing Officer Standards and Backup DVHO Standards
4. *Aid in Identifying Firearms
5. *Victim Notification Form
6. Summary of Electronic TRO
6a. Instructions for Recording Complete Incident Description in FACTS
7. *Confirmatory Order
8. Appeal of Ex Parte Order – Application for Appeal and Order
9. Continuance Order
10. Final Restraining Order
11. Notice of Fingerprinting Requirements
12. "What Dissolving a Restraining Order Means"
12a. Spanish "What Dissolving a Retraining Order Means"
13. Certification to Dismiss Complaint/TRO
14. Order of Dismissal
15. Risk Assessment
16. Protective Order (Custody Reports)
17. *Attorney General Law Enforcement Directive 2000-3 and 2000-4
18. *Affidavit in Support of Domestic Violence Search Warrant (Law Enforcement)
19. *Domestic Violence Warrant for Search and Seizure of Weapons (Law Enforcement)
20. Child Support Hearing Officer Standard 7
21. Procedures and Forms for Registering Out of State Restraining Orders
22. Domestic Violence Central Registry FACTS Inquiry Guide
23. *Checklist for Law Enforcement Officers
24. *Supplementary Domestic Violence Offense Report
25. Guide to Services for Victims of Domestic Violence
26. Safety Plan Brochure
27. Batterers Intervention Program Guidelines
28. *Attorney General Guidelines for Enforcement of Out of State Restraining Orders
29. State Police Phone Numbers by State
30. State Administrative Offices of the Court by State
31. Uniform Summary Support Order
32. Address Confidentiality Program Act

*The Division of Criminal Justice prepared the items marked with an asterisk.

New Jersey Judiciary
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Date: _____

Your Information **(Party Filing-Plaintiff)**	Information of Person you're filing against **(Defendant)**
Name of Police Department where you reside:	Name of Police Department where defendant resides:
Name **Any Prior Names**	**Name** **AKA**
Street Address	Street Address
City	City
Zip	Zip
Phone (h) (cell)	Phone (h) (cell)
SS#	SS#
Birth Date	Birth Date
Sex ☐ Male ☐ Female	Sex ☐ Male ☐ Female
Race	Race
Employment Information Employer	**Employment Information** Employer
Address	Address
Phone	Phone
Days / Hours	Days / Hours
Emergency Contact Name	**Other place(s) defendant may be reached**
Phone	

CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Relationship to Defendant

- ☐ Married
- ☐ Divorced
- ☐ Never married
- ☐ Currently living together
- ☐ Previously lived together
- ☐ Have child(ren) with defendant
- ☐ Expecting child with the defendant
- ☐ Have had a dating relationship
- ☐ Family relationship (specify)

Defendant Identifier's

Height		Eye Color	
Weight		Hair Color	

Complexion ☐ Light ☐ Medium ☐ Dark

Scars, Tattoos, Glasses, Facial Hair, Body Piercing

Other

Defendant's vehicle

Make	Model	Year	Color	License plate #

Do you and the defendant have children together?

	Name	DOB	SS#	Resides with
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Are there any custody/visitation/support orders pending or in effect?

Where Docket Number

Child Support Case Number

Are you currently asking the court for child support or medical coverage? ☐ **Yes** ☐ **No**

Does either party require an interpreter or have other special needs? ☐ **Yes** ☐ **No**

Describe

Does the defendant have a criminal history? ☐ **Yes** ☐ **No**

Do you have a lawyer for this matter? ☐ **Yes** ☐ **No**

Name Phone

YOU WILL BE ASKED ABOUT THE INCIDENT WHICH BROUGHT YOU HERE TODAY. PLEASE BE PREPARED TO DISCUSS THE INCIDENT, PLUS ANY PRIOR HISTORY, IF APPLICABLE.

Poder Judicial de Nueva Jersey
HOJA DE INFORMACIÓN CONFIDENCIAL DE LA VÍCTIMA
(NO DÉ ESTE FORMULARIO AL DEMANDADO)

New Jersey Judiciary
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Fecha/Date: _____

Sus datos **(Parte actora - Demandante)** **Your information (Party Filing-Plaintiff)**	Datos de la persona contra quien usted presenta la acción **(Demandado)** Information of Person you're filing against **(Defendant)**
Nombre del Departamento de Policía de donde usted reside: Name of Police Department where you reside:	Nombre del Departamento de Policía de donde reside el demandado: Name of Police Department where defendant resides:
Nombre y apellido **Name** **Nombre o apellido anterior (si lo hubiera)** **Any Prior Names**	**Nombre y apellido** **Name** **Nombre y alias** **AKA**
Dirección - Calle Street Address	Dirección - Calle Street Address
Ciudad City	Ciudad City
Código postal Zip	Código postal Zip
Teléfono (casa) (celular) Phone (h) (cell)	Teléfono (casa) (celular) Phone (h) (cell)
No. de seguro social SS#	No. de seguro social SS#
Fecha de nacimiento Birth Date	Fecha de nacimiento Birth Date
Sexo ☐ Hombre ☐ Mujer Sex Male Female	Sexo ☐ Hombre ☐ Mujer Sex Male Female
Raza Race	Raza Race
Datos del empleo **Employment Information** Lugar de empleo Employer	**Datos del empleo** **Employment Information** Lugar de empleo Employer
Dirección Address	Dirección Address
Teléfono Phone	Teléfono Phone
Días / Horas Days / Hours	Días / Horas Days / Hours
Contacto en caso de emergencia **Emergency Contact** Nombre y apellido Name	**Otro(s) lugar(es) donde se pueda comunicar con el demandado** **Other place(s) defendant may be reached**
Teléfono Phone	

HOJA DE INFORMACIÓN CONFIDENCIAL DE LA VÍCTIMA
(NO DÉ ESTE FORMULARIO AL DEMANDADO)
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Relación con el demandado
Relationship to Defendant

- ☐ Casados / Married
- ☐ Divorciados / Divorced
- ☐ Nunca casados / Never married
- ☐ Conviven actualmente / Currently living together
- ☐ Convivieron anteriormente / Previously lived together
- ☐ Tiene hijo(s) con el demandado / Have child(ren) with defendant
- ☐ Espera un hijo del demandado / Expecting child with the defendant
- ☐ Han tenido una relación romántica / Have had a dating relationship
- ☐ Parentesco familiar (especifique) / Family relationship (specify)

Rasgos característicos del demandado
Defendant Identifiers

Estatura / Height		Color de ojos / Eye Color	
Peso / Weight		Color del cabello / Hair Color	

Tez / Complexion ☐ Clara / Light ☐ Mediana / Medium ☐ Oscura / Dark

Cicatrices, tatuajes, lentes, vello facial, perforaciones del cuerpo
Scars, Tattoos, Glasses, Facial Hair, Body Piercing

Otro / Other

Vehículo del demandado / Defendant's vehicle

Marca / Make	Modelo / Model	Año / Year	Color / Color	No. de placa / License plate #

¿Tiene usted hijo(s) con el demandado?
Do you and the defendant have children together?

	Nombre / Name	**Fecha de nacimiento / DOB**	**No. de seguro social / SS#**	**Reside con / Resides with**
1.				
2.				
3.				
4.				
5.				
6.				
7.				

¿Hay alguna orden de custodia/visitas/manuteción pendiente o vigente?
Are there any custody/visitation/support orders pending or in effect?
Dónde / Where
Número del expediente / Docket Number
Número del Caso de Manutención de Menores / Child Support Case Number

¿Pide usted actualmente al tribunal manutención de menores o seguro médico? ☐ Sí /Yes ☐ No/No
Are you currently asking the court for child support or medical coverage?

¿Alguna de las partes requiere un intérprete o tiene otra necesidad especial? ☐ Sí /Yes ☐ No/No
Does either party require an interpreter or have other special needs?
Descríbala / Describe

¿Tiene el demandado antecedentes penales? ☐ Sí /Yes ☐ No/No
Does the defendant have a criminal history?

¿Tiene usted un abogado para este asunto? ☐ Sí/Yes ☐ No/No
Do you have a lawyer for this matter?
Nombre y apellido / Name
Teléfono / Phone

LE VAN A HACER PREGUNTAS SOBRE EL INCIDENTE QUE LO TRAJO AQUÍ HOY. ESTÉ PREPARADO PARA HABLAR DEL INCIDENTE Y DE CUALQUIER ANTECEDENTE, SI LO HAY.

YOU WILL BE ASKED ABOUT THE INCIDENT WHICH BROUGHT YOU HERE TODAY. PLEASE BE PREPARED TO DISCUSS THE INCIDENT, PLUS ANY PRIOR HISTORY, IF APPLICABLE.

GENERAL INSTRUCTIONS
TEMPORARY RESTRAINING ORDERS

COMPLAINT

FIRST ROW: Check off TRO box

SECOND ROW: Must check off box for Superior Court or Municipal.

- If Municipal**,** which town? Add in town name.
- **NOTE: Matter can be brought where plaintiff resides, where Defendant resides, where Plaintiff is sheltered or where incident took place.**

DEFENDANT IDENTIFIERS: Fill in as much information as possible. This is needed if someone else has to serve Defendant or to verify a warrant. Also needed to input into FACTS, especially dates of birth. Ask if Plaintiff has a recent photograph of defendant.

STORY: Fill in the date (A*0N*@) and the time (A*AT*@), the offense and what Def. did (the*ABY*@)

- **EX: A*ON* 5/18/01, *AT* 9pm, Def assaulted Plf *BY* hitting her in the face with a fist@ Give as much detail as possible and note injuries or pain.**

CRIMINAL OFFENSE BOXES: check off <u>all</u> that apply; give Defendant notice (due process).

#1: PRIOR HISTORY: detail other incidents, even if not reported; be sure to check box. For example, A6/99, Def broke plf wrist; called work every day this month@ **(NOTE: put prior docket numbers in # 3)**

#2 CRIMINAL HISTORY: Check for SBI number, check for warrants, check central registry

#3 PRIOR OR PENDING MATTERS: fill in with court, dates, dockets numbers where available

#4 CRIMINAL COMPLAINT: where possible, fill in charges and complainant

#5 WEAPONS – fill in if weapons were removed with number of weapons and type
WEAPON is anything readily capable of lethal use or of inflicting serious bodily injury
ARREST of defendant – check box

#6 MORE BOXES: check off the relationship; for (former) household member, plf must be 18.

#7 CHILDREN: list children in common only; **if relationship criteria (#6) is coparents, make sure the children are listed**, no matter where they live and no matter their age.

#8 FAMILY RELATIONSHIP - does not change the jurisdiction of PDVA; put plaintiff first so if Plf is mother and def is son, write Amother/son."

CERTIFICATION: plaintiff must sign and date
If using e-TRO, have Plaintiff sign after printing

ORDER

*****NOTE: DEFENDANT=S RELIEF IS FIRST*****

TOP OF FORM: Make sure Defendant=s name appears on all pages

PART I RELIEF *(CAN ARREST FOR VIOLATION OF THIS SECTION)*

#1-13 IMPORTANT BOXES: There are three columns on left side of the Order.

- **TRO column shows what is <u>REQUESTED</u> in the Temporary Order**
- **FRO column shows what is <u>REQUESTED</u> at the Final hearing (ex - child support)**
- ******<u>*GRANTED*</u>*** column shows what is <u>*GRANTED*</u> in the *TEMPORARY ORDER* ONLY * GRANTED column must be CHECKED for the Order to be enforceable.**

BE SURE TO CHECK ALL APPROPRIATE BOXES

#3 PLACES: check off home and residence boxes but fill in actual address only if <u>known</u> to Defendant; if confidential, write confidential.

#4,5,6: OTHERS: Fill in names and relationship of people <u>known</u> to def

#7 EMERGENT MONEY: Be very specific when this is used; exact amount and when and how paid

#8, 9 EVALUATIONS AND TREATMENT: Also be very specific—where, when and who pays

#10 WEAPONS POSSESSION: This section precludes defendant from POSSESSING weapons only; includes firearms and weapons, purchasing card and id. card; note Ammunition is not a weapons pursuant to N.J.S.A. 2C:39-1r; fill in weapons other than firearms in space provided.

NOTE: With the e-TRO, once this box is checked, the line must be filled in with something; fill in the specifics, or a general statement such as “all weapons.”

#11 EXCLUSIVE POSSESSION: if checked, something must be written; if defendant knows the address, fill in address; if defendant does not know address, fill in “plaintiff’s residence.”

#12 CUSTODY: list children in common; need not list other children, esp. where defendant is not parent of that child.

#13 OTHER RELIEF: this is the section where defendant can be arrested so use this sparingly; can by used to require return of passports or other papers; house or car keys, etc.

LAW ENFORCEMENT: specify which police department (if known), to accompany defendant to a specific place to retrieve clothing and toiletries (or other specific item(s)), once for a limited time (such as 15 minutes).

NOTE ON BOTTOM OF PAGE: a violation can result in arrest and incarceration; only a court can change the Order.

WARRANT: requires that a WRITTEN INVENTORY of items seized be sent to family court

PART II RELIEF *(Must file Affidavit or Motion in Superior Court for violation of this section)*

AGAIN NOTE **DEFENDANT** INFORMATION IS FIRST *

#1-3 MORE BOXES: SEE ABOVE. Here, it is important to fill in, if possible, what pla wants at the Final, so def knows what to prepare. Example: risk assessment; child support; medical insurance; car insurance

PERSONAL PROPERTY: think possession of car, house or car keys, a pet, passports

COMMENTS: This area can be used to continue the story from the first page or advise of special circumstances, such as special needs child

PAGE 4:

- **If TRO denied: check off correct box. If Municipal: check off ATRO DENIED BY MUNICIPAL COURT.@ Order must still be <u>signed</u> and sent to Family Court immediately; Plaintiff can go to Superior Court next day and renew request.**
- **If TRO is granted: check that box, <u>sign</u>, check Box to schedule Final hearing AND fill in NOTICE TO APPEAR at final hearing with date, time and place**

NEW BOX:** IS AN INTERPRETER NEEDED?

SERVICE: Fill in for Plaintiff.

- **If Municipal court, FAX TRO TO FAMILY COURT IMMEDIATELY, even if both parties not yet served.** Superior Court needs time to put info into the computer. If Defendant needs to be served elsewhere, issuing court must fax to the law enforcement agency where defendant can be served.
- **Service of TRO on defendant must also be FAXED to family court immediately, no matter who serves it.** If unable to serve immediately, fax order to Superior Court and refax page 4 later with service info whenever Def is served. TRO must also be faxed to the town where Defendant lives for service, if different.

NOTE: SERVICE OF <u>FRO</u> B must also fax proof of service of FRO to Superior Court for entry into Central Registry. Fill in date and department that served (page 4)

New Jersey Domestic Violence Civil Complaint and Temporary Restraining Order

☐ TRO ☐ Amended TRO

N.J.S.A. 2C:25-17 *et seq.*

☐ Superior Court, Chancery Division, Family Part, _____ County ☐ Municipal Court of _____

DOCKET NUMBER FV -	POLICE CASE #
IN THE MATTER OF PLAINTIFF (VICTIM)	PLAINTIFF'S SEX ☐ MALE ☐ FEMALE / PLAINTIFF'S DATE OF BIRTH

DEFENDANT INFORMATION	LAST NAME	FIRST NAME	INITIAL	DATE OF BIRTH

AKA	DEFENDANT'S SOCIAL SECURITY NUMBER

HOME ADDRESS	CITY	STATE	ZIP	HOME PHONE NUMBER ( )	WORK PHONE NUMBER ( )

EMPLOYER	WORK ADDRESS	DEFENDANT'S SEX ☐ MALE ☐ FEMALE

HAIR COLOR	EYE COLOR	HEIGHT	WEIGHT	RACE	SCARS, FACIAL HAIR, TATTOO(S), ETC.

The undersigned complains that said defendant did endanger plaintiff's life, health or well being (give specific facts regarding acts or threats of abuse and the date(s) and time(s) they occurred; specify any weapons):

ON	AT	BY

which constitute(s) the following criminal offenses(s): (Check all applicable boxes. Law Enforcement Officer: Attach *N.J.S.P.* UCR DV1 offense report(s)):

☐ HOMICIDE ☐ TERRORISTIC THREATS ☐ CRIMINAL RESTRAINT ☐ SEXUAL ASSAULT ☐ LEWDNESS ☐ BURGLARY ☐ HARASSMENT

☐ ASSAULT ☐ KIDNAPPING ☐ FALSE IMPRISONMENT ☐ CRIMINAL SEXUAL CONTACT ☐ CRIMINAL MISCHIEF ☐ CRIMINAL TRESPASS ☐ STALKING

1. ANY PRIOR HISTORY OF DOMESTIC VIOLENCE REPORTED OR UNREPORTED? IF YES, EXPLAIN: ☐ YES ☐ NO

2. DOES DEFENDANT HAVE A CRIMINAL HISTORY? (IF YES, ATTACH CCH SUMMARY) ☐ YES ☐ NO

3. ANY PRIOR OR PENDING COURT PROCEEDINGS INVOLVING PARTIES? (IF YES, ENTER DOCKET NUMBER, COURT, COUNTY, STATE) ☐ YES ☐ NO

4, HAS A CRIMINAL COMPLAINT BEEN FILED IN THIS MATTER? (IF YES, ENTER DATE, DOCKET NUMBER, COURT, COUNTY, STATE) ☐ YES ☐ NO

5, IF LAW ENFORCEMENT OFFICERS RESPONDED TO A DOMESTIC VIOLENCE CALL:
WERE WEAPONS SEIZED? IF YES, DESCRIBE ☐ YES ☐ NO WAS DEFENDANT ARRESTED? IF YES, DESCRIBE ☐ YES ☐ NO

6. (A) THE PLAINTIFF AND DEFENDANT ARE 18 YEARS OLD OR OLDER OR EMANCIPATED AND ARE ☐ MARRIED ☐ DIVORCED OR ☐ PRESENT HOUSEHOLD MEMBER ☐ FORMER HOUSEHOLD MEMBER **OR**

(B) THE DEFENDANT IS 18 YEARS OLD OR OLDER OR EMANCIPATED and PLAINTIFF AND DEFENDANT ARE ☐ UNMARRIED ☐ CO-PARENTS ☐ EXPECTANT PARENTS **OR** ☐ PLAINTIFF AND DEFENDANT HAVE HAD A DATING RELATIONSHIP

7. WHERE APPROPRIATE LIST CHILDREN , IF ANY (INCLUDE NAME, SEX, DATE OF BIRTH, PERSON WITH WHOM CHILD RESIDES)

8. THE PLAINTIFF AND DEFENDANT: ☐ PRESENTLY; ☐ PREVIOUSLY; ☐ NEVER: RESIDED TOGETHER
☐ FAMILY RELATIONSHIP: _____ (SPECIFY)

CERTIFICATION

I certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

DATE _____ SIGNATURE OF PLAINTIFF _____

DOCKET NUMBER FV -	DEFENDANT'S NAME

PART 1 - RELIEF - Instructions: Relief sought by plaintiff

DEFENDANT:

	TRO	FRO	GRANTED	
1.	☐	N / A	☐	You are prohibited from returning to the scene of violence.
2.	☐	☐	☐	You are prohibited from future acts of domestic violence.
3.	☐	☐	☐	You are barred from the following locations: ☐ RESIDENCE(S) OF PLAINTIFF ☐ PLACE(S) OF EMPLOYMENT OF PLAINTIFF
				☐ OTHER (ONLY LIST ADDRESSES KNOWN TO DEFENDANT): _____
4.	☐	☐	☐	You are prohibited from having **any** oral, written, personal, electronic, or other form of contact or communication with Plaintiff.
	☐	☐	☐	OTHER(S): _____
5.	☐	☐	☐	You are prohibited from making or causing anyone else to make harassing communications to: Plaintiff
	☐	☐	☐	OTHER(S) - SAME AS ITEM 4 ABOVE OR LIST NAMES: _____
6.	☐	☐	☐	You are prohibited from stalking, following or threatening to harm, stalk or follow: Plaintiff
	☐	☐	☐	OTHER(S) - SAME AS ITEM 4 ABOVE OR LIST NAMES: _____
7.				You must pay emergent monetary relief to (describe amount and method):
	☐	☐	☐	PLAINTIFF: _____
	☐	☐	☐	DEPENDANTS: _____
8.	☐	☐	☐	You must be subject to intake monitoring of conditions and restraints: _____
	☐	☐	☐	Other (evaluations or treatment - describe): _____
9.	☐	☐	☐	Psychiatric evaluation: _____
10.	☐	☐	☐	**Prohibition Against Possession of Weapons:** You are prohibited from possessing **any and all firearms or other weapons** and must immediately surrender these firearms, weapons, permit(s) to carry, application(s) to purchase firearms and firearms purchaser ID card to the officer serving this Court Order: Failure to do so may result in your arrest and incarceration.

PLAINTIFF:

11.	☐	☐	☐	You are granted exclusive possession of (list residence or alternate housing only if specifically known to defendant):
12.	☐	☐	☐	You are granted temporary custody of: _____
13.	☐	☐	☐	Other relief for - Plaintiff: _____
	☐	☐	☐	Other relief for - Children: _____

LAW ENFORCEMENT OFFICER:

You are to accompany to scene, residence, shared place of business, other (indicate address, time, duration and purpose):

☐	☐	☐	Plaintiff: _____
☐	☐	☐	Defendant: _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

DOCKET NUMBER FV -	DEFENDANT'S NAME

WARRANT TO SEARCH FOR AND TO SEIZE WEAPONS FOR SAFEKEEPING

☐ **To any law enforcement officer having jurisdiction -** this Order shall serve as a warrant to search for and to seize any issued permit to carry a firearm, application to purchase a firearm and firearms purchaser identification card issued to the defendant and the following firearm(s) or other weapon(s):

1. **You are hereby commanded** to search for the above described weapons and/or permits to carry a firearm, application to purchase a firearm and firearms purchaser identification card and to serve a copy of this Order upon the person at the premises or location described as:

2. **You are hereby ordered** in the event you seize any of the above described weapons, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person to have a copy of this Order together with such receipt in or upon the said structure from which the property was taken.

3. **You are authorized** to execute this Order immediately or as soon thereafter as is practicable:

☐ ANYTIME ☐ OTHER: _____

4. **You are further ordered**, after the execution of this Order, to promptly provide the Court with a written inventory of the property seized per this Order.

PART II - RELIEF DEFENDANT:

	TRO	FRO	GRANTED	
1.	☐	☐	☐	No parenting time / visitation until further ordered;
	☐	☐	☐	Parenting time / visitation pursuant to F _____ suspended until further order:
	☐	☐	☐	Parenting time / visitation permitted as follows:
2.	☐	☐	☐	Risk assessment ordered (specify by whom, any requirements, dates): _____
3.				You must provide compensation as follows:
	☐	☐	☐	Emergent support for plaintiff: _____
	☐	☐	☐	For dependent(s): _____
	N / A	☐	☐	Ongoing support for plaintiff: _____
	N / A	☐	☐	For dependent(s): _____
	☐	☐	☐	Compensatory damages to plaintiff: _____
	N / A	☐	☐	Punitive damages to plaintiff: _____
	N / A	☐	☐	To Third Party(ies) (describe): _____
	☐	☐	☐	Medical coverage for plaintiff: _____
				For dependent(s): _____
	☐	☐	☐	☐ Rent ☐ Mortgage payments (specify amount(s) and recipient(s)): _____
	☐	☐	☐	You must participate in a batterers intervention program: _____
	☐	☐	☐	You are granted temporary possession of the following personal property (describe): _____

PART II - RELIEF PLAINTIFF:

☐ ☐ ☐ You are granted temporary possession of the following personal property (describe): _____

COMMENTS:

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

DOCKET NUMBER FV -	DEFENDANT'S NAME

☐ **TRO denied**. Complaint dismissed by Family Part.

☐ **TRO denied by Municipal Court**, forwarded to Family Part for administrative dismissal, and plaintiff advised of right to file new complaint in Superior Court, Family Division.

☐ **TRO granted**. The Court has established jurisdiction over the subject matter and the parties pursuant to *N.J.S.A.* 2C:25-17 et seq., and has found good cause that a prima facie act of domestic violence has been established; that an immediate danger of domestic violence exists and that plaintiffs life, health and well being are endangered; that an emergency restraining Order is necessary pursuant to *R*. 5:7A(b) and *N.J.S.A.* 2C:25-28 to prevent the occurrence or recurrence of domestic violence and to search for and seize firearms and other weapons as indicated in this order.

DATE / TIME ☐ VIA TELEPHONE HONORABLE COURT / COUNTY

ALL LAW ENFORCEMENT OFFICERS WILL SERVE AND FULLY ENFORCE THIS ORDER

This *ex parte* Domestic Violence Complaint and Temporary Restraining Order meets the criteria of the federal Violence Against Women Act for enforcement outside of the State of New Jersey upon verification of service of defendant. 18 *U.S.C.A*. 2265 & 2266

THIS ORDER SHALL REMAIN IN EFFECT UNTIL FURTHER ORDER OF THE COURT AND SERVICE OF SAID ORDER ON THE DEFENDANT

NOTICE TO APPEAR TO PLAINTIFF AND DEFENDANT

1. ☐ Both the plaintiff and defendant are ordered to appear for a final hearing on (date) _____ at (time) _____ at the Superior Court, Chancery Division, Family Part, _____ County, located at (address) _____

Note: You must bring financial information including pay stubs, insurance information, bills and mortgage receipts with you to Court.

2. ☐ The final hearing in this matter shall not be scheduled until: _____

3. ☐ Interpreter needed. Language: _____

Upon satisfaction of the above-noted conditions notify the Court immediately so that a final hearing date may be set.

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Superior Court. The named defendant cannot have any contact with the plaintiff without permission of the Court.

NOTICE TO DEFENDANT

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, applications or identification cards may constitute criminal contempt pursuant to *N.J.S.A.* 2C:29-9(b), and may also constitute violations of other state and federal laws which may result in your arrest and/or criminal prosecution. This may result in a jail sentence.

You have the right to immediately file an appeal of this temporary Order before the Superior Court, Chancery Division, Family Part, as indicated above and a hearing may be scheduled.

RETURN OF SERVICE

☐ Plaintiff was given a copy of the Complaint / TRO by:

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ I hereby certify that I served the within Complaint / TRO by delivering a copy to the defendant personally:

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ I hereby certify that I served the within Complaint / TRO by use of substituted service as follows: _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ Defendant could not be served (explain): _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

DEFENDANT MUST SIGN THIS STATEMENT: I hereby acknowledge the receipt of the restraining Order. I understand that pursuant to this Court Order, I am not to have any contact with the named plaintiff even if the plaintiff agrees to the contact or invites me onto the premises and that I may be arrested and prosecuted if I violate this Order.

SIGNATURE OF DEFENDANT TIME AND DATE

THE COURTHOUSE IS ACCESSIBLE TO THOSE WITH DISABILITIES. PLEASE NOTIFY THE COURT IF YOU REQUIRE ASSISTANCE.

DISTRIBUTION: FAMILY PART, PLAINTIFF, DEFENDANT, SHERIFF, OTHER _____

Family – Domestic Violence Hearing Officer Program Standards

Directive #16-01 December 14, 2001
Issued by: Richard J. Williams
Administrative Director

Attached are the Domestic Violence Hearing Officer Program Standards that have been approved by the Supreme Court. Part of our ongoing standardization effort in the Family Division, these standards were recommended by the Conference of Family Division Presiding Judges and endorsed by the Judicial Council.

Consistent with the approach that we have been taking in our standardization efforts, I would ask that you advise me in writing by February 15, 2002 that your vicinage is in compliance with these standards. For each of those standards that have not yet been fully implemented in your vicinage, please set out the steps you plan to take towards implementation and the date by which you anticipate the particular standards will be implemented.

Any questions regarding these DVHO Program Standards in their implementation may be directed to the AOC's Family Division at 609-984-7793.

DOMESTIC VIOLENCE HEARING OFFICER PROGRAM

The Supreme Court has adopted this set of Operating Standards for the Domestic Violence Hearing Officer Program. The standards and the accompanying commentary were developed and recommended by the Conferences of Family Division Managers and Family Presiding Judges. The standards are applicable to the program as implemented in all vicinages.

I. Standards/Best Practices -- Domestic Violence Case Processing

Domestic violence case processing standards/"best practices" are in essence set forth in the Domestic Violence Procedures Manual, as jointly promulgated by the Supreme Court and the Attorney General for use by courts and law enforcement personnel throughout the State. The standards set forth here are presented in the same narrative format, so that they are consistent with and can be inserted directly into the Procedures Manual.

II. Standards/Best Practices --Domestic Violence Hearing Officer (DVHO) Program

DVHO Standard # 1: Appointment

DVHOs shall be hired at the vicinage level in the same manner as all other Judiciary employees based on the qualifications of the position adopted by the Department of Personnel, supplemented in the "Note" section as set forth below. All successful candidates for the DVHO position prior to hearing any cases shall complete a training program approved by the Administrative Office of the Courts. The Training Committee of the Conference of Family Division Managers will develop the training program in coordination with the Judiciary's Chief of Training and Staff Development and in consultation with the DVHO Advisory Committee of the State Domestic Violence Working Group.

Qualifications for the DVHO position include: (1) A bachelor's degree in a behavioral or social science; and (2) three years of experience in the areas of domestic violence or family crisis. A masters degree or admission to the New Jersey Bar and one year of experience in Family Law (which shall include work involving domestic violence) may be substituted for one year of experience.

All future DVHO job announcements should include in the "Note" section the following language: "Awareness of the dynamics of domestic violence and its impact upon victims, families, and abusers is helpful."

The Training Committee of the Conference of Family Division Managers has developed statewide training for new Family staff and training for Family Team Leaders. The Training Committee will develop the curriculum for newly hired Domestic Violence Hearing Officers. In developing that curriculum, the Training Committee should coordinate with the Judiciary's Chief of Training and Staff Development and consult with the Domestic Violence Hearing Officer Advisory Committee of the State Domestic Violence Working Group (which includes representatives from the New Jersey Coalition for Battered Women, Division of Youth and Family Services, a Family Division Manager, Domestic Violence Hearing Officers, a Family Presiding Judge, and AOC Family Practice staff). The Conferences of Family Division Managers and Family Presiding Judges must review and approve the curriculum prior to its implementation.

DVHO Standard #2: Duties and Responsibilities

A. Domestic Violence Hearing Officers conduct hearings on requests for Temporary Restraining Orders. In doing so, a DVHO shall:

1. **Review all related case files involving the parties;**

2. **Inform Plaintiff about her/his legal rights and options, and about available protective services, including shelter care;**

3. **Explain to Plaintiff the domestic violence legal process and procedures;**

4. **Explain to Plaintiff that appearance before the Domestic Violence Hearing Officer is voluntary, and that no adverse inference shall be drawn if Plaintiff seeks to appear instead before a judge;**

5. **Take testimony and establish a record, including findings of fact concerning the basis for his/her recommendations;**

6. **Rule on the admissibility of evidence;**

7. **Draft a comprehensive, case-specific Temporary Restraining Order, where appropriate;**

8. **Forward the recommended Temporary Restraining Order for review and signature by a judge;**

9. **Make appropriate referrals to other agencies for assistance.**

10. **Inform Plaintiff of the right to a hearing *de novo* before a Superior Court Judge if the DVHO has recommended that a TRO not be granted.**

B. The DVHO will be expected to assume other similar duties in the Family Division when time allows. However, even in those counties in which conducting TRO hearings does not comprise the majority of the DVHO's time, such hearings shall take precedence over other duties assigned to the DVHO. Any other duties assigned to the DVHO must be consistent with the skills, abilities, and status of the DVHO position.

DVHO Standard # 3: Management Structure

A. The DVHO shall report to the Assistant Family Division Manager, and for legal consultation or case issues shall have access to the Family Division Presiding Judge or a judge designated by the Presiding Judge.

B. The DVHO should participate in relevant meetings and discussions in the vicinage held by the Presiding Judge, Division Manager, and Assistant Division Manager(s).

C. The DVHO should participate in the County Domestic Violence Working Group, and in other intra-court and interagency committees/groups at the state and local levels that are identified as appropriate by Family Division Management (e.g. Presiding Judge, Family Division Manager or Assistant Family Division Manager).

D. The DVHO should attend statewide DVHO meetings, which are to be called by the Family Division Manager who is designated to chair meetings of the DVHOs, and may also attend other training events identified and approved by Family Division Management, the SDVWG's DVHO Advisory Committee, and the AOC.

The regular statewide meetings of DVHOs will be scheduled at the direction of the Chair of the Conference of Family Presiding Judges, and will be chaired by the designated Family Division Manager. It is expected that there will be at least nine such meetings during 2001, with such meetings scheduled on a regular basis thereafter. It is also the expectation of the Conference of Family Presiding Judges that all DVHOs will be encouraged and permitted to attend all such statewide meetings. At the local level, the DVHO is expected to be an active member of the County Domestic Violence Working Group in order to contribute his/her expertise to the resolution of local and statewide issues related to the implementation of the Prevention of Domestic Violence Act.

DVHO Standard #4: Facilities and Staff Support

A. The DVHO should conduct the hearing in a hearing room specifically set up and designed to accommodate domestic violence proceedings.

Hearing rooms shall be equipped with a desk/bench for the DVHO, chairs for

the victim and witnesses, space for support staff and security, phone, and PC with access to FACTS, PROMIS/GAVEL, ACS, ACSES, as well probation, warrant, and jail information, and the Judiciary's InfoNet.[1]

B. DVHOs shall be provided appropriate security, consistent with and as reflected in the vicinage's security plan.

C. All hearings conducted by the DVHO shall be recorded and a log shall be maintained. A court staff member should be provided during hearings to operate the recording equipment, maintain the logs, take files to the judge for review and signature, and, when necessary, escort the victim to a courtroom or back to Intake.

D. DVHOs shall be provided with the current version of the Domestic Violence Reference Manual, which includes the Domestic Violence Procedures Manual. DVHOs also shall have regular access to the following:

1. **New Jersey Rules of Court;**
2. **New Jersey Rules of Evidence;**
3. **New Jersey Code of Criminal Justice;**
4. **New Jersey Law Journal and/or New Jersey Lawyer;**
5. **Family Division slip opinions, as well as any other slip opinions relating to domestic violence.**

<u>DVHO Standard #5: Jurisdiction</u>

A. DVHOs shall only hear requests for Temporary Restraining Orders made at the Family Division during regular court hours. Appearance before the DVHO is voluntary and a plaintiff may elect to appear before a judge instead. No adverse inferences shall be drawn from a plaintiff's election to appear before a judge.

B. The DVHO shall be governed by the New Jersey Prevention of Domestic Violence Act, New Jersey Court Rule 5:7A, the Domestic Violence Procedures Manual, and these Standards in making recommendations regarding the issuance of an initial Temporary Restraining Order and its specific provisions.

C. DVHOs may draft and recommend Amended Temporary Restraining Orders where only the Plaintiff appears and none of the exclusions listed in Section D below apply.

D. DVHOs shall not hear a particular matter if any of the following circumstances exist:

[1]Counties that cannot meet this standard immediately will be asked to develop a specific plan to meet the standard within a reasonable period of time.

1. **When a change in or suspension of an existing custody or visitation order is sought by plaintiff;**

2. **When there are cross-complaints, complex issues or circumstances, or pending or recently resolved cases involving the parties that make the matter "complex"; (this determination of "complexity" by the Hearing Officer is subject to the oversight of the Presiding Judge or Lead Domestic Violence Judge)**

3. **Where a party has submitted an application for dismissal;**

4. **When both parties are present;**

5. **When a TRO has been denied by the Municipal Court, and the Plaintiff appears at the Family Division for a hearing *de novo*;**

6. **When a conflict of interest or the appearance of impropriety would result.**

E. Other than the matters set forth in Section D above, all cases shall be brought to the attention of the DVHO, who can make referrals to the designated judge as necessary and appropriate.

F. The following provisions are applicable to cases involving the use or threatened use of weapons.

1. **When a domestic violence complaint is taken in a matter that involves the use or threatened use of a weapon, or where the defendant possesses or has access to a firearm or other weapon described in N.J.S.A. 2C:39-1r, this information should be noted on the complaint and transmittal form that will be attached to the other paperwork forwarded to the DVHO;**

2. **If the DVHO finds that good cause exists for the issuance of a TRO, the DVHO should proceed to review and check off those restraints and reliefs being recommended;**

3. **During the hearing, when the DVHO reaches the section of the TRO prohibiting weapons possession, and after having determined that there are weapons to be seized, the DVHO should ask for as detailed a description as possible concerning the type and number of weapons, and their specific location(s);**

4. If the DVHO determines that there is probable cause for seizure, the DVHO should note this on the record and then should:

a. Complete the weapons seizure affidavit form [Attachment] based on Plaintiff's testimony, including details about the weapon(s) to be seized and the likely location(s) of the weapon(s), as well as the basis for Plaintiff's belief that such weapons are in Defendant's possession or are accessible to Defendant;

b. Review the contents of the affidavit with Plaintiff of the record and have Plaintiff sign the affidavit; the DVHO should witness Plaintiff's signature;

c. Complete the warrant portion of the TRO with specificity regarding the weapon(s), location(s) of same, and any other instructions to law enforcement;

d. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and signature. The probable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information;

e. If the judge does not concur with the TRO as recommended, or wishes to take testimony directly from the victim, or if the DVHO finds no basis for the issuance of the TRO or a lack of probable cause for weapons seizure and Plaintiff requests a hearing *de novo* on either determination, the case should be handled as an excluded case and forwarded to the judge for a hearing *de novo*.

G. All recommendations made by the DVHO shall be reviewed by a Family Division Judge or other Superior Court Judge, as follows:

1. The Family Presiding Judge or a judge designated by the Presiding Judge immediately shall review all Temporary Restraining Orders recommended by the DVHO. If the judge finds the recommended TRO to be appropriate, he or she should sign the TRO. The fact that the matter was heard by a DVHO may be noted on the file but shall not appear on the TRO itself.

2. **A plaintiff who does not agree with the findings and/or recommendations of the DVHO shall be entitled to an immediate hearing *de novo* conducted by the Family Presiding Judge or a designated Family Division judge.**

3. **Copies of the signed TRO shall be provided to Plaintiff by the court or court staff, in accordance with local practice, before Plaintiff leaves the courthouse. Defendant shall be served a copy pursuant to N.J.S.A. 2C:25-17 et seq.**

The Domestic Violence Procedures Manual sets out the standard for the maximum amount of time that an individual should have to wait for a hearing. Every effort should be made for cases to be heard within one hour after the time the complaint was completed. The Domestic Violence Technical Assistance Team has examined this aspect of the process in every county and has made recommendations for improvement in those counties in which the amount of time a victim waits exceeds the standard.

Concern has been expressed that the DVHOs' caseloads will expand as a result of the specific authority to hear matters involving weapons, as set forth above. This will be monitored at DVHO meetings and will be brought to the attention to the Presiding Judges-Family Division Managers Domestic Violence Subcommittee, if necessary.

ATTACHMENT

AFFIDAVIT IN SUPPORT OF DOMESTIC VIOLENCE SEARCH WARRANT

I, _____ , having been duly sworn upon my oath according to the law, depose and say:

1.On _____, 200__, I was subjected to an act of Domestic Violence by the above defendant.

2. I allege that the defendant committed an act of Domestic Violence as described in the attached Complaint, such acts posing an imminent danger to my life, health or well-being.

3. I also believe that the defendant is in possession of a weapon(s) that I reasonably believe would expose me to a risk of serious bodily injury.

4. These weapon(s) consist of (be as specific as possible)_____
_____
_____
_____
_____ .

5. I am aware that the defendant possesses or has access to these weapons based upon (how the victim is aware of weapons)
_____
_____.

6. The defendant's weapons, noted in Item 4, are located at (be as specific as possible as to location of the weapons and owner of the premises, if not the defendant.)
_____
_____
_____
_____ .

7. I would request that the items in Item 4, as well as any other weapon that may be located by law enforcement at the location(s), be seized for safekeeping purposes. I would further request all of the defendant's permits to carry a firearm, firearms purchaser identification card, and any outstanding applications to purchase firearms be seized.

_____
Signature of Affiant

Oath administered and witnessed by:

_____
Hearing Officer

Date:_____

[Questions or comments regarding this Directive may be directed to (609) 984-4228.]

Directive # 2-06
[Supplements Directive #16-01]

TO: Assignment Judges

FROM: Philip S. Carchman

SUBJ: Standards for Backup Domestic Violence Hearing Officers

DATE: January 30, 2006

The Judicial Council at its December 8, 2005 meeting approved the attached set of Standards for Backup Domestic Violence Hearing Officers ("Backup DVHOs"). These Standards for Backup DVHOs supplement the Domestic Violence Hearing Officer Program Standards previously promulgated by Directive #16-01.

These Standards for Backup DVHOs authorize vicinages to designate an existing staff person as a Backup DVHO to function temporarily as a DVHO on a collateral, part-time basis when the DVHO is absent or otherwise unavailable. Any such designations are to be made by the Assignment Judge, with the Backup DVHO first to have completed the same training required of full-time Domestic Violence Hearing Officers.

Please feel free to contact Assistant Director Harry Cassidy at 609-984-4228 with any questions or for further information concerning the appointment and training of Backup DVHOs.

P.S.C.

attachment
cc: Chief Justice Deborah T. Poritz
Family Presiding Judges
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
Trial Court Administrators
Family Division Managers
Geraldine Washington, Chief, Family Practice Division
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

DOMESTIC VIOLENCE HEARING OFFICER (DVHO) PROGRAM

STANDARDS FOR BACKUP DOMESTIC VIOLENCE HEARING OFFICERS (BDVHOs)

Promulgated by Directive #2-06 as a Supplement to Directive #16-01

Purpose

The Domestic Violence Hearing Officer Program Standards approved by the Supreme Court established the procedures for appointing and training DVHOs and for the conduct of domestic violence proceedings before such Hearing Officers. The Standards are documented in Directive #16-01, dated December 14, 2001. The Backup DVHO Standards described authorize vicinages to designate a staff person to function temporarily as DVHO when the DVHO is absent for any reason. The use of a Backup DVHO may obviate the need for a judge to hear requests for a domestic violence restraining order when the DVHO is absent and thus provide more prompt responses to plaintiffs in these cases. Vicinages are not required to make such designations, but are permitted to do so.

BDVHO Standard # 1: Designation

Backup DVHOs shall be designated by the Assignment Judge or his/her designee following the candidate's completion of the training and approval process outlined herein. The candidate must be either an Administrative Specialist 4 or an Assistant Family Division Manager.

BDVHO Standard #2: Duties and Responsibilities

The duties and responsibilities of the BDVHO shall be the same as for the DVHO as set forth in DVHO Standard #2.

BDVHO Standard #3: Management Structure

The BDVHO shall report to the Assistant Family Division Manager, and for legal consultation or case issues shall have access to the Family Presiding Judge or another judge designated by the Presiding Judge. If the BDVHO is an Assistant Family Division Manager, he or she shall report to the Family Division Manager.

BDVHO Standard #4: Training Curriculum

All Backup DVHOs must complete the approved Domestic Violence Hearing Officer training curriculum prior to conducting hearings.

A prospective BDVHO shall be present and observe DVHO proceedings on requests for TROs with the vicinage mentor DVHO at a minimum of 30% of the

county's monthly DV caseload for the first month of training and will observe DVHO proceedings that involve weapons at a minimum of 20% of the county's monthly caseload of such cases. The BDVHO candidate shall also observe requests for TROs and FROs heard by vicinage Family Part Judges at a minimum of two days in his/her first month of training. The BDVHO shall also observe an existing DVHO in another vicinage for two days during this period. The BDVHO candidate is also required to meet with the DV Advisory Judge[1] at least once during this time at the convenience of the DV Advisory Judge. The length of time a candidate for the BDVHO position remains in training shall be determined in consultation with the vicinage's Family Presiding Judge, the state DV Advisory Judge, the Family Division Manager and the AOC Family Practice Division, and will depend upon the following:

a. Prior Domestic Violence training and experience;
b. Report from the Family Part Presiding Judge;
c. Report from the DV Advisory Judge;
d. Report from the mentor DVHO;
e. Report from vicinage DVHO.

After consultation with vicinage management and reports from the mentor DVHO and any other DVHO who may have observed the BDVHO, the DV Advisory Judge will make a determination as to that individual's ability to conduct hearings independently. If the determination is positive, the BDVHO may proceed to hear requests for TROs immediately upon the designation by the Assignment Judge or his/her designee.

Should the newly designated BDVHO require additional training based on the reports received, that training will be organized by AOC Family Practice Division for a length of time determined by the DV Advisory Judge.

BDVHO Standard #5: Conducting Hearings Under Supervision

When all parties agree that the BDVHO is ready to conduct hearings under the supervision of the existing DVHO, that additional training shall be no less than 10 cases.

BDVHO Standard #6: Conducting Hearings

In order to keep their skills current, the BDVHOs shall conduct (at a minimum) 10% of the monthly hearings of the county where they are assigned on an ongoing basis. The schedule shall be determined by the Family Division Manager in relation to the other duties of the BDVHO and the volume of domestic violence cases in the vicinage.

[1] The statewide Domestic Violence Advisory Judge is designated by the Administrative Director to provide technical assistance to vicinages in the management of their domestic violence programs. The current DV Advisory Judge is Judge Thomas Dilts, P.J.F.P., Somerset/Hunterdon/Warren Vicinage.

BDVHO Standard #7: Continued Training

BDVHOs shall have at least three days of continuing education/training per year. Information pertaining to training opportunities should be made available at the vicinage level and through the AOC Family Practice Division.

BDVHO Standard # 8: Compliance with Existing DVHO Standards

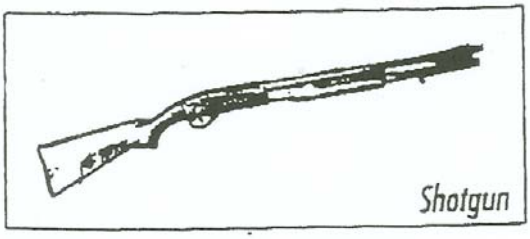
BDVHOs shall operate within the following existing DVHO Standards:

a. Standard # 4 - Facilities and Staff Support
b. Standard # 5 - Jurisdiction

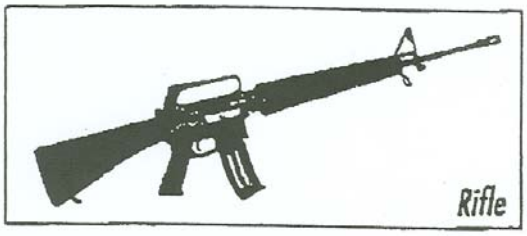
AID IN IDENTIFYING FIREARMS

Revolver

Pistol



Shotgun



Rifle

Submachine Gun

Division of Criminal Justice

LAPS

Training Guide
for
Victim Notification Form

In-Service Training
for
Police Officers

Prepared by the Prosecutors and Police Bureau & Office of Victim-Witness Advocacy Division of Criminal Justice

Introduction to Training Guide for *Victim Notification Form*

The *Victim Notification Form* has been revised to improve the recording of information. This will assist the victim, the law enforcement officer and the courts in providing notification to the victim. The revisions will be noted in this training guide. It is important to keep in mind the following:

> "Victims are the people behind crime statistics. They are the individuals who suffer the injuries inflicted by criminals ...."[1] A victim of crime is entitled to know when the offender is arrested or released from custody. This is the law in this State.
>
> "The Legislature finds and declares that it is in the public interest that victims involved in proceedings within the State's criminal justice system receive adequate notice and advice concerning critical stages of the criminal justice process to allow for participation and understanding."[2]

A copy of the revised form is included in this training guide. The revisions will be explained in this training guide.

To provide arrest and release information to the victim, the Attorney General has approved a revised *Victim Notification Form*. This form has been designed for quick entry of information with its "check the box and fill in the blank" format.

This form replaced the *Domestic Violence Victim's Rights Form* and includes the *Crime Victims' Bill of Rights* in English and in Spanish.[3] This form should be completed

- during the initial stages of the investigation of an indictable offense where there is a victim;
- when a defendant is arrested for an indictable criminal offense; or
- when a police officer responds to a domestic violence incident.

Note: **The information contained on this form is confidential. No information is to be released or given to the defendant, defense counsel or any person not having an absolute need to know.**

This information is confidential

For the safety of the victim, this form should not be kept in any file, which contains discoverable material, that is information that will be given to the defendant under the discovery rules of court.[4] This effort may prevent retaliation attempts by the accused.

Officers should not write any domestic violence victim contact information in their incident reports which may disclose the whereabouts of the victim. Incident reports are discoverable.

Confidentiality of this information is extremely important, especially in domestic violence cases where the victim has relocated to escape the abuser who may resort to threats or acts of violence to intimidate the victim. The officer must keep in mind the dynamics of domestic violence and the batterer's need to maintain power and control over the victim. A victim of domestic violence may be at a 75 percent greater risk of serious injury when the victim leaves the battering relationship.

For more information on the dynamics of domestic violence, please see the *Dynamics of Domestic Violence,* Training Module 1, issued by the Division of Criminal Justice in 1995.

The officer should stress to the victim the importance of keeping the police, the prosecutor's office or the courts informed of any changes in address or telephone numbers where the victim can be immediately contacted.

The officer also should point out to the victim information contained on the pink copy of the form, which includes important telephone numbers. The victim should be advised to contact the county Office of Victim-Witness Advocacy if he or she has any questions about the criminal justice process.

I. A Close Look at the Top Portion of the Form

A. The top portion of the form, shown on the next page, is to be completed by the officer who responds to the call or a person who assists the victim. This portion asks for the basic identifying data.

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date: _____
Date of Arrest: _____ Warrant/(Summons) No. _____ Charges: _____
Name of Police Officer or Court Staff: _____ Department/Agency: _____
• Telephone No. _____ • Fax No. _____

Defendant Information - In addition to defendant's name, list defendant's social security number, date of birth, or jail commitment number, if known.

- The law enforcement officer or court staff initiating this form should complete the identifying information portion of the form. Law enforcement officers should list badge number next to his or her name. The victim, who will receive the pink copy of this form, will use this information to contact the person preparing this form.

II. Checking the Boxes

This portion of the form is filled out by the responding officer or court personnel assisting the victim. This information will alert the notifying agency regarding the required timetable for notifying the victim of an arrest or release.

Check Appropriate Boxes (✓) _____
❑ Victim cannot be identified or is a government agency
❑ If defendant is charged with one of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking
❑ domestic violence: ❑ Violation of TRO/FRO; ❑ Other domestic violence offenses – *N.J.S.A.* 2C:25-19a
❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.
❑ Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

A. Victim cannot be identified or is a government agency

The officer should make reasonable efforts to identify the victim of the criminal offense at the time the form is completed. However, there may be instances when it is not possible to identify a victim. Examples when this box should be checked are:

- when there is damage to government property;

- when vacation property, whose owner has not been identified, is stolen or damaged; or
- When a murder victim's identity is unknown.

B. Immediate Notification Crimes

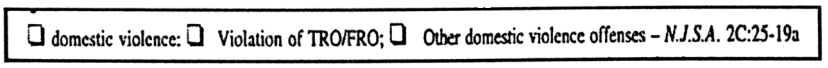
If one of the enumerated crimes has been committed, the responding officer must check the appropriate box. This signifies to the notifying agency as well as the victim, that immediate telephone notification must be initiated when the defendant is arrested or if the defendant is about to be released from custody.

Note: **The term "immediate telephone notification" should be interpreted strictly regardless of the time of day or night.**

There is a box entitled "domestic violence" which is illustrated below. This box is to be checked when the domestic violence act is violated. If the domestic violence incident is a violation of a restraining order, the "violation of TRO/FRO" box should be checked. If the domestic violence offense is one of the enumerated domestic violence crimes, the box "Other domestic violence offenses – *N.J.S.A.* 2C:25-19a" should be checked. All domestic violence offenses, regardless of classification, require immediate notification.

Criminal Offenses that activate the protections of the domestic violence act are:

Homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, and stalking.



Further down on the form, the victim will have the opportunity to choose not to be notified by telephone. However, the officer must explain to the victim that under the law, the victim is entitled to be notified immediately if one of these criminal offenses has been committed and the defendant is either arrested or is to be released from custody.

If the officer at the scene knows that because of the nature of the criminal offense the arrested defendant will be released on his or her own recognizance after being processed at headquarters, the officer should explain this procedure to the victim at this time. Since the defendant will not be held in custody, no bail will be set and no further notification regarding defendant's release will be made to the victim.

A Court Rule requires the release of individuals on their own recognizance for certai offenses. See *R.* 3:4-1.

C. Notification within 48 hours after arrest or pretrial release

If the criminal offense is not a domestic violence related offense or the indictable criminal offense is not one of the enumerated offenses requiring immediate notification, the victim is to be notified within 48 hours of the defendant's arrest or pretrial release.[5]

D. Time & Date of Court Hearing

Some counties have a Central Judicial Processing Court (CJP Court) where the defendant will be brought before the court, informed of the pending charges and bail will be set. In these jurisdictions, the officer should write in the time and date of the court hearing.

III. Victim Information

This information should be printed legibly either by the victim or by the responding officer. The victim should be instructed to give a name and telephone number where he or she can be reached. If the victim does not have a telephone, a number for a friend, neighbor or relative must be provided.

Procedure if victim is a juvenile

In the case of homicide, all surviving family members are considered "victims." The officer should obtain victim contact information from the closest relative (i.e., spouse first, the parents or adult children or siblings) or his/her designee.

If the victim is a juvenile, a name of a parent or guardian should be listed with the following notation: "for juvenile."

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

A. **ID No, if applicable**

(If your county has instituted an automated notification system (e.g. VINE), the victim should write in his or her personal identification number in this block. The automated notification program should be explained to the victim in accordance with county procedures.)

(If your county utilizes an "800" access number for victim notification so victims can find out the status of the defendant, the victim should enter his or her PIN in this block.)

B. **Address and Telephone Numbers**

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____

The officer should explain to the victim the importance of listing the victim's home and work addresses and telephone numbers and work hours. The victim should be instructed to inform his or her employer that the police might be calling to provide information about the case. If the victim resides in an apartment, the apartment number as well as the street address must be listed.

C. **Other Contact Information**

- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____

The victim must list at least one person who will know the victim's whereabouts if the victim cannot be contacted at the numbers given.

If the victim has any other means of contact, such as a pager or cellular telephone, the number should be listed in the "other information" block.

D. Victim Notification Preferences

• *I do not want to be notified by telephone when defendant is* ❑ *arrested or* ❑ *released on bail. Notification by mail is sufficient:* _____ _____
(Signature of victim) (Date)

In some cases, a victim may not want to be notified by telephone when the defendant is either arrested or about to be released from custody. If the victim does not want immediate notification, the victim should check the appropriate box and sign and date this portion of the form.

E. Domestic Violence Information

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.
❑ I want a civil restraining order; ❑ **I do not** want a civil restraining order at this time. _____
(Signature of victim)

***Note*: In Domestic Violence cases, this portion of the form must *be completed* even if the victim does not want a restraining order and even if no criminal charges are filed. This form should then be retained for police records only.**

The reference on the form to a "civil restraining order" means a temporary domestic violence restraining order.

In cases involving domestic violence, the officer must inform the victim of the domestic violence rights.[6] The victim's domestic violence rights are printed on the reverse side of the pink copy, which is always given to the victim.

The officer must ask the domestic violence victim if he or she wants a domestic violence civil restraining order. The officer should instruct the victim to check the appropriate box and to sign this portion of the form.

F. Distribution of Forms

This completes the responsibilities of the responding officer. The Victim Notification Forms is now ready to be distributed to the various agencies:

- White copy to correctional facility

  If the defendant was arrested at the time this form is completed, a copy of this form must accompany the defendant to the correctional facility

  If the defendant was not arrested at this time, the form should be held at the police department until the defendant is apprehended. Then the white copy should be forwarded to the correctional facility at the time the defendant is transported to the correctional facility.
- Canary copy to the police

  Pink copy to the victim

- A copy of this form should be faxed to the County Office of Victim-Witness Advocacy or the appropriate Family Division Court in accordance with county procedures. If no criminal complaint had been filed but the victim wants a domestic violence restraining order, the copy of this form should be faxed to the appropriate court.

  If both a criminal complaint and a temporary restraining order are filed, both the Office of Victim-Witness Advocacy and the Family Division Court should be faxed a copy of this notification form in accordance with county procedures.

IV. Notifying Agency Portion of Form

A. This portion of the form is to be completed by the agency, which notifies the victim when the defendant is either arrested, or about to be released from custody. In some cases, this notifying agency will be the police department; in some cases, it will be the county correctional facility or victim-witness office.

Note: *Some County Prosecutor's Offices may require additional distribution of this form.*

The instructor will note what your county procedures require

This notification procedure may vary from county to county.

For Use by Notifying Agency Only When Defendant Is Arrested or Released

☐ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

☐ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ ☐ Conditions of release - order attached

B. Where the arresting agency is not the same one that conducted the initial investigation or the one completing the top portion of the form, the arresting agency should notify the investigating agency of the arrest. If the defendant is to be incarcerated, a copy of this form should be submitted to the county correctional facility in accordance with county procedures.

Investigating agency's responsibility to notify victim

It is the investigating agency's responsibility to notify the victim in accordance with the criteria listed above.

C. **Let's look at some portions of this section in closer detail:**

- **Defendant released from custody (date) at (time). Reason for release**

  The officer inserts the date and time the defendant is released from custody and the reason for the release, such as "bail," etc.

- **Released by .... Conditions of release**

  The name of the officer and agency responsible for the release of the defendant is entered on this line. If there are any conditions for the release, that order is attached and this box is checked.

  An example of a condition of release could be when a defendant is released from custody with a restriction that the defendant not have any contact with the victim.

- Efforts made to contact victim

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
1.			

The notifying agency must make at least two attempts at separate times to contact the victim. These attempts should be documented in the spaces provided:

- **Additional action taken to notify the victim**

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

If the victim can not be located by calling the designated numbers but the notifying agency takes additional steps to locate the victim, that information should be entered on these lines with a check in the appropriate box.

Procedure when victim cannot be immediately located

In cases where immediate notification is required but attempts have failed, the notifying agency should request that the appropriate law enforcement agency where the victim resides attempt to notify the victim in person of defendant's release.

If the police are not able to notify the victim, the police should on the next business day, notify the Office of Victim-Witness Advocacy.[7]

- **Updated information attached**

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***
White Copy to Correctional Facility: Canary Copy to Police: Pink Copy to Victim: Fax Copy to Victim-Witness Office or Court (DCJ Rev. 2/00)

If a victim changes any contact information, this box should be checked and the information should be forwarded to the correctional facility if applicable and to the Office of Victim-Witness Advocacy.

V. Summary.

Victim notification is a vital function of law enforcement. In some cases, victims need to be reassured that police, prosecutors and the courts are taking every step possible under the law to protect them. It also is important that police inform victims that in many cases, defendants will be released from custody pending disposition of the criminal charges against them.[8]

Victims should be informed that if the defendant attempts to intimidate, threaten or harass them while the matter is pending that they should immediately contact the police.

---

[1] *Attorney General Standards to Ensure the Rights of Crime Victims* at iii (April 28, 1993)
[2] Notification Provided to Victims of Critical Events in Criminal Justice Process. L. 1994, c. 131 section 1, eff. Oct. 31, 1994, *N.J.S.A.* 52:4B-44
[3] *N.J.S.A.* 52:4B-36
[4] *R.* 3:13-3
[5] See Footnote 1, *supra*, at 2.2
[6] *N.J.S.A.* 2C:25-23
[7] See Footnote 1, *supra*, at 4
[8] *R.* 3:26-1(a)

VICTIM NOTIFICATION FORM ◆ *Confidential Information - Not to be Disclosed*

(Please Print or Type)

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date:

Date of Arrest:_____ Warrant/(Summons) No._____ Charges: _____

Name of Police Officer or Court Staff: _____ Department/Agency:

- Telephone No. _____ • Fax No. _____

Check Appropriate Boxes (✓) CHECK ALL BOXES THAT APPLY

❑ Victim cannot be identified or is a government agency

❑ If defendant is charged with any of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking, ❑ violation of domestic violence TRO/FRO; ❑ domestic violence offenses – *N.J.S.A.* 2C:25-19a (check appropriate boxes above or write in domestic violence offenses here): _____

_____

❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.

Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

❑ Domestic violence victim

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____
- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____

Non Domestic Violence Victims: ***I do not want to be notified by telephone when defendant is*** ❑ ***arrested or*** ❑ ***released on bail. Notification by mail is sufficient:*** _____ _____

(Signature of victim) (Date)

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.

❑ I want a civil restraining order; ❑ I do not want a civil restraining order at this time.

_____

(Signature of victim)

◆ **If defendant is to be incarcerated, a copy of this form must be delivered to the appropriate correctional institution**

For Use by Notifying Agency Only When Defendant is Arrested or Released

❑ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

❑ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ (Department/Agency) ❑ Conditions of release - order attached

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

_____

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***

White Copy to Correctional Facility: Canary Copy to Police; Pink Copy to Victim; Fax Copy to Victim-Witness Office or Court (DCJ Rev. 4/00)

VICTIM NOTIFICATION FORM ◆ *Confidential Information - Not to be Disclosed*

(Please Print or Type)

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date:

Date of Arrest:_____ Warrant/(Summons) No. Charges: _____

Name of Police Officer or Court Staff: _____ Department/Agency:

- Telephone No. _____ Fax No. _____

Check Appropriate Boxes (✓) _____

❑ Victim cannot be identified or is a government agency

❑ Domestic violence victim (check appropriate boxes below or write in offenses in space below)

❑ If defendant is charged with one of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking, ❑ violation of domestic violence TRO/FRO; ❑ other domestic violence offenses – *N.J.S.A.* 2C:25-19a (describe: _____

❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.

❑ Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____
- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____
- **Non Domestic Violence Victims:** ***I do not want to be notified by telephone when defendant is*** ❑ ***arrested or*** ❑ ***released on bail. Notification by mail is sufficient:*** _____ (Signature of victim) _____ (Date)

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.

❑ I want a civil restraining order; ❑ **I do not** want a civil restraining order at this time.

_____ (Signature of victim)

◆ **If defendant is to be incarcerated, a copy of this form must be delivered to the appropriate correctional institution**

For Use by Notifying Agency Only When Defendant is Arrested or Released

❑ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

❑ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ (Department/Agency) ❑ Conditions of release - order attached

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
1. _____	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

_____

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***

White Copy to Correctional Facility: Canary Copy to Police; Pink Copy to Victim; Fax Copy to Victim-Witness Office or Court (DCJ Rev. 4/00)

Family –Domestic Violence Procedures – Electronic Filing of Complaints and Temporary Restraining Orders ("E-TRO")

E-TRO – the project by which domestic violence complaints and temporary restraining orders may be filed electronically – operated on a pilot basis for nearly five years before expanded statewide in July 2007. The Supreme Court initially authorized the project in December 2002, with two expansions of the pilot thereafter. The Court's approval included relaxation of a number of Rules of Court for the pilot counties. By all measures the pilot test of E-TRO has been a success in all municipalities in which it has been implemented.

The Administrative Office of the Court's Family Practice Division, Information Technology Office, Automated Trial Court Services Unit, and Municipal Court Services Division collaborated in the development of this innovative program. The initiative and support of the pilot vicinages and municipalities have been invaluable.

The program provides an efficient means for filing domestic violence complaints and temporary restraining orders after normal court hours. E-TRO streamlines the procedures so that after hours, a police officer interviews the complainant at the police station, completing both the complaint and the proposed TRO at a computer terminal. The relaxed rules allow the police officer to enter the complainant's name on the complaint in lieu of the complainant's signature. The judge then takes sworn testimony by telephone. If the judge determines to issue the TRO, the judge directs the police

officer to enter the judge's name on the TRO electronically. The electronic TRO is immediately enforceable and may be served on the defendant. Police staff prints out and retains hard copies of the complaint and TRO and then transmits the documents to a server that is interfaced with the Judiciary's mainframe computer. The interface allows the complaint and TRO to be immediately available on the Domestic Violence Central Registry ("Central Registry") and entered in FACTS without the need for additional manual data entry. A Municipal Court or Superior Court judge thereafter will sign a confirmatory order. Thus, the E-TRO eliminates the need for the police officers to fax documents to the Family Division. The E-TRO also eliminates the need for Family Division staff to enter this faxed information into FACTS.

Statewide implementation of the E-TRO will enhance safety for domestic violence victims by having a typed order immediately included on the Central Registry and thereby available to law enforcement statewide. It also will increase efficiency and convenience for complainants, police, judges, and court staff in processing domestic violence complaints and TROs.

As noted above, the Court earlier relaxed a number of Rules of Court for the pilot counties. In approving E-TRO for statewide implementation, the Court now has relaxed those several Rules – Rules 1:4-4(c), 4:42-1(e) and 5:7A(b) – on a statewide basis. Attached is a copy of the Court's June 5, 2007 rule relaxation order. As noted in the order, these rule relaxations are pending development and recommendation of conforming rule amendments by the appropriate Practice Committees.

FAMILY AUTOMATED CASE TRACKING SYSTEM

*e*TRO

Addendum for capturing full incident description text

Administrative Office of the Courts
Automated Trial Court Systems Unit
April 2008

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

TABLE OF CONTENTS

INTRODUCTION 1
ABOUT THE INCIDENT DESCRIPTION FIELD 1

VIEWING AND PROCESSING e-TROs 3
eTRO INCIDENT FIELD AND AUDIT COPY 8

COPY INCIDENT DESCRIPTION 9

PASTING INCIDENT DESCRIPTION INTO CASE COMMENTS 15

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

INTRODUCTION

ABOUT THE INCIDENT DESCRIPTION FIELD

This addendum is a guide to capturing the full text of an incident description from the e-TRO incident description field when the text exceeds 250 characters. The Complaints and TROs that electronically transfer to the Family Automated Case Tracking System (FACTS) may have up to 600 characters in the incident description field. The incident description field on FACTS can only accept 250 characters. When the cases are docketed, the text which exceeds 250 characters is lost due to truncating.

The full eTRO should be printed out (an audit copy) with all 600 characters on a PC laser printer by using the mainframe print function during the docketing process.

I

VIEWING AND PROCESSING *eTROs*

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

VIEWING AND PROCESSING OF eTROs

Those personnel in Superior Court doing FV intake via the eTRO function will docket cases using the FV establish case interface. The ability to view these electronically transferred TROs is available via the internet. The ability to cross-reference them in FACTS will ensure the accurate transmission of data from police agencies to the Superior Court of New Jersey.

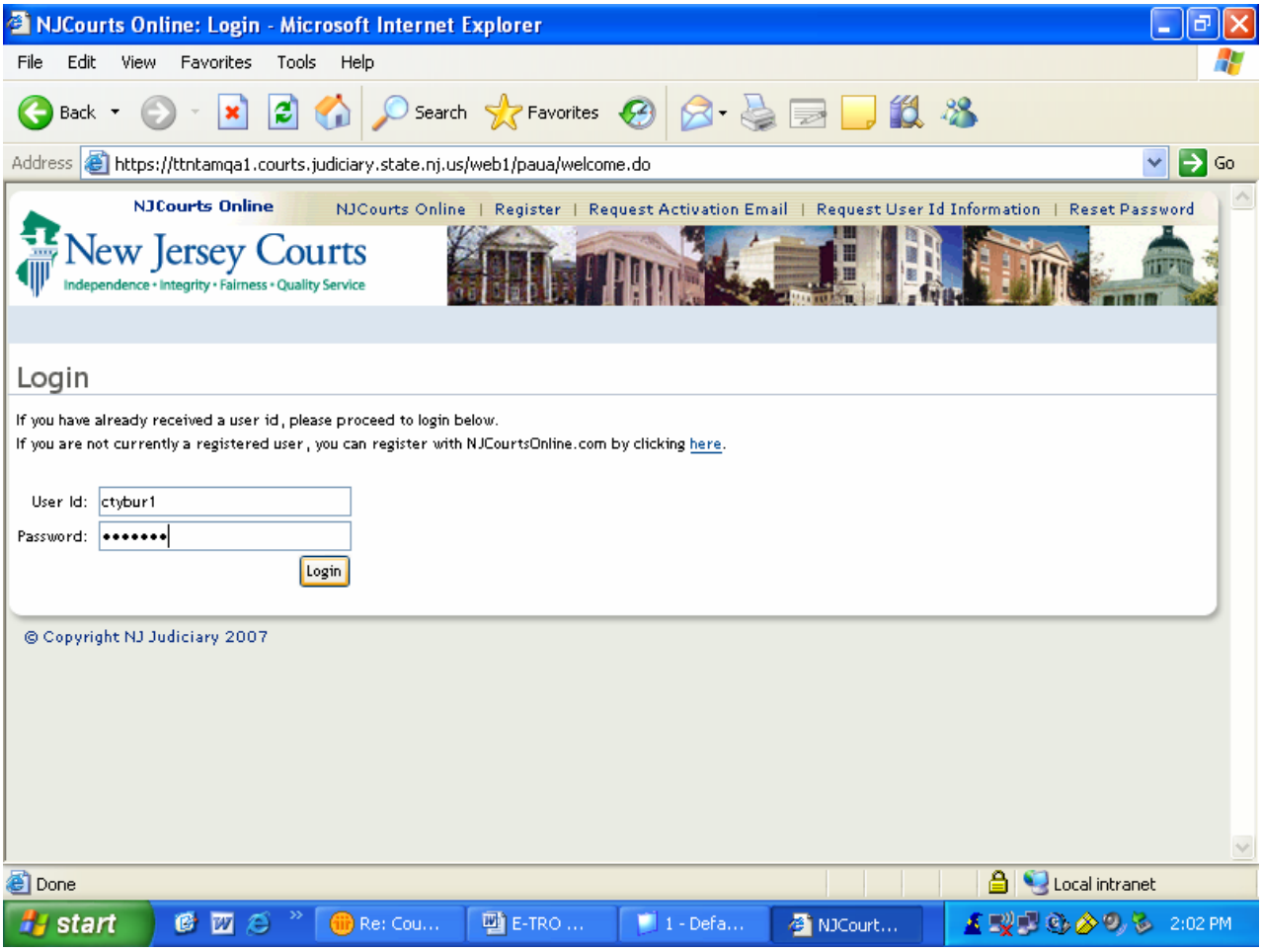
Data displayed includes a total list of transmitted eTROs within the county and then by issuing entities by municipality. Within each municipality list are individual case listings showing the issuing entity, the defendant and the plaintiff names, docket submission date, judge, service date and police case number if applicable.

To view eTROs issued, log on to the PAUA page on the internet to see those restraining orders that have been transmitted to Superior Court for docketing.

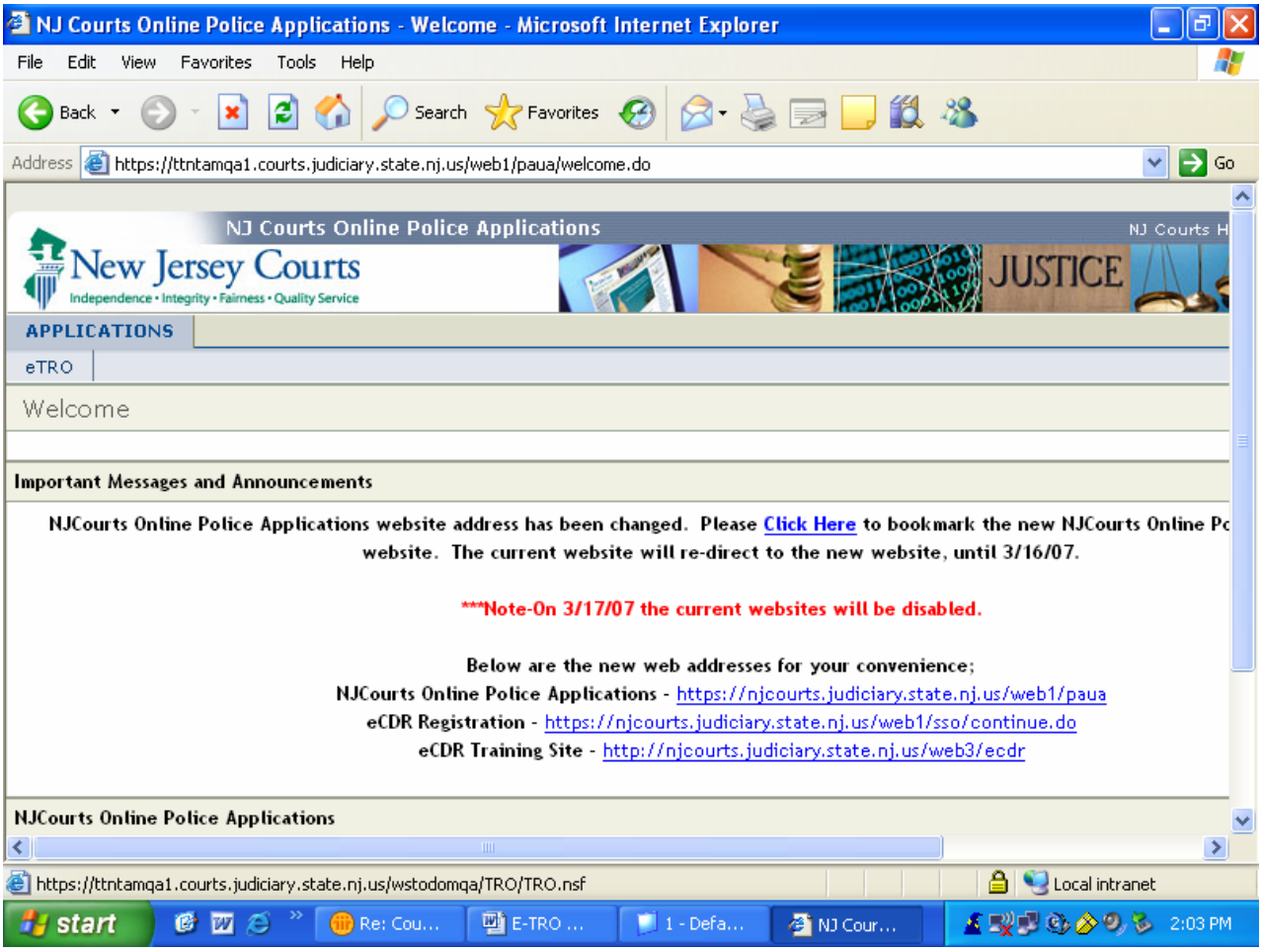
Prior to docketing each case, click on the case and open the complaint/tro and check the incident description field. If the incident description fills or exceeds half of the available area, highlight the text with your mouse and copy the text. It is suggested, but not required, that users paste the text into a new (blank) word document before docketing the case. Once the case is docketed, paste the full text of the incident description into the case comments in FACTS.

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

1) Log on to eTRO as you normally would.

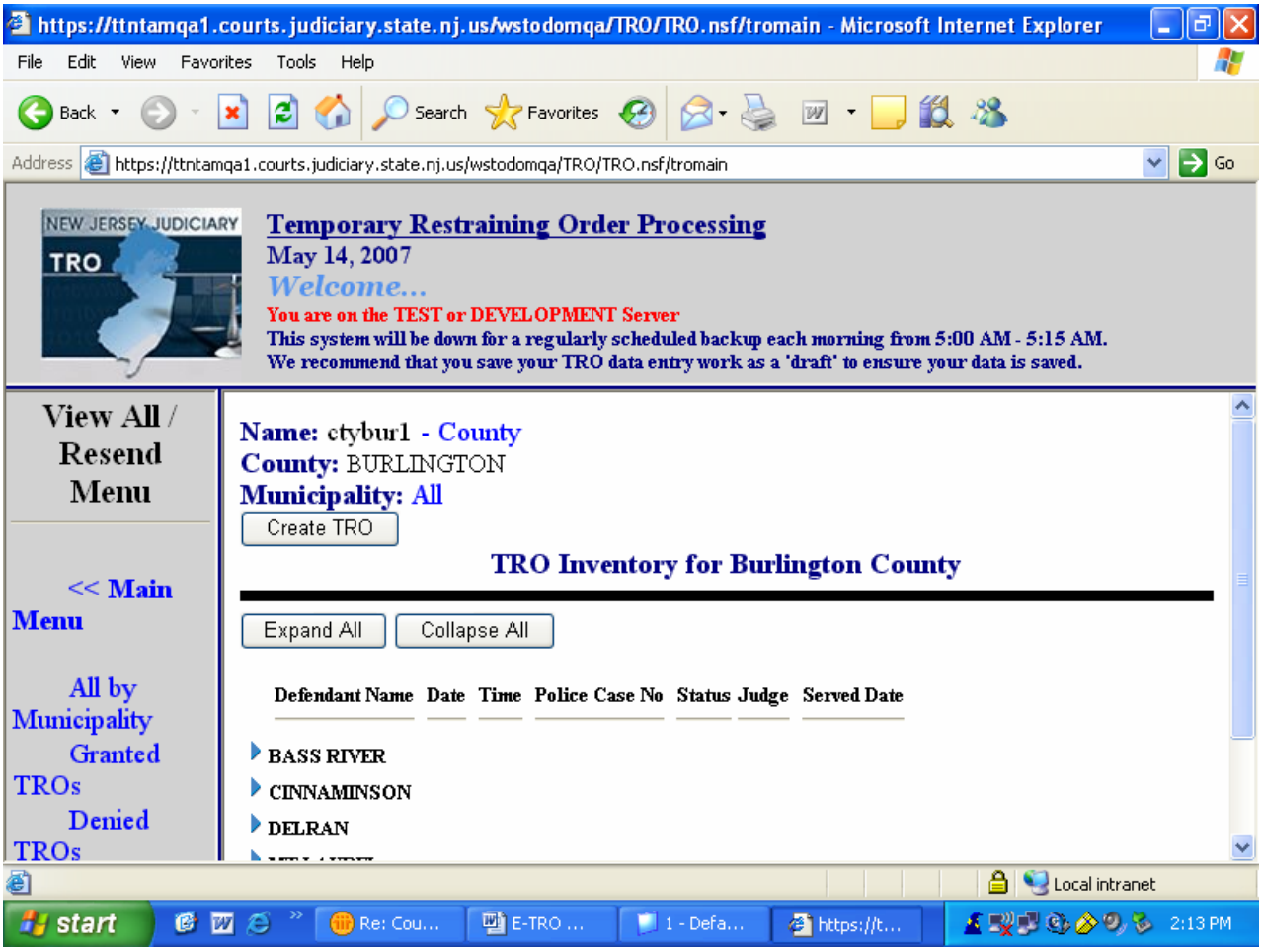


2) Click on the eTRO tab.



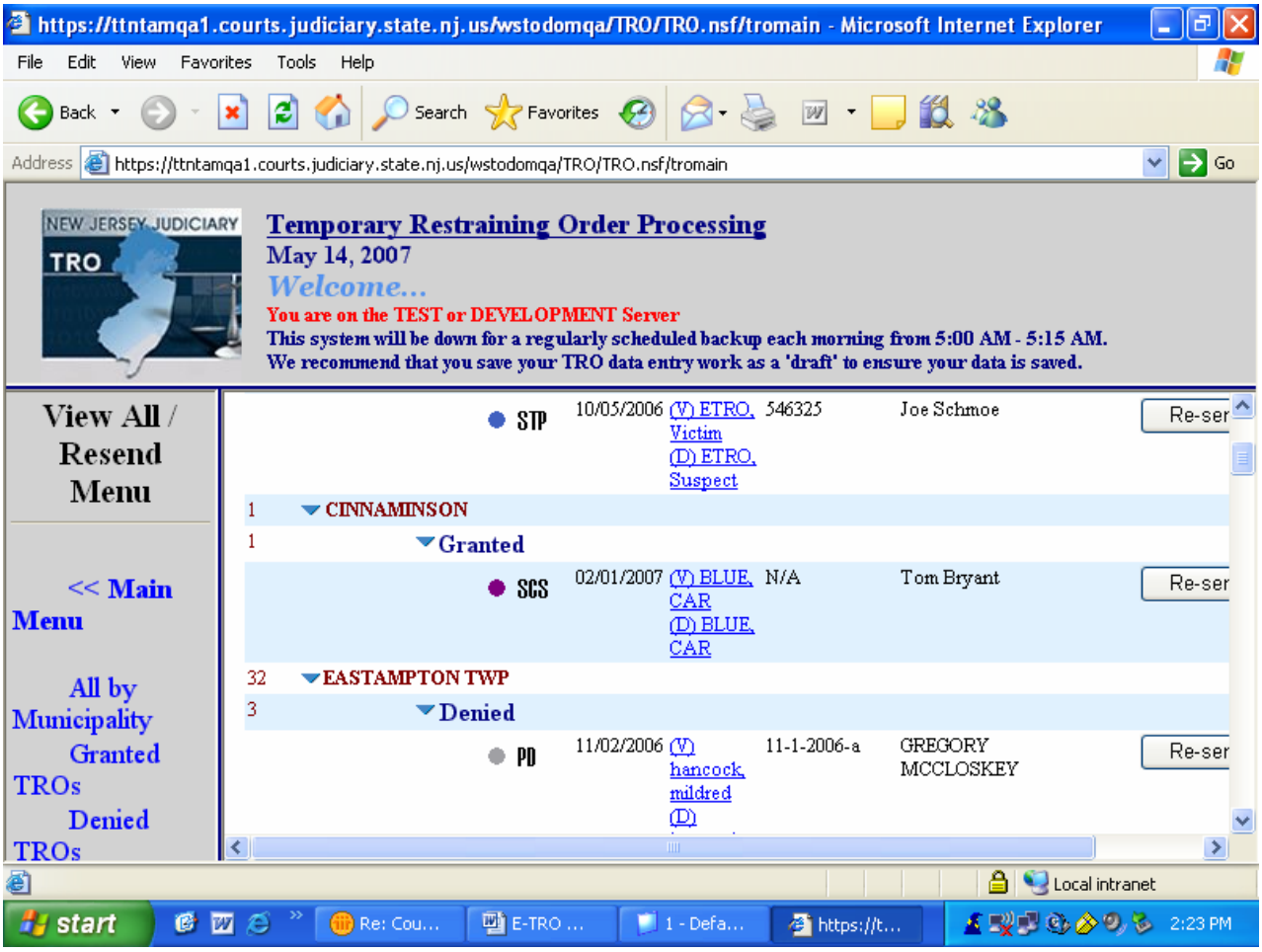
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

3) Use the “View All” menu item to display all TROs transmitted in your county.



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

4) Using the “Expand All” button will display all eTROs in your county.



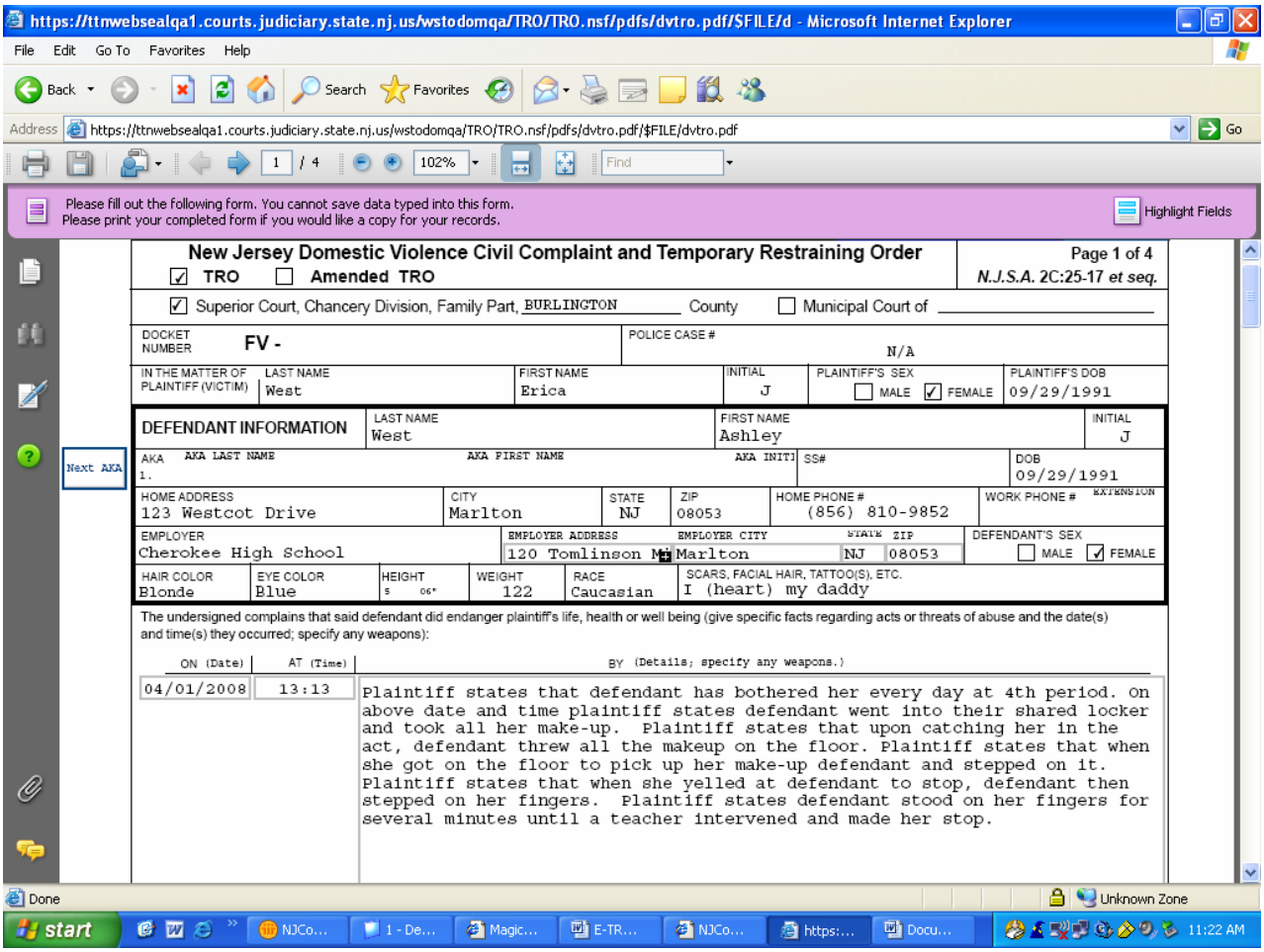
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

eTRO INCIDENT FIELD AND AUDIT COPY

An exact audit copy of the eTRO is needed.

5) Click on the party/case. This will launch Adobe Acrobat.
6) Once this is opened, look at the incident description field. If it fills half of the field or more, highlight the text and copy it onto your clipboard.
(See next section for detailed instructions on this process.)
7) You should then paste the text onto a blank word document to preserve it during the docking process.
(See next section for detailed instructions on this process.)
8) Click on a blank area of the document to remove highlighting.
9) Click on the printer icon and a hard copy of the e-TRO will print to your default printer.

This is the only chance to print an exact duplicate of the eTRO as issued by the agency entering the information.



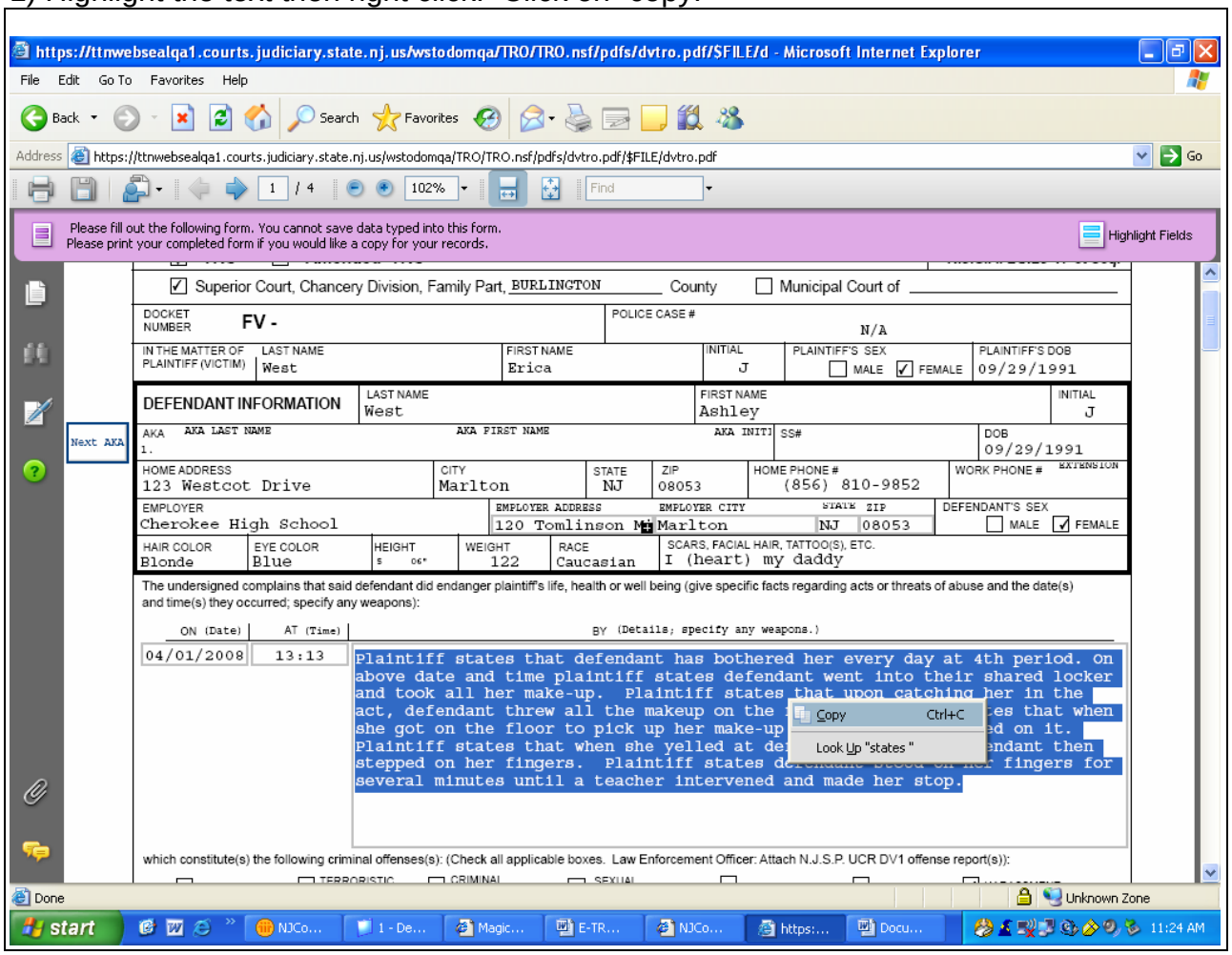
II

COPY AND PASTE

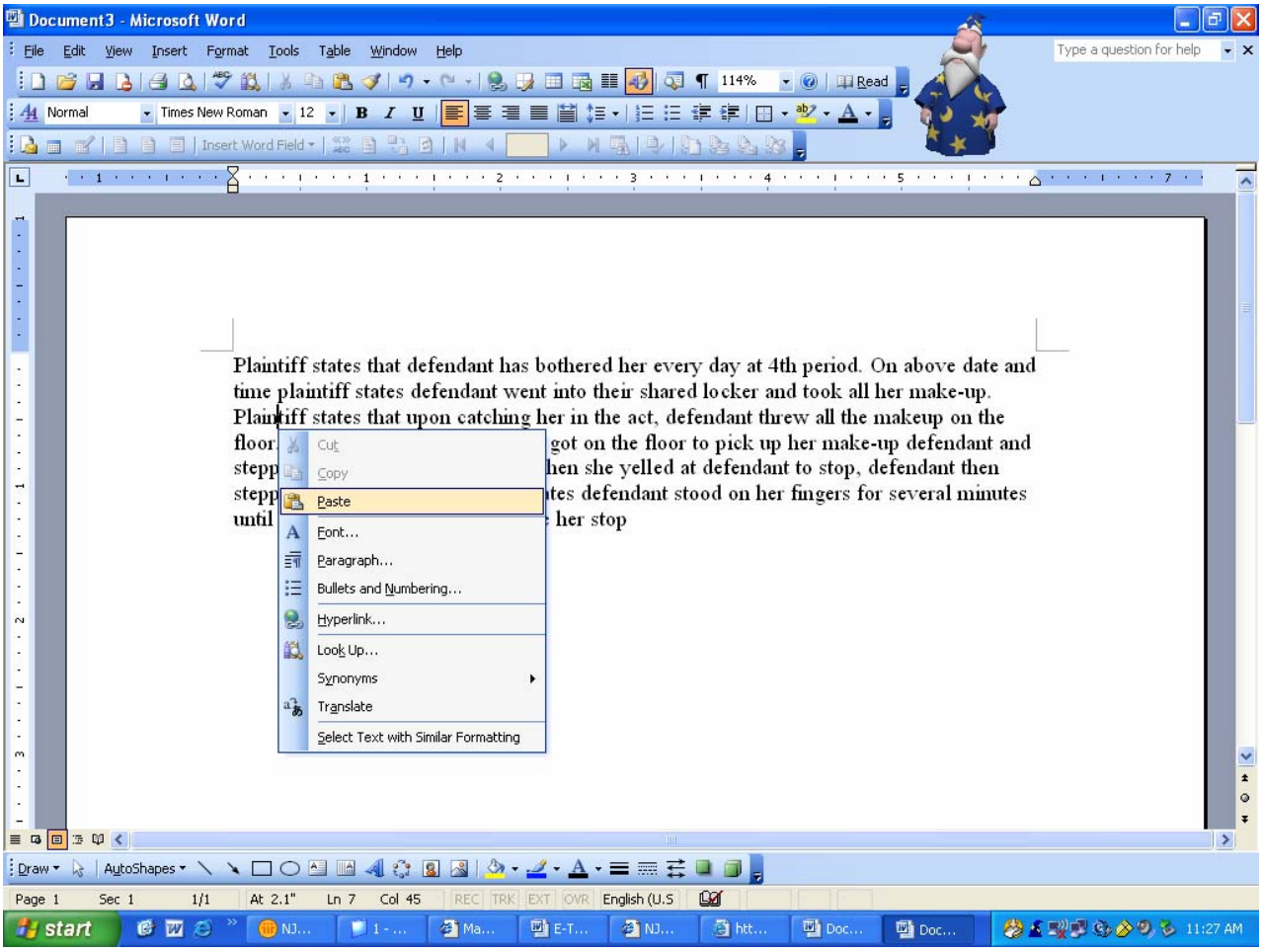
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

COPY

1) Highlight the text then right click. Click on “copy.”



2) Open a new (blank) word document and paste the text there for safe keeping during the docketing process.



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

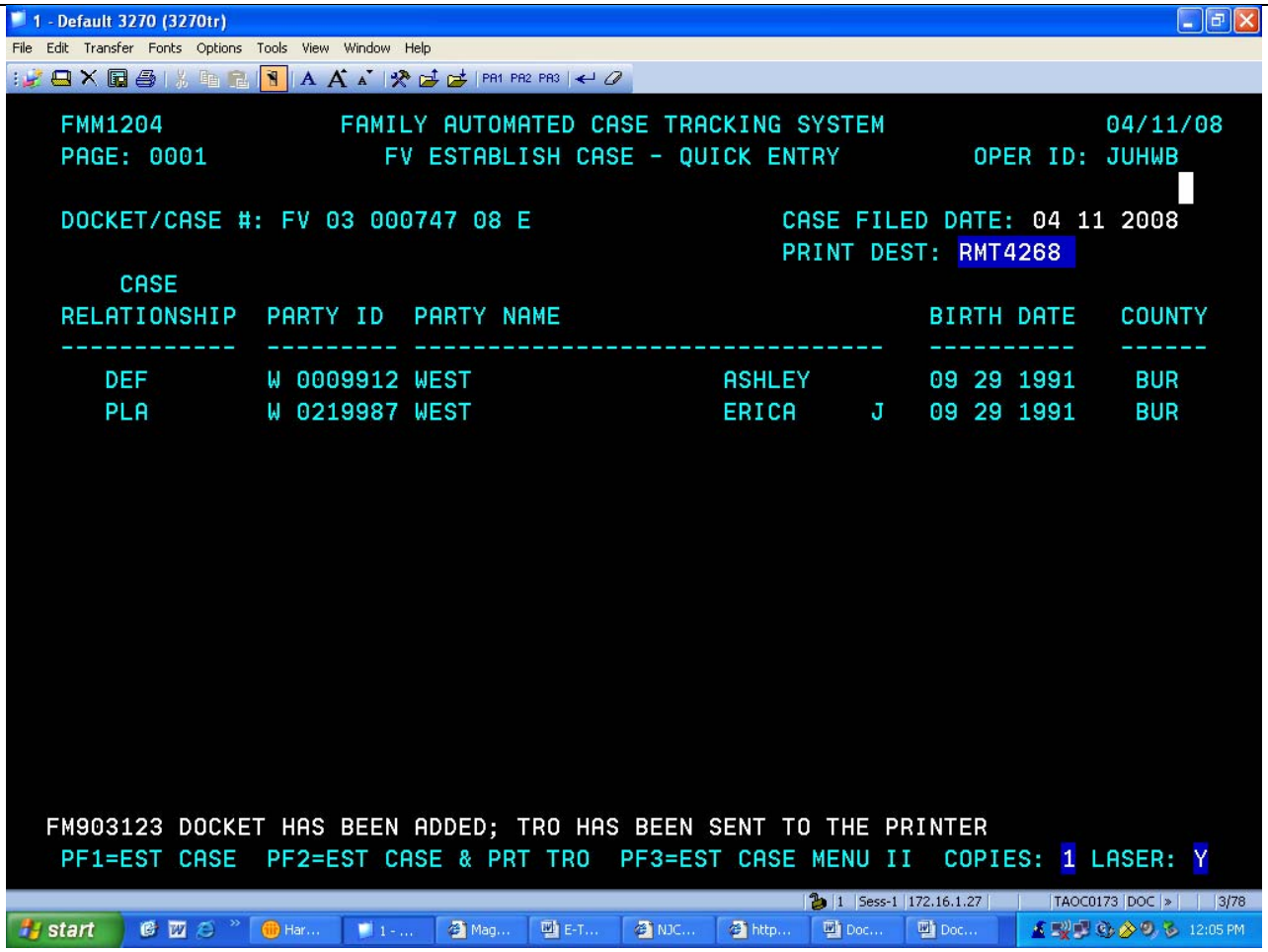
3) SELECT the party to be docketed on FACTS and DOCKET THE CASE.

```
FMM1201          FAMILY AUTOMATED CASE TRACKING SYSTEM                 04/11/08
PAGE: 0001          MUNICIPAL TRO LIST FOR BURLINGTON(TOTAL 5)          13:47
                                                                        PF

LAST NAME:                    FIRST NAME:       MIDDLE INIT:
-------------------------------------------------------------------------------  E
S  PARTY NAME                          BIRTH DATE     RACE      SEX   SERVICE DT  R
- ------------------------------  ----------  ----------- ---   ----------  R

  JONESBURY, JOHN                      01 07 1980  CAUCASIAN     M               E
  PHILLIPS, STEVE                      06 22 1957  CAUCASIAN     M
  BILLINGS, BILL                       09 03 1953  ALASKAN NAT   F               W
  LOUIS, SMITHERS                      10 15 1969  CAUCASIAN     M    10 12 2002
S WEST, ASHLEY                         09 29 1991  CAUCASIAN     F

FM906946 COUNTY/VENUE TRO SEARCH PERFORMED
PF1=FACTS PARTY SEARCH  PF2=ALL PARTIES  PF3=DROP  PF7=BACKWARD  PF8=FORWARD
      PF23=REFRESH   PF24=TRO SEARCH
```



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

Upon successfully establishing a new FV case on FACTS, the docket number will be displayed on the screen and the mainframe copy of the eTRO should be printed based upon the selection of PF2.

It is important to note that this print request will be the last time a FACTS user will be able to print the eTRO with the data exactly matching the content as it appears on the original TRO. All subsequent Complaint and/or TRO print requests will reflect any data changes made by Superior Court, if any.

NOTE: This print option will not be in the Adobe format as an exact audit copy of the complaint and eTRO, but the data will mirror that document. If an exact copy in all respects to the eTRO is needed, refer to this function in the beginning section of this addendum.

At this point, the case has been docketed on FACTS.

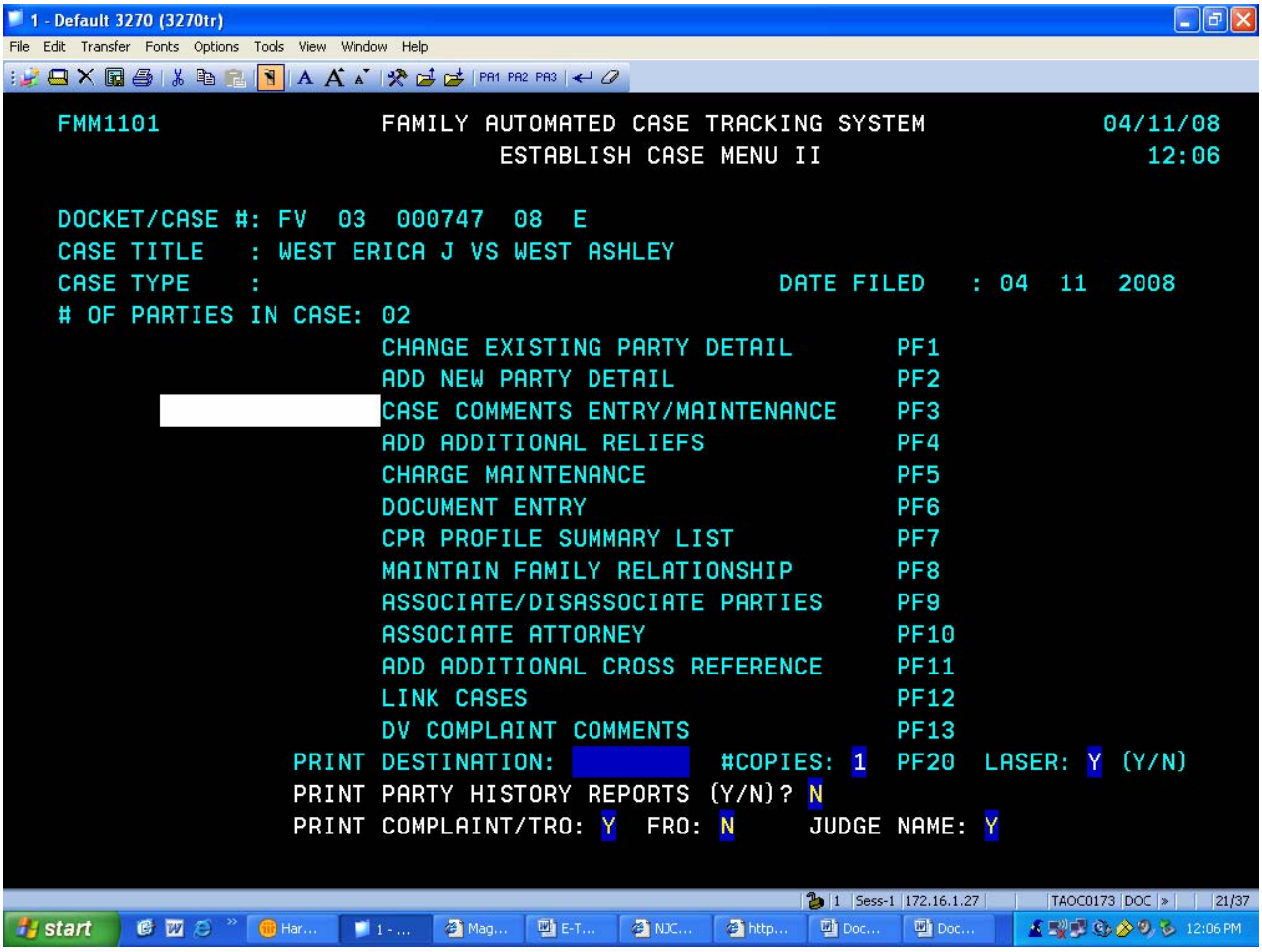
III

PASTING INCIDENT DESCRIPTION INTO CASE COMMENTS

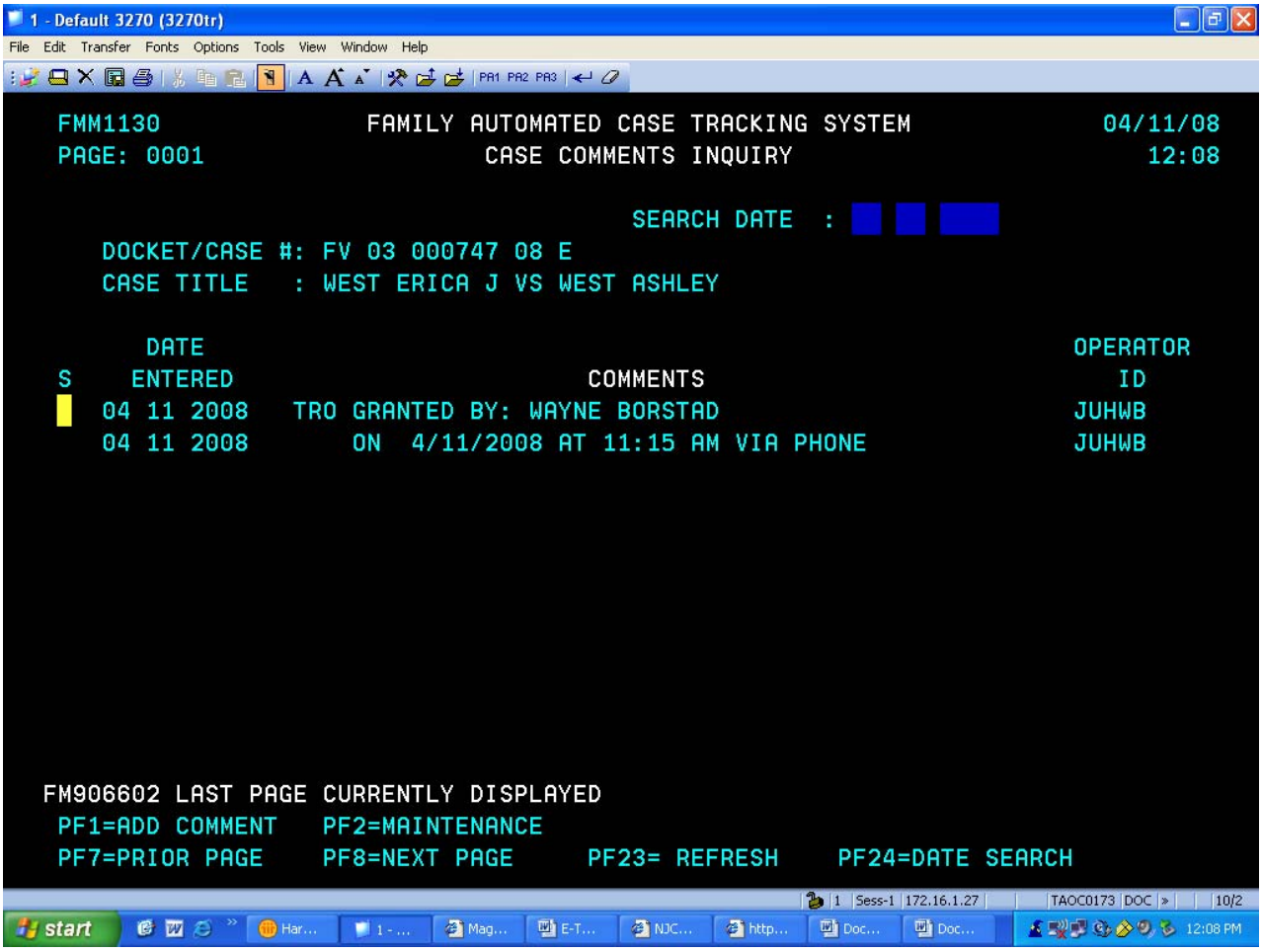
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

PASTING TEXT

1) From ESTABLISH CASE MENU II SELECT PF3=CASE COMMENTS ENTRY/MAINTENANCE

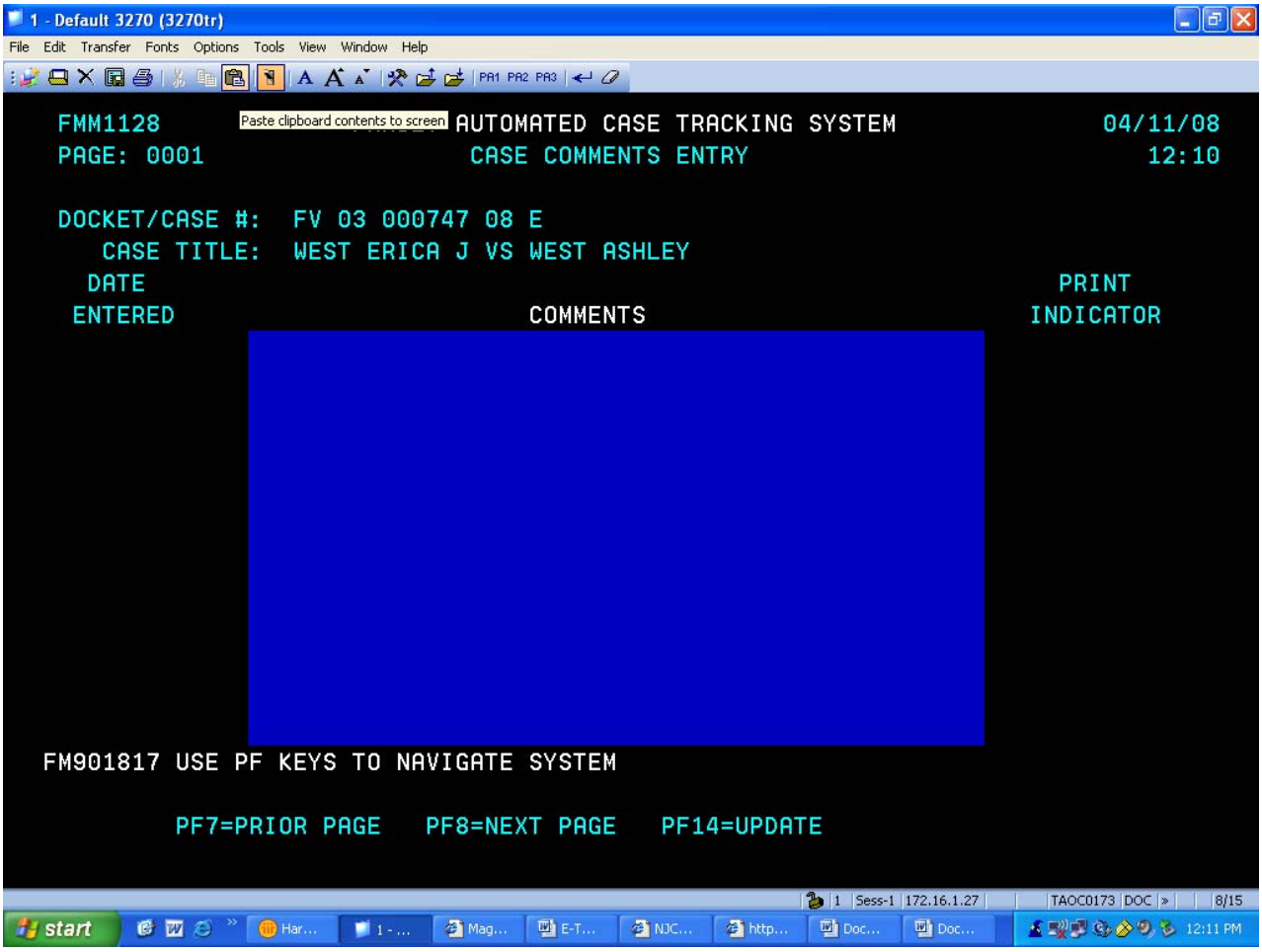


2) PRESS PF1=ADD COMMENT

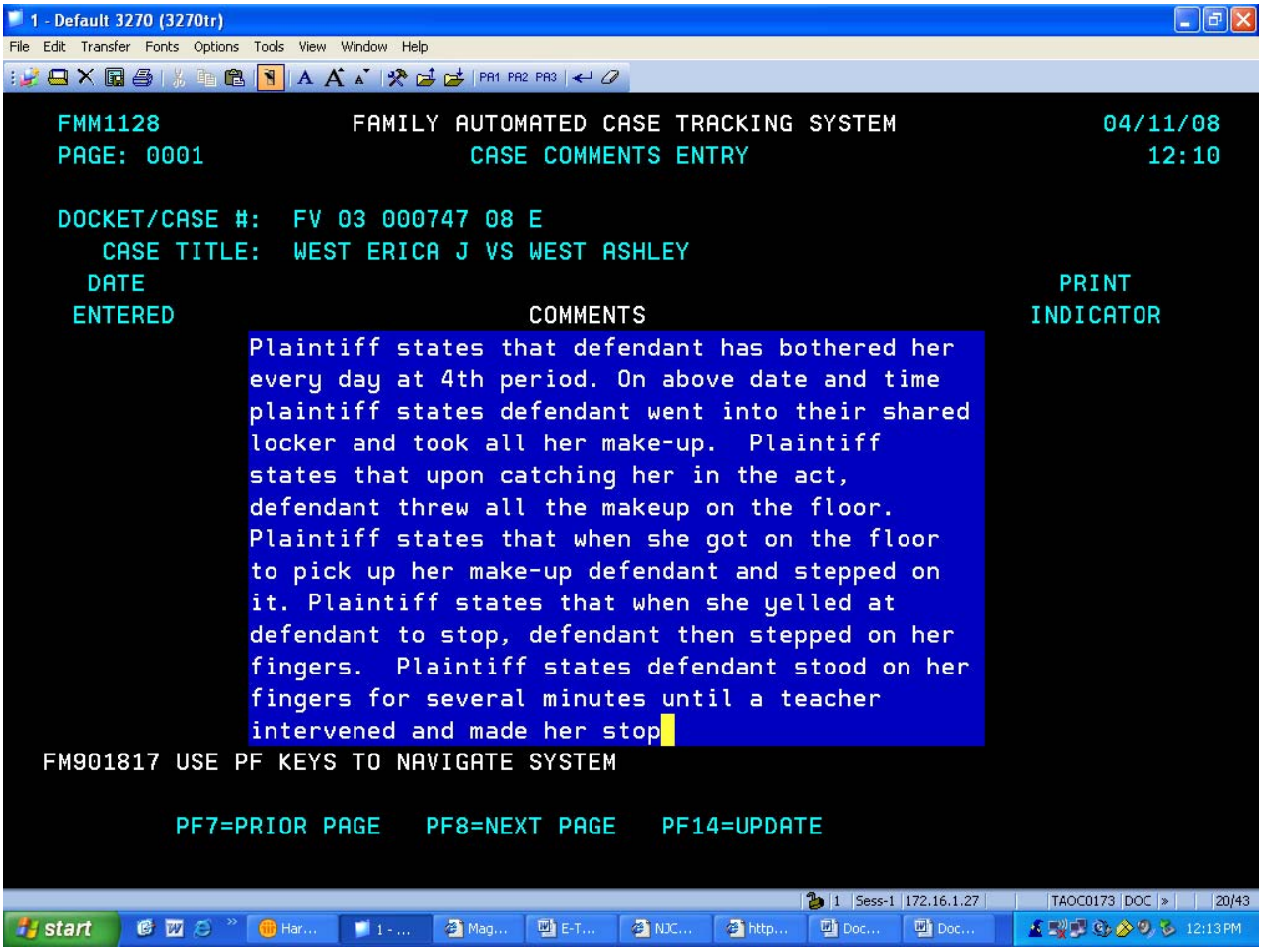


FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

3) Click on the clipboard icon on the top row and paste the comments into the field.



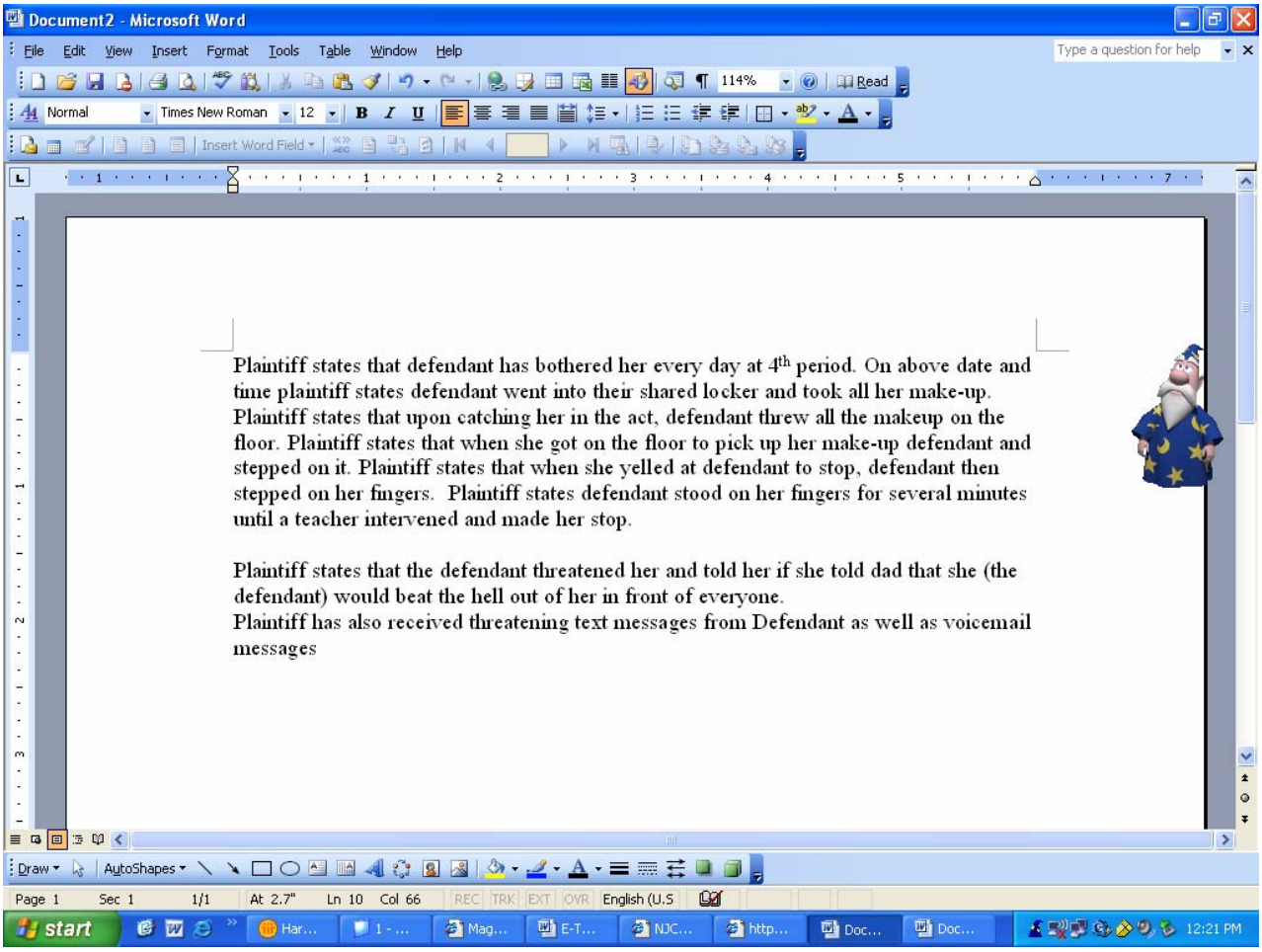
4) Text from clipboard will appear in case comments box.



5) Press PF14=UPDATE.

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

If more than one page of text was copied onto clipboard, use will need to use Microsoft WORD or similar application to split text into separate paragraphs and paste each paragraph separately into CASE COMMENTS.

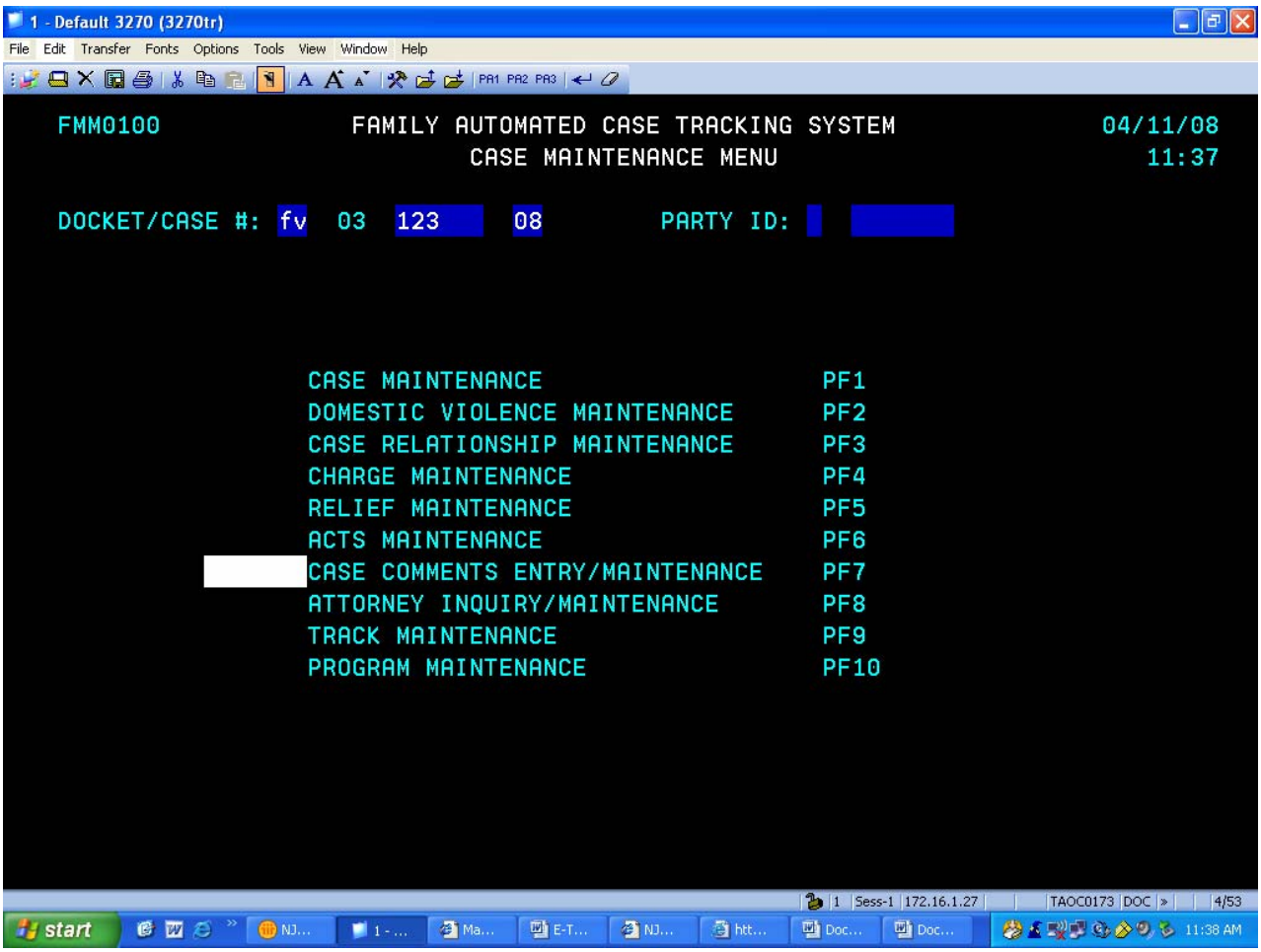


FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

If user forgets to enter comments during docketing process, they can still be entered using case maintenance.

1) From the FACTS main menu **PRESS PF10=CASE MAINTENANCE**.

2) From CASE MAINTENANCE **PRESS PF7=CASE COMMENTS ENTRY/MAINTENANCE**.



NOTE;

THIS CUT AND PASTE METHOD SHOULD ALSO BE EMPLOYED IF THE TEXT IN PRIOR HISTORY FIELD MEETS OR EXCEEDS HALF OF THE AVAILABLE AREA.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.:FV -____ -_____

_____:		
Plaintiff	:	ORDER CONFIRMING ISSUANCE OF DOMESTIC VIOLENCE TEMPORARY
Vs.	:	RESTRAINING ORDER AND SUMMARY
_____:		OF SWORN ORAL TESTIMONY PURSUANT
:		TO RULE 5:7A(B)
Defendant	:	

SWORN ORAL TESTIMONY OF APPLICANT COMMUNICATED:
_____In person _____Radio _____Telephone _____Other (explain)

LAW ENFORCEMENT OFFICER ASSISTING APPLICANT
Name, Department, Phone number _____

SUMMARY OF SWORN TESTIMONY:

After hearing sworn oral testimony of the Plaintiff and finding that an act of domestic violence has been committed by defendant and all other statutory requirements having been satisfied, this court authorizes the issuance of a duplicate original Temporary Restraining Order on _____ day of _____ , 20_____ , _____(a.m.) (p.m.). The above Summary and this Confirmatory Order have been prepared by me contemporaneously with the sworn oral application and issuance of the duplicate Temporary Restraining Order;

IT IS HEREBY ORDERED that this Order be attached to the original complaint and TRO and shall become a part thereof.

_____
, J.M.C.
Judge of the Municipal Court

Revised 3/26/04 AOC

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.: FV-___-_____

_____	:	
Plaintiff	:	APPLICATION FOR APPEAL
	:	AND ORDER
Vs.	:	
	:	
_____	:	
Defendant	:	

NAME:
ADDRESS:

PHONE NUMBERS (HOME AND WORK):

DATE OF BIRTH:
SOCIAL SECURITY NUMBER:
EMERGENCY CONTACT (NAME AND PHONE NUMBER):

CERTIFICATION AND REQUEST FOR APPEAL

I am the **Plaintiff( ) or Defendant ( )** in the above captioned matter and make this request to Appeal the entry of an *ex parte* Temporary Restraining Order entered on _____ in **Superior Court ( ) OR Municipal Court ( )**.

I am asking for this Appeal for the following reasons (use additional paper if necessary):

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____

Date ***Signature***

Name (print):

ORDER OF THE COURT

The Court, having taken notice of Plaintiff's ( ) OR Defendant's ( ) request for an appeal of a Temporary Restraining Order entered on _____; and

( ) Plaintiff having been advised of this appeal; or

( ) Defendant having been advised of this appeal; or

( ) No notice having been given to the other party; and

IT IS HEREBY ORDERED ON this _____ day of _____,

that the request for Appeal of the Temporary Restraining Order is:

( ) Denied. Final Hearing will proceed as originally scheduled.

( ) GRANTED. A hearing shall be held on _____, 20____ for the following:

( ) Final Hearing.

( ) Limited purpose of:

( ) OTHER RELIEF:

( ) THE REASONS FOR ENTRY OF THIS ORDER:

_____

, J.S.C.

RETURN OF SERVICE:

( ) Defendant was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

( ) Plaintiff was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

Print Form Clear Form

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF
DOCKET NO.: FV-__ - _____ - __

_____	:	
Plaintiff	:	
	:	
Vs.	:	CONTINUANCE ORDER
	:	
_____	:	
Defendant	:	

This matter having been opened to Court for a Final Hearing:

IT IS HEREBY ORDERED ON this _____ day of _____, that all restraints previously ordered in the Temporary Restraining Order dated _____ (attached) **SHALL CONTINUE IN FULL FORCE AND EFFECT. THE TRO MUST BE ATTACHED TO THIS CONTINUANCE ORDER FOR SERVICE.**

IT IS FURTHER ORDERED:

☐ Since Defendant was not served, this matter is continued until Defendant is served. When Defendant is served, return of service must be sent to Family Division so a Final Hearing can be scheduled.

☐ All parties shall appear for a hearing on _____ at _____am/pm in Courtroom _____ . This Order shall serve as Notice to Appear.

☐ This Order shall be served by personal service on ☐ **Plaintiff** / ☐ **Defendant**.
☐ The parties shall advise the Court of any change in address or phone number.

_____
, J.S.C.

RETURN OF SERVICE:
☐ **Defendant** was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

☐ **Plaintiff** was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

STATE OF NEW JERSEY

PREVENTION OF DOMESTIC VIOLENCE ACT

_____ County, Superior Court, Chancery Division, Family Part

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order**

DOCKET NUMBER					
FV -					
IN THE MATTER OF: PLAINTIFF					PLAINTIFF'S DATE OF BIRTH
DEFENDANT	DEFENDANT'S SEX / RACE	DEFENDANT'S DATE OF BIRTH	HT WT	DEFENDANT'S SOCIAL SECURITY NO.	
DEFENDANT'S HOME ADDRESS		SCARS, FACIAL HAIR, ETC. HAIR COLOR EYE COLOR		DEFENDANT'S HOME TELEPHONE NUMBER	
DEFENDANT'S WORK ADDRESS				DEFENDANT'S WORK TELEPHONE NUMBER	

The Court having considered plaintiff's Complaint dated _____ seeking an ORDER under the Prevention of Domestic Violence Act, having established jurisdiction over the subject matter and the parties pursuant to *N.J.S.A.* 2C:25-17 et seq., and having found that defendant has commited an act of domestic violence, and all other statutory requirements having been satisfied:

It is on this _____ day of _____, 20 _____, ORDERED that:

SOUGHT GRANTED **PART I RELIEF**

DEFENDANT:

1. ☐ ☐ You are prohibited against future acts of domestic violence.

2. ☐ ☐ You are barred from the following locations(s):
   ☐ RESIDENCE(S) OF PLAINTIFF ☐ PLACE(S) OF EMPLOYMENT OF PLAINTIFF
   Other _____

3. You are prohibited from having **any** oral, written, personal, electronic, or other form of contact or communication with:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (List names & relationship to plaintiff): _____

4. You are prohibited from making or causing anyone else to make harassing communications to:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (Same as above or list names & relationship to plaintiff:): _____

5. You are prohibited from stalking, following, or threatening to harm, to stalk or to follow:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (Same as above or list names & relationship to plaintiff): _____

6. You must pay emergent monetary relief (describe amount and method):
   ☐ ☐ Plaintiff: _____
   ☐ ☐ Dependents: _____

7. ☐ ☐ Other appropriate relief:
   Defendant (including substance abuse, mental health or other evaluations and subsequent treatment): _____

8. ☐ ☐ Psychiatric evaluation: _____

9. ☐ ☐ Intake monitoring of conditions and restraints (specify): _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

SOUGHT GRANTED **PART I RELIEF** continued

DEFENDANT:

10. ☐ ☐ **PROHIBITIONS AGAINST POSSESSION OF WEAPONS**: You are prohibited from possessing **any and all firearms or other weapons** and must immediately surrender these firearms, weapons, permits to carry, applications to purchase firearms and firearms purchaser ID card to the officer serviing this court Order. Failure to do so can result in your arrest and incarceration.
Other Weapon(s) (describe): _____

PLAINTIFF:

11. ☐ ☐ You are granted exclusive possession of (residence or alternate housing, list address only if specifically known to defendant):

_____

_____

12. ☐ ☐ You are granted temporary custody of (specify name(s)): _____

_____

_____

13. Other appropriate relief:
☐ ☐ Plaintiff (describe): _____

_____

☐ ☐ Child(ren) (describe): _____

_____

LAW ENFORCEMENT OFFICER

You are to accompany to scene, residence, shared place of business, other (indicate address, time, duration & purpose):

☐ ☐ Plaintiff: _____

_____

☐ ☐ Defendant: _____

_____

WARRANT TO SEARCH FOR AND TO SEIZE WEAPONS FOR SAFEKEEPING:

☐ **To any law enforcement officer having jurisdiction -** this Order shall serve as a warrant to search for and seize any issued permit to carry a firearm, application to purchase a firearm and firearms purchaser identification card issued to the defendant and the following firearm(s) or weapon(s): _____

_____

1. **You are hereby commanded to** search the premises for the above described weapons and/or permits to carry a firearm, application to purchase a firearm and firearms purchaser ID card and to serve a copy of this Order upon the person at the premises or location described as: _____

_____

2. **You are hereby ordered** in the event you seize any of the above described weapons, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person to have a copy of this Order together with such receipt in or upon the said structure from which the property was taken.

3. **You are authorized** to execute this Order immediately or as soon thereafter as is practicable.

☐ ANYTIME ☐ OTHER: _____

4. **You are further ordered,** after the execution of this Order, to promptly provide the Court with a written inventory of the property seized per this Order.

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

PREVENTION OF DOMESTIC VIOLENCE ACT

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

SOUGHT GRANTED **PART II RELIEF**

DEFENDANT:

1. ☐ ☐ You acknowledge parentage of: _____
2. ☐ ☐ You must submit to genetic testing: _____
3. ☐ ☐ No parenting time (visitation) until further order: _____
4. ☐ ☐ Parenting time (visitation) pursuant to (prior FV, FM, or FD Order) # _____ is suspended, a hearing is scheduled for: _____
5. ☐ ☐ Parenting time (visitation) is ordered as follows (specify drop-off and pick-up times and locations, participation of or supervision by designated third party): _____
6. ☐ ☐ Risk assessment ordered (specify by whom): _____ Return Date: _____
7. You must provide compensation as follows: (Appropriate notices have been attached as part of this Order):
   - ☐ ☐ Emergent support - plaintiff: _____
   - ☐ ☐ Emergent support - dependent(s): _____
   - ☐ Interim support - plaintiff: _____
   - ☐ Interim support - dependent(s): _____
   - ☐ ☐ Ongoing plaintiff support: _____
     Paid via income withholding through the _____ Probation Div. _____
     Other: _____
   - ☐ ☐ Ongoing child support: _____
     Paid via income withholding through the _____ Probation Div. _____
     Other: _____
8. ☐ ☐ Medical coverage for plaintiff: _____
9. ☐ ☐ Medical coverage for dependent(s): _____
10. ☐ ☐ Compensatory damages to plaintiff: _____
11. ☐ ☐ Punitive damages (describe): _____
12. ☐ ☐ You must pay compensation to (specify third party and/or VCCA, and describe): _____
13. ☐ ☐ You must participate in a batterers' intervention program (specify): _____
14. ☐ ☐ You must make ☐ rent ☐ mortgage payments (specify amount(s), due date(s) and payment manner): _____
15. ☐ ☐ Defendant is granted temporary possession of the following personal property (describe): _____

☐ You must pay a civil penalty of $ _____ ($50.00 to $500.00 per *N.J.S.A.* 2C:25-29) to: _____ within _____ days. You will be charged a $2.00 transaction fee for each payment or partial payment that you make.

☐ Waived due to extreme financial hardship because: _____

SOUGHT GRANTED

PLAINTIFF:

16. ☐ ☐ Plaintiff is granted temporary possession of the following personal property (describe) _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

PREVENTION OF DOMESTIC VIOLENCE ACT

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

COMMENTS: _____

_____

_____

_____

This Order is to become effective immediately and shall remain in effect until further Order of the Superior Court, Chancery Division, Family Part.

_____ _____

DATE HONORABLE

ALL LAW ENFORCEMENT OFFICERS WILL SERVE AND FULLY ENFORCE THIS ORDER.

THE PLAINTIFF SHALL NOT BE ARRESTED FOR A VIOLATION OF THIS RESTRAINING ORDER.

- **THIS FINAL RESTRAINING ORDER WAS ISSUED AFTER DEFENDANT WAS PROVIDED WITH NOTICE AND THE OPPORTUNITY TO BE HEARD AND SHOULD BE GIVEN FULL FAITH AND CREDIT PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT OF 1991, SEC. 40221, CODIFIED AT 18 U.S.C.A. S2265(A) AND S2266.**
- **IF ORDERED, SUFFICIENT GROUNDS HAVE BEEN FOUND BY THIS COURT FOR THE SEARCH AND SEIZURE OF FIREARMS AND OTHER WEAPONS AS INDICATED IN THIS COURT ORDER.**
- **DEFENDANT SHALL NOT BE PERMITTED TO POSSESS ANY WEAPON, ID CARD OR PURCHASE PERMIT WHILE THIS ORDER IS IN EFFECT, OR FOR TWO YEARS, WHICHEVER IS GREATER.**

NOTICE TO PLAINTIFF AND DEFENDANT

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Family Court. The named defendant **cannot** have any contact with the plaintiff without permission of the court. If you wish to change the terms of this Order and/or you resume living together, you **must** appear before this court for a rehearing.

NOTICE TO DEFENDANT

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, application or identification cards may constitute criminal contempt pursuant to *N.J.S.A.* 2C:29-9(b), and may also constitute violations of other state and federal laws which can result in your arrest and/or criminal prosecution. This may result in a jail sentence.

RETURN OF SERVICE

☐ Plaintiff was given a copy of the Order by:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ I hereby certify that I served the within Order by delivering a copy to the defendant personally:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ I hereby certify that I served the within Order by use of substituted service as follows:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ Defendant could not be served (explain): _____

_____

_____

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

Defendant hereby acknowledges receipt of the Restraining Order. I understand that pursuant to this court Order, I am not to have any contact with the named plaintiff even if plaintiff agrees to the contact or invites me onto the premises and that I can be arrested and prosecuted if I violate this Order. I understand that pursuant to *N.J.S.A.* 53:1-15 any person against whom a Final Restraining Order in a domestic violence matter has been entered shall submit to fingerprinting and other identification procedures as required by law and **I HAVE BEEN ADVISED THAT I MUST SUBMIT TO FINGERPRINTING AND OTHER IDENTIFICATION PROCEDURES.**

SIGNATURE: _____ TIME / DATE: _____

The courthouse is accessible to those with disabilities. Please notify the court if you will require assistance.

DISTRIBUTION: FAMILY PART, PLAINTIFF, DEFENDANT, SHERIFF, OTHER _____

NOTICE
FINGERPRINTING REQUIREMENTS

FV- ___ - _____ - ___
Defendant Name:
Date:

N.J.S.A. 53:1-15 requires any person who is subject to a Domestic Violence Final Restraining Order must submit to identification procedures for fingerprinting and photographing. This identification process shall take place immediately after the entry of the Final Restraining Order. Failure to submit to the identification process is a disorderly persons offense. Failure to be fingerprinted and photographed will result in criminal charges.

NOTE:
As a defendant in a Final Restraining Order you must be fingerprinted and photographed by the _____ County Sheriff's Department.

You must immediately go to:

As a defendant in a Final Restraining Order, failure to comply will result in the signing and prosecuting of criminal charges for violation of N.J.S.A. 53:15.

WHAT DISSOLVING A RESTRAINING ORDER MEANS

1. I am voluntarily asking a judge to take away the legal restraints entered against the defendant which were issued by the Judge at my request. I understand that I am asking the court to now dissolve the restraining order, and a final decision will be made by a judge.

2. Once this Restraining Order is dissolved, I will not benefit from any special protection from the defendant. I cannot obtain this protection again unless there is another act of domestic violence. In that event, I will have to go to the courthouse or the police station, fill out a new complaint and request a new Restraining Order.

3. I understand that one of the protections of a Restraining Order is a mandatory arrest if the defendant violates the "no contact" provisions (Part I). I understand that without the Restraining Order, it is not mandatory that the police arrest the defendant. Even if I have another order from this court that says defendant must stay away (included with my divorce case or my child support case), it is not mandatory that the police arrest the defendant for violating that order.

4. I understand that if criminal complaints were filed by me or the police, I will have to go to another court (probably municipal court) to request that those charges be dismissed.

5. The Judge's decision to dissolve this Restraining Order is final and will close my case. This will end all the protections I received as a result of the acts of domestic violence committed against me.

6. I understand that I should only sign the "Certification to Dissolve a Restraining Order" voluntarily.

7. I have been told about the Domestic Violence services and have been given an opportunity to speak to a victim advocate or have spoken to my attorney.

8. IF YOU HAVE ANY DOUBTS OR QUESTIONS ABOUT DISMISSING THE RESTRAINING ORDER, OR IF YOU HAVE BEEN THREATENED, COERCED OR FORCED BY ANYONE TO SEEK THIS DISMISSAL, TELL THE INTAKE WORKER OR SOMEONE ELSE IN FAMILY COURT, OR REQUEST TO SPEAK TO A VICTIM ADVOCATE OR YOUR ATTORNEY.

LO QUE SIGNIFICA LA ANULACIÓN DE UNA ORDEN DE RESTRICCIÓN

1. Pido voluntariamente que un juez quite las restricciones legales asentadas contra el demandado que fueron emitidas por el juez a solicitud mía. Entiendo que ahora pido que el tribunal anule la Orden de Restricción, y que un juez tomará la decisión final.

2. Una vez que se anule dicha Orden de Restricción, no me beneficiaré de ninguna protección especial contra el demandado. No puedo volver a obtener dicha protección a menos que ocurra otro acto de violencia doméstica. En ese caso, tendré que acudir a los tribunales o a la estación de policía, preparar los documentos de otra denuncia y pedir otra Orden de Restricción.

3. Entiendo que una de las protecciones de una Orden de Restricción es el arresto obligatorio si el demandado infringe las disposiciones de "ningún contacto" (Parte I). Entiendo que sin la Orden de Restricción, no es obligatorio que la policía arreste al demandado. Aunque yo tenga otra orden de este tribunal que diga que el demandado debe mantenerse alejado (incluida con mi causa de divorcio o de manutención de menores), no es obligatorio que la policía arreste al demandado por infringir esa orden.

4. Entiendo que si presenté denuncias penales o las presentó la policía, tendré que acudir a otro tribunal (probablemente al juzgado municipal) para pedir que se desestimen esos cargos.

5. La decisión del juez de anular esta Orden de Restricción es definitiva, y pondrá fin a mi causa. Esto terminará todas las protecciones que recibía como resultado de los actos de violencia doméstica cometidos contra mí.

6. Entiendo que debo firmar la "Certificación para Anular una Orden de Restricción" sólo voluntariamente.

7. Me han informado sobre los servicios de Violencia Doméstica y me han dado la oportunidad de hablar con un defensor de víctimas, o he hablado con mi abogado.

8. SI USTED TIENE ALGUNA DUDA O PREGUNTA EN CUANTO A LA DESESTIMACIÓN DE LA ORDEN DE RESTRICCIÓN, O SI ALGUIEN LO HA AMENAZADO, COACCIONADO O FORZADO A TRATAR DE OBTENER ESTA ANULACIÓN, INFÓRMESELO AL TRABAJADOR DE ADMISIÓN U OTRA PERSONA DEL TRIBUNAL DE FAMILIAS, O PIDA HABLAR CON UN DEFENSOR DE VÍCTIMAS O CON SU ABOGADO.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.: FV- _____ -_____

_____	:	
Plaintiff	:	**CERTIFICATION FOR**
	:	**DISSOLUTION OF**
Vs.	:	**RESTRAINING ORDER**
	:	
_____	:	
Defendant	:	

Plaintiff _____ hereby certifies and says:

1. I am the plaintiff in the above captioned matter.
2. On _____ I appeared in **Superior Court ( )** OR in the **Police station ( )** and signed a complaint and application for a Temporary Restraining Order.
3. On _____, I obtained a Final Restraining Order.
4. Since that time, I have reconciled with or reconsidered my relationship with the defendant. Therefore, I am asking the court to dissolve all the restraints against the defendant.
5. My Restraining Order **does ( )** OR **does not ( )** include provisions for custody, time sharing and/or child support**. I want ( )** OR **I do not want ( )** these provisions continued without a restraining order.
6. I have had my options explained to me and I have reviewed the information on the form "What Dissolving a Restraining Order Means." I am asking for this dismissal voluntarily, of my own free will and without coercion or interference from any person.
7. I am further aware that should I wish to contact an attorney, domestic violence program or counseling group that I may do so prior to completing this Certification.
8. I am aware that if any criminal charges were filed by me or the police, I will need to go to the municipal court (or superior court, criminal division) to request their dismissal.
9. I am aware that if there are further acts of domestic violence and I want a new Restraining Order, I must reapply for a Restraining Order either at the courthouse or the police station.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____

Date Plaintiff signature

AOC 3/04

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART

_____ VICINAGE

DOCKET NO. FV-

PLAINTIFF :

vs. :

:

DEFENDANT :

ORDER OF DISMISSAL

☐ **TEMPORARY RESTRAINING ORDER**

□ **FINAL RESTRAINING ORDER**

THE COURT having considered the testimony and/or certification at this hearing and the Court having determined that:

1. The Plaintiff having requested dismissal of the matter; and

   □ Having read "What Dissolving a Restraining Order Means"

   □ Having read and signed "Certification for Dissolution of Restraining Order"

   □ Having not been coerced or placed under duress to withdraw the complaint and dissolve the Order;

   □ Having been advised of the cycle of domestic violence, and of the protective resources available through the Court and the local domestic violence program(s), especially with regard to housing and Court-ordered emergency custody and support;

   □ Understanding that withdrawal of the complaint and dismissal of the Restraining Order will **eliminate** the protection that had been issued under this Order;

   □ Being aware that such withdrawals **are not prejudicial** and if (s)he may need protection in the future, (s)he may apply for a new restraining order;

   □ Being aware that any criminal charges filed by Plaintiff or the police are not affected by this order of dismissal and will remain pending until addressed separately in the appropriate court; OR

2. The Plaintiff failing to appear for Final Hearing; and

   □ The Court having been unable to contact the plaintiff via telephone numbers/address given; OR

   □ The Court having determined that plaintiff was contacted and that coercion or duress did not cause the plaintiff's non-appearance; OR

3. □ The Court having determined that the plaintiff's allegation of domestic violence has not been substantiated.

4. □ The Municipal Court having denied the TRO application.

5. □ The Court having determined on appeal of the Temporary Restraining Order that the required burden of proof has not been met.

IT IS HEREBY ORDERED on this day of , , that the Domestic Violence Complaint, dated , is **DISMISSED** and the □ **TEMPORARY RESTRAINING ORDER *OR*** □ **FINAL RESTRAINING ORDER** dated is/are vacated, and

***IT IS FURTHER ORDERED THAT*:**

□ The complaint is dismissed and present support order under this docket is terminated and any arrears are vacated.

Probation to terminate their interest and close case.

□ The complaint is dismissed. Continue present support order and/or arrears to be:

□ **transferred to docket** F _____ _____ and □ paid through **Probation (IV D)**

or □ paid directly to **Plaintiff** (**obligee).**

□ Other:

_____ J.S.C.

RETURN OF SERVICE

Plaintiff was given a copy of the Order by _____

Defendant was given a copy of the Order by_____

Date:_____
Signature, Title & Department or Office

VISITATION RISK ASSESSMENT
INTERVIEW SHEET

TRACKING INFORMATION

PERSON INTERVIEWED	DATE	ASSESSOR
☐ PLAINTIFF ☐ DEFENDANT ☐ CHILD(REN)		

CASE NAME	DOCKET NUMBER	DATE RECEIVED

GENERAL INFORMATION

WHAT ARE PLAINTIFF'S CONCERNS ABOUT VISITATION?

ARE BOTH PARTIES THE BIOLOGICAL PARENTS OF ALL CHILDREN?

☐ YES ☐ NO PLEASE EXPLAIN: _____

AGES AND SEX OF CHILDREN INVOLVED

FIRST CHILD: AGE: _____ SEX: _____ **SECOND** CHILD: AGE: _____ SEX: _____ **THIRD** CHILD: AGE: _____ SEX: _____ **FOURTH** CHILD: AGE: _____ SEX: _____

DO ANY OF THE CHILDREN HAVE PHYSICAL OR MENTAL SPECIAL NEEDS WHICH WOULD IMPACT VISITATION? ☐ YES ☐ NO IF YES, WHICH CHILD: _____

DESCRIBE THE SPECIAL NEEDS OF THE CHILD: _____

IS THE DEFENDANT FROM ANOTHER COUNTY? ☐ YES ☐ NO	WHERE?

HOW WOULD CHILDREN BE TRANSPORTED TO THE VISITATION SITE?

DO THE PARTIES HAVE SUGGESTIONS FOR THE FREQUENCY AND STRUCTURE OF VISITATION? (INCLUDE SUGGESTED CONDITIONS OF SUPERVISION, IF ANY)

PLAINTIFF: _____

DEFENDANT: _____

HAS THE CHILD(REN) EXPRESSED ANY FEELINGS CONCERNING VISITATION WITH DEFENDANT?

DESCRIBE: _____

DOMESTIC VIOLENCE

LENGTH AND NATURE OF DOMESTIC VIOLENCE HISTORY

MINOR INJURIES SUSTAINED?

DESCRIBE: _____

MAJOR INJURIES SUSTAINED?

DESCRIBE: _____

SPECIFY OBJECTS OR WEAPONS USED, IF ANY

THIS IS SIDE #1

DOMESTIC VIOLENCE *continued*

HAS ABUSE INCLUDED THREATS TO KILL OR HARM MORE EXTENSIVELY? ☐ YES ☐ NO

HAS ABUSE INCLUDED SEXUAL ASSUALT/EXPLOITATION?

DESCRIBE: _____

HAS ABUSE INCLUDED DAMAGE TO PLAINTIFF'S POSSESSIONS OR PETS?

DESCRIBE: _____

HAS ABUSE INCLUDED VERBAL/PSYCHOLOGICAL ABUSE?

DESCRIBE: _____

HAS VIOLENCE INCREASED OVER TIME?

☐ YES ☐ NO

DESCRIBE: _____

DOES PHYSICAL/SEXUAL VIOLENCE OCCUR FOUR TIMES A YEAR OR MORE?

☐ YES ☐ NO

DESCRIBE FREQUENCY: _____

AVAILABLE VERIFICATION ☐ RESTRAINING ORDER ☐ COURT ORDERS ☐ MEDICAL REPORTS ☐ POLICE REPORTS

☐ SOCIAL AGENCY REPORTS ☐ PROFESSIONAL REPORTS ☐ OTHER _____

CHILD ABUSE

LENGTH OF CHILD ABUSE HISTORY

☐ ACTIVE DYFS CASE ☐ PREVIOUS DYFS CASE ☐ NO DYFS INVOLVEMENT

DESCRIBE: _____

MINOR INJURIES SUSTAINED?

DESCRIBE: _____

MAJOR INJURIES SUSTAINED?

DESCRIBE: _____

SPECIFY OBJECTS OR WEAPONS USED, IF ANY:

HAS ABUSE INCLUDED THREATS TO KILL OR HARM MORE EXTENSIVELY?

☐ YES ☐ NO

HAS ABUSE INCLUDED SEXUAL ABUSE/EXPLOITATION?

DESCRIBE: _____

HAS ABUSE INCLUDED DAMAGE TO CHILD'S POSSESSIONS OR PETS?

DESCRIBE: _____

HAS DEFENDANT EXHIBITED INDIFFERENCE OR NEGLECT OF CHILD'S PHYSICAL NEEDS, INCLUDING FOOD, CLOTHING, SAFETY, MEDICAL ATTENTION?

DESCRIBE: _____

THIS IS SIDE #2

CHILD ABUSE *continued*

HAS DEFENDANT THREATENED TO KIDNAP CHILDREN?

☐ YES ☐ NO

HAS DEFENDANT EVER KIDNAPPED CHILDREN?

DESCRIBE: _____

_____

HAS VIOLENCE AGAINST CHILD(REN) INCREASED OVER TIME?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAS ABUSE INCLUDED VERBAL/PSYCHOLOGICAL ABUSE?

☐ YES ☐ NO

DESCRIBE: _____

AVAILABLE VERIFICATION: ☐ DYFS ☐ MEDICAL ☐ POLICE ☐ SCHOOL

☐ SOCIAL AGENCY ☐ PROFESSIONAL ☐ OTHER _____

EXPOSURE TO DOMESTIC VIOLENCE

HAVE CHILDREN WITNESSED OR HEARD EPISODES OF DOMESTIC VIOLENCE EITHER IN THE HOME OR ELSEWHERE?

☐ YES ☐ NO

IF YES, WAS AN OBJECT OR WEAPON USED?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAVE CHILDREN BEEN INJURED DURING A DOMESTIC VIOLENCE EPISODE?

DESCRIBE: _____

_____

HAVE CHILDREN EXHIBITED CONCERN FOR THEIR OWN PERSONAL SAFETY BECAUSE OF THE DOMESTIC VIOLENCE?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAVE CHILDREN WITNESSED OR HEARD PHYSICAL ABUSE OF ANOTHER CHILD OR FAMILY PET?

DESCRIBE: _____

_____

AVAILABLE VERIFICATION ☐ POLICE REPORT ☐ COURT ☐ HOSPITAL ☐ OTHER _____

SUBSTANCE ABUSE

DOES THE DEFENDANT HAVE A DRUG/ALCOHOL PROBLEM?

DESCRIBE: _____

_____

DOES DEFENDANT ABUSE SUBSTANCES IN THE PRESENCE OF THE CHILDREN?

DESCRIBE: _____

_____

IS DEFENDANT USUALLY ABUSING SUBSTANCES WHEN VIOLENT?

☐ YES ☐ NO

IS DEFENDANT CURRENTLY UNDERGOING SUBSTANCE ABUSE TREATMENT?

DESCRIBE (INCLUDING VOLUNTARY OR COURT-ORDERED): _____

_____

_____

_____

SUBSTANCE ABUSE *continued*

DOES DEFENDANT DRIVE WHILE IMPAIRED?

DESCRIBE: _____

_____

HAS DEFENDANT BEEN CONVICTED OF DWI OFFENSES?

☐ YES ☐ NO

AVAILABLE VERIFICATION: ☐ PROFESSIONAL REPORTS ☐ DWI ARRESTS/CONVICTIONS ☐ POSSESSION/INTENT TO DISTRIBUTE ARRESTS/CONVICTIONS

☐ IDRC REPORT ☐ OTHER _____

CRIMINAL HISTORY

HAS THE DEFENDANT BEEN ARRESTED FOR AN ACT OF DOMESTIC VIOLENCE OR CHILD ABUSE?

WHEN? _____

HAS THE DEFENDANT BEEN CONVICTED OF OTHER CRIMES OF VIOLENCE OR CHILD ABUSE?

WHEN? _____

WHICH CRIMES? _____

HAS THE DEFENDANT EVER VIOLATED A RESTRAINING ORDER?

☐ YES ☐ NO

WHEN AND HOW: _____

_____

HAS THE DEFENDANT EVER VIOLATED ANY OTHER ORDER INVOLVING OTHER PARENT OR CHILD?

WHEN AND HOW: _____

_____

IS THE DEFENDANT FACING PENDING CRIMINAL CHARGES FOR OTHER CRIMES OF VIOLENCE OR CHILD ABUSE?

☐ YES ☐ NO

WHICH CRIMES: _____

_____

HAS THE DEFENDANT BEEN CONVICTED OF OTHER CRIMES?

WHEN? _____

WHICH CRIMES? _____

IS THE DEFENDANT FACING PENDING CRIMINAL CHARGES FOR OTHER CRIMES?

☐ YES ☐ NO

WHICH CRIMES? _____

AVAILABLE VERIFICATION: ☐ CONVICTIONS ☐ PENDING CHARGES ☐ POLICE

☐ OTHER _____

PSYCHO-SOCIAL FACTORS

DOES THE DEFENDANT EXHIBIT EXTREME ABERRANT BEHAVIORS DUE TO MENTAL HEALTH PROBLEMS?

DESCRIBE: _____

_____

_____

HAS THE DEFENDANT EVER BEEN TREATED FOR ABOVE PROBLEM?

WHEN: _____

DESCRIBE: _____

IDENTIFY MEDICATIONS, IF ANY: _____

HAS THE DEFENDANT EVER THREATENED OR ATTEMPTED SUICIDE?

WHEN: _____

DESCRIBE: _____

_____

THIS IS SIDE #4

PSYCHO-SOCIAL FACTORS *continued*

DOES THE DEFENDANT POSSESS CHILD PORNOGRAPHY?

☐ YES ☐ NO

AVAILABLE VERIFICATION:
☐ PROFESSIONAL REPORTS ☐ OTHER _____

PREVIOUS VISITATION EXPERIENCE

HAS THE DEFENDANT EVER KIDNAPPED THE CHILDREN?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT EVER PHYSICALLY ABUSED PARTNER IN THE COURSE OF VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT EVER REFUSED TO RETURN THE CHILDREN?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT VIOLATED THE VISITATION ORDER IN OTHER WAYS?

WHEN: _____

DESCRIBE: _____

_____

HAVE THE CHILDREN EVER EXHIBITED SIGNS OF PHYSICAL/SEXUAL ABUSE OR NEGLECT AFTER VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS DEFENDANT EVER ABUSED SUBSTANCES DURING VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT FAILED TO APPEAR FOR SCHEDULED VISITATION?

WHEN: _____

_____

HAS THE DEFENDANT FAILED TO ATTEND TO THE CHILD'S MEDICAL, SAFETY, PHYSICAL OR EDUCATIONAL NEEDS DURING VISITATION?

EXPLAIN: _____

_____

AVAILABLE VERIFICATION:
☐ COURT REPORT ☐ POLICE ☐ ARRESTS/CONVICTIONS
☐ PROFESSIONAL ☐ SCHOOL ☐ OTHER _____

PARENTAL CAPACITY/EXPERIENCE

DOES THE DEFENDANT HAVE EXPERIENCE IN CARING FOR CHILDREN ALONE?

☐ YES ☐ NO

DESCRIBE FREQUENCY OF SOLE CARETAKING: _____

_____

CHECK RELEVANT PARENTING SKILLS, IF ANY, THAT DEFENDANT REPORTEDLY LACKS:

☐ DIAPERCHANGING ☐ FEEDING ☐ BATHING ☐ PLAYING ☐ DISCIPLINE
☐ TRANSPORTING ☐ SENSITIVITY ☐ OTHER _____

THIS IS SIDE #5

PARENTAL CAPACITY/EXPERIENCE *continued*

DOES DEFENDANT HAVE ADEQUATE VISITATION FACILITIES?

☐ YES ☐ NO

DESCRIBE POTENTIAL VISITATION ENVIRONMENT: _____

_____

DOES DEFENDANT DISPLAY ERRATIC OR UNSTABLE TEMPERAMENT TOWARDS CHILDREN?

☐ YES ☐ NO

DESCRIBE: _____

_____

DOES DEFENDANT HAVE A GOOD RELATIONSHIP AND RAPPORT WITH CHILDREN?

☐ YES ☐ NO

DESCRIBE RELATIONSHIP: _____

_____

DOES DEFENDANT HAVE EXPERIENCE OR SKILLS REQUIRED TO CARE FOR SPECIAL PHYSICAL OR MENTAL NEEDS OF ONE OR MORE CHILDREN?

☐ N/A ☐ YES ☐ NO

EXPLAIN: _____

_____

THIS IS SIDE #6

VISITATION RISK ASSESSMENT
SUMMARY SHEET

CASE NAME / DOCKET NUMBER	YES	NO	UNDET.*	DOCUMENTS AVAILABLE	DOCUMENTS ATTACHED
DOMESTIC VIOLENCE					
Minor physical injury to victim					
Serious physical injury to victim					
Objects or weapons used					
Sexual assault/sexual exploitation					
Verbal/psychological abuse					
Frequent violent episodes					
CHILD ABUSE					
Minor physical injury to child					
Serious physical injury to child					
Objects or weapons used					
Sexual abuse/sexual exploitation					
Neglects child's physical needs					
Threats of kidnapping					
History of kidnapping					
Verbal/psychological abuse					
EXPOSURE TO DOMESTIC VIOLENCE					
Children saw or heard partner abuse					
Children in home but did not see or hear					
Children physically hurt during dv episode					
Children saw/heard abuse with weapon					
Children saw/heard abuse of other child					
Children saw/heard abuse of family pet					
SUBSTANCE ABUSE					
Drug/alcohol abuse					
Drug/alcohol abuse during violent episode					
Drug/alcohol abuse currently untreated					
Drug/alcohol abuse while driving					
DWI Conviction					

* UNDET: Undetermined - Information received from all parties differs and the assessor is unable to make a determination based on documentation or other reliable means.

VISITATION RISK ASSESSMENT
SUMMARY SHEET

CASE NAME / DOCKET NUMBER	YES	NO	UNDET.*	DOCUMENTS AVAILABLE	DOCUMENTS ATTACHED
CRIMINAL HISTORY					
Arrested for act(s) of domestic violence or child abuse					
Convicted of crime of domestic violence or child abuse					
Violation(s) of restraining or other related order					
Pending criminal charges for violence or child abuse					
Convicted of other (non-violent) crimes					
Pending criminal charges for other crimes					
PSYCHO-SOCIAL FACTORS					
Extreme aberrant behaviors due to mental health problems					
Suicide attempts/threats					
Possession of child pornography					
PARENTAL CAPACITY/EXPERIENCE					
Lacks sole caretaking experience					
Lacks age-appropriate parenting skills					
Lacks appropriate discipline skills					
Lacks appropriate visitation site					
Lacks consistent and stable temperament					
Lacks good rapport with children					
Lacks skills for special needs child					
PREVIOUS VISITATION EXPERIENCE (if applicable)					
Partner violence during visitation					
Refusal to return children					
Evidence of child physical/sexual abuse during visitation					
Failure to attend to child's medical, safety, physical needs					
Substance abuse during visitation					

NOTE THE NATURE OF AVAILABLE DOCUMENTATION

DATE	PERSON COMPLETING ASSESSMENT

PREPARED BY THE COURT

	SUPERIOR COURT OF NEW JERSEY
	Chancery Division – Family Part
Plaintiff,	County of _____
vs.	Docket No.:
	Civil Action
Defendant.	**PROTECTIVE ORDER**

THIS MATTER being opened to the Court, and it appearing that copies of the following confidential reports are being released to the attorneys and parties or the pro-se litigants:

- ☐ Home Inspection Report
- ☐ Social Investigation Report
- ☐ Psychological Report
- ☐ Psychiatric Report
- ☐ Risk Assessment
- ☐ Other _____

and for good cause shown;

IT IS ON THIS _____ day of _____, 20____;

1) **ORDERED** that copies of these reports shall be released to the attorneys and their clients or self-represented litigants with the understanding that the information contained therein is to be used only for purposes of the pending custody/parenting time matter including distribution to experts and may not be used in any other matter without the express written permission of the Court; and it is further

2) **ORDERED** that this information shall not be disclosed to any other person for any reason, nor may it be disseminated or made public by any means, direct or indirect, without the express written permission of the Court; and it is further

3) **ORDERED** that the use of information contained in the investigation and/or report, or information obtained from the investigation for any purpose other than set forth by the Court, shall be a violation of this Court Order and subject to sanctions; and it is further

4) **ORDERED** that under no circumstances is (are) the report(s) to be discussed, revealed, or disclosed to the child(ren).

_____

J.S.C.

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CRIMINAL JUSTICE

PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

JOHN J. FARMER, JR.
Attorney General

KATHRYN FLICKER
Director

September 19, 2000

TO: **ALL COUNTY PROSECUTORS**
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: **KATHRYN FLICKER, DIRECTOR**
DIVISION OF CRIMINAL JUSTICE

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES 2000-3 and 2000-4 -** Replacements for an unnumbered Attorney General Directive dated August 14, 1995, regarding Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Attached for your attention are the following Directives which were recently signed by Attorney General Farmer:

No. 2000-3 - Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers involved in Domestic Violence Incidents. This Directive is to be followed by county prosecutors when handling local and county law enforcement officers involved in domestic violence incidents.

No. 2000-4 - Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers involved in Domestic Violence Incidents. This Directive provides notice of the procedures the Division of Criminal Justice will follow when removing weapons from state law enforcement officers, which includes the Division of State Police, Division of Criminal Justice investigators, Department of Corrections officers, Juvenile Justice Commission officers, Bureau of Parole officers, State Park Ranger Service (Fish and Game) officers, Human Services Police, N. J. Transit Police Officers, state college and university campus police, Division of Taxation agents, and investigators for the State Commission of Investigations.

The procedures are essentially the same. The separation eliminates any confusion contained in the August 14, 1995, Directive between areas of responsibility for county prosecutors and the Division of Criminal Justice.

All County Prosecutors
All Law Enforcement Chief Executives
September 19, 2000

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES
2000-3 and 2000-4 - Replacements for an unnumbered Attorney General Directive dated August 14, 1995, regarding Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Please distribute to all law enforcement officers and/or assistant prosecutors in your agency. If you have any questions you may contact either DAG Jessica S. Oppenheim or DAG Martin C. Mooney, Sr., in the Prosecutors and Police Bureau at 609/984-2814.

jak
Attachments
c Attorney General John J. Farmer
First Assistant Paul H. Zoubek
Administrator Thomas O'Reilly
Director of State Police Affairs Martin Cronin
Colonel Carson J. Dunbar, Jr., Supt., NJSP
Commissioner Jack Terhune, Dept. of Corrections
Chief of Staff Debra L. Stone
Chief State Investigator John A. Cocklin
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Ronald Susswein
Chief Greta Gooden Brown, Pros. & Police Bureau

DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATTORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-3**

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM MUNICIPAL AND COUNTY LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A*. 52:17B-97 *et seq.*, requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:17B-98. Accordingly, it is directed that all law enforcement agencies and law enforcement officers who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed.

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from an officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the prosecutor's office in the county where the charge had been filed.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the county Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:25-21d, the County Prosecutor's Office where the civil and/or criminal charge was filed or incident occurred shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The County Prosecutor completing the investigation shall forward the report to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the appropriate County Prosecutor's Office whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The County Prosecutor's Office within whose jurisdiction the incident occurred should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the County Prosecutor, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the County Prosecutor that the officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the County Prosecutor may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining order, while armed.

3. The department owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, a County Prosecutor may authorize the return of the seized weapons subject to conditions, if any, the Prosecutor determines necessary.

V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 *U.S.C.A.* 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from State Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATTORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-4**

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM ALL STATE LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A*. 52:17B-97 *et seq.*, requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:17B-98. Accordingly, it is directed that all state law enforcement agencies and law enforcement officers who are employed by the State Department of Corrections, the Division of Criminal Justice, the Division of State Police, Human Services Police, Juvenile Justice Commission or the State Park Ranger Service and who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the state officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed and also notify the Division of Criminal Justice, Prosecutors and Police Bureau;

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from a state law enforcement officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the Division of Criminal Justice, Prosecutors and Police Bureau.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the County Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:25-21d, the Division of Criminal Justice, Prosecutors and Police Bureau shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The Division of Criminal Justice, Prosecutors and Police Bureau shall promptly forward its report and recommendations to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a state law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the Division of Criminal Justice, Prosecutors and Police Bureau who shall determine whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The Division of Criminal Justice, Prosecutors and Police Bureau or designee generally should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the Division of Criminal Justice Prosecutors and Police Bureau, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a state law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the Division of Criminal Justice, Prosecutors and Police Bureau that the state law enforcement officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the Division of Criminal Justice, Prosecutors and Police Bureau may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining

order, while armed.

3. The department-owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a state law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, Division of Criminal Justice, Prosecutors and Police Bureau may authorize the return of the seized weapons subject to conditions, if any, the Division of Criminal Justice, Prosecutors and Police Bureau determines necessary.

V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 *U.S.C.A.* 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

_____ Court of New Jersey
_____ Division
_____ County

AFFIDAVIT IN SUPPORT OF A DOMESTIC VIOLENCE WARRANT FOR THE SEARCH & SEIZURE OF WEAPONS

State of New Jersey :
County of _____ : SS

I, _____, of _____, being
(Name of Officer) (Department)
of full age and having been duly sworn upon my oath according to law, depose and say:

1. On _____ at _____ __.m., I was dispatched to the following premises:

   _____

   _____

   in response to a domestic violence Incident.

2. I was told by _____, the victim of the domestic violence incident, that he or she believes that his or her life, health or well-being is in imminent danger by the domestic violence assailant, _____, by one of the weapons listed in paragraph 3. The victim said:

   _____

   _____

   _____

   _____

3. The victim has described the weapons as follows:

   _____

   _____

   _____

   _____

4. The victim of domestic violence has informed me that the domestic violence assailant has the weapons listed in paragraph 3 at

_____
(Describe Premises in Detail and identify owner of premises if not person listed in Paragraph 1)

_____

_____

_____

5. Based on the above, I have probable cause to believe that the presence of the weapons described in paragraph 3 exposes the victim to a risk of serious bodily injury.

6. I want to search the premises described in paragraph 4 for the weapons described in paragraph 3 and to seize any of the above named weapons found at that location for safekeeping purposes. I also want to seize from the defendant any issued permit to carry a firearm, firearms purchaser identification card and any outstanding applications to purchase handguns.

7. _____
(If Requesting a No Knock Warrant or Entry at Special Hours, Explain Reason here or on Attached Sheet , or enter any additional information here)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____
(Signature of Affiant)

Sworn and subscribed to before
me this _____ day of
_____. 20____.

_____
Judge of the _____ Court of
New Jersey

_____ Court of New Jersey
_____ Division
_____ County

DOMESTIC VIOLENCE WARRANT FOR THE SEARCH & SEIZURE OF WEAPONS

TO: ANY LAW ENFORCEMENT OFFICER HAVING JURISDICTION

1. The Court, having reviewed the affidavit or testimony of _____ under oath against _____, finds reasonable cause to believe that the life, health, or well-being of _____ has been and is endangered by defendant's acts of violence and finds reasonable cause to believe that the defendant may not be qualified to possess firearms pursuant to *N.J.S.A.* 2C:58-3c(5). The Court finds reasonable cause to believe that the below listed weapons in defendant's possession may present a risk of serious bodily injury to plaintiff:
_____
_____
_____
_____.

2. **YOU ARE HEREBY COMMANDED** to search the premises described as_____
_____
_____
_____

for the above described weapons and to serve a copy of this warrant upon the person at that address.

YOU ARE FURTHER COMMANDED to seize from defendant any issued permit to carry a firearm, firearms purchaser identification card and any outstanding applications to purchase handguns.

3. **YOU ARE HEREBY ORDERED**, in the event you seize any of the above described weapons and firearms permits, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person, to leave a copy of this warrant together with such receipt in or upon the said structure from which the property was taken.

4. **YOU ARE AUTHORIZED** to execute this warrant within 10 days from the issuance hereof:

☐ Between the hours of _____ m. and _____ m., or

☐ Anytime

After the execution of this warrant, you are ordered to forthwith make prompt return to this Court with a written inventory of the property seized hereunder.

5. Given and issued under my hand at _____
at _____ o'clock _____ m. this day of _____, 20 ___.

_____
(Signature)
Judge of the _____ Court of New Jersey

Revised 4/04

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 037
TRENTON, NEW JERSEY 08625-0037

Questions or comments may be addressed to (609) 292-5099

M E M O R A N D U M

To: **Assignment Judges**
Trial Court Administrators

From: **Philip S. Carchman, J.A.D.**

Re: **Child Support Hearing Officer (CSHO) Program Standards – Amendment to Standard 7; and a New Standard (Standard 13)**

Date: **July 24, 2007**

Enclosed are amendments to the Child Support Hearing Officer (CSHO) Program Standards, an amended Standard 7 and new Standard 13. The amendments were approved by the Supreme Court in March 2007 and will improve the expedited process for child support cases and enhance customer service.

CSHO Program Standard 7 - Amended

CSHO Program Standard 7 has been amended to authorize the CSHO to handle FD (non-dissolution) complaints filed by the local Board of Social Services that seek to *establish* paternity and/or child support in cases where the obligee has a final restraining order against the defendant/obligor. Standard 7 already permits the CSHO, under specified security and facilities conditions, to hear applications initiated by individuals to *modify* or *enforce* child support orders in matters with active domestic violence restraints in either FV (domestic violence) or FD (non-dissolution) cases.

These *establishment* matters, formerly heard by a judge, may now be handled by a CSHO. They are to be processed as FD cases, rather than FV, since only the victim may be a plaintiff in an FV matter. In FDs filed by the local

Boards, the child support paid by the obligor is assigned to the Board for the period that assistance is provided. Standard 7 is permissive and the provision that permits the CSHO to hear FV *modification* and *enforcement* applications has been implemented in eleven vicinages. The security and facilities requirements that exist for actions to *modify* and *enforce* child support in matters with active restraints also apply to these *establishment* matters.

CSHO Standard 13 - New

New CSHO Program Standard 13 authorizes the CSHO to conduct hearings by telephone in appropriate cases. The new Standard sets forth direction as to how to proceed with telephonic hearings including proper screening, coordination with the calendaring of other matters scheduled before the CSHO, and the appropriate equipment.

Amended Standard 7 and the new Standard 13, along with a new telephone hearing request form, are attached and should be inserted into existing hardcopies of the Standards and will also be available on the Infonet. As noted, these Standards are permissive not mandatory. **Please advise me by September 1, 2007 whether you plan to implement either or both of the Standards in your vicinage and, if so, how you will proceed with implementation.**

Any questions or comments may be directed to Assistant Director Harry T. Cassidy at 609-984-4228 or to Elidema Mireles, Chief, CSHO Program at 609-292-5099.

P.S.C.

cc: Chief Justice Stuart Rabner
Family Presiding Judges
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Elidema Mireles, Chief
Richard Narcini, Chief
Family Division Managers
Vicinage Chief Probation Officers
Assistant Family Division Managers in Multi-County Vicinages
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Amended

CSHO Program Standard 7 and Commentary

as approved by the Supreme Court March 5, 2007

CSHO Standard 7 (amendments underlined)

A. In order for the Family Division to better serve victims of domestic violence and to provide expedited process, vicinages may schedule, child support modifications in domestic violence cases before the Child Support Hearing Officers (CSHOs). The CSHOs may hear child support modification motions in domestic violence cases under the conditions set forth herein. <u>In addition the CSHO may hear FD cases where there is a restraining order in effect when filed by the Board of Social Services to establish child support.</u> The CSHO, at all times, will address <u>only</u> the child support aspects (civil enforcement and modification and TANF establishments) of the case before them. The following conditions will be observed:

1. Both parties must be amenable to appearing before the CSHO.
2. The CSHO may hear child support modifications in matters established under an "FV" docket; <u>matters with active restraints filed by the Board of Social Services</u> under an "FD" docket; or interstate matters filed pursuant to the *Uniform Interstate Family Support Act.* (UIFSA).
3. The restraining order must be in effect for six (6) months without further activity before the case may be placed before a CSHO for modification of child support; otherwise, the modification shall be scheduled before a judge. <u>This six month requirement does not apply to FD establishments filed by the Board of Social Services.</u>
4. The matter cannot be scheduled before the CSHO if the case raises any issues other than child support.
5. The matter should go before a judge, where other factors or concerns exist that make the matter complex, e.g. indication of ongoing inappropriate behavior by the batterer toward the victim or behavior that occurs while waiting to be heard or during the hearing.
6. The action must be a Title IV-D case, i.e. the child support is payable through Probation.

B. Prior to the vicinage scheduling these cases before the CSHOs, a written security plan for these hearings must be developed and approved by the Assignment Judge; taking into account the recommended standards set forth in Section A *Security and Facilities*, of the Commentary.

C. All CSHOs, Supervisors and Chief of the Program shall be required to participate in the mandatory training for domestic violence staff in addition to receiving training as to the dynamics of families with domestic violence issues before the vicinage may schedule matters to the CSHO. To the extent that FD or FM staff will be screening these cases, the Team Leaders in these docket types should also receive training regarding domestic violence issues.

D. Because of the volatile nature of these cases, appeals and referrals from the CSHO should be heard by a judge as promptly as possible, and in any event on the same day as the CSHO hearing (see Commentary, Section C).

Commentary:

A. Security and Facilities

Child support modification hearings arising out of domestic violence cases raise particularly serious security concerns. While initial TRO hearings in domestic violence matters are heard ex parte, with only the plaintiff present, child support modification hearings are likely to be held in the presence of both the plaintiff and the defendant. Because emotions often run high between these parties, security needs must be anticipated and planned for. In developing a security plan for child support hearings in domestic violence cases, the following recommended standards (which are generally addressed in courtroom) should be taken into account:

1. Provide an armed Sheriff's Officer for each CSHO proceeding.
2. Provide duress alarms for the CSHO.
3. Restrict access to light controls.
4. Provide the hearing officer with an egress route to a safe location.
5. Utilize a command and control center to monitor alarms and CCTV.
6 Utilize two-way radios to maintain communications and coordinate emergency responses.
7. Provide emergency back-up power for the lighting and security system.

In addition to these general recommended standards, the following specific provisions should be addressed in the security plan for child support hearings in DV cases:

8. Schedule modification cases in a courtroom or in a room of comparable size and formality. The room should be large enough so that the victim is not required to sit in close proximity to the defendant either while waiting for the case to be heard or during the conduct of the hearing. The parties should not be seated at the same table under any circumstances.
9. If a facility does not offer two separate waiting areas to keep the victim and defendant apart from each other prior to the hearing, a second Sheriff's Officer should be assigned to the waiting area to insure the safety of litigants.
10. In vicinages where the CSHO hearing facility is located in a separate building from the courthouse where the appeal will be heard, the vicinage should have appropriate security arrangements in place for the parties to be

escorted to the courtroom of the judge who will hear the appeal. The parties are not to be left unattended while the appeal is pending.

When an appeal is taken, it poses a particularly critical time because the plaintiff is vulnerable to coercion and intimidation regarding the recommendation being appealed. The defendant's emotions may be running high since the stakes are usually whether to increase or decrease an order of child support. A higher rate of appeal is anticipated on these child support modifications than is generally the case on CSHO calendars (about 3-4%).

In developing security plans for child support hearings in domestic violence cases, as in all other security matters, technical assistance will be available from the Court Access Services Unit at the Administrative Office of the Courts.

B. Case Types

1. Both parties must be amenable to appearing before the CSHO. The CSHO should explain to parties what the CSHO's role is in the proceeding and what will occur during the hearing as well as explaining the use of the Guidelines and their individual right to appeal the recommendation of the CSHO and obtain an immediate hearing before a judge. Either party may request to have the matter heard by a judge. This is similar to DVHO Standard 5, which indicates that appearance before the DVHO is voluntary and permits the plaintiff the option of appearing instead before a judge.

2. The CSHO may hear child support modifications in matters established under an "FV" docket; establishment of support matters under an "FD" docket filed by the Board of Social Services even with companion restraints; or interstate matters filed under the *Uniform Interstate Family Support Act* (UIFSA).

3. The restraining order must be in effect for six (6) months without further activity before the case may be placed before the CSHO for modification of child support; otherwise, the modification shall be scheduled before a judge. This six month requirement does not apply to FD establishment of support cases in the presence of active restraints if it is filed by the Board of Social Services.

4. When there are other pending actions or outstanding issues such as contempt or enforcement of other provisions of the restraining order including custody or parenting time or pending FM with other outstanding issues, the matter shall not be scheduled before the CSHO for establishment, enforcement or modification of child support. This is currently a standard established in the *Manual* applicable to civil enforcement in domestic violence matters before the CSHO.

5. The matter should go before the judge, where other factors or concerns exist, that make the matter complex, e.g. indication of ongoing inappropriate behavior by the batterer toward the victim or behavior that occurs while waiting to be heard or during the hearing.

6. The action must be a Title IV-D case, i.e. the child support is payable through Probation (Centralized Collections) and a county Probation Division is responsible for the collection and enforcement of the child support provisions. Direct pay matters or matters ordered paid to a third party, shall not be scheduled before the CSHO**.**

7. If the issue involves provisions other than child support, e.g. rent or mortgage payments, parenting time, monetary compensation, counseling and temporary possession of specified personal property, the matter shall not be placed before the CSHO and shall be scheduled before a judge. The CSHO shall only address the support establishment, modification or civil enforcement of the child support provisions since the CSHO's jurisdiction per R. 5:25-3 is in the Title IV-D matters.

C. Appeals and Referrals to a Judge

1. The CSHO shall exercise judgment in determining the appropriateness of the forum and shall be permitted to refer the matter to a judge as a complex case. There are many factors in play in domestic violence cases. The CSHO must be alert to the total picture in determining whether it is appropriate for a hearing officer to proceed with the hearing. The CSHO must observe the interaction of the parties with the CSHO, with each other, as well as verbal and non-verbal cues to assess if the dynamics between the parties point to a requirement for judicial attention. We cannot detail all the possible scenarios that call into question if the case may be heard by the CSHO, keeping in mind that the imbalance of power may manifest in observable behavior. Training will help the CSHO develop further the skills needed to recognize the dynamics in play. The CSHO shall not permit, when the parties are before the CSHO, any opportunity for coercion or intimidation of the victim. All referrals of complex cases must have a brief written statement from the CSHO to the judge stating the details that render the matter complex in nature.

2. Appeals of either party from the CSHO's recommendation shall be treated as emergent matters. Appeals from the CSHO calendar are not to be continued. In the domestic violence cases, the appeal not only should be heard the same day, but also should not be held for so long that the long wait may indeed contribute to inappropriate behavior from the batterer.

3. In accordance with R. 5:7-4 (b), the CSHO shall record the case disposition (establishment, modification or civil enforcement) using the Uniform Order for Summary Support. Parties must be given an unsigned copy of the order resulting from the CSHO proceeding and a signed copy of the order if they are before a judge. The CSHO shall insure that the order does not contain any confidential information such as the address of the victim or other information

of a confidential nature. A signed copy of the order will be mailed to the parties by Family Intake staff in the vicinage, once the judge signs the order. If a Guidelines calculation was done, the parties shall be provided with a copy of the Guidelines. This is also in accord with CSHOP standards 3 and 4**.**

D. Training of Staff

All CSHOP staff and relevant FD and FM Team Leaders shall receive training regarding the dynamics of families with domestic violence issues prior to a vicinage being approved to schedule child support modifications before the CSHO. Thereafter, they shall participate in training that is mandatory for all domestic violence personnel.

The proposed standard represents a departure from the prior *Domestic Violence Procedures Manual.* The *Manual* is issued under the authority of the Supreme Court of New Jersey and the Office of the Attorney General. It sets forth the uniform standards and procedures to be followed by those responsible for handling domestic violence matters and to provide a unified approach intended to assure prompt assistance to the victims of domestic violence.

This proposed standard is the result of a debate that predates 1992, when the *Manual* was amended to allow CSHOs to hear civil enforcement motions in domestic violence cases. In 1992 the State Domestic Violence Work Group considered whether to amend the *Manual* additionally and permit the CSHOs to hear the modification of the child support provisions of domestic violence matters. Ultimately the amendment permitted solely the civil enforcement of litigant's rights motions to be calendared before the CSHO under specific conditions detailed in the in Section III of the *Manual*. Civil enforcement refers to those matters that are Title IV-D, i.e. the order is payable through a Probation Division and the case is thus supervised by county Probation Division staff responsible for the filing of the enforcement motion.

The experience of the CSHOP with the civil enforcement in domestic violence matters indicates that in general it works well. There is concern expressed by CSHOs themselves that the specific conditions set forth in the *Manual* have not been consistently enforced. One example given was the lack of the presence of an on-site Sheriff's Officer during the hearing because the Sheriff's Officer was responsible for covering the waiting area and/or other hearings in progress. Concern was also expressed for the delays in hearing the appeals resulting from the enforcement hearing before the CSHO. The strict implementation of the conditions and requirements is crucial to the ability to delivery of expedited process to the victims of domestic violence. Such service however should not be at the cost of the safety of the victim, the defendant, the hearing officer, or any other staff or litigants.

Currently, judges are responsible for hearing the child support establishments and modifications in the domestic violence matters despite the fact that most other non-

dissolution (FD) applications to modify are routinely scheduled before the CSHO. The CSHOs have the expertise as to the child support modification issues and as to the application of the Guidelines that comes from having primary responsibility for the disposition of Title IV-D child support cases.

The *Manual* states that modifications are inherently complex and provides that they be heard by a judge. Historically, this has raised issues for the Judiciary. Since Family handles ten (10) docket types, there is tremendous demand for judge time to address the cases requiring the attention of a judge. Expedited process is premised on the concept of diverting appropriate matters from the judge in order to resolve them in an expedited manner. Requiring that all modification of support cases go to a judge unduly delays their resolution because they are segregated from the expedited process B the process of child support matters going first to a CSHO. The laudable intent of providing the attention of a judge to hear these cases inadvertently subjects the victim to less timely service due to the demands placed on the available judge time. The expedited process places summary child support matters before the CSHO normally, but the domestic violence cases have been historically been diverted from the expedited process. DV cases are by no means routine, but the adoption of R.5:6A Child Support Guidelines by NJ has contributed to standardization of the issue of child support. Expedited process means that child support issues in some domestic violence cases will be better served before the CSHO. This would permit the judge to devote time to the domestic violence cases requiring judicial attention.

The July 2004 *Manual* incorporates the CSHO Program Standard 7 as Appendix 20. Standard 7 clearly provides specific and necessary security and facilities conditions that should be met in order to place the civil enforcement before a CSHO. In expanding to allow CSHOs to hear establishments, modifications and enforcements with domestic violence restraints, these conditions and even increased safety measures would have to be in place for any vicinage seeking to calendar child support modifications in domestic violence cases before the CSHO. Indeed, the proposed standard requires that the security issues be addressed in advance, prior to a county scheduling these cases before the CSHO, to insure that the requirements as to security and facilities are met and to insure that the other conditions are understood in terms of proper implementation.

New

CSHO Program Standard 13 and Commentary

as approved by the Supreme Court March 5, 2007

CSHO STANDARD 13 TELEPHONIC HEARINGS

In matters involving establishment and modification of child support in non-dissolution matters and post-judgment dissolution motions, the Child Support Hearing Officer may conduct hearings by telephone. In New Jersey, it is not unusual to have parties or counsel participate by telephone. Rule 5: 5-7 allows for case management conferences to be by phone. Rule 5:7A (b) allows TROs to issue based on sworn testimony to the judge using telephone, radio or other means of electronic communication. The *Uniform Interstate Family Support Act, 2A: 4-30.92, et. seq.* encourages courts to allow testimony by telephone or electronic communications. The Family Division staff will ensure that cases appropriate for telephonic hearings are scheduled before a hearing officer and that the proper equipment is provided. The CSHO has the discretion to end a telephonic hearing if he or she determines that the integrity of the record is being compromised because it is telephonic. The following conditions shall be observed:

1. Family Division staff will process requests for telephonic hearings and determine whether there is good cause for the telephonic hearing accommodation. If a party resides in New Jersey, a reasonable distance from the hearing site, there is a presumption that they would appear for the hearing unless there is another valid reason, e.g. the party is hospitalized. The Family Division will advise the party that he or she must submit the request for a telephonic hearing in writing to the Family Division and their adversary no less than 15 days prior to the hearing date (letter or motion papers). Family Division should use a form to process the requests for telephonic hearings. See attached form.
2. Family Division staff will obtain and place in the file the necessary telephone numbers and names of contact persons and will clearly identify on the hearing officer's calendar and on the case notice all matters scheduled for a telephonic hearing and the time of the hearing. If the party is in the military, the Family Division staff will also obtain the person's commanding officer and military base.

3. Generally, the court shall initiate the call to the requesting party. The CSHO shall have the ability to coordinate the telephonic matter with the other scheduled cases where parties have appeared and may instead call the requesting party. In all instances, the requesting party will be advised by Family Division staff to remain available and wait for the call (as per the written request for a telephonic appearance indicates) from the court. In order to coordinate the telephonic hearings with the hearing officer's scheduled calendar, it must be clear from the hearing officer's calendar what cases are scheduled for a telephonic hearing, provide the telephone contact number and whether an interpreter is needed for the case.

4. Ten days prior to scheduling the telephonic hearing, the Family Division shall notify the parties, counsel of record, and the Board of Social Services attorneys (UIFSA, TANF and DYFS cases), of any requests for telephonic hearings.

5. In *UIFSA* matters the Family Division staff shall cooperate with tribunals of other states in designating an appropriate location for the testimony and advise the party if he or she must contact the child support enforcement agency and arrange to appear at the state agency for their assistance in setting up the call. In addition the party must be advised that he or she must provide information to confirm their identity.

6. For all matters to establish or modify support, the parties must be notified that no less than five days prior to the hearing, they must provide their last three federal income tax returns and four current pay stubs to the hearing officer and their adversary. The adversary must provide to the other party their last three income tax returns and four current pay stubs no later than five days prior to the hearing. The party appearing by telephone must provide information to confirm their identity during the hearing. Other documents that the parties want to submit to the hearing officer for review must be submitted to Family Division no less than five days prior to the hearing and copies must be provided by the party to their adversary in advance. The Family Division staff will place these documents in the file prior to the telephonic hearing.

7. In scheduling telephonic hearings for the hearing officer, Family Division staff will take into consideration that telephonic hearings require more time to conduct than in-person hearings and will schedule fewer total cases in order to accommodate telephonic hearings. When an interpreter is used in a telephonic hearing, the time needed to hear the case may be increased.

8. When the CSHO does not proceed with a scheduled telephonic hearing or concludes the hearing before it is finished, the CSHO shall set forth the reason(s) for doing so in the Uniform Summary Support Order (USSO).

9. The USSO shall indicate that there was a telephonic hearing. A copy of the Child Support Hearing Officer recommendation along with the Child Support Guidelines worksheet shall be provided to the party at the hearing and the copy of the order signed by a Judge along with the Child Support Guidelines worksheet will be mailed to both parties.

10. In the event of an appeal by one or both parties, the Family Division will schedule the telephonic appeal hearing before a Judge for the same day, if possible, or make suitable arrangements when the appeal cannot be heard the same day.

11. When scheduling telephonic hearings in modification of child support in domestic violence cases (Standard 7) and FM post-judgment motions to modify support (Standard 9), the screening requirements still apply.

12. Polycom equipment, when available, shall be used for the telephonic hearing. If it is not available and the equipment used (e.g. speaker phone) is not adequate, malfunctions, or an outside telephone line is not available after several attempts, the hearing officer may discontinue the telephonic hearing and reschedule the matter to allow parties to appear. If the party appearing telephonically is not available to take the call or fails to call the court, the hearing officer shall proceed with the hearing and treat the case as he or she would any other non-appearance and, on the record, dismiss the case without prejudice if the party appearing telephonically is the moving party or proceed with a default order if appropriate.

Commentary:

The advancement of technology and the current use of telephone and electronic communication for court hearings provide authority and a basis for allowing the Child Support Hearing Officer to conduct expedited hearings where a party may testify by telephone. Under the *Uniform Interstate Family Support Act (UIFSA), N.J.S.A. 2A; 4:30.65 et. seq.* telephonic hearings are a recognized means of conducting hearings; all proceedings brought under *UIFSA*, including long-arm cases, may proceed by telephonic hearings. Rule 5:5-7 allows for Family case management conferences to be by telephone. Rule 5:7A(b) allows TROs to issue based on sworn testimony to the judge using telephone, radio or other means of electronic communication. It is logical to extend this method to the summary proceedings conducted by the CSHO and further enhance expedited process.

May 4, 2000

MEMORANDUM TO: Assignment Judges
Family Presiding Judges
Family Division Managers

FROM: Richard J. Williams

RE: **Procedures for the Registration of Out of state Domestic Violence Restraining Orders**

The Conference of Family Division Managers, the Family Practice Division and the Automated Trial Court Systems Unit have developed procedures to implement the registration of out of state domestic violence orders in the Family Division and the DV central registry. The Information Systems Division has completed the programming of this procedure in FACTS. This process is scheduled to become active in FACTS on 5/8/00. These procedures have been reviewed by the State Domestic Violence Working Group and the Conference of Family Division Managers, and approved by the Conference of Family Division Presiding Judges. The procedures were included, in draft form, in the New Jersey presentation to the Mid-Atlantic VAWA conference on Full Faith and Credit issues.

This memorandum includes:

- Procedures for Family Division staff to follow in the registration of the orders;
- FACTS codes and procedures. (part of the FACTS FV Docket users guide distributed by the Automated Trial Court Systems Unit);
- Certification forms for incoming orders and for outgoing New Jersey orders.

The attached procedure has been modified from prior drafts in order to better accommodate the out of state order's expiration date in FACTS and recent discussions with other Mid Atlantic states concerning the practice of certification for Restraining Orders. The Automated Trial court Systems Unit conducted training in April to implement this process. The trainees from each vicinage were provided the updated FV Docket users guide. Please advise Mary M. DeLeo if you have any questions concerning this procedure.

These procedures are labeled as interim pending the development of a complete Foreign order process within the FACTS system, and eventually every state's inclusion of their Restraining Orders in a National Central Registry which is anticipated by July, 2002. These procedures will allow for out of state Domestic violence orders to be placed on to the system, with a minimum of

system changes.

The primary benefit to registration for the victim is that the order will be on the statewide DV registry to which police throughout the state will have access on an immediate, round-the-clock basis.

These procedures will:

- Establish these registered cases without adding new cases to the Family Division statistical report;
- Accommodate the expiration date of out of state orders;
- Identify out of state orders to users, particularly law enforcement users of the DV registry;
- Not permit an out of state order to be reopened or modified;
- Still require that Full Faith and Credit be honored by Law Enforcement and the Courts on those orders which have not been registered.

Procedures

1. The victim (plaintiff) who elects to register an out of state restraining order will present the order at a county Family Division intake or domestic violence unit. The victim/plaintiff will complete a Victim Information Form and complete an Out of State certification form (attached).

2. The Family Division DV or central reception staff member will review the order, certification and victim information form. The staff member will call the issuing court, immediately, or within one business day. The staff member will fax the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager, or if so designated by the Division Manager, the FV Team Leader, may review the contact with the issuing court to resolve questions concerning confirmation.

3. Upon confirmation, the staff member will complete the confirmation form, which will allow for the establishment and docketing of the case on FACTS.

4. The establishment process will include:

    - A new initiating document, the OUT OF STATE DV RO, entered in the initiating document field, will be combined with a case status reason code that identifies the case as an Out of State Order;
    - The field MUNICIPALITY OF OFFENSE becomes a required field with a change from numeric to alphanumeric to allow the state to be identified, e.g. 9901 for an Out of State Order from Pennsylvania (attached FACTS procedure-1a);
    - All OUT OF STATE DV RO initiating document cases would be ignored in the statistical count, and cannot be reopened.

5. The expiration date will be identified in the system, and appear on the registry based on the use of a Relief code that is unique to this case type. The expiration date will be entered by the user and appear in the registry in the COMMENTS field (attached 2c).
6. Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered as of the case establishment date and providing the NJ docket number. The victim/plaintiff should be provided with the order, a copy faxed to the police departments identified by the victim/plaintiff, and a copy placed in

the Family Division file that was created when the system assigned the New Jersey number as part of the registration process.

7. The Attorney General's Guidelines to Law Enforcement Officers state that the registration of an order is not required in order to enforce the order. We have been assured by the Division of Criminal Justice that Full Faith and Credit will be emphasized in all police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out of state order with New Jersey

Outgoing Orders

All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute. As a further aid to victims, the federal VAWA office has promulgated a form of Certification, which, if completed by the issuing court, is intended to encourage the enforcement of these orders in all states. Attached is a form of this certification with the New Jersey Family Part caption. At this time, it is not a recommended practice to provide this certification for orders issued on a routine basis. Rather, the form should be completed upon the request of a victim, or another state's court or law enforcement agency that has requested verification of the New Jersey FRO.

The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, upon request of the victim.

c: Chief Justice Deborah T. Poritz
John J. Farmer, Attorney General
Paul H. Zoubek, Director, Division of Criminal Justice
AOC Directors and Assistant Directors
Trial Court Administrators

E:\CASSIDY\FVREG_.PRO

NEW JERSEY JUDICIARY

VERIFICATION AND CERTIFICATION
DOMESTIC VIOLENCE RESTRAINING ORDER

SUPERIOR COURT OF _____ COUNTY

ADDRESS

ADDRESS

TELEPHONE NUMBER

☐ Temporary Restraining Order ☐ Final Restraining Order

TO: STATE OF | CONTACT PERSON

TELEPHONE NUMBER ( ) | FAX NUMBER ( )

ADDRESS

CITY | STATE | ZIP CODE

PLAINTIFF'S LAST NAME | FIRST NAME | DEFENDANT'S LAST NAME | FIRST NAME

DATE OF ORDER | EXPIRATION DATE **NONE** | JURISDICTION (COUNTY / CITY) | ISSUING COURT DOCKET / CASE NUMBER

CERTIFICATION

I _____ certifiy that the above identified Order granted by the New Jersey Superior Court,

Chancery Division, Family Part, County of _____ **OR** Municipal Court of _____,

County of _____, represents a true copy of the original Order issued on _____ (date).

This Order represents the last Order issued in this matter. This Order has not be modified by any subsequent Order(s).

I am aware that if any statements made by me are willfully false I am subject to punishment.

FAMILY COURT STAFF NAME AND TITLE | DATE

The signatory is authorized by the Superior Court noted above to certify that the attached Order is a true copy of a valid New Jersey Domestic Violence Restraining Order.

PROOF OF SERVICE INFORMATION

☐ The defendant was provided with notice and the opportunity to be heard (Proof of Service Attached).

☐ There is no Proof of Service that the defendant has been served with a copy of this Order as of this date.

☐ Other: _____

NEW JERSEY JUDICIARY

CERTIFICATION OUT-OF-STATE
DOMESTIC VIOLENCE RESTRAINING ORDER

YOUR LAST NAME	FIRST NAME	DEFENDANT'S LAST NAME	FIRST NAME

DATE OF ORDER	EXPIRATION DATE	ISSUING STATE	JURISDICTION (COUNTY / CITY)

ISSUING COURT DOCKET / CASE NUMBER	ISSUING COURT PHONE NUMBER
	( )

CERTIFICATION

I _____ certifiy that the above identified Order presented to the New Jersey Superior Court, Chancery Division, Family Part, County of _____ represents a true copy of the original Order issued by _____ (state / local jurisdiction) on _____ (date). This Order represents the last Order issued in this matter to the best of my knowledge. I am aware that if any statements made by me are willfully false I am subject to punishment.

SIGNATURE	DATE

ISSUING COURT

TO BE COMPLETED BY AUTHORIZED PERSON FROM THE ISSUING COURT

NAME / TITLE

TELEPHONE NUMBER	FAX NUMBER
( )	( )

This certifies that the Order identified above and dated _____ has been reviewed and represents a true copy of our court's original Order. The defendant in this case was provided with the notice and the opportunity to be heard (Proof of Service attached) prior to the entry of this Order. The terms and conditions of the Order have not be modified by any subsequent Court Order(s).

SIGNATURE	DATE

PLEASE RETURN THIS STATEMENT TO _____ VIA FAX NUMBER _____

NEW JERSEY COURTS

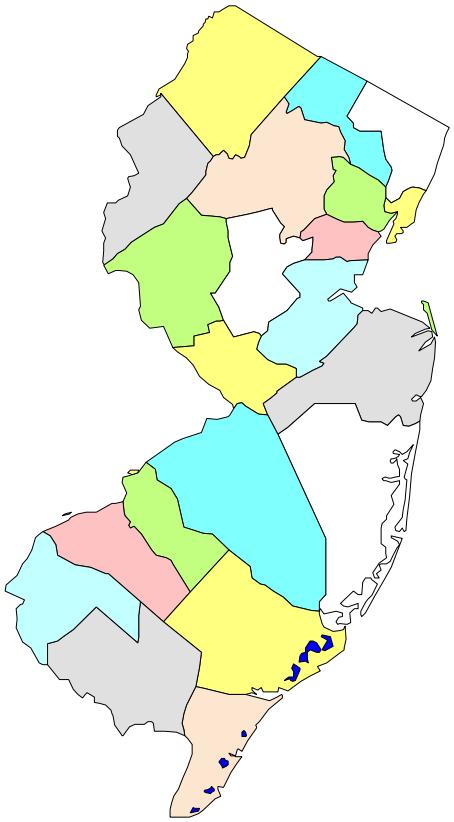
TO BE COMPLETED BY NEW JERSEY FAMILY DIVISION STAFF (ATTACH CERTIFICATION AND PLACE IN FILE)

STAFF MEMBER NAME	DATE ORDER PRESENTED	DATE CASE ESTABLISHED ON FACTS

DISTRIBUTION TO (identify)	NJ DOCKET NUMBER

SUPERVISOR NAME / COMMENTS

STATE OF NEW JERSEY
FAMILY AUTOMATED CASE TRACKING SYSTEM
(FACTS)



DVCR INQUIRY GUIDE

DRAFT

Prepared By: Automated Trial Court Systems Unit (ATCSU)
Date: June 2008

TABLE OF CONTENTS

INTRODUCTION 1

I LOGGING ON 3

II **DVCR** DEFENDANT AND VICTIM SEARCH 8

III DOMESTIC VIOLENCE INFORMATION 12
- A VICTIM SEARCH 13
- B DEFENDANT SEARCH 14
- C UNDOCKETED TRO SEARCH 16
- D FV CASE INFORMATION 18
- E FO CASE INFORMATION 20
- F P/G AND ACS HISTORY 22

APPENDIX 24
- TIPS FOR SEARCHING NAMES IN FACTS 25
- CONTACTS 26
- COUNTY CODES 27

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR INQUIRY GUIDE

INTRODUCTION - DVCR

The Domestic Violence Central Registry (DVCR) is a computerized inquiry system that allows law enforcement to access information about Domestic Violence cases. Prior to the existence of the Registry, officers needing information about DV cases had to request this information from the Family Court DV units in their county, who would then look up the case in question on the Family Automated Case Tracking System (FACTS). Access to the information was available only during the court's operating hours. The Central Registry permits direct access at any time to the DV information in FACTS.

The Central Registry displays information about cases in which a restraining order was requested (FV docket type), and cases in which a violation of a restraining order is alleged to have occurred (FO docket type). Law Enforcement personnel are using this information to help determine what action to take when a Restraining Order is allegedly violated, to help determine bail amounts, to decide if applications for weapons permits should be granted, and for general information in handling DV cases.

ONGOING ENHANCEMENTS

Enhancements to the Domestic Violence Central Registry are being developed on an ongoing basis. In anticipation of these enhancements, the text of this manual covers their use. If you find that you are unable to perform a function described in this manual, you may be trying to access a feature that has not yet been installed. Please phone the Judicial Problem Reporting Desk at 1-800-343-7002 and an analyst will contact you with further details.

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR INQUIRY GUIDE

INTRODUCTION – Juvenile Central Registry

This section deleted

ONGOING ENHANCEMENTS

Enhancements to the system are being developed on an ongoing basis. If you find that you are unable to perform a function described in this manual, please phone the Judicial Problem Reporting Desk at 1-800-343-7002. An analyst will contact you about your problem.

A NOTE ABOUT USING THIS GUIDE

To help you use this guide more effectively, remember that:

- CAPITALS - indicate names of Screens and Fields
- **BOLDED CAPITALS** - indicate some action that you must take (entering data or pressing keys).

NAVIGATING IN FACTS

CLEAR - return to the previous screen
PA1 - return to FACTS Main Menu from anywhere in FACTS
PF7 - page backward on screen or list
PF8 - page forward on screen or list

I

LOGGING ON

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE

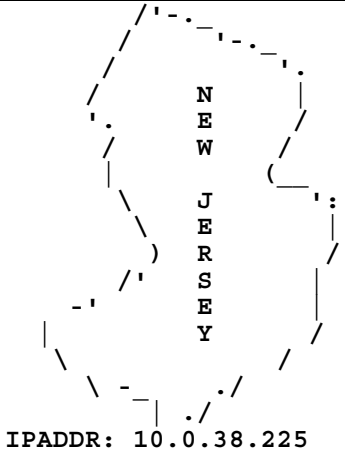
I. LOGGING ON

1) At the Office of Telecommunications and Information System (OTIS) screen, **TYPE AOCTELE** and **PRESS ENTER.**

STATE OF NEW JERSEY OFFICE OF TELECOMMUNICATIONS
AND INFORMATION SYSTEM
YOUR NETWORK TERMINAL IS xxxxxxxx
UNAUTHORIZED ACCESS ILLEGAL

PLEASE ENTER APPLICATION REQUEST: **AOCTELE**

2) At the ADMINISTRATIVE OFFICE OF THE COURTS "scale" screen, **TYPE NJ** and **PRESS ENTER**.

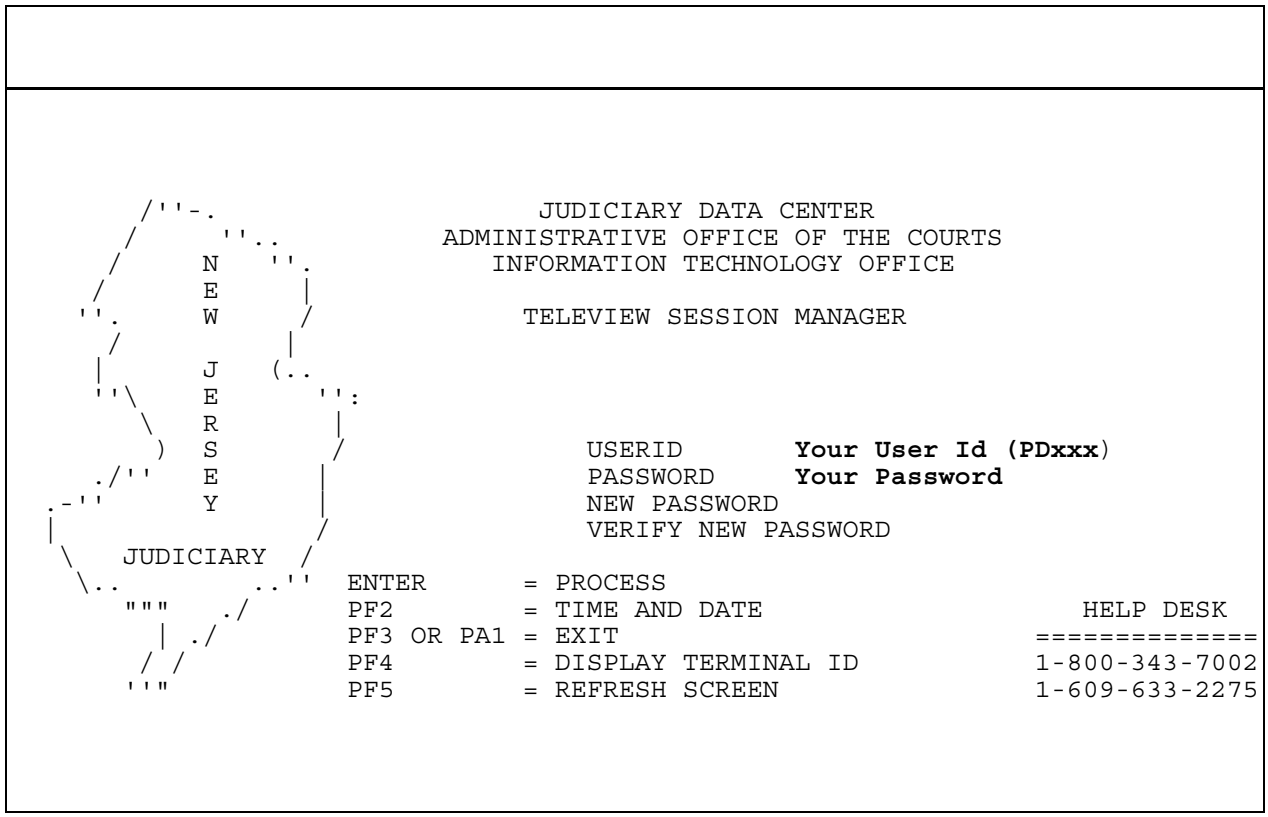



```
                                    JUDICIARY
                          TELECOMMUNICATIONS NETWORK
IPADDR: 10.0.38.225
                        ADMINISTRATIVE OFFICE OF THE COURTS
                           INFORMATION TECHNOLOGY OFFICE
                            UNAUTHORIZED USE PROHIBITED

                           PROBLEM REPORTING DESK - 800-343-7002
                                                    609-633-2275
                    ,ENTER "NJ" TO ACCESS:
```

3) At the TELEVIEW SESSION MANAGER screen, **TYPE** your **USERID ID, PRESS** the **TAB** Key**, TYPE** in your **PASSWORD,** and **PRESS ENTER.**
(The password will not be visible on the screen.)

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE



4) At the TELEVIEW SESSION MANAGER screen, look for "FACTS, DVCR & JUV REG" and **PRESS** the appropriate key to select the option.

(Note: The option may be a different number on your menu.)

```
 1/28/02 MON          JUDICIARY DATA CENTER              NETID: TNB00345
03:42:52 PM         TELEVIEW SESSION MANAGER             USRID: PDTRN10
--------------------------------------------------------------------------
MODEL: 3270-2/2E          ESC: ATTN    CMDCHR: .          REGID: 019F

CHOOSE SYSTEM NUMBER OR PFKEY FOR VIEWING:

 SYSTEM              APPLICATION STATUS      REMARKS / DESCRIPTION
 ------------ ---------------------------- -------------------------
 1 IDMS CV1            AVAILABLE              CV1 - TRAINING RELEASE 12
 2 EMAIL               AVAILABLE              ELECTRONIC MAIL
 3 RMDS/FM             AVAILABLE              FACTS REPORTS
 4 IDMS V17            AVAILABLE              FACTS, DVCR & JUV REG

      PA1 = UP   PA2 = DOWN   CLEAR = MSG   LOGOFF ALL = EXIT
```

5) The Central Registry Menu will display.
PRESS PF1 to access the DOMESTIC VIOLENCE CENTRAL REGISTRY

```
FMM1920              FAMILY AUTOMATED CASE TRACKING SYSTEM        01/28/02
                            CENTRAL REGISTRY MENU                    15:13
                                                                       PF

              USER ID:

                PF1  - DOMESTIC VIOLENCE CENTRAL REGISTRY

                PF2  - JUVENILE CENTRAL REGISTRY


FM905739 PLEASE DEPRESS PF KEY TO PROCESS FUNCTION
```

NOTE: Please be aware that the FACTS installation dates for the counties varied. Cases that occurred before 1992 may not be in the system. Many cases with active orders prior to 1992 have been entered by county DV staff.

II

DEFENDANT AND VICTIM

SEARCH

II. DEFENDANT AND VICTIM SEARCH

The following procedure describes how to search for a Defendant or Victim in the Central Registry.

1) On the PARTY NAME SEARCH screen choose the most accurate information you have on the party and use it for the search:

NAME (Primary method of searching) Full or partial last name may be used. (If a partial last name is used, no first name may be used.) Full or partial first name may be used with a full last name.

SBI #	State Police Bureau of Identification #.
SSN	Social Security Number. (See note below)
CDR #	Warrant # or Summons #.
PARTY ID	FACTS-generated Identifying Number.

(See Appendix I for tips on searching names).

```
 FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY            05/01/01
 PAGE: 0001                       PARTY NAME SEARCH                      16:19
                                                                          PF
 LAST NAME:                        FIRST NAME:            MIDDLE INIT:
 SBI #:          SSN:             CDR #:     0000 000000 0000  PTY ID:

S  PARTY NAME            DV PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS




 FM906738 ENTER SEARCH INFORMATION AND PRESS PF1

 PF1=PARTY SEARCH
                                                          PF11=REFRESH
```

NOTE: Social Security Number (SSN) searches will return ALL parties that claimed to be associated with that social security number who have had contact with the Family Court. A party or parties may display that have NO domestic violence record. Conversely, a party may have a domestic violence record and not display in a SSN search. <u>SSN and SBI numbers must not be the primary or sole method of searching</u>. Parties that display after an SSN search can not be assumed to be a party to any incident unless they show a D and/or V indication and can be selected.

2) Enter the search criteria and **PRESS PF1 PARTY SEARCH**.
A list of names that meet the search criteria will be displayed.

```
FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                      PARTY NAME SEARCH                          13:37
                                                                           PF

LAST NAME: MARINNIA             FIRST NAME:           MIDDLE INIT:
SBI #:          SSN:           CDR #:                     PTY ID:


S  PARTY NAME           DV  PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC       M  MER ***
   MARINNIA CINDI                                                     MAIDE
      SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN      M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  CAM
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK          F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK          M  MON
   MARINNIA JON           D  M 0020817  03 09 1970  BLACK          M  ATL
   MARINNIA KURT L                                                    NICKN
      MARRINIA LUKES K    V  M 0185816  03 20 1974                  F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN      M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN        M  PAS

       PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD   PF9=ALIAS PF11=REFRESH
```

3) Party Information.

a) *Dockets In More Than One County*. The Party's name will be listed once for each county in which they have a case. The Party ID, (a FACTS generated ID number) should be the same for each listing. Selecting any of the entries will yield a list of all cases in all counties for that party. (e.g., Eboney Marinnia above.)
If the party has different Party IDs each will display separate information. You must check the party's information under the extra Party ID number. (e.g. Jon Marinnia above)

b) *Defendant or Victim?* Each party will have one of the following under the DV column indicating whether they were a Defendant, Victim, or both.

D Defendant
V Victim
DV Both Victim and Defendant.

c) Alias Indicator. If the party has an alias in FACTS, one of the following indicators will display:

***	Indicates the Party has one or more alias (see PF9 below.)
AKA	Name is an Also Known As. True name is listed on next line.
NICKN	Name is a Nickname. True name is listed on next line
MAIDE	Name is a Maiden Name. True name is listed on next line
MISSP	Name was misspelled at some point in the records.
RESUM	Party has resumed a Maiden Name.
COURT	Court Misspelling of Name.

4) *To view the additional Alias listing,* select a name with *** indicator and **PRESS PF9 ALIAS.**
All other alias names in FACTS attached to this party will be displayed with VENUE and DESCRIPTION OF ALIAS. **PRESS CLEAR** to exit this window.

```
 FMM1900                DOMESTIC VIOLENCE CENTRAL REGISTRY            02/14/01
 PAGE: 0001                      PARTY NAME SEARCH                       10:58
                                                                          PF

 LAS +-------------------------------------------------------------+
     | FMM1907 FAMILY AUTOMATED CASE TRACKING SYSTEM     PAGE:    1 |
     |                          ALIAS LISTING                      |
 S   |   NAME: SMITH CINDI                    PARTY ID: S0108609    |CTY ALIAS
     | VEN     ALIAS                               DESCRIPTION       | ATL
 s   | ATL     MARGOLIS CINDI                      NICKNAME          |  ATL ***
     | ATL     MARINNIA CINDI                      MAIDEN NAME       |  ATL
     | ATL     MULGREW KATE                        A/K/A             |  ATL
     | ATL     MARINNIA CINDY                      COURT SPELLI      |  ATL
     | ATL     MARRANA SINDY                       MISSPELLING       |  CAM
     | BUR     MUDRUCKER CINDI                     RESUME MAIDE      |
     | BUR     MUDRUCKER SINDEE                    A/K/A             |
     |                                                               |
     +---------------------------------------------------------------+
     |                PF7=BWD PF8=FWD CLEAR=EXIT                     |
     +---------------------------------------------------------------+

                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD  PF9=ALIAS  PF11=REFRESH
```

5) *To search another name*, **PRESS CLEAR** to exit window, and **PRESS PF11 REFRESH** to reset screen and proceed as above.

III

DOMESTIC VIOLENCE INFORMATION

III. DOMESTIC VIOLENCE INFORMATION

A. VICTIM SEARCH

Displays a list of cases in which the party was a victim, with the name of the defendant for each docket.

1) From the PARTY NAME SEARCH screen, **SELECT** (S) a Victim (V) and **PRESS PF3 VICTIM SEARCH.**

```
FMM1900                DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                      PARTY NAME SEARCH                        13:37
                                                                         PF

LAST NAME: MARINNIA              FIRST NAME:            MIDDLE INIT:
SBI #:         SSN:            CDR #:     0000 000000 0000 PTY ID:

S  PARTY NAME            DV  PARTY ID   BIRTH DATE  RACE         SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC      M  MER ***
   MARINNIA CINDI                                                      MAIDE

S     SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN     M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN     F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN     F  CAM ***
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK         F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK         M  MOR
   MARINNIA JON           D  M 0020817  03 09 1970  BLACK         M  ATL
   MARINNIA KURT    L                                                  NICKN
      MARRINIA LUKES K    V  M 0185816  03 20 1974                 F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN     M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN       M  PAS


                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
 PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD  PF9=ALIAS PF11=REFRESH
```

The VICTIM-DEFENDANT NAME LIST screen displays.

```
FMM1905                DOMESTIC VIOLENCE CENTRAL REGISTRY            8/16/00
PAGE: 0001                VICTIM - DEFENDANT NAME LIST                 13:16
                                                                        PF



VICTIM LAST NAME: SMITH                FIRST NAME: CINDY      MIDDLE INIT:


S  DEFENDANT NAME          DOCKET NUMBER    PARTY ID  BIRTH DATE  RACE    SEX
S   MARINNIA JON           MER FV 001677 94 M 0020817 03 09 1970 BLACK     M









                          PF2=CASE LIST
```

2) *To access the Defendant Case List*, **SELECT** (S) the Defendant and **PRESS PF2 CASE LIST**.

More information about the defendant case list follows.

B. DEFENDANT SEARCH

Use the Defendant's information to quickly check for any active restraining orders or to go to the Defendant's case list to see a history of their DV cases.

1) *To check for active Restraining orders*: From the PARTY NAME SEARCH screen **SELECT** (S) the Defendant (D) and **PRESS PF4 ACTIVE ORDER CHECK.**

Several messages may be displayed:

The messages "ACTIVE RESTRAINING ORDER EXISTS - SEE CASE LIST" or "NO ACTIVE RESTRAINING ORDERS" will display for NJ orders.

If an Out of State DV Order has been registered, the message will read "REGISTERED ORDER EXISTS (EXPIRATION XX/XX/XXXX) - SEE CASE LIST".

If the Out of State DV Order has no expiration date, the message "REGISTERED ORDER EXISTS (NO EXPIRATION DATE) - SEE CASE LIST" will display.

If more than one Out of State Order has been registered, the message "MULTIPLE REGISTERED ORDERS EXIST - SEE CASE LIST FOR DETAILS" will display.

If both NJ and Out of State Orders are found, the message "ACTIVE AND REGISTERED ORDERS EXIST - SEE CASE LIST" will display.

NOTE: This function is not a full look-up, but a quick check of the defendant. If an active or registered order is found, the user must then continue the process by pressing PF2 to view the case list. If a Victim (V) is selected, this function will not return restraining order information on the defendant. The Defendant (D) must be selected.

3) *To view the Case List for the Defendant*: From the PARTY NAME SEARCH screen, **SELECT** (S) the Defendant (D) and **PRESS PF2 CASE LIST**.
If the person does not appear on the list, check a list of TROs that have been entered in the on-line system, but have not yet been docketed by Family Court.

```
FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                       PARTY NAME SEARCH                         13:37
                                                                           PF

LAST NAME: MARINNIA              FIRST NAME:            MIDDLE INIT:
SBI #:          SSN:            CDR #:                      PTY ID:



S  PARTY NAME            DV  PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC       M  MER ***
   MARINNIA CINDI                                                      MAIDE

      SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN      M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  CAM ***
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK          F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK          M  MOR
S  MARINNIA JON           D  M 0020817  03 09 1970  BLACK          M  ATL
   MARINNIA KURT  L                                                    NICKN
      MARRINIA LUKES K     V  M 0185816  03 20 1974                  F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN      M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN        M  PAS

                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
 PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD   PF9=ALIAS
PF11=REFRESH
```

C. UNDOCKETED TRO SEARCH

Many police agencies including the State Police now use e-TRO to record complaints and TROs granted after hours, weekends and holidays. The PARTY LIST screen displays the ability to search these TROs using the function key, **PF5 - UNDOCKETED TRO SEARCH.**

1) PRESS PF5, without selecting a person from the party name search list to perform this search. The system will use the criteria already entered and search for a TRO for the person. If any TROs are found with that name as plaintiff or defendant, the names will appear on this screen.

```
FMM1908                DOMESTIC VIOLENCE CENTRAL REGISTRY            02/27/02
PAGE: 0001                      UNDOCKETED TRO LIST                     15:31
                                                                         PF

 LAST NAME: MARINNIA            FIRST NAME:          MIDDLE INIT:
-------------------------------------------------------------------------------
 PARTY NAME          CASE RELATN     BIRTH DATE    RACE     SEX CTY SERVICE DT
---------------      -----------   ----------  ----------- --- —-- ----------

  MARINNIA ALBERT        DEFENDANT   09 01 1952  CAUCASIAN   M  BER
    MARINNIA JACKIE      PLAINTIFF   09 03 1971              F  BER
  MARINNIA COLAN         DEFENDANT   02 04 1954  ALASKAN NAT M  ATL
    MARINNIA ANNA        PLAINTIFF   06 09 1980              F  ATL
  MARINNIA JESSIE        DEFENDANT   10 15 1969  CAUCASIAN   M  SOM
    MARINNIA BARBARA     PLAINTIFF   01 01 1987              F  SOM
  MARINNIA LARRY         DEFENDANT   08 07 1988  CAUCASIAN   M  ATL
    BENNINGS ELIZABETH   PLAINTIFF   09 27 1981              F  ATL
* MARINNIO JACK          DEFENDANT   10 15 1969  CAUCASIAN   M  SOM
    MARINNIO BETTY       PLAINTIFF   01 01 1987              F  SOM

      TRO FOUND FOR DEFENDANT NAME ENTERED
    * = TRO DENIED          PF7=BACKWARD     PF8=FORWARD
```

If an asterisk (*) appears in front of the defendant name, the TRO was denied by the municipal court judge on duty at the time of complaint.

The purpose of this screen is to prevent duplicate TRO entry by law enforcement. It will not show any granted reliefs.

If a defendant is selected from the party search list and PF2 is pressed,

the DEFENDANT CASE LIST screen displays.

```
FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY            03/13/07
PAGE: 0002                   FACTS DEFENDANT CASE LIST                 13:18
                                                                          PF
 PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA             JON
 SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCEAN

 DOCKET NUMBER: OCN FO 000946 99  FP:Y  CASE STATUS/DATE: GUILTY    11 23 1999
    IND#: 990600544I                    ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FO 000319 99  FP:   CASE STATUS/DATE: DISMISSED 10 31 1999
    CDR#: W 1999 001598 0101            ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FO 000046 99  FP:   CASE STATUS/DATE: DISMISSED 05 23 1999
    CDR#: MULTIPLE CDR                  ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FV 001668 99  FP:   ORDER STATUS/DATE: ACTIVE/FRO
    MUNI: 0101 ABSECON TOWNSHIP        TRO ISS/SERVED: 04 18 1999 /
   VICTIM: JOYNER             TRACI     FRO ISS/SERVED: 05 08 1999 / 05 11 1999

PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD  PF10=CASE DETAIL
```

Defendant Information:

PARTY ID	FACTS Identifying ID Number.
SBI #	State Police Bureau of Identification #
DOB	Date of Birth
SSN	Social Security #
DL#	Drivers License # with state
JAIL STATUS	In Jail or Discharged.*
COMMITMENT/DISCHARGE DATE	Date Committed to/Discharged from County Jail
COUNTY	County Jail where Committed/Discharged.

(* Jail Status will display only for those parties whose County Jail and Family records have been linked using the FAMJAIL system.)

D. FV CASE INFORMATION

FV cases are created when a victim asks for a DV Restraining Order or registers an Out of State Restraining Order.

1) On the DEFENDANT CASE LIST, the following information displays for FV cases:

DOCKET NUMBER	County, Docket Type, Number, Court Year
FP	Fingerprint Indicator, Y or blank
ORDER STATUS/DATE	Case Status and Status Date
MUNI	Municipality where act of DV took place (State will display for Registered Foreign Orders)
TRO ISS/SERVED	TRO issued date / Proof of Service date
FRO ISS/SERVED	FRO issued date / Proof of Service date
VICTIM	Victim Name

The most important information is the Order Status. Orders with a Status of "ACTIVE" are in effect and enforceable. A Status of "DISMISSED" indicates the order is no longer in effect and the provisions of the order are no longer enforceable. An Order Status of "REGISTERED" indicates a Restraining Order from another state which has been registered in New Jersey. Whereas NJ orders do not expire, the orders from most other states are not permanent and have an expiration date. You must check the expiration date to determine if the expiration date has passed, which would make the order void.

```
 FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY            03/13/07
PAGE: 0002                    FACTS DEFENDANT CASE LIST                  13:18
 PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA            JON
 SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCN
 DOCKET NUMBER: OCN FO 000946 99  FP:Y  CASE STATUS/DATE: GUILTY    11 23 1999
    IND#: 990600544I                    ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
 DOCKET NUMBER: ATL FO 000319 99  FP:   CASE STATUS/DATE: DISMISSED 10 31 1999
    CDR#: W 1999 001598 0101            ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
 DOCKET NUMBER: ATL FO 000046 99  FP:   CASE STATUS/DATE: DISMISSED 05 23 1999
    CDR#: MULTIPLE CDR                  ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
S DOCKET NUMBER: ATL FV 001668 99  FP:   ORDER STATUS/DATE: ACTIVE/FRO
   MUNI: 0325 MOUNT LAUREL TOWNSHI     TRO ISS/SERVED: 04 18 1999 /
   VICTIM: JOYNER           TRACI      FRO ISS/SERVED: 05 08 1999 / 05 11 1999

 PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD PF10=CASE DETAIL
```

2) *To see a list of reliefs granted for the case*, **SELECT** (S) the case and **PRESS PF10 CASE DETAIL.**

A list of reliefs addressed by the order is displayed.

Reliefs for TRO's are preceded by an E (Emergent).
Reliefs for FRO's preceded by an F (Final).

Example of a New Jersey Final Restraining Order:

```
FMM1911    DOMESTIC VIOLENCE CENTRAL REGISTRY    PAGE: 0001
             RESTRAINING ORDER RELIEFS GRANTED
 F - PROHIBITION AGAINST FUTURE ACT OF DV
 F - EXCL POSS RESIDENCE TO PLA / ALT HOUSEHOLD
 F - PROHIBITION AGAINST CONTACT W/ VICTIM
 F - PROHIB AGAINST CONTACT W/ FAMILY HOUSEHOLD
 F - PROHIB AGAINST HARASSING COMMUNICATIONS
 F - LAW ENF ACCOMPANIMENT TO SCENE / RESIDENCE
 F - IN HOUSE RESTRAINTS



                PF7/BWD PF8/FWD CLEAR/PREV
```

Example of a Registered Out of State Order:

```
 FMM1911    DOMESTIC VIOLENCE CENTRAL REGISTRY    PAGE: 0001
              RESTRAINING ORDER RELIEFS GRANTED
 RO EXPIRES 12 MONTHS
      EXPIRATION DATE 03/16/2001
 F - PROHIBITION AGAINST FUTURE ACT OF DV
 F - EXCL POSS RESIDENCE TO PLA / ALT HOUSEHOLD
 F - PROHIBITION AGAINST CONTACT W/ VICTIM
 F - PROHIB AGAINST CONTACT W/ FAMILY HOUSEHOLD
 F - PROHIB AGAINST HARASSING COMMUNICATIONS
 F - LAW ENF ACCOMPANIMENT TO SCENE / RESIDENCE
 F - IN HOUSE RESTRAINTS



                 PF7/BWD PF8/FWD CLEAR/PREV
```

E. FO CASE INFORMATION

FO docket type cases arise from allegations that a DV restraining order (TRO or FRO) has been violated.

1) On the DEFENDANT CASE LIST the following information displays for FO cases:

DOCKET NUMBER	County, Docket Type, Number, Court Year
CASE STATUS/DATE	Case Status and Status Date
CDR #	Complaint # - Summons or Warrant
IND#	Indictment Number
ORIGINAL DOCKET #	Docket # for originating FV case
VICTIM	Victim's name

A Case Status of "GUILTY" indicates that the Defendant was found or pled guilty to violating the restraining order. A Case Status of "DISMISSED" indicates the Defendant was found Not Guilty of having violated the order or the case was dropped. "PENDING" cases are cases that have not yet gone to trial. See Appendix II for a list of possible Case Statuses.

```
FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY             03/13/07
 PAGE: 0002                    FACTS DEFENDANT CASE LIST                 13:18
                                                                          PF
  PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA             JON
  SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCN

  DOCKET NUMBER: OCN FO 000946 99 FP: CASE STATUS/DATE: GUILTY      11 23 1999
     IND#: 990600544I                 ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96
  DOCKET NUMBER: ATL FO 000319 99 FP: CASE STATUS/DATE: DISMISSED   10 31 1999
     CDR#: W 1999 001598 0101         ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96

S DOCKET NUMBER: ATL FO 000046 99 FP: CASE STATUS/DATE: GUILTY      05 23 1999
     CDR#: MULTIPLE CDR               ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96

  DOCKET NUMBER: ATL FV 001668 96 FP: ORDER STATUS/DATE: ACTIVE/FRO
     MUNI: 0325 MOUNT LAUREL TOWNSHI   TRO ISS/SERVED: 04 18 1999 /
     VICTIM: JOYNER            TRACI   FRO ISS/SERVED: 05 08 1999 / 05 11 1999

 PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD PF10=CASE DETAIL
```

2) *To see a list of the charges in case*: **Select** (S) the FO case and **PRESS PF10 CASE DETAIL**.

A list of charges displays. The result for each charge displays directly below the charge.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
CDR#:W 1999 001227 0101

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                D  05 23 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:12-1B(8)-AGGRAVATED ASSAULT /                                3  05 23 99
  DISMISSED
2C:14-2A-AGGRAVATED SEXUAL ASS /                                1  05 23 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:14-2B-SEXUAL ASSAULT        /                                2  05 23 99
  COUNSELING
                                PF8=FWD  CLEAR=PREV
```

If the case has multiple CDR #s or multiple IND #s, a notation displays showing which CDR or IND you are viewing. **PRESS PF6** to view the next CDR/IND.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
CDR#: W 1999 001228 0101

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                D  05 23 99
  PENDING              006 MONTH      TO BE SERVED
2C:12-1A-SIMPLE ASSAULT        /                                D  05 23 99
  FINE
2C:33-4C-HARASSMENT-PHYSICAL/V /                                P  05 23 99
  CHARGE DISMISSED

           PF6=N CDR                    CLEAR=PREV        MULT CDR 01 OF 02
```

If the case has an indictment number, that number will appear at the top of the screen.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
IND#:990900544I

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                4  09 21 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:12-1B(8)-AGGRAVATED ASSAULT /                                3  09 21 99
  DISMISSED
2C:14-2B-SEXUAL ASSAULT        /                                2  09 21 99
  COUNSELING
                                PF8=FWD  CLEAR=PREV
```

F. P/G AND ACS HISTORY

Displays the Defendant's court history from P/G (Promis/Gavel - the Superior Court Criminal information system) and ACS (Automated Complaint System- the Municipal Court Criminal information system). The cases displayed give general information about a party's court record and may or may not be related to their DV cases. This function will only work when SBI # is displayed on the defendant case list.

1) From the DEFENDANT CASE LIST screen **PRESS PF1 P/G HISTORY**.
(Note if no Promis/Gavel information is found, the system will skip to the ACS display)
The following information displays:

DEFENDANT NAME	Name of Defendant
SBI#	State Police Bureau of ID #
FP IND	"Y" or blank. Indicates SBI# was approved by State Police.
COUNTY	County where case originated
CASE #	PG case number
CRIME TYPE	Description of charge
IND/ACC #	Indictment/Accusation #
DEFN STATUS/DATE	Case Status and Date
SENT DATE	Date Sentenced
DISP DATE	Date case was disposed
ACTION	Sentence
REASON	Reason for Sentence

```
FMM1903                DOMESTIC VIOLENCE CENTRAL REGISTRY
PAGE:                   PROMIS/GAVEL DEFENDANT CASE LIST


DEFENDANT NAME: MARINNIA     JON
     SBI #:113000A     FP IND: Y     D-O-B: 03 09 1960   RACE: W    SEX:M
COUNTY CASE #:9800051   CRIME TYPE: ASSAULT         IND/ACC #:  98-12-0015-I
   ATL  DEFN STATUS/DATE:ACTIVE/NON-FUGITIVE 02 10 1998 SENT DATE:
        DISP DATE:03 09 1998     ACTION:GT    REASON: GUILTY PLEA AS CHARGED

DEFENDANT NAME: MARINNIA     JON    K
     SBI #:113000A     FP IND: Y     D-O-B: 03 09 1960   RACE: W    SEX:M
COUNTY CASE #:9700265   CRIME TYPE: NARCOTICS       IND/ACC #:  97-06-00132-I
   OCN  DEFN STATUS/DATE:PTI DIVERSION       02 01 1997 SENT DATE:
        DISP DATE:08 10 1997     ACTION:DM    REASON:PTI COMPLETION

PF1=ACS SBI SEARCH            PF7=BACKWARD                PF8=FORWARD
```

For more detailed information refer to the P/G Inquiry Guide.

2) From the PROMIS/GAVEL DEFENDANT CASE LIST **PRESS PF1 MUNICIPAL HISTORY** to see the Defendant's Municipal Court History in the Automated Complaint System (ACS),

The following information displays:

SBI#	State Police Bureau of ID #
DV IND	"Y" or blank. Domestic Violence Indicator
# CHRGS	Number of Charges on the CDR.
DESC	Description of the Most Severe Charge
STATUS/FINDING	Status of Complaint/Finding of Court
OFFN DATE	Date of Alleged Crime
DISP DATE	Date disposition of case was determined.

```
FMM1904                DOMESTIC VIOLENCE CENTRAL REGISTRY          03/19/07
PAGE: 0001                ACS DEFENDANT COMPLAINT LIST                14:47

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:    DV IND: Y    DOB: 03 09 1960     RACE: W   SEX: M
        COMPLAINT NO:W 2001 000036 0104  # CHRGS: 002  DESC: AGGRAVATED ASSA
        COMPL STATUS/FINDING:  WARRANT /
        OFFN DATE: 02 02 2001  DISP DATE:          ** OUTSTANDING WARRANT **

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:    DV IND: Y    DOB: 03 09 1960     RACE: W   SEX: M
        COMPLAINT NO.:W 2000 001163 0104  # CHRGS: 002 DESC: CRIMINAL MISCHF
        COMPL STATUS/FINDING:  DISPOSED / GUILTY
        OFFN DATE: 06 07 2000  DISP DATE: 08 09 2000

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:Y   DV IND: Y    DOB: 03 09 1960     RACE:W    SEX:M
        COMPLAINT NO.:W 1999 980325 0104  # CHRGS: 006  DESC: ASSAULT W/ INT
        COMPL STATUS/FINDING: TRANSFERED / DISPOSED AT SUPERIOR COURT
        OFFN DATE:01 02 1999  DISP DATE:10 13 1999

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:     DV IND:     DOB: 03 09 1960     RACE:W    SEX:M
        COMPLAINT NO.:W 1996 380325 0104  # CHRGS: 003  DESC:CAUSING OR RISK
        COMPL STATUS/FINDING: TPAY / COND DISCHARGE
        OFFN DATE:02 07 1996  DISP DATE:07 02 1996



PF7=BACKWARD          PF8=FORWARD           CLEAR=PRIOR SCREEN
```

For more detailed information, refer to the ACS Inquiry Guide.

APPENDIX

APPENDIX

TIPS FOR SEARCHING NAMES IN FACTS

1) *Start with a narrow search*. Start the search using a unique identifier or full name. This narrows the search and will save you time if you find the party.
- SSN # or PARTY ID.
- Full Name.

2) *Jr, Sr, III, ... at bottom of list*. The FACTS database is arranged such that Jr, Sr etc. are listed *after* all names that do not have one of these appendages. (e.g. - Al Smith Jr will be listed below Zeb Smith.)

3) *Search according to Data Entry Standards*
Data Entry Standards specify the correct way to enter data into FACTS.
- No punctuation. Use space where hyphens or apostrophes would be.
- Spaces before capitals in middle of names.

IF THE NAME IS:	*ENTERED AS:*
William Renn III	Renn III William
Susan Helig-Meyers	Helig Meyers Susan
Pat O'Brien	O Brien Pat
Jack McNealy	Mc Nealy Jack
John A. Smith Jr.	Smith Jr John A

4) *Try Variations***.** The Data Entry Standards may not have been followed or there may have been spelling variations. Even common names sometimes have spelling variations.

If you don't find:	*Try:*
O Brien	O'Brien
	Obrien
John	Jon
Helig Meyers	Helig-Meyers
Smith Jr John	Smith John

5) *Broaden the search.*
- Use only partial first name
- Try last name only
- Try partial last name

APPENDIX II ORDER AND CASE STATUS DESCRIPTIONS

Domestic Violence (FV)

ACTIVE	New Case - no result at this time
DISMISSED	No restraining order in effect
ACTIVE/RO	Restraining order in effect
ACTIVE/FRO	Final Restraining Order in effect
ACTIVE/TRO EXT	Temp Restraining Order in effect - Extended Indefinitely
ACTIVE/AMD TRO	Amended Temporary Restraining Order in effect
ACTIVE/AMD FRO	Amended Final Restraining Order in effect
REGISTERED	A Restraining Order from another state has been registered in NJ. (User must check expiration date to determine if order is still in effect.)
TRANSFER	Case has been transferred to another county. (User must view other county's case to determine case status.)

Domestic Violence Contempt (FO)

GUILTY	Defendant found or pleads guilty
DISMISSED	Defendant not found guilty - case dismissed
ON HOLD	Case cannot proceed
PENDING	Case has not yet gone to trial

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE

CONTACTS

For questions regarding either of the registries, please call the Judiciary Problem Reporting Desk at (609) 633-2275 or (800) 343-7002. They will contact an analyst who will answer your questions and address your needs.

All Law Enforcement officers having access to the Domestic Violence Central Registry will also have access to the Juvenile Central Registry.

Any new requests to access either system will be granted access to both registries.

COUNTY CODES

01	**ATLANTIC**
02	**BERGEN**
03	**BURLINGTON**
04	**CAMDEN**
05	**CAPE MAY**
06	**CUMBERLAND**
07	**ESSEX**
08	**GLOUCESTER**
09	**HUDSON**
10	**HUNTERDON**
11	**MERCER**
12	**MIDDLESEX**
13	**MONMOUTH**
14	**MORRIS**
15	**OCEAN**
16	**PASSAIC**
17	**SALEM**
18	**SOMERSET**
19	**SUSSEX**
20	**UNION**
21	**WARREN**

APPENDIX

DOMESTIC VIOLENCE CHECK LIST FOR LAW ENFORCEMENT OFFICERS
Primary Investigation Guidelines
Obtaining TRO's

1. ***Upon Arrival at Scene***

- ‘ Determine location and condition of victim
- ‘ Determine if suspect is still as scene
- ‘ Check well being, physical condition of all parties
- ‘ Determine what, if any, criminal offense has occurred
- ‘ Determine if any weapon was involved
- ‘ Summon first aid if injuries require

2. Preliminary Investigation

- ‘ Interview victim & suspect separately
- ‘ Ask victim if there is a history of abuse
- ‘ If children at scene, interview them separately
- ‘ Distinguish primary aggressor from victim, if both parties injured
  - T Comparative extent of injuries suffered
  - T History of domestic violence
  - T The nature and type of wounds [injury associated with defendant oneself[
  - T Other relevant factors
  - T Keep in mend that a person has a right to defendant self if attacked by another
- ‘ Note & document emotional & physical condition of parties involved
- ‘ Note demeanor of suspect
- ‘ Note torn clothing of both parties
- ‘ If victim is a woman, note smeared make up
- ‘ Note signs of injury on victim
- ‘ Note and record any excited utterances by any party
- ‘ Note any evidence of substance/chemical abuse
- ‘ Advise victim of domestic violence rights
- ‘ Assist victim in completing Victim Notification Form
- ‘ Advise victim of available resources
- ‘ Assist victim in obtaining temporary domestic violence restraining order

3. Court Orders

- ‘ Determine if victim has restraining order
- ‘ Was restraining order served on suspect
- ‘ Determine if suspect in violation of court order

4. Arrest

- ‘ If criteria for mandatory arrest present, arrest suspect
  - T Victim shows signs of injury caused by an act of domestic violence
  - T A warrant is in effect
  - T Defendant has violated a restraining order
  - T Defendant used or threatened to use a weapon
- ‘ If probable cause not present for arrest by officer, advise victim of right to sign criminal complaint
- ‘ Record spontaneous statement of suspect
- ‘ Prevent communication between suspect & victim/witness
- ‘ Record alibi statement of suspect

‘ Advise suspect of rights
‘ Record all statements

5. Evidence

‘ Record condition of crime scene
‘ Photograph damaged property
‘ Photograph crime scene
‘ Identify weapons/firearms
‘ Photograph and diagram injuries of
____victim
____suspect
‘ Obtain statements of
_____victim
_____children
_____witnesses
‘ Collect, protect and document all physical evidence

6***. Medical Treatment***

‘ Transport victim to hospital, if necessary
‘ Obtain copy of EMT report
‘ Obtain medical release from victim, if appropriate

7. Completing Incident Report

‘ Maintain objectivity in reporting
‘ Avoid personal opinions
‘ Report details, not conclusions
T Ensure that elements of all involved criminal offenses are included in report
T Describe in <u>detail</u> nature of criminal offenses involved
T Document any injuries suffered by victim
T Document any injuries suffered by suspect
T Document past history of violence
T Record spontaneous statements as stated by parties–do not paraphrase
T Record reasons why weapons were seized for safekeeping

8. Obtaining TRO When Courts are Closed

‘ Always contact a judge if:
1. an act of DV is alleged
2. the victim is a person protected under the DV Act; and
3. a TRO is requested
‘ If unsure of the above, contact the judge [Do not make a legal determination]
‘ Prior to contacting the judge for a DV Restraining Order, review the following:
1. Advise victim that she/he has the right to request a TRO and file a criminal complaint.
2. Confirm if victim is requesting a TRO. Officer cannot request TRO on behalf of victim.
3. Be sure all victim's rights forms are completed.
4. When TRO requested, complete DV complaint with victim.
5. Explain to victim that she/he will have to speak with the judge via telephone. Assist the victim in preparing a statement to be made to the judge.
‘ After administering the oath to the victim, the judge will ask the victim questions about the incident, the TRO and the requested relief.
‘ Contact the assigned judge by radio, telephone or other means of electronic communication. DO NOT USE the telephone of one of the parties.
‘ If mandatory arrest situation, have bail information available for the judge. Run CCH on defendant prior to contacting the judge. Check DV Registry.
‘ If not mandatory arrest, judge will decide whether complaint should go on a warrant or a summons.
‘ Run a multi-state record if circumstances warrant. A motor

vehicle check may also be helpful as it may reflect FTA's which could have a bearing on the bail decision.

- Be prepared to advise the judge of any prior incidents of domestic violence which may not appear on the criminal history [i.e., incident reports, etc.]
- Have TRO ready to complete at the direction of the judge after the judge has spoken with the victim. If the judge issues a TRO, the officer will be instructed to print the judge's name and enter the judge's authorization on the TRO.
- After the judge issues the TRO, serve the offender.

9. Violations of Restraining Orders

- When an officer determines that a party has violated an existing TRO or FRO by committing a new act of domestic violence or by violating the terms of the order, the officer should:
  1. arrest the offender
  2. Sign a criminal complaint charge, and ll related criminal offenses, on a complaint-warrant
  3. During regular court hours, telephone the assigned Superior Court judge, assigned prosecutor or bail unit and request bail be set At all other times, follow procedures for each county and vicinage.

10. Enforcing Out-of-State Restraining or Protective Orders

- Federal law requires out-of-state restraining and protective orders be recognized and enforced as if they were issued by a NJ court.
  To determine if out-of-state order is facially valid the officer should
  __Order is considered valid if order contains names if correct parties, and order has not expired [Note: NJ and WA orders do not have expiration dates], and
  __victim states that named defendant appeared in court or had notice of order

11. Enforcing Out-of-State Restraining or Protective Orders in Emergency Situations

- If named defendant committed a criminal offense under NJ law against victim and violated an out-of-state court order, officer should:
  __arrest defendant and
  __sign criminal complaint
  against defendant for criminal offense committed and cor a violation of a court order, N.J.S.A. 2c:29-9a.
- If named defendant committed no criminal offense but violated out-of-sate order, officer should
  __arrest defendant for a violation of court order and charge N.J.S.A. 2C:29-9a
- If victim does not have copy of out-of-state order and officer cannot determine existence of order or if court order contains apparent defect which would cause reasonable officer to question its authenticity, officer should
  __arrest actor if criteria of NJ Domestic Violence Act has been committed, and/or
  __explain to victim procedures to obtain order in NJ

12. Enforcing Out-of-State Restraining or Protective Orders Non-Emergency Situations

- Where no immediate need for police action, officer should refer victim to appropriate court so victim may seek relief in accordance with out-of-state court order

13. Violations of Federal Law

- Officer should determine if defendant violated federal law in committing act of domestic violence
- Interstate Domestic Violence
  __Did defendant cross state line or enter or leave Tribal Lands to commit domestic violence with intent to injure, harass, or intimidate that person's spouse or intimate partner, and, who, in the course of or as a result of such travel, intentionally committed a crime of violence and caused bodily injury to such spouse or intimate partner
  __Did defendant cause spouse or intimate partner to cross state lines or enter or leave tribal lands to commit any of above offenses?
- Interstate violation of Court Order
  __Did defendant cross state line or enter or leave tribal land with intent to violate domestic violence restraining or protective order
  __Did defendant cause another to cross state lines or to enter or leave triabal land by force, coercion, duress or fraud and in course or as result of such conduct, intentionally commit act that injures person's spouse or intimate partner in violation of court order
- NOTE: If officer concludes that federal law was violated, officer must contact designated assistant county prosecutor in accordance with departmental procedure.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)* ☐ YES	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*? ☐ YES	(19) WERE CHILDREN: ☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES

(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES

(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES

(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***

(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES

(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES

(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.*

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS MALE ____ FEMALE ____

(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

N.J.S.P. UCR UNIT COPY

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)* ☐ YES	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*? ☐ YES	(19) WERE CHILDREN: ☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES	(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***
(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES	(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES
(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES	(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES
	(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE	☐ 5. CRIMINAL RESTRAINT	☐ 9. LEWDNESS*	☐ 13. HARASSMENT
☐ 2. ASSAULT	☐ 6. FALSE IMPRISONMENT	☐ 10. CRIMINAL MISCHIEF*	☐ 14. STALKING*
☐ 3. TERRORISTIC THREATS*	☐ 7. SEXUAL ASSAULT	☐ 11. BURGLARY*	
☐ 4. KIDNAPPING	☐ 8. CRIMINAL SEXUAL CONTACT	☐ 12. CRIMINAL TRESPASS*	

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS	(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS
MALE ____ FEMALE ____	MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

COUNTY BUREAU OF IDENTIFICATION

(FORWARD DIRECTLY TO THE COUNTY BUREAU OF IDENTIFICATION)

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)*	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*?	(19) WERE CHILDREN:
☐ YES		☐ YES	☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES

(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES

(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES

(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***

(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES

(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES

(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS MALE ____ FEMALE ____

(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

MUNICIPAL/SUPERIOR COURT

(FORWARD DIRECTLY TO THE MUNICIPAL OR SUPERIOR COURT)

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)*	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*?	(19) WERE CHILDREN:
☐ YES		☐ YES	☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES	(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***
(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES	(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES
(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES	(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES
	(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)*** WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS		(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS	
MALE ____	FEMALE ____	MALE ____	FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

CONTRIBUTOR'S COPY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT GUIDE

A. PURPOSE OF THE REPORT:

The Supplementary Domestic Violence Offense Report shall be used to report (a) any of the fourteen listed acts of domestic violence and/or (b) any allegation of a domestic violence court order. N.J.S.A. 2C:25-1 et. seq. It will be the responsibility of a law enforcement officer who responds to a domestic violence call and/or an allegation of a violation of a Domestic Violence Court Order, to complete this report.

a. The report will be completed when one or more of the following acts are inflicted **by an adult or emancipated minor** upon a person protected under this act. A victim of domestic violence includes any person 18 years of age or older or who is an emancipated minor and has been subjected to domestic violence **by** a spouse, former spouse, or any other person who is a present or former household member. A victim also includes any person, regardless of age, who has been subjected to domestic violence **by** a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. A victim of domestic violence also includes any person who has been subjected to domestic violence **by** a person with whom the victim has had a dating relationship. **Child abuse complaints are not to be reported on this form.**
NOTE: **"Emancipated minor"** means a person who is less than 18 years of age but who has been married, entered in the military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

The acts of domestic violence are:

1. Homicide
2. Assault
3. Terroristic Threats
4. Kidnapping
5. Criminal Restraint
6. False Imprisonment
7. Sexual Assault
8. Criminal Sexual Contact
9. Lewdness
10. Criminal Mischief
11. Burglary
12. Criminal Trespass
13. Harassment
14. Stalking

B. MECHANICS:

1. This report may be ball pointed (block printed) or typed.
2. Routing:
   a. Original-First Copy **(NOTE: Do not forward copies of court orders or other documents to the New Jersey State Police.)**: New Jersey State Police, UCR Unit, Box 7068, River Road, West Trenton, NJ 08628-0068, (609) 882-2000, Ext. 2870.
   b. Second Copy: County Bureau of Identification (Forward directly to the County Bureau of Identification.)
   c. Third Copy: Municipal/Superior Court (Forward directly to the Municipal or Superior Court.)
   d. Fourth Copy: Contributor's Copy
3. Reports will be submitted immediately upon completion. DO NOT wait for the end of the month to forward the forms.

C. INSTRUCTIONS FOR PREPARATION OF THE SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT:

This report shall be accurate, factual, clear, concise, complete and free of errors in spelling and grammar. Appropriate abbreviations are acceptable. Complete all applicable boxes. Note: Logical edits have been written for the state's data entry programs. Illogical responses will be corrected by the program. No notice will be provided to the reporting agency (e.g., Criminal Trespass, offense with injury). Blocks requiring an affirmative answer must be checked "Yes" otherwise a "No" response will be recorded.

1. CASE NO. - Enter investigation report number; if none, enter operations report number or other available identifying number.
2. MUNICIPALITY - Enter name of the municipality where offense occurred.
3. MUNICIPALITY CODE - Enter four digit municipality identifier code.
4. SP STATION - Enter State Police station reporting offense (for State Police use only).
5. SP STATION CODE - Enter State Police station code number (for State Police use only).
6. PHONE NUMBER - Enter the reporting agency's complete phone number and extension.
7. OFFENSE DATE - Enter the date of offense. Example: 0 1 / 0 1 / 2 0 0 0 .
8. DAY CODE - Circle appropriate numerical code. 1. Sunday 2. Monday 3. Tuesday 4. Wednesday 5. Thursday 6. Friday 7. Saturday
9. MILITARY TIME - Enter time of offense - e.g. 0 0 0 1 HRS.
10. TOTAL TIME SPENT - Enter the total time spent on this investigation. IF UNKNOWN, ENTER APPROXIMATE TIME.
11. ALCOHOL INVOLVED - Check yes to indicate if the victim or the offender had been drinking.
12. OTHER DRUGS INVOLVED - Check yes to indicate if the victim or offender used drugs other than alcohol.
13. VICTIM'S NAME -Enter full name of the victim (first, middle, and last name). **ONE REPORT WILL BE COMPLETED FOR EACH VICTIM.** If incident involves a violation of a domestic violence order **only,** victim is the State of New Jersey, (leave blocks 14 thru 20 blank).
14. VICTIM'S AGE, SEX, RACE CODE AND ETHNICITY - Enter the Victim's:
    AGE - If unknown, enter approximate age.
    SEX - Check male or female.
    ETHNICITY - Check the appropriate box.
    RACE CODE - Circle numerical code for victim's race (using numbers 1 through 4).
    1 — White 2 — Black 3 — Asian or Pacific Islander 4 — American Indian or Alaskan Native
15. IS VICTIM PREGNANT? - Check yes to indicate if the victim is pregnant at the time of the incident.
16. WERE VICTIM AND OFFENDER INVOLVED IN A DATING RELATIONSHIP? - Check yes, if applicable; otherwise, leave blank.
17. IS VICTIM DISABLED? - Check yes if the victim is disabled, then check the appropriate box.
18. IF VICTIM IS DISABLED OR 60 YEARS OF AGE OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED (2C:24-8)? - Check yes, if applicable.
19. CHILDREN WERE INVOLVED, PRESENT - Check the appropriate box.
20. RELATIONSHIP OF VICTIM TO OFFENDER - Check to indicate relationship at time of incident (only check one block).
21. OFFENDER'S AGE, SEX, RACE CODE AND ETHNICITY - Enter offender's age, sex, race code, and ethnic origin using the instructions listed in block 14.
22. OFFENDER - Check the appropriate block.
23. PRIOR COURT ORDERS - Check yes if a Domestic Violence court order has ever been issued between the parties involved.
24. DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? - Check yes if this incident involved or alleged a violation of a Domestic Violence Restraining Order.
25. AS A RESULT OF THIS INCIDENT, WAS A RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES LISTED IN BLOCK 27? - Check yes if so.
26. WAS OFFENDER ARRESTED? - Check **ONLY** One.

OFFENSE INFORMATION - If incident is a violation of a domestic violence restraining order ONLY, leave blocks 27 through 35 blank.

27. CURRENT OFFENSE/COMPLAINT - Check only one block with regard to current offense. Mark the most serious crime. **For offenses with an asterisk, check "NONE" in Block 30.**
28.,29., 30. DEGREE OF INJURY FROM WEAPON USED - Locate weapon used, then check the appropriate block on horizontal line indicating degree of injury. - Check **ONLY** One.
    EXAMPLE: Aggravated/serious - is when injury is sufficient to cause broken bones, internal injuries, or when stitches are required.
    Non-Aggravated/minor - includes any lesser injury. Check only one weapon, by going down the list from 1 to 5.
31. WEAPONS SEIZED - **NOTE:** Include weapons seized even if not used to commit the domestic violence offense. Check yes for each weapon category (gun, knife, and other dangerous) to indicate if weapon(s) were seized. If no weapon(s) seized, leave blank.
32. ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM - Enter the total number of associated deaths, e.g., accidental, suicide, etc.
    NOTE: If the victim's cause of death was suicide, accidental, etc., include in this box.
33. ENTER NUMBER OF ASSOCIATED ADULT DEATHS - enter appropriate number of adult male/female deceased.
34. ENTER NUMBER OF ASSOCIATED JUVENILE DEATHS - enter appropriate number of juvenile male/female deceased.
35. DID OFFENDER COMMIT SUICIDE? - If applicable, check yes. **NOTE:** If yes, then the offender should be counted in block 30 as an associated death.
36. REMARKS - Enter additional information as needed.
37. RANK/NAME - Enter rank and name of investigating officer with signature.
38. BADGE NUMBER - Enter badge number of the officer preparing report.
39. DATE COMPLETED - Enter the date report is prepared.
40. REVIEWED BY - Enter initials and badge number of immediate supervisor who reviewed and approved the report.
41. BLANK BLOCK. 42. BLANK BLOCK. 43. BLANK BLOCK.

Atlantic County

ATLANTIC COUNTY WOMEN'S CENTER	
Violence Intervention Program (VIP)	
PO Box 311, Northfield, NJ 08225	
Emergency Shelter	
24 Hr. Hotline:	**(609) 646-6767**
Tollfree:	**1-800-286-4184**
TTY:	(609) 645-2909
Office:	(609) 646-4376
Fax:	(609) 645-8877
Email:	acwc@bellatlantic. net
Web:	www.acwc.org
Outreach	
Ph:	(609) 646-6768
Displaced Homemakers Services	
Home To Work	
Ph:	(609) 601-9925
Fax:	(609) 601-2975
Unified Child Care Services	
Child Care Network	
Ph:	(609) 646-1180
Fax:	(609) 645-8877
Sexual Assault	
24 Hr. Hotline:	(609) 646-6767
Tollfree:	1-800-286-4184
Batterers Services	
Alternatives To Violence (ATV)	
Ph:	(609) 646-6775

-

Bergen County

SHELTER OUR SISTERS
PO Box 217, Hackensack, NJ 07602
Office: 405 State Street Hackensack, NJ 07601

Emergency Shelter

24 Hr. Hotline:	**(201) 944-9600**
TTY:	(201) 836-3071
Shelter:	(201) 836-1075
Fax/Shelter:	(201) 836-7029
Office:	(201) 498-9247
Fax/Office:	(201) 498-9256
Email:	sos@shelteroursisters.org
Web:	www.shelteroursisters.org

-TRANSITIONAL HOUSING AVAILABLE

ALTERNATIVES TO DOMESTIC VIOLENCE
Bergen County Department of Human Services
One Bergen County Plaza, 2nd Floor
Hackensack, NJ 07601

Non-Residential Services/Outreach

24 Hr. Hotline:	**(201) 336-7575**
TTY:	(201) 336-7525
Fax:	(201) 336-7555
Email:	adv@co.bergen.nj.us
Web:	www.co.bergen.nj.us/ADV

Batterers Services
Alternatives to Domestic Violence

24 Hr. Hotline:	(201) 336-7575
Fax:	(201) 336-7555

-

Burlington County

PROVIDENCE HOUSE/WILLINGBORO SHELTER
PO Box 496 Willingboro, NJ 08046

Emergency Shelter

24 Hr. Hotline:	**(609) 871-7551**
TTY:	(609) 871-7551
Office:	(856) 824-0599
Fax/Office:	(856) 824-9340
Fax/Shelter:	(609) 871-0360
Web:	www.catholiccharities.org

Outreach
950A Chester Ave. Delran, NJ 08075

Ph:	(856) 824-0599
Fax:	(856) 824-9340

-

Camden County

CAMDEN COUNTY WOMEN'S CENTER
PO Box 1459 Blackwood, NJ 08012

Emergency Shelter

24 Hr. Hotline:	**(856)227-1234**
TTY:	(856) 227-9264
Office:	(856) 227-1800
Fax:	(856) 227-1261

Outreach Center
415 Cooper Street, Camden, NJ 08102

Ph:	(856) 963-5668
Fax:	(856) 964-4998

VOLUNTEERS OF AMERICA DELAWARE VALLEY
235 White Horse Pike, Collingswood, New Jersey 08107

Office:	(856) 854-4660
Fax:	(856) 854-0651
Email:	lengstrom@voadv.org

Batterers Services
Volunteers of America, Family Violence Prevention Program
525 Cooper Street, 3rd Floor
Camden, New Jersey 08101

Ph:	(856) 668-2065
Fax:	(856) 338-9017

Cape May County

CARA, INC. (COALITION AGAINST RAPE & ABUSE, INC.)
PO Box 774, Cape May Court House, NJ 08210-0774

Emergency Shelter

24 Hr. Hotline:	**(609) 522-6489**
Tollfree:	**1-877-294-2272 (CARA)**
TTY:	(609) 463-0818
Office:	(609) 522-6489
Fax:	(609) 463-0967
Email:	carasafe1@verizon.net

Men's Non Violence Group Services
MEND (Men Explore New Directions)

24 Hr. Hotline:	(609) 522-6489
Tollfree:	1-877-294-2272 (CARA)

-

Cumberland County

CUMBERLAND COUNTY WOMEN'S CENTER	
PO Box 921, Vineland, NJ 08362	
Emergency Shelter	
24 Hr. Hotline:	**(856) 691-3713**
Tollfree:	**1-800-286-4353**
TTY:	(856) 691-6024
Office:	(856) 691-3713
Fax:	(856) 691-9774
Batterers Services	
A.C.T. (Abuse Ceases Today)	
Ph:	(856) 691-3713

Essex County

FAMILY VIOLENCE PROGRAM
755 South Orange Avenue, Newark, NJ 07106

Emergency Shelter

24 Hr. Hotline:	**(973) 484-4446**
Office:	(973) 484-1704
Fax:	(973) 484-7682
Web:	www.babyland.org

Outreach
Family Violence Outreach
755 South Orange Ave, Newark , NJ 07106

Ph:	(973) 484-1704

Batterers Services
Men for Peace

Ph:	(973) 399-3400
Fax:	(973) 399-2076

THE SAFE HOUSE
PO Box 1877, Bloomfield, NJ 07003

Emergency Shelter

24 Hr. Hotline:	**(973) 759-2154**
Office:	(973) 759-2378
Fax:	(973) 844-4950

THE RACHEL COALITION c/o JEWISH FAMILY SERVICE
570 West Mt. Pleasant Ave, Suite 203
Livingston, NJ 07039

Emergency Safehouse

24 Hr. Emergency Paging Service:	**(973) 740-1233**

Outreach

Office:	(973) 740-1233
Fax:	(973) 740-1590
Website:	www.rachelcoalition.org

TRANSITIONAL HOUSING (one unit)

Batterers Services
RESPECT

Office:	(973) 765-9050 ext. 259 (intake)

LINDA & RUDY SLUCKER
NATIONAL COUNCIL OF JEWISH WOMEN
CENTER FOR WOMEN
513 W. Mt. Pleasant Ave., Suite 325, Livingston, NJ 07039

Outreach
Teen Dating Abuse Program

Office:	(973) 994-4994
Fax:	(973) 994-7412
Email:	centerforwomen@ncjwessex.org
Web:	www.CENTERFORWOMENnj.org

Gloucester County

SERVICES EMPOWERING THE RIGHTS OF VICTIMS (SERV)
PO Box 566, Glassboro, NJ 08028

Emergency Shelter

24 Hr. Hotline:	**(856) 881-3335**
Tollfree:	**(866) 295-7378**
TTY:	(856) 881-9365
Office:	(856) 881-9337
Fax:	(856) 881-1297
Email:	gcdvs@centerffs.org

-

Hudson County

WOMENRISING, INC.
270 Fairmount Avenue, Jersey City, NJ 07306

Emergency Shelter

24 Hr. Hotline:	**(201) 333-5700**
TTY:	(201) 333-0547
Fax:	(201) 333-9305
Email:	womenrising@aol.com

Outreach
270 Fairmount Ave, Jersey City, NJ 07306

Ph:	(201) 333-5700

-

Hunterdon County

WOMEN'S CRISIS SERVICES
47 E. Main Street, Flemington, NJ 08822

Emergency Shelter

24 Hr. Hotline:	**(908) 788-4044**
Tollfree:	**1-888-988-4033**
TTY:	1-866-954-0100
Office:	(908) 806-8605
Fax:	(908) 788-7263
Email:	agencyinfo@womenscrisisservices.org
Web:	www.womenscrisisservices.org

Outreach

Ph:	(908) 788-7666
TTY:	(908) 788-7666
Fax:	(908) 806-4725 or (908) 788-2799

Sexual Assault/Rape/Incest

Ph:	(908) 788-7666

Batterers Services
Men's Group

Ph:	(908) 788-7666

TRANSITIONAL HOUSING AVAILABLE

Ph:	(908) 806-0073

Mercer County

WOMANSPACE, INC. 1212 Stuyvesant Avenue, Trenton, NJ 08618	
Emergency Shelter	(609) 394-9000
24-Hr. Hotline:	1-800-572-SAFE (7233)
State Hotline:	.
V/TTY:	(609) 394-9000 or 1-888-252-7233
Office:	(609) 394-0136
Fax:	(609) 396-1093
Email:	pmh@womanspace.org
Web:	www.womanspace.org
Sexual Assault Support Services	
24 Hr. Hotline :	**(609) 394-9000**
Outreach 1860 Brunswick Avenue, Lawrenceville, NJ, 08648	
Ph:	(609) 394-2532
TTY:	(609) 394-5417
TRANSITIONAL HOUSING AVAILABLE	
Batterers Services Family Growth Program 39 N. Clinton Avenue, Trenton, NJ 08609	
Ph:	(609) 394-5157
Fax:	(609) 394-3010

-

Middlesex County

WOMEN AWARE, INC.
PO Box 312, New Brunswick, NJ 08903

Emergency Shelter

24-Hr. Hotline:	**(732) 249-4504**
TTY:	(732) 249-0600
Office:	(732) 249-4900
Fax:	(732) 249-4901
Shelter Fax:	(732) 249-0010
Email:	womenaware@aol.com

Outreach
96 Paterson Street, New Brunswick, NJ, 08901

Ph:	(732) 937-9525
Fax:	(732) 249-6942
Web:	www.womenaware.net

MANAVI, INC. (An organization for South Asian Women)
PO Box 3101, New Brunswick, NJ 08903-3103

Transitional Housing Available
(Office Hours 9:30 - 5:30)

Office:	(732) 435-1414
Fax:	(732) 435-1411
Email:	Manavi@att.net
Website:	www.manavi.org

-

Monmouth County

180 Turning Lives Around Inc.
One Bethany Road, Bldg. 3, Suite 42, Hazlet, NJ 07730

Emergency Shelter

24-Hr. Hotline:	(732) 264-4111
TTY:	(732) 203-0862
Office:	(732) 264-4360
Fax:	(732) 264-8655
Email:	wcmcmain@aol.com
Web:	www.180nj.org

Outreach Counseling

Ph:	(732) 264-4111

Rape Care Program

24 Hr. Hotline:	(732) 264-7273
Toll free:	1-888-264- RAPE (7273)

Batterers Services: Alternatives to Abuse

Ph:	(732) 264-4360, Ext. 252

Transitional Housing Available

Transitional Living Program: Families in Transition

Ph:	(732) 886-5144
Fax:	(732) 886-5141

Asbury/Neptune Outreach

Ph:	(732) 988-5200 ext. 510

School Based Violence Prevention Group

Ph:	(732) 264-4360 ext. 118

Youth Helpline

Toll free:	888-222-2228

Morris County

JERSEY BATTERED WOMEN'S SERVICES, INC. (JBWS)
PO Box 1437, Morristown, NJ 07962-1437

Emergency Shelter

24 Hr. Hotline:	(973) 267-4763
TTY:	(973) 285-9095
Office:	(973) 455-1256
Fax:	(973) 605-5898
Email:	info@jbws.org
Web:	www.jbws.org

Batterers Services
Abuse Ceases Today (ACT)

Ph:	(973) 539-7801
Fax:	(973) 539-4068

Transitional Housing Available

Ocean County

PROVIDENCE HOUSE - OCEAN
PO Box 4344, Brick, NJ 08723

Emergency Shelter

24 Hr. Hotline:	(732) 244-8259
Tollfree:	1-800-246-8910
TTY:	(732) 244-8259
Office:	(732) 262-3143
Fax:	(732) 262-1787
Shelter Fax:	(732) 244-3064
Web:	www.catholiccharities.org

Outreach
35 Beaverson Blvd., Bldg #6, Brick, NJ 07823

Ph:	(732) 262-3143

-

Passaic County

PASSAIC COUNTY WOMEN'S CENTER
Domestic Violence Program
PO Box 244, Paterson, NJ 07513

Emergency Shelter

24-Hr. Hotline:	(973) 881-1450
TTY:	(973) 278-8630
Office:	(973) 881-1450
Fax:	(973) 881-0617

Outreach
1027 Madison Avenue, Paterson, NJ 07513

Ph:	(973) 881-0725
Fax:	(973) 881-0938

Rape Crisis Program
1027 Madison Avenue, Paterson, NJ 07513

24-Hr. Hotline:	(973) 881-1450
Ph:	(973) 881-0725
Fax:	(973) 881-0938

Project S.A.R.A.H.
199 Scoles Ave., Clifton, NJ 07102

24-Hr. Tollfree Hotline:	1-888-883-2323
Ph:	(973) 777-7638
Fax:	(973) 777-9311

Strengthen Our Sisters
PO Box U, Hewitt, NJ 07421

Office:	(973) 657-0251
Fax:	(973)728-0618
Email:	info@strengthenoursisters.org
Website:	www.strengthenoursisters.org

Salem County

SALEM COUNTY WOMEN'S SERVICES
PO Box 125, Salem, NJ 08079-0125

Emergency Shelter

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511
TTY:	(856) 935-7118
Office:	(856) 935-8012
Fax:	(856) 935-6165
Email:	scws125@comcast.net

Sexual Assault/Rape Crisis

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511

Batterers Services
Alternatives to Violence

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511

-

Somerset County

RESOURCE CENTER FOR WOMEN AND THEIR FAMILIES
427 Homestead Road, Hillsborough, NJ 08844

Emergency Shelter

24-Hr. Hotline:	1-866-685-1122
TTY:	(908) 359-8604
Office:	(908) 359-0003
Fax:	(908) 359-8881
Email:	info@rcwtf.org
Web:	www.rcwtf.org

Outreach

Ph:	(908) 359-0003

Batterers Services
Batterer's Referral Line

Ph:	1-866-685-1122

Transitional Housing Available

Sussex County

DOMESTIC ABUSE SERVICES, INC.
PO Box 805, Newton, NJ 07860

Emergency Shelter
24 Hr. Hotline:
(Collect Calls Accepted) (973) 875-1211
TTY: (973) 875-6369
Office: (973) 579-2386
Fax: (973) 579-3277
Email: dasi@nac. net
Web: www.dasi.org

Outreach
Ph: (973) 579-2386
TTY: (973) 579-6593
Fax: (973) 579-3277

Sexual Trauma Resource Center
PO Box 805, Newton, NJ 07860
24 Hr. Hotline (973) 875-1211
Ph: (973) 300-5609
TTY (973) 875-6369
Fax: (973) 579-3277

Batterers Services
DECIDE Program
PO Box 295, Newton, NJ 07860
Ph: (973) 579-2500
Fax: (973) 579-1273

Domestic Violence Assessment Center of Sussex County
PO Box 295, Newton, NJ 07860
Ph: (973) 579-9666
Fax: (973) 579-1273

-

Union County

PROJECT: PROTECT
c/o YWCA of Eastern Union County
1131 East Jersey Street, Elizabeth, NJ 07201

Emergency Shelter

24-Hr. Hotline:	(908) 355-4357
TTY:	(908) 355-1023
Office:	(908) 355-1500
Fax:	(908) 355-0534
Email:	info@ywcamail.com

Outreach

Ph:	(908) 355-1995

Batterers Services
Men Against Violence, c/o YWCA

Ph:	(908) 355-1995

ALTERNATIVES FOR MEN - BATTERERS SERVICES
Mental Health Association
23 North Avenue East, Cranford, NJ 07016

Ph:	(908) 272-0304
Fax:	(908) 272-5696

Warren County

DOMESTIC ABUSE & RAPE CRISIS CENTER (DARCC)
PO Box 423, Belvidere, NJ 07823

Emergency Shelter

24-Hr. Hotline:	(908) 475-8408
Tollfree:	1-866-6BE-SAFE (1-866-623-7233)
TTY:	(908) 453-2553
Office:	(908) 453-4121
Fax:	(908) 453-3706
Web:	www.darcc.org

Outreach Services
78 South Main St, Phillipsburg, NJ 08865

Ph:	(908) 475-8408

Batterers Services

Ph:	(908) 813-8820

Domestic violence, or battering, is a pattern of abusive behaviors that some individuals use to control their intimate partners. Battering can include physical, sexual and emotional abuse, and other controlling behaviors. The following questions may help you decide whether you are being abused.

Does your partner ever:

- Hit, kick, shove or injure you?
- Use weapons/objects against you or threaten to use them?
- Force or coerce you to engage in unwanted sexual acts?
- Threaten to hurt you or others, or to disclose your sexual orientation or other personal information?
- Control what you do and who you see in a way that interferes with your work, education or other personal activities?
- Steal or destroy your belongings?
- Constantly criticize you, call you names or put you down? Make you feel afraid?
- Deny your basic needs such as food, housing, clothing, or medical and physical assistance?

If you answered "yes" to any of the above, it may be time to think about your safety.

Help is Available

Many places offer 24-hour support, emergency shelter, advocacy and information about resources and safe options for you and your children.
For assistance, call:

National Domestic Violence Hotline
(assistance available in over 140 languages)
1-800-799-SAFE (7233)
1-800-787-3224 TTY

Or access your local resources:

NJ Statewide Domestic Violence Hotline
(Translators available in any language)
1-800-572-SAFE (7233)
609-392-2990 TTY

NJ Coalition for Battered Women
(609) 584-8107
(609) 584-0027 TTY

Division on Women
(609) 292-8840
(609) 777-0799 TTY

Women's Referral Central
1-800-322-8092

This brochure is part of a series developed by the **Public Education Technical Assistance Project of the National Resource Center on Domestic Violence**. It can be freely reproduced. For more information, call 1-800-537-2238 / 1-800-553-2508 TTY.

Domestic Violence…
Putting the Pieces Together

Finding Safety and Support

NJ Department of Community Affairs
Division on Women
101 South Broad Street – PO Box 801
Trenton, NJ 08625-0801

609-292-8840 • TTY 609-777-0799
dow@dca.state.nj.us • www.nj.gov/dca/dow

It Can Happen to Anyone

Domestic violence is a serious problem that has been happening for centuries. In the U.S. each year, it affects millions of people, most often women. Domestic violence can happen to anyone regardless of employment or educational level, race or ethnic background, religion, marital status, physical ability, age or sexual orientation.

It is NOT Your Fault

If you are being abused by your partner, you may feel confused, afraid, angry or trapped. All of these emotions are normal responses to abuse. You may also blame yourself for what is happening. No matter what others might say, you are never responsible for your partner's abusive actions. Batterers choose to be abusive.

Identifying Support

Developing a support network can be very helpful to you as you plan for safety. There are many places to turn for assistance.

Community Support

Friends, family, women's and community groups, churches and service providers (such as legal, health and counseling centers) can provide a variety of resources, support and assistance.

Domestic Violence Services

In many communities, there are organizations that provide free and confidential help to individuals who are being battered. Information about finding and using these services is on the back of this brochure.

Legal Options

Criminal Charges

If you or other loved ones have been physically injured, threatened, raped, harassed or stalked, you can report these crimes to the police. Criminal charges may lead to the abuser being arrested and possibly imprisoned.

Restraining/Protective Orders

Even if you don't want to press criminal charges, you can file for a civil court order that directs your partner to stay away from you. In many states, restraining/protective orders can also evict your partner from your home, grant support or child custody, or ban him/her from having weapons.

Planning for Safety

Without help, domestic violence often continues to get more severe over time. It sometimes can become deadly.

To Increase Your Safety:

- Tell others you trust, such as friends, family, neighbors and co-workers, what is happening and talk about ways they might be able to help.
- Memorize emergency numbers for the local police (such as 911), support persons and crisis hotlines.
- Identify escape routes and places to go if you need to flee from an unsafe situation quickly.
- Talk with your children about what they should do if a violent incident occurs or if they are afraid.
- Put together an emergency bag with money/checkbooks, extra car keys, medicine, and important papers such as birth certificates, social security cards, immigration documents, and medical cards. Keep it somewhere safe and accessible, such as with a trusted friend.
- Trust your instincts – if you think you are in immediate danger, you probably are. Get to a safe place as soon as you can.

NO ONE deserves to be battered.

NJ COALITION FOR BATTERED WOMEN

Batterers Intervention Program Standards

The following standards were developed by the New Jersey Coalition for Battered Women in 1998 in conjunction with its Batterers Intervention Programs (BIP's) and BIP's outside of the Coalition membership. The Coalition considers these standards to be very basic minimum standards. The Coalition will be developing more detailed standards in the future.

I. Goals of Batterers Intervention Programs

II. Program Structure and Operation

III. Staffing

IV. Victim Confidentiality

I. Goals of Batterers Intervention Programs

1) To protect victims and their children.

2) To hold perpetrators accountable for their violent and abusive behaviors towards family/community and self.

3) To empower batterers to make nonviolent choices.

II. Program Structure and Operations

1) Group format is preferred to individual intervention. Couples counseling is contraindicated where domestic violence exists in a relationship. Couples counseling is not considered a form of BIP.

2) Length of the program is ideally 52 weeks or longer; 26 weeks is the

minimum.

3) Each group should run from 1.5 to 2.5 hours, once a week.

4) Eight to 12 people are the ideal number for a group, particularly with only one facilitator, but even with two facilitators.

5) Participants must complete the program within a prescribed length of time.

6) Intakes will only be rescheduled once. Batterers are dismissed after missing two scheduled intake appointments. A letter from the referring Judge is required to get the batterer back into the program.

7) Where fees are charged, they must be paid in full before a compliance letter goes to the court.

8) Batterers may miss four scheduled group sessions, but those sessions must be made up within the program's time frame.

10) Programs will contact the referring court regarding compliance/non-compliance with court ordered attendance and participation requirements.

III. Staff

1) Co-facilitation is preferred, ideally by a male and female team.

2) A Masters level program supervisor with a NJ Domestic Violence Specialist (DVS) certification is preferred; otherwise the supervisor should have the equivalent 180 hours of DV education and 2,000 hours of experience working in the domestic violence field. Experience working with victims and children should be a prerequisite to working with batterers.

3) Accountability with people who represent as much of the racial, ethnic, and sexual diversity of society as possible, is encouraged. Batterers groups would ideally be videotaped, audio taped, peer supervised and/or clinically supervised, particularly where only one facilitator conducts the intervention.

IV. Victim Confidentiality

1) Batterers Service Providers have a duty to warn victims based on the 1976 Tarasoff decision. (A therapist's duty to warn a victim through notifying both the victim and law enforcement authorities).

2) When victim contact occurs, either through outreach by the domestic violence program or by the victim, information about services available for the victim should always be provided. Victims, however, should never be pressured to attend domestic violence programs.

3) Service providers receiving information from victims about a batterer's violent behavior are encouraged to use that information carefully to develop specific interventions with the batterer. Service providers are reminded that victim confidentiality and safety are paramount. Victim confidentiality must be maintained unless a written waiver is provided by the victim.

4) While victims may be strongly encouraged to report further violence to the batterers program, and certainly to the police and legal system; victims should never be pressured to divulge information which they are not comfortable revealing, or to provide a confidentiality waiver while fearing such actions will put them in further danger from the batterer.

5) Service providers must remain cognizant that batterers programs can never promise to protect victims when confidentiality is waived, and should encourage victims to have a safety plan.

Court Checklist for Batterer Intervention Programs

Preferred arrest policies for domestic violence in Ohio have increased the number of batterers seen in criminal courts. When available, Batterer Intervention Programs* (BIPs) offer courts a treatment approach that holds batterers accountable, while striving to change their behavior. Unfortunately, poorly run or improperly constructed BIPs also can pose increased risks to victims of domestic violence. Therefore, it is important that courts understand the critical elements of effective BIPs. This guide was adapted from the Ohio Domestic Violence Network's Self-Evaluation Tool for Batterers Intervention Programs to help Ohio judges consider the quality of existing programs.

☑ Does the program have written procedures for victim safety to:

- ☐ Screen at intake and periodically thereafter for lethality/dangerousness toward partner and children?
- ☐ Warn a victim in cases where a potential risk of harm has been identified by program staff (often referred to as the "duty to warn" policy)?
- ☐ Limit the confidentiality of BIP clients (e.g., authorizations to release information)?
- ☐ Contact victims safely and appropriately according to the procedure developed with assistance from the local domestic violence programs**?

☑ Does the prcgram seek input from the local domestic violence program to:

- ☐ Develop procedures for victim contact?
- ☐ Train BIP providers on domestic violence and victimization in general?
- ☐ Monitor the BIP through observation by skilled staff trained in the dynamics of domestic violence?
- ☐ Provide interventions for women who are arrested for domestic violence, including procedures that determine the primary aggressor and protect victims from being placed in groups with batterers?

☑ Does the BIP have written procedures for providing information to the courts that specify:

- ☐ Information exchange between BIP staff and probation officers, judges, court clerks, or another designated agent?
- ☐ The necessary information to effectively monitor batterers (e.g., attendance, any non-compliance or lack of progress)?
- ☐ Timelines for regular reporting (e.g., weekly or monthly)?
- ☐ Requirements for additional reports in exceptional circumstances?

☑ Does the program work collaboratively within the community? Is the program:

- ☐ Represented on the local domestic violence taskforce or other coordinating efforts?
- ☐ Included in the inter-agency protocols that clarify roles and responsibilities between law enforcement, service providers, and the courts within the community?
- ☐ Involved in collaborative efforts to provide education to other professionals and in the community?
- ☐ Able to clearly explain the process for receiving referral from all possible sources, including appropriate contact persons and the procedural requirements for each agent (e.g., the information required for a referral and timing)?
- ☐ Able to place victim safety as first priority?

☑ Does the program support BIP clients by:

- ☐ Informing them of program policies and procedures?
- ☐ Providing or making referrals-for services to address common problems such as substance abuse, mental health, and or physical disability?
- ☐ Providing outreach to underserved populations by building collaborative relationship with diverse communities?
- ☐ Ensuring client participation is for a minimum length of 52 weeks with 1.5 hours sessions?
- ☐ Including group education and intervention strategies?
- ☐ Ensuring regular oversight of sessions by supervisors experienced in batterer interventions?

☑ Does the program support staff with regular, in-service training:

- ☐ That includes a core written curriculum that focuses on the behavior of a batterer as a system of oppression, with stopping all forms of abuse and victim safety as the primary goals?
- ☐ That teaches the power imbalance between men and women?
- ☐ Based on a male/female, co-facilitator model?
- ☐ That offers training opportunities for staff to further their knowledge and skills in domestic violence in general as well as in batterer intervention?

☑ Does the program demonstrate its efficacy by:

- ☐ Basing its practices on accepted clinical interventions and domestic violence research?
- ☐ Establishing measures to evaluate program effectiveness on clients?
- ☐ Developing long-term outcome measures on batterer recidivism?
- ☐ Working closely with the local research community and domestic violence programs?

* Batterer intervention program refers to a program that provides treatment for male domestic violence perpetrators.

** Domestic violence program refers to a community-based program that directly serves victims, including shelters and other agencies that advocates for victims and their children.

About the Ohio Domestic Violence Network (ODVN)

ODVN is a statewide coalition of domestic violence programs, supportive agencies, and concerned individuals organizing to ensure the elimination of domestic violence by: providing technical assistance, resources, information, and training to all who address or are affected by domestic violence; and promoting social and systems change through public policy, public awareness, and education initiatives.

For more detailed information, contact ODVN at (800) 934-9840 or info@odvn.org. The ODVN Standards for Batterers Interventions and an accompanying Self-Evaluation Guide are available online at www.odvn.org.

DOMESTIC VIOLENCE

Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases

Issued April 1996
Revised September 2000

Introduction: The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 *U.S.C.A.* 2265, requires that out-of-state domestic violence restraining orders or orders of protection be recognized and enforced as if they were orders of a New Jersey court. The out-of-state order is to be enforced in this State even if

A. The victim would not be eligible for a restraining order or an order of protection in this State.

B. The foreign order grants the named applicant more relief than the person would have received under New Jersey law.

I. Definitions

A. Out-of-State domestic violence restraining orders (also known as "foreign") orders of protection include any court order issued by any other state, Indian tribe, territory or possession of the United States, Puerto Rico or the District of Columbia, whether or not the order is similar to a restraining order issued in the State of New Jersey.

B. Mutual Order of Protection is a single court order entered against both parties and requiring both parties to abide by the conditions of the order. Under the VAWA, mutual orders of protection are discouraged. Under New Jersey law, mutual orders of protection are prohibited. However, each party may obtain a separate restraining order against the other party. This would not be considered a mutual order of protection.

C. Emergency Situation would include a situation that presents a need for immediate action by the police to protect the victim against violent behavior, threats or violations of a non-contact order.

D. Non-emergency Situation would include a situation where there is a request for enforcement of child support, changes in visitation or any other modification or enforcement request that does not involve violent behavior, threats or a violation of a non-contact order.

II. Responding Officers Procedures

A. Emergency Situations

In an emergency situation, the restraining order or order of protection should be presumed valid when presented to an officer. The primary responsibility of the officer should be to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.

1. If the named defendant in the court order committed a criminal offense under New Jersey law against the victim and appeared to have violated the court order, the officer should arrest the defendant and sign the criminal complaint against the defendant for the criminal offense. The officer also should charge the defendant with contempt, *N.J.S.A.* 2C:29-9a.

2. If the named defendant committed no criminal offense but appears to be in violation of the out-of-state no-contact order, the officer should determine whether the order appears to be facially valid.

   a. If the court order appears to be facially valid, the officer should arrest the defendant for violating the terms of the court order. The defendant should be charged with contempt, *N.J.S.A.* 2C:29-9a.

   b. An order will be considered facially valid if:

      (1) the order contains the names of the correct parties, and,

      (2) the order has not expired, and,

      (3) the victim informs the officer that the named defendant appeared at the court hearing or had notice to appear in court when the court order was issued.

   c. In most states a restraining order or an order of protection has a specified expiration date. The officer must review the court order to determine whether it remains valid. Only New Jersey and Washington State have court orders with no stated expiration dates. In these two states, a final restraining order remains in effect until modified or vacated by a court.

d. Defects on the face of the order, such as boxes indicating no service checked, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defects to determine whether the defendant had been served with the order or has knowledge that the order was issued.

3. If the victim does not have a copy of the out-of-state court order and the officer cannot determine the existence of the court order or if the court order contains an apparent defect which would cause a reasonable officer to question its authenticity, the officer should

   a. arrest the actor if the criteria of the New Jersey Domestic Violence Act, *N.J.S.A.* 2C:25-17 *et seq.*, have been met and if a criminal offense had been committed, and

   b. assist the victim in obtaining a temporary restraining order in accordance with departmental procedures, or

   c. if the officer determines that a non-emergency situation exists, explain to the victim the procedure to obtain a domestic violence restraining order in New Jersey.

4. If the responding officer has probable cause to believe that a defendant, who is no longer at the scene, has

   a. violated the provisions of a valid restraining order and/or

   b. committed a criminal offense requiring arrest under *N.J.S.A.* 2C:25-21a,

Then the officer should follow standard departmental operating procedure for dealing with a criminal suspect who has fled the scene.

B. Non-Emergency Situations

In a non-emergency situation, the officer should refer the victim to the appropriate court so the victim may seek to obtain appropriate relief in accordance with the foreign restraining order or order of protection. If the victim had moved into New Jersey from another state, the officer should refer the victim to the Family Part of Superior Court in the county where the victim is then located. If the victim is only temporarily in New Jersey, the officer should refer the victim to the court where the victim is then

residing.

C. Mutual Orders of Protection

The plaintiff of a mutual order of protection from another state is entitled to full faith and credit in this State to the same degree as if the order had been issued solely on the plaintiff's behalf. The defendant of a mutual order of protection from another state would be entitled to relief if:

1. The defendant had filed a written pleading seeking this protective order, and

2. The court had made specific findings on the record that the defendant was entitled to the order.

Note: The enforcement of a mutual order of protection by a defendant should be a relatively rare occurrence. In non-emergent situations, the defendant should be referred to the appropriate court for relief.

III. Violations of Federal Law

If the responding officer determines that the defendant in the out-of-state restraining order or order of protection traveled across a state line with the intent to engage in conduct that violates a portion of the court order or to injure, harass, or intimidate the named victim in the court order, the officer should report this fact to the designated Assistant County Prosecutor who will determine whether the case should be referred to the U.S. Attorney's Office for the appropriate action pursuant to 18 *U.S.C.A.* 2261 and 2262.

Note: An officer should not charge a violation of federal law since the officer does not have federal jurisdiction.

IV. Immunity from Civil Liability

N.J.S.A. 2C:25-22 provides that a law enforcement officer shall not be held liable in any civil action brought by any party for an arrest based on probable cause when that officer in good faith enforced a court order. Under the qualified immunity doctrine, a law enforcement officer may also assert immunity to federal actions brought under 42 *U.S.C.A.* sec. 1983.

ALL STATES POLICE DEPARTMENTS
PHONE LIST

ALABAMA

334-242-4371
Fax 334-242-0934, 242-0512

ALASKA

907-269-5511
Fax 907-337-2059

ARIZONA

602-223-2000
Fax 602-223-2910

ARKANSAS

501-618-8000
Fax 501-618-8222

CALIFORNIA

916-657-7152
Fax 916-657-7324

COLORADO

303-239-4500
Fax 303-239-4416

CONNECTICUT

860-685-8250
Fax 860-685-8361

DELAWARE

302-739-5911
Fax 302-739-5982

DISTRICT OF COLUMBIA

202-727-4218
Fax 202-727-9524

FLORIDA

850-488-4885
Fax 850-922-0148

GEORGIA

404-624-7710
Fax 404-624-6706

HAWAII

808-538-5656
Fax 808-538-5684

IDAHO

208-884-7200
Fax 208-884-7290

ILLINOIS

217-782-7263
Fax 217-785-2821

INDIANA

317-232-8200
Fax 317-232-0652, 232-5682

IOWA

515-281-5824
Fax 515-242-6305

KANSAS

785-296-6800
Fax 785-296-3049

KENTUCKY

502-695-6300
Fax 502-573-1479

LOUISIANA

225-925-6006
Fax 225-925-3742

MAINE

207-624-7068
Fax 207-624-7088

MARYLAND

410-486-3101
Fax 410-653-9651

MASSACHUSETTS

508-820-2300
Fax 508-820-9630

MICHIGAN

517-332-2521
Fax 517-336-6551

MINNESOTA

651-297-3935
Fax 651-296-5937

MISSOURI

573-751-3313
Fax 573-751-9921

MONTANA

406-444-3780
Fax 406-479-4169

NEBRASKA

402-471-4545
Fax 402-479-4002

NEVADA

775-684-4870
Fax 775-684-4879

NEW HAMPSHIRE

603-271-3636
Fax 603-271-2527

NEW JERSEY

609-882-2000
Fax 609-530-9708

NEW MEXICO

505-827-9002
Fax 505-827-3395

NEW YORK

518-457-6811
Fax 518-457-3207

NORTH CAROLINA

919-733-7952
Fax 919-733-1189

NORTH DAKOTA

701-328-2455
Fax 701-328-1717

OHIO

614-466-2660
Fax 614-752-6409

OKLAHOMA

405-425-7709
Fax 405-425-7039

OREGON

503-378-3720
Fax 503-378-8282

PENNSYLVANIA

717-783-5599
Fax 717-787-2948

RHODE ISLAND

401-444-1000
Fax 401-444-1105

SOUTH CAROLINA

803-896-7920
Fax 803-896-7922

SOUTH DAKOTA

605-773-3105
Fax 605-773-6046

TENNESSEE

615-251-5166
Fax 615-253-2091

TEXAS

512-424-2000
Fax 512-424-2603

UTAH

801-965-4461
Fax 801-965-4608

VERMONT

802-244-8718
Fax 802-241-5551

VIRGINIA

804-674-2000
Fax 804-674-2267

WASHINGTON

360-753-6540
Fax 360-753-2492

WEST VIRGINIA

304-746-2111
Fax 360-746-2246

WISCONSIN

608-267-7102
Fax 608-267-4495

WYOMING

307-777-4301
Fax 307-777-4282

GUAM

State Court
671-475-3420
Fax 671-477-1500

NORTHERN MARIANA ISLANDS

State Court
670-236-9700
Fax 670-236-9702

PUERTO RICO

State Court
787-723-6033
Fax 787-724-5090

VIRGIN ISLANDS

State Court
340-774-6680
Fax 340-776-8690

S/domestic violence/allstatespolicedeptphone

ALL STATES ADMINISTRATIVE OFFICES OF THE COURTS DIRECTORY

ALABAMA

300 Dexter Avenue
Montgomery, AL 36104
334-242-0300
FAX 334-242-2099

ALASKA

Administrative Director of the Courts
303 K Street
Anchorage, AK 99501
907-264-0547
FAX 907-264-0881

ARIZONA

Arizona State Courts Building
1501 West Washington
Phoenix, AZ 85007-3327
602-542-9301
FAX 602-542-9484

ARKANSAS

1100 Justice Building
625 Marshall Street
Little Rock, AR 72201
501-682-9400
FAX 501-682-9410

CALIFORNIA

455 Golden Gate Avenue
San Francisco, CA 94102-3660
415-865-4200
FAX 415 865-4228

COLORADO

Office of the State Court Administrator
1301 Pennsylvania , Suite 300
Denver, CO 80203
303-861-1111
FAX 303-837-2340

CONNECTICUT

Office of the Chief Court Administrator
Supreme Court Building
231 Capitol Avenue
Hartford, CT 06106
860-757-2100
FAX 860-757-2130

DELAWARE

Carvel State Building, 11th Floor
820 North French Street
Wilmington, DE 19801-3509
302-577-8481
FAX 302-577-3139

DISTRICT OF COLUMBIA

Executive Office of the D.C. Courts
500 Indiana Avenue, N.W., Rm. 1500
Washington, D.C. 20001
202-879-1700
FAX 202-879-4829

FLORIDA

Office of the State Courts Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1900
850-922-5082
FAX 850-488-0156

GEORGIA

244 Washington Street, S.W., Suite 300
Atlantic, GA 30334-5900
404-656-5171
FAX 404-651-6449

HAWAII

Administrative Director of the Courts
Supreme Courts Building
417 South King Street
Honolulu, HI 96813
808-539-4900
FAX 808-539-4855

IDAHO

Idaho Supreme Court
451 West State Street
Boise, ID 83702
Mailing Address:
P.O. Box 83720
Boise, ID 83720-0101
208-334-2246
FAX 208-334-2146

ILLINOIS

840 South Spring Street
Springfield, IL 62704
217-785-2125
FAX 217-785-3793

INDIANA

115 West Washington St., Suite 1080
Indianapolis, IN 46204
317-232-2542
FAX 317-233-6586

IOWA

State Capitol, Rm. G02
1007 East Grand
Des Moines, IA 50319
515-281-5241
FAX 515-242-0014

KANSAS

Judicial Center, Rm. 337
301 S.W. Tenth Avenue
Topeka, KS 66612-1507
785-296-4873
FAX 785-296-7076

KENTUCKY

100 Millcreek Park
Frankfort, KY 40601
502-573-2350
FAX 502-695-1759

LOUISIANA

Office of Judicial Administrator
1555 Poydras Avenue, Suite 1540
New Orleans, LA 70112
504-568-5747
FAX 504-568-5087

MAINE

62 Elm Street
P.O. Box 4820
Portland, ME 04112
207-822-0792
FAX 207-822-0781

MARYLAND

Maryland Judicial Center
580 Taylor Avenue
Annapolis, MD 21401
410-260-1400
FAX 410-974-5577

MASSACHUSETTS

Administrative Office of the Judicial Court
1400 New Courthouse
Boston, MA 02108
617-557-1193
FAX 617-557-1052

MICHIGAN

State Court Administrative Office
309 North Washington Square
P.O. Box 30048
Lansing, MI 48909
517-373-0130
FAX 517-373-2112

MINNESOTA

25 Constitution Avenue
St. Paul, MN 55155
651-296-2474
FAX 651-215-6004

MISSISSIPPI

656 North State
Jackson, MS 39201
Mailing Address:
P.O. Box 117
Jackson, MS 39205
601-354-7406
FAX 601-354-7459

MISSOURI

Office of State Courts Administrator
2112 Industrial Drive
P.O. Box 104480
Jefferson City, MO 65110-4480
573-751-4377
FAX 573-751-5540

MONTANA

Justice Building, Rm. 315
215 North Sanders
Helena, MT 59620
Mailing Address:
P.O. Box 203002
Helena, MT 59620-3002
406-444-2621
FAX 406-444-0834

NEBRASKA

1220 State Capitol
P.O. Box 98910
Lincoln, NE 68509
402-471-3730
FAX 402-471-2197

NEVADA

Supreme Court Building
Capitol Complex, Suite 250
201 South Carson Street
Carson City, NV 89701-4702
775-684-1700
FAX 775-684-1723

NEW HAMPSHIRE

Two Noble Drive
Concord, NH 03301
603-271-2521
FAX 603-271-3977

NEW JERSEY

Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 983
Trenton, NJ 08625
609-984-4228
FAX 609-984-0067

NEW MEXICO

Supreme Court Building, Rm. 25
237 Don Gaspar Street
Sante Fe, NM 87501-2178
505-827-4800
FAX 505-827-4824

NEW YORK

Office of Court Administration
25 Beaver Street
New York, NY 10004
212-428-2100
FAX 212-428-2819

NORTH CAROLINA

Justice Building
2 East Morgan Street
Raleigh, NC 27601
Mailing Address:
P.O. Box 2448
Raleigh, NC 27602-2448
919-733-7107
FAX 919-715-5779

NORTH DAKOTA

Office of State Court Administrator
State Capitol, Judicial Wing
600 East Boulevard Avenue, Dept. 180
Bismarck, ND 58505-0530
701-328-4216
FAX 701-328-4480

OHIO

Supreme Court of Ohio
30 East Broad Street, 3rd Floor
Columbus, OH 43266-0419
614-466-2653
FAX 614-752-8736

OKLAHOMA

1915 North Stiles, Suite 305
Oklahoma City, OK 73105
405-521-2450
FAX 405-521-6815

OREGON

Office of State Court Administrator
Justice Building, Rm. 510
1162 Court Street
Salem, OR 97301-2563
Mailing Address:
Supreme Court Building
1163 State Street
Salem, OR 97301-2563
503-986-5500
FAX 503-986-5503

PENNSYLVANIA

Administrative Office of Pennsylvania Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
215-560-6300
FAX 215-560-6315

RHODE ISLAND

250 Benefit Street
Providence, RI 02903
401-222-3266
FAX 401-222-5131

SOUTH CAROLINA

Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201
803-734-1800
FAX 803-734-1821

SOUTH DAKOTA

State Capitol
Pierre, SD 57501-5070
605-773-3474
FAX 605-773-5627

TENNESSEE

511 Union Street, Suite 600
Nashville, TN 37219
615-741-2687
FAX 615-741-6285

TEXAS

205 West 14th Street, 6th Floor
Austin, TX 78701
Mailing Address:
P.O. Box 12066
Austin, TX 78711-2066
512-463-1625
FAX 512-463-1648

UTAH

450 South State Street, 3rd Floor
Salt Lake City, UT 84111
Mailing Address:
P.O. Box 140241
Salt Lake City, UT 84114-0241
801-578-3806
FAX 801-578-3843

VERMONT

111 State Street
Montpelier, VT 05609-0701
Mailing Address:
109 State Street
Montpelier, VT 05609-0701
802-828-3278
FAX 802-828-3457

VIRGINIA

Supreme Court of Virginia
100 North 9th Street, 3rd Floor
Richmond, VA 23219
804-786-6455
FAX 804-786-4542

WASHINGTON

Temple of Justice
P.O. Box 41174
Olympia, WA 98504-1174
360-357-2121
FAX 360-357-2127

WEST VIRGINIA

Supreme Court of Appeals of W.VA
E-100 State Capitol
Charleston, WV 25305
304-558-0145
FAX 304-558-1212

WISCONSIN

119 Martin L. King, Jr. Blvd.
Suite LL2
Madison, WI 53703
Mailing Address:
Supreme Court
P.O. Box 1688
Madison, WI 53701-1688
608-266-6828
FAX 608-267-0980

WYOMING

Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
307-777-7480
FAX 307-777-3447

GUAM

Superior Court of Guam
Guam Judicial Center
120 West O'Brien Drive
Hagatna, GU 96910
671-475-3544, 475-3330
FAX 671-477-3184

NORTHERN MARIANA ISLANDS

Supreme Court of The Commonwealth
Northern Mariana Islands
House of Justice
P.O. Box 502165
Saipan, MP 96950
670-236-9700
FAX 670-236-9702

PUERTO RICO

Office of Courts Administration
General Court of Justice
6 Vela Street, Stop 35 ½
Hato Rey, PR 00919
Mailing Address:
P.O. Box 190917
San Juan, PR 00919-0917
787-641-6623,24
FAX 787-250-7448

VIRGIN ISLANDS

Territorial Court of the Virgin Islands
5500 Veterans Drive
Saint Thomas, VI 00802
Mailing Address:
P.O. Box 70
Saint Thomas, VI 00804
340-774-6680
FAX 340-776-8690

Information Obtained from NJ Lawyers Diary, 2002

APPENDIX XVI – UNIFORM SUMMARY SUPPORT ORDER (R. 5:7-4)

PLAINTIFF *VS* *DEFENDANT*		*SUPERIOR COURT OF NEW JERSEY* *Chancery Division-Family Part*	
☐ *Obligor* ☐ *Obligee* ☐ *Obligor* ☐ *Obligee*		COUNTY OF	CIVIL ACTION ORDER Page 1 of 2
HEARING DATE _____/_____/_____	WELFARE / U.R.E.S.A.#	PROBATION ACCT# CS	DOCKET #
Attorney for Plaintiff:		Attorney for Defendant:	

This matter having been opened to the court by: ☐ Plaintiff ☐ Defendant ☐ County Welfare Agency ☐ Probation Division Family Division for an ORDER:

IS HEREBY ORDERED THAT: The obligor shall pay support for the spouse named above and/or unallocated support for the child(ren) named below:

CHILD'S NAME	BIRTH DATE	CHILD'S NAME	BIRTH DATE
1.		4.	
2.		5.	
3.		6.	

☐ PATERNITY of child(ren) (# above) _____ Is acknowledged by defendant, and an ORDER of paternity is entered.

Support shall be paid to the New Jersey Family Support Payment Center by income withholding in the amount of:

	+		+		=		*payable*		*effective*	
										__/__/__
Child Support		*Spousal Support*		*Arrears Payment*		*Total*		*Frequency*		*Date*

☐ ARREARS: are to be calculated by the Probation Division based upon amounts and effective date noted above.

☐ ARREARS: indicated in the records of the Probation Division, are $_____ as of _____/_____/_____.

☐ GROSS WEEKLY INCOMES of the parties, as defined by the Child Support Guidelines, upon which this ORDER is based:

PLAINTIFF = $_____ DEFENDANT = $_____

☐ INCOME WITHHOLDING is hereby ORDERED on current and future income sources, including:

Name of income source: Address of income source:

_____ _____

OBLIGOR SHALL, however, make payments AT ANY TIME the full amount of support and/ or arrears are not withheld.

☐ MEDICAL INSURANCE coverage for the child(ren) and/or spouse as available at reasonable cost shall be provided by the

Obligor ☐ Obligee ☐ Both ☐

The parties shall divide extraordinary medical expenses of the child(ren) that are unreimbursed by insurance, as follows:

_____% Obligor _____% Obligee

Proof of Medical Insurance availability shall be provided to the Probation Division by _____/_____/_____.

If coverage is available, duplicate Medical Insurance I.D. card(s) as proof of coverage for the child(ren)/spouse shall be provided by the

☐ obligor ☐ obligee immediately upon availability, via the Probation Division.

☐ Health insurance benefits are to be paid directly to the health care provider by the insurer.

☐ BLOOD/GENETIC TESTING to assist the court in determining paternity of the child(ren) (#_____) is hereby ORDERED.

The county welfare agency in the county of residence of the child shall bear the cost of said testing, without prejudice to final allocation of said costs. If defendant is later adjudicated the father of said child(ren), defendant shall reimburse the welfare agency for the costs of said tests, and pay child support retroactive to _____/_____/_____.

☐ This matter is hereby RELISTED for hearing on ____/____/____ before _____. A copy of this ORDER shall serve as the summons for the hearings. No further notice for appearance shall be given. Failure to appear may result in a default order, bench warrant, or dismissal.

☐ AN EMPLOYMENT SEARCH MUST BE CONDUCTED BY THE obligor. Written records of at least #_____employment contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be provided immediately to the Probation Division.

PLAINTIFF *VS* *DEFENDANT* *PAGE 2 OF 2*

DOCKET# *HEARING DATE ____/____/____*

☐ THIS ORDER IS ENTERED BY DEFAULT. The obligor was properly served for court appearance on ____/____/____ and failed to appear. (Service noted below).

☐ A BENCH WARRANT for the arrest of the obligor is hereby ORDERED. The obligor was properly served with notice for court appearance on ____/____/____, failed to appear, and is in violation of litigant's rights for failure to comply with the support ORDER (Service noted below). A payment of $_____ shall be required to purge the warrant. Said payment shall be applied to the arrears.

☐ SERVICE upon which this order is based:

☐ Personal Service ☐ Certified Mail: ☐ Refused ☐ Regular Mail (not returned)

Date: __/__/___ ☐ Signed by: _____ ☐ Returned Unclaimed ☐ Other:

☐ FUTURE MISSED PAYMENT(S) numbering _____or more may result in the issuance of a warrant, without further notice or hearing, for the arrest of the obligor.

☐ A LUMP SUM PAYMENT OF $_____ must be made by the obligor by _____/_____/_____, or a bench warrant for the arrest of the obligor shall issue.

☐ This complaint is hereby INACTIVATED, pending _____.

☐ This complaint/motion is hereby DISMISSED, without prejudice, as _____.

☐ Order of Support is hereby VACATED effective _____/_____/_____, as _____
Arrears, if any, as calculated by the Probation Division, prior to the effective date, shall be paid at the rate and frequency noted on page number one of this ORDER.

☐ It is further ORDERED: _____

_____

_____

_____

☐ Additional Page (s) attached: #_____, #_____.

TAKE NOTICE that all provisions stated on the reverse of page (1) are to be considered part of this ORDER.

I hereby declare that I understand all provisions of this ORDER and do not wish to appeal this day, to the Superior Court::

PLAINTIFF _____ ATTORNEY_____

DEFENDANT_____ATTORNEY_____

☐ Copies provided to above at hearing. ☐ Copies to be mailed to the parties.

So Recommended to the Court by the Hearing Officer:

Date _____/_____/_____ H.O. _____ Signature _____

So Ordered by the Court::

Date _____/_____/_____ Judge _____ Signature _____.J.S..C

Note: Revised form adopted October 12, 2004 to be effective immediately.

TAKE NOTICE:

1. You must continue to make all payments until the Court order is changed.
2. If your child's status changes (turns 18, moves in with a different relative, marries, gets a full-time job or other changes), you must continue to make the same payments until the Court changes the amount you must pay.
3. If your income goes down for reasons you do not control, YOU WILL BE RESPONSIBLE TO PAY THE AMOUNT ORDERED UNTIL THE COURT CHANGES THE AMOUNT.
4. In order for the Court to change the amount that must be paid, YOU must make a WRITTEN request for the order to change. Contact the Probation Division where payments are made to find out how to do this.
5. The amount you owe (arrears) can be changed only as of the date of your WRITTEN request. If you delay making your request, you will have to pay the original amount of support until that date. IT IS IMPORTANT that you request a change as soon as possible after your income or your child's status changes (N.J.S.A. 2A:17-56.9).
6. Changes in employment status and address must be reported in writing to the Probation Division within 10 days of the change. Not providing this information is a violation of this ORDER. The last address you give to Probation will be used to send you notices of future hearings/proceedings. If you fail to appear, an order may be entered against you (default order) or a warrant may be issued for your arrest (R. 5:7-4) (R. 1:5-2) (R. 1:4-1[b]).
7. Payments must be made directly to the New Jersey Family Support Payment Center, P.O. Box 4880, Trenton, NJ 08650, unless the court order says to pay someone else. Gifts, other purchases or in-kind payments made directly to the obligee or child(ren) will not fulfill your obligation. Credit for payments made directly to the obligee or child(ren) may not be given.
8. Payments are due even when your child is visiting you unless the court orders credit. If both parents agree to credits, it must be approved by the Court. Failure to have visitation is not an excuse for not paying.
9. THIS ORDER takes priority over payments of debts and other obligations. Payments may not be excused because a party marries or accepts other obligations.
10. Payments are based on annual income. It is the responsibility of a person with seasonal employment to budget income so the payments are made regularly throughout the year.
11. Any payment or installment for child support is a "judgment by operation of law" on the date it is due (N.J.S.A. 2A:17-56,23a). Any non-payment of child support has the effect of a lien against the obligor's real or personal property. This child support lien may affect you ability to obtain credit or sell real property.
12. Judgments that result from failure to comply with the ORDERS of this Court are subject to an interest charge at the rate prescribed by Rule 4:42-11(a).
13. If immediate income withholding is not required when an order is entered or modified or the order was entered before October1, 1990, the child support may be required to be paid by income withholding when the amount due becomes equal to the amount of support due for 14 days. Child support orders entered or modified after October 1, 1990 shall include a provision for immediate income withholding without regard to the amount of the arrearage unless the obligor and obligee agree, in writing, to an alternative arrangement or either party demonstrates, and the Court finds, good cause for an alternative arrangement (N.J.S.A. 2A:17-56.9).
14. The amount of a Title IV-D child support order is subject to review, by the state IV-D Agency or its designee, and adjustment may be made, as necessary, by the Court at least once every three years (N.J.S.A. 2A:17-56.9a).
15. Child support arrearage of $1,000 or more shall be reported to consumer credit reporting agencies as a debt owed by the obligor (N.J.S.A. 2a:17-56.21).
16. Child support arrearage may be reported to the Internal Revenue Service and the State Division of Taxation. Tax refunds/homestead rebates due the obligor may be taken to pay arrears (N.J.S.A. 2A:17-56.16).
17. Any person who willfully and with the intent to deceive, uses a Social Security number obtained on the basis of false information provided to Social Security Administration or provides a false or inaccurate Social Security number is subject to a fine or imprisonment (42 U.S.C. 408(7)). Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 U.S.C. 405). Disclosure of the individual's Social Security number is mandatory. Social Security numbers are used to obtain income, employment and benefit information on individuals through computer matching programs with federal and State agencies. This information is used to establish and enforce child support under Title IV-D of the Social Security Act, and to record child support judgments.
18. The Custodial parent may choose to have medical insurance benefits paid by the insurance carrier of the non-custodial parent remitted directly to the health care provider. If direct payment to the health care provider is chosen, the custodial parent must provide the insurer with a copy of the relevant section this order (N.J.S.A. 2A:34-23b).
19. IF this order contains any provision concerning custody and/or visitation, both parties are advised: Failure to comply with the custody provisions of this court order may subject you to criminal penalties under N.J.S.A. 2c:13-4, Interference with Custody. Such criminal penalties include, but are not limited to, imprisonment, probation, and/or fines.

    Si usted deja de cumplir con las clausulas de custodia de esta ordern del tribunal, puede estar sujeto (sujeta) a castigos criminals conforme a N.J.S.A. 2C:13-4, Interference with Custody, (Obstruccion de la Custodia). Dichos castigos criminals incluyen pero no se limitan a encarcelamento, libertad, multas o una combinacion de los tres.

ADDRESS CONFIDENTIALITY PROGRAM ACT

N.J.S.A. 47:4-1. Short title

This act shall be known and may be cited as the "Address Confidentiality Program Act."

N.J.S.A. 47:4-2. Legislative findings and declarations

The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses to prevent their assailants from finding them. The purpose of this act is to enable public agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, and to enable public agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

N.J.S.A. 47:4-3. Definitions

As used in this act:

"Address" means a residential street address, school address, or work address of a person, as specified on the person's application to be a program participant under this act.

"Program participant" means a person certified by the Secretary of State as eligible to participate in the Address Confidentiality Program established by this act.

"Department" means the Department of State.

"Domestic violence" means an act defined in section 3 of P.L.1991, c. 261 (C.2C:25-19), if the act has been reported to a law enforcement agency or court.

"Secretary" means the Secretary of State.

N.J.S.A. 47:4-4. Address Confidentiality Program created

a. There is created in the department a program to be known as the "Address Confidentiality Program." A person 18 years of age or over, a

parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the secretary to have an address designated by the secretary as the applicant's address. The secretary shall approve an application if it is filed in the manner and on the form prescribed by the secretary and if it contains:

(1) a sworn statement by the applicant that the applicant has good reason to believe:

(a) that the applicant is a victim of domestic violence as defined in this act; and

(b) that the applicant fears further violent acts from the applicant's assailant;

(2) a designation of the secretary as agent for the purpose of receiving process and for the purpose of receipt of mail;

(3) the mailing address where the applicant can be contacted by the secretary, and a telephone number where the applicant can be called;

(4) the new address or addresses that the applicant requests not be disclosed because of the increased risk of domestic violence; and

(5) the signature of the applicant and any person who assisted in the preparation of the application, and the date.

b. An application shall be filed with the secretary.

c. Upon approving a completed application, the secretary shall certify the applicant as a program participant. An applicant shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date.

d. A program participant may apply to be recertified every four years thereafter.

e. A program participant may use the address designated by the secretary as his or her work address.

f. Upon receipt of first class mail addressed to a program participant, the secretary or a designee shall forward the mail to the actual address of the participant. The secretary may arrange to receive and forward other kinds and classes of mail for any program participant at the participant's expense.

The actual address of a program participant shall be available only to the secretary and to those employees involved in the operation of the address confidentiality program and to law enforcement officers for law enforcement purposes.

g. The secretary, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

N.J.S.A. 47:4-5. Cancellation of program participant's participation

The secretary may cancel a program participant's certification if:

(1) the program participant obtains a name change through an order of the court;

(2) the program participant changes the participant's residential address and does not provide seven days' advance notice to the secretary;

(3) mail forwarded by the secretary to the address or addresses provided by the program participant is returned as undeliverable; or

(4) any information on the application is false.

The application form shall notify each applicant of the provisions of this section.

N.J.S.A. 47:4-6. Use of address designated by agency

A program participant may request that any State or local agency use the address designated by the secretary as the program participant's address. The agency shall accept the address designated by the secretary as a program participant's address, unless the agency has demonstrated to the satisfaction of the secretary that:

(1) the agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; and

(2) the disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.
L.1997, c. 369, § 1, eff. Jan. 19, 1998.

Click here for Table of Contents

STATE OF NEW JERSEY

DOMESTIC VIOLENCE PROCEDURES MANUAL

Issued under the Authority of the
Supreme Court of New Jersey
and the Attorney General of the
State of New Jersey
July 2004
October 2008 Amended Edition

Domestic Violence Procedures Manual

ANNOUCEMENT OF AMENDED EDITION

October 9, 2008

This announces an amended edition of the Domestic Violence Procedures Manual ("DVPM"). This amended edition replaces in its entirety the last revised edition of the DVPM promulgated in 2004 under the joint authority of the Supreme Court and the Attorney General. **Prior hard copy editions of the DVPM are outdated and should be discarded.**

This also announces that beginning with this amended edition, the method of publication will be exclusively Internet based. No hard copies of the DVPM will be distributed. The new DVPM can be found on the Infonet and on the Judiciary's Internet Web site at http://www.njcourts.com/family/index.htm. Using the Internet as a medium of publication represents a significant step forward in the way this important information is made available to those who need it. Just four years ago, the Judiciary published the DVPM in hard copy. It was necessary to print and distribute more than 3,000 copies of the DVPM at that time. Relying on Internet publication saves time and money, and ensures that users will always have access to the most up-to-date version.

The current amendments to the DVPM relate almost exclusively to matters within the Judiciary's purview resulting from new legislation, changes to court rules, new policy initiatives, and editorial corrections and clarifications[1]. The amendments were reviewed and endorsed by the Conferences of Family Presiding Judges and Family Division Managers.

Manual Sections (New or Amended)

- Sections 4.1.6 and 4.1.8 – amended to add information on the electronic Temporary Restraining Order (E-TRO) procedure by which domestic violence complaints and temporary restraining orders may be filed electronically. These amendments were made in accordance with statewide implementation of the E-TRO Project as described in the Administrative Director's July 5, 2007 memorandum to Assignment Judges and Trial Court Administrators.

- Sections 4.3.10 to 4.3.13 (new) – Sets out the existing procedures for determining paternity and child support prior to issuance of a Final Restraining Order (FRO).

[1] The Attorney General's Office provided amended Appendices 5, 18 and 23. That is the extent of its involvement in these DVPM amendments.

- Section 4.5.7 – amended to add a new paragraph setting out a uniform procedure for amending Temporary Restraining Orders.

- Section 4.11 – amended to bring text into conformity with Rule 5:7A, regarding transfers, as amended in 2005, and Directive #3-05 (Intercounty Child Support Case Management Policy).

- Section 4.14.9 – amended to add procedures from the Non-Dissolution Operations Manual, section 1104, for processing a domestic violence case when there is an existing non-dissolution case.

- Section 4.15.1 – amended to provide information about the surcharge imposed on domestic violence offenders pursuant to N.J.S.A. 2C:25-29.4.

- Section 4.17.3 – amended to add information regarding the Uniform Summary Support Order, R. 5:7-4 and Appendix XVI of the Rules of Court, which also has been added as Appendix 31 to the DVPM.

Appendices (New or Amended)

- Appendix 1, Confidential Victim Information Sheet – amended as directed by the Supreme Court, as promulgated by the Administrative Director's June 11, 2008 memorandum to Assignment Judges and Trial Court Administrators.

- Appendix 2, Temporary Restraining Order and Instructions – amended to reflect that the name of the Victims of Crimes Compensation Board has been legislatively changed to the Victims of Crimes Compensation Agency.

- Appendix 3, Domestic Violence Hearing Officer Standards – amended to include the Backup Domestic Violence Hearing Officer Standards promulgated by Directive #2-06 as a Supplement to Directive #16-01.

- Appendix 6, Summary of Electronic TRO – see amendments to Sections 4.1.6 and 4.1.8 above. Amended to reflect the statewide expansion of the program in July 2007.

- Appendix 6A, Recording Complete Incident Description in FACTS – new appendix to provide instructions for capturing full incident description text in FACTS. Please note that this is a temporary solution pending modifications to the Judiciary's automated system.

- Appendix 8, Appeal of Ex Parte Order – Application for Appeal and Order pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-28i – amended to allow for the signature and printed name of either plaintiff or defendant on the Certification. The prior form only provided for defendant's signature. This change was recommended by the Conference of

Family Presiding Judges to accurately reflect the fact that both plaintiff and defendant have the right to appeal the Temporary Restraining Order.

- Appendix 9, Continuance Order – amended to delete the phrase,"The Temporary Restraining Order is further amended as follows." The Continuance Order is not to be used for TRO amendments, which should be made in accordance with the procedures described in amended Section 4.5.7 (above).

- Appendix 10, Final Restraining Order – amended to show the correct court Seal.

- Appendix 14, Order of Dismissal – amended to clarify that if the Temporary or Final Restraining Order is dismissed, any criminal charges filed by either plaintiff or the police are not affected by the dismissal and shall remain pending until addressed separately in the appropriate court.

- Appendix 31, Uniform Summary Support Order, R. 5:7-4 and Appendix XVI of the Rules of Court – New appendix.

- Appendix 32, Address Confidentiality Statute, N.J.S.A. 47:4-2, et. seq. – New appendix.

Any questions concerning these amendments to the DVPM or regarding the DVPM generally may be directed to Harry T. Cassidy, Assistant Director, Family Practice Division at 609-984-4228 or Harry.Cassidy@judiciary.state.nj.us.

SUPREME COURT OF NEW JERSEY

DEBORAH T. PORITZ
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
POST OFFICE BOX 023
TRENTON, N.J. 08625-0023

This revised edition of the New Jersey Domestic Violence Procedures Manual provides procedural guidance for law enforcement officials, judges and judiciary staff in implementing the Prevention of Domestic Violence Act. It is designed to facilitate the prompt resolution of domestic violence matters and provide effective relief to the victims of domestic violence. The Manual is issued jointly by the Judiciary and the Department of Law and Public Safety to provide a seamless system of case handling.

Since it was first issued in 1991, the Domestic Violence Procedures Manual has been updated periodically to reflect amendments to the statute, changes to court rules, and new practices designed to ensure the most efficient management and disposition of these important matters. This edition supersedes the 1998 Manual in its entirety, as well as all previous editions. The changes from the 1998 edition are summarized in the Introduction.

New Jersey has strong laws and protective processes for victims of domestic violence. Users of this Manual will find that it will enable them to implement those laws effectively. Your continued support of this program is very much appreciated.

Deborah T. Poritz
Chief Justice

Peter C. Harvey
Attorney General

July 2004

NOTICE NOTICE NOTICE NOTICE

The New Jersey Domestic Violence Procedures Manual is intended to provide procedural and operational guidance for two groups with responsibility for handling domestic violence complaints in the state of New Jersey – judges and Judiciary staff and law enforcement personnel. The bulk of the Manual (i.e., all except Section III and associated appendices) sets forth procedures to guide Judiciary staff in the management of cases within their area of responsibility. Section III and its associated appendices provide guidance to law enforcement personnel. The procedures for law enforcement and the Judiciary are presented in a single volume in order to provide for both groups a seamless description of the management of domestic violence cases from initiation to conclusion.

The Judiciary portion of the Manual was prepared by the Conference of Family Presiding Judges, working with the Conference of Family Division Managers and the Family Practice Division of the Administrative Office of the Courts (AOC) with input from judges and staff of the Municipal and Criminal Divisions as well as the Supreme Court State Domestic Violence Working Group. It is intended to embody the policies and procedures adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Family Presiding Judges, in order to promote uniform case management statewide. As such, court staff is required to adhere to its provisions.

While the Judiciary portion of the Manual reflects court policies existing as of the date of its preparation, in the event there is a conflict between the Manual and any statement of policy issued by the Supreme Court, the Judicial Council or the Administrative Director of the Courts, that statement of policy, rather than the Manual, will be controlling. Other than in that circumstance however, the Judiciary portion of this Manual is binding on court staff. This Manual is not intended to change any statute or court rule, and in the event a statute or court rule differs from this manual, the statute or rule will control.

Section III, the Law Enforcement portion of the Manual, and its associated appendices were prepared by the Department of Law and Public Safety, Division of Criminal Justice and are intended to provide procedural and operational guidelines for the New Jersey law enforcement community. This material is specifically intended for law enforcement use. While its inclusion in this Manual provides useful information to judges and court staff as well, it is not binding on them. The law enforcement section has not been reviewed or endorsed by the Judiciary.

DOMESTIC VIOLENCE PROCEDURES MANUAL

TABLE OF CONTENTS

Go directly to the item in the table by clicking on it.

Introduction

Section I – Definitions

Section II – Initial Procedures

2.1 Where, When and How Domestic Violence Complaints Are To Be Filed

2.2 Application for a Temporary Restraining Order (TRO)

2.3 Where to File a Criminal Complaint with an Accompanying TRO Application and Complaint

2.4 Where to File a Criminal Complaint When There Is No Accompanying Complaint/TRO

Section III – Law Enforcement

A. Introduction -- Domestic Violence Performance Standards

3.1 Domestic Violence Policy and Procedures

3.2 Response to Domestic Violence Incidents

3.3 Receipt and Processing of Domestic Violence Complaints

3.4 Domestic Violence Arrests

3.5 Weapons Relating to Domestic Violence Incidents

3.6 Reporting of Domestic Violence Incidents

3.7 Training

B. Guidelines on Police Response Procedures in Domestic Violence Cases

3.8 Mandatory Arrest

3.9 Discretionary Arrest

3.10 Seizure of Weapons

3.11 Domestic Violence Complaint Process

3.12 Procedure for Filing Reports

3.13 Temporary Restraining Court Orders

3.14 Service of Temporary Restraining Order

3.15 Court Order Violations

3.16 Criminal Offenses Against the Elderly and Disabled

3.17 Guidelines on Prosecutorial Procedure Regarding Weapons Seized in Domestic Violence Cases

Section IV – Court Procedures

4.1 Municipal Court Procedure

4.2 Superior Court, Family Division Processing

4.3 Taking a Complaint in Superior Court, Family Division

4.4 Access in Special Circumstances

4.5 Initial/Emergent Hearing

4.6 Procedures for Service of Complaint/TRO/FRO

4.7 Service Out of County

4.8 Appeals of *Ex Parte* Orders

4.9 Procedures for Final Hearings

4.10 Appearance by Both Parties

4.11 Transfer of Matters Between Counties

4.12 Final Hearing

4.13 Dispositions

4.14 Remedies Available Under the Act

4.15 Civil Penalty

4.16 Fingerprinting and Processing

4.17 After an FRO Has Been Entered

4.18 Service of FRO

4.19 Requests for Dismissal or Reopening

Section V – Weapons

5.1 Weapons in General

5.2 Mandatory Arrest

5.3 Seizure of Weapon for Safekeeping

5.4 Seizure of Weapons Pursuant to Court Order

5.5 Seizure of Weapons Used in Commission of a Criminal Offense

5.6 Seizure of Weapons Pursuant to *N.J.S.A.* 2C:25-21d

5.7 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order was Issued

5.8 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident

5.9 Restrictions on Return of Firearms

5.10 Warrant for the Search and Seizure of Weapons

5.11 Notice to the Prosecutor

5.12 Hearing Regarding Weapons

Section VI – Enforcement and Modification of Restraining Orders

6.1 Enforcement and Modification

6.2 Criminal Contempt

6.3 Enforcement of Litigant's Rights Proceeding

6.4 Contempt in Superior Court, Family Division

Section VII – Full Faith and Credit of Out of State Orders

7.1 Federal Statutory Overview

7.2 Protection Orders Covered by Section 2265

7.3 New Jersey Law and Procedure

7.4 Process

7.5 Outgoing Orders

Section VIII – Working Groups

Appendix List

SECTION I

DEFINITIONS

DEFINITIONS

1.1 "Child in common" – the child of the plaintiff and the defendant.

1.2 "Criminal Complaint" – formal process under the Code of Criminal Justice of New Jersey (*N.J.S.A.* 2C) using a CDR-1 (summons) or CDR-2 (warrant); must comport with all rules and procedures under the criminal code.

1.3 "Defendant" – A person at least 18 years old or emancipated who is alleged to have committed or has been found to have committed an act(s) of domestic violence under the Prevention of Domestic Violence Act (PDVA). See also sections 1.8 and 2.1.3C.

1.4 "Domestic Violence" – the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act of 1991:

Homicide	*N.J.S.A.* 2C:11-1 *et seq.*
Assault	*N.J.S.A.* 2C:12-1
Terroristic threats	*N.J.S.A.* 2C:12-3
Kidnapping	*N.J.S.A.* 2C:13-1
Criminal restraint	*N.J.S.A.* 2C:13-2
False imprisonment	*N.J.S.A.* 2C:13-3
Sexual assault	*N.J.S.A.* 2C:14-2
Criminal sexual contact	*N.J.S.A.* 2C:14-3
Lewdness	*N.J.S.A.* 2C:14-4
Criminal mischief	*N.J.S.A.* 2C:17-3
Burglary	*N.J.S.A.* 2C:18-2
Criminal trespass	*N.J.S.A.* 2C:18-3
Harassment	*N.J.S.A.* 2C:33-4
Stalking	*N.J.S.A.* 2C:12-10

1.5 "Domestic Violence Central Registry" or DVCR – Statewide registry established under *N.J.S.A.* 2C:25-34 (See Appendix 22).

1.6 "Domestic Violence Civil Complaint" – A multi page application (the civil complaint) and temporary restraining order issued by the Superior Court or Municipal Court. Referred to as "Complaint/TRO."

1.7 "Domestic Violence Response Team" – Law Enforcement agencies are required by *N.J.S.A.* 2C:25-20b(3) to establish such teams of persons trained in counseling, crisis intervention or in the treatment of domestic violence and neglect and abuse of the elderly and disabled victims. Also known as Domestic Violence Crisis Teams.

1.8 "Emancipated Minor" – Under the PDVA, a minor is considered emancipated from his or her parents when the minor:

A. Is or has been married,

B. Has entered military service,

C. Has a child or is pregnant, or,

D. Has been previously declared by the court or an administrative agency to be emancipated.

1.9 "*Ex parte*" – as used in this manual, an application for a TRO where the judge or hearing officer takes testimony only from the plaintiff without notice to the defendant of the application.

1.10 "Final Restraining Order" or FRO – A civil order under the PDVA restraining defendant (Appendix 10); entered after a hearing when defendant has been served with a TRO; remains in effect until further order of the court and is enforceable under the federal full faith and credit provision of Violence Against Women Act (VAWA), see Section VII.

1.11 FM or FD docket – A case which is opened by a complaint for divorce or separate maintenance is given a docket number by Family Court starting with FM; a case which is opened by a complaint for custody, support, paternity or parenting time is given an FD docket number.

1.12 FV or FO docket number – A case that is opened by signing and filing a civil complaint under the PDVA is given an FV docket number. A case which is opened by filing of criminal charges for a violation of an order issued under the PDVA is given an FO docket number; a weapons forfeiture matter is also given an FO docket.

1.13 "Law Enforcement Officer" – A person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

1.14 "Prevention of Domestic Violence Act" or PDVA– *N.J.S.A.* 2C: 25-18 to 2C:25-35.

1.15 "Plaintiff" – A person who seeks or has been granted relief under the PDVA.

1.16 "Personal Service" – Service that requires a law enforcement officer or other authorized person to personally serve the defendant and/or plaintiff with a TRO, FRO or other order issued under the PDVA.

1.17 "Petitioner" – Plaintiff or victim who seeks to enforce or register an out of state Order of Protection in New Jersey.

1.18 "Temporary Restraining Order" or TRO an order entered pursuant to a complaint under the PDVA; is temporary by its terms and requires that a full hearing be scheduled within 10 days. A TRO shall continue in effect until further order of the court (Appendix 2).

1.19 "Victim Advocate" – also known as domestic violence program liaison; a person who is specially trained in domestic violence, both the dynamics and the law, employed by or

working as a volunteer of any domestic violence project, shelter, woman's program or the like.

1.20 "Victim of Domestic Violence" – a person protected by the PDVA and includes any person:

A. Who is 18 years of age or older, **or** who is an emancipated minor, **and** who has been subjected to domestic violence by:

- Spouse
- Former spouse
- Any other person who is a present or former household member, or

B. Who, regardless of age, has been subjected to domestic violence by a person:

- With whom the victim has a child in common, or
- With whom the victim anticipates having a child in common, if one of the parties is pregnant, or

C. Who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

1.21 Weapons - means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air. *N.J.S.A* 2C:39-1r.

SECTION II

INITIAL PROCEDURES

2.1 WHERE, WHEN AND HOW DOMESTIC VIOLENCE COMPLAINTS ARE TO BE FILED

2.1.1 A victim of domestic violence must have access to the courts at all times. Law enforcement, Municipal and Superior Court staff must be advised that victims should never be turned away because of the inconvenience of arranging off-hours emergency relief.

2.1.2 A law enforcement officer responding to a domestic violence call must provide the victim with assistance to file either a criminal or civil Complaint/TRO or both. Under no circumstances should an officer prevent or discourage a victim from seeking immediate temporary relief merely because the domestic violence occurs after regular business hours.

2.1.3 Special Provisions for persons under 18 years of age:

A. A victim may be below the age of 18, may sign the Complaint/TRO and does not need the consent of a parent or guardian to file or withdraw a complaint or to request a modification of an existing order.

B. The domestic violence defendant must be over the age of 18 or emancipated at the time of the offense. (See emancipated minor definition, Section 1.8, for criteria in determining whether a person is emancipated.)

C. A person under 18 years of age and not emancipated who commits an act of violence may not be a defendant in a civil domestic violence case but can be charged with specific acts of domestic violence (e.g., assault) under the Code of Juvenile Justice. The entry of pre or post-dispositional restraints can also be considered for use in the juvenile delinquency case.

2.2 APPLICATION FOR A TEMPORARY RESTRAINING ORDER (TRO)

2.2.1 A victim may file a domestic violence complaint:

A. Where the alleged act of domestic violence occurred;

B. Where the defendant resides;

C. Where the victim resides; or,

D. Where the victim is sheltered or temporarily staying.

2.2.2 During Court hours for domestic violence matters (Monday through Friday, 8:30 AM to at least 3:30 PM):

A. The victim should be transported or directed to the Family Division of

Superior Court, provided the victim can arrive prior to 3:30 PM.

B. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the Family Division, Domestic Violence Unit. There are occasions when a person seeking to file a domestic violence Complaint/TRO arrives too late in the day for it to be processed and heard during regular court hours. During the interim period between the Domestic Violence Unit's close of business and when the courthouse actually closes, victims shall not be turned away. Each county shall develop a procedure in such instances for either in-person or telephonic communication under *Rule* 5:7A between the victim and an on-site or emergent duty judge, so that the request for emergent relief can be handled without the necessity of the victim having to go to the local police station or the Municipal Court. (See section 4.4)

2.2.3 On weekends, holidays and weekdays after 3:30 PM and other times when the Superior Court is closed,

A. A victim may sign the domestic violence complaint with a law enforcement agency as set forth in 2.2.1.

B. The victim's complaint shall be processed promptly. Under no circumstances should the victim be advised to appear in the Superior Court, Family Division the next business day in order to apply for a TRO.

C. If a TRO is denied by a Municipal Court judge, the denial and the Complaint/TRO must still be faxed or forwarded to the Family Division within 24 hours for an administrative dismissal. A victim whose Complaint/TRO has been dismissed in this manner is not barred from refiling in the Family Division based on the same incident and receiving an emergency *ex parte* hearing *de novo*. Every denial of relief by a Municipal Court judge must so state, with specificity in the "Comments" portion of the TRO and the victim must be advised of the right to refile with the Superior Court, Family Division.

2.3 WHERE TO FILE A CRIMINAL COMPLAINT WITH AN ACCOMPANYING TRO APPLICATION AND COMPLAINT

2.3.1 When a victim is seeking a TRO, a companion criminal complaint may also be signed against the defendant in one of the following locations:

A. Where the alleged act of domestic violence occurred, or

B. Where the defendant resides, or

C. Where the victim resides, or

D. Where the victim is sheltered or temporarily staying.

2.3.2 The out-of-jurisdiction complaint (i.e., one taken not where the incident occurred) should be prepared on a blank CDR and the court accepting the complaint for filing shall have the authority to issue process and set bail as if the alleged offense had occurred in that jurisdiction. A "blank" CDR is one without the court's name or municipality code in the caption.

2.3.3 The companion criminal complaint shall be forwarded to the jurisdiction where the offense is alleged to have occurred for investigation and prosecution.

2.3.4 A criminal complaint does not preclude the victim from filing a domestic violence complaint and seeking a TRO. A person may also file criminal charges without seeking a TRO.

2.4 WHERE TO FILE A CRIMINAL COMPLAINT WHEN THERE IS NO ACCOMPANYING COMPLAINT/TRO

2.4.1 The victim may file a criminal complaint with the Municipal Court or police department where the alleged act occurred. See also Section 3.11.4.

2.4.2 If the police officer believes that no-contact provisions should be issued as a condition of bail, the officer should inform the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. This section shall be checked off on the appropriate form (the bail recognizance form). The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request. This order must be in writing and given to the victim consistent with *N.J.S.A.* 2C:25-26.

SECTION III

LAW ENFORCEMENT

THIS SECTION PREPARED BY THE

DIVISION OF CRIMINAL JUSTICE

This section has not been reviewed or endorsed by the Judiciary.

A. INTRODUCTION - DOMESTIC VIOLENCE STANDARDS

Domestic violence, a serious crime against society, must be affirmatively addressed by both law enforcement and the courts so that the victims and society are protected.

Prescribed procedures are necessary so that both law enforcement officers and the courts can promptly and effectively respond to domestic violence cases.

Because of the diversity of police resources in this State, county prosecutors, who are the chief law enforcement officers of their counties, should be responsible for procedures used in all the law enforcement agencies of their counties.

To promote uniformity in police response statewide, the county response procedure should conform to the format of the attached Standard.

The General Guidelines on Police Response in Domestic Violence Cases, promulgated by the Attorney General on April 12, 1988 have been expanded and revised. The revised Guidelines have been incorporated into this Standard.

The response procedures to be developed by county prosecutors for law enforcement officers should then be included in this Domestic Violence Procedures Manual. The Manual was jointly developed by the Administrative Office of the Courts and a committee of law enforcement officials convened by the Attorney General.

The Manual is intended to secure appropriate responses to domestic violence in this State. The unique unified approach will assure prompt assistance to the victims of domestic violence and demonstrate New Jersey's resolve that violent behavior will not be tolerated in public or in private.

Any questions regarding law enforcement procedures should be directed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau, Justice Complex, Trenton.

PERFORMANCE STANDARDS

GOAL: The goal of this standard is to establish procedures for the proper and consistent handling of domestic violence incidents. The procedures will be established by the county prosecutor or by municipal law enforcement agencies as needed. Exceptions will be made for municipal law enforcement agencies as approved by the county prosecutor.

DOMESTIC VIOLENCE

3.1 DOMESTIC VIOLENCE POLICY AND PROCEDURES

The agency shall adopt specific procedures for the handling of domestic violence and codify these procedures through policy.

3.1.1 The agency shall develop and implement written policy governing the handling of domestic violence incidents.

3.1.2 The agency shall develop and implement specific procedures for:

A. Response to domestic violence incidents;

B. Receipt and processing of domestic violence complaints and restraining orders;

C. Domestic violence arrests;

D. Weapons relating to domestic violence complaints and restraining orders;

E. Reporting of domestic violence incidents;

F. Training of officers in response to domestic violence incidents.

3.1.3 The agency shall clearly define and explain all relevant terms used in its domestic violence policy, including but not limited to:

A. Domestic violence;

B. Victim of domestic violence.

3.1.4 The agency shall insure that its domestic violence policy and procedures are in compliance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines.

3.2 RESPONSE TO DOMESTIC VIOLENCE INCIDENTS

The agency shall have clear policy and procedures on the response to domestic violence incidents realizing the importance and potential for additional violence of such incidents.

3.2.1 The agency shall insure that all allegations of domestic violence are responded to promptly and investigated thoroughly.

3.2.2 The agency shall insure that the safety of the victim and all individuals at the scene of domestic violence, including the officers, is of primary concern.

3.2.3 The agency shall insure that victims are notified of their domestic violence rights as required by statute.

3.2.4 The agency shall insure that all officers who respond to domestic violence incidents shall have available current and accurate information for referrals to appropriate social service agencies.

3.2.5 The agency shall establish or participate in an established domestic violence crisis team.

3.3 RECEIPT AND PROCESSING OF DOMESTIC VIOLENCE COMPLAINTS

When domestic violence incidents generate criminal or civil domestic violence complaints, or both, the processing of those complaints shall be explicitly defined.

3.3.1 The agency shall specify the procedure to be followed in filing of criminal charges stemming from domestic violence incidents.

3.3.2 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is open.

3.3.3 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is closed but the Municipal Court is open.

3.3.4 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division and the Municipal Court are closed.

3.4 DOMESTIC VIOLENCE ARRESTS.

The agency shall delineate, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, those domestic violence incidents in which the arrest of the actor is mandatory.

3.4.1 The agency shall specify those domestic violence incidents which require mandatory arrests:

A. Act involving signs of injury;

B. Violation of a restraining order;

C. A warrant is in effect;

D. There is probable cause to believe a weapon was involved in the act of domestic violence.

3.4.2 The agency shall specify those domestic violence incidents in which arrest is discretionary.

3.4.3 The agency shall clearly delineate the procedure to be followed in cases involving violation of an existing restraining order.

3.4.4 The agency shall specify the procedure to be followed in processing an arrest for domestic violence, including:

A. Signing of complaint;

B. Fingerprinting;

C. Photographing;

D. Bail.

3.4.5 The agency shall specify the procedure to be followed when a charge of domestic violence is filed against a law enforcement officer.

3.5 WEAPONS RELATING TO DOMESTIC VIOLENCE INCIDENTS

The agency shall identify the procedures to be followed by officers when weapons are involved in domestic violence incidents, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, and accepted police practice.

3.5.1 The agency shall specify the procedures to be followed by investigating officers when:

A. Weapon(s) are used or threatened to be used in the domestic violence incident;

B. Weapon(s) are not used in the domestic violence incident but are in plain view to the officer;

C. Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

3.6 REPORTING OF DOMESTIC VIOLENCE INCIDENTS

The agency shall fully document all complaints of and responses to domestic violence incidents.

3.6.1 The agency shall insure that all domestic violence incidents are fully recorded and documented within the departmental reporting system.

3.6.2 The agency shall insure that all domestic violence incidents are reported in accordance with state statute. This includes, but is not limited to, completion and submission of the UCR DV#l form or its electronic data equivalent.

3.7 TRAINING

The agency shall train its officers in the handling of domestic violence incidents as a matter of policy and procedure, and also from the standpoint of proper police protocol.

3.7.1 The agency shall provide for the training of all officers in the appropriate handling, investigation and response procedures concerning reports of domestic violence.

B. GUIDELINES ON POLICE RESPONSE PROCEDURES IN DOMESTIC VIOLENCE CASES

Introduction These general guidelines consolidate the police response procedures for domestic violence cases, including abuse and neglect of the elderly and disabled, based on State law, Court Rules, and prior editions of the Domestic Violence Procedures Manual which was jointly prepared by the New Jersey Supreme Court and the Attorney General through the Division of Criminal Justice.

3.8 MANDATORY ARREST

3.8.1 A police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if there exists probable cause to believe an act of domestic violence has occurred and

3.8.2 The victim exhibits signs of injury caused by an act of domestic violence. *N.J.S.A.* 2C:25-21a(1).

A. The word, "exhibits," is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or impairment of physical condition. Probable cause to arrest also may be established when the police officer observes manifestations of an internal injury suffered by the victim. *N.J.S.A.* 2C:25-21c(1)

B. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest. *N.J.S.A.* 2C:25-21c(1)

C. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

1. The comparative extent of injuries suffered;

2. The history of domestic violence between the parties, if any;

3. The presence of wounds associated with defense, or considered defensive wounds; or

4. Other relevant factors, including checking the DV Central Registry. *N.J.S.A.* 2C:25-21c(2).

5. **NOTE:** The investigating officer must insure that "[n]o victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self-defense against domestic violence by an attacker." *N.J.S.A.* 2C:25-21c(3).

D. If the officer arrests both parties, when each exhibit signs of injury, the officer should explain in the incident report the basis for the officer's action and the probable cause to substantiate the charges against each party.

E. Police shall follow standard procedures in rendering or summoning emergency treatment for the victim, if required.

3.8.3 There is probable cause to believe that the terms of a TRO have been violated. If the victim does not have a copy of the restraining order, the officer may verify the existence of an order with the appropriate law enforcement agency. The officer should check the DVCR. *N.J.S.A.* 2C:25-21(a)(3)

3.8.4 A warrant is in effect. *N.J.S.A.* 2C:25-21a(2)

3.8.5 There is probable cause to believe that a weapon as defined in *N.J.S.A.* 2C:39-1r has been involved in the commission of an act of domestic violence. *N.J.S.A.* 25-21a(4)

3.9. DISCRETIONARY ARREST

3.9.1 A police officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed but none of the conditions in Section. 3.8 above applies. *N.J.S.A.* 2C:25-21b

In any situation when domestic violence may be an issue, but there's no probable cause for arrest and the victim does not wish to file a TRO, the police officers must give and explain to the victim the domestic violence notice of rights as contained in the Victim Notification Form. *N.J.S.A.* 2C:25-23

3.10 SEIZURE OF WEAPONS

3.10.1 Seizure of a Weapon for Safekeeping. A police officer who has probable cause to believe that an act of domestic violence has been committed shall pursuant to *N.J.S.A.* 2C:25-21d(1):

A. Question all persons present to determine whether there are weapons, as defined in *N.J.S.A.* 2C:39-1r, on the premises. *N.J.S.A.* 25:21d(1)(a)

B. If an officer sees or learns that a weapon is present within the premises of a domestic violence incident and reasonably believes that the weapon would expose the victim to a risk of serious bodily injury, the officer shall attempt to gain possession of the weapon. If a law enforcement officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence. *N.J.S.A.* 2C:25-21d(1)(b)

C. If the weapon is in plain view, the officer should seize the weapon.

D. If the weapon is not in plain view but is located within the premises possessed by the domestic violence victim or jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain the consent, preferably in writing, of the domestic violence victim to search for and to seize the weapon.

E. If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and domestic violence assailant but is located upon other premises, the officer should attempt to obtain possession of the weapon from the possessor of the weapon, either the domestic violence assailant or a third party, by a voluntary surrender of the weapon.

F. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon or to allow the officer to enter the premises to search for the named weapon, the officer should obtain a Domestic Violence Warrant for the Search and Seizure of Weapons. [See Appendix 19]

3.10.2 Seizure of a Weapon Pursuant to Court Order. *N.J.S.A.* 2C:25-26 and *N.J.S.A.* 2C:25-28j.

A. If a domestic violence victim obtains a TRO or FRO directing that the domestic violence assailant surrender a named weapon, the officer should demand that the person surrender the named weapon.

B. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should:

1. Inform the person that the court order authorizes a search and seizure of the premises for the named weapon, and

2. Arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, *N.J.S.A.* 2C:29-9, and

3. Conduct a search of the named premises for the named weapon.

3.10.3. The officer must append an inventory of seized weapons to the domestic violence offense report. *N.J.S.A.* 2C:25-21d(2)

3.10.4 Weapons seized by a police officer, along with any seized firearms identification card or permit to purchase a handgun, must be promptly delivered to the county prosecutor along with a copy of the domestic violence offense report and, where applicable, the

domestic violence complaint and temporary restraining order. *N.J.S.A.* 2C:25-21d(2*)*

3.11 DOMESTIC VIOLENCE COMPLAINT PROCESS

DEFINITIONS USED IN THIS SECTION

A. Domestic Violence Civil Complaint means the multi page application and temporary restraining order issued by the Superior or Municipal Court. See Section 1.6. Referred to as TRO/Complaint.

B. Criminal Complaint refers to the criminal charges placed on a CDR-1 (summons) or CDR-2 (warrant). See Section 1.2.

3.11.1 Notice. When a police officer responds to a call of a domestic violence incident, the officer must give and explain to the victim the domestic violence notice of rights which advises the victim of available court action, *N.J.S.A.* 2C:25-23. The victim may file:

A. A Complaint/TRO alleging the defendant committed an act of domestic violence and asking for court assistance to prevent its recurrence by asking for a temporary restraining court order (TRO) or other relief;

B. A criminal complaint alleging the defendant committed a criminal act. See Section, 3.8 Mandatory Arrest above as to when a police officer must sign the criminal complaint (CDR-1 (summons) or CDR-2 (warrant).); or

C. Both of the above.

3.11.2 Jurisdiction for filing domestic violence Complaint/TRO by the victim. *N.J.S.A.* 2C:25-28 -

A. During regular court hours,

1. The victim should be transported or directed to the Family Division of Superior Court. See Section 4.2.

2. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the designated court by telephone for an emergent temporary restraining order in accordance with established procedure.

B. On weekends, holidays and other times when the court is closed,

1. The victim may file the domestic violence complaint with the police and request a TRO from a Municipal Court Judge specifically assigned to accept these complaints. *N.J.S.A.* 2C:25-28a.

C. The victim may file a domestic violence complaint . *N.J.S.A.* 2C:25-28a:

1. Where the alleged act of domestic violence occurred,

2. Where the defendant resides, or

3. Where the victim resides or is sheltered.

3.11.3. Jurisdiction for filing criminal complaint (CDR-1 or CDR-2) by the victim in connection with filing domestic violence complaint.

A. A criminal complaint may be filed against the defendant in locations indicated in Paragraph 3.11.2 C above.

B. A criminal complaint filed pursuant to Paragraph 3.11.2 A above shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.

3.11.4 Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.

A. The victim may file a criminal complaint as stated in section 3.11.2C above.

B. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim and shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to the law enforcement agency where the offense occurred. That law enforcement agency shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. Where a victim has exhibited signs of physical injury, the agency receiving the documentation shall arrest the suspect in accordance with existing domestic violence procedure.

C. If the police officer believes that a no-contact order should be issued, as a condition of bail, the officer should inform the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.

D. If the officer believes that weapons should be seized, the officer should inform the court of the circumstances justifying such request that as a condition of bail, the defendant's weapons must be surrendered to the police

for safe-keeping. All weapons seized must be safely secured or turned over to the county prosecutor.

3.11.5 Victim Notification Form [see appendix 5]

A When either a criminal or domestic violence complaint is signed, a Victim Notification Form is to be completed by the person assisting the victim, either the police officer or other appropriate staff.

B. The victim should be informed that, for the victim's protection, the prosecutor or the court must have the ability to contact the victim on short notice to inform the victim about the defendant's

1. Impending release from custody, or

2. Application to reduce bail.

C. The victim should be provided with the telephone number of the

1. Victim Witness Unit of the Prosecutor's Office when a criminal complaint or domestic violence contempt complaint is signed, or

2. Family Division Domestic Violence Unit when a domestic violence complaint is signed.

D. The victim should be instructed to contact the appropriate office to provide new telephone numbers if the victim changes telephone numbers from the numbers listed on the Victim Notification Form.

E. Whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim immediately.

3.12. PROCEDURE FOR FILING REPORTS

3.12.1 A copy of the domestic violence offense report and Victim Notification Form must be attached to all criminal complaints and to the TRO when these documents are forwarded to the appropriate court. *N.J.S.A.* 2C:25-24a

3.13 TEMPORARY RESTRAINING COURT ORDERS

3.13.1 When a victim requests a court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer should:

A. Assist the victim in preparing the complaint and a statement to be made to the judge.

B. Explain that the judge will place the person under oath and will ask questions about the incident.

C. If the judge issues a temporary restraining order, the police officer will be instructed to enter the judge's authorization on a prescribed form.

D The officer also will be instructed to print the judge's name on the temporary restraining order.

E. The officer also will be instructed to serve the TRO upon the alleged offender.

3.14 SERVICE OF TEMPORARY RESTRAINING ORDER

3.14.1 When the victim obtains a restraining order but the defendant had not been arrested by police and is present at the scene, the officer should:

A. Escort the victim to his or her home.

B. Read the conditions of the court order to the defendant if the defendant is present.

C. Order the defendant to vacate the premises, where that is part of the Order.

D. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration. *N.J.S.A.* 2C:25-28k**.** The officer shall remain with the defendant as he or she gathers personal belongings pursuant to the terms of the temporary restraining order

E. Arrest the defendant if required by the TRO or if defendant refuses to comply with the order.

3.14.2 Where a TRO had been issued but was not served upon the defendant because the defendant could not then be located but the defendant is now at the scene, police should follow Paragraphs 3.14.1 A-E**.**

3.14.3 When a temporary or final restraining order is issued that requires service outside the issuing county,

A. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be brought or transmitted by facsimile to the sheriff's department in the issuing county.

1. The sheriff's department in the issuing county must similarly bring or transmit by facsimile the order and related documents to the sheriff's

department in the county of the defendant's residence or business.

2. The sheriff's department in the receiving county, pursuant to local policy, will either

   a. Execute service on the defendant or

   b. Immediately bring or transmit by facsimile the order and related documents to the police department in the municipality in which the defendant resides or works so that it can execute service accordingly.

3. The return of service should then be transmitted by facsimile back to the sheriff's department in the issuing county, which in turn must immediately deliver or transmitted by facsimile the return of service to the Family Division in the issuing county.

B. When the service of a restraining order results in the seizure of weapons;

1. The weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.

2. The weapons themselves, along with any licenses, I.D. cards, or other paperwork or documentation shall be secured by the prosecutor in the seizing county for storage. At such time that the seized property is needed by the prosecutor or Family Division in the issuing county, the prosecutor in the seizing county shall forward same.

C. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the police or sheriff's department and immediately returned to the Family Division prior to the scheduled final hearing date.

3.15 COURT ORDER VIOLATIONS

3.15.1. Where a police officer determines that a party has violated an existing restraining order either by committing a new act of domestic violence or by violating the terms of a court order, the officer must

A. Arrest and transport the defendant to the police station.

B. Sign a criminal contempt charge concerning the incident on a complaint-warrant (CDR-2).

C. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint (CDR-

2) form that contains the contempt charge.)

D. Telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt charge. *N.J.S.A.* 2C:25-31b.

1. During regular court hours, bail should be set by the emergent duty Superior Court judge that day. *N.J.S.A.* 2C:25-31d.

2. On weekends, holidays and other times when the court is closed, bail should be set by the designated emergent duty Superior Court judge except in those counties where a Municipal Court judge has been authorized to set bail for non-indictable contempt charges by the assignment judge.

3. When bail is set by a judge when the courts are closed, the officer shall arrange to have the clerk of the Family Division notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. *N.J.S.A.* 2C:25-25-31d.

4. If a Municipal Court judge sets the bail, the arresting officer shall notify the clerk of that Municipal Court of this information. *N.J.S.A.* 2C:25-31d.

5. The DVCR must be checked prior to bail being set. *N.J.S.A.* 2C:25-31a.

E. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at police headquarters or the county jail. *N.J.S.A.* 2C:25-31c.

3.15.2 Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO, the officer must advise the victim of the procedure for completing and signing a

A. Criminal complaint alleging a violation of the court order. *N.J.S.A.* 2C:25-32

1. During regular court hours, the officer should advise the victim that the complaint must be filed with the Family Division of the Chancery Division of Superior Court. *N.J.S.A.* 2C:25-32

2. On weekends, holidays and other hours when the court is closed.

a. The officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint;

b. The alleged offender shall be charged with contempt of a domestic violence restraining court order, *N.J.S.A.* 2C:29-9;

c. The officer in charge shall check the DVCR prior to contacting the on duty Superior Court Judge for a probable cause determination for the issuance of the criminal complaint. If the judge finds sufficient probable cause for the charges, the officer must prepare a complaint-warrant (CDR-2).

d. The officer in charge shall follow standard police procedure in arranging to have a court set bail.

e. The officer who had determined that there was no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO must articulate in the officer's incident report the reasons for the officer's conclusions.

B. Civil complaint against the defendant for violations of a court order pertaining to support or monetary compensation, custody, visitation or counseling. The victim should be referred to the Family Division Domestic Violence Unit to pursue enforcement of litigant's rights.

3.16 CRIMINAL OFFENSES AGAINST THE ELDERLY AND DISABLED

3.16.1 Where an elderly or disabled person is subjected to a criminal offense listed as an act of domestic violence, police shall follow the appropriate procedure listed above.

3.16.2 Where the actions or omissions against an elderly or disabled person do not meet the domestic violence conditions, police may file appropriate criminal charges against the offender.

3.16.3 A person may be charged with Endangering the Welfare of the Elderly or Disabled, *N.J.S.A.* 2C:24-8, if the person has a legal duty to care for or has assumed continuing responsibility for the care of a person who is:

A. 60 years of age or older, or

B. Emotionally, psychologically or physically disabled, and

C. The person unreasonably neglects or fails to permit to be done any act necessary for the physical or mental health of the elderly or disabled person.

3.17 GUIDELINES ON PROSECUTORIAL PROCEDURE REGARDING WEAPONS

SEIZED IN DOMESTIC VIOLENCE CASES

Introduction These general guidelines outline the procedure a County Prosecutor should establish regarding the disposition of weapons seized in domestic violence cases.

3.17.1 Seizure of Weapons Used in Commission of a Criminal Offense. Any weapon used in the commission of a criminal offense or is contraband or evidence of criminal activity shall be seized by police and processed in accordance with established procedures for the handling of such evidence.

3.17.2 Seizure of Weapons for Safekeeping Purposes. Any weapon seized by police in a domestic violence incident pursuant to *N.J.S.A.* 2C:25-21d cannot be returned to the owner by the police.

A. The police must promptly deliver to the County Prosecutor's Office:

1. The weapon involved in a domestic violence incident; along with any seized firearms identification card or permit to purchase a handgun;

2. The domestic violence offense report which includes an inventory of all weapons seized, and

3. Where applicable, a copy of the TRO or FRO, the criminal complaint, the Victim Notification Form and the police incident report.

4. Where seizure of weapons is pursuant to a TRO or FRO, the weapon inventory should also be forwarded to the Family Division Domestic Violence Unit.

B. When a weapon was seized at the scene pursuant to *N.J.S.A.* 2C:25-21d,

1. The County Prosecutor shall determine within 45 days of the seizure:

a. Whether the weapon should be returned to the owner of the weapon, or

b. Whether to institute legal action against the owner of the weapon.

2. If the County Prosecutor determines not to institute action to seize the weapon and does not institute an action within 45 days of seizure, the seized weapon shall be returned to the owner. *N.J.S.A.* 2C:25-21d(3).

3. If the County Prosecutor determines to institute action to seize the weapon, the Prosecutor shall, with notice to the owner of the weapon,

a. File a petition with the Family Division of the Superior Court, Chancery Division, to obtain title to the weapon, or

b. Seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license and other authorization for the use, possession, or ownership of such weapons. (See *N.J.S.A.* 2C:58-3f, 2C:58-4f and/or 2C:58-5 governing such use, possession, or ownership), or

c. Object to the return of the weapon on such grounds:

(1) As are provided for the initial rejection or later revocation of the authorizations pursuant to *N.J.S.A.* 2C:58-3c; or

(2) That the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular; or

(3) Seek a court order that defendant must dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.

C. Any weapon seized by police:

1. Pursuant to a temporary or final domestic violence restraining order, or

2. Pursuant to a Domestic Violence Warrant for the Search & Seizure of Weapons, or

3. As a condition of bail for a criminal offense involving domestic violence,

should be returned to the owner by the appropriate court specifically authorizing the return of the weapon if the order or criminal complaint is in effect. If the order or complaint is withdrawn or dismissed prior to a hearing, the provisions in Paragraph, 3.17.2B2 *supra*, should be followed.

3.17.3 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order Was Issued. When the service of a domestic violence restraining order results in the seizure of weapons,

A. The weapons inventory should be attached to the return of service that is

brought or transmitted by facsimile back to the issuing county.

B. The weapons themselves, along with any firearms identification card, purchasers permit, licenses, identification cards, or other paperwork or documentation shall be secured by the County Prosecutor in the seizing county for storage. At such time that the seized property is needed by the County Prosecutor or Family Division in the issuing county, the Prosecutor in the seizing county shall make arrangements for the delivery of same.

3.17.4 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident. See Attorney General Directives 2000-3 and 2000-4 (Appendix 17).

When a law enforcement officer, who is authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6, is involved in an act of domestic violence, the seizure of weapons shall be governed by the Attorney Generals Directives 2000-3 and 2000-4. (See Appendix 17)[1]

A. If a law enforcement officer is required by departmental regulations to personally purchase his or her official duty firearm, that firearm shall be considered the same as if it had been departmentally issued for purposes of applying the provisions of the Attorney General Directives 2000-3 and 2000-4 and the provisions of the federal gun control law, 18 *U.S.C.A.* 922(g).

B. When a personal firearm is seized from a member of a state law enforcement officer, which includes members of the State Police, the State Department of Corrections, the Division of Criminal Justice, Rutgers University Campus Police, state college and university police, N.J. Transit Police, Division of Parole, Juvenile Justice Commission, Human Services Police, any officer of Fish, Game and Wildlife authorized to carry a firearm, State Commission of Investigation, and Division of Taxation;

1. The county Prosecutor's Office must inform the Division of Criminal Justice whether it will or will not institute forfeiture proceedings pursuant to *N.J.S.A.* 2C:25-21d for the seizure of the member's approved off-duty firearms and other personally owned firearms,

[1] The Directives are similar in content: Directive 2000-3 *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers* is applicable to municipal and county law enforcement and requires the county prosecutor to investigate whether a police officer, having his firearms seized pursuant to the Prevention of Domestic Violence Act of 1990, should and under what conditions, would have his firearms, agency owned and personal, returned to him. Directive 2000-4, *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers Involved in Domestic Violence Incidents* places the responsibility of determining the conditions upon which a state law enforcement officer would have his right to carry a firearm restored with the Division of Criminal Justice.

2. The Division of Criminal Justice will determine whether that officer shall be authorized to carry that firearm or any firearm either on duty or off duty and whether conditions should be imposed for such authorization pursuant to the Attorney General Directive 2000-4 at IVD.

3. The Division of Criminal Justice will inform the County Prosecutor's Office of its decision whether that officer would be authorized to carry a firearm either on duty or off duty and whether conditions had been imposed for carrying a firearm.

3.17.5 Restrictions on Return of Firearms

A. If a final domestic violence restraining order is issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g), the named defendant shall not be permitted to possess, purchase, own, or control any firearm for the duration of the order or for two years, whichever is greater. *N.J.S.A.* 2C:25-29b

B. If a law enforcement officer is subject to a temporary or final restraining order issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A.* 2C:39-7b(3) & 18 *U.S.C.A.* 922(g)and sec 925, the County Prosecutor may permit a municipal or county police officer to be armed while actually on duty provided that the restraining order specifically permits the possession of a firearm on duty, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty. In the event a state law enforcement officer is subject to a final restraining order, the Attorney General, by the Division of Criminal Justice, may permit a subject officer to be armed while on duty provided said restraining order specifically permits, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty.

C. A law enforcement officer who has been convicted of a misdemeanor domestic violence offense anywhere in the nation is prohibited from possessing a firearm pursuant to 18 *U.S.C.* 922(g)(8). This federal law applies to offenses that have as an element (1) the use or attempted use of physical force, 9r (2) the threatened use of a deadly weapon. Under New Jersey law, a disqualifying offense would be:

1. Harassment, *N.J.S.A.* 2C:33-4b by striking, kicking, shoving

2. Simple assault, *N.J.S.A.* 2C:12-1a(1) by attempting to or purposely knowingly or recklessly causing bodily injury

3. Simple assault, *N.J.S.A.* 2C:12-1a(2) by negligently causing bodily injury to another with a deadly weapon

D. A law enforcement officer who has been convicted of stalking, or a crime or disorderly persons offense involving domestic violence may not purchase, own, possess or control a firearm, and may not be issued a permit to purchase a handgun or firearms identification card. *N.J.S.A.* 2C:39-7 & 2C:58-3.

SECTION IV

COURT PROCEDURES

4.1 MUNICIPAL COURT PROCEDURE

4.1.1 A Municipal Court judge hearing applications for temporary restraining orders shall:

A. Be available by telephone when the Superior Court is not in session and when directed by the Vicinage Presiding Judge of the Municipal Court.

B. Speak directly with the applicant in person, or by telephone, radio or other means of electronic communication per *Rule* 5:7A. Speaking only to the police officer does not satisfy this rule.

C. Ensure that the police or staff fully sets forth the victim's allegations of domestic violence in the body of the domestic violence complaint, including past history of domestic violence between the parties, whether reported or unreported.

D. Comply with all of the provisions set forth below.

E. Confirm with the police officer assisting with the TRO whether or not they are on a taped line. If not on a taped line, the judge must make detailed notes of the victim's testimony and the reasons for issuing the TRO and any weapons seizure.

4.1.2 The judge upon *ex parte* application shall administer an oath to the applicant and take testimony regarding:

A. The alleged domestic violence;

B The past history of domestic violence between the parties, whether reported or unreported;

C. The reason the applicant's life, health, or well-being is endangered;

D. Whether defendant possesses or has access to weapons, firearms or a firearms identification card;

E. The judge shall state with specificity the reasons for and scope of any search and seizure to be authorized by the Order (see weapons section).

4.1.3 The judge shall review all available information involving the parties; confirm that the plaintiff has been informed about legal rights and options and available protective services, including shelter services, safety plans, etc (see sample safety plan, Appendix 26); explain to the plaintiff the domestic violence legal procedures; establish a record, including findings of fact; amend the complaint to conform to the testimony, where appropriate; inquire as to all relief requested by the applicant to determine the appropriateness of same; and prepare a case specific TRO, where one

is to be entered. The court should ensure that the victim has been offered the services of the Domestic Violence Response Team.

4.1.4 The judge or law enforcement officer shall ensure that a tape recording or stenographic record is made of the testimony; if neither is available, the judge shall prepare adequate long-hand notes summarizing what has been said by the applicant, police officer and any witnesses.

4.1.5 Where the Municipal Court judge determines that defendant possesses or has access to weapons, firearms, a firearms identification card or purchaser permit, the judge shall also comply with the weapons procedure Section V of this manual.

4.1.6 After hearing testimony from the victim, the judge shall issue or deny the TRO. If the TRO is denied, the judge shall state the reasons. When a TRO is entered, a return date for the Final Hearing is to be set within ten (10) days. Whether granted or denied, the judge should check the appropriate box and sign the TRO or direct the law enforcement officer to check the box and print the judge's name on the order as authorized by *Rule* 5:7A, or as authorized by E-TRO procedures (Appendix 6).

4.1.7 Contemporaneously, the judge shall issue a written Confirmatory Order (See Appendix 7) and shall enter the exact time of issuance, as required by *Rule* 5:7A(b).

4.1.8 When a TRO is granted, copies of the Complaint/TRO shall be provided to:

A. The victim;

B. The law enforcement agency of the municipality in which the victim resides or is sheltered;

C. The law enforcement agency that will serve the defendant with the Complaint/TRO;

D. The Domestic Violence Unit of Superior Court. This copy should be faxed immediately, or sent via electronic mail, where E-TRO procedures are in place; and,

E. The Municipal Court judge.

4.1.9 When a TRO is denied, the plaintiff shall receive a copy of the Complaint/TRO but the defendant shall not. It shall be forwarded to the Domestic Violence Unit of the Family Division.

4.1.10 When the defendant is arrested for a crime or offense arising out of a domestic violence situation, the Municipal Court judge or court administrator shall fix bail when requested to do so pursuant to *Rule* 5:7A-1 and *N.J.S.A.* 2B:12-21a, except when a Superior Court Judge must set bail pursuant to *Rule* 3:26-2(a).

4.1.11 When the Superior Court is closed, the Municipal Courts must be accessible to victims in need of emergent relief. Each Municipal Court shall ensure that there is adequate backup coverage for domestic violence cases and other emergent matters for each Municipal Court in that vicinage. The Court Administrator of each Municipal Court in each vicinage should provide the police or other law enforcement officers covering that municipality with a list of names and phone numbers (in order of priority) to be contacted in domestic violence cases, starting with the sitting Municipal Court judge, the back up judge, the Presiding Judge of the Municipal Court (where applicable) and the emergent duty Superior Court judge.

4.1.12 Municipal Court Costs. Municipal Court costs shall not be imposed against a plaintiff/complainant who seeks the dismissal of a disorderly or petty disorderly complaint arising out of a domestic violence matter except if imposed pursuant to *N.J.S.A.* 2B:12-24.

4.2 SUPERIOR COURT, FAMILY DIVISION PROCESSING

During court hours for Domestic Violence matters (Monday through Friday, 8:30 AM to at least 3:30 PM), a victim of domestic violence will be referred to the Superior Court, Family Division to sign a domestic violence complaint. When a criminal complaint is also signed, it is to be processed separately for investigation and prosecution through the Criminal/Municipal Courts.

4.3 TAKING A COMPLAINT IN SUPERIOR COURT, FAMILY DIVISION

4.3.1 When a victim arrives, the victim should be directed to the Domestic Violence Unit. A victim shall be given a Victim Information Sheet (VIS) to complete (See Appendix 1). At this time, the victim should be fully informed about her/his right to file a criminal complaint, a domestic violence complaint, or both types of complaints. The victim should be told about the differences between the two proceedings and about the relief available under each. The victim can then make an informed decision based on her/his own needs and a clear understanding of the options available.

4.3.2 The victim should be assisted and accompanied by a victim advocate whenever possible. A victim advocate should be available to speak with all victims or potential victims at all stages of the court process. The victim advocate should be given as much support as possible (e.g. space for interviewing, immediate referrals), as well as access (with the victim) to the courtroom. The victim advocate should be advised when every initial intake or application for dismissal is presented to offer assistance to the victim at this early stage in the process. When a victim advocate is not available, courts, police, prosecutors and law enforcement should have contact names and numbers readily available to give to all victims, preferably in the form of a card or pamphlet.

4.3.3 A domestic violence staff person shall interview the victim in a private area and

advise and inform the victim of rights, options and appropriate referrals.

4.3.4 Based upon the information provided by the victim on the VIS, the staff person will search FACTS for both parties' history and case history. The case is established and docketed on FACTS, where appropriate, which results in the production of the Complaint/TRO. The party case history should be made part of the court's file. If it is determined while searching FACTS that plaintiff has an active restraining order against defendant or that taking a complaint is inappropriate for any other reason, the complaint should not be docketed.

4.3.5 Staff should be certain that the victim's allegations are fully set forth in the body of the domestic violence complaint, as well as any prior history or acts of domestic violence, whether or not reported.

4.3.6 The determination of whether the incident constitutes domestic violence is a legal issue to be determined by a judge or Domestic Violence Hearing Officer (DVHO). A victim should rarely be turned away. Legal sufficiency or jurisdiction, applicability of definitions such as "household member" or "dating relationship," or the appropriateness of using the domestic violence process to address a particular problem are all decisions for a judge or DVHO. Screening by staff should be concentrated on information gathering, and only those cases that clearly fall outside the scope of the law should be rejected at the staff level. In these situations, the rejection of a complaint by staff should be reviewed by a supervisor who should ensure that appropriate alternate remedies-are explained to the victim.

4.3.7 When available and in appropriate cases, a victim can choose to have their complaint heard by a DVHO. Proceedings before a DVHO shall be in accordance with the approved DVHO Standards (See Appendix 3). Those cases that are not heard by a DVHO shall be brought to a judge.

4.3.8 When a TRO is not recommended by the DVHO, the DVHO must advise the plaintiff of his/her option to see a judge for a hearing *de novo*, in accordance with the DVHO Standards.

4.3.9 The judge or DVHO must follow Section 5.10 regarding weapons if there is any allegation that the defendant owns or has access to a weapon(s), a firearms identification card or permit to purchase a handgun.

4.3.10 When an applicant seeks a TRO, she or he must be asked if he or she wishes to request ongoing child support at the FRO hearing. If he or she wishes to pursue this relief, Intake must provide the applicant with a IV-D application to be completed during the intake process. Parts E–H should be placed in the court file. Parts A-C should be provided to the Plaintiff as reference information.

4.3.11 The appropriate reliefs should be added to FACTS (i.e., paternity and/or child support.) If paternity has not been previously established for the child(ren), a request to establish paternity at the final hearing must be entered on line 13 of the TRO.

Paternity need not be established if the parties are married or if a legal determination of paternity has been made previously. If a Certificate of Paternity has been signed, this can be indicated on the TRO and a copy maintained in the file.

4.3.12 When a child support obligation is established, the information regarding paternity and the monetary amount must be entered on both the FRO and the Uniform Summary Support Order (USSO, Appendix 31). Paternity determination is required to be recorded on the FRO at line 1 of Part 2 relief and on the appropriate check-off boxes on the USSO.

4.3.13 When a defendant comes to the Intake Office, FACTS should be searched to determine if service of the FRO and the USSO has been accomplished. If these orders have not been served on defendant, service shall be documented by requesting the defendant to sign the orders or court staff may initial the orders with the current date indicating that the defendant received the orders. Service by a law enforcement officer is documented by signature on the FRO.

4.4 ACCESS IN SPECIAL CIRCUMSTANCES

4.4.1 Victims shall personally appear during regular court hours. A procedure shall be implemented by the Family Division Manager to allow victims to obtain emergent relief through telephonic contact with a judge pursuant to *Rule* 5:7A where a victim is unable to personally appear. Telephonic testimony may be permitted at the TRO or FRO hearing in the discretion of the court.

4.4.2 If a victim is physically or mentally incapable of filing personally, a judge may issue a temporary restraining order requested by a person who represents the applicant provided the judge is satisfied that (1) exigent circumstances exist to excuse the failure of the applicant to appear personally and (2) that sufficient grounds for granting the application have been shown.

4.4.3 The Family Division shall be prepared to accept domestic violence complaints until at least 3:30 PM during days when the Superior Court is in session. The regular business hours of the Domestic Violence Unit or other office accepting domestic violence complaints shall be clearly posted and disseminated to all Municipal Courts and law enforcement personnel in the vicinage. See sections 2.2.2 and 2.2.3.

4.4.4 There are occasions when a person seeking to file a domestic violence Complaint/TRO arrives too late in the day for it to be processed and heard during regular court hours. During the interim period between the Domestic Violence Unit's close of business and when the courthouse actually closes, victims shall not be turned away. Each county shall develop a procedure in such instances for either in-person or telephonic communication under *Rule* 5:7A between the victim and an on-site or emergent duty judge, so that the request for emergent relief can be handled without the necessity of the victim having to go to the local police station or the Municipal Court.

4.4.5 On weekends, holidays or during those hours when the Superior Court is not in session, a victim should be referred to local law enforcement officials, so that her/his Complaint/TRO can be processed by a law enforcement officer and heard by a Municipal Court judge.

4.5 INITIAL/EMERGENT HEARING

4.5.1 Once a domestic violence victim has been interviewed and the necessary paperwork has been processed and is ready for court, every effort should be made for the case to be heard within one hour.

4.5.2 In those cases where both parties appear at the courthouse and each seeks a temporary restraining order against the other, a judge should hear each Complaint/TRO separately and grant relief where appropriate. The same judge should consider these complaints to ensure that the orders do not contain conflicting provisions for such matters as possession of the residence and custody of the children.

4.5.3 At the initial hearing, the court upon *ex parte* application shall administer an oath to the applicant and take testimony regarding (a) the alleged domestic violence; (b) the past history of domestic violence between the parties, if any; (c) the reason the applicant's life, health, or well-being is endangered; (d) whether firearms or weapons are present or available to the defendant; and shall (e) state with specificity the reasons for and scope of any search and seizure authorized by the Order (See Section on Weapons); and (f) make general inquiry as to all relief requested by the applicant to determine the appropriateness of same.

4.5.4 The judge or DVHO shall review all related case files involving the parties; ensure that plaintiff is informed about legal rights and options and available protective services, including shelter services, safety planning, etc.; explain to the plaintiff the domestic violence legal process and procedures; establish a record, including findings of fact and conclusions of law forming the basis of any determination; rule on the admissibility of evidence; amend the complaint to conform to the testimony, where appropriate; and prepare a comprehensive case specific TRO, where one is to be entered. When a TRO is granted, the order must be completed and signed in accordance with *Rule* 5:7A.

4.5.5 After hearing testimony from the victim, the judge will issue or deny the TRO, setting forth the reasons therefore. Unless the judge denies the TRO and dismisses the Complaint/TRO, a return date for the Final Hearing is to be set within ten (10) days.

4.5.6 When a TRO is granted, the Order must be completed and signed by the judge. Copies shall be provided to:

A. The victim;

B. The law enforcement agency of the municipality in which the victim resides or is sheltered; and

C. The law enforcement agency which will serve the defendant with the Complaint/TRO.

4.5.7 When a TRO is not granted, the court must check the box stating that the TRO was denied and sign the order. This automatically dismisses the Complaint/TRO. (NOTE: If the TRO is denied, no copy of the Complaint/TRO is to be provided to the defendant. If a later TRO refers to the prior complaint, a copy of the prior complaint can be provided to the defendant upon request even though the prior complaint was dismissed.)

If after the entry of a TRO, the plaintiff returns to court to amend the TRO/Complaint, an amended complaint containing the additional allegation(s) should be taken. The defendant shall be served with the amended TRO complaint in accordance with the procedures in section 4.6. If the defendant has not been served with the amended complaint prior to the Final hearing an adjournment may be granted and a continuance order or amended TRO be issued if defendant needs additional time to prepare.

4.6 PROCEDURES FOR SERVICE OF COMPLAINT/TRO/FRO

4.6.1 The Complaint/TRO shall be served on the defendant by **personal service,** immediately following the entering of such order. This service is effectuated by the procedures outlined in each county, through the Municipal or State police, Sheriff's Department or both. Substituted service is permitted only by specific court order.

4.6.2 The Sheriff's Officer or court staff member will provide the plaintiff two copies of the Complaint/TRO. The plaintiff may, but is under no circumstances required, to provide a copy to the police department or residence or where sheltered. The plaintiff shall be advised to keep a copy of the TRO on with them at all times.

4.6.3 If the parties reside together and the defendant is being removed from the home, the plaintiff will be instructed to report to the appropriate law enforcement agency for accompaniment to the residence if appropriate.

4.6.4 The Family Division, Domestic Violence Unit must immediately fax a copy of the Complaint/TRO to the municipality where the defendant resides or may be served, and to all law enforcement agencies that can or may assist in the service and enforcement of the Order. This can be specified in the Comments section of the TRO.

At no time shall the plaintiff be asked or required to serve any order on the defendant. *N.J.S.A.* 2C:25-28.

4.6.5 Once service on the defendant is attempted (successfully or unsuccessfully), the return of service portion of the TRO must be completed by the appropriate law enforcement agency and immediately faxed to Family Court (Domestic Violence Unit) and if issued by a Municipal Court, the court which issued the TRO. The original shall be returned to the Domestic Violence Unit.

4.7 SERVICE OUT OF COUNTY

4.7.1 When a temporary or final restraining order is issued that requires service outside the issuing county, the restraining order must immediately be brought or faxed to the Sheriff's Department or other designated law enforcement agency in the issuing county.

A. The Sheriff's Department or other designated law enforcement agency in the issuing county must bring or fax the order and related documents to the sheriff's department or other designated law enforcement agency in the county of the defendant's residence or business.

B. The Sheriff's Department or other designated law enforcement agency in the receiving county, pursuant to local policy, will either:

(1) Execute service on the defendant, or

(2) Immediately bring or fax the order and related documents to the sheriff or other designated law enforcement agency in the municipality in which the defendant resides or works so that it can execute service accordingly.

C. The return of service should then be faxed back to the sheriff's department or other designated law enforcement agency in the issuing county, which in turn must immediately deliver or fax the return of service to the Family Division in the issuing county.

4.7.2 Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the sheriff's department or other designated law enforcement agency and immediately faxed or returned to the Family Division prior to the scheduled final hearing date.

4.7.3 When an order must be served on a defendant who is out-of-state, the law enforcement officer or agency or court staff should contact the State Police or Family Court in the other state to determine the procedures for service in that state (Appendix 29 and 30).

4.8 APPEALS OF *EX PARTE* ORDERS

4.8.1 *N.J.S.A.* 2C:25-28(i) provides that any TRO is immediately appealable by plaintiff or defendant for a plenary hearing *de novo,* not on the record below, before any Superior Court, Family Division Judge in the county where the TRO was entered if that judge issued the temporary order or has access to the reasons for the issuance of the TRO and sets forth on the record the reason for the modification or dissolution.

4.8.2 Upon receipt of a request for an emergent appeal, staff shall obtain the reasons for the request of appeal and assist the appealing party in completing the "Appeal of *Ex Parte* Order" (See Appendix 8), and present the request with the file to the judge for consideration.

4.8.3 If the application is granted, an emergent hearing will be scheduled with adequate notice to both parties as to the purpose of the hearing and the issues to be addressed. The judge must place the reasons for continuing, modifying or dissolving the TRO on the record.

4.8.4 If the application is denied, the reasons shall be set forth by the judge on the "Appeal of *Ex Parte* Order" form and the FRO hearing will proceed as initially scheduled.

4.9 PROCEDURES FOR FINAL HEARINGS

4.9.1 A final hearing must be scheduled within ten days of the filing of the Complaint/TRO in the county where the Complaint/TRO was issued unless good cause is shown for the hearing to be held elsewhere. Each county shall provide the police and Municipal Courts with the designated days and times for final hearings.

4.9.2 If the return of service on the defendant has not been received by the day before a final hearing, a designated domestic violence team member shall check with the appropriate law enforcement agency responsible for service (such as sheriff or local police) to ascertain whether the defendant was successfully served. The return of service portion of the TRO must be immediately faxed to the domestic violence team by law enforcement.

4.9.3 The Continuance Order may be used when a new date must be scheduled and there are no substantive changes to the TRO. When substantive changes, including amendments to the complaint, are needed, an Amended TRO shall be used, which shall set forth the changes. The TRO must be attached to the Continuance Order for service. If the defendant has been served with the TRO, notice of the new date may be made by mail, if an address is known.

4.9.4 Any defendant who qualifies under the Servicemembers Civil Relief Act, 50 *U.S.C.* 501, *et. seq.*, is entitled to have the proceedings stayed while the member is either in military service or within 90 days after termination or release from such service for a servicemember who has received notice of such proceedings, if the court receives a

letter or other communication: (1) stating that current duty requirements materially affect the servicemember's ability to appear; or (2) from the servicemembers commanding officer stating that current duties prevent the servicemember's appearance and that military leave is not authorized. This also permits a servicemember granted a stay from such proceedings to apply for an additional stay based on continuing material effect of military duty on the ability to appear. This shall be entered into FACTS as an extended TRO.

The restraining order shall stay in effect until such stay is lifted.

4.9.5 Nonappearance By Either Party: If no one appears for the final hearing, a domestic violence team member shall attempt to contact the plaintiff and defendant and collect as much information as practicable about the reasons for nonappearance and present same to the court for consideration prior to the dismissal of any Order.

The matter shall be rescheduled where there is no appearance by either party unless the court is fully satisfied that a dismissal meets the standards as set forth on the Order of Dismissal (See Appendix 14).

4.9.6 Nonappearance by the plaintiff: The domestic violence team member shall attempt to contact the plaintiff to collect as much information as practicable about the plaintiff's nonappearance and present the information to the court. Communications about the plaintiff shall be made outside the presence of the defendant. The file and notes reflecting the findings shall then be brought to the judge. If only the defendant appears, [s]he should be questioned under oath concerning knowledge of the plaintiff's whereabouts. The court shall inquire if the defendant caused or is responsible for the nonappearance of the plaintiff.

If (1) the plaintiff can be contacted, and (2) the judge is satisfied (after hearing both parties' explanations) that the plaintiff's failure to appear was not the result of coercion and duress, and (3) the findings required as per the Order of Dismissal were made, the court may issue an Order of Dismissal. If not, or if the plaintiff cannot be contacted, the matter shall be rescheduled.

Any dismissal order shall be without prejudice, and any Order of Dismissal or order modifying the TRO shall be faxed or otherwise transmitted to the applicable law enforcement agency.

4.9.7 Warrants shall not be used to secure the presence of the plaintiff in court under any circumstances when the plaintiff has failed to appear or has allowed the defendant back into the residence.

When a plaintiff is unable to appear at the final hearing for good cause shown, arrangements shall be made for a telephonic appearance on the record.

4.9.8 Nonappearance by the Defendant: If only the plaintiff appears, the plaintiff's request for relief should be identified in accordance with the domestic violence procedures.

A. Where the defendant does not appear at the final hearing, and proof of service has been provided, the court should proceed with the final hearing and may enter a final order in default.

B. If the court file does not contain proof of service, the court should conduct a hearing in the presence of the plaintiff to determine the following:

- Whether the plaintiff has seen the defendant in the court house or knows of the defendant's whereabouts;
- Whether the plaintiff is aware of whether the defendant was served and the basis for such knowledge;
- Whether the defendant has had any contact with the plaintiff since execution of the temporary restraining order; and
- Whether the same or different conditions exist in comparison to those at the time of the initial hearing.

C. If the court determines that the defendant had actual knowledge of the restraining order and hearing date, after making such finding on the record, the court may proceed with the final hearing and may enter a final order by default.

4.9.9 Defendant Not Served: If the court determines that the defendant has not been served but finds there is reasonable likelihood of service on the defendant within a reasonable amount of time (e.g. the defendant's whereabouts are known, but the defendant is on vacation), a short postponement shall be granted and a date certain scheduled, which shall be memorialized in a Continuance Order (See Appendix 9) or Amended TRO. The Continuance Order shall be served on the defendant with the Complaint/TRO.

In the event that it is unlikely the defendant can be served within a reasonable period of time, then the court can issue an indefinite TRO. This TRO shall continue the reliefs requested by the plaintiff until further order of the court and contain a provision that a final hearing shall be rescheduled upon service on the defendant. The case will be recorded as disposed of in FACTS with the case status reason code of "extended TRO."

4.10 APPEARANCE BY BOTH PARTIES

4.10.1 When both parties appear for a Final Hearing, the victim and defendant should be kept in different locations and directed to the appropriate intake or waiting area for

case processing by the domestic violence unit. Separate waiting areas must be available for victims to avoid potential contact, intimidation, or additional violence or victimization.

4.10.2 Information Gathering

A. A domestic violence staff person should meet with each party, separately, prior to court to review identifying information and to determine if the case is likely to be a contested trial or a dismissal. The domestic violence staff person should review with the plaintiff what relief is being sought and explain the procedure to be followed in a trial, including the right to call witnesses and present evidence. In addition, a victim advocate should be available to confer with the plaintiff before the court session.

B. Court staff shall not meet with the parties together or conduct mediation of any sort on any issue, such as custody or parenting time, per *N.J.S.A.* 2C:25-29a(6) and *Rule* 1:40-5(a).

C. If support is being sought as a relief, staff should ensure that both parties have completed the required forms with complete identifying and financial information. Staff support should be provided to the judge to calculate Child Support Guidelines.

D. Counsel for the parties may participate in the staff held meetings. No party shall be required to meet with opposing counsel without his/her clear, express consent.

4.10.3 No Mediation. There shall be no mediation of any kind in domestic violence cases.

4.10.4 Request for Continuance.–The court may grant an adjournment or continuance if either party requests an adjournment for the purpose of obtaining or consulting with an attorney, securing witnesses, or other good cause, unless the delay would create an extreme hardship on the other party, or there has been an inordinate delay in seeking counsel.

4.10.5 Court Files. At the time of the Final Hearing, the court's file should contain the Complaint/TRO; the Victim Information Sheet; FACTS history of the parties and children; and prior domestic violence history, if any; and relevant financial, social and criminal record history.

4.10.6 Confidentiality. All records maintained pursuant to the PDVA are confidential as specified by *N.J.S.A.* 2C:25-33. However, all court proceedings under the Act are open unless closed by the court in accordance with the Rules.

4.11 TRANSFER OF MATTERS BETWEEN COUNTIES

Pursuant to *N.J.S.A.* 2C:25-29 and Rule 5:7A, a final hearing is to be held "in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere." A Domestic Violence matter may be transferred between vicinages by order of the presiding judge or his or her designee in the following situations:

A. Plaintiff or defendant works in family court in the original county of venue, consistent with the judiciary "Policy and Procedures for Reporting Involvement in Criminal/Quasi- Criminal Matters";

B. There is an FM or FD matter pending in the other county;

C. The filing of the TRO and FRO are where the act(s) occurred but plaintiff or both parties reside in another county, upon application by either party;

D. Such other matters for good cause shown.

See also Directive #3-05, "Intercounty Child Support Case Management Policy."

4.12 FINAL HEARING

A final hearing is described in *N.J.S.A.* 2C:25-29a as follows:

> A hearing shall be held in the Family Division of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of this act in the county where the *ex parte* restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident that is the subject matter of a complaint brought under N.J.S.A. 2C:25-28a has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the Rules of Evidence that govern unavailable parties. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:
>
> (1) The previous history of domestic violence between the plaintiff and defendant including threats, harassment and physical abuse;
>
> (2) The existence of immediate danger to person or property;
>
> (3) The financial circumstances of the plaintiff and defendant;
>
> (4) The best interests of the victim and any child;

(5) In determining custody and visitation, the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

When the allegations in the plaintiff's complaint are incomplete and/or it becomes evident at the final hearing that the plaintiff is seeking a restraining order based upon acts outside the complaint, the court, either on its own motion or on a party's motion, shall amend the complaint to include those acts, which motion shall be freely granted. Due process requires that the judge make an inquiry as to whether the defendant needs additional time to prepare in light of the amended complaint. A brief adjournment may be required if the judge determines that the defendant did not have adequate notice and needs time to prepare. If an adjournment is granted, a continuance order or an amended TRO shall be entered.

If there is a verifiable order for protection from another state and the court has jurisdiction over the defendant then the acts of violence that lead to that Order may be viewed as providing adequate basis for the issuance of like restraints in New Jersey, without a need for alleging additional acts of violence (See Section VII on Full Faith and Credit.)

4.13 DISPOSITIONS

4.13.1 Following a final hearing, the court should either enter an FRO with appropriate relief upon a finding of domestic violence, or an admission of an act of domestic violence by the defendant; or, dismiss the Complaint/TRO and dissolve all restraints if domestic violence has not been established; or, if appropriate, adjourn the final hearing and continue the restraints on an interim basis until a final determination can be made.

4.13.2 The court only has jurisdiction to enter restraints against a defendant after a finding by the court or an admission by the defendant that the defendant has committed an act(s) of domestic violence. A defendant's admission or stipulation to committing an act of domestic violence must comply with the following:

A. The parties must be sworn before any action is taken on the complaint, particularly when one or both of the parties appear *pro se*;

B. The defendant must provide a factual basis for the admission that an act of domestic violence has occurred; and

C. Where it becomes clear that defendant does not agree that the conduct constituted an act of domestic violence, the hearing must proceed.

4.13.3 If prior to or during the final hearing, a defendant alleges that the plaintiff committed an act(s) of domestic violence, defendant should be instructed to file a separate

domestic violence Complaint/TRO. The complaint should receive a separate docket number and, if practicable, both cases should be heard that day unless continued for good cause.

4.13.4 Where each party has a separate Complaint/TRO: If both parties admit to or are found to have committed an act or acts of domestic violence, a final order must be entered on each separate docket number where each party is the defendant. "Mutual Restraints" cannot be issued on a single restraining order.

4.14 REMEDIES AVAILABLE UNDER THE ACT

Following a hearing and a finding of domestic violence, the court may issue an order granting any or all of the following relief, including any relief "necessary to prevent further abuse," pursuant to *N.J.S.A.* 2C:25-29b.

4.14.1	Weapons
4.14.2	Further acts of violence
4.14.3	Exclusive possession of residence
4.14.4	Parenting Time and Risk Assessments
4.14.5	Monetary compensation, including support
4.14.6	Professional domestic violence counseling
4.14.7	Restraints from certain locations
4.14.8	Communication restraints
4.14.9	Other support and personal property
4.14.10	Temporary custody
4.14.11	Law enforcement accompaniment
4.14.12	No in-house restraints
4.14.13	Any other appropriate relief, including monitoring that relief
4.14.14	Prohibition from possessing weapons
4.14.15	Prohibition against stalking

4.14.1 Weapons – In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to *N.J.S.A.* 2C:58-3 during the period in which the restraining order is in effect, or two years whichever is greater, except that this provision shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. [*N.J.S.A.* 2C:25-29b, effective January 14, 2004.]

4.14.2 Further acts of violence – An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act. [*N.J.S.A.* 2C:25-29b(1).]

4.14.3 Exclusive possession of residence – An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or

household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing. [*N.J.S.A.* 2C:25-29b(2).]

4.14.4 Parenting Time and Risk Assessments - An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time. [*N.J.S.A.* 2C:25-29b(3).]

The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious. [*N.J.S.A.* 2C:25-29b(3)(a).]

The custodial parent can request an assessment of risk of harm to the child or children posed by unsupervised parenting time with the defendant prior to the entry of an order for parenting time. When this request is noted as a desired form of relief on the Complaint/TRO, or when the request is made either at the emergent or final hearing, a risk assessment must be ordered unless, on the record, the judge finds the request to be arbitrary or capricious and thus denies the request.

Risk Assessment reports must be completed on the "Visitation Risk Assessment Sheet" (See Appendix 15) and may be completed by in-court professional staff person or by an outside professional. The assessment shall serve as a minimum standard for assessing the potential risk of harm to children posed by establishing a parenting time schedule with the defendant. The order for a Risk Assessment should also prompt the setting of a return date before the court in approximately three weeks. The Risk Assessment report should be completed prior to the scheduled date and provided to the parties and counsel along with a "Protective Order" pursuant to the standards adopted by the Judiciary (See Appendix 16).

If interim parenting time is ordered during the initial three week period, and the vicinage has a court-sponsored or approved supervised visitation site, the parenting time should be supervised by an individual designated by the court or through the auspices of the supervised parenting time program and should have clear instructions regarding the arrival and departure of the victim, children and defendant

so as not to compromise the safety of the victim in any way. Security must be available at the parenting-time site, and the individual(s) who is (are) supervising the parenting time must be advised as to the emergency procedures that must be employed if a particular parenting time session appears dangerous. If the Risk Assessment has not been completed before the return date, the court may enter an interim order to continue supervised visitation or hold the hearing to consider any additional applications or evidence that relates to the issue of parenting time.

The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child. [*N.J.S.A.* 2C:25-29b(3)(b).]

Pursuant to *N.J.S.A.* 2C:25-29b(3)(b), a plaintiff in a domestic violence matter may, as a form of pre- or post-dispositional relief, request that an order for parenting time issued pursuant to *N.J.S.A.* 2C:25-29b(3) be suspended. A hearing must then be held upon the plaintiff's application that the defendant's continued access to the child or children pursuant to the parenting time order has threatened the safety and well-being of the child or children.

This request may be made immediately upon the entry of an order for parenting time or at any point subsequent to the entry of such an order.

4.14.5 Monetary Compensation, including Support - An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victim of Crime Compensation Agency for any and all compensation paid by the Victim of Crime Compensation Agency directly to or on behalf of the victim, and require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but are not limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages. [*N.J.S.A.* 2C:25-29b(4).]

Each county shall establish a procedure for the collection and distribution of emergent monetary relief, whether ordered by the Superior Court or Municipal Court. Special care should be taken to avoid the entry of an order that requires the victim to have contact with the defendant in order to receive money under this section. Courts. Courts should give consideration to all forms of monetary relief listed in the statute, above.

Support may be ordered in an FRO pursuant to *N.J.S.A.* 2C:25-29b (4) and (10), which provides for both emergent monetary relief that includes emergency support for minor children and compensatory losses in the form of child or spousal support. An order for emergency monetary relief or child support or spousal support may be entered without prejudice to a pending dissolution case, particularly when done on an *ex parte* basis. Monetary compensation in the form of ongoing support utilizing the child support guidelines, where applicable, should be issued at the final hearing if the court is able to consider testimony. All child support shall be paid by income withholding from any source of funds or income.

4.14.6 Professional domestic violence counseling - An order requiring the defendant to receive professional domestic violence counseling from either a private or court-appointed source and, in that event, at the court's discretion requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. [*N.J.S.A.* 2C:25-29b(5).]

This section permits the court to order the defendant into a batterers intervention program as part of the professional domestic violence counseling option. Victims shall never be ordered into counseling of any kind.

4.14.7 Restraints from certain locations - An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members. [*N.J.S.A.* 2C:25-29b(6).]

A victim shall not be required to disclose any residence or place of employment nor shall the court require such disclosure on the record. The FRO should include (where appropriate) specific names and addresses identifying the locations from which the defendant is barred and the people that the defendant is restrained from contacting, communicating with, harassing, or stalking.

4.14.8 Communication restraints - An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim. [*N.J.S.A.* 2C:25-29b(7).]

4.14.9 Other support and personal property - An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action. [*N.J.S.A.* 2C:25-29b(8).]

An order granting either party temporary possession of specified property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

An order awarding emergency monetary relief, including emergency support for minor children, to the victim, and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law. [*N.J.S.A.* 2C:25-29b(10).]

The court should determine, where necessary, the issue of paternity and the duty to support. If the defendant has a duty to support, as established by a prior finding of paternity, a Certificate of Paternity, an admission of paternity, or a presumption of paternity based on marriage, the court should review the available information, apply the Child Support Guidelines if appropriate and enter a support order payable through income withholding. The order should be referenced in the FRO and entered on the two page support order form, payable and enforced through probation. In the event paternity of defendant is not established, any money paid for child support may be refunded to the defendant in accordance with applicable case law. The method by which the court determined paternity shall be indicated on the order.

If paternity has not been established, the court may order genetic testing and employ the same procedures used by the county in FD matters. In this instance the judge should enter an FRO including all of the other reliefs and restraints. This case will be "disposed" in FACTS with a standing FRO. When the results of the genetic test are received, the case should be reopened on the court's motion for a hearing on the paternity and support issues. All proceedings are held on the FV docket before a judge.

Following the entry of an order under the FV docket, all subsequent applications between the parties involving paternity, custody, parenting time and support shall be taken and heard under the FV docket. A separate FD complaint should not be opened to address these issues. However, this section should not be construed to prevent a party from filing a dissolution complaint.

If an FRO has been entered with relief granted and there is an FD which has been filed but no orders yet entered, the FD will be dismissed and all subsequent applications/modifications (e.g., support, custody, parenting time) shall be made under the FV, so long as the FV is still in effect. If there is a pending FM, all reliefs except the restraints shall be incorporated into the FM with the restraints continuing in the FV docket and on the FRO. Subsequent applications or modifications for support, custody or parenting time should take place within the FM docket number. The FV should be reopened and modified as needed so the FM and FV are consistent.

After support has been entered on the FV, an application to dismiss the FRO and continue the support order should be addressed pursuant to the procedures in the FD manual (section 1104) to ensure that the support continues.

In processing an FV case where there is an existing FD case, the following provisions of the FD manual should be employed. The following is what is stated in Section 1104 of the Non-Dissolution Manual, Standing/Pre-Existing FD Order Prior to an FV Case which has been approved by the Conference of Family Presiding Judges:

> If there exists a previous FD order addressing custody/parenting time and/or child support, prior to the filing of a domestic violence action, that order shall be preserved under the FD docket. The FD court file must be forwarded to the judge hearing the FRO or continued TRO for review and any adjustment to the FD order to insure conflicting orders do not exist. The FD order should be referenced in the FV order to insure all affected parties, divisions and agencies are aware of the multiple orders. The FD file shall be joined to the FV file for as long as the FV case is active. For tracking purposes, a comment should placed in FACTS indicating that the FD court jacket is with the FV team. The FV team should link the cases in FACTS to so that the FD and FV cases are scheduled at the same time for any future court action.
>
> When any party wishes to file for a modification of the FD order during the life of the domestic violence restraining order, that case must be heard by the judge hearing the current FV matter. Parties should be referred to the FV team for scheduling of their FD case while the restraining order is active. A reference to the FV restraining order should be visible on any revised FD order and provided to all entities that might be affected by the revision (i.e., parties, child support enforcement, supervised visitation).
>
> If the FV action is dismissed the judge will determine the continued status of the FD order and note that determination on the FV dismissal order, and on a new FD order, if necessary. At that time the jacket shall be returned to the FD team and noted in FACTS case comments.
>
> If the FV case has child support, the Probation Division should be sent copies of all modified FRO and indefinite TRO orders. If the retraining order is dismissed, the DV indicator must be updated by Family staff and a copy of the dismissed restraining order must be forwarded to Probation.
>
> If there is a restraining order in effect and the plaintiff begins to

receive welfare, the County Board of Social services shall be able to file a complaint for support under a new FD docket.

NOTE: Normal FACTS/ACSES data entry procedures must be completed.

End of quotation from the Non-Dissolution Manual.

It is important to note that enforcement of support obligations or emergent monetary relief can be civil or criminal. If emergent monetary relief is entered under Part I of the FRO, then enforcement is by way of criminal contempt and mandatory arrest pursuant to *N.J.S.A.* 2C:29-9b. (See Section VI)

4.14.10 Temporary Custody - An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent. [*N.J.S.A.* 2C:25-29b(11).]

Violations of orders for temporary custody issued pursuant to this section are included within the scope of *N.J.S.A.* 2C:29-9b, Contempt. Arrest and criminal charges are mandatory when such an order is violated.

As set forth in the statute, when making custody decisions in domestic violence cases, the court must presume that "the best interests of the child are served by an award of custody to the non-abusive parent." This mandate reflects the policy stated in the legislative findings section, *N.J.S.A.* 2C:25-18, "that there is a positive correlation between spousal abuse and child abuse, and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence."

4.14.11 Law Enforcement accompaniment - An order requiring that a law enforcement officer accompany either party to the residence or to any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration. [*N.J.S.A.* 2C:25-29b(12).]

4.14.12 No in-house restraints - Notwithstanding any provision of 2C:25-17, *et seq.* to the contrary, no order issued by the Family Division of the Chancery Division of the Superior Court pursuant to 2C:25-28 or 2C:25-29 regarding emergency, temporary or final relief shall include an in-house restraining order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises**.** [*N.J.S.A.* 2C:25-28.1]

In-house restraining orders are specifically prohibited.

4.14.13 Any other appropriate relief, including monitoring that relief - An order granting any other appropriate relief for the plaintiff and dependent children, provided that the

plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order. [*N.J.S.A.* 2C:25-29b(14).]

The Plaintiff should not be denied any relief on the basis that it was not sought at the emergent hearing.

An order that requires that the defendant report to the intake unit of the Family Division of the Chancery Division of the Superior Court for monitoring of any other provision of the order. [*N.J.S.A.* 2C:25-29b(15).]

An order requiring the defendant to undergo a psychiatric evaluation. [N.J.S.A. 2C:25-29b(18).]

4.14.14 Prohibition from possessing weapons - In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of *N.J.S.A.* 2C:39-1, and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order. [*N.J.S.A.* 2C:25-29b(16).] See Section 5.10 for procedure.

A specific description of the weapon and its believed location should be set forth with as much detail as is known. The court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. (See also Section on Weapons.)

4.14.15 Prohibition against stalking An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to behavior prohibited under the provisions of *N.J.S.A.* 2C:12-10. [*N.J.S.A.* 2C:25-29b(17).]

4.15 CIVIL PENALTY

4.15.1 Upon the finding of an act of domestic violence and the entry of a FRO, the court is required to assess a civil penalty of $50.00 to $500.00 against the defendant under *N.J.S.A.* 2C:25-29.1. This fee may be waived due to "extreme financial hardship." Such a finding must be made on the record. The court may order the payment to be made immediately, within 30 days, or within some other specific period of time. All

orders must also include a provision for the payment of a $2.00 Comprehensive Adult Probation System (CAPS) transaction fee for each payment. For example, if one payment of $50 is ordered, a $2 transaction fee is assessed, for a total of $52. If a penalty of $500 is ordered to be paid in five installments of $100 each, a $2 transaction fee must be added to each payment, for a fee of $10 (five payments, $2 each) and a total penalty of $510. There is no provision for a refund of the penalty or the transaction fee after dismissal of a FRO.

See section 6.4.8 regarding the Surcharge for domestic violence offender to fund grants pursuant to N.J.S.A. 2C:25-29.4. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

4.15.2 Each county should prepare a set of specific instructions to defendants setting out the location and address of the Finance Office where the payments are to be made. The defendant should be provided with these instructions and directed to that office to make payments pursuant to the court's order. If the defendant does not appear at the final hearing, payment instructions shall be served on the defendant along with the FRO. The Family Division should send a copy of the order to the appropriate finance office to enter into the CAPS system.

4.15.3 When the penalty is not paid in accordance with the Court's order, the Comprehensive Enforcement Program (CEP) in the Probation Division will serve as the enforcement mechanism. These cases will be included in the normal CEP process.

4.16 FINGERPRINTING AND PROCESSING

All persons against whom a FRO has been entered shall submit to fingerprinting and photographing either on the same day as the entry of the final order or within a reasonable time thereafter. Failure to do so is a disorderly persons offense under *N.J.S.A.* 53:1-15. Each county must establish its own procedure to fingerprint, photograph and enforce these provisions against those who do not comply (See Appendix 11).

4.17 AFTER AN FRO HAS BEEN ENTERED

4.17.1 Where an FRO includes provisions for emergent monetary relief, monetary compensation, including child support or spousal support, custody, visitation (particularly supervised visitation), counseling or other evaluations, or where the order relates to third parties for whom addresses and other information are needed, or where intake monitoring is ordered, each party should be referred to the Family staff for their separate post-court interview. Care should be taken by staff that the parties have no contact during the interview process. Staff can facilitate any of these items, including the collection of the IV-D application, the initiation of Title IV-D procedures, where applicable, and can make other appropriate arrangements. Family staff can facilitate providing the defendant with a Child Support Probation Account

Number for payments made to the New Jersey Family Support Payment Center (P.O. Box 4880, Trenton, NJ 08625-4880).

4.17.2 Professional domestic violence counseling for defendant should be considered whenever there has been a finding of domestic violence. Whenever possible, the order should also include provisions for monitoring or periodic court review.

4.17.3 Orders for ongoing support as a form of monetary compensation in a FRO pursuant to *N.J.S.A.* 2C:25-29b(4) should be made payable to the New Jersey Family Support Payment Center (P.O. Box 4880, Trenton, NJ 08625-4880) and the order shall be enforced by the Probation Division in the county in which the order was entered. The probation division will use all enforcement mechanisms applicable to the case. Staff should ensure that the "family violence indicator" in ACSES is correctly coded.

When ongoing child support is entered, or paternity established, the court must enter the child support, medical support and paternity decisions on the IV-D Uniform Summary Support Order (USSO, Appendix 31), which shall be referenced in the FRO, using the same FV docket number. The USSO must indicate whether the child support obligation is based on the New Jersey Child Support Guidelines or if there was a deviation from the Guidelines.

4.17.4 Each county shall develop and implement procedures to monitor compliance with court ordered provisions, including counseling and evaluation.

4.18 SERVICE OF FRO

The defendant shall be personally served in court if present for the final hearing. If the defendant is not present, service shall be in accordance with the procedures set forth in the section entitled "Procedures for Service of Complaint/TRO/FRO."

4.19 REQUESTS FOR DISMISSAL OR REOPENING

4.19.1 Withdrawals of Complaint/TRO by the plaintiff - When a victim seeks to withdraw a civil Complaint/TRO after a TRO has been entered but prior to the entry of a final order, the victim should do so in person and before a judge. When the request is made by telephone, the victim should be directed to come to the courthouse and report to the domestic violence unit. Whether the request is made in person on a walk-in basis or on the scheduled final hearing date, the victim should be directed to the appropriate domestic violence staff person or intake. Victims do not need to wait until the final hearing to request a dismissal.

Where a municipal TRO was issued and the paperwork has not reached the Family Division, the staff person should contact the police to obtain information about the Complaint/TRO, preferably receiving a FAXED copy. The matter must be docketed and a file prepared prior to the matter being brought before the judge.

A victim advocate should be available to speak to the plaintiff, in person or by telephone. Where this is not possible, the staff should make the plaintiff aware of the existence of an advocate along with a name and telephone number, preferably in writing.

A professional staff person is to meet with the victim to ascertain that:

A. The victim has read and understood "What Dissolving a Restraining Order Means" (See Appendix 12);

B. The victim has not been coerced or placed under duress to withdraw the Complaint/TRO;

C. The victim understands the cycle of domestic violence and its probable recurrence;

D. The victim is aware of the protective resources available through the court and the local domestic violence program, especially with regard to housing and court-ordered emergency custody and support;

E. The victim clearly understands that withdrawal of the Complaint/TRO and dismissal of the TRO will eliminate the protections that had been issued;

F. The victim is aware that such withdrawals, while they should not be done without careful thought, are not prejudicial if [s]he should need to seek protection in the future; and

G. The victim is informed that any parallel criminal matters are separate and distinct and must be addressed in a separate venue. Victims should be advised to discuss the matter with the appropriate prosecutor.

Once the victim has been counseled as described above, if [s]he wishes to pursue withdrawal of the complaint, [s]he must fill out a Certification to Dismiss Complaint/ TRO (See Appendix 13). The completed form should be placed in the file and an available judge should be located. The victim should then be sent to the appropriate waiting area.

The judge should complete a review of the file and certification and question the victim, on the record, using the same procedure as a request for dismissal of a final order.

After reviewing the file and the Certification to Dismiss, the judge should review the above with the victim on the record. If the judge finds that the request for withdrawal is an informed one and not made under duress, the withdrawal shall be granted.

When the complaint has been withdrawn and the TRO dismissed, copies of the order of dismissal should be distributed to the plaintiff and any law enforcement agency that received the TRO, and served on the defendant in the same manner as the TRO, where it has been served, unless otherwise designated by the court.

Where the defendant was not served with the TRO, the dismissal shall not be served on the defendant.

4.19.2 Dismissals with "Civil Restraints" - The court should not initiate or suggest the use of "civil restraints" in domestic violence cases. If civil restraints are requested by the plaintiff, the court should question the victim on the record using the same standards as a request for a dismissal and in addition, ascertain the following:

A. Whether the victim is aware that the "civil restraints" in an FM (dissolution) or FD (nondissolution) matter will not provide the same protection as a TRO or FRO;

B. Whether the victim understands that the police must arrest for a violation of a domestic violence restraining order but there will be no arrest for the violation of "civil restraints" and the police are unlikely to respond to a call regarding such a violation;

C. Whether the victim will feel safe with the protections offered by the "civil" restraining order; and

D. Whether the victim understands [s]he has a right to obtain a new restraining order if another act of domestic violence occurs, even if "civil restraints" are in effect.

Under no circumstances shall an FD matter be opened for the sole purpose of effectuating "civil restraints."

4.19.3 Dismissal of FRO at the Request of the Plaintiff

> Upon good cause shown, any final order may be dissolved or modified upon application to the Family Division of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or the judge dissolving the order has available a complete record of the hearing or hearings on which the order was based. [*N.J.S.A.* 2C:25-29d]

A request for dismissal of a final order should be handled in the same manner as a request for withdrawal of a Complaint/TRO (see section 4.19.2). The dismissal must be requested in person, and before the judge who entered the order or a judge who has available the complete court file, after the victim has been counseled

concerning her/his rights and the ramifications of a dismissal. The court should determine whether an order for child support, custody and/or visitation was entered as part of the FRO and if so, determine whether the victim wants the relief to continue. If so, these provisions should be made part of an FD order, then and there, without undue waiting and refiling by the plaintiff.

4.19.4 Dismissal of FRO at Request of the Defendant - An FRO may be dissolved upon "good cause shown," *N.J.S.A.* 2C:25-29(d). A request by the defendant for dismissal of an FRO shall be brought to the court by Notice of Motion accompanied by an appropriate certification and brief. Service of the motion and supporting documents on plaintiff shall be through the Family Division and not served directly by the defendant. The motion shall be heard by the judge who entered the FRO if that judge is available. If that judge is not available, the motion shall be heard by another judge who shall read and consider the transcript of the final hearing and the findings by the original judge. The transcript, where needed, shall be provided by the defendant.

The court shall consider the following as part of the determination of whether the defendant has established good cause to dissolve the FRO:

A. As required by *N.J.S.A.* 2C:25-29(b)(5), determine whether the defendant attended and completed all court ordered counseling. If not, the motion must be denied.

B. Past history of domestic violence. If no findings were made by the court at a final hearing regarding any past history of domestic violence, the record may be supplemented with regard to such past history.

C. Any other factors the court deems appropriate to assess whether the defendant has shown good cause that the FRO should be modified or dissolved.

D. To protect the victim, courts should consider a number of factors when determining whether good cause has been shown that the FRO should be dissolved upon request of the defendant, including:

(1) Whether the victim consented to dismiss the restraining order;

(2) Whether the victim fears the defendant;

(3) The nature of the relationship between the parties today;

(4) The number of times that the defendant has been convicted of contempt for violating the order;

(5) Whether the defendant has a continuing involvement with drug or alcohol abuse;

(6) Whether the defendant has been involved in other violent acts with other persons;

(7) Whether the defendant has engaged in counseling;

(8) The age and health of the defendant;

(9) Whether the victim is acting in good faith when opposing the defendant's request;

(10) Whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and,

(11) Any other factors deemed relevant by the court.

The court shall make reasonable efforts to find and notify the plaintiff of the request for dismissal, but unless good cause is shown, the court cannot hold a hearing on this application unless the plaintiff is given notice and an opportunity to be heard.

4.19.5 Request to Reopen Dismissed Matter by the Plaintiff - If there is no new act of domestic violence since the filing of the initial Complaint/TRO and the plaintiff seeks to reopen a TRO or FRO which has been dismissed, a notice of motion must be filed pursuant to *Rule* 4:50-1.

Once the application has been filed, the case is only opened for the purpose of scheduling the motion hearing. The restraining order is still dismissed on FACTS and the DVCR.

An application to reinstate the Complaint/TRO and restraining order does not "activate" the restraining order. The order is not activated until and unless both parties are notified, the court reviews the file, conducts a hearing, makes findings and then reinstates the order.

At the hearing, the judge may reinstate the order or let the dismissal stand. If reinstated, the status of the order would be "active" in FACTS and on the DVCR.

4.19.6 Request to Reopen Due to Duress

When a plaintiff seeks to reopen a domestic violence matter that [s]he has withdrawn or asked to have dismissed, and alleges that [s]he made such a request because [s]he was put in fear by the defendant of proceeding with the case, a new complaint shall be taken. The original allegations of violence, coupled with the threats or other acts of duress, should be listed on the new complaint.

4.19.7 Conditional Dismissals - The conditional dismissal of a domestic violence Complaint/TRO or FRO is prohibited. Whether done at the request of the plaintiff, with the agreement of the defendant, or at the discretion of the judge at the end of trial, conditions may not be imposed on the dismissal of a Complaint/TRO or FRO. That is, no TRO/FRO shall be dismissed conditioned upon either party performing any specific act or upon the occurrence of any particular event.

4.19.8 Dismissal of TRO for Failure of the Plaintiff to Appear at Final Hearing

See section 4.9.3 or 4.

4.19.9 Judge to Advise that Municipal and/or Criminal Complaints Continue - At the time of the dismissal of the complaint and vacating of a TRO or FRO, the judge shall advise the parties who are present that any related municipal or criminal complaint(s) arising out of the incident shall continue and are in no way affected by the dismissal of the domestic violence Complaint/TRO. All parties present shall be advised of the need to comply with the conditions of bail and participate in all future court hearings related to such municipal or criminal actions. The parties should be advised to speak to the appropriate prosecutor.

SECTION V

WEAPONS

5.1 WEAPONS IN GENERAL

5.1.1 Weapons of varying types are defined generally in *N.J.S.A.* 2C:39-1, and more specifically in *N.J.S.A.* 2C:39-1r. The Attorney General and County Prosecutors delineate law enforcement procedures through directives and guidelines in accordance with the United States Constitution, New Jersey Constitution, statutes and court decisions.

5.1.2 Weapons relating to domestic violence incidents can be categorized in several ways including but not limited to:

A. Weapon(s) used or threatened to be used in a domestic violence incident.

B. Weapon(s) not used in a domestic violence incident but in plain view of an officer.

C. Weapon(s) not used in a domestic violence incident, not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

5.2 MANDATORY ARREST

See Sections 3.10 and 3.17.

5.3 SEIZURE OF WEAPONS FOR SAFEKEEPING

See Sections 3.10 and 3.17.

5.4 SEIZURE OF WEAPONS PURSUANT TO COURT ORDER

See Sections 3.10 and 3.17.

5.5 SEIZURE OF WEAPONS USED IN COMMISSION OF A CRIMINAL OFFENSE

See Sections 3.10 and 3.17.

5.6 SEIZURE OF WEAPONS PURSUANT TO *N.J.S.A.* 2C:25-21d

See Sections 3.10 and 3.17.

5.7 SEIZURE OF WEAPONS OUTSIDE THE COUNTY WHERE THE DOMESTIC VIOLENCE RESTRAINING ORDER WAS ISSUED

See Sections 3.10 and 3.17.

5.8 SEIZURE OF WEAPONS FROM LAW ENFORCEMENT OFFICERS INVOLVLED IN A DOMESTIC VIOLENCE INCIDENT

See Sections 3.10 and 3.17.

5.9 RESTRICTIONS ON RETURN OF FIREARMS

5.9.1 Where the defendant is a Law Enforcement Officer: If a law enforcement officer is subject to an FRO, pursuant to the provisions of the federal gun control law, 18 *U.S.C.A.* 922(g), the court may, if necessary for the protection of the plaintiff, prohibit any defendant who is a law enforcement officer from possessing any weapon, firearm or firearm identification card, including those provided by his/her department. If the court determines that a prohibition on possession of weapons by defendant who is a law enforcement officer is not necessary, the provisions of the Attorney General's *Directive Implementing Procedures for the Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents* shall apply. Where the court permits the return of weapons while on duty, the procedures in section 3.17 still apply. See Appendix 17.

5.9.2 All Others: If an FRO is issued, the named defendant may not be permitted to own or possess any firearm for the duration of the order or for two years, whichever is greater.

5.10 WARRANT FOR THE SEARCH AND SEIZURE OF WEAPONS

5.10.1 The purpose of the issuance of a search warrant is to protect the victim of domestic violence from further violence and not to discover evidence of criminality. There must be sufficient facts and information presented to satisfy the judicial *reasonable cause* requirement. The scope of the warrant and the times during which it may be served must be set forth with specificity on the warrant.

5.10.2 When granting a TRO, the court should grant relief that includes forbidding the defendant from possessing any firearm or other weapon as defined by *N.J.S.A.* 2C:39-1r. The possession of a weapon by a defendant may pose a danger to the victim even though the alleged act of domestic violence did not involve the use or threatened use of a weapon and even though there was no testimony or evidence that the defendant had previously used or threatened to use a weapon against the victim.

5.10.3. *N.J.S.A.*2C:25-28j authorizes the issuance of a search warrant as a form of *ex parte* relief at the time of the issuance of a TRO. *N.J.S.A* 2C:25-29b(16) contains identical language authorizing similar relief at the time of the issuance of a FRO. Both statutes are intended to protect the victim from the risk of serious bodily injury.

5.10.4 The test to be applied by the Court is whether there exists *reasonable cause* to believe that:

A. The defendant has committed an act of domestic violence;

B. The defendant possesses or has access to a firearm or other weapon(s) as enumerated in *N.J.S.A.* 2C:39-1r; and

C. The defendant's possession or access to the weapon poses a heightened or increased risk of danger or injury to the victim.

5.10.5 A specific description of the weapon and its believed location should, as much as practical, be set forth in the Order. The Court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. The original return of the search warrant shall be delivered to the Court within ten (10) days.

5.10.6 When a search warrant is recommended by a Domestic Violence Hearing Officer (DVHO), the affidavit in support of the warrant shall set forth precise facts constituting the basis for the conclusion that the defendant's possession of a weapon exposes the plaintiff/victim to a risk of serious bodily injury. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and signature. After reviewing the TRO, affidavit and DVHO Case Notes, any questions regarding the sufficiency of the information contained in the affidavit should be resolved by sworn testimony by the victim before the judge. If the affidavit in support of the warrant for the search and seizure of weapons recommended by the DVHO contains sufficient information, the judge shall confirm with appropriate findings on the record and enter the order. The reasonable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information.

5.10.7 After reviewing the TRO, affidavit and DVHO Case Notes, the judge shall consider and be satisfied as to the following:

A. The basis upon which plaintiff believes that the defendant possesses a prohibited weapon or firearm;

B. The reasons plaintiff believes that the defendant's possession of a prohibited weapon or firearm poses a heightened or increased risk of danger or injury to the plaintiff, which may include the past history if any of domestic violence between the parties;

C. A description of the weapon or firearm which the defendant possesses;

D. A specific description of the location where the weapons or firearms are located, the owner of those premises, if not the defendant; and,

E. Other relevant factors that the particulars of the circumstances require.

5.10.8 When an *ex parte* application is made regarding seizure of weapons, whether before the Court or the DVHO, the affidavit must be completed with the reasons for the seizure specified.

5.10.9 When the service of a restraining order results in the seizure of weapons, the weapons inventory should be attached to the return of service that is brought/faxed back to the Family Division in the issuing county. The weapons themselves, along with any licenses, identification. cards, other paperwork or documentation shall be secured for storage by the prosecutor in the seizing county. At such time that the seized property is needed by the prosecutor or the Family Court in the issuing county, the prosecutor in the seizing county shall make arrangements for the delivery of forward same.

5.11 NOTICE TO THE PROSECUTOR

In order to ensure that the prosecutor is aware of the existence of the pending domestic violence Complaint/TRO, in addition to having received the seized weapon(s), a copy of every TRO or FRO in which the "seizure" box is checked should be forwarded immediately to the County Prosecutor's Office. In addition, where seizure has not yet occurred but is ordered as part of an order prohibiting weapons possession pursuant to *N.J.S.A* 2C:25-29b(1), a copy of that order, with the appropriate boxes checked, should also be forwarded immediately to the Prosecutor's Office.

5.12 HEARING REGARDING WEAPONS

5.12.1 When the prosecutor intends to proceed with forfeiture, notice shall be provided to the plaintiff, the defendant and the Family Division. The court shall hold a hearing within 45 days of receipt of the notice provided by the prosecutor, as set forth in *N.J.S.A.* 2C:25-21d(3). No formal pleading and no filing fee shall be required. The hearing shall be summary in nature. The hearing must be held even if the plaintiff withdraws or seeks dismissal of the domestic violence Complaint/TRO or FRO.

5.12.2 At the hearing, the Family Division Judge must decide whether the weapon(s) should be forfeited, along with any related permit(s) or license(s), or whether the weapon(s) should be returned; or whether legal rights to own should be revoked and/or defendant should be ordered to dispose of the weapon, based on the factors contained in *N.J.S.A.* 2C:25-21d.

5.12.3 In addition to any other provisions, any FRO issued shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or

retaining a firearms purchaser identification card or permit to purchase a handgun pursuant during the period in which the restraining order is in effect or two years, whichever is greater, except for military and law enforcement personnel, see *N.J.S.A.* 2C:25-29b.

SECTION VI

ENFORCEMENT AND MODIFICATION OF RESTRAINING ORDERS

6.1 ENFORCEMENT AND MODIFICATION

6.1.1 The enforcement of a TRO or FRO occurs when the plaintiff seeks to have the defendant comply with an existing order. A modification occurs when one party seeks to add or change provisions to an existing order.

6.1.2 Enforcement of TRO and FRO is governed by *N.J.S.A.* 2C:25-30 and 2C:29-9b, depending on the conduct and the provision violated. All relief contained in Part I of the restraining order can be enforced by way of criminal or civil remedies. All relief contained in Part II must be enforced by civil remedies, i.e., by filing an application with the Superior Court, Family Division.

6.1.3 Violations of *N.J.S.A.* 2C:25-29(b) (which covers Part II relief) includes:

A. An order for parenting time;

B. An order requiring the defendant to pay monetary compensation;

C. An order requiring the defendant to receive professional domestic violence counseling;

D. An order requiring the defendant to make rent/mortgage payments; and/or

E. An order granting either party temporary possession of personal property.

These may be enforced in a civil action initiated by the plaintiff, generally under *Rule* 1:10-3 and *Rule* 5:3-7 by way of motion, affidavit, or in emergent circumstances, an order to show cause.

6.1.4 A defendant who "purposely or knowingly violates any provision" of a TRO or FRO is guilty of a crime of the fourth degree if the conduct that constitutes the violation also constitutes a crime or disorderly persons offense under *N.J.S.A.* 2C:29-9(b). In all other cases, the defendant is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of the PDVA.

6.1.5 These distinctions apply even when the restraining order is no longer in effect, so long as the conduct which constitutes the offense occurred while the order, temporary or final, was in effect.

6.1.6 In connection with enforcement applications or reports of violations by the victim, the victim advocate or the Victim Witness Unit should be involved in the interview, whenever possible. If the advocate is not available, the victim should be given the victim advocate's card and told to contact her/him prior to the hearing.

6.2 CRIMINAL CONTEMPT

See section III.

6.3 ENFORCEMENT OF LITIGANT'S RIGHTS PROCEEDINGS

6.3.1 When a plaintiff alleges that the defendant violated a portion of Part II of a restraining order (i.e., pertaining to parenting time, monetary compensation, professional domestic violence counseling, rent or mortgage payments or possession of personal property), the plaintiff should be directed to Family Division, during normal court hours to file an application (by motion or affidavit) to enforce these provisions. A domestic violence advocate should be available to speak to the plaintiff.

6.3.2 The designated domestic violence staff person should speak to the plaintiff to determine (a) whether a restraining order violation has occurred; (b) if the person is seeking the type of relief that civil enforcement can provide; and (c) if another type of procedure is more appropriate. If the plaintiff is seeking enforcement of issues in Part I (other than parenting time, monetary compensation, receipt of professional domestic violence counseling, rent or mortgage payments or possession of personal property), staff should explain the criminal procedures regarding filing criminal complaints and advise the party of the option to initiate criminal procedures with the appropriate police department or the prosecutor's office. In addition, plaintiff should be told of the option to have any of these issues addressed by Family Court.

6.3.3 When a defendant alleges that the plaintiff has not abided by the terms of a restraining order, for example, parenting time or possession of personal property, the defendant should be directed to Family Division, during normal court hours to file an application (by motion or affidavit) to enforce these provisions.

6.3.4 If the issue is appropriate for civil enforcement, the court, should provide forms to the plaintiff to prepare an application to the court (motion or affidavit) pursuant to *Rule* 1:10-3 or *Rule* 5:3-7. Where available, the plaintiff should be assisted by the victim advocate or victim witness representative. If the issue is the modification or enforcement of child support, the matter can be scheduled before a Child Support Hearing Officer (CSHO), pursuant to CSHOP Standard 7 (See Appendix 20). Otherwise, the matter should be listed before the judge who granted the order, where possible. The matter should be reopened using the same docket number and case file. The judge hearing the matter should have the complete file.

6.3.5 If the litigant (either plaintiff or defendant) believes that the matter is emergent, the domestic violence staff person should provide the necessary forms to assist the litigant in preparing an Order to Show Cause (OTSC), which should be presented to the judge forthwith to determine whether the request is emergent. Whenever possible, the judge who issued the original order should review the proposed OTSC, grant any or all relief, and set a return date, or deny the application. If a return date is set for the OTSC, the matter should be scheduled on the next designated domestic

violence enforcement day for which regular notice can be arranged. If the OTSC is denied, the litigant can be referred back to intake to file a motion/affidavit.

6.3.6 After the matter is reopened and processed, a request for an OTSC shall be brought to the judge as quickly as possible, so that the OTSC can be signed if the judge is satisfied with the sufficiency of the application and a return date for the enforcement hearing can be set on short notice. Wherever possible, the judge who issued the original order should review the proposed OTSC. That judge can also hold the enforcement hearing. Motions made pursuant to *Rule* 1:10-3 should be returnable for the next designated domestic violence enforcement day for which regular notice can be arranged, but in any event no longer than two weeks.

6.3.7 The moving party will receive a copy of the OTSC while in court and the other party shall be served with the OTSC, motion or affidavit pursuant to court rules. Service of papers and notice of hearing shall be prepared by Family Division. Family Division staff should ensure that the plaintiff's address is not disclosed to the defendant. The notice should state to the responding party that non-appearance may result in the requested relief being granted.

6.3.8 Any modifications granted by the court should be recorded in a new final order that also includes all the non-amended prior relief, recorded on an Amended FRO. This must be served in the same manner as an FRO. This order should also specifically set forth all prior relief which was not modified, and not just refer to the former order, to ensure that there is only one final order that sets forth all of the relief. If the only relief being amended is the child support provisions, then a new USSO may be used instead of an amended FRO.

6.4 CONTEMPT IN SUPERIOR COURT

Processing of 2C:29-9(b) Complaints

6.4.1 When a Defendant has been arrested for Violating a TRO or FRO - Upon allegation of a violation of a restraining order, a warrant should be issued immediately and the CDR should be completed at that time. Upon arrest, the CDR-2 should be immediately forwarded to the Criminal Division, the Prosecutor's Office and as otherwise described at the bottom of the CDR. Initial screening by the Assistant Prosecutor assigned to the Domestic Violence unit should be at the first appearance, or no later than the plea hearing date. If the contempt is non-indictable and/or downgraded, it shall be sent to Family Court and docketed as an FO case. This should be done at the first appearance.

6.4.2 Bail

A. An initial bail must be set by a Superior Court Judge pursuant to *Rule* 3:26-2. The CDR should be provided, along with the DV Incident/Police Report.

B. During regular court hours, bail should be set by a Family Division Judge, who will have access to the underlying FV file along with other relevant FV, FO and FD files, and the FACTS printout regarding other Family Court history.

C. When the Superior Court is not in session, the on-call bail judge should be contacted and provided with all available information on the defendant and the underlying case information from the DVCR.

NOTE: If the contempt has been initially screened as a disorderly persons offense, bail may be set by a Municipal Court Judge if the Assignment Judge in that vicinage has issued a directive/order allowing this practice.

D. The CDR shall serve as the moving document as the case proceeds through the court. In Municipal Court, all bail decisions are reflected on the CDR, along with all screening and downgrade decisions, which must be dated. Conditions of bail or release such as prohibitions against contact should be noted in the appropriate section of the CDR as well. (In Superior Court, Criminal Division, there are separate court orders for bail decisions.)

6.4.3 Responsibility for arraignments/bail reviews/first appearances - Responsibility for arraignments/bail reviews/first appearances should rest with the Division or Part of the Superior Court that has jurisdiction over the case at that time, either the Family Division or in Criminal Division so long as the Assistant Prosecutor assigned to the Domestic Violence Unit is available. Daily jail lists should be provided to both the Criminal Division and the Family Division each morning with *N.J.S.A.* 2C:29-9b indictable and non-indictable violations identified as such. The judge conducting the hearing should be provided with pertinent information from the underlying FV file as required by *N.J.S.A.* 2C:29-26e.

The prescreening of matters, to determine whether the matter is indictable is strongly encouraged where at all possible.

6.4.4 Scheduling of Subsequent Proceedings - As contempt cases are high impact offenses, each county Prosecutor should screen these cases as expeditiously as possible.

A. Following arrest, defendants should be given the CDR with the first appearance/arraignment date noted in the appropriate section, along with any other Notice to Appear, where applicable. Thus, even if bail is posted, the defendant has the date of the first appearance/arraignment.

B. If the defendant is in custody the first appearance and bail review must be scheduled within 72 hours in accordance with *Rule* 3:4-2.

C. Where defendant is not incarcerated, the first appearance/arraignment/case management conference should be scheduled no later than 20 days after the

issuance of a contempt complaint. Notice of the court date should be sent to the defendant by the appropriate court.

D. An assistant prosecutor should be required to appear at the first appearance/arraignment and should provide the court with a preliminary determination as to whether the case is being referred to the Criminal Division as an indictable case or is being graded/downgraded and heard in the Family Division. Scheduling of subsequent hearings**,** including bail review hearings at regular intervals, is the responsibility of the Part or Division in which the case will be heard.

E. All contempt matters are subject to Speedy Trial Guidelines, and must be scheduled accordingly. There is a 90-day disposition guideline that applies as well in Family and Municipal Court.

F. When the case is referred to the Family Division, the 5A (Financial Questionnaire to Establish Indigency) should be completed, counsel appointed and a pretrial conference scheduled at the first appearance/arraignment. These cases will then be docketed in FACTS, tracked accordingly and disposed within 90 days of docketing.

6.4.6 Where there is more than one charge on a CDR -2.

A. If, upon screening, there is a determination that there is no basis for a contempt charge, the companion charges may be referred to the Criminal or Municipal Court for disposition.

B. Where the matter is docketed in Family Division, and there are both contempt and underlying charges, if the contempt is dismissed as part of a plea, the Family Division judge shall dispose of the underlying charge.

C. The contempt charge and the underlying charge should never be bifurcated and heard by different courts.

D. After the bail review/first appearance, these matters must be promptly scheduled for a plea hearing/calendar. In Family Division, the plea hearing should be held within two weeks if the defendant is incarcerated, and within four weeks if the defendant is out on bail.

E. At the plea hearing, the defendant should, after consultation with counsel, enter a plea.

F. Where defendant pleads guilty, [s]he should be sentenced immediately, unless the court needs additional information and adjourns the sentencing to a date certain.

G. Where a defendant pleads not guilty, a non-jury trial must be scheduled expeditiously before a Family Division Judge, keeping the 90-day disposition guideline in mind.

H. At the trial, the Prosecutor's Office will present the case against the defendant. Discovery must be obtained by the prosecutor. Subpoenas for witnesses must be issued by the prosecutor.

I. At sentencing, the disposition must be noted in the FO file and entered into FACTS.

J. The completed CDR-2 and any ancillary paperwork must immediately be forwarded by Family Division for routing of orders of commitment, probation, fines, VCCA payments to the appropriate case management clerical or probation office.

6.4.7 Incarceration of Sole Caretaker of Children - Whenever a person has been convicted of a violation which will result in incarceration, the court must follow the procedures set forth in *N.J.S.A.* 2C:44-6.2, *et.seq*., and Directives 4-04 and 8-95.

6.4.8 Domestic Violence Surcharge - Pursuant to *N.J.S.A.* 2C:25-29.4, any person convicted of an act of domestic violence (as that term is defined in *N.J.S.A.* 2C:25-19) shall be subject to a surcharge in the amount of $100. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

SECTION VII

FULL FAITH AND CREDIT OF OUT OF STATE ORDERS

7.1 FEDERAL STATUTORY OVERVIEW

7.1.1 The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 *U.S.C.A.* 2265, *et seq*., requires states and Indian tribes to enforce protection orders issued by other states and Indian tribes as if the orders had been issued by the non-issuing/enforcing state or Indian tribe. In addition, an enforcing state must enforce a protection order from another state even if the petitioner would not be eligible for a protection order in the enforcing state.

7.1.2 Additionally, all orders of protection shall have the same force and effect on military installations as such order has within the jurisdiction of the court that issued the order under the Armed Forces Domestic Security Act, 10 *U.S.C.* 1561a.

7.2 PROTECTION ORDERS COVERED BY §2265

7.2.1 Definition of Protection Order - The Full Faith and Credit provision applies to any injunction or other order issued for the purpose of preventing violent or threatening acts, or harassment against, contact or communication with, or physical proximity to another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking the protection. In other words, it extends to temporary and final, civil and criminal protection orders (e.g., stay away or no-contact orders that are part of a defendant's conditions of release or bail).

7.2.2 Final and *Ex Parte* Orders

A. Every state, subdivision thereof, and Indian tribe must accord full faith and credit to both final and *ex parte* protection orders.

B. In terms of final protection orders, the statute provides that a final order must be enforced if:

1. It was issued by a court that had personal and subject matter jurisdiction to issue the order, and

2. The respondent was provided with reasonable notice and the *opportunity* to be heard sufficient to protect that person's right to due process.

C. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state or tribal law and, in any event, within a reasonable period of time after the order is issued, sufficient to protect the opposing party's right to due process.

7.2.3 Mutual Protection Orders - Should the issuing court enter a protection order with

prohibitions against both the respondent and the petitioner, only the provisions in favor of the petitioner (those constraining the respondent) are entitled to enforcement in another state, tribe, or territory unless:

A. the respondent filed a separate petition or pleading seeking such an order, and

B. the court made specific findings that both parties were entitled to such a protection order.

Pursuant to §2265, a court in a jurisdiction other than the jurisdiction that issued the order shall not enforce a mutual order against a petitioner unless the portions that impose prohibitions on the petitioner meet the above legal criteria.

7.3 NEW JERSEY LAW AND PROCEDURE

7.3.1 In May 2000, the New Jersey Judiciary adopted procedures to implement the registration of out of state orders (Appendix 21). The procedures include:

A. Procedures for Family Division staff to follow to register the orders.

B. FACTS codes and procedures (part of the FACTS FV Docket User's Guide distributed by the Automated Trial Court Systems Unit).

C. Certification forms for incoming orders and for outgoing New Jersey orders.

7.3.2 The procedures accommodate the out-of-state order's expiration date in FACTS and the practice of other states concerning certification for Restraining Orders. The primary benefit to registration for the victim is that the order will be on the statewide DVCR to which police throughout the state have access on an immediate, round-the-clock basis.

7.3.3 These procedures:

A. Establish these registered cases without adding new cases to the Family Division statistical report;

B. Accommodate the expiration date of out-of-state orders;

C. Identify out-of-state orders to users, particularly law enforcement users of the DVCR;

D. Prohibit an out-of-state order to be reopened or modified; and

E. Continue to require that Full Faith and Credit be honored by law enforcement and the courts on those orders that have not been registered.

7.4 PROCESS

7.4.1 The victim (plaintiff) who elects to register an out-of-state restraining order will present the order at a county Family Division Intake Domestic Violence Unit. The plaintiff will complete a Victim Information Sheet and complete an Out-of-State certification form (See Appendix 21).

7.4.2 The Domestic Violence Unit will review the order, certification and Victim Information Sheet. The staff member will call the issuing court immediately or within one business day. The staff member will send by facsimile the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager or the Domestic Violence Team Leader may review the contact with the issuing court to resolve questions concerning confirmation.

7.4.3 Upon confirmation, the staff member will complete the confirmation form, which will allow for the establishment and docketing of the case on FACTS.

7.4.4 The establishment process will include:

A. A new initiating document, the OUT-OF-STATE DV RO, entered in the initiating document field, will be combined with a case status reason code that identifies the case as an Out-of-State Order;

B. The field MUNICIPALITY OF OFFENSE becomes a required field with a change from numeric to alphanumeric to allow the state to be identified, e.g. A9901 for an Out-of-State order from Pennsylvania;

C. All OUT-OF-STATE DV RO initiating document cases would be ignored in the statistical count and cannot be reopened.

7.4.5 The expiration date will be identified in the system and appear on the registry based on the use of a relief code that is unique to this case type. The expiration date will be entered by the user and appear in the registry in the COMMENTS field.

7.4.6 Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered as of the case establishment date and providing the New Jersey docket number. The victim/plaintiff should be provided with the order, a copy faxed to the police departments identified by the plaintiff, and a copy placed in the Family Division file that was created when the system assigned the New Jersey number as part of the registration process.

7.4.7 **The Attorney General's guidelines to law enforcement officers state that the registration of an order <u>is not required</u> to enforce the order.** The Division of Criminal Justice has assured that Full Faith and Credit will be emphasized in all

police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out-of-state order with New Jersey.

7.5 OUTGOING ORDERS

7.5.1 All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute. As a further aid to victims, the federal VAWA office has promulgated a form of Certification, if completed by the issuing court, intended to encourage the enforcement of these orders in all states. At this time, it is not a recommended practice to provide this certification for orders issued on a routine basis. Rather, the form should be completed upon the request of a victim, or another state's court or law enforcement agency that has requested verification of the New Jersey FRO. (See Appendix 21)

7.5.2 The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, upon request of the victim.

SECTION VIII

WORKING GROUPS

DOMESTIC VIOLENCE WORKING GROUPS

On September 24, 1991, then Chief Justice Wilentz and Attorney General Del Tufo charged that each Presiding Judge and County Prosecutor convene or reconvene a County Domestic Violence Working Group to assist in the design of a county implementation and monitoring strategy, and provide an ongoing forum for identification and resolution of problems in the domestic violence prevention and protection process in each county. The Presiding Judge (or Family Division Judge, in a multi-county vicinage) and County Prosecutor should serve as co-chairpersons. The working group meetings are a productive resource for discussing domestic violence processes and procedures.

The group shall also consist of the Family Division Manager; Domestic Violence Team Leader; the DVHO; the Sheriff; the President of the Municipal Prosecutor's Association; the President of the County Chiefs' Association; a Criminal Division Liaison; a Municipal Court Liaison; the Director and Court Liaison of the local domestic violence program; a representative from each Municipal Court and County Prosecutor's Office (who handles domestic violence cases); the County Victim Witness Coordinator; the local batterer's group; DYFS; the County Bar Association Family Law Section; and any other appropriate service provider. Working Groups shall meet at least quarterly.

APPENDIX LIST

DOMESTIC VIOLENCE PROCEDURES MANUAL
APPENDIX LIST

1. Victim Information Sheet
1a. Spanish Victim Information Sheet
2. Temporary Restraining Order and Instructions
3. Domestic Violence Hearing Officer Standards and Backup DVHO Standards
4. *Aid in Identifying Firearms
5. *Victim Notification Form
6. Summary of Electronic TRO
6a. Instructions for Recording Complete Incident Description in FACTS
7. *Confirmatory Order
8. Appeal of Ex Parte Order – Application for Appeal and Order
9. Continuance Order
10. Final Restraining Order
11. Notice of Fingerprinting Requirements
12. "What Dissolving a Restraining Order Means"
12a. Spanish "What Dissolving a Retraining Order Means"
13. Certification to Dismiss Complaint/TRO
14. Order of Dismissal
15. Risk Assessment
16. Protective Order (Custody Reports)
17. *Attorney General Law Enforcement Directive 2000-3 and 2000-4
18. *Affidavit in Support of Domestic Violence Search Warrant (Law Enforcement)
19. *Domestic Violence Warrant for Search and Seizure of Weapons (Law Enforcement)
20. Child Support Hearing Officer Standard 7
21. Procedures and Forms for Registering Out of State Restraining Orders
22. Domestic Violence Central Registry FACTS Inquiry Guide
23. *Checklist for Law Enforcement Officers
24. *Supplementary Domestic Violence Offense Report
25. Guide to Services for Victims of Domestic Violence
26. Safety Plan Brochure
27. Batterers Intervention Program Guidelines
28. *Attorney General Guidelines for Enforcement of Out of State Restraining Orders
29. State Police Phone Numbers by State
30. State Administrative Offices of the Court by State
31. Uniform Summary Support Order
32. Address Confidentiality Program Act

*The Division of Criminal Justice prepared the items marked with an asterisk.

New Jersey Judiciary
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Date: _____

Your Information **(Party Filing-Plaintiff)**	Information of Person you're filing against **(Defendant)**
Name of Police Department where you reside:	Name of Police Department where defendant resides:
Name **Any Prior Names**	**Name** **AKA**
Street Address	Street Address
City	City
Zip	Zip
Phone (h) (cell)	Phone (h) (cell)
SS#	SS#
Birth Date	Birth Date
Sex ☐ Male ☐ Female	Sex ☐ Male ☐ Female
Race	Race
Employment Information Employer	**Employment Information** Employer
Address	Address
Phone	Phone
Days / Hours	Days / Hours
Emergency Contact Name	**Other place(s) defendant may be reached**
Phone	

CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Relationship to Defendant

- ☐ Married
- ☐ Divorced
- ☐ Never married
- ☐ Currently living together
- ☐ Previously lived together
- ☐ Have child(ren) with defendant
- ☐ Expecting child with the defendant
- ☐ Have had a dating relationship
- ☐ Family relationship (specify)

Defendant Identifier's

Height		Eye Color	
Weight		Hair Color	

Complexion ☐ Light ☐ Medium ☐ Dark

Scars, Tattoos, Glasses, Facial Hair, Body Piercing

Other

Defendant's vehicle

Make	Model	Year	Color	License plate #

Do you and the defendant have children together?

	Name	DOB	SS#	Resides with
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Are there any custody/visitation/support orders pending or in effect?

Where Docket Number

Child Support Case Number

Are you currently asking the court for child support or medical coverage? ☐ **Yes** ☐ **No**

Does either party require an interpreter or have other special needs? ☐ **Yes** ☐ **No**

Describe

Does the defendant have a criminal history? ☐ **Yes** ☐ **No**

Do you have a lawyer for this matter? ☐ **Yes** ☐ **No**

Name Phone

YOU WILL BE ASKED ABOUT THE INCIDENT WHICH BROUGHT YOU HERE TODAY. PLEASE BE PREPARED TO DISCUSS THE INCIDENT, PLUS ANY PRIOR HISTORY, IF APPLICABLE.

Poder Judicial de Nueva Jersey
HOJA DE INFORMACIÓN CONFIDENCIAL DE LA VÍCTIMA
(NO DÉ ESTE FORMULARIO AL DEMANDADO)

New Jersey Judiciary
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Fecha/Date: _____

Sus datos **(Parte actora - Demandante)** **Your information (Party Filing-Plaintiff)**	Datos de la persona contra quien usted presenta la acción **(Demandado)** Information of Person you're filing against **(Defendant)**
Nombre del Departamento de Policía de donde usted reside: Name of Police Department where you reside:	Nombre del Departamento de Policía de donde reside el demandado: Name of Police Department where defendant resides:
Nombre y apellido **Name** **Nombre o apellido anterior (si lo hubiera)** **Any Prior Names**	**Nombre y apellido** **Name** **Nombre y alias** **AKA**
Dirección - Calle Street Address	Dirección - Calle Street Address
Ciudad City	Ciudad City
Código postal Zip	Código postal Zip
Teléfono (casa) (celular) Phone (h) (cell)	Teléfono (casa) (celular) Phone (h) (cell)
No. de seguro social SS#	No. de seguro social SS#
Fecha de nacimiento Birth Date	Fecha de nacimiento Birth Date
Sexo ☐ Hombre ☐ Mujer Sex Male Female	Sexo ☐ Hombre ☐ Mujer Sex Male Female
Raza Race	Raza Race
Datos del empleo **Employment Information** Lugar de empleo Employer	**Datos del empleo** **Employment Information** Lugar de empleo Employer
Dirección Address	Dirección Address
Teléfono Phone	Teléfono Phone
Días / Horas Days / Hours	Días / Horas Days / Hours
Contacto en caso de emergencia **Emergency Contact** Nombre y apellido Name	**Otro(s) lugar(es) donde se pueda comunicar con el demandado** **Other place(s) defendant may be reached**
Teléfono Phone	

HOJA DE INFORMACIÓN CONFIDENCIAL DE LA VÍCTIMA
(NO DÉ ESTE FORMULARIO AL DEMANDADO)
CONFIDENTIAL VICTIM INFORMATION SHEET
(DO NOT GIVE TO DEFENDANT)

Relación con el demandado
Relationship to Defendant

- ☐ Casados / Married
- ☐ Divorciados / Divorced
- ☐ Nunca casados / Never married
- ☐ Conviven actualmente / Currently living together
- ☐ Convivieron anteriormente / Previously lived together
- ☐ Tiene hijo(s) con el demandado / Have child(ren) with defendant
- ☐ Espera un hijo del demandado / Expecting child with the defendant
- ☐ Han tenido una relación romántica / Have had a dating relationship
- ☐ Parentesco familiar (especifique) / Family relationship (specify)

Rasgos característicos del demandado
Defendant Identifiers

Estatura / Height		Color de ojos / Eye Color	
Peso / Weight		Color del cabello / Hair Color	

Tez / Complexion ☐ Clara / Light ☐ Mediana / Medium ☐ Oscura / Dark

Cicatrices, tatuajes, lentes, vello facial, perforaciones del cuerpo
Scars, Tattoos, Glasses, Facial Hair, Body Piercing

Otro / Other

Vehículo del demandado / Defendant's vehicle

Marca / Make	Modelo / Model	Año / Year	Color / Color	No. de placa / License plate #

¿Tiene usted hijo(s) con el demandado?
Do you and the defendant have children together?

	Nombre / Name	**Fecha de nacimiento / DOB**	**No. de seguro social / SS#**	**Reside con / Resides with**
1.				
2.				
3.				
4.				
5.				
6.				
7.				

¿Hay alguna orden de custodia/visitas/manuteción pendiente o vigente?
Are there any custody/visitation/support orders pending or in effect?
Dónde / Where
Número del expediente / Docket Number
Número del Caso de Manutención de Menores / Child Support Case Number

¿Pide usted actualmente al tribunal manutención de menores o seguro médico? ☐ Sí /Yes ☐ No/No
Are you currently asking the court for child support or medical coverage?

¿Alguna de las partes requiere un intérprete o tiene otra necesidad especial? ☐ Sí /Yes ☐ No/No
Does either party require an interpreter or have other special needs?
Descríbala / Describe

¿Tiene el demandado antecedentes penales? ☐ Sí /Yes ☐ No/No
Does the defendant have a criminal history?

¿Tiene usted un abogado para este asunto? ☐ Sí/Yes ☐ No/No
Do you have a lawyer for this matter?
Nombre y apellido / Name
Teléfono / Phone

LE VAN A HACER PREGUNTAS SOBRE EL INCIDENTE QUE LO TRAJO AQUÍ HOY. ESTÉ PREPARADO PARA HABLAR DEL INCIDENTE Y DE CUALQUIER ANTECEDENTE, SI LO HAY.

YOU WILL BE ASKED ABOUT THE INCIDENT WHICH BROUGHT YOU HERE TODAY. PLEASE BE PREPARED TO DISCUSS THE INCIDENT, PLUS ANY PRIOR HISTORY, IF APPLICABLE.

GENERAL INSTRUCTIONS
TEMPORARY RESTRAINING ORDERS

COMPLAINT

FIRST ROW: Check off TRO box

SECOND ROW: Must check off box for Superior Court or Municipal.

- If Municipal**,** which town? Add in town name.
- **NOTE: Matter can be brought where plaintiff resides, where Defendant resides, where Plaintiff is sheltered or where incident took place.**

DEFENDANT IDENTIFIERS: Fill in as much information as possible. This is needed if someone else has to serve Defendant or to verify a warrant. Also needed to input into FACTS, especially dates of birth. Ask if Plaintiff has a recent photograph of defendant.

STORY: Fill in the date (A*0N*@) and the time (A*AT*@), the offense and what Def. did (the*ABY*@)

- **EX: A*ON* 5/18/01, *AT* 9pm, Def assaulted Plf *BY* hitting her in the face with a fist@ Give as much detail as possible and note injuries or pain.**

CRIMINAL OFFENSE BOXES: check off <u>all</u> that apply; give Defendant notice (due process).

#1: PRIOR HISTORY: detail other incidents, even if not reported; be sure to check box. For example, A6/99, Def broke plf wrist; called work every day this month@ **(NOTE: put prior docket numbers in # 3)**

#2 CRIMINAL HISTORY: Check for SBI number, check for warrants, check central registry

#3 PRIOR OR PENDING MATTERS: fill in with court, dates, dockets numbers where available

#4 CRIMINAL COMPLAINT: where possible, fill in charges and complainant

#5 WEAPONS – fill in if weapons were removed with number of weapons and type
WEAPON is anything readily capable of lethal use or of inflicting serious bodily injury
ARREST of defendant – check box

#6 MORE BOXES: check off the relationship; for (former) household member, plf must be 18.

#7 CHILDREN: list children in common only; **if relationship criteria (#6) is coparents, make sure the children are listed**, no matter where they live and no matter their age.

#8 FAMILY RELATIONSHIP - does not change the jurisdiction of PDVA; put plaintiff first so if Plf is mother and def is son, write Amother/son."

CERTIFICATION: plaintiff must sign and date
If using e-TRO, have Plaintiff sign after printing

ORDER

*****NOTE: DEFENDANT=S RELIEF IS FIRST*****

TOP OF FORM: Make sure Defendant=s name appears on all pages

PART I RELIEF *(CAN ARREST FOR VIOLATION OF THIS SECTION)*

#1-13 IMPORTANT BOXES: There are three columns on left side of the Order.

- **TRO column shows what is <u>REQUESTED</u> in the Temporary Order**
- **FRO column shows what is <u>REQUESTED</u> at the Final hearing (ex - child support)**
- ******<u>*GRANTED*</u>*** column shows what is <u>*GRANTED*</u> in the *TEMPORARY ORDER* ONLY * GRANTED column must be CHECKED for the Order to be enforceable.**

BE SURE TO CHECK ALL APPROPRIATE BOXES

#3 PLACES: check off home and residence boxes but fill in actual address only if <u>known</u> to Defendant; if confidential, write confidential.

#4,5,6: OTHERS: Fill in names and relationship of people <u>known</u> to def

#7 EMERGENT MONEY: Be very specific when this is used; exact amount and when and how paid

#8, 9 EVALUATIONS AND TREATMENT: Also be very specific—where, when and who pays

#10 WEAPONS POSSESSION: This section precludes defendant from POSSESSING weapons only; includes firearms and weapons, purchasing card and id. card; note Ammunition is not a weapons pursuant to N.J.S.A. 2C:39-1r; fill in weapons other than firearms in space provided.

NOTE: With the e-TRO, once this box is checked, the line must be filled in with something; fill in the specifics, or a general statement such as “all weapons.”

#11 EXCLUSIVE POSSESSION: if checked, something must be written; if defendant knows the address, fill in address; if defendant does not know address, fill in “plaintiff’s residence.”

#12 CUSTODY: list children in common; need not list other children, esp. where defendant is not parent of that child.

#13 OTHER RELIEF: this is the section where defendant can be arrested so use this sparingly; can by used to require return of passports or other papers; house or car keys, etc.

LAW ENFORCEMENT: specify which police department (if known), to accompany defendant to a specific place to retrieve clothing and toiletries (or other specific item(s)), once for a limited time (such as 15 minutes).

NOTE ON BOTTOM OF PAGE: a violation can result in arrest and incarceration; only a court can change the Order.

WARRANT: requires that a WRITTEN INVENTORY of items seized be sent to family court

PART II RELIEF *(Must file Affidavit or Motion in Superior Court for violation of this section)*

AGAIN NOTE **DEFENDANT** INFORMATION IS FIRST *

#1-3 MORE BOXES: SEE ABOVE. Here, it is important to fill in, if possible, what pla wants at the Final, so def knows what to prepare. Example: risk assessment; child support; medical insurance; car insurance

PERSONAL PROPERTY: think possession of car, house or car keys, a pet, passports

COMMENTS: This area can be used to continue the story from the first page or advise of special circumstances, such as special needs child

PAGE 4:

- **If TRO denied: check off correct box. If Municipal: check off ATRO DENIED BY MUNICIPAL COURT.@ Order must still be <u>signed</u> and sent to Family Court immediately; Plaintiff can go to Superior Court next day and renew request.**
- **If TRO is granted: check that box, <u>sign</u>, check Box to schedule Final hearing AND fill in NOTICE TO APPEAR at final hearing with date, time and place**

NEW BOX:** IS AN INTERPRETER NEEDED?

SERVICE: Fill in for Plaintiff.

- **If Municipal court, FAX TRO TO FAMILY COURT IMMEDIATELY, even if both parties not yet served.** Superior Court needs time to put info into the computer. If Defendant needs to be served elsewhere, issuing court must fax to the law enforcement agency where defendant can be served.
- **Service of TRO on defendant must also be FAXED to family court immediately, no matter who serves it.** If unable to serve immediately, fax order to Superior Court and refax page 4 later with service info whenever Def is served. TRO must also be faxed to the town where Defendant lives for service, if different.

NOTE: SERVICE OF <u>FRO</u> B must also fax proof of service of FRO to Superior Court for entry into Central Registry. Fill in date and department that served (page 4)

New Jersey Domestic Violence Civil Complaint and Temporary Restraining Order

☐ TRO ☐ Amended TRO

N.J.S.A. 2C:25-17 *et seq.*

☐ Superior Court, Chancery Division, Family Part, _____ County ☐ Municipal Court of _____

DOCKET NUMBER FV -	POLICE CASE #
IN THE MATTER OF PLAINTIFF (VICTIM)	PLAINTIFF'S SEX ☐ MALE ☐ FEMALE / PLAINTIFF'S DATE OF BIRTH

DEFENDANT INFORMATION	LAST NAME	FIRST NAME	INITIAL	DATE OF BIRTH

AKA	DEFENDANT'S SOCIAL SECURITY NUMBER

HOME ADDRESS	CITY	STATE	ZIP	HOME PHONE NUMBER ( )	WORK PHONE NUMBER ( )

EMPLOYER	WORK ADDRESS	DEFENDANT'S SEX ☐ MALE ☐ FEMALE

HAIR COLOR	EYE COLOR	HEIGHT	WEIGHT	RACE	SCARS, FACIAL HAIR, TATTOO(S), ETC.

The undersigned complains that said defendant did endanger plaintiff's life, health or well being (give specific facts regarding acts or threats of abuse and the date(s) and time(s) they occurred; specify any weapons):

ON	AT	BY

which constitute(s) the following criminal offenses(s): (Check all applicable boxes. Law Enforcement Officer: Attach *N.J.S.P.* UCR DV1 offense report(s)):

☐ HOMICIDE ☐ TERRORISTIC THREATS ☐ CRIMINAL RESTRAINT ☐ SEXUAL ASSAULT ☐ LEWDNESS ☐ BURGLARY ☐ HARASSMENT

☐ ASSAULT ☐ KIDNAPPING ☐ FALSE IMPRISONMENT ☐ CRIMINAL SEXUAL CONTACT ☐ CRIMINAL MISCHIEF ☐ CRIMINAL TRESPASS ☐ STALKING

1. ANY PRIOR HISTORY OF DOMESTIC VIOLENCE REPORTED OR UNREPORTED? IF YES, EXPLAIN: ☐ YES ☐ NO

2. DOES DEFENDANT HAVE A CRIMINAL HISTORY? (IF YES, ATTACH CCH SUMMARY) ☐ YES ☐ NO

3. ANY PRIOR OR PENDING COURT PROCEEDINGS INVOLVING PARTIES? (IF YES, ENTER DOCKET NUMBER, COURT, COUNTY, STATE) ☐ YES ☐ NO

4, HAS A CRIMINAL COMPLAINT BEEN FILED IN THIS MATTER? (IF YES, ENTER DATE, DOCKET NUMBER, COURT, COUNTY, STATE) ☐ YES ☐ NO

5, IF LAW ENFORCEMENT OFFICERS RESPONDED TO A DOMESTIC VIOLENCE CALL:
WERE WEAPONS SEIZED? IF YES, DESCRIBE ☐ YES ☐ NO WAS DEFENDANT ARRESTED? IF YES, DESCRIBE ☐ YES ☐ NO

6. (A) THE PLAINTIFF AND DEFENDANT ARE 18 YEARS OLD OR OLDER OR EMANCIPATED AND ARE ☐ MARRIED ☐ DIVORCED OR ☐ PRESENT HOUSEHOLD MEMBER ☐ FORMER HOUSEHOLD MEMBER **OR**

(B) THE DEFENDANT IS 18 YEARS OLD OR OLDER OR EMANCIPATED and PLAINTIFF AND DEFENDANT ARE ☐ UNMARRIED ☐ CO-PARENTS ☐ EXPECTANT PARENTS **OR** ☐ PLAINTIFF AND DEFENDANT HAVE HAD A DATING RELATIONSHIP

7. WHERE APPROPRIATE LIST CHILDREN , IF ANY (INCLUDE NAME, SEX, DATE OF BIRTH, PERSON WITH WHOM CHILD RESIDES)

8. THE PLAINTIFF AND DEFENDANT: ☐ PRESENTLY; ☐ PREVIOUSLY; ☐ NEVER: RESIDED TOGETHER
☐ FAMILY RELATIONSHIP: _____ (SPECIFY)

CERTIFICATION

I certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

DATE _____ SIGNATURE OF PLAINTIFF _____

DOCKET NUMBER FV -	DEFENDANT'S NAME

PART 1 - RELIEF - Instructions: Relief sought by plaintiff

DEFENDANT:

	TRO	FRO	GRANTED	
1.	☐	N / A	☐	You are prohibited from returning to the scene of violence.
2.	☐	☐	☐	You are prohibited from future acts of domestic violence.
3.	☐	☐	☐	You are barred from the following locations: ☐ RESIDENCE(S) OF PLAINTIFF ☐ PLACE(S) OF EMPLOYMENT OF PLAINTIFF
				☐ OTHER (ONLY LIST ADDRESSES KNOWN TO DEFENDANT): _____
4.	☐	☐	☐	You are prohibited from having **any** oral, written, personal, electronic, or other form of contact or communication with Plaintiff.
	☐	☐	☐	OTHER(S): _____
5.	☐	☐	☐	You are prohibited from making or causing anyone else to make harassing communications to: Plaintiff
	☐	☐	☐	OTHER(S) - SAME AS ITEM 4 ABOVE OR LIST NAMES: _____
6.	☐	☐	☐	You are prohibited from stalking, following or threatening to harm, stalk or follow: Plaintiff
	☐	☐	☐	OTHER(S) - SAME AS ITEM 4 ABOVE OR LIST NAMES: _____
7.				You must pay emergent monetary relief to (describe amount and method):
	☐	☐	☐	PLAINTIFF: _____
	☐	☐	☐	DEPENDANTS: _____
8.	☐	☐	☐	You must be subject to intake monitoring of conditions and restraints: _____
	☐	☐	☐	Other (evaluations or treatment - describe): _____
9.	☐	☐	☐	Psychiatric evaluation: _____
10.	☐	☐	☐	**Prohibition Against Possession of Weapons:** You are prohibited from possessing **any and all firearms or other weapons** and must immediately surrender these firearms, weapons, permit(s) to carry, application(s) to purchase firearms and firearms purchaser ID card to the officer serving this Court Order: Failure to do so may result in your arrest and incarceration.

PLAINTIFF:

11.	☐	☐	☐	You are granted exclusive possession of (list residence or alternate housing only if specifically known to defendant):
12.	☐	☐	☐	You are granted temporary custody of: _____
13.	☐	☐	☐	Other relief for - Plaintiff: _____
	☐	☐	☐	Other relief for - Children: _____

LAW ENFORCEMENT OFFICER:

You are to accompany to scene, residence, shared place of business, other (indicate address, time, duration and purpose):

☐	☐	☐	Plaintiff: _____
☐	☐	☐	Defendant: _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

DOCKET NUMBER FV -	DEFENDANT'S NAME

WARRANT TO SEARCH FOR AND TO SEIZE WEAPONS FOR SAFEKEEPING

☐ **To any law enforcement officer having jurisdiction -** this Order shall serve as a warrant to search for and to seize any issued permit to carry a firearm, application to purchase a firearm and firearms purchaser identification card issued to the defendant and the following firearm(s) or other weapon(s):

1. **You are hereby commanded** to search for the above described weapons and/or permits to carry a firearm, application to purchase a firearm and firearms purchaser identification card and to serve a copy of this Order upon the person at the premises or location described as:

2. **You are hereby ordered** in the event you seize any of the above described weapons, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person to have a copy of this Order together with such receipt in or upon the said structure from which the property was taken.

3. **You are authorized** to execute this Order immediately or as soon thereafter as is practicable:

☐ ANYTIME ☐ OTHER: _____

4. **You are further ordered**, after the execution of this Order, to promptly provide the Court with a written inventory of the property seized per this Order.

PART II - RELIEF DEFENDANT:

	TRO	FRO	GRANTED	
1.	☐	☐	☐	No parenting time / visitation until further ordered;
	☐	☐	☐	Parenting time / visitation pursuant to F _____ suspended until further order:
	☐	☐	☐	Parenting time / visitation permitted as follows:
2.	☐	☐	☐	Risk assessment ordered (specify by whom, any requirements, dates): _____
3.				You must provide compensation as follows:
	☐	☐	☐	Emergent support for plaintiff: _____
	☐	☐	☐	For dependent(s): _____
	N / A	☐	☐	Ongoing support for plaintiff: _____
	N / A	☐	☐	For dependent(s): _____
	☐	☐	☐	Compensatory damages to plaintiff: _____
	N / A	☐	☐	Punitive damages to plaintiff: _____
	N / A	☐	☐	To Third Party(ies) (describe): _____
	☐	☐	☐	Medical coverage for plaintiff: _____
				For dependent(s): _____
	☐	☐	☐	☐ Rent ☐ Mortgage payments (specify amount(s) and recipient(s)): _____
	☐	☐	☐	You must participate in a batterers intervention program: _____
	☐	☐	☐	You are granted temporary possession of the following personal property (describe): _____

PART II - RELIEF PLAINTIFF:

☐ ☐ ☐ You are granted temporary possession of the following personal property (describe): _____

COMMENTS:

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

DOCKET NUMBER FV -	DEFENDANT'S NAME

☐ **TRO denied**. Complaint dismissed by Family Part.

☐ **TRO denied by Municipal Court**, forwarded to Family Part for administrative dismissal, and plaintiff advised of right to file new complaint in Superior Court, Family Division.

☐ **TRO granted**. The Court has established jurisdiction over the subject matter and the parties pursuant to *N.J.S.A.* 2C:25-17 et seq., and has found good cause that a prima facie act of domestic violence has been established; that an immediate danger of domestic violence exists and that plaintiffs life, health and well being are endangered; that an emergency restraining Order is necessary pursuant to *R*. 5:7A(b) and *N.J.S.A.* 2C:25-28 to prevent the occurrence or recurrence of domestic violence and to search for and seize firearms and other weapons as indicated in this order.

DATE / TIME ☐ VIA TELEPHONE HONORABLE COURT / COUNTY

ALL LAW ENFORCEMENT OFFICERS WILL SERVE AND FULLY ENFORCE THIS ORDER

This *ex parte* Domestic Violence Complaint and Temporary Restraining Order meets the criteria of the federal Violence Against Women Act for enforcement outside of the State of New Jersey upon verification of service of defendant. 18 *U.S.C.A*. 2265 & 2266

THIS ORDER SHALL REMAIN IN EFFECT UNTIL FURTHER ORDER OF THE COURT AND SERVICE OF SAID ORDER ON THE DEFENDANT

NOTICE TO APPEAR TO PLAINTIFF AND DEFENDANT

1. ☐ Both the plaintiff and defendant are ordered to appear for a final hearing on (date) _____ at (time) _____ at the Superior Court, Chancery Division, Family Part, _____ County, located at (address) _____

Note: You must bring financial information including pay stubs, insurance information, bills and mortgage receipts with you to Court.

2. ☐ The final hearing in this matter shall not be scheduled until: _____

3. ☐ Interpreter needed. Language: _____

Upon satisfaction of the above-noted conditions notify the Court immediately so that a final hearing date may be set.

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Superior Court. The named defendant cannot have any contact with the plaintiff without permission of the Court.

NOTICE TO DEFENDANT

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, applications or identification cards may constitute criminal contempt pursuant to *N.J.S.A.* 2C:29-9(b), and may also constitute violations of other state and federal laws which may result in your arrest and/or criminal prosecution. This may result in a jail sentence.

You have the right to immediately file an appeal of this temporary Order before the Superior Court, Chancery Division, Family Part, as indicated above and a hearing may be scheduled.

RETURN OF SERVICE

☐ Plaintiff was given a copy of the Complaint / TRO by:

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ I hereby certify that I served the within Complaint / TRO by delivering a copy to the defendant personally:

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ I hereby certify that I served the within Complaint / TRO by use of substituted service as follows: _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

☐ Defendant could not be served (explain): _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NUMBER / DEPARTMENT

DEFENDANT MUST SIGN THIS STATEMENT: I hereby acknowledge the receipt of the restraining Order. I understand that pursuant to this Court Order, I am not to have any contact with the named plaintiff even if the plaintiff agrees to the contact or invites me onto the premises and that I may be arrested and prosecuted if I violate this Order.

SIGNATURE OF DEFENDANT TIME AND DATE

THE COURTHOUSE IS ACCESSIBLE TO THOSE WITH DISABILITIES. PLEASE NOTIFY THE COURT IF YOU REQUIRE ASSISTANCE.

DISTRIBUTION: FAMILY PART, PLAINTIFF, DEFENDANT, SHERIFF, OTHER _____

Family – Domestic Violence Hearing Officer Program Standards

Directive #16-01 December 14, 2001
Issued by: Richard J. Williams
Administrative Director

Attached are the Domestic Violence Hearing Officer Program Standards that have been approved by the Supreme Court. Part of our ongoing standardization effort in the Family Division, these standards were recommended by the Conference of Family Division Presiding Judges and endorsed by the Judicial Council.

Consistent with the approach that we have been taking in our standardization efforts, I would ask that you advise me in writing by February 15, 2002 that your vicinage is in compliance with these standards. For each of those standards that have not yet been fully implemented in your vicinage, please set out the steps you plan to take towards implementation and the date by which you anticipate the particular standards will be implemented.

Any questions regarding these DVHO Program Standards in their implementation may be directed to the AOC's Family Division at 609-984-7793.

DOMESTIC VIOLENCE HEARING OFFICER PROGRAM

The Supreme Court has adopted this set of Operating Standards for the Domestic Violence Hearing Officer Program. The standards and the accompanying commentary were developed and recommended by the Conferences of Family Division Managers and Family Presiding Judges. The standards are applicable to the program as implemented in all vicinages.

I. Standards/Best Practices -- Domestic Violence Case Processing

Domestic violence case processing standards/"best practices" are in essence set forth in the Domestic Violence Procedures Manual, as jointly promulgated by the Supreme Court and the Attorney General for use by courts and law enforcement personnel throughout the State. The standards set forth here are presented in the same narrative format, so that they are consistent with and can be inserted directly into the Procedures Manual.

II. Standards/Best Practices --Domestic Violence Hearing Officer (DVHO) Program

DVHO Standard # 1: Appointment

DVHOs shall be hired at the vicinage level in the same manner as all other Judiciary employees based on the qualifications of the position adopted by the Department of Personnel, supplemented in the "Note" section as set forth below. All successful candidates for the DVHO position prior to hearing any cases shall complete a training program approved by the Administrative Office of the Courts. The Training Committee of the Conference of Family Division Managers will develop the training program in coordination with the Judiciary's Chief of Training and Staff Development and in consultation with the DVHO Advisory Committee of the State Domestic Violence Working Group.

Qualifications for the DVHO position include: (1) A bachelor's degree in a behavioral or social science; and (2) three years of experience in the areas of domestic violence or family crisis. A masters degree or admission to the New Jersey Bar and one year of experience in Family Law (which shall include work involving domestic violence) may be substituted for one year of experience.

All future DVHO job announcements should include in the "Note" section the following language: "Awareness of the dynamics of domestic violence and its impact upon victims, families, and abusers is helpful."

The Training Committee of the Conference of Family Division Managers has developed statewide training for new Family staff and training for Family Team Leaders. The Training Committee will develop the curriculum for newly hired Domestic Violence Hearing Officers. In developing that curriculum, the Training Committee should coordinate with the Judiciary's Chief of Training and Staff Development and consult with the Domestic Violence Hearing Officer Advisory Committee of the State Domestic Violence Working Group (which includes representatives from the New Jersey Coalition for Battered Women, Division of Youth and Family Services, a Family Division Manager, Domestic Violence Hearing Officers, a Family Presiding Judge, and AOC Family Practice staff). The Conferences of Family Division Managers and Family Presiding Judges must review and approve the curriculum prior to its implementation.

DVHO Standard #2: Duties and Responsibilities

A. Domestic Violence Hearing Officers conduct hearings on requests for Temporary Restraining Orders. In doing so, a DVHO shall:

1. **Review all related case files involving the parties;**

2. **Inform Plaintiff about her/his legal rights and options, and about available protective services, including shelter care;**

3. **Explain to Plaintiff the domestic violence legal process and procedures;**

4. **Explain to Plaintiff that appearance before the Domestic Violence Hearing Officer is voluntary, and that no adverse inference shall be drawn if Plaintiff seeks to appear instead before a judge;**

5. **Take testimony and establish a record, including findings of fact concerning the basis for his/her recommendations;**

6. **Rule on the admissibility of evidence;**

7. **Draft a comprehensive, case-specific Temporary Restraining Order, where appropriate;**

8. **Forward the recommended Temporary Restraining Order for review and signature by a judge;**

9. **Make appropriate referrals to other agencies for assistance.**

10. **Inform Plaintiff of the right to a hearing *de novo* before a Superior Court Judge if the DVHO has recommended that a TRO not be granted.**

B. The DVHO will be expected to assume other similar duties in the Family Division when time allows. However, even in those counties in which conducting TRO hearings does not comprise the majority of the DVHO's time, such hearings shall take precedence over other duties assigned to the DVHO. Any other duties assigned to the DVHO must be consistent with the skills, abilities, and status of the DVHO position.

DVHO Standard # 3: Management Structure

A. The DVHO shall report to the Assistant Family Division Manager, and for legal consultation or case issues shall have access to the Family Division Presiding Judge or a judge designated by the Presiding Judge.

B. The DVHO should participate in relevant meetings and discussions in the vicinage held by the Presiding Judge, Division Manager, and Assistant Division Manager(s).

C. The DVHO should participate in the County Domestic Violence Working Group, and in other intra-court and interagency committees/groups at the state and local levels that are identified as appropriate by Family Division Management (e.g. Presiding Judge, Family Division Manager or Assistant Family Division Manager).

D. The DVHO should attend statewide DVHO meetings, which are to be called by the Family Division Manager who is designated to chair meetings of the DVHOs, and may also attend other training events identified and approved by Family Division Management, the SDVWG's DVHO Advisory Committee, and the AOC.

The regular statewide meetings of DVHOs will be scheduled at the direction of the Chair of the Conference of Family Presiding Judges, and will be chaired by the designated Family Division Manager. It is expected that there will be at least nine such meetings during 2001, with such meetings scheduled on a regular basis thereafter. It is also the expectation of the Conference of Family Presiding Judges that all DVHOs will be encouraged and permitted to attend all such statewide meetings. At the local level, the DVHO is expected to be an active member of the County Domestic Violence Working Group in order to contribute his/her expertise to the resolution of local and statewide issues related to the implementation of the Prevention of Domestic Violence Act.

DVHO Standard #4: Facilities and Staff Support

A. The DVHO should conduct the hearing in a hearing room specifically set up and designed to accommodate domestic violence proceedings.

Hearing rooms shall be equipped with a desk/bench for the DVHO, chairs for

the victim and witnesses, space for support staff and security, phone, and PC with access to FACTS, PROMIS/GAVEL, ACS, ACSES, as well probation, warrant, and jail information, and the Judiciary's InfoNet.[1]

B. DVHOs shall be provided appropriate security, consistent with and as reflected in the vicinage's security plan.

C. All hearings conducted by the DVHO shall be recorded and a log shall be maintained. A court staff member should be provided during hearings to operate the recording equipment, maintain the logs, take files to the judge for review and signature, and, when necessary, escort the victim to a courtroom or back to Intake.

D. DVHOs shall be provided with the current version of the Domestic Violence Reference Manual, which includes the Domestic Violence Procedures Manual. DVHOs also shall have regular access to the following:

1. **New Jersey Rules of Court;**
2. **New Jersey Rules of Evidence;**
3. **New Jersey Code of Criminal Justice;**
4. **New Jersey Law Journal and/or New Jersey Lawyer;**
5. **Family Division slip opinions, as well as any other slip opinions relating to domestic violence.**

<u>DVHO Standard #5: Jurisdiction</u>

A. DVHOs shall only hear requests for Temporary Restraining Orders made at the Family Division during regular court hours. Appearance before the DVHO is voluntary and a plaintiff may elect to appear before a judge instead. No adverse inferences shall be drawn from a plaintiff's election to appear before a judge.

B. The DVHO shall be governed by the New Jersey Prevention of Domestic Violence Act, New Jersey Court Rule 5:7A, the Domestic Violence Procedures Manual, and these Standards in making recommendations regarding the issuance of an initial Temporary Restraining Order and its specific provisions.

C. DVHOs may draft and recommend Amended Temporary Restraining Orders where only the Plaintiff appears and none of the exclusions listed in Section D below apply.

D. DVHOs shall not hear a particular matter if any of the following circumstances exist:

[1]Counties that cannot meet this standard immediately will be asked to develop a specific plan to meet the standard within a reasonable period of time.

1. **When a change in or suspension of an existing custody or visitation order is sought by plaintiff;**

2. **When there are cross-complaints, complex issues or circumstances, or pending or recently resolved cases involving the parties that make the matter "complex"; (this determination of "complexity" by the Hearing Officer is subject to the oversight of the Presiding Judge or Lead Domestic Violence Judge)**

3. **Where a party has submitted an application for dismissal;**

4. **When both parties are present;**

5. **When a TRO has been denied by the Municipal Court, and the Plaintiff appears at the Family Division for a hearing *de novo*;**

6. **When a conflict of interest or the appearance of impropriety would result.**

E. Other than the matters set forth in Section D above, all cases shall be brought to the attention of the DVHO, who can make referrals to the designated judge as necessary and appropriate.

F. The following provisions are applicable to cases involving the use or threatened use of weapons.

1. **When a domestic violence complaint is taken in a matter that involves the use or threatened use of a weapon, or where the defendant possesses or has access to a firearm or other weapon described in N.J.S.A. 2C:39-1r, this information should be noted on the complaint and transmittal form that will be attached to the other paperwork forwarded to the DVHO;**

2. **If the DVHO finds that good cause exists for the issuance of a TRO, the DVHO should proceed to review and check off those restraints and reliefs being recommended;**

3. **During the hearing, when the DVHO reaches the section of the TRO prohibiting weapons possession, and after having determined that there are weapons to be seized, the DVHO should ask for as detailed a description as possible concerning the type and number of weapons, and their specific location(s);**

4. If the DVHO determines that there is probable cause for seizure, the DVHO should note this on the record and then should:

a. Complete the weapons seizure affidavit form [Attachment] based on Plaintiff's testimony, including details about the weapon(s) to be seized and the likely location(s) of the weapon(s), as well as the basis for Plaintiff's belief that such weapons are in Defendant's possession or are accessible to Defendant;

b. Review the contents of the affidavit with Plaintiff of the record and have Plaintiff sign the affidavit; the DVHO should witness Plaintiff's signature;

c. Complete the warrant portion of the TRO with specificity regarding the weapon(s), location(s) of same, and any other instructions to law enforcement;

d. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and signature. The probable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information;

e. If the judge does not concur with the TRO as recommended, or wishes to take testimony directly from the victim, or if the DVHO finds no basis for the issuance of the TRO or a lack of probable cause for weapons seizure and Plaintiff requests a hearing *de novo* on either determination, the case should be handled as an excluded case and forwarded to the judge for a hearing *de novo*.

G. All recommendations made by the DVHO shall be reviewed by a Family Division Judge or other Superior Court Judge, as follows:

1. The Family Presiding Judge or a judge designated by the Presiding Judge immediately shall review all Temporary Restraining Orders recommended by the DVHO. If the judge finds the recommended TRO to be appropriate, he or she should sign the TRO. The fact that the matter was heard by a DVHO may be noted on the file but shall not appear on the TRO itself.

2. **A plaintiff who does not agree with the findings and/or recommendations of the DVHO shall be entitled to an immediate hearing *de novo* conducted by the Family Presiding Judge or a designated Family Division judge.**

3. **Copies of the signed TRO shall be provided to Plaintiff by the court or court staff, in accordance with local practice, before Plaintiff leaves the courthouse. Defendant shall be served a copy pursuant to N.J.S.A. 2C:25-17 et seq.**

The Domestic Violence Procedures Manual sets out the standard for the maximum amount of time that an individual should have to wait for a hearing. Every effort should be made for cases to be heard within one hour after the time the complaint was completed. The Domestic Violence Technical Assistance Team has examined this aspect of the process in every county and has made recommendations for improvement in those counties in which the amount of time a victim waits exceeds the standard.

Concern has been expressed that the DVHOs' caseloads will expand as a result of the specific authority to hear matters involving weapons, as set forth above. This will be monitored at DVHO meetings and will be brought to the attention to the Presiding Judges-Family Division Managers Domestic Violence Subcommittee, if necessary.

ATTACHMENT

AFFIDAVIT IN SUPPORT OF DOMESTIC VIOLENCE SEARCH WARRANT

I, _____ , having been duly sworn upon my oath according to the law, depose and say:

1.On _____, 200__, I was subjected to an act of Domestic Violence by the above defendant.

2. I allege that the defendant committed an act of Domestic Violence as described in the attached Complaint, such acts posing an imminent danger to my life, health or well-being.

3. I also believe that the defendant is in possession of a weapon(s) that I reasonably believe would expose me to a risk of serious bodily injury.

4. These weapon(s) consist of (be as specific as possible)_____
_____
_____
_____
_____ .

5. I am aware that the defendant possesses or has access to these weapons based upon (how the victim is aware of weapons)
_____
_____.

6. The defendant's weapons, noted in Item 4, are located at (be as specific as possible as to location of the weapons and owner of the premises, if not the defendant.)
_____
_____
_____
_____ .

7. I would request that the items in Item 4, as well as any other weapon that may be located by law enforcement at the location(s), be seized for safekeeping purposes. I would further request all of the defendant's permits to carry a firearm, firearms purchaser identification card, and any outstanding applications to purchase firearms be seized.

_____
Signature of Affiant

Oath administered and witnessed by:

_____
Hearing Officer

Date:_____

[Questions or comments regarding this Directive may be directed to (609) 984-4228.]

Directive # 2-06
[Supplements Directive #16-01]

TO: Assignment Judges

FROM: Philip S. Carchman

SUBJ: Standards for Backup Domestic Violence Hearing Officers

DATE: January 30, 2006

The Judicial Council at its December 8, 2005 meeting approved the attached set of Standards for Backup Domestic Violence Hearing Officers ("Backup DVHOs"). These Standards for Backup DVHOs supplement the Domestic Violence Hearing Officer Program Standards previously promulgated by Directive #16-01.

These Standards for Backup DVHOs authorize vicinages to designate an existing staff person as a Backup DVHO to function temporarily as a DVHO on a collateral, part-time basis when the DVHO is absent or otherwise unavailable. Any such designations are to be made by the Assignment Judge, with the Backup DVHO first to have completed the same training required of full-time Domestic Violence Hearing Officers.

Please feel free to contact Assistant Director Harry Cassidy at 609-984-4228 with any questions or for further information concerning the appointment and training of Backup DVHOs.

P.S.C.

attachment
cc: Chief Justice Deborah T. Poritz
Family Presiding Judges
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
Trial Court Administrators
Family Division Managers
Geraldine Washington, Chief, Family Practice Division
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

DOMESTIC VIOLENCE HEARING OFFICER (DVHO) PROGRAM

STANDARDS FOR BACKUP DOMESTIC VIOLENCE HEARING OFFICERS (BDVHOs)

Promulgated by Directive #2-06 as a Supplement to Directive #16-01

Purpose

The Domestic Violence Hearing Officer Program Standards approved by the Supreme Court established the procedures for appointing and training DVHOs and for the conduct of domestic violence proceedings before such Hearing Officers. The Standards are documented in Directive #16-01, dated December 14, 2001. The Backup DVHO Standards described authorize vicinages to designate a staff person to function temporarily as DVHO when the DVHO is absent for any reason. The use of a Backup DVHO may obviate the need for a judge to hear requests for a domestic violence restraining order when the DVHO is absent and thus provide more prompt responses to plaintiffs in these cases. Vicinages are not required to make such designations, but are permitted to do so.

BDVHO Standard # 1: Designation

Backup DVHOs shall be designated by the Assignment Judge or his/her designee following the candidate's completion of the training and approval process outlined herein. The candidate must be either an Administrative Specialist 4 or an Assistant Family Division Manager.

BDVHO Standard #2: Duties and Responsibilities

The duties and responsibilities of the BDVHO shall be the same as for the DVHO as set forth in DVHO Standard #2.

BDVHO Standard #3: Management Structure

The BDVHO shall report to the Assistant Family Division Manager, and for legal consultation or case issues shall have access to the Family Presiding Judge or another judge designated by the Presiding Judge. If the BDVHO is an Assistant Family Division Manager, he or she shall report to the Family Division Manager.

BDVHO Standard #4: Training Curriculum

All Backup DVHOs must complete the approved Domestic Violence Hearing Officer training curriculum prior to conducting hearings.

A prospective BDVHO shall be present and observe DVHO proceedings on requests for TROs with the vicinage mentor DVHO at a minimum of 30% of the

county's monthly DV caseload for the first month of training and will observe DVHO proceedings that involve weapons at a minimum of 20% of the county's monthly caseload of such cases. The BDVHO candidate shall also observe requests for TROs and FROs heard by vicinage Family Part Judges at a minimum of two days in his/her first month of training. The BDVHO shall also observe an existing DVHO in another vicinage for two days during this period. The BDVHO candidate is also required to meet with the DV Advisory Judge[1] at least once during this time at the convenience of the DV Advisory Judge. The length of time a candidate for the BDVHO position remains in training shall be determined in consultation with the vicinage's Family Presiding Judge, the state DV Advisory Judge, the Family Division Manager and the AOC Family Practice Division, and will depend upon the following:

a. Prior Domestic Violence training and experience;
b. Report from the Family Part Presiding Judge;
c. Report from the DV Advisory Judge;
d. Report from the mentor DVHO;
e. Report from vicinage DVHO.

After consultation with vicinage management and reports from the mentor DVHO and any other DVHO who may have observed the BDVHO, the DV Advisory Judge will make a determination as to that individual's ability to conduct hearings independently. If the determination is positive, the BDVHO may proceed to hear requests for TROs immediately upon the designation by the Assignment Judge or his/her designee.

Should the newly designated BDVHO require additional training based on the reports received, that training will be organized by AOC Family Practice Division for a length of time determined by the DV Advisory Judge.

BDVHO Standard #5: Conducting Hearings Under Supervision

When all parties agree that the BDVHO is ready to conduct hearings under the supervision of the existing DVHO, that additional training shall be no less than 10 cases.

BDVHO Standard #6: Conducting Hearings

In order to keep their skills current, the BDVHOs shall conduct (at a minimum) 10% of the monthly hearings of the county where they are assigned on an ongoing basis. The schedule shall be determined by the Family Division Manager in relation to the other duties of the BDVHO and the volume of domestic violence cases in the vicinage.

[1] The statewide Domestic Violence Advisory Judge is designated by the Administrative Director to provide technical assistance to vicinages in the management of their domestic violence programs. The current DV Advisory Judge is Judge Thomas Dilts, P.J.F.P., Somerset/Hunterdon/Warren Vicinage.

BDVHO Standard #7: Continued Training

BDVHOs shall have at least three days of continuing education/training per year. Information pertaining to training opportunities should be made available at the vicinage level and through the AOC Family Practice Division.

BDVHO Standard # 8: Compliance with Existing DVHO Standards

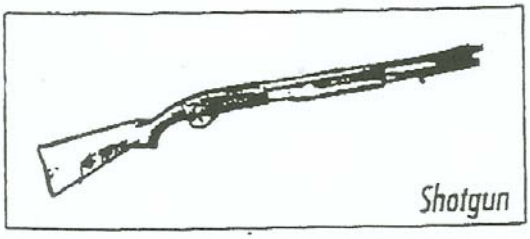
BDVHOs shall operate within the following existing DVHO Standards:

a. Standard # 4 - Facilities and Staff Support
b. Standard # 5 - Jurisdiction

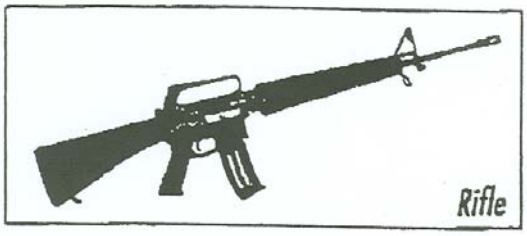
AID IN IDENTIFYING FIREARMS

Revolver

Pistol



Shotgun



Rifle

Submachine Gun

Division of Criminal Justice

LAPS

Training Guide
for
Victim Notification Form

In-Service Training
for
Police Officers

Prepared by the Prosecutors and Police Bureau & Office of Victim-Witness Advocacy Division of Criminal Justice

Introduction to Training Guide for *Victim Notification Form*

The *Victim Notification Form* has been revised to improve the recording of information. This will assist the victim, the law enforcement officer and the courts in providing notification to the victim. The revisions will be noted in this training guide. It is important to keep in mind the following:

> "Victims are the people behind crime statistics. They are the individuals who suffer the injuries inflicted by criminals ...."[1] A victim of crime is entitled to know when the offender is arrested or released from custody. This is the law in this State.
>
> "The Legislature finds and declares that it is in the public interest that victims involved in proceedings within the State's criminal justice system receive adequate notice and advice concerning critical stages of the criminal justice process to allow for participation and understanding."[2]

A copy of the revised form is included in this training guide. The revisions will be explained in this training guide.

To provide arrest and release information to the victim, the Attorney General has approved a revised *Victim Notification Form*. This form has been designed for quick entry of information with its "check the box and fill in the blank" format.

This form replaced the *Domestic Violence Victim's Rights Form* and includes the *Crime Victims' Bill of Rights* in English and in Spanish.[3] This form should be completed

- during the initial stages of the investigation of an indictable offense where there is a victim;
- when a defendant is arrested for an indictable criminal offense; or
- when a police officer responds to a domestic violence incident.

Note: **The information contained on this form is confidential. No information is to be released or given to the defendant, defense counsel or any person not having an absolute need to know.**

This information is confidential

For the safety of the victim, this form should not be kept in any file, which contains discoverable material, that is information that will be given to the defendant under the discovery rules of court.[4] This effort may prevent retaliation attempts by the accused.

Officers should not write any domestic violence victim contact information in their incident reports which may disclose the whereabouts of the victim. Incident reports are discoverable.

Confidentiality of this information is extremely important, especially in domestic violence cases where the victim has relocated to escape the abuser who may resort to threats or acts of violence to intimidate the victim. The officer must keep in mind the dynamics of domestic violence and the batterer's need to maintain power and control over the victim. A victim of domestic violence may be at a 75 percent greater risk of serious injury when the victim leaves the battering relationship.

For more information on the dynamics of domestic violence, please see the *Dynamics of Domestic Violence,* Training Module 1, issued by the Division of Criminal Justice in 1995.

The officer should stress to the victim the importance of keeping the police, the prosecutor's office or the courts informed of any changes in address or telephone numbers where the victim can be immediately contacted.

The officer also should point out to the victim information contained on the pink copy of the form, which includes important telephone numbers. The victim should be advised to contact the county Office of Victim-Witness Advocacy if he or she has any questions about the criminal justice process.

I. A Close Look at the Top Portion of the Form

A. The top portion of the form, shown on the next page, is to be completed by the officer who responds to the call or a person who assists the victim. This portion asks for the basic identifying data.

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date: _____
Date of Arrest: _____ Warrant/(Summons) No. _____ Charges: _____
Name of Police Officer or Court Staff: _____ Department/Agency: _____
• Telephone No. _____ • Fax No. _____

Defendant Information - In addition to defendant's name, list defendant's social security number, date of birth, or jail commitment number, if known.

- The law enforcement officer or court staff initiating this form should complete the identifying information portion of the form. Law enforcement officers should list badge number next to his or her name. The victim, who will receive the pink copy of this form, will use this information to contact the person preparing this form.

II. Checking the Boxes

This portion of the form is filled out by the responding officer or court personnel assisting the victim. This information will alert the notifying agency regarding the required timetable for notifying the victim of an arrest or release.

Check Appropriate Boxes (✓) _____
❑ Victim cannot be identified or is a government agency
❑ If defendant is charged with one of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking
❑ domestic violence: ❑ Violation of TRO/FRO; ❑ Other domestic violence offenses – *N.J.S.A.* 2C:25-19a
❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.
❑ Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

A. Victim cannot be identified or is a government agency

The officer should make reasonable efforts to identify the victim of the criminal offense at the time the form is completed. However, there may be instances when it is not possible to identify a victim. Examples when this box should be checked are:

- when there is damage to government property;

- when vacation property, whose owner has not been identified, is stolen or damaged; or
- When a murder victim's identity is unknown.

B. Immediate Notification Crimes

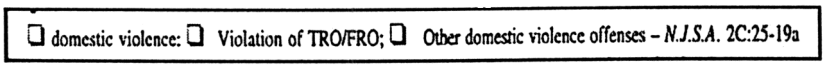
If one of the enumerated crimes has been committed, the responding officer must check the appropriate box. This signifies to the notifying agency as well as the victim, that immediate telephone notification must be initiated when the defendant is arrested or if the defendant is about to be released from custody.

Note: **The term "immediate telephone notification" should be interpreted strictly regardless of the time of day or night.**

There is a box entitled "domestic violence" which is illustrated below. This box is to be checked when the domestic violence act is violated. If the domestic violence incident is a violation of a restraining order, the "violation of TRO/FRO" box should be checked. If the domestic violence offense is one of the enumerated domestic violence crimes, the box "Other domestic violence offenses – *N.J.S.A.* 2C:25-19a" should be checked. All domestic violence offenses, regardless of classification, require immediate notification.

Criminal Offenses that activate the protections of the domestic violence act are:

Homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, and stalking.



Further down on the form, the victim will have the opportunity to choose not to be notified by telephone. However, the officer must explain to the victim that under the law, the victim is entitled to be notified immediately if one of these criminal offenses has been committed and the defendant is either arrested or is to be released from custody.

If the officer at the scene knows that because of the nature of the criminal offense the arrested defendant will be released on his or her own recognizance after being processed at headquarters, the officer should explain this procedure to the victim at this time. Since the defendant will not be held in custody, no bail will be set and no further notification regarding defendant's release will be made to the victim.

A Court Rule requires the release of individuals on their own recognizance for certai offenses. See *R.* 3:4-1.

C. Notification within 48 hours after arrest or pretrial release

If the criminal offense is not a domestic violence related offense or the indictable criminal offense is not one of the enumerated offenses requiring immediate notification, the victim is to be notified within 48 hours of the defendant's arrest or pretrial release.[5]

D. Time & Date of Court Hearing

Some counties have a Central Judicial Processing Court (CJP Court) where the defendant will be brought before the court, informed of the pending charges and bail will be set. In these jurisdictions, the officer should write in the time and date of the court hearing.

III. Victim Information

This information should be printed legibly either by the victim or by the responding officer. The victim should be instructed to give a name and telephone number where he or she can be reached. If the victim does not have a telephone, a number for a friend, neighbor or relative must be provided.

Procedure if victim is a juvenile

In the case of homicide, all surviving family members are considered "victims." The officer should obtain victim contact information from the closest relative (i.e., spouse first, the parents or adult children or siblings) or his/her designee.

If the victim is a juvenile, a name of a parent or guardian should be listed with the following notation: "for juvenile."

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

A. **ID No, if applicable**

(If your county has instituted an automated notification system (e.g. VINE), the victim should write in his or her personal identification number in this block. The automated notification program should be explained to the victim in accordance with county procedures.)

(If your county utilizes an "800" access number for victim notification so victims can find out the status of the defendant, the victim should enter his or her PIN in this block.)

B. **Address and Telephone Numbers**

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____

The officer should explain to the victim the importance of listing the victim's home and work addresses and telephone numbers and work hours. The victim should be instructed to inform his or her employer that the police might be calling to provide information about the case. If the victim resides in an apartment, the apartment number as well as the street address must be listed.

C. **Other Contact Information**

- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____

The victim must list at least one person who will know the victim's whereabouts if the victim cannot be contacted at the numbers given.

If the victim has any other means of contact, such as a pager or cellular telephone, the number should be listed in the "other information" block.

D. Victim Notification Preferences

• *I do not want to be notified by telephone when defendant is* ❑ *arrested or* ❑ *released on bail. Notification by mail is sufficient:* _____ _____
(Signature of victim) (Date)

In some cases, a victim may not want to be notified by telephone when the defendant is either arrested or about to be released from custody. If the victim does not want immediate notification, the victim should check the appropriate box and sign and date this portion of the form.

E. Domestic Violence Information

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.
❑ I want a civil restraining order; ❑ **I do not** want a civil restraining order at this time. _____
(Signature of victim)

***Note*: In Domestic Violence cases, this portion of the form must *be completed* even if the victim does not want a restraining order and even if no criminal charges are filed. This form should then be retained for police records only.**

The reference on the form to a "civil restraining order" means a temporary domestic violence restraining order.

In cases involving domestic violence, the officer must inform the victim of the domestic violence rights.[6] The victim's domestic violence rights are printed on the reverse side of the pink copy, which is always given to the victim.

The officer must ask the domestic violence victim if he or she wants a domestic violence civil restraining order. The officer should instruct the victim to check the appropriate box and to sign this portion of the form.

F. Distribution of Forms

This completes the responsibilities of the responding officer. The Victim Notification Forms is now ready to be distributed to the various agencies:

- White copy to correctional facility

  If the defendant was arrested at the time this form is completed, a copy of this form must accompany the defendant to the correctional facility

  If the defendant was not arrested at this time, the form should be held at the police department until the defendant is apprehended. Then the white copy should be forwarded to the correctional facility at the time the defendant is transported to the correctional facility.
- Canary copy to the police

  Pink copy to the victim

- A copy of this form should be faxed to the County Office of Victim-Witness Advocacy or the appropriate Family Division Court in accordance with county procedures. If no criminal complaint had been filed but the victim wants a domestic violence restraining order, the copy of this form should be faxed to the appropriate court.

  If both a criminal complaint and a temporary restraining order are filed, both the Office of Victim-Witness Advocacy and the Family Division Court should be faxed a copy of this notification form in accordance with county procedures.

IV. Notifying Agency Portion of Form

A. This portion of the form is to be completed by the agency, which notifies the victim when the defendant is either arrested, or about to be released from custody. In some cases, this notifying agency will be the police department; in some cases, it will be the county correctional facility or victim-witness office.

Note: *Some County Prosecutor's Offices may require additional distribution of this form.*

The instructor will note what your county procedures require

This notification procedure may vary from county to county.

For Use by Notifying Agency Only When Defendant Is Arrested or Released

☐ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

☐ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ ☐ Conditions of release - order attached

B. Where the arresting agency is not the same one that conducted the initial investigation or the one completing the top portion of the form, the arresting agency should notify the investigating agency of the arrest. If the defendant is to be incarcerated, a copy of this form should be submitted to the county correctional facility in accordance with county procedures.

Investigating agency's responsibility to notify victim

It is the investigating agency's responsibility to notify the victim in accordance with the criteria listed above.

C. **Let's look at some portions of this section in closer detail:**

- **Defendant released from custody (date) at (time). Reason for release**

  The officer inserts the date and time the defendant is released from custody and the reason for the release, such as "bail," etc.

- **Released by .... Conditions of release**

  The name of the officer and agency responsible for the release of the defendant is entered on this line. If there are any conditions for the release, that order is attached and this box is checked.

  An example of a condition of release could be when a defendant is released from custody with a restriction that the defendant not have any contact with the victim.

- Efforts made to contact victim

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
1.			

The notifying agency must make at least two attempts at separate times to contact the victim. These attempts should be documented in the spaces provided:

- **Additional action taken to notify the victim**

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

If the victim can not be located by calling the designated numbers but the notifying agency takes additional steps to locate the victim, that information should be entered on these lines with a check in the appropriate box.

Procedure when victim cannot be immediately located

In cases where immediate notification is required but attempts have failed, the notifying agency should request that the appropriate law enforcement agency where the victim resides attempt to notify the victim in person of defendant's release.

If the police are not able to notify the victim, the police should on the next business day, notify the Office of Victim-Witness Advocacy.[7]

- **Updated information attached**

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***
White Copy to Correctional Facility: Canary Copy to Police: Pink Copy to Victim: Fax Copy to Victim-Witness Office or Court (DCJ Rev. 2/00)

If a victim changes any contact information, this box should be checked and the information should be forwarded to the correctional facility if applicable and to the Office of Victim-Witness Advocacy.

V. Summary.

Victim notification is a vital function of law enforcement. In some cases, victims need to be reassured that police, prosecutors and the courts are taking every step possible under the law to protect them. It also is important that police inform victims that in many cases, defendants will be released from custody pending disposition of the criminal charges against them.[8]

Victims should be informed that if the defendant attempts to intimidate, threaten or harass them while the matter is pending that they should immediately contact the police.

---

[1] *Attorney General Standards to Ensure the Rights of Crime Victims* at iii (April 28, 1993)
[2] Notification Provided to Victims of Critical Events in Criminal Justice Process. L. 1994, c. 131 section 1, eff. Oct. 31, 1994, *N.J.S.A.* 52:4B-44
[3] *N.J.S.A.* 52:4B-36
[4] *R.* 3:13-3
[5] See Footnote 1, *supra*, at 2.2
[6] *N.J.S.A.* 2C:25-23
[7] See Footnote 1, *supra*, at 4
[8] *R.* 3:26-1(a)

VICTIM NOTIFICATION FORM ◆ *Confidential Information - Not to be Disclosed*

(Please Print or Type)

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date:

Date of Arrest:_____ Warrant/(Summons) No._____ Charges: _____

Name of Police Officer or Court Staff: _____ Department/Agency:

- Telephone No. _____ • Fax No. _____

Check Appropriate Boxes (✓) CHECK ALL BOXES THAT APPLY

❑ Victim cannot be identified or is a government agency

❑ If defendant is charged with any of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking, ❑ violation of domestic violence TRO/FRO; ❑ domestic violence offenses – *N.J.S.A.* 2C:25-19a (check appropriate boxes above or write in domestic violence offenses here): _____

_____

❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.

Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

❑ Domestic violence victim

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____
- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____

Non Domestic Violence Victims: ***I do not want to be notified by telephone when defendant is*** ❑ ***arrested or*** ❑ ***released on bail. Notification by mail is sufficient:*** _____ _____

(Signature of victim) (Date)

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.

❑ I want a civil restraining order; ❑ I do not want a civil restraining order at this time.

_____

(Signature of victim)

◆ **If defendant is to be incarcerated, a copy of this form must be delivered to the appropriate correctional institution**

For Use by Notifying Agency Only When Defendant is Arrested or Released

❑ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

❑ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ (Department/Agency) ❑ Conditions of release - order attached

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

_____

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***

White Copy to Correctional Facility: Canary Copy to Police; Pink Copy to Victim; Fax Copy to Victim-Witness Office or Court (DCJ Rev. 4/00)

VICTIM NOTIFICATION FORM ◆ *Confidential Information - Not to be Disclosed*

(Please Print or Type)

Case/Docket No.

Defendant: _____ SSN: _____ DOB: _____ Date:

Date of Arrest:_____ Warrant/(Summons) No. Charges: _____

Name of Police Officer or Court Staff: _____ Department/Agency:

- Telephone No. _____ Fax No. _____

Check Appropriate Boxes (✓) _____

❑ Victim cannot be identified or is a government agency

❑ Domestic violence victim (check appropriate boxes below or write in offenses in space below)

❑ If defendant is charged with one of following offenses, victim informed of right to immediate notification of defendant's arrest or release from pretrial custody: ❑ aggravated assault, ❑ arson, ❑ carjacking, ❑ child abuse, ❑ death by auto, ❑ homicide, ❑ kidnapping, ❑ robbery, ❑ sexual offenses, ❑ stalking, ❑ violation of domestic violence TRO/FRO; ❑ other domestic violence offenses – *N.J.S.A.* 2C:25-19a (describe: _____

❑ In all other cases, victim informed that he/she will be notified within 48 hours after defendant's arrest or pretrial release.

❑ Time & date of court hearing, if applicable, in which court may consider defendant's bail status: _____

Victim Information: *If any of this information changes, call police or court at above number*

Name of Victim/Survivor: _____ [ID No, if applicable: _____]

- Home address: _____ Telephone number: _____
- Work name/address: _____ Telephone No.: _____ Work hours: _____
- List at least one person to contact if you cannot be reached at the above home or work telephone numbers:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____

- Other information that may be needed to contact you: _____
- **Non Domestic Violence Victims:** ***I do not want to be notified by telephone when defendant is*** ❑ ***arrested or*** ❑ ***released on bail. Notification by mail is sufficient:*** _____ (Signature of victim) _____ (Date)

Domestic Violence Victims Only: My Domestic Violence Rights have been explained to me & I have been given a copy of them.

❑ I want a civil restraining order; ❑ **I do not** want a civil restraining order at this time.

_____ (Signature of victim)

◆ **If defendant is to be incarcerated, a copy of this form must be delivered to the appropriate correctional institution**

For Use by Notifying Agency Only When Defendant is Arrested or Released

❑ Defendant arrested on _____ (Date) by _____ (Agency) Place of Custody: _____

❑ Defendant released from custody _____ (Date) at _____ (Time) Reason for Release: _____

Released by: _____ (Name of Officer authorizing release) _____ (Department/Agency) ❑ Conditions of release - order attached

Efforts made to contact victim: [At least two attempts must be made to contact victim at each of the numbers listed above]:

Phone Number Called	Date / time	Name of Caller /Agency	Indicate: Person Notified / No One Notified
1. _____	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Additional Action Taken to Notify the Victim by ❑ Police; ❑ Correctional Institution; ❑ Victim-Witness Office; ❑ Court Staff

_____

❑ **Updated information attached** ◆ ***CONFIDENTIAL INFORMATION***

White Copy to Correctional Facility: Canary Copy to Police; Pink Copy to Victim; Fax Copy to Victim-Witness Office or Court (DCJ Rev. 4/00)

Family –Domestic Violence Procedures – Electronic Filing of Complaints and Temporary Restraining Orders ("E-TRO")

E-TRO – the project by which domestic violence complaints and temporary restraining orders may be filed electronically – operated on a pilot basis for nearly five years before expanded statewide in July 2007. The Supreme Court initially authorized the project in December 2002, with two expansions of the pilot thereafter. The Court's approval included relaxation of a number of Rules of Court for the pilot counties. By all measures the pilot test of E-TRO has been a success in all municipalities in which it has been implemented.

The Administrative Office of the Court's Family Practice Division, Information Technology Office, Automated Trial Court Services Unit, and Municipal Court Services Division collaborated in the development of this innovative program. The initiative and support of the pilot vicinages and municipalities have been invaluable.

The program provides an efficient means for filing domestic violence complaints and temporary restraining orders after normal court hours. E-TRO streamlines the procedures so that after hours, a police officer interviews the complainant at the police station, completing both the complaint and the proposed TRO at a computer terminal. The relaxed rules allow the police officer to enter the complainant's name on the complaint in lieu of the complainant's signature. The judge then takes sworn testimony by telephone. If the judge determines to issue the TRO, the judge directs the police

officer to enter the judge's name on the TRO electronically. The electronic TRO is immediately enforceable and may be served on the defendant. Police staff prints out and retains hard copies of the complaint and TRO and then transmits the documents to a server that is interfaced with the Judiciary's mainframe computer. The interface allows the complaint and TRO to be immediately available on the Domestic Violence Central Registry ("Central Registry") and entered in FACTS without the need for additional manual data entry. A Municipal Court or Superior Court judge thereafter will sign a confirmatory order. Thus, the E-TRO eliminates the need for the police officers to fax documents to the Family Division. The E-TRO also eliminates the need for Family Division staff to enter this faxed information into FACTS.

Statewide implementation of the E-TRO will enhance safety for domestic violence victims by having a typed order immediately included on the Central Registry and thereby available to law enforcement statewide. It also will increase efficiency and convenience for complainants, police, judges, and court staff in processing domestic violence complaints and TROs.

As noted above, the Court earlier relaxed a number of Rules of Court for the pilot counties. In approving E-TRO for statewide implementation, the Court now has relaxed those several Rules – Rules 1:4-4(c), 4:42-1(e) and 5:7A(b) – on a statewide basis. Attached is a copy of the Court's June 5, 2007 rule relaxation order. As noted in the order, these rule relaxations are pending development and recommendation of conforming rule amendments by the appropriate Practice Committees.

FAMILY AUTOMATED CASE TRACKING SYSTEM

*e*TRO

Addendum for capturing full incident description text

Administrative Office of the Courts
Automated Trial Court Systems Unit
April 2008

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

TABLE OF CONTENTS

INTRODUCTION 1
ABOUT THE INCIDENT DESCRIPTION FIELD 1

VIEWING AND PROCESSING e-TROs 3
eTRO INCIDENT FIELD AND AUDIT COPY 8

COPY INCIDENT DESCRIPTION 9

PASTING INCIDENT DESCRIPTION INTO CASE COMMENTS 15

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

INTRODUCTION

ABOUT THE INCIDENT DESCRIPTION FIELD

This addendum is a guide to capturing the full text of an incident description from the e-TRO incident description field when the text exceeds 250 characters. The Complaints and TROs that electronically transfer to the Family Automated Case Tracking System (FACTS) may have up to 600 characters in the incident description field. The incident description field on FACTS can only accept 250 characters. When the cases are docketed, the text which exceeds 250 characters is lost due to truncating.

The full eTRO should be printed out (an audit copy) with all 600 characters on a PC laser printer by using the mainframe print function during the docketing process.

I

VIEWING AND PROCESSING *eTROs*

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

VIEWING AND PROCESSING OF eTROs

Those personnel in Superior Court doing FV intake via the eTRO function will docket cases using the FV establish case interface. The ability to view these electronically transferred TROs is available via the internet. The ability to cross-reference them in FACTS will ensure the accurate transmission of data from police agencies to the Superior Court of New Jersey.

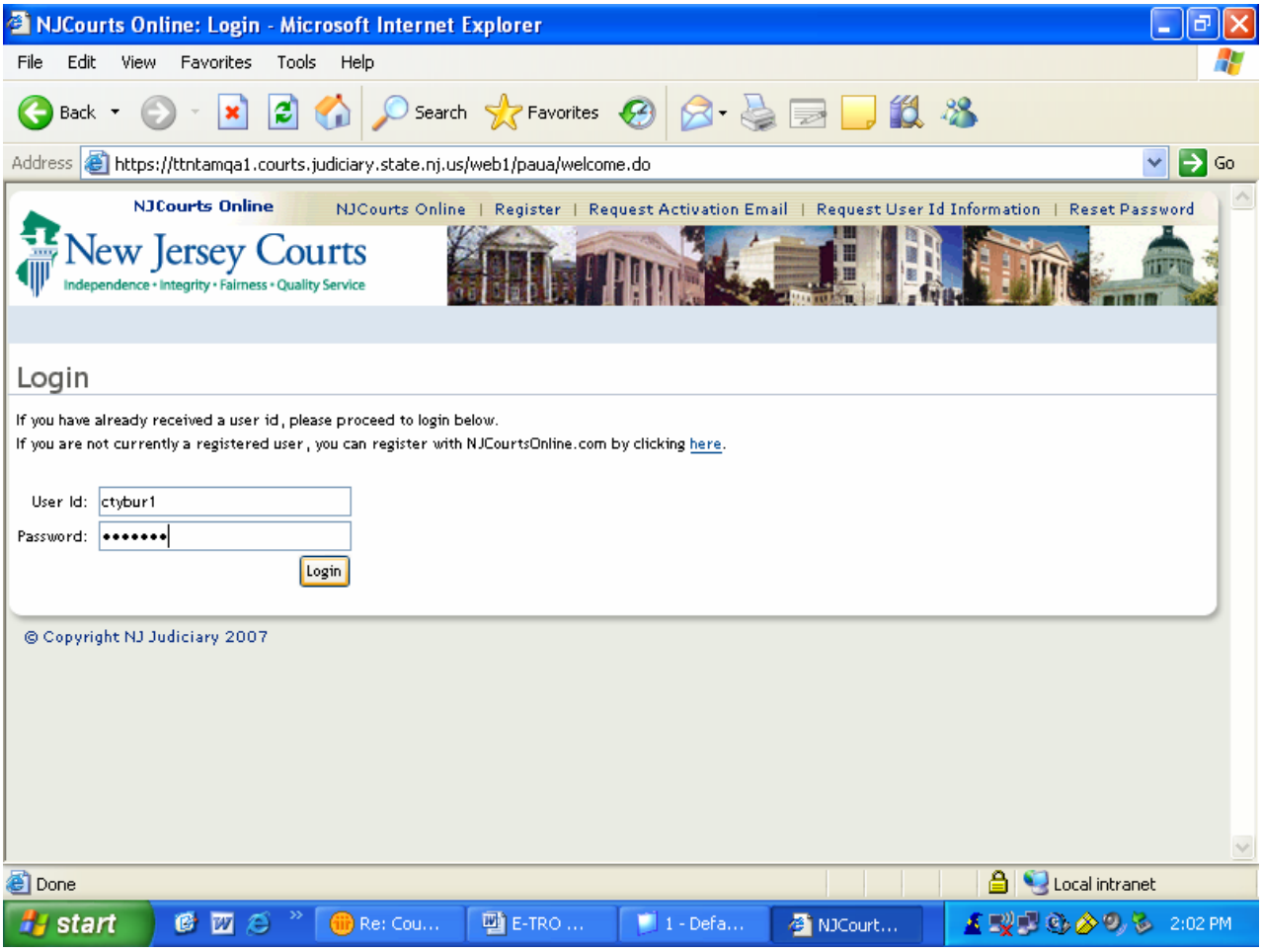
Data displayed includes a total list of transmitted eTROs within the county and then by issuing entities by municipality. Within each municipality list are individual case listings showing the issuing entity, the defendant and the plaintiff names, docket submission date, judge, service date and police case number if applicable.

To view eTROs issued, log on to the PAUA page on the internet to see those restraining orders that have been transmitted to Superior Court for docketing.

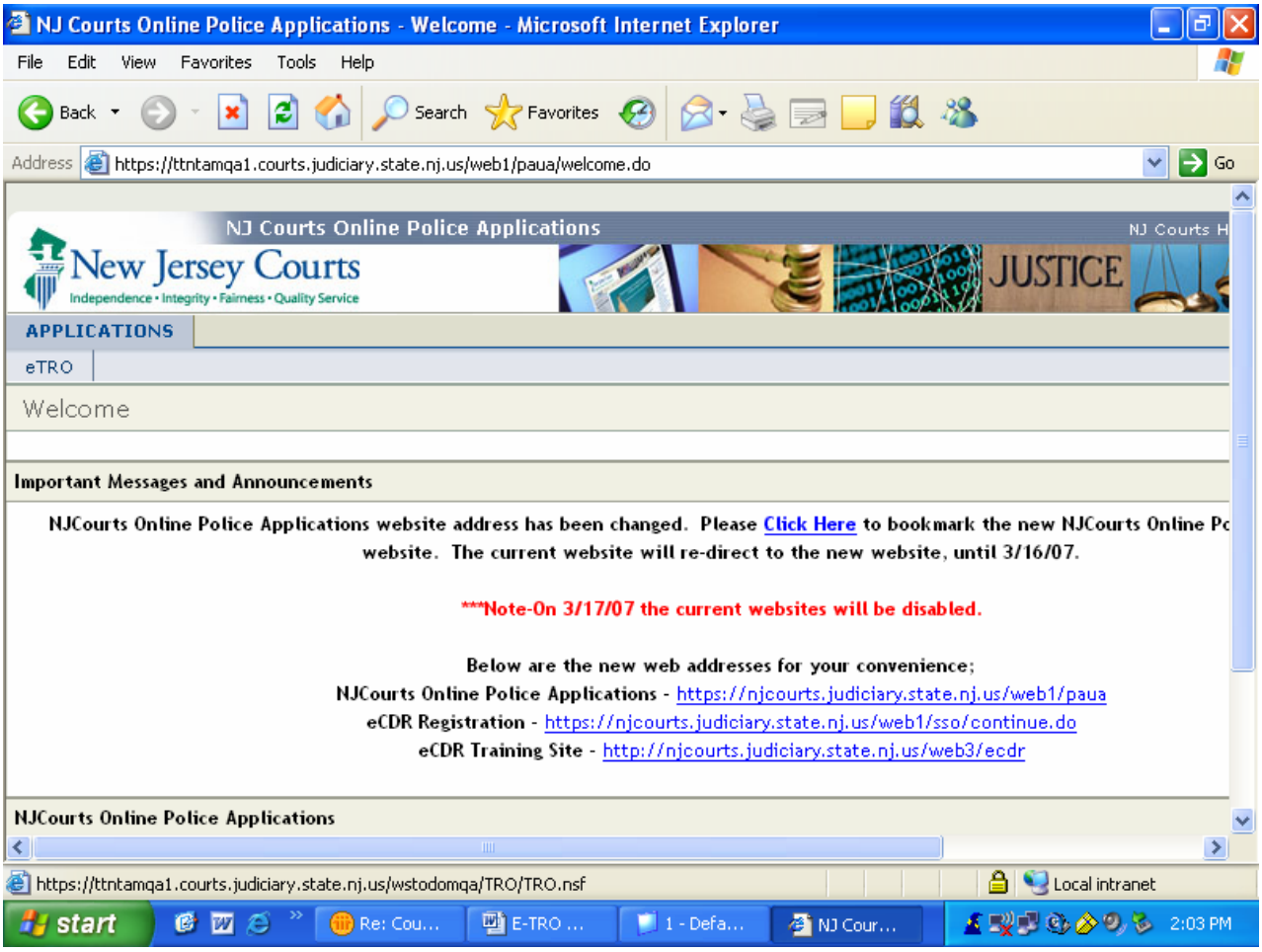
Prior to docketing each case, click on the case and open the complaint/tro and check the incident description field. If the incident description fills or exceeds half of the available area, highlight the text with your mouse and copy the text. It is suggested, but not required, that users paste the text into a new (blank) word document before docketing the case. Once the case is docketed, paste the full text of the incident description into the case comments in FACTS.

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

1) Log on to eTRO as you normally would.

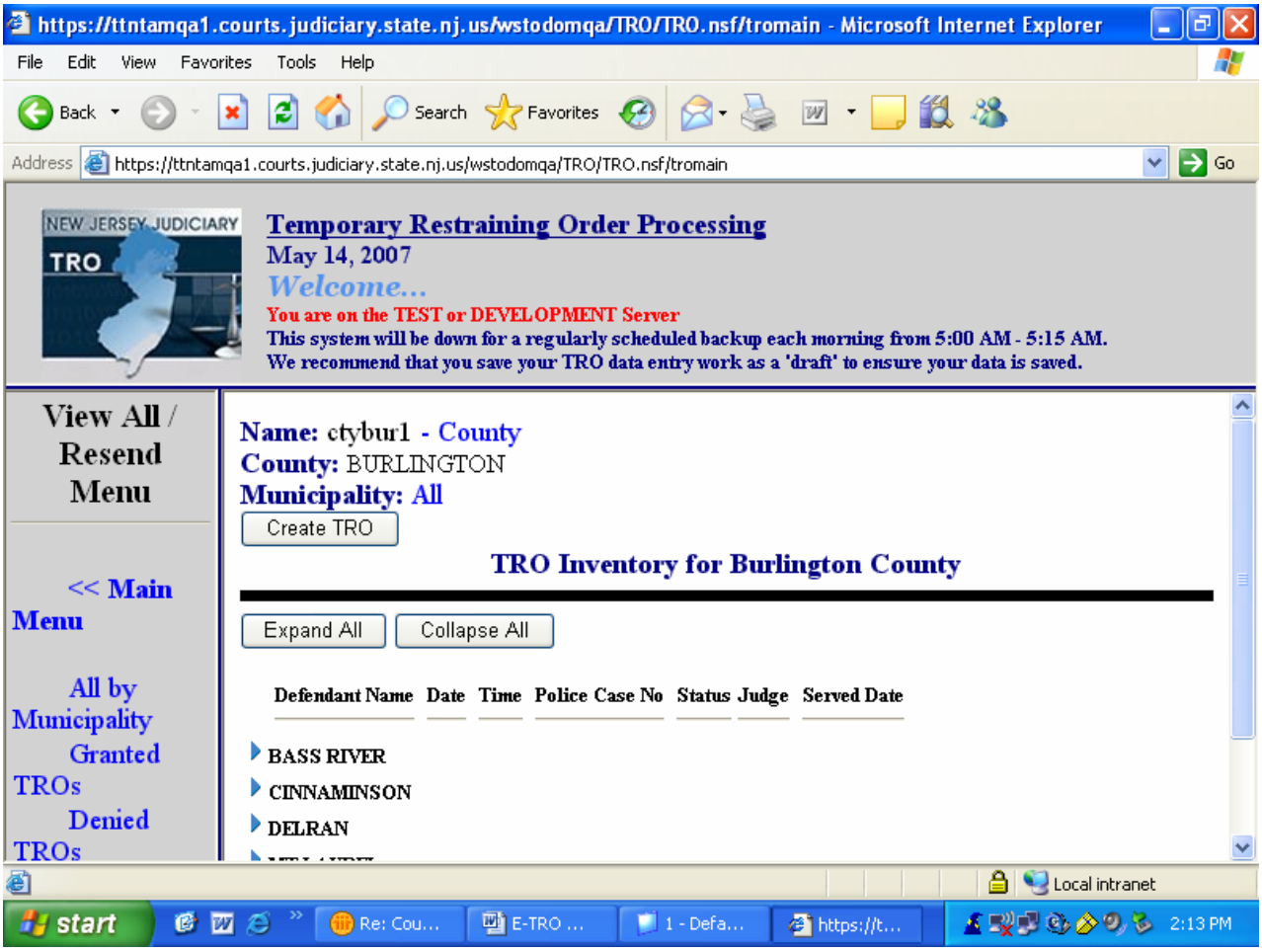


2) Click on the eTRO tab.



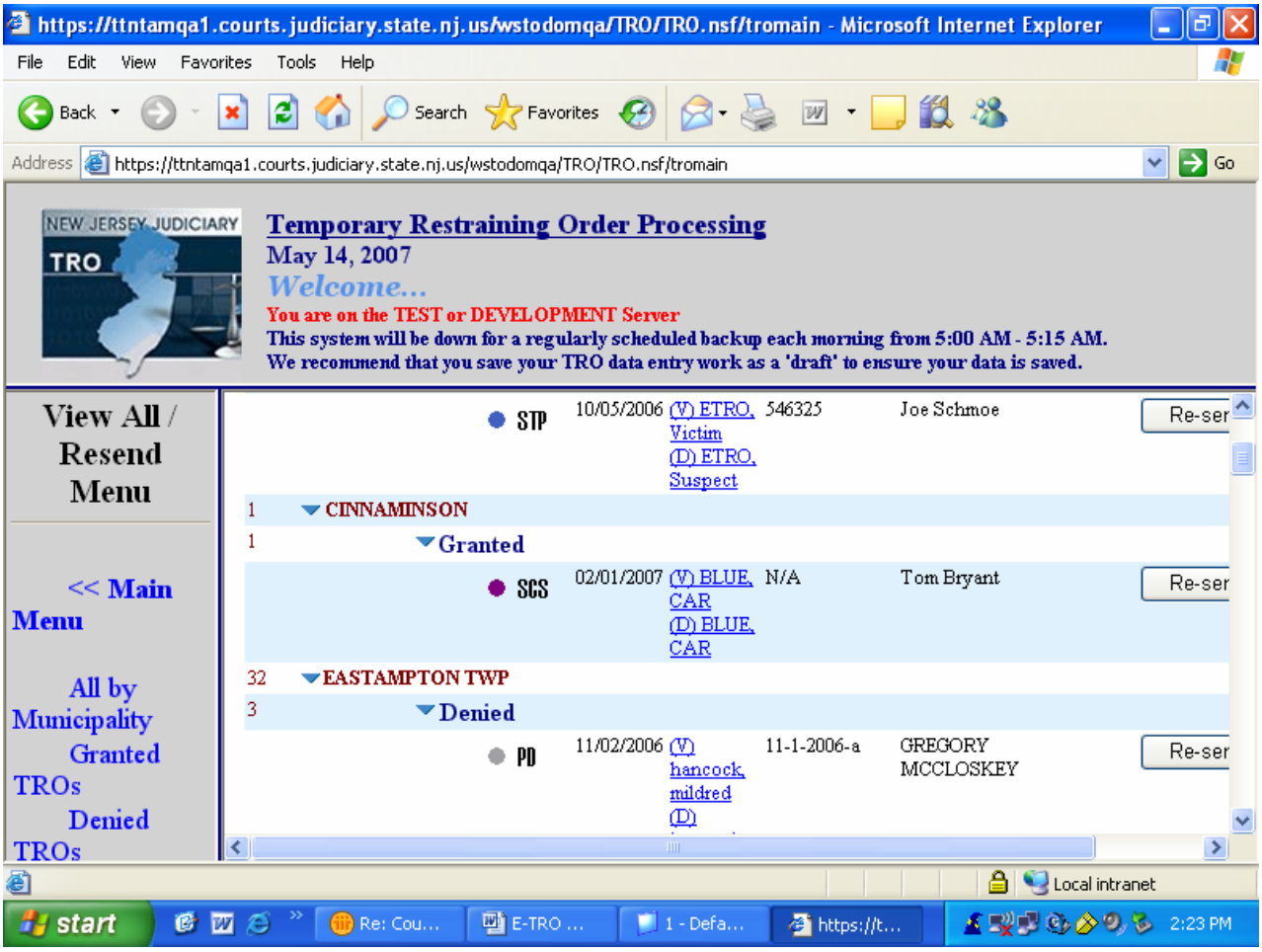
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

3) Use the “View All” menu item to display all TROs transmitted in your county.



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

4) Using the “Expand All” button will display all eTROs in your county.



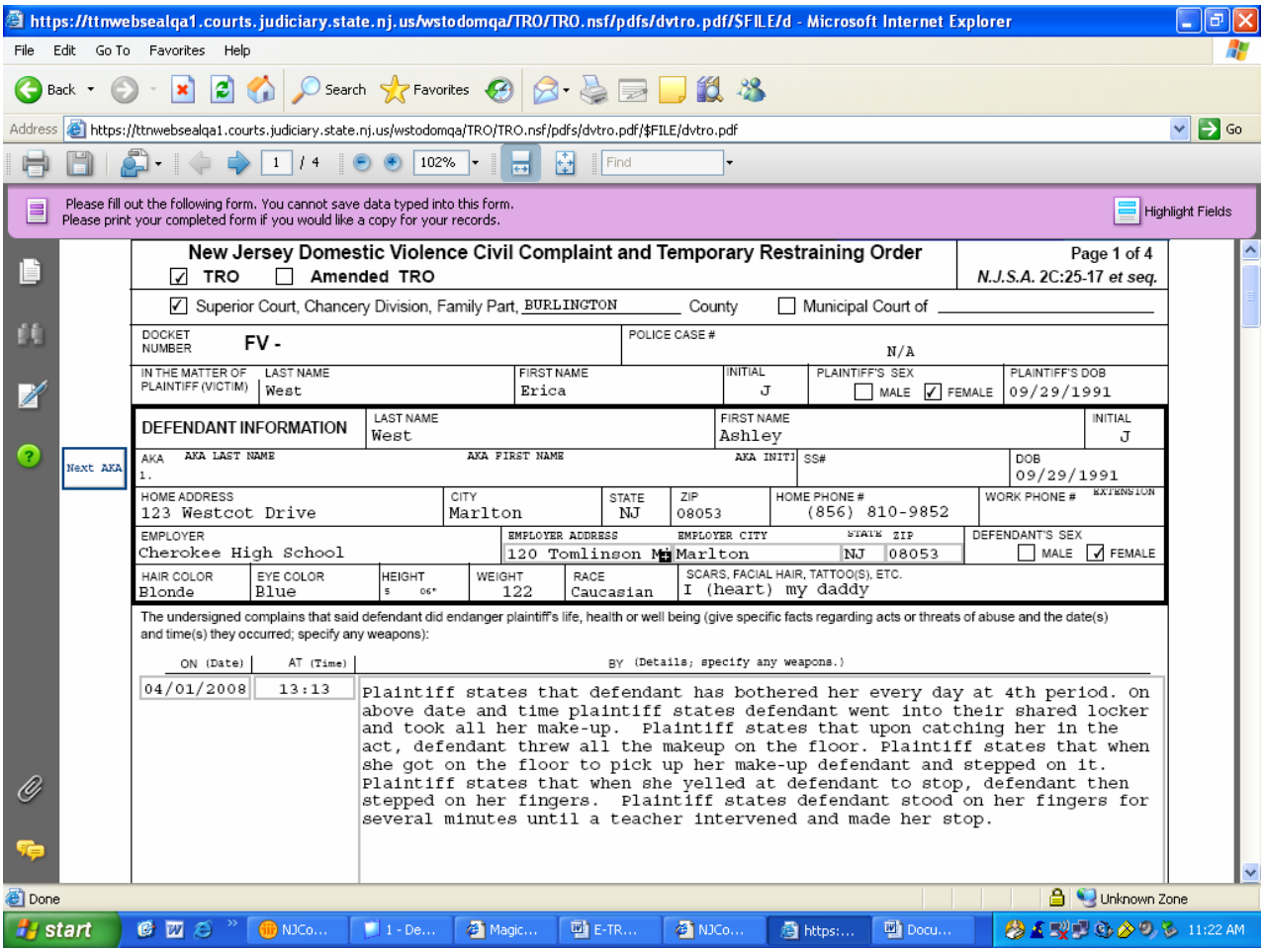
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

eTRO INCIDENT FIELD AND AUDIT COPY

An exact audit copy of the eTRO is needed.

5) Click on the party/case. This will launch Adobe Acrobat.
6) Once this is opened, look at the incident description field. If it fills half of the field or more, highlight the text and copy it onto your clipboard.
(See next section for detailed instructions on this process.)
7) You should then paste the text onto a blank word document to preserve it during the docking process.
(See next section for detailed instructions on this process.)
8) Click on a blank area of the document to remove highlighting.
9) Click on the printer icon and a hard copy of the e-TRO will print to your default printer.

This is the only chance to print an exact duplicate of the eTRO as issued by the agency entering the information.



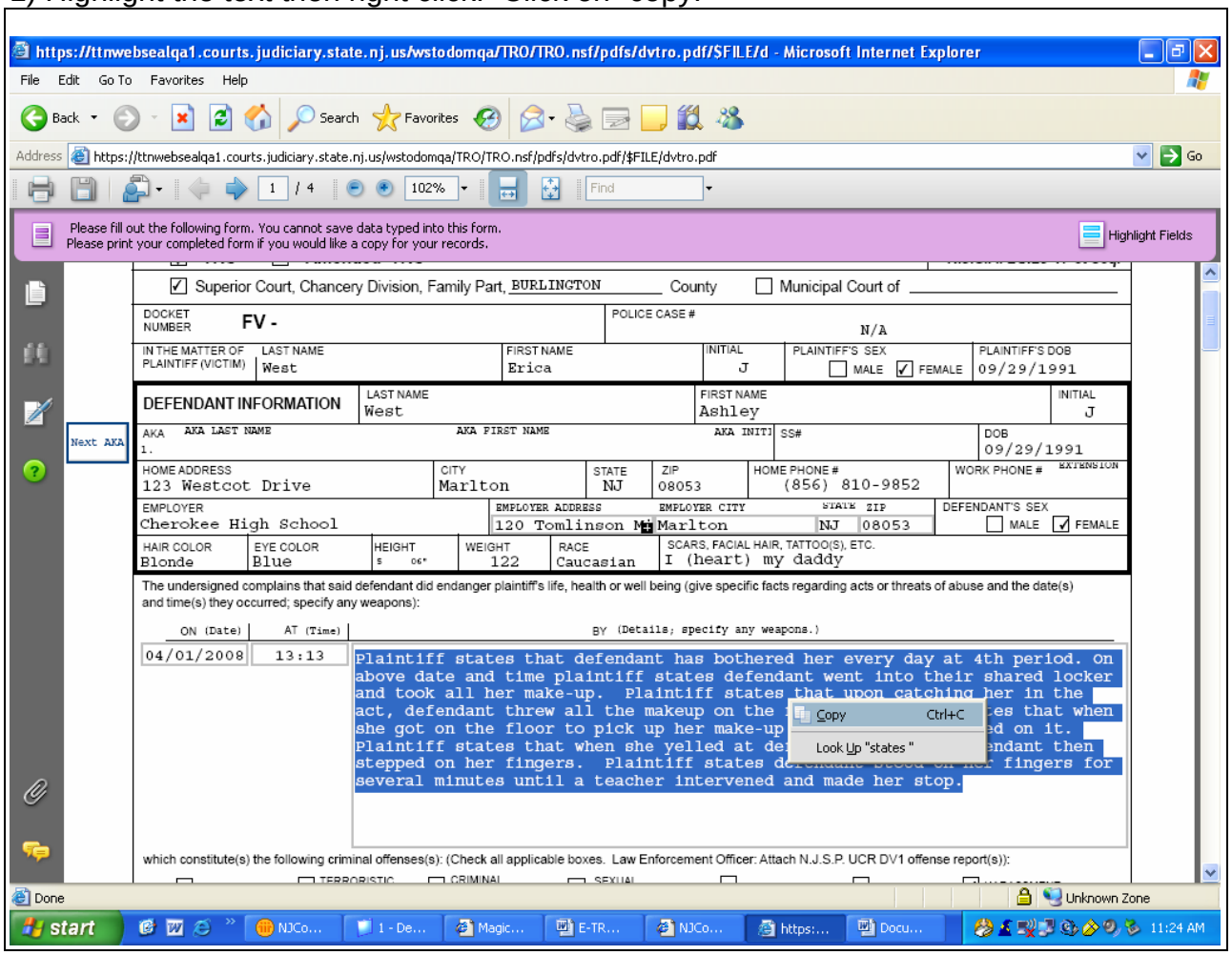
II

COPY AND PASTE

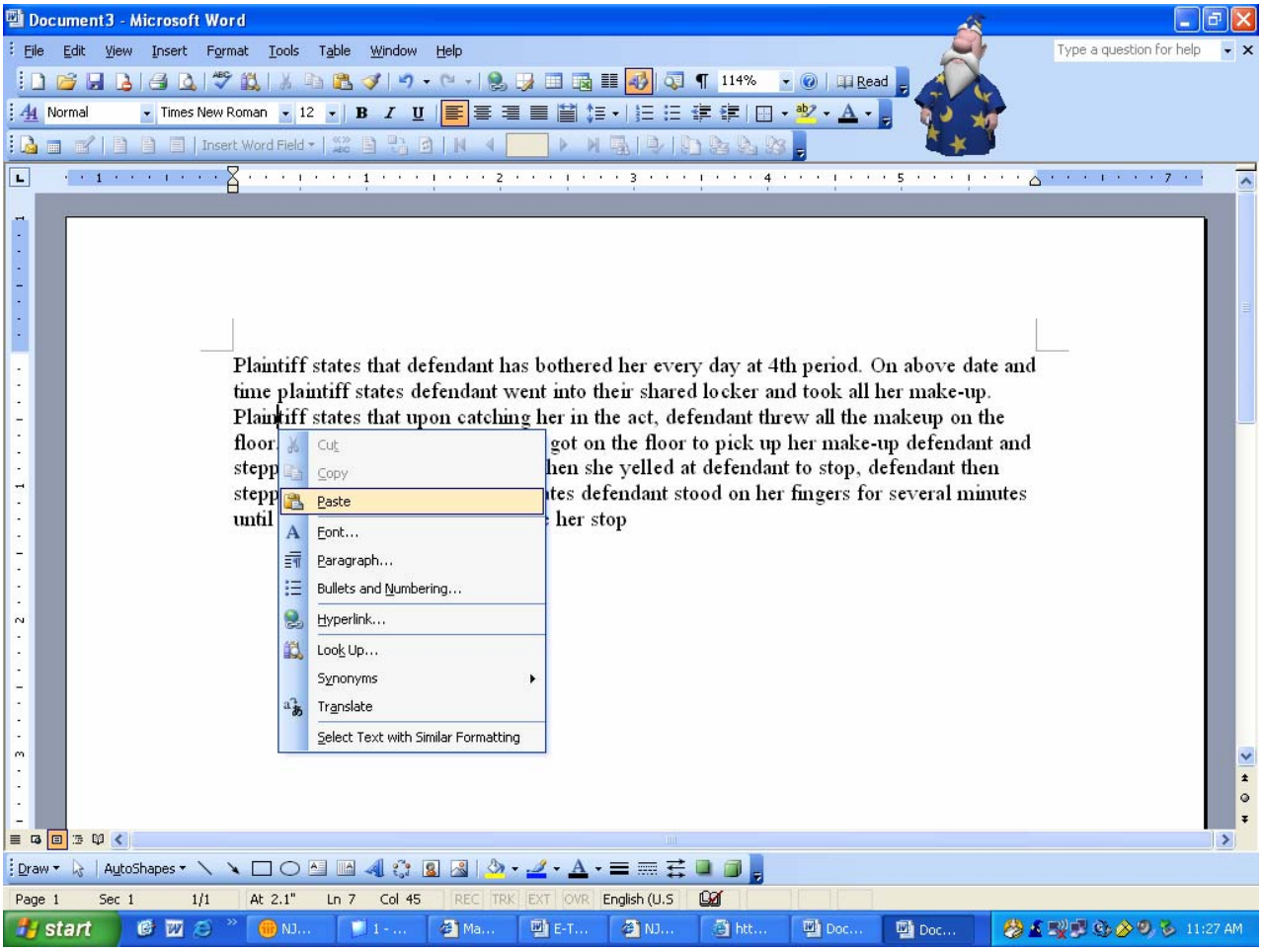
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

COPY

1) Highlight the text then right click. Click on “copy.”



2) Open a new (blank) word document and paste the text there for safe keeping during the docketing process.



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

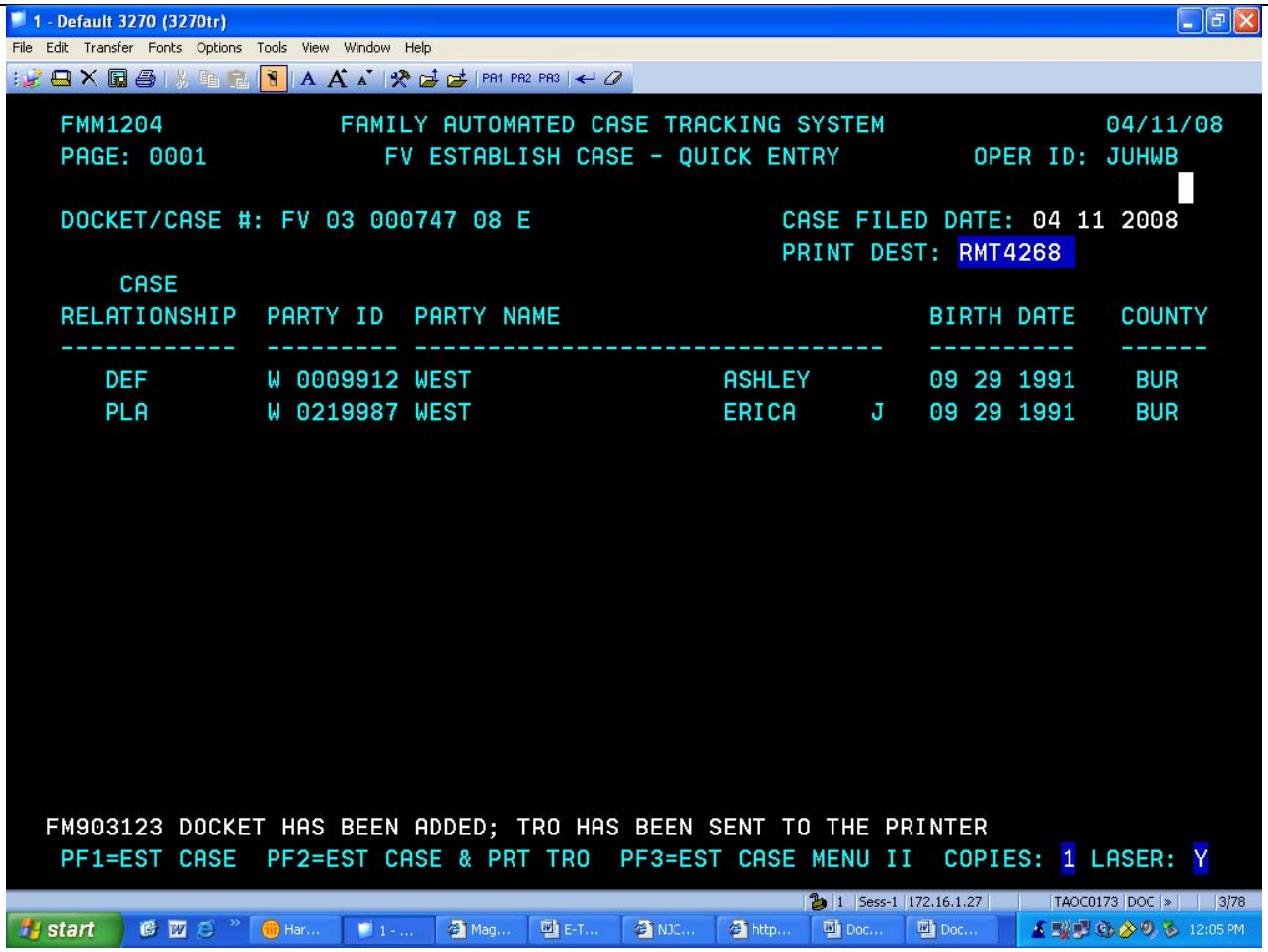
3) SELECT the party to be docketed on FACTS and DOCKET THE CASE.

```
FMM1201          FAMILY AUTOMATED CASE TRACKING SYSTEM                 04/11/08
PAGE: 0001          MUNICIPAL TRO LIST FOR BURLINGTON(TOTAL 5)          13:47
                                                                        PF

LAST NAME:                    FIRST NAME:       MIDDLE INIT:
-------------------------------------------------------------------------------  E
S  PARTY NAME                          BIRTH DATE     RACE      SEX   SERVICE DT  R
- ------------------------------  ----------  ----------- ---   ----------  R

  JONESBURY, JOHN                      01 07 1980  CAUCASIAN     M               E
  PHILLIPS, STEVE                      06 22 1957  CAUCASIAN     M
  BILLINGS, BILL                       09 03 1953  ALASKAN NAT   F               W
  LOUIS, SMITHERS                      10 15 1969  CAUCASIAN     M    10 12 2002
S WEST, ASHLEY                         09 29 1991  CAUCASIAN     F

FM906946 COUNTY/VENUE TRO SEARCH PERFORMED
PF1=FACTS PARTY SEARCH  PF2=ALL PARTIES  PF3=DROP  PF7=BACKWARD  PF8=FORWARD
      PF23=REFRESH   PF24=TRO SEARCH
```



FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

Upon successfully establishing a new FV case on FACTS, the docket number will be displayed on the screen and the mainframe copy of the eTRO should be printed based upon the selection of PF2.

It is important to note that this print request will be the last time a FACTS user will be able to print the eTRO with the data exactly matching the content as it appears on the original TRO. All subsequent Complaint and/or TRO print requests will reflect any data changes made by Superior Court, if any.

NOTE: This print option will not be in the Adobe format as an exact audit copy of the complaint and eTRO, but the data will mirror that document. If an exact copy in all respects to the eTRO is needed, refer to this function in the beginning section of this addendum.

At this point, the case has been docketed on FACTS.

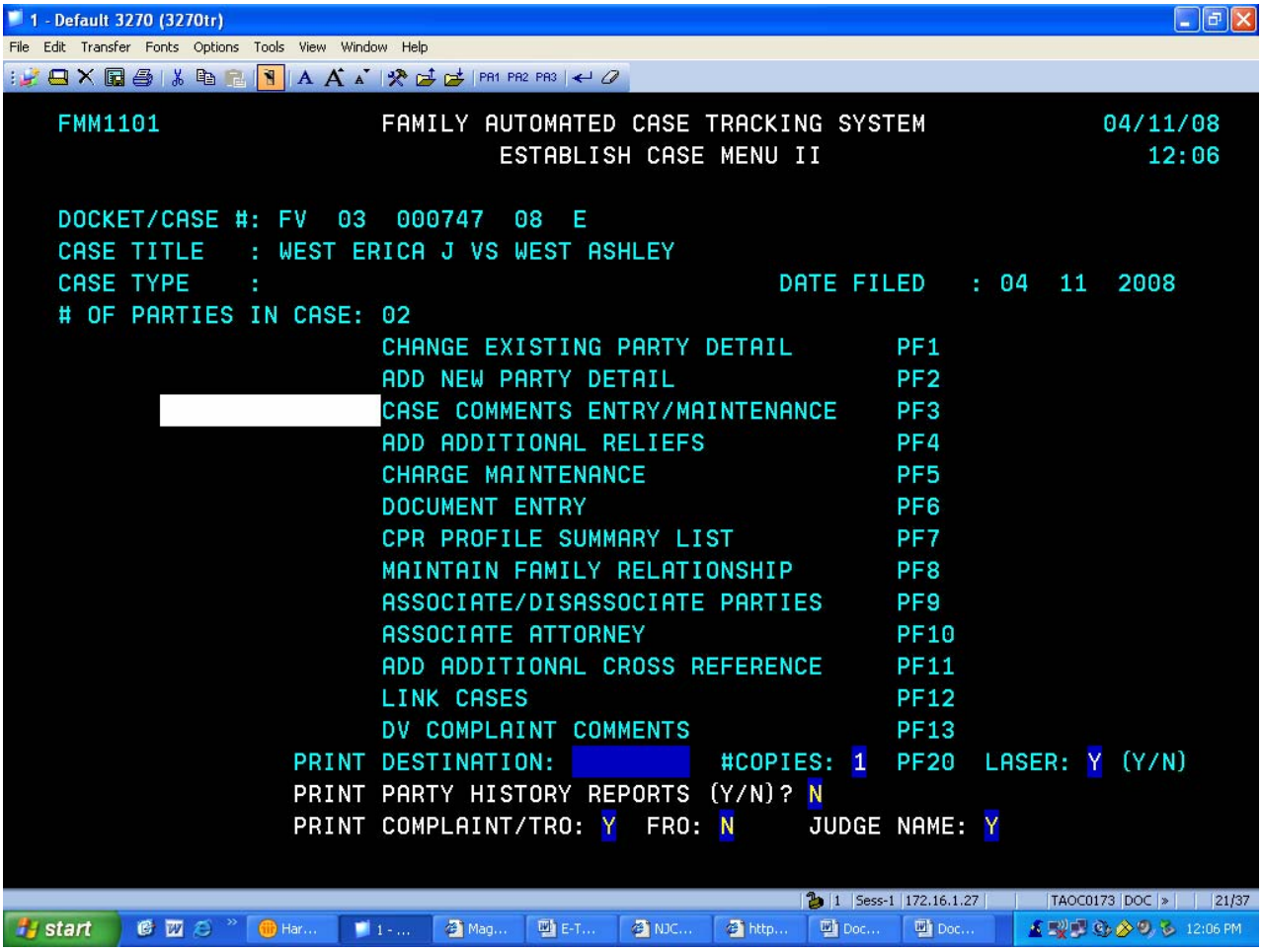
III

PASTING INCIDENT DESCRIPTION INTO CASE COMMENTS

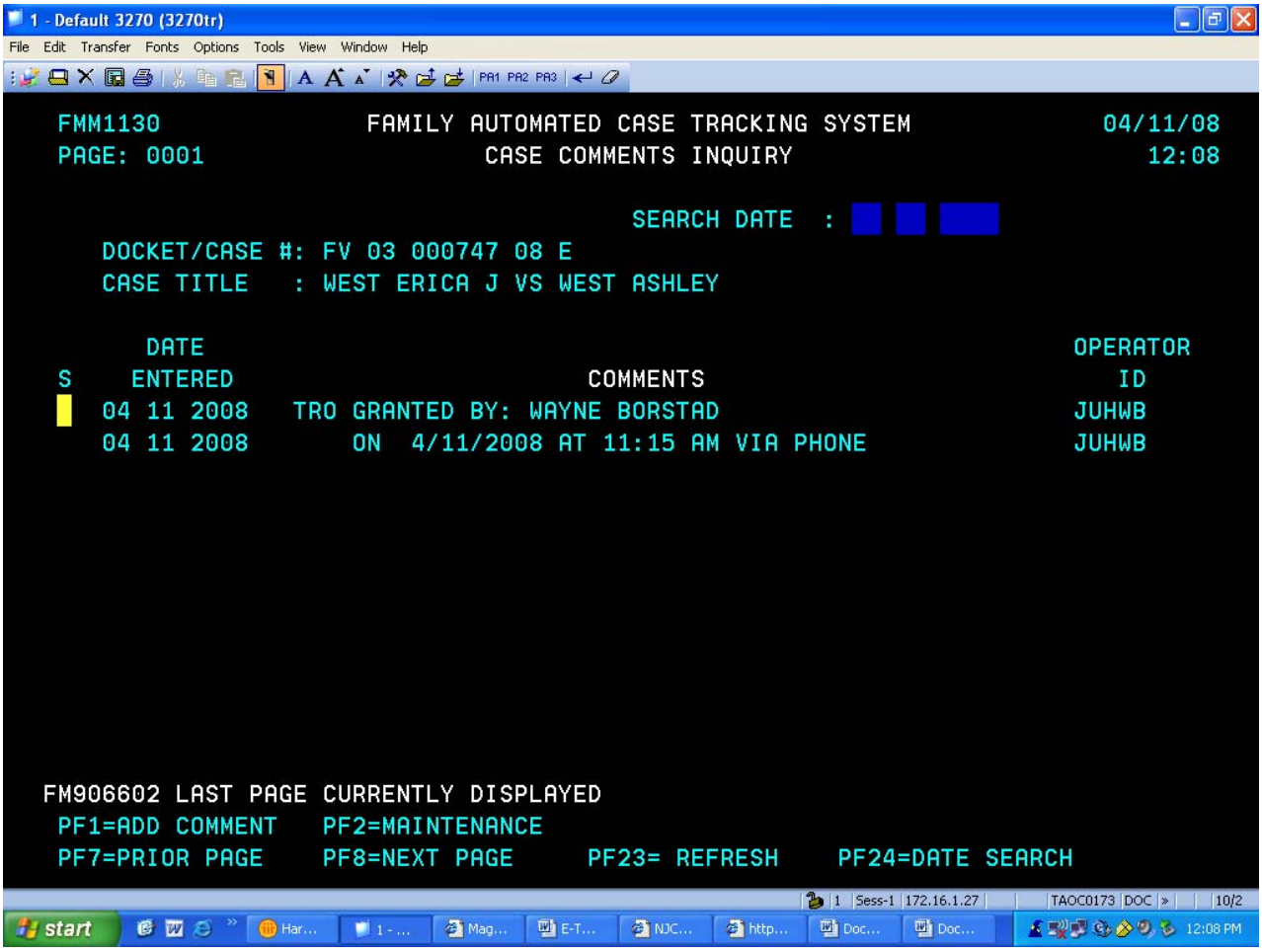
FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

PASTING TEXT

1) From ESTABLISH CASE MENU II SELECT PF3=CASE COMMENTS ENTRY/MAINTENANCE

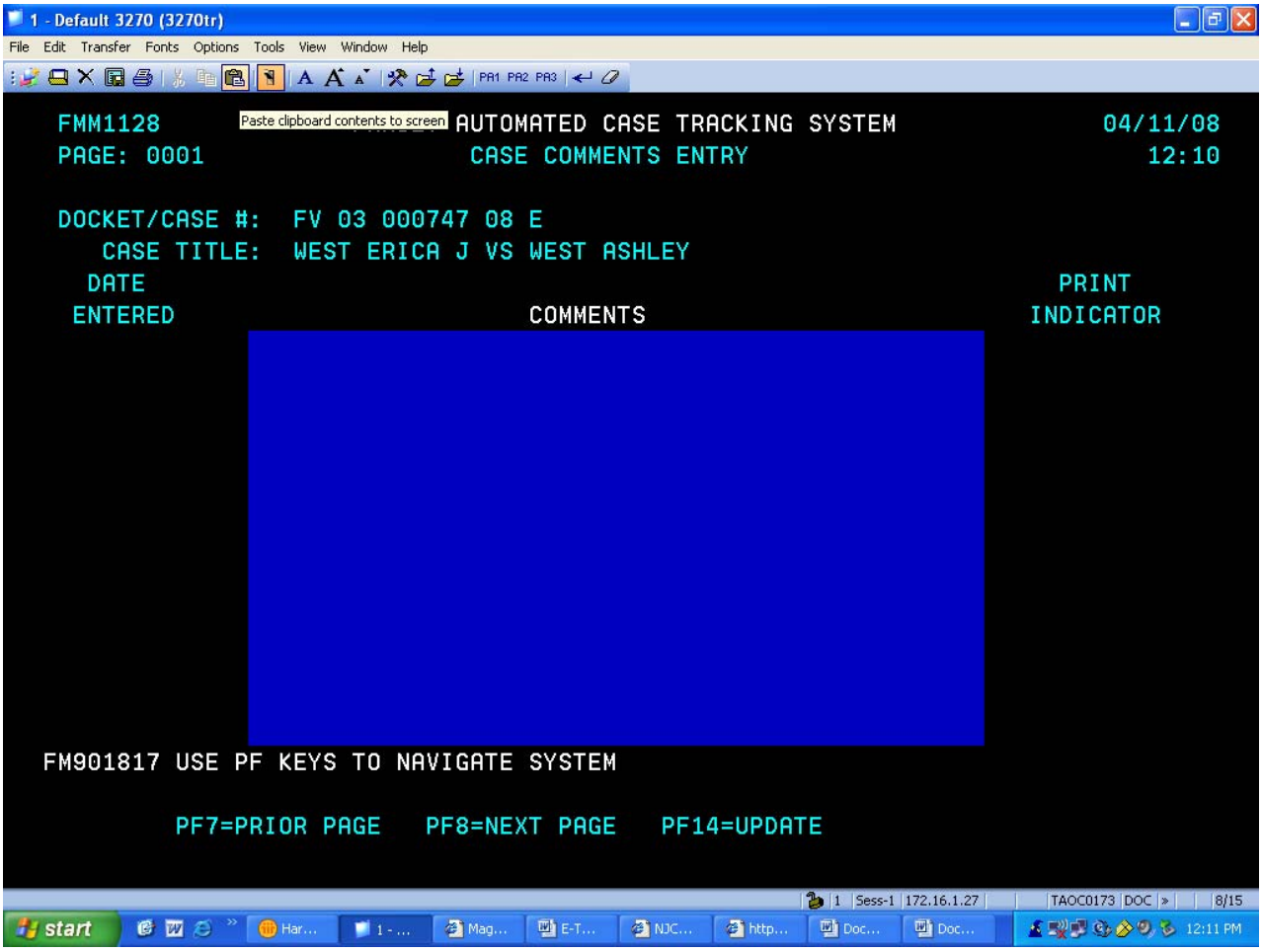


2) PRESS PF1=ADD COMMENT

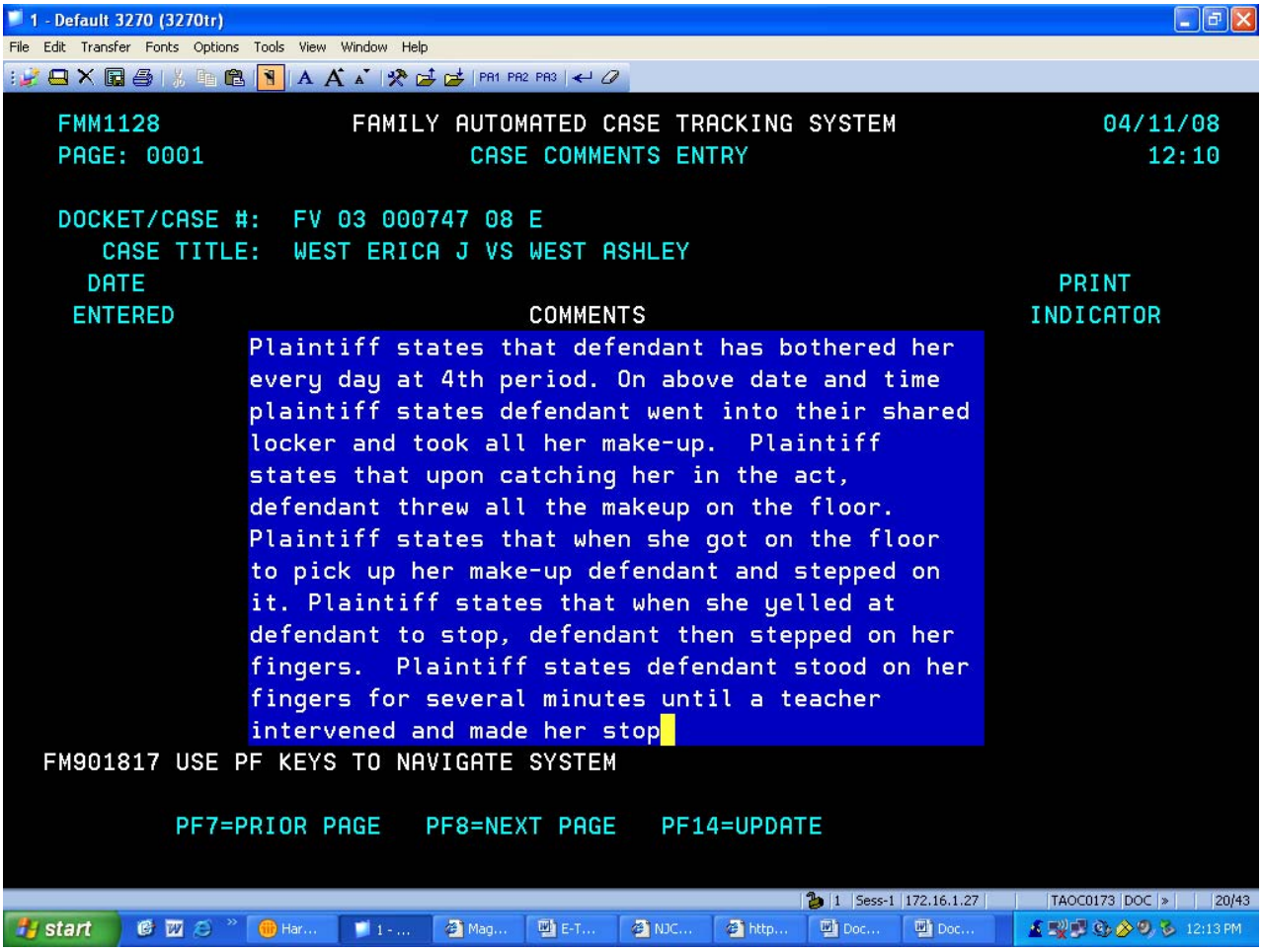


FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

3) Click on the clipboard icon on the top row and paste the comments into the field.



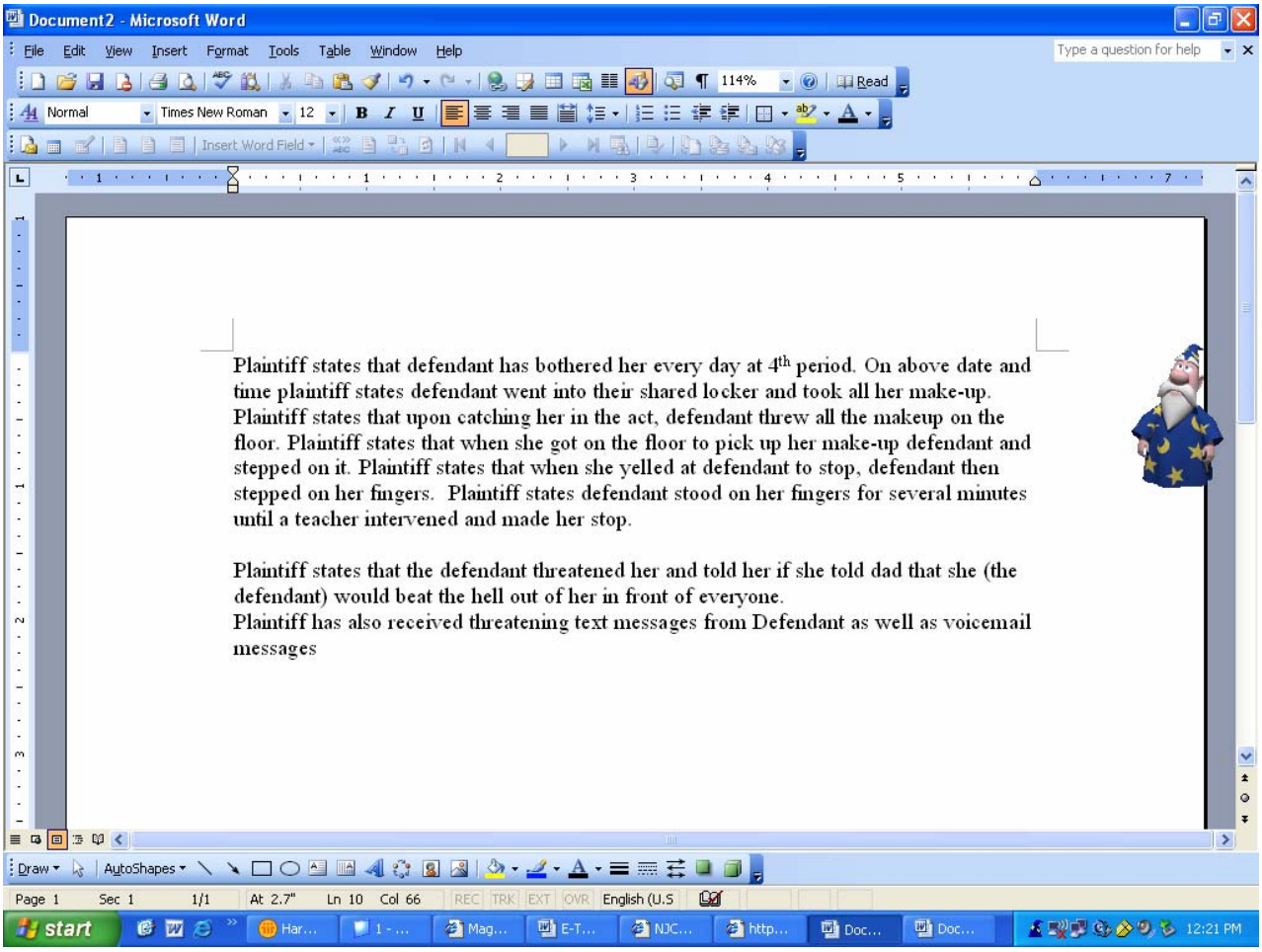
4) Text from clipboard will appear in case comments box.



5) Press PF14=UPDATE.

FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

If more than one page of text was copied onto clipboard, use will need to use Microsoft WORD or similar application to split text into separate paragraphs and paste each paragraph separately into CASE COMMENTS.

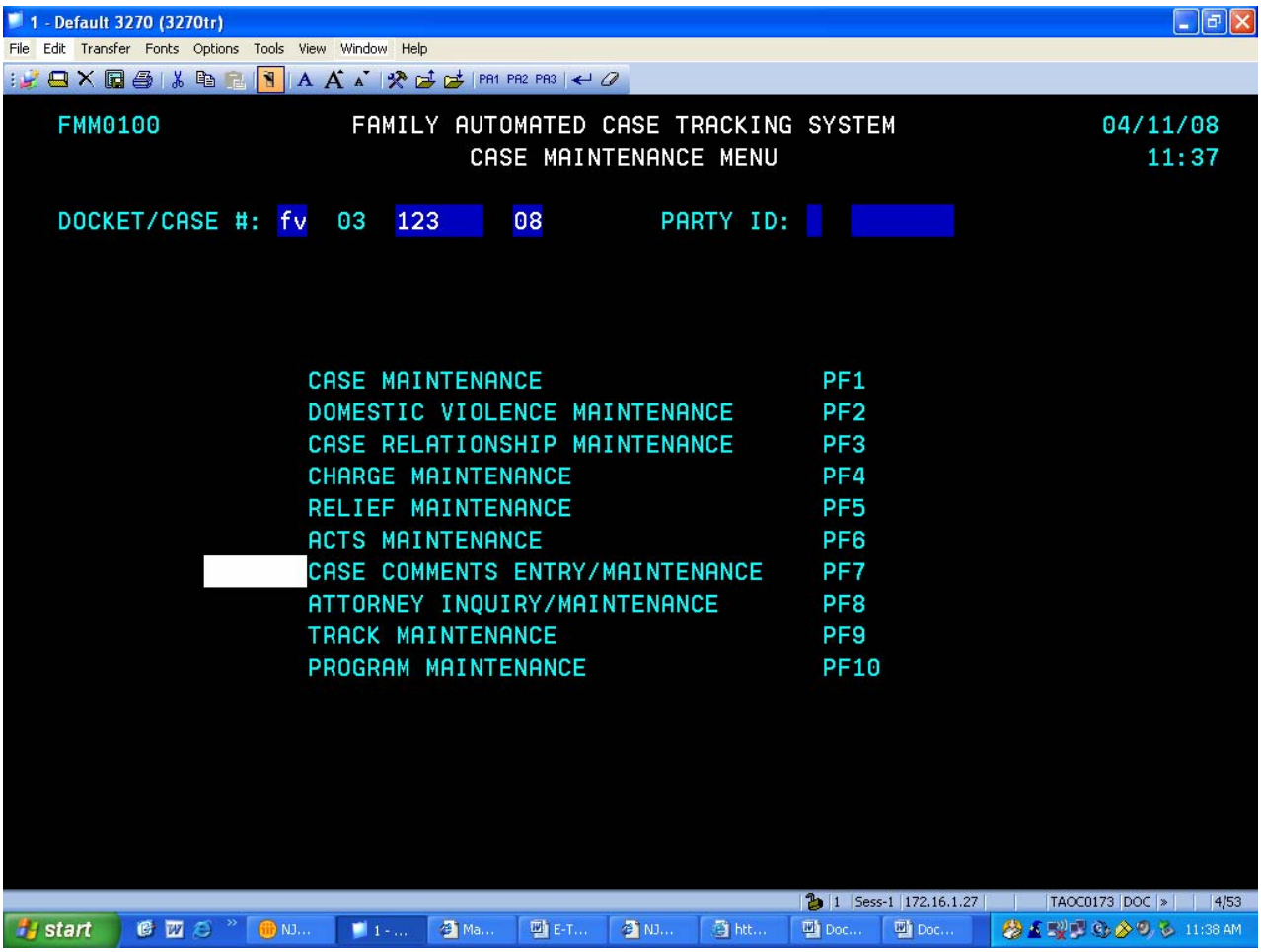


FAMILY AUTOMATED CASE TRACKING SYSTEM
e-TRO INCIDENT DESCRIPTION ADDENDUM

If user forgets to enter comments during docketing process, they can still be entered using case maintenance.

1) From the FACTS main menu **PRESS PF10=CASE MAINTENANCE**.

2) From CASE MAINTENANCE **PRESS PF7=CASE COMMENTS ENTRY/MAINTENANCE**.



NOTE;

THIS CUT AND PASTE METHOD SHOULD ALSO BE EMPLOYED IF THE TEXT IN PRIOR HISTORY FIELD MEETS OR EXCEEDS HALF OF THE AVAILABLE AREA.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.:FV -____ -_____

_____:		
Plaintiff	:	ORDER CONFIRMING ISSUANCE OF DOMESTIC VIOLENCE TEMPORARY
Vs.	:	RESTRAINING ORDER AND SUMMARY
_____:		OF SWORN ORAL TESTIMONY PURSUANT
:		TO RULE 5:7A(B)
Defendant	:	

SWORN ORAL TESTIMONY OF APPLICANT COMMUNICATED:
_____In person _____Radio _____Telephone _____Other (explain)

LAW ENFORCEMENT OFFICER ASSISTING APPLICANT
Name, Department, Phone number _____

SUMMARY OF SWORN TESTIMONY:

After hearing sworn oral testimony of the Plaintiff and finding that an act of domestic violence has been committed by defendant and all other statutory requirements having been satisfied, this court authorizes the issuance of a duplicate original Temporary Restraining Order on _____ day of _____ , 20_____ , _____(a.m.) (p.m.). The above Summary and this Confirmatory Order have been prepared by me contemporaneously with the sworn oral application and issuance of the duplicate Temporary Restraining Order;

IT IS HEREBY ORDERED that this Order be attached to the original complaint and TRO and shall become a part thereof.

_____
, J.M.C.
Judge of the Municipal Court

Revised 3/26/04 AOC

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.: FV-___-_____

_____	:	
Plaintiff	:	APPLICATION FOR APPEAL
	:	AND ORDER
Vs.	:	
	:	
_____	:	
Defendant	:	

NAME:
ADDRESS:

PHONE NUMBERS (HOME AND WORK):

DATE OF BIRTH:
SOCIAL SECURITY NUMBER:
EMERGENCY CONTACT (NAME AND PHONE NUMBER):

CERTIFICATION AND REQUEST FOR APPEAL

I am the **Plaintiff( ) or Defendant ( )** in the above captioned matter and make this request to Appeal the entry of an *ex parte* Temporary Restraining Order entered on _____ in **Superior Court ( ) OR Municipal Court ( )**.

I am asking for this Appeal for the following reasons (use additional paper if necessary):

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____

Date ***Signature***

Name (print):

ORDER OF THE COURT

The Court, having taken notice of Plaintiff's ( ) OR Defendant's ( ) request for an appeal of a Temporary Restraining Order entered on _____; and

( ) Plaintiff having been advised of this appeal; or

( ) Defendant having been advised of this appeal; or

( ) No notice having been given to the other party; and

IT IS HEREBY ORDERED ON this _____ day of _____,

that the request for Appeal of the Temporary Restraining Order is:

( ) Denied. Final Hearing will proceed as originally scheduled.

( ) GRANTED. A hearing shall be held on _____, 20____ for the following:

( ) Final Hearing.

( ) Limited purpose of:

( ) OTHER RELIEF:

( ) THE REASONS FOR ENTRY OF THIS ORDER:

_____

, J.S.C.

RETURN OF SERVICE:

( ) Defendant was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

( ) Plaintiff was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

Print Form Clear Form

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF
DOCKET NO.: FV-__ - _____ - __

_____	:	
Plaintiff	:	
	:	
Vs.	:	CONTINUANCE ORDER
	:	
_____	:	
Defendant	:	

This matter having been opened to Court for a Final Hearing:

IT IS HEREBY ORDERED ON this _____ day of _____, that all restraints previously ordered in the Temporary Restraining Order dated _____ (attached) **SHALL CONTINUE IN FULL FORCE AND EFFECT. THE TRO MUST BE ATTACHED TO THIS CONTINUANCE ORDER FOR SERVICE.**

IT IS FURTHER ORDERED:

☐ Since Defendant was not served, this matter is continued until Defendant is served. When Defendant is served, return of service must be sent to Family Division so a Final Hearing can be scheduled.

☐ All parties shall appear for a hearing on _____ at _____am/pm in Courtroom _____ . This Order shall serve as Notice to Appear.

☐ This Order shall be served by personal service on ☐ **Plaintiff** / ☐ **Defendant**.
☐ The parties shall advise the Court of any change in address or phone number.

_____
, J.S.C.

RETURN OF SERVICE:
☐ **Defendant** was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

☐ **Plaintiff** was given a copy of this Order by:

_____	_____	_____
print name	time and date	signature/ badge number/ dept

STATE OF NEW JERSEY

PREVENTION OF DOMESTIC VIOLENCE ACT

_____ County, Superior Court, Chancery Division, Family Part

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order**

DOCKET NUMBER					
FV -					
IN THE MATTER OF: PLAINTIFF					PLAINTIFF'S DATE OF BIRTH
DEFENDANT	DEFENDANT'S SEX / RACE	DEFENDANT'S DATE OF BIRTH	HT WT	DEFENDANT'S SOCIAL SECURITY NO.	
DEFENDANT'S HOME ADDRESS		SCARS, FACIAL HAIR, ETC. HAIR COLOR EYE COLOR		DEFENDANT'S HOME TELEPHONE NUMBER	
DEFENDANT'S WORK ADDRESS				DEFENDANT'S WORK TELEPHONE NUMBER	

The Court having considered plaintiff's Complaint dated _____ seeking an ORDER under the Prevention of Domestic Violence Act, having established jurisdiction over the subject matter and the parties pursuant to *N.J.S.A.* 2C:25-17 et seq., and having found that defendant has commited an act of domestic violence, and all other statutory requirements having been satisfied:

It is on this _____ day of _____, 20 _____, ORDERED that:

SOUGHT GRANTED **PART I RELIEF**

DEFENDANT:

1. ☐ ☐ You are prohibited against future acts of domestic violence.

2. ☐ ☐ You are barred from the following locations(s):
   ☐ RESIDENCE(S) OF PLAINTIFF ☐ PLACE(S) OF EMPLOYMENT OF PLAINTIFF
   Other _____

3. You are prohibited from having **any** oral, written, personal, electronic, or other form of contact or communication with:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (List names & relationship to plaintiff): _____

4. You are prohibited from making or causing anyone else to make harassing communications to:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (Same as above or list names & relationship to plaintiff:): _____

5. You are prohibited from stalking, following, or threatening to harm, to stalk or to follow:
   ☐ ☐ Plaintiff
   ☐ ☐ Others (Same as above or list names & relationship to plaintiff): _____

6. You must pay emergent monetary relief (describe amount and method):
   ☐ ☐ Plaintiff: _____
   ☐ ☐ Dependents: _____

7. ☐ ☐ Other appropriate relief:
   Defendant (including substance abuse, mental health or other evaluations and subsequent treatment): _____

8. ☐ ☐ Psychiatric evaluation: _____

9. ☐ ☐ Intake monitoring of conditions and restraints (specify): _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

SOUGHT GRANTED **PART I RELIEF** continued

DEFENDANT:

10. ☐ ☐ **PROHIBITIONS AGAINST POSSESSION OF WEAPONS**: You are prohibited from possessing **any and all firearms or other weapons** and must immediately surrender these firearms, weapons, permits to carry, applications to purchase firearms and firearms purchaser ID card to the officer serviing this court Order. Failure to do so can result in your arrest and incarceration.
Other Weapon(s) (describe): _____

PLAINTIFF:

11. ☐ ☐ You are granted exclusive possession of (residence or alternate housing, list address only if specifically known to defendant):

_____

_____

12. ☐ ☐ You are granted temporary custody of (specify name(s)): _____

_____

_____

13. Other appropriate relief:
☐ ☐ Plaintiff (describe): _____

_____

☐ ☐ Child(ren) (describe): _____

_____

LAW ENFORCEMENT OFFICER

You are to accompany to scene, residence, shared place of business, other (indicate address, time, duration & purpose):

☐ ☐ Plaintiff: _____

_____

☐ ☐ Defendant: _____

_____

WARRANT TO SEARCH FOR AND TO SEIZE WEAPONS FOR SAFEKEEPING:

☐ **To any law enforcement officer having jurisdiction -** this Order shall serve as a warrant to search for and seize any issued permit to carry a firearm, application to purchase a firearm and firearms purchaser identification card issued to the defendant and the following firearm(s) or weapon(s): _____

_____

1. **You are hereby commanded to** search the premises for the above described weapons and/or permits to carry a firearm, application to purchase a firearm and firearms purchaser ID card and to serve a copy of this Order upon the person at the premises or location described as: _____

_____

2. **You are hereby ordered** in the event you seize any of the above described weapons, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person to have a copy of this Order together with such receipt in or upon the said structure from which the property was taken.

3. **You are authorized** to execute this Order immediately or as soon thereafter as is practicable.

☐ ANYTIME ☐ OTHER: _____

4. **You are further ordered,** after the execution of this Order, to promptly provide the Court with a written inventory of the property seized per this Order.

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

PREVENTION OF DOMESTIC VIOLENCE ACT

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

SOUGHT GRANTED **PART II RELIEF**

DEFENDANT:

1. ☐ ☐ You acknowledge parentage of: _____
2. ☐ ☐ You must submit to genetic testing: _____
3. ☐ ☐ No parenting time (visitation) until further order: _____
4. ☐ ☐ Parenting time (visitation) pursuant to (prior FV, FM, or FD Order) # _____ is suspended, a hearing is scheduled for: _____
5. ☐ ☐ Parenting time (visitation) is ordered as follows (specify drop-off and pick-up times and locations, participation of or supervision by designated third party): _____
6. ☐ ☐ Risk assessment ordered (specify by whom): _____ Return Date: _____
7. You must provide compensation as follows: (Appropriate notices have been attached as part of this Order):
   - ☐ ☐ Emergent support - plaintiff: _____
   - ☐ ☐ Emergent support - dependent(s): _____
   - ☐ Interim support - plaintiff: _____
   - ☐ Interim support - dependent(s): _____
   - ☐ ☐ Ongoing plaintiff support: _____
     Paid via income withholding through the _____ Probation Div. _____
     Other: _____
   - ☐ ☐ Ongoing child support: _____
     Paid via income withholding through the _____ Probation Div. _____
     Other: _____
8. ☐ ☐ Medical coverage for plaintiff: _____
9. ☐ ☐ Medical coverage for dependent(s): _____
10. ☐ ☐ Compensatory damages to plaintiff: _____
11. ☐ ☐ Punitive damages (describe): _____
12. ☐ ☐ You must pay compensation to (specify third party and/or VCCA, and describe): _____
13. ☐ ☐ You must participate in a batterers' intervention program (specify): _____
14. ☐ ☐ You must make ☐ rent ☐ mortgage payments (specify amount(s), due date(s) and payment manner): _____
15. ☐ ☐ Defendant is granted temporary possession of the following personal property (describe): _____

☐ You must pay a civil penalty of $ _____ ($50.00 to $500.00 per *N.J.S.A.* 2C:25-29) to: _____ within _____ days. You will be charged a $2.00 transaction fee for each payment or partial payment that you make.

☐ Waived due to extreme financial hardship because: _____

SOUGHT GRANTED

PLAINTIFF:

16. ☐ ☐ Plaintiff is granted temporary possession of the following personal property (describe) _____

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to *N.J.S. A.* 2C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. **Only a court can modify any of the terms or conditions of this court order.**

PREVENTION OF DOMESTIC VIOLENCE ACT

☐ **Final Restraining Order (FRO)** ☐ **Amended Final Restraining Order** **FV -**

COMMENTS: _____

_____

_____

_____

This Order is to become effective immediately and shall remain in effect until further Order of the Superior Court, Chancery Division, Family Part.

_____ _____

DATE HONORABLE

ALL LAW ENFORCEMENT OFFICERS WILL SERVE AND FULLY ENFORCE THIS ORDER.

THE PLAINTIFF SHALL NOT BE ARRESTED FOR A VIOLATION OF THIS RESTRAINING ORDER.

- **THIS FINAL RESTRAINING ORDER WAS ISSUED AFTER DEFENDANT WAS PROVIDED WITH NOTICE AND THE OPPORTUNITY TO BE HEARD AND SHOULD BE GIVEN FULL FAITH AND CREDIT PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT OF 1991, SEC. 40221, CODIFIED AT 18 U.S.C.A. S2265(A) AND S2266.**
- **IF ORDERED, SUFFICIENT GROUNDS HAVE BEEN FOUND BY THIS COURT FOR THE SEARCH AND SEIZURE OF FIREARMS AND OTHER WEAPONS AS INDICATED IN THIS COURT ORDER.**
- **DEFENDANT SHALL NOT BE PERMITTED TO POSSESS ANY WEAPON, ID CARD OR PURCHASE PERMIT WHILE THIS ORDER IS IN EFFECT, OR FOR TWO YEARS, WHICHEVER IS GREATER.**

NOTICE TO PLAINTIFF AND DEFENDANT

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Family Court. The named defendant **cannot** have any contact with the plaintiff without permission of the court. If you wish to change the terms of this Order and/or you resume living together, you **must** appear before this court for a rehearing.

NOTICE TO DEFENDANT

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, application or identification cards may constitute criminal contempt pursuant to *N.J.S.A.* 2C:29-9(b), and may also constitute violations of other state and federal laws which can result in your arrest and/or criminal prosecution. This may result in a jail sentence.

RETURN OF SERVICE

☐ Plaintiff was given a copy of the Order by:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ I hereby certify that I served the within Order by delivering a copy to the defendant personally:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ I hereby certify that I served the within Order by use of substituted service as follows:

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

☐ Defendant could not be served (explain): _____

_____

_____

_____ ; _____ ; _____

PRINT NAME TIME AND DATE SIGNATURE / BADGE NO. / DEPT.

Defendant hereby acknowledges receipt of the Restraining Order. I understand that pursuant to this court Order, I am not to have any contact with the named plaintiff even if plaintiff agrees to the contact or invites me onto the premises and that I can be arrested and prosecuted if I violate this Order. I understand that pursuant to *N.J.S.A.* 53:1-15 any person against whom a Final Restraining Order in a domestic violence matter has been entered shall submit to fingerprinting and other identification procedures as required by law and **I HAVE BEEN ADVISED THAT I MUST SUBMIT TO FINGERPRINTING AND OTHER IDENTIFICATION PROCEDURES.**

SIGNATURE: _____ TIME / DATE: _____

The courthouse is accessible to those with disabilities. Please notify the court if you will require assistance.

DISTRIBUTION: FAMILY PART, PLAINTIFF, DEFENDANT, SHERIFF, OTHER _____

NOTICE
FINGERPRINTING REQUIREMENTS

FV- ___ - _____ - ___
Defendant Name:
Date:

N.J.S.A. 53:1-15 requires any person who is subject to a Domestic Violence Final Restraining Order must submit to identification procedures for fingerprinting and photographing. This identification process shall take place immediately after the entry of the Final Restraining Order. Failure to submit to the identification process is a disorderly persons offense. Failure to be fingerprinted and photographed will result in criminal charges.

NOTE:
As a defendant in a Final Restraining Order you must be fingerprinted and photographed by the _____ County Sheriff's Department.

You must immediately go to:

As a defendant in a Final Restraining Order, failure to comply will result in the signing and prosecuting of criminal charges for violation of N.J.S.A. 53:15.

WHAT DISSOLVING A RESTRAINING ORDER MEANS

1. I am voluntarily asking a judge to take away the legal restraints entered against the defendant which were issued by the Judge at my request. I understand that I am asking the court to now dissolve the restraining order, and a final decision will be made by a judge.

2. Once this Restraining Order is dissolved, I will not benefit from any special protection from the defendant. I cannot obtain this protection again unless there is another act of domestic violence. In that event, I will have to go to the courthouse or the police station, fill out a new complaint and request a new Restraining Order.

3. I understand that one of the protections of a Restraining Order is a mandatory arrest if the defendant violates the "no contact" provisions (Part I). I understand that without the Restraining Order, it is not mandatory that the police arrest the defendant. Even if I have another order from this court that says defendant must stay away (included with my divorce case or my child support case), it is not mandatory that the police arrest the defendant for violating that order.

4. I understand that if criminal complaints were filed by me or the police, I will have to go to another court (probably municipal court) to request that those charges be dismissed.

5. The Judge's decision to dissolve this Restraining Order is final and will close my case. This will end all the protections I received as a result of the acts of domestic violence committed against me.

6. I understand that I should only sign the "Certification to Dissolve a Restraining Order" voluntarily.

7. I have been told about the Domestic Violence services and have been given an opportunity to speak to a victim advocate or have spoken to my attorney.

8. IF YOU HAVE ANY DOUBTS OR QUESTIONS ABOUT DISMISSING THE RESTRAINING ORDER, OR IF YOU HAVE BEEN THREATENED, COERCED OR FORCED BY ANYONE TO SEEK THIS DISMISSAL, TELL THE INTAKE WORKER OR SOMEONE ELSE IN FAMILY COURT, OR REQUEST TO SPEAK TO A VICTIM ADVOCATE OR YOUR ATTORNEY.

LO QUE SIGNIFICA LA ANULACIÓN DE UNA ORDEN DE RESTRICCIÓN

1. Pido voluntariamente que un juez quite las restricciones legales asentadas contra el demandado que fueron emitidas por el juez a solicitud mía. Entiendo que ahora pido que el tribunal anule la Orden de Restricción, y que un juez tomará la decisión final.

2. Una vez que se anule dicha Orden de Restricción, no me beneficiaré de ninguna protección especial contra el demandado. No puedo volver a obtener dicha protección a menos que ocurra otro acto de violencia doméstica. En ese caso, tendré que acudir a los tribunales o a la estación de policía, preparar los documentos de otra denuncia y pedir otra Orden de Restricción.

3. Entiendo que una de las protecciones de una Orden de Restricción es el arresto obligatorio si el demandado infringe las disposiciones de "ningún contacto" (Parte I). Entiendo que sin la Orden de Restricción, no es obligatorio que la policía arreste al demandado. Aunque yo tenga otra orden de este tribunal que diga que el demandado debe mantenerse alejado (incluida con mi causa de divorcio o de manutención de menores), no es obligatorio que la policía arreste al demandado por infringir esa orden.

4. Entiendo que si presenté denuncias penales o las presentó la policía, tendré que acudir a otro tribunal (probablemente al juzgado municipal) para pedir que se desestimen esos cargos.

5. La decisión del juez de anular esta Orden de Restricción es definitiva, y pondrá fin a mi causa. Esto terminará todas las protecciones que recibía como resultado de los actos de violencia doméstica cometidos contra mí.

6. Entiendo que debo firmar la "Certificación para Anular una Orden de Restricción" sólo voluntariamente.

7. Me han informado sobre los servicios de Violencia Doméstica y me han dado la oportunidad de hablar con un defensor de víctimas, o he hablado con mi abogado.

8. SI USTED TIENE ALGUNA DUDA O PREGUNTA EN CUANTO A LA DESESTIMACIÓN DE LA ORDEN DE RESTRICCIÓN, O SI ALGUIEN LO HA AMENAZADO, COACCIONADO O FORZADO A TRATAR DE OBTENER ESTA ANULACIÓN, INFÓRMESELO AL TRABAJADOR DE ADMISIÓN U OTRA PERSONA DEL TRIBUNAL DE FAMILIAS, O PIDA HABLAR CON UN DEFENSOR DE VÍCTIMAS O CON SU ABOGADO.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF

DOCKET NO.: FV- _____ -_____

_____	:	
Plaintiff	:	**CERTIFICATION FOR**
	:	**DISSOLUTION OF**
Vs.	:	**RESTRAINING ORDER**
	:	
_____	:	
Defendant	:	

Plaintiff _____ hereby certifies and says:

1. I am the plaintiff in the above captioned matter.
2. On _____ I appeared in **Superior Court ( )** OR in the **Police station ( )** and signed a complaint and application for a Temporary Restraining Order.
3. On _____, I obtained a Final Restraining Order.
4. Since that time, I have reconciled with or reconsidered my relationship with the defendant. Therefore, I am asking the court to dissolve all the restraints against the defendant.
5. My Restraining Order **does ( )** OR **does not ( )** include provisions for custody, time sharing and/or child support**. I want ( )** OR **I do not want ( )** these provisions continued without a restraining order.
6. I have had my options explained to me and I have reviewed the information on the form "What Dissolving a Restraining Order Means." I am asking for this dismissal voluntarily, of my own free will and without coercion or interference from any person.
7. I am further aware that should I wish to contact an attorney, domestic violence program or counseling group that I may do so prior to completing this Certification.
8. I am aware that if any criminal charges were filed by me or the police, I will need to go to the municipal court (or superior court, criminal division) to request their dismissal.
9. I am aware that if there are further acts of domestic violence and I want a new Restraining Order, I must reapply for a Restraining Order either at the courthouse or the police station.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____

Date Plaintiff signature

AOC 3/04

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART

_____ VICINAGE

DOCKET NO. FV-

PLAINTIFF :

vs. :

:

DEFENDANT :

ORDER OF DISMISSAL

☐ **TEMPORARY RESTRAINING ORDER**

□ **FINAL RESTRAINING ORDER**

THE COURT having considered the testimony and/or certification at this hearing and the Court having determined that:

1. The Plaintiff having requested dismissal of the matter; and

   □ Having read "What Dissolving a Restraining Order Means"

   □ Having read and signed "Certification for Dissolution of Restraining Order"

   □ Having not been coerced or placed under duress to withdraw the complaint and dissolve the Order;

   □ Having been advised of the cycle of domestic violence, and of the protective resources available through the Court and the local domestic violence program(s), especially with regard to housing and Court-ordered emergency custody and support;

   □ Understanding that withdrawal of the complaint and dismissal of the Restraining Order will **eliminate** the protection that had been issued under this Order;

   □ Being aware that such withdrawals **are not prejudicial** and if (s)he may need protection in the future, (s)he may apply for a new restraining order;

   □ Being aware that any criminal charges filed by Plaintiff or the police are not affected by this order of dismissal and will remain pending until addressed separately in the appropriate court; OR

2. The Plaintiff failing to appear for Final Hearing; and

   □ The Court having been unable to contact the plaintiff via telephone numbers/address given; OR

   □ The Court having determined that plaintiff was contacted and that coercion or duress did not cause the plaintiff's non-appearance; OR

3. □ The Court having determined that the plaintiff's allegation of domestic violence has not been substantiated.

4. □ The Municipal Court having denied the TRO application.

5. □ The Court having determined on appeal of the Temporary Restraining Order that the required burden of proof has not been met.

IT IS HEREBY ORDERED on this day of , , that the Domestic Violence Complaint, dated , is **DISMISSED** and the □ **TEMPORARY RESTRAINING ORDER *OR*** □ **FINAL RESTRAINING ORDER** dated is/are vacated, and

***IT IS FURTHER ORDERED THAT*:**

□ The complaint is dismissed and present support order under this docket is terminated and any arrears are vacated.

Probation to terminate their interest and close case.

□ The complaint is dismissed. Continue present support order and/or arrears to be:

□ **transferred to docket** F _____ _____ and □ paid through **Probation (IV D)**

or □ paid directly to **Plaintiff** (**obligee).**

□ Other:

_____ J.S.C.

RETURN OF SERVICE

Plaintiff was given a copy of the Order by _____

Defendant was given a copy of the Order by_____

Date:_____
Signature, Title & Department or Office

VISITATION RISK ASSESSMENT
INTERVIEW SHEET

TRACKING INFORMATION

PERSON INTERVIEWED	DATE	ASSESSOR
☐ PLAINTIFF ☐ DEFENDANT ☐ CHILD(REN)		

CASE NAME	DOCKET NUMBER	DATE RECEIVED

GENERAL INFORMATION

WHAT ARE PLAINTIFF'S CONCERNS ABOUT VISITATION?

ARE BOTH PARTIES THE BIOLOGICAL PARENTS OF ALL CHILDREN?

☐ YES ☐ NO PLEASE EXPLAIN: _____

AGES AND SEX OF CHILDREN INVOLVED

FIRST CHILD: AGE: _____ SEX: _____ **SECOND** CHILD: AGE: _____ SEX: _____ **THIRD** CHILD: AGE: _____ SEX: _____ **FOURTH** CHILD: AGE: _____ SEX: _____

DO ANY OF THE CHILDREN HAVE PHYSICAL OR MENTAL SPECIAL NEEDS WHICH WOULD IMPACT VISITATION? ☐ YES ☐ NO IF YES, WHICH CHILD: _____

DESCRIBE THE SPECIAL NEEDS OF THE CHILD: _____

IS THE DEFENDANT FROM ANOTHER COUNTY? ☐ YES ☐ NO	WHERE?

HOW WOULD CHILDREN BE TRANSPORTED TO THE VISITATION SITE?

DO THE PARTIES HAVE SUGGESTIONS FOR THE FREQUENCY AND STRUCTURE OF VISITATION? (INCLUDE SUGGESTED CONDITIONS OF SUPERVISION, IF ANY)

PLAINTIFF: _____

DEFENDANT: _____

HAS THE CHILD(REN) EXPRESSED ANY FEELINGS CONCERNING VISITATION WITH DEFENDANT?

DESCRIBE: _____

DOMESTIC VIOLENCE

LENGTH AND NATURE OF DOMESTIC VIOLENCE HISTORY

MINOR INJURIES SUSTAINED?

DESCRIBE: _____

MAJOR INJURIES SUSTAINED?

DESCRIBE: _____

SPECIFY OBJECTS OR WEAPONS USED, IF ANY

THIS IS SIDE #1

DOMESTIC VIOLENCE *continued*

HAS ABUSE INCLUDED THREATS TO KILL OR HARM MORE EXTENSIVELY? ☐ YES ☐ NO

HAS ABUSE INCLUDED SEXUAL ASSUALT/EXPLOITATION?

DESCRIBE: _____

HAS ABUSE INCLUDED DAMAGE TO PLAINTIFF'S POSSESSIONS OR PETS?

DESCRIBE: _____

HAS ABUSE INCLUDED VERBAL/PSYCHOLOGICAL ABUSE?

DESCRIBE: _____

HAS VIOLENCE INCREASED OVER TIME?

☐ YES ☐ NO

DESCRIBE: _____

DOES PHYSICAL/SEXUAL VIOLENCE OCCUR FOUR TIMES A YEAR OR MORE?

☐ YES ☐ NO

DESCRIBE FREQUENCY: _____

AVAILABLE VERIFICATION ☐ RESTRAINING ORDER ☐ COURT ORDERS ☐ MEDICAL REPORTS ☐ POLICE REPORTS

☐ SOCIAL AGENCY REPORTS ☐ PROFESSIONAL REPORTS ☐ OTHER _____

CHILD ABUSE

LENGTH OF CHILD ABUSE HISTORY

☐ ACTIVE DYFS CASE ☐ PREVIOUS DYFS CASE ☐ NO DYFS INVOLVEMENT

DESCRIBE: _____

MINOR INJURIES SUSTAINED?

DESCRIBE: _____

MAJOR INJURIES SUSTAINED?

DESCRIBE: _____

SPECIFY OBJECTS OR WEAPONS USED, IF ANY:

HAS ABUSE INCLUDED THREATS TO KILL OR HARM MORE EXTENSIVELY?

☐ YES ☐ NO

HAS ABUSE INCLUDED SEXUAL ABUSE/EXPLOITATION?

DESCRIBE: _____

HAS ABUSE INCLUDED DAMAGE TO CHILD'S POSSESSIONS OR PETS?

DESCRIBE: _____

HAS DEFENDANT EXHIBITED INDIFFERENCE OR NEGLECT OF CHILD'S PHYSICAL NEEDS, INCLUDING FOOD, CLOTHING, SAFETY, MEDICAL ATTENTION?

DESCRIBE: _____

THIS IS SIDE #2

CHILD ABUSE *continued*

HAS DEFENDANT THREATENED TO KIDNAP CHILDREN?

☐ YES ☐ NO

HAS DEFENDANT EVER KIDNAPPED CHILDREN?

DESCRIBE: _____

_____

HAS VIOLENCE AGAINST CHILD(REN) INCREASED OVER TIME?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAS ABUSE INCLUDED VERBAL/PSYCHOLOGICAL ABUSE?

☐ YES ☐ NO

DESCRIBE: _____

AVAILABLE VERIFICATION: ☐ DYFS ☐ MEDICAL ☐ POLICE ☐ SCHOOL

☐ SOCIAL AGENCY ☐ PROFESSIONAL ☐ OTHER _____

EXPOSURE TO DOMESTIC VIOLENCE

HAVE CHILDREN WITNESSED OR HEARD EPISODES OF DOMESTIC VIOLENCE EITHER IN THE HOME OR ELSEWHERE?

☐ YES ☐ NO

IF YES, WAS AN OBJECT OR WEAPON USED?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAVE CHILDREN BEEN INJURED DURING A DOMESTIC VIOLENCE EPISODE?

DESCRIBE: _____

_____

HAVE CHILDREN EXHIBITED CONCERN FOR THEIR OWN PERSONAL SAFETY BECAUSE OF THE DOMESTIC VIOLENCE?

☐ YES ☐ NO

DESCRIBE: _____

_____

HAVE CHILDREN WITNESSED OR HEARD PHYSICAL ABUSE OF ANOTHER CHILD OR FAMILY PET?

DESCRIBE: _____

_____

AVAILABLE VERIFICATION ☐ POLICE REPORT ☐ COURT ☐ HOSPITAL ☐ OTHER _____

SUBSTANCE ABUSE

DOES THE DEFENDANT HAVE A DRUG/ALCOHOL PROBLEM?

DESCRIBE: _____

_____

DOES DEFENDANT ABUSE SUBSTANCES IN THE PRESENCE OF THE CHILDREN?

DESCRIBE: _____

_____

IS DEFENDANT USUALLY ABUSING SUBSTANCES WHEN VIOLENT?

☐ YES ☐ NO

IS DEFENDANT CURRENTLY UNDERGOING SUBSTANCE ABUSE TREATMENT?

DESCRIBE (INCLUDING VOLUNTARY OR COURT-ORDERED): _____

_____

_____

_____

SUBSTANCE ABUSE *continued*

DOES DEFENDANT DRIVE WHILE IMPAIRED?

DESCRIBE: _____

_____

HAS DEFENDANT BEEN CONVICTED OF DWI OFFENSES?

☐ YES ☐ NO

AVAILABLE VERIFICATION: ☐ PROFESSIONAL REPORTS ☐ DWI ARRESTS/CONVICTIONS ☐ POSSESSION/INTENT TO DISTRIBUTE ARRESTS/CONVICTIONS

☐ IDRC REPORT ☐ OTHER _____

CRIMINAL HISTORY

HAS THE DEFENDANT BEEN ARRESTED FOR AN ACT OF DOMESTIC VIOLENCE OR CHILD ABUSE?

WHEN? _____

HAS THE DEFENDANT BEEN CONVICTED OF OTHER CRIMES OF VIOLENCE OR CHILD ABUSE?

WHEN? _____

WHICH CRIMES? _____

HAS THE DEFENDANT EVER VIOLATED A RESTRAINING ORDER?

☐ YES ☐ NO

WHEN AND HOW: _____

_____

HAS THE DEFENDANT EVER VIOLATED ANY OTHER ORDER INVOLVING OTHER PARENT OR CHILD?

WHEN AND HOW: _____

_____

IS THE DEFENDANT FACING PENDING CRIMINAL CHARGES FOR OTHER CRIMES OF VIOLENCE OR CHILD ABUSE?

☐ YES ☐ NO

WHICH CRIMES: _____

_____

HAS THE DEFENDANT BEEN CONVICTED OF OTHER CRIMES?

WHEN? _____

WHICH CRIMES? _____

IS THE DEFENDANT FACING PENDING CRIMINAL CHARGES FOR OTHER CRIMES?

☐ YES ☐ NO

WHICH CRIMES? _____

AVAILABLE VERIFICATION: ☐ CONVICTIONS ☐ PENDING CHARGES ☐ POLICE

☐ OTHER _____

PSYCHO-SOCIAL FACTORS

DOES THE DEFENDANT EXHIBIT EXTREME ABERRANT BEHAVIORS DUE TO MENTAL HEALTH PROBLEMS?

DESCRIBE: _____

_____

_____

HAS THE DEFENDANT EVER BEEN TREATED FOR ABOVE PROBLEM?

WHEN: _____

DESCRIBE: _____

IDENTIFY MEDICATIONS, IF ANY: _____

HAS THE DEFENDANT EVER THREATENED OR ATTEMPTED SUICIDE?

WHEN: _____

DESCRIBE: _____

_____

THIS IS SIDE #4

PSYCHO-SOCIAL FACTORS *continued*

DOES THE DEFENDANT POSSESS CHILD PORNOGRAPHY?

☐ YES ☐ NO

AVAILABLE VERIFICATION:
☐ PROFESSIONAL REPORTS ☐ OTHER _____

PREVIOUS VISITATION EXPERIENCE

HAS THE DEFENDANT EVER KIDNAPPED THE CHILDREN?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT EVER PHYSICALLY ABUSED PARTNER IN THE COURSE OF VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT EVER REFUSED TO RETURN THE CHILDREN?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT VIOLATED THE VISITATION ORDER IN OTHER WAYS?

WHEN: _____

DESCRIBE: _____

_____

HAVE THE CHILDREN EVER EXHIBITED SIGNS OF PHYSICAL/SEXUAL ABUSE OR NEGLECT AFTER VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS DEFENDANT EVER ABUSED SUBSTANCES DURING VISITATION?

WHEN: _____

DESCRIBE: _____

_____

HAS THE DEFENDANT FAILED TO APPEAR FOR SCHEDULED VISITATION?

WHEN: _____

_____

HAS THE DEFENDANT FAILED TO ATTEND TO THE CHILD'S MEDICAL, SAFETY, PHYSICAL OR EDUCATIONAL NEEDS DURING VISITATION?

EXPLAIN: _____

_____

AVAILABLE VERIFICATION:
☐ COURT REPORT ☐ POLICE ☐ ARRESTS/CONVICTIONS
☐ PROFESSIONAL ☐ SCHOOL ☐ OTHER _____

PARENTAL CAPACITY/EXPERIENCE

DOES THE DEFENDANT HAVE EXPERIENCE IN CARING FOR CHILDREN ALONE?

☐ YES ☐ NO

DESCRIBE FREQUENCY OF SOLE CARETAKING: _____

_____

CHECK RELEVANT PARENTING SKILLS, IF ANY, THAT DEFENDANT REPORTEDLY LACKS:

☐ DIAPERCHANGING ☐ FEEDING ☐ BATHING ☐ PLAYING ☐ DISCIPLINE
☐ TRANSPORTING ☐ SENSITIVITY ☐ OTHER _____

THIS IS SIDE #5

PARENTAL CAPACITY/EXPERIENCE *continued*

DOES DEFENDANT HAVE ADEQUATE VISITATION FACILITIES?

☐ YES ☐ NO

DESCRIBE POTENTIAL VISITATION ENVIRONMENT: _____

_____

DOES DEFENDANT DISPLAY ERRATIC OR UNSTABLE TEMPERAMENT TOWARDS CHILDREN?

☐ YES ☐ NO

DESCRIBE: _____

_____

DOES DEFENDANT HAVE A GOOD RELATIONSHIP AND RAPPORT WITH CHILDREN?

☐ YES ☐ NO

DESCRIBE RELATIONSHIP: _____

_____

DOES DEFENDANT HAVE EXPERIENCE OR SKILLS REQUIRED TO CARE FOR SPECIAL PHYSICAL OR MENTAL NEEDS OF ONE OR MORE CHILDREN?

☐ N/A ☐ YES ☐ NO

EXPLAIN: _____

_____

THIS IS SIDE #6

VISITATION RISK ASSESSMENT
SUMMARY SHEET

CASE NAME / DOCKET NUMBER	YES	NO	UNDET.*	DOCUMENTS AVAILABLE	DOCUMENTS ATTACHED
DOMESTIC VIOLENCE					
Minor physical injury to victim					
Serious physical injury to victim					
Objects or weapons used					
Sexual assault/sexual exploitation					
Verbal/psychological abuse					
Frequent violent episodes					
CHILD ABUSE					
Minor physical injury to child					
Serious physical injury to child					
Objects or weapons used					
Sexual abuse/sexual exploitation					
Neglects child's physical needs					
Threats of kidnapping					
History of kidnapping					
Verbal/psychological abuse					
EXPOSURE TO DOMESTIC VIOLENCE					
Children saw or heard partner abuse					
Children in home but did not see or hear					
Children physically hurt during dv episode					
Children saw/heard abuse with weapon					
Children saw/heard abuse of other child					
Children saw/heard abuse of family pet					
SUBSTANCE ABUSE					
Drug/alcohol abuse					
Drug/alcohol abuse during violent episode					
Drug/alcohol abuse currently untreated					
Drug/alcohol abuse while driving					
DWI Conviction					

* UNDET: Undetermined - Information received from all parties differs and the assessor is unable to make a determination based on documentation or other reliable means.

VISITATION RISK ASSESSMENT
SUMMARY SHEET

CASE NAME / DOCKET NUMBER	YES	NO	UNDET.*	DOCUMENTS AVAILABLE	DOCUMENTS ATTACHED
CRIMINAL HISTORY					
Arrested for act(s) of domestic violence or child abuse					
Convicted of crime of domestic violence or child abuse					
Violation(s) of restraining or other related order					
Pending criminal charges for violence or child abuse					
Convicted of other (non-violent) crimes					
Pending criminal charges for other crimes					
PSYCHO-SOCIAL FACTORS					
Extreme aberrant behaviors due to mental health problems					
Suicide attempts/threats					
Possession of child pornography					
PARENTAL CAPACITY/EXPERIENCE					
Lacks sole caretaking experience					
Lacks age-appropriate parenting skills					
Lacks appropriate discipline skills					
Lacks appropriate visitation site					
Lacks consistent and stable temperament					
Lacks good rapport with children					
Lacks skills for special needs child					
PREVIOUS VISITATION EXPERIENCE (if applicable)					
Partner violence during visitation					
Refusal to return children					
Evidence of child physical/sexual abuse during visitation					
Failure to attend to child's medical, safety, physical needs					
Substance abuse during visitation					

NOTE THE NATURE OF AVAILABLE DOCUMENTATION

DATE	PERSON COMPLETING ASSESSMENT

PREPARED BY THE COURT

	SUPERIOR COURT OF NEW JERSEY
	Chancery Division – Family Part
Plaintiff,	County of _____
vs.	Docket No.:
	Civil Action
Defendant.	**PROTECTIVE ORDER**

THIS MATTER being opened to the Court, and it appearing that copies of the following confidential reports are being released to the attorneys and parties or the pro-se litigants:

- ☐ Home Inspection Report
- ☐ Social Investigation Report
- ☐ Psychological Report
- ☐ Psychiatric Report
- ☐ Risk Assessment
- ☐ Other _____

and for good cause shown;

IT IS ON THIS _____ day of _____, 20____;

1) **ORDERED** that copies of these reports shall be released to the attorneys and their clients or self-represented litigants with the understanding that the information contained therein is to be used only for purposes of the pending custody/parenting time matter including distribution to experts and may not be used in any other matter without the express written permission of the Court; and it is further

2) **ORDERED** that this information shall not be disclosed to any other person for any reason, nor may it be disseminated or made public by any means, direct or indirect, without the express written permission of the Court; and it is further

3) **ORDERED** that the use of information contained in the investigation and/or report, or information obtained from the investigation for any purpose other than set forth by the Court, shall be a violation of this Court Order and subject to sanctions; and it is further

4) **ORDERED** that under no circumstances is (are) the report(s) to be discussed, revealed, or disclosed to the child(ren).

_____

J.S.C.

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CRIMINAL JUSTICE

PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

JOHN J. FARMER, JR.
Attorney General

KATHRYN FLICKER
Director

September 19, 2000

TO: **ALL COUNTY PROSECUTORS**
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: **KATHRYN FLICKER, DIRECTOR**
DIVISION OF CRIMINAL JUSTICE

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES 2000-3 and 2000-4 -** Replacements for an unnumbered Attorney General Directive dated August 14, 1995, regarding Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Attached for your attention are the following Directives which were recently signed by Attorney General Farmer:

No. 2000-3 - Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers involved in Domestic Violence Incidents. This Directive is to be followed by county prosecutors when handling local and county law enforcement officers involved in domestic violence incidents.

No. 2000-4 - Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers involved in Domestic Violence Incidents. This Directive provides notice of the procedures the Division of Criminal Justice will follow when removing weapons from state law enforcement officers, which includes the Division of State Police, Division of Criminal Justice investigators, Department of Corrections officers, Juvenile Justice Commission officers, Bureau of Parole officers, State Park Ranger Service (Fish and Game) officers, Human Services Police, N. J. Transit Police Officers, state college and university campus police, Division of Taxation agents, and investigators for the State Commission of Investigations.

The procedures are essentially the same. The separation eliminates any confusion contained in the August 14, 1995, Directive between areas of responsibility for county prosecutors and the Division of Criminal Justice.

All County Prosecutors
All Law Enforcement Chief Executives
September 19, 2000

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVES
2000-3 and 2000-4 - Replacements for an unnumbered Attorney General Directive dated August 14, 1995, regarding Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Please distribute to all law enforcement officers and/or assistant prosecutors in your agency. If you have any questions you may contact either DAG Jessica S. Oppenheim or DAG Martin C. Mooney, Sr., in the Prosecutors and Police Bureau at 609/984-2814.

jak
Attachments
c Attorney General John J. Farmer
First Assistant Paul H. Zoubek
Administrator Thomas O'Reilly
Director of State Police Affairs Martin Cronin
Colonel Carson J. Dunbar, Jr., Supt., NJSP
Commissioner Jack Terhune, Dept. of Corrections
Chief of Staff Debra L. Stone
Chief State Investigator John A. Cocklin
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Ronald Susswein
Chief Greta Gooden Brown, Pros. & Police Bureau

DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATTORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-3**

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM MUNICIPAL AND COUNTY LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A*. 52:17B-97 *et seq.*, requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:17B-98. Accordingly, it is directed that all law enforcement agencies and law enforcement officers who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed.

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from an officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the prosecutor's office in the county where the charge had been filed.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the county Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:25-21d, the County Prosecutor's Office where the civil and/or criminal charge was filed or incident occurred shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The County Prosecutor completing the investigation shall forward the report to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the appropriate County Prosecutor's Office whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The County Prosecutor's Office within whose jurisdiction the incident occurred should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the County Prosecutor, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the County Prosecutor that the officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the County Prosecutor may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining order, while armed.

3. The department owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, a County Prosecutor may authorize the return of the seized weapons subject to conditions, if any, the Prosecutor determines necessary.

V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 *U.S.C.A.* 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from State Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995
Revised September 2000

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: JOHN J. FARMER, JR. ATTORNEY GENERAL

DATE: SEPTEMBER 1, 2000

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2000-4**

REVISION TO AUGUST 14, 1995, DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM ALL STATE LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, *N.J.S.A*. 52:17B-97 *et seq.*, requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." *N.J.S.A.* 52:17B-98. Accordingly, it is directed that all state law enforcement agencies and law enforcement officers who are employed by the State Department of Corrections, the Division of Criminal Justice, the Division of State Police, Human Services Police, Juvenile Justice Commission or the State Park Ranger Service and who are authorized to carry weapons pursuant to *N.J.S.A.* 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. Seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. Surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in *N.J.S.A.* 2C:25-19 has been alleged to have been committed by a state law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

1. Immediately report that fact to the state officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed and also notify the Division of Criminal Justice, Prosecutors and Police Bureau;

2. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from a state law enforcement officer, a report shall immediately be made to the arresting officer's departmental supervisor who must notify the Division of Criminal Justice, Prosecutors and Police Bureau.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the County Prosecutor's Office in the county where the seizure of weapons took place in accordance with the procedures set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of *N.J.S.A.* 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to *N.J.S.A.* 2C:25-21d, the Division of Criminal Justice, Prosecutors and Police Bureau shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings. The Division of Criminal Justice, Prosecutors and Police Bureau shall promptly forward its report and recommendations to the County Prosecutor within whose jurisdiction the officer is employed.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a state law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. Conduct an investigation into the officer's background and shall recommend to the Division of Criminal Justice, Prosecutors and Police Bureau who shall determine whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons, consistent with any family or criminal or municipal court bail orders entered against the officer in the jurisdiction which the incident occurred.

2. If necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The Division of Criminal Justice, Prosecutors and Police Bureau or designee generally should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the Division of Criminal Justice Prosecutors and Police Bureau, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons; or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a state law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the Division of Criminal Justice, Prosecutors and Police Bureau that the state law enforcement officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the Division of Criminal Justice, Prosecutors and Police Bureau may recommend to the appropriate court that:

1. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. The officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining

order, while armed.

3. The department-owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a state law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, Division of Criminal Justice, Prosecutors and Police Bureau may authorize the return of the seized weapons subject to conditions, if any, the Division of Criminal Justice, Prosecutors and Police Bureau determines necessary.

V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 *U.S.C.A.* 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and

B. The officer may not possess any personally owned firearms.

VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

_____ Court of New Jersey
_____ Division
_____ County

AFFIDAVIT IN SUPPORT OF A DOMESTIC VIOLENCE WARRANT FOR THE SEARCH & SEIZURE OF WEAPONS

State of New Jersey :
County of _____ : SS

I, _____, of _____, being
(Name of Officer) (Department)
of full age and having been duly sworn upon my oath according to law, depose and say:

1. On _____ at _____ __.m., I was dispatched to the following premises:

   _____

   _____

   in response to a domestic violence Incident.

2. I was told by _____, the victim of the domestic violence incident, that he or she believes that his or her life, health or well-being is in imminent danger by the domestic violence assailant, _____, by one of the weapons listed in paragraph 3. The victim said:

   _____

   _____

   _____

   _____

3. The victim has described the weapons as follows:

   _____

   _____

   _____

   _____

4. The victim of domestic violence has informed me that the domestic violence assailant has the weapons listed in paragraph 3 at

_____
(Describe Premises in Detail and identify owner of premises if not person listed in Paragraph 1)

_____

_____

_____

5. Based on the above, I have probable cause to believe that the presence of the weapons described in paragraph 3 exposes the victim to a risk of serious bodily injury.

6. I want to search the premises described in paragraph 4 for the weapons described in paragraph 3 and to seize any of the above named weapons found at that location for safekeeping purposes. I also want to seize from the defendant any issued permit to carry a firearm, firearms purchaser identification card and any outstanding applications to purchase handguns.

7. _____
(If Requesting a No Knock Warrant or Entry at Special Hours, Explain Reason here or on Attached Sheet , or enter any additional information here)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____
(Signature of Affiant)

Sworn and subscribed to before
me this _____ day of
_____. 20____.

_____
Judge of the _____ Court of
New Jersey

_____ Court of New Jersey
_____ Division
_____ County

DOMESTIC VIOLENCE WARRANT FOR THE SEARCH & SEIZURE OF WEAPONS

TO: ANY LAW ENFORCEMENT OFFICER HAVING JURISDICTION

1. The Court, having reviewed the affidavit or testimony of _____ under oath against _____, finds reasonable cause to believe that the life, health, or well-being of _____ has been and is endangered by defendant's acts of violence and finds reasonable cause to believe that the defendant may not be qualified to possess firearms pursuant to *N.J.S.A.* 2C:58-3c(5). The Court finds reasonable cause to believe that the below listed weapons in defendant's possession may present a risk of serious bodily injury to plaintiff:
_____
_____
_____
_____.

2. **YOU ARE HEREBY COMMANDED** to search the premises described as_____
_____
_____
_____

for the above described weapons and to serve a copy of this warrant upon the person at that address.

YOU ARE FURTHER COMMANDED to seize from defendant any issued permit to carry a firearm, firearms purchaser identification card and any outstanding applications to purchase handguns.

3. **YOU ARE HEREBY ORDERED**, in the event you seize any of the above described weapons and firearms permits, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person, to leave a copy of this warrant together with such receipt in or upon the said structure from which the property was taken.

4. **YOU ARE AUTHORIZED** to execute this warrant within 10 days from the issuance hereof:

☐ Between the hours of _____ m. and _____ m., or

☐ Anytime

After the execution of this warrant, you are ordered to forthwith make prompt return to this Court with a written inventory of the property seized hereunder.

5. Given and issued under my hand at _____
at _____ o'clock _____ m. this day of _____, 20 ___.

_____
(Signature)
Judge of the _____ Court of New Jersey

Revised 4/04

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 037
TRENTON, NEW JERSEY 08625-0037

Questions or comments may be addressed to (609) 292-5099

M E M O R A N D U M

To: **Assignment Judges**
Trial Court Administrators

From: **Philip S. Carchman, J.A.D.**

Re: **Child Support Hearing Officer (CSHO) Program Standards – Amendment to Standard 7; and a New Standard (Standard 13)**

Date: **July 24, 2007**

Enclosed are amendments to the Child Support Hearing Officer (CSHO) Program Standards, an amended Standard 7 and new Standard 13. The amendments were approved by the Supreme Court in March 2007 and will improve the expedited process for child support cases and enhance customer service.

CSHO Program Standard 7 - Amended

CSHO Program Standard 7 has been amended to authorize the CSHO to handle FD (non-dissolution) complaints filed by the local Board of Social Services that seek to *establish* paternity and/or child support in cases where the obligee has a final restraining order against the defendant/obligor. Standard 7 already permits the CSHO, under specified security and facilities conditions, to hear applications initiated by individuals to *modify* or *enforce* child support orders in matters with active domestic violence restraints in either FV (domestic violence) or FD (non-dissolution) cases.

These *establishment* matters, formerly heard by a judge, may now be handled by a CSHO. They are to be processed as FD cases, rather than FV, since only the victim may be a plaintiff in an FV matter. In FDs filed by the local

Boards, the child support paid by the obligor is assigned to the Board for the period that assistance is provided. Standard 7 is permissive and the provision that permits the CSHO to hear FV *modification* and *enforcement* applications has been implemented in eleven vicinages. The security and facilities requirements that exist for actions to *modify* and *enforce* child support in matters with active restraints also apply to these *establishment* matters.

CSHO Standard 13 - New

New CSHO Program Standard 13 authorizes the CSHO to conduct hearings by telephone in appropriate cases. The new Standard sets forth direction as to how to proceed with telephonic hearings including proper screening, coordination with the calendaring of other matters scheduled before the CSHO, and the appropriate equipment.

Amended Standard 7 and the new Standard 13, along with a new telephone hearing request form, are attached and should be inserted into existing hardcopies of the Standards and will also be available on the Infonet. As noted, these Standards are permissive not mandatory. **Please advise me by September 1, 2007 whether you plan to implement either or both of the Standards in your vicinage and, if so, how you will proceed with implementation.**

Any questions or comments may be directed to Assistant Director Harry T. Cassidy at 609-984-4228 or to Elidema Mireles, Chief, CSHO Program at 609-292-5099.

P.S.C.

cc: Chief Justice Stuart Rabner
Family Presiding Judges
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Elidema Mireles, Chief
Richard Narcini, Chief
Family Division Managers
Vicinage Chief Probation Officers
Assistant Family Division Managers in Multi-County Vicinages
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Amended

CSHO Program Standard 7 and Commentary

as approved by the Supreme Court March 5, 2007

CSHO Standard 7 (amendments underlined)

A. In order for the Family Division to better serve victims of domestic violence and to provide expedited process, vicinages may schedule, child support modifications in domestic violence cases before the Child Support Hearing Officers (CSHOs). The CSHOs may hear child support modification motions in domestic violence cases under the conditions set forth herein. <u>In addition the CSHO may hear FD cases where there is a restraining order in effect when filed by the Board of Social Services to establish child support.</u> The CSHO, at all times, will address <u>only</u> the child support aspects (civil enforcement and modification and TANF establishments) of the case before them. The following conditions will be observed:

1. Both parties must be amenable to appearing before the CSHO.
2. The CSHO may hear child support modifications in matters established under an "FV" docket; <u>matters with active restraints filed by the Board of Social Services</u> under an "FD" docket; or interstate matters filed pursuant to the *Uniform Interstate Family Support Act.* (UIFSA).
3. The restraining order must be in effect for six (6) months without further activity before the case may be placed before a CSHO for modification of child support; otherwise, the modification shall be scheduled before a judge. <u>This six month requirement does not apply to FD establishments filed by the Board of Social Services.</u>
4. The matter cannot be scheduled before the CSHO if the case raises any issues other than child support.
5. The matter should go before a judge, where other factors or concerns exist that make the matter complex, e.g. indication of ongoing inappropriate behavior by the batterer toward the victim or behavior that occurs while waiting to be heard or during the hearing.
6. The action must be a Title IV-D case, i.e. the child support is payable through Probation.

B. Prior to the vicinage scheduling these cases before the CSHOs, a written security plan for these hearings must be developed and approved by the Assignment Judge; taking into account the recommended standards set forth in Section A *Security and Facilities*, of the Commentary.

C. All CSHOs, Supervisors and Chief of the Program shall be required to participate in the mandatory training for domestic violence staff in addition to receiving training as to the dynamics of families with domestic violence issues before the vicinage may schedule matters to the CSHO. To the extent that FD or FM staff will be screening these cases, the Team Leaders in these docket types should also receive training regarding domestic violence issues.

D. Because of the volatile nature of these cases, appeals and referrals from the CSHO should be heard by a judge as promptly as possible, and in any event on the same day as the CSHO hearing (see Commentary, Section C).

Commentary:

A. Security and Facilities

Child support modification hearings arising out of domestic violence cases raise particularly serious security concerns. While initial TRO hearings in domestic violence matters are heard ex parte, with only the plaintiff present, child support modification hearings are likely to be held in the presence of both the plaintiff and the defendant. Because emotions often run high between these parties, security needs must be anticipated and planned for. In developing a security plan for child support hearings in domestic violence cases, the following recommended standards (which are generally addressed in courtroom) should be taken into account:

1. Provide an armed Sheriff's Officer for each CSHO proceeding.
2. Provide duress alarms for the CSHO.
3. Restrict access to light controls.
4. Provide the hearing officer with an egress route to a safe location.
5. Utilize a command and control center to monitor alarms and CCTV.
6 Utilize two-way radios to maintain communications and coordinate emergency responses.
7. Provide emergency back-up power for the lighting and security system.

In addition to these general recommended standards, the following specific provisions should be addressed in the security plan for child support hearings in DV cases:

8. Schedule modification cases in a courtroom or in a room of comparable size and formality. The room should be large enough so that the victim is not required to sit in close proximity to the defendant either while waiting for the case to be heard or during the conduct of the hearing. The parties should not be seated at the same table under any circumstances.
9. If a facility does not offer two separate waiting areas to keep the victim and defendant apart from each other prior to the hearing, a second Sheriff's Officer should be assigned to the waiting area to insure the safety of litigants.
10. In vicinages where the CSHO hearing facility is located in a separate building from the courthouse where the appeal will be heard, the vicinage should have appropriate security arrangements in place for the parties to be

escorted to the courtroom of the judge who will hear the appeal. The parties are not to be left unattended while the appeal is pending.

When an appeal is taken, it poses a particularly critical time because the plaintiff is vulnerable to coercion and intimidation regarding the recommendation being appealed. The defendant's emotions may be running high since the stakes are usually whether to increase or decrease an order of child support. A higher rate of appeal is anticipated on these child support modifications than is generally the case on CSHO calendars (about 3-4%).

In developing security plans for child support hearings in domestic violence cases, as in all other security matters, technical assistance will be available from the Court Access Services Unit at the Administrative Office of the Courts.

B. Case Types

1. Both parties must be amenable to appearing before the CSHO. The CSHO should explain to parties what the CSHO's role is in the proceeding and what will occur during the hearing as well as explaining the use of the Guidelines and their individual right to appeal the recommendation of the CSHO and obtain an immediate hearing before a judge. Either party may request to have the matter heard by a judge. This is similar to DVHO Standard 5, which indicates that appearance before the DVHO is voluntary and permits the plaintiff the option of appearing instead before a judge.

2. The CSHO may hear child support modifications in matters established under an "FV" docket; establishment of support matters under an "FD" docket filed by the Board of Social Services even with companion restraints; or interstate matters filed under the *Uniform Interstate Family Support Act* (UIFSA).

3. The restraining order must be in effect for six (6) months without further activity before the case may be placed before the CSHO for modification of child support; otherwise, the modification shall be scheduled before a judge. This six month requirement does not apply to FD establishment of support cases in the presence of active restraints if it is filed by the Board of Social Services.

4. When there are other pending actions or outstanding issues such as contempt or enforcement of other provisions of the restraining order including custody or parenting time or pending FM with other outstanding issues, the matter shall not be scheduled before the CSHO for establishment, enforcement or modification of child support. This is currently a standard established in the *Manual* applicable to civil enforcement in domestic violence matters before the CSHO.

5. The matter should go before the judge, where other factors or concerns exist, that make the matter complex, e.g. indication of ongoing inappropriate behavior by the batterer toward the victim or behavior that occurs while waiting to be heard or during the hearing.

6. The action must be a Title IV-D case, i.e. the child support is payable through Probation (Centralized Collections) and a county Probation Division is responsible for the collection and enforcement of the child support provisions. Direct pay matters or matters ordered paid to a third party, shall not be scheduled before the CSHO**.**

7. If the issue involves provisions other than child support, e.g. rent or mortgage payments, parenting time, monetary compensation, counseling and temporary possession of specified personal property, the matter shall not be placed before the CSHO and shall be scheduled before a judge. The CSHO shall only address the support establishment, modification or civil enforcement of the child support provisions since the CSHO's jurisdiction per R. 5:25-3 is in the Title IV-D matters.

C. Appeals and Referrals to a Judge

1. The CSHO shall exercise judgment in determining the appropriateness of the forum and shall be permitted to refer the matter to a judge as a complex case. There are many factors in play in domestic violence cases. The CSHO must be alert to the total picture in determining whether it is appropriate for a hearing officer to proceed with the hearing. The CSHO must observe the interaction of the parties with the CSHO, with each other, as well as verbal and non-verbal cues to assess if the dynamics between the parties point to a requirement for judicial attention. We cannot detail all the possible scenarios that call into question if the case may be heard by the CSHO, keeping in mind that the imbalance of power may manifest in observable behavior. Training will help the CSHO develop further the skills needed to recognize the dynamics in play. The CSHO shall not permit, when the parties are before the CSHO, any opportunity for coercion or intimidation of the victim. All referrals of complex cases must have a brief written statement from the CSHO to the judge stating the details that render the matter complex in nature.

2. Appeals of either party from the CSHO's recommendation shall be treated as emergent matters. Appeals from the CSHO calendar are not to be continued. In the domestic violence cases, the appeal not only should be heard the same day, but also should not be held for so long that the long wait may indeed contribute to inappropriate behavior from the batterer.

3. In accordance with R. 5:7-4 (b), the CSHO shall record the case disposition (establishment, modification or civil enforcement) using the Uniform Order for Summary Support. Parties must be given an unsigned copy of the order resulting from the CSHO proceeding and a signed copy of the order if they are before a judge. The CSHO shall insure that the order does not contain any confidential information such as the address of the victim or other information

of a confidential nature. A signed copy of the order will be mailed to the parties by Family Intake staff in the vicinage, once the judge signs the order. If a Guidelines calculation was done, the parties shall be provided with a copy of the Guidelines. This is also in accord with CSHOP standards 3 and 4**.**

D. Training of Staff

All CSHOP staff and relevant FD and FM Team Leaders shall receive training regarding the dynamics of families with domestic violence issues prior to a vicinage being approved to schedule child support modifications before the CSHO. Thereafter, they shall participate in training that is mandatory for all domestic violence personnel.

The proposed standard represents a departure from the prior *Domestic Violence Procedures Manual.* The *Manual* is issued under the authority of the Supreme Court of New Jersey and the Office of the Attorney General. It sets forth the uniform standards and procedures to be followed by those responsible for handling domestic violence matters and to provide a unified approach intended to assure prompt assistance to the victims of domestic violence.

This proposed standard is the result of a debate that predates 1992, when the *Manual* was amended to allow CSHOs to hear civil enforcement motions in domestic violence cases. In 1992 the State Domestic Violence Work Group considered whether to amend the *Manual* additionally and permit the CSHOs to hear the modification of the child support provisions of domestic violence matters. Ultimately the amendment permitted solely the civil enforcement of litigant's rights motions to be calendared before the CSHO under specific conditions detailed in the in Section III of the *Manual*. Civil enforcement refers to those matters that are Title IV-D, i.e. the order is payable through a Probation Division and the case is thus supervised by county Probation Division staff responsible for the filing of the enforcement motion.

The experience of the CSHOP with the civil enforcement in domestic violence matters indicates that in general it works well. There is concern expressed by CSHOs themselves that the specific conditions set forth in the *Manual* have not been consistently enforced. One example given was the lack of the presence of an on-site Sheriff's Officer during the hearing because the Sheriff's Officer was responsible for covering the waiting area and/or other hearings in progress. Concern was also expressed for the delays in hearing the appeals resulting from the enforcement hearing before the CSHO. The strict implementation of the conditions and requirements is crucial to the ability to delivery of expedited process to the victims of domestic violence. Such service however should not be at the cost of the safety of the victim, the defendant, the hearing officer, or any other staff or litigants.

Currently, judges are responsible for hearing the child support establishments and modifications in the domestic violence matters despite the fact that most other non-

dissolution (FD) applications to modify are routinely scheduled before the CSHO. The CSHOs have the expertise as to the child support modification issues and as to the application of the Guidelines that comes from having primary responsibility for the disposition of Title IV-D child support cases.

The *Manual* states that modifications are inherently complex and provides that they be heard by a judge. Historically, this has raised issues for the Judiciary. Since Family handles ten (10) docket types, there is tremendous demand for judge time to address the cases requiring the attention of a judge. Expedited process is premised on the concept of diverting appropriate matters from the judge in order to resolve them in an expedited manner. Requiring that all modification of support cases go to a judge unduly delays their resolution because they are segregated from the expedited process B the process of child support matters going first to a CSHO. The laudable intent of providing the attention of a judge to hear these cases inadvertently subjects the victim to less timely service due to the demands placed on the available judge time. The expedited process places summary child support matters before the CSHO normally, but the domestic violence cases have been historically been diverted from the expedited process. DV cases are by no means routine, but the adoption of R.5:6A Child Support Guidelines by NJ has contributed to standardization of the issue of child support. Expedited process means that child support issues in some domestic violence cases will be better served before the CSHO. This would permit the judge to devote time to the domestic violence cases requiring judicial attention.

The July 2004 *Manual* incorporates the CSHO Program Standard 7 as Appendix 20. Standard 7 clearly provides specific and necessary security and facilities conditions that should be met in order to place the civil enforcement before a CSHO. In expanding to allow CSHOs to hear establishments, modifications and enforcements with domestic violence restraints, these conditions and even increased safety measures would have to be in place for any vicinage seeking to calendar child support modifications in domestic violence cases before the CSHO. Indeed, the proposed standard requires that the security issues be addressed in advance, prior to a county scheduling these cases before the CSHO, to insure that the requirements as to security and facilities are met and to insure that the other conditions are understood in terms of proper implementation.

New

CSHO Program Standard 13 and Commentary

as approved by the Supreme Court March 5, 2007

CSHO STANDARD 13 TELEPHONIC HEARINGS

In matters involving establishment and modification of child support in non-dissolution matters and post-judgment dissolution motions, the Child Support Hearing Officer may conduct hearings by telephone. In New Jersey, it is not unusual to have parties or counsel participate by telephone. Rule 5: 5-7 allows for case management conferences to be by phone. Rule 5:7A (b) allows TROs to issue based on sworn testimony to the judge using telephone, radio or other means of electronic communication. The *Uniform Interstate Family Support Act, 2A: 4-30.92, et. seq.* encourages courts to allow testimony by telephone or electronic communications. The Family Division staff will ensure that cases appropriate for telephonic hearings are scheduled before a hearing officer and that the proper equipment is provided. The CSHO has the discretion to end a telephonic hearing if he or she determines that the integrity of the record is being compromised because it is telephonic. The following conditions shall be observed:

1. Family Division staff will process requests for telephonic hearings and determine whether there is good cause for the telephonic hearing accommodation. If a party resides in New Jersey, a reasonable distance from the hearing site, there is a presumption that they would appear for the hearing unless there is another valid reason, e.g. the party is hospitalized. The Family Division will advise the party that he or she must submit the request for a telephonic hearing in writing to the Family Division and their adversary no less than 15 days prior to the hearing date (letter or motion papers). Family Division should use a form to process the requests for telephonic hearings. See attached form.
2. Family Division staff will obtain and place in the file the necessary telephone numbers and names of contact persons and will clearly identify on the hearing officer's calendar and on the case notice all matters scheduled for a telephonic hearing and the time of the hearing. If the party is in the military, the Family Division staff will also obtain the person's commanding officer and military base.

3. Generally, the court shall initiate the call to the requesting party. The CSHO shall have the ability to coordinate the telephonic matter with the other scheduled cases where parties have appeared and may instead call the requesting party. In all instances, the requesting party will be advised by Family Division staff to remain available and wait for the call (as per the written request for a telephonic appearance indicates) from the court. In order to coordinate the telephonic hearings with the hearing officer's scheduled calendar, it must be clear from the hearing officer's calendar what cases are scheduled for a telephonic hearing, provide the telephone contact number and whether an interpreter is needed for the case.

4. Ten days prior to scheduling the telephonic hearing, the Family Division shall notify the parties, counsel of record, and the Board of Social Services attorneys (UIFSA, TANF and DYFS cases), of any requests for telephonic hearings.

5. In *UIFSA* matters the Family Division staff shall cooperate with tribunals of other states in designating an appropriate location for the testimony and advise the party if he or she must contact the child support enforcement agency and arrange to appear at the state agency for their assistance in setting up the call. In addition the party must be advised that he or she must provide information to confirm their identity.

6. For all matters to establish or modify support, the parties must be notified that no less than five days prior to the hearing, they must provide their last three federal income tax returns and four current pay stubs to the hearing officer and their adversary. The adversary must provide to the other party their last three income tax returns and four current pay stubs no later than five days prior to the hearing. The party appearing by telephone must provide information to confirm their identity during the hearing. Other documents that the parties want to submit to the hearing officer for review must be submitted to Family Division no less than five days prior to the hearing and copies must be provided by the party to their adversary in advance. The Family Division staff will place these documents in the file prior to the telephonic hearing.

7. In scheduling telephonic hearings for the hearing officer, Family Division staff will take into consideration that telephonic hearings require more time to conduct than in-person hearings and will schedule fewer total cases in order to accommodate telephonic hearings. When an interpreter is used in a telephonic hearing, the time needed to hear the case may be increased.

8. When the CSHO does not proceed with a scheduled telephonic hearing or concludes the hearing before it is finished, the CSHO shall set forth the reason(s) for doing so in the Uniform Summary Support Order (USSO).

9. The USSO shall indicate that there was a telephonic hearing. A copy of the Child Support Hearing Officer recommendation along with the Child Support Guidelines worksheet shall be provided to the party at the hearing and the copy of the order signed by a Judge along with the Child Support Guidelines worksheet will be mailed to both parties.

10. In the event of an appeal by one or both parties, the Family Division will schedule the telephonic appeal hearing before a Judge for the same day, if possible, or make suitable arrangements when the appeal cannot be heard the same day.

11. When scheduling telephonic hearings in modification of child support in domestic violence cases (Standard 7) and FM post-judgment motions to modify support (Standard 9), the screening requirements still apply.

12. Polycom equipment, when available, shall be used for the telephonic hearing. If it is not available and the equipment used (e.g. speaker phone) is not adequate, malfunctions, or an outside telephone line is not available after several attempts, the hearing officer may discontinue the telephonic hearing and reschedule the matter to allow parties to appear. If the party appearing telephonically is not available to take the call or fails to call the court, the hearing officer shall proceed with the hearing and treat the case as he or she would any other non-appearance and, on the record, dismiss the case without prejudice if the party appearing telephonically is the moving party or proceed with a default order if appropriate.

Commentary:

The advancement of technology and the current use of telephone and electronic communication for court hearings provide authority and a basis for allowing the Child Support Hearing Officer to conduct expedited hearings where a party may testify by telephone. Under the *Uniform Interstate Family Support Act (UIFSA), N.J.S.A. 2A; 4:30.65 et. seq.* telephonic hearings are a recognized means of conducting hearings; all proceedings brought under *UIFSA*, including long-arm cases, may proceed by telephonic hearings. Rule 5:5-7 allows for Family case management conferences to be by telephone. Rule 5:7A(b) allows TROs to issue based on sworn testimony to the judge using telephone, radio or other means of electronic communication. It is logical to extend this method to the summary proceedings conducted by the CSHO and further enhance expedited process.

May 4, 2000

MEMORANDUM TO: Assignment Judges
Family Presiding Judges
Family Division Managers

FROM: Richard J. Williams

RE: **Procedures for the Registration of Out of state Domestic Violence Restraining Orders**

The Conference of Family Division Managers, the Family Practice Division and the Automated Trial Court Systems Unit have developed procedures to implement the registration of out of state domestic violence orders in the Family Division and the DV central registry. The Information Systems Division has completed the programming of this procedure in FACTS. This process is scheduled to become active in FACTS on 5/8/00. These procedures have been reviewed by the State Domestic Violence Working Group and the Conference of Family Division Managers, and approved by the Conference of Family Division Presiding Judges. The procedures were included, in draft form, in the New Jersey presentation to the Mid-Atlantic VAWA conference on Full Faith and Credit issues.

This memorandum includes:

- Procedures for Family Division staff to follow in the registration of the orders;
- FACTS codes and procedures. (part of the FACTS FV Docket users guide distributed by the Automated Trial Court Systems Unit);
- Certification forms for incoming orders and for outgoing New Jersey orders.

The attached procedure has been modified from prior drafts in order to better accommodate the out of state order's expiration date in FACTS and recent discussions with other Mid Atlantic states concerning the practice of certification for Restraining Orders. The Automated Trial court Systems Unit conducted training in April to implement this process. The trainees from each vicinage were provided the updated FV Docket users guide. Please advise Mary M. DeLeo if you have any questions concerning this procedure.

These procedures are labeled as interim pending the development of a complete Foreign order process within the FACTS system, and eventually every state's inclusion of their Restraining Orders in a National Central Registry which is anticipated by July, 2002. These procedures will allow for out of state Domestic violence orders to be placed on to the system, with a minimum of

system changes.

The primary benefit to registration for the victim is that the order will be on the statewide DV registry to which police throughout the state will have access on an immediate, round-the-clock basis.

These procedures will:

- Establish these registered cases without adding new cases to the Family Division statistical report;
- Accommodate the expiration date of out of state orders;
- Identify out of state orders to users, particularly law enforcement users of the DV registry;
- Not permit an out of state order to be reopened or modified;
- Still require that Full Faith and Credit be honored by Law Enforcement and the Courts on those orders which have not been registered.

Procedures

1. The victim (plaintiff) who elects to register an out of state restraining order will present the order at a county Family Division intake or domestic violence unit. The victim/plaintiff will complete a Victim Information Form and complete an Out of State certification form (attached).

2. The Family Division DV or central reception staff member will review the order, certification and victim information form. The staff member will call the issuing court, immediately, or within one business day. The staff member will fax the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager, or if so designated by the Division Manager, the FV Team Leader, may review the contact with the issuing court to resolve questions concerning confirmation.

3. Upon confirmation, the staff member will complete the confirmation form, which will allow for the establishment and docketing of the case on FACTS.

4. The establishment process will include:

    - A new initiating document, the OUT OF STATE DV RO, entered in the initiating document field, will be combined with a case status reason code that identifies the case as an Out of State Order;
    - The field MUNICIPALITY OF OFFENSE becomes a required field with a change from numeric to alphanumeric to allow the state to be identified, e.g. 9901 for an Out of State Order from Pennsylvania (attached FACTS procedure-1a);
    - All OUT OF STATE DV RO initiating document cases would be ignored in the statistical count, and cannot be reopened.

5. The expiration date will be identified in the system, and appear on the registry based on the use of a Relief code that is unique to this case type. The expiration date will be entered by the user and appear in the registry in the COMMENTS field (attached 2c).
6. Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered as of the case establishment date and providing the NJ docket number. The victim/plaintiff should be provided with the order, a copy faxed to the police departments identified by the victim/plaintiff, and a copy placed in

the Family Division file that was created when the system assigned the New Jersey number as part of the registration process.

7. The Attorney General's Guidelines to Law Enforcement Officers state that the registration of an order is not required in order to enforce the order. We have been assured by the Division of Criminal Justice that Full Faith and Credit will be emphasized in all police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out of state order with New Jersey

Outgoing Orders

All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute. As a further aid to victims, the federal VAWA office has promulgated a form of Certification, which, if completed by the issuing court, is intended to encourage the enforcement of these orders in all states. Attached is a form of this certification with the New Jersey Family Part caption. At this time, it is not a recommended practice to provide this certification for orders issued on a routine basis. Rather, the form should be completed upon the request of a victim, or another state's court or law enforcement agency that has requested verification of the New Jersey FRO.

The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, upon request of the victim.

c: Chief Justice Deborah T. Poritz
John J. Farmer, Attorney General
Paul H. Zoubek, Director, Division of Criminal Justice
AOC Directors and Assistant Directors
Trial Court Administrators

E:\CASSIDY\FVREG_.PRO

NEW JERSEY JUDICIARY

VERIFICATION AND CERTIFICATION
DOMESTIC VIOLENCE RESTRAINING ORDER

SUPERIOR COURT OF _____ COUNTY

ADDRESS

ADDRESS

TELEPHONE NUMBER

☐ Temporary Restraining Order ☐ Final Restraining Order

TO: STATE OF | CONTACT PERSON

TELEPHONE NUMBER ( ) | FAX NUMBER ( )

ADDRESS

CITY | STATE | ZIP CODE

PLAINTIFF'S LAST NAME | FIRST NAME | DEFENDANT'S LAST NAME | FIRST NAME

DATE OF ORDER | EXPIRATION DATE **NONE** | JURISDICTION (COUNTY / CITY) | ISSUING COURT DOCKET / CASE NUMBER

CERTIFICATION

I _____ certifiy that the above identified Order granted by the New Jersey Superior Court,

Chancery Division, Family Part, County of _____ **OR** Municipal Court of _____,

County of _____, represents a true copy of the original Order issued on _____ (date).

This Order represents the last Order issued in this matter. This Order has not be modified by any subsequent Order(s).

I am aware that if any statements made by me are willfully false I am subject to punishment.

FAMILY COURT STAFF NAME AND TITLE | DATE

The signatory is authorized by the Superior Court noted above to certify that the attached Order is a true copy of a valid New Jersey Domestic Violence Restraining Order.

PROOF OF SERVICE INFORMATION

☐ The defendant was provided with notice and the opportunity to be heard (Proof of Service Attached).

☐ There is no Proof of Service that the defendant has been served with a copy of this Order as of this date.

☐ Other: _____

NEW JERSEY JUDICIARY

CERTIFICATION OUT-OF-STATE
DOMESTIC VIOLENCE RESTRAINING ORDER

YOUR LAST NAME	FIRST NAME	DEFENDANT'S LAST NAME	FIRST NAME

DATE OF ORDER	EXPIRATION DATE	ISSUING STATE	JURISDICTION (COUNTY / CITY)

ISSUING COURT DOCKET / CASE NUMBER	ISSUING COURT PHONE NUMBER
	( )

CERTIFICATION

I _____ certifiy that the above identified Order presented to the New Jersey Superior Court, Chancery Division, Family Part, County of _____ represents a true copy of the original Order issued by _____ (state / local jurisdiction) on _____ (date). This Order represents the last Order issued in this matter to the best of my knowledge. I am aware that if any statements made by me are willfully false I am subject to punishment.

SIGNATURE	DATE

ISSUING COURT

TO BE COMPLETED BY AUTHORIZED PERSON FROM THE ISSUING COURT

NAME / TITLE

TELEPHONE NUMBER	FAX NUMBER
( )	( )

This certifies that the Order identified above and dated _____ has been reviewed and represents a true copy of our court's original Order. The defendant in this case was provided with the notice and the opportunity to be heard (Proof of Service attached) prior to the entry of this Order. The terms and conditions of the Order have not be modified by any subsequent Court Order(s).

SIGNATURE	DATE

PLEASE RETURN THIS STATEMENT TO _____ VIA FAX NUMBER _____

NEW JERSEY COURTS

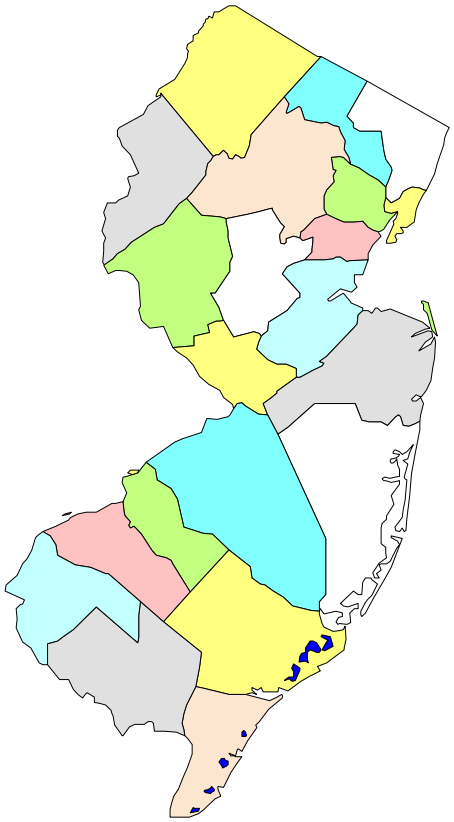
TO BE COMPLETED BY NEW JERSEY FAMILY DIVISION STAFF (ATTACH CERTIFICATION AND PLACE IN FILE)

STAFF MEMBER NAME	DATE ORDER PRESENTED	DATE CASE ESTABLISHED ON FACTS

DISTRIBUTION TO (identify)	NJ DOCKET NUMBER

SUPERVISOR NAME / COMMENTS

STATE OF NEW JERSEY
FAMILY AUTOMATED CASE TRACKING SYSTEM
(FACTS)



DVCR INQUIRY GUIDE

DRAFT

Prepared By: Automated Trial Court Systems Unit (ATCSU)
Date: June 2008

TABLE OF CONTENTS

INTRODUCTION 1

I LOGGING ON 3

II **DVCR** DEFENDANT AND VICTIM SEARCH 8

III DOMESTIC VIOLENCE INFORMATION 12
- A VICTIM SEARCH 13
- B DEFENDANT SEARCH 14
- C UNDOCKETED TRO SEARCH 16
- D FV CASE INFORMATION 18
- E FO CASE INFORMATION 20
- F P/G AND ACS HISTORY 22

APPENDIX 24
- TIPS FOR SEARCHING NAMES IN FACTS 25
- CONTACTS 26
- COUNTY CODES 27

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR INQUIRY GUIDE

INTRODUCTION - DVCR

The Domestic Violence Central Registry (DVCR) is a computerized inquiry system that allows law enforcement to access information about Domestic Violence cases. Prior to the existence of the Registry, officers needing information about DV cases had to request this information from the Family Court DV units in their county, who would then look up the case in question on the Family Automated Case Tracking System (FACTS). Access to the information was available only during the court's operating hours. The Central Registry permits direct access at any time to the DV information in FACTS.

The Central Registry displays information about cases in which a restraining order was requested (FV docket type), and cases in which a violation of a restraining order is alleged to have occurred (FO docket type). Law Enforcement personnel are using this information to help determine what action to take when a Restraining Order is allegedly violated, to help determine bail amounts, to decide if applications for weapons permits should be granted, and for general information in handling DV cases.

ONGOING ENHANCEMENTS

Enhancements to the Domestic Violence Central Registry are being developed on an ongoing basis. In anticipation of these enhancements, the text of this manual covers their use. If you find that you are unable to perform a function described in this manual, you may be trying to access a feature that has not yet been installed. Please phone the Judicial Problem Reporting Desk at 1-800-343-7002 and an analyst will contact you with further details.

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR INQUIRY GUIDE

INTRODUCTION – Juvenile Central Registry

This section deleted

ONGOING ENHANCEMENTS

Enhancements to the system are being developed on an ongoing basis. If you find that you are unable to perform a function described in this manual, please phone the Judicial Problem Reporting Desk at 1-800-343-7002. An analyst will contact you about your problem.

A NOTE ABOUT USING THIS GUIDE

To help you use this guide more effectively, remember that:

- CAPITALS - indicate names of Screens and Fields
- **BOLDED CAPITALS** - indicate some action that you must take (entering data or pressing keys).

NAVIGATING IN FACTS

CLEAR - return to the previous screen
PA1 - return to FACTS Main Menu from anywhere in FACTS
PF7 - page backward on screen or list
PF8 - page forward on screen or list

I

LOGGING ON

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE

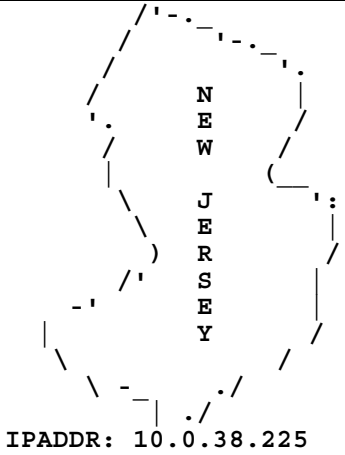
I. LOGGING ON

1) At the Office of Telecommunications and Information System (OTIS) screen, **TYPE AOCTELE** and **PRESS ENTER.**

STATE OF NEW JERSEY OFFICE OF TELECOMMUNICATIONS
AND INFORMATION SYSTEM
YOUR NETWORK TERMINAL IS xxxxxxxx
UNAUTHORIZED ACCESS ILLEGAL

PLEASE ENTER APPLICATION REQUEST: **AOCTELE**

2) At the ADMINISTRATIVE OFFICE OF THE COURTS "scale" screen, **TYPE NJ** and **PRESS ENTER**.

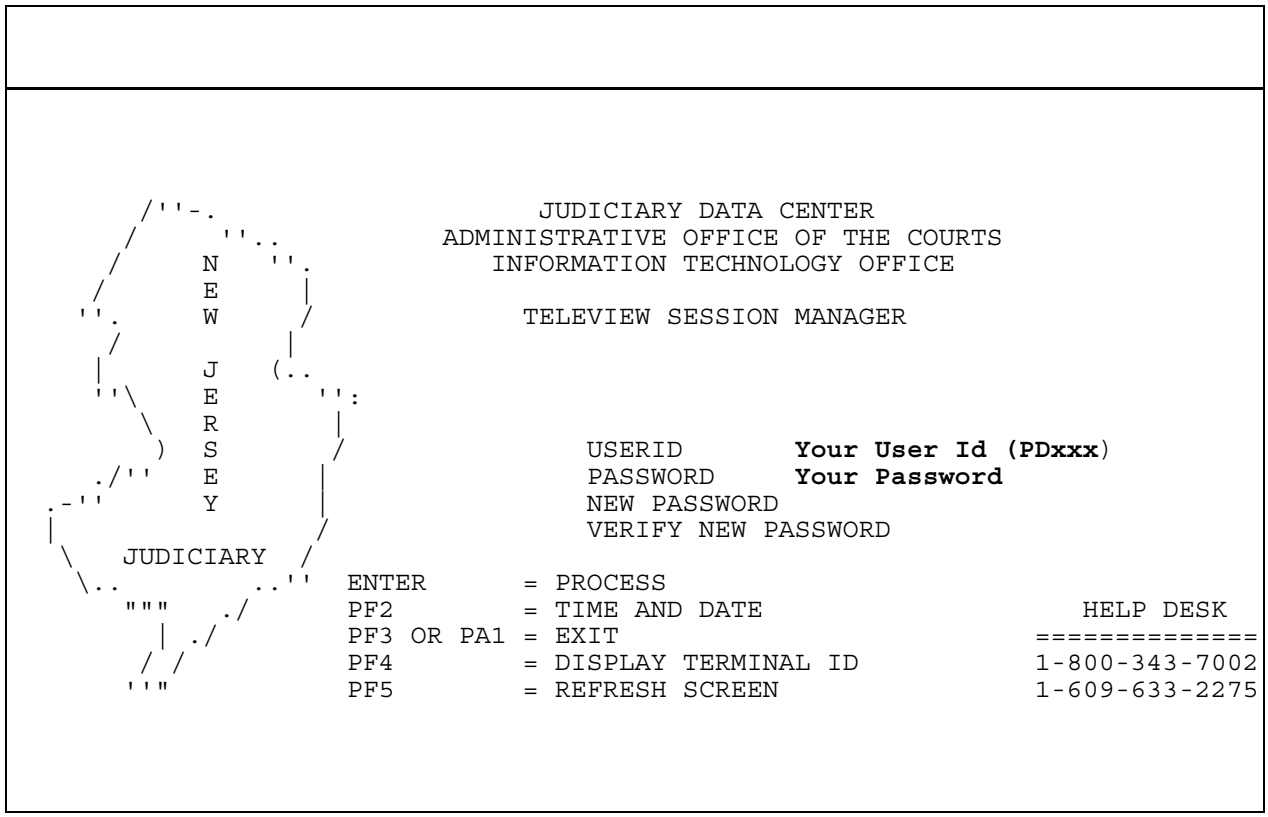



```
                                    JUDICIARY
                          TELECOMMUNICATIONS NETWORK
IPADDR: 10.0.38.225
                        ADMINISTRATIVE OFFICE OF THE COURTS
                           INFORMATION TECHNOLOGY OFFICE
                            UNAUTHORIZED USE PROHIBITED

                           PROBLEM REPORTING DESK - 800-343-7002
                                                    609-633-2275
                    ,ENTER "NJ" TO ACCESS:
```

3) At the TELEVIEW SESSION MANAGER screen, **TYPE** your **USERID ID, PRESS** the **TAB** Key**, TYPE** in your **PASSWORD,** and **PRESS ENTER.**
(The password will not be visible on the screen.)

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE



4) At the TELEVIEW SESSION MANAGER screen, look for "FACTS, DVCR & JUV REG" and **PRESS** the appropriate key to select the option.

(Note: The option may be a different number on your menu.)

```
 1/28/02 MON          JUDICIARY DATA CENTER              NETID: TNB00345
03:42:52 PM         TELEVIEW SESSION MANAGER             USRID: PDTRN10
--------------------------------------------------------------------------
MODEL: 3270-2/2E          ESC: ATTN    CMDCHR: .          REGID: 019F

CHOOSE SYSTEM NUMBER OR PFKEY FOR VIEWING:

 SYSTEM              APPLICATION STATUS      REMARKS / DESCRIPTION
 ------------ ---------------------------- -------------------------
 1 IDMS CV1            AVAILABLE              CV1 - TRAINING RELEASE 12
 2 EMAIL               AVAILABLE              ELECTRONIC MAIL
 3 RMDS/FM             AVAILABLE              FACTS REPORTS
 4 IDMS V17            AVAILABLE              FACTS, DVCR & JUV REG

      PA1 = UP   PA2 = DOWN   CLEAR = MSG   LOGOFF ALL = EXIT
```

5) The Central Registry Menu will display.
PRESS PF1 to access the DOMESTIC VIOLENCE CENTRAL REGISTRY

```
FMM1920              FAMILY AUTOMATED CASE TRACKING SYSTEM        01/28/02
                            CENTRAL REGISTRY MENU                    15:13
                                                                       PF

              USER ID:

                PF1  - DOMESTIC VIOLENCE CENTRAL REGISTRY

                PF2  - JUVENILE CENTRAL REGISTRY


FM905739 PLEASE DEPRESS PF KEY TO PROCESS FUNCTION
```

NOTE: Please be aware that the FACTS installation dates for the counties varied. Cases that occurred before 1992 may not be in the system. Many cases with active orders prior to 1992 have been entered by county DV staff.

II

DEFENDANT AND VICTIM

SEARCH

II. DEFENDANT AND VICTIM SEARCH

The following procedure describes how to search for a Defendant or Victim in the Central Registry.

1) On the PARTY NAME SEARCH screen choose the most accurate information you have on the party and use it for the search:

NAME (Primary method of searching) Full or partial last name may be used. (If a partial last name is used, no first name may be used.) Full or partial first name may be used with a full last name.

SBI #	State Police Bureau of Identification #.
SSN	Social Security Number. (See note below)
CDR #	Warrant # or Summons #.
PARTY ID	FACTS-generated Identifying Number.

(See Appendix I for tips on searching names).

```
 FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY            05/01/01
 PAGE: 0001                       PARTY NAME SEARCH                      16:19
                                                                          PF
 LAST NAME:                        FIRST NAME:            MIDDLE INIT:
 SBI #:          SSN:             CDR #:     0000 000000 0000  PTY ID:

S  PARTY NAME            DV PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS




 FM906738 ENTER SEARCH INFORMATION AND PRESS PF1

 PF1=PARTY SEARCH
                                                          PF11=REFRESH
```

NOTE: Social Security Number (SSN) searches will return ALL parties that claimed to be associated with that social security number who have had contact with the Family Court. A party or parties may display that have NO domestic violence record. Conversely, a party may have a domestic violence record and not display in a SSN search. <u>SSN and SBI numbers must not be the primary or sole method of searching</u>. Parties that display after an SSN search can not be assumed to be a party to any incident unless they show a D and/or V indication and can be selected.

2) Enter the search criteria and **PRESS PF1 PARTY SEARCH**.
A list of names that meet the search criteria will be displayed.

```
FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                      PARTY NAME SEARCH                          13:37
                                                                           PF

LAST NAME: MARINNIA             FIRST NAME:           MIDDLE INIT:
SBI #:          SSN:           CDR #:                     PTY ID:


S  PARTY NAME           DV  PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC       M  MER ***
   MARINNIA CINDI                                                     MAIDE
      SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN      M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  CAM
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK          F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK          M  MON
   MARINNIA JON           D  M 0020817  03 09 1970  BLACK          M  ATL
   MARINNIA KURT L                                                    NICKN
      MARRINIA LUKES K    V  M 0185816  03 20 1974                  F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN      M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN        M  PAS

       PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD   PF9=ALIAS PF11=REFRESH
```

3) Party Information.

a) *Dockets In More Than One County*. The Party's name will be listed once for each county in which they have a case. The Party ID, (a FACTS generated ID number) should be the same for each listing. Selecting any of the entries will yield a list of all cases in all counties for that party. (e.g., Eboney Marinnia above.)
If the party has different Party IDs each will display separate information. You must check the party's information under the extra Party ID number. (e.g. Jon Marinnia above)

b) *Defendant or Victim?* Each party will have one of the following under the DV column indicating whether they were a Defendant, Victim, or both.

D Defendant
V Victim
DV Both Victim and Defendant.

c) Alias Indicator. If the party has an alias in FACTS, one of the following indicators will display:

***	Indicates the Party has one or more alias (see PF9 below.)
AKA	Name is an Also Known As. True name is listed on next line.
NICKN	Name is a Nickname. True name is listed on next line
MAIDE	Name is a Maiden Name. True name is listed on next line
MISSP	Name was misspelled at some point in the records.
RESUM	Party has resumed a Maiden Name.
COURT	Court Misspelling of Name.

4) *To view the additional Alias listing,* select a name with *** indicator and **PRESS PF9 ALIAS.**
All other alias names in FACTS attached to this party will be displayed with VENUE and DESCRIPTION OF ALIAS. **PRESS CLEAR** to exit this window.

```
 FMM1900                DOMESTIC VIOLENCE CENTRAL REGISTRY            02/14/01
 PAGE: 0001                      PARTY NAME SEARCH                       10:58
                                                                          PF

 LAS +-------------------------------------------------------------+
     | FMM1907 FAMILY AUTOMATED CASE TRACKING SYSTEM     PAGE:    1 |
     |                          ALIAS LISTING                      |
 S   |   NAME: SMITH CINDI                    PARTY ID: S0108609    |CTY ALIAS
     | VEN     ALIAS                               DESCRIPTION       | ATL
 s   | ATL     MARGOLIS CINDI                      NICKNAME          |  ATL ***
     | ATL     MARINNIA CINDI                      MAIDEN NAME       |  ATL
     | ATL     MULGREW KATE                        A/K/A             |  ATL
     | ATL     MARINNIA CINDY                      COURT SPELLI      |  ATL
     | ATL     MARRANA SINDY                       MISSPELLING       |  CAM
     | BUR     MUDRUCKER CINDI                     RESUME MAIDE      |
     | BUR     MUDRUCKER SINDEE                    A/K/A             |
     |                                                               |
     +---------------------------------------------------------------+
     |                PF7=BWD PF8=FWD CLEAR=EXIT                     |
     +---------------------------------------------------------------+

                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD  PF9=ALIAS  PF11=REFRESH
```

5) *To search another name*, **PRESS CLEAR** to exit window, and **PRESS PF11 REFRESH** to reset screen and proceed as above.

III

DOMESTIC VIOLENCE INFORMATION

III. DOMESTIC VIOLENCE INFORMATION

A. VICTIM SEARCH

Displays a list of cases in which the party was a victim, with the name of the defendant for each docket.

1) From the PARTY NAME SEARCH screen, **SELECT** (S) a Victim (V) and **PRESS PF3 VICTIM SEARCH.**

```
FMM1900                DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                      PARTY NAME SEARCH                        13:37
                                                                         PF

LAST NAME: MARINNIA              FIRST NAME:            MIDDLE INIT:
SBI #:         SSN:            CDR #:     0000 000000 0000 PTY ID:

S  PARTY NAME            DV  PARTY ID   BIRTH DATE  RACE         SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC      M  MER ***
   MARINNIA CINDI                                                      MAIDE

S     SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN     M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN     F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN     F  CAM ***
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK         F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK         M  MOR
   MARINNIA JON           D  M 0020817  03 09 1970  BLACK         M  ATL
   MARINNIA KURT    L                                                  NICKN
      MARRINIA LUKES K    V  M 0185816  03 20 1974                 F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN     M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN       M  PAS


                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
 PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD  PF9=ALIAS PF11=REFRESH
```

The VICTIM-DEFENDANT NAME LIST screen displays.

```
FMM1905                DOMESTIC VIOLENCE CENTRAL REGISTRY            8/16/00
PAGE: 0001                VICTIM - DEFENDANT NAME LIST                 13:16
                                                                        PF



VICTIM LAST NAME: SMITH                FIRST NAME: CINDY      MIDDLE INIT:


S  DEFENDANT NAME          DOCKET NUMBER    PARTY ID  BIRTH DATE  RACE    SEX
S   MARINNIA JON           MER FV 001677 94 M 0020817 03 09 1970 BLACK     M









                          PF2=CASE LIST
```

2) *To access the Defendant Case List*, **SELECT** (S) the Defendant and **PRESS PF2 CASE LIST**.

More information about the defendant case list follows.

B. DEFENDANT SEARCH

Use the Defendant's information to quickly check for any active restraining orders or to go to the Defendant's case list to see a history of their DV cases.

1) *To check for active Restraining orders*: From the PARTY NAME SEARCH screen **SELECT** (S) the Defendant (D) and **PRESS PF4 ACTIVE ORDER CHECK.**

Several messages may be displayed:

The messages "ACTIVE RESTRAINING ORDER EXISTS - SEE CASE LIST" or "NO ACTIVE RESTRAINING ORDERS" will display for NJ orders.

If an Out of State DV Order has been registered, the message will read "REGISTERED ORDER EXISTS (EXPIRATION XX/XX/XXXX) - SEE CASE LIST".

If the Out of State DV Order has no expiration date, the message "REGISTERED ORDER EXISTS (NO EXPIRATION DATE) - SEE CASE LIST" will display.

If more than one Out of State Order has been registered, the message "MULTIPLE REGISTERED ORDERS EXIST - SEE CASE LIST FOR DETAILS" will display.

If both NJ and Out of State Orders are found, the message "ACTIVE AND REGISTERED ORDERS EXIST - SEE CASE LIST" will display.

NOTE: This function is not a full look-up, but a quick check of the defendant. If an active or registered order is found, the user must then continue the process by pressing PF2 to view the case list. If a Victim (V) is selected, this function will not return restraining order information on the defendant. The Defendant (D) must be selected.

3) *To view the Case List for the Defendant*: From the PARTY NAME SEARCH screen, **SELECT** (S) the Defendant (D) and **PRESS PF2 CASE LIST**.
If the person does not appear on the list, check a list of TROs that have been entered in the on-line system, but have not yet been docketed by Family Court.

```
FMM1900                 DOMESTIC VIOLENCE CENTRAL REGISTRY              08/16/00
PAGE: 0001                       PARTY NAME SEARCH                         13:37
                                                                           PF

LAST NAME: MARINNIA              FIRST NAME:            MIDDLE INIT:
SBI #:          SSN:            CDR #:                      PTY ID:



S  PARTY NAME            DV  PARTY ID   BIRTH DATE  RACE          SEX CTY ALIAS
   MARINNIA ABRAHAM       D  M 0133530  10 17 1981  HISPANIC       M  MER ***
   MARINNIA CINDI                                                      MAIDE

      SMITH CINDI         V  S 0108609  07 23 1988  CAUCASIAN      M  ATL ***
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  BUR
   MARINNIA EBONEY        V  M 0028203  09 23 1978  CAUCASIAN      F  CAM ***
   MARINNIA ELANOR        D  M 0095140  08 17 1950  BLACK          F  MER
   MARINNIA JON           D  M 0021419  03 09 1970  BLACK          M  MOR
S  MARINNIA JON           D  M 0020817  03 09 1970  BLACK          M  ATL
   MARINNIA KURT  L                                                    NICKN
      MARRINIA LUKES K     V  M 0185816  03 20 1974                  F  MER ***
   MARINNIA MARKUS        D  M 0097333  06 07 1964  CAUCASIAN      M  HUD
   MARINNIA MARLONE       V  M 0097343  01 10 1989  UNKNOWN        M  PAS

                  PF2=CASE LIST    PF3=VICTIM SEARCH   PF4=ACTIVE ORDER CHECK
 PF5=UNDOCKETED TRO SEARCH   PF7=BACKWARD  PF8=FORWARD   PF9=ALIAS
PF11=REFRESH
```

C. UNDOCKETED TRO SEARCH

Many police agencies including the State Police now use e-TRO to record complaints and TROs granted after hours, weekends and holidays. The PARTY LIST screen displays the ability to search these TROs using the function key, **PF5 - UNDOCKETED TRO SEARCH.**

1) PRESS PF5, without selecting a person from the party name search list to perform this search. The system will use the criteria already entered and search for a TRO for the person. If any TROs are found with that name as plaintiff or defendant, the names will appear on this screen.

```
FMM1908                DOMESTIC VIOLENCE CENTRAL REGISTRY            02/27/02
PAGE: 0001                      UNDOCKETED TRO LIST                     15:31
                                                                         PF

 LAST NAME: MARINNIA            FIRST NAME:          MIDDLE INIT:
-------------------------------------------------------------------------------
 PARTY NAME          CASE RELATN     BIRTH DATE    RACE     SEX CTY SERVICE DT
---------------      -----------   ----------  ----------- --- —-- ----------

  MARINNIA ALBERT        DEFENDANT   09 01 1952  CAUCASIAN   M  BER
    MARINNIA JACKIE      PLAINTIFF   09 03 1971              F  BER
  MARINNIA COLAN         DEFENDANT   02 04 1954  ALASKAN NAT M  ATL
    MARINNIA ANNA        PLAINTIFF   06 09 1980              F  ATL
  MARINNIA JESSIE        DEFENDANT   10 15 1969  CAUCASIAN   M  SOM
    MARINNIA BARBARA     PLAINTIFF   01 01 1987              F  SOM
  MARINNIA LARRY         DEFENDANT   08 07 1988  CAUCASIAN   M  ATL
    BENNINGS ELIZABETH   PLAINTIFF   09 27 1981              F  ATL
* MARINNIO JACK          DEFENDANT   10 15 1969  CAUCASIAN   M  SOM
    MARINNIO BETTY       PLAINTIFF   01 01 1987              F  SOM

      TRO FOUND FOR DEFENDANT NAME ENTERED
    * = TRO DENIED          PF7=BACKWARD     PF8=FORWARD
```

If an asterisk (*) appears in front of the defendant name, the TRO was denied by the municipal court judge on duty at the time of complaint.

The purpose of this screen is to prevent duplicate TRO entry by law enforcement. It will not show any granted reliefs.

If a defendant is selected from the party search list and PF2 is pressed,

the DEFENDANT CASE LIST screen displays.

```
FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY            03/13/07
PAGE: 0002                   FACTS DEFENDANT CASE LIST                 13:18
                                                                          PF
 PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA             JON
 SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCEAN

 DOCKET NUMBER: OCN FO 000946 99  FP:Y  CASE STATUS/DATE: GUILTY    11 23 1999
    IND#: 990600544I                    ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FO 000319 99  FP:   CASE STATUS/DATE: DISMISSED 10 31 1999
    CDR#: W 1999 001598 0101            ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FO 000046 99  FP:   CASE STATUS/DATE: DISMISSED 05 23 1999
    CDR#: MULTIPLE CDR                  ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-99

 DOCKET NUMBER: ATL FV 001668 99  FP:   ORDER STATUS/DATE: ACTIVE/FRO
    MUNI: 0101 ABSECON TOWNSHIP        TRO ISS/SERVED: 04 18 1999 /
   VICTIM: JOYNER             TRACI     FRO ISS/SERVED: 05 08 1999 / 05 11 1999

PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD  PF10=CASE DETAIL
```

Defendant Information:

PARTY ID	FACTS Identifying ID Number.
SBI #	State Police Bureau of Identification #
DOB	Date of Birth
SSN	Social Security #
DL#	Drivers License # with state
JAIL STATUS	In Jail or Discharged.*
COMMITMENT/DISCHARGE DATE	Date Committed to/Discharged from County Jail
COUNTY	County Jail where Committed/Discharged.

(* Jail Status will display only for those parties whose County Jail and Family records have been linked using the FAMJAIL system.)

D. FV CASE INFORMATION

FV cases are created when a victim asks for a DV Restraining Order or registers an Out of State Restraining Order.

1) On the DEFENDANT CASE LIST, the following information displays for FV cases:

DOCKET NUMBER	County, Docket Type, Number, Court Year
FP	Fingerprint Indicator, Y or blank
ORDER STATUS/DATE	Case Status and Status Date
MUNI	Municipality where act of DV took place (State will display for Registered Foreign Orders)
TRO ISS/SERVED	TRO issued date / Proof of Service date
FRO ISS/SERVED	FRO issued date / Proof of Service date
VICTIM	Victim Name

The most important information is the Order Status. Orders with a Status of "ACTIVE" are in effect and enforceable. A Status of "DISMISSED" indicates the order is no longer in effect and the provisions of the order are no longer enforceable. An Order Status of "REGISTERED" indicates a Restraining Order from another state which has been registered in New Jersey. Whereas NJ orders do not expire, the orders from most other states are not permanent and have an expiration date. You must check the expiration date to determine if the expiration date has passed, which would make the order void.

```
 FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY            03/13/07
PAGE: 0002                    FACTS DEFENDANT CASE LIST                  13:18
 PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA            JON
 SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCN
 DOCKET NUMBER: OCN FO 000946 99  FP:Y  CASE STATUS/DATE: GUILTY    11 23 1999
    IND#: 990600544I                    ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
 DOCKET NUMBER: ATL FO 000319 99  FP:   CASE STATUS/DATE: DISMISSED 10 31 1999
    CDR#: W 1999 001598 0101            ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
 DOCKET NUMBER: ATL FO 000046 99  FP:   CASE STATUS/DATE: DISMISSED 05 23 1999
    CDR#: MULTIPLE CDR                  ORIGINAL DOCKET #:
    VICTIM: JOYNER            TRACI        FV-03-001668-96
S DOCKET NUMBER: ATL FV 001668 99  FP:   ORDER STATUS/DATE: ACTIVE/FRO
   MUNI: 0325 MOUNT LAUREL TOWNSHI     TRO ISS/SERVED: 04 18 1999 /
   VICTIM: JOYNER           TRACI      FRO ISS/SERVED: 05 08 1999 / 05 11 1999

 PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD PF10=CASE DETAIL
```

2) *To see a list of reliefs granted for the case*, **SELECT** (S) the case and **PRESS PF10 CASE DETAIL.**

A list of reliefs addressed by the order is displayed.

Reliefs for TRO's are preceded by an E (Emergent).
Reliefs for FRO's preceded by an F (Final).

Example of a New Jersey Final Restraining Order:

```
FMM1911    DOMESTIC VIOLENCE CENTRAL REGISTRY    PAGE: 0001
             RESTRAINING ORDER RELIEFS GRANTED
 F - PROHIBITION AGAINST FUTURE ACT OF DV
 F - EXCL POSS RESIDENCE TO PLA / ALT HOUSEHOLD
 F - PROHIBITION AGAINST CONTACT W/ VICTIM
 F - PROHIB AGAINST CONTACT W/ FAMILY HOUSEHOLD
 F - PROHIB AGAINST HARASSING COMMUNICATIONS
 F - LAW ENF ACCOMPANIMENT TO SCENE / RESIDENCE
 F - IN HOUSE RESTRAINTS



                PF7/BWD PF8/FWD CLEAR/PREV
```

Example of a Registered Out of State Order:

```
 FMM1911    DOMESTIC VIOLENCE CENTRAL REGISTRY    PAGE: 0001
              RESTRAINING ORDER RELIEFS GRANTED
 RO EXPIRES 12 MONTHS
      EXPIRATION DATE 03/16/2001
 F - PROHIBITION AGAINST FUTURE ACT OF DV
 F - EXCL POSS RESIDENCE TO PLA / ALT HOUSEHOLD
 F - PROHIBITION AGAINST CONTACT W/ VICTIM
 F - PROHIB AGAINST CONTACT W/ FAMILY HOUSEHOLD
 F - PROHIB AGAINST HARASSING COMMUNICATIONS
 F - LAW ENF ACCOMPANIMENT TO SCENE / RESIDENCE
 F - IN HOUSE RESTRAINTS



                 PF7/BWD PF8/FWD CLEAR/PREV
```

E. FO CASE INFORMATION

FO docket type cases arise from allegations that a DV restraining order (TRO or FRO) has been violated.

1) On the DEFENDANT CASE LIST the following information displays for FO cases:

DOCKET NUMBER	County, Docket Type, Number, Court Year
CASE STATUS/DATE	Case Status and Status Date
CDR #	Complaint # - Summons or Warrant
IND#	Indictment Number
ORIGINAL DOCKET #	Docket # for originating FV case
VICTIM	Victim's name

A Case Status of "GUILTY" indicates that the Defendant was found or pled guilty to violating the restraining order. A Case Status of "DISMISSED" indicates the Defendant was found Not Guilty of having violated the order or the case was dropped. "PENDING" cases are cases that have not yet gone to trial. See Appendix II for a list of possible Case Statuses.

```
FMM1901                DOMESTIC VIOLENCE CENTRAL REGISTRY             03/13/07
 PAGE: 0002                    FACTS DEFENDANT CASE LIST                 13:18
                                                                          PF
  PARTY ID: M 0020817     DEFENDANT NAME: MARINNIA             JON
  SBI#: 113000A  DOB: 03 09 1960  SSN: 111-11-1111 DL#:    :
        JAIL STATUS:IN JAIL          COMMITMENT DATE: 11/23/07   OCN

  DOCKET NUMBER: OCN FO 000946 99 FP: CASE STATUS/DATE: GUILTY      11 23 1999
     IND#: 990600544I                 ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96
  DOCKET NUMBER: ATL FO 000319 99 FP: CASE STATUS/DATE: DISMISSED   10 31 1999
     CDR#: W 1999 001598 0101         ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96

S DOCKET NUMBER: ATL FO 000046 99 FP: CASE STATUS/DATE: GUILTY      05 23 1999
     CDR#: MULTIPLE CDR               ORIGINAL DOCKET #:
     VICTIM: JOYNER            TRACI     FV-03-001668-96

  DOCKET NUMBER: ATL FV 001668 96 FP: ORDER STATUS/DATE: ACTIVE/FRO
     MUNI: 0325 MOUNT LAUREL TOWNSHI   TRO ISS/SERVED: 04 18 1999 /
     VICTIM: JOYNER            TRACI   FRO ISS/SERVED: 05 08 1999 / 05 11 1999

 PF1=P/G SBI SEARCH  PF3=JAIL HELP  PF7=BACKWARD  PF8=FORWARD PF10=CASE DETAIL
```

2) *To see a list of the charges in case*: **Select** (S) the FO case and **PRESS PF10 CASE DETAIL**.

A list of charges displays. The result for each charge displays directly below the charge.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
CDR#:W 1999 001227 0101

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                D  05 23 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:12-1B(8)-AGGRAVATED ASSAULT /                                3  05 23 99
  DISMISSED
2C:14-2A-AGGRAVATED SEXUAL ASS /                                1  05 23 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:14-2B-SEXUAL ASSAULT        /                                2  05 23 99
  COUNSELING
                                PF8=FWD  CLEAR=PREV
```

If the case has multiple CDR #s or multiple IND #s, a notation displays showing which CDR or IND you are viewing. **PRESS PF6** to view the next CDR/IND.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
CDR#: W 1999 001228 0101

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                D  05 23 99
  PENDING              006 MONTH      TO BE SERVED
2C:12-1A-SIMPLE ASSAULT        /                                D  05 23 99
  FINE
2C:33-4C-HARASSMENT-PHYSICAL/V /                                P  05 23 99
  CHARGE DISMISSED

           PF6=N CDR                    CLEAR=PREV        MULT CDR 01 OF 02
```

If the case has an indictment number, that number will appear at the top of the screen.

```
FMM1912           DOMESTIC VIOLENCE CENTRAL REGISTRY            PAGE: 0001
                        CONTEMPT CHARGES LIST
IND#:990900544I

PRIMARY STATUTE-DESCRIPT       / AUX.STATUTE DESCR             DEGR  DATE
2C:29-9B-CONTEMPT-DV           /                                4  09 21 99
  JAIL TERM            006 MONTH      TO BE SERVED
2C:12-1B(8)-AGGRAVATED ASSAULT /                                3  09 21 99
  DISMISSED
2C:14-2B-SEXUAL ASSAULT        /                                2  09 21 99
  COUNSELING
                                PF8=FWD  CLEAR=PREV
```

F. P/G AND ACS HISTORY

Displays the Defendant's court history from P/G (Promis/Gavel - the Superior Court Criminal information system) and ACS (Automated Complaint System- the Municipal Court Criminal information system). The cases displayed give general information about a party's court record and may or may not be related to their DV cases. This function will only work when SBI # is displayed on the defendant case list.

1) From the DEFENDANT CASE LIST screen **PRESS PF1 P/G HISTORY**.
(Note if no Promis/Gavel information is found, the system will skip to the ACS display)
The following information displays:

DEFENDANT NAME	Name of Defendant
SBI#	State Police Bureau of ID #
FP IND	"Y" or blank. Indicates SBI# was approved by State Police.
COUNTY	County where case originated
CASE #	PG case number
CRIME TYPE	Description of charge
IND/ACC #	Indictment/Accusation #
DEFN STATUS/DATE	Case Status and Date
SENT DATE	Date Sentenced
DISP DATE	Date case was disposed
ACTION	Sentence
REASON	Reason for Sentence

```
FMM1903                DOMESTIC VIOLENCE CENTRAL REGISTRY
PAGE:                   PROMIS/GAVEL DEFENDANT CASE LIST


DEFENDANT NAME: MARINNIA     JON
     SBI #:113000A     FP IND: Y     D-O-B: 03 09 1960   RACE: W    SEX:M
COUNTY CASE #:9800051   CRIME TYPE: ASSAULT         IND/ACC #:  98-12-0015-I
   ATL  DEFN STATUS/DATE:ACTIVE/NON-FUGITIVE 02 10 1998 SENT DATE:
        DISP DATE:03 09 1998     ACTION:GT    REASON: GUILTY PLEA AS CHARGED

DEFENDANT NAME: MARINNIA     JON    K
     SBI #:113000A     FP IND: Y     D-O-B: 03 09 1960   RACE: W    SEX:M
COUNTY CASE #:9700265   CRIME TYPE: NARCOTICS       IND/ACC #:  97-06-00132-I
   OCN  DEFN STATUS/DATE:PTI DIVERSION       02 01 1997 SENT DATE:
        DISP DATE:08 10 1997     ACTION:DM    REASON:PTI COMPLETION

PF1=ACS SBI SEARCH            PF7=BACKWARD                PF8=FORWARD
```

For more detailed information refer to the P/G Inquiry Guide.

2) From the PROMIS/GAVEL DEFENDANT CASE LIST **PRESS PF1 MUNICIPAL HISTORY** to see the Defendant's Municipal Court History in the Automated Complaint System (ACS),

The following information displays:

SBI#	State Police Bureau of ID #
DV IND	"Y" or blank. Domestic Violence Indicator
# CHRGS	Number of Charges on the CDR.
DESC	Description of the Most Severe Charge
STATUS/FINDING	Status of Complaint/Finding of Court
OFFN DATE	Date of Alleged Crime
DISP DATE	Date disposition of case was determined.

```
FMM1904                DOMESTIC VIOLENCE CENTRAL REGISTRY          03/19/07
PAGE: 0001                ACS DEFENDANT COMPLAINT LIST                14:47

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:    DV IND: Y    DOB: 03 09 1960     RACE: W   SEX: M
        COMPLAINT NO:W 2001 000036 0104  # CHRGS: 002  DESC: AGGRAVATED ASSA
        COMPL STATUS/FINDING:  WARRANT /
        OFFN DATE: 02 02 2001  DISP DATE:          ** OUTSTANDING WARRANT **

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:    DV IND: Y    DOB: 03 09 1960     RACE: W   SEX: M
        COMPLAINT NO.:W 2000 001163 0104  # CHRGS: 002 DESC: CRIMINAL MISCHF
        COMPL STATUS/FINDING:  DISPOSED / GUILTY
        OFFN DATE: 06 07 2000  DISP DATE: 08 09 2000

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:Y   DV IND: Y    DOB: 03 09 1960     RACE:W    SEX:M
        COMPLAINT NO.:W 1999 980325 0104  # CHRGS: 006  DESC: ASSAULT W/ INT
        COMPL STATUS/FINDING: TRANSFERED / DISPOSED AT SUPERIOR COURT
        OFFN DATE:01 02 1999  DISP DATE:10 13 1999

DEFENDANT NAME: MARINNIA     JON
   SBI #:113000A    FP:     DV IND:     DOB: 03 09 1960     RACE:W    SEX:M
        COMPLAINT NO.:W 1996 380325 0104  # CHRGS: 003  DESC:CAUSING OR RISK
        COMPL STATUS/FINDING: TPAY / COND DISCHARGE
        OFFN DATE:02 07 1996  DISP DATE:07 02 1996



PF7=BACKWARD          PF8=FORWARD           CLEAR=PRIOR SCREEN
```

For more detailed information, refer to the ACS Inquiry Guide.

APPENDIX

APPENDIX

TIPS FOR SEARCHING NAMES IN FACTS

1) *Start with a narrow search*. Start the search using a unique identifier or full name. This narrows the search and will save you time if you find the party.
- SSN # or PARTY ID.
- Full Name.

2) *Jr, Sr, III, ... at bottom of list*. The FACTS database is arranged such that Jr, Sr etc. are listed *after* all names that do not have one of these appendages. (e.g. - Al Smith Jr will be listed below Zeb Smith.)

3) *Search according to Data Entry Standards*
Data Entry Standards specify the correct way to enter data into FACTS.
- No punctuation. Use space where hyphens or apostrophes would be.
- Spaces before capitals in middle of names.

IF THE NAME IS:	*ENTERED AS:*
William Renn III	Renn III William
Susan Helig-Meyers	Helig Meyers Susan
Pat O'Brien	O Brien Pat
Jack McNealy	Mc Nealy Jack
John A. Smith Jr.	Smith Jr John A

4) *Try Variations***.** The Data Entry Standards may not have been followed or there may have been spelling variations. Even common names sometimes have spelling variations.

If you don't find:	*Try:*
O Brien	O'Brien
	Obrien
John	Jon
Helig Meyers	Helig-Meyers
Smith Jr John	Smith John

5) *Broaden the search.*
- Use only partial first name
- Try last name only
- Try partial last name

APPENDIX II ORDER AND CASE STATUS DESCRIPTIONS

Domestic Violence (FV)

ACTIVE	New Case - no result at this time
DISMISSED	No restraining order in effect
ACTIVE/RO	Restraining order in effect
ACTIVE/FRO	Final Restraining Order in effect
ACTIVE/TRO EXT	Temp Restraining Order in effect - Extended Indefinitely
ACTIVE/AMD TRO	Amended Temporary Restraining Order in effect
ACTIVE/AMD FRO	Amended Final Restraining Order in effect
REGISTERED	A Restraining Order from another state has been registered in NJ. (User must check expiration date to determine if order is still in effect.)
TRANSFER	Case has been transferred to another county. (User must view other county's case to determine case status.)

Domestic Violence Contempt (FO)

GUILTY	Defendant found or pleads guilty
DISMISSED	Defendant not found guilty - case dismissed
ON HOLD	Case cannot proceed
PENDING	Case has not yet gone to trial

ADMINISTRATIVE OFFICE OF THE COURTS
DVCR GUIDE

CONTACTS

For questions regarding either of the registries, please call the Judiciary Problem Reporting Desk at (609) 633-2275 or (800) 343-7002. They will contact an analyst who will answer your questions and address your needs.

All Law Enforcement officers having access to the Domestic Violence Central Registry will also have access to the Juvenile Central Registry.

Any new requests to access either system will be granted access to both registries.

COUNTY CODES

01	**ATLANTIC**
02	**BERGEN**
03	**BURLINGTON**
04	**CAMDEN**
05	**CAPE MAY**
06	**CUMBERLAND**
07	**ESSEX**
08	**GLOUCESTER**
09	**HUDSON**
10	**HUNTERDON**
11	**MERCER**
12	**MIDDLESEX**
13	**MONMOUTH**
14	**MORRIS**
15	**OCEAN**
16	**PASSAIC**
17	**SALEM**
18	**SOMERSET**
19	**SUSSEX**
20	**UNION**
21	**WARREN**

APPENDIX

DOMESTIC VIOLENCE CHECK LIST FOR LAW ENFORCEMENT OFFICERS
Primary Investigation Guidelines
Obtaining TRO's

1. ***Upon Arrival at Scene***

- ‘ Determine location and condition of victim
- ‘ Determine if suspect is still as scene
- ‘ Check well being, physical condition of all parties
- ‘ Determine what, if any, criminal offense has occurred
- ‘ Determine if any weapon was involved
- ‘ Summon first aid if injuries require

2. Preliminary Investigation

- ‘ Interview victim & suspect separately
- ‘ Ask victim if there is a history of abuse
- ‘ If children at scene, interview them separately
- ‘ Distinguish primary aggressor from victim, if both parties injured
  - T Comparative extent of injuries suffered
  - T History of domestic violence
  - T The nature and type of wounds [injury associated with defendant oneself[
  - T Other relevant factors
  - T Keep in mend that a person has a right to defendant self if attacked by another
- ‘ Note & document emotional & physical condition of parties involved
- ‘ Note demeanor of suspect
- ‘ Note torn clothing of both parties
- ‘ If victim is a woman, note smeared make up
- ‘ Note signs of injury on victim
- ‘ Note and record any excited utterances by any party
- ‘ Note any evidence of substance/chemical abuse
- ‘ Advise victim of domestic violence rights
- ‘ Assist victim in completing Victim Notification Form
- ‘ Advise victim of available resources
- ‘ Assist victim in obtaining temporary domestic violence restraining order

3. Court Orders

- ‘ Determine if victim has restraining order
- ‘ Was restraining order served on suspect
- ‘ Determine if suspect in violation of court order

4. Arrest

- ‘ If criteria for mandatory arrest present, arrest suspect
  - T Victim shows signs of injury caused by an act of domestic violence
  - T A warrant is in effect
  - T Defendant has violated a restraining order
  - T Defendant used or threatened to use a weapon
- ‘ If probable cause not present for arrest by officer, advise victim of right to sign criminal complaint
- ‘ Record spontaneous statement of suspect
- ‘ Prevent communication between suspect & victim/witness
- ‘ Record alibi statement of suspect

‘ Advise suspect of rights
‘ Record all statements

5. Evidence

‘ Record condition of crime scene
‘ Photograph damaged property
‘ Photograph crime scene
‘ Identify weapons/firearms
‘ Photograph and diagram injuries of
____victim
____suspect
‘ Obtain statements of
_____victim
_____children
_____witnesses
‘ Collect, protect and document all physical evidence

6***. Medical Treatment***

‘ Transport victim to hospital, if necessary
‘ Obtain copy of EMT report
‘ Obtain medical release from victim, if appropriate

7. Completing Incident Report

‘ Maintain objectivity in reporting
‘ Avoid personal opinions
‘ Report details, not conclusions
T Ensure that elements of all involved criminal offenses are included in report
T Describe in <u>detail</u> nature of criminal offenses involved
T Document any injuries suffered by victim
T Document any injuries suffered by suspect
T Document past history of violence
T Record spontaneous statements as stated by parties–do not paraphrase
T Record reasons why weapons were seized for safekeeping

8. Obtaining TRO When Courts are Closed

‘ Always contact a judge if:
1. an act of DV is alleged
2. the victim is a person protected under the DV Act; and
3. a TRO is requested
‘ If unsure of the above, contact the judge [Do not make a legal determination]
‘ Prior to contacting the judge for a DV Restraining Order, review the following:
1. Advise victim that she/he has the right to request a TRO and file a criminal complaint.
2. Confirm if victim is requesting a TRO. Officer cannot request TRO on behalf of victim.
3. Be sure all victim's rights forms are completed.
4. When TRO requested, complete DV complaint with victim.
5. Explain to victim that she/he will have to speak with the judge via telephone. Assist the victim in preparing a statement to be made to the judge.
‘ After administering the oath to the victim, the judge will ask the victim questions about the incident, the TRO and the requested relief.
‘ Contact the assigned judge by radio, telephone or other means of electronic communication. DO NOT USE the telephone of one of the parties.
‘ If mandatory arrest situation, have bail information available for the judge. Run CCH on defendant prior to contacting the judge. Check DV Registry.
‘ If not mandatory arrest, judge will decide whether complaint should go on a warrant or a summons.
‘ Run a multi-state record if circumstances warrant. A motor

vehicle check may also be helpful as it may reflect FTA's which could have a bearing on the bail decision.

- Be prepared to advise the judge of any prior incidents of domestic violence which may not appear on the criminal history [i.e., incident reports, etc.]
- Have TRO ready to complete at the direction of the judge after the judge has spoken with the victim. If the judge issues a TRO, the officer will be instructed to print the judge's name and enter the judge's authorization on the TRO.
- After the judge issues the TRO, serve the offender.

9. Violations of Restraining Orders

- When an officer determines that a party has violated an existing TRO or FRO by committing a new act of domestic violence or by violating the terms of the order, the officer should:
  1. arrest the offender
  2. Sign a criminal complaint charge, and ll related criminal offenses, on a complaint-warrant
  3. During regular court hours, telephone the assigned Superior Court judge, assigned prosecutor or bail unit and request bail be set At all other times, follow procedures for each county and vicinage.

10. Enforcing Out-of-State Restraining or Protective Orders

- Federal law requires out-of-state restraining and protective orders be recognized and enforced as if they were issued by a NJ court.
  To determine if out-of-state order is facially valid the officer should
  __Order is considered valid if order contains names if correct parties, and order has not expired [Note: NJ and WA orders do not have expiration dates], and
  __victim states that named defendant appeared in court or had notice of order

11. Enforcing Out-of-State Restraining or Protective Orders in Emergency Situations

- If named defendant committed a criminal offense under NJ law against victim and violated an out-of-state court order, officer should:
  __arrest defendant and
  __sign criminal complaint
  against defendant for criminal offense committed and cor a violation of a court order, N.J.S.A. 2c:29-9a.
- If named defendant committed no criminal offense but violated out-of-sate order, officer should
  __arrest defendant for a violation of court order and charge N.J.S.A. 2C:29-9a
- If victim does not have copy of out-of-state order and officer cannot determine existence of order or if court order contains apparent defect which would cause reasonable officer to question its authenticity, officer should
  __arrest actor if criteria of NJ Domestic Violence Act has been committed, and/or
  __explain to victim procedures to obtain order in NJ

12. Enforcing Out-of-State Restraining or Protective Orders Non-Emergency Situations

- Where no immediate need for police action, officer should refer victim to appropriate court so victim may seek relief in accordance with out-of-state court order

13. Violations of Federal Law

- Officer should determine if defendant violated federal law in committing act of domestic violence
- Interstate Domestic Violence
  __Did defendant cross state line or enter or leave Tribal Lands to commit domestic violence with intent to injure, harass, or intimidate that person's spouse or intimate partner, and, who, in the course of or as a result of such travel, intentionally committed a crime of violence and caused bodily injury to such spouse or intimate partner
  __Did defendant cause spouse or intimate partner to cross state lines or enter or leave tribal lands to commit any of above offenses?
- Interstate violation of Court Order
  __Did defendant cross state line or enter or leave tribal land with intent to violate domestic violence restraining or protective order
  __Did defendant cause another to cross state lines or to enter or leave triabal land by force, coercion, duress or fraud and in course or as result of such conduct, intentionally commit act that injures person's spouse or intimate partner in violation of court order
- NOTE: If officer concludes that federal law was violated, officer must contact designated assistant county prosecutor in accordance with departmental procedure.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)* ☐ YES	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*? ☐ YES	(19) WERE CHILDREN: ☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES

(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES

(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES

(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***

(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES

(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES

(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.*

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS MALE ____ FEMALE ____

(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

N.J.S.P. UCR UNIT COPY

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)* ☐ YES	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*? ☐ YES	(19) WERE CHILDREN: ☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES	(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***
(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES	(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES
(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES	(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES
	(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE	☐ 5. CRIMINAL RESTRAINT	☐ 9. LEWDNESS*	☐ 13. HARASSMENT
☐ 2. ASSAULT	☐ 6. FALSE IMPRISONMENT	☐ 10. CRIMINAL MISCHIEF*	☐ 14. STALKING*
☐ 3. TERRORISTIC THREATS*	☐ 7. SEXUAL ASSAULT	☐ 11. BURGLARY*	
☐ 4. KIDNAPPING	☐ 8. CRIMINAL SEXUAL CONTACT	☐ 12. CRIMINAL TRESPASS*	

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS	(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS
MALE ____ FEMALE ____	MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

COUNTY BUREAU OF IDENTIFICATION

(FORWARD DIRECTLY TO THE COUNTY BUREAU OF IDENTIFICATION)

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)*	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*?	(19) WERE CHILDREN:
☐ YES		☐ YES	☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES

(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES

(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES

(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***

(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES

(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES

(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)***

WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS MALE ____ FEMALE ____

(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS MALE ____ FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

MUNICIPAL/SUPERIOR COURT

(FORWARD DIRECTLY TO THE MUNICIPAL OR SUPERIOR COURT)

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT

(1) CASE NO.

(2) MUNICIPALITY	(3) MUN. CODE NO.	(4) SP STATION	(5) CODE	(6) DEPARTMENT PHONE NUMBER
				(___) ___-____ EXT.

(7) OFFENSE DATE	(8) DAY CODE *(Circle Number)*	(9) MILITARY TIME	(10) TOTAL TIME SPENT: *(Enter Approx. Time If Unknown)*	(11) WAS ALCOHOL INVOLVED?	(12) OTHER DRUGS INVOLVED?
__/__/__	S M T W TH F S 1 2 3 4 5 6 7	____HRS.	____HRS. ____MIN.	☐ YES	☐ YES

VICTIM INFORMATION *Victim must be involved in a dating relationship or 18+ years old or emancipated.*

*(If this is a violation of a domestic violence restraining order **ONLY**, State of New Jersey is the victim, leave blocks 14 through 20 blank).*

(13) VICTIM'S NAME	(14) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(15) IS VICTIM PREGNANT?
	____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ YES

(16) HAVE VICTIM & OFFENDER EVER BEEN INVOLVED IN A DATING RELATIONSHIP? *(Applies only to relationships after August 11, 1994.)*	(17) IS VICTIM DISABLED? ☐ YES *If Yes, Check one:* ☐ PSYCHOLOGICAL ☐ PHYSICAL	(18) IF VICTIM IS DISABLED OR 60 YEARS OLD OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED *(2C:24.8)*?	(19) WERE CHILDREN:
☐ YES		☐ YES	☐ 1. INVOLVED ☐ 2. PRESENT

(20) RELATIONSHIP OF VICTIM TO OFFENDER: ***(Check ONLY One.)***

☐ 1. VICTIM IS THE SPOUSE ☐ 2. VICTIM IS THE EX-SPOUSE ☐ 3. VICTIM IS A **CO**-PARENT ☐ 4. VICTIM IS A RELATIVE *(Mother, Father, etc.)* ☐ 5. VICTIM IS A FRIEND/ ACQUAINTANCE ☐ 6. VICTIM IS AN EX-FRIEND

OFFENDER INFORMATION *Offender must be 18+ years old or emancipated.*

(21) **AGE** *Enter Approx. Age if Unknown*	**SEX**	**RACE CODE** *(Circle One)*	**ETHNICITY**	(22) OFFENDER:
____	☐ MALE ☐ FEMALE	1 2 3 4	☐ A - HISPANIC ☐ B - NON-HISPANIC	☐ IS A **PRESENT** HOUSEHOLD MEMBER ☐ IS A **FORMER** HOUSEHOLD MEMBER ☐ NEVER RESIDED WITH VICTIM

(23) HAS A DOMESTIC VIOLENCE ORDER EVER BEEN ISSUED BETWEEN THE PARTIES INVOLVED? ☐ YES	(26) WAS OFFENDER ARRESTED FOR: ***(Check ONLY One.)***
(24) DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? ☐ YES	(A) VIOLATION OF A D.V. RESTRAINING ORDER **ONLY**? ☐ YES
(25) AS A RESULT OF THIS INCIDENT, WAS A D.V. RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES IN BLOCK 27? ☐ YES	(B) DOMESTIC VIOLENCE OFFENSE **ONLY** (Block 27)? ☐ YES
	(C) **BOTH** - VIOLATION OF A D.V. RESTRAINING ORDER **AND** A DOMESTIC VIOLENCE OFFENSE (BLOCK 27)? ☐ YES

OFFENSE INFORMATION *Leave section blank if incident is **ONLY** a violation of a domestic violence restraining order.*

(27) CURRENT DOMESTIC VIOLENCE OFFENSE COMPLAINT: ***(Check ONLY One.)***

☐ 1. HOMICIDE ☐ 2. ASSAULT ☐ 3. TERRORISTIC THREATS* ☐ 4. KIDNAPPING ☐ 5. CRIMINAL RESTRAINT ☐ 6. FALSE IMPRISONMENT ☐ 7. SEXUAL ASSAULT ☐ 8. CRIMINAL SEXUAL CONTACT ☐ 9. LEWDNESS* ☐ 10. CRIMINAL MISCHIEF* ☐ 11. BURGLARY* ☐ 12. CRIMINAL TRESPASS* ☐ 13. HARASSMENT ☐ 14. STALKING*

** For these offenses check "None" - "No Injury", in Block 30.*

DEGREE OF INJURY FROM WEAPON USED ***(Check ONLY One.)*** WEAPON	(28) AGGRAVATED SERIOUS INJURY	(29) NON-AGGRAVATED MINOR INJURY	(30) NO INJURY	(31) WEAPONS SEIZED? *(Check if Yes for each weapon.)*
1. GUN				
2. KNIFE or cutting instrument				
3. OTHER DANGEROUS				
4. HANDS, FISTS, ETC.				
5. NONE				

(32) ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM. *IF NONE, ENTER 0.* ____

COMPLETE ONLY IF BLOCK 32 IS OTHER THAN ZERO.

(33) ENTER NUMBER OF ASSOCIATED **ADULT** DEATHS		(34) ENTER NUMBER OF ASSOCIATED **JUVENILE** DEATHS	
MALE ____	FEMALE ____	MALE ____	FEMALE ____

(35) DID OFFENDER COMMIT SUICIDE? ☐ YES

(36) REMARKS:

(37) RANK/NAME:	(38) BADGE NO.:	(39) DATE COMPLETED:	(40) REVIEWED BY:

(41)	(42)	(43)

CONTRIBUTOR'S COPY

SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT GUIDE

A. PURPOSE OF THE REPORT:

The Supplementary Domestic Violence Offense Report shall be used to report (a) any of the fourteen listed acts of domestic violence and/or (b) any allegation of a domestic violence court order. N.J.S.A. 2C:25-1 et. seq. It will be the responsibility of a law enforcement officer who responds to a domestic violence call and/or an allegation of a violation of a Domestic Violence Court Order, to complete this report.

a. The report will be completed when one or more of the following acts are inflicted **by an adult or emancipated minor** upon a person protected under this act. A victim of domestic violence includes any person 18 years of age or older or who is an emancipated minor and has been subjected to domestic violence **by** a spouse, former spouse, or any other person who is a present or former household member. A victim also includes any person, regardless of age, who has been subjected to domestic violence **by** a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. A victim of domestic violence also includes any person who has been subjected to domestic violence **by** a person with whom the victim has had a dating relationship. **Child abuse complaints are not to be reported on this form.**
NOTE: **"Emancipated minor"** means a person who is less than 18 years of age but who has been married, entered in the military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

The acts of domestic violence are:

1. Homicide
2. Assault
3. Terroristic Threats
4. Kidnapping
5. Criminal Restraint
6. False Imprisonment
7. Sexual Assault
8. Criminal Sexual Contact
9. Lewdness
10. Criminal Mischief
11. Burglary
12. Criminal Trespass
13. Harassment
14. Stalking

B. MECHANICS:

1. This report may be ball pointed (block printed) or typed.
2. Routing:
   a. Original-First Copy **(NOTE: Do not forward copies of court orders or other documents to the New Jersey State Police.)**: New Jersey State Police, UCR Unit, Box 7068, River Road, West Trenton, NJ 08628-0068, (609) 882-2000, Ext. 2870.
   b. Second Copy: County Bureau of Identification (Forward directly to the County Bureau of Identification.)
   c. Third Copy: Municipal/Superior Court (Forward directly to the Municipal or Superior Court.)
   d. Fourth Copy: Contributor's Copy
3. Reports will be submitted immediately upon completion. DO NOT wait for the end of the month to forward the forms.

C. INSTRUCTIONS FOR PREPARATION OF THE SUPPLEMENTARY DOMESTIC VIOLENCE OFFENSE REPORT:

This report shall be accurate, factual, clear, concise, complete and free of errors in spelling and grammar. Appropriate abbreviations are acceptable. Complete all applicable boxes. Note: Logical edits have been written for the state's data entry programs. Illogical responses will be corrected by the program. No notice will be provided to the reporting agency (e.g., Criminal Trespass, offense with injury). Blocks requiring an affirmative answer must be checked "Yes" otherwise a "No" response will be recorded.

1. CASE NO. - Enter investigation report number; if none, enter operations report number or other available identifying number.
2. MUNICIPALITY - Enter name of the municipality where offense occurred.
3. MUNICIPALITY CODE - Enter four digit municipality identifier code.
4. SP STATION - Enter State Police station reporting offense (for State Police use only).
5. SP STATION CODE - Enter State Police station code number (for State Police use only).
6. PHONE NUMBER - Enter the reporting agency's complete phone number and extension.
7. OFFENSE DATE - Enter the date of offense. Example: 0 1 / 0 1 / 2 0 0 0 .
8. DAY CODE - Circle appropriate numerical code. 1. Sunday 2. Monday 3. Tuesday 4. Wednesday 5. Thursday 6. Friday 7. Saturday
9. MILITARY TIME - Enter time of offense - e.g. 0 0 0 1 HRS.
10. TOTAL TIME SPENT - Enter the total time spent on this investigation. IF UNKNOWN, ENTER APPROXIMATE TIME.
11. ALCOHOL INVOLVED - Check yes to indicate if the victim or the offender had been drinking.
12. OTHER DRUGS INVOLVED - Check yes to indicate if the victim or offender used drugs other than alcohol.
13. VICTIM'S NAME -Enter full name of the victim (first, middle, and last name). **ONE REPORT WILL BE COMPLETED FOR EACH VICTIM.** If incident involves a violation of a domestic violence order **only,** victim is the State of New Jersey, (leave blocks 14 thru 20 blank).
14. VICTIM'S AGE, SEX, RACE CODE AND ETHNICITY - Enter the Victim's:
    AGE - If unknown, enter approximate age.
    SEX - Check male or female.
    ETHNICITY - Check the appropriate box.
    RACE CODE - Circle numerical code for victim's race (using numbers 1 through 4).
    1 — White 2 — Black 3 — Asian or Pacific Islander 4 — American Indian or Alaskan Native
15. IS VICTIM PREGNANT? - Check yes to indicate if the victim is pregnant at the time of the incident.
16. WERE VICTIM AND OFFENDER INVOLVED IN A DATING RELATIONSHIP? - Check yes, if applicable; otherwise, leave blank.
17. IS VICTIM DISABLED? - Check yes if the victim is disabled, then check the appropriate box.
18. IF VICTIM IS DISABLED OR 60 YEARS OF AGE OR OLDER, WAS CRIMINAL NEGLECT ALSO INVOLVED (2C:24-8)? - Check yes, if applicable.
19. CHILDREN WERE INVOLVED, PRESENT - Check the appropriate box.
20. RELATIONSHIP OF VICTIM TO OFFENDER - Check to indicate relationship at time of incident (only check one block).
21. OFFENDER'S AGE, SEX, RACE CODE AND ETHNICITY - Enter offender's age, sex, race code, and ethnic origin using the instructions listed in block 14.
22. OFFENDER - Check the appropriate block.
23. PRIOR COURT ORDERS - Check yes if a Domestic Violence court order has ever been issued between the parties involved.
24. DID THIS INCIDENT INVOLVE/ALLEGE A VIOLATION OF A DOMESTIC VIOLENCE RESTRAINING ORDER? - Check yes if this incident involved or alleged a violation of a Domestic Violence Restraining Order.
25. AS A RESULT OF THIS INCIDENT, WAS A RESTRAINING ORDER ISSUED FOR ONE OF THE 14 OFFENSES LISTED IN BLOCK 27? - Check yes if so.
26. WAS OFFENDER ARRESTED? - Check **ONLY** One.

OFFENSE INFORMATION - If incident is a violation of a domestic violence restraining order ONLY, leave blocks 27 through 35 blank.

27. CURRENT OFFENSE/COMPLAINT - Check only one block with regard to current offense. Mark the most serious crime. **For offenses with an asterisk, check "NONE" in Block 30.**
28.,29., 30. DEGREE OF INJURY FROM WEAPON USED - Locate weapon used, then check the appropriate block on horizontal line indicating degree of injury. - Check **ONLY** One.
    EXAMPLE: Aggravated/serious - is when injury is sufficient to cause broken bones, internal injuries, or when stitches are required.
    Non-Aggravated/minor - includes any lesser injury. Check only one weapon, by going down the list from 1 to 5.
31. WEAPONS SEIZED - **NOTE:** Include weapons seized even if not used to commit the domestic violence offense. Check yes for each weapon category (gun, knife, and other dangerous) to indicate if weapon(s) were seized. If no weapon(s) seized, leave blank.
32. ENTER NUMBER OF DEATHS OTHER THAN A HOMICIDE VICTIM - Enter the total number of associated deaths, e.g., accidental, suicide, etc.
    NOTE: If the victim's cause of death was suicide, accidental, etc., include in this box.
33. ENTER NUMBER OF ASSOCIATED ADULT DEATHS - enter appropriate number of adult male/female deceased.
34. ENTER NUMBER OF ASSOCIATED JUVENILE DEATHS - enter appropriate number of juvenile male/female deceased.
35. DID OFFENDER COMMIT SUICIDE? - If applicable, check yes. **NOTE:** If yes, then the offender should be counted in block 30 as an associated death.
36. REMARKS - Enter additional information as needed.
37. RANK/NAME - Enter rank and name of investigating officer with signature.
38. BADGE NUMBER - Enter badge number of the officer preparing report.
39. DATE COMPLETED - Enter the date report is prepared.
40. REVIEWED BY - Enter initials and badge number of immediate supervisor who reviewed and approved the report.
41. BLANK BLOCK. 42. BLANK BLOCK. 43. BLANK BLOCK.

Atlantic County

ATLANTIC COUNTY WOMEN'S CENTER	
Violence Intervention Program (VIP)	
PO Box 311, Northfield, NJ 08225	
Emergency Shelter	
24 Hr. Hotline:	**(609) 646-6767**
Tollfree:	**1-800-286-4184**
TTY:	(609) 645-2909
Office:	(609) 646-4376
Fax:	(609) 645-8877
Email:	acwc@bellatlantic. net
Web:	www.acwc.org
Outreach	
Ph:	(609) 646-6768
Displaced Homemakers Services	
Home To Work	
Ph:	(609) 601-9925
Fax:	(609) 601-2975
Unified Child Care Services	
Child Care Network	
Ph:	(609) 646-1180
Fax:	(609) 645-8877
Sexual Assault	
24 Hr. Hotline:	(609) 646-6767
Tollfree:	1-800-286-4184
Batterers Services	
Alternatives To Violence (ATV)	
Ph:	(609) 646-6775

-

Bergen County

SHELTER OUR SISTERS
PO Box 217, Hackensack, NJ 07602
Office: 405 State Street Hackensack, NJ 07601

Emergency Shelter

24 Hr. Hotline:	**(201) 944-9600**
TTY:	(201) 836-3071
Shelter:	(201) 836-1075
Fax/Shelter:	(201) 836-7029
Office:	(201) 498-9247
Fax/Office:	(201) 498-9256
Email:	sos@shelteroursisters.org
Web:	www.shelteroursisters.org

-TRANSITIONAL HOUSING AVAILABLE

ALTERNATIVES TO DOMESTIC VIOLENCE
Bergen County Department of Human Services
One Bergen County Plaza, 2nd Floor
Hackensack, NJ 07601

Non-Residential Services/Outreach

24 Hr. Hotline:	**(201) 336-7575**
TTY:	(201) 336-7525
Fax:	(201) 336-7555
Email:	adv@co.bergen.nj.us
Web:	www.co.bergen.nj.us/ADV

Batterers Services
Alternatives to Domestic Violence

24 Hr. Hotline:	(201) 336-7575
Fax:	(201) 336-7555

-

Burlington County

PROVIDENCE HOUSE/WILLINGBORO SHELTER
PO Box 496 Willingboro, NJ 08046

Emergency Shelter

24 Hr. Hotline:	**(609) 871-7551**
TTY:	(609) 871-7551
Office:	(856) 824-0599
Fax/Office:	(856) 824-9340
Fax/Shelter:	(609) 871-0360
Web:	www.catholiccharities.org

Outreach
950A Chester Ave. Delran, NJ 08075

Ph:	(856) 824-0599
Fax:	(856) 824-9340

-

Camden County

CAMDEN COUNTY WOMEN'S CENTER
PO Box 1459 Blackwood, NJ 08012

Emergency Shelter

24 Hr. Hotline:	**(856)227-1234**
TTY:	(856) 227-9264
Office:	(856) 227-1800
Fax:	(856) 227-1261

Outreach Center
415 Cooper Street, Camden, NJ 08102

Ph:	(856) 963-5668
Fax:	(856) 964-4998

VOLUNTEERS OF AMERICA DELAWARE VALLEY
235 White Horse Pike, Collingswood, New Jersey 08107

Office:	(856) 854-4660
Fax:	(856) 854-0651
Email:	lengstrom@voadv.org

Batterers Services
Volunteers of America, Family Violence Prevention Program
525 Cooper Street, 3rd Floor
Camden, New Jersey 08101

Ph:	(856) 668-2065
Fax:	(856) 338-9017

Cape May County

CARA, INC. (COALITION AGAINST RAPE & ABUSE, INC.)
PO Box 774, Cape May Court House, NJ 08210-0774

Emergency Shelter

24 Hr. Hotline:	**(609) 522-6489**
Tollfree:	**1-877-294-2272 (CARA)**
TTY:	(609) 463-0818
Office:	(609) 522-6489
Fax:	(609) 463-0967
Email:	carasafe1@verizon.net

Men's Non Violence Group Services
MEND (Men Explore New Directions)

24 Hr. Hotline:	(609) 522-6489
Tollfree:	1-877-294-2272 (CARA)

-

Cumberland County

CUMBERLAND COUNTY WOMEN'S CENTER	
PO Box 921, Vineland, NJ 08362	
Emergency Shelter	
24 Hr. Hotline:	**(856) 691-3713**
Tollfree:	**1-800-286-4353**
TTY:	(856) 691-6024
Office:	(856) 691-3713
Fax:	(856) 691-9774
Batterers Services	
A.C.T. (Abuse Ceases Today)	
Ph:	(856) 691-3713

Essex County

FAMILY VIOLENCE PROGRAM
755 South Orange Avenue, Newark, NJ 07106

Emergency Shelter

24 Hr. Hotline:	**(973) 484-4446**
Office:	(973) 484-1704
Fax:	(973) 484-7682
Web:	www.babyland.org

Outreach
Family Violence Outreach
755 South Orange Ave, Newark , NJ 07106

Ph:	(973) 484-1704

Batterers Services
Men for Peace

Ph:	(973) 399-3400
Fax:	(973) 399-2076

THE SAFE HOUSE
PO Box 1877, Bloomfield, NJ 07003

Emergency Shelter

24 Hr. Hotline:	**(973) 759-2154**
Office:	(973) 759-2378
Fax:	(973) 844-4950

THE RACHEL COALITION c/o JEWISH FAMILY SERVICE
570 West Mt. Pleasant Ave, Suite 203
Livingston, NJ 07039

Emergency Safehouse

24 Hr. Emergency Paging Service:	**(973) 740-1233**

Outreach

Office:	(973) 740-1233
Fax:	(973) 740-1590
Website:	www.rachelcoalition.org

TRANSITIONAL HOUSING (one unit)

Batterers Services
RESPECT

Office:	(973) 765-9050 ext. 259 (intake)

LINDA & RUDY SLUCKER
NATIONAL COUNCIL OF JEWISH WOMEN
CENTER FOR WOMEN
513 W. Mt. Pleasant Ave., Suite 325, Livingston, NJ 07039

Outreach
Teen Dating Abuse Program

Office:	(973) 994-4994
Fax:	(973) 994-7412
Email:	centerforwomen@ncjwessex.org
Web:	www.CENTERFORWOMENnj.org

Gloucester County

SERVICES EMPOWERING THE RIGHTS OF VICTIMS (SERV)
PO Box 566, Glassboro, NJ 08028

Emergency Shelter

24 Hr. Hotline:	**(856) 881-3335**
Tollfree:	**(866) 295-7378**
TTY:	(856) 881-9365
Office:	(856) 881-9337
Fax:	(856) 881-1297
Email:	gcdvs@centerffs.org

-

Hudson County

WOMENRISING, INC.
270 Fairmount Avenue, Jersey City, NJ 07306

Emergency Shelter

24 Hr. Hotline:	**(201) 333-5700**
TTY:	(201) 333-0547
Fax:	(201) 333-9305
Email:	womenrising@aol.com

Outreach
270 Fairmount Ave, Jersey City, NJ 07306

Ph:	(201) 333-5700

-

Hunterdon County

WOMEN'S CRISIS SERVICES
47 E. Main Street, Flemington, NJ 08822

Emergency Shelter

24 Hr. Hotline:	**(908) 788-4044**
Tollfree:	**1-888-988-4033**
TTY:	1-866-954-0100
Office:	(908) 806-8605
Fax:	(908) 788-7263
Email:	agencyinfo@womenscrisisservices.org
Web:	www.womenscrisisservices.org

Outreach

Ph:	(908) 788-7666
TTY:	(908) 788-7666
Fax:	(908) 806-4725 or (908) 788-2799

Sexual Assault/Rape/Incest

Ph:	(908) 788-7666

Batterers Services
Men's Group

Ph:	(908) 788-7666

TRANSITIONAL HOUSING AVAILABLE

Ph:	(908) 806-0073

Mercer County

WOMANSPACE, INC. 1212 Stuyvesant Avenue, Trenton, NJ 08618	
Emergency Shelter	(609) 394-9000
24-Hr. Hotline:	1-800-572-SAFE (7233)
State Hotline:	.
V/TTY:	(609) 394-9000 or 1-888-252-7233
Office:	(609) 394-0136
Fax:	(609) 396-1093
Email:	pmh@womanspace.org
Web:	www.womanspace.org
Sexual Assault Support Services	
24 Hr. Hotline :	**(609) 394-9000**
Outreach 1860 Brunswick Avenue, Lawrenceville, NJ, 08648	
Ph:	(609) 394-2532
TTY:	(609) 394-5417
TRANSITIONAL HOUSING AVAILABLE	
Batterers Services Family Growth Program 39 N. Clinton Avenue, Trenton, NJ 08609	
Ph:	(609) 394-5157
Fax:	(609) 394-3010

-

Middlesex County

WOMEN AWARE, INC.
PO Box 312, New Brunswick, NJ 08903

Emergency Shelter

24-Hr. Hotline:	**(732) 249-4504**
TTY:	(732) 249-0600
Office:	(732) 249-4900
Fax:	(732) 249-4901
Shelter Fax:	(732) 249-0010
Email:	womenaware@aol.com

Outreach
96 Paterson Street, New Brunswick, NJ, 08901

Ph:	(732) 937-9525
Fax:	(732) 249-6942
Web:	www.womenaware.net

MANAVI, INC. (An organization for South Asian Women)
PO Box 3101, New Brunswick, NJ 08903-3103

Transitional Housing Available
(Office Hours 9:30 - 5:30)

Office:	(732) 435-1414
Fax:	(732) 435-1411
Email:	Manavi@att.net
Website:	www.manavi.org

-

Monmouth County

180 Turning Lives Around Inc.
One Bethany Road, Bldg. 3, Suite 42, Hazlet, NJ 07730

Emergency Shelter

24-Hr. Hotline:	(732) 264-4111
TTY:	(732) 203-0862
Office:	(732) 264-4360
Fax:	(732) 264-8655
Email:	wcmcmain@aol.com
Web:	www.180nj.org

Outreach Counseling

Ph:	(732) 264-4111

Rape Care Program

24 Hr. Hotline:	(732) 264-7273
Toll free:	1-888-264- RAPE (7273)

Batterers Services: Alternatives to Abuse

Ph:	(732) 264-4360, Ext. 252

Transitional Housing Available

Transitional Living Program: Families in Transition

Ph:	(732) 886-5144
Fax:	(732) 886-5141

Asbury/Neptune Outreach

Ph:	(732) 988-5200 ext. 510

School Based Violence Prevention Group

Ph:	(732) 264-4360 ext. 118

Youth Helpline

Toll free:	888-222-2228

Morris County

JERSEY BATTERED WOMEN'S SERVICES, INC. (JBWS)
PO Box 1437, Morristown, NJ 07962-1437

Emergency Shelter

24 Hr. Hotline:	(973) 267-4763
TTY:	(973) 285-9095
Office:	(973) 455-1256
Fax:	(973) 605-5898
Email:	info@jbws.org
Web:	www.jbws.org

Batterers Services
Abuse Ceases Today (ACT)

Ph:	(973) 539-7801
Fax:	(973) 539-4068

Transitional Housing Available

Ocean County

PROVIDENCE HOUSE - OCEAN
PO Box 4344, Brick, NJ 08723

Emergency Shelter

24 Hr. Hotline:	(732) 244-8259
Tollfree:	1-800-246-8910
TTY:	(732) 244-8259
Office:	(732) 262-3143
Fax:	(732) 262-1787
Shelter Fax:	(732) 244-3064
Web:	www.catholiccharities.org

Outreach
35 Beaverson Blvd., Bldg #6, Brick, NJ 07823

Ph:	(732) 262-3143

-

Passaic County

PASSAIC COUNTY WOMEN'S CENTER
Domestic Violence Program
PO Box 244, Paterson, NJ 07513

Emergency Shelter

24-Hr. Hotline:	(973) 881-1450
TTY:	(973) 278-8630
Office:	(973) 881-1450
Fax:	(973) 881-0617

Outreach
1027 Madison Avenue, Paterson, NJ 07513

Ph:	(973) 881-0725
Fax:	(973) 881-0938

Rape Crisis Program
1027 Madison Avenue, Paterson, NJ 07513

24-Hr. Hotline:	(973) 881-1450
Ph:	(973) 881-0725
Fax:	(973) 881-0938

Project S.A.R.A.H.
199 Scoles Ave., Clifton, NJ 07102

24-Hr. Tollfree Hotline:	1-888-883-2323
Ph:	(973) 777-7638
Fax:	(973) 777-9311

Strengthen Our Sisters
PO Box U, Hewitt, NJ 07421

Office:	(973) 657-0251
Fax:	(973)728-0618
Email:	info@strengthenoursisters.org
Website:	www.strengthenoursisters.org

Salem County

SALEM COUNTY WOMEN'S SERVICES
PO Box 125, Salem, NJ 08079-0125

Emergency Shelter

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511
TTY:	(856) 935-7118
Office:	(856) 935-8012
Fax:	(856) 935-6165
Email:	scws125@comcast.net

Sexual Assault/Rape Crisis

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511

Batterers Services
Alternatives to Violence

24-Hr. Hotline:	(856) 935-6655
Tollfree:	1-888-632-9511

-

Somerset County

RESOURCE CENTER FOR WOMEN AND THEIR FAMILIES
427 Homestead Road, Hillsborough, NJ 08844

Emergency Shelter

24-Hr. Hotline:	1-866-685-1122
TTY:	(908) 359-8604
Office:	(908) 359-0003
Fax:	(908) 359-8881
Email:	info@rcwtf.org
Web:	www.rcwtf.org

Outreach

Ph:	(908) 359-0003

Batterers Services
Batterer's Referral Line

Ph:	1-866-685-1122

Transitional Housing Available

Sussex County

DOMESTIC ABUSE SERVICES, INC.
PO Box 805, Newton, NJ 07860

Emergency Shelter
24 Hr. Hotline:
(Collect Calls Accepted) (973) 875-1211
TTY: (973) 875-6369
Office: (973) 579-2386
Fax: (973) 579-3277
Email: dasi@nac. net
Web: www.dasi.org

Outreach
Ph: (973) 579-2386
TTY: (973) 579-6593
Fax: (973) 579-3277

Sexual Trauma Resource Center
PO Box 805, Newton, NJ 07860
24 Hr. Hotline (973) 875-1211
Ph: (973) 300-5609
TTY (973) 875-6369
Fax: (973) 579-3277

Batterers Services
DECIDE Program
PO Box 295, Newton, NJ 07860
Ph: (973) 579-2500
Fax: (973) 579-1273

Domestic Violence Assessment Center of Sussex County
PO Box 295, Newton, NJ 07860
Ph: (973) 579-9666
Fax: (973) 579-1273

-

Union County

PROJECT: PROTECT
c/o YWCA of Eastern Union County
1131 East Jersey Street, Elizabeth, NJ 07201

Emergency Shelter

24-Hr. Hotline:	(908) 355-4357
TTY:	(908) 355-1023
Office:	(908) 355-1500
Fax:	(908) 355-0534
Email:	info@ywcamail.com

Outreach

Ph:	(908) 355-1995

Batterers Services
Men Against Violence, c/o YWCA

Ph:	(908) 355-1995

ALTERNATIVES FOR MEN - BATTERERS SERVICES
Mental Health Association
23 North Avenue East, Cranford, NJ 07016

Ph:	(908) 272-0304
Fax:	(908) 272-5696

Warren County

DOMESTIC ABUSE & RAPE CRISIS CENTER (DARCC)
PO Box 423, Belvidere, NJ 07823

Emergency Shelter

24-Hr. Hotline:	(908) 475-8408
Tollfree:	1-866-6BE-SAFE (1-866-623-7233)
TTY:	(908) 453-2553
Office:	(908) 453-4121
Fax:	(908) 453-3706
Web:	www.darcc.org

Outreach Services
78 South Main St, Phillipsburg, NJ 08865

Ph:	(908) 475-8408

Batterers Services

Ph:	(908) 813-8820

Domestic violence, or battering, is a pattern of abusive behaviors that some individuals use to control their intimate partners. Battering can include physical, sexual and emotional abuse, and other controlling behaviors. The following questions may help you decide whether you are being abused.

Does your partner ever:

- Hit, kick, shove or injure you?
- Use weapons/objects against you or threaten to use them?
- Force or coerce you to engage in unwanted sexual acts?
- Threaten to hurt you or others, or to disclose your sexual orientation or other personal information?
- Control what you do and who you see in a way that interferes with your work, education or other personal activities?
- Steal or destroy your belongings?
- Constantly criticize you, call you names or put you down? Make you feel afraid?
- Deny your basic needs such as food, housing, clothing, or medical and physical assistance?

If you answered "yes" to any of the above, it may be time to think about your safety.

Help is Available

Many places offer 24-hour support, emergency shelter, advocacy and information about resources and safe options for you and your children.
For assistance, call:

National Domestic Violence Hotline
(assistance available in over 140 languages)
1-800-799-SAFE (7233)
1-800-787-3224 TTY

Or access your local resources:

NJ Statewide Domestic Violence Hotline
(Translators available in any language)
1-800-572-SAFE (7233)
609-392-2990 TTY

NJ Coalition for Battered Women
(609) 584-8107
(609) 584-0027 TTY

Division on Women
(609) 292-8840
(609) 777-0799 TTY

Women's Referral Central
1-800-322-8092

This brochure is part of a series developed by the **Public Education Technical Assistance Project of the National Resource Center on Domestic Violence**. It can be freely reproduced. For more information, call 1-800-537-2238 / 1-800-553-2508 TTY.

Domestic Violence…
Putting the Pieces Together

Finding Safety and Support

NJ Department of Community Affairs
Division on Women
101 South Broad Street – PO Box 801
Trenton, NJ 08625-0801

609-292-8840 • TTY 609-777-0799
dow@dca.state.nj.us • www.nj.gov/dca/dow

It Can Happen to Anyone

Domestic violence is a serious problem that has been happening for centuries. In the U.S. each year, it affects millions of people, most often women. Domestic violence can happen to anyone regardless of employment or educational level, race or ethnic background, religion, marital status, physical ability, age or sexual orientation.

It is NOT Your Fault

If you are being abused by your partner, you may feel confused, afraid, angry or trapped. All of these emotions are normal responses to abuse. You may also blame yourself for what is happening. No matter what others might say, you are never responsible for your partner's abusive actions. Batterers choose to be abusive.

Identifying Support

Developing a support network can be very helpful to you as you plan for safety. There are many places to turn for assistance.

Community Support

Friends, family, women's and community groups, churches and service providers (such as legal, health and counseling centers) can provide a variety of resources, support and assistance.

Domestic Violence Services

In many communities, there are organizations that provide free and confidential help to individuals who are being battered. Information about finding and using these services is on the back of this brochure.

Legal Options

Criminal Charges

If you or other loved ones have been physically injured, threatened, raped, harassed or stalked, you can report these crimes to the police. Criminal charges may lead to the abuser being arrested and possibly imprisoned.

Restraining/Protective Orders

Even if you don't want to press criminal charges, you can file for a civil court order that directs your partner to stay away from you. In many states, restraining/protective orders can also evict your partner from your home, grant support or child custody, or ban him/her from having weapons.

Planning for Safety

Without help, domestic violence often continues to get more severe over time. It sometimes can become deadly.

To Increase Your Safety:

- Tell others you trust, such as friends, family, neighbors and co-workers, what is happening and talk about ways they might be able to help.
- Memorize emergency numbers for the local police (such as 911), support persons and crisis hotlines.
- Identify escape routes and places to go if you need to flee from an unsafe situation quickly.
- Talk with your children about what they should do if a violent incident occurs or if they are afraid.
- Put together an emergency bag with money/checkbooks, extra car keys, medicine, and important papers such as birth certificates, social security cards, immigration documents, and medical cards. Keep it somewhere safe and accessible, such as with a trusted friend.
- Trust your instincts – if you think you are in immediate danger, you probably are. Get to a safe place as soon as you can.

NO ONE deserves to be battered.

NJ COALITION FOR BATTERED WOMEN

Batterers Intervention Program Standards

The following standards were developed by the New Jersey Coalition for Battered Women in 1998 in conjunction with its Batterers Intervention Programs (BIP's) and BIP's outside of the Coalition membership. The Coalition considers these standards to be very basic minimum standards. The Coalition will be developing more detailed standards in the future.

I. Goals of Batterers Intervention Programs

II. Program Structure and Operation

III. Staffing

IV. Victim Confidentiality

I. Goals of Batterers Intervention Programs

1) To protect victims and their children.

2) To hold perpetrators accountable for their violent and abusive behaviors towards family/community and self.

3) To empower batterers to make nonviolent choices.

II. Program Structure and Operations

1) Group format is preferred to individual intervention. Couples counseling is contraindicated where domestic violence exists in a relationship. Couples counseling is not considered a form of BIP.

2) Length of the program is ideally 52 weeks or longer; 26 weeks is the

minimum.

3) Each group should run from 1.5 to 2.5 hours, once a week.

4) Eight to 12 people are the ideal number for a group, particularly with only one facilitator, but even with two facilitators.

5) Participants must complete the program within a prescribed length of time.

6) Intakes will only be rescheduled once. Batterers are dismissed after missing two scheduled intake appointments. A letter from the referring Judge is required to get the batterer back into the program.

7) Where fees are charged, they must be paid in full before a compliance letter goes to the court.

8) Batterers may miss four scheduled group sessions, but those sessions must be made up within the program's time frame.

10) Programs will contact the referring court regarding compliance/non-compliance with court ordered attendance and participation requirements.

III. Staff

1) Co-facilitation is preferred, ideally by a male and female team.

2) A Masters level program supervisor with a NJ Domestic Violence Specialist (DVS) certification is preferred; otherwise the supervisor should have the equivalent 180 hours of DV education and 2,000 hours of experience working in the domestic violence field. Experience working with victims and children should be a prerequisite to working with batterers.

3) Accountability with people who represent as much of the racial, ethnic, and sexual diversity of society as possible, is encouraged. Batterers groups would ideally be videotaped, audio taped, peer supervised and/or clinically supervised, particularly where only one facilitator conducts the intervention.

IV. Victim Confidentiality

1) Batterers Service Providers have a duty to warn victims based on the 1976 Tarasoff decision. (A therapist's duty to warn a victim through notifying both the victim and law enforcement authorities).

2) When victim contact occurs, either through outreach by the domestic violence program or by the victim, information about services available for the victim should always be provided. Victims, however, should never be pressured to attend domestic violence programs.

3) Service providers receiving information from victims about a batterer's violent behavior are encouraged to use that information carefully to develop specific interventions with the batterer. Service providers are reminded that victim confidentiality and safety are paramount. Victim confidentiality must be maintained unless a written waiver is provided by the victim.

4) While victims may be strongly encouraged to report further violence to the batterers program, and certainly to the police and legal system; victims should never be pressured to divulge information which they are not comfortable revealing, or to provide a confidentiality waiver while fearing such actions will put them in further danger from the batterer.

5) Service providers must remain cognizant that batterers programs can never promise to protect victims when confidentiality is waived, and should encourage victims to have a safety plan.

Court Checklist for Batterer Intervention Programs

Preferred arrest policies for domestic violence in Ohio have increased the number of batterers seen in criminal courts. When available, Batterer Intervention Programs* (BIPs) offer courts a treatment approach that holds batterers accountable, while striving to change their behavior. Unfortunately, poorly run or improperly constructed BIPs also can pose increased risks to victims of domestic violence. Therefore, it is important that courts understand the critical elements of effective BIPs. This guide was adapted from the Ohio Domestic Violence Network's Self-Evaluation Tool for Batterers Intervention Programs to help Ohio judges consider the quality of existing programs.

☑ Does the program have written procedures for victim safety to:

- ☐ Screen at intake and periodically thereafter for lethality/dangerousness toward partner and children?
- ☐ Warn a victim in cases where a potential risk of harm has been identified by program staff (often referred to as the "duty to warn" policy)?
- ☐ Limit the confidentiality of BIP clients (e.g., authorizations to release information)?
- ☐ Contact victims safely and appropriately according to the procedure developed with assistance from the local domestic violence programs**?

☑ Does the prcgram seek input from the local domestic violence program to:

- ☐ Develop procedures for victim contact?
- ☐ Train BIP providers on domestic violence and victimization in general?
- ☐ Monitor the BIP through observation by skilled staff trained in the dynamics of domestic violence?
- ☐ Provide interventions for women who are arrested for domestic violence, including procedures that determine the primary aggressor and protect victims from being placed in groups with batterers?

☑ Does the BIP have written procedures for providing information to the courts that specify:

- ☐ Information exchange between BIP staff and probation officers, judges, court clerks, or another designated agent?
- ☐ The necessary information to effectively monitor batterers (e.g., attendance, any non-compliance or lack of progress)?
- ☐ Timelines for regular reporting (e.g., weekly or monthly)?
- ☐ Requirements for additional reports in exceptional circumstances?

☑ Does the program work collaboratively within the community? Is the program:

- ☐ Represented on the local domestic violence taskforce or other coordinating efforts?
- ☐ Included in the inter-agency protocols that clarify roles and responsibilities between law enforcement, service providers, and the courts within the community?
- ☐ Involved in collaborative efforts to provide education to other professionals and in the community?
- ☐ Able to clearly explain the process for receiving referral from all possible sources, including appropriate contact persons and the procedural requirements for each agent (e.g., the information required for a referral and timing)?
- ☐ Able to place victim safety as first priority?

☑ Does the program support BIP clients by:

- ☐ Informing them of program policies and procedures?
- ☐ Providing or making referrals-for services to address common problems such as substance abuse, mental health, and or physical disability?
- ☐ Providing outreach to underserved populations by building collaborative relationship with diverse communities?
- ☐ Ensuring client participation is for a minimum length of 52 weeks with 1.5 hours sessions?
- ☐ Including group education and intervention strategies?
- ☐ Ensuring regular oversight of sessions by supervisors experienced in batterer interventions?

☑ Does the program support staff with regular, in-service training:

- ☐ That includes a core written curriculum that focuses on the behavior of a batterer as a system of oppression, with stopping all forms of abuse and victim safety as the primary goals?
- ☐ That teaches the power imbalance between men and women?
- ☐ Based on a male/female, co-facilitator model?
- ☐ That offers training opportunities for staff to further their knowledge and skills in domestic violence in general as well as in batterer intervention?

☑ Does the program demonstrate its efficacy by:

- ☐ Basing its practices on accepted clinical interventions and domestic violence research?
- ☐ Establishing measures to evaluate program effectiveness on clients?
- ☐ Developing long-term outcome measures on batterer recidivism?
- ☐ Working closely with the local research community and domestic violence programs?

* Batterer intervention program refers to a program that provides treatment for male domestic violence perpetrators.

** Domestic violence program refers to a community-based program that directly serves victims, including shelters and other agencies that advocates for victims and their children.

About the Ohio Domestic Violence Network (ODVN)

ODVN is a statewide coalition of domestic violence programs, supportive agencies, and concerned individuals organizing to ensure the elimination of domestic violence by: providing technical assistance, resources, information, and training to all who address or are affected by domestic violence; and promoting social and systems change through public policy, public awareness, and education initiatives.

For more detailed information, contact ODVN at (800) 934-9840 or info@odvn.org. The ODVN Standards for Batterers Interventions and an accompanying Self-Evaluation Guide are available online at www.odvn.org.

DOMESTIC VIOLENCE

Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases

Issued April 1996
Revised September 2000

Introduction: The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 *U.S.C.A.* 2265, requires that out-of-state domestic violence restraining orders or orders of protection be recognized and enforced as if they were orders of a New Jersey court. The out-of-state order is to be enforced in this State even if

A. The victim would not be eligible for a restraining order or an order of protection in this State.

B. The foreign order grants the named applicant more relief than the person would have received under New Jersey law.

I. Definitions

A. Out-of-State domestic violence restraining orders (also known as "foreign") orders of protection include any court order issued by any other state, Indian tribe, territory or possession of the United States, Puerto Rico or the District of Columbia, whether or not the order is similar to a restraining order issued in the State of New Jersey.

B. Mutual Order of Protection is a single court order entered against both parties and requiring both parties to abide by the conditions of the order. Under the VAWA, mutual orders of protection are discouraged. Under New Jersey law, mutual orders of protection are prohibited. However, each party may obtain a separate restraining order against the other party. This would not be considered a mutual order of protection.

C. Emergency Situation would include a situation that presents a need for immediate action by the police to protect the victim against violent behavior, threats or violations of a non-contact order.

D. Non-emergency Situation would include a situation where there is a request for enforcement of child support, changes in visitation or any other modification or enforcement request that does not involve violent behavior, threats or a violation of a non-contact order.

II. Responding Officers Procedures

A. Emergency Situations

In an emergency situation, the restraining order or order of protection should be presumed valid when presented to an officer. The primary responsibility of the officer should be to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.

1. If the named defendant in the court order committed a criminal offense under New Jersey law against the victim and appeared to have violated the court order, the officer should arrest the defendant and sign the criminal complaint against the defendant for the criminal offense. The officer also should charge the defendant with contempt, *N.J.S.A.* 2C:29-9a.

2. If the named defendant committed no criminal offense but appears to be in violation of the out-of-state no-contact order, the officer should determine whether the order appears to be facially valid.

   a. If the court order appears to be facially valid, the officer should arrest the defendant for violating the terms of the court order. The defendant should be charged with contempt, *N.J.S.A.* 2C:29-9a.

   b. An order will be considered facially valid if:

      (1) the order contains the names of the correct parties, and,

      (2) the order has not expired, and,

      (3) the victim informs the officer that the named defendant appeared at the court hearing or had notice to appear in court when the court order was issued.

   c. In most states a restraining order or an order of protection has a specified expiration date. The officer must review the court order to determine whether it remains valid. Only New Jersey and Washington State have court orders with no stated expiration dates. In these two states, a final restraining order remains in effect until modified or vacated by a court.

d. Defects on the face of the order, such as boxes indicating no service checked, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defects to determine whether the defendant had been served with the order or has knowledge that the order was issued.

3. If the victim does not have a copy of the out-of-state court order and the officer cannot determine the existence of the court order or if the court order contains an apparent defect which would cause a reasonable officer to question its authenticity, the officer should

   a. arrest the actor if the criteria of the New Jersey Domestic Violence Act, *N.J.S.A.* 2C:25-17 *et seq.*, have been met and if a criminal offense had been committed, and

   b. assist the victim in obtaining a temporary restraining order in accordance with departmental procedures, or

   c. if the officer determines that a non-emergency situation exists, explain to the victim the procedure to obtain a domestic violence restraining order in New Jersey.

4. If the responding officer has probable cause to believe that a defendant, who is no longer at the scene, has

   a. violated the provisions of a valid restraining order and/or

   b. committed a criminal offense requiring arrest under *N.J.S.A.* 2C:25-21a,

Then the officer should follow standard departmental operating procedure for dealing with a criminal suspect who has fled the scene.

B. Non-Emergency Situations

In a non-emergency situation, the officer should refer the victim to the appropriate court so the victim may seek to obtain appropriate relief in accordance with the foreign restraining order or order of protection. If the victim had moved into New Jersey from another state, the officer should refer the victim to the Family Part of Superior Court in the county where the victim is then located. If the victim is only temporarily in New Jersey, the officer should refer the victim to the court where the victim is then

residing.

C. Mutual Orders of Protection

The plaintiff of a mutual order of protection from another state is entitled to full faith and credit in this State to the same degree as if the order had been issued solely on the plaintiff's behalf. The defendant of a mutual order of protection from another state would be entitled to relief if:

1. The defendant had filed a written pleading seeking this protective order, and

2. The court had made specific findings on the record that the defendant was entitled to the order.

Note: The enforcement of a mutual order of protection by a defendant should be a relatively rare occurrence. In non-emergent situations, the defendant should be referred to the appropriate court for relief.

III. Violations of Federal Law

If the responding officer determines that the defendant in the out-of-state restraining order or order of protection traveled across a state line with the intent to engage in conduct that violates a portion of the court order or to injure, harass, or intimidate the named victim in the court order, the officer should report this fact to the designated Assistant County Prosecutor who will determine whether the case should be referred to the U.S. Attorney's Office for the appropriate action pursuant to 18 *U.S.C.A.* 2261 and 2262.

Note: An officer should not charge a violation of federal law since the officer does not have federal jurisdiction.

IV. Immunity from Civil Liability

N.J.S.A. 2C:25-22 provides that a law enforcement officer shall not be held liable in any civil action brought by any party for an arrest based on probable cause when that officer in good faith enforced a court order. Under the qualified immunity doctrine, a law enforcement officer may also assert immunity to federal actions brought under 42 *U.S.C.A.* sec. 1983.

ALL STATES POLICE DEPARTMENTS
PHONE LIST

ALABAMA

334-242-4371
Fax 334-242-0934, 242-0512

ALASKA

907-269-5511
Fax 907-337-2059

ARIZONA

602-223-2000
Fax 602-223-2910

ARKANSAS

501-618-8000
Fax 501-618-8222

CALIFORNIA

916-657-7152
Fax 916-657-7324

COLORADO

303-239-4500
Fax 303-239-4416

CONNECTICUT

860-685-8250
Fax 860-685-8361

DELAWARE

302-739-5911
Fax 302-739-5982

DISTRICT OF COLUMBIA

202-727-4218
Fax 202-727-9524

FLORIDA

850-488-4885
Fax 850-922-0148

GEORGIA

404-624-7710
Fax 404-624-6706

HAWAII

808-538-5656
Fax 808-538-5684

IDAHO

208-884-7200
Fax 208-884-7290

ILLINOIS

217-782-7263
Fax 217-785-2821

INDIANA

317-232-8200
Fax 317-232-0652, 232-5682

IOWA

515-281-5824
Fax 515-242-6305

KANSAS

785-296-6800
Fax 785-296-3049

KENTUCKY

502-695-6300
Fax 502-573-1479

LOUISIANA

225-925-6006
Fax 225-925-3742

MAINE

207-624-7068
Fax 207-624-7088

MARYLAND

410-486-3101
Fax 410-653-9651

MASSACHUSETTS

508-820-2300
Fax 508-820-9630

MICHIGAN

517-332-2521
Fax 517-336-6551

MINNESOTA

651-297-3935
Fax 651-296-5937

MISSOURI

573-751-3313
Fax 573-751-9921

MONTANA

406-444-3780
Fax 406-479-4169

NEBRASKA

402-471-4545
Fax 402-479-4002

NEVADA

775-684-4870
Fax 775-684-4879

NEW HAMPSHIRE

603-271-3636
Fax 603-271-2527

NEW JERSEY

609-882-2000
Fax 609-530-9708

NEW MEXICO

505-827-9002
Fax 505-827-3395

NEW YORK

518-457-6811
Fax 518-457-3207

NORTH CAROLINA

919-733-7952
Fax 919-733-1189

NORTH DAKOTA

701-328-2455
Fax 701-328-1717

OHIO

614-466-2660
Fax 614-752-6409

OKLAHOMA

405-425-7709
Fax 405-425-7039

OREGON

503-378-3720
Fax 503-378-8282

PENNSYLVANIA

717-783-5599
Fax 717-787-2948

RHODE ISLAND

401-444-1000
Fax 401-444-1105

SOUTH CAROLINA

803-896-7920
Fax 803-896-7922

SOUTH DAKOTA

605-773-3105
Fax 605-773-6046

TENNESSEE

615-251-5166
Fax 615-253-2091

TEXAS

512-424-2000
Fax 512-424-2603

UTAH

801-965-4461
Fax 801-965-4608

VERMONT

802-244-8718
Fax 802-241-5551

VIRGINIA

804-674-2000
Fax 804-674-2267

WASHINGTON

360-753-6540
Fax 360-753-2492

WEST VIRGINIA

304-746-2111
Fax 360-746-2246

WISCONSIN

608-267-7102
Fax 608-267-4495

WYOMING

307-777-4301
Fax 307-777-4282

GUAM

State Court
671-475-3420
Fax 671-477-1500

NORTHERN MARIANA ISLANDS

State Court
670-236-9700
Fax 670-236-9702

PUERTO RICO

State Court
787-723-6033
Fax 787-724-5090

VIRGIN ISLANDS

State Court
340-774-6680
Fax 340-776-8690

S/domestic violence/allstatespolicedeptphone

ALL STATES ADMINISTRATIVE OFFICES OF THE COURTS DIRECTORY

ALABAMA

300 Dexter Avenue
Montgomery, AL 36104
334-242-0300
FAX 334-242-2099

ALASKA

Administrative Director of the Courts
303 K Street
Anchorage, AK 99501
907-264-0547
FAX 907-264-0881

ARIZONA

Arizona State Courts Building
1501 West Washington
Phoenix, AZ 85007-3327
602-542-9301
FAX 602-542-9484

ARKANSAS

1100 Justice Building
625 Marshall Street
Little Rock, AR 72201
501-682-9400
FAX 501-682-9410

CALIFORNIA

455 Golden Gate Avenue
San Francisco, CA 94102-3660
415-865-4200
FAX 415 865-4228

COLORADO

Office of the State Court Administrator
1301 Pennsylvania , Suite 300
Denver, CO 80203
303-861-1111
FAX 303-837-2340

CONNECTICUT

Office of the Chief Court Administrator
Supreme Court Building
231 Capitol Avenue
Hartford, CT 06106
860-757-2100
FAX 860-757-2130

DELAWARE

Carvel State Building, 11th Floor
820 North French Street
Wilmington, DE 19801-3509
302-577-8481
FAX 302-577-3139

DISTRICT OF COLUMBIA

Executive Office of the D.C. Courts
500 Indiana Avenue, N.W., Rm. 1500
Washington, D.C. 20001
202-879-1700
FAX 202-879-4829

FLORIDA

Office of the State Courts Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1900
850-922-5082
FAX 850-488-0156

GEORGIA

244 Washington Street, S.W., Suite 300
Atlantic, GA 30334-5900
404-656-5171
FAX 404-651-6449

HAWAII

Administrative Director of the Courts
Supreme Courts Building
417 South King Street
Honolulu, HI 96813
808-539-4900
FAX 808-539-4855

IDAHO

Idaho Supreme Court
451 West State Street
Boise, ID 83702
Mailing Address:
P.O. Box 83720
Boise, ID 83720-0101
208-334-2246
FAX 208-334-2146

ILLINOIS

840 South Spring Street
Springfield, IL 62704
217-785-2125
FAX 217-785-3793

INDIANA

115 West Washington St., Suite 1080
Indianapolis, IN 46204
317-232-2542
FAX 317-233-6586

IOWA

State Capitol, Rm. G02
1007 East Grand
Des Moines, IA 50319
515-281-5241
FAX 515-242-0014

KANSAS

Judicial Center, Rm. 337
301 S.W. Tenth Avenue
Topeka, KS 66612-1507
785-296-4873
FAX 785-296-7076

KENTUCKY

100 Millcreek Park
Frankfort, KY 40601
502-573-2350
FAX 502-695-1759

LOUISIANA

Office of Judicial Administrator
1555 Poydras Avenue, Suite 1540
New Orleans, LA 70112
504-568-5747
FAX 504-568-5087

MAINE

62 Elm Street
P.O. Box 4820
Portland, ME 04112
207-822-0792
FAX 207-822-0781

MARYLAND

Maryland Judicial Center
580 Taylor Avenue
Annapolis, MD 21401
410-260-1400
FAX 410-974-5577

MASSACHUSETTS

Administrative Office of the Judicial Court
1400 New Courthouse
Boston, MA 02108
617-557-1193
FAX 617-557-1052

MICHIGAN

State Court Administrative Office
309 North Washington Square
P.O. Box 30048
Lansing, MI 48909
517-373-0130
FAX 517-373-2112

MINNESOTA

25 Constitution Avenue
St. Paul, MN 55155
651-296-2474
FAX 651-215-6004

MISSISSIPPI

656 North State
Jackson, MS 39201
Mailing Address:
P.O. Box 117
Jackson, MS 39205
601-354-7406
FAX 601-354-7459

MISSOURI

Office of State Courts Administrator
2112 Industrial Drive
P.O. Box 104480
Jefferson City, MO 65110-4480
573-751-4377
FAX 573-751-5540

MONTANA

Justice Building, Rm. 315
215 North Sanders
Helena, MT 59620
Mailing Address:
P.O. Box 203002
Helena, MT 59620-3002
406-444-2621
FAX 406-444-0834

NEBRASKA

1220 State Capitol
P.O. Box 98910
Lincoln, NE 68509
402-471-3730
FAX 402-471-2197

NEVADA

Supreme Court Building
Capitol Complex, Suite 250
201 South Carson Street
Carson City, NV 89701-4702
775-684-1700
FAX 775-684-1723

NEW HAMPSHIRE

Two Noble Drive
Concord, NH 03301
603-271-2521
FAX 603-271-3977

NEW JERSEY

Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 983
Trenton, NJ 08625
609-984-4228
FAX 609-984-0067

NEW MEXICO

Supreme Court Building, Rm. 25
237 Don Gaspar Street
Sante Fe, NM 87501-2178
505-827-4800
FAX 505-827-4824

NEW YORK

Office of Court Administration
25 Beaver Street
New York, NY 10004
212-428-2100
FAX 212-428-2819

NORTH CAROLINA

Justice Building
2 East Morgan Street
Raleigh, NC 27601
Mailing Address:
P.O. Box 2448
Raleigh, NC 27602-2448
919-733-7107
FAX 919-715-5779

NORTH DAKOTA

Office of State Court Administrator
State Capitol, Judicial Wing
600 East Boulevard Avenue, Dept. 180
Bismarck, ND 58505-0530
701-328-4216
FAX 701-328-4480

OHIO

Supreme Court of Ohio
30 East Broad Street, 3rd Floor
Columbus, OH 43266-0419
614-466-2653
FAX 614-752-8736

OKLAHOMA

1915 North Stiles, Suite 305
Oklahoma City, OK 73105
405-521-2450
FAX 405-521-6815

OREGON

Office of State Court Administrator
Justice Building, Rm. 510
1162 Court Street
Salem, OR 97301-2563
Mailing Address:
Supreme Court Building
1163 State Street
Salem, OR 97301-2563
503-986-5500
FAX 503-986-5503

PENNSYLVANIA

Administrative Office of Pennsylvania Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
215-560-6300
FAX 215-560-6315

RHODE ISLAND

250 Benefit Street
Providence, RI 02903
401-222-3266
FAX 401-222-5131

SOUTH CAROLINA

Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201
803-734-1800
FAX 803-734-1821

SOUTH DAKOTA

State Capitol
Pierre, SD 57501-5070
605-773-3474
FAX 605-773-5627

TENNESSEE

511 Union Street, Suite 600
Nashville, TN 37219
615-741-2687
FAX 615-741-6285

TEXAS

205 West 14th Street, 6th Floor
Austin, TX 78701
Mailing Address:
P.O. Box 12066
Austin, TX 78711-2066
512-463-1625
FAX 512-463-1648

UTAH

450 South State Street, 3rd Floor
Salt Lake City, UT 84111
Mailing Address:
P.O. Box 140241
Salt Lake City, UT 84114-0241
801-578-3806
FAX 801-578-3843

VERMONT

111 State Street
Montpelier, VT 05609-0701
Mailing Address:
109 State Street
Montpelier, VT 05609-0701
802-828-3278
FAX 802-828-3457

VIRGINIA

Supreme Court of Virginia
100 North 9th Street, 3rd Floor
Richmond, VA 23219
804-786-6455
FAX 804-786-4542

WASHINGTON

Temple of Justice
P.O. Box 41174
Olympia, WA 98504-1174
360-357-2121
FAX 360-357-2127

WEST VIRGINIA

Supreme Court of Appeals of W.VA
E-100 State Capitol
Charleston, WV 25305
304-558-0145
FAX 304-558-1212

WISCONSIN

119 Martin L. King, Jr. Blvd.
Suite LL2
Madison, WI 53703
Mailing Address:
Supreme Court
P.O. Box 1688
Madison, WI 53701-1688
608-266-6828
FAX 608-267-0980

WYOMING

Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
307-777-7480
FAX 307-777-3447

GUAM

Superior Court of Guam
Guam Judicial Center
120 West O'Brien Drive
Hagatna, GU 96910
671-475-3544, 475-3330
FAX 671-477-3184

NORTHERN MARIANA ISLANDS

Supreme Court of The Commonwealth
Northern Mariana Islands
House of Justice
P.O. Box 502165
Saipan, MP 96950
670-236-9700
FAX 670-236-9702

PUERTO RICO

Office of Courts Administration
General Court of Justice
6 Vela Street, Stop 35 ½
Hato Rey, PR 00919
Mailing Address:
P.O. Box 190917
San Juan, PR 00919-0917
787-641-6623,24
FAX 787-250-7448

VIRGIN ISLANDS

Territorial Court of the Virgin Islands
5500 Veterans Drive
Saint Thomas, VI 00802
Mailing Address:
P.O. Box 70
Saint Thomas, VI 00804
340-774-6680
FAX 340-776-8690

Information Obtained from NJ Lawyers Diary, 2002

APPENDIX XVI – UNIFORM SUMMARY SUPPORT ORDER (R. 5:7-4)

PLAINTIFF *VS* *DEFENDANT*		*SUPERIOR COURT OF NEW JERSEY* *Chancery Division-Family Part*	
☐ *Obligor* ☐ *Obligee* ☐ *Obligor* ☐ *Obligee*		COUNTY OF	CIVIL ACTION ORDER Page 1 of 2
HEARING DATE _____/_____/_____	WELFARE / U.R.E.S.A.#	PROBATION ACCT# CS	DOCKET #
Attorney for Plaintiff:		Attorney for Defendant:	

This matter having been opened to the court by: ☐ Plaintiff ☐ Defendant ☐ County Welfare Agency ☐ Probation Division Family Division for an ORDER:

IS HEREBY ORDERED THAT: The obligor shall pay support for the spouse named above and/or unallocated support for the child(ren) named below:

CHILD'S NAME	BIRTH DATE	CHILD'S NAME	BIRTH DATE
1.		4.	
2.		5.	
3.		6.	

☐ PATERNITY of child(ren) (# above) _____ Is acknowledged by defendant, and an ORDER of paternity is entered.

Support shall be paid to the New Jersey Family Support Payment Center by income withholding in the amount of:

	+		+		=		*payable*		*effective*	
										__/__/__
Child Support		*Spousal Support*		*Arrears Payment*		*Total*		*Frequency*		*Date*

☐ ARREARS: are to be calculated by the Probation Division based upon amounts and effective date noted above.

☐ ARREARS: indicated in the records of the Probation Division, are $_____ as of _____/_____/_____.

☐ GROSS WEEKLY INCOMES of the parties, as defined by the Child Support Guidelines, upon which this ORDER is based:

PLAINTIFF = $_____ DEFENDANT = $_____

☐ INCOME WITHHOLDING is hereby ORDERED on current and future income sources, including:

Name of income source: Address of income source:

_____ _____

OBLIGOR SHALL, however, make payments AT ANY TIME the full amount of support and/ or arrears are not withheld.

☐ MEDICAL INSURANCE coverage for the child(ren) and/or spouse as available at reasonable cost shall be provided by the

Obligor ☐ Obligee ☐ Both ☐

The parties shall divide extraordinary medical expenses of the child(ren) that are unreimbursed by insurance, as follows:

_____% Obligor _____% Obligee

Proof of Medical Insurance availability shall be provided to the Probation Division by _____/_____/_____.

If coverage is available, duplicate Medical Insurance I.D. card(s) as proof of coverage for the child(ren)/spouse shall be provided by the

☐ obligor ☐ obligee immediately upon availability, via the Probation Division.

☐ Health insurance benefits are to be paid directly to the health care provider by the insurer.

☐ BLOOD/GENETIC TESTING to assist the court in determining paternity of the child(ren) (#_____) is hereby ORDERED.

The county welfare agency in the county of residence of the child shall bear the cost of said testing, without prejudice to final allocation of said costs. If defendant is later adjudicated the father of said child(ren), defendant shall reimburse the welfare agency for the costs of said tests, and pay child support retroactive to _____/_____/_____.

☐ This matter is hereby RELISTED for hearing on ____/____/____ before _____. A copy of this ORDER shall serve as the summons for the hearings. No further notice for appearance shall be given. Failure to appear may result in a default order, bench warrant, or dismissal.

☐ AN EMPLOYMENT SEARCH MUST BE CONDUCTED BY THE obligor. Written records of at least #_____employment contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be provided immediately to the Probation Division.

PLAINTIFF *VS* *DEFENDANT* *PAGE 2 OF 2*

DOCKET# *HEARING DATE ____/____/____*

☐ THIS ORDER IS ENTERED BY DEFAULT. The obligor was properly served for court appearance on ____/____/____ and failed to appear. (Service noted below).

☐ A BENCH WARRANT for the arrest of the obligor is hereby ORDERED. The obligor was properly served with notice for court appearance on ____/____/____, failed to appear, and is in violation of litigant's rights for failure to comply with the support ORDER (Service noted below). A payment of $_____ shall be required to purge the warrant. Said payment shall be applied to the arrears.

☐ SERVICE upon which this order is based:

☐ Personal Service ☐ Certified Mail: ☐ Refused ☐ Regular Mail (not returned)

Date: __/__/___ ☐ Signed by: _____ ☐ Returned Unclaimed ☐ Other:

☐ FUTURE MISSED PAYMENT(S) numbering _____or more may result in the issuance of a warrant, without further notice or hearing, for the arrest of the obligor.

☐ A LUMP SUM PAYMENT OF $_____ must be made by the obligor by _____/_____/_____, or a bench warrant for the arrest of the obligor shall issue.

☐ This complaint is hereby INACTIVATED, pending _____.

☐ This complaint/motion is hereby DISMISSED, without prejudice, as _____.

☐ Order of Support is hereby VACATED effective _____/_____/_____, as _____
Arrears, if any, as calculated by the Probation Division, prior to the effective date, shall be paid at the rate and frequency noted on page number one of this ORDER.

☐ It is further ORDERED: _____

_____

_____

_____

☐ Additional Page (s) attached: #_____, #_____.

TAKE NOTICE that all provisions stated on the reverse of page (1) are to be considered part of this ORDER.

I hereby declare that I understand all provisions of this ORDER and do not wish to appeal this day, to the Superior Court::

PLAINTIFF _____ ATTORNEY_____

DEFENDANT_____ATTORNEY_____

☐ Copies provided to above at hearing. ☐ Copies to be mailed to the parties.

So Recommended to the Court by the Hearing Officer:

Date _____/_____/_____ H.O. _____ Signature _____

So Ordered by the Court::

Date _____/_____/_____ Judge _____ Signature _____.J.S..C

Note: Revised form adopted October 12, 2004 to be effective immediately.

TAKE NOTICE:

1. You must continue to make all payments until the Court order is changed.
2. If your child's status changes (turns 18, moves in with a different relative, marries, gets a full-time job or other changes), you must continue to make the same payments until the Court changes the amount you must pay.
3. If your income goes down for reasons you do not control, YOU WILL BE RESPONSIBLE TO PAY THE AMOUNT ORDERED UNTIL THE COURT CHANGES THE AMOUNT.
4. In order for the Court to change the amount that must be paid, YOU must make a WRITTEN request for the order to change. Contact the Probation Division where payments are made to find out how to do this.
5. The amount you owe (arrears) can be changed only as of the date of your WRITTEN request. If you delay making your request, you will have to pay the original amount of support until that date. IT IS IMPORTANT that you request a change as soon as possible after your income or your child's status changes (N.J.S.A. 2A:17-56.9).
6. Changes in employment status and address must be reported in writing to the Probation Division within 10 days of the change. Not providing this information is a violation of this ORDER. The last address you give to Probation will be used to send you notices of future hearings/proceedings. If you fail to appear, an order may be entered against you (default order) or a warrant may be issued for your arrest (R. 5:7-4) (R. 1:5-2) (R. 1:4-1[b]).
7. Payments must be made directly to the New Jersey Family Support Payment Center, P.O. Box 4880, Trenton, NJ 08650, unless the court order says to pay someone else. Gifts, other purchases or in-kind payments made directly to the obligee or child(ren) will not fulfill your obligation. Credit for payments made directly to the obligee or child(ren) may not be given.
8. Payments are due even when your child is visiting you unless the court orders credit. If both parents agree to credits, it must be approved by the Court. Failure to have visitation is not an excuse for not paying.
9. THIS ORDER takes priority over payments of debts and other obligations. Payments may not be excused because a party marries or accepts other obligations.
10. Payments are based on annual income. It is the responsibility of a person with seasonal employment to budget income so the payments are made regularly throughout the year.
11. Any payment or installment for child support is a "judgment by operation of law" on the date it is due (N.J.S.A. 2A:17-56,23a). Any non-payment of child support has the effect of a lien against the obligor's real or personal property. This child support lien may affect you ability to obtain credit or sell real property.
12. Judgments that result from failure to comply with the ORDERS of this Court are subject to an interest charge at the rate prescribed by Rule 4:42-11(a).
13. If immediate income withholding is not required when an order is entered or modified or the order was entered before October1, 1990, the child support may be required to be paid by income withholding when the amount due becomes equal to the amount of support due for 14 days. Child support orders entered or modified after October 1, 1990 shall include a provision for immediate income withholding without regard to the amount of the arrearage unless the obligor and obligee agree, in writing, to an alternative arrangement or either party demonstrates, and the Court finds, good cause for an alternative arrangement (N.J.S.A. 2A:17-56.9).
14. The amount of a Title IV-D child support order is subject to review, by the state IV-D Agency or its designee, and adjustment may be made, as necessary, by the Court at least once every three years (N.J.S.A. 2A:17-56.9a).
15. Child support arrearage of $1,000 or more shall be reported to consumer credit reporting agencies as a debt owed by the obligor (N.J.S.A. 2a:17-56.21).
16. Child support arrearage may be reported to the Internal Revenue Service and the State Division of Taxation. Tax refunds/homestead rebates due the obligor may be taken to pay arrears (N.J.S.A. 2A:17-56.16).
17. Any person who willfully and with the intent to deceive, uses a Social Security number obtained on the basis of false information provided to Social Security Administration or provides a false or inaccurate Social Security number is subject to a fine or imprisonment (42 U.S.C. 408(7)). Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 U.S.C. 405). Disclosure of the individual's Social Security number is mandatory. Social Security numbers are used to obtain income, employment and benefit information on individuals through computer matching programs with federal and State agencies. This information is used to establish and enforce child support under Title IV-D of the Social Security Act, and to record child support judgments.
18. The Custodial parent may choose to have medical insurance benefits paid by the insurance carrier of the non-custodial parent remitted directly to the health care provider. If direct payment to the health care provider is chosen, the custodial parent must provide the insurer with a copy of the relevant section this order (N.J.S.A. 2A:34-23b).
19. IF this order contains any provision concerning custody and/or visitation, both parties are advised: Failure to comply with the custody provisions of this court order may subject you to criminal penalties under N.J.S.A. 2c:13-4, Interference with Custody. Such criminal penalties include, but are not limited to, imprisonment, probation, and/or fines.

    Si usted deja de cumplir con las clausulas de custodia de esta ordern del tribunal, puede estar sujeto (sujeta) a castigos criminals conforme a N.J.S.A. 2C:13-4, Interference with Custody, (Obstruccion de la Custodia). Dichos castigos criminals incluyen pero no se limitan a encarcelamento, libertad, multas o una combinacion de los tres.

ADDRESS CONFIDENTIALITY PROGRAM ACT

N.J.S.A. 47:4-1. Short title

This act shall be known and may be cited as the "Address Confidentiality Program Act."

N.J.S.A. 47:4-2. Legislative findings and declarations

The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses to prevent their assailants from finding them. The purpose of this act is to enable public agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, and to enable public agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

N.J.S.A. 47:4-3. Definitions

As used in this act:

"Address" means a residential street address, school address, or work address of a person, as specified on the person's application to be a program participant under this act.

"Program participant" means a person certified by the Secretary of State as eligible to participate in the Address Confidentiality Program established by this act.

"Department" means the Department of State.

"Domestic violence" means an act defined in section 3 of P.L.1991, c. 261 (C.2C:25-19), if the act has been reported to a law enforcement agency or court.

"Secretary" means the Secretary of State.

N.J.S.A. 47:4-4. Address Confidentiality Program created

a. There is created in the department a program to be known as the "Address Confidentiality Program." A person 18 years of age or over, a

parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the secretary to have an address designated by the secretary as the applicant's address. The secretary shall approve an application if it is filed in the manner and on the form prescribed by the secretary and if it contains:

(1) a sworn statement by the applicant that the applicant has good reason to believe:

(a) that the applicant is a victim of domestic violence as defined in this act; and

(b) that the applicant fears further violent acts from the applicant's assailant;

(2) a designation of the secretary as agent for the purpose of receiving process and for the purpose of receipt of mail;

(3) the mailing address where the applicant can be contacted by the secretary, and a telephone number where the applicant can be called;

(4) the new address or addresses that the applicant requests not be disclosed because of the increased risk of domestic violence; and

(5) the signature of the applicant and any person who assisted in the preparation of the application, and the date.

b. An application shall be filed with the secretary.

c. Upon approving a completed application, the secretary shall certify the applicant as a program participant. An applicant shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date.

d. A program participant may apply to be recertified every four years thereafter.

e. A program participant may use the address designated by the secretary as his or her work address.

f. Upon receipt of first class mail addressed to a program participant, the secretary or a designee shall forward the mail to the actual address of the participant. The secretary may arrange to receive and forward other kinds and classes of mail for any program participant at the participant's expense.

The actual address of a program participant shall be available only to the secretary and to those employees involved in the operation of the address confidentiality program and to law enforcement officers for law enforcement purposes.

g. The secretary, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

N.J.S.A. 47:4-5. Cancellation of program participant's participation

The secretary may cancel a program participant's certification if:

(1) the program participant obtains a name change through an order of the court;

(2) the program participant changes the participant's residential address and does not provide seven days' advance notice to the secretary;

(3) mail forwarded by the secretary to the address or addresses provided by the program participant is returned as undeliverable; or

(4) any information on the application is false.

The application form shall notify each applicant of the provisions of this section.

N.J.S.A. 47:4-6. Use of address designated by agency

A program participant may request that any State or local agency use the address designated by the secretary as the program participant's address. The agency shall accept the address designated by the secretary as a program participant's address, unless the agency has demonstrated to the satisfaction of the secretary that:

(1) the agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; and

(2) the disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.
L.1997, c. 369, § 1, eff. Jan. 19, 1998.

New Jersey Law Enforcement Drug Testing Manual

LEAPS

Law Enforcement Drug Testing Manual

Introduction

In October 1986, the Attorney General of New Jersey issued Law Enforcement Drug Screening Guidelines for use by the State's law enforcement agencies. These guidelines, which were developed by the New Jersey Criminal Justice Advisory Council, outlined methods and procedures for the drug testing of law enforcement officers that were consistent with the legal principles governing workplace drug testing and satisfied the Attorney General's responsibility to maintain the integrity of the State's law enforcement agencies.

The 1986 policy was revised in 1990 and 1998. The 1990 revisions modified the specimen acquisition process and designated the State Toxicology Laboratory in Newark as the sole facility for law enforcement drug testing in New Jersey. The 1998 revisions renamed the document the *Law Enforcement Drug Testing Policy* and permitted law enforcement agencies to implement random drug testing programs. It was revised in June 2001 to clarify some issues concerning random drug testing and the Central Drug Registry.

The purpose of this manual is to acquaint law enforcement personnel with New Jersey's law enforcement drug testing program. Specific sections of this manual will discuss in detail the following topics:

- The objectives of a law enforcement drug testing program;
- The types of drug testing that can be conducted by a law enforcement agency;
- The implementation of a random drug testing program;
- The collection and submission of specimens to the State Toxicology Laboratory;
- The analysis of specimens by the State Toxicology Laboratory;
- The reporting of drug test results to law enforcement agencies;
- The consequences of a positive test result for subject officers; and
- The responsibilities of the law enforcement agency and executive officers following the receipt of test results.

The Division of Criminal Justice together with the State Toxicology Laboratory is responsible for coordinating the law enforcement drug testing program. Information concerning the program may be found at the Division's website "www.njdcj.org". In addition, specific inquiries may be addressed to the Division of Criminal Justice at 609-984-6500.

Objectives

As the chief law enforcement officer of the State, the Attorney General has a duty to ensure that the citizens of New Jersey receive police services from law enforcement officers whose competency and integrity are beyond question. The Attorney General is also responsible for ensuring that the illegal use of drugs by individual law enforcement officers does not undermine the integrity of law enforcement agencies or threaten the safety and morale of other law enforcement officers.

In an effort to fulfill these responsibilities, the Attorney General has issued the *Law Enforcement Drug Testing Policy*. The goal of the policy is deter illegal drug use by law enforcement officers. The policy provides law enforcement agencies with a mechanism to identify and remove those law enforcement officers engaged in the illegal use of drugs. Because illegal drug use is inconsistent with the duties, obligations and responsibilities of sworn law enforcement officers, the policy mandates that officers who test positive must be terminated from employment.

The policy sets forth uniform methods and procedures for implementing and administering law enforcement drug testing. The policy also outlines the duties and responsibilities of the State's law

enforcement agencies and chief executive officers with respect to the drug testing process. Any law enforcement agency that implements a drug testing program must do so consistent with the policy.

The policy also seeks to ensure that the employment rights of individual law enforcement officers are safeguarded consistent with existing legal principles. As a result, the policy sets forth procedures for the uniform collection, submission and analysis of drug test specimens. The procedures seek to ensure the accuracy and reliability of the drug testing process. They also seek to ensure that each law enforcement agency administers its drug testing program in a way that is fundamentally fair to individual law enforcement officers and is consistent with existing due process requirements.

In addition to providing uniform methods and procedures for implementing and administering the drug testing process, the policy imposes uniform penalties on those law enforcement officers who test positive for the illegal use of drugs. The Attorney General has determined that illegal drug use by law enforcement officers or those attending mandatory basic training to become a law enforcement officer will not be tolerated. Thus, permanently appointed law enforcement officers and those attending mandatory basic training to become a law enforcement officer who test positive for the illegal use of a controlled substance shall be dismissed from employment and permanently banned from future law enforcement employment in New Jersey. Applicants and candidates for law enforcement employment who test positive for illegal drug use during a pre-employment background investigation shall be removed from further consideration for employment, and barred from law enforcement employment in New Jersey for two years.

Applicability

Law enforcement agencies may drug test sworn law enforcement officers in a manner that is consistent with the *Law Enforcement Drug Testing Policy*. In order for a sworn law enforcement officer to be subject to this drug testing policy, the officer must be responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act, and be authorized to carry a firearm under *N.J.S.A.* 2C:39-6.

Under the Special Law Enforcement Officers' Act, (*N.J.S.A.* 40A:14-146.8 *et seq.*), special law enforcement officers are required to comply with the same rules and regulations as regular police officers employed by the same agency. Therefore, if an agency's regular police officers are required to undergo drug testing, the agency's special law enforcement officers are also required to undergo drug testing. However, only Class Two Special Law Enforcement Officers are subject to testing under the policy. In addition, special law enforcement officers are subject to testing only during those periods when they are employed by the municipality. For example, if a special law enforcement officer is appointed in January but employed only between May and October, the special officer is exempt from drug testing between January and April, subject to drug testing between May and October and exempt again in November and December. Special law enforcement officers employed throughout the calendar year are subject to drug testing throughout the calendar year. During those periods when they are eligible for drug testing, special law enforcement officers should be tested at the same time and in the same manner as the agency's regular police officers.

Because the authority of the Attorney General under the Criminal Justice Act of 1970 (*N.J.S.A.* 52:17B-98) is limited to county and municipal law enforcement agencies, the *Law Enforcement Drug Testing Policy* does not apply to State and county corrections officers, interstate law enforcement officers and federal law enforcement officers. Agencies that employ these officers are free to adopt their own drug testing policies that address the specific issues posed by the duties these officers perform.

The *Law Enforcement Drug Testing Policy* also does not apply to civilian employees of a law enforcement agency. Agencies that wish to drug test civilian employees should consult with legal counsel to determine whether drug testing policies and procedures have been addressed by a collective bargaining agreement or some other administrative or executive official.

In addition, the *Law Enforcement Drug Testing Policy* does not govern drug testing that may be conducted during a regularly scheduled medical examination. Law enforcement agencies have the discretion to require their employees to undergo periodic medical examinations to ensure their fitness for duty. Whether drug testing will be conducted during a periodic medical examination is a matter to be decided by the agency in consultation with the doctor or doctors conducting the examinations. In the event drug testing is conducted during a periodic medical examination, the collection and analysis of specimens shall be performed according to procedures established by the doctor or doctors conducting the examination. However, individual officers who test positive for illegal drug use during a periodic medical examination are subject to appropriate disciplinary action under the rules and regulations of their agency.

Types of Drug Testing

Law enforcement drug testing may be categorized according to the employment status of the individual being tested and the method by which the individual was selected for testing. These methods include applicant testing, trainee testing, reasonable suspicion testing and random testing.

Applicant Testing

The *Law Enforcement Drug Testing Policy* recognizes that drug testing may be an important component of a pre-employment background investigation. Thus, while the policy does not require prospective employees to be drug tested, law enforcement agencies seeking to hire officers should strongly consider drug testing candidates for employment. The policy permits law enforcement agencies engaged in the hiring process to drug test prospective employees at any point during the pre-employment process.

In addition, candidates for employment may be tested as many times as the law enforcement agency deems necessary to ensure that the candidates are not engaged in the illegal use of drugs. For example, applicants who have been drug tested as part of the application process may be tested again if a significant amount of time has elapsed since the previous step in the employment process.

During the pre-employment process, the agency must ensure that it complies with the provisions of the Americans with Disabilities Act (ADA) by refraining from making any medical inquiries. Therefore, the medication information form should not be used at the applicant stage, unless a positive test result requires an explanation by the prospective employee.

Trainee Testing

Individuals hired as law enforcement officers who are required to attend and successfully complete a mandatory basic training course approved by the Police Training Commission are subject to drug testing during their attendance at a police academy. The drug testing of law enforcement trainees will be conducted by the police academy staff under rules and regulations adopted by the Police Training Commission.

Reasonable Suspicion Testing

A third method for selecting individuals for law enforcement drug testing is reasonable suspicion testing. While law enforcement agencies are not required to implement applicant testing or random testing, agencies must undertake reasonable suspicion testing when there is reasonable suspicion to believe that a law enforcement officer, prospective law enforcement officer or law enforcement officer trainee is engaged in the illegal use of controlled substances.

Unlike applicant and trainee testing, reasonable suspicion testing requires a decision as to whether the appropriate basis for conducting a test exists (i.e. reasonable suspicion). Because reasonable suspicion is a legal concept of some complexity, this manual will not attempt to define the term. However, law enforcement executive officers should be aware of the following.

Reasonable suspicion "requires objective facts which, with inferences, would lead a reasonable person to conclude that drug-related activity is taking or has taken place and that a particular individual is

involved in that drug activity."[1] The reasonable suspicion standard is "less demanding" than the probable cause standard in two ways.[2] First, the amount of evidence needed to satisfy the reasonable suspicion standard is less than that needed to satisfy the probable cause standard.[3] Second, the type of information used to satisfy the reasonable suspicion standard may be "less reliable than that required to show probable cause."[4] The following factors should be evaluated to determine the quality and relevance of the information acquired by the law enforcement agency:

1. The nature and source of the information;
2. Whether the information constitutes direct evidence or is hearsay in nature;
3. The reliability of the informant or source;
4. Whether corroborating information exists and the degree to which it corroborates the accusation; and
5. Whether and to what extent the information may be stale.[5]

Every law enforcement agency subject to the jurisdiction of the Attorney General must include in its rules and regulations a provision governing reasonable suspicion drug testing. Before a law enforcement executive may order an individual officer to undergo reasonable suspicion testing, the agency shall prepare a written report documenting the basis for the test. Law enforcement executives who wish to discuss whether the information they possess is sufficient to conduct reasonable suspicion testing should contact their county prosecutor's office for advice.

[1] *Caldwell v. New Jersey Department of Corrections, 250 N.J.Super. 592, 609 (App. Div. 1991); certif. denied, 127 N.J. 555 (1991).*

[2] *Drake v. County of Essex, 275 N.J.Super. 585, 589 (App. Div. 1994).*

[3] *Id.*

[4] *Id.*

[5] *Caldwell v. New Jersey Department of Corrections at 250 N.J.Super. at 609.*

Random Testing

The last method of selecting law enforcement officers for drug testing is random selection. The most recent revisions to the *Law Enforcement Drug Testing Policy* authorize law enforcement agencies to drug test sworn law enforcement officers by randomly selecting the officers to be tested. Random selection is defined by the policy as a method of selecting employees for drug testing in which every member of the agency, regardless of rank or assignment, has an equal chance of being selected each and every time a selection is made. The number of officers to be selected each time a random test is conducted shall be less than the total number of sworn officers employed by the agency.

The *Law Enforcement Drug Testing Policy* does not require law enforcement agencies to implement random drug testing programs. However, agencies that establish a random drug testing program must do so by rule, regulation or procedure. A municipal police department should have the appropriate authority adopt a rule or regulation as defined by *N.J.S.A.* 40A:14-118 authorizing random drug testing. County, State or campus police agencies should have the appropriate administrative, executive or law enforcement official adopt a policy or procedure authorizing random drug testing. Random drug testing cannot be implemented until the rule, regulation or procedure has been in effect for a minimum of 60 days.

The rule, regulation or procedure authorizing random drug testing should state that all sworn members of the agency are eligible for random drug testing, regardless of rank or assignment. The rule, regulation or procedure should also indicate the maximum number of officers to be selected each time a random selection takes place. This can be expressed as either the number of officers to be selected or a percentage of the agency's sworn personnel. It is acceptable to state this as a maximum number of officers to be tested, e.g., "No more than 30% of the officers in the department will be selected each time a random drug test is conducted." In any case, the number of sworn officers selected shall be less than the total number of sworn officers employed by the agency.

The agency must choose a method of random selection which ensures that every sworn officer in the agency has an equal chance of being selected each and every time a selection takes place. In other words, an officer who has been selected on one or more previous occasions for a random drug test is not excused from future tests. The mechanism for selecting officers can be as simple and inexpensive as placing names in a hat, or as complex and expensive as a custom computer program. The procedures used for each random selection must be carefully documented.

The random selection process should be verified and documented. The agency should permit representatives of the affected collective bargaining units to witness the selection process. Everyone present at the time of the selection, however, must understand that anyone who discloses the identity of an officer selected for random testing, or the fact that a random selection is scheduled to take place prior to the collection of urine specimens, will be subject to discipline.

Collection of Specimens

The integrity and accuracy of the law enforcement drug testing program depends in large measure on appropriate specimen acquisition procedures. Fortunately, these procedures are not complicated and can be followed on a step-by-step basis.

The agency will designate a staff member to serve as monitor of the specimen acquisition process. This monitor should always be of the same sex as the individual being tested. However, in the event there is no member of the same sex available from the agency collecting the specimens, the agency may request that a member of the same sex from another law enforcement agency serve as monitor of the process.

The monitor of the specimen acquisition process shall be responsible for ensuring that all documentation associated with the test procedures is fully and accurately completed by the individual submitting the specimen. The monitor will insure that the collection of specimens is done in a manner that provides for individual privacy while ensuring the integrity of the specimen.

Prior to the submission of a urine specimen, sworn law enforcement officers and law enforcement trainees shall complete a medication information form (Attachment A) by listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements and nutritional supplements that were ingested by the officer during the past 14 days. Candidates for law enforcement employment are not required to complete a medication information form at this time.

Throughout the testing process, the identity of individual law enforcement officers shall remain confidential. Individual specimens and forms shall be identified throughout the process by the use of social security numbers. At no time shall a name appear on any form or specimen container sent to the State Toxicology Laboratory.

Specimens will be collected utilizing equipment and supplies approved by the State Toxicology Laboratory. Under no circumstances shall a specimen be collected and submitted for analysis in a specimen container that has not been approved by the State Toxicology Laboratory. It is the responsibility of each agency to contact the Laboratory to obtain the appropriate supplies and equipment.

The procedures for labeling, collecting and sealing urine specimen containers are set forth in Attachment B.

Every effort shall be made to ensure the privacy of individual officers who have been directed to provide a specimen. Therefore, individual officers will void without the direct observation of the monitor. This means that while the monitor may be present in the area where individuals void, there can be no direct observation of the officer's production of a specimen. However, it is the responsibility of the monitor to ensure the accuracy and integrity of the test. Therefore, a monitor can, among other things, direct an individual officer who has been selected for drug testing to remove outer clothing (jackets, sweaters etc.), empty their pockets, and wash their hands under running water, before they produce a specimen. In addition, the monitor may wish to add tinting agents to

toilet water and secure the area where the specimens are to be collected prior to conducting individual drug tests.

If the monitor has reason to believe that an individual officer will attempt to adulterate or contaminate a specimen, substitute another substance or liquid for their specimen, or compromise the integrity of the test process, the monitor may conduct a direct observation of the individual officer. If a monitor concludes that direct observation is necessary, he or she must document the facts supporting the belief that the officer will attempt to compromise the integrity of the test process before there can be direct observation.

After a specimen has been produced, the officer shall seal the specimen container and deliver it to the monitor. The monitor shall take possession of the specimen and ensure that it has been properly labeled and sealed. The monitor must check the temperature tape on the specimen container within five minutes of collection. A reading between 90º and 100º F is acceptable. If the temperature tape does not indicate the acceptable temperature, the monitor must examine the possibility that the officer attempted to tamper with the collection.

At the conclusion of the test process, the monitor shall ensure that all chain of custody documentation has been properly completed and make arrangements for the specimen to be delivered to the State Toxicology Laboratory.

Individuals who are unable to produce a urine specimen may remain under the supervision of the test monitor until the monitor is satisfied that the individual cannot produce a specimen. While the individual is under supervision, the monitor may direct the individual to drink fluids in an attempt to induce the production of a specimen. If the individual remains unable to provide a specimen after a reasonable period of time, the monitor may have the individual examined by a doctor to determine whether the inability to produce a specimen is the result of a medical or physical infirmity. If there is no valid reason why an individual officer cannot produce a specimen, the inability to produce a specimen shall be deemed a refusal to cooperate with the test process and the appropriate action taken against the officer.

Second Specimen

Law enforcement officers and law enforcement trainees have the option to provide the monitor with a second urine specimen. This second specimen must be collected at the same time and the same place as the first specimen. The second specimen must be given contemporaneous with the first specimen, in other words, during the same void. The second specimen shall be collected in the same fashion as the first specimen. The monitor shall take possession of the second specimen and place it in a secured refrigerated storage area.

The law enforcement agency shall maintain possession of the second specimen for a period of 60 days or until the agency receives notification from the State Toxicology Laboratory that the first specimen tested negative for the presence of controlled substances.

The second specimen shall be released for analysis by the law enforcement agency under the following circumstances:

1. The agency is notified by the State Toxicology Laboratory that the first specimen tested positive for a controlled substance; and

2. The agency is informed by the officer whose specimen tested positive that the officer wishes to have the specimen independently tested; and

3. The officer designates a laboratory that is licensed as a clinical laboratory by the New Jersey Department of Health under the New Jersey Clinical Laboratory Improvement Act to conduct the independent test; and

4. A representative of the licensed clinical laboratory takes possession of the second specimen in accordance with accepted chain of custody procedures within 60 days of the date the specimen was produced.

Submission of Specimens for Analysis

The State Toxicology Laboratory within the Division of Criminal Justice is the only facility approved for the analysis of law enforcement drug tests conducted under the *Law Enforcement Drug Testing Policy*. Law enforcement agencies are not permitted to use any other facility or laboratory for the purpose of analyzing urine specimens for illegal drug use by law enforcement officers.

Urine specimens should be submitted to the State Toxicology Laboratory as soon as possible after collection. In the event a specimen cannot be submitted to the laboratory within one working day of collection, the law enforcement agency shall store the specimen in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

The submission of specimens to the State Toxicology Laboratory may be accomplished by personnel from the law enforcement agency or commercial courier. Should a law enforcement agency choose to have specimens delivered to the State Toxicology Laboratory by commercial courier, the submission must be by "next day delivery," and packaged in a manner that includes two additional seals to provide for the integrity of the test specimens.

All specimens must be accompanied by a medical information form and a specimen submission record (Attachment C). The State Toxicology Laboratory will inspect all documentation to ensure that it has been properly completed. Failure to include the appropriate documentation with each submission will cause the Laboratory to delay conducting an analysis of the specimen or specimens until the missing documentation is submitted. In situations where documentation remains incomplete for a total of five business days, the specimen will be discarded.

In addition to ensuring that the appropriate documentation has been completed and submitted for each specimen, the State Toxicology Laboratory shall inspect each specimen for damage and evidence of tampering. The Laboratory may reject any specimen it has reason to believe has been tampered with or damaged.

Directions to the State Toxicology Laboratory are found in Attachment D. The Laboratory will accept submissions on regular work days, from 8:30 a.m. to 4 p.m. The Laboratory can be contacted at 973-648-3915.

Analysis of Specimens

The analysis of each specimen shall be done in accordance procedures adopted by the State Toxicology Laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, metabolite cut-off levels and the issuance of test reports. The State Toxicology Laboratory will utilize the following test procedures to analyze urine specimens for illegal drug use.

The Laboratory's drug testing procedures will screen specimens for the following controlled substances at the cut-off levels indicated:

1. Amphetamine / methamphetamine . . 300 ng/ml
2. Barbiturates . . . . . 300 ng/ml
3. Benzodiazepine . . . . . 300 ng/ml
4. Cannabinoids (marijuana) . . . . . 20 ng/ml
5. Cocaine . . . . . 300 ng/ml
6. Methadone . . . . . 300 ng/ml
7. Opiates (heroin) . . . . . 300 ng/ml
8. Phencyclidine . . . . . 75 ng/ml

The State Toxicology Laboratory utilizes a two stage procedure to analyze specimens. In the first stage, all specimens submitted to the Laboratory will undergo an initial drug screening procedure. This procedure, which employs flourescence polarization immunoassy (FPIA) technology, analyzes each specimen for the eight substances listed above. The initial screening procedure analyzes each specimen to determine whether one or more of the eight substances or their metabolites are present.[6] If the initial analysis determines that a specimen contains one of the substances listed above in an amount equal to or greater than the cut-off level, the specimen will undergo a second stage of analysis.

[6] A metabolite results from the body's breakdown of a particular substance.

Gas chromatography/mass spectrophotometry (GC/MS) constitutes the second stage of analysis employed by the State Toxicology Laboratory. Specimens that have tested positive following FPIA analysis in an amount equal to or greater than the cut-off level will undergo GC/MS analysis. This second stage of analysis will seek to confirm the presence of the substance identified by the FPIA analysis. The GC/MS analysis will utilize cut-off levels for each substance that are different from the cut-off levels utilized by the FPIA analysis.

When a specimen tests positive at the initial screen and the confirmation analysis, a medical review officer assigned to the State Toxicology Laboratory will review the test results together with the medication information form submitted for the specimen. The medical review officer will seek to determine whether any of the substances listed on the form would explain the positive test result.

Candidates for law enforcement employment are not required to submit a medication information form with their specimen. Therefore, if a candidate's specimen tests positive, the law enforcement agency, following notification from the State Toxicology Laboratory, must have the candidate complete the medication information form. Once the form has been completed, the agency is responsible for transmitting the form to the Laboratory. A review of the form will be conducted by the medical review officer as outlined above.

In addition to the testing outlined above, specimens submitted to the State Toxicology Laboratory may be tested for additional substances at the request of the law enforcement agency submitting the specimen. The State Toxicology Laboratory has the ability through its own facilities as well as the facilities of cooperating laboratories to arrange drug testing for steroid abuse, as well as various "designer", "club" or "rave" drugs including the following:

1. Methylenedioxymethamphetamine (aka MDMA, Ecstasy, X, XTC);
2. Gamma-hydroxybutyrate (aka GHB, Grievous Bodily Harm, G, Liquid Ecstasy);
3. Ketamine (aka Special K, Vitamin K, K);
4. Rohypnol (aka Roofies, Rophies, Forget-me pill);
5. Lysergic acid diethylamide (aka LSD);

The methods and procedures used to analyze specimens for these additional substances will differ from the procedures outlined above.

Ordinarily, drug testing for the additional substances listed above will be limited to specimens collected based on reasonable suspicion. Agencies wishing to conduct testing for these additional substances on a more regular basis must contact the Division of Criminal Justice and the State Toxicology Laboratory.

Reporting of Drug Test Results

The State Toxicology Laboratory will provide written test results for every specimen submitted for analysis. All efforts will be made to deliver these reports within 15 working days of the submission. Reports will be addressed to the contact person listed on the specimen submission record. Positive test results will be sent to the contact person by overnight express mail.

In some cases, the State Toxicology Laboratory will report that a specimen tested positive for a particular substance and that the information on the medication information form explains the test result. For example, the Laboratory may report that a specimen tested positive for barbiturates and that a prescription medication listed on the form by the officer explains the test result. At this point, it is the responsibility of the submitting agency to determine whether the officer had a valid prescription. Officers who do not have a valid prescription are subject to disciplinary action including termination by the agency.

Under no circumstances, will the State Toxicology Laboratory provide law enforcement agencies with verbal reports of drug test results. In addition, no individual or agency may ask the Laboratory to conduct a second analysis of a specimen that has already been analyzed by the Laboratory.

Consequences of a Positive Test Result

Applicants

When an applicant tests positive for illegal drug use, the applicant shall be immediately removed from consideration for employment by the agency. In addition, the applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by the law enforcement agency to which the individual applied. Any applicant who tests positive will be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years from the date of the test.

Where an applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the Division of State Police.

Trainees

When a trainee tests positive for illegal drug use, the trainee shall be immediately dismissed from basic training subject to rules adopted by the Police Training Commission. In addition, the trainee shall be suspended from employment by his or her appointing authority. Upon final disciplinary action by the appointing authority, the trainee shall be terminated from employment as a law enforcement officer, and be reported to the Central Drug Registry. The trainee shall be permanently barred from future law enforcement employment in New Jersey.

Sworn Law Enforcement Officers

In the event of a positive test result, the submitting agency shall notify the officer of the results as soon as practical after receipt of the report from the State Toxicology Laboratory. Upon request, the officer may receive a copy of the laboratory report.

The officer shall be immediately suspended from all duties. The officer shall be administratively charged and, upon final disciplinary action, terminated from employment as a law enforcement officer.

The officer shall be reported to Central Drug Registry maintained by the Division of State Police by his or her employer. In addition, the officer shall be permanently barred from future law enforcement employment in New Jersey.

Consequences of a Refusal to Submit to a Drug Test

Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred from consideration for future law enforcement employment for period of two years from the date of the refusal. In addition, the appointing authority shall forward the applicant's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the trainee's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

Sworn law enforcement officers who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the officer did in fact refuse to submit a sample, the officer shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the officer's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

Please note that if there is no valid reason why an officer cannot produce a specimen, the officer's actions

will be treated as a refusal. In addition, a sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

Central Drug Registry

Every law enforcement agency shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn law enforcement officers who test positive for the illegal use of drugs or who refuses an order to submit to a drug test.

A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

Notifications to the Central Drug Registry shall be made on the form in Attachment E, and shall be signed by the chief or director and notarized with a raised seal. The following information shall be included:

1. name and address of the submitting agency;
2. name of the individual who tested positive;
3. last known address of the individual;
4. date of birth;
5. social security number;
6. SBI number (if applicable);
7. gender
8. race
9. eye color
10. substance the individual tested positive for, or circumstances of the refusal to submit a urine sample;
11. date of the drug test or refusal;
12. date of final dismissal or separation from the agency; and
13. whether the individual was an applicant, trainee or sworn law enforcement officer.

Notifications to the Central Drug Registry shall be sent to:

Division of State Police
Records and Identification Section
P.O. Box 7068
West Trenton, New Jersey 08628-0068

Record Keeping

Each law enforcement agency's Internal Affairs Unit shall maintain all records relating to the drug testing of applicants, trainees and law enforcement officers.

For all drug testing, the records shall include but not be limited to:

1. the identity of those ordered to submit urine samples;
2. the reason for that order;
3. the date the urine was collected;
4. the monitor of the collection process;
5. the chain of custody of the urine sample from the time it was collected until the time it was received by the State Toxicology Laboratory;
6. the results of the drug testing;
7. copies of notifications to the subject officer; and
8. for any positive result or refusal, appropriate documentation of disciplinary action.

For random drug testing, the records will also include the following information:

9. a description of the process used to randomly select officers for drug testing;
10. the date selection was made;
11. a copy of the document listing the identities of those selected for drug testing;
12. a list of those who were actually tested; and
13. the date(s) those officers were tested.

Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the *New Jersey Internal Affairs Policy and Procedures*.

ATTACHMENT A

DRUG TESTING
MEDICATION INFORMATION

As part of the drug testing process, it is essential that you inform us of all medications you have taken in the last fourteen (14) days. Please *carefully* complete the information below.

T all that apply:

☐ A. During the past 14 days I have taken the following medication prescribed by a physician:

	Name of Medication	Prescribing Physician	Date Last Taken
1			
2			
3			

☐ B. During the past 14 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

	Non-Prescription Medication	Date Last Taken
1		
2		
3		

☐ C. During the past 14 days, I have taken **NO** prescription or non-prescription medications.

Social Security Number & Initials _____ Date _____

Signature of Witness _____ Date _____

ATTACHMENT B

New Jersey Law Enforcement Drug Testing

INSTRUCTIONS FOR USING THE DOX CONTAINER

1. The individual being tested fills out the plastic label. <u>USE A NUMBER 2 PENCIL</u>.

   SOCIAL SECURITY NUMBER ONLY,
   <u>NO NAMES</u>.

2. The individual places the label <u>inside</u> the container, <u>printed side out</u>.

3. The individual being tested will void into the container <u>after</u> the label has been put inside the container.

4. Place the filled bottle on the table. Push cap into the bottle using the palm of the hand, until it snaps into place.

5. Monitor must check the temperature tape. A reading between 90º and 100º F is acceptable.

CAUTION: The DOX Specimen Container System when used in collecting human urine for drugs of abuse testing is intended for invitro diagnostic use or for professional use only. Human urine samples should be handled and processed as though they are potentially infectious.

STATE OF NEW JERSEY
STATE TOXICOLOGY LABORATORY
EDWIN H. ALBANO INSTITUTE OF FORENSIC SCIENCE
325 NORFOLK STREET
NEWARK, NEW JERSEY 07103-2710

(973) 648-3915

SPECIMEN SUBMISSION RECORD

Submitting Agency: _____

Address: _____

Phone: _____ Fax: _____

Agency Contact Person: _____

PLEASE TEST THE URINE SPECIMENS LISTED BELOW FOR THE PRESENCE OF DRUGS.

Check One: " Applicants " Trainees " Officers " Random

Sequential Specimen #	*Social Security #*	*Tox Case #*

Delivered By: Received By: Date & Time:

_____ _____ _____

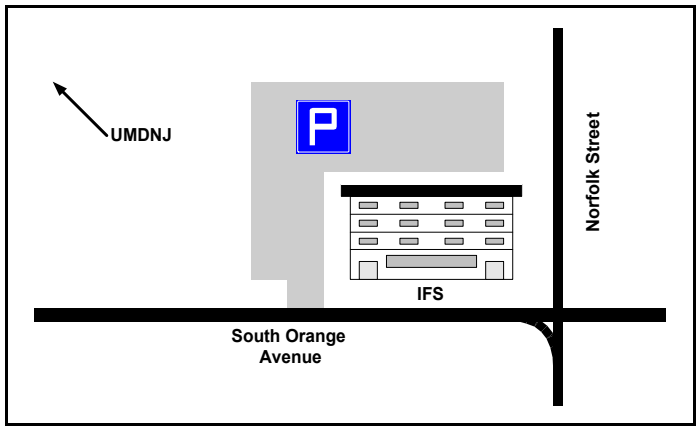
Print

_____ _____ Page ( ) of ( )

Signature

ATTACHMENT D

Directions to



State Toxicology Laboratory

Edwin H. Albano Institute of Forensic Science (IFS)

325 Norfolk Street
Newark, New Jersey
973-648-3915

From Garden State Parkway North:

1. Take Exit 144, South Orange Avenue.
2. Make a right on South Orange Avenue.
3. Continue about 25 blocks to intersection at Bergen Street (UMDNJ campus is on left.)
4. Continue down South Orange Avenue past traffic light to driveway on left before two story brick building (IFS).

From Garden State Parkway South:

1. Take Exit 145, East Orange.
2. Take I-280 East to first exit (Newark).
3. Make a right on First Street. This becomes Bergen Street.
4. Continue to fifth traffic light at South Orange Avenue.
5. Make a left.
6. Continue down South Orange Avenue past traffic light to driveway on left before two story brick building (IFS).

From New Jersey Turnpike North:

1. Take Exit 14, Newark.
2. After toll plaza, take I-78 West (express or local).
3. Take Exit 56, Hillside Avenue.
4. Continue on Hillside Avenue to end at Avon Avenue.
5. Make left on Avon Avenue.
6. Continue one block to traffic light on Irvine Turner Blvd.
7. Make right on Irvine Turner Blvd. (which becomes Jones St.) and continue to traffic light at South Orange Avenue.
8. Turn left and enter first driveway on right behind two story brick building (IFS).

From New Jersey Turnpike South:

1. Take Exit 15W to I-280 West to Exit 14B, Clifton Avenue.
2. At the traffic light, make a left.
3. Continue on Clifton Avenue to eighth traffic light at South Orange Avenue and Norfolk Street.
4. Turn right and enter first driveway on right behind two story brick building (IFS).

ATTACHMENT E

NOTIFICATION TO THE CENTRAL DRUG REGISTRY

AGENCY SUBMITTING			
AGENCY		PHONE	
ADDRESS	CITY	STATE	ZIP
CONTACT PERSON	TITLE	PHONE	

PERSON TO BE ENTERED			
NAME	GENDER	RACE	EYE COLOR

THIS PERSON WAS:
☐ APPLICANT ☐ TRAINEE
☐ SWORN OFFICER - RANDOM ☐ SWORN OFFICER - REASONABLE SUSPICION

ADDRESS		
CITY	STATE	ZIP
DOB / SSN	SBI NUMBER (IF KNOWN)	

REASON FOR NOTIFICATION

THE PERSON LISTED ABOVE

☐ TESTED POSITIVE FOR _____
(IDENTIFY SUBSTANCE)

OR

☐ REFUSED TO SUBMIT A URINE SAMPLE

DATE OF THE DRUG TEST OR REFUSAL	DATE OF FINAL DISMISSAL OR SEPARATION FROM AGENCY

CERTIFICATION ***(Must be completed by Chief or Director. Must be notarized with raised seal)***

I hereby affirm that the above information is true and correct to the best of my knowledge.

_____ _____
Print Name *Title* *Signature*

Sworn and subscribed before me this _____ day of _____, _____

(Seal) _____

(6/01)

Mail to: Division of State Police
Records and Identification Section
P.O. Box 7068
West Trenton, New Jersey 08628-0068

DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Issued October 1986
Revised August 1990
Revised September 1998
Revised June 2001
Revised May 2012
(revisions in **BOLD** and UNDERLINED)

I. Applicability

A. This policy applies to:

1. Applicants for a position as a law enforcement officer who, if appointed, will be responsible for the enforcement of the criminal laws of this State and will be authorized to carry a firearm under *N.J.S.A.* 2C:39-6;

2. Law enforcement officer trainees subject to the Police Training Act while they attend a mandatory basic training course; and

3. Sworn law enforcement officers who are responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act and are authorized to carry a firearm under *N.J.S.A.* 2C:39-6.

B. This policy does not require law enforcement agencies to drug test applicants, nor does it require law enforcement agencies to implement a random drug testing program for sworn officers. However, law enforcement agencies have an independent obligation to undertake the drug testing of individual officers when there is reasonable suspicion to believe that the officer is illegally using drugs.

II. Types of drug testing

A. Applicants for a position as a law enforcement officer

1. Applicants may be required to submit a urine specimen at any time prior to appointment.

B. Law enforcement trainees

1. Trainees will be required to submit one or more urine specimens for testing while they attend a mandatory basic training course. All drug testing conducted during mandatory basic training will comply with rules

and regulations established by the Police Training Commission.

2. Individual trainees may also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the trainee is illegally using drugs. A trainee shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor, the chief executive officer of the trainee's agency, or the academy director.

C. Sworn law enforcement officers

1. Urine specimens shall be ordered from a sworn law enforcement officer when there exists reasonable suspicion to believe that the officer is illegally using drugs. Urine specimens shall not be ordered from an officer without the approval of the county prosecutor or the chief executive officer of the officer's agency.

2. Urine specimens may be ordered from sworn law enforcement officers who have been randomly selected to submit to a drug test. Random selection shall be defined as a method of selection in which each and every sworn member of the law enforcement agency, regardless of rank or assignment, has an equal chance to be selected for drug testing each and every time a selection is conducted.

3. Urine specimens may be collected from law enforcement officers during a regularly scheduled and announced medical examination or a fitness for duty examination. However, the collection and analysis of these specimens are not governed by this policy.

III. Notification of drug testing procedures

A. Applicants

1. Agencies that choose to test applicants for law enforcement positions must notify those applicants that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test. In addition, the notification will indicate that if the applicant is currently employed by another agency as a sworn law enforcement officer and the officer tests positive for illegal drug use, the officer's employing agency will be notified of the test results and the officer will be terminated from employment and permanently barred

from future law enforcement employment in New Jersey.

B. Trainees

1. All newly appointed law enforcement officers shall be informed that drug testing is mandatory during basic training. Newly appointed officers shall also be informed that a negative result is a condition of employment and that a positive result will result in: a) the officer's termination from employment; and b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

2. Newly appointed officers shall be further informed that the refusal to submit to a drug test shall result in their dismissal from employment and a permanent ban from future law enforcement employment in New Jersey.

3. Each police academy will include in its rules and regulations a provision implementing drug testing during basic training.

C. Sworn law enforcement officers: reasonable suspicion testing

1. Each municipal law enforcement agency shall include in its rules and regulations as defined in *N.J.S.A.* 40A:14-118, and every county and state law enforcement agency shall include in appropriate standard operating procedures, a provision that individual law enforcement officers will be ordered to submit to a drug test when there is a reasonable suspicion to believe that the officer is illegally using drugs.

2. Before an officer may be ordered to submit to a drug test based on reasonable suspicion, the agency shall prepare a written report which documents the basis for the reasonable suspicion. The report shall be reviewed by the county prosecutor or the chief executive officer of the law enforcement agency before a reasonable suspicion test may be ordered. Under emergent circumstances, approval may be given for a reasonable suspicion test on the basis of a verbal report.

3. The agency's rules and regulations or appropriate standard operating procedures shall also provide that a negative result is a condition of employment as a sworn officer and that a positive result will result in: a) the officer's termination from employment; b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

4. The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test based on reasonable suspicion after being lawfully ordered to do so are subject to the same penalties as those officers who test positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

D. Sworn law enforcement officers: Random drug testing

1. Law enforcement agencies may choose to implement a random drug testing program for their sworn law enforcement officers. Law enforcement agencies which establish a random drug testing program must do so by rule and regulation as defined in *N.J.S.A.* 40A:14-118 for municipal law enforcement agencies or by appropriate standard operating procedures for county and state law enforcement agencies. Random drug testing cannot be implemented until rules and regulations establishing such a procedure have been in effect for a minimum of 60 days.

2. Each agency's rules and regulations or appropriate standard operating procedures will, at a minimum:

a. State that all sworn members of the agency are eligible for random drug testing, regardless of rank or assignment.

b. State the number of officers to be selected each time a random selection takes place. This can be expressed as either a number of sworn officers or a percentage of the sworn officers, which in every case shall be less than the total number of sworn officers employed by the agency.

c. Establish a method of random selection which ensures that every sworn officer in the agency has an equal chance to be selected for a testing each and every time a selection takes place.

d. Establish a system by which the selection process can be verified and documented.

e. Permit a representative of the collective bargaining unit(s) to witness the selection process.

f. Provide that any member of the agency who discloses the identity of an officer selected for random testing or the fact that a random selection is scheduled to take place prior to the collection of urine

specimens shall be subject to discipline.

g. Establish a system to collect urine specimens from selected officers in a prompt, efficient and confidential manner.

h. The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test when randomly selected are subject to the same penalties as those officers who test positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

IV. Specimen acquisition procedures

A. Preliminary acquisition procedures

1. The law enforcement agency shall designate a member of its staff to serve as monitor of the specimen acquisition process. The monitor shall always be of the same sex as the individual being tested. In the event there is no member of the same sex available from the agency collecting the specimens, the agency may request that a member of the same sex from another law enforcement agency serve as monitor of the process.

2. The monitor of the specimen acquisition process shall be responsible for:

a. Ensuring that all documentation is fully and accurately completed by the individual submitting the specimen.

b. Collecting specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen.

c. Complying with chain of custody procedures established for the collection of urine specimens and their subsequent submission to the New Jersey State Toxicology Laboratory within the Division of Criminal Justice for analysis.

3. Prior to the submission of a specimen, an applicant for a law enforcement position shall execute a form consenting to the collection and analysis of their urine for illegal drugs. (Attachment A) The form shall also advise the applicant that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State

Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years. Applicants shall not complete a medical questionnaire (Attachment B) prior to the submission of a specimen unless they have already received a conditional offer of employment. However, applicants who have not received a conditional offer of employment can be required to complete a medical questionnaire if, following the submission of their specimen to the State Toxicology Laboratory for analysis, the law enforcement agency receives a report indicating that the specimen tested positive for a controlled substance.

4. Prior to the submission of a urine specimen, a trainee enrolled in a basic training course shall execute a form (Attachment C) advising the trainee that a negative result is a condition of employment and that a positive result will: a) result in the trainee being dismissed from basic training; b) cause the trainee to be dismissed from employment as a law enforcement officer by his or her appointing authority; c) cause the trainee's name to be reported to the central drug registry maintained by the Division of State Police; and d) cause the trainee to be permanently barred from future law enforcement employment in New Jersey. The form shall also advise trainees that the refusal to participate in the test process carries the same penalties as testing positive. Trainees shall also complete a medical questionnaire (Attachment B) which clearly describes all medications, both prescription and over-the-counter (non-prescription), that were ingested in the past 14 days.

5. Prior to the submission of a urine specimen, sworn law enforcement officers shall complete a medical questionnaire (Attachment B) which clearly describes all medications, both prescription and over-the-counter (non-prescription), that were ingested in the past 14 days.

B. Specimen collection

1. Throughout the test process, the identity of individual applicants, trainees and sworn law enforcement officers shall remain confidential. Individual specimens shall be identified throughout the process by the use of social security numbers. At no time shall an individual's name appear on any form or specimen container sent to the State Toxicology Laboratory.

2. Specimens will be collected utilizing equipment and supplies approved by the State Toxicology Laboratory. Under no circumstances may a specimen be collected and submitted for analysis in a specimen container that has not been approved by the State Toxicology Laboratory.

3. Urine specimens will be acquired and processed in accordance with procedures established by the State Toxicology Laboratory.

a. After the monitor has inspected the appropriate forms for accuracy, the applicant, trainee or sworn officer shall void into the specimen collection container.

b. After a specimen has been produced, the individual shall seal the specimen container and deliver it to the monitor.

c. Once the monitor is satisfied that the required documentation is accurate and he or she has inspected the specimen container to determine that a specimen has been produced, the monitor shall take possession of the specimen and ensure that it is delivered to the State Toxicology Laboratory for analysis.

4. Individuals will void without the direct observation of the monitor unless there is reason to believe that the individual will adulterate the specimen or otherwise compromise the integrity of the test process. Under these circumstances, the production of a specimen may be directly observed by the monitor. Law enforcement agencies must document the facts underlying their belief that an individual may adulterate a specimen or compromise the integrity of the test process.

5. Individuals that initially are unable to produce a urine specimen may remain under the supervision of the test monitor until the monitor is satisfied that the individual cannot produce a specimen. While the individual is under supervision, the monitor may allow the individual to drink fluids in an attempt to induce the production of a specimen. If the individual remains unable to provide a specimen after a reasonable period of time, the monitor may have the individual examined by a doctor to determine whether the inability to produce a specimen was the result of a medical or physical infirmity or constituted a refusal to cooperate with the drug testing process.

6. Trainees and sworn law enforcement officers shall have the option to provide the monitor with a second urine specimen at the same time the first specimen is collected.

a. The second specimen shall be collected in the same fashion as the first specimen. The monitor shall take possession of the second specimen and place it in a secured refrigerated storage area.

b. The law enforcement agency shall maintain possession of the second specimen for a period of 60 days or until the agency receives notification from the State Toxicology Laboratory that the first specimen tested negative for the presence of controlled substances.

c. The second specimen shall be released by the law enforcement agency under the following circumstances:

(1) The law enforcement agency is notified by the State Toxicology Laboratory that the first specimen tested positive for a controlled substance; and

(2) The law enforcement agency is informed by the individual whose specimen tested positive that the individual wishes to have the specimen independently tested; and

(3) The officer must designate a laboratory that is licensed as a clinical laboratory by the New Jersey Department of Health under the New Jersey Clinical Laboratory Improvement Act to conduct the independent test; and

(4) A representative of the licensed clinical laboratory designated by the individual takes possession of the second specimen in accordance with accepted chain of custody procedures within 60 days of the date the specimen was produced.

V. Submission of specimens for analysis

A. The New Jersey State Toxicology Laboratory within the Division of Criminal Justice will constitute the sole facility for the analysis of law enforcement drug tests. Law enforcement agencies are not permitted to use any other facility or laboratory for purposes of analyzing urine specimens.

B. Urine specimens should be submitted to the State Toxicology Laboratory as soon as possible after their collection. In the event a specimen cannot be submitted to the laboratory within one working day of its collection, the law enforcement agency shall store the specimen in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

1. Submission of specimens to the State Toxicology Laboratory may be accomplished by personnel from the law enforcement agency or commercial courier.

2. Should a law enforcement agency choose to have specimens delivered to the State Toxicology Laboratory by commercial courier, the following procedural safeguards must be taken:

a. All submissions must be by "next day delivery."

b. In addition to the sealed container, all submissions must be

packaged in a manner that includes two additional seals to provide for the integrity of the test specimens.

c. The State Toxicology Laboratory must reject specimens that it has reason to believe have been subject to tampering.

VI. Analysis of specimens

A. The State Toxicology Laboratory will utilize the following test procedures to analyze urine specimens for law enforcement agencies:

1. All specimens will be subject to an initial test utilizing fluorescence polarization immunoassay analysis.

2. Those specimens that test positive for a controlled substance following the fluorescence polarization immunoassay, shall be subject to a gas chromatography/mass spectrophotometry analysis to confirm the presence of the controlled substance.

3. In the event a specimen is confirmed to be positive for a controlled substance following the gas chromatography/mass spectrophotometry, a medical review officer at the laboratory shall compare the test results with the medical questionnaire submitted with the specimen to determine whether any substance listed on the questionnaire would explain the test result. The medical review officer may direct the agency that collected the specimen to obtain further information from the individual being tested concerning the medications listed on the questionnaire. In the event the questionnaire does not explain the test result, the medical review officer shall issue a report indicating that specimen tested positive.

4. The State Toxicology Laboratory shall analyze each specimen for the following substances and their metabolites:

a. amphetamine/methamphetamine;

b. barbiturates;

c. benzodiazepine;

d. cannabinoids;

e. cocaine;

f. methadone;

g. phencyclidine; and

h. opiates.

5. **Every law enforcement executive may request that one or more specimens be analyzed for the presence of steroids.**

6. The analysis of each specimen shall be done in accordance procedures adopted by the State Toxicology Laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, metabolite cut-off levels and the issuance of test reports.

VII. Drug test results

A. The State Toxicology Laboratory shall notify the submitting law enforcement agency of test results from the specimens submitted for analysis. All reports shall be in writing and sent to the agency within 15 working days of the submission.

B. The State Toxicology Laboratory shall not report a specimen as having tested positive for a controlled substance until the specimen has undergone a confirmatory test and the medical review officer has reviewed the results of that test with the medical questionnaire pertinent to that specimen.

C. The submitting agency shall notify the applicant, trainee or sworn officer of the results of a positive test result as soon as practical after receipt of the report from the State Toxicology Laboratory. Upon request, the individual may receive a copy of the laboratory report.

D. Under no circumstances may an agency or an individual resubmit a specimen for testing or ask that a particular specimen within the possession of the State Toxicology Laboratory be retested.

VIII. Consequences of a positive test result

A. When an applicant tests positive for illegal drug use:

1. The applicant shall be immediately removed from consideration for employment by the agency;

2. The applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by the law enforcement agency to which the individual applied; and

3. The applicant shall be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years.

4. Where the applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the Division of State Police.

B. When a trainee tests positive for illegal drug use, subject to rules adopted by the Police Training Commission:

1. The trainee shall be immediately dismissed from basic training and suspended from employment by his or her appointing authority;

2. The trainee shall be terminated from employment as a law enforcement officer, upon final disciplinary action by the appointing authority;

3. The trainee shall be reported to the Central Drug Registry maintained by the Division of State Police; and

4. The trainee shall be permanently barred from future law enforcement employment in New Jersey.

C. When a sworn law enforcement officer tests positive for illegal drug use:

1. The officer shall be immediately suspended from all duties;

2. The officer shall be terminated from employment as a law enforcement officer, upon final disciplinary action;

3. The officer shall be reported by his or her employer to Central Drug Registry maintained by the Division of State Police; and

4. The officer shall be permanently barred from future law enforcement employment in New Jersey.

IX. Consequences of a refusal to submit to a drug test

A. Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred from consideration for future law enforcement employment for period of two years from the date of the refusal. In addition, the appointing authority shall forward the applicant's name to the Central Drug

Registry and note that the individual refused to submit to a drug test.

B. Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the trainee's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

C. Sworn law enforcement officers who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the officer did in fact refuse to submit a sample, the officer shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the officer's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

X. A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

XI. Record keeping

A. Each law enforcement agency's Internal Affairs Unit shall maintain all records relating to the drug testing of applicants, trainees and law enforcement officers.

B. Each agency's drug testing records shall include but not be limited to:

1. For all drug testing:

a. the identity of those ordered to submit urine samples;

b. the reason for that order;

c. the date the urine was collected;

d. the monitor of the collection process;

e. the chain of custody of the urine sample from the time it was collected until the time it was received by the State Toxicology Laboratory;

f. the results of the drug testing;

g. copies of notifications to the subject;

h. for any positive result, **documentation from the officer's physician that the medication was lawfully prescribed and does not render the officer unfit for duty;**

i. **for any positive result** or refusal, appropriate documentation of disciplinary action.

2. For random drug testing, the records will also include the following information:

a. a description of the process used to randomly select officers for drug testing;

b. the date selection was made;

c. a copy of the document listing the identities of those selected for drug testing;

d. a list of those who were actually tested; and

e. the date(s) those officers were tested.

C. Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the *New Jersey Internal Affairs Policy and Procedures*.

XII. Central Drug Registry

A. Every law enforcement agency shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn law enforcement officers who test positive for the illegal use of drugs or refuses an order to submit a urine sample on the form prescribed in Attachment D.

B. Notifications to the Central Drug Registry shall include the following information as to each individual:

1. name and address of the submitting agency, and contact person;

2. name of the individual who tested positive;

3. last known address of the individual;

4. date of birth;

5. social security number;

6. SBI number (if known);

7. Gender

8. Race

9. Eye color

10. substance the individual tested positive for, or circumstances of the refusal to submit a urine sample;

11. date of the drug test or refusal;

12. date of final dismissal or separation from the agency; and

13. whether the individual was an applicant, trainee or sworn law enforcement officer.

C. The certification section of the notification form must be completed by the chief or director, and notarized with a raised seal.

D. Notifications to the central registry shall be sent to:

Division of State Police
State Bureau of Identification
Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068

E. Information contained in the central registry may be released by the Division of State Police only under the following circumstances:

1. In response to an inquiry from a criminal justice agency as part of the background investigation process for prospective or new personnel.

2. In response to a court order.

ATTACHMENT A

DRUG TESTING
APPLICANT NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation to determine my suitability for the position for which I have applied.

I understand that as part of this process, I will undergo drug testing through urinalysis.

I understand that a negative drug test result is a condition of employment.

I understand that if I refuse to undergo the testing, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use and am not currently employed as a sworn law enforcement officer, I will be barred from future law enforcement employment in New Jersey for two years from the date of the test, After this two year period, the positive test result may be considered in evaluating my fitness for future criminal justice employment.

I understand that if I am currently employed as a sworn law enforcement officer and I produce a positive test result for illegal drug use, my current law enforcement employer will be notified of the positive test result. In addition, I will be dismissed from my law enforcement position and I will be permanently barred from law enforcement employment.

I have read and understand the information contained on this "Applicant Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the pre-employment process.

_____ _____

Signature of Applicant Date Signature of Witness Date

ATTACHMENT B

DRUG TESTING
MEDICATION INFORMATION

As part of the drug testing process, it is essential that you inform us of all medications you have taken in the last fourteen (14) days. Please *carefully* complete the information below.

✓ all that apply:

☐ A. During the past 14 days I have taken the following medication prescribed by a physician:

	Name of Medication	Prescribing Physician	Date Last Taken
1			
2			
3			

☐ B. During the past 14 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

	Non-Prescription Medication	Date Last Taken
1		
2		
3		

☐ C. During the past 14 days, I have taken **NO** prescription or non-prescription medications.

_____ _____
Social Security Number & Initials Date

_____ _____
Signature of Witness Date

ATTACHMENT C

DRUG TESTING
TRAINEE NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the program of training at _____, I will undergo unannounced drug testing by urinalysis during the training period.

I understand that a negative result is a condition of my continued attendance at the academy.

I understand that I can refuse to undergo the testing. I understand that if I refuse, I will be dismissed from the academy and from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, I will be dismissed from the academy.

I understand that if I produce a positive test result for illegal drug use, the academy will notify my employer of the positive test result. In addition, I will be permanently dismissed from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use, I will be permanently barred from serving as a law enforcement officer in New Jersey.

I have read and I understand the information contained on this "Trainee Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the academy training program.

_____ _____

Signature of Applicant Date Signature of Witness Date

ATTACHMENT D

NOTIFICATION TO THE CENTRAL DRUG REGISTRY

Type or Print

AGENCY SUBMITTING

AGENCY		PHONE	
ADDRESS	CITY	STATE	ZIP
CONTACT PERSON	TITLE	PHONE	

PERSON TO BE ENTERED

LAST NAME	FIRST NAME	INITIAL	GENDER	RACE	EYE COLOR
DOB	SSN		SBI NUMBER (IF KNOWN)		

THIS PERSON WAS:
☐ APPLICANT ☐ TRAINEE
☐ SWORN OFFICER - RANDOM ☐ SWORN OFFICER - REASONABLE SUSPICION

ADDRESS		
CITY	STATE	ZIP

REASON FOR NOTIFICATION

THE PERSON LISTED ABOVE

☐ TESTED POSITIVE FOR _____
(IDENTIFY SUBSTANCE)

OR

☐ REFUSED TO SUBMIT A URINE SAMPLE

DATE OF THE DRUG TEST OR REFUSAL	DATE OF FINAL DISMISSAL OR SEPARATION FROM AGENCY

CERTIFICATION ***(Must be completed by Chief or Director. Must be notarized with raised seal.)***

I hereby affirm that the above information is true and correct to the best of my knowledge.

_____ _____
Print Name *Title* *Signature*

Sworn and subscribed before me this _____ day of _____, _____

(Seal) _____

(6/01)

Mail to: Division of State Police
Records and Identification Section
P.O. Box 7068
West Trenton, New Jersey 08628-0068

DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Issued October 1986
Revised August 1990
Revised September 1998
Revised June 2001

I. Applicability

A. This policy applies to:

1. Applicants for a position as a law enforcement officer who, if appointed, will be responsible for the enforcement of the criminal laws of this State and will be authorized to carry a firearm under *N.J.S.A.* 2C:39-6;

2. Law enforcement officer trainees subject to the Police Training Act while they attend a mandatory basic training course; and

3. Sworn law enforcement officers who are responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act and are authorized to carry a firearm under *N.J.S.A.* 2C:39-6.

B. This policy does not require law enforcement agencies to drug test applicants, nor does it require law enforcement agencies to implement a random drug testing program for sworn officers. However, law enforcement agencies have an independent obligation to undertake the drug testing of individual officers when there is reasonable suspicion to believe that the officer is illegally using drugs.

II. Types of drug testing

A. Applicants for a position as a law enforcement officer

1. Applicants may be required to submit a urine specimen at any time prior to appointment.

B. Law enforcement trainees

1. Trainees will be required to submit one or more urine specimens for testing while they attend a mandatory basic training course. All drug testing conducted during mandatory basic training will comply with rules and regulations established by the Police Training Commission.

2. Individual trainees may also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the trainee

is illegally using drugs. A trainee shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor, the chief executive officer of the trainee's agency, or the academy director.

C. Sworn law enforcement officers

1. Urine specimens shall be ordered from a sworn law enforcement officer when there exists reasonable suspicion to believe that the officer is illegally using drugs. Urine specimens shall not be ordered from an officer without the approval of the county prosecutor or the chief executive officer of the officer's agency.

2. Urine specimens may be ordered from sworn law enforcement officers who have been randomly selected to submit to a drug test. Random selection shall be defined as a method of selection in which each and every sworn member of the law enforcement agency, regardless of rank or assignment, has an equal chance to be selected for drug testing each and every time a selection is conducted.

3. Urine specimens may be collected from law enforcement officers during a regularly scheduled and announced medical examination or a fitness for duty examination. However, the collection and analysis of these specimens are not governed by this policy.

III. Notification of drug testing procedures

A. Applicants

1. Agencies that choose to test applicants for law enforcement positions must notify those applicants that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test. In addition, the notification will indicate that if the applicant is currently employed by another agency as a sworn law enforcement officer and the officer tests positive for illegal drug use, the officer's employing agency will be notified of the test results and the officer will be terminated from employment and permanently barred from future law enforcement employment in New Jersey.

B. Trainees

1. All newly appointed law enforcement officers shall be informed that drug testing is mandatory during basic training. Newly appointed officers shall also be informed that a negative result is a condition of employment and that a positive result will result in: a) the officer's termination from employment; and b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

2. Newly appointed officers shall be further informed that the refusal to submit to a drug test shall result in their dismissal from employment and a permanent ban from future law enforcement employment in New Jersey.

3. Each police academy will include in its rules and regulations a provision implementing drug testing during basic training.

C. Sworn law enforcement officers: reasonable suspicion testing

1. Each municipal law enforcement agency shall include in its rules and regulations as defined in *N.J.S.A.* 40A:14-118, and every county and state law enforcement agency shall include in appropriate standard operating procedures, a provision that individual law enforcement officers will be ordered to submit to a drug test when there is a reasonable suspicion to believe that the officer is illegally using drugs.

2. Before an officer may be ordered to submit to a drug test based on reasonable suspicion, the agency shall prepare a written report which documents the basis for the reasonable suspicion. The report shall be reviewed by the county prosecutor or the chief executive officer of the law enforcement agency before a reasonable suspicion test may be ordered. Under emergent circumstances, approval may be given for a reasonable suspicion test on the basis of a verbal report.

3. The agency's rules and regulations or appropriate standard operating procedures shall also provide that a negative result is a condition of employment as a sworn officer and that a positive result will result in: a) the officer's termination from employment; b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

4. The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test based on reasonable suspicion after being lawfully ordered to do so are subject to the same penalties as those officers who test

positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

D. Sworn law enforcement officers: Random drug testing

1. Law enforcement agencies may choose to implement a random drug testing program for their sworn law enforcement officers. Law enforcement agencies which establish a random drug testing program must do so by rule and regulation as defined in *N.J.S.A.* 40A:14-118 for municipal law enforcement agencies or by appropriate standard operating procedures for county and state law enforcement agencies. Random drug testing cannot be implemented until rules and regulations establishing such a procedure have been in effect for a minimum of 60 days.

2. Each agency's rules and regulations or appropriate standard operating procedures will, at a minimum:

a. State that all sworn members of the agency are eligible for random drug testing, regardless of rank or assignment.

b. State the number of officers to be selected each time a random selection takes place. This can be expressed as either a number of sworn officers or a percentage of the sworn officers, which in every case shall be less than the total number of sworn officers employed by the agency.

c. Establish a method of random selection which ensures that every sworn officer in the agency has an equal chance to be selected for a testing each and every time a selection takes place.

d. Establish a system by which the selection process can be verified and documented.

e. Permit a representative of the collective bargaining unit(s) to witness the selection process.

f. Provide that any member of the agency who discloses the identity of an officer selected for random testing or the fact that a random selection is scheduled to take place prior to the collection of urine specimens shall be subject to discipline.

g. Establish a system to collect urine specimens from selected officers in a prompt, efficient and confidential manner.

h. The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test when randomly selected are subject to the same penalties as those officers who test positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

IV. Specimen acquisition procedures

A. Preliminary acquisition procedures

1. The law enforcement agency shall designate a member of its staff to serve as monitor of the specimen acquisition process. The monitor shall always be of the same sex as the individual being tested. In the event there is no member of the same sex available from the agency collecting the specimens, the agency may request that a member of the same sex from another law enforcement agency serve as monitor of the process.

2. The monitor of the specimen acquisition process shall be responsible for:

a. Ensuring that all documentation is fully and accurately completed by the individual submitting the specimen.

b. Collecting specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen.

c. Complying with chain of custody procedures established for the collection of urine specimens and their subsequent submission to the New Jersey State Toxicology Laboratory within the Division of Criminal Justice for analysis.

3. Prior to the submission of a specimen, an applicant for a law enforcement position shall execute a form consenting to the collection and analysis of their urine for illegal drugs. (Attachment A) The form shall also advise the applicant that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years. Applicants shall not complete a medical questionnaire (Attachment B) prior to the submission of a specimen unless they have already received a conditional offer of employment. However, applicants who have not

received a conditional offer of employment can be required to complete a medical questionnaire if, following the submission of their specimen to the State Toxicology Laboratory for analysis, the law enforcement agency receives a report indicating that the specimen tested positive for a controlled substance.

4. Prior to the submission of a urine specimen, a trainee enrolled in a basic training course shall execute a form (Attachment C) advising the trainee that a negative result is a condition of employment and that a positive result will: a) result in the trainee being dismissed from basic training; b) cause the trainee to be dismissed from employment as a law enforcement officer by his or her appointing authority; c) cause the trainee's name to be reported to the central drug registry maintained by the Division of State Police; and d) cause the trainee to be permanently barred from future law enforcement employment in New Jersey. The form shall also advise trainees that the refusal to participate in the test process carries the same penalties as testing positive. Trainees shall also complete a medical questionnaire (Attachment B) which clearly describes all medications, both prescription and over-the-counter (non-prescription), that were ingested in the past 14 days.

5. Prior to the submission of a urine specimen, sworn law enforcement officers shall complete a medical questionnaire (Attachment B) which clearly describes all medications, both prescription and over-the-counter (non-prescription), that were ingested in the past 14 days.

B. Specimen collection

1. Throughout the test process, the identity of individual applicants, trainees and sworn law enforcement officers shall remain confidential. Individual specimens shall be identified throughout the process by the use of social security numbers. At no time shall an individual's name appear on any form or specimen container sent to the State Toxicology Laboratory.

2. Specimens will be collected utilizing equipment and supplies approved by the State Toxicology Laboratory. Under no circumstances may a specimen be collected and submitted for analysis in a specimen container that has not been approved by the State Toxicology Laboratory.

3. Urine specimens will be acquired and processed in accordance with procedures established by the State Toxicology Laboratory.

   a. After the monitor has inspected the appropriate forms for accuracy, the applicant, trainee or sworn officer shall void into the specimen collection container.

b. After a specimen has been produced, the individual shall seal the specimen container and deliver it to the monitor.

c. Once the monitor is satisfied that the required documentation is accurate and he or she has inspected the specimen container to determine that a specimen has been produced, the monitor shall take possession of the specimen and ensure that it is delivered to the State Toxicology Laboratory for analysis.

4. Individuals will void without the direct observation of the monitor unless there is reason to believe that the individual will adulterate the specimen or otherwise compromise the integrity of the test process. Under these circumstances, the production of a specimen may be directly observed by the monitor. Law enforcement agencies must document the facts underlying their belief that an individual may adulterate a specimen or compromise the integrity of the test process.

5. Individuals that initially are unable to produce a urine specimen may remain under the supervision of the test monitor until the monitor is satisfied that the individual cannot produce a specimen. While the individual is under supervision, the monitor may allow the individual to drink fluids in an attempt to induce the production of a specimen. If the individual remains unable to provide a specimen after a reasonable period of time, the monitor may have the individual examined by a doctor to determine whether the inability to produce a specimen was the result of a medical or physical infirmity or constituted a refusal to cooperate with the drug testing process.

6. Trainees and sworn law enforcement officers shall have the option to provide the monitor with a second urine specimen at the same time the first specimen is collected.

a. The second specimen shall be collected in the same fashion as the first specimen. The monitor shall take possession of the second specimen and place it in a secured refrigerated storage area.

b. The law enforcement agency shall maintain possession of the second specimen for a period of 60 days or until the agency receives notification from the State Toxicology Laboratory that the first specimen tested negative for the presence of controlled substances.

c. The second specimen shall be released by the law enforcement agency under the following circumstances:

(1) The law enforcement agency is notified by the State Toxicology Laboratory that the first specimen tested positive for a controlled substance; and

(2) The law enforcement agency is informed by the individual whose specimen tested positive that the individual wishes to have the specimen independently tested; and

(3) The officer must designate a laboratory that is licensed as a clinical laboratory by the New Jersey Department of Health under the New Jersey Clinical Laboratory Improvement Act to conduct the independent test; and

(4) A representative of the licensed clinical laboratory designated by the individual takes possession of the second specimen in accordance with accepted chain of custody procedures within 60 days of the date the specimen was produced.

V. Submission of specimens for analysis

A. The New Jersey State Toxicology Laboratory within the Division of Criminal Justice will constitute the sole facility for the analysis of law enforcement drug tests. Law enforcement agencies are not permitted to use any other facility or laboratory for purposes of analyzing urine specimens.

B. Urine specimens should be submitted to the State Toxicology Laboratory as soon as possible after their collection. In the event a specimen cannot be submitted to the laboratory within one working day of its collection, the law enforcement agency shall store the specimen in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

1. Submission of specimens to the State Toxicology Laboratory may be accomplished by personnel from the law enforcement agency or commercial courier.

2. Should a law enforcement agency choose to have specimens delivered to the State Toxicology Laboratory by commercial courier, the following procedural safeguards must be taken:

a. All submissions must be by "next day delivery."

b. In addition to the sealed container, all submissions must be packaged in a manner that includes two additional seals to provide for the integrity of the test specimens.

c. The State Toxicology Laboratory must reject specimens that it has reason to believe have been subject to tampering.

VI. Analysis of specimens

A. The State Toxicology Laboratory will utilize the following test procedures to analyze urine specimens for law enforcement agencies:

1. All specimens will be subject to an initial test utilizing fluorescence polarization immunoassay analysis.

2. Those specimens that test positive for a controlled substance following the fluorescence polarization immunoassay, shall be subject to a gas chromatography/mass spectrophotometry analysis to confirm the presence of the controlled substance.

3. In the event a specimen is confirmed to be positive for a controlled substance following the gas chromatography/mass spectrophotometry, a medical review officer at the laboratory shall compare the test results with the medical questionnaire submitted with the specimen to determine whether any substance listed on the questionnaire would explain the test result. The medical review officer may direct the agency that collected the specimen to obtain further information from the individual being tested concerning the medications listed on the questionnaire. In the event the questionnaire does not explain the test result, the medical review officer shall issue a report indicating that specimen tested positive.

4. The State Toxicology Laboratory shall analyze each specimen for the following substances and their metabolites:

a. amphetamine/methamphetamine;

b. barbiturates;

c. benzodiazepine;

d. cannabinoids;

e. cocaine;

f. methadone;

g. phencyclidine; and

h. opiates.

5. The analysis of each specimen shall be done in accordance procedures adopted by the State Toxicology Laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, metabolite cut-off levels and the issuance of test reports.

VII. Drug test results

A. The State Toxicology Laboratory shall notify the submitting law enforcement agency of test results from the specimens submitted for analysis. All reports shall be in writing and sent to the agency within 15 working days of the submission.

B. The State Toxicology Laboratory shall not report a specimen as having tested positive for a controlled substance until the specimen has undergone a confirmatory test and the medical review officer has reviewed the results of that test with the medical questionnaire pertinent to that specimen.

C. The submitting agency shall notify the applicant, trainee or sworn officer of the results of a positive test result as soon as practical after receipt of the report from the State Toxicology Laboratory. Upon request, the individual may receive a copy of the laboratory report.

D. Under no circumstances may an agency or an individual resubmit a specimen for testing or ask that a particular specimen within the possession of the State Toxicology Laboratory be retested.

VIII. Consequences of a positive test result

A. When an applicant tests positive for illegal drug use:

1. The applicant shall be immediately removed from consideration for employment by the agency;

2. The applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by the law enforcement agency to which the individual applied; and

3. The applicant shall be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years.

4. Where the applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the

Division of State Police.

B. When a trainee tests positive for illegal drug use, subject to rules adopted by the Police Training Commission:

1. The trainee shall be immediately dismissed from basic training and suspended from employment by his or her appointing authority;

2. The trainee shall be terminated from employment as a law enforcement officer, upon final disciplinary action by the appointing authority;

3. The trainee shall be reported to the Central Drug Registry maintained by the Division of State Police; and

4. The trainee shall be permanently barred from future law enforcement employment in New Jersey.

C. When a sworn law enforcement officer tests positive for illegal drug use:

1. The officer shall be immediately suspended from all duties;

2. The officer shall be terminated from employment as a law enforcement officer, upon final disciplinary action;

3. The officer shall be reported by his or her employer to Central Drug Registry maintained by the Division of State Police; and

4. The officer shall be permanently barred from future law enforcement employment in New Jersey.

IX. Consequences of a refusal to submit to a drug test

A. Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred from consideration for future law enforcement employment for period of two years from the date of the refusal. In addition, the appointing authority shall forward the applicant's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

B. Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the trainee's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

C. Sworn law enforcement officers who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the officer did in fact refuse to submit a sample, the officer shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the officer's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

X. A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

XI. Record keeping

A. Each law enforcement agency's Internal Affairs Unit shall maintain all records relating to the drug testing of applicants, trainees and law enforcement officers.

B. Each agency's drug testing records shall include but not be limited to:

1. For all drug testing:

a. the identity of those ordered to submit urine samples;

b. the reason for that order;

c. the date the urine was collected;

d. the monitor of the collection process;

e. the chain of custody of the urine sample from the time it was collected until the time it was received by the State Toxicology Laboratory;

f. the results of the drug testing;

g. copies of notifications to the subject; and

h. for any positive result or refusal, appropriate documentation of disciplinary action.

2. For random drug testing, the records will also include the following information:

a. a description of the process used to randomly select officers for drug testing;

b. the date selection was made;

c. a copy of the document listing the identities of those selected for drug testing;

d. a list of those who were actually tested; and

e. the date(s) those officers were tested.

C. Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the *New Jersey Internal Affairs Policy and Procedures*.

XII. Central Drug Registry

A. Every law enforcement agency shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn law enforcement officers who test positive for the illegal use of drugs or refuses an order to submit a urine sample on the form prescribed in Attachment D.

B. Notifications to the Central Drug Registry shall include the following information as to each individual:

1. name and address of the submitting agency, and contact person;

2. name of the individual who tested positive;

3. last known address of the individual;

4. date of birth;

5. social security number;

6. SBI number (if known);

7. Gender

8. Race

9. Eye color

10. substance the individual tested positive for, or circumstances of the refusal to submit a urine sample;

11. date of the drug test or refusal;

12. date of final dismissal or separation from the agency; and

13. whether the individual was an applicant, trainee or sworn law enforcement officer.

C. The certification section of the notification form must be completed by the chief or director, and notarized with a raised seal.

D. Notifications to the central registry shall be sent to:

Division of State Police
State Bureau of Identification
Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068

E. Information contained in the central registry may be released by the Division of State Police only under the following circumstances:

1. In response to an inquiry from a criminal justice agency as part of the background investigation process for prospective or new personnel.

2. In response to a court order.

ATTACHMENT A

DRUG TESTING
APPLICANT NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation to determine my suitability for the position for which I have applied.

I understand that as part of this process, I will undergo drug testing through urinalysis.

I understand that a negative drug test result is a condition of employment.

I understand that if I refuse to undergo the testing, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use and am not currently employed as a sworn law enforcement officer, I will be barred from future law enforcement employment in New Jersey for two years from the date of the test, After this two year period, the positive test result may be considered in evaluating my fitness for future criminal justice employment.

I understand that if I am currently employed as a sworn law enforcement officer and I produce a positive test result for illegal drug use, my current law enforcement employer will be notified of the positive test result. In addition, I will be dismissed from my law enforcement position and I will be permanently barred from law enforcement employment.

I have read and understand the information contained on this "Applicant Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the pre-employment process.

_____ _____

Signature of Applicant Date Signature of Witness Date

ATTACHMENT B

DRUG TESTING
MEDICATION INFORMATION

As part of the drug testing process, it is essential that you inform us of all medications you have taken in the last fourteen (14) days. Please *carefully* complete the information below.

✓ all that apply:

☐ A. During the past 14 days I have taken the following medication prescribed by a physician:

	Name of Medication	Prescribing Physician	Date Last Taken
1			
2			
3			

☐ B. During the past 14 days, I have taken the following non-prescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

	Non-Prescription Medication	Date Last Taken
1		
2		
3		

☐ C. During the past 14 days, I have taken **NO** prescription or non-prescription medications.

Social Security Number & Initials _____ Date _____

Signature of Witness _____ Date _____

ATTACHMENT C

DRUG TESTING
TRAINEE NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the program of training at _____ , I will undergo unannounced drug testing by urinalysis during the training period.

I understand that a negative result is a condition of my continued attendance at the academy.

I understand that I can refuse to undergo the testing. I understand that if I refuse, I will be dismissed from the academy and from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, I will be dismissed from the academy.

I understand that if I produce a positive test result for illegal drug use, the academy will notify my employer of the positive test result. In addition, I will be permanently dismissed from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use, I will be permanently barred from serving as a law enforcement officer in New Jersey.

I have read and I understand the information contained on this "Trainee Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the academy training program.

_____ _____

Signature of Applicant Date Signature of Witness Date

ATTACHMENT D

NOTIFICATION TO THE CENTRAL DRUG REGISTRY

Type or Print

AGENCY SUBMITTING

AGENCY		PHONE	
ADDRESS	CITY	STATE	ZIP
CONTACT PERSON	TITLE	PHONE	

PERSON TO BE ENTERED

LAST NAME	FIRST NAME	INITIAL	GENDER	RACE	EYE COLOR

DOB	SSN	SBI NUMBER (IF KNOWN)

THIS PERSON WAS:
☐ APPLICANT ☐ TRAINEE
☐ SWORN OFFICER - RANDOM ☐ SWORN OFFICER - REASONABLE SUSPICION

ADDRESS		
CITY	STATE	ZIP

REASON FOR NOTIFICATION

THE PERSON LISTED ABOVE

☐ TESTED POSITIVE FOR _____
(IDENTIFY SUBSTANCE)

OR

☐ REFUSED TO SUBMIT A URINE SAMPLE

DATE OF THE DRUG TEST OR REFUSAL	DATE OF FINAL DISMISSAL OR SEPARATION FROM AGENCY

CERTIFICATION ***(Must be completed by Chief or Director. Must be notarized with raised seal)***

I hereby affirm that the above information is true and correct to the best of my knowledge.

_____
_____
Print Name *Title* *Signature*

Sworn and subscribed before me this _____ day of _____, _____

(Seal) _____

(6/01)

Mail to: Division of State Police
State Bureau of Identification
Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068

JUVENILE MATTERS
Attorney General Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors

Issued October 1990

The subject-matter of this Executive Directive was carefully studied by numerous practitioners in the juvenile justice field, including representatives from state, county and local law enforcement and prosecuting agencies, the courts, correction agencies and non-law enforcement juvenile service providers. The following Executive Directive represents the consensus of these juvenile justice practitioners. Their contributions to the policy development of this Executive Directive are gratefully acknowledged.

ATTORNEY GENERAL EXECUTIVE DIRECTIVE No. 1990-1:

Whereas, it is decidedly in the public interest that the entire New Jersey law enforcement community should respond fairly, predictably and uniformly to acts of juvenile delinquency; and

Whereas, the Criminal Justice Act of 1970, N.J.S.A. 52:17b-98, states that it is the public policy of this State:

to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.

Now, therefore, I, Robert J. Del Tufo, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby DIRECT that all law enforcement agencies and officers in this State shall in the course of handling all juvenile matters seek to implement and achieve the following goals and objectives:

a. To dedicate adequate law enforcement resources to the prevention and control of juvenile delinquency, to make the best possible use of these limited resources and to ensure that all law enforcement officers are adequately trained and informed regarding juvenile laws, policies and procedures;

b. To promote uniform law enforcement policies and procedures for the handling and prosecution

of juvenile offenders;

c. To ensure that the interests of the public are properly represented in the handling and prosecution of juvenile matters, and to safeguard the rights and interests of victims and witnesses involved in delinquency matters;

d. To promote whenever possible the rehabilitation of juveniles involved in minor offenses by means of early intervention and by encouraging the diversion of these cases, instead of referring these matters to a court for formal adjudication, provided that this can be done without jeopardizing the public safety; and

e. To identify and deal appropriately with the small core of juvenile "Impact Offenders," who by their serious repetitive criminal activity are responsible for a disproportionate percentage of all crimes committed by juveniles. For the purposes of this Executive Directive, the term "Impact Offender" shall mean a juvenile who is a chronic or repetitive offender, and whose repetitive offenses, if committed by an adult, would constitute indictable crimes, whether against persons or property. This term shall also include a juvenile over the age of fourteen who, if he or she were an adult, would qualify as a professional criminal within the meaning of N.J.S.A. 2C:44-3b.

Furthermore, so as to achieve and implement the objectives and goals enumerated above, and so as to provide appropriate guidance to police officers and prosecutors in the sound exercise of discretion in their handling of juvenile matters, I do hereby further DIRECT the following:

1. School Zone Working Group. The School Zone Narcotics Enforcement Working Group established pursuant to Directive 5.14 of the Statewide Action Plan for Narcotics Enforcement shall reconvene to examine ways to enhance cooperation between the law enforcement community and the professional educational community with respect to delinquency prevention and intervention and with respect to the goal of achieving crime-free schools. The membership of this Working Group may be expanded as necessary to address these additional concerns. The Working Group shall recommend specific guidelines or directives to the Attorney General and the Commissioner of Education, and shall develop model agreements or memoranda of understanding between local law enforcement agencies and appropriate school officials concerning the following areas:

The reporting of criminal or delinquent activity occurring on school property;

The reporting of any fire-setting activity occurring on school property;

The duties and responsibilities of law enforcement officers assigned to patrol in and around school property;

The entry by law enforcement officers onto school property for the purpose of effecting an arrest, taking a juvenile into custody or seizing contraband;

Coordinating referrals to and from law enforcement agencies and providing appropriate services to juveniles and their families; and

Law enforcement participation in student instructional or awareness programs concerning crime, juvenile justice, health or other related issues.

PROVISIONS CONCERNING THE EXERCISE OF POLICE DISCRETION

2. Designation of Juvenile Officers. It shall be the policy of this State that the appropriate handling of juvenile matters shall be a high priority of the entire law enforcement community. Every law enforcement agency having patrol jurisdiction shall designate at least one sworn officer to handle and coordinate juvenile matters. This designated juvenile officer need not be assigned full-time to handle juvenile matters where the extent of juvenile delinquent activity and the resources available to the agency makes full-time assignment impractical. Where, however, the volume or seriousness of juvenile delinquent activity so warrants, a juvenile unit or bureau should be established and provided with sufficient resources to accomplish the principles, policies and objectives set forth in this Executive Directive.

3. Training Working Group. A Juvenile Justice Police Training Working Group shall be established which shall consist of representatives from the Division of Criminal Justice, Division of State Police, County Prosecutors Association, Association of Chiefs of Police, county and local police academies, state and county juvenile officers associations and from the academic and juvenile justice fields, as appropriate. This Working Group shall review and where necessary provide recommendations to the Attorney General and the Police Training Commission regarding the adequacy of mandatory basic police training curricula pertaining to the juvenile justice system. The Training Working Group shall also identify in-service juvenile justice-related training needs and develop appropriate training curricula and other materials for use by academies and law enforcement agencies in developing and providing juvenile justice training for police officers.

4. Juvenile Officers Manual. The Division of Criminal Justice, in consultationwith the County Prosecutors Association and the Association of Chiefs of Police, shall develop and issue to all law enforcement agencies an updated Juvenile Officers Manual, which shall summarize all applicable criminal and juvenile statutes, case law, court rules and statewide law enforcement policies, guidelines and operating procedures concerning the handling of juveniles. This manual shall be periodically reviewed and, when necessary, updated material shall be issued to law enforcement agencies.

5. Standardized Recordkeeping and information Sharing. So as to improve recordkeeping and access to information on delinquency and juvenile offenders, a Juvenile Records and Information Working Group shall be established which shall consist of representatives from the Division of Criminal Justice, Division of State Police, Association of Chiefs of Police, County Prosecutors Association and the Juvenile Delinquency Commission. The Juvenile Records and Information Working Group shall develop recommendations to the Attorney General regarding reasonable standardized law enforcement data collection and reporting procedures, recordkeeping practices and information sharing procedures, including recommendations concerning the development of a centralized repository of law enforcement information relating to juvenile matters, as authorized by the Code of Juvenile Justice. The Working Group's recommendations to the Attorney General shall take into account and seek to minimize any additional administrative burdens upon law enforcement agencies and officers.

6. Arrest, Charging and Diversion Guidelines Working Group. It shall be the policy of this State to provide guidance to police officers in the exercise of their discretion in the handling of juvenile matters, and it shall also be the policy of this State to encourage law enforcement agencies to divert from formal court proceedings those juvenile who are involved in minor delinquent activity. A Juvenile Arrest, Charging and Diversion Guidelines Working Group shall be established for the purpose of developing model guidelines and procedures, consistent with the policies, principles and objectives set forth in this Executive Directive, concerning the prevention and control of delinquent activity, the handling by police of juvenile offenders and appropriate police response to juvenile-family crisis incidents, including the use, where warranted, of curbside warnings and stationhouse adjustments. This Working Group shall consist of representatives from the Division of Criminal Justice, Association of Chiefs of Police, County Prosecutors Association, State and county juvenile officers associations, and other juvenile justice agencies as appropriate.

7. Standards For Arrest and Filing Complaints.

a. It shall be the policy of this State that a juvenile should ordinarily be taken into custody, consistent with the laws of arrest, and that a complaint should be filed, where any of the following circumstances exist:

The delinquent activity involves the commission of an indictable offense;

The delinquent activity is committed by a juvenile identified as an Impact Offender, or by a juvenile who has charges pending or has a history of committing repetitive disorderly persons offenses; or

The delinquent activity constitutes a violation of a supervisory condition of probation, parole, home detention or suspended sentence.

b. Notwithstanding any other provision of this Executive Directive, it shall be the responsibility of all sworn law enforcement officers to take into custody any juvenile where there is probable cause to believe that the juvenile has committed an act of delinquency that would constitute a violation of any offense defined in Chapter 35 or 36 of Title 2C ("The Comprehensive Drug Reform Act"), as required by Directive 5.7 of the Statewide Action Plan for Narcotics Enforcement. Where a juvenile is taken into custody for an act of delinquency involving a violation of any offense defined in Chapter 35 or 36 of Title 2C, a complaint alleging delinquency shall be filed.

c. Subject to the provisions of subsections a. and b. of this section, it shall be the policy of this State that a complaint ordinarily should not be filed where the delinquent activity involves a petty disorderly persons offense or disorderly persons offense, other than a repetitive disorderly persons offense or a disorderly persons offense involving the use or possession of a controlled dangerous substance or drug paraphernalia.

8. Curbside Warnings and Stationhouse Adjustments.

a. The New Jersey Code of Juvenile Justice and Court Rules provide that certain delinquency complaints filed by a law enforcement officer may be diverted by court personnel to a "Juvenile Conference Committee" or to an "intake service conference." These judicially-administered diversion options have proven to be extremely effective, and provide an excellent opportunity to resolve matters that, while warranting the filing of a complaint by law enforcement, need not be presented to a judge for formal adjudication. There are numerous occasions, however, where less serious matters can be satisfactorily resolved or "adjusted," either at curbside or at the police stationhouse, without the need for a formal adjudication of delinquency, the filing of a complaint or even the taking of a juvenile into custody. It shall therefore be the policy of this State to encourage the use of "curbside warnings" or "stationhouse adjustments" as an appropriate law enforcement response to non-serious juvenile activity that does not warrant either the taking of a juvenile into custody or the filing of a complaint alleging delinquency.

b. For the purposes of this Executive Directive, a "stationhouse adjustment" would ordinarily entail warning the juvenile about the future consequences of his or her continued delinquent activity, and notifying the juvenile's parent(s) or guardians about the matter. Where a "stationhouse adjustment" is used to resolve a minor juvenile matter, the law enforcement agency should keep a record of the identity of the juvenile and the date and nature of the offense involved, consistent with recommended recordkeeping procedures to be developed by the Juvenile Arrest, Charging and Diversion Guidelines Working Group in consultation with the Juvenile Records and Information Working Group. These recommended procedures shall be designed to minimize any additional administrative burdens upon law enforcement agencies and officers. The Juvenile Arrest, Charging and Diversion Guidelines Working Group and the Division of Criminal Justice shall provide ongoing technical assistance and guidance to law enforcement agencies in the appropriate use of "stationhouse adjustments."

PROVISIONS CONCERNING THE EXERCISE OF PROSECUTORIAL DISCRETION

9. Designated Prosecution Staff.

a. Each county prosecutor shall allocate sufficient legal, investigative and support resources to aggressively prosecute juvenile matters and to achieve and implement the principles, policies and objectives set forth in this Executive Directive. At least one assistant prosecutor in each county prosecutor's office shall be designated to supervise the investigation, screening and prosecution of juvenile matters, and at least one county investigator or detective in the county prosecutor's office shall be assigned responsibility, whether on a full-time or part-time basis, for performing investigative and case preparation functions in juvenile matters. Where the volume or seriousness of juvenile cases so warrant, a separate juvenile unit or section should be established.

b. Each county prosecutor shall make certain that assistant prosecutors who are on call to provide legal assistance to law enforcement officers have sufficient experience and expertise to provide competent legal advice concerning the Code of Juvenile Justice and applicable criminal laws and court procedures pertaining to the handling of juvenile offenders. Law enforcement agencies throughout the county should be encouraged to call the prosecutor's office for advice concerning juvenile matters whenever needed.

c. The Division of Criminal Justice, in conjunction with the County Prosecutors Association, shall provide for the in-service training of assistant prosecutors and county prosecutor investigative personnel assigned to handle juvenile cases. Training shall be made available at least twice annually for designated assistant prosecutors and investigative personnel concerning the principles, policies and objectives set forth in this Executive Directive, the laws and

procedures relating to juvenile delinquency and youth offenders, the prevention and control of delinquency, and the availability and appropriate use of dispositional and detention alternatives.

10. Screening of Complaints.

a. Each county prosecutor shall make certain that no delinquency complaints charging an indictable offense, a repetitive disorderly persons offense or a violation of any offense defined in Chapter 35 or 36 of Title 2C are diverted from the court without the consent of the prosecutor, as required by law.

b. Each county prosecutor shall issue and implement written guidelines concerning the screening and handling of juvenile complaints. In addition to those factors specified in the Code of Juvenile Justice for diversion recommendations, prosecutorial screening guidelines should incorporate the following criteria:

Whether the facts constitute prima facie evidence that a delinquent act has been committed by the juvenile;

Whether the juvenile is an Impact Offender;

Whether the juvenile has previously been adjudicated delinquent or diverted in juvenile proceedings; and

Whether the matter involves any adult codefendants, and whether diversion of the juvenile would adversely affect the prosecution of such adult codefendants.

c. Prosecution screening guidelines developed by each county prosecutor shall reflect the policy of this State that, absent special circumstances, the prosecutor should not consent to the matter being diverted from court in the following circumstances:

The complaint alleges a crime of the first or second degree;

The complaint is filed against a juvenile identified as an Impact Offender;

The juvenile is charged with an indictable offense involving infliction of serious bodily injury, the use or possession of a deadly weapon or arson;

The juvenile is charged with an indictable offense and a) has previously been adjudicated delinquent for an indictable offense, or b) has previously been diverted to a Juvenile Conference Committee or intake conference for an indictable offense.

11. Predisposition Detention.

a. Each county prosecutor should seek the predisposition detention of juvenile offenders only in those cases where such detention is necessary and appropriate to protect public safety or to assure the juvenile's appearance at court proceedings, and it shall be the policy of this State that each county prosecutor should recommend the use of alternatives to detention in cases where the safety of the community would not be threatened thereby, and where the subsequent appearance by the juvenile at court proceedings would not be jeopardized. Prosecutors in no case shall advocate the use of predisposition detention as a form of punishment directed against a juvenile prior to an adjudication of delinquency.

b. Each county prosecutor, working in conjunction with the Family Court, detention center and local law enforcement agencies, shall seek to develop alternatives to secure detention. Each county prosecutor should encourage and facilitate the development of home detention programs as an alternative form of detention for qualified juvenile offenders who would otherwise be detained in a secure facility. Home detention programs should include the following:

A written agreement outlining the conditions for home detention, which should be signed by the juvenile and a parent or guardian;

ongoing supervisory contact with the juvenile pending case disposition;

Notification to the appropriate local law enforcement agency of the juvenile's release to home detention; and

Return of the juvenile to a detention center upon a violation of a substantial program condition.

12. Prosecutor's Role in Disposition Hearings.

a. Each county prosecutor shall take an active role in recommending appropriate dispositions for juveniles adjudicated delinquent, and such recommendations to the court shall take into account the nature and seriousness of the offense, the juvenile's prior delinquency record and the juvenile's need for and amenability to rehabilitation. In recommending dispositions to the court, prosecutors shall consider the interests and needs of the juvenile, but a prosecutor's recommendations should be based principally upon concern for the safety and welfare of the community.

b. Each county prosecutor shall ensure that the court at a dispositional hearing is fully informed as to the impact of the juvenile's conduct on the victim, where such information has not otherwise been included in the pre-disposition report. Where a juvenile is adjudicated delinquent for an offense involving loss to the victim resulting from personal injuries or property damage, prosecutors should ordinarily seek an order for restitution to the victim as part of the disposition.

c. In all cases in which probation is an appropriate disposition, prosecutors should recommend to the court those specific terms and conditions of probation which are appropriate to the circumstances of the case and which are authorized under the Code of Juvenile Justice.

13. Short-term Commitment Disposition Option.

a. Each county prosecutor should encourage the establishment of a program of short-term commitment, as authorized by the Code of Juvenile Justice, so as to have this disposition option available to be used as a special deterrent (sometimes referred to as "shock incarceration") in the hopes of discouraging certain appropriately chosen juveniles from becoming career criminals or "Impact Offenders." Each county prosecutor should consider recommending this form of brief detention in those cases where a supervisory or probationary disposition is inadequate, but where long-term commitment to a state correctional institution is not necessary to protect the public safety and might actually prove to be counterproductive by allowing an impressionable juvenile to be negatively influenced by close, long-term contact with more serious, repetitive or hardened juvenile offenders.

b. Where the option is available, each county prosecutor should consider recommending short-term commitments for the following categories Of juvenile offenders, provided that commitment to a state correctional institution is not otherwise warranted:

First-time offenders adjudicated delinquent for a first or second degree crime;

Persistent offenders who have repeatedly been adjudicated delinquent for crimes or offenses that,

considered in isolation, would not normally warrant commitment to a state correctional institution, e.g., persistent criminal mischief or joyriding;

Juveniles who have committed a substantial violation of probation or have significantly violated non-custodial program requirements;

First-time offenders involved in the distribution of controlled dangerous substances or anabolic steroids;

Juveniles adjudicated delinquent for an offense committed while on suspended sentence to a state correctional institution;

Juveniles adjudicated delinquent for offenses involving a deadly weapon.

c. The county prosecutor should not necessarily request a full 60-day commitment. Rather, the prosecutor's recommendation to the court with respect to the specific term of commitment should be based upon a careful consideration of all relevant factors, including the seriousness of the offense, the juvenile's age, prior history of delinquency, present participation in school or gainful employment and amenability to being positively influenced by this type of disposition.

14. Prosecution of Drug and Alcohol Offenses.

a. Each county prosecutor shall take steps to ensure that juveniles taken into custody for or charged with an offense involving substance abuse, including alcohol abuse, are referred as soon as possible to available substance abuse evaluation and treatment, as appropriate.

b. Each county prosecutor shall make certain that delinquency complaints filed by police alleging a violation of any offense defined in Chapter 35 or 36 of Title 2C are not diverted from the court without the prosecutor's consent, which consent should not be given except in extraordinary circumstances.

c. Where a juvenile is adjudicated delinquent for any offense defined in Chapter 35 or 36 of Title 2C, the county prosecutor shall make certain that the applicable mandatory penalties are imposed, including the Drug Enforcement and Demand Reduction penalty, forensic laboratory fee, mandatory community service for certain possessory offenses committed on or near school property, and the forfeiture or postponement of the privilege to operate a motor vehicle or

motorized bicycle.

d. Where the conduct or neglect of a parent or guardian of a juvenile who has been adjudicated delinquent appears to have significantly contributed to the juvenile's delinquency, and substance abuse by the parent or guardian is indicated, the prosecutor should ordinarily seek mandatory parental or guardian participation in substance abuse evaluation and treatment, as necessary and as may be authorized by the Code of Juvenile Justice.

e. Consistent with the provisions of the Comprehensive Drug Reform Act and the clearly expressed intention of the Legislature, it shall be the policy of this State to aggressively prosecute adults and juveniles who are involved in the distribution of controlled dangerous substances. Prosecutors should seek, in addition to substance abuse evaluation and treatment, the imposition of appropriate sanctions for juveniles adjudicated delinquent for offenses involving the possession with intent to distribute, distribution or manufacture of a controlled dangerous substance or anabolic steroid. Prosecutors should ordinarily recommend incarceration or short-term commitment in the following circumstances:

Where a juvenile is adjudicated delinquent for an offense involving the manufacture, distribution or possession with intent to distribute a controlled dangerous substance or anabolic steroid, and the juvenile has previously been adjudicated delinquent for an offense involving controlled dangerous substances or anabolic steroids; or

Where a juvenile is adjudicated delinquent for a violation of N.J.S.A. 2C:35-3, 2C:35-4; 2C:35-7, 2C:35-9. or a violation of N.J.S.A. 2C:35-5 designated as a crime of the first degree.

f. Each county prosecutor should ordinarily seek the waiver to adult court of any juvenile fourteen years of age or older who is charged with a violation of N.J.S.A. 2C:35-9, or a violation of N.J.S.A. 2C:35-3, 2C:35-4 or 2C:35-5 which involved the distribution for pecuniary gain of any controlled dangerous substance while on any school property.

15. Juvenile Adjudication, Waiver and Disposition Working Group. A Juvenile Adjudication, Wavier and Disposition Working Group consisting of county prosecutors and other juvenile justice system practitioners and experts shall be established for the purpose of examining the practice of plea negotiations in juvenile matters, the incarceration of juveniles adjudicated delinquent and the waiver of juveniles to adult court. The Working Group shall within nine months issue a report to the Attorney General, recommending guidelines and/or directives for statewide promulgation by the Attorney General.

16. Juvenile Impact Offenders. A Juvenile Impact Offender Working Group shall be established consisting of representatives of the Division of Criminal Justice, County Prosecutors Association, Association of Chiefs of Police, the Judiciary and the Department of Corrections, for the purpose of developing a comprehensive, coordinated system-wide initiative to deal with serious repetitive juvenile offenders, who account for a disproportionate percentage of all crimes committed by juveniles. The Working Group shall within nine months issue a report to the Attorney General recommending any guidelines and/or directives for the implementation and funding of a Juvenile Impact Offender Program so as to focus available resources to the prevention, identification, detention differential case processing, prosecution disposition, confinement, rehabilitation and aftercare of serious repetitive juvenile offenders.

17. Working Group Membership. The Director of the Division of Criminal Justice shall within 30 days determine and announce the membership of all Working Groups established or reconstituted pursuant to this Executive Directive. Nothing herein shall be construed to prevent the Director or his designee from at any time expanding the membership of any Working Group or Committee as appropriate.

18. Effective Date. This Executive Directive shall take effect immediately.

Dated: October 17, 1990

6-2 Executive Directive No. 1996-2 Concerning Law Enforcement Use of Deadly Force

Issued by:	**Deborah T. Poritz, Attorney General**
Date issued:	**July 9, 1996**
Cross reference:	**None**

To: All County Prosecutors

Re: Executive Directive No. 1996-2 Concerning Law Enforcement Use of Deadly Force

Dear Prosecutor:

Enclosed is Executive Directive No. 1996-2 issued by former Attorney General Deborah T. Poritz on July 9, 1996. The Directive is effective immediately.

Executive Directive No. 1996-2 sets forth the procedure to be followed when the use of a firearm by a law enforcement officer results in death or serious bodily injury to another person or when any use of force by a law enforcement officer results in death. In order to comply with the initial notification requirement, procedures must be established in each county to ensure that the Prosecutor's Office is immediately notified of all such incidents.

Once the Prosecutor's Office has been notified, a "Police Use of Deadly Force - Attorney General Notification Report" (Form 1996-1, copy attached) must be completed by the appropriate Prosecutor's Office Representative and transmitted via telefax to the Division of Criminal Justice within 24 hours of the incident. Facsimile transmissions should be sent to the:

Prosecutors and Police Bureau
Fax No. (609) 292-5943 or (609) 984-4466

If such facsimile transmission is not feasible, then telephonic contact must be made with Greta Gooden Brown, Chief of the Prosecutors and Police Bureau, or her designee, at (609) 984-2814 during normal working hours between 9 a.m. and 5 p.m., Monday through Friday. Under emergency circumstances, Chief Brown, Deputy Director Stone, Chief of Staff Sakowicz or Director Farley should be contacted in the order listed, via beeper or at home. Refer to the confidential directory provided to all prosecutors for updated beeper and home numbers of these individuals.

Also, pursuant to the Directive, the Prosecutor's Office in the county in which the incident occurred will conduct the investigation in all cases except where a member of that Prosecutor's Office or the New Jersey State Police is involved. In the former case, the Division of Criminal Justice will conduct the investigation. In the latter case, the New Jersey State Police will conduct the investigation with review by the County Prosecutor's Office. Unless the undisputed facts indicate that the use of force was justifiable under the law, the matter **must** be presented to a grand jury.

The Division of Criminal Justice must be informed of the outcome of all investigations into law enforcement shootings, as well as other use of force involving death, immediately following the conclusion of the investigation. Such notifications should be made in writing and should be forwarded to the Prosecutors and Police Bureau at the letterhead address prior to grand jury presentation. The report should detail all investigative findings as well as whatever course of action will be pursued, particularly if the matter will not be presented to the grand jury.

These measures have, in the past, been followed successfully in most of the counties. The formal adoption of this approach on a statewide basis will permit both the public and law enforcement alike to be well aware of the process and thereby avoid the confusion which an **ad hoc** approach may engender.

Very truly yours,

Debra L. Stone
Deputy Director

/gs

c: Attorney General Peter Verniero
First Assistant Attorney General Janice Mitchell Mintz
Director Terrence P. Farley

Chief of Staff Gregory J. Sakowicz
Special Assistant to the Director Dion Feltri
Deputy Director Michael J. Bozza
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Ronald Susswein
Chief State Investigator James H. Convery
Deputy Attorney General Greta Gooden Brown
Deputy Chief Investigator John Cocklin
Colonel Carl A. Williams, Superintendent, New Jersey State Police
Commissioner William H. Fauver, Department of Corrections
Commissioner Leslie Z. Celentano, Commission of Investigation
Director John G. Holl, Division of Alcoholic Beverage Control

ATTORNEY GENERAL EXECUTIVE DIRECTIVE NO. 1996-2

Whereas, it is decidedly in the public interest that the entire law enforcement community should use only clearly acceptable force; and

Whereas, it is appropriate to ensure and enhance public confidence in the manner in which the use of deadly force by law enforcement is reviewed to assure adequate justification for the use of such force; and

Whereas, the Criminal Justice Act of 1970, N.J.S.A. 52:17b-98, states that it is the public policy of this State:

> to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State; and

Whereas, in order to promote statewide uniformity and accountability, it is appropriate for the Attorney General, in cooperation and consultation with the County Prosecutors, to issue and enforce procedures for review of the use of force by law enforcement officers statewide;

Now, therefore, I, Deborah T. Poritz, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby direct that:

1. The Division of Criminal Justice, Operations Bureau, must be notified within twenty-four (24) hours, in a manner prescribed by the Division, **of any shooting by a law enforcement officer involving death or serious bodily injury.**

2. When a law enforcement officer employed by a municipal or county agency is involved in the shooting, the County Prosecutor's Office in the county of occurrence will conduct the investigation. The Division of Criminal Justice may supersede in the investigation when there is a conflict.

3. When a Prosecutor's Detective or Investigator, Assistant Prosecutor, or Prosecutor is involved in the shooting, the Division of Criminal Justice will conduct the investigation.

4. When a State Investigator, Deputy Attorney General or Assistant Attorney General employed by the Division of Criminal Justice or any other law enforcement officer

employed by a State or federal agency is involved in the shooting, the County Prosecutor's Office in the county of occurrence will conduct the investigation, unless otherwise directed by the Attorney General.

5. When a member of the State Police or any agency supervised by the State Police is involved in the shooting, the Major Crimes Unit of the State Police will conduct the investigation with review by the County Prosecutor's Office in the county of occurrence.

6. Where the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by the Division of Criminal Justice, except under paragraph 4 where the final decision will be made by the Attorney General.

7. In all other circumstances, the matter must be presented to a grand jury.

8. The Division of Criminal Justice, Operations Bureau, must be informed of the outcome of all investigations into shootings by law enforcement officers or other use of force involving death immediately after the conclusion of the investigation by the County Prosecutor.

9. This Directive shall take effect immediately.

Deborah T. Poritz
Attorney General

ATTEST:

Dated: July 9, 1996

POLICE USE OF DEADLY FORCE - ATTORNEY GENERAL NOTIFICATION REPORT

INVESTIGATING & PROSECUTING AGENCY'S INFORMATION

1) Agency Investigating & Prosecuting, (if applicable) Use of Force Incident: _____

01 Atlantic County Prosecutor's Office
02 Bergen County Prosecutor's Office
03 Burlington County Prosecutor's Office
04 Camden County Prosecutor's Office
05 Cape May County Prosecutor's Office
06 Cumberland County Prosecutor's Office
07 Essex County Prosecutor's Office
08 Gloucester County Prosecutor's Office
09 Hudson County Prosecutor's Office
10 Hunterdon County Prosecutor's Office
11 Mercer County Prosecutor's Office
12 Middlesex County Prosecutor's Office
13 Monmouth County Prosecutor's Office
14 Morris County Prosecutor's Office
15 Ocean County Prosecutor's Office
16 Passaic County Prosecutor's Office
17 Salem County Prosecutor's Office
18 Somerset County Prosecutor's Office
19 Sussex County Prosecutor's Office
20 Union County Prosecutor's Office
21 Warren County Prosecutor's Office
22 New Jersey Division of Criminal Justice

2) This incident involves, (check appropriate box)

☐ Shooting Involving Death ☐ Shooting Involving Serious Bodily Injury ☐ Other Use of Force Involving Death

3) Prosecutors Case #: _____ 4) Police Agency Case #: _____

5) Total Injured or Killed: _____

PERSONS INJURED OR KILLED

6) Person 1: _____ / / / /
Name - (Last, First, MI) DOB Sex Race SSN

Address - Street City State Zip

Injury Status: ☐ Injured ☐ Killed

Occupation

Description of Injuries:

Place of Treatment Date of Treatment

7) Person 2: _____ / / / /
Name - (Last, First, MI) DOB Sex Race SSN

Address - Street City State Zip

Injury Status: ☐ Injured ☐ Killed

Occupation

Description of Injuries

Place of Treatment Date of Treatment

NJ/LEPS/DCJ/OPERATIONS - Form 1996-1 • 3/1996 Page 1

SP58457

OR 000219

POLICE USE OF DEADLY FORCE - ATTORNEY GENERAL NOTIFICATION REPORT

8) Total Officers Involved: _____

POLICE OFFICER(S) INVOLVED

9) Officer 1: _____

Name - (Last, First, MI) | Badge # | DOB | Sex | Race | Years of Service

Name of Department | Assigned Unit | Department ORI Number

10) Officer 2: _____

Name - (Last, First, MI) | Badge # | DOB | Sex | Race | Years of Service

Name of Department | Assigned Unit | Department ORI Number

DESCRIPTION OF INCIDENT

11) Date and Time of Incident

12) Date and Time Reported to the Prosecutor's Office

13) Reported to the Prosecutor's Office By:

14) Address of the Incident - Street | Municipality

15) Description of Address in Block 14):

16) Description of Incident:

For Division of Criminal Justice Use Only

Date and Time Reported to DCJ | DCJ Representative Taking Report

County Representative Reporting Incident

SP58458

OR 000220

Section/Unit_____
completing report
Section IV. 14b.

County_____

Year_____

INTERNAL AFFAIRS SUMMARY REPORT FORM

Agency:_____ County:_____

Reporting Period:_____ to _____

Type of Complaint	Cases Pending From Last Year	Cases Received This Year	Total Cases	Number of Dispositions					Cases Pending End of Year
				Sustained		Exonerated	Not Sustained	Unfounded	
				Criminal	Rule Violation				
Excessive Force									
Arrest									
Entry									
Search									
Differential Treatment									
Demeanor									
Other									
TOTAL									

(DCJ 12/6/94)

Section IV. 14.b.

INTERNAL AFFAIRS SUMMARY REPORT FORM

Unit of Measurement

The unit of measurement for this chart is the case. A "case" is defined as a single incident and the officer involved. If there are multiple officers involved in a situation, each officer who had a complaint filed against him or her is to be counted separately for the purposes of this report. The agency for whom the officer works should report the complaint and the disposition. For example, if the Prosecutor's Office is investigating the criminal allegation of a municipal police officer, the municipality would report the results of the investigation, not the prosecutor's office.

Each case is to be classified as one of the seven types of complaints outlined below. Their order, from top to bottom on the left hand column of the report form, reflect their relative seriousness. Should an officer have more than one type of complaint filed arising from the same incident, record the disposition in the complaint category which represent the most serious charge. Only one disposition and one type of complaint should be reported for each case.

Disposition is defined as any case which includes a conclusion of fact of sustained criminal, sustained rule violation, exonerated, not sustained or unfounded, notwithstanding that further events, such as a court case in sustained criminal complaints, may be necessary to formalize closure. Any cases that are under review but do no have a conclusion by reporting year end (December 31 of the reporting year) are considered pending.

Examples of cases and how they are classified can be found at the end of these instructions.

Types of Complaints

The complaint type categories listed along the left hand column are primarily taken from the Police Management Manual Chapter Five, 2nd Edition, Internal Affairs Policy and Procedures as released in November of 1992.

1. **Excessive Force**

   Complaint of aggravated or simple assault or the use or threatened use of excessive force against a person committed in the line of duty.

2. **Arrest**

   Complaint that the restraint of a person's liberty was improper or unjust.

3. **Entry**

Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.

4. **Search**

Complaint that the search of a person or property was improper, unjustified or otherwise in violation of established police procedures.

5. **Differential Treatment**

Complaint that the taking, failing to take, or method of police action was predicated upon irrelevant factors such as race, attire, age or sex.

6. **Demeanor**

Complaint that a department member's bearing, gestures, language or other actions were inappropriate.

7. **Other**

Any complaint that does not fit into the six categories described above.

Manner of Disposition

The disposition categories are taken from the Police Management Manual Chapter Five, 2nd Edition, Internal Affairs Policy and Procedures as released in November of 1992.

1. **Exonerated**

The alleged incident did occur, but the actions of the officer were justified, legal and proper.

2. **Sustained, Criminal**

The investigation disclosed sufficient evidence to prove the allegation involved criminal behavior, and a criminal complaint was or will be filed.

3. **Sustained, Rule Violation**

   The investigation disclosed sufficient evidence to prove the allegation involved a rule violation, and the officer was or will be charged with an administrative rule violation.

4. **Not Sustained**

   The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

5. **Unfounded**

   a. The alleged incident did not occur; or
   b. There is insufficient information to conduct a meaningful investigation.

Completing the Form

Instructions below assist in the completing of the form. Remember that the unit of measurement is a case, defined as a single incident and the officer involved. Only one type of complaint should be reported for each case, even if an officer is charged with more than one type of violation. Several examples are attached to help clarify how to record multiple complaint violations.

1. Cases pending from last year.

   For each complaint type, enter the number of cases pending from the prior reporting year.

2. Cases received this year.

   For each complaint type, enter the number of cases received in the reporting year, remembering to record only the most serious complaint alleged for each case.

3. Total cases.

   The sum of column # 1 and column # 2.

4. Number of dispositions.

   Record the number of dispositions for each category as outlined in the instruction above, remembering to only record the disposition of the highest type of complaint alleged.

5. Cases pending at end of year.

   Record the number of cases pending at the end of the reporting year (this will then be the first column of the next year's internal affairs summary report form).

Note that Total Cases minus the Number of Dispositions should equal the Cases Pending at End of Year.

Filing the Form

The County Prosecutor's Office is responsible for collecting the necessary information from each municipal law enforcement agency in their county. It is suggested that copies of the Internal Affairs Summary Report Form be distributed to each law enforcement agency so that the appropriate member of the County Prosecutor's Office can in turn collate the information and submit a final form with the Prosecutor's Annual Report to the Division of Criminal Justice.

Examples

Below are several examples that should help clarify how a case is to be recorded.

1. An officer is implicated in an incident alleging false arrest during the reporting year, which is found to be not sustained by the internal affairs unit. This would count as a case received this year, complaint type arrest, disposition not sustained.

2. An officer is alleged to have used excessive force when gaining entry and to have used differential treatment during the arrest of a suspect. The conclusion of the internal affairs unit is that the forced entry allegation was sustained but that the differential treatment was unfounded. This would count as a case received this year, complaint type entry, disposition sustained, rule violation.

3. Three officers all have complaints of excessive force filed against them for a single arrest of a suspect. The complaint was filed in the preceding reporting year. The conclusion for all three officers is exoneration. The three cases should already be counted in Cases Pending from Last Year column, complaint type excessive force. There should also now be three more cases added to the exonerated disposition for excessive force.

4. An officer involved in an altercation at a bar while off duty has a criminal complaint of simple assault filed against him by two of the bar patrons also involved in the fight. The internal affairs department does not have a decision on the case by the end of the reporting year. Although two citizens filed criminal complaints, this is only one incident for reporting purposes. This would count as a case received this year, complaint type other, with the case pending at the end of the year.

5. An officer is alleged to have committed an aggravated assault in the course of an arrest for which the suspect filed a criminal complaint. In addition, it is alleged by the arrestee that the officer improperly gained entry into the building where he was hiding out. The officer is exonerated of the aggravated assault charge but the improper entry charge is sustained. This would count as a case received this year, complaint type excessive force, disposition exonerated. The improper entry complaint is not recorded on the form.

PASSAIC INTERNAL AFFAIRS SUMMARY REPORT FORM - 1997

Type of Complaint	Cases Pending From Last Year	Cases Received This Year	Total Cases	Number of Dispostions: Criminal	Rule Violation	Exonerated	Not Sustained	Unfounded	Cases Pending End of Year
Excessive Force	28	146	174		2	43	41	18	70
Arrest	1	16	17			5	3	4	5
Entry		1	1						1
Search	1	12	13		7	2	1	2	1
Diff. Treatment	2	28	30		2	3	8	13	4
Demeanor	1	99	100		12	18	27	28	15
Other	10	155	165	1	41	25	34	32	32
Total	43	457	500	1	64	96	114	97	128

Section IV.14b.

INTERNAL AFFAIRS SUMMARY REPORT FORM

Agency: WANAQUE RESERVORI POLICE County: PASSAIC

Reporting Period: 1-1-97 to 1-1-98

Type of Complaint	Cases Pending From Last Year	Cases Received This Year	Total Cases	Number of Dispositions				Cases Pending End of Year
				Exonerated	Sustained	Not Sustained	Unfounded	
Crime								
Excessive Force								
Arrest								
Entry								
Search								
Differential Treatment								
Demeanor								
Serious Rule Infraction								
Minor Rule Infraction								
Other								
TOTAL	0	0	0	0	0	0	0	0

(DCJ 4/14/94)

Section IV.14b.

INTERNAL AFFAIRS SUMMARY REPORT FORM

Agency: Passaic County Sheriff's Department

County: Passaic

Reporting Period: January 1,1997 to December 31,1997

Type of Complaint	Cases Pending From Last Year	Cases Received This Year	Total Cases	Number of Dispositions					Cases Pending End of Year
				Sustained		Exonerated	Not Sustained	Unfounded	
				Criminal	Rule Violation				
Excessive Force	0	19	19		2	1	9	6	1
Arrest	0	1	1				1		
Entry	0	0	0						
Search	0	0	0						
Differential Treatment	0	2	2		1			1	
Demeanor	0	3	3				1	2	
Other	0	14	14		6		5	3	
TOTAL	0	39	39	0	9	1	16	12	1

(DCJ 12/6/94)

STATEWIDE INTERNAL AFFAIRS SUMMARY REPORT FORM - 1997

				Number of Dispostions					
Type of Complaint	Cases Pending From Last Year	Cases Received This Year	Total Cases	Criminal	Rule Violation	Exonerated	Not Sustained	Unfounded	Cases Pending End of Year
Excessive Force	217	1266	1483	13	39	291	508	275	358
Arrest	32	244	276	3	20	75	75	48	55
Entry	12	81	93	1	7	19	26	12	28
Search	11	176	187	1	23	57	53	41	13
Diff. Treatment	46	582	628	0	42	151	195	176	65
Demeanor	123	2216	2339	1	370	376	927	487	178
Other	290	4561	4851	37	2004	412	854	602	944
Total	731	9126	9857	56	2505	1381	2638	1641	1636

Source: Prosecutors' Annual Reports, 1997

c:\msoffice\excel\par\imprt.xls 8/98

6-2 Executive Directive No. 1996-2 Concerning Law Enforcement Use of Deadly Force

Issued by:	**Deborah T. Poritz, Attorney General**
Date issued:	**July 9, 1996**
Cross reference:	**None**

To: All County Prosecutors

Re: Executive Directive No. 1996-2 Concerning Law Enforcement Use of Deadly Force

Dear Prosecutor:

Enclosed is Executive Directive No. 1996-2 issued by former Attorney General Deborah T. Poritz on July 9, 1996. The Directive is effective immediately.

Executive Directive No. 1996-2 sets forth the procedure to be followed when the use of a firearm by a law enforcement officer results in death or serious bodily injury to another person or when any use of force by a law enforcement officer results in death. In order to comply with the initial notification requirement, procedures must be established in each county to ensure that the Prosecutor's Office is immediately notified of all such incidents.

Once the Prosecutor's Office has been notified, a "Police Use of Deadly Force - Attorney General Notification Report" (Form 1996-1, copy attached) must be completed by the appropriate Prosecutor's Office Representative and transmitted via telefax to the Division of Criminal Justice within 24 hours of the incident. Facsimile transmissions should be sent to the:

Prosecutors and Police Bureau
Fax No. (609) 292-5943 or (609) 984-4466

Chief of Staff Gregory J. Sakowicz
Special Assistant to the Director Dion Feltri
Deputy Director Michael J. Bozza
Deputy Director Wayne S. Fisher, Ph.D.
Deputy Director Ronald Susswein
Chief State Investigator James H. Convery
Deputy Attorney General Greta Gooden Brown
Deputy Chief Investigator John Cocklin
Colonel Carl A. Williams, Superintendent, New Jersey State Police
Commissioner William H. Fauver, Department of Corrections
Commissioner Leslie Z. Celentano, Commission of Investigation
Director John G. Holl, Division of Alcoholic Beverage Control

employed by a State or federal agency is involved in the shooting, the County Prosecutor's Office in the county of occurrence will conduct the investigation, unless otherwise directed by the Attorney General.

5. When a member of the State Police or any agency supervised by the State Police is involved in the shooting, the Major Crimes Unit of the State Police will conduct the investigation with review by the County Prosecutor's Office in the county of occurrence.

6. Where the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by the Division of Criminal Justice, except under paragraph 4 where the final decision will be made by the Attorney General.

7. In all other circumstances, the matter must be presented to a grand jury.

8. The Division of Criminal Justice, Operations Bureau, must be informed of the outcome of all investigations into shootings by law enforcement officers or other use of force involving death immediately after the conclusion of the investigation by the County Prosecutor.

9. This Directive shall take effect immediately.

Deborah T. Poritz
Attorney General

ATTEST:

Dated: July 9, 1996

POLICE USE OF DEADLY FORCE - ATTORNEY GENERAL NOTIFICATION REPORT

8) Total Officers Involved: _____

POLICE OFFICER(S) INVOLVED

9) Officer 1: _____

Name - (Last, First, MI) | Badge # | DOB | Sex | Race | Years of Service

Name of Department | Assigned Unit | Department ORI Number

10) Officer 2: _____

Name - (Last, First, MI) | Badge # | DOB | Sex | Race | Years of Service

Name of Department | Assigned Unit | Department ORI Number

DESCRIPTION OF INCIDENT

11) Date and Time of Incident

12) Date and Time Reported to the Prosecutor's Office

13) Reported to the Prosecutor's Office By:

14) Address of the Incident - Street

Municipality

15) Description of Address in Block 14):

16) Description of Incident:

For Division of Criminal Justice Use Only:

Date and Time Reported to DCJ

DCJ Representative Taking Report

County Representative Reporting Incident

N.J.L.&P.S./DCJ/OPERATIONS - Form 1996-1 * 3/1996

Page 2

SP58472

OR 000234

NEW JERSEY STATE POLICE
INTERNAL AFFAIRS BUREAU
ANNUAL SUMMARY REPORT OF INTERNAL INVESTIGATIONS GENERATED BY THE PUBLIC
Reporting Period
January 1, _____ Through December 31, _____

SP58485

Complaint Classification	Cases Received For Internal Invest.	Cases Pending Completion From Last Year	Cases Pending Completion From This Year	Cases Completed and Forwarded For Disposition	Substantiated	Unsubstantiated	Unfounded	Pending Disposition	Cases Closed With Notification
Improper Search									
Theft									
Assault									
Excessive Force									
Racial Profile									
Racial Harassment									
Sexual Harassment									
Other Harassment									
Dom. Violence									
Drug Violation									
Alcohol Violation									
Fail To Perform Duty									
Improperly Performed Duty									
M. V. Violation									
Attitude and Demeanor									
Other									
Totals									

OR 000235

SP-439 (Rev. 10/93)

OPERATIONS INSTRUCTION

EFFECTIVE DATE	NUMBER
January 16, 1999	99-05

SUBJECT

REVISED Internal Investigation/Administrative Inquiry Short Form Investigation

REFERENCE	EXPIRES	O.P.I. NUMBER
S.O.P. B3, B11 O.I. 98-08		K020

RESCINDS

I. INTRODUCTION:

A. The Internal Affairs Bureau (I.A.B.), via authorization of the Superintendent, has modified/extended a pilot program to expedite the investigation and disciplinary process for minor infractions of the *Rules and Regulations*.

B. Typical violations that may fall into this category are

1. Lost identification (all forms)
2. Lost equipment (handcuffs, flashlights, radios, weapons, etc.)
3. Misuse of troop transportation
4. Lack of prosecution in municipal court

II. MECHANICS:

A. Upon receipt of an allegation, the member's immediate supervisor will review the circumstances to determine if a full investigation is warranted. The supervisor shall encourage Weingarten review by the appropriate association representative. The New Jersey State Police Internal Complaint form (S.P. 251) shall be completed and the troop commander or section supervisor will be notified regarding the scope of the investigation.

B. The station commander/unit supervisor will review the allegation and contact the member to ascertain if the member will acknowledge responsibility. If the member will accept responsibility, the station commander/unit supervisor will contact I.A.B. and request an administrative inquiry (A.I.) number be issued. An administrative inquiry will not be conducted prior to I.A.B. review of the alleged infraction and assignment of an A.I. number.

all circumstances in which an AI is issued

C. The member will complete a Principal Acknowledgment form (S.P. 605) at the station/unit level and submit a Special Report (S.P. 329) acknowledging responsibility.

D. The completed Internal Complaint Form, Special Report, Principal Acknowledgment Form with any related documentation and a cover letter with the section supervisor/troop commander recommendation will be submitted to IAB as per S.O.P. B10 and the Internal Investigation Manual.

E. The Superintendent will review the matter and authorize the standard disciplinary penalty.

F. The Advisory Board will not review these administrative inquiries.

G. The member, supervisor, troop commander, section supervisor and/or IAB may request that a complete internal investigation be conducted if circumstances dictate. Repeated offenses, injuries, or unusual events may dictate that a full investigation be conducted.

H. Listed below are minor infractions and the adopted standard disciplinary penalty.

Minor Infraction	Disciplinary Penalty
Lost identification	Written reprimand
Lost equipment	Written reprimand
Lost portable radio	Written reprimand and three day suspension
Lost weapon	Written reprimand and five day suspension
Lack of prosecution	Written reprimand
Misuse of troop transportation	Written reprimand
Misuse of troop transportation with motor vehicle accident	Written reprimand and five day suspension

I. Each case involving the listed minor infraction will be investigated by the member's supervisor to ensure that the alleged violation entails no other possible violations of the *Rules and Regulations*. Evidence of additional violations will require that a full internal investigation be conducted.

III. For your information and compliance.

BY ORDER OF THE SUPERINTENDENT

Michael A. Fedorko

Michael A. Fedorko, Lt. Colonel
Deputy Superintendent

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

MEMORANDUM

TO: County Prosecutors
Superintendent, New Jersey State Police

FROM: Peter C. Harvey
First Assistant Attorney General
Director, Division of Criminal Justice

DATE: August 23, 2002

SUBJECT: ***Search Warrant Application Form***

Pursuant to Attorney General Law Enforcement Directive 2002-2, which takes effect on September 2, attached please find the Search Warrant Approval Form. The Division of Criminal Justice will also be transmitting the form to you electronically. Please reproduce and distribute the form to all law enforcement agencies in your jurisdiction.

The attached form was designed to help search warrant applicants and designated attorneys quickly answer all of the questions contemplated by the Attorney General Law Enforcement Directive. I anticipate that once we have gained some practical experience in implementing the Attorney General Law Enforcement Directive, the form can be modified, and I would very much appreciate any comments or suggestions as to how the form can be improved.

/djv
cc: Vaughn L. McKoy, First Deputy Director
Andy Rossner, Deputy Director

RESET FORM FIELDS

SEARCH WARRANT APPROVAL FORM

(Assigned by Reviewer) CONTROL NO.:

Rev. 8/23/02
Page 1 of ____

A. CASE INFORMATION

1. NAME OF APPLICANT

2. AGENCY

3. TELEPHONE #/PAGER #

4. DATE

5. TIME

6. Method of Submittal: E-mail/Fax ☐ Phone ☐ In-Person ☐

7. Is applicant the affiant/lead agent? Yes ☐ No ☐

8. Type of Case (crime suspected):

9. Previous application involving subject/premises? Yes ☐ No ☐

10. Type of warrant sought: In-person ☐ Telephonic ☐

11. Warrant based upon: Written affidavit ☐ Sworn oral testimony ☐ Both ☐

12. Investigation involved confidential informant or source? Yes ☐ No ☐

13. Are you seeking a "no knock" entry or unusual time for execution? Yes ☐ No ☐

B. INTERAGENCY COORDINATION INFORMATION

14. Length of Investigation

15. a) Was this a joint investigation or task force case? Yes ☐ No ☐
b) Did any other agency contribute to investigation or supply information? Yes ☐ No ☐
If YES, name of agency:

16. Does criminal activity/operation extend beyond jurisdiction of applicant's agency? Yes ☐ No ☐ Unknown ☐

17 a) Is a subject of the investigation or a premises to be searched believed to be associated with terrorist activities? Yes ☐ No ☐

b) Is a subject of the investigation or a premises to be searched believed to be associated with sophisticated criminal enterprise? Yes ☐ No ☐

c) Is a subject of the investigation or a premises to be searched believed to be associated with organized crime? Yes ☐ No ☐

18. Is premises/vehicle to be searched or commerical business at that premises believed to be subject to investigation by another law enforcement agency? Yes ☐ No ☐ If YES, name of agency:

19. Do you have reason to believe that a target of the current investigation:
a) Is a defendant in any pending criminal matter? Yes ☐ No ☐

b) Is an informant/cooperating witness for any law enforcement agency? Yes ☐ No ☐

c) Is a target of an investigation conducted by another law enforcement agency? Yes ☐ No ☐

d) Has ever been detained or questioned by another law enforcement agency? Yes ☐ No ☐

e) Is the subject of an outstanding arrest warrant or B.O.L.O. bulletin? Yes ☐ No ☐

If YES to 20(a-e), name of agency:

20. CERTIFICATION: I certify that all of the information in this Application is true to the best of my knowledge and belief.

Signature: _____ **Date:** _____

PART I - INFORMATION SUPPLIED BY APPLICANT

PART II - COMPLETED BY REVIEWER

21. Action Taken: Approved ☐ Denied ☐ *Conditional Approval ☐
* Explain Conditions:

22. Resubmission to reviewer required? Yes ☐ No ☐

23. Judge to be contacted:

LEGAL SUFFICIENCY

24. Adequate description of place to be searched? Yes ☐ No ☐

25. Adequate description of property to be seized? Yes ☐ No ☐

26. Exigent circumstances (if telephonic warrant)? Yes ☐ No ☐ N/A ☐

27. Probable cause for each place to be searched? Yes ☐ No ☐

28. Basis for "no knock" or other unusual execution? Yes ☐ No ☐

INTERAGENCY COORDINATION

29 a) Is any place to be searched outside the jurisdiction of reviewer? Yes ☐ No ☐

29 b) If YES to 29, has appropriate county prosecutor been notified? Yes ☐ No ☐

30. Does any other agency appear to have an interest in target/premises? Yes ☐ No ☐

31. Has interested agency been consulted? (If not, explain if there are reasons for not requiring notification) Yes ☐ No ☐

32. Name/title of person consulted:

Does any other agency object to the search? Yes ☐ No ☐

33. Is there any indication that a subject of the current investigation or a premises to be searched is associated with terrorist activities? (If YES, reviewer must promptly advise U.S. Attorney's Office) Yes ☐ No ☐

34. Reviewing Attorney:

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE (609) 984-6500

DAVID SAMSON
Attorney General

PETER C. HARVEY
First Asst. Attorney General
Director

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE No. 2002-2

APPROVAL OF SEARCH WARRANT APPLICATIONS, EXECUTION OF SEARCH WARRANTS, AND PROCEDURES TO COORDINATE INVESTIGATIVE ACTIVITIES CONDUCTED BY MULTIPLE LAW ENFORCEMENT AGENCIES

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., declares it to be the public policy of this State "to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State", N.J.S.A. 52:17B-98; and

WHEREAS, many law enforcement and prosecuting agencies operating at the federal, state, bi-state, county and local levels of government have overlapping territorial and subject-matter jurisdiction, creating a potential for the investigative activities of one resident agency to conflict with investigations or intelligence-gathering operations that are being undertaken by other law enforcement agencies; and

WHEREAS, it is necessary and appropriate, consistent with the Attorney General's responsibility to secure the benefits of the uniform and efficient enforcement of the criminal law, to establish and periodically refine policies, procedures and protocols to enhance cooperation among the law enforcement agencies operating within the State, and to promote the appropriate sharing of information among and between these law enforcement agencies; and

WHEREAS, the need for enhanced cooperation and coordination of law enforcement activities and efforts is especially important given the urgent need to muster all available law enforcement resources and assets to respond to the threat of terrorist activities, and in light of new enforcement initiatives to investigate and

prosecute offenses and offenders associated with criminal gangs and other violent or predatory criminal organizations that typically operate without regard to jurisdictional boundaries and beyond the jurisdiction of any one law enforcement agency; and

WHEREAS, the authority to conduct a court-authorized search of a dwelling, place of business or automobile is a vital investigative tool routinely used and relied upon by law enforcement agencies to detect and prosecute violators of the law; and

WHEREAS, it is the constitutional and statutory responsibility of the Attorney General as the State's chief law enforcement officer to ensure that search warrants are properly and effectively utilized, and that law enforcement agencies are aware of and comply with all rules and procedures established by law or Court Rules that are designed to safeguard the rights of citizens under the United States and New Jersey Constitutions to be free from unreasonable searches and seizures; and

WHEREAS, in 1985, following upon the recommendations contained in a presentment issued by a special county grand jury, the Attorney General and the County Prosecutors' Association of New Jersey issued a joint policy statement requiring that all applications for search warrants be reviewed by the Attorney General or his designees, or the appropriate County Prosecutor, or his designees, prior to submission to a court for authorization; and

WHEREAS, while the scope of prosecutorial review established in the 1985 policy statement was limited to a determination whether probable cause exists to justify the issuance of a search warrant, it is now necessary and appropriate for the Attorney General, in order to safeguard the integrity of law enforcement investigations, protect the safety of law enforcement officers, and to safeguard sources of information and investigative techniques relied upon by law enforcement agencies, to establish uniform policies and procedures concerning all aspects of the search warrant process, including the execution of search warrants and strict adherence to the principles established in R. 3:5-4, which provides that a search warrant shall be issued with all practicable secrecy and that the disclosure that a warrant has been applied for or issued, except as necessary for its execution, may constitute a contempt of court.

NOW, THEREFORE, I, DAVID SAMSON, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby DIRECT that all law enforcement agencies operating under the authority of the

laws of the State of New Jersey shall adhere to the policies and procedures set forth below:

1. Scope of Directive

This Directive applies to all applications made to a New Jersey Superior or Municipal Court Judge for issuance of a criminal search warrant, and shall apply to all law enforcement agencies operating under the authority of the laws of the State of New Jersey at the State, county and local levels of government. This Directive does not apply to applications for administrative search warrants, or for court orders to enter premises to retrieve weapons pursuant to N.J.S.A. 2C:25-21 (domestic violence) where the weapons to be seized are not believed to be contraband, evidence or an instrumentality of a criminal offense.

2. Requirement to Obtain Prosecutorial Approval

No law enforcement officer or agency operating under the authority of the laws of this State at any level of government shall apply to a New Jersey Judge for issuance of a search warrant without first obtaining express authorization from an Assistant Attorney General, Deputy Attorney General or Assistant County Prosecutor who has been designated in writing by the Director of the Division of Criminal Justice or a County Prosecutor pursuant to the provisions of Section 5 of this Directive. (These persons are hereinafter referred to in this Directive as "Designated Attorneys"). This rule shall apply to applications for a search warrant made in person pursuant to R. 3:5-3a, as well as to applications for a search warrant that are communicated to a Superior Court Judge by telephone, radio or other means of electronic communication pursuant to R. 3:5-3b.

3. Prosecutorial Assistance in Applying for Search Warrants

The Director of the Division of Criminal Justice and each County Prosecutor shall establish procedures to assist law enforcement officers and agencies operating within their jurisdiction to apply to an appropriate court for a search warrant. The Division of Criminal Justice and each County Prosecutor shall maintain and make available to all appropriate law enforcement agencies a list of personnel who will be available on a 24-hour, seven days per week basis to assist in preparing and making search warrant applications, and who are designated pursuant to Section 5 of this Directive to review and approve search warrant applications prior to their submission to an appropriate court. When practicable, the Assistant Attorney General, Deputy Attorney General or Assistant Prosecutor who reviews and approves the

application should accompany the applicant in appearing before the Judge.

4. Preference for Appearing Before Superior Court Judges

An Assistant Attorney General, Deputy Attorney General or Assistant Prosecutor designated to review search warrant applications pursuant to Section 3 of this Directive shall determine the appropriate Judge before whom the application for a search warrant should be made, and shall assist the applicant in contacting the Judge. Whenever practicable, the application for a search warrant should be made to a Superior Court Judge, rather than a Municipal Court Judge, since Superior Court Judges have statewide jurisdiction and their probable cause determinations are entitled to substantial deference by other Superior Court Judges who might hear any ensuing motion to suppress physical evidence. See State v. Kasabuki, 52 N.J. 110 (1968).

5. Designation of Attorneys Authorized to Approve Search Warrant Applications

The Director of the Division of Criminal Justice and each County Prosecutor shall designate in writing Assistant Attorneys General, Deputy Attorneys General, and Assistant Prosecutors who shall be authorized pursuant to this Directive to approve an application by a law enforcement officer to appear before a judge to request the issuance of a search warrant. These Designated Attorneys shall have sufficient training and experience to comply with all of the requirements of this Directive, and shall be subject to such additional training and continuing education requirements as the Attorney General may from time to time direct. The designation of an individual attorney may be limited to certain types of cases. For example, a given assistant prosecutor may be authorized in writing by the County Prosecutor only to approve applications for search warrants in cases involving narcotics, or only cases presented by certain specified law enforcement agencies. The Division of Criminal Justice shall maintain a current registry of all Assistant Attorneys General, Deputy Attorneys General and Assistant Prosecutors who have been authorized in writing to approve search warrant applications.

6. Method of Review and Approval

Approval of an application to apply to a judge for issuance of a search warrant may be given by a Designated Attorney in writing, electronically (e-mail or facsimile transmission), or orally (by telephone or radio communication). Whenever practicable, the law enforcement officer seeking permission to apply

for issuance of a search warrant (hereinafter referred to as an "applicant") should submit to the appropriate Designated Attorney a written copy of the affidavit intended to be submitted to the court in support of issuance of the warrant, along with a completed and signed application form developed by the Division of Criminal Justice pursuant to Section 11 of this Directive. When the circumstances make it impracticable for the applicant to submit to the Designated Attorney a copy of a written affidavit and completed application form, the Designated Attorney shall be responsible for making certain that all of the requirements of this Directive have been satisfied by means of oral communication with the applicant, and the Designated Attorney shall make certain that all of the questions appearing on the application form have been answered. If the applicant has prepared a written affidavit intended to be submitted to a court, but it is not practicable to transmit a copy of the written affidavit to the Designated Attorney for review, the applicant shall read verbatim the text of the affidavit to the Designated Attorney. Where the circumstances reasonably require that the applicant rely on oral testimony in lieu of or to supplement a written affidavit in support of the application for issuance of a search warrant, the Designated Attorney shall require the applicant to provide all information that is intended to be presented to the court by means of oral testimony.

7. Authorized Actions by Designated Attorney Reviewing an Application

The Designated Attorney is authorized to deny an application for a search warrant, to approve the application, or to make approval contingent upon some further investigative step, notification and/or consultation with some other law enforcement officer or agency, or such other action to be taken by the applicant that is deemed by the Designated Attorney to be necessary to satisfy all of the requirements of this Directive. If the Designated Attorney determines that the application is in any respect deficient or otherwise in need of supplemental investigation or any other action necessary to satisfy the requirements of this Directive, the Designated Attorney shall require the applicant to conduct such supplemental investigation or to take such other steps as may be necessary to cure the deficiency or to satisfy the requirements of this Directive, and then report back to the Designated Attorney for final authorization before proceeding to submit the application to a judge. Notwithstanding the foregoing, a Designated Attorney is authorized to grant conditional approval contingent upon the satisfaction of some additional step, provided that the Designated Attorney provides clear guidance to the applicant as to the step(s) that must be taken by the applicant and the conditions that must be satisfied before the applicant is authorized to submit the application to

a judge. (Example: a Designated Attorney may conditionally approve an application contingent upon the applicant consulting with an appropriate representative from another law enforcement agency that reasonably appears to have an interest in the target of the investigation or the premises to be searched. In these circumstances, a conditional approval might provide that the applicant is authorized to apply to a court for issuance of the search warrant unless the other law enforcement agency objects to the search.)

8. Documentation of Approval Process

The Designated Attorney shall maintain a record of the application (whether denied, approved or conditionally approved), including a copy of the application form (whether prepared by the applicant or by the Designated Attorney in the case of a telephonic application) and any notations made by the Designated Attorney. The application form shall be placed in the prosecuting agency's case file and shall be subject to review and audit by the Attorney General or his designee.

9. Successive Applications

In the event that a Designated Attorney declines to approve an application, or conditionally approves the application subject to a condition that has not been satisfied, the applicant or any other person representing the applicant's law enforcement agency shall be prohibited from making an application to any other Designated Attorney without revealing in the successive application the fact that an application had previously been reviewed by another Designated Attorney. This notification requirement shall apply to any successive application involving the same criminal activities or premises to be searched that were involved in the prior application that was not approved.

10. Familiarity of Applicant with Information Necessary to Satisfy the Requirements of the Directive

The law enforcement officer who contacts a Designated Attorney seeking permission to apply to a court for issuance of a search warrant should be the actual affiant or lead case agent for the investigation (i.e., the officer most likely to be familiar with the scope and details of the investigation and who would therefore be in the best position to be able to answer all of the questions that are required to be addressed pursuant to this Directive).

11. Application Forms

The Division of Criminal Justice shall develop and disseminate to the County Prosecutors and to all law enforcement agencies operating under authority of state law blank application forms to be completed and submitted by applicants to Designated Attorneys pursuant to this Directive. The applicant shall be required to sign the application form, certifying that all of the information provided to the Designated Attorney is true and accurate to the best of the applicant's knowledge and belief. Where the application is made telephonically, the Designated Attorney shall use the form as a checklist and shall make certain that the applicant answers every question propounded on the form. Thereafter, the applicant shall be required as soon as practicable to sign the application form that was prepared by the Designated Attorney based upon information orally provided by the applicant to the Designated Attorney.

12. Substantive Review Criteria

The Designated Attorney shall be responsible for determining that the application establishes all of the following:

1. An adequately specific and detailed description of all places or premises to be searched;

2. An adequately specific and detailed description of all property to be seized;

3. In the case of telephonic applications to a court pursuant to R. 3:5-3b, the existence of exigent circumstances sufficient to excuse the failure to obtain a written warrant obtained by personally appearing before the judge; and

4. Probable cause to justify a search of each place or premises intended to be searched.

13. Use and Preservation of Confidential Sources

The Designated Attorney shall determine whether the application relies to any degree upon a confidential informant or other confidential source of information, or whether the investigation involved the use of a secret surveillance site. In addition to determining whether the confidential source provided reliable information that, based upon the totality of the circumstances, constitutes probable cause (see Section 12(4), supra), the

Designated Attorney shall inquire whether the applicant anticipates the need to seek a protective order to preclude eventual disclosure to a defense counsel or any other person of any information that might reveal the identity of the informer or other confidential information source, or the location of a surveillance site. In the event that a protective order is necessary and appropriate to protect a confidential source, the Designated Attorney shall take all appropriate steps to make certain that a timely ex parte application is made to the court for a protective order.

14. Intended Manner of Execution

The Designated Attorney shall determine from the applicant as to the intended manner of execution of the warrant (i.e., e.g., whether circumstances exist that might justify dispensing with the "knock and announce" rule.) If the applicant indicates a need to execute an unannounced or forcible entry, or to execute the warrant at any time other than during regular business hours, the Designated Attorney shall determine whether there is an adequate factual basis to justify any such proposed method of execution. The Designated Attorney shall take steps to make certain that the issuing judge is advised of these circumstances and is asked to issue a warrant expressly authorizing this manner of entry or execution. Nothing in this Directive shall be construed in any way to preclude a law enforcement officer executing a warrant from making an unannounced or forceful entry without prior judicial approval for such unannounced or forcible entry in the event that the officer at the time of execution becomes aware of unanticipated facts or circumstances that would be sufficient to justify any such unannounced or forcible entry.

15. Secrecy of Issuance and Execution of Search Warrants

A law enforcement officer involved in the application for or execution of a search warrant shall be strictly prohibited from disclosing to a non-law enforcement officer any facts contained in or concerning the application for the warrant, or the fact that a search warrant will or has been sought or executed, unless such disclosure is expressly authorized by the Director of the Division of Criminal Justice or his designee, or a County Prosecutor or his designee. No law enforcement officer shall advise or invite any non-law enforcement officer to attend, participate in or witness the execution of a search warrant, and no law enforcement officer shall permit a non-law enforcement officer to enter a premises during the execution of a warrant, unless the attendance or participation of such non-law enforcement personnel is necessary to ensure the safe and efficient execution of the warrant. (Example: civilian personnel who may be necessary to the safe and efficient execution of a warrant might include

landlords, building managers or custodians; locksmiths, child welfare officials (to take custody of minor children who may be present at the scene); or animal control officers (to assist in the control of guard dogs or other animals at the premises to be searched).

16. Preserving Secrecy of Completed Searches

Once a court-authorized search has been completely executed, all information concerning the issuance and execution of the warrant, including but not limited to the affidavit filed in support the warrant, shall be treated as if such information and document had been sealed by a court. No information concerning the search or the grounds therefor, or the nature of any evidence found during the execution of the search, shall be revealed by a law enforcement officer to any person other than to another law enforcement officer except as may be expressly authorized by a court of competent jurisdiction, or by the Director of the Division of Criminal Justice or his designee or a County Prosecutor or his designee, or except as may be expressly required by R. 3:5-5a (which requires the officer taking property under the warrant to give the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken, or else requiring that the copy and receipt be left at the place from which the property was taken). It shall be the responsibility of the County Prosecutor, or, where applicable, the Division of Criminal Justice, to comply with the criminal discovery requirements set forth in R. 3:5-6c and R. 3:13-3f.

17. Coordination of Interagency Investigations

Before approving an application for permission to seek issuance of a search warrant, the Designated Attorney shall take reasonable steps to determine whether any other law enforcement agency at any level of government (federal, state, bi-state, county, local, or out-of-state agency) has an interest in a target of the investigation or the premises to be searched that might be adversely affected by execution of the warrant. In that event, it shall be the general policy of this State to notify and consult with any such interested law enforcement agency prior to approving the search warrant application.

18. Specific Information Necessary to Identify Other Law Enforcement Agencies that Might Have an Interest in the Execution of the Search

The uniform application form developed by the Division of Criminal Justice pursuant to Section 11 of this Directive shall require the applicant to

disclose to the best of the applicant's knowledge and belief the following information to be used and relied upon by the Designated Attorney in determining whether any other law enforcement agency has a sufficient interest in the target of the investigation or in the premises to be searched as to require prior notification and consultation:

a. Whether this investigation was conducted jointly with any other agency or task force, or whether any other law enforcement agency was involved in or contributed to the current investigation or to any related investigation;

b. Whether the applicant's agency in conducting the current investigation relied to any degree upon information supplied by another law enforcement agency;

c. Whether the target of the investigation or the premises to be searched is believed to be involved in or associated with terrorist activities, a sophisticated criminal enterprise, or any organized criminal activity;

d. Whether the suspected criminal activity or operation extends to any other jurisdiction beyond the territorial jurisdiction of the applicant's agency;

e. Whether the premises to be searched or any commercial business at that premises is believed to be the subject of an investigation of another law enforcement agency; and

f. Whether any target of the current investigation: (1) is a defendant in any pending criminal action; (2) is an informant or cooperating witness for any other law enforcement agency; (3) is the target of an investigation conducted by any other law enforcement agency; (4) has ever been detained or questioned by another law enforcement agency; or (5) is the subject of an arrest warrant or a be-on-the-lookout (B.O.L.O.) bulletin or advisory issued by any other law enforcement agency.

19. Steps Taken By Applicant to Identify Other Agencies in Interest

The applicant shall explain to the Designated Attorney what steps have been taken by the applicant or his agency to determine whether any of the circumstances described in Section 18 of this Directive exist that might indicate that another law enforcement agency has an interest in the target of this investigation or in the premises to be searched. The Designated Attorney shall not approve the application unless satisfied that reasonable precautions

have been taken, considering the nature of the offense and offender under investigation, to determine whether any other agency might be adversely affected by execution of the warrant. See also Section 27 of this Directive (requiring the development of a comprehensive statewide system to facilitate the collection and sharing of information and the coordination of interagency investigative activities.)

20. Notification to Interested Agencies of Intention to Execute Search Warrant

In the event that it reasonably appears that any other law enforcement agency is involved in the investigation, or has an interest in the target of the investigation or in the premises to be searched, a Designated Attorney shall not approve the application unless the applicant certifies that an appropriate representative of such other interested agency (whose name and rank shall be documented) has been consulted and does not object to the execution of the search, or that there is good and sufficient cause to execute the search without first notifying and consulting with such other interested law enforcement agency. In the event that a representative from such other interested law enforcement agency upon notification objects to the execution of a search, a Designated Attorney shall not be authorized to approve the search, but rather shall refer the matter without delay to either the County Prosecutor (in the event that the Designated Attorney is employed by the County Prosecutor and the objecting law enforcement agency is subject to the jurisdiction of the County Prosecutor) or to the Director of the Division of Criminal Justice or his designee (if the objecting law enforcement agency is not subject to the jurisdiction of the County Prosecutor employing the Designated Attorney).

21. Special Notification to Federal Authorities of Suspected Terrorist Activities

Where it reasonably appears that a target of the investigation or a premises to be searched may be involved in or associated with terrorist activities, see Section 18(c), supra, the Designated Attorney shall promptly notify the Assistant United States Attorney or other official who has been specifically designated to receive such notification by the United States Attorney for the District of New Jersey.

22. Notification of Searches in Multiple Jurisdictions

Where an application is made for a warrant to conduct a search in multiple locations any one of which is outside the territorial jurisdiction of the applicant's agency, or beyond the territorial jurisdiction of an assistant

prosecutor reviewing the application, the application shall not be approved and no search shall be conducted without first notifying and consulting with a representative of the County Prosecutor's Office having jurisdiction over the place to be searched, or a representative of the Division of Criminal Justice. (Example: a search warrant application reviewed by an Assistant Prosecutor of county A involves an intended search of multiple premises, one of which is located in county B. The search of the premises located in county B shall not be conducted without first notifying and consulting with a representative from the County B Prosecutor's Office.) In addition, the local police department having patrol jurisdiction over each and every place or premises to be searched shall be notified of the operation prior to execution of the search unless a Designated Attorney, for good cause shown, determines that notification to the local police department shall only be provided during the execution of the search, or at some later time.

23. Search Warrant Manual and Training Updates

The Division of Criminal Justice in consultation with the County Prosecutors shall develop, disseminate and periodically update a search warrant manual concisely explaining the law, Court Rules and all Attorney General policies and Directives concerning the issuance and execution of search warrants. The Manual shall include model forms and sample affidavits and warrants. In addition, the Division of Criminal Justice will on an ongoing basis publish training bulletins and case law updates to assist law enforcement agencies and Designated Attorneys in complying with all legal requirements for the issuance and execution of search warrants and the requirements of this Directive. The Division of Criminal Justice shall also develop a training course for all Assistant Attorneys General, Deputy Attorneys General, and Assistant Prosecutors designated and authorized pursuant to this Directive to approve search warrant applications.

24. Authority of County Prosecutors to Impose Supplemental Guidelines

Nothing in this Directive shall be construed in any way to preclude a County Prosecutor from issuing directives or guidelines to the law enforcement agencies within his or her jurisdiction setting forth additional procedural or substantive rules concerning the issuance or execution of search warrants, provided that any such directives or guidelines are not inconsistent with the policies or principles set forth in this Directive.

25. Violations and Remedial Actions

All violations of the requirements of this Directive shall be reported promptly to the Director of the Division of Criminal Justice, who shall be authorized to conduct any appropriate investigation and to take such remedial or disciplinary actions as may be necessary to enforce the terms, conditions, principles and policies of this Directive. Strict adherence to the requirements of this Directive shall be a condition of a law enforcement agency's eligibility to receive the proceeds of forfeited property disposed of and distributed pursuant to N.J.S.A. 2C:64-6 and 2C:64-7, and any failure to comply with the terms of this Directive shall be taken into account in the calculation of forfeitable assets to be distributed among agencies that contributed to the surveillance, investigation, arrest or prosecution resulting in a forfeiture. If any violation of the terms of this Directive involves a breach of the secrecy requirements generally set forth in R. 3:5-4, the Director of the Division of Criminal Justice shall promptly notify the judge who issued the warrant so as to permit the judge to determine whether any such violation constituted a contempt within the meaning of R. 3:5-4.

26. Enforcement by Third Parties

Nothing in this Directive shall be construed in any way to create any rights or promises. Nor does this Directive vest enforcement rights in any person claiming noncompliance or deviation from the policies, practices and procedures described in this Directive.

27. Establishment of Interagency Coordination Working Group

The Director of the Division of Criminal Justice shall establish and maintain a working group comprised of representatives from the County Prosecutor's Association and other appropriate law enforcement and prosecuting agencies or associations operating within the State of New Jersey, including federal law enforcement agencies. This Working Group shall develop and report to the Attorney General within 45 days of the effective date of this Directive a plan for establishing a comprehensive system, using all available resources and technologies, to ensure to the greatest extent possible that information concerning criminal activities is appropriately shared by and between law enforcement agencies, and to ensure to the great extent possible that the investigative activities of any one agency do not conflict with or jeopardize investigations or intelligence-gathering operations undertaken by other law enforcement agencies.

28. Liberal Construction

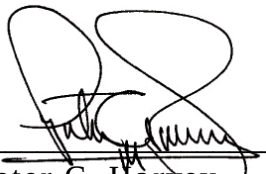
The provisions of this Directive shall be liberally construed to achieve the purposes set forth in the Preamble, and any questions concerning the meaning or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice.

29. Effective Date

This Directive shall take effect on September 2, 2002, and shall be binding upon all law enforcement agencies operating under the authority of the laws of the State of New Jersey.

Dated: August 8 2002

David Samson
Attorney General

Attest: 

Peter C. Harvey
First Assistant Attorney General
Director, Division of Criminal Justice

State of New Jersey

RICHARD J. CODEY
Acting Governor

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

PETER C. HARVEY
Attorney General

MEMORANDUM

TO: Sidney Casperson, Director
Office of Counter-Terrorism

Col. Rick Fuentes, Superintendent
New Jersey State Police

AAG Vaughn L. McKoy, Director
Division of Criminal Justice

Thomas J. O'Reilly, Administrator
Department of Law and Public Safety

All County Prosecutors

FROM: Peter C. Harvey, Attorney General

DATE: December 20, 2005

SUBJECT: Directive to Prevent Racial, Ethnic and Religious Profiling in the Course of Conducting Counter-Terrorism Investigations and Intelligence Collection

I have been evaluating several legal and policy questions regarding the collection, handling and sharing of intelligence information that is used to support New Jersey's counter-terrorism efforts. Questions have been raised concerning when and under what circumstances law enforcement and intelligence personnel, including personnel assigned to the Office of Counter-Terrorism, may consider, and are prohibited from considering, a person's ethnicity or religious affiliation or practices when determining whether the person is involved in terrorist activity. The citizens of New Jersey rightfully expect that all lawful and appropriate means will be used to thwart terrorists. Public confidence in the integrity, objectivity and

impartiality of the law enforcement community requires a clear policy that prohibits law enforcement officials from relying to any extent on broad-brushed ethnic or religious stereotypes in targeting individuals for law enforcement scrutiny. The impermissible use of such stereotypes would ultimately undermine our counter-terrorism efforts by alienating significant segments of our society, thereby eroding public support for law enforcement efforts and denying us access to valuable sources of information that are needed to identify and deter terrorist organizations.

Pursuant to my authority as the Chief Law Enforcement Officer of the State pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq. I hereby direct that the following actions be immediately taken:

1. Official Non-discrimination Policy as Applied to Counter-Terrorism

a. The non-discrimination policy prohibiting "racially-influenced policing" set forth in Attorney General Law Enforcement Directive 2005-1 shall apply to all sworn and unsworn personnel assigned to the Office of Counter-Terrorism, and to any other law enforcement personnel operating under the authority of State law to investigate, prosecute, or collect or analyze intelligence information pertaining to terrorism. For purposes of the implementation of the statewide non-discrimination policy, a person's religious affiliation or any act that constitutes a constitutionally-protected expression of religion shall be treated in the same manner as law enforcement officers in this State are required to treat the person's race or ethnicity. Specifically, personnel assigned to the Office of Counter-Terrorism and any other sworn or unsworn member of a law enforcement agency operating under the authority of the laws of the State of New Jersey shall not consider a person's race, ethnicity, religious affiliation, or religious practice or expression as a factor in drawing an inference or conclusion that the person may be involved in terrorist activity, except when responding to a suspect or investigation-specific "Be on The Lookout" (B.O.L.O.) situation as described in Section 1b of this Directive and in the training provided to Office of Counter-Terrorism personnel by the Division of Criminal Justice pursuant to Section 1c of this Directive.

b. Consistent with the provisions of Section 2b of Attorney General Law Enforcement Directive 2005-1, nothing herein shall be construed in any way to prohibit the Office of Counter-Terrorism or its officers or civilian employees, or any other law enforcement personnel, from taking into account a person's race, ethnicity, religious affiliation, or religious practice or expression when such factor(s) is/are used to identify or describe the physical characteristics of a particular individual or individuals who is/are the subject of a law enforcement investigation, or who is/are otherwise being sought by the Office of Counter-Terrorism or any other law enforcement agency in furtherance of a specific investigation or prosecution of a specific terrorist act, scheme, conspiracy or organization.

c. The Division of Criminal Justice shall within 45 days of the effective date of this Directive provide training on the policies established in this Directive to all sworn personnel assigned to the Office of Counter-Terrorism, to all Office of Counter-Terrorism intelligence analysts, whether sworn or unsworn, and to such other civilian staff of the Office of Counter-Terrorism as may be appropriate. Any person hereinafter detailed to or employed by the Office of Counter-Terrorism who would have been required to undergo the foregoing training had he/she been so detailed or employed on the effective date of this Directive shall undergo the training described in this section within 5 days of being detailed to or employed by the Office of Counter-Terrorism. Such training shall be made available to other law enforcement officers to the extent it is not included in the racially-influenced policing training described in Attorney General Law Enforcement Directive 2005-1.

2. Promulgation of Investigation and Intelligence Collection Procedures

a. The Division of Criminal Justice, in consultation with the Office of Counter-Terrorism, the New Jersey State Police, and the County Prosecutors, and subject to the approval of the Attorney General or his/her designee, shall within 90 days of the effective date of this Directive prepare revisions to the 2004 Attorney General Guidelines on the Collection, Handling, Storage and Dissemination of Intelligence in New Jersey ("the Revised Attorney General Guidelines"). The Revised Attorney General Guidelines shall, among other things, delineate investigation guidelines that specify when and how counter-terrorism cases are to be opened. These guidelines shall define the permissible scope, duration, subject matter and objectives of counter-terrorism investigations, and shall explain when and under what circumstances various investigative techniques are authorized and when investigators must obtain specific approval

from designated superiors before employing certain investigative techniques. In preparing the revised investigative guidelines, the Division of Criminal Justice shall use as a reference and be guided by the United States Attorney General's "Guidelines on General Crimes, Racketeering Enterprise and Terrorism Investigations," and shall specify distinct procedures and standards for opening and pursuing cases involving the following levels of investigative activity: (1) prompt and extremely limited checking of initial leads, (2) preliminary inquiries, and (3) full investigations. The investigation guidelines shall also include the following requirements:

(i) reaffirm that no investigative activity of any type should ever be undertaken based to any extent on racial, ethnic or religious stereotypes;

(ii) establish a preference for the use of the "least intrusive means" reasonably available to complete the legitimate investigative objective whenever any person's constitutional rights are implicated;

(iii) authorize a "full investigation" only when facts or circumstances "reasonably indicate that a crime has been, is being, or will be committed;"

(iv) require that a "preliminary inquiry" be promptly terminated when it becomes apparent that a full investigation is not warranted, and

(v) provide that information collected pursuant to a "tips and leads" or "preliminary inquiry" shall be purged after a reasonable period of time if investigative activities fail to disclose information that would meet the reasonable indication of criminal activity threshold necessary to initiate a full investigation.

b. The Revised Attorney General Guidelines shall provide a single and comprehensive source of guidance for all law enforcement agencies operating under the laws of the State of New Jersey concerning: (1) the nondiscrimination policy established in Attorney General Law Enforcement Directive 2005-1 and this Directive, and (2) the special rules governing intelligence collection, handling and sharing activities that may implicate any person's constitutional rights, described more fully in Section 3 of this Directive.

c. Personnel assigned to the Office of Counter-Terrorism shall not seek issuance of any grand jury subpoena, arrest warrant, communications data warrant, search warrant, or electronic surveillance order without first obtaining the approval of the Attorney General or the Director of the Division of Criminal Justice.

3. Policy and Procedures to Strengthen the Statewide Intelligence Management System (SIMS) and Ensure Compliance With Applicable Federal and State Regulations

a. No person assigned to the Office of Counter-Terrorism shall submit data for entry into the Statewide Intelligence Management System (SIMS) unless such data has been reviewed by a designated supervisor who has been trained in the requirements of 28 C.F.R Part 23, and that supervisor has determined that the information satisfies the data entry standards set forth in both 28 C.F.R. Part 23 and the 2004 Attorney General Guidelines on the Collection, Handling, Storage and Dissemination of Intelligence in New Jersey, including as such guidelines may be amended pursuant to Section 2 of this Directive. Special supervisory care shall be taken whenever information proposed for entry into the SIMS system relates to or references a person or organization who/that has not previously been entered into the system. The Office of Counter-Terrorism, subject to the direction and review of the Attorney General or his/her designee, shall establish procedures to ensure that data proposed for entry into SIMS is subjected to supervisory review as expeditiously as practicable.

b. All sworn personnel assigned to the Office of Counter-Terrorism, all Office of Counter-Terrorism intelligence analysts, whether sworn or unsworn, and such other civilian staff of the Office of Counter-Terrorism as may be appropriate shall within 60 days of the effective date of this Directive receive specialized training on the standards for submitting information into SIMS. The Office of the Attorney General shall take steps to develop this training program in consultation with the United States Department of Justice, Bureau of Justice Assistance and/or the Institute for Intergovernmental Research. The training program shall address the key components and concepts articulated in 28 C.F.R Part 23. The training shall emphasize the need for adequate documentation so that a supervisor can reliably determine whether the information proposed for submission into SIMS meets all applicable data entry criteria.

c. The New Jersey State Police shall within 45 days of the effective date of

this Directive review the operating procedures for SIMS and shall take steps to make certain that, other than as may be necessary for routine system management and maintenance, no individual or unit of a law enforcement agency shall have access to or in any way operationally use information other than as may be authorized pursuant to the security grading level that has been assigned in the first instance by the agency that had submitted the information. The New Jersey State Police will make certain that the scope and membership of all security groups is clearly defined, and that members of the security group are aware of the identity of all other persons and law enforcement units that are members of that security group.

d. All SIMS users shall be required to make a notation in the narrative portion of their reports whenever the name of any individual or organization referenced in the report represents only non-criminal identifying information. Following consultation by the Attorney General with the Justice Department, all SIMS users shall be provided training on how to properly identify and label non-criminal identifying information that may be contained in the narrative text of information submissions.

4. Independent Review to Ensure Compliance With This Directive

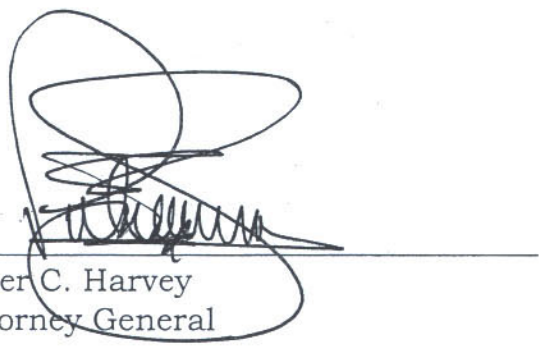
One or more Assistant or Deputy Attorneys General, and such other staff as may be appropriate, shall be assigned to review and monitor compliance with the provisions of this Directive. The Assistant or Deputy Attorney General in charge of the review function shall report directly to the Attorney General, or to such person as the Attorney General may designate, and shall be provided with complete access to all pertinent Office of Counter-Terrorism and Division of State Police intelligence information, files, and other materials and information as may be necessary to efficiently and effectively perform the compliance monitoring function. The Assistant or Deputy Attorney General-In-Charge shall report to the Attorney General on not less than a quarterly basis as to the implementation of this Directive.

5. Monthly Investigation Summary Reports

The Office of Counter-Terrorism shall submit to the Attorney General written reports on a monthly basis, or otherwise when requested by the Attorney General, that provide detailed information concerning all pending investigations, new investigations, matters on which electronic surveillance is being used and cases that are the subject of any court proceedings.

6. Effective Date

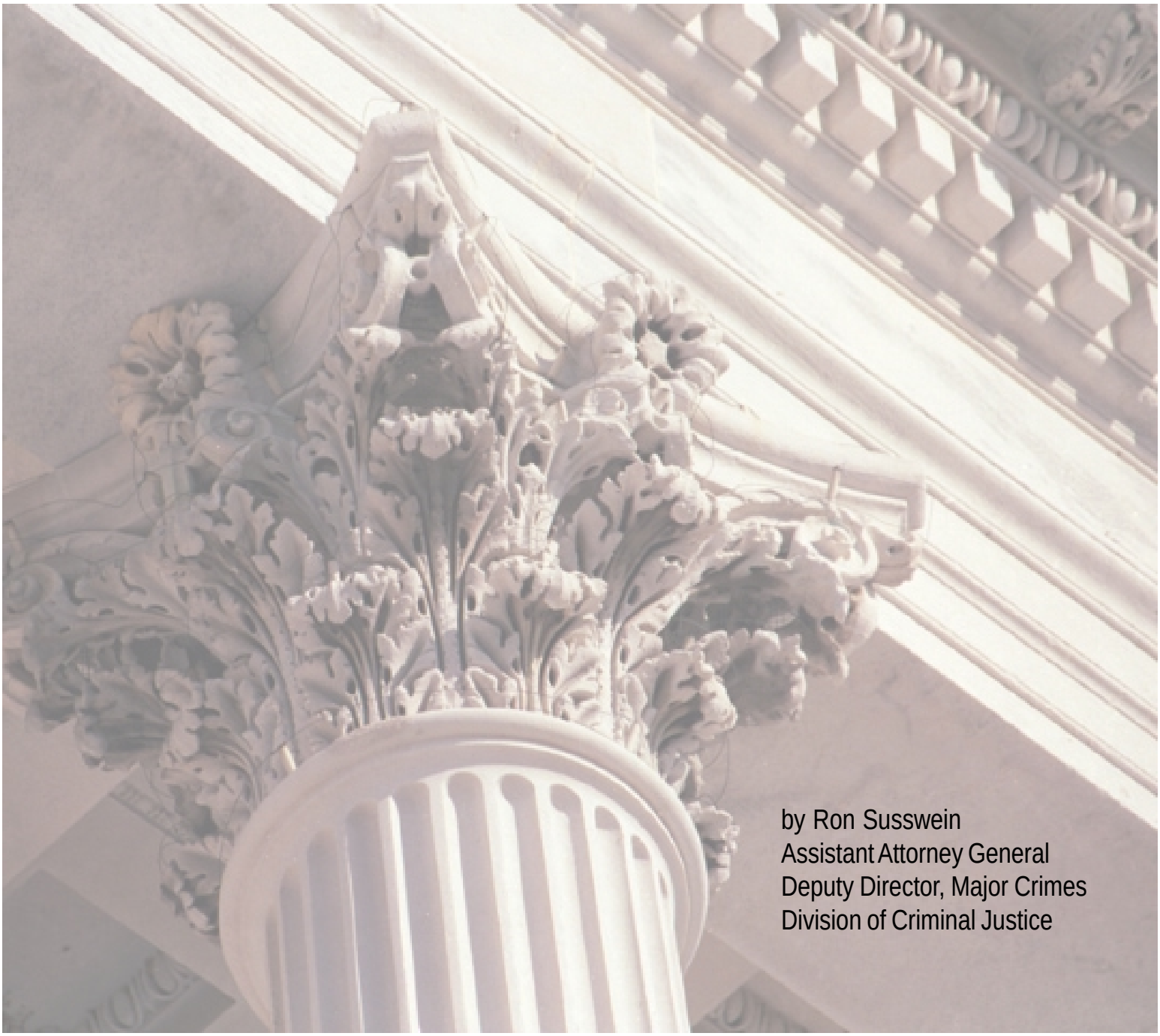
This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended or superceded by the Attorney General.



Peter C. Harvey
Attorney General

Dated: December 20, 2005
Trenton, New Jersey

COMPANION GUIDE



by Ron Susswein
Assistant Attorney General
Deputy Director, Major Crimes
Division of Criminal Justice

TABLE OF CONTENTS

PART I UNDERSTANDING THE NATURE AND SCOPE OF THE RACIAL PROFILING PROBLEM

UNIT 1: SCOPE AND PURPOSE 1

UNIT 2: VIDEO SCENARIO. 2-5

UNIT 3: THE OBVIOUS AND HIDDEN COSTS OF RACIAL PROFILING 6-11

3.1 The Widespread Alienation of Law-Abiding Citizens 6-7

3.2 The Invocation of the Exclusionary Rule 7

3.3 The Prospect of Civil Liability 7-8

3.4 The Adverse Impact on Search and Seizure Law 8-9

3.5 The Loss of Public Support and Sources of Intelligence Information 9-10

3.6 The Advent of "Defensive Policing" and "De-Policing" 10

3.7 The Unnecessary Risks Posed to Officer Safety 10-11

UNIT 4: EXERCISING DISCRETION 12-14

UNIT 5: SETTING LIMITS ON THE EXERCISE OF POLICE DISCRETION: IMPOSING BOUNDARIES AND ERECTING BARRIERS TO PREVENT ABUSES OF DISCRETION 15-19

5.1 Distinct Rights are Defined in Distinct Provisions of the Federal and State Constitutions 16-19

UNIT 6: WHAT IS RACIAL PROFILING? 20-33

6.1 Distinguishing "*Racial* Profiling" From Legitimate "Profiling" 20-22

6.2 Inadequate and Misleading Definitions of Racial Profiling 22-23

6.3 Embracing a More Precise and Comprehensive Term: "Racially-Influenced Policing" 23-24

6.4 Recognizing That Different Definitions and Rules of Police Conduct are Sometimes Used in Other Jurisdictions 24-26

6.5 The Legal and Policy Basis for the New Jersey Rule That Generally Prohibits *Any* Consideration of Race or Ethnicity 27-29

6.6 The "Strict Scrutiny" Test When Race or Ethnicity is Considered by Police 30-31

6.7 Official Deprivation of Civil Rights 31-33

UNIT 7: REPUDIATING THE MYTH THAT ONLY RACISTS ENGAGE IN RACIAL PROFILING 34-37

PART II APPLYING THE RULE PROHIBITING "RACIALLY-INFLUENCED POLICING"

UNIT 8: THE BASIC NON-DISCRIMINATION RULE IN A NUTSHELL 38-44

8.1 When Clothing or Manner of Dress May be Considered to be a Form of Conduct 39-41

8.2 The Basic Non-Discrimination Rule Applies to All Police Decisions 41-42

8.3 Police are Prohibited from Targeting Persons for Enhanced Scrutiny Based on Race or Ethnicity, Not From Targeting Places for Enhanced Scrutiny Based on Crime Patterns 42-44

UNIT 9: THE "B.O.L.O. EXCEPTION:" USING RACE OR ETHNICITY WHEN LOOKING FOR SPECIFIC INDIVIDUALS 45-59

9.1 Using Race or Ethnicity to Describe and Identify Specific Persons Being Sought by Law Enforcement 45-53

9.2 The Legitimate Use of Race or Ethnicity to Pursue Specific Suspects or "Leads" During the Course Of a Particular Criminal Investigation 54-59

UNIT 10: THE GANG PROBLEM 60-64

UNIT 11: SOME SPECIFIC EXAMPLES OF RACIALLY-INFLUENCED POLICING 65-70

11.1 Persons Who Appear to be "Out of Place" 65-69

11.2 Interracial Groups. 69

11.3 Persons Who Do Not Appear to "Fit" their Vehicles 69-70

PART III UNDERSTANDING THE NATURE AND PECULIARITIES OF SELECTIVE ENFORCEMENT LITIGATION

UNIT 12: HOW COURTS AND PROSECUTORS ADDRESS RACIAL PROFILING 71-79

12.1 The Role of Prosecutors in Screening Cases and Anticipating Litigation Problems 71-73

12.2 The Role of "Reviewing" Courts 73

12.3 The "Motion Picture" Analogy 73-75

12.4 Making Comparisons to Infer Purposeful Discrimination or a "*De Facto*" Agency Policy to Discriminate 75-78

12.5 The "Burden Shifting Template" 78-79

UNIT 13: MEETING THE BURDEN OF PRODUCTION: THE IMPORTANCE OF DOCUMENTATION AND REPORT-WRITING 80-109

13.1 Deviations from Routine or Normal Practice 82-83

13.2 Judicial Skepticism About High Discretion Encounters. 83-87

13.3 Judicial Skepticism About "Digging" for Evidence of Criminality 87-93

13.4 Judicial Skepticism About the Consent-to-Search Doctrine 93-94

13.5 Judicial Skepticism About Posing Probing or "Accusatorial" Questions and Eliciting "Inconsistent Statements" 94-104

13.6 Judicial Concerns About Misuse of the Frisk Doctrine 104-106

13.7 Judicial Skepticism About Overreliance on "Nervousness" and "Furtive Movements" as Suspicion Factors 106-109

UNIT 14: INCONSISTENT OR INACCURATE POLICE REPORTS AND TESTIMONY AS A TRIGGER FOR JUDICIAL SCRUTINY 110-117

14.1 The Need for Precision, Accuracy and Thoroughness 110-111

14.2 Inconsistencies in Multiple Reports 111-112

14.3 Case Study: State v. Segars 112-116

14.4 Synopsis: Quality Police Reports as a Counterweight to Discrimination Claims 116-117

UNIT 15: PROBING AN OFFICER'S MENTAL PROCESSES 118-130

15.1 The Rules Concerning "Pretext" Stops 119-130

UNIT 16: THE USE AND MISUSE OF STATISTICS 131-137

16.1 The Use of Statistics to try to *Justify* Racially-Influenced Policing 131-135

16.2 The Use of Statistics to *Prove* Racially-Influenced Policing 135-137

UNIT 17: THE ROLE OF POLICE EXECUTIVES AND SUPERVISORS 138-142

17.1 Police Chiefs and Executives: Setting Good Policy and Setting a Good Example 138-140

17.2 Supervisors: The First Line of Defense Against Discriminatory Policing 140-142

UNIT 18: RACIALLY-INFLUENCED POLICING AFTER 9/11 143-151

18.1 The Basic Rule 143-144

18.2 Behavioral (Race/Ethnicity-Neutral) Profiles or "Screening Systems" of Possible Terrorists 144-148

18.3 The B.O.L.O. Exception 148-151

PART IV SUMMING UP

UNIT 19: REVISITING THE VIDEO SCENARIO 152-159

APPENDIX

Attorney General Law Enforcement Directive No. 2005-1 Establishing An Official Statewide Policy Defining and Prohibiting the Practice of "Racially-Influenced Policing"

PART I UNDERSTANDING THE NATURE AND SCOPE OF THE RACIAL PROFILING PROBLEM

UNIT 1: SCOPE AND PURPOSE

In this course, we will discuss the law and policy that explains when and under what circumstances a police officer is prohibited from considering an individual's race or ethnicity in deciding how to exercise police discretion. This is not a course about cultural diversity, or about how to communicate effectively with citizens of different colors, from different cultures, or whose primary language is other than English. Those are all critically important subjects, but our topic is more narrowly focused: the law and legal principles about "racial profiling." There are many different terms and phrases that have been used in court proceedings to describe the police practice that is the focus of our attention. These include, "Racial Targeting," "Selective Enforcement," "Disparate Treatment," "Discriminatory Policing," and "Purposeful Discrimination."

This course was designed for use by every police department and every police officer throughout the State of New Jersey. Even if your department has to date managed to avoid a racial profiling claim or lawsuit, you will benefit by understanding the rules and how they will be applied by the courts in New Jersey. In other words, this course can help to innoculate departments and officers against future claims of discrimination.

What will make this course particularly challenging is that we will be using a nontraditional approach to legal training. It is not enough for law enforcement officers to be able to recite by rote a list of specific rules that were announced in a string of published cases. For this reason, we will be delving more deeply into the subject by examining a number of scenarios and by exploring why the published court cases were decided as they were. Sometimes these reasons are disturbing to us, but as law enforcement professionals, you must understand the reasons underlying court decisions, even if you do not agree with all of those decisions. By understanding the specific concerns that have been expressed by courts, law enforcement officers will be better able to anticipate and comply with constitutional requirements as the law of racially-influenced policing continues to evolve, as it surely will.

UNIT 2: VIDEO SCENARIO

The DVD presentation of this course begins with an examination of a two-minute vignette that was produced a number of years ago by the Anti-Defamation League. This short video was played at a Law Enforcement Summit that was held in New Jersey in 1998.

The scenario unfolds as follows:

Two Caucasian police officers are in a marked police vehicle patrolling a quiet residential street. It is obviously an extremely affluent suburban neighborhood, as evidenced by the large, well-maintained homes. There is no other traffic on the street. One of the officers notices a red car parked at the curb. It is the only parked vehicle in sight. There are two African-American males (as it turns out, father and adolescent son), sitting in the vehicle. The following conversation between the officers ensues:

Officer #1: "Quiet day, huh?"

Officer #2: "Hey, did you notice that?"

Officer #1: "What?"

Officer #2: "Those two black guys in the Toyota?"

Officer #1: "That's unusual isn't it?"

Officer #2: "Sure is around here. I just want to check on the car just to be safe."

Officer #1: "You call it in and I'll check it out."

The police vehicle makes a U-turn and pulls up behind the parked Toyota. The officers do not activate the police vehicle's overhead or "wig-wag" lights. Officer #1 steps out of the police vehicle and approaches the male sitting in the driver's seat of the parked Toyota. Officer #2 remains in the police vehicle. Officer #1 engages the person in the driver's seat (the father) in the following conversation:

Officer #1: "Anything I can do for you guys?"

Father: "No. That's okay."

Officer #1: "Do you live around here?"

Father: "No we don't."

Officer #1: "Would you please get out of the car?"

Father: "Why?"

Officer #1: "Please, get out of the car. Do you have some identification? Why are you parked here?"

The father gets out of the vehicle and produces an operator's license from his sports jacket inside pocket. He provides the license to Officer #1.

Father: "Look officer, my son and I are just waiting for someone. What's the problem?"

Officer #1: "No problem."

Officer #1 examines the license and looks at the driver, apparently to confirm that he matches the information on the license. Officer #2 has now approached the Toyota after having communicated with the police dispatcher.

Officer #2: "The car is fine."

Officer #1: "Okay. Just a routine check."

Father: "Yeah, *routine*."

Officer #2: "What's he getting upset about?"

Officer #1: "I don't know. No harm done."

The two officers return to the police vehicle. The son turns to his father in exasperation and says:

Son: "We should report them."

Father: "For what?"

Son: "I don't know."

Father: "Hey, forget it. It does make you mad though, doesn't it. I guess they just wanted to know why we were here."

Son: "I didn't know we needed a reason."

The father appears to be mortified by the implications of his son's last comment.

* * *

We start our examination of New Jersey law and policy with what would seem to be a very straightforward question. Does this scenario present an example of "racial profiling"? Which of the following statements most closely matches your own impression of the police conduct that occurred during this brief encounter:

(1) This was good police work. The officers would have been derelict in their duty had they not investigated the situation as they did.

(2) We need more information before we can decide whether or not this was good police work as opposed to inappropriate police work.

(3) The officers in this scenario had their hearts in the right place, but used questionable judgment. The situation could have been handled better.

(4) This was an example of racial profiling. It appears that the officers in this scenario discriminated against the two minority citizens.

In Unit 19, we will revisit this scenario and examine it more closely to understand exactly <u>why</u> you reached whatever conclusion you did.

UNIT 3: THE OBVIOUS AND HIDDEN COSTS OF RACIAL PROFILING

Before we delve into the intricacies of New Jersey's laws and policies against police discrimination, it is important to understand why it is so important for police officers to know, understand and follow the rules set by the courts that limit our authority. To fully appreciate the importance and complexity of our topic, we first need to consider some of the unfortunate byproducts of the racial profiling controversy. We must examine, in other words, some of the hidden as well as obvious costs that are exacted when police rely on race or ethnicity when exercising their discretion.

3.1 The Widespread Alienation of Law-Abiding Citizens

There is at least one point on which everyone agrees: the racial profiling controversy has left countless citizens – and countless police officers – angry and frustrated.

There are numerous accounts of young men and women of color who have been stopped time and again by police officers for the most minor motor vehicle violations. In fact, this particular circumstance has led some to refer to the practice of racial profiling as "Driving While Black." Many minority youth today expect to be stopped repeatedly by police officers, and NOBLE, the National Organization of Black Law Enforcement Executives, has actually published training materials for young men and women of color, teaching them what to do during their repeated encounters with police officers.

This phenomenon is not limited to minority adolescents and young adults. There are countless stories of more mature minority citizens, including minority ministers and police officers, who have been stopped repeatedly by police, especially when operating expensive vehicles or driving through non-minority neighborhoods.

In many instances, these minority citizens were not issued a ticket. Some law enforcement officers might therefore question what these motorists are complaining about, since they did not receive a summons. It is all too easy to sit back and invoke what is essentially a "no harm, no foul" rule.

What we can too easily fail to appreciate, however, is that there is a harm suffered in these police-citizen encounters. The very fact that an officer elected not to issue a ticket might not be viewed as a "courtesy" or benefit extended to the motorist, but rather as proof that there had been no valid reason for initiating the motor vehicle stop in the first place, and that this had been a so-called "pretext" stop. (We will discuss pretext stops in more detail in Unit 15.1.)

That perception is compounded when an officer does not bother to explain to the motorist the true reason for the stop. (Taking the time to explain the reasons for the exercise of police discretion is one of the best ways to defuse a potentially confrontational or volatile situation. This simple precaution can help to avoid misunderstandings that might lead an angry citizen to lodge a complaint against a police officer, and this simple courtesy also serves to minimize the risk that the citizen might act out in frustration in a manner that puts both the citizen and the officer at greater risk of physical harm.)

3.2 The Invocation of the Exclusionary Rule

A claim of racial profiling can result in the suppression of relevant physical evidence or incriminating statements. When this happens, factually-guilty defendants may escape conviction and punishment. Moreover, the overwhelming majority of criminal cases are disposed of by means of a plea bargain, rather than a jury trial. In fact, in New Jersey, roughly 97% of all of our convictions for indictable crimes come by way of a plea agreement as opposed to a trial. As part of the plea-bargaining process, a prosecutor may undervalue or even dismiss outright a provable criminal case because the prosecutor anticipates that critical evidence may be suppressed as a result of a racial profiling claim. (We will discuss this case screening process in more detail in Unit 12.1.)

3.3 The Prospect of Civil Liability

Racial profiling claims can be raised in two distinct types of court actions: criminal prosecutions and civil law suits. In criminal cases, defendants seek to suppress evidence of their guilt – usually illicit drugs or weapons that were found during a motor vehicle search. In civil cases, sometimes referred to as "1983" or "civil rights" actions, plaintiffs may ask for injunctive relief – a court order prohibiting the police from repeating the illegal conduct – or may seek monetary awards. See 42 U.S.C. § 1983. Police officers and their departments, in other words, can be sued based on a claim of racial profiling. Countless taxpayer dollars are spent defending or settling these lawsuits -- money that could be better spent to benefit the law enforcement community by providing much-needed equipment and other resources.

3.4 The Adverse Impact on Search and Seizure Law

The racial profiling controversy has prompted courts to develop strict new rules that limit the authority of law enforcement officers to conduct investigations. Although most of

these new rules are technically grounded in the Fourth Amendment of the United States Constitution, or in its state constitutional counterpart, Article 1, paragraph 7, in many instances, the ghostly specter of racial profiling is lurking just beneath the surface of the court's reasoning. Even in cases where the issue of racial profiling was not expressly litigated, courts have imposed new restrictions on the exercise of police discretion in an effort to address the racial profiling problem. See, e.g., State v. Carty, 170 N.J. 632 (2002) (New Jersey Supreme Court held that under the State Constitution, unless there is a reasonable and articulable basis beyond the initial valid motor vehicle stop to continue the detention after completion of the valid traffic stop, any further detention to effectuate a consent search is unconstitutional).

In addition to imposing new rules of law and procedure, some courts have also become more skeptical and probing of police officers, sometimes openly doubting their credibility as witnesses. (In Unit 13, we will discuss certain types of recurring situations when reviewing courts are likely to be more skeptical of police.)

There are a number of things that police departments and officers can do to address this problem. By way of example, when an agency equips its vehicles with Mobile Video Recorders (MVRs), an objective and virtually unasailable record is made of the police-citizen encounter. This technology serves not only to deter police misconduct, but as importantly serves to protect law enforcement officers by verifying their accounts and by repudiating false claims of misconduct that are sometimes made against police officers by disgruntled defendants who are willing to lie to try to gain an unfair advantage in the plea bargaining process.

While MVRs can accurately document what exactly happened during an encounter, they might not necessarily always establish why police officers made the decisions they made. (Of course, when the audio portion of an MVR tape captures an officer "talking through" his or her reasoning process, then we have an excellent record of the officer's "present sense impressions," which can be used not only to explain the officer's reasoning process, but also to repudiate any allegation that the officer "made up" facts when later filling out a report to justify the decisions the officer had made before finding any contraband that is now the subject of a motion to suppress evidence.)

As we will see in Unit 13, one of the keys to responding to (and preventing) allegations of so-called "testilying" by law enforcement officers is to ensure the quality, accuracy and thoroughness of police reports. For our present purposes, the key point to understand is that judicial skepticism about police credibility and veracity has been fueled by the perception of some judges that some police officers are basing their decisions on impermissible factors. This has prompted judges to be more exacting in requiring officers to explain in detail the actual, legitimate reasons for their on-the-scene decisions.

3.5 The Loss of Public Support and Valuable Sources of Intelligence Information

We have already discussed circumstances where some citizens have become mistrustful of the law enforcement community. These citizens and their family members and friends are less likely to support law enforcement efforts. It is both ironic and regrettable that in our zeal to attack the nation's drug problem by trying to interdict drugs, we may inadvertently have alienated large segments of our society who might otherwise have provided valuable information to law enforcement authorities. In other words, in our efforts to choke off the supply of drugs, we may have unwittingly choked off our supply of the kind of information or "tips" that we need in order to target our resources and apprehend the most dangerous and predatory drug traffickers.

Aside from losing out on potential sources of information, the erosion of community trust that results from racially-influenced policing can undermine our law enforcement and prosecution efforts in other ways. For example, some jurors are mistrustful of law enforcement officers, and are less willing today to accept the credibility of police witnesses. Law enforcement officers must always be mindful that every citizen they encounter is a potential juror, and that if an officer does anything during an encounter to make that citizen (or the citizen's close friends and relatives) mistrustful of police, this may effect that citizen's judgment at some future time when he or she is called upon to serve as a member of a jury and must judge the credibility of police witnesses in a criminal prosecution.

3.6 The Advent of "Defensive Policing" and "De-Policing"

As a result of the racial profiling controversy, many police officers today are chilled from vigilantly enforcing our criminal laws because they are not certain about where the legal lines are drawn. Some officers have also lost confidence in their superiors, prosecutors and judges. These officers have come to believe that it is in their best personal and professional interest simply to look the other way, ignoring legitimate and constitutionally permissible indications of criminal activity because they are afraid of being accused of engaging in racial profiling. This form of timidity is sometimes referred to as "de-policing." When this happens, dangerous criminals may escape identification and apprehension.

3.7 The Unnecessary Risks Posed to Officer Safety

Finally, and perhaps most importantly, the racial profiling controversy poses a direct and immediate threat to the safety of every police officer out on the street. Police officers and their superiors, and prosecutors as well, must never forget that "Rule #1" of policing is that at the end of an officer's tour of duty, he or she is to go home safe and sound. Officers are not to wind up in a hospital, or a morgue. The problem for our present purposes, however, is that when a citizen is fearful or mistrustful of police, that citizen during an inherently stressful and emotional encounter with a police officer is more likely

to be inclined to “fight” or to “flee.” These are the two types of citizen conduct that pose the greatest risk of physical injury or death to a police officer.

Always remember that when officers take steps during an encounter to defuse or cool down a potentially volatile situation -- such as by patiently explaining the legitimate reasons for their decisions – they are reducing the risk that a citizen might misperceive the situation and over-react. By the same token, when our law enforcement community as a whole embraces policies that are designed to restore trust and confidence among all segments of our society, we enhance officer safety and thus actively promote Rule #1 of police work.

The remainder of this course will be dedicated to showing you how you can take steps that will increase the odds that at the end of each and every duty shift, you will go home safe and sound. The goal is to protect you from all sorts of harm: physical harm (injury or death) as well as legal harm (racial discrimination complaints, internal investigations, lawsuits, and lost or devalued criminal prosecutions.)

UNIT 4: EXERCISING DISCRETION

Effective policing is all about exercising sound and judicious discretion. Each day, a law enforcement officer is required to make a seemingly endless series of split-second decisions. Some of these decisions are routine or even mundane, such as which street to patrol next, who to pull over, and whether to issue a ticket or just a warning. Other situations may involve the most urgent, life-threatening decisions, such as whether to initiate a high speed pursuit, or whether to use deadly force.

Because law enforcement officers have to make so many decisions each day, more often than not, they are not consciously aware that they are making decisions at all, and when that happens, it is easy to lose sight of the fact that those decisions could have profound practical as well as legal consequences. *The greatest danger in policing occurs when law enforcement officers in the field are not thinking consciously about what they are doing.*

In Unit 5, we will discuss how (and why) the courts have imposed limits on the exercise of police discretion, and how courts go about reviewing the decisions that are made "in the field" by law enforcement officers. But first, we need to step back and review our <u>own</u> conduct, asking ourselves how and why we make the decisions that we make.

Consider the following situation. You are on patrol in a marked police car. You are in between calls for service, and part of your duty assignment is to enforce motor vehicle laws. You see three cars, all traveling at the same speed well in excess of the posted speed limit. You know from your Fourth Amendment training that you are authorized to stop <u>any</u> of these vehicles for speeding, but as a practical matter, you can only pull over one of the cars, allowing the other two violators to go on.

Which vehicle do you select to pull over? A vehicle in the "fast" lane, or one in the "slow" lane? The closest one? The first driver to see you and apply his brakes? The vehicle with any other Title 39 violations, such as an equipment violation? The oldest vehicle? The newest one? The one with the most occupants? The one with the fewest occupants? The sports car? The sedan or the minivan or the SUV?

As a practical matter, police officers rarely act "randomly" in making this kind of selection. (An example of truly random selection would be if you were to roll dice and allow the result of the dice roll to dictate which vehicle would be pulled over.) Rather, in the real world, there had to be <u>some</u> reason or reasons that led you to select a particular vehicle from among the universe of vehicles that were violating the law and that were thus subject to a lawful stop under the Fourth Amendment.

Let us consider another example involving yet another step in the unfolding sequence of events that occur during a typical motor vehicle stop. Suppose that you pick one of the vehicles to pull over, you maneuver behind that vehicle and activate your

overhead and “takedown” lights. The motorist dutifully responds by pulling off to the side of the road. You pull behind the stopped vehicle, approach the driver and ask him to produce his driving credentials. At this point in the encounter, are you allowed to order the driver to exit the vehicle?

The answer is yes. Under both state and federal law, you are allowed to order the driver of a lawfully stopped vehicle to step out, so long as this can be done safely. See State v. Smith, 134 N.J. 599 (1994). (In New Jersey, the rule is different with respect to passengers, but let us confine our present discussion to the driver.) This particular decision (ordering a driver to exit the vehicle) does not amount to a new, separate intrusion upon Fourth Amendment liberty or privacy rights, and thus does not have legal significance under the Fourth Amendment or its state constitutional analog. For this reason, you are not required to meet any particular standard of proof (such as “articulable facts warranting heightened caution,” “reasonable articulable suspicion” or “probable cause”) before you may order the driver to step out (assuming, of course, that the initial stop was lawful).

But just because you are authorized to order the driver out does not mean that you will actually do that in every case. In the real world, police officers exercise discretion in deciding whether to take advantage of their legal authority to order all drivers to step out.

What factors or criteria will you use in exercising this form of discretion? As we will see in Unit 5, although the decision to order a driver out of a vehicle has no legal significance under the Fourth Amendment, this exercise of police discretion does have legal significance under another constitutional provision: the Equal Protection Clause of the Fourteenth Amendment. Indeed, as we will see, the Fourteenth Amendment right to the equal protection of the laws applies to every police decision.

When asked to explain why they made the choices that they made, officers will often answer that their decision was “based on training and experience.” But saying that one was relying on “training and experience” does not answer the question with any degree of precision. The logical follow-up question, of course, will be what exactly in your training and experience led you to draw the inference you drew, or to make the choice that you made? When an officer is unable to be precise in answering those questions, reviewing courts are more likely to be skeptical, and are more likely to wonder whether the exercise of discretion was based on a hunch or gut feeling that, in turn, may have been based on or at least influenced by an impermissible factor.

The bottom line is that police officers should not have to be thinking twice about the split-second decisions they have to make “on the fly” during an encounter with a private citizen. But officers *do* need you to be thinking *once* about what they are doing, and why they are doing it.

UNIT 5: SETTING LIMITS ON THE EXERCISE OF POLICE DISCRETION: IMPOSING BOUNDARIES AND ERECTING BARRIERS TO PREVENT ABUSES OF DISCRETION

Having established that policing is all about exercising discretion, we must next recognize that it is the role and responsibility of courts to *review* the exercise of police discretion. When doing so, courts will be looking for abuses of discretion, that is, they will try to hone in on decisions made by police officers that were based on inadequate reasons, or that seem to be based upon impermissible reasons.

As we undertake our careful examination of the law of racial profiling and its relationship to the law of arrest, search and seizure, we begin with a candid recognition that as a matter of human nature, no one likes to be second-guessed by others, just as no one likes to have their discretion curtailed, in part because this implies that we have exercised poor judgment in the past and that we cannot be completely trusted to do our job and make good judgments in the future.

Of course, police officers are by no means the only actors in the criminal justice system who routinely have their decisions reviewed (and sometimes criticized) by others. Appellate courts, after all, exist precisely to review the decisions made by trial court judges, and a lower court ruling may be overturned (sometimes in a published opinion) when an appellate court finds that the trial court made a mistake or abused the exercise of judicial discretion.

It is important for law enforcement officers to understand that the Federal and State Constitutions are designed to prevent abuses of power by imposing limits on the authority of the government, including law enforcement. These Constitutions achieve the goal of protecting citizens' civil rights by setting boundaries and by erecting barriers, limiting police discretion.

For example, the Fourth Amendment safeguards the right of *liberty* (the right of freedom of movement and to be left alone by government agents) and the right of *privacy* (the right to keep the government from "peeking, poking or prying" into your personal life, your physical body, your property, homestead and personal effects). It does so by erecting obstacles that can only be overcome when the government is able to meet a certain legal standard or "level of proof." These levels of proof include: "articulable facts warranting heightened caution;" "reasonable articulable suspicion to believe that criminal activity is afoot;" "reasonable articulable suspicion to believe that a person is armed and dangerous;" "probable cause;" "preponderance of the evidence;" "clear and convincing evidence;" and "proof beyond a reasonable doubt." The greater the degree of intrusion on a protected right, the higher the evidential standard the government must meet in order to justify that intrusion.

By way of example, you are not allowed to "seize" or "detain" a motorist or pedestrian (i.e., order him or her to "stop") unless you are aware of facts constituting a "reasonable articulable suspicion" to believe that unlawful activity is occurring. (An observed motor vehicle violation generally satisfies this standard, so that when you observe a motor vehicle violation, you are able to lawfully initiate the stop and briefly detain the vehicle and driver.)

After the stop is initiated, there are many other decisions or steps in the course of the unfolding police-citizen encounter, and some of these decisions involve additional or incrementally greater intrusions on the detained citizen's constitutional rights, requiring you to satisfy other legal tests. During the course of the stop or so-called "investigative detention," for example, you would not be allowed to conduct a protective patdown or "frisk" of the citizen for weapons unless you are aware of facts that satisfy the legal standard for justifying a frisk, that is, reasonable articulable suspicion to believe that this individual may be carrying a weapon.

The key to successfully complying with the Fourth Amendment lies in (1) knowing which level of proof applies to various police decisions, and (2) being able to determine on a case-by-case basis whether you have established an adequate factual basis to satisfy the applicable legal standard.

5.1 Distinct Rights are Defined in Distinct Provisions of the Federal and State Constitutions

The United States Constitution provides only the minimum "floor" of constitutional protections that are afforded to everyone in America. See State v. Hempele, 120 N.J. 182, 197 (1990). The New Jersey Supreme Court is free to interpret our State Constitution to provide people in New Jersey with greater protections, and so the New Jersey Supreme Court is authorized to impose stricter rules for New Jersey law enforcement officers to follow than would apply to federal law enforcement officers, or to police officers in other jurisdictions.

In fact, the New Jersey Supreme Court in recent years has "diverged" from United States Supreme Court precedent on a number of occasions. See State v. Pierce, 136 N.J. 184, 209 (1994) (referring to the "steadily evolving commitment" by our state courts to provide citizens enhanced protections under the New Jersey Constitution). The critical point, of course, is that New Jersey law enforcement officers must know and comply with the stricter rules that have been issued by the New Jersey Supreme Court.

It is also important to understand that private citizens enjoy a number of different and distinct constitutional rights that are codified in different provisions in the text of the United States and New Jersey Constitutions. For example, the Fourth Amendment (and its counterpart, Article 1, paragraph 7 of the New Jersey Constitution of 1947) protects citizens from unreasonable searches and seizures.

The Fifth Amendment guarantees that citizens may not be compelled to incriminate themselves. The Sixth Amendment of the United States Constitution, meanwhile, guarantees, among other things, the right of citizens to the assistance of legal counsel at all important criminal justice proceedings. The combination and interplay of these Fifth and Sixth Amendment rights defines the law of police interrogations, and is the basis for the Miranda rule, which requires police officers to advise citizens of certain constitutional rights before police may lawfully initiate a "custodial interrogation."

The Fourteenth Amendment of the United States Constitution, meanwhile, guarantees, among other things, the right of all persons to the "equal protection of the laws." This particular constitutional right, which is the centerpiece of this training course, ensures that people are not treated differently by the government and its agents on the basis of impermissible or so-called "suspect" criteria, such as race or ethnicity.

Here we can begin to see how the inherent differences between these substantive rights have led courts to develop distinct rules limiting the exercise of police discretion, and distinct ways in which the courts will go about determining whether a given constitutional right was violated. As we have already seen, a court trying to determine whether police respected a person's Fourth Amendment rights will examine the weight to be given a fact or suite of facts needed to justify the police conduct, asking whether those facts add up to satisfy the required "level of proof." (This "adding up" process is literally referred to as the "totality of the circumstances.").

Under the Fourteenth Amendment, the court's analysis will be different. The court will be concerned with whether the officer was allowed to consider a given fact at all. (The fact at issue is the person's race or apparent ethnicity.) Consideration of an impermissible fact, in other words, can taint or "poison" the decision-making process.

Here again we see how courts will address two distinct questions in deciding whether police officers abused their discretion: did the officers rely upon inadequate reasons to justify their decision? (a Fourth Amendment question), and did the officers rely upon an impermissible reason? (a Fourteenth Amendment question).

Note that both Fourth and Fourteenth Amendment legal inquiries may arise in the same court proceeding examining a single encounter between a police officer and a private citizen. Judges are expected to keep the different analytical strands of constitutional law separate, and so are police officers. We will throughout this course examine in detail exactly how reviewing courts will apply the various specific legal standards and rules of police conduct that arise under the various provisions and features of the United States and New Jersey Constitutions. For our present purpose, the key point to understand is that it is possible to violate one of these various constitutional rights, while not necessarily violating all of them at once.

Note, of course, that any constitutional violation could lead to the suppression of

evidence. It is no defense in a suppression hearing that while the officer violated the Fourth Amendment, he or she did not also violate the Fourteenth Amendment Equal Protection Clause. The Fourth Amendment violation by itself is enough to result in the suppression of any evidence that was a "fruit" of the violation. The same is true, of course, when the officer complies with the Fourth Amendment but violates the Fourteenth Amendment.

It is hardly a new idea that law enforcement officers must comply with a suite of separate rules of conduct derived from different parts of the Constitution. It was always understood, for example, that if a police officer makes an unlawful arrest (for example, an arrest that is not based upon probable cause), and the officer proceeds to read the Miranda warnings, any incriminating statement given by the arrestee will be subject to the exclusionary rule, not because the Miranda rule was violated, but rather because the confession will likely be deemed to be a "fruit" of the illegal arrest. In other words, the fact that the officer dutifully complied with the Fifth/Sixth Amendment rules is not enough. Rather, for the statement to be admissible, the State would have to also establish that the underlying arrest that immediately preceded the interrogation and confession was not unlawful under the Fourth Amendment.

The same basic principle applies with respect to the Fourteenth Amendment guarantee of Equal Protection. Consider a case where an officer approaches a citizen under circumstances where the citizen reasonably believes that he or she is free to walk away. This encounter is said to be a mere "field inquiry." See, e.g., State v. Neshina, 175 N.J. 502 (2003). Under the Fourth Amendment, there is no legal standard that the officer must meet before engaging a citizen in this type of consensual encounter. In other words, it is simply not possible for a police officer to violate the Fourth Amendment when he or she initiates a consensual field inquiry. However, if the officer's decision to approach this particular citizen was based on an impermissible reason in violation of the Fourteenth Amendment Equal Protection Clause, the consensual encounter would be deemed by the courts to be illegal, and any results of that encounter (such as any physical evidence discovered or incriminating statement made during the course of the encounter) would be subject to the exclusionary rule. See, e.g., State v. Maryland, 167 N.J. 471 (2001).

In sum, police officers must at all times respect all constitutional rights, whatever their specific source in the text of the United States or New Jersey Constitutions. Each of these constitutional provisions serves a distinct purpose and provides to citizens its own distinct protections.

UNIT 6: WHAT IS RACIAL PROFILING?

Although we have casually bandied about the term "racial profiling" in the preceding Units, we still have not defined it. It is now time to tackle the most fundamental question: what *is* racial profiling? What conduct is prohibited (and permitted) under the Equal Protection Clause of the Fourteenth Amendment and our statewide nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1? When and under what circumstances are police officers permitted to consider a person's race or ethnicity in making decisions and exercising police discretion?

These are not simple or straightforward questions. In fact, they are the source of much confusion and misunderstandings within and outside the law enforcement community and the entire legal profession.

6.1 Distinguishing "*Racial* Profiling" From Legitimate "Profiling"

We begin answering those questions by distinguishing the term "*racial* profiling" -- which is impermissible police conduct -- from "profiling," which is a legitimate and well-accepted law enforcement practice. While "racial profiling" is inappropriate and cannot and will not be tolerated, other forms of "profiling" are perfectly legitimate and must remain an important part of modern police work.

The law is well-settled in New Jersey and throughout the nation that in appropriate factual circumstances, police "may piece together a series of acts, which by themselves seem innocent, but to a trained officer would reasonably indicate that criminal activity is afoot." State v. Patterson, 270 N.J. Super. 550, 558 (Law Div. 1993). As the court in State v. Patterson noted, "it is appropriate and legitimate police work to develop a so-called 'profile' based upon observations made in investigating the distribution or transportation of illicit drugs." Id. Using these and other means, "the police can develop a pattern of criminal wrongdoing that justifies their suspicions when they observe features that are in accord with the principle aspects of that pattern." Id.

In State v. Demeter, 124 N.J. 374 (1991), the New Jersey Supreme Court recognized that "in some situations a police officer may have particular training or experience that would enable him to infer criminal activity in circumstances where an ordinary observer would not." 124 N.J. at 382. This police experience reflects the careful collection of historical and intelligence information, thoughtful crime trend analysis, and an in-depth examination of the specific methods of operation, the so-called "*modus operandi*" of drug traffickers or others engaged in various types of criminal activity. Legitimate law enforcement "profiles" focus on the conduct and methods of operation of criminals, rather than on personal characteristics that individuals cannot change, such as their racial or ethnic heritage.

If there was any doubt about the validity of using "profiles" under New Jersey law,

the New Jersey Supreme Court in State v. Stovall, 170 N.J. 346 (2002), definitively ruled that the characteristics contained in a "drug courier profile" are permissible factors to be considered by police officers as part of the "totality of the circumstances." 170 N.J. at 358.

According to the New Jersey Supreme Court in Stovall:

> A "drug courier profile" is merely a shorthand way of referring to a group of characteristics that may indicate that a person is a drug courier. . . . A "profile" characteristic is a relevant, objective characteristic when exhibited by a particular defendant. There is no reason why the police should not be able to consider that characteristic in formulating reasonable suspicion. There is also no reason why "profile" characteristics that are exhibited by a defendant cannot provide the basis for an investigative detention in the appropriate case. [170 N.J. at 360 (emphasis added)].

That does not mean that a profile will necessarily provide reasonable articulable suspicion much less probable cause to justify a Fourth Amendment liberty or privacy intrusion. Legitimate profiles tend to be rather general in nature and persons who match a *modus operandi* profile may have perfectly innocent explanations for their conduct. As a result, a profile may describe a very large category of presumably innocent persons. While race-neutral profile characteristics are relevant and may be considered as part of the "totality of the circumstances" (along with the rest of an officer's "training and experience"), these profile characteristics are rarely if ever sufficient by themselves to justify a "seizure" of the person, that is, a non-consensual encounter such as an investigative detention (a "stop"). See Reid v. Georgia, 100 S.Ct. 2752 (1984) (*per curiam*). See also State v. Stovall, 170 N.J. 346, 360 (2002) ("[t]he mere fact that a suspect displays profile characteristics does not justify a stop."); State ex. rel. J.G., 320 N.J. Super. 21 (App. Div. 1999) (finding street detention unjustified where the officer's hunch was based on profile factors and not specific overt conduct by defendants); State v. Kuhn, 213 N.J. Super. 275, 281 n.1 (App. Div. 1986) (noting that a vehicle stop and search based solely on the fact that defendant matches a "drug courier profile" would be unconstitutional).

6.2 Inadequate and Misleading Definitions of Racial Profiling

People have very different opinions about the existence, nature and scope of the racial profiling problem in part because we do not all agree what we mean when we use the term "racial profiling." One of the most commonly used definitions of "racial profiling" – the one that is often found in newspaper accounts – is both imprecise and incomplete. Specifically, racial profiling is sometimes described as the practice of "stopping motorists based solely on their race."

That definition steers us off in the wrong analytical direction by limiting the legal inquiry in two important respects. First, this narrow definition suggests that the only police conduct at issue is the initial decision by an officer to "stop" a motor vehicle. The disparate treatment of minorities, however, may extend to a host of discretionary decisions made by police officers before and during the course of routine traffic stops and every other kind of police encounter with a citizen. In other words, our concern is not limited to an officer's initial decision to initiate an investigative detention. In fact, reviewing courts have expressed even more concern with respect to certain discretionary steps that occur after a stop has been made, including, especially, the decision to request a detained motorist to authorize a "consent search." (Note that by this point in an encounter, an officer will usually not be able to argue that he or she was not aware of the outward physical appearance of vehicle occupants.)

Second, the common lay definition presupposes that the officer's decision to stop the motor vehicle must have been based entirely on the motorist's race or ethnicity. The use of the term "solely" suggests that it is somehow permissible for a police officer to take race or ethnicity into account provided that the officer is also considering other race-neutral facts or circumstances.

That approach has been rejected in New Jersey. We have instead adopted a rule that police officers are generally not permitted to consider a person's race or ethnicity *to any extent* in making law enforcement decisions. Under this approach, which we will discuss in more detail in Unit 6.5, racial profiling occurs if a citizen's race or ethnicity was taken into account and contributed to the officer's decision to act or to refrain from acting. Race or ethnicity need not be the "sole" basis for the officer's exercise of discretion. Rather, under the approach that we take in New Jersey, a person's race or ethnicity is deemed to be irrelevant and may not be considered at all as an indicia of criminality or suspiciousness (except when deciding whether the person matches the physical description set out in a suspect-specific "Be-on-the-Lookout" or "B.O.L.O." situation – an exception that we will discuss in detail in Unit 9).

6.3 Embracing a More Precise and Comprehensive Term: "Racially-Influenced Policing"

Harvard Law School Professor Randall Kennedy, one of the foremost experts on the racial profiling controversy, has described the concept of racial profiling as using race as a factor in deciding whom to place under suspicion and/or surveillance. In other words, racial profiling means using race or ethnicity as an indicator or predictor of criminality. Randall Kennedy, Race, Crime and the Law (1998).

Some courts and commentators have also used the phrase "racial targeting" to refer to the illegal practice that is the subject of our concern today. See, e.g., State v. Segars, 172 N.J. 481 (2002) (*per curiam*). That phrase is more accurate and descriptive than the term "racial profiling" in that it does not suggest that law enforcement officers must be

relying on any formal "profile" or catalog and compilation of predictive factors. Rather, the phrase "racial targeting" would also embrace using visceral, ad hoc stereotypes to focus police attention on any particular individual or group of citizens based on racial or ethnic characteristics.

Several years ago, experts at the Police Executive Research Forum coined the phrase "racially biased policing." Police Executive Research Forum, Racially Biased Policing: A Principled Response (2001). This is a vast improvement over the ambiguous term "racial profiling." Even so, the phrase "racially biased policing" might be seen as implying that only biased or bigoted police officers engage in this prohibited practice. One of the critical principles that we will discuss in Unit 7 is that an officer need not be a racist or bigot to be influenced by racial stereotypes. An officer who is not a racist might still unwittingly or even subconsciously rely upon racial classifications and stereotypes that could influence the officer's exercise of discretion.

For all of these reasons, the phrase "racially-influenced policing" may represent the most accurate and complete description of the problem. Racially-influenced policing simply means allowing a person's race or ethnicity to influence an officer's exercise of discretion – in other words, using race as a factor in making police decisions. In virtually all circumstances (with a notable exception involving "B.O.L.O." (Be on the Lookout) situations), this is inappropriate as a matter of law and sound law enforcement policy.

We must recognize, of course, that all of these phrases are too limited if we were to narrowly define the component term "race" to refer only to formal racial classifications. According to the United States Census Bureau, "Hispanic" heritage is not a racial classification. So too, saying that a person is a "Columbian," for example, does not describe the person's race. Accordingly, throughout this course, when we use the term "racially-influenced policing," we include any situation where a person's ethnic background or national origin is used as a factor in drawing inferences or in exercising police discretion.

6.4 Recognizing That Different Definitions and Rules of Police Conduct are Sometimes Used in Other Jurisdictions

Although the basic rules and definitions that we will use in New Jersey are clear and straightforward, we must acknowledge that there is widespread disagreement within the nation's legal community as to exactly what kind of police conduct is prohibited under the Equal Protection Clause.

One need not be a constitutional scholar to understand that a person's race and ethnicity cannot be the sole basis for initiating a motor vehicle stop. On that point, everyone seems to agree. However, the law in some other jurisdictions is far less clear with respect to whether there are any circumstances (besides a so-called "B.O.L.O." situation that we will discuss in Unit 9) when police may legitimately consider race or ethnicity when drawing inferences about criminal activity.

Some courts have suggested that in at least certain circumstances, race or ethnicity may be considered as one among an array of factors that police may use to infer that an individual is generally more likely than others to be engaged in criminal activity. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (Federal agents could take suspect's apparent Mexican ancestry into account when searching for illegal aliens near the United States-Mexico border); United State v. Weaver, 966 F.2d 391 (8th Cir. 1992), cert. den. 507 U.S. 1040 (1992) (Drug Enforcement Administration agent was allowed to use race as part of an "airport profile" when looking for gang members from Los Angeles who were "flooding the Kansas City areas with cocaine"). Sometimes this is referred to as "soft" racial profiling, in contrast to "hard" racial profiling where race is the sole reason relied upon by police officers for exercising discretion.

This is an unsettled and evolving area of federal Equal Protection law, and federal courts are struggling to figure out just what the rule is for police. Recently, a Federal Appeals Court in the case of Farm Labor Organizing Committee v. Ohio State Highway Patrol, 308 F.3d 523 (6 Cir. 2002), rejected the reasoning that had been used by some other federal courts which had said that police could consider race in drawing inferences of suspicion so long as race was not the sole factor. 308 F.3d at 538. The Court in Ohio State Highway Patrol warned that "constitutional liability is not limited to instances in which an impermissible purpose was the sole motive for an adverse action." Id. at 539. The court ultimately concluded that if the police would have treated a person differently if the person had been of a different race or ethnicity, then race or ethnicity was a causal factor in the exercise of police discretion, in violation of the Fourteenth Amendment Equal Protection clause. Id.

On June 17, 2003, the President and the United States Attorney General issued racial profiling guidelines to all federal law enforcement officers. The federal policy, like the approach we use in New Jersey, generally prohibits any consideration of race or ethnicity. While the United States Attorney General was careful to note that the federal racial profiling policy goes beyond the requirements of federal constitutional law, it is nonetheless conceivable that these guidelines will influence federal courts in deciding ultimately what law enforcement conduct is acceptable, and may well provide a national benchmark against which state and local police agencies will be measured.

The federal policy guidelines specifically provide in pertinent part that:

> In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may *not* use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists. This prohibition applies even where the use of race or ethnicity might otherwise be lawful . . . . Federal law enforcement agencies and officers sometimes engage in law enforcement activities, such as traffic

> and foot patrols, that generally do not involve either the ongoing investigation of specific criminal activities or the prevention of catastrophic events or harm to the national security. Rather, their activities are typified by spontaneous action in response to the activities of individuals whom they happen to encounter in the course of their patrols and about whom they have no information other than their observations. These general enforcement responsibilities should be carried out without *any* consideration of race or ethnicity. (emphasis in original).

6.5 The Legal and Policy Basis for the New Jersey Rule That Generally Prohibits *Any* Consideration of Race or Ethnicity

While it is not certain how the legal debate will eventually play out in federal courts, it is a good bet that New Jersey courts would never tolerate "soft" racial profiling. In State v. Kuhn, 213 N.J. Super. 275 (App. Div. 1986), the New Jersey Appellate Division concluded that police are not permitted to draw any inferences from a suspect's race. The court in State v. Patterson, 270 N.J. Super. 550 (Law Div. 1993), was even more forceful on this point, observing that, "certainly the police could not conclude that all young, male African-Americans are suspected of involvement in the illicit drug trade. Therefore, an individual's race cannot be considered at all when conclusions are reached or assumed as to a 'profile' suggesting criminal activity." 270 N.J. Super. at 559 (emphasis added).

The general rule that we have adopted in New Jersey – prohibiting law enforcement officers from using race or ethnicity as a factor in determining the likelihood that a person is engaged in criminal activity -- makes sense from a practical perspective because it is unambiguous and thus will help police officers to avoid many of the legal pitfalls and landmines that would arise were they to try to build race or ethnicity into the equation of suspiciousness.

To understand this, let us re-examine the earlier scenario where an officer on patrol observed three motor vehicles that were all traveling at the same speed in excess of the speed limit. As we saw, under the Fourth Amendment, the officer would be justified in stopping any one of these vehicles based on an observed motor vehicle violation. But what if the officer, forced to pick only one, were to choose one of them because that vehicle was being driven by a minority citizen. In those circumstances, the officer could honestly say that race was not the "sole" reason for the stop. Indeed, the principle "reason" for the stop was the observed motor vehicle violation.

Were we to have a rule that permitted race to be considered as long as it was not the sole basis for the exercise of police discretion, then that particular situation would be ambiguous; the rule, in other words, would not be clear in this case, and police officers would be forced to guess at their peril whether reviewing courts might deem this conduct

to be unlawful.

Let us consider another scenario to further explain why the New Jersey policy prohibiting racially-influenced policing is not limited to cases where race or ethnicity was the "sole" factor relied upon by police in drawing inferences of criminality or in exercising discretion. Suppose that a local police department is trying to address the problems that are being caused by an "open air" drug market, which is attracting would-be purchasers from surrounding neighborhoods and communities. The open air drug market is displacing legitimate businesses and eroding the quality of life for law abiding residents in the area.

The police are frustrated because the traditional strategy of targeting the drug dealers is not working; these street-level dealers are replaced as soon as they are arrested, and many of those who are arrested make bail and return almost immediately to the open air market or else return after serving only a short stint in jail or prison. The police therefore want to try a different approach; they hope to deter the prospective drug purchasers from coming to this neighborhood, thereby cutting off the source of revenue that sustains the local drug market.

In furtherance of that policy, the police department carefully analyzes crime data, arrest reports and intelligence information and determines that a significant proportion of the persons who have been arrested in this area for purchasing drugs were college-aged Caucasian students who attend a nearby college. Arrest reports show that many of these offenders traveled in pairs in passenger cars from the college campus to the open air drug market on Friday and Saturday nights between 9 to 12 p.m. Based upon this historical information, patrol officers are instructed to watch out for persons heading in the direction of the open air market who match these characteristics. (Note that although patrol officers are instructed to "look out" for persons matching these general characteristics, this instruction does not satisfy the "B.O.L.O." (Be on the Lookout) situation that we will consider in Unit 9 because in this instance, the alert is very general and does not relate to *specific* individuals who are being sought.)

In essence, the police department has devised a "profile," that is, a compilation of characteristics believed to be typical of persons who are about to purchase illicit drugs. While all of these characteristics are innocent, when considered in combination they are also consistent with criminal activity. The distinct components of this "drug purchaser profile" can be broken down and enumerated as follows: (1) college-aged; (2) Caucasian; (3) students enrolled in the nearby college; (4) who are traveling in pairs; (5) in passenger cars; (6) traveling from the direction of the college; (7) to a particular location; (8) on Friday and/or Saturday nights; (9) between the hours of 9 to 12 p.m.

Any such "profile" would not establish reasonable articulable suspicion to justify an investigative detention under the Fourth Amendment. This profile, after all, describes a large category of presumably innocent motorists. See Reid v. Georgia, 100 S.Ct. 2752

(1984) (*per curiam*). As we discussed in Unit 6.1, under the Fourth Amendment, police may nonetheless devise and use a compilation of characteristics which may be considered as part of the so-called "totality of the circumstances."

In this instance, however, the "profile" expressly includes a consideration of race (enumerated Factor #2). If a police officer were to consider race in deciding whether a motorist "matches the profile," and were in any way to treat this motorist differently than one who does not match this particular profile characteristic, then such police conduct (whether undertaken as a matter of official departmental policy or as an ad hoc decision made by an individual officer) would constitute racially-influenced policing in violation of the statewide policy prohibiting discrimination set forth in Attorney General Law Enforcement Directive 2005-1.

The key point for our present purposes is that this would be true even though race was by no means the "sole" fact relied upon to draw an inference of suspiciousness. Indeed, in this scenario, race was only one of at least nine distinctly enumerated characteristics that comprised the drug purchaser profile. Were we to have a rule that permitted race to be considered as long as it was not the sole basis for the exercise of police discretion, then police departments and officers would be allowed to construct just such a race-conscious profile, which is simply not the law. See State v. Patterson, 270 N.J. Super. 550, 559 (Law Div. 1993) ("[r]ace cannot be considered at all when conclusions are reached or assumed as to a 'profile' suggesting criminal activity.").

6.6 The "Strict Scrutiny" Test When Race or Ethnicity is Considered by Police

Attorney General Law Enforcement Directive 2005-1, which generally prohibits police from considering a person's race or ethnicity as a factor in drawing inferences of criminality or in exercising police discretion, is consistent with the general rule that when a government agency or agent explicitly relies on a so-called "suspect classification" (such as race or ethnicity) in deciding to treat persons differently, that governmental decision is subject to what is called "strict scrutiny" under the Fourteenth Amendment Equal Protection Clause. See Phyler v. Doe, 457 U.S. 202, 216-17 (1982). See also Farm Labor Organizing Committee v. Ohio State Highway Patrol, 308 F.3d 523, 534 n.4 (6 Cir. 2002) (when a State adopts explicit racial criteria, strict scrutiny will automatically be applied to the challenged government action under equal protection analysis, even in the absence of a discriminatory purpose).

The strict scrutiny test is the most intense level of judicial review found in our entire system of justice. According to Harvard Law School Professor Randall Kennedy:

> Under strict scrutiny, a racially-discriminatory governmental action should be upheld only if it can be supported by reference to a *compelling* justification and only if the government's racial distinction is narrowly tailored to advance the project at hand. When a court administers strict scrutiny, it shines an intense spotlight on the governmental decisionmaking at issue in order to uncover any covert or unconscious racial biases at work. Strict scrutiny embodies a recognition, born of long and terrible experience, that the presence of a racial factor in decisionmaking should raise anxiety and signal that the government is likely to be doing something wrong. (emphasis in original) [Randall Kennedy, Race, Crime and the Law (1998) at 147.]

Note that under the strict scrutiny test, it is not enough that the government seeks to advance a compelling State interest. Rather, the government agency seeking to rely on race or ethnicity to differentiate between how people are to be treated also bears a heavy burden of establishing that the method chosen to accomplish the compelling objective is "narrowly tailored." This means that the government agency will be expected to consider whether there are any better, less intrusive and less offensive means to achieve the compelling objective other than by taking race or ethnicity into account.

For all practical purposes, once the strict scrutiny standard of review is invoked, the government can rarely overcome this legal hurdle. This is especially likely to be true when the government is really relying on generalized or "broad brushed" stereotypes about who is more likely to be involved in common criminal activity such as drug distribution, burglary or auto theft. Indeed, as a general proposition, the inherent breadth and generality of racial

or ethnic stereotypes is fundamentally inconsistent with the "narrowly tailored" prong of the two-part strict scrutiny test.

6.7 Official Deprivation of Civil Rights

The New Jersey Legislature recently created a new crime entitled "official deprivation of civil rights." This new statute, found at N.J.S.A. 2C:30-6, supplements pre-existing offenses such as "Official Misconduct," N.J.S.A. 2C:30-2, and "Bias Intimidation," N.J.S.A. 2C:16-1.

Some law enforcement officers had at first expressed concern that some of the language in the legislative declaration of policy and findings might be interpreted to prohibit law enforcement officers from initiating investigative stops based upon information contained in a B.O.L.O. ("Be on the Lookout") description that includes the race or ethnicity of a specific suspect or wanted person. The Attorney General, as the State's chief law enforcement officer and prosecutor, issued an official statement – one that is binding on the Division of Criminal Justice and all county prosecutors – making clear that the new law in no way prohibits police officers from relying on a "B.O.L.O." description that includes a racial or ethnic "identifier" of the person or persons who are being sought. (In Unit 9, we will consider in detail the so-called "B.O.L.O. exception" to the general rule in this State that police may not use race or ethnicity in drawing inferences of criminality or in exercising police discretion.)

Once the Attorney General's official interpretation was issued, the legislation creating the new offense of official deprivation of civil rights gained the support of police chiefs and police unions, reflecting the unified commitment of the New Jersey law enforcement community to condemn discriminatory policing practices.

The new offense of official deprivation of civil rights is committed when:

> A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringements of personal or property rights; or (2) denies or impedes another in the lawful exercise of enjoyment of any right, privilege, power or immunity.

Note that this new crime requires proof that the government official acted with the

purpose to intimidate or discriminate against an individual based on any of the listed personal characteristics. Furthermore, this crime is committed only when the public servant knows that his or her conduct is unlawful. Under most criminal statutes, "ignorance of the law" is generally no defense. In the context of this particular offense, however, the crime is not committed unless the officer actually knows that his or her conduct is unlawful.

The new statute makes clear, however, that preparing a false report, or failing to prepare a report that was required to be prepared, gives rise to an inference that the officer knew that his or her action was unlawful. See N.J.S.A. 2C:30-6d. Lying about what happened, in other words, or failing to prepare a required report, can be enough to establish that the officer knew that his or her conduct was unlawful, and then lied about it or otherwise tried to conceal the wrongdoing.

This new crime is designed to address one of the most serious forms of discriminatory policing, involving what is essentially deliberate misconduct. In other words, this new offense requires a much higher degree of culpability than merely miscalculating the facts necessary to establish reasonable articulable suspicion or probable cause, or misapplying one of the elements of a recognized exception to the warrant requirement. While the New Jersey Supreme Court has ruled that under the State Constitution, there is no "good faith exception" to the exclusionary rule, see State v. Novembrino, 105 N.J. 95 (1987), for purposes of this new criminal statute, a police officer could not be convicted merely for making a good faith mistake. In other words, the fact that a reviewing court in a motion to suppress evidence determines that an officer's conduct was unlawful (thus warranting invocation of the exclusionary rule), does not necessarily mean that the officer has committed this new crime.

It is also critically important to understand that the statewide policy banning racially-influenced policing is broader in scope than this new criminal statute. This legislation reflects the sound policy that the criminal prosecution of a government official should be reserved for the most serious forms of intentional discrimination and the knowing disregard of the rule of law by those who are sworn to uphold the law. The statewide non-discrimination policy set forth in Attorney General Law Enforcement Directive 2005-1 goes further and, as we will discuss more fully in Unit 7, prohibits certain police conduct without regard to whether officers are acting in good faith or in bad faith.

The point is simply that while all violations of this new crime would obviously constitute a violation of both Attorney General Law Enforcement Directive 2005-1 and the Equal Protection Clause of the Fourteenth Amendment, not all violations of the policy prohibiting racially-influenced policing would constitute "official deprivation of civil rights" within the meaning of the new criminal statute. In other words, for the reasons we will discuss more fully in Unit 7, it is certainly possible to violate the Equal Protection Clause of the Fourteenth Amendment (and the statewide policy prohibiting racially-influenced policing) without also committing this new offense.

UNIT 7: REPUDIATING THE MYTH THAT ONLY RACISTS ENGAGE IN

RACIAL PROFILING

In Unit 6.2, we noted that one of the most common (and inadequate) definitions of racial profiling requires that a motorist be stopped based solely on his or her apparent race or ethnicity. The misguided notion that racial profiling occurs only when race is the "sole" basis for police action has helped to perpetuate one of the greatest myths and misunderstandings about the racial profiling problem, namely, the idea that racial profiling is practiced only by "racist" law enforcement officers or agencies.

Needless to say, if any officer were to pull over a vehicle solely because of the race of the driver – in other words, in a case where the vehicle was not observed to have committed any violations – then we would all agree that this would seem to constitute nothing short of racist harassment. This mode of analysis has mislead some into believing that racial profiling is only practiced by bigoted law enforcement officers.

To understand the nature and root cause of the confusion, we must begin by understanding what it really means to say that the Fourteenth Amendment Equal Protection Clause bans "purposeful discrimination."

In common parlance, the word "discriminate" implies active bigotry. The verb "discriminate," however, need not necessarily be synonymous with the verbs "intimidate" or "harass." Rather, when used in the context of a Fourteenth Amendment Equal Protection claim in a civil action or a motion to suppress evidence, the word "discriminate" essentially means to "differentiate," that is, to explicitly distinguish between two or more persons or things based on some distinguishing characteristic. In our present context, that means to differentiate people based on the distinguishing characteristic of their race or apparent ethnicity. (As we will see, the bedrock principle underlying the Equal Protection Clause is that the government may not treat people differently on account of their race or ethnicity.)

Accordingly, when the courts say that the Fourteenth Amendment Equal Protection Clause prohibits "purposeful discrimination," they really mean that government actors may not intentionally rely on an impermissible or so-called "suspect" or "invidious" distinguishing characteristic such as race or ethnicity. They do not necessarily mean that the government official must have acted with malice, intended to cause harm, or deliberately violated the Constitution. Compare Farm Labor Organizing Committee v. Ohio State Highway Patrol, 308 F.3d 523, 534 n.4 (6 Cir. 2002) (when police explicitly rely on racial criteria, strict scrutiny analysis will apply even in the absence of a discriminatory purpose). (Note that the nondiscrimination policy established in Attorney General Law Enforcement Directive 2005-1 is designed to eradicate even inadvertent or subconscious discrimination, going beyond the minimum requirements of Equal Protection law.)

It is instructive to note in this regard that in State v. Patterson, 270 N.J. Super. 550 (Law Div. 1993), the court ultimately concluded that the officer had devised and relied upon an unconstitutional racial profile. The trial court went out of its way to point out that it "clearly and convincingly appeared that [the officer] is not a racist." Id. at 553, 559. In that case, the court found that the officer has "testified in a most credible fashion" and was

clearly not a racist, even as the court concluded that the officer had engaged in impermissible racial profiling warranting invocation of the exclusionary rule.

In sum, a law enforcement actor need not have any ill will or malice toward a person or group of persons before it can be said that the officer has violated the statewide policy prohibiting discriminatory policing set forth in Attorney General Law Enforcement Directive 2005-1. Indeed, an officer can certainly violate the Directive and the Equal Protection Clause of the Fourteenth Amendment without being guilty of a "bias crime," which requires that the actor have a "purpose to intimidate" another on the basis of the victims' race, ethnicity or certain other distinguishing characteristics. See now N.J.S.A. 2C:16-1 (defining the offense of "bias intimidation"). While all "bias crimes" are, of course, a form of purposeful discrimination, not all forms of purposeful discrimination constitute a bias crime. In other words, it is possible to violate the Fourteenth Amendment Equal Protection Clause and the statewide policy prohibiting racially-influenced policing without committing the crime of "bias intimidation." By the same token, as we discussed in Unit 6.7, a person can violate the Fourteenth Amendment Equal Protection Clause without committing the new crime of "official deprivation of civil rights," which requires proof that the actor actually knows that his or her conduct is illegal.

The widespread misconception that only racists would engage in "racial profiling" helps to explain why so many departments and officers adamantly deny that they have ever engaged in or tolerated the practice. If your definition of "racial profiling" includes a requirement that the officer be a bald-faced racist, then you probably believe that the practice of racial profiling is despicable, but rare. Indeed, some officers probably believed that there is no reason for them to participate in this statewide training program since they could not possibly be guilty of racial profiling simply because they are not racists.

But the problem that we must candidly and aggressively confront goes well beyond racist harassment. Indeed, if that were the only problem that we needed to address, our task in this course of instruction would be much easier.

This is not at all to say that racism is not a problem within the law enforcement community, or to suggest that there are no law enforcement officers in New Jersey who are bigoted. Our profession is certainly not immune from the societal problem of prejudice, any more than we are immune from any other problem that exists in our society, including alcoholism and substance abuse, depression, and domestic violence. Indeed, no group or profession, however noble their calling, is immune from these problems.

The point, however, is that the problem of prejudice that we need to understand and address as a professional community is too complex to be solved simply by blaming a group of renegade officers or so-called "bad apples." Indeed, the steps that we need to take to address the problem go far beyond identifying or weeding out those applicants, recruits, or sworn officers who harbor racist ideas and who would willingly if not eagerly allow their ingrained racism to influence the exercise of their discretion.

We should step back at this point to consider one of the unfortunate byproducts of the myth that only racists engage in racial profiling, namely, the wedge that has been driven between cops and prosecutors, and between line officers and their superiors. If the problem of selective enforcement was limited to racist police officers, then a finding by a court (or by a prosecutor or a police executive) that an officer had engaged in selective enforcement would be tantamount to a finding that the officer in question was a racist. The officer's friends and colleagues, believing this to be untrue, would be frustrated and angry because they would conclude that their colleague had been falsely accused and unfairly branded. Those officers would soon lose confidence in their supervisors, in prosecutors, and in the entire criminal justice system all because they would be operating under the misconception that racial profiling is tantamount to racism, and that a claim of racial profiling is essentially a claim that an officer is a racist.

In reality, the problem of racially-influenced profiling is exceedingly complex, and even subtle. It is true that racial profiling is a form of "prejudice" in the literal since that it involves "pre judging" a person based on skin color. But one need not be a racist to rely on racial stereotypes that lie at the very heart of the racial profiling problem. A minority law enforcement officer may be just as likely as his non-minority colleague to rely on a popular stereotype, especially one that is repeatedly broadcast in the news and entertainment media.

The real problem that we need to address – and the reason that this training course is so complicated and challenging – is that most examples of racial profiling actually do not involve overt racism or bigotry, but rather involve subtle or even subconscious reliance on race as a factor in drawing inferences and exercising police discretion. This is most likely to occur when police officers rely on a "gut feeling" or an "inarticulable hunch" in deciding what to do next. Indeed, reliance upon racial stereotypes is much more likely to occur when officers are not carefully thinking about why exactly they are doing what they are doing.

In Unit 13, we will discuss this particular aspect of the problem in the context of the need for officers to clearly articulate and document the reasons for the exercise of police discretion. For now, it is enough to note that officers cannot simply assert that they do not engage in racial profiling because they are not bigots or racists. Subtle discrimination is still discrimination, and has the same negative effects on the relationship between police and minority communities. The New Jersey law enforcement community must be committed to enforcing a policy to eradicate all forms of discrimination, whether subtle or obvious or intentional or inadvertent.

PART II APPLYING THE RULE PROHIBITING "RACIALLY-INFLUENCED POLICING"

UNIT 8: THE BASIC NON-DISCRIMINATION RULE IN A NUTSHELL

The policy in New Jersey prohibiting racially-influenced policing may be simply stated. Except when you are responding to some type of a suspect-specific or investigation-specific B.O.L.O. ("Be On The Lookout") situation, you are prohibited from considering a person's race or ethnicity to any degree in drawing inferences that this person may be involved in criminal activity, or in exercising any form of police discretion with respect to how you will deal with that person.

Obviously, police officers are human beings, not computers. We cannot be programmed to simply ignore a bit of information from our "active memory." When officers are dealing with citizens at close quarters, they cannot help but see the race or readily apparent ethnicity of those citizens. The real issue, therefore, is how you choose to use that piece of information in drawing inferences and deciding what actions to take based upon all of the information known to you.

Accordingly, the rule is not that you must disregard a citizen's race or apparent ethnicity, pretending as if the person's outward appearance was invisible to you. Rather, the rule is that you may not use that information as an indicia of suspiciousness except when you are trying to decide whether this individual may be a particular person who is described in a wanted or "B.O.L.O." bulletin or situation.

Here is a simple way to test whether your exercise of discretion was impermissibly influenced by race or ethnicity in violation of Attorney General Law Enforcement Directive 2005-1: ask yourself, if the race or ethnicity of the citizen had been different, would you have made the same decision, drawn the same inference, harbored the same suspicion or undertaken the same course of action? If the answer to all of these questions is yes, then race or ethnicity played no contributing role in the exercise of police discretion, and our rule prohibiting police discrimination would not have been violated. If, however, the answer to any of these questions is no, meaning that you would have treated this person differently had he or she been of a different racial or ethnic background, then racial or ethnic characteristics contributed to and influenced your decision-making process, in violation of the statewide policy prohibiting racially-influenced policing.

We can now reduce the cardinal principle of this course of instruction to a very simple and practical rule of thumb: rather than considering people's racial or ethnic heritage -- features persons are born with and cannot change -- you should instead be focusing on their conduct, that is, what they are doing, or saying.

8.1 When Clothing or Manner of Dress May be Considered to be a Form of Conduct

In some circumstances, a person's manner of dress may also be relevant and can be considered to be a form of expressive "conduct." By way of example, if, based on your training and experience, you recognize that an individual is wearing clothing, jewelry, or

bearing tatoos consistent with membership in a particular criminal organization (in other words, "flying the colors" of a particular street gang), you may certainly take that information into account in determining how you will exercise your discretion in investigating whether that individual is actually involved in criminal activity. In Unit 10, we will consider the gang problem in more detail. For the moment, the critical point is that you may not consider physical characteristics that individuals are born with and cannot change, such as their racial or ethnic heritage, in deciding whether they are more likely than others to be engaged in criminal activity.

Police officers must always be cautious and circumspect in drawing any inferences of suspiciousness from a person's physical appearance. As a general rule, an officer should not consider physical characteristics such as manner of dress, length or style of hair, etc. (other than when determining whether a person matches a description in a "B.O.L.O.") unless the officer can identify and describe the manner in which those personal characteristics are directly and specifically related to particular criminal activity.

When, for example, an officer is aware that a particular local gang or other criminal organization expects its members to display a particular kind of attire, and the officer sees a person wearing just such attire, then the officer may properly consider those observed personal characteristics in inferring whether the person is, in fact, associated with this particular gang. In that event, the officer would be able to identify and describe the manner in which the observed personal characteristics (clothing) are directly and specifically related to a particular form of criminal activity, and would do so by recounting the specific training or experience that taught the officer that the particular manner of attire that was observed is consistent with the customs and practices of this particular gang.

It is important to restate, however, that it is another question entirely whether an officer's observation of a person's physical appearance satisfactorily establishes a basis under the Fourth Amendment to believe that the individual is in fact associated with a particular gang, or is presently engaged in criminal activity. By way of example, and at the risk of stating the obvious, the overwhelming majority of persons who wear an article of red clothing are not "Bloods," and the overwhelming majority of persons who wear an article of blue clothing are not "Crips." Our discussion at this point focuses only on *whether you are allowed* to consider outward appearance characteristics of this nature, and not on *how much weight* should be given to these race-neutral physical characteristics in determining on a case-by-case basis whether there is a reasonable and articulable suspicion to believe that a person is engaged in criminal activity.

In contrast to the gang "colors" scenario we just considered, it would be inappropriate for a police officer to deduce from a person's old, tattered or shabby clothing that the citizen is more likely to be a criminal. Any such inference would be based on nothing more than a broad-brushed stereotype, namely, that the observed manner of dress suggests that the person is poor, and by, virtue of economic status, is more likely than others to be engaged in general criminal activity. That is exactly the kind of offensive,

stereotype-driven reasoning that courts in New Jersey will not tolerate under either Fourth or Fourteenth Amendment analysis.

Finally, as we will consider in more detail in Unit 18, except when responding to a suspect-specific "B.O.L.O." situation, police officers in this State may not draw any inferences of suspiciousness from the fact that a person is wearing attire that is commonly associated with the expression of religious beliefs or religious affiliation. Thus, for example, you are not permitted to infer from a person's religious garb that he or she may be an Islamic terrorist.

8.2 The Basic Non-Discrimination Rule Applies to **All** Police Decisions

It is critically important to understand that our basic nondiscrimination rule applies to every police decision and to every conceivable step during the course of a law enforcement officer's interaction with an individual or group of individuals, and not just those decisions that trigger a Fourth Amendment legal standard (such as an investigative detention, a frisk, an arrest or a search).

Obviously, an officer may not consider to any degree the person's race or ethnicity in deciding whether to initiate a motor vehicle stop, or to initiate a true "Terry" stop. But this rule also applies to the exercise of police discretion even before an officer makes a decision to initiate an investigative detention. For example, it is improper for a police officer to consider an individual's race or ethnicity in deciding whether to conduct a motor vehicle lookup (i.e., "run the plates") of a vehicle that the individual is in, even though this type of police scrutiny does not intrude upon any of the recognized Fourth Amendment rights and so may be performed by police officers without first having to meet any of the traditional Fourth Amendment standards of proof, such as reasonable articulable suspicion or probable cause. See State v. Segars, 172 N.J. 481 (2002)(*per curiam*).

Furthermore, the basic rule prohibiting racially-influenced policing applies to every police decision that might occur after an officer makes the decision to initiate an investigative detention or any other kind of encounter with a private citizen.

In sum, the general prohibition against using race or ethnicity to any degree in deciding how a law enforcement officer should act with respect to a particular individual applies to every conceivable decision that the officer can make, including but not limited to:

- the decision to "run the plates" of a vehicle;
- the decision to approach an individual and to initiate a consensual "field inquiry,"
- the decision to initiate an investigative detention;

- the decision to order a driver or passenger to exit from a lawfully detained vehicle;

- the decision to conduct a protective frisk for weapons;

- the decision to pose probing or "accusatorial questions" during the course of a consensual "field inquiry" or a routine motor vehicle stop;

- the decision to run an outstanding warrant check or to conduct a criminal history lookup;

- the decision to ask an individual for permission to conduct a consent search;

- the decision to summon a drug detection canine to the scene;

- the decision to issue a ticket rather than to issue a written or oral warning; and

- the decision to make a custodial arrest rather than to issue a summons on the scene.

8.3 Police are Prohibited from Targeting Persons For Enhanced Scrutiny Based on Race or Ethnicity, Not From Targeting Places For Enhanced Scrutiny Based on Crime Patterns

When police detain or arrest a large proportion of minority citizens, some people may argue that this statistic automatically constitutes "disparate treatment" and proof of impermissible discrimination. This is not always a fair conclusion. Sometimes, what might appear at first glance to be a "discriminatory effect" (the high proportion of arrestees who are minority citizens) is actually the result of perfectly legitimate, *race-neutral* law enforcement decisions, such as when police respond to reported crimes in urban neighborhoods that happen to be comprised predominantly of minority residents. In Unit 16, we will discuss more fully the complex role that statistics play in the racial profiling controversy, and we will consider, for example, the importance of identifying appropriate statistical "benchmarks" to measure the impartiality of police decisions. For present purposes, the critical point is that police are permitted to rely upon race-neutral criteria in exercising discretion or deploying personnel, even when this happens to result in the arrest or detention of a comparatively large number of minority citizens.

The basic rule under Attorney General Law Enforcement Directive 2005-1 is that police may not consider race or ethnicity as a factor in targeting individuals for enhanced police scrutiny or in drawing an adverse inference of suspiciousness about those

individuals. That rule in no way restricts the authority of officers or agencies to target crime-plagued neighborhoods for enhanced law enforcement attention and enforcement actions (e.g., "saturation" patrol), even though such enhanced enforcement activity is likely to result in the detention and arrest of a comparatively high proportion of minority citizens, reflecting the racial composition of the high-crime neighborhood that is the subject of special attention. As a matter of common sense, police are permitted to respond to a rash of crimes reported at particular locations, just as they are allowed to pursue leads in a particular investigation. See Unit 9.2.

As will be noted in Unit 17.1, when law enforcement officers are deployed in an area that happens to have a comparatively large minority population, it is reasonable to expect that the officers patrolling in that neighborhood will interact with a correspondingly high percentage of minority citizens. So too, it could be expected that a large proportion of the persons arrested in that particular neighborhood will be minority offenders or fugitives, reflecting those persons who are present in the area. (Note that those minority offenders will tend to prey upon a correspondingly large proportion of minority *victims*, again reflecting the racial and ethnic composition of the resident population of that particular area. Those law abiding minority citizens, in turn, are the beneficiaries of the enhanced and targeted enforcement efforts.)

When police respond in this way to reported crimes, they simply are not relying on anyone's race or ethnicity to draw adverse inferences or to make policing decisions. Using empirical data to focus law enforcement efforts at particular locations must not be confused with the *in*appropriate use of empirical data that we will consider in Unit 16.1, where we will examine why police in this State are flatly prohibited from using aggregate arrest or conviction statistics to infer that a particular individual or group of individuals of a given race or ethnicity is more likely to be engaged in criminal activity because other persons of that race or ethnicity happen to have been arrested or convicted.

In sum, it is perfectly appropriate for police to use arrest reports and other historical and intelligence information to identify specific locations where the crime problem is particularly acute. This form of empirically-based resource allocation is a critical part of modern policing strategies, and is one of the key features of COMSTAT – a proven crime analysis and management tool designed to reduce crime and violence and enhance the quality of life for the law abiding residents of the targeted districts.

UNIT 9: THE "B.O.L.O. EXCEPTION:" USING RACE OR ETHNICITY WHEN LOOKING FOR SPECIFIC INDIVIDUALS

9.1 Using Race or Ethnicity to Describe and Identify Specific Persons Who Are Being Sought by Law Enforcement

It is important to discuss at some length the notable exception to the general rule that prohibits a police officer in New Jersey from considering an individual's race or ethnicity in exercising police discretion. No one disputes that police are permitted to take a person's race or ethnicity into account when trying to determine whether that person is an individual who was specifically described in a "wanted" or "be on the lookout" bulletin. In this instance, race or ethnicity is being used only as a means of identifying a known suspect. As Harvard Law School Professor Randall Kennedy has noted:

> In such a case, the person's skin color is being used no differently than information about the pants or jacket or shoes that the suspect was said to be wearing. When used as part of a detailed description to identify a given individual, the person's race is not so much a category that embraces a large number of people as a distinguishing fact about the identity of a designated person. [Randall Kennedy, Race, Crime and the Law (1998) at 137-38 (unnumbered footnote).]

Accord, State v. Stovall, 170 N.J. 346 (2002), where the New Jersey Supreme Court concluded that the identification of the suspects in that case as Hispanic was only that -- an identification.

Recall that in Unit 6.6, we discussed the so-called "strict scrutiny" test that is used by reviewing courts when the government intentionally relies on a "suspect classification," such as race or ethnicity. Under the "strict scrutiny" standard of review, the government must establish that it is pursuing a *compelling* governmental objective, and must further show that the means chosen to do so are *narrowly tailored* to accomplish that compelling objective.

The so-called "B.O.L.O. exception" clearly satisfies both prongs of this test. Needless to say, the State has a compelling interest in identifying and apprehending wanted persons (whether they are wanted on suspicion of criminal activity or wanted as witnesses in a bona fide criminal investigation or community caretaking or intelligence-gathering function). Furthermore, the use of race or ethnicity to identify a particular individual is "narrowly tailored" precisely because it is limited to *specific* individuals and because there is no other practicable way to identify and apprehend a specific wanted person without giving as detailed a description of that person's outward appearance as is possible based on all known facts about that individual. Obviously, leaving out important descriptive details about the person's outward appearance would greatly reduce the likelihood of achieving the legitimate governmental objective of finding the person who is

being sought.

In fact, the Fourth Amendment in some circumstances may actually require law enforcement agencies to include and rely upon every known identifying characteristic in a bulletin or alert that instructs officers to identify, apprehend and detain a wanted person or known suspect. Under the Fourth Amendment, law enforcement officers in New Jersey are generally expected to use what is called the "least intrusive means" to accomplish their legitimate investigative objectives. See, e.g., State v. Davis, 104 N.J. 490 (an officer during a stop should use the least intrusive technique reasonably available to verify or dispel suspicion in the shortest period of time). When police put out any kind of alert calling for the apprehension of a suspect, they are expected to use all reasonable means to limit the number of persons who might be scrutinized or detained based upon the B.O.L.O. bulletin. In other words, as criminal investigators, police are generally expected to separate the wheat from the chaff and to winnow down the number of potential suspects to the greatest extent possible.

Consider the following scenario. A convenience store was just robbed by a man who is described by witnesses as being Caucasian, 25 years old, about six feet tall, and wearing a dark jacket and blue jeans. If any resulting B.O.L.O. bulletin were to exclude the fact that the suspect being sought is Caucasian, then young non-Caucasian males would potentially be included in the class of persons that police would scrutinize, even though there is absolutely no basis to justify such scrutiny of persons who could not possibly be the suspected robber. Such a practice of leaving out important descriptive identifiers would not only dilute and distract law enforcement attention (making it less likely that the actual suspect would be apprehended), but might result in persons being detained when, viewed objectively, based on the "totality of the circumstances," there would be absolutely no basis to justify any such detention, thus constituting a violation of the Fourth Amendment.

In sum, law enforcement officers are by no means required to "redact" a racial or ethnic description of a person from a wanted or B.O.L.O. bulletin. Indeed, were it otherwise, police might also be precluded from posting a wanted flier that includes a picture or artist's drawing of the suspect, since the photograph or artist's rendering would communicate the suspect's race or ethnicity. Obviously, that is not the law.

The so-called "B.O.L.O. exception" to the general rule prohibiting law enforcement officers from taking an individual's race or ethnicity into account provides an opportunity for us to consider the complex interplay between the Fourth and Fourteenth Amendments, and gives us an opportunity to start to explore how courts will analyze or dissect police conduct under these two distinct constitutional provisions. (In Unit 13, we will discuss in more detail the differences between Fourth and Fourteenth Amendment litigation.)

Let us suppose that a robbery has just been committed at a convenience store in an urban area. The manager of the convenience store, who was the victim and principal witness to the crime, did not have an opportunity to get a good look at his assailant and so

the victim is only able to provide the police with a fairly general description: "light-skinned male, twenty to thirty years old; dark clothing, average height and build."

That description is broadcast over the police radio system, reflecting the only information currently available to police to use in identifying the robber. You are patrolling the area near the crime scene and you observe a large number of people of various racial and ethnic types going about their affairs. One of these individuals who comes into your view is Caucasian possibly of Hispanic ethnicity, is wearing a dark jacket, is of average height and build and appears to be in his twenties. The person does not appear to be acting in any particularly unusual or suspicious manner. He is not, for example, running from the crime scene. Nor does he turn away from you, attempt to flee, or otherwise try to avoid you or conceal his physical features.

Based on the information that had been provided to you over the radio, could you initiate an investigative detention or so-called "Terry" stop?

While in these circumstances you would certainly be permitted to approach the individual and attempt to engage him in conversation as part of a consensual "field inquiry," given the very general description of the wanted suspect, you probably would not be allowed on these facts to initiate a stop. The B.O.L.O. description in this case was not sufficiently specific or "particularized" to justify even a brief "seizure" of the person.

In this instance, the limitation on your authority to initiate an investigative detention would derive from the Fourth Amendment, not the Fourteenth Amendment Equal Protection Clause. Your use of the individual's race in this case in trying to determine whether or not this was the person who had committed the recent robbery would be perfectly legitimate.

It should be noted that a "B.O.L.O." may, of course, refer to more than one person. See Drake v. County of Essex, 275 N.J. Super. 585 (App. Div. 1994) (reasonable suspicion may be established by evidence which points to the guilt of at least one of a discrete group of individuals), citing to United States v. Fisher, 702 F.2d 372 (2d Cir. 1983) (reasonable suspicion to stop four African-American males to investigate a robbery committed by three persons matching their general physical characteristics). The key for our purposes is that each and every person mentioned or described in the B.O.L.O. is believed to be associated with specific criminal activity, that is, a particular event, episode, transaction, scheme, or conspiracy that is the subject of a pre-existing law enforcement investigation.

This is what distinguishes a B.O.L.O. from a "profile." A B.O.L.O. relates to one or more specific individuals who are being sought by law enforcement authorities. A "profile," in contrast, is more general and describes the characteristics and behavior of a large and undetermined number of persons who may be involved in various types of criminal activity, but who are not specifically believed to be engaged in such criminal activity based on pre-existing information that law enforcement authorities already know about them as

individuals. Compare Drake v. County of Essex, supra at 591 (an individualized suspicion is one that refers to evidence of wrongdoing at a particular time and place, as distinguished from suspicion based on general group characteristics; detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity).

Applying these basic principles, a profile is merely a tool to aid police in inferring whether a person may be engaged in criminal activity. A B.O.L.O., in contrast, is a tool for locating one or more specific individuals who are already the subject of law enforcement attention and interest.

It is important to note that the so-called "B.O.L.O. exception" to the general rule prohibiting law enforcement officers from considering race or ethnicity applies whenever a law enforcement officer is looking for one or more particular persons, whether as a result of a broadcast alert or as a result of information learned during the course of a particular investigation of a reported or suspected specific crime. (In Unit 9.2, we will discuss in more detail a variant of the "B.O.L.O. Exception" when police are "pursuing leads" in the course of an ongoing investigation.) The exception to the general rule, in other words, is not limited to circumstances where the "B.O.L.O." information is "broadcast" over the police radio or flashed as part of an "All Points Bulletin" or an Amber Alert. Rather, the B.O.L.O. exception applies to any information describing a particular suspect or suspects without regard to the exact means by which this identifying and descriptive information is communicated to, by and among law enforcement officers. By way of example, the B.O.L.O. exception applies to descriptive information about a wanted person or specific criminal suspect or suspects that is communicated to police at roll call, by means of teletypes, a radio dispatch, a wanted flier, or that is provided to law enforcement officers by a private citizen.

Consider the following situation. You are on patrol in a marked vehicle when you are flagged down by a pedestrian. She tells you that she just observed an individual selling drugs out in the open. This observation, according to the citizen-tipster, was made just a few minutes ago on an adjoining street. The citizen gives you a description of the person, including a description of the suspect's race. Based on this information, you go immediately to the adjoining street where you see several persons of different races milling about.

In this scenario, you are of course, absolutely permitted to consider a person's race in determining which if any of the persons presently in view may be the same person who had been described by the tipster as selling drugs. This situation clearly falls within our "Be on the Lookout" exception because that is exactly what is happening – you are "looking out" for a particular suspect.

Note that under the Fourth Amendment, you may or may not have enough information to justify a "Terry" stop. That will depend on a number of factors, including the detail and specificity of the description of the suspect, the credibility of the citizen who had provided the information to you, and especially her basis for suspecting that the suspect had been selling drugs. (It is generally not enough that an informant knows the location or comings and goings of a suspect; rather, the informant must have a basis for believing that the suspect is involved in criminal activity, such as in this case, the informant's personal observation of open-air drug distribution.) Reviewing courts will ask, for example, whether this tipster was "anonymous," or whether you would be able to later find the tipster to hold her accountable if it were to turn out that she had been lying. (The United States Supreme Court in Florida v. J.L., 120 S.Ct. 1375 (2002), ruled that an anonymous tip, by itself, is rarely sufficient to justify a "Terry" stop or frisk, even when the tipster reports that the suspect is carrying a concealed weapon. However, courts interpreting the J.L. decision have recognized that a tip that is delivered face-to-face, even from an unidentified person, is inherently more reliable than an anonymous tip delivered via telephone. See, e.g., United States v. Heard, 367 F.3d 1275, 1278-81 (11 Cir. 2001)).

The critical point for our present purposes is that these fact-sensitive questions arise under traditional Fourth Amendment law governing searches and seizures. In this scenario, there is no violation of the Fourteenth Amendment Equal Protection Clause as a result of the officer having used and relied upon a racial description in trying to identify the person who had been described by the tipster.

This does not mean that Fourteenth Amendment Equal Protection issues cannot arise when a law enforcement officer responds to information that has been provided by a private citizen. There may be circumstances where it is so readily apparent that the citizen tipster is himself or herself relying entirely on racial stereotypes that it would be inappropriate for police to give credence to the citizen's report unless that report provides objective facts that the officer could use to draw his or her own race-neutral conclusions.

As a general proposition, the Fourteenth Amendment Equal Protection Clause applies only to government conduct; it does not apply to decisions and actions undertaken by private citizens who are not acting "under color of state law." Even so, police officers must always use common sense in using and relying upon information provided by citizens. This is certainly a familiar principle to us, at least in the context of the Fourth Amendment. We all know, for example, that a "tip" provided by an informant is by no means automatically deemed to be reliable. To the contrary, for purposes of deciding whether the

tipster's information establishes reasonable articulable suspicion or probable cause, we have long known that police must always examine the tipster's basis for knowledge. In some instances, police also must consider the informant's veracity, that is the informant's penchant for lying or for telling the truth, at least in the case of a confidential informant who is said to be involved in the so-called "criminal milieu." (Ordinary citizens, that is those who are not believed to be personally involved in criminal activity, are generally assumed to be trustworthy. See State v. Stovall, 170 N.J. 346, 363 (2002), and State v. Johnson, 171 N.J. 192 (2002). However, police must still question how a citizen came to know the information that he or she claims to know, and why the informant has reason to believe that the suspect is involved in *criminal* activity.) This analytical process is sometimes described in Fourth Amendment law as the "two-pronged" test of informant reliability. Cf. Illinois v. Gates, 462 U.S. 213 (1983) (rejecting a rigid application of the "two pronged" test for confidential informants).

To explain how this review or scrutiny of citizen information would apply in the context of the Fourteenth Amendment, let us consider the following scenario. You are in uniform and on routine patrol when a citizen flags you down and advises you to be-on-the-lookout for a group of "suspicious" adolescents that the citizen recently observed in the neighborhood. Since you would always want to gather as much information as possible, you inquire of the citizen as to what the adolescents were doing that led the citizen to believe that they were acting in a suspicious manner. The citizen replies, "Well, they're black kids. They really have no business being around here." The citizen cannot point to anything that the youths were doing (besides merely being present in the neighborhood) that reasonably suggests unlawful activity.

In Unit 11.1, we will discuss in greater detail when and under what circumstances an officer may consider that a person seems to be "out of place" in a particular neighborhood. For our present purposes, it is enough to note that in the specific scenario that we have just described, it should be readily apparent to the police officer that the tipster's suspicion is based principally if not entirely on a racial stereotype, and not on an observation of unlawful or even suspicious conduct. Accordingly, under the general rule prohibiting police discrimination, in these particular circumstances, you could not use the tipster's information as a basis for the exercise of police discretion.

In contrast, had the tipster provided a description of observed facts that are objectively suspicious, you would of course be permitted to rely on those facts in drawing your own inferences and reaching your own race-neutral conclusions. (Some examples of such facts might be that the group of adolescents were creating a loud disturbance, or were obstructing traffic, or were observed trespassing, throwing bottles or damaging property.) If you are provided with such objective, race-neutral facts, you would not have to rely at all on the tipster's inferences and conclusions. In that event, it would not matter whether or not the citizen tipster was biased or had relied in part on a racial stereotype.

Let us now change the scenario to further demonstrate that as a general rule, the

Fourteenth Amendment Equal Protection Clause and our State's nondiscrimination policy would not require you to ignore or disregard information provided by private citizens, even though that information does not meet the Fourth Amendment standard for initiating an investigative detention or for making an arrest. Let us suppose that instead of flagging you down on the street, the citizen tipster had called the police station to report that a number of youths at a certain location were "hanging out" and acting "suspiciously." The tipster does not reveal to the dispatcher the exact reasons why she had concluded that the adolescents were behaving in a suspicious manner, and the dispatcher simply relays the raw information to you to check out as part of your routine patrol function. In this case, it is by no means readily apparent that the information was based on an inappropriate racial stereotype and in these circumstances, the responding officer would, of course, be allowed, indeed expected to proceed to the scene to determine for himself/herself whether anyone was engaging in objectively suspicious conduct. In other words, a police officer dispatched to investigate a situation is not required to assume that a tip or citizen's report of information is based on a racial stereotype.

To this point in our discussion of the "B.O.L.O. exception" to the general rule prohibiting police from considering a person's race or ethnicity, all of the persons described in a B.O.L.O. alert or "All Points Bulletin" were criminal suspects. It is important to note, however, that the B.O.L.O. exception need not be limited to specific persons who are "suspects," that is, individuals who are suspected of being personally involved in criminal activity. Rather, a B.O.L.O. alert can certainly include innocent persons, including witnesses and victims. An Amber Alert, for example, may focus as much on the description of the victim as on the description of a suspected offender. Indeed, for practical reasons, the description of the victim in such an alert may well be far more detailed and useful than the description of a suspected kidnapper.

Furthermore, the pre-existing law enforcement investigation need not have established probable cause to believe that a crime has actually been committed. For example, police may issue a B.O.L.O. for a "missing person" (and any other individuals believed to be associated with that missing person) without having to have established that the missing person was kidnapped or murdered.

In sum, the "B.O.L.O. exception" applies whenever police officers are alerted by any means to "look out for" a specified individual (or group of specific individuals), even though these persons may not themselves be criminal suspects, but rather may merely be persons that some law enforcement agency wants to locate in furtherance of a law enforcement investigation.

9.2 The Legitimate Use of Race or Ethnicity to Pursue Specific Suspects or "Leads" During the Course of a Particular Criminal Investigation

As we have seen, the so-called "B.O.L.O. Exception" applies whenever a law enforcement officer uses race or ethnicity for the purpose of describing and identifying one or more particular, specific suspects or persons of interest during the course of a pre-existing investigation into specific criminal activity (i.e., a specific event, episode, transaction scheme, or conspiracy). What distinguishes a legitimate example of the B.O.L.O. Exception from an illegitimate use of a racial or ethnic stereotype is that the B.O.L.O. Exception focuses police attention on persons who are the subjects, targets or witnesses in a specific ongoing investigation, whereas an impermissible stereotype is, by its nature, very generalized. (If we were to use Fourteenth Amendment Equal Protection Clause terminology to describe this difference, we might say that the use of racial or ethnic characteristics in a B.O.L.O. situation is "narrowly tailored," while the reliance on racial or ethnic characteristics as part of a stereotype is not.)

Another way to think about the distinction is that the B.O.L.O. Exception applies to an ongoing investigation of a specific crime or ongoing criminal scheme that has already been reported, or that at least is already suspected based on particularized facts that are already known. The impermissible use of race or ethnicity, in contrast, is much more likely to arise when an officer is first trying to determine whether a crime is occurring at all, such as when an officer assigned to patrol duties happens by chance to encounter a citizen and the officer spontaneously seeks to convert this as yet routine, unplanned encounter (such as a traffic stop) into a criminal investigation. This police patrol practice is sometimes referred to as "digging" and is now frowned upon by many courts for reasons that we will discuss in much more detail in Unit 13.3.

It should be noted that throughout this course of instruction, the legitimate law enforcement practice of pursuing specific leads and winnowing down the list of potential suspects while investigating a specific criminal event, episode, transaction, scheme or conspiracy is essentially considered to be a type of "Be on the Lookout" situation for the purposes of determining whether it is permissible to take into account a person's race or ethnicity. This analytical approach makes sense since a law enforcement officer investigating a specific case is pursuing or "looking out for" one or more specific individuals (the perpetrators of or witnesses to this particular crime), even though the officer at this stage of the investigation may not yet know the identity of any suspects or witnesses and may not yet be able to describe them with any specificity.

Alternatively, the notion of pursuing leads during the course of a specific investigation might be thought of as a separate and distinct "exception" to the general rule that law enforcement officers may not consider a person's race or ethnicity in drawing inferences of criminal involvement and may not treat people differently based on their race or ethnicity. That analytical approach and nomenclature is perfectly acceptable under Attorney General Law Enforcement Directive 2005-1, so long as it is clearly understood that

the Fourteenth Amendment Equal Protection Clause and our statewide nondiscrimination policy applies at all times to all law enforcement officers, and not just to uniformed police officers assigned to patrol duty. See Unit 8.2 (the basic non-discrimination rule applies to *all* police decisions). Detectives, in other words, can certainly violate the rule prohibiting racially influenced policing.

Consider, by way of example, a case where a specific crime has been reported, such as an automobile theft, but there is no eyewitness to provide any description of the thief. Under our nondiscrimination policy, a detective assigned to investigate this offense could not, of course, focus his or her attention on minority citizens based on the derisive stereotype that such citizens are generally more likely than non-minority citizens to commit this type of crime. Any such investigation would clearly constitute racially influenced policing in violation of Attorney General Law Enforcement Directive 2005-1.

The critical distinguishing characteristic between the permissible and impermissible consideration of race depends on the *specificity* of the suspicion and the information upon which that suspicion is based. Law enforcement officers must ask themselves whether they are focusing on specific suspects or witnesses (pursuing one or more specific "leads") or rather are relying on a generalized inference about racial or ethic groups (a stereotype). Recall from our discussion in Unit 6.6 that the "strict scrutiny" test under the Fourteenth Amendment requires that any governmental reliance upon race or ethnicity must be "narrowly tailored" to achieve the compelling governmental objective.

The key point is that while police are, of course, permitted to pursue specific leads during the course of a specific ongoing investigation, they are not permitted to rely upon broad-brushed, race or ethnicity-based stereotypes about who is generally more likely to be involved in criminal activity. When police are following a specific lead, they may, for example, consider any relevant fact or circumstance (including a person's race or apparent ethnicity) that may help to winnow out any individual who is clearly not a subject, target, witness or person of interest in this particular investigation, just as police may quickly discount or ignore any person who clearly does not match the description in a traditional B.O.L.O. bulletin. In other words, our statewide nondiscrimination policy by no means requires police to interview or otherwise interact with persons who could not possibly be aware of information relevant to a specific ongoing investigation, and in certain circumstances, a person's race or ethnicity could be used to exclude him or her from further consideration. (For a specific example of such a situation, see Factual Scenario #6 in the Skills Assessment portion of this course of instruction.)

Relatedly, it is important to understand that the "B.O.L.O. Exception" to the general rule prohibiting any consideration of race or ethnicity is certainly not limited to situations where an "All Points Bulletin" was actually "broadcast" to police. As noted above, this exception to the general rule applies when a law enforcement officer during the course of an ongoing investigation of a specific incident or scheme develops a reason for locating (in other words, a reason to "look out for") one or more persons believed to have information

relevant to this particular criminal investigation. This would be true even though the officer may not yet know the exact identities of these potential witnesses, and cannot provide a specific description of these individuals that might be broadcast to or otherwise shared with other officers via a traditional B.O.L.O. bulletin. (Indeed, the objective of the criminal investigation at this stage may simply be to identify and locate potential witnesses and suspects.)

In certain circumstances, a "Be on the Lookout" situation may exist for purposes of our statewide nondiscrimination policy even when no information has been communicated from one law enforcement officer to another. A single officer, for example, may learn something during the course of an encounter or investigation that prompts him or her to seek out some other person or persons for additional information. The officer may proceed to look out for this new witness, suspect or information source without advising any other officers or bothering to enlist their assistance in locating this specific individual or individuals who the investigating officer wants to find. This commonsense practice is essentially nothing more than pursuing or following up on investigative "leads."

The point is simply that detectives assigned to a specific case (and uniformed officers who are pursuing a specific investigation as well) are permitted, indeed are expected to pursue leads during the course of the ongoing investigation. In doing so, law enforcement officers may focus their attention on any and all individuals who may have information concerning the particular incident, particular scheme or particular organization that is the subject of the ongoing investigation. Similarly, officers investigating a specific crime may focus their attention on specific places or premises where potential suspects or witnesses to that particular criminal episode are most likely to congregate.

To underscore this point, let us consider a situation that at first glance might look as if you were relying inappropriately on race or ethnicity, when in reality you would actually be relying on appropriate, race-neutral criteria. You are a detective conducting a criminal investigation of a reported crime, in this instance, a murder. In the course of investigating the homicide, you will want to speak to friends, co-workers, and neighbors of the victim and of any potential suspect that you may already have in mind. Suppose that, as it turns out, the victim tended to associate with persons who shared the victim's own racial or ethnic background. In that event, the persons who you would be seeking out to interview (the friends, co-workers, and neighbors of the victim), would tend to be persons of a particular race or ethnicity.

In a closely related vein, you might want to canvas the neighborhood, local bars, stores, etc. seeking information about the victim and any potential suspect. Naturally, you would "target" those places where the victim was known to have frequented. If the neighborhood that you would be canvassing is predominantly comprised of citizens of a particular race, then your investigative efforts would tend to focus on persons of that race.

Let us suppose that the homicide victim was believed to be a member of a particular gang. In that event, you would be permitted and would be expected to try to identify other members of that specific gang or "set" who might have information about the circumstances of this particular crime. So too, if intelligence information reveals that there is a rival gang in the area, you would, of course, be expected to investigate the possibility that the rival gang may have been involved in this murder, and you could focus your attention on persons who are believed to be members of that specific rival gang, as well as on persons who might otherwise have information concerning the activities of that specific rival gang. (In Unit 10, we will be considering the gang problem in more detail.) In pursuing any such specific investigation involving a particular group or gang, an officer could, of course, exclude from consideration those persons who could not possibly be affiliated with this specific gang by reason of the gang's own membership criteria.

These are all examples of legitimate law enforcement work. In these situations, you would not be using anyone's race or ethnicity to draw a *generalized* inference of his or her propensity to commit crime. While the overwhelming majority of persons that you would select to approach and interview might happen to be persons of a particular racial or ethnic background, you would not be considering their skin color as the basis for a generalized or stereotype-influenced inference of criminality.

Another way to think about this distinction is that in this crime investigation scenario, the detective during the course of the ongoing investigation of specific criminal activity (the reported homicide) is only reacting to facts and circumstances over which he or she has no control. In this case, the officer is permitted, indeed expected, to "follow leads" wherever they may happen to go, and without regard to the racial or ethnic characteristics of any persons that the detective may encounter during the investigation.

This is very different from a spontaneous and "proactive" police-citizen encounter, such as where an officer on patrol is trying to first see whether a crime is being committed at all. In such a scenario, as may occur during a routine traffic stop, the officer is not following leads, so much as pursuing hunches in the hope of fortuitously uncovering as yet unreported and unrevealed criminal activity. As we will discuss more fully in Unit 13.3, courts in New Jersey are critical of this kind of proactive "digging," especially when a police officer seeks to escalate a routine motor vehicle stop or pedestrian field inquiry into a full-blown criminal investigation.

Finally, it should be noted that law enforcement officers may obviously consider race or ethnicity in the course of an ongoing investigation when those physical characteristics are at issue in the case or are relevant to the elements of the specific offense that is the subject of the investigation. If, for example, police are investigating an alleged or suspected violation of the crime of bias intimidation defined at N.J.S.A. 2C:16-1, they may, of course, consider all circumstances that would tend to prove or disprove that the perpetrator acted "with a purpose to intimidate an individual or group of individuals because of race, color . . . or ethnicity." N.J.S.A. 2C:16-1a(1).

In other words, law enforcement officers investigating the offense of bias intimidation, or any crime where race or ethnicity was related to the motive for committing the offense, may consider the race or ethnicity of the suspected perpetrator(s) and victim(s). This is simply another type of situation where police would be "following leads" in the course of an ongoing investigation of specific criminal activity (i.e., a specific event, episode, transaction, scheme or conspiracy).

UNIT 10: THE GANG PROBLEM

One of the most difficult challenges in complying with the basic rule that race and ethnicity may not be considered to any degree in deducing whether an individual is engaged in criminal activity arises in the context of how a law enforcement officer goes about determining whether an individual is a member of a gang or other criminal organization that happens to be comprised largely of persons of a given race or ethnicity. Regrettably, the gang problem in New Jersey has worsened in recent years, and law enforcement agencies will be expected to adopt strong measures to aggressively disrupt these criminal organizations. There are nonetheless many legal pitfalls and landmines that police officers must take careful steps to avoid. It is therefore important that we consider this issue in some detail.

We start our analysis by recognizing a simple and undeniable fact: some criminal organizations are comprised of persons of like racial or ethnic characteristics. Some of these groups or gangs are thus said to be exclusionary, meaning that they exercise their First Amendment right to associate with whomever they please, even if this means practicing a form of racism and bigotry.

The general rule for police under the Fourth Amendment is that a Terry stop or ensuing frisk may not be based solely on the fact that a person is a member of a particular group, even if other members of that group are often associated with criminal offenses. See, e.g., Drake v. County of Essex, 275 N.J. Super. 585 (App. Div. 1994). Were it otherwise, police would be permitted to repeatedly detain a known gang member any and every time he or she is recognized without regard to whether the officer is aware of any facts that suggest that the gang member is presently engaged in criminal activity.

Courts recognize, however, that a person's known membership in a specific criminal organization such as a particular street or motorcycle gang is highly relevant and may of course be considered by a police officer as part of the so-called "totality of the circumstances." For obvious and compelling reasons, moreover, gang membership may be especially relevant in the context of an officer's reasonable suspicion that an individual may be armed and dangerous, at least where members of the particular group that the person is believed to be associated with are known to typically carry firearms or other weapons.

The legal and practical problem for police officers is that we must reconcile this principle of Fourth Amendment relevance (gang membership is a legitimate factor for police to consider) with the fundamental Fourteenth Amendment principle that police are not permitted to draw any inferences of criminal activity from a person's race or ethnicity.

The answer to this dilemma is that while membership in a criminal organization is a legitimate factor that an officer may use in determining whether a person is presently engaged in criminal activity, or is armed and dangerous, an officer in this State is not

permitted to use the person's race or ethnicity in first assessing the likelihood that the person is, in fact, a member of any such criminal organization. To do otherwise would be to practice a form of legal bootstrapping, placing the cart before the horse by drawing an inference (the person is presently engaged in criminal activity) from a predicate fact (gang membership) that has not yet been established.

The key to complying with the Fourteenth Amendment in this situation lies in your ability to carefully "line up the ducks" of your reasonable suspicions. The notion that the Constitution requires police to pay careful attention to timing (the proper sequencing of police decisions) is hardly a new or radical idea. After all, we have always known that under the Fourth Amendment, officers must be prepared to articulate the specific reasons that justify their suspicions before acting upon those suspicions by engaging in conduct that intrudes upon Fourth Amendment interests, such as initiating an investigative detention or conducting a frisk. For example, police officers may not initiate a routine motor vehicle stop until after they have observed a motor vehicle violation. If an officer were to make the stop without first seeing a violation, the fact that the officer subsequently observed an equipment violation while walking up to the stopped vehicle would not, of course, justify the stop. Any such belated discovery of an equipment violation would be deemed to be a "fruit" of an illegal detention.

In sum, police officers in this State are prohibited from relying to any degree on generalized stereotypes about who is more likely to be a gang member. Rather, a law enforcement officer must have some objective and specific basis to believe that an individual might actually be a member of a particular criminal gang or group before the officer may draw an inference of criminality from any such group association. If, for example, an officer were to recognize that a motorist or pedestrian was wearing a jacket bearing the distinctive insignia of a specific motorcycle gang, the officer at that point would have an objective and articulable factual basis to suspect that the person is associated with that particular gang, and at that point, the officer could proceed to draw reasonable inferences from such specific gang affiliation. (In Unit 8.1, we found that the way in which a person dresses may in certain circumstances be considered to be an expressive form of conduct, which is something that police officers are allowed to consider in drawing reasonable inferences based on their training and experience.)

The critical point is that police officers should not simply guess at gang membership, or rely upon inarticulable hunches (which, as we have seen, may be influenced by all-too-common stereotypes). Rather, a law enforcement officer must be prepared to articulate why he or she had an objectively reasonable basis for believing that a particular person was in fact a member of a specific gang or group, based upon objective, articulable and specific indicators that have been provided through training or that were learned through personal experiences. It is also important to remember that the general rule is that police should focus on a person's conduct in deciding whether that person is engaged in criminal activity.

In the gang recognition context, this careful "line up your ducks" approach makes sense from a practical as well as legal perspective for the simple reason that the percentage of persons of any particular racial or ethnic background who are actually members of a criminal group is exceedingly small. It is, of course, true that a person could not be a member of a particular exclusionary group or gang unless the person shares the racial or ethnic characteristics of that group. Skinhead white supremacy groups that commit bias crimes, for example, are, by definition, comprised of Caucasians. It does not logically follow, however, that a significant percentage of persons of like characteristics (Caucasians, or Caucasians with shaved heads) are members of any such criminal organization. In fact, the percentage of persons who are actually members of any such organization is so small that an officer could make no rational (much less legally sufficient) conclusion about a person's gang membership based on the person's race or ethnicity.

To further explain this point, let us draw an example from the New Jersey law enforcement community's tireless efforts to deal with so-called "traditional" organized crime groups that are sometimes referred to collectively as "*La Cosa Nostra*" or "the *Mafia*." The *La Cosa Nostra* families that operate in the New York, New Jersey, and Philadelphia areas are comprised almost entirely of persons of Italian ancestry. Let us suppose that an officer were to pull over a motorist and deduce from the motorist's surname that he is of Italian heritage. It almost goes without saying that it would be ludicrous (and offensive) for the officer to treat that citizen as if he were a suspected solider, associate, lieutenant or *capo-regime* of a *La Cosa Nostra* family. It is true that this person could conceivably be a *Mafioso*; he is not precluded from that possibility according to the ethnicity-based membership criteria and recruiting practices of this particular gang. But all but the most unenlightened bigot understands that the percentage of Italian-Americans who are actually associated with organized crime is negligible. Indeed, no law enforcement officer in this State would even think for a moment to treat an Italian-American motorist under suspicion of being a *Mafioso* on the basis of the person's apparent ethnic heritage.

The key point to understand is that this basic principle applies to all colors and ethnicities. This does not mean that there are not organizations comprised of persons of certain racial backgrounds or from certain foreign nations that, for example, traffic in illicit drugs or engage in other types of organized criminal activity. Regrettably, New Jersey is home to many African-American, Hispanic, Asian, former Soviet-bloc, and white supremacist criminal organizations. But the percentage of citizens from each and every racial and ethnic group who are actually members of such organized street gangs or drug trafficking networks is so small that no officer could entertain an objectively reasonable suspicion that a motorist or pedestrian is a member of such a gang or criminal enterprise on the basis of race or ethnicity.

For all of these reasons, it is not enough to provide gang "awareness" information to law enforcement officers in which we broadly describe the general nature of the worsening gang problem. Rather, we must provide detailed and specific gang recognition training that provides officers with the objective specific facts that they can use to recognize

ongoing gang activity and to reasonably determine whether a particular individual is likely to be associated with a particular gang. Such training must focus on the specific and distinctive hand signals, tattoos, insignia, jewelry, code words, rituals, and "colors" that are "flown" by specific gangs that are believed to be operating, organizing or recruiting within the trainee's patrol jurisdiction.

Gang recognition trainers must be very careful to minimize the chances that the information that they provide will be taken out of context or misinterpreted and misapplied. A trainer before supplying a piece of information to an audience should always consider and anticipate how that bit of information is likely to be used by law enforcement audience members out on the street. In other words, instructors (and those who develop and disseminate intelligence bulletins and reports) should carefully consider the intended purpose for including a bit of information, especially when that information relates to a racial or ethnic classification.

By way of example, broadly announcing that "African American gangs are forming and expanding in this town," without more specific information or explanation, could foreseeably cause local police officers to view all black youth in town under suspicion of being potential gang members. Any such generalized warning is inadequate and unacceptable because it is likely to be misinterpreted and foster broad-brushed stereotyping. For recognition training to be meaningful, the instructor must instead explain in precise detail how an officer can reliably determine whether a given citizen is (or is not) a member of a specific, particular gang.

Remember that a little knowledge can be a dangerous thing. In some respects, incomplete or imprecise gang "awareness" training is like taking a half-day course in Tae Kwan Do. You are likely to learn just enough to get into serious trouble.

UNIT 11: SOME SPECIFIC EXAMPLES OF RACIALLY-INFLUENCED POLICING

The problem of racially-influenced policing is by no means limited to the purposeful or even subconscious use of racial stereotypes in an effort to interdict illicit drugs on interstate highways. There are a number of other enforcement situations where race or ethnicity can inappropriately influence the exercise of police discretion. In this unit, we will talk about three such examples that can arise in any police department: (1) when an officer draws an inference of suspicion because a person does not appear to "fit" the neighborhood he or she is in; (2) when an officer draws an inference of suspicion because two or more persons of different races or ethnicities are congregating; and (3) when an officer draws an inference of suspicion because an individual does not appear to "fit" the vehicle that he or she is driving.

11.1 Persons Who Appear to be "Out of Place"

Police officers on patrol are expected to look out for suspicious behavior, that is, conduct that, while innocent on its face, might be consistent with ongoing criminal activity. By way of example, one of the modus operandi or "methods of operation" associated with street level drug activity is that persons from out of town will sometimes drive into an urban area that is known to be an "open air" drug market. These visitors are there to purchase drugs by means of what is sometimes referred to as a "stranger to stranger" transaction. (This is often done out in the open because these visiting purchasers are afraid to park their vehicles and venture into inner-city dwellings to complete transactions behind closed doors; the purchasers instead prefer the perceived safety and convenience of making transactions in or very near their vehicles.)

The question logically arises, when and under what circumstances can a police officer react to information that suggests that a person who is observed in such a high-crime area is not a resident of that area, leading to the inference that he or she may be there to conduct illicit business? Needless to say, some neighborhoods have a definite racial or ethnic composition, that is, the residents of that neighborhood or community may be predominantly of one race or ethnicity or another. The real issue, therefore, is whether and to what extent an officer may consider a person's race or ethnicity in determining whether this individual is in fact a visitor who is here to engage in an illicit drug transaction.

Applying the general rule that we have restated repeatedly throughout this course, it is inappropriate for an officer to draw an inference that a person is a non-resident who is "up to no good" in a predominantly minority neighborhood by considering the fact that the person is white, since, in essence, the officer would be inferring possible criminal activity from the person's racial or ethnic characteristics.

The same legal principle would, of course, apply in a case involving a minority citizen who was walking or driving in a neighborhood comprised predominantly of non-minority citizens. Indeed, this latter situation may seem to be a more obvious example of

impermissible race-influenced policing. Few would question that it would be inappropriate for an officer to infer that a minority citizen is "suspicious" simply because he or she is walking or driving in a non-minority neighborhood.

The critical point, however, is that the Equal Protection Clause requires equal treatment, and protects persons of all races and colors from being treated with suspicion based upon their race or ethnicity. In State v. Kuhn, 213 N.J. Super. 275 (App. Div. 1986), a Caucasian defendant had been observed in a vehicle conversing with two Hispanic males in a high-crime area. The appellate court expressly held that, "if defendant as a white person in a predominantly black neighborhood could be stopped and searched, so could any black person seen in a predominantly white neighborhood. That simply is not the law." 213 N.J. Super. at 281.

The key to complying with this rule is to recall that police officers when drawing inferences of suspiciousness and criminality are required in New Jersey to focus not on a person's racial or ethnic characteristics, but rather on the person's conduct. If an officer were to observe an individual (without regard to his or her race or ethnicity) engaging in objectively suspicious conduct, then the officer could certainly act upon that observation. Thus, for example, police could take into account whether a person is driving slowly around the block or "cruising" in a high crime area or open air drug marketplace. An officer could also take into account whether the person stopped and called a known or suspected drug dealer over to his car, or made some kind of hand to hand transfer of an object.

These are objective facts that, although quite possibly innocent, nonetheless are consistent with criminal activity based on the modus operandi or methods of operation of persons who are engaged in, or who are about to engage in, illicit drug deals. So too, a person cruising slowly through a neighborhood could be "casing" a house or business in preparation for a future burglary or other criminal act. In all of these instances, the unusual movements and actions of the vehicle or its occupants would constitute objective facts that an officer could take into account in determining whether criminal activity might be afoot. The fact that such activity might also be consistent with innocent behavior (for example, the person may merely be looking at house numbers to find a particular address), does not preclude the officer from considering these facts in determining whether there is a basis to initiate a consensual encounter or an investigative detention. See State v. Arthur, 149 N.J. 1 (1997) ("It must be rare indeed that an officer observed behavior consistent only with guilt and incapable of innocent interpretation.").

By the same token, the rule that we just discussed does not mean that a police officer is prohibited from considering whether a person is not a resident of a particular area, or may be a resident of or recently traveled to or from another specific jurisdiction, such as a known "source" city of illicit drugs. Rather, the point is that an officer may not rely to any degree on an individual's skin color in determining whether the person's presence is suspicious or warrants further investigation. While being from "out of town" is clearly not a sufficient reason to initiate an investigative detention, that fact might nonetheless be a relevant and a legitimate factor for a police officer to consider where, for example, the

officer knows that out of town citizens frequently come to a particular area to engage in criminal activity.

Thus, for example, if a police officer who routinely patrols a public housing project sees an individual that the officer does not recognize as a tenant, the officer may approach the individual to inquire whether he or she is a guest of a tenant, or is instead trespassing on housing authority property or is otherwise violating visitor security rules and protocols. So too, if a community policing officer while patrolling a public street knows everyone in the area and sees a person who he does not recognize, the officer may reasonably (and lawfully) infer that this person is not a resident of that area, and the officer at this point may take that race-neutral predicate fact into account in determining whether the person's presence warrants closer scrutiny. A police officer might also deduce that a motorist is likely to be a resident of another jurisdiction based upon information learned from a motor vehicle lookup. (Note that while police may "run the plates" of a vehicle without first observing a violation -- a so-called "random" lookup -- under New Jersey law, police may not access "personal information," such as the address of the registered owner, unless they have observed a motor vehicle violation or unless the initial "random" lookup information discloses a basis for further police action (e.g., the vehicle is reported stolen or the registered owner is on the revoked list). See State v. Donis, 157 N.J. 44 (1998). Of course, whether a motor vehicle violation is observed or not, the motorist's race or apparent ethnicity may play *no part* in an officer's decision to conduct (or not to conduct) a computer inquiry, whether the officer's purpose is to try to determine if the motorist is from another jurisdiction, or the inquiry is done for some other investigative purpose. See State v. Segars, 172 N.J. 481 (2002) (*per curiam*)).

Furthermore, the rule that we have just discussed does not mean that a police officer may not focus on and react to a person who is in a place where there is a race-neutral reason to believe that the person is trespassing or otherwise does not belong there. For example, police could certainly respond if they learn that someone is walking or driving in a restricted area, or in the parking lot of a closed store, or they learn that an adult is "hanging around" a schoolyard. An officer in these circumstances could certainly react to these situations by conducting a discreet surveillance to further scrutinize the person's conduct, or could go ahead and initiate a consensual field inquiry, or could even initiate an investigative detention or so-called "Terry" stop, provided, of course, that the facts taken together establish a reasonable articulable suspicion to believe that criminal activity is afoot. In State v. Nishina, 175 N.J. 502 (2003), for example, the New Jersey Supreme Court unanimously held that, based on the totality of the circumstances, the officer in this case had reasonable suspicion to stop and ask the defendant for credentials where the defendant was observed on school grounds late at night when the school was closed and offered no legitimate explanation for being on school grounds.

Once again, the point is that officers are allowed to scrutinize and investigate persons who appear to be out of place, such as persons who, based on their movements, seem to be lost. Police officers in this State are not, however, allowed to use race or

ethnicity as a factor in determining that the person's presence is suspicious.

11.2 Interracial Groups

Another example of impermissible racially-influenced policing occurs when a law enforcement officer draws an inference of suspiciousness from the fact that persons of different races or ethnicities are seen together or are traveling in the same vehicle. Any such inference would be based on the generalized racial stereotype that people tend to congregate only with persons of their own racial or ethnic backgrounds, and so when persons of different races interact, they are more likely to be engaged in some kind of illicit transaction. This broad-brushed stereotype is racially-based and thus can play no part in an officer's reasoning process, as was made clear by the court in State v. Kuhn, 213 N.J. Super. 275 (App. Div. 1986) – the case where the defendant was a Caucasian male who was seen in a vehicle conversing with two Hispanic males in a high crime area.

11.3 Persons Who Do Not Appear to "Fit" Their Vehicles

Yet another not so subtle kind of racially-influenced policing can occur when a police officer's decision to "run the plates" of a vehicle or to initiate a stop is in any way influenced by the notion that the driver does not appear to "fit" the vehicle that he or she is operating. The supposition that a person does not appear to "match" the vehicle based on the person's race or ethnicity is essentially nothing more than an inarticulable hunch predicated upon a stereotype, such as, for example, the broad brushed notion that minority citizens are less likely to be able to afford a high-priced vehicle, leading to an inference that either the vehicle is stolen, or else that the minority citizen must have some illegitimate source of income (such as drug trafficking) to be able to afford this automobile.

This is an especially important and problematic example of racially-influenced policing that we need to address and eradicate. Law enforcement agencies in New Jersey and throughout the country have received numerous complaints from men and women of color who have been repeatedly stopped by police for the most minor motor vehicle violations and who were essentially treated as criminal suspects when they happened to be operating expensive sports or luxury vehicles. Before you ever draw and act upon an inference that a person seems not to fit the vehicle he or she is driving, you must stop and ask yourself why exactly you suspect this to be so, and you must be absolutely certain that the driver's race or ethnicity played no part in your reasoning process. Remember, you cannot "run the plates" of a vehicle to check out a racially-influenced hunch, because that police act is subject to the requirements of the Fourteenth Amendment Equal Protection Clause even though the suspected motorist is unaware of and may never learn about your computer look-up. See State v. Segars, 172 N.J. 481 (2002) (*per curiam*).

PART III UNDERSTANDING THE NATURE AND PECULIARITIES OF SELECTIVE ENFORCEMENT LITIGATION

UNIT 12: HOW COURTS AND PROSECUTORS ADDRESS RACIAL PROFILING

12.1 The Role of Prosecutors in Screening Cases and Anticipating Litigation Problems

Police officers, as professionals, are entitled to know how courts go about reviewing and critiquing the exercise of police discretion. Police officers cannot fully appreciate how racial profiling cases will be litigated without first understanding the role of prosecutors, and how prosecutors go about addressing and *anticipating* the legal issues that might arise in a motion to suppress physical evidence based upon an alleged violation of a defendant's Fourth or Fourteenth Amendment rights.

It is a prosecutor's responsibility at the very outset of a criminal case to gauge the likelihood of ultimately prevailing in court. This review process is sometimes called "case screening." When a prosecutor determines that there is a significant possibility that key evidence may be suppressed, the prosecutor will tend to devalue the case as part of the plea bargaining process. (Almost 97% of all convictions for indictable crimes in New Jersey are the result of a plea agreement, rather than a trial.) In other words, the plea offer that a prosecutor tenders to a defendant will account for any perceived weaknesses in the case, including the *possibility* that crucial State's evidence may be suppressed.

In addition to considering the probability of ultimate success, the prosecutor will also consider the amount of time and effort that must be expended throughout the course of any anticipated litigation. When a prosecutor anticipates that a particular motion to suppress will be difficult or especially burdensome to handle, the prosecutor will take the anticipated expenditure of prosecutorial and judicial resources into account in deciding whether a case should be resolved through a negotiated guilty plea rather than a trial. (In State v. Soto, 324 N.J. Super. 66 (Law Div. 1996), the motion to suppress hearing involved a remarkable 75 days of testimony. Racial profiling cases also tend to involve extensive pretrial "discovery," where thousands of pages of police reports and other internal police department documents may have to be identified, copied and made available for inspection. See, e.g., State v. Ballard, 331 N.J. Super. 529 (App. Div. 2000).)

Finally, prosecutors must always consider whether litigating a case will produce adverse legal precedent, providing trial or appellate courts with an opportunity to make new law that will further limit the discretion and authority of police officers. (This concern applies to cases arising under both the Fourth Amendment and the Fourteenth Amendment.) It is often said in this regard that "tough cases make bad law."

One of the biggest problems we face, and one that we are beginning to tackle in this training course, is the need to improve the lines of communication between prosecutors and police. We know that there already is a natural tension between prosecutors and

police officers. After all, cops and troopers risk their lives to make criminal cases, whereas prosecutors are seen as trying to dispose of those cases as quickly and easily as possible. (It is interesting to note that the final resolution of a criminal case is called a "disposition.") Too often, moreover, prosecutors do not do a good enough job explaining to police officers why cases were handled in the way that they were. This breakdown in the lines of communication has been a source of considerable frustration, leading some law enforcement officers to believe that prosecutors are just "dumping" racial profiling cases.

It is therefore important for police officers to understand the legal procedures and challenges that prosecutors will face in the courthouse when litigating a selective enforcement case. As it turns out, a prosecutor's decision to dismiss a case, or to devalue it in the plea-bargaining process, does not necessarily mean that the prosecutor believes that the officer has engaged in discriminatory practices. (And as we have already seen, by no means does the decision to dismiss or downgrade a case constitute a finding by the prosecutor that the officer is a racist. See Unit 7.) Rather, the decision to dismiss or downgrade a case may mean only that the prosecutor has determined that there is not enough legal or factual ammunition available to successfully contest the case in light of the so-called "burden-shifting template" that has been adopted by the New Jersey Supreme Court. (We will discuss this "burden shifting" analytical model in Unit 12.5.) That is why it is

so important for police officers today to understand some of the litigation realities involved in selective enforcement litigation.

12.2 The Role of "Reviewing" Courts

Courts have the opportunity if not the obligation to "second-guess" the split-second decisions made by police officers out in the field. Indeed, a judge hearing a motion to suppress is often called a "reviewing court." It may seem unfair to police officers that judges – who usually have no practical law enforcement experience – get to review an officer's split-second decisions with the benefit of 20/20 hindsight and from the comfort and safety of courtrooms, offices and law libraries.

The problem is exacerbated because, in most cases, police officers do not get to see what happens inside the courthouse and rarely if ever get to observe an entire case from start to finish. As law enforcement professionals, however, police officers are entitled to understand the inner workings of the process by which judges analyze or, literally, "break down" a police officer's roadside decisions. It is also important for police officers to understand some of the significant differences in the way in which courts analyze traditional Fourth Amendment cases, as compared to "selective enforcement" cases under the Fourteenth Amendment.

12.3 The "Motion Picture" Analogy

Police officers in New Jersey are far more familiar with the manner in which traditional Fourth Amendment claims are analyzed. We will therefore start here as a way of showing some of the critical differences between selective enforcement cases and cases involving "regular" search and seizure issues.

Fourth Amendment litigation focuses entirely on the conduct of a police officer during a particular encounter with a particular defendant. The analytical approach used by reviewing courts can be likened to watching a motion picture. The reviewing court is a "critic," who will closely observe the officer's conduct from start to finish, frame-by-frame as the story unfolds. (The court usually learns about what happened out on the street by listening to testimony, but sometimes, the court may have an opportunity to watch an actual motion picture if the on-the-scene encounter was recorded by an MVR (Mobile Video Recorder) in a police vehicle.)

The reviewing court always has the option of rewinding and replaying the imaginary motion picture, and the court also has the option to use what could be likened to the "slow motion," "freeze frame" and "zoom in" features of a remote control on a DVD player, allowing the court to hone in and pay especially close attention to a particular "frame" of film that shows a particular step taken by the officer that may have especially important legal significance.

In some ways, this review process can be likened to the way in which an NFL

referee responds to a “coach’s challenge” following a controversial play. The referee will review the key aspects of the play in dispute from various angles, zooming in on some critical point and making full use of slow motion and freeze frame controls while the opposing teams wait anxiously to see if the referee will reverse the ruling made out on the field. (Under NFL rules, the ruling on the field will not be reversed in the absence of “indisputable visual evidence.” In essence, the NFL has established a “burden of proof” on the team challenging the play by creating a “presumption” that the ruling on the field is correct. As we will see in Unit 12.5, this same basic approach is used in both Fourth and Fourteenth Amendment litigation and is an extremely important concept that we will discuss in great detail.)

The key point for our present purposes is that under traditional Fourth Amendment analysis, while the reviewing court will look closely at this particular incident (the officer’s encounter with the defendant), the court will not look beyond that particular and specific episode. To go back to our NFL “coaches challenge” analogy, consider that the referee may look at a close play several times from different angles, but in deciding whether, for example, the receiver had caught the ball in bounds, the referee will not consider other plays involving that receiver. The referee, in other words, is not supposed to consider, for example, whether the receiver had been “robbed” by a bad call on an earlier play, or whether that receiver is known to be very athletic and thus very capable of having kept his feet in bounds while stretching to catch and exercise control of the football. The sole issue is whether the receiver stayed in bounds <u>on this play.</u> His reputation and past history is irrelevant.

So too, under traditional Fourth Amendment analysis, a reviewing court does not examine earlier or later encounters involving different citizens. The issue is not whether this particular officer generally complies with or violates Fourth Amendment rules (although an officer who has been found to be less than credible as a witness will face a tough road in all future court hearings). Rather, the only issue before the court is whether the officer had violated the Fourth Amendment *on this particular occasion*.

Going frame by frame through the encounter, a reviewing court will carefully examine each step or police decision that has legal significance, that is, steps where the officer was required to satisfy one of the "levels of proof" established under the Fourth Amendment. The court will decide whether the officer at that precise moment was aware of facts that satisfied the legal standard applicable to that particular intrusion upon protected Fourth Amendment interests.

If the reviewing court were to observe a frame of film in the imaginary motion picture that depicts a Fourth Amendment violation, then for all practical purposes, the film breaks at that exact point. As a general proposition, any information learned or evidence seized after the violation will likely be deemed to be a "fruit" of the violation and will thus be subject to the exclusionary rule.

12.4 Making Comparisons to Infer Purposeful Discrimination or a "*De Facto*" Agency Policy to Discriminate

A defendant may make a Fourth Amendment claim and a Fourteenth Amendment claim as part of a single motion to suppress evidence. The way in which the Fourteenth Amendment Equal Protection issue is litigated may be quite different from the manner in which the Fourth Amendment issue is handled. There are essentially two distinct ways that a defendant can pursue the alleged violation of the Fourteenth Amendment Equal Protection Clause. One way is by trying to show that the arresting officer impermissibly relied upon the defendant's race or ethnicity in exercising police discretion on this specific occasion. In that event, the court will review the allegation in much the same way that it would examine a claimed Fourth Amendment violation, that is, by focusing on the actions of a specific officer during the course of a specific encounter, except that instead of having to determine whether the facts known to the officer were enough to satisfy a particular Fourth Amendment "level of proof" (e.g., "reasonable articulable suspicion," or "probable cause"), the court will decide whether any of the facts relied upon by the officer were race-based and thus impermissible.

The other method for pursuing a Fourteenth Amendment Equal Protection claim is very different. Under this distinct theory, the defendant will try to demonstrate that the agency itself either had an actual policy to discriminate, or else had a so-called "de facto" policy to discriminate. A de facto policy essentially means the agency made it a practice to tolerate or to "look the other way" in the face of discriminatory policing.

When you consider the implications of this distinct method for pursuing Fourteenth Amendment litigation, it should be immediately clear why it is so important for police departments to establish and enforce a policy that prohibits, rather than tolerates, any form of discriminatory policing. As importantly, it is vital that every member of the department, from the chief all the way down to the newest recruit, fully embrace and help to enforce the agency's official policy to condemn all forms of discrimination. Always remember that it is possible for you to lose a motion to suppress evidence on Equal Protection grounds based not on your own conduct, but rather on the conduct of your brother and sister officers. To prevent that result, every officer must contribute to the overall effort to deter and condemn discriminatory policing, using peer pressure to establish a department-wide culture that will not tolerate racially-influenced policing.

As a practical matter, a defendant claiming a Fourteenth Amendment violation in a motion to suppress may resort to either or both of these two distinct theories in an effort to suppress the evidence. Whenever the defendant claims that the agency had either an official or a de facto policy to discriminate, then, unlike the mode of analysis used to resolve a Fourth Amendment claim, the reviewing court need not limit its review to a specific encounter between the arresting officer and the defendant. Courts instead may look for *patterns* of behavior. This means that a reviewing court may examine other episodes occurring at different times involving this same officer, a whole squad of officers, or even the entire department, and to do this, the court may consider "aggregate statistics." In Unit 16, we will consider the relevance and importance of aggregate statistics in more detail.

In addition to considering statistical evidence, a reviewing court hearing a Fourteenth Amendment claim may look at a department's regulations and standing operating procedures, the department's training programs, and how the department has responded to past racial profiling complaints in an effort to determine whether the department has an actual or de facto policy to permit officers to engage in impermissible discrimination.

As you can see, as compared to traditional Fourth Amendment litigation, litigation arising under the Fourteenth Amendment can become quite cumbersome and unwieldy in terms of the breadth and scope of the court's review of law enforcement conduct and policy. See Farm Labor Organizing Committee v. Ohio State Highway Patrol, 308 F.3d 523, 534 (6 Cir. 2002) (determining whether official action was motivated by intentional discrimination for purposes of an equal protection claim demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available). Whereas the typical discovery package in a Fourth Amendment case is a scant few pages consisting of one or two police reports and perhaps a radio log of a particular dispatch, in a Fourteenth Amendment case, where a defendant makes a colorable claim of discrimination, the prosecution may be required to turn over tens of thousands of pages of internal police department records. See, e.g., State v. Kennedy, 247 N.J. Super. 21 (App. Div. 1991); State v. Ballard, 331 N.J. Super. 529 (App. Div. 2000); State v. Clark, 345 N.J. Super. 349 (App. Div. 2001).

To understand why this is so, keep in mind that when a claim is made by a

defendant under the Equal Protection Clause of the Fourteenth Amendment, the defendant is essentially alleging that he or she had been subjected to "unequal" or "disparate" treatment. In other words, the gist of a selective enforcement claim under the Fourteenth Amendment is that this defendant was treated differently from other similarly-situated persons on the basis of an impermissible classification, such as race or ethnicity.

As a practical matter, it would be difficult if not impossible in most cases to establish one way or the other whether any particular individual had been treated differently from others by looking only at the way in which the police officer treated this individual suspect (unless of course the officer had displayed blatant and overt racial bias, as might be evidenced, for example, by the use of racial epithets or other outrageous conduct that by itself would demonstrate an officer's racial animus). Rather, a selective enforcement claim generally requires the reviewing court to draw a comparison between the way in which this particular defendant was treated and the way in which other similarly-situated persons of other races or ethnicities have been treated. It is no surprise then that selective enforcement litigation can be quite protracted and wide-ranging in scope, going well beyond a painstaking review of the police officer's conduct and decision-making processes in this particular encounter with this particular citizen.

12.5 The "Burden Shifting Template"

In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the New Jersey Supreme Court for the first time provided judges and lawyers with an analytical model to explain how selective enforcement claims are to be litigated. The Court embraced what it called a "burden shifting template" in racial targeting cases. Under this analytical model, a defendant who is making an Equal Protection selective enforcement claim bears the ultimate burden of proving by a preponderance of the evidence that the police acted with a discriminatory purpose, that is, that the police selected the defendant because of his or her race. In addition to that ultimate burden, the defendant claiming discrimination bears the preliminary obligation of establishing what is called a "prima facie" case of discrimination, that is, one in which the evidence, including any favorable inferences to be drawn therefrom, could sustain a judgment in the defendant's favor. Once a defendant through relevant evidence and inferences establishes a prima facie case of racial targeting, a so-called "burden of production" shifts to the State to articulate a race-neutral basis for its actions.

One of the practical problems for police officers is that the "shifting of burdens" can be triggered by events that occur beyond an individual officer's control or even awareness. For example, a claimant's prima facie case may arise months or years after the fact through an analysis of aggregate statistics involving multiple police officers and encounters. This means that as a practical matter, you cannot always know when you might need to offer a race-neutral explanation for your conduct.

This circumstance highlights the need for accurate and thorough report writing and

record keeping in all encounters, to guard against the possibility that a particular encounter may become the subject of a Fourteenth Amendment claim at some future time. (It is a supervisor's responsibility to make certain that all reports are of high quality, and not just those that are likely to result in Fourth Amendment litigation, such as when an officer seizes evidence or makes an arrest.) You must always keep in mind that citizens may file internal affairs complaints and bring civil actions against police departments in cases that did not result in an arrest or the seizure of evidence. Indeed, a person filing a discrimination lawsuit may tend to be far more sympathetic to a jury if that civil plaintiff was personally innocent of any wrongdoing.

UNIT 13: MEETING THE BURDEN OF PRODUCTION: THE IMPORTANCE OF DOCUMENTATION AND REPORT-WRITING

It is hardly a radical idea to suggest that a police officer should be able to articulate the reasons for making legally significant decisions. Indeed, law enforcement officers have been trained for decades that when they conduct a warrantless search or seizure, their conduct is deemed by the courts to be "presumptively" unlawful. See State v. Moore, 181 N.J. 40 (2004) (a warrantless search or seizure is presumed invalid and the State as the party seeking to validate a warrantless search has the burden of proving its validity). See also State v. Pineiro, 181 N.J. 13 (2004) (the State must demonstrate by a preponderance of the evidence that there was no constitutional violation from a warrantless search). This means that the State in a motion to suppress will bear the burden of proving that the officer's conduct was lawful whenever the officer's decision to intrude upon a protected Fourth Amendment right was made without first having received express authorization (i.e., a warrant) from a "neutral and detached" judge.

Because this familiar Fourth Amendment "burden of proof" principle applies only to police actions that have Fourth Amendment significance, however, officers are only accustomed to being required to document the reasons for those particular actions that trigger a Fourth Amendment standard of proof, such as a stop, a frisk, an arrest or search. Police officers are therefore less likely to carefully analyze much less bother to document the reasons for police decisions that do not intrude upon Fourth Amendment liberty or privacy interests. This can cause a serious litigation problem in the event that a defendant mounts a Fourteenth Amendment claim and is able to trigger the "burden shifting template."

Let us consider a specific example to highlight this point. As we have seen, the Fourth Amendment does not require an officer to articulate the reasons for ordering the driver of a lawfully stopped vehicle to exit the vehicle. See State v. Smith, 134 N.J. 599 (1994). It is therefore more likely that an officer may be inclined to exercise this option and actually order a driver out based on a mere hunch or gut feeling. While that poses no problem under traditional Fourth Amendment analysis, this hunch or gut feeling may turn out to be based on a stereotype involving race or ethnicity (e.g., the stereotypical notion that young men of color are more likely to be carrying weapons than young non-minority men). In that event, race or ethnicity would indeed have played a part in the officer's decision, but, precisely because the officer was not thinking carefully about the decision, the officer may not have been consciously aware that he or she was using race or ethnicity inappropriately as a factor in deciding how to deal with this individual.

It is important to understand that the courts do not prohibit law enforcement officers from having hunches. Experienced police officers can develop a "feel" or "sixth sense" for situations where something seems to be amiss or is not quite "right." The critical points to keep in mind are (1) a hunch is never enough to justify a Fourth Amendment intrusion (such as a stop, a frisk, or an arrest), and (2) even when you are not intruding on Fourth

Amendment liberty or privacy rights, you should not rely on a hunch in taking any action unless you make certain that your suspicion is not based on a person's race or ethnicity.

The importance of this last point was underscored by the New Jersey Supreme Court in State v. Maryland, 167 N.J. 471 (2001), a decision that we will discuss in more detail in Unit 15.2. In that case, the Court observed:

> We do not intend to suggest that ordinarily a proper field inquiry could not be based on a hunch. But that rationale will not do here. Because the totality of the record suggests that the hunch itself was, in our view, at least in part based on racial stereotyping, it was insufficient to rebut the inference of selective law enforcement that tainted the police conduct. The officer's field inquiry is therefore defective. [167 N.J. at 486.]

Remember that any time that you cannot explain in English why you drew the inference that you drew (in other words, for example, why you suspected an individual of being involved in criminal activity, or of being more dangerous than others), then your suspicion is said to be, literally, "inarticulable." In that event, your reasoning will be invisible to a reviewing court and so the court may be forced to guess as to your internal thought processes, which exposes you to the risk that a skeptical court might infer that

your reasoning had been based on some impermissible, unstated basis, such as race or ethnicity.

At this point, we must step back and take a reality check. Obviously, it is not humanly possible for you to document all of the reasons for every decision that you make throughout the course of any one encounter, much less every encounter that might conceivably be reviewed as part of a selective enforcement claim. You therefore need to figure out when it is most important to document your reasoning process, recognizing that your entire duty shift cannot be spent filling out novel-length, stream-of-consciousness reports to protect you in the off-chance that these reports might someday be relevant in a selective enforcement proceeding. Indeed, police today complain, with justification, that too much of their time is already spent in the stationhouse filling out paperwork, rather than out on the street protecting the public. For this reason, it is important to understand when and under what circumstances reviewing courts are most likely to be skeptical and probing, because it is in these circumstances when an officer must be especially careful, thorough and precise in documenting the legitimate reasons for the exercise of police discretion.

13.1 Deviations from Routine or Normal Practice

Any deviation from an officer's normal or routine procedure can attract the attention of a reviewing court, prompting the court to wonder what factors the officer may have actually considered in deciding to treat a particular citizen differently from the way the officer has generally treated other citizens in roughly the same circumstances. You should therefore be certain to carefully document the reasons that explain your choice of action whenever you deviate from your normal or routine practice. After all, that is exactly when there is the greatest risk of engaging in the kind of selective enforcement or "disparate treatment" that courts will be on the lookout for.

If, for instance, it is your personal practice in certain circumstances to always order the driver of a lawfully-stopped vehicle to step out, then no legal issue can arise from that decision. (By way of example, you may have a routine personal practice to order a driver out when it is nighttime, the weather is good and there is a passenger in the front seat.) In contrast, if your general practice is not to order every driver to exit a vehicle in a given set of circumstances, then you should be prepared to explain why you deviated from your normal practice in a given case where you chose to order the driver to step out of his or her vehicle.

This same principle applies to all other discretionary steps during the course of the encounter, such as posing probing or accusatorial questions. (See Unit 13.5.) In other words, if it is your general practice to pose certain questions to motorists during a traffic stop, there will be no Fourteenth Amendment issue (although there could be Fourth Amendment implications if your questions inappropriately prolong the duration of the stop). If, however, you are more likely to pose certain probing questions to minority motorists, that practice constitutes impermissible racially-influenced policing even if the questions

themselves do not violate the Fourth Amendment.

13.2 Judicial Skepticism About High Discretion Encounters

We can expect greater judicial skepticism and probing whenever an officer has an especially wide range of discretion to act or to refrain from acting, since in those circumstances, there will be a correspondingly greater potential for an abuse of that unchanneled discretion. Not surprisingly, most claims of racial profiling arise when officers are on "discretionary patrol" rather than when they are responding to a "call for service," precisely because discretionary patrol, as the name suggests, involves proactive police decisions where officers can pretty much choose what they want to focus on, as opposed to having to react to information provided by a police dispatcher.

This does not mean, however, that an officer assigned to patrol duties always has unlimited discretion. Sometimes, an officer has no choice but to react to a serious event or observation that cries out for a police response. Consider, for example, that when an officer sees a motorist traveling in excess of 90 mph, the officer has practically no discretion in deciding whether or not to initiate a motor vehicle stop. Of course, a police officer always has discretion to refrain from engaging in a high-speed pursuit when the officer believes that such a pursuit would be too dangerous. The point, however, is that rarely if ever would a police officer simply ignore a motor vehicle violation of this degree of seriousness.

This kind of excessive speeding, in other words, would virtually always prompt some law enforcement action, and for this reason, it would be exceedingly difficult for a defendant to claim that an officer had engaged in "racial profiling" in selecting his or her vehicle to be stopped when the defendant had been observed committing so serious a motor vehicle violation. (Remember, the test ultimately is whether the office would have treated the motorist the same if the motorist had been of a different race or ethnicity. When the observed violation is especially serious, it becomes clear that the race or ethnicity of the violator would make no difference in the officer's decision to intervene.)

Similarly, police officers have comparatively little discretion and selectivity when dealing with obvious drunk drivers – a vehicle weaving all over the road and thus posing an immediate public safety risk to other motorists. Again, it would be difficult for a defendant to establish a prima facie case of discrimination where an officer had initiated a motor vehicle stop based on such observed conduct.

Police officers also have comparatively limited discretion when they are relying upon information provided by another. Consider a case where an officer is dispatched to a scene to investigate information that had been reported by a private citizen. This may be a report of an "aggressive driver" made by another driver via a cell phone, or may be a report from a concerned resident about a "suspicious person" prowling about in their neighborhood. From the responding officer's perspective, these are essentially "B.O.L.O." situations and if the citizen's report had included a description of the suspicious person's race or ethnicity, then the responding officer may, of course, take that circumstance into account in trying to identify this individual described in the citizen's report. (As we saw in Unit 9, however, there may be circumstances where it might be readily apparent that the citizen's report is itself based entirely on a racial stereotype, rather than an observation of objectively suspicious conduct, so that an officer would be expected to discount the reported information on its face.)

Recall that from a Fourth Amendment perspective, the information or "tip" provided to police by a citizen may or may not constitute a reasonable and articulable suspicion necessary to justify an investigative detention. The general rule is that an "anonymous" tip (where the identity of the tipster is unknown) is rarely sufficient to satisfy the reasonable articulable suspicion level of proof needed to justify an investigative detention, even when the tip pertains to a suspicious person with a gun. See Florida v. J.L., 120 S.Ct. 1375 (2002). But even if the information provided by a citizen is insufficient by itself to justify initiating an investigative detention, an officer would usually be permitted to undertake some form of less intrusive investigation, such as conducting a discreet surveillance, or approaching the person to initiate a consensual "field inquiry." In other words, the information provided by a citizen and conveyed via a dispatcher would generally authorize an officer to focus attention on any person matching the description in the tip. Indeed, depending on the circumstances, it might well constitute dereliction of duty for an officer to simply ignore what is essentially a call for service. Note that in this type of situation, the officer is reacting to a reported event or incident, which is very different from proactive

"digging" for evidence of criminality, which we will discuss in Unit 13.3.

We have just considered several examples of "low discretion" encounters where there is a low potential for abuse of police discretion. Let us now consider what could be described as a "high discretion" encounter where, from a reviewing court's perspective, there would be a correspondingly high potential for an abuse of police discretion and where it would be easier for a defendant to establish a prima facie case of selective enforcement.

Suppose that an officer were to pull over a motorist who had been traveling at 67 mph in a 65 mph zone, or for having a broken taillight. A reviewing court in such a case is much more likely to probe deeply into the true reasons why this vehicle was selected to be stopped, and the court is more likely to question whether race or ethnicity might have played some part in the exercise of police discretion. The reason for this is that police officers have much more discretion to ignore, or at least not act upon, a violation of such a comparatively minor nature. In fact, it is common for police to refrain from making a stop for such a violation, leading to an inference that there must have been something about this particular violator that distinguishes him or her from other similar violators who are not stopped.

This is not to suggest that it is illegal for a police officer to initiate a motor vehicle stop based on a minor moving violation or equipment violation. The point, rather, is that in such a case, you can expect that a reviewing court will be more likely to require you to explain the criteria that you used to select this vehicle to be stopped from among the universe of other vehicles that may have been committing violations that were at least as serious. (Remember, the gist of a "selective enforcement" claim is that you relied on inappropriate criteria to "select" an individual for a certain type of treatment or enforcement action.) Officers who want to avoid such heightened scrutiny of their discretionary decisions should focus their enforcement actions on more serious violations, since such encounters are less likely to result in a claim of being a so-called "pretext" stop. (We will discuss the issue of pretext stops – when they are permitted and when they are not permitted – in more detail in Unit 15.1.)

Let us consider yet another example of a type of police decision that involves a wide latitude of discretion precisely because the police conduct does not involve an intrusion on Fourth Amendment rights (but that nonetheless could raise issues under the Equal Protection Clause). Under New Jersey law, police officers are allowed to "run the plates" of any motor vehicle that comes into their line of sight. Because there is no expectation of privacy with respect to one's license plate, this police action simply does not intrude on the Fourth Amendment and thus need not be justified under any Fourth Amendment standard or "level of proof." See State v. Segars, 172 N.J. 481 (2002) (*per curiam*); State v. Donis, 157 N.J. 44 (1998). If the officer were to "run plates" in a truly "random" fashion, then there would also be no Equal Protection issue, since the definition of randomness is that every vehicle would have an equal chance of being selected for this type of police scrutiny. If, for example, an officer were to check every plate that he observes (or every third or fifth

vehicle), there could be no possibility of unlawful disparate treatment or discrimination based upon race or ethnicity.

But in the real world, an officer does not have the time or opportunity to run the license plates of every vehicle that the officer sees on the road. Nor is it feasible in many situations to select vehicles according to a neutral plan of the kind used at a drunk driving checkpoint (i.e., every third, every fifth vehicle, etc.) Accordingly, there must be some other selection criteria that an officer uses in choosing which license plates to check through the MVC database. If a statistical analysis were later to produce an anomaly (i.e., e.g., if the license plates of minority drivers are disproportionately represented among the universe of plates that were checked), an inference could be drawn that race or ethnicity had played some part in the exercise of police discretion, and in that event, using the "burden-shifting template" developed by the New Jersey Supreme Court, it would fall upon the officer to explain the legitimate, race-neutral criteria that he or she used to exercise this form of discretion. If the officer cannot produce a race-neutral explanation, then the prima facie case of discrimination established by aggregate statistics could be enough to result in a finding of racial targeting.

13.3 Judicial Skepticism About "Digging" for Evidence of Criminality

New Jersey courts in recent years have repeatedly expressed their concern with the police practice sometimes known as "digging," as in digging for hidden treasure. From the courts' perspective, this can be most problematic when a police officer assigned to patrol duties seems to be trying to transform or escalate a routine motor vehicle stop into a full-blown criminal investigation. It is one thing to be vigilant and observant. Police officers should *always* be paying attention to everything going on around them, and must be especially watchful for signs of criminal behavior. It is another thing, however, for officers to be launching "fishing expeditions," especially when this has the effect of treating ordinary citizens as if they were criminal suspects.

This practice raises a number of Fourth Amendment issues. As importantly, serious Fourteenth Amendment Equal Protection concerns arise whenever it appears that officers may be more likely to engage in "digging" when they are dealing with minority motorists (based on the stereotype that such motorists are more likely to be engaged in criminal activity). Consider that from a reviewing court's perspective, the problem with allowing police to embark on a "fishing expedition" during a run-of-the-mill traffic stop is not just that we might cast too wide a net, but also that we may throw out one that is too narrow, that is, one that has the practical effect of trolling for criminals too selectively based on subtle or even subconscious stereotypes of what a "typical" criminal looks like. (Recall from our discussion in Unit 7 that reliance upon a racial or ethnic stereotype is more likely to occur when officers rely on a "gut feeling" or "hunch," that is, when officers cannot articulate the reasons for the exercise of police discretion and are not carefully thinking about why exactly they are doing what they are doing.) The courts' response to the police practice of "digging" or "fishing" represents a good example of how the development of Fourth

Amendment search and seizure law has been influenced by concerns about Equal Protection violations, and these *Fourteenth* Amendment concerns may be lying just beneath the surface of a court's express Fourth Amendment analysis and reasoning.

In 1979, the United States Supreme Court ruled in Delaware v. Prouse, 440 U.S. 648, that police may not order a vehicle to pull over unless the officer has a reasonable articulable suspicion that a violation has occurred. In the vast majority of cases, this legal standard is satisfied by an officer observing a motor vehicle violation – a traffic offense. The reasonable articulable suspicion standard used in Delaware v. Prouse had first been developed in the landmark case of Terry v. Ohio, 392 U.S. 1 (1968) – a case that involved suspected criminal activity. (In Terry, a police officer became suspicious of two men pacing nervously on a street and repeatedly peering into a store – conduct consistent with casing a store for a robbery).

In the quarter century since Delaware v. Prouse was decided, many courts and police trainers and legal advisors have tended not to distinguish between true Terry stops (criminal suspicion encounters) and Prouse stops (traffic stops typically based upon observed motor vehicle violations). In fact, the term "Terry stop" is often casually used by police officers, lawyers and judges to describe the brief detention of a motor vehicle for a traffic offense. In other words, we have tended to lump routine traffic stops and criminal suspicion stops together under the broad rubric of "investigative detentions." (An investigative detention, sometimes also called an "investigatory stop," literally involves briefly detaining someone for the purpose of conducting an on-the-scene investigation of some suspected unlawful (but not necessarily criminal) behavior.)

Recently, however, courts, especially in New Jersey, seem to have begun to draw at least a tacit distinction between these two types of encounters, even though both are considered to be "investigative detentions" and both are justified by the same "level of proof," namely, reasonable articulable suspicion. Reviewing courts generally expect police officers in these two different types of encounters to pursue a different sequence of routine steps as part of their prompt, on-the-scene investigation into the unlawful activity that justified the decision to initiate a temporary "seizure" of a person or vehicle. This means that an officer who stops a vehicle for an observed motor vehicle violation might not automatically be authorized to pursue a probing or protracted investigation into criminal activity absent some articulable basis for suspecting that the motorist is engaged in committing a criminal offense, at least where any such expanded investigation would have the practical effect of prolonging the duration of the encounter beyond that which is necessary to investigate and resolve the initial motor vehicle infraction.

Actually, this is hardly a new principle of law, although the courts are now becoming more strict in enforcing this principle. In the landmark case of Terry v. Ohio – the historic case decided in 1968 that first established the whole concept of an investigative detention – the United States Supreme Court ruled that reviewing courts must examine "whether the officer's action was justified at its inception, and whether it was reasonably related in scope

to the circumstances which justified the interference [with a citizen's right to go about his or her business] in the first place." 392 U.S. at 20 (emphasis added). Police actions that are not "reasonably related in scope" to the initial reason for the stop, in other words, can constitute a Fourth Amendment violation, especially when those actions have a tendency to prolong the duration of the encounter.

Indeed, reviewing courts are especially concerned with police conduct that unnecessarily extends the duration of a routine investigative detention. In United States v. Sharpe, 470 U.S. 675 (1985), the United States Supreme Court admonished that police must "diligently pursue" their investigation during a stop, and in Florida v. Royer, 103 S.Ct. 1319 (1983), the Court warned that the scope of an investigative detention "must be carefully tailored to its underlying justification . . ., and [may] last no longer than is necessary to effectuate the purpose of the stop." See also Illinois v. Caballes, 125 S.Ct. 834 (2005) and Muehler v. Mena, 125 S.Ct. 1465 (2005) (A lawful seizure "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission," referring to the situation-specific "mission" to investigate and resolve the motor vehicle violation or other infraction that had justified the stop in the first place).

The New Jersey Supreme Court in State v. Davis, 104 N.J. 490 (1986), held in the same vein that an officer during a stop should use the least intrusive technique reasonably available to verify or dispel suspicion in the shortest period of time. In State v. Pegeese, 351 N.J. Super. 25 (App. Div. 2002), the court was even more pointed when it noted that in the absence of any evidence of criminal wrongdoing, once a law enforcement officer is satisfied that the operator of a vehicle stopped for a traffic violation has a valid license and the vehicle is not stolen, the officer may not detain the occupants of the vehicle for further questioning, since such detention could not be deemed to be "reasonably related in scope" to the circumstances which justify the stop in the first place. (In that particular case, the court concluded that prolonging the detention while the trooper waited for the results of a registration and license computer check to see whether the vehicle was stolen was permissible, since the registered owner was not present and neither of the occupants were able to present a driver's license or any other form of identification.)

The courts have thus relied upon the Fourth Amendment and Article 1, paragraph 7 of the New Jersey Constitution to impose limitations on the authority of police officers to use rudimentary investigative techniques, such as posing questions, that might not at first blush seem to be particularly intrusive. In Unit 13.5, we will discuss in more detail when and under what circumstances it is appropriate to engage citizens in conversation and pose probing questions or request citizens to provide identification. For present purposes, the key point is that under the "reasonably related in scope" test, courts may be skeptical when police exercise discretion by trying to elicit information from citizens when that information is not necessary to resolve the reason for the police-citizen encounter.

In Hornberger v. American Broadcasting Company, 351 N.J. Super. 577 (App. Div. 2002), for example, a New Jersey court held that it was unreasonable for an officer to

request identification from the passengers of a motor vehicle where the officer had no basis to suspect the passengers of any wrongdoing. (The Hornberger case involved a civil lawsuit brought by police officers against a news organization that broadcast a television report on "Driving While Black" based upon an incident involving three African American men who were acting as "testers" by agreeing to cruise in an expensive car to find out if police would stop them.) The Appellate Division in Hornberger recognized that there is a split in legal authority and that courts in some States permit such requests as a routine matter. In holding that the officer's conduct was unreasonable, the court in Hornberger concluded that prohibiting routine demands for identification when there is no factual justification for such a demand is "most consistent with our [New Jersey] Supreme Court's decision in Carty and the prophylactic purpose of discouraging the police from turning a routine traffic stop into a 'fishing expedition for criminal activity unrelated to the stop.'" 351 N. J. Super. at 614, quoting from State v. Carty, 170 N.J. at 632. (Note that Carty is the case that holds that police during a traffic stop may not ask for permission to conduct a consent search unless the officer has reasonable articulable suspicion to believe that the search would reveal evidence of criminal activity.)

It is important to recognize that if the initial reason for a stop is an observed motor vehicle violation, as opposed to suspected criminal activity, then as a general proposition, an officer should not treat the driver or occupants as if they were *criminal* suspects, subjecting them to the kinds of probing tactics that are designed to ferret out criminal activity, unless there is some objective basis to believe that criminal activity may be occurring. The same principle would, of course, also apply to a so-called "community caretaking" encounter, where the officer has a reasonable basis to believe that a vehicle or occupant is in some kind of distress and needs assistance.

Even putting aside constitutional requirements, this approach makes sense from a policy perspective as well. Treating citizens as if they are criminal suspects when there is no legitimate basis for doing so is the antithesis of modern notions of community policing. Such an aggressive and inherently accusatorial tactic tends to leave citizens with a negative impression of police, fosters their earnest belief that they had been targeted or singled out for some unstated impermissible reason, and may ultimately prove to be an unsafe police tactic because it may lead to anger, resentment or frustration that could manifest itself in a response that puts the officer at greater risk.

Of course, the nature of a routine motor vehicle stop may change in midstream, where, for example, during a stop that was originally based upon an observed motor vehicle violation, the officer, based on objective observations and reasonable inferences drawn therefrom, begins to suspect that criminal activity may be occurring. When that happens, the purpose or reason for the stop changes, and it is as if the Delaware v. Prouse traffic stop was now "merging" with or evolving into a true Terry v. Ohio stop. The officer at that point would be authorized to begin to take a different series of actions, such as asking follow-up questions that are related to the newly-evolved suspicion.

This is sometimes referred to as a "broadening" of the investigation – a phrase that was used by the New Jersey Supreme Court in State v. Dickey, 152 N.J. 468 (1998). See also State v. Chapman, 332 N.J. Super. 623 (App. Div. 2000) (if during a traffic stop the circumstances give rise to suspicions unrelated to the traffic offense, police may broaden their inquiry beyond the circumstances of the initial stop). This practice is sometimes also referred to as "enlarging" a routine traffic stop or as a "shift in purpose." See Illinois v. Caballes, 125 S.Ct. 834 (2005) (United States Supreme Court held that the "shift in purpose" from a traffic stop into a drug investigation was lawful because the dog sniff was not a search subject to the Fourth Amendment and because in the unusual circumstances of that case, the duration of the stop had not been extended by the dog sniff since the canine had arrived at the scene and completed its scent examination while the trooper who initiated the speeding stop was still in the process of writing a warning ticket; the dog handler had responded immediately to the initial radio call-in of the stop and the entire incident (from the moment the stop was initiated to the time when the drug detection dog alerted to the exterior of the trunk of the detained vehicle) lasted less than ten minutes.)

In sum, this is an unsettled and rapidly evolving area of search and seizure law. Several courts in oral or unpublished opinions have suggested that a police officer during a routine motor vehicle stop has no right to be "nosy" in investigating the possibility that the vehicle may be transporting drugs, or involved in other types of criminal activity. Reviewing courts will especially be on the lookout for any indication that race or ethnicity played any part in the officer's decision to try to broaden the scope of the investigation beyond that which was minimally necessary to investigate the circumstances of the observed motor vehicle violation.

In the next few subunits, we will be talking about judicial skepticism about certain particular "digging" tactics, including police reliance upon the consent-to-search doctrine, and the posing of probing or "accusatorial" questions to detained motor vehicle violators and their passengers. For our present purposes, the key point is that when you initiate an encounter with a citizen, and especially when you initiate an investigative detention (i.e., when you briefly detain someone for the purposes of conducting an on-the-scene investigation), you should (1) be able to articulate exactly what it is that you are investigating, and (2) carefully consider whether the investigative tactics or techniques you choose to use are reasonably geared to advance that particular investigation.

13.4 Judicial Skeptism About the Consent-To-Search Doctrine

Police officers must always be cognizant that some courts are especially concerned about the use of the consent-to-search doctrine because they believe that it has been used by police officers as a mean to promote "digging" for evidence of a crime, transforming routine traffic stops into protracted criminal investigations. Because some courts, in turn, believe that "digging" is itself a manifestation of the racial profiling problem, the courts in New Jersey have erected new legal restrictions under the guise of the Fourth Amendment. These new rules are designed in part to discourage officers from trying to broaden the

scope of a routine motor vehicle stop.

One of the concerns about the consent-to-search doctrine was that it allowed for a virtually unlimited degree of police discretion, precisely because there were no legal standards or limits imposed on when an officer could ask for permission to conduct a consent search. (All of the rules governing consent searches, including some especially strict rules that had been developed by the courts in New Jersey, dealt with how to obtain a knowing and voluntary waiver of Fourth Amendment rights, not when to do so. See, e.g., State v. Johnson, 68 N.J. 349 (1975) (Under the New Jersey Constitution, the State must prove that person knew that he or she had the right to refuse to consent to search).) Given the absence of a legal standard for requesting permission to conduct a consent search, police officers were free to base their decision on a mere hunch or gut feeling, leading some courts to speculate that these hunches, in turn, could be based on unstated, impermissible criteria that would be difficult to detect or monitor precisely because police were not required to articulate their reasons for wanting to conduct a consensual search.

In State v. Carty, 170 N.J. 632 (2002), the New Jersey Supreme Court dramatically changed the legal landscape, at least in the context of routine motor vehicle stops, by establishing a legal standard that police must meet before they can even ask for permission to conduct a consent search. Specifically, the Court in Carty diverged from long-standing federal and state precedent by holding that an officer during a motor vehicle stop may not prolong the duration of the encounter by asking a motorist to consent to a search unless the officer is aware of facts constituting a reasonable articulable suspicion to believe that the search would find evidence of criminal activity.

By imposing this legal standard for patrol officers to meet, the Court restricted and channeled the exercise of police discretion, reducing the potential for an abuse of that discretion. Furthermore, by effectively eliminating the potential for patrol officers to conduct roadside searches based on a whim or hunch, the New Jersey Supreme Court undoubtedly hoped to discourage officers from bothering to even begin to engage in any type of factually unsubstantiated "digging," since such efforts would be far less likely to hit pay dirt without the ability to rely on the consent doctrine.

13.5 Judicial Skepticism About Posing "Probing or Accusatorial" Questions and Eliciting "Inconsistent Statements"

One of the most common examples of "digging" occurs when an officer decides to engage a driver and passengers in conversation in the hope of eliciting an outright and obvious lie, or at least "inconsistent statements" that might reasonably suggest that one or more of the occupants is lying, which in turn would suggest that criminal activity is afoot. Specifically, officers will sometimes pose a legitimate identification or itinerary question to the driver, and then later pose the same questions to a passenger to see whether their "stories" are inconsistent. (It should be noted that police officers will sometimes order a driver to exit a lawfully detained vehicle to preserve the option of posing the same itinerary

or identification questions to first the driver, and then to the passengers. The driver will be ordered out, in other words, so that the officer can pose questions to the driver under circumstances where the passengers cannot hear the driver's answers.)

Sometimes officers will be even more direct by asking a motorist straight out whether there are any illicit drugs in the vehicle. This is sometimes

referred to as an "accusatorial" question because the question by its very nature presupposes criminal activity.

Most police officers have been trained over the years to think that the law of police questioning or "interrogations" derives principally if not entirely from the Fifth and Sixth Amendments, which define and safeguard the right against compelled self-incrimination and the right to counsel. These Fifth and Sixth Amendment principles are distilled in the landmark case of Miranda v. Arizona. In reality, other constitutional provisions, including the Fourth and Fourteenth Amendments, may also impose limitations on the authority of police officers to pose questions to private citizens.

The Miranda rule, as it turns out, only applies when the person being questioned is in police "custody," which in this context essentially means that the person is under arrest. Although accusatorial questions are clearly designed or at least are reasonably likely to elicit an "incriminating" response, police officers are not required to read Miranda warnings before posing such questions during a consensual field inquiry, or even during the course of an investigative detention. See State v. Hickman, 335 N.J. Super. 623 (App. Div. 2000) (following the reasoning in Berkemer v. McCarty, 104 S.Ct. 3138 (1984)).

While posing such questions during the course of a field inquiry or investigative detention is clearly permitted under the Fifth Amendment and the Miranda rule, that does not mean that there are no constitutional issues concerning the propriety and legal impact of this police tactic. Recall from our earlier discussion in Unit 5.1 that various provisions in the State and Federal Constitutions define and safeguard a number of distinct and sometimes overlapping civil rights. The key point, of course, is that police officers in their interactions with private citizens must comply with *all* of the various rules established under all of the various constitutional provisions that are designed to impose limits on the exercise of police discretion.

We will start our analysis by discussing the Fourth Amendment implications whenever an officer is using questions to "dig" for evidence of criminal activity. While the Fourth Amendment is generally not thought of as dealing directly and specifically with police questioning, we must always remember that this constitutional provision safeguards, among other things, a right of liberty, that is, the right that citizens enjoy to move about freely, to be left alone, and to go about their affairs without being interrupted or unduly delayed by government agents. Accordingly, any police conduct that unreasonably extends the duration of a nonconsensual police-citizen encounter may violate the Fourth Amendment or its state constitutional counterpart.

The United States Supreme Court has repeatedly held that mere police questioning does not constitute a seizure under the Fourth Amendment. See most recently Muehler v. Mena, 125 S.Ct. 1465 (2005). In Florida v. Bostick, 111 S.Ct. 2382 (1991), for example, the Court explained that "even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the

individual's identification; and request consent to search his or her luggage."

In Illinois v. Caballes, 125 S.Ct. 834 (2005), the Court nonetheless warned that a lawful traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." Furthermore, we now know after State v. Carty, 170 N.J. 632 (2002), that under the state constitutional counterpart to the Fourth Amendment, certain questions may not be posed by law enforcement officers in New Jersey absent reasonable suspicion of criminal activity. As we considered in the preceding unit, the New Jersey Supreme Court in Carty rejected a long line of federal (and State) precedent by holding that police officers during a traffic stop may not ask a motorist whether he or she would be willing to consent to a search unless the officer is aware of facts that constitute a reasonable suspicion to believe that the search would find evidence of an offense. We therefore know that at least some of the above-quoted language in Florida v. Bostick is no longer good law in this State.

The rules under the Fourth Amendment (and especially under Article 1, paragraph 7 of the New Jersey Constitution) may be particularly strict when the police questioning is accusatorial in nature. An accusatorial question is one that presupposes criminal activity, such as "Are you carrying any illicit drugs?" (Note that asking a person to give permission to conduct a consent search is impliedly accusatorial, especially now that the New Jersey Supreme Court has ruled in State v. Carty that there must be reasonable suspicion to believe the consent search would uncover evidence of an offense.)

New Jersey courts have recently held that posing an accusatorial question can in at least certain circumstances transform a consensual field inquiry into a full-blown "Terry" stop. See State v. Rodriquez, 172 N.J. 117 (2002). In State in Interest of J.G., 320 N.J. Super. 21 (App. Div. 1999), the court went even further and suggested that posing an accusatorial question *automatically* converts a field inquiry into an investigative detention. (The New Jersey Supreme Court in Rodriquez declined to decide one way or the other whether it would embrace such a strict, automatic rule governing accusatorial questions.) Most recently, the Court in State v. Neshina, 175 N.J. 502 (2003), observed that a field inquiry occurs when an officer questions a citizen in a manner that is not "harassing, overbearing *or accusatory in nature*." (emphasis added).

Note that any such escalation from a consensual field inquiry into an investigative detention can have profound legal consequences, since at the precise moment a police-citizen encounter becomes an investigative detention, the detaining officer must be aware of facts constituting a reasonable articulable suspicion that criminal activity is afoot. If the officer at that moment does not satisfy the reasonable articulable suspicion level of proof, the field inquiry-turned-investigative detention is deemed to be unlawful and any information learned or evidence seized after that precise point in the encounter (that "frame of film" in our motion picture analogy) will be subject to the exclusionary rule.

But let us suppose that we are not talking about a field inquiry, but rather a case

where the tactic of posing an accusatorial question is used after a person has already been temporarily "seized" for Fourth Amendment purposes, such as a traffic stop. In that event, the accusatorial question cannot convert the encounter into an investigative detention because the encounter is already in the investigative detention mode. How then will courts react to this form of "digging"? What are the limits imposed on the authority of an officer to engage detained motorists in conversation?

This aspect of search and seizure law in New Jersey is evolving and unsettled. As we have seen, courts seem to be beginning to distinguish between Delaware v. Prouse traffic stops and true Terry v. Ohio criminal suspicion stops. Police officers should remember that as a matter of sound law enforcement policy, if not as a matter of settled law, it is generally inappropriate to treat a motorist who is stopped for a mere motor vehicle violation as if he or she were a criminal suspect unless there is some objective factual basis for doing so. At a minimum, police officers must expect reviewing courts to look closely at the reasons for subjecting a person detained in a routine motor vehicle stop to probing questions that, by their nature, presuppose criminal activity.

We also need to consider the legal implications of somewhat less aggressive and accusatorial forms of police probing, such as posing a series of questions that are designed to elicit indications of deception. While this aspect of search and seizure law is also unsettled, always keep in mind that one of the key questions that reviewing courts will address is whether any such probing questions unduly extended the duration of the police-citizen encounter.

As a general proposition, once an investigative detention (e.g., a motor vehicle stop) has been lawfully initiated, police are authorized to pose questions to a detained motorist so long as those questions are not excessive and do not unduly prolong the encounter, and provided that the questions are reasonably related to the reason for the stop. Compare State v. Chapman, 332 N.J. Super. 452 (App. Div. 2000) (the questions in that case concerning the motorists' travel itinerary had a "substantial nexus" to ascertaining the reasons for erratic driving; if during the stop, or as a result of reasonable inquiries initiated by officers, the circumstances give rise to suspicions unrelated to the traffic offense, then police may broaden their inquiry beyond the circumstances of the initial stop) with State v. Hickman, 335 N.J. Super. 623 (App. Div. 2000) (police during a motor vehicle stop may question occupants on a subject "unrelated to the purpose of the stop" so long as such questioning does not extend the duration of the stop). Compare also Muehler v. Mena, 125 S.Ct. 1465 (2005) (Officers' questioning of defendant about her immigration status while she was detained during execution of a search warrant did not constitute a Fourth Amendment violation when the questioning did not extend the time she was detained).

One thing is certain. Police are *permitted*, indeed are *expected* to pose questions during the course of a traffic stop or any other kind of encounter with private citizens. It is therefore a gross exaggeration to suggest that police officers during a routine, noncriminal encounter are precluded by the Fourth Amendment (and Article 1, paragraph 7 of the New

Jersey Constitution) from investigating possible criminal activity. The key is to understand the nature and reasons for the constitutional limitations that are indeed imposed on police discretion. The practical test can be simply stated: police officers should have a legitimate basis for posing questions that are likely to have the effect of extending the duration of an encounter. This is hardly an insurmountable burden. Indeed, as it turns out, police officers continue to enjoy a wide (but not unbounded) latitude of discretion in pursuing an on-the-scene investigation during the course of routine encounters.

For example, because the overwhelming majority of motor vehicle stops involve an observed speeding violation, officers are almost always permitted to ask what are sometimes referred to as "itinerary questions," that is, questions that ask where the motorists are heading, where they are coming from, and what is the purpose of their travel. Such point of origin and destination questions are relevant or "reasonably related" to investigating why the motorist was traveling in excess of the speed limit, and it is appropriate for the officer to consider these circumstances in deciding, for example, whether to issue a summons for speeding as opposed to merely issuing an oral or written warning.

The problem is that there is no simple or "bright line" rule governing what questions may be deemed by a reviewing court to be "excessive." Police officers must therefore use common sense in deciding how long to pursue a line of questioning with a detained motorist or pedestrian. Obviously, in every encounter, it is appropriate for an officer to pose at least some questions to the motorist so as to determine whether the driver is coherent (in other words, to establish whether the person appears to be intoxicated), and also to determine the motorist's state of mind. From an officer safety perspective, moreover, it is obviously important to ascertain at the earliest possible opportunity in the encounter whether a motorist appears to be extremely angry or agitated.

Police officers should also be aware that there may be legal issues concerning the manner in which they interact with passengers during the course of routine traffic stops. While an officer will always engage the driver in conversation, this is not necessarily true with respect to a passenger who is not suspected of any offense (such as a seat belt infraction). The courts in New Jersey have on occasion drawn a distinction between drivers and passengers for purposes of routine investigatory or precautionary steps that may be taken by police during a motor vehicle stop. In State v. Smith, 134 N.J. 599 (1994), for example, the New Jersey Supreme Court ruled that police may not automatically order a passenger to step out of a lawfully stopped vehicle, whereas police may automatically order the driver to exit the vehicle. The Court in Smith observed:

> [w]ith respect to the passenger, the only justification for the intrusion on the passenger's privacy is the untimely association with the driver on the day the driver is observed committing a traffic violation. Because the passenger has not engaged in culpable conduct, the passenger has a legitimate expectation

> that no further inconvenience will be occasioned by any intrusion beyond the delay caused by the lawful stop. [134 N.J. at 615.]

As we saw in Unit 13.3, reviewing courts are becoming increasingly wary of any effort by an officer during a "routine" traffic stop to mount a "fishing expedition" or otherwise "dig" for evidence of criminality that is not immediately apparent. In Hornberger v. American Broadcasting Company, 351 N.J. Super. 577 (App. Div. 2002), the court found it to be unreasonable for the officer to have requested identification from passengers where there was absolutely no basis to suspect the passengers of any wrongdoing. Compare State v. Sirianni, 347 N.J. Super. 382 (App. Div. 2002), certif. den. 172 N.J. 178 (2002), where the court declined to adopt a bright line rule that a request for identification must be based upon reasonable articulable suspicion to believe that the person has committed a crime.

(As a matter of common sense, of course, not all forms of casual conversation will raise constitutional concerns. If, for example, a backup officer engages a passenger in friendly conversation while the other officer questions the driver about the circumstances for the stop, there is not likely to be cause for judicial anxiety. Not all conversations between an officer and a citizen are "probing" in nature, or are likely to prolong the duration of the stop.)

While the law concerning the questioning of passengers is unsettled and evolving, there are clearly times when it is perfectly appropriate for an officer to pose questions to a passenger during the course of a traffic stop. For example, an officer should pose questions where the driver turns out to be on the revoked list or appears to be intoxicated, since the officer needs to ascertain whether the passenger is sober and licensed to operate the vehicle. Similarly, an officer may pose questions to a passenger where the registered owner is not present and it is appropriate to verify that the driver has permission to operate this particular vehicle. In these circumstances, the questions posed to a passenger would be reasonably related to a legitimate question that has arisen during the course of the traffic stop.

It is certainly understandable why a police officer would always want to know the identity of the vehicle occupants, since an officer armed with this information would be able to run a criminal history check and because an occupant might be less likely to flee or resort to violence if he or she knew that the officer had ascertained his or her identity. The point, however, is that it is by no means clear that officers are automatically authorized to pose questions to occupants during routine traffic stops. Consider that passengers are not really "witnesses" to a mere traffic offense (prosecutors in municipal court do not call civilian witnesses to establish that the driver was speeding, for example), and therefore, depending on the circumstances, a passenger's cooperation may not be relevant or "reasonably related" to completing the investigation of the observed traffic infraction that justified the stop in the first place. An officer should therefore be able to articulate why it is appropriate

to interact with a passenger by posing probing questions, especially when the nature of those questions might lead a citizen to believe that he or she is suspected of something or otherwise is "under investigation."

At this point, it would be helpful to recap and synthesize the limitations imposed by law on an officer's authority to "ask the next question" during the course of a noncriminal encounter. In doing so, we need to be as clear and precise as possible so that officers can be confident in posing questions that are perfectly legitimate and lawful. It is critically important that police officers not be chilled from asking questions whenever there is an objective basis to believe that something may be amiss. The federal and State Constitutions do *not* require officers to put on blinders or avert their eyes during an encounter, and officers should never ignore any sights, sounds or smells that may raise legitimate suspicion of possible criminality. After all, every officer's core mission is to protect the public by detecting and deterring criminal activity.

But because police discretion is not unlimited, and because the end goal of protecting public safety by ferreting out crime does not necessarily justify all investigative means, an officer during a routine, noncriminal encounter with a private citizen should be able to articulate why he or she is pursuing a particular avenue of investigation or line of questioning, and this in turn can best be done when the questions are based on the citizen's *conduct*, that is, what this particular citizen said or did (or didn't say or do) that might provide cause for further inquiry or more intensive scrutiny.

As we have seen repeatedly throughout this course, some of our Fourth Amendment rules (e.g., limits on prolonging the duration of a stop) are designed in part to safeguard Fourteenth Amendment Equal Protection rights, reflecting the sneaking suspicion by some reviewing courts that a citizen's race or ethnicity may sometimes play a role in the exercise of police discretion. That being so, our strategy for complying with the Fourth Amendment can be based on our strategy for complying with the Equal Protection Clause and Attorney General Law Enforcement Directive 2005-1:

First you should focus on the citizen's *conduct*. Your observation of some unusual or suspicious circumstance would justify posing a question, just as an unusual or suspicious reaction or response to a police question would always warrant a follow-up question.

Second, you should be prepared to *document* the objective basis or reason(s) why you bothered to pose a particular question or decided to pursue a line of questioning. (Recall that while the Fourth Amendment is mostly concerned with *what* happened, the Fourteenth Amendment is just as concerned with *why* an officer acted as he or she did.) This two-pronged strategy will help to innoculate you from claims arising under *both* the Fourth and Fourteenth Amendments.

The bottom line is that in today's legal climate, you should always be prepared to answer *why* you elected in the exercise of discretion to undertake every investigative step

that you took during the course of a police-citizen encounter. It therefore makes sense to think about the rationale for posing questions to passengers (and drivers) before you pose them. Remember, the cornerstone of the Fourth Amendment is "reasonableness," which requires you to be *reasoning* (i.e., thinking about what you are doing) at all times.

In sum, when you pose a question during the course of a routine traffic stop (whether to the driver or to any other occupants) and that question has the capacity to extend the duration of the stop, you should make certain that the question is "reasonably related" to one or more of the following circumstances:

> (1) the initial reason for the stop (i.e., the observed motor vehicle violation, and the sobriety of the driver (and passenger) when this is in question);
>
> (2) ownership of the stopped vehicle and the lawful authority of the driver to be operating this vehicle (i.e., the driver's identity, license status and relationship to this particular vehicle, and the bona fides of the vehicle registration and insurance coverage);
>
> (3) whether an occupant is the subject of a B.O.L.O. bulletin, or
>
> (4) some suspicious or at least unusual fact learned or observation made during the course of the encounter that justifies posing follow-up questions or "broadening" the scope of the on-the-scene investigation (such as, for example, a "furtive" movement, see Unit 13.7, a discrepancy between the driver/vehicle credentials and MVC records, an implausible or inaccurate response to a lawfully propounded question, an item in plain view that seems inconsistent with the situation or at least consistent with unlawful activity, or some piece of information provided by a dispatcher or mobile data computer before or during the encounter, etc.).

Remember that from a Fourth Amendment analytical perspective, reviewing courts are principally concerned with whether the detaining officer's conduct unnecessarily extended the duration of the encounter. See, e.g., State v. Pegeese, 351 N.J. Super. 25 (App. Div. 2002) (once the officer is satisfied that the operator of a lawfully stopped vehicle has a valid license and the vehicle is not stolen, the officer may not detain the occupants for further questioning). For this reason, it is generally a good idea to pose any "probing" questions during what could be described as the "downtime" when the officer is waiting for information to come back from a mobile display computer or the dispatcher concerning the bona fides of the vehicle registration and the operator's license. See State v. Chapman, 332 N.J. Super. 623 (App. Div. 2000) (court noted that most of the questions were posed while the officer was awaiting computer verification so they did not have the effect of prolonging the duration of the encounter).

Finally, and perhaps most importantly for our present purposes, you must always keep in mind that there are also Fourteenth Amendment Equal Protection issues that would arise if it could be established that an officer does not routinely use the same probing tactics when interacting with non-minority motorists. Always remember that courts tend to be skeptical and are more likely to create or more strictly enforce *Fourth* Amendment rules limiting police discretion when they believe that officers may be relying on race or ethnicity in exercising discretion. Recall also that the Equal Protection Clause applies to *all* police decisions, whether or not the decision intrudes on a Fourth Amendment liberty interest by prolonging the duration of a stop.

While police officers in this State are expected to be vigilant and watchful for objective indications of criminal activity, they must not, of course, rely to any extent on race-influenced stereotypes in their effort to ferret out criminal activity. You must therefore always ask yourself this critical question: would you have posed the same questions to the driver and/or passengers of a detained vehicle if they had been of a different race or ethnicity? If the answer is no, then the decision to pose those questions represents a form of racially-influenced policing in violation of the statewide nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1.

13.6 Judicial Concerns About Misuse of the Frisk Doctrine

A number of courts have expressed concern about police abuse of the "frisk" doctrine, which has resulted in a series of cases that restrict the authority of police officers to engage in this self-protective tactic. The caselaw in New Jersey makes clear that protective frisks (sometimes also referred to as "patdowns") may not be done "routinely," much less "automatically," unless the initial reason for the stop was a reasonable articulable suspicion that the person was engaged in criminal activity involving violence or weapons. See, e.g., State v. Lipski, 238 N.J. Super. 100 (App. Div. 1990) (police may not routinely frisk a detained motorist for weapons). The basic rule is that a frisk is only authorized where the officer can point to facts and circumstances that constitute a reasonable articulable suspicion to believe that the specific person to be frisked is armed and dangerous. See State v. Thomas, 110 N.J. 673 (1988). It is not enough that officers earnestly but subjectively fear for their safety because they are in close proximity to a detained citizen, such as when they order occupants to exit a vehicle or are administering a field sobriety test.

In State v. Garland, 270 N.J. Super. 31 (App. Div. 1994), the court adopted a simple and straightforward rule of thumb: if the reason for the initial stop does not automatically include an objective basis to believe that the suspect is armed and dangerous (in other words, if the stop is not based, for example, on a reasonable suspicion that the person had recently committed an armed robbery or other offense that by its nature involves violence or weapons), then a frisk is not permitted unless some event occurs between the stop and the frisk that leads to the objective belief that the detained person is armed and dangerous. 270 N.J. Super. at 42.

It is critically important for police officers to recognize that at least some courts believe that some officers are more likely to engage in "routine" or even casual frisking when they are dealing with minority citizens. (Such "casual" frisking may involve a frontal or "face-to-face" frisk where the officer nonchalantly pokes around a citizen's pockets without taking the usual precautions associated with a properly executed protective frisk, which is generally done from behind while the suspect's hands are away from his or her body or are otherwise under control so that the officer maintains a positional and tactical advantage.) These courts believe that some officers, in other words, rely on a racial stereotype – the notion that minority citizens are more likely to be armed and dangerous than non-minority citizens – to justify the decision to initiate a frisk. Obviously, in any case where this is true,

the officer would be engaging in racially-influenced policing in clear violation of the law and policy in this State.

The bottom line is that police officers in this State are strictly prohibited from drawing any inference regarding the likelihood that a person is carrying a concealed weapon based to any degree on the person's race or ethnicity. Rather, the decision to initiate a protective frisk for weapons must be based on objective, race-neutral facts that are specific to the particular individual who the officer intends to frisk. It is absolutely imperative that those facts be thoroughly and accurately documented, whether or not the frisk actually revealed a weapon.

All police officers have a vested interest in making certain that their colleagues comply with these Fourth and Fourteenth Amendment rules. The frisk doctrine is a vital tool designed to enhance officer safety. Any abuses of the frisk doctrine will only encourage courts to impose further restrictions on the exercise of police discretion.

13.7 Judicial Skepticism About Overreliance on "Nervousness" and "Furtive Movements" as Suspicion Factors

Some courts have criticized police officers for relying too often and too heavily upon certain facts or observations in order to justify treating detained motorists as criminal suspects. Specifically, some courts have expressed concern about police reliance upon "unnatural nervousness" and "furtive movements." These judges believe that it is too easy for police to misinterpret or place too much emphasis upon nervousness and furtiveness in drawing inferences of ongoing criminal activity, using these subjective factors to justify pre-existing suspicions that are really based on hunches and perhaps influenced by racial or ethnic stereotypes.

Although "unusual nervousness" and "furtive movements" are *legitimate* factors that police may consider as part of the "totality of the circumstances," whenever you rely upon either or both of these suspicion factors, it is especially important for you to fully and specifically document the circumstances. It is not enough, for example, to write in a report that a motorist made a "furtive" movement without fully explaining exactly *what* the movement was, and why you reasonably believed that that movement was threatening or otherwise consistent with criminal (as opposed to innocent) behavior. See State v. Daniels, 264 N.J. Super. 161 (App. Div. 1993) ("Although such characterizations [the officer describing suspect's movement as "furtive"] may be helpful in understanding a police officer's subjective reactions, they are not talismanic, search justifying "sesames." The critical inquiry is the objective nature of the movement.").

Part of the problem lies in the fact that the word "furtive" is extremely nebulous and does not mean much. It is defined in the dictionary as "concealed, or hidden or stealthy." The term thus encompasses a wide range of behaviors, some of which are far more threatening or consistent with criminal behavior than others.

As the dictionary definition suggests, the one common feature in all "furtive movement" cases is that the movement, at least initially, is unexplained (precisely because it was concealed or hidden). This logically begs the question of who will have the burden of explaining the true nature and significance of the movement. As we have seen, under traditional Fourth Amendment law, whenever an officer is acting without the benefit of prior authorization from a court, the burden of proof generally rests with the State in a motion to suppress.

An officer confronted with any unexplained or ambiguous movement should therefore consider the feasibility of posing a question to the person concerning the movement, trying to elicit some explanation. The citizen's explanation may dispel the threatening or suspicious nature of the movement, or, in contrast, may heighten the officer's concern, providing a new factual basis for suspicion, where, for example, the person denies having made a movement that the officer actually observed. Such a denial is essentially a form of lying, which is an extremely important circumstance, one that is inherently suspicious and that logically supports or corroborates an inference that criminal activity may be afoot and that weapons may be present. See again State v. Daniels, 264 N.J. Super. 161 (App. Div. 1993) (the officer's concern engendered by the front seat passenger's reaching under seat was heightened by the passenger's denial of these actions so that furtive gesture ripened into reasonable articulable suspicion).

A number of courts have also expressed concern that police rely too much on a suspect's nervousness as evidence of a "consciousness of guilt." Recently, the New Jersey Supreme Court in State v. Stovall, 170 N.J. 346 (2002), explained that nervousness is a perfectly legitimate suspicion factor, notwithstanding that it is common for people to react nervously when questioned by police. See also State v. Hickman, 335 N.J. Super. 623 (App. Div. 2000) (nervousness in responding to questions justified broadening the scope of the officer's inquiries).

Even so, it is important for police officers to understand why some trial courts remain skeptical. Law enforcement officers may tend to interpret nervousness as evidence that a person is hiding something. But there can be many reasons why a person might be nervous in the presence of a uniformed officer. Indeed, courts are likely to assume that *all* citizens (including law abiding citizens) are at least somewhat apprehensive when they are pulled over by police. See, e.g., State v. Jones, 326 N.J. Super. 234 (App. Div. 1999) (driver's nervousness was "to be expected").

This fact-sensitive issue is especially important in the context of our discussion of racially-influenced policing because some minority citizens may appear to be nervous because they are mistrustful of police or have been treated with derision or disrespect by police officers in the past. Anyone who anticipates being treated as a criminal suspect is more likely to be nervous about the encounter (i.e., "act guilty") than are persons who are only worried about whether they are going to be able to talk their way out of getting a traffic ticket.

Whenever you rely on nervousness as a factor in deducing whether criminal activity is afoot, you should fully and precisely document the person's conduct that manifested nervousness (i.e., trembling hands or voice, apparent unwillingness to make eye contact, unusual perspiration, etc.). (Although the resolution of the video portion of a Mobile Video Recorder may not be good enough to record such subtle behaviors, the audio portion can be used to document an officer's "present sense impressions" when, for example, the officer asks the motorist why he or she seems to be so nervous. When this can be done safely (the posing of this question could prompt a nervous criminal to react with a fight or flee response), the audio recording would help

to repudiate any claim that the officer had later fabricated the observation that the motorist appeared nervous.)

As importantly, you should be aware of and carefully document exactly when those nervous behaviors first occurred. If, for example, the person exhibited nervousness from the very outset of a motor vehicle stop, that might be explained by the citizen's general apprehensiveness regarding law enforcement officers. If, in contrast, the person's nervous behavior only began (or significantly intensified) after a specific question was posed by the officer, that would constitute stronger evidence that the nervousness suggests a consciousness of guilt.

UNIT 14: INCONSISTENT OR INACCURATE POLICE REPORTS AND TESTIMONY AS A TRIGGER FOR JUDICIAL SCRUTINY

14.1 The Need for Precision, Accuracy and Thoroughness

In today's judicial climate, and because in many if not most cases the burden of proof or production will be on the State in a motion to suppress evidence, it is not enough that police officers make sound decisions out in the field. Rather, officers must be prepared to document their actions and the reasons that explain and justify their split-second decisions.

Report-writing, as it turns out, is one of the most important skills that a law enforcement officer must master. The test for a good police report is deceptively simple: a person reading your report -- who knows nothing about the police encounter at issue -- should be able to figure out exactly what happened (the who, what, where and when), and, as importantly, should be able to figure out why you made the decisions that you made.

Always remember that defense attorneys, prosecutors and judges will carefully review police reports, focusing on what is in them, and also on what is missing. Police must therefore be dead-on accurate, precise and thorough in describing the sequence of events and in establishing the facts necessary to meet any applicable legal test or required level of proof. It is important to understand that your reports serve many functions besides helping to "refresh" your recollection at the time that you testify at trial or a pretrial motion to suppress evidence. These reports are read by prosecutors, defense lawyers and judges to decide how a case will be handled. Indeed, a poorly written report (one that is incomplete or imprecise) may result in a case being downgraded, devalued as part of the plea bargaining process, or even dismissed outright, so that you may never have a chance to supplement the report with your in-court testimony.

Let us consider how even factually accurate language in a report can create confusion in a Fourteenth Amendment Equal Protection context where the report is otherwise deficient in setting forth the legitimate factual basis for the exercise of police discretion. Suppose that an officer in his report writes that, "I observed two Hispanic males conversing with a white male in an area known to be a high drug crime area."

It is certainly conceivable that the report-writer merely intended to describe the individuals that he encountered, and did not mean to suggest that the race/ethnicity of these individuals played a role in the officer's initial suspicion that they were engaged in criminal activity. A prosecutor screening the case and reviewing this report might nonetheless take the report's prominent references to race and ethnicity into account in gauging the risk that a defendant could mount a successful or costly Equal Protection (or Fourth Amendment) challenge. Unless the report provides other details that clearly document a legitimate, race-neutral basis for police scrutiny and the ensuing police conduct, this case might easily be devalued by a prosecutor in the course of case

screening and plea bargaining. The key, of course, is that the report be sufficiently thorough to set forth all of the facts (and the reasonable inferences drawn therefrom) that had prompted the officer to focus attention on these individuals and to initiate the encounter with them.

14.2 Inconsistencies in Multiple Reports

As a practical matter, it may not take much for a court in New Jersey to conclude that a defendant has made a prima facie case of discrimination, thus shifting the burden of production to the State to articulate a race-neutral basis for an officer's action. In State v. Maryland, 167 N.J. 471 (2001), for example, the New Jersey Supreme Court invoked the exclusionary rule notwithstanding that the defendant had not offered detailed evidence or statistics to prove racial discrimination. The Court in State v. Maryland found that the officer had approached the defendant only because he was one of three black males that the officer had seen at the train station a week earlier. This circumstance raised an inference of selective law enforcement, triggering the State's burden to provide a race-neutral explanation for the officer's decision to initiate a consensual field inquiry.

In that case, the Court ultimately found that the record "persuades us that the police action of which defendant complains is not reasonably understood as anything but such a proscribed race-based inquiry." The Court was especially concerned with the way in which the police officers had articulated and documented the reasons for the exercise of their discretion. The Court observed that because,

> an inference of selective enforcement was raised, and because there were three disparate and inconsistent versions of defendant's encounter with the police, the State was required to have established a non-discriminatory basis for the officers to conduct a field inquiry . . . (emphasis added). [167 N.J. at 486.]

In light of this case, we are now on clear notice that poorly written police reports can help to trigger an inference of racially-influenced policing.

14.3 Case Study: State v. Segars

At this point, it would be helpful to look very closely at another case where the New Jersey Supreme Court reversed a conviction on the grounds of impermissible racial targeting. The case of State v. Segars, 172 N.J. 481 (2002) (*per curiam*), sheds light on how New Jersey courts will go about reviewing police discretion when racial discrimination is alleged, and once again, this case highlights the importance of accurate recordkeeping, accurate report writing, and accurate in-court testimony.

The facts of this case were sharply contested and the prosecution and defense offered radically different versions of what had happened. The Court first described the defendant's version of the facts: The defendant testified that on the date in question, at approximately 1 p.m., he drove his car into the parking lot of a bank and parked next to an unoccupied police vehicle, which was the only other car in the lot at the time. The defendant entered the bank to use the automated teller machine. On the way in, he passed the police officer exiting the bank. Defendant noted that the officer, who was Caucasian, was looking at him "with sort of a question mark on his face." The defendant, who was African-American, was wearing a running outfit and a baseball cap. The defendant completed his transaction, exited the parking lot and drove next door to a convenience store. After a few minutes in the convenience store, defendant returned to his vehicle where he was approached by the police officer, who asked to see his credentials. Defendant produced the credentials and, when asked, admitted that his license had been suspended. The defendant acknowledged that the officer was polite and made no comments in respect of the defendant's race.

The police officer's testimony was quite different. The officer testified that he saw defendant's unoccupied vehicle already in the bank parking lot when the officer drove in. The officer decided to check the license plate on his MDT (Mobile Data Terminal) and may also have checked the plates of another vehicle that was parked in the lot. The motor vehicle lookup of the defendant's plates revealed that the registered owner of the vehicle had a suspended driver's license. The officer then pulled up next to the parking lot exit and called central dispatch to determine the reason for the suspension, which he discovered was for driving while impaired. While waiting for the defendant to exit the bank and return to his vehicle, the officer checked the plates on another car that pulled up in front of the

bank because the officer noticed that this other vehicle had an expired inspection sticker. He saw the driver of that vehicle use the automated teller machine. That driver, who was Caucasian, subsequently was issued a ticket.

On cross-examination, the officer restated that he did not use the automated teller machine within the span of time in question and that he never saw the defendant in the bank or anywhere else prior to the time that the officer ran the MDT check on defendant's parked vehicle. When asked why he "ran" defendant's license plates, the officer replied, "It was a bank holiday . . . very light traffic, very – not many cars parked in the lot. There were two cars parked there; I ran both plates . . . Any car that was in the lot I would have run." The officer stated that he runs plates frequently, without "rhyme or reason," and that if it is a slow day, like a holiday, he might check every car that goes by.

On the second day of the hearing, defendant presented the records of the bank regarding the use of the automated teller machine on the day in question. Those records supported the accuracy of the defendant's testimony where that testimony conflicted with that of the officer. In particular, the bank records bolstered defendant's assertion that he and the officer first encountered each other inside the bank, and that the officer only then ran the MDT check of defendant's license plates. Specifically, the records showed that the officer had personally used the automated teller machine at 1:10 p.m. and that defendant had used the ATM at 1:11 p.m. Police records turned over in discovery further revealed that the officer checked the plates of another car at 1:12 p.m., and checked the plates on defendant's car at 1:13 p.m. and on a third car at 1:16 p.m.

Defendant argued from these facts that there could be only one explanation for the officer's inaccurate testimony, namely, that the officer was "covering up" for having checked defendant's plates because of his race. The State countered that the reason for the officer's inaccurate testimony was unknown, and that defendant's theory was "only rank speculation and conjecture."

In applying the law to the facts of this case, the New Jersey Supreme Court first reaffirmed that MDT checks are not traditional "searches" subject to Fourth Amendment restrictions. Accordingly, a police officer may lawfully "run the plates" of a vehicle even though the officer has no objective basis to suspect a violation of any kind. The Court took pains to make clear, however, that under the Equal Protection Clause of the Fourteenth Amendment, the officer could not rely on an impermissible reason such as race in deciding when and how to use an MDT.

The Court went on to hold that when a defendant claims that an MDT check is based on race, the defendant bears the burden of establishing a "prima facie" case by producing relevant evidence that would support an inference of discriminatory enforcement. If the defendant does so, the burden then shifts to the State to produce evidence of a race-neutral reason for the check. (As we saw in Unit 12.5, the Court referred to this mode of analysis as the "burden shifting template.")

In this case, the officer testified that he never used the automated teller machine during the time in question, that he never saw defendant and thus did not know defendant's race before he ran the MDT check, that that MDT check was totally random, and that he checked and ticketed others, including a Caucasian motorist, during the same period. Defendant had testified to the contrary that the officer used the automated teller machine immediately before the defendant had, and so the officer would have therefore seen the defendant and known the defendant's race before the officer ran the MDT check on the defendant's vehicle.

The New Jersey Supreme Court concluded that from this evidence, a trier of fact could infer that the officer checked defendant's plates because of his race and then testified falsely about what he did because he knew that racial targeting is wrong. Put another way, the court concluded that defendant had met his burden of establishing a prima facie case of selective enforcement.

Furthermore, because the evidence that raised the inference of racial targeting also served to impeach the officer's race-neutral rationale, a critical part of the State's rebuttal should have been the production of an explanation for the officer's inaccurate testimony. The State did not provide any such explanation and the Court referred to this as "the pivotal point in the case."

The Court concluded that an inference of discriminatory targeting was established by the defendant's testimony and documentary evidence, the officer's inaccurate testimony, and the failure of the State to recall the officer for an explanation. The Court ultimately found that the State had not defeated that inference, since the only evidence advanced by the State to support the officer's explanation and to counter the inference of racial targeting was that the officer had also checked the plates of a Caucasian driver. However, on the facts of this case, that circumstance could not serve as a "counterweight" to the inference of racial targeting because the officer acknowledged that he had run the plates of the other vehicle as a result of an observed expired inspection sticker. By that testimony, the Court concluded, the officer revealed that that Caucasian motorist was not checked randomly, but rather "for cause." The Court concluded that such a for cause check is irrelevant in determining whether the officer's claimed "random" computer inquiries were racially motivated. (The race of the *third* driver whose license plate was checked was never determined, and consequently that MDT check could not support an inference for or against the racial targeting of the defendant.)

The Court ended its decision by recognizing that this was a very unusual case. Without the officer's repudiated testimony, the evidence produced by defendant that the officer saw him prior to the MDT check would have been completely inadequate to support an inference of discriminatory enforcement. But because the officer's misstatements went to the heart of defendant's claims and would have allowed a trier of fact to conclude that the officer had testified inaccurately because he practiced racial targeting and knew that it was wrong, the State needed to recall the officer to explain his testimony.

Although this is indeed an unusual case, it is an important precedent for training purposes, because it shows just how easily the burdens of proof and production can shift back and forth in the course of Equal Protection litigation. Always keep in mind that if officers are asked why they stopped a particular individual, or why they treated that individual in a particular way, and their answer for any reason lacks credibility and veracity, that alone might generate an inference of an impermissible reason, shifting the burden to come forward with a credible, race-neutral explanation.

14.4 Synopsis: Quality Police Reports as a Counterweight to Discrimination Claims

Because a police officer can never know whether a burden of production might arise at some time in the future – perhaps as a result of statistical evidence offered by a person alleging discrimination – an officer must take prudent steps to document the facts that would meet the State's burden of production by demonstrating a race-neutral explanation for the officer's course of action. Indeed, one of the central themes of this entire course is that the changing nature of both Fourth and Fourteenth Amendment litigation has placed an ever-greater emphasis on the importance of top quality report writing and record keeping. Always keep the following principles in mind when writing a report, or when reviewing and approving a report drafted by a subordinate:

- Police reports (and, of course, testimony) must be **completely accurate**. As we saw in both State v. Maryland and State v. Segars, inconsistent police reports or inaccurate testimony can result in invocation of the exclusionary rule. (Inaccurate sworn testimony is an especially fatal mistake and can, depending on the circumstances, result in serious disciplinary action or even criminal prosecution for false swearing or official deprivation of civil rights. Recall that preparing a false report gives rise to an inference that the officer knew that his or her conduct was unlawful. See N.J.S.A. 2C:30-6d.) Police officers should be mindful that defense attorneys will be looking carefully for internal inconsistencies and may also cross-check an officer's account with other sources of information (such as other police reports,

  patrol and radio logs, 911 tapes, and other records) to try to cast doubt on a police officer's credibility.

- Police reports and testimony must be **precise**. Law enforcement officers in their reports and testimony must be careful when using legal terminology. When a police officer uses a term or phrase that has a particular legal meaning, prosecutors and reviewing courts will assume that the officer knows the meaning of the phrase and has used it correctly.

- Police reports and testimony must be **thorough**. You must be prepared to document all facts and circumstances, and the reasonable inferences drawn

therefrom, that are necessary to justify police conduct against an expected or at least reasonably foreseeable claim of a constitutional violation. (This is true for issues arising under both the Fourth and Fourteenth Amendments.) By way of example, instead of writing that you "observed a hand-to-hand transaction," you should explicitly describe the actors' hand movements and why, for example, these movements were not consistent with innocent behavior such as a handshake. Similarly, if warning signals were issued (e.g., "5-0" or "88"), these should be fully documented along with all other legitimate suspicion factors.

- Police reports should not include extraneous or irrelevant information. Reviewing courts, knowing that officers do not have much time available to draft the narrative portion of their police reports, will assume that everything in the report is there for a reason, and that if a bit of information is memorialized in a report, the officer must have thought that piece of information was important and must have relied on that bit of information in making police decisions.

UNIT 15: PROBING AN OFFICER'S MENTAL PROCESSES

Fourteenth Amendment litigation is very different from traditional Fourth Amendment litigation with respect to whether and to what extent a reviewing court will probe the internal thought processes of a law enforcement officer. In resolving a *Fourth* Amendment claim, reviewing courts use what is called an "objective" test. The inquiry for determining the constitutionality of a search or seizure is limited to asking "whether the conduct of the law enforcement officer who undertook the [stop or] search was objectively reasonable, without regard to his or her underlying motives or intent." State v. Bruzzese, 94 N.J. at 210 (1984). "The Fourth Amendment," the New Jersey Supreme Court noted in Bruzzese, "proscribes unreasonable actions, not improper thoughts." Under this so-called "objective" (as opposed to subjective) approach, the courts are not concerned about what the officer was actually thinking or hoping, provided that the officer was not making decisions for the purpose of engaging in racist harassment. 94 N.J. at 226.

This Fourth Amendment analytical approach is consistent with the "motion picture analogy" that we have already used in a different context to demonstrate how courts conduct a "frame by frame" analysis of an officer's conduct. When we watch a movie, we are only concerned with the action and dialogue on the screen – what the actors are doing, or saying. We are not at all concerned with what the actors might happen to have been actually thinking when the motion picture was being filmed.

The legal approach used by courts in analyzing *Fourteenth* Amendment claims, however, is very different. When a defendant alleges an Equal Protection violation, the reviewing court must decide whether the officer (or the officer's department) engaged in purposeful discrimination. (A department's discriminatory purpose can be established by showing that the agency either had a policy to discriminate, or else had a de facto policy to tolerate or condone discriminatory practices by its officers in the field.) Recall from our discussion in Unit 7 that the concept of "purposeful discrimination" when used in the context of a Fourteenth Amendment claim does not necessarily require a purpose to harass or intimidate, or a purpose to violate the Constitution. Rather, in a selective enforcement case, purposeful discrimination essentially means that the officer intended to rely on a

particular distinguishing characteristic (in our context, race or ethnicity) in differentiating between persons when deciding how they are to be treated.

The bottom line is that under Fourteenth Amendment analysis, the mental processes of an officer may be relevant, and so courts are free to probe an officer's internal thought processes to determine, for example, whether some impermissible factor influenced the exercise of police discretion. This fundamentally different analytical approach helps to explain why aggregate statistics are relevant in Fourteenth Amendment litigation, whereas they are irrelevant in deciding whether the Fourth Amendment was violated. These statistics may serve as evidence of an officer's underlying intent (or a department's de facto policy), and may be used in certain circumstances by a court to draw an inference that race or ethnicity played a role in the exercise of police discretion.

Of course, an inference of improper motive or intent might also be based upon the officer's conduct during a particular encounter, if, for example, the officer were to use a racial slur or epithet, suggesting that race or ethnicity was being considered at the time that the officer was making decisions or engaging in specific conduct. And as we saw in our discussion of State v. Segars in Unit 14.3, subsequent inaccurate testimony can also establish an inference of improper motive by suggesting that the officer was trying to conceal or "cover up" an improper motive. See also N.J.S.A. 2C:30-6d (creating a permissive inference that an officer knew that his or her conduct was unlawful when the officer prepares a false report or fails to prepare a report that was required to be prepared).

In sum, Fourth Amendment litigation tends to focus mostly on what happened. Fourteenth Amendment litigation, in contrast, tends to focus much more on why events transpired as they did, examining the thought processes and purpose and motivations of law enforcement officers.

15.1 The Rules Concerning Police Deception and "Pretext" Stops

In litigation arising under both the Fourteenth Amendment Equal Protection Clause and the Fourth Amendment, defendants may allege that the officer had conducted a "pretext" stop. The word "pretext" has obvious negative connotations, implying that an officer has lied, is operating under a "false pretense," or otherwise has attempted to mislead someone. (The word pretext is defined in the dictionary to mean "a false reason or motive put forth to hide the real one.")

This is not a word that should ever be used casually or inartfully by police or prosecutors. From a legal perspective, however, the word "pretext" is much like the word "profile." While both of these terms carry a negative connotation in common parlance, neither word describes police conduct that is always inappropriate, and certainly not all pretext stops are illegal. Indeed, there are times when it is perfectly acceptable for police to resort to a pretext or ruse, just as it is appropriate for police to make use of a race-neutral "profile." With respect to so-called "pretext" stops, if the underlying true reason for

the stop is lawful, then the stop is lawful. In contrast, if the underlying or ulterior reason for the stop is unlawful for any reason, then the resulting stop is automatically unlawful.

In Whren v. United States, 116 S.Ct. 1769 (1996), the United States Supreme Court rejected the defendant's Fourth Amendment claim that the police had conducted an impermissible "pretext" stop when plainclothes narcotics officers pulled defendant's vehicle over for a minor motor vehicle violation for the ulterior purpose of pursuing a narcotics investigation. Although it was highly unusual for plainclothes detectives to initiate a traffic stop, the Court refused to delve into the officers' secret or ulterior motives, declining to examine whether their conduct was based on a so-called subterfuge or pretext.

(The United States Supreme Court in Whren nonetheless issued a stern warning to officers who might decide which motorists to stop based on what the Court characterized as "decidedly impermissible factors, such as the race of the car's occupants." "We of course agree with petitioners," the Court warned, "that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the Constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment." 116 S.Ct. at 1774.)

Similarly, the New Jersey Supreme Court years ago in the landmark case of State v. Bruzzese, 94 N.J. 210 (1984), refused to probe an officer's mental processes under Fourth Amendment analysis, holding that the proper inquiry for determining the constitutionality of a search or seizure is done "without regard to [the officer's] underlying motives or intent." 94 N.J. at 219.

In that case, the police suspected that the defendant was involved in a burglary of a business premises from which the defendant had recently been fired. Detectives checked their records and determined that the defendant was subject to an outstanding bench warrant. The detectives, relying on the authority of the arrest warrant, went to the defendant's house, even though it was not standard procedure and in fact was highly unusual for detectives to bother to execute this kind of warrant by going to a person's home. The New Jersey Supreme Court rejected the defendant's argument that the execution of the arrest warrant was a mere "pretext" for conducting a criminal investigation. The Court ruled that it was irrelevant, for purposes of Fourth Amendment analysis, that the detectives had hoped to use this encounter at defendant's home to spot evidence of the burglary, which is exactly what happened.

(The New Jersey Supreme Court in Bruzzese nonetheless issued a clear warning that, "[i]n discarding the general use of a subjectivity analysis, we do not condone searches that are not undertaken to further valid law enforcement aims. For example, we afford no legal protection to police officers who invade the privacy of citizens as a means of racist or political harassment." 94 N.J. at 226.)

In sum, there are times when it is perfectly appropriate for a police officer to conceal

from a criminal suspect the true reason or factual basis for the officer's course of action. Indeed, it is sometimes permissible for a law enforcement officer to go further and affirmatively mislead a criminal suspect. For example, it may, depending on the circumstances, be a permissible interrogation tactic to suggest to a properly-Mirandized suspect that the strength of the case against the suspect is stronger than it really is. See, e.g., Frazier v. Cupp, 89 S.Ct. 1420 (1969) (confession was held to be voluntary and admissible where police had lied to defendant that his co-defendant had implicated him in the crime). But compare State v. Patton, 362 N.J. Super. 16 (App. Div. 2003) (police deception in the form of fabricating false tangible evidence or documents to elicit a confession violates due process and defendant's resulting confession was per se inadmissible). See also State v. Chirokovkcic, 373 N.J. Super. 125 (App. Div. 2004) (re-affirming the rule that police may not fabricate evidence to use in an interrogation and holding that Patton did not announce a new rule of law in New Jersey.) The use of deception during the course of a police interrogation is an extremely complicated area of Fifth and Sixth Amendment law. Courts will closely examine the circumstances to determine whether any such police tactics went too far and had the capacity to "overbear the suspect's will."

Furthermore, and at the risk of stating the obvious, while it is sometimes permissible for police to mislead criminal suspects, it is never permissible for a police officer to mislead a court. Whenever any kind of deception or pretense is used, prosecutors and courts must be able to review the tactic and determine whether the deception or pretense was appropriate, or went too far. Here is a simple rule of thumb: if a police officer would hesitate to fully and accurately document the true nature of any deception, pretense or ulterior motive, then that fact by itself is a clear indication that the deception or ulterior motive is inappropriate and illegal. Always remember, it is our responsibility to explain to a reviewing court exactly what happened and why it happened.

One of the most common examples of a legitimate use of a "pretext" occurs when the police make what is sometimes called a "directed" stop. Consider the following scenario. Narcotics detectives have been working on a significant case for a long time and have learned from a reliable source that a large shipment of drugs will be traveling in a particular vehicle using a particular route. The detectives want to intercept this drug shipment in transit, but do not want to reveal to the "mule" or his or her superiors that they are all the subjects of an ongoing narcotics investigation. The detectives therefore arrange for a uniformed police officer in a marked patrol car to intercept the subject vehicle and essentially simulate a routine motor vehicle stop, misleading the suspected drug courier into believing that he had simply been unlucky when he was stopped for a motor vehicle violation. This encounter, meanwhile, provides the detaining officer the opportunity to pursue the narcotics investigation, and possibly even secure the cooperation of the mule.

This is a *lawful* police tactic. Essentially, this is a type of "B.O.L.O." situation where the uniformed officer in a marked patrol car is instructed by other officers to be on the lookout for a particular vehicle suspected of being involved in criminal activity. Note that

in this instance, because the detaining officer has preexisting reasonable suspicion (or even probable cause) to justify an investigative detention (if not a full blown arrest), the officer need not wait to observe a motor vehicle violation before initiating the encounter, although for tactical reasons, the officer will probably be instructed to watch and wait for a motor vehicle violation so as not to arouse the mule's suspicions about the true reason for the stop. In this scenario, the officer would be permitted to lie to the motorist about the true reason for the stop, explaining to the motorist that the stop was based on an observed speeding violation, even if, in fact, no such violation took place.

While the use of deceptive tactics or subterfuge has its place in dealing with criminal suspects, as a general proposition, police officers should not attempt to deceive or mislead persons who are not already criminal suspects. For example, when a citizen is pulled over for a minor traffic violation, it would be inappropriate for a police officer to lie to the detained motorist as to the reason for the motor vehicle stop. If the stop was based on an observed speeding violation, the officer should explain that to the motorist, and generally should do so at an early stage of the encounter, and without prodding from the motorist, so as to reduce tensions and assuage any concerns that the motorist might have that the stop was based on some impermissible reason.

(Obviously, if the reason for the stop is that the officer had reasonable articulable suspicion to believe that the motorist was engaged in criminal activity, or was the subject of a wanted or B.O.L.O. bulletin, then, for tactical and safety reasons, the officer need not reveal that fact until it is safe to do so. In those circumstances, such as the "directed" stop we just discussed, it would be appropriate for the officer to tell the motorist that he or she was pulled over for an observed motor vehicle violation, even though that is not true. But note that in this circumstance, the motorist being deceived would already be a criminal suspect.)

As we have seen, courts have expressed concern when police try to use a routine motor vehicle stop as a launching pad to initiate an impromptu criminal investigation – a practice we have referred to as "digging." As a general proposition, it is inappropriate for a police officer to treat a motorist who is suspected of nothing more than a minor traffic violation as if he or she

were a criminal suspect, unless the officer is actually aware of objective facts that suggest that this individual is, in fact, engaged in criminal activity.

Let us consider another scenario where there are objective, race-neutral facts concerning possible criminal activity that would justify what might well be called a "pretext" motor vehicle stop. Suppose a citizen reports by cell phone that the occupant of a particular vehicle is carrying a gun. The tipster gives a detailed description of the suspect's vehicle and license plates, but she refuses to provide her own name to police, choosing to remain anonymous. As we have seen, the United States Supreme Court in Florida v. J.L., 120 S.Ct. 1375 (2000),has ruled that an anonymous tip of a "man with a gun" generally does not, by itself, satisfy the reasonable articulable suspicion level of proof. In other words, our anonymous tip standing on its own would not justify initiating a so-called "Terry" stop.

Let us further suppose that you are on patrol and, acting on a B.O.L.O. bulletin based on the anonymous tip, you identify the subject vehicle, watch it for a few moments from a discreet distance (without activating your overhead and "takedown" lights), and fortuitously observe a very minor Title 39 violation. At this point, may you initiate a motor vehicle stop based on the Title 39 violation, even though that infraction is so minor that ordinarily, you would not bother to stop a vehicle for this violation?

The answer is yes. This would indeed be lawful and appropriate police conduct in response to the anonymous tip. It is true, of course, that this stop might be characterized as a "pretext" in that you are obviously trying to take advantage of the minor motor vehicle violation to pursue an investigation into matters that are wholly unrelated to the observed Title 39 infraction, namely, an investigation into whether the driver is carrying a firearm. However, as in the Bruzzese and Whren cases, your ulterior motives in this instance are irrelevant (because those motives are not themselves illegal), and so you would be authorized under both State and federal constitutional law to initiate an investigative detention based on the objective fact of the observed motor vehicle violation.

During the course of this investigation, you could certainly order the driver to step out of the vehicle so that you might be able to observe a bulge in his pockets, and you could also pose questions and watch for any nervous or furtive reactions that might corroborate the anonymous tip. (Indeed, in this instance you could also order any passenger to step out of the vehicle based on the report of the gun, since the anonymous tip, while not meeting the reasonable articulable suspicion level of proof, would meet the lower "articulable facts warranting heightened caution" level of proof established by the New Jersey Supreme Court in State v. Smith, 134 N.J. 599 (1994), to justify ordering passengers to alight from a lawfully-stopped vehicle.)

The key point to understand is that in this scenario, the officer's ulterior motive (the officer's desire to investigate the anonymous tip) was not independently unlawful, and thus did not taint or "poison" the decision to stop the subject vehicle for a very minor Title 39

infraction.

It is important to note in this regard that the United States Supreme Court in Florida v. J.L. by no means suggested that an anonymous tip is irrelevant and may not be considered as part of the totality of the circumstances. Rather, the United States Supreme Court only ruled that as a general proposition, an anonymous tip *by itself* does not establish reasonable articulable suspicion of criminal activity. In fact, the Court suggested that a responding officer could and should investigate the matter, but could not do so by initiating an investigative detention based solely on the as yet uncorroborated anonymous tip.

This is yet another example of the importance of timing (patiently controlling the sequence of events and police decisions) and of "lining up your ducks" before taking a step that intrudes on Fourth Amendment rights and that therefore triggers a legal standard or level of proof. (At the risk of making a bad pun, one might say that the officers in Florida v. J.L. had "jumped the gun" by initiating an investigative detention before they had attempted to corroborate the anonymous tip.) In our scenario, in contrast, the act of identifying and watching the subject vehicle from a discreet distance to look for a violation was an appropriate "less intrusive" investigative alternative, and, as was true in Bruzzese, the fact that the officer very much "hoped" to observe just such a violation to justify a stop is simply irrelevant for purposes of constitutional analysis.

Let us now consider yet another considerably more complex scenario that will help to explain when officers might be allowed to make what could be characterized as a "pretext" stop in a situation that raises the issue whether the Fourteenth Amendment Equal Protection Clause has been violated. In this variation of a "pretext" stop scenario, we will consider when and under what circumstances an officer may legitimately consider that an individual is "out of place" in a particular neighborhood – a sensitive and complicated subject that we have already discussed in Unit 11.

Suppose that narcotics detectives interview numerous arrestees and develop and share reliable intelligence information that indicates that students from a nearby college are buying illicit drugs at a particular urban public housing complex. (The college student body happens to be comprised mostly of non-minority students, whereas the residents of the public housing project are predominantly African-American. However, the resulting modus operandi "profile" that is communicated to rank and file officers at a roll call briefing is silent as to race.)

Two officers are on patrol near the public housing complex and observe a vehicle entering the neighborhood bearing a rear windshield parking permit sticker that indicates that the owner/operator of the vehicle attends the nearby college. The two persons in the vehicle are Caucasian.

The officers watch the vehicle to look for suspicious behavior (such as cruising repeatedly around the block, stopping to speak with known drug dealers out on the street,

hand-to-hand transactions, etc.), but before they observe any such behavior consistent with criminal activity, the officers observe a minor motor vehicle infraction. Let us suppose, for example, that they notice an equipment violation, such as a malfunctioning brake light. Although the officers would not normally bother to initiate a traffic stop for so minor a motor vehicle infraction, they decide to stop the vehicle on the basis of this Title 39 equipment violation. Their ulterior purpose, of course, is to investigate whether the occupants are here to buy drugs.

Is this a lawful stop under the Fourth Amendment? Yes, the observed motor vehicle violation provides what is called an "objectively reasonable" justification for initiating an investigative detention. Once again, for purposes of Fourth Amendment analysis, the officer's ulterior purpose or motive is irrelevant.

Of course, that does not end our legal inquiry. The real issue that is likely to arise is whether this particular "pretext" encounter violated the Equal Protection Clause of the Fourteenth Amendment, and we could reasonably expect in this scenario that a reviewing court might be skeptical and would carefully examine whether race or ethnicity contributed in any way to the officers' decision to target this vehicle. The answer to the legal question in a nutshell is that the police decision to stop the vehicle in these specific circumstances would not constitute a violation of either the Equal Protection Clause of the Fourteenth Amendment or the New Jersey policy strictly prohibiting racially-influenced policing. It is true that this was a "pretext" stop in the sense that the officers clearly had an ulterior purpose for taking advantage of the observed Title 39 violation, namely, their desire to create an opportunity to investigate possible involvement in more serious criminal activity. But remember that the general rule is that an officer's ulterior purpose or motive is irrelevant so long as that ulterior purpose is not itself unlawful.

In this case, the officers do not appear to have engaged in racially-influenced policing because there is no indication that they had used race as a factor in determining that this vehicle or its occupants may have been engaged in criminal activity. The modus operandi "profile" of local drug purchasers that was developed through the analysis of intelligence information was "race neutral" – it referred to students from a particular college, not persons of a particular race or ethnicity. (Note that travel to or from a particular place (such as a known "source" of illicit drugs) is a form of *conduct* that may be considered as part of a race-neutral profile.) It may well be true, of course, that race was strongly "correlated" to attendance at this particular college, meaning in this instance that students from this particular school are more likely to be white. But the officers cannot change that fact and are not responsible for such demographic realities, any more then they can change the ethnic composition of the Mafia. See also Unit 16.2 (discussing so-called "spurious" or "intervening" variables that can explain how race-neutral suspicion factors may be statistically correlated to race or ethnicity).

The point is simply that in this scenario (in contrast to a similar scenario we considered in Unit 6.5), the officers who developed and disseminated the intelligence

reports, and the officers who relied on those intelligence reports to make decisions in the field, at no time used race or ethnicity to draw or bolster inferences that an individual or group of individuals of a certain racial type are more likely to be engaged in criminal activity. The officers who developed and disseminated the intelligence data did not incorporate race or ethnicity into their description of the methods of operation of students who are traveling to the urban apartment complex to purchase drugs. Needless to say, it would have been inappropriate (and violative of our non-discrimination policy) if the intelligence report and ensuing alert had been that "white college kids are coming into this part of town to buy drugs." Any such broad-brushed, race-based alert would have been no better, from a policy or constitutional perspective, then a generalized alert saying something along the lines that young African Americans are coming into town to buy or sell drugs, commit burglaries or steal cars.

To sum up our mode of analysis, in this scenario, there were essentially two significant components of the intelligence-based "profile" of local drug purchasers and their modus operandi:

1.			2.	
	students from a particular college	are		traveling to a particular location to buy drugs

Had the "profile" included a third component, "(1) white students (2) from a particular college are (3) traveling to a particular location to buy drugs," then this "profile" would not be race-neutral. Such a generalized consideration of race would not fall within the "B.O.L.O. exception," moreover, because in this instance, race would not be used to describe a particular known suspect or even a group of specific suspects, but rather would inevitably be used to draw the general inference that white youths are more likely than other college-aged persons to be in this area for the purpose of buying drugs. (Had the intelligence information and resulting bulletins referred to specific students suspected of being drug purchasers, then they could of course be described in part by reference to their race, and any such alert would fall neatly under the B.O.L.O. Exception. But in that event, one would expect that the B.O.L.O. bulletin would include some additional identifiers, besides race, about the known individual suspects.)

It is also important to note that in this case, the officers on patrol did not establish the first predicate fact (that these motorists are reasonably likely to be students who attend the particular college) by considering their race or ethnicity. The officers, in other words, did not "put the cart in front of the horse" by assuming that these motorists attended the college on the grounds that they were white and thus would have no business in this apartment complex unless they were college students who are known to come here to purchase drugs. (An example of the internal thought process of such "bootstrapping" might sound something like this: "Hmm, that's odd. These must be a couple of those college

kids we were warned about at roll call. Why else would white kids be in this part of town?") Rather, in our scenario, the predicate fact of the motorists' attendance at the college was established by the markings on the vehicle -- an objective, race-neutral circumstance. The observation of the college parking sticker created a fair inference that one or both of the vehicle occupants attend the college, and thus matched the race-neutral "profile" of drug purchasers developed through intelligence data.

Having considered two legitimate "pretext" stops, let us consider an example of what would constitute an illegitimate pretext stop – one that would clearly violate our policy prohibiting racially-influenced policing. Let us suppose that an officer on patrol observes a vehicle driven by a minority citizen traveling in a predominantly white neighborhood. The officer believes that this citizen seems to be "out of place" and he very much wants the opportunity to stop that vehicle to "check it out," but he sees no Title 39 violation. The officer knows that he is not permitted under the Fourth Amendment to make a motor vehicle stop unless there is an observed motor vehicle violation to justify any such investigative detention. The officer therefore runs the plates on the vehicle hoping that the MVC lookup would reveal an objective basis under the Fourth Amendment to initiate an investigative detention.

Needless to say, this scenario right from the outset constitutes a violation of our policy banning racially-influenced policing. As we have seen repeatedly, an officer may not consider race or ethnicity in deciding whether or not to "run the plates" of a vehicle, even though that particular police action does not intrude upon Fourth Amendment interests, and even though the motorist may never learn that the officer had checked his or her license plates. If, by chance, any such motor vehicle lookup had revealed the basis for initiating an investigative detention (such as, for example, information indicating that the vehicle was falsely plated or was reported stolen, or that the operator of the vehicle was driving on the suspended list), that information would be tainted, that is, would be considered to be the "fruit" of the unlawful use of race or ethnicity in exercising police discretion.

In this case, any resultant "pretext" stop would be illegal, not because officers are not allowed to run plates in the hope of providing a pretextual basis for initiating a stop, but because in this case, the ulterior motive was itself racially-influenced and thus unlawful. The violation of our statewide nondiscrimination policy in this scenario occurred the instant that the officer "ran the plates" of the vehicle. It therefore would not matter whether or not the computer inquiry produced some kind of "hit." The "hit," in other words, would not salvage the officer's race-influenced decision to "run the plate."

Let us now change the scenario and suppose instead that the officer when scrutinizing the "out of place" vehicle happened to notice a minor motor vehicle violation. May the officer in that event initiate a motor vehicle stop relying upon the observed Title 39 violation? The answer, of course, is no. In this situation, the true reason for selecting this vehicle to be stopped was the officer's hunch that something is amiss based on the officer's belief that it is unusual or suspicious for a minority citizen to be traveling in a predominantly

white neighborhood. In this case, the race-based inference would clearly have influenced the officer's exercise of discretion, and would thus taint or poison any ensuing police decision or action.

Note that in this version of the scenario, a stop based on the observed motor vehicle violation would not violate the Fourth Amendment, but would instead violate the Fourteenth Amendment Equal Protection Clause and our statewide nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1. The practical result, of course, is the same; the police conduct is illegal and any evidence that might thereafter be found would be subject to the exclusionary rule. See Unit 5.1 (a police officer must at all times respect all constitutional rights, and a violation of any provision of the Constitution could lead to the suppression of evidence even though the officer's conduct complied with other provisions of the Constitution).

UNIT 16: THE USE AND MISUSE OF STATISTICS

Statistical data have played an interesting role in the unfolding racial profiling controversy. We all know that statistics are easily manipulated and misused, whether inadvertently or on purpose. We must therefore always be careful in how we use statistical information.

In the context of the racial profiling controversy, statistics have been used in a number of different ways to serve many different purposes. Sometimes, statistics have been used by law enforcement professionals to try to justify various forms of racially-influenced policing – a dangerous and discredited practice that raises serious legal and policy questions. On the other side of the scales, statistics have also been used against law enforcement agencies, and can be relied upon by persons who are trying to establish that they were the victims of police discrimination. Statistics are also sometimes used by police agencies to monitor their own performance and to serve as a kind of "early warning system" to alert supervisors and managers of potential problems. (We will consider this latter use of statistics in our discussion of the roles of police executives and supervisors in Unit 17.)

16.1 The Use of Statistics to Try to *Justify* Racially-Influenced Policing

We will first consider how statistics have sometimes been used by some law enforcement agencies around the country in an effort to justify certain enforcement tactics. We begin our discussion by noting that one of the specific assumptions that lies near the heart of the racial profiling controversy is the belief that a disproportionate percentage of drug dealers and couriers are Black or Hispanic. If that were true, the argument goes, then race and ethnicity might then serve as a reliable indicator or predictor of drug trafficking activity. In other words, some have argued that by focusing police attention on minority citizens, the law enforcement community could enhance the odds of detecting drug offenders and of seizing large drug shipments. Essentially, the advocates of using racial characteristics to focus police scrutiny on minorities have determined that the ends (marginally enhancing the efficiency of drug interdiction efforts) justifies the means (using race to predict criminal activity).

The proponents of this viewpoint often cite to "empirical" evidence, usually in the form of arrest and conviction statistics that would appear at first glance to demonstrate that minorities are indeed disproportionately represented among the universe of convicted drug offenders. On closer inspection, however, it turns out that these statistics may have been used unwittingly to grease the wheels of a vicious cycle – a self-fulfilling prophecy whereby law enforcement agencies rely on arrest data that they themselves generated as a result of the discretionary allocation of resources in targeting their drug enforcement efforts.

It is important to understand that drug enforcement is said to be "proactive," meaning that we will often go out looking for offenses and offenders, rather than wait to investigate a completed crime that was reported by a witness or victim, such as a burglary or robbery. That is why drug arrests are not considered to be "index" offenses and are not used to calculate crime rates. The number of drug arrests is more a reflection of law enforcement efforts and priorities then it is a reflection of the actual extent of drug distribution activity. We can, in other words, make as many drug arrests as we want to, although as a practical matter, we can only make arrests for a tiny fraction of the innumerable drug offenses that are actually committed. When drug enforcement is made a priority, drug arrests go up, and conversely when our attention and resources are diverted to other enforcement priorities, drug arrests may go down, whether or not the drug problem has actually worsened, improved, or stayed pretty much the same.

Furthermore, when an officer during a particular encounter with a citizen is not expecting to find drugs, the officer is less likely to actively look for drugs, and, logically, is less likely ultimately to find them. For this reason, our arrest and conviction statistics involving minority citizens could well be the result of the fact that these citizens were more likely to be suspected of being drug offenders in the first place, and thus were more likely to be subjected to probing investigative tactics (such as posing accusatorial questions or asking for permission to conduct a consent search) -- "digging" tactics that are designed to confirm pre-existing suspicions of criminal activity.

Simply stated, the practice of relying upon minority arrest and conviction statistics to justify investigation and arrest practices is like allowing the tail to wag the dog. Some police officers may be subjecting minority citizens to heightened scrutiny and more probing investigative tactics, which leads to more arrests, which are then used tautologically to justify those same enhanced investigative tactics.

Yet another problem in relying on arrest and conviction statistics is that these numbers, by definition, count only those persons who were found to be involved in criminal activity. These statistics do not show the number of persons who were detained or investigated who, as it turns out, were <u>not</u> found to be carrying drugs. Consistent with our human nature, we in law enforcement tend to remember and focus on our "hits," but tend to pay much less attention to our far more frequent misses, that is, those instances where, for example, a consent search failed to discover contraband, or where the posing of probing or accusatorial questions failed to reveal inconsistencies or apparent falsehoods that could

be used to build a reasonable articulable suspicion of criminal activity.

Consider that if you act on a "hunch" and your ensuing investigation happens not to find evidence of criminality, you are not likely to pay too much attention to this episode; nor are you likely to lose confidence in your gut instincts. If, on the other hand, your hunch happens to pan out, leading to the discovery of evidence of criminal activity, you will always remember this incident and view it as validating your "sixth sense." This same principle of selective memory can apply to profiles. "Misses," while common, are just chalked up to experience, while fortuitous "hits," which are far less common and thus inherently more noteworthy, are credited to the profile, rather than to chance. ("Selective enforcement," as it turns out, can sometimes be attributed to selective recall.)

Statistics that show that a disproportionate percentage of minority citizens are arrested and convicted for drug offenses can also be misleading because it is so much easier for police to observe and apprehend drug offenders who operate out in the open. It is far easier to make arrests in or around "open air" drug marketplaces in urban areas than it is to apprehend suburban drug offenders, who tend to commit offenses more discreetly from behind closed doors. As to these suburban and rural offenders, we generally cannot make an arrest except as a result of a comparatively sophisticated investigation that is conducted by undercover officers and that depends upon the issuance of a search warrant. Because urban offenders tend to operate out on the street rather than from behind closed doors, they are far more vulnerable, and can easily be arrested without a warrant by uniformed patrol officers, who comprise the vast majority of our law enforcement resources.

The easy-to-catch urban offenders reflect the racial and ethnic demographics of the urban neighborhoods in which they operate. The same is true for the harder-to-catch suburban and rural offenders. That being so, the net result is that minority drugs dealers tend to be more easily apprehended, and so are arrested in greater numbers. When one "controls for" the racial and ethnic demographics of the neighborhoods in which drug offenders operate, it turns out that race and ethnicity are not useful in predicting who is more likely than others to be engaged in criminal activity.

Indeed, law enforcement experts who have carefully examined the empirical evidence have reached this conclusion. According to the Police Executive Research Forum, for example, "many studies have demonstrated that race is not a useful predictor of criminality, either as a sole factor or in combination with other factors . . ." Police Executive Research Forum, Racially Biased Policing: A Principled Response, p. 93 (2001). In other words, as it turns out, using profiles that rely on racial or ethnic stereotypes is no better, and in many respects is far worse, then targeting citizens at random.

It is also important to note that the United States Department of Justice – an agency that includes the Drug Enforcement Administration and the Federal Bureau of Investigation – recently announced strict policy guidelines that flatly dismiss the notion that crime

statistics can be used to justify racially-influenced policing. Specifically, the United States Attorney General has declared that:

> Stereotyping certain races as having a greater propensity to commit crimes is absolutely prohibited. Some have argued that overall discrepancies in crime rates among racial groups could justify using race as a factor in general traffic enforcement activities and would produce a greater number of arrests for non-traffic offenses (e.g., narcotics trafficking). We emphatically reject this view.

In sum, and for all of the foregoing reasons, under our statewide policy prohibiting discriminatory policing, aggregate or group statistics (such as arrest and conviction data) may not be used to justify using race or ethnicity as a factor in predicting or inferring that a particular individual or group of individuals is more likely than others to be involved in drug trafficking or any other type of criminal activity. It is inappropriate, in other words, to rely on "aggregate" or group statistics to support an inference that a particular individual of a given race or ethnicity (the person with whom an officer is interacting) is engaged in criminal activity.

16.2 The Use of Statistics to *Prove* Racially-Influenced Policing

Fourteenth Amendment litigation is very different from Fourth Amendment jurisprudence in its use and reliance upon aggregate statistics. In an Equal Protection case, the person claiming to be the victim of unconstitutional behavior is permitted, or in some cases may even be required, to present evidence concerning "patterns" of similar police conduct involving other possible victims. Such statistical evidence may be used to show a "disparate impact," a "discriminatory intent," or both. (In the real world, these two legal concepts tend to overlap. Evidence that shows that minorities are treated differently (an "effect") may also establish an agency's actual or de facto intent to treat minority citizens differently.)

In State v. Soto, 324 N.J. Super. 66 (Law Div. 1996), the defendants based their claim of racial targeting on statistics. While statistical evidence is deemed to be relevant, it is usually not sufficient by itself to support an Equal Protection claim. (In most cases, defendants are not likely to rely entirely on statistical evidence. In State v. Soto, for example, the defense produced other witnesses, including an expert to testify on whether the State Police had allowed, condoned, cultivated or tolerated discriminatory practices.) Sometimes, however, these statistics may reveal anomalies that could conceivably satisfy the claimant's "prima facie case," thus triggering the "burden shifting template" established by the courts, requiring the State at that point to offer a race-neutral explanation for the statistical anomaly. Relatedly, statistics may be used by a defendant to establish a "colorable basis" to believe that selective enforcement may be occurring, thus entitling the defendant to demand access to internal police reports and other documents as part of the

process of pretrial "discovery." See State v. Kennedy, 247 N.J. Super. 21 (App. Div. 1991); State v. Ballard, 331 N.J. Super. 529 (App. Div. 2000).

The use of statistics to try to determine whether racially-influenced policing is occurring can lead to a protracted "battle of experts." Statisticians may argue, for example, over whether data were correctly obtained and whether the data are accurate and reliable. We can also expect expert witnesses to argue over how many "standard deviations" from an expected result constitutes evidence of discrimination, and is not just random variation that signifies nothing.

One of the key issues that arises in any such battle of experts is how to determine what "benchmark" should be used to decide whether the recorded statistics actually demonstrate a potential Equal Protection problem. Remember that the gist of an Equal Protection claim is that a particular individual or group of individuals is being treated unequally, that is, treated differently from other persons who were otherwise similarly situated but who have different racial or ethnic characteristics. This type of litigation necessarily requires a *comparison*, which forces judges, lawyers and statisticians to figure out whether they are comparing the right information, rather than comparing apples and oranges.

It is important to note that a statistical discrepancy (e.g., the apparent overepresentation of minorities in a given stop, arrest or conviction statistic) does not necessarily mean that police have engaged in discrimination in violation of the Fourteenth Amendment Equal Protection Clause or Attorney General Law Enforcement Director 2005-1. Often, what might appear at first glance to be evidence of "disparate treatment" might actually have been caused by one or more perfectly legitimate, race-neutral factors -- criteria that police are absolutely permitted to rely upon under our statewide nondiscrimination policy. This is so because there are many instances when legitimate law enforcement criteria or suspicion factors turn out to be "correlated" to race or ethnicity for reasons that have nothing to do with law enforcement decisions and that are simply beyond the power of law enforcement to change.

By way of example, a law enforcement agency whose core mission is to investigate the criminal activities of *La Cosa Nostra* families could be expected to arrest and prosecute a large proportion of suspected *Mafioso* who happen to be persons of Italian ethnicity. Such arrest and prosecution statistics would simply reflect the membership criteria of that particular criminal organization, and so in this instance, the arrest and conviction statistics would by no means demonstrate that this law enforcement agency has in any way engaged in purposeful discrimination or otherwise violated the basic principles set forth in Attorney General Law Enforcement Directive 2005-1. So too, as we saw in Unit 6.7, when a police agency focuses its patrol and enforcement efforts to respond to reported offenses in a so-called high crime neighborhood that happens to have a large minority population, it is reasonable to expect that police officers assigned to patrol that neighborhood would stop and arrest a correspondingly large proportion of minority offenders (who, in turn, would

have been preying upon the law-abiding minority residents of this neighborhood).

One of the most important and challenging tasks for those involved in selective enforcement litigation is to identify what statisticians refer to as “spurious” or “intervening” variables that might cause or help to explain any statistical discrepancies or deviations. By identifying and statistically “controlling for” these variables, it may be possible to demonstrate that the law enforcement agency had, in fact, relied upon appropriate, race-neutral criteria in exercising discretion, thus satisfying the burden of production that might fall upon the State under the so-called “burden-shifting template” devised by the New Jersey Supreme Court in State v. Segars, 172 N.J. 481 (2002) (*per curiam*). See Unit 12.5.

UNIT 17: THE ROLE OF POLICE EXECUTIVES AND SUPERVISORS

17.1 Police Chiefs and Executives: Setting Good Policy and Setting a Good Example

Professional policing starts at the top of a law enforcement agency. It is the Chief's responsibility, ultimately, to establish and enforce unambiguous policies and procedures that make clear that discriminatory policing will not be tolerated. In doing so, police executives must be certain that their rank and file officers receive the training and day-to-day supervision they will need to achieve the highest standards of professionalism. In implementing New Jersey's statewide nondiscrimination policy, police executives must embrace the need to support their officers, giving them the tools to succeed – and the tools to avoid unnecessary law suits and citizen complaints.

In implementing and enforcing our State's nondiscrimination policy, police executives should not rely, of course, only on the threat of discipline. Rather, police executives should create a professional and supportive work environment by using, as appropriate, non-punitive means such as counseling and in-service training to prevent as well as to identify and remediate problems before they might become a basis for legal or disciplinary action.

In recent years, many police departments throughout New Jersey and the rest of the nation have begun to collect more detailed statistics about how their officers interact with persons of different races and ethnicities. Police executives can then use this data to monitor their department's performance and to identify potential problems. For this system to work, police departments must be certain to record enough information to be able to "control" for certain so-called "spurious" or "intervening" variables, that is, environmental factors that might cause, or at least explain, differences in the way people of various racial or ethnic backgrounds are being treated.

For example, an officer or group of officers who are assigned to patrol a particular neighborhood are obviously most likely to encounter persons who reside or work in that area. Accordingly, the stop, frisk, search and arrest statistics for these officers are likely to reflect the racial, ethnic and socio-economic characteristics of that particular area constituting their primary patrol zone. If the demographic features of that zone are different from the demographic characteristics of the remainder of the police department's jurisdiction (e.g., if a particular zone is comprised predominantly of minority citizens whereas the town as a whole is not), then one would *expect* officers who spend most of their time and enforcement efforts in that zone would make stops, frisks, arrests and searches of a greater percentage of minority citizens than would be true for officers in the same Department who are assigned to patrol other areas in the town that have a different racial or ethnic composition. In other words, the proper "benchmark" for reviewing the statistics generated by officers operating in a particular patrol zone is the racial or ethnic composition of that specific area.

As we considered in Unit 16, it is not always easy to figure exactly what is the appropriate "benchmark" to use when comparing data about *observed* police conduct with *expected* police conduct. Experts do not always agree on how to measure the demographic characteristics of those citizens who police officers on various types of duty assignments are most likely to encounter, that is, those citizens who, by virtue of their own conduct or other circumstances beyond an officer's control, are at greatest risk of attracting the attention of and interacting with police officers who are lawfully performing their assigned duties.

The key point for our present discussion is that any agency that decides to collect these kinds of statistics must be certain to employ sensitive enough measures to be able to account for (or "statistically control for") such factors as type of duty assignment, day of week and time of day (the demographic composition of persons who police are likely to encounter on the street may vary by time of day), and specific locations where the encounters took place.

We must also recognize that keeping statistics is only one step in addressing the racial profiling controversy. A department that keeps accurate statistics of critical events such as stops, frisks, arrests and consent searches must make certain that it also takes steps to ensure the consistent high quality of its report writing practices. This is critically important because, as we have seen, it may be necessary to review police reports to glean legitimate, race-neutral explanations in the event that a statistical anomaly arises. Police supervisors and managers should never rely solely on statistics, and they will need to conduct a further investigation on a case-by-case or report-by-report basis to determine whether, in fact, any statistical deviation was the result of impermissible discrimination. There may well be innocent, non-discriminatory explanations for a statistical deviation, but once any such statistical discrepancy arises, the State must be prepared to meet the burden of production under the "burden shifting template" by producing credible evidence of a race-neutral explanation.

In a closely related vein, police executives and supervisors must recognize that collecting and reviewing statistics should not be used to reach final judgments about particular officers or incidents. A statistically significant deviation from an expected result or "benchmark" is only the beginning of the inquiry, not the end of the inquiry. Any such deviation should be thought of only as a kind of "trigger" for closer scrutiny, and as part of that scrutiny, executives and supervisors should always look to other sources of information (including explanations provided by the officers involved), to corroborate or dispel any inference of racially-influenced policing that might arise as a result of statistical analysis.

Finally, and perhaps most importantly, police departments and officers must avoid relying on these kinds of statistics to the point that they start to exercise discretion "by the numbers." Always remember that the Equal Protection Clause requires <u>equal</u> treatment of persons of all races and colors. Just as it is illegal for an officer to consider race or ethnicity in deciding who to stop, question, frisk or search, so too it is illegal to consider

race or ethnicity in deciding who not to stop, question, frisk or search. Officers who consciously select non-minority citizens for a particular course of treatment in an effort to "improve" their numbers (i.e., artificially achieve a representative cross-section of the community so as to avoid supervisory scrutiny or Equal Protection claims) are just as guilty of racially-influenced policing as if they had instead targeted minority citizens. Indeed, any such deceptive and manipulative tactic would strike at the very heart of police integrity and impartiality, and cannot and will not be tolerated.

17.2 Supervisors: The First Line of Defense Against Discriminatory Policing

Front line supervisors must play an especially important role in recognizing and guarding against racially-influenced policing by their subordinates. Supervisors throughout the chain of command must be held accountable for holding their supervisees accountable for complying with our nondiscrimination policy and all constitutionally-based rules of police conduct. One of the most significant contributions that supervisors can make is to carefully review and critique police reports prepared by their supervisees, making certain that these reports are thorough. Supervisors should take steps to ensure that any errors, gaps or ambiguities are resolved before a draft report is approved and formally submitted.

Supervisors should place themselves in the shoes of a reviewing court, posing the same kind of probing analytical questions that a prosecutor or reviewing court would ask based on the information provided in the police report. Supervisors should anticipate when a reviewing court is more likely to be skeptical or probing, and should then make certain that the report adequately addresses the questions that a court would likely ask were this case to result in Fourth or Fourteenth Amendment litigation.

If a supervisor cannot tell exactly what happened during the police-citizen encounter by reading the report, then the supervisor must assume that a reviewing court would also be in the dark, and would be forced to speculate as to the events that took place – a situation that might not bode well for the State in litigation.

Supervisors should not assume that an officer at some future point will be able to explain any gaps, deficiencies, discrepancies or ambiguities by means of oral testimony, since, as we have seen, an inadequate report might lead to an unfavorable review by a prosecutor, resulting in the downgrading, devaluation, or even outright dismissal of the case so that the officer who wrote the report may never actually get an opportunity to provide additional information by testifying in a court hearing.

The police report, in other words, is not just used to "refresh" an officer's recollection when the officer prepares to testify in court. Even more importantly, the report is used by other actors in the criminal justice system to figure out what happened out on the street and to gauge the strengths and weaknesses of the State's case. The bottom line is that a police report must speak for itself, and while it is the line officer's responsibility in the first place to draft a thorough and accurate report, it is the supervisor's responsibility to make

certain that that is done in every case.

When reviewing reports to look for the possibility of racially-influenced policing, supervisors must always remember the critical principle that one need not be a racist to engage in racial profiling. The fact that the supervisor knows his or her subordinate well, and knows this officer to be a man or woman of integrity – one who would never intentionally violate a citizen's civil rights – does not end the supervisor's inquiry. Supervisors must be on the lookout for subtle or even unthinking examples of racially-influenced policing.

Just as a good report spells out the facts constituting reasonable articulable suspicion or probable cause necessary to justify a Fourth Amendment intrusion, that report must likewise set forth the facts establishing a race-neutral explanation for the officer's exercise of discretion, especially in the kinds of circumstances we discussed in Unit 13 where reviewing courts are more likely to be skeptical of the way in which police exercise discretion. Supervisors must always consider what would happen if an inference of selective enforcement were to arise, thus triggering the "burden shifting template" adopted by the New Jersey Supreme Court. If that is a realistic possibility, then the supervisor must make certain that information documented in the report would satisfy the State's "burden of production."

UNIT 18: RACIALLY-INFLUENCED POLICING AFTER 9/11

No discussion of the racial profiling controversy would be complete without candidly addressing the impact of the terrorist attack against our country on September 11, 2001, the ongoing global war against terrorism and the military conflict in Iraq. Police officers in New Jersey must continue to play a vital role in protecting our homeland. We nonetheless need to carefully define the specific contributions that each law enforcement officer and agency can make to our overriding goal of protecting our safety and security.

The most difficult question for the purposes of this course is whether and under what circumstances a law enforcement officer in New Jersey may consider a person's apparent Middle Eastern ethnicity (or attire indicating the person's Islamic religious beliefs) in drawing inferences that that person might possibly be engaged in terrorist activities. In answering this question, we must never lose sight of the critical fact that the percentage of persons who reside in or travel through New Jersey who are of Middle Eastern ethnicity or who practice the Islamic faith and who are actually affiliated with al-Qaida or any other terrorist network is negligible.

18.1 The Basic Rule

Under our State nondiscrimination policy, a police officer may not consider a person's apparent Middle Eastern ethnicity, or attire suggesting a person's Islamic faith, to any degree in drawing an inference that the person may be engaged in terrorist or other criminal activity or in deciding, for example, whether to initiate a consensual field inquiry or investigative detention. In this limited setting, our rule may be stricter than the one announced in June 2003 by the United States Attorney General for use by federal law enforcement agencies.

Consistent with the general rule that we have discussed throughout this course, law enforcement officers in this State must focus not on the person's skin color, but instead must focus on the person's conduct and whether, for example, the person's conduct is consistent with the methods of operation of terrorists, or is otherwise suspicious.

Furthermore, while manner of dress can in appropriate circumstances be considered to be a form of conduct (i.e., when persons are "flying the colors" of a gang), in this context, when manner of dress and personal appearance relates to an expression of a person's religious beliefs, the person's attire may not be considered to any degree in drawing any inferences of criminal activity (other than in the context of a "Be on the Lookout" situation discussed in Unit 18.3). In other words, it is inappropriate and unlawful for a law enforcement officer operating under the authority of the laws of this State to infer from a person's garb that he or she is a Muslim, and then to infer from that conclusion that the person may be a fanatical terrorist poised to strike.

18.2 Behavioral (Race/Ethnicity-Neutral) Profiles or "Screening Systems" of Possible Terrorists

While Attorney General Law Enforcement Directive 2005-1 prohibits police from considering a person's ethnicity or religious attire in drawing an inference that this person is more likely than others to be engaged in terrorist activity, or is otherwise "suspicious," it is important to recall that it is perfectly legal and appropriate for law enforcement agencies to develop behavioral "profiles" of persons engaged in various types of criminal activity, including suicide bombings and other forms of terrorism, so long as those profiles do not rely on racial or ethnic characteristics (or on religious attire or other symbols of religious faith or expression). See Unit 6.1 (distinguishing "*racial* profiling" from legitimate, race-neutral "profiling"). Legitimate counter-terrorism profiles and screening systems are designed to identify persons who are at a heightened or elevated risk of being associated with potential terrorist activity by focusing on conduct and race-neutral behavioral characteristics that have been gleaned from a careful analysis of intelligence information.

As we considered in Unit 8.3 and in Unit 16.2 in our discussion of the use of statistics, sometimes, a perfectly legitimate, race-neutral suspicion factor may happen to be "correlated" to race or ethnicity for reasons (such as demographics) that are simply beyond the control of law enforcement. To explain this point in the context of homeland security, let us briefly consider two legitimate counter-terrorism-related factors or characteristics that may coincidently be correlated to ethnicity, but that are actually "race-neutral" and so may be taken into account by police officers in making threat assessments without violating our nondiscrimination policy. Specifically, we will consider: (1) a person's recent travels to and from other nations, and (2) a person's country of citizenship. (Note that the following discussion is by no means intended to suggest that travel abroad and foreign citizenship are especially important factors in gauging the risk that a person may be involved in terrorist activity. These two examples are discussed only to show how ethnicity might be correlated to characteristics that are actually "race neutral" and that may therefore be taken into account by police without running afoul of our statewide nondiscrimination policy.)

Recall from our earlier discussion of legitimate, race-neutral "profiles" that travel to and from a particular place is a form of conduct that may be considered in inferring whether criminal activity is afoot. (For example, a legitimate drug courier profile may include a

consideration of whether a person is traveling to or from a place where illicit drugs are known to be produced or shipped -- a so-called "source" city.) Applying this same principle to counter-terrorism efforts, if during the course of a lawfully initiated encounter an officer were to learn that a person had recently traveled to or otherwise had contact with a nation that is believed to sponsor terrorism, the officer may legitimately consider that race-neutral fact in determining the likelihood that this individual may be engaged in terrorist activities.

Of course, like all generalized "profile" characteristics, travel abroad, considered in isolation, would by no means establish reasonable articulable suspicion, much less probable cause to believe that this person is in fact engaged in criminal activity. Note also that this particular behavioral characteristic (recent travel to a specified foreign nation) could coincidently be correlated to the person's ethnic background. It is conceivable, for example, that individuals who have recently traveled to or from a particular Middle Eastern nation might tend to reflect the ethnic composition of that nation's indigenous population. In this instance, however, the police officer would be focusing solely on the person's *conduct* (travel abroad), and not on the person's ethnicity.

By the same token, neither the Fourteenth Amendment Equal Protection Clause nor Attorney General Law Enforcement Directive 2005-1 prohibit a police officer from considering a person's foreign citizenship. This is true even though foreign citizenship may coincidently be correlated to race or ethnicity, since foreign nationals may tend to reflect the racial or ethnic composition of their nation of citizenship. (While the United States is a true "melting pot" comprised of innumerable cultures, races and ethnicities, some other nations are far less diverse. Some nations, in other words, are far more homogeneous than America with respect to the racial or ethnic composition of their indigenous population.)

For the purposes of our statewide nondiscrimination policy, a person's alien citizenship is legally and analytically distinct from the person's ethnicity or "national origin" (i.e., where the person's ancestors were born). Being a citizen of another nation, unlike race or ethnicity, is a legally cognizable *status* (such as whether the person is an adult, or is licensed to operate a motor vehicle) that police in appropriate circumstances may consider as part of their enforcement duties. See Farm Labor Organizing Committee v. Ohio State Highway Patrol, 991 F. Supp. 895 (N.D. Ohio 1997) (any police officer whose duty is to enforce criminal laws may enforce the criminal prohibitions of the federal Immigration and Nationality Act and in some circumstances may therefore question motorists about their alienage and immigration status). See also Muehler v. Mena, 125 S.Ct. 1465 (2005) (Officers' questioning of defendant about her immigration status did not constitute a Fourth Amendment violation; in this case, the questioning did not extend the time she was detained during the execution of a search warrant of the premises she happened to be in).

This by no means suggests that alien citizens do not have constitutional rights. Indeed, the Fourth Amendment applies to all "persons" and draws no distinction at all between United States citizens and citizens of other nations. Rather, it means that in certain contexts, the government may treat its own citizens differently from noncitizens, requiring,

for example, alien visitors and residents to comply with immigration laws and regulations that simply have no applicability to United States citizens.

The bottom line for our purposes is that neither the Fourteenth Amendment Equal Protection Clause nor Attorney General Law Enforcement Directive 2005-1 require police officers to ignore a person's citizenship or immigration status. In fact, in some instances, police are *expected* to determine a person's foreign citizenship. When foreign nationals are arrested, for example, police officers in this country are required by international law and treaty obligation to advise the arrestees of their right to have their consular office notified. See Vienna Convention on Consular Relations (Approved 1963).

Of course, the fact that a person happens to be a citizen of a nation thought to sponsor or harbor terrorists hardly establishes reasonable articulable suspicion of criminal activity for purposes of the Fourth Amendment. The point, rather, is that government agents are not prohibited by the Equal Protection Clause or our statewide nondiscrimination policy from taking foreign citizenship into account as part of the "totality of the circumstances."

In applying these general principles of relevance, police officers in this State must always use caution and common sense, making certain that a person's race or ethnicity plays no part in the exercise of police discretion. Police officers, in other words, should always take the time to carefully "line up the ducks" of their suspicions. (Recall from our discussion of the gang problem in Unit 10 that timing and the sequencing of events and inferences is often critical to the resolution of constitutional issues under both Fourth and Fourteenth Amendment analysis.) By way of example, a law enforcement officer operating under the laws of this State must not use an individual's skin color or apparent ethnicity as an indicia of suspiciousness and as the factual basis for first inquiring as to the person's citizenship or recent travels abroad. See Farm Labor Organizing Committee v. Ohio State Highway Patrol, 95 F.Supp. 2d 723 (N.D. Ohio (2000), affirmed and remanded 308 F.3d 523 (6 Cir. 2002) (court found a *prima facie* case of racial discrimination based on evidence that showed that Ohio troopers questioned Hispanic motorists, but not white motorists, about their immigration status when they were pulled over for traffic violations).

It would be an inappropriate form of "bootstrapping" -- putting the cart in front of the horse -- if an officer during a routine encounter such as a traffic stop were to consider a person's physical appearance (as opposed to the person's conduct) as the basis for launching what is, in effect, an *ad hoc* criminal investigation of possible terrorist activity. That would be roughly akin to using an individual's race or ethnicity to infer that he or she is "out of place" in a particular neighborhood, leading to enhanced scrutiny and probing, such as accusatorial questions that would not be posed if the individual were of a different race or ethnicity. See Unit 11.1. (In essence, an officer in these circumstances would be impermissibly using a person's ethnicity as the predicate for inferring that the person may be "up to no good," and as the basis for investigating, not what the person is doing in this particular neighborhood, but rather what the person is doing in this country.) See also Unit 15.1, where we considered why it would be inappropriate for the officers in one scenario to

use the motorists' race to infer that they were students at a particular college and thus "fit the profile" of a drug purchaser.

Always remember that the ultimate test under Attorney General Law Enforcement Directive 2005-1 is whether you would have taken the same investigatory or enforcement actions if the person had been of a different ethnic background. If the answer to that question is no, then the person's ethnicity would have contributed to your decision-making process in violation of our statewide nondiscrimination policy.

18.3 The B.O.L.O. Exception

As we have noted in Unit 9 and throughout this course, an officer during a lawful encounter may take steps to determine whether a person is the subject of an outstanding "Be on the Lookout" bulletin. Law enforcement officers should be aware that the F.B.I. has compiled a list of persons who are thought to have information about terrorist activities. The F.B.I. has asked to be notified whenever local police come across a person on this B.O.L.O. list.

While the B.O.L.O.s issued by the F.B.I. refer to specific, named people, these alert bulletins generally do not provide a sufficiently detailed physical description to allow an officer on patrol to make a Fourth Amendment liberty intrusion, such as initiating or unduly prolonging an investigative detention. However, a law enforcement officer in this State during a lawfully initiated encounter may consider a person's apparent Middle Eastern ethnicity in determining whether or not the person may be one of the individuals listed in the F.B.I. B.O.L.O. bulletins or in similar alerts issued by State or local authorities. Accordingly, an officer during a lawfully initiated stop traffic may ask a passenger to identify himself or herself so that the person's name could be checked against the F.B.I. B.O.L.O. list, provided that this process can be completed without unduly prolonging the duration of a routine motor vehicle stop. See Unit 13.5.

It should be noted that under New Jersey law, a person other than one who is operating a motor vehicle is generally under no legal obligation to provide proof of identification to a law enforcement officer, or even to provide his or her name upon request or otherwise cooperate with an on-the-scene law enforcement investigation.

On June 21, 2004, a sharply divided United States Supreme Court ruled in a 5-4 decision in Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S.Ct. 2451 (2004), that the officer's request for identification during the course of a lawful "Terry" stop was reasonably related to the circumstances justifying the stop, and thus the suspect's arrest for failure to comply with Nevada's "stop and identify" law did not violate either the Fourth Amendment or the Fifth Amendment right against self-incrimination. The Nevada statute expressly requires persons who are lawfully detained as part of a "Terry" stop to disclose their names. The United States Supreme Court ruling would seem to have little impact in New Jersey, however, because we do not presently have a statute that creates what is essentially a legal duty for a person who is the subject of an investigative detention (other than the operator of a motor vehicle) to disclose his or her name upon request. Compare State v. Stampone, 341 N.J. Super. 247 (App. Div. 2001) (when an officer does not have reasonable articulable suspicion of criminal conduct before approaching and questioning a person sitting in a car, the person has the right to refuse and remains free to leave without showing identification.) See also State v. Pineiro, 181 N.J. 13 (2004) (field inquiries are permissible so long as they are not harassing, overbearing or accusatory in nature. This means that the person approached in a field inquiry need not answer any question put to him, and the person may decline to listen to the question at all and may go on his way).

It is important to remember that the so-called "B.O.L.O. exception" to the general rule prohibiting any consideration of race or ethnicity is by no means limited to formal bulletins or teletypes issued by the F.B.I. or any other federal, state, county or local law enforcement agency. As we saw in Unit 9, the B.O.L.O. exception also applies with respect to information provided to an officer, *by any means*, about a particular person who is suspected of criminal activity. Thus, for example, if a private citizen were to report a "suspicious person" to authorities, police officers are generally permitted, indeed depending on the circumstances may well be required, to investigate that report and may rely upon a racial or ethnic description of the person thought by the private citizen to be "suspicious" in determining whether an individual in the responding officer's view is the same person who had been reported by the citizen-informant. Remember, however, that if it is readily apparent that the citizen's report is based entirely on the suspect's ethnicity, and not at all on the person's suspicious conduct, then you may not give credence to the use of any such ethnic stereotype.

Also remember that under the Fourth Amendment, the information provided by the citizen may or may not justify a "seizure" (i.e., a "Terry" stop). That will depend upon a number of fact-sensitive factors, including the specificity of the description, the citizen-informant's basis for believing that this person may be involved in unlawful activity, and the veracity or credibility of the informant-tipster. The key point to keep in mind is that the

Fourteenth Amendment focuses on whether you are allowed to consider a fact (a person's race or ethnicity) at all. The Fourth Amendment is concerned with whether all of the known facts (the "totality of the circumstances") add up to satisfy the level of proof necessary to justify a seizure or other police action that intrudes upon a Fourth Amendment liberty or privacy interest.

It is also important to recall that the "B.O.L.O. exception" to the general rule prohibiting police in this State from considering a person's race or ethnicity is not limited to specified persons who are criminal "suspects," that is, persons who are believed to be personally engaged in criminal activity. As we saw in Unit 9.1, police are allowed to follow investigative "leads" and may therefore seek out and interview specified persons who may have valuable information but who are not themselves suspected of any criminal activity. It is interesting to note in this regard that many of the federal B.O.L.O. bulletins issued after September 11, 2001, refer to persons who are thought to have information that might be helpful to counter-terrorism authorities. These are individuals who the F.B.I. wants to interview, but not necessarily detain or arrest. In fact, many if not most of these federal B.O.L.O.s do not involve outstanding arrest warrants, and the federal bulletins caution police not to make arrests based on such bulletins.

Finally, it is important to recognize that the "B.O.L.O. exception" need not be limited to recognizing wanted persons in chance encounters out on the street. Law enforcement authorities are, of course, allowed to pursue a B.O.L.O. bulletin by going to specific places where the subject of the B.O.L.O. (whether a criminal suspect, possible witness, or victim) is likely to be. For example, if federal law enforcement authorities want to go to the homes or businesses of specified persons to interview them about any knowledge that they may have about terrorist organizations or terrorist activities, police in New Jersey may accompany federal authorities and may actively participate in any such investigative activities without in any way violating our non-discrimination policy, even though these specified persons to be interviewed may tend to be of a particular ethnicity. In these circumstances, law enforcement officers are merely following "leads" that identify specific individuals who are believed to have potentially useful information. See Unit 9.2.

PART IV SUMMING UP

UNIT 19: REVISITING THE VIDEO SCENARIO

We have covered a lot of ground in this course. It is now time to put the pieces of the complex and intricate racial profiling puzzle together and apply some of the ideas and legal concepts that we have discussed to a specific scenario – one that we have already considered. Let us take a moment to revisit the script of a dramatized police encounter that was produced by the Anti Defamation League.

* * *

Two Caucasian police officers are in a marked police vehicle patrolling a quiet residential street. It is obviously an extremely affluent suburban neighborhood, as evidenced by the large, well-maintained homes. There is no other traffic on the street. One of the officers notices a red car parked at the curb. It is the only parked vehicle in sight. There are two African-American males (as it turns out, father and adolescent son), sitting in the vehicle. The following conversation between the officers ensues:

Officer #1: "Quiet day, huh?"

Officer #2: "Hey, did you notice that?"

Officer #1: "What?"

Officer #2: "Those two black guys in the Toyota?"

Officer #1: "That's unusual isn't it?"

Officer #2: "Sure is around here. I just want to check on the car just to be safe."

Officer #1: "You call it in and I'll check it out."

The police vehicle makes a U-turn and pulls up behind the parked Toyota. The officers do not activate the police vehicle's overhead or "wig-wag" lights. Officer #1 steps out of the police vehicle and approaches the male sitting in the driver's seat of the parked Toyota. Officer #2 remains in the police vehicle. Officer #1 engages the person in the driver's seat (the father) in the following conversation:

Officer #1: "Anything I can do for you guys?"

Father: "No. That's okay."

Officer #1: "Do you live around here?"

Father: "No we don't."

Officer #1: "Would you please get out of the car?"

Father: "Why?"

Officer #1: "Please, get out of the car. Do you have some identification? Why are you parked here?"

The father gets out of the vehicle and produces an operator's license from his sports jacket inside pocket. He provides the license to Officer #1.

Father: "Look officer, my son and I are just waiting for someone. What's the problem?"

Officer #1: "No problem."

Officer #1 examines the license and looks at the driver, apparently to confirm that he matches the information on the license. Officer #2 has now approached the Toyota after having communicated with the police dispatcher.

Officer #2: "The car is fine."

Officer #1: "Okay. Just a routine check."

Father: "Yeah, *routine*."

Officer #2: "What's he getting upset about?"

Officer #1: "I don't know. No harm done."

The two officers return to the police vehicle. The son turns to his father in exasperation and says:

Son: "We should report them."

Father: "For what?"

Son: "I don't know."

Father: "Hey, forget it. It does make you mad though, doesn't it. I guess they just wanted to know why we were here."

Son: "I didn't know we needed a reason."

The father appears to be mortified by the implications of his son's last comment.

* * *

At the beginning of this course, when we first considered this scenario, you were asked to consider whether this was an example of good police work, or an example of police officers relying on racial stereotypes. Your personal opinion may or may not have changed as a result of anything that we have discussed in this course. That is not important, because there is not necessarily a right or wrong answer to the question whether this scenario represents appropriate law enforcement conduct. The key is that you be able to analyze or "break down" the scenario so that your opinion is a reasoned one.

In terms of legal analysis of this scenario, we need to consider first when under the Fourth Amendment a "stop" was initiated. Pulling behind a vehicle that is already stopped generally constitutes a mere "field inquiry," rather than a "Terry" or "Prouse" stop. (Police will sometimes describe this type of field inquiry as a "motorist aid" situation, or one that is justified under the so-called "community caretaking function." See, e.g., State v. Martinez, 260 N.J. Super. 75 (App. Div. 1992) (driving at a "snail's pace" at 2:00 a.m. was "abnormal" behavior that raised sufficient concerns to justify a stop)). Note that the officers did not activate the police vehicle's overhead or "wig-wag" lights. See also State v. Stampone, 341 N.J. Super. 247 (App. Div. 2001) (when police do not have reasonable articulable suspicion of illegal conduct sufficient to initiate a "Terry" stop before approaching and questioning a person sitting in a car, the person has the right to refuse to answer questions and remains free to leave without showing identification.)

However, once the officer directed the person in the driver's seat to step out of the vehicle, it is conceivable if not likely that a reviewing court would say that the encounter had escalated into an investigative detention. Arguably, many citizens in these circumstances would believe that they would not be free to disregard the officer's second "request" to step out of the vehicle, and few citizens at this point would believe that they could simply drive off leaving the officer behind. This would be especially true once the driver had turned over his license to the officer pursuant to the officer's command. See State v. Maryland, 167 N.J. 471 (2001) (courts in deciding whether an encounter is an investigative detention will consider whether the officer has made any demands or issued orders). See also State v. Stovall, 170 N.J. 346, 358 (2002) (although police officer framed his statement as a request rather than a command, the Court found that defendant was not free to leave).

We need to ask, therefore, what was the legal basis for briefly detaining these citizens? Was it unlawful for this vehicle to be parked in this location (which would constitute an observed violation that by itself would justify an investigative detention) or, was there a reasonable articulable suspicion to believe that these individuals were "casing" a house for the purpose of committing a burglary, or were otherwise engaged in criminal activity? (We simply do not know from the limited information presented in this scenario whether there had been recent burglaries reported in the neighborhood? Nor do we know whether this vehicle

been seen before at the time of a reported burglary, or whether the vehicle or occupants matched the description of a B.O.L.O. bulletin.) In other words, was the situation so abnormal as to raise legitimate concerns that would justify a brief detention?

Even putting aside these important Fourth Amendment questions, recall that the Equal Protection Clause of the Fourteenth Amendment applies to all police decisions, and not just those that constitute a "seizure" under the Fourth Amendment. Thus, even if we were to assume for purposes of discussion that the Fourth Amendment was never triggered in this scenario, under a Fourteenth Amendment analysis, the reviewing court would still ask whether the officer's initial decision to turn the patrol car around and pull behind the parked vehicle was based to any degree on race or ethnicity. (Remember, the Fourteenth Amendment rules apply to *all* police-citizen encounters, including consensual "field inquiries" and the decision to run a computer query)

As we considered in Unit 15, under the Fourth Amendment, the courts use a so-called "objective" test, meaning that they are generally not concerned with the police officer's purposes or motivations. Under the Fourteenth Amendment, however, the officer's purpose and mental processes are relevant and may be carefully scrutinized by a reviewing court to make certain that race or ethnicity played no part in the officer's decision-making processes. The problem in reviewing this case (or any other case for that matter) is that we cannot be absolutely certain from the text of this scenario what exactly the officers were thinking. Rather, we have to try to deduce their reasoning process by looking at what they did and said.

This scenario shows us quite clearly that even when the objective facts are known – in other words, even when we know exactly what happened – the constitutional inquiry is not over. When a Fourteenth Amendment claim is brought, a reviewing court may go beyond an objective and detached "motion picture" review of the officer's conduct (the action and dialogue on the screen), and may probe the thought processes of the officers to determine whether the officer's judgment was influenced by some impermissible consideration.

The key to resolving the Fourteenth Amendment question in this case will ultimately depend upon the ability of these officers to articulate the reasons for their actions. In other words, the officers should be prepared to answer probing questions about the reasons for their decisions. In this scenario, the officers must be prepared to explain exactly what it was that they observed that was suspicious or "unusual" so as warrant turning around, pulling behind the parked vehicle, "running the plates" and engaging the occupants in conversation. (By way of example, perhaps, given the nature of the street, it was unusual for anyone to be sitting in a car parked along the curb at this time of day. In that event, it may have been the citizen's conduct (parking on this street) rather than their race that prompted the officers to describe the situation as being "unusual.")

Of course, the most important question that these officers must be prepared to answer is whether they would have done the same thing if the two persons observed in the parked vehicle had not been minority citizens. When one of the officers said to his partner, "did you notice the two black guys in the Toyota," was he merely describing the two people in the vehicle, or was it their skin color that had really attracted attention and was the basis

for suspicion? In other words, would the situation have been suspicious or, to use officer's own characterization, "unusual . . . around here," had two *white* males been sitting in a parked car at this exact location on this particular street at this time of day? Remember that the cardinal principle undergirding all Fourteenth Amendment analysis is that persons may not be treated differently by police on account of their race or ethnicity.

Always remember, moreover, that if a reviewing court were to review this scenario and were to draw an inference that race had played a part in the way this encounter unfolded, then the "burden of production" would shift to the officers to establish a race-neutral explanation for their decision to turn around, to pull behind the parked vehicle, to "run the plates" of the vehicle, to order the person in the driver's seat to step out of the vehicle and to order that person to produce proof of identification. As was made clear by our Supreme Court in State v. Segars, once an inference of racially-influenced policing can be drawn, reviewing courts will not speculate as to the legitimate reasons for police conduct; rather, it will be our responsibility to come forward with those legitimate reasons.

Finally, however one interprets the propriety of the police conduct described in this scenario, and however one gauges the likelihood that a reviewing court might condemn this encounter as an example of racial targeting, you must recognize the importance of perceptions and the fact that different people reviewing the same events can come to different conclusions as to the officers' actual motivations for initiating this encounter. Police officers in New Jersey must understand that minority citizens experiencing this situation might become frustrated, angry, and mistrustful of law enforcement. In this vignette, the African-American father and his son obviously believed that they had been singled out for police scrutiny on the basis of their race and because the officers assumed that they had no legitimate business being in this affluent neighborhood. The father was no doubt humiliated by the fact that this demeaning encounter took place in the presence of his adolescent son.

The officers during the encounter, meanwhile, did nothing to dispel any such perception and treated the whole affair as a rather trivial or "routine" incident, unaware that the way they conducted this encounter would likely leave a lasting impression on these two citizens. The officers certainly did not explain to the citizens why they had been approached and why the older man had been ordered out of the car. Always remember that courtesy and demeanor are the hallmarks of a law enforcement professionalism. Perhaps the officers in this particular dramatization were trained that they do not have to have, or give, a reason for this exercise of police authority, and they may earnestly have believed that these citizens were simply not entitled to an explanation. But by not perceiving and defusing the perception of selective enforcement, these officers may have needlessly exposed themselves to the possibility that these citizens might file a complaint against them.

As you perform your duties as a peace officer, you must always remember that no one likes to be falsely accused of wrongdoing, or to be treated like a "suspect" when there is no objective reason to justify such derisive treatment. This is especially true when a person believes that he or she was singled out for suspicion based on broad-brushed group

characteristics. The feelings of resentment and hostility that arise in this kind of situation are certainly not ameliorated merely because the person winds up not being formally charged with an offense or violation. (Being charged would only add injury to insult.)

If you doubt how human beings react to being implicitly accused of wrongdoing, consider the following scenario. You are off duty and you are proudly wearing a tee shirt that bears the name and logo of your agency. You are with your family in a shopping mall. Someone comes up to you, looks at your shirt and asks you, “Hey, are you one of those racial profilers?”

You would have every reason to be disturbed by the accusatorial nature of the citizen's question, since it implies that you and your department have engaged in police misconduct. While you would no doubt respond to this situation in a professional manner, you would not come away from that encounter with a favorable impression of that citizen, who had essentially challenged your integrity and ethics and embarrassed you in the presence of your family.

As it turns out, cops don't like to be "profiled" (to use the vernacular) any more than private citizens do. The bottom line is that law abiding people are rightfully upset and resentful when they are treated under suspicion for wrongdoing on the basis of the color of their skin, or the color of their uniforms.

MARK P. DENBEAUX
Seton Hall University School of Law
One Newark Center
Newark, New Jersey 07102-5210
Telephone: (973) 642-8822 Fax: (973) 642-8194
mark.denbeaux@shu.edu

EMPLOYMENT

Seton Hall University School of Law, Newark, New Jersey
1972-Present Professor of Law
2006-Present Founder and Director – Center for Policy and Research
Teaching
Evidence, Remedies, Uniform Commercial Code, Contracts, Professional Responsibility, Federal Civil Procedure, Criminal Law, Torts, and Constitutional Law

Community Action for Legal Services
1970-1972 Senior Attorney supervising city-wide litigation

South Bronx Legal Services
1968-1970 Staff Attorney

EDUCATION

1968 **J.D.**, ***New York University School of Law***, New York, New York
1965 **B.A.,** ***College of Wooster***, Wooster, Ohio

MEMBERSHIPS

New Jersey Bar (State and Federal)
New York Bar (State and Federal)
New Jersey Bar Association
American Bar Association

MISCELLANEOUS

Member, Board of Directors, ***New York City Legal Services (CALS),*** 1972-1987
Chair, Board of Directors, ***Community Action for Legal Services***, New York, NY, 1983-1987
Affiliated Scholar, ***American Bar Foundation***, Chicago, Illinois, 1974-1978
Elected Member, ***American Law Institute***, 1978
London School of Economics, Studied Legal History, Jurisprudence and Remedies (Sabbatical 1978-1979)
Acting Project Director, ***Bronx Legal Services Corporation***, March-September 1978

PUBLICATIONS

Books

The Guantanamo Lawyers: Inside a Prison Outside the Law, in Amazon/NYU Press (2009). (Edited with Jonathan Hafetz)

New Jersey Evidentiary Foundations, Denbeaux, Arseneault and Imwinkelried, The Michie Company, 1995.

Trial Evidence, (with D. Michael Risinger*), 1052 pp. I.C.L.E., 1978.*

Articles

The Attorney-Client Relationship in Guantanamo Bay (with Boyd-Nafsta) 30 FORDHAM INT'L L. J. 491 (2007).

Kumho Tire and Expert Reliability: How the Question You Ask Gives the Answer You Get, (with Risinger) 34 SETON HALL L. REV. 15 (2003).

Brave New 'Post-Daubert World': A Reply to Professor Moenssens, (with Risinger and Saks) 29 SETON HALL L. REV. 405 (1998).

Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification 'Expertise', (with Risinger & Saks), U. OF PA. L. REV. (JAN. 1989).

The First Word of the First Amendment, NW. U. L. REV., P.1156 (SPRING 1988).

Questioning Questions: Problems of Form in the Interrogation of Witness, (with Risinger) 33 ARKANSAS L. REV. 439 (1980).

Restitution and Mass Actions: A Solution to the Problems of Class Actions, 10 SETON HALL L. REV. 273 (1979).

Trust, Cynicism, and Machiavellianism Among First Year Law Students, 53 J. OF URBAN L. 397 (1976).

PUBLICATIONS: CENTER FOR POLICY & RESEARCH

Report on Guantanamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data, (Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann and Helen Skinner)

Profile of Released Guantanamo Detainees: The Government's Story Then and Now, (Joshua Denbeaux, R. David Gratz, Co-Authors & Research Fellows: Adam Deutsch, James Hlavenka, Gabrielle Hughes, Brianna Kostecka, Michael Patterson, Paul Taylor, Anthony Torntore)

No-Hearing Hearings CSRT: The Modern Habeas Corpus? An Analysis of the Proceeding of the Government's Combatant Status Review Tribunals at Guantanamo, (November 2006) (Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann, Megan Sassaman and Helen Skinner)

Torture: Who Knew An Analysis of the FBI Department of Defense Reactions to Harsh Interrogation Methods at Guantanamo, (April 2009) (Joshua Denbeaux, R. David Gratz. With Megan Sassaman, Daniel Mann, Mathew Darby, Michael Ricciardelli, Jennifer Ellick, Grace Brown, Jillian Camarote, Douglas Eadie, Daniel Lorenzo, Mark Muoio, Courntey Ray)

The Meaning of "Battlefield" An Analysis of the Government's Representations of "Battlefield Capture and "Recidivism" of the Guantanamo Detainees, (December 2007) (Joshua Denbeaux, R. David Gratz, Co-Authors & Research Fellows: Grace Brown, Jullian Camarote, Douglas Eadie, Jennifer Ellick, Daniel Lorenzo, Mark Muoio, Courtney Ray and Nebroisa Zlatanovic)

Justice Scalia, the Department of Defense, And the Perpetuation of an Urban Legend: The Truth About the Alleged Recidivism of Released Guantanamo Detainees, (June 2008) (Joshua Denbeaux, R. David Gratz, Co-Authors & Research Fellows: Daniel Lorenzo, Mark Muoio, Grace Brown, Jennifer Ellick, Jullian Camarote, Douglas Eadie, and Paul Taylor)

Released Guantanamo Detainees of the Department of Defense: Propaganda by the Numbers?, (January 2009) (Joshua Denbeaux, R. David Gratz. Co-Authors & Research Fellows: Daniel Lorenzo, Mark Muoio, Grace Brown, Jullian Camarote, Douglas Eadie, Jennifer Ellick, Paul Taylor, Adam Deutsch, Michael Patterson, Gabrielle Hughes and Michelle Fish)

Revisionist Recidivism: A New Analysis of the Government's Representations of Alleged "Recidivism" of the Guantanamo Detainees, (June 2009)

June 10th Suicides at Guantanamo: Government Words and Deeds Compared, (August 2006) (Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann, Megan Sassaman and Helen Skinner)

Death in Camp Delta, (December 2009) (Co-Authors & Research Fellows: Brian Beroth, Scott Buerkle, Sean Camoni, Meghan Chrisner, Adam Deutsch, Jesse Dresser, Doug Eadie, Michelle Fish, Marissa Litwin, Michael McDonough, Michael Patterson, Shannon Sterrit, Kelli Stout, Paul Taylor)

DOD Contradicts DOD: An Analysis of the Response to Death in Camp Delta, (February 2010) (Co-Authors & Research Fellows: Brian Beroth, Scott Buerkle, Sean Camoni, Meghan Chrisner, Adam Deutsch, Jesse Dresser, Michelle Fish, Marissa Litwin, Michael McDonough, Michael Patterson, Shannon Sterritt, Kelli Stout, Paul Taylor)

The Guantanamo Detainees During Detention: Data From Department of Defense Records, (July 2006) (Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann, Megan Sassaman, Helen Skinner)

Captured On Tape: Interrogation and Videotaping of Detainees in Guantanamo, (February 2008) (Joshua Denbeaux, R. David Gratz, Jennifer Ellick, Michael Ricciardelli, Matthew Darby)

The 14 Myths of Guantanamo: Senate Armed Services Committee Statement of Mark P. Denbeaux, (April 2007)

Second Report on the Guantanamo Detainees: Inter- and Intra-Departmental Disagreements About Who Is Our Enemy, (Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann and Helen Skinner)

SPONSORED RESEARCH

American Bar Foundation–Recipient of a grant, with Professor Alan Katz of Fairfield University, Fairfield, Connecticut, to conduct a longitudinal study on law student attitudes toward politics, law and legal education, 1974-78.
Alteration or Elaboration: Does Law School Instill Cynicism? (with Alan Katz), National Conferences on Teaching Professional Responsibility, Detroit, Michigan, September 1977.

TESTIMONY AND LECTURES

Congressional Testimony

Senate Armed Forces Committee, The 14 Myths of Guantánamo, April 26, 2007.

Senate Judiciary Committee, The Meaning of 'Battlefield:' An Analysis of the Government's Representations of 'Battlefield Capture' and 'Recidivism' of the Guantánamo Detainees, December, 10, 2007.

Senate Judiciary Committee, 2008.

House Foreign Relations Committee, Guantánamo: The Cost of Replacing Legal Process with Politics Incompetence and Injustice and the Threat to National Security, May 20, 2008.

House Armed Services Committee, 2007.

Expert Testimony

Retained as an expert in a variety of jurisdictions and testified as an expert on the limitations of questioning, document examiners including the defects in their methodology and the unreliability of their underlying opinions. Testified as an expert in the following jurisdictions:

Federal Courts
Third Circuit Court of Appeals
United States District Court, Boston, Massachusetts
United States District Court, Northern District of California (San Francisco Division)
United States District Court, Middle District of Florida (Orlando Division)
United States District Court, Northern District of Georgia (Atlanta Division)

United States District Court, Southern District of New York
United States District Court, Western District of New York
United States District Court, Eastern District of Pennsylvania (Eastern Division)
United States District Court, Western District of Pennsylvania
United States District Court, Colorado

State Courts
California
Florida
Louisiana
New Jersey
New York
South Carolina
Tennessee
Texas

LECTURES

Professional Lecturer, New Jersey Judicial College
Lecturer, New Jersey Institute of Continuing Legal Education
Trial Advocacy Skills Instructor, National Legal Services Corp.
Trial Advocacy Skills Instructor, New Jersey Trial Lawyers Association
Practicing Law Institute (PLI)
Fairfield University, Fall Lecture Series– "Legal Equality in a Society of Unequals" 1994
NACDL, Questioning Questioned Documents Examiners: Monterey, California, 1986
Problems of Expert Opinion Testimony, New Jersey Institute of Continuing Education, November 1995
American Academy of Forensic Sciences, Questioned Documents Section, Panel Discussion, Nashville, Tennessee, February, 1996
The University of Texas School of Law
University of Cincinnati College of Law
Roger Williams University School of Law
Suffolk University School of Law
Western State University College of Law
Yale Law School
Rutgers Law School
The University of Arizona James E. Rogers College of Law
Whitman College
Benjamin N. Cardozo School of Law

ADMINISTRATIVE PROCEEDINGS

New York City Police Department hearings

RABBINICAL COURT

Beth Din, Los Angeles, California

ERADICATING RACIAL PROFILING: PRACTICAL GUIDANCE ON HOW POLICE DEPARTMENTS AND OFFICERS CAN PREVENT RACIALLY-INFLUENCED POLICING

SKILLS ASSESSMENT

June 2005

by Ron Susswein
Assistant Attorney General
Deputy Director, Major Crimes
Division of Criminal Justice

SKILLS ASSESSMENT

The following skills assessment is designed to test your knowledge of constitutional law and New Jersey's statewide policy prohibiting discriminatory policing. It is also designed to test your ability to *apply* your knowledge to various factual situations that law enforcement officers may encounter in the performance of their duties.

The skills assessment consists of three parts. Part I is a series of true/false questions that will examine your knowledge of specific legal or policy principles.

Part II of the skills assessment is more challenging. It consists of a series of factual scenarios that raise difficult, complex and subtle issues concerning the practice of racially-influenced policing.

Part III contains the answer key to the true/false questions in Part I (with detailed explanations), and a discussion of the issues raised by the factual scenarios in Part II.

Table of Contents

Part I	True/False Questions	Pages 1-7
Part II	Factual Scenarios	Pages 8-30
Part III	True/False Questions Answer Key	Pages 31-46
	Analytical Discussion of Factual Scenarios	Pages 47-71

PART I

TRUE/FALSE QUESTIONS

SKILLS ASSESSMENT "TRUE/FALSE" QUESTIONS

1. The New Jersey Supreme Court will sometimes interpret the State Constitution to impose stricter limitations on the exercise of police discretion than are imposed under the United States Constitution as interpreted by Federal courts. **(True) (False)**

2. Under Attorney General Law Enforcement Directive 2005-1, one of the critical questions that a police officer must be prepared to answer is whether he or she would have made the same decision, or drawn the same inference, if the defendant had been of a different race or ethnicity. **(True) (False)**

3. Courts automatically suppress evidence whenever officers rely on "hunches." **(True) (False)**

4. During a routine motor vehicle stop, a police officer in New Jersey is not permitted to ask a motorist for permission to conduct a consent search unless the officer has a reasonable articulable suspicion to believe that the consent search would reveal evidence of criminal activity. **(True) (False)**

5. When making decisions about how to deal with a citizen, a police officer should generally focus on the person's conduct, rather than on physical characteristics such as skin color. **(True) (False)**

6. A legitimate "profile" focuses on the modus operandi or "methods of operation" of criminals, rather than on the race or ethnicity of individuals. **(True) (False)**

7. The Fourteenth Amendment Equal Protection Clause only applies to police actions that constitute a significant intrusion on a citizen's liberty or privacy interests. **(True) (False)**

8. You are allowed to consider a person's race or ethnicity in drawing

inferences of criminal activity so long as you can point to reliable statistics that show that persons of a given race or ethnicity are more likely than others to be arrested or convicted for certain specific crimes. **(True) (False)**

9. It is an absolute defense to a claim of racial profiling that the police officer is not a racist. **(True) (False)**

10. In appropriate circumstances, an officer can consider if a person seems to be "out of place" (i.e., is not a resident of a particular area or neighborhood), so long as the officer does not rely on the person's race or ethnicity to reach that conclusion or to draw an inference that the person is "up to no good." **(True) (False)**

11. Because the United States Constitution always takes precedence over a state statute, every violation of the Fourteenth Amendment Equal Protection Clause automatically constitutes a violation of the new crime of "official deprivation of civil rights." **(True) (False)**

12. The Fourth Amendment prohibits police from "running the plates" of a vehicle unless an officer has already observed a motor vehicle violation, or has some objective reason to believe that this particular vehicle may be stolen, or that the driver of this particular vehicle is on the "revoked" list. **(True) (False)**

13. Because racial profiling is a kind of "prejudice" ("pre judging" persons based on the color of their skin), a minority police officer cannot be guilty of racially-influenced policing when dealing with a minority citizen. **(True) (False)**

14. In a motion to suppress involving a Fourteenth Amendment Equal Protection claim, statistics are generally irrelevant and will not be considered by the reviewing court. **(True) (False)**

15. Under our statewide non-discrimination policy, you would be permitted to consider a minority motorist's race or ethnicity when deciding whether to "run the plates" of the vehicle in which he or she is driving if arrest or conviction statistics were to show that minority citizens are more likely to be driving stolen vehicles than nonminority citizens. **(True) (False)**

16. If a defendant in a motion to suppress evidence were to establish an inference of racial targeting, the State would be required to come forward with a race-neutral explanation. **(True) (False)**

17. You are permitted to "run the plates" of a vehicle based on nothing more than a "hunch," so long as race or ethnicity plays no part in your decision. **(True) (False)**

18. Under New Jersey law, the Fourth Amendment prohibits unlawful police conduct, not improper thoughts. **(True) (False)**

19. A police officer may draw an inference of criminality and initiate a consensual "field inquiry" based in part on the race or ethnicity of a citizen, so long as the officer makes it absolutely clear to that person that he or she is free to walk away. **(True) (False)**

20. If a police officer intrudes on a Fourth Amendment right without first obtaining a warrant from a judge, the burden of proof in the motion to suppress is on the State to show that the officer's conduct was lawful. **(True) (False)**

21. All "pretext" stops (when you have an ulterior reason for making the stop) are automatically illegal. **(True) (False)**

22. Under the Fourth Amendment, an officer is permitted to approach a citizen and engage that citizen in polite conversation (a "field inquiry") only when the officer has a reasonable articulable suspicion to believe that this person is engaged in criminal activity. **(True) (False)**

23. While you cannot use race or ethnicity to decide who to "stop," you are permitted to consider race or ethnicity in drawing inferences of criminality after a lawful stop has already been initiated. **(True) (False)**

24. You are authorized to "frisk" a person for illicit drugs provided that you have a reasonable articulable suspicion to believe that the person is carrying concealed drugs. **(True) (False)**

25. The act of approaching an individual under circumstances where the individual would reasonably believe that he or she is free to walk away constitutes a "seizure" for purposes of the Fourth Amendment. **(True) (False)**

26. During the course of a routine traffic stop, you may always consider a person's race or ethnicity in deciding whether it is a prudent precaution to run a criminal history lookup or warrant check. **(True) (False)**

27. In a motion to suppress involving a traditional Fourth Amendment search and seizure issue, statistics are generally irrelevant and will not be considered by the reviewing court. **(True) (False)**

28. The gang problem has gotten worse in recent years in New Jersey. **(True) (False)**

29. All forms of "profiling" are illegal. **(True) (False)**

30. The only purpose of a police report is to refresh your recollection when you eventually testify at trial or in a motion to suppress evidence. **(True) (False)**

31. In some circumstances, a court can draw an inference of impermissible selective enforcement from the fact that an officer's testimony was shown to be inaccurate. **(True) (False)**

32. When a person's conduct matches a race-neutral "profile" of criminal activity, that fact may be considered as part the "totality of the circumstances," but is usually not enough by itself to authorize a "seizure" of the person. **(True) (False)**

33. You are permitted to consider a person's race or ethnicity when determining whether that person matches the description in a "Be on the Lookout" (B.O.L.O.) bulletin. **(True) (False)**

34. In deciding whether something is "suspicious," you are permitted to consider a person's race or ethnicity as long as that is not the sole factor that you rely upon in drawing an inference of criminality. **(True) (False)**

35. Because all traffic stops are potentially dangerous, a police officer in New Jersey is permitted to routinely frisk a detained motorist, so long as the officer does not rely on the person's race or ethnicity to make that decision. **(True) (False)**

36. The Fourteenth Amendment Equal Protection Clause cannot be violated unless you have directly caused harm by subjecting a citizen to either a search or a custodial arrest. **(True) (False)**

37. To avoid even the possibility of being accused of racial profiling, the better practice is to leave a suspect's race or ethnicity out of the description that is broadcast in a "Be on the Lookout" bulletin. **(True) (False)**

38. There are times when you may use an observed minor motor vehicle violation as a "pretext" (ulterior reason) to stop a vehicle to investigate possible criminal activity, so long as your ulterior motive is not itself illegal. **(True) (False)**

39. Suspected membership in a violent street gang is a factor that an officer may consider as part of the "totality of the circumstances" in deciding whether to initiate a Terry stop or a Terry frisk. **(True) (False)**

40. When reviewing a Fourteenth Amendment claim, a court in a motion to suppress may examine the thought processes and motivations of the officer to see whether the officer relied on an impermissible factor, such as race or ethnicity. **(True) (False)**

41. Because auto theft is a serious problem in this State, police officers are always allowed to pull a vehicle over whenever the driver does not seem to "fit" the vehicle that he or she is driving. **(True) (False)**

42. If you were to pose an "accusatorial" question to a citizen (one that presupposes criminal activity, such as "are you carrying any drugs?"), you must always first read Miranda warnings to the person.

(True) (False)

43. Reviewing courts are more likely to be skeptical and probing of a police officer when the officer chooses to extend the duration of a routine motor vehicle stop by posing questions to see if the motorist might possibly be engaged in criminal activity. **(True) (False)**

44. You are always permitted to ask a motorist to waive his or her Fourth Amendment rights by granting permission to conduct a consent search, so long as your decision to ask for permission to conduct the search is not based to any degree on the motorist's race or ethnicity. **(True) (False)**

45. When reviewing a Fourth Amendment claim, the court in a motion to suppress will closely examine the subjective thought processes and motivations of the police officer. **(True) (False)**

46. When an officer relies on a "hunch," a reviewing court may be more skeptical and may be more likely to question whether that hunch had been based on a racial or ethnic stereotype. **(True) (False)**

47. When a prosecutor reviews or "screens" a case, he or she will consider the likelihood that this case may raise a Fourth or Fourteenth Amendment issue.
(True) (False)

48. In some circumstances, a court may conclude that posing an "accusatorial" question to a citizen (one that presupposes criminal activity, such as "are you carrying any drugs?") can convert a consensual "field inquiry" into a "Terry stop."
(True) (False)

49. Because gangs may be comprised of persons of a particular racial or ethnic type, you are always permitted to consider a person's race in determining the likelihood that that person is a member of a gang.
(True) (False)

50. Because you are always authorized to order the driver of a lawfully stopped vehicle to step out, you can consider absolutely any factor you want to in deciding whether to actually order a driver to exit the vehicle. **(True) (False)**

51. Under the Fourth Amendment, you are allowed to stop a car for going just a couple of miles per hour over the posted speed limit, but a reviewing court in these circumstances may be more likely to question why this particular vehicle was selected. **(True) (False)**

52. It is generally a good idea to treat persons stopped for routine motor vehicle violations as if they were criminal suspects, since its better to be safe than sorry. **(True) (False)**

53. A police officer only commits a violation of the new crime of "official deprivation of civil rights" if the officer acts with the purpose to discriminate or intimidate, and the officer *knows* and that his or her conduct is unlawful. **(True) (False)**

54. The "B.O.L.O. Exception" to the general rule prohibiting police in this State from considering a person's race or ethnicity only applies when the bulletin has been approved by a superior and is broadcast over the radio or in an Amber Alert. **(True) (False)**

55. Because courts will strictly scrutinize police conduct any time that a persons' race or ethnicity is even mentioned, the "B.O.L.O Exception" only applies with respect to wanted persons who are suspected of committing serious indictable crimes (second degree or higher), or who are subject to an outstanding arrest warrant issued by a judge. **(True) (False)**

PART II

FACTUAL SCENARIOS

#1 Watching Out for Stolen Vehicles: The Luxury Sedan Pages 11-13

#2 Protecting Critical Infrastructure: The Citizen "Tip" Pages 14-16

#3 Train Station Interdiction Pages 17-18

#4 Road Stop En Route to the Open Air Drug Market Pages 19-20

#5 Pedestrian Encounter in the Town Square Pages 21-22

#6 Drive-by Shooting Investigation Pages 23-25

#7 Residential Burglary Investigation Pages 26-28

#8 Scrutinizing and Intercepting Vehicles Coming From the "Source" City Pages 29-30

SKILLS ASSESSMENT FACTUAL SCENARIOS

When reviewing the law enforcement conduct described in the following scenarios, you should put yourself in the shoes of a supervisor, whose task is to determine whether the law enforcement conduct is appropriate. In making that determination, you should ask yourself the following questions:

1. Did the law enforcement officers comply at all times with the requirements of the Fourth Amendment and its State Constitutional counterpart (the law governing arrests, searches and seizures)?

2. Did the law enforcement officers comply at all times with the Fourteenth Amendment Equal Protection Clause and New Jersey's policy prohibiting discriminatory policing? In answering this question, you should consider the following:

a. Did the officers rely upon a person's race or ethnicity as a factor in making decisions or drawing inferences of criminality, and is it reasonable to infer that the officers would have handled the situation differently if the citizens had been of a different race or ethnicity? If race or ethnicity did contribute to the officers' decision-making process, did this consideration of race or ethnicity fall within the B.O.L.O. (Be on the Lookout) exception to the general rule that prohibits law enforcement officers in this State from considering a person's race or ethnicity as a factor in exercising police discretion?

b. If the scenario were to be reviewed by a court, what is the likelihood that the reviewing court would conclude that the "burden of production" has shifted to the State to provide a race-neutral explanation for the exercise of police discretion?

c. If the "burden of production" does shift to the State, how would the officers meet that burden?

d. Do you require any additional facts or information to answer any of the foregoing questions? If so, what specific questions would you pose to the officers?

e. If you were one of the officers described in the scenario, how would you document the facts necessary to establish that you had not relied impermissibly upon a person's race or ethnicity in drawing inferences of criminality or in exercising police discretion?

It should be noted that many of these scenarios stop abruptly in the middle of an ongoing police-citizen encounter. We therefore do not know whether those encounters eventually led to an arrest or a search that revealed physical evidence of criminal activity. This is by design. In the real world, of course, a court would have no opportunity to review police conduct in a motion to suppress unless some evidence was actually seized or a criminal prosecution was brought. Law enforcement officers must recognize, however, that their conduct may be subject to review even when there is no criminal prosecution. This review of police discretion may occur in the context of a civil lawsuit claiming discrimination, or in the context of an internal investigation based on a citizen complaint.

The key point to understand is that when you are in the field making decisions, you can never know whether your conduct might become the subject of judicial or supervisory scrutiny. For this reason, you must *always* be cognizant of the limitations imposed by the Constitution on the exercise of police discretion, and you must always be thinking about what you are doing and why exactly you are doing it.

It is especially important for all supervisors throughout the chain of command to understand that they are responsible for identifying and remediating unconstitutional or problematic police conduct, whether or not that conduct resulted in an arrest or seizure. Law enforcement officers in this State must never embrace a "no harm, no

foul" approach to constitutional violations based on the fact that the citizen whose rights were violated was not arrested or prosecuted.

By the same token, when it turns out that evidence is discovered and seized, police officers must never try to rationalize a constitutional violation by arguing that the ends (taking contraband "off the streets") somehow justified the means (an illegal arrest or search). That sort of overzealous, reckless approach to constitutional law would only prompt reviewing courts to become even more skeptical of law enforcement, and would provide both an incentive and opportunity for courts to impose even tighter restrictions on the exercise of police discretion and to more closely scrutinize and to more critically second-guess law enforcement decisions.

One of the problems with the traditional approach to law enforcement legal training is that we tend to study published court decisions in criminal cases that involved searches that had resulted in the seizure of contraband or other evidence of crime. (After all, a criminal prosecution and a motion to suppress evidence presupposes, by definition, that there was some relevant evidence that might be subject to the exclusionary rule.) The following training scenarios, in contrast, are designed to show that it does not matter whether the law enforcement conduct at issue fortuitously resulted in a "hit" or a "miss." Instead, you should focus solely on whether the police decisions described in these scenarios were appropriate or inappropriate at the exact moment that those decisions were made by officers in the field. See Ker v. California, 83 S.Ct. 1623 (1963) (In determining the lawfulness of police conduct, a reviewing court is only concerned with what the officers had reason to believe at the time. "A search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from what is dug up subsequently.")

1. Watching Out for Stolen Vehicles: The Luxury Sedan

Officers Smith and Jones are employed by a mid-sized police department. Their municipality is one of several suburban communities that border on the city of Eastburg, which is a major urban center. Officers Smith and Jones are assigned to patrol duty and are presently enforcing traffic laws in between calls for service. The officers are aware that police departments in the region have recently noted a significant increase in the incidence of motor vehicle theft and "joyriding." The problem is especially serious in Eastburg. While the motor vehicle theft problem is not nearly as severe as the one that existed a decade ago, police executives throughout the region have expressed concern about the resurgence of this form of criminal activity and hope to nip the problem in the bud. Officers Smith and Jones have been advised by their superiors to watch out for potential stolen vehicles.

Officers Smith and Jones are patrolling Eastburg Avenue – a heavily-traveled four-lane residential road that connects their town to a number of other municipalities, including Eastburg. Officer Smith observes a late model luxury sedan traveling in a line of traffic in the right lane heading towards Eastburg. The following conversation between Officers Smith and Jones ensues:

Officer Smith: "What do you make of that one?"

Officer Jones: "Which one?"

Officer Smith: "The new Mercedes sedan over there. Two black guys -- they appear to be teenagers. Late teens, maybe."

Officer Jones: "That doesn't seem quite right, does it? Any violations?"

Officer Smith: "I don't see any yet. Let me check on that."

Officer Jones: "Okay. In the mean time, I'll do a random lookup."

Officer Jones uses the vehicle's Mobile Display Computer (MDC) to "run the plates" of the late-model Mercedes Benz sedan.

Officer Jones: "Okay. The vehicle is not reported stolen, and the registered owner is not on the revoked list. Let's see. The plates match the vehicle. No help there."

Officer Smith: "Alright, I just clocked him doing 44 in a 40, so it's okay to run a full check."

Officer Jones: "Right. Let's see. Okay, it comes back registered to a John Q. Public, male, date of birth June 1, '53. That would make him, let's see, 53 years old."

Officer Smith: "Well, there's no middle-aged guy in that vehicle. We better check this one out just to be sure."

Officer Smith maneuvers behind the Mercedes sedan and activates the police vehicle's overhead and takedown lights, ordering the Mercedes to stop. The driver of the Mercedes responds promptly, pulling over to the side of the road. Officer Smith approaches the Mercedes on the driver's side, while Officer Jones positions himself on the passenger side to observe the encounter and watch for suspicious movements. Neither officer observes any evidence of damage to the Mercedes Benz suggesting a forcible entry. Officer Smith engages the driver of the Mercedes sedan in the following conversation:

Officer Smith: "Good afternoon. May I see your license, vehicle registration, and insurance identification card, please."

The driver of the vehicle reaches over to the glove box to retrieve credentials, and then pulls out his wallet from his pants pocket. The driver hands the three pieces of identification to Officer Smith.

Driver: "Why'd you stop us?"

Officer Smith carefully examines the driver's license and registration. The photograph on the license matches the driver. The license is in the name of John Q. Public, Jr.

Officer Smith: "Did you know that this was only a 40 mile per hour zone?"

Driver: "I guess, sort of. How fast was I going?"

Officer Smith: "Well, it was over 40. That's why we stopped you. Is this your car?"

Driver: "No, it's my father's car. I'm home from Yale for spring break and he's letting me use it today."

Officer Smith: "Okay. Your father's name seems familiar. Is he a law enforcement officer around here?"

Driver: "No. He's a Superior Court Judge."

Officer Smith: "That's where I heard the name, I guess. Okay, I'm sure your father would want you to slow it down. I'm

gonna let you off with a warning, but please take it easy on these residential streets. They're not interstates, you know."

* * *

2. Protecting Critical Infrastructure: The Citizen "Tip"

Officers Smith and Jones are employed by a large urban police department. The city's water reservoir is located on the edge of town. The reservoir is considered to be a critical and vulnerable part of the State's infrastructure. It is essentially a deep, manmade lake. The lake itself is not visible from the adjacent streets because it is protected by a tall stone wall at the top of a steeply sloped grass lawn. The stone wall is capped with a barbed wire fence that is marked with numerous signs that read: "Restricted Area. Keep Out."

At approximately 4:50 p.m., a citizen uses his cell phone to call the police department to report suspicious activity. The citizen's conversation with the communications officer is as follows:

Officer Smith: "First precinct, Officer Smith. How can I help you?"

Citizen: "Hello, this is Bob Citizen, 123 Evergreen Road. I've seen the signs on the interstates that say we're supposed to report suspicious activity now, because, you know, because of 9-11 and anthrax and everything. I was just walking my dog along Park Road and I saw these two men – Middle Eastern-type guys, walking right near the stone wall by the reservoir. They, you know, had real dark hair and beards. I think they were from somewhere in the Middle East, you know, Arabs or something. I don't know what they were doing by the wall. I've seen kids climb up there before to try to see the water,

but I've never seen adults climb up the hill. I thought I should report it."

Officer Smith: "Are the two men still in view?

Citizen: "No, I saw them just a couple minutes ago, but I'm not on Park Road now and they were going the other way. I don't see them right now."

Officer Smith: "Can you describe what they were wearing?"

Citizen: "Yeah. Both were wearing dark pants and white shirts. Dress shirts, but no ties."

Officer Smith: "Do you know whether they climbed the retaining wall, or tried to?

Citizen: "No. I don't know. Maybe. They were pretty close to it when I saw them. They were walking right up next to it."

Officer Smith: "Can you describe how old they were?"

Citizen: "They were adults. They were not, you know, kids, because they both had beards. Twenty to twenty-five, maybe. Maybe a little older."

Officer Smith: "Were they carrying anything? Any

packages or equipment?"

Citizen: "No. Well, I'm not sure. One might have had a backpack or something. It might have been a camera bag, or for a video camera or something. Come to think of it, I think one of them was holding a camera or camcorder or something. I just thought it was strange for two Arab-looking guys to be walking up on the slope right near the reservoir, what with all you see on the news and all, I just thought I should report it."

Officer Smith: "I understand. I'll send an officer to check it out."

Officer Jones is dispatched to investigate the report of two suspicious men near the reservoir restricted area. Officer Jones is provided with a general description of the two men. As Officer Jones approaches the area, he sees two young men walking on Park Road. The two men are wearing dark pants and white shirts. Both have dark hair and beards. The two men are walking on the sidewalk alongside the road, well away from the wall.

The officer pulls up alongside the two men and gets out of the police vehicle. He approaches the two men to inquire why they had been walking so close to the restricted area.

* * *

3. Train Station Interdiction

Officers Smith and Jones are employed by a municipal police department in an affluent suburban town with a large commuter population. The police department is aware of reports that illicit drugs are being smuggled into the area by train at the local station. Drug dealers who reside in nearby Eastburg are believed to make "runs" into New York City, purchasing illicit drugs and returning on the next available train. (Eastburg is an adjacent urban town with a predominantly minority population.) Intelligence reports indicate that these local dealers typically travel in pairs for protection.

Officers Smith and Jones are on a "park and walk" patrol assignment. They are walking along the platform at the local train station. The platform is crowded with approximately 50 to 100 commuters who are waiting for the next train headed for New York City. It is just before 8 a.m. on a weekday, and most of the persons on the platform are dressed in professional/business attire. The next train to New York is expected to arrive momentarily.

Officer Smith notices two Hispanic males, approximately 20 years old, who are wearing baggy clothing. Officers Smith and Jones approach the two males on the train platform and engage them in the following conversation:

Officer Smith: "Good morning. How are you fellows doing this morning?"

First Male: "Okay."

The second male seems to be looking the other way, avoiding eye contact with the two officers. This second male has turned away from the officers, facing the track, indicating that he is not willing to engage in conversation.

Officer Jones: "Are you fellows heading to the City?

First Male: "Yeah. We're going to visit my cousin."

Officer Jones: "Do you fellows live here in town?

First Male: "Nah. We live in the Burg" (referring to the urban community of Eastburg).

Officer Smith: "What part of the City are you heading to?

First Male: "Bronx."

Officer Jones: "The Bronx? That can be a pretty rough place, you know. You don't have anything on you you shouldn't have, do you?

First Male: "No, man. We ain't that stupid."

Second Male: "Yo, the train's pulling in. Let's get out of here."

The commuter train has arrived at the station.

First Male: "Hey, man, this is our train. Can we get on, or what?

* * *

4. Road Stop En Route to the Open Air Drug Market

Officers Smith and Jones are employed by a large, urban police department. They are assigned as partners to discretionary motorized patrol duty in a high drug crime area. The neighborhood is predominantly African-American. Officers Smith and Jones know from experience that out-of-town motorists from nearby suburban communities frequently travel to their patrol jurisdiction to purchase drugs. This problem is especially acute in and around the intersection of Broad and Second Streets, which is at the corner of a public housing complex that is known on the streets as the "Hole." This location has earned a reputation as an open air drug market.

It is 9:30 p.m. on a Friday night, and the traffic on Main Street is light. Officer Smith notices a late model luxury vehicle with three Caucasian male occupants. They appear to be in their mid to late 20s. The vehicle has just stopped at a traffic light. The following conversation between Officers Smith and Jones ensues:

Officer Smith: "Hey, look over there. I wonder what those three guys could be up to this time of night?"

Officer Jones: "Which guys?"

Officer Smith: "The three white guys in the gray Beemer."

Officer Jones: "Oh yeah. That's a tough one alright."

Officer Smith: "You wanna bet they're gonna turn right on Second Street to get to Broad. That's where the action will be tonight."

The traffic light turns green and the BMW proceeds two blocks, maneuvering into the right lane without signaling a lane change. Officers Smith and Jones follow at a discrete distance. The BMW then proceeds to turn right onto Second Street, again without activating the turn signal.

Officer Jones: "You pegged them, alright, and no turn signal."

Officer Smith: "You know, sometimes it's almost too easy."

Officer Jones: "Like shooting fish in a barrel. Let's do these kids a favor and stop 'em before they get themselves into real trouble in the Hole."

Officer Smith activates the patrol vehicle's overhead and takedown lights, ordering the driver of the BMW to pull over based upon the observed motor vehicle violations.

* * *

5. Pedestrian Encounter in the Town Square

Officers Smith and Jones are employed by a mid-sized police department in an affluent suburban community. It is almost 11 p.m. on a warm Saturday night, and the local playhouse has just let out. Hundreds of theater goers are now walking the streets to return to their parked vehicles, or to patronize the restaurants, coffee houses and nightclubs in the town square.

Officers Smith and Jones are on foot patrol to ensure the safety of the theater patrons and to maintain a visible police presence. In recent weeks there have been several reports of crimes, including pickpocketing as well as several car thefts and vehicle break-ins. No arrests have been made. Local merchants are concerned that the recent crimes may hurt business. In repose to these concerns, police officers on patrol have been advised to watch out for potential suspects.

While walking in the crowd on Main Street, Officers Smith and Jones notice a group of five African-American males. They appear to be in their late teens to early 20s. They are walking together, talking loudly, laughing and joking.

Officer Smith: "There's trouble coming."

Officer Jones: "I wonder what these guys could be up to."

Officer Smith: "I don't think they were here to see the show. (Laughing). See how they're bothering other folks. Everyone is crossing the street to get away from them?"

Officer Jones: "Well, can you blame 'em. Let's nip this in the bud and find out why

they're here."

The two officers approach the five African-American males.

Officer Smith: "Gentlemen. Good evening. What brings you to town tonight?"

One of the Males: "We're just hanging out."
(One of the other males laughs.)

Officer Smith: "Who drove you guys here tonight. Do you have any id?"

One of the Males: "What for? We're just walking."

Officer Smith: "We'll you had to get here somehow. I'm gonna need to see a driver's license. We just want to make certain you gentlemen get home safely."

* * *

6. Drive-by Shooting Investigation

Detectives Smith and Jones are employed by an urban police department and work together in the Homicide/Major Crimes Bureau. Earlier this evening, a 20-year-old African American male was seriously wounded in a "drive-by" shooting in the eastern section of town. The victim is believed to be a member of a street gang known as the "Sovereign Lords of the Righteous Nation." Intelligence information suggests that the Lords are engaged in an ongoing conflict with other gangs, including a white supremacist "skinhead" group that calls itself the "Northeast Hate Mongers."

Detectives Smith and Jones have been assigned to investigate the shooting. In the hospital, they encounter three young African-American males who have come to the hospital to check on the victim's status. The three males are all wearing the "colors" of the Lords gang.

Detectives Smith and Jones approach the three African-American males in the hospital waiting room and engage them in the following conversation:

Detective Smith: "He's not out of the woods, but it looks like your buddy is gonna make it. Do you guys have any idea who might have done this? Any idea who would want to kill your buddy?"

One of the Males: "Don't you worry about it. These things just kind of take care of themselves, you know. We don't need no help from you."

The next evening, Detectives Smith and Jones go to a bar in the

western section of town that is thought to be frequented by members of the Northeast Hate Mongers gang. The bar is crowded. The officers notice a table with six young white males with shaved heads. Several of them appear to have tattoos, one of which appears to be a Nazi swastika. The officers approach the table and engage the young men in the following conversation:

Detective Jones: "Good evening. I'm Detective Jones, and this is my partner, Detective Smith. Mind if we speak to you gentlemen?"

One of the Males: "It's a free country, you know."
(The other patrons at the table laugh.)

Detective Smith: "There was a shooting last night in the east ward. We were just wondering if any of you gentlemen might know something about that?"

One of the Males: "Yeah, I read in the paper that a f-----g n----- was shot last night. I hope they wasted his f-----g ass."

Another Male: "Yeah. That was a real shame." (All of the male patrons at the table laugh.)

Detective Jones (turning to the male who had made the first statement): "What 'they' are you referring to."

First Male: "Huh?"

Detective Jones: "You just said you hope *they* wasted him. Who were you referring to?"

Another Male: "Look, we don't know nothing, so unless you're here to arrest us, leave us the f - - - alone, okay."

Detectives Smith and Jones travel to another bar located on the other side of town. This establishment is patronized predominantly by African-American citizens. It is believed that some members of the Lords gang occasionally come to this establishment. The detectives approach the bartender and engage him in the following conversation:

Detective Smith: "We're looking into the shooting last night."

Bartender: "I heard about that. Is the kid gonna make it?"

Detective Smith: "We think so. He was hurt pretty bad but it looks like he'll pull through. We want to put an end to this before it gets any worse. What have you heard about it?"

Bartender: "Hey man, I don't get involved in no Lords business. No way. But if you stick around, someone may come by who knows the talk on the streets. They sometimes come in around 1."

Detective Jones: "Okay. We have some other things to check out, but we'll come back later and maybe you can just point someone out to us we can talk to."

* * *

7. Residential Burglary Investigation

Lieutenant Smith supervises the Detective Bureau in the Westburg Police Department. Westburg is an affluent suburban "bedroom" community with a predominantly non-minority population. The town borders on the City of Eastburg, which is a much larger and more urban municipality that is comprised predominantly of minority citizens.

In the last couple of weeks, a number of residential burglaries have been reported in Westburg's East Ward. All of the home invasions follow a nearly identical *modus operandi*: the burglar(s) cuts the phone lines of targeted houses to disable the alarm system and prevent notification to a central monitoring station. The burglar(s) then breaks in through a back door or window and steals cash, jewelry, and silverware. All of the these crimes have occurred during the daytime on weekdays. To this point, no one has been present in a house that has been targeted for invasion. The police have not been able to recover fingerprints or any other forensic evidence, and there have been no reports of suspicious persons in the neighborhood at or around the time that the burglaries occurred.

Daytime patrols have been stepped up in the East Ward, but given the layout of the neighborhood, it is difficult to monitor back doors and windows from patrol cars. The Chief of the Westburg Police Department is putting pressure on Lieutenant Smith to solve the crimes and make an arrest.

Lieutenant Smith calls Detective Jones into his office to discuss the status of the investigation. The following conversation ensues:

Lieutenant Smith: "What progress have we made on the East Ward breakins?"

Detective Jones: "We're working on it. We don't have a lot of

leads here, and you know we're pretty tied up on that downtown robbery case that looks like its going to trial next week. That'll take a lot of my time for the next few days or so."

Lieutenant Smith: "I know, but the Chief wants to find this burglar right away. The mayor lives in the East Ward and the Chief's taking a lot of flack from the community. He's already seen two neighbors apply for gun permits. Folks are getting real nervous out there and the Chief does not want this neighborhood to turn into the Wild West, you know what I mean?"

Detective Jones: "Right. Well, I went through our files and I've been working with the prosecutor's office and a detective in Eastburg PD. We've put together about fifty files or so of people in the area who've been arrested or convicted of breakins and home invasions. I'm going to go through all the files we have so far to see if anything comes up in terms of M.O. I want to be able to circulate some pictures of possible suspects, you know, to show them around to neighbors, mail carriers and all."

Lieutenant Smith: "Okay. The Patrol Division has also been told to look out for this guy, so pull together some photos that we can give to them. The Chief is really on my back so I want to be able to give something to the Patrol Division for tomorrow morning's roll call."

Detective Jones: "I'll see what I can put together.

Lieutenant Smith: "I think fifty photos is too much, though. We've got to pare that down."

Detective Jones: "Well, I figure that this guy is probably an

addict fencing stuff to buy dope, so I've reached out to local pawn shops and some of our confidential sources."

Lieutenant Smith: "Good. He's probably selling the stuff right on the street for a few pennies on the dollar. By the way, I'm not sure that saying he's probably an addict really helps all that much. I'll bet you that just about all of those files are dopeheads."

Detective Jones: "Fair enough. I'll still be able to find out which ones have drug priors."

Lieutenant Smith: "Okay, and also check with the County and State Corrections to see if any of those guys just got out of jail or a residential program. These breakins only started two weeks ago. Maybe we'll get lucky and find someone who just got out and hit the streets running."

Detective Jones: "Will do. But that will take a little time. I have to be at the prosecutor's office all afternoon on the robbery case. I may not be able to put too much together for tomorrow's day shift roll call."

Lieutenant Smith: "Understood. Let's start by checking out the black suspects who also had drug charges, and then we'll go from there. I just need to have something to give the Chief today to show him we're making some progress."

* * *

8. Scrutinizing and Intercepting Vehicles Coming From the "Source" City

The Town of Westburg is an affluent suburban community located near the much larger, more urban City of Eastburg. Westburg is a predominantly non-minority jurisdiction, whereas Eastburg is comprised mostly of minority residents.

Several months ago, the Eastburg Police Department started working with County and State authorities to form a task force to enhance street-level drug enforcement efforts. The initiative is designed to close down some of the most notorious open air drug markets in the region. This "Quality of Life" program seems to have been successful in driving some of Eastburg's street-level drug dealers from their familiar haunts.

The Westburg Police Department has learned from specific and reliable sources that some of these displaced dealers have begun traveling into other communities, including Westburg, to sell drugs directly to local buyers who used to have to go to the open air drug markets in Eastburg. In essence, Eastburg is considered to be a significant "source" city of the drugs that are being sold and consumed in Westburg and other surrounding suburban communities. Intelligence information suggests that these Eastburg-based dealers are driving into suburban communities in groups of two or more.

Westburg Police Officers Smith and Jones are both assigned to patrol duty and are stationed on Eastburg Avenue, which is the principle means of traveling from Eastburg into Westburg. Smith and Jones work in tandem as part of the town's "tac pac" patrol, and their current assignment is to look out for potential drug dealers coming into town. Their strategy is to pay special attention to those vehicles traveling west on Eastburg Avenue that are likely to be coming from Eastburg. They have determined that the most reliable way to ascertain a vehicle's likely point of origin is to determine through Motor Vehicle Commission records the address of the vehicle's registered owner. (The assumption in this instance is that a vehicle

registered to an Eastburg resident would be garaged in Eastburg and would be likely to be traveling from that point of origin and transporting Eastburg residents.) Officer Smith, who is in an unmarked car, first scrutinizes vehicles traveling westbound on Eastburg Avenue and "runs" their plates. He then radios ahead to Officer Jones, who is in a marked patrol car, who will initiate a motor vehicle stop based on information provided by Officer Smith.

Officers Smith and Jones know that while they are allowed to "run the plates" of any vehicle that comes into their view, under New Jersey law, they may not obtain personal information, such as a registered owner's name and address, unless they first observe a motor vehicle violation, or unless the results of a random lookup were to provide a basis for further inquiry (e.g., if the registered owner has a suspended license). Accordingly, Officer Smith scrutinizes all passing vehicles going westbound looking for any kind of moving or equipment violation, which would then allow him to run a "for cause" motor vehicle lookup so that he can determine the address of the vehicle's registered owner.

As it turns out, most of the vehicles on Eastburg Avenue are traveling in excess of the posted 30 mile per hour limit. The large number of violators makes it impractical for Officer Smith to run the plates of every vehicle observed to have committed a violation. Smith therefore focuses his attention and runs the plates of the vehicles that have two or more minority motorists, since intelligence reports have suggested that the displaced drug dealers are traveling in groups of two or more, and because most of the displaced Eastburg drug dealers were known to be black or Hispanic.

If the motor vehicle lookup confirms that the vehicle is registered to a person who resides in Eastburg, Officer Smith alerts Officer Jones to initiate a motor vehicle stop based on the observed violation (usually speeding). Jones will then order the driver to exit the vehicle to preserve the option of eliciting inconsistent statements from the driver and the passenger(s). Jones will pose several "itinerary" questions concerning the motorists' point of origin, destination and purpose for travel into Westburg. If the occupants' stories check out

(in other words, if there are no material inconsistencies), Jones will let the driver off with a warning unless the observed violation that had justified the initial stop was particularly serious, such as speeding fifteen or more miles over the posted limit.

Officer Jones seeks to complete these on-the-scene investigations as quickly as possible, not only to minimize the level of intrusion, but also because he hopes to stop as many vehicles as possible during his duty shift. The goal of this program is not just to apprehend drug dealers, but also to send a message that is designed to deter displaced Eastburg drug dealers from coming into Westburg to peddle their illicit wares.

* * *

PART III

ANSWER KEY AND ANALYTICAL DISCUSSION OF FACTUAL SCENARIOS

Answers to True/False Questions . . . . . Pages 31-46

Discussion of Factual Scenario #1 . . . . . Pages 47-50

Discussion of Factual Scenario #2 . . . . . Pages 51-53

Discussion of Factual Scenario #3 . . . . . Pages 54-56

Discussion of Factual Scenario #4 . . . . . Pages 57-59

Discussion of Factual Scenario #5 . . . . . Pages 60-62

Discussion of Factual Scenario #6 . . . . . Pages 63-65

Discussion of Factual Scenario #7 . . . . . Pages 66-67

Discussion of Factual Scenario #8 . . . . . Pages 68-71

SKILLS ASSESSMENT "TRUE/FALSE" ANSWER KEY

1. **True**. Our civil rights derive from both the State and Federal Constitutions. The United States Constitution establishes the minimum protections afforded to all persons in the nation. See State v. Hempele, 120 N.J. 182, 197 (1990). State Constitutions may afford persons with additional rights (and may impose additional limits on police powers), beyond those established under federal law. The New Jersey Supreme Court on a number of occasions has chosen to rely on the New Jersey Constitution to suppress evidence that would have been admissible in federal prosecutions. In State v. Pierce, 136 N.J. 184, 209 (1994), the New Jersey Supreme Court spoke of a "steadily evolving commitment" by our State courts to provide citizens enhanced protections under our State Constitution.

2. **True**. The key test under Attorney General Law Enforcement Directive 2005-1 is whether an officer would have handled an encounter differently if the citizen had been of a different race or ethnicity, since this means that race or ethnicity would have played a contributing role in the officer's exercise of discretion. Unless the police conduct involves a "B.O.L.O. ("Be on the Lookout") situation, such a finding would mean that the citizen had been treated "unequally" within the meaning of the Equal Protection Clause and Attorney General Law Enforcement Directive 2005-1.

3. **False**. In State v. Maryland, 167 N.J. 471 (2001), the Court expressly noted that, "We do not intend to suggest that ordinarily a proper field inquiry could not be based on a hunch." It is important to understand, however, that while police are not prohibited from relying on hunches, an inarticulable hunch would provide no basis for "seizing" a person under the Fourth Amendment (i.e., initiating an investigative detention or so-called "Terry" stop.) The legal standard for justifying an investigative detention, after all is a "reasonable articulable suspicion" – not an inarticulable suspicion. Furthermore, as the Court in State v. Maryland made clear, officers in this State may not rely on a hunch that is, in turn, "at least in part based on racial stereotyping." Id. at 496.

4. **True**. The New Jersey Supreme Court in State v. Carty, 170 N.J. 632 (2002), interpreted the State Constitution to create a new rule that prohibits police officers during a motor vehicle stop from even asking a motorist to consent to a search unless the officer is aware of facts that constitute a reasonable articulable suspicion to believe that the search would reveal evidence of an offense.

5. **True**. The key to complying with the Fourteenth Amendment Equal Protection Clause and New Jersey's statewide policy prohibiting racially-influenced policing is for police officers when drawing inferences of criminal activity or when otherwise exercising police discretion to focus on a citizen's *conduct*, rather than on immutable physical characteristics that the person was born with and cannot change.

6. **True**. In State v. Stovall, 170 N.J. 346 (2002), the Court made clear that officers in New Jersey may in appropriate circumstances develop and rely upon a "profile." The Court defined a "drug courier profile," for example, as a compilation of objective factors which may be innocent alone, but in conjunction with each other or other facts, lead officers to believe that the suspect is engaging in drug trafficking. It is critical to note, however, that any such profile must not rely to any extent on race or ethnicity. Rather, legitimate profiles are race-neutral, focusing on the modus operandi or "methods of operation" of criminals.

7. **False**. The Fourteenth Amendment Equal Protection Clause and New Jersey's statewide policy prohibiting racially-influenced policing applies to *all* police conduct and decisions, and not just those decisions that trigger a Fourth Amendment legal standard (such as an investigative detention (a "stop"), an arrest or a search). In State v. Maryland, 167 N.J. 471 (2001), for example, the New Jersey Supreme Court concluded that the police had violated the Fourteenth Amendment based on the manner in which the officers had initiated a consensual field inquiry, notwithstanding that such a consensual field inquiry does not intrude upon any Fourth Amendment rights,

and, unlike an investigative detention or "Terry" stop, need not be based upon a reasonable articulable suspicion that criminal activity is afoot.

8. **False**. Aggregate statistics cannot be used to justify treating persons of different races differently. It is inappropriate, for example, to use group statistics to infer that a particular individual of a given race or ethnic background is more likely to be a criminal because other persons of that race or ethnicity happen to have been convicted of criminal activity.

9. **False**. One of the greatest myths about the racial profiling controversy is the misguided notion that only bigoted officers engage in this prohibited practice. In reality, a well-meaning, non-bigoted officer can inadvertently engage in racially-influenced policing simply by relying unthinkingly on broad-brushed stereotypes. A minority law enforcement officer may be just as likely as his or her non-minority colleague to allow race or ethnicity to play a role in drawing inferences or exercising discretion.

10. **True**. There are certain circumstances where it is permissible and appropriate for a police officer to take into account that a person is not a resident in a particular neighborhood. For example, this fact might be relevant where the police are aware that non-resident citizens travel to a particular location (such as an open air drug market) to engage in criminal conduct. Police officers must be very careful, however, in how they deduce in the first place that a person is not a resident of a particular area or neighborhood. It is inappropriate for an officer to use a person's race or ethnicity to support an inference that the person seems to be "out of place" in a particular neighborhood.

11. **False**. The new state crime of "official deprivation of civil rights" requires proof beyond a reasonable doubt that the officer committing this offense acted with the purpose to intimidate or discriminate, and

actually knew that his or her conduct was unlawful. N.J.S.A. 2C:30-6. The Fourteenth Amendment Equal Protection Clause and New Jersey's statewide policy prohibiting racially-influenced policing set forth in Attorney General Law Enforcement Directive 2005-1 is broader in scope than the new criminal statute and bans police conduct that would not necessarily be criminal under this new law.

12. **False**. In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the New Jersey Supreme Court confirmed its earlier decision in State v. Donis, 157 N.J. 44 (1998), holding that mobile display terminal checks are not traditional searches that are subject to Fourth Amendment restrictions. As a result, these computer lookups can be done randomly and need not be based on an observed motor vehicle violation or reasonable suspicion to believe that criminal activity is afoot. The Court in Segars made clear, however, that mobile display terminal checks may *not* be based on impermissible criteria such as race or ethnicity.

13. **False**. It is a myth that only racist or bigoted law enforcement officers engage in the practice of racially-influenced policing. Minority law enforcement officers are by no means immune from the problem of racially-influenced policing. In fact, minority law enforcement officers are just as likely as their non-minority colleagues to rely, perhaps unwittingly or unthinkingly, on racial or ethnic stereotypes in drawing inferences of criminal activity and in exercising police discretion.

14. **False**. When a defendant raises a Fourteenth Amendment Equal Protection claim in a motion to suppress, the reviewing court may examine aggregate statistics in an effort to determine whether the officer(s) involved (or even the entire department) have engaged in a *pattern* of behavior that would suggest that these officers had embraced or tolerated a so-called "de facto policy" to treat persons differently based on their race or apparent ethnicity.

15. **False**. Aggregate statistics may not be used by law enforcement

officers to justify drawing inferences of criminal activity based on a citizen's race or apparent ethnicity. The fact that group statistics may show that a disproportionate percentage of persons of a given race or ethnicity have been convicted of a particular crime cannot be used to support an inference that one or more particular individuals are engaged in criminal activity.

16. **True**. In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the New Jersey Supreme Court established what it called the "burden shifting template" in racial targeting cases. If the defendant establishes a *prima facie* case of discrimination, that is, one in which the evidence, including any favorable inferences to be drawn therefrom, could sustain a judgment in the defendant's favor, the burden of production shifts to the State to articulate a race-neutral basis for its action. If the State is unable to meet this burden of producing a race-neutral explanation, then the defendant's claim of discrimination will prevail, and the seized evidence will be suppressed.

17. **True**. In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the New Jersey Supreme Court confirmed that the act of "running the plates" is not a traditional search that is subject to Fourth Amendment restrictions. This kind of computer inquiry can be done randomly and need not be based upon reasonable suspicion or predetermined objective criteria. An officer may therefore conduct a mobile display terminal check of a vehicle based solely on a "hunch" or "gut feeling," provided, however, that this inarticulate hunch is not in turn based upon a racial or ethnic stereotype.

18. **True**. In State v. Bruzzese, 94 N.J. 210 (1984), the New Jersey Supreme Court embraced what it called an "objective" test in deciding whether the Fourth Amendment has been violated. The Court held that the Fourth Amendment proscribes unreasonable actions, not improper thoughts. Note, however, that this Fourth Amendment principle does *not* apply to discrimination claims made under the

Equal Protection Clause of the Fourteenth Amendment.

19. **False**. The fact that a citizen understands that he or she is free to walk away from the police means that the encounter is indeed a "field inquiry" and not an "investigative detention" within the meaning of the Fourth Amendment. See State v. Pineiro, 181 N.J. 13 (2004) (field inquiries are permissible so long as they are not harassing, overbearing or accusatory in nature. This means that the person approached in a field inquiry need not answer any question put to him, and the person may decline to listen to the question at all and may go on his way). But just because the Fourth Amendment was not violated does not mean that the police conduct is lawful, since the Fourteenth Amendment Equal Protection Clause establishes its own set of rules governing police conduct, prohibiting officers from using race or ethnicity as the basis for the exercise of police discretion. The Fourteenth Amendment applies to *all* police decisions, including the decision to initiate a consensual field inquiry. See State v. Maryland, 167 N.J. 471 (2001).

20. **True**. Under both State and Federal law, warrantless searches and seizures are deemed by courts to be presumptively unreasonable. This means the State must bear the burden of proof in a motion to suppress to show that the officer's conduct complied with all applicable Fourth Amendment rules.

21. **False**. Not all pretext steps are illegal. There are times when it is perfectly acceptable for police to resort to a pretext or ruse. However, if the underlying true reason for initiating an encounter with a citizen is itself unlawful for any reason, then the resulting stop is automatically unlawful.

22. **False**. The New Jersey Supreme Court confirmed in State v. Neshina, 175 N.J. 502 (2003), that an officer is permitted to approach a citizen to initiate a "field inquiry" without having to be aware of facts that establish a reasonable articulable suspicion to believe that this person is engaged in criminal activity.

23. **False**. New Jersey's statewide policy prohibiting racially-influenced policing set forth in Attorney General Law Enforcement Directive 2005-1 applies to *all* police decisions, and not just to the initial decision to initiate an investigative detention. Thus, for example, a police officer may not consider a lawfully stopped motorist's race or ethnicity in deciding whether to ask that motorist to step out of the vehicle, to pose certain probing or accusatorial questions designed to expose possible criminal activity, or to ask the motorist for permission to conduct a consent search.

24. **False**. The term "frisk" refers to a limited patdown of a detained suspect *for weapons*. There is simply no such thing as a "frisk" for illicit drugs or other nonweapon contraband. Any physical touching of a person to inspect for drugs would instead constitute a full-blown "search," which must be based upon probable cause and fall under one of the recognized exceptions to the general rule that searches must be authorized by a court-issued warrant. Note that probable cause is a higher standard of proof than the "reasonable articulable suspicion" standard that must be met before an officer may conduct a limited protective frisk for weapons.

25. **False**. In State v. Maryland, 167 N.J. 471 (2001), the Court held that the test for deciding whether an investigative detention has occurred is measured from a citizen's perspective. The correct inquiry is whether a reasonable person, under all of the attendant circumstances, would believe that he or she could walk away without answering any of the officer's questions. The court will consider whether the officer's questions are put in a conversational manner, whether the officer has made any demands or issued orders, and

whether the officer's questions are overbearing or harassing in nature. See State v. Pineiro, 181 N.J. 13 (2004) (field inquiries are permissible so long as they are not harassing, overbearing or accusatory in nature. This means that the person approached in a field inquiry need not answer any question put to him, and the person may decline to listen to the question at all and may go on his way).

26. **False**. Our statewide policy prohibiting racially-influenced policing prohibits a law enforcement officer from considering race or ethnicity as a factor in exercising police discretion (other than when responding to a suspect-specific B.O.L.O. ("Be on the Lookout") situation. This prohibition against the use of race or ethnicity applies to *every* police decision, including the decision to run a criminal history lookup or warrant check.

27. **True**. In contrast to litigation under the Fourteenth Amendment Equal Protection Clause, a court deciding a motion to suppress using traditional Fourth Amendment analysis is concerned only with the conduct of the police officer during the particular encounter with the defendant. Aggregate statistics are therefore irrelevant to the question whether this particular officer's conduct complied with the requirements of the Fourth Amendment during this particular encounter with this specific defendant.

28. **True**. Regrettably, gangs have proliferated throughout the State of New Jersey in recent years. It is critical to note that this problem is by no means limited to urban areas. Many street gangs are expanding their "turf," and are actively recruiting members in suburban communities.

29. **False**. While "*racial* profiling" is illegal and will not be tolerated in this State, other forms of profiling (which focus on conduct and the modus operandi of criminals) are perfectly legitimate. In State v. Stovall, 170 N.J. 346 (2002), for example, the New Jersey Supreme Court approved the use of a "drug courier profile."

30. **False**. Police reports serve many important functions besides refreshing an officer's recollection when he or she testifies at trial or

in a motion to suppress evidence. Most notably, the police report is relied upon by prosecutors as part of the case "screening" process, which determines how the case will be handled. Prosecutors must evaluate all cases to determine whether there are any weaknesses (such as the possibility of losing a motion to suppress evidence) that affect the likelihood of securing a conviction at trial. This evaluation of the strengths and weaknesses of the State's proofs will, in turn, affect the plea offer that is likely to be tendered by the prosecutor as part of the plea negotiation process. When a police report is imprecise, inaccurate or incomplete, there is a greater likelihood that the case will be dismissed, downgraded, or de-valued in terms of the plea offer that will be tendered to the defendant.

31. **True**. In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the Court's determination that the arresting officer had given inaccurate testimony raised the inference of racial targeting (i.e., e.g., the inference that inaccurate testimony was an attempt to conceal the fact that the officer had relied upon race because he knew that such reliance was unlawful). In Segars, the State's failure to produce an explanation for the officer's inaccurate testimony was deemed by the Court to be the "pivotal point in the case," and was the basis for the Court's ultimate legal conclusion that the officer had engaged in racial targeting, warranting the suppression of the seized evidence.

32. **True**. The New Jersey Supreme Court in State v. Stovall, 170 N.J. 346 (2002), recognized that police may develop and use "profiles" in determining whether a person may be engaged in criminal activity. The profile (which is simply a compilation of objective factors that may be innocent but that are nonetheless consistent with criminal activity) becomes part of the so-called "totality of the circumstances" that a law enforcement officer may consider in determining whether criminal activity is afoot. In essence, a profile is simply a type of police "training and experience" which can be used by police to interpret a situation, although a formalized profile is based on the carefully documented experience of a number of officers (or the entire agency)

rather than any one officer. While relevant and useful, these race-neutral law enforcement profiles rarely if ever are sufficient by themselves to establish a basis for initiating an investigative detention under the Fourth Amendment. In Reid v. Georgia, 100 S.Ct. 2752 (1984), for example, the United States Supreme Court observed that a drug courier profile alone does not establish reasonable suspicion. See also State v. Stovall, supra (the mere fact that a suspect displays profile characteristics does not justify a stop.)

33. **True**. Police are permitted and are expected to consider all known physical traits and identifying physical characteristics, including race or apparent ethnicity, when deciding whether a person is the specific individual described in a "Be on the Lookout" (B.O.L.O.) bulletin. In State v. Stovall, 170 N.J. 346 (2002), the New Jersey Supreme Court concluded that the identification of the suspects in that case as Hispanic was only that – an identification.

34. **False**. Under New Jersey's statewide policy prohibiting racially-influenced policing, law enforcement officers are not permitted to consider a person's race or ethnicity at all in drawing inferences of criminal activity or in exercising discretion (other than when responding to a suspect-specific B.O.L.O. situation). The policy set forth in Attorney General Law Enforcement Directive 2005-1 can be violated even when race or ethnicity is not the sole factor relied upon by police to draw an inference of criminality. The test, simply stated, is whether the officer would have treated this particular citizen differently had the citizen been of a different race or ethnicity. If the answer to that question is yes, then race or ethnicity played a contributing role in the exercise of police discretion, in violation of our statewide policy prohibiting racially-influenced policing.

35. **False**. The courts in New Jersey have made clear on numerous occasions that police officers in this State are not permitted to routinely frisk detained motorists. See, e.g., State v. Lipski, 238 N.J. Super. 100 (App. Div. 1990). Police officers may not frisk a detained suspect for weapons unless they are aware of facts that constitute a reasonable and articulable suspicion to believe that this particular individual may be armed and dangerous. Because this is a rule arising under the Fourth Amendment and its State Constitutional counterpart, it does not matter that the officers were not also violating the Fourteenth Amendment Equal Protection Clause. It is possible, in other words, to violate one of these distinct constitutional provisions without violating the other.

36. **False**. The Fourteenth Amendment Equal Protection Clause and our statewide policy prohibiting racially-influenced policing applies to *all* police decisions, and not just to those decisions that implicate Fourth Amendment privacy or liberty rights (such as a stop, an arrest, or a search). It is therefore possible to violate the nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1 by engaging in conduct that a citizen never even becomes aware of. For example, if an officer were to "run the plates" of a vehicle based on

the race or ethnicity of the motorist, that decision would constitute a violation of the Equal Protection Clause and our statewide policy prohibiting racially-influenced policing. This would be true even if the motor vehicle lookup did not reveal a basis to stop the vehicle, so that motorist would never know that the officer had checked the license plates.

37. **False**. It is appropriate, indeed necessary for officers to include in a B.O.L.O. description every known identifying characteristic of the specific individual who is being sought. Police are generally required under the Fourth Amendment and its State Constitutional counterpart to use "the least intrusive means" to accomplish their legitimate investigative objectives. Were police to leave out a racial or ethnicity "identifier" from a B.O.L.O. bulletin, then persons who could not possibly be the person being sought might be subjected to police scrutiny and detention. In other words, a B.O.L.O. would cast too broad a net if it failed to include every known physical characteristic that might help police in the field find the wanted person and, as importantly, help the police to eliminate from suspicion persons who do not match the known physical characteristics of the wanted person.

38. **True**. Not all "pretext" stops are unlawful. See, e.g., Whren v. United States, 116 S.Ct. 1769 (1996) (United States Supreme Court refused to examine whether a police officer's conduct is based on a "pretext"). Police are permitted to make a stop based on a very minor observed motor vehicle violation even though they have an ulterior purpose, provided that that ulterior purpose is itself lawful. (While the motorist in that event is being treated differently than other minor violators, this form of "selective enforcement" does not run afoul of the Constitution so long as a "suspect classification" such as race or ethnicity is not involved.) If, on the other hand, the ulterior reason for actually choosing to make this stop is *un*lawful for any reason, then the resulting stop is unlawful, notwithstanding the general rule under the Fourth Amendment that police may stop a motor vehicle

based upon an observed motor vehicle violation. Thus, for example, if police suspect that an individual is engaged in criminal activity based in part on the individual's race or ethnicity, they may not stop that individual based on a fortuitously observed motor vehicle violation under circumstances where they otherwise would not have initiated a motor vehicle stop for such a minor violation, since the underlying or ulterior reason for bothering to make the stop would have been influenced by a consideration of race or ethnicity in violation of the Fourteenth Amendment Equal Protection Clause and our statewide policy against discriminatory policing. Remember that the test under the Fourteenth Amendment and Attorney General Law Enforcement Directive 2005-1 is whether police are treating a particular individual differently based on the individual's race or ethnicity.

39. **True**. Courts recognize that a person's known membership in a specific criminal organization such as a street gang is relevant and certainly may be considered by the officer as part of the "totality of the circumstances." However, membership in a group commonly thought to be suspicious, such as a gang, is insufficient by itself to establish reasonable suspicion. See Drake v. County of Essex, 275 N.J. Super. 585 (App. Div. 1994), citing to Reid v. Georgia, 100 S.Ct. 2752 (1984) (drug "profile" alone does not establish reasonable suspicion).

40. **True**. A court reviewing a Fourteenth Amendment claim of selective enforcement may conduct a wide-ranging inquiry. A reviewing court may, for example, examine the officer's thought processes to determine whether the officer had, in fact, relied on an impermissible factor such as race or ethnicity. This approach distinguishes Fourteenth Amendment legal analysis from Fourth Amendment jurisprudence. See State v. Bruzzese, 94 N.J. 210 (1983) ("the proper inquiry for determining the constitutionality [under the Fourth Amendment] of a search and seizure is done without regard to the officer's underlying motives or intent.").

41. **False**. Police officers are not permitted to draw any inferences of criminality from the race or apparent ethnicity of an individual (other than when determining whether the individual matches the description of a suspect-specific B.O.L.O. bulletin). The nature, extent or prevalence of a criminal problem is irrelevant to this analysis.

42. **False**. Some courts have held that the act of posing an "accusatorial" question automatically converts a consensual field inquiry into an investigative detention or "Terry stop." See, e.g., State in the Interest of J.G., 320 N.J. Super. 21 (App. Div. 1999). Compare State v. Rodriquez, 172 N.J. 117 (2002), where the New Jersey Supreme Court declined to decide whether an accusatorial question automatically triggers an investigative detention, with State v. Neshina, 175 N.J. 502 (2003), where the Court suggested that a field inquiry involves questions that are not accusatory in nature. But even if the act of posing an accusatorial question were deemed to transform a consensual field inquiry into an investigative detention, the requirement to administer Miranda warnings does not apply in any event to an investigative detention (as opposed to a full-blown arrest). See Berkermer v. McCarty, 104 S.Ct. 3138 (1984).

43. **False**. Courts in New Jersey have expressed great concern with the police practice that is sometimes referred to as "digging," that is, when a police officer seeks to use the opportunity of a routine traffic stop to conduct a *criminal* investigation in the hope of fortuitously uncovering evidence of a crime. See, e.g., Hornberger v. American Broadcasting Company, 351 N.J. Super. 577 (App. Div. 2002) (court sought to discourage police from turning a routine traffic stop into a "fishing expedition for criminal activity unrelated to the stop," citing State v. Carty, 170 N.J. 632 (2002)). To the extent that such "digging" is often based on inarticulable hunches, courts are much more likely to carefully scrutinize the encounter to make certain that impermissible factors such as racial or ethnic stereotypes played no role in the exercise of police discretion. It should be noted that the prolongation of a stop could, depending on the circumstances, result

in a Fourth Amendment violation if a court were later to find that the encounter had escalated into a de facto arrest, which would be unlawful if the officer at that moment was not aware of facts constituting probable cause to believe that a criminal offense had been or was being committed.

44. **False**. The New Jersey Supreme Court in State v. Carty, 170 N.J. 632 (2002), definitively ruled that police officers in this State are not permitted to prolong the duration of a motor vehicle stop by asking a motorist for permission to conduct a search unless the officer is aware of facts that constitute a reasonable articulable suspicion to believe that the consent search would reveal evidence of an offense. The Court's ruling in Carty was based on the State Constitutional counterpart to the Fourth Amendment, and so any violation of this new rule will automatically lead to the suppression of evidence notwithstanding that the officer has not also violated the Fourteenth Amendment Equal Protection Clause.

45. **False**. In State v. Bruzzese, 94 N.J. 210 (1983), the New Jersey Supreme Court held that under the Fourth Amendment, "the proper inquiry for determining the constitutionality of a search and seizure is done without regard to the officer's underlying motives or intent." Note that the approach used in resolving a Fourteenth Amendment selective enforcement claim is very different; when a violation of the Equal Protection Clause is alleged, the reviewing court may conduct a wide-ranging inquiry in an effort to determine the officer's purpose and intent.

46. **True**. The New Jersey Supreme Court in State v. Maryland, 167 N.J. 471 (2001), made clear that it "did not intend to suggest that ordinarily a proper field inquiry could not be based on a hunch." However, as a practical matter, a reviewing court is more likely to closely examine the underlying basis for any such inarticulable hunch to make certain that the police officer was not influenced by a racial or ethnic stereotype. Police officers in this State should always be consciously thinking not only about *what* they are doing, but also *why* they are drawing the inferences that they are drawing or making the

decisions that they are making.

47. **True**. The purpose of "screening" is to determine the strengths and weaknesses of a case and the likelihood of obtaining a conviction at trial. Prosecutors will therefore consider, among other things, the possibility that physical evidence or statements might be suppressed based upon a constitutional violation. In other words, prosecutors may *anticipate* that a defendant would challenge a stop, arrest or search, and prosecutors will consider, based upon the information available, both the risk that the State would ultimately lose a motion to suppress, and the costs and expenditure of resources that would be involved in litigating any such motion.

48. **True**. Some courts have held that posing an accusatorial question automatically converts a field inquiry into an investigative detention. See, e.g., State in the Interest of J.G., 320 N.J. Super. 21 (App. Div. 1999). But even if the courts ultimately do not uniformly establish a strict, bright-line rule concerning accusatorial questions, they will certainly consider the accusatorial nature of questions as part of the "totality of the circumstances" in deciding whether a police-citizen encounter is no longer consensual and has become an investigative detention. In State v. Maryland, 167 N.J. 471 (2001), the New Jersey Supreme Court explained that in making this determination, a reviewing court should consider whether the officer's questions were "put in a conversational manner," and whether those questions were "overbearing or harassing in nature." Most recently in State v. Neshina, 175 N.J. 502 (2003), the New Jersey Supreme Court suggested that a field inquiry involves questions that are not accusatory in nature.

49. **False**. Except when responding to a suspect-specific B.O.L.O. situation, law enforcement officers in this State are prohibited from considering a person's race or ethnicity to infer that person may be a member of a criminal organization. Law enforcement officers should instead focus on the person's *conduct*, including, where appropriate, expressive conduct such as the decision to display particular clothing,

jewelry, tattoos, etc. Such physical characteristics might suggest that the person has chosen to affiliate with a particular gang.

50. **False**. Under the Fourth Amendment and its State Constitutional counterpart, law enforcement officers in this State are always authorized to order the driver of a lawfully stopped vehicle to step out, since that police action is not deemed to constitute a further intrusion on Fourth Amendment liberty or privacy rights. See State v. Smith, 134 N.J. 599 (1994). The Equal Protection Clause of the Fourteenth Amendment, however, provides constitutional standards and safeguards that are distinct from the Fourth Amendment right to be free from unreasonable searches and seizures. The rule in New Jersey is that law enforcement officers are prohibited from taking *any* action that is based upon a person's race or ethnicity (other than when responding to a suspect-specific B.O.L.O. situation). Thus, if a police officer were to order the driver of a lawfully detained vehicle to step out of the vehicle based on the motorist's race or ethnicity, that decision would violate New Jersey's strict policy prohibiting racially-influenced policing.

51. **True**. Under the Fourth Amendment, any observed motor vehicle violation, however minor, would provide an objective basis for initiating a motor vehicle stop. Law enforcement officers must expect, however, that reviewing courts would be especially skeptical and probing when a stop is based on a very minor violation, since that situation suggests that the vehicle had been selected for police scrutiny and intervention for some ulterior reason. Remember that the test under the Fourteenth Amendment Equal Protection Clause and New Jersey's statewide policy prohibiting racially-influenced policing is whether the officer would have treated the person/motorist differently had that person been of a different race or ethnicity. Because reviewing courts are concerned about potential abuses of police discretion, they are likely to examine more closely encounters that involve a wide latitude of discretion, as compared to stops for very serious violations (such as drunk driving or excessive speeding),

where officers have less discretion to simply ignore the violation. Whenever an officer makes a stop based upon a comparatively minor infraction, he or she should be prepared to explain exactly why this particular vehicle was selected to be stopped from among the universe of vehicles that were committing motor vehicle offenses that were at least as serious.

52. **False**. Police officers, of course, must *always* exercise caution. After all, "Rule Number 1" of police work is that an officer is expected to go home safe and sound at the end of his or her duty shift. It is nonetheless inappropriate as a matter of sound law enforcement policy for police to treat motorists stopped for mere motor vehicle violations as if they were *criminal* suspects (unless there is some objective basis for believing they are engaged in criminal activity). See, e.g., Hornberger v. American Broadcasting Company, 351 N.J. Super. 577 (App. Div. 2002) (court found that officer's demand for passengers to produce identification during traffic stop was unreasonable since there was no basis to suspect that the passengers were armed, dangerous or involved in any criminal activity; the court sought to discourage police from turning a routine traffic stop into a "fishing expedition," citing to State v. Carty, 170 N.J. 632 (2002)). However a police officer may choose to treat citizens in general, the officer must always be aware that the Fourteenth Amendment Equal Protection Clause and our statewide policy prohibiting racially-influenced policing requires that all citizens be treated equally. This means that an officer may not treat a minority citizen differently from the way the officer treats nonminority citizens encountered in a similar situation.

53. **True**. To establish a violation of the new crime of "official deprivation of civil rights," the State must prove that the officer acted with the purpose to discriminate or intimidate, and that the officer knew that his or her conduct was unlawful. See N.J.S.A. 2C:30-6. It should be noted that the statute expressly provides that the officer's knowledge may be proved by establishing that the officer had made a false statement or prepared a false report, or had failed to prepare a

report when required to have done so. N.J.S.A. 2C:30-6d. In other words, lying about one's conduct, or trying to conceal one's conduct by not filing a report, establishes an inference that the officer knew that his or her conduct was unlawful.

54. **False**. The "B.O.L.O. exception" applies to a wide range of situations where a law enforcement officer is looking for a particular individual or individuals. Radio broadcasts and amber alerts are only two means by which information may be communicated by and among law enforcement officers. Law enforcement officers may, of course, rely upon information that has not been reviewed or "approved" by a superior officer.

55. **False**. The so-called "B.O.L.O. exception" to the general rule prohibiting law enforcement officers in this State from considering race or ethnicity in exercising discretion applies to any situation where law enforcement officers or agencies have a legitimate interest in identifying and finding a specific individual or individuals. The B.O.L.O. exception is not limited to crimes of any particular degree. Indeed, the B.O.L.O. exception can apply to any person that the police want to find, including people who are not even suspected of criminal activity, such as material witnesses, victims, and missing persons.

ANALYTICAL DISCUSSION OF FACTUAL SCENARIOS

Unlike the true/false questions in Part I, there are not necessarily "right" or "wrong" answers to the issues raised by the factual scenarios described in Part II. Any ruling issued by a reviewing court might depend in part on the court's assessment of the credibility of witnesses, and on additional information that is not set forth in the text of these factual scenarios.

Discussion of Factual Scenario #1: Watching Out for Stolen Vehicles: The Luxury Sedan

This scenario examines the practice of inferring that a vehicle may be stolen because the occupants do not appear to "match" the vehicle. If any such suspicion were to be based on the race or ethnicity of the occupants, then this inference would constitute racially-influenced policing in violation of our statewide policy prohibiting police discrimination set forth in Attorney General Law Enforcement Directive 2005-1. But before examining the Fourteenth Amendment Equal Protection Clause issues raised in this scenario, we will first address the relevant Fourth Amendment issues.

In State v. Donis, 157 N.J. 44 (1998), the New Jersey Supreme Court ruled that a police officer may conduct a motor vehicle/NCIC inquiry (i.e., "run the plates" of a vehicle) before observing any motor vehicle violation. This is sometimes referred to as a "random" check. The Court in Donis interpreted a state statutory provision, however, to restrict a patrol officer's access to "personal information" such as the name, address, and criminal history of the registered owner unless the initial information provided during a random check discloses a basis for further police action. Accordingly, the computer system administered by the New Jersey State Police will only provide limited information to police officers running a "random" check, namely, whether the vehicle had been reported stolen, whether the registered owner of the vehicle has a revoked or suspended operator's

license, and whether the license plates of the vehicle match the description of the vehicle from MVC records.

Once the officers in this scenario observed a motor vehicle violation, they were at that point entitled to run a more complete computer inquiry and were authorized to access so-called personal information from the database, including the name, gender and date of birth of the registered owner. (Note that MVC computer records do not document the race of licensed drivers and registered owners.)

In this case, the ensuing motor vehicle stop was essentially a "pretext." The officers were obviously relying upon a comparatively minor violation to justify the stop, even though ordinarily, they would probably not bother to stop a vehicle that was traveling in a line of traffic and that was going only a few miles per hour over the posted speed limit. The ulterior reason for the stop, of course, was to investigate the possibility that this vehicle may have been stolen.

A pretext stop is not necessarily unlawful, so long as the true reason for the stop is not itself unlawful. Under the Fourth Amendment, courts use what is called an "objective" test of reasonableness, meaning that reviewing courts are generally not concerned with underlying or ulterior reasons for initiating a Fourth Amendment seizure, so long as the officers had actually observed a motor vehicle violation. See Whren v. United States, 116 S.Ct. 1769 (1996) (Court refused to examine whether a police officer's conduct was based on a "pretext"); see also State v. Bruzzese, 94 N.J. 210 (1984) (the Fourth Amendment proscribes improper conduct, not improper thoughts).

It should be noted that the limited facts recited in this scenario do not suggest that a B.O.L.O. ("Be on the Lookout") had been issued for this particular vehicle, or for any specific individual or individuals who are suspected of automobile theft.

Furthermore, the officers had not observed any *conduct* consistent with theft. The vehicle was not being operated in a reckless manner that might suggest that the driver was unconcerned for the welfare of the vehicle or was otherwise engaged in "joyriding."

There was also no indication that the vehicle had been damaged in a way that would suggest that it had recently been broken into. (The officers confirmed that the vehicle was not damaged when they were able to approach it on foot and examine it at close quarters. It should be noted that at this point, if they had observed some form of damage consistent with theft, they would only have become aware of that fact *after* the stop had already been initiated. In that event, any such observation could not be used to justify their initial decision to stop this vehicle.)

This brings us to the more difficult question whether the police conduct described in this scenario constitutes racially-influenced policing. In State v. Segars, 172 N.J. 481 (2002) (*per curiam*), the New Jersey Supreme Court made clear that while police do not have to have a reasonable suspicion before they conduct a computer lookup, such checks cannot be based upon impermissible motives such as race.

To address the Fourteenth Amendment Equal Protection issue, we must examine and interpret the officers' intentions and the true reason(s) for their exercise of discretion in first "running the plates" and later in ordering the vehicle to pull over. When Officer Smith referred to "two black guys" who appeared to be teenagers, we must determine whether he was merely describing the vehicle occupants, or whether the fact that the occupants were African-American played a role in precipitating or bolstering his "hunch" that this vehicle might be stolen. In the same vein, when Officer Jones remarked, "That doesn't seem quite right." we must determine exactly what it was about the situation that seemed to him to be suspicious or at least odd. Was Officer Jones suggesting that it was unusual for a teenager

to be driving a luxury sedan, or was he suggesting that it was unusual for an *African-American* teenager to be driving such a vehicle?

The critical question that must be answered in this case, of course, is whether the officers were in fact relying to any degree on a racial stereotype, and specifically the notion that young minority citizens are more likely than young non-minority citizens to steal vehicles. Relatedly, we must determine whether the officers were relying on the notion that minority citizens tend to be less affluent, and therefore would be less likely to be able to afford to lease or purchase a new Mercedes Benz sedan. This stereotype might also be premised on the closely-related notion that a minority citizen who is able to lease or purchase such a vehicle is more likely than a nonminority citizen to be engaged in some illicit profit-making enterprise, such as drug trafficking.

Reviewing courts in New Jersey will be sensitive to these issues, and will be looking closely to see whether the police relied upon such broad-brushed, race-based stereotypes to justify initiating a motor vehicle stop for a comparatively minor violation, especially if other vehicles at the same time and place were committing the same violation but were not targeted for police scrutiny. Always remember that the gist of a "selective enforcement" claim under the Fourteenth Amendment is that the individual was "selected" for police intervention based on some impermissible criterion.

Some courts reviewing this factual scenario would be likely to draw an inference that race had played a role in the exercise of police discretion. In that event, the "burden of production" would shift to the officers to provide a race-neutral explanation for the way in which they exercised their discretion.

The key question raised by this scenario is whether these officers would have "run the plates" of this vehicle, and would have stopped it, had the occupants instead been Caucasian teenagers, rather than African-American teenagers. If the answer to that question is no, then the race of the occupants would have played a role in the exercise of police discretion in violation of our statewide nondiscrimination policy.

This question can best be answered simply by asking the officers to explain their reasons. It should also be noted that in the course of litigation, a court might consider evidence of other encounters involving these officers, and might also consider aggregate statistics to see if there is a "pattern" of treating minority citizens differently from nonminority citizens when investigating the possibility that a vehicle might be stolen.

Finally, it is important to note that if, in fact, the officers in this scenario had impermissibly relied on the vehicle occupants' race to draw or support an inference of criminality, it would not matter that the driver had not been issued a summons for the minor motor vehicle

violation. Whenever a law enforcement officer engages in racially-influenced policing, it cannot be said that "no harm" was done, since the prohibited practice is itself harmful.

Discussion of Factual Scenario #2: Protecting Critical Infrastructure: The Citizen "Tip"

We begin our analysis of this factual scenario by considering the Fourth Amendment implications of the police conduct. Law enforcement officers are, of course, authorized -- indeed are *expected* -- to investigate possible criminal activity, and are also authorized to respond to unusual situations under the so-called "community caretaking" doctrine.

In this instance, the suspicious conduct described by the citizen (who provided his name and therefore is not an "anonymous" tipster) may not be criminal per se. Based on the description of the area surrounding the reservoir and the location of the warning signs on the fence, it is by no means clear that the act of walking up the grassy slope toward the stone retaining wall constitutes defiant trespass in violation of N.J.S.A. 2C:18-3b. For purposes of the Fourth Amendment, however, it does not matter that there may have been a perfectly innocent explanation for why these adults climbed the hill to observe (and perhaps photograph) the reservoir. That is what an investigation would ultimately determine. See State v. Arthur, 149 N.J. 1 (1997) ("it must be rare indeed that an officer observes behavior consistent only with guilt and incapable of innocent interpretation."). See also State v. Pineiro, 181 N.J. 13 (2004) (the fact that purely innocent connotations can be ascribed to a person's actions does not mean that an officer cannot base a finding of reasonable suspicion for an investigatory stop on those actions so long as a reasonable person would find the actions are consistent with guilt).

Because the observed conduct in this instance was consistent with a possible threat posed to public safety, the police clearly had a legitimate basis under the Fourth Amendment to investigate the situation, and to initiate a consensual field inquiry if not an investigative detention. See State v. Neshina, 175 N.J. 502 (2003) (Officer was permitted to approach defendant and ask for credentials

where defendant was on school property late at night when school was closed, defendant's vehicle was not parked in lighted school parking lot, and defendant offered no legitimate explanation for being on school grounds).

We must next consider the Fourteenth Amendment Equal Protection Clause implications of the police decisions that were made. The more difficult question raised in this scenario is whether the police had inappropriately relied upon ethnicity, that is, the fact that the two men walking near the reservoir appeared to be of Middle-Eastern ancestry. Officer Jones (the officer who was dispatched to the scene) was only responding to a description of two specific individuals that was part of a B.O.L.O. ("Be on the Lookout") alert. Officer Jones had no choice but to look for the persons described in the radio dispatch. The real question, therefore, is whether Officer Smith had inappropriately relied upon ethnicity in exercising police discretion by dispatching another officer to investigate the citizen's tip.

In this instance, Officer Smith's conduct appears to be appropriate. A police officer in these circumstances is permitted, indeed would be expected to act upon the information provided by the private citizen.

It is certainly conceivable, of course, that the private citizen had himself relied at least in part on apparent ethnicity in concluding that the two men near the reservoir were "suspicious." It may well be true that the citizen was reacting to the tragic events of 9-11, and that he may have been suspicious of the two individuals that he observed by virtue of their apparent ethnicity or national origin. The Fourteenth Amendment Equal Protection Clause, however, does not apply to the inferences drawn or actions taken by private citizens. Rather, the Equal Protection Clause only imposes limits on the exercise of governmental authority.

That does not mean that police can automatically rely upon all information provided by citizens without regard to the Equal Protection Clause or the nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1. Rather, it means that law enforcement authorities when using information provided by citizens must conduct their *own* analysis to determine whether there is an adequate, race-neutral basis for taking further governmental action. The critical question in this case is whether Officer Smith would have dispatched another officer to the scene if the citizen had merely reported that he saw two adult males walking near the reservoir retaining wall, and had not described their apparent ethnicity.

In addressing that critical question, it is important to note that the citizen reported observed *facts* that, while not necessarily criminal per se, are nonetheless suspicious or at least unusual. (Had the citizen instead reported that two "Arab-looking" men were simply walking on the sidewalk, that information would, of course, provide no legitimate basis for police action.) In sum, the citizen's "tip" included factual information regarding unusual *conduct*, which in turn would justify Officer Smith's decision to dispatch another officer to investigate the situation. (The citizen tipster had related that it was unusual for adults to climb up the steep hill, and also provided information suggesting the possibility that one of the men had a camera or video recorder. The possible use of a camera raises security concerns since terrorists are known to photograph their targets so they can identify security weaknesses and infrastructure vulnerabilities when planning an attack.)

Once again, the critical Fourteenth Amendment question in this case is whether Officer Smith would have handled the situation differently if the two men had not been described by the citizen tipster as appearing to be from the Middle East (referring to their apparent ethnicity). This question forces us to speculate as to the thought processes of Officer Smith. A supervisor in this situation could

address the issue simply by asking Officer Smith whether he would have reacted differently if the two adult males had not been described by the citizen tipster as being "Arab-looking guys." We might also consider other information about different encounters that would allow us to consider how Officer Smith has handled similar situations in the past.

If we were to conclude that Officer Smith would not have bothered to dispatch an officer had the suspicious males not appeared to be of Middle-Eastern ancestry, then the officer's decision would have been based at least in part on an ethnicity-influenced stereotype (the notion that "Arab-looking" persons are more likely to be terrorists), in violation of the statewide nondiscrimination policy.

Discussion of Factual Scenario #3: Train Station Interdiction

The factual scenario begins by reciting what is essentially a race-neutral "profile" based upon police experience, namely, the documented historical fact that drug dealers from Eastburg travel by train to New York City to purchase illicit drugs for local redistribution. It is further believed that these dealers travel in pairs when making "runs" into New York City.

This "profile" essentially describes the modus operandi or "method of operation" of local drug traffickers. Note that this profile focuses on conduct, rather than on race or ethnicity. (By way of example, travel to or from a known "source city" of illicit drugs is a form of conduct that may be considered as part of a legitimate, race-neutral drug courier profile.) Police agencies are permitted to collect, analyze and rely upon this kind of information when drawing inferences of criminal suspicion when officers encounter persons whose conduct is consistent with the essential features of the modus operandi profile. See State v. Stovall, 170 N.J. 346 (2002). The real challenge, of course, lies in how that information is actually used out in the field when making police decisions.

From a Fourth Amendment perspective, police officers are always permitted to conduct a consensual "field inquiry." See State v. Maryland, 167 N.J. 471 (2001). In other words, police officers are allowed under the Fourth Amendment to approach citizens under circumstances where the citizens would reasonably believe that they are free to walk away or ignore the officers. In this instance, a reasonable person would probably understand that he or she is not required to engage the police officers in conversation, and in fact, one of the males essentially turned his back on the police. See State v. Pineiro, 181 N.J. 13 (2004) (field inquiries are permissible so long as they are not harassing, overbearing or accusatory in nature. This means that the person approached in a field inquiry need not answer any question put to him, and the person may decline to listen to the question at all and may go on his way).

It thus appears that the officers had not conducted an investigative detention or so-called "Terry" stop, at least at the outset of the encounter. It should be noted, however, that once Officer Jones posed what could be described as an "accusatorial" question, that is, a question that presupposes criminal activity ("You don't have anything on you you shouldn't have, do you?"), the encounter may have escalated into an investigative detention. Compare State in the Interest of J.G., 320 N.J. Super. 21 (App. Div. 1999) (posing an accusatorial question converted a field inquiry into a "Terry" stop requiring articulable suspicion) with State v. Rodriquez, 172 N.J. 117 (2002) (Court declined to decide whether an accusatorial question automatically transforms a field inquiry into an investigative detention) and State v. Neshina, 175 N.J. 502 (2003) (Court suggested that a field inquiry involves questions that are not accusatory in nature).

If a reviewing court were to conclude that the encounter had become an investigative detention, then the police conduct would be unconstitutional, since the officers did not have a reasonable articulable suspicion that these two individuals were engaged in criminal activity. While race-neutral modus operandi profiles are relevant as part of the "totality of the circumstances" and may be considered by police in drawing inferences of possible criminal activity, they rarely, if ever, are sufficient by themselves to justify an investigative detention or "seizure" under the Fourth Amendment. See, e.g., Reid v. Georgia, 100 S.Ct. 2752 (1984) (*per curiam*) (drug courier profile by itself did not establish reasonable suspicion).

The more complex issue raised in this scenario is whether and to what extent the officers had relied on apparent ethnicity in determining whether these individuals "fit the profile." While a consensual field inquiry does not constitute an intrusion of Fourth Amendment rights, the New Jersey Supreme Court has made clear that this exercise of police discretion is subject to limitations based on

the Equal Protection Clause of the Fourteenth Amendment. See State v. Maryland, 167 N.J. 471 (2001). If, in fact, the officers had relied on ethnicity in selecting these two individuals for police scrutiny from among the many other travelers on the train platform, then the State's policy prohibiting racially-influenced policing would have been violated. The critical question that must be answered under Attorney General Law Enforcement Directive 2005-1 may be simply stated: would the officers have chosen to approach and converse with these two individuals if they had been young *non*minority males rather than Hispanic males?

Were this scenario to be reviewed by a court, it is likely that the so-called "burden shifting template" would be invoked. This means that it would be incumbent upon the State to produce evidence suggesting a race-neutral explanation for the officer's exercise of discretion. In that event, these officers would be expected to explain why exactly they selected *these* two individuals to initiate a field inquiry. (We simply do not know how many other persons on the train platform (if any) were approached by these officers before (or after) they selected the two Hispanic males.)

It is important to note that it does not appear from the limited facts recited in the scenario that the officers recognized these particular individuals from prior dealings or observations. This was not a case, for example, where the officers had reason to believe that these specific individuals had boarded an earlier train to New York City that day. (The fact that specific individuals would travel repeatedly on the same day to a drug source city would be consistent with the modus operandi profile of individuals making frequent "runs" to purchase drugs. Cf. State v. Maryland, 167 N.J. 471 (2001) (Court found that the officer had approached the defendant only because he was one of three black males that the officer had seen at the train station *a week earlier*, raising an inference of selective enforcement)). Nor is there any indication that the officers were aware that these two specific individuals had previously been involved in or suspected of

drug trafficking.

Finally, it is important to note that the fact that the officers conducted the encounter in a polite and professional manner would by no means rectify the situation if, in fact, the initial decision to target these two individuals had been based to any degree on their apparent ethnicity.

Discussion of Factual Scenario #4: **Road Stop En Route to the Open Air Drug Market**

This scenario raises a number of issues that are discussed throughout the training program, including the legitimacy of using law enforcement "profiles," and when police are permitted to infer that an individual appears to be "out of place" in a particular neighborhood. This scenario also raises the issue of when and under what circumstances police may use a "pretext" to justify a motor vehicle stop.

The "profile" used in this case is that out-of-town motorists travel to a particular neighborhood to purchase drugs in a notorious open air drug market. This information describes the modus operandi or method of operation of drug purchasers and is based upon historical knowledge that is, on its face, race-neutral. The real issue, of course, is how such historical or intelligence information is actually used by law enforcement officers in the field to target individuals for police scrutiny and intervention.

From a Fourth Amendment perspective, it is clear that police officers are permitted to initiate a motor vehicle stop based on an observed motor vehicle violation (in this case, changing lanes and making a turn without giving a proper signal). The observed motor vehicle violation, in other words, provides an objective basis to justify a motor vehicle stop under the Fourth Amendment. The real question raised by this scenario, however, is whether the officers' conduct violates the Equal Protection Clause of the Fourteenth Amendment and New Jersey's policy prohibiting discriminatory policing set forth in Attorney General Law Enforcement Directive 2005-1.

Relying upon this "profile" of the known modus operandi of criminals, it would be appropriate for police officers on patrol to focus attention on out-of-town motorists who are traveling toward the open air drug market at a time of day when the market is active. The

practical problem, however, is how police officers would go about determining in the first place that individuals in a particular vehicle are not local residents. The statewide policy prohibiting racially-influenced policing prohibits officers from considering a person's race or ethnicity as the basis for drawing an inference that the person seems to be "out of place" because he or she does not match the racial or ethnic composition of a particular area or neighborhood.

One of the critical questions that must be asked in this scenario, therefore, is why exactly the officers focused their attention on the three individuals in the gray BMW. Put another way, would the officers have acted differently had the gray BMW contained three African-American citizens?

Because this vehicle first came to the officer's attention while it was stopped at a traffic light, their decision to scrutinize this vehicle could not have been based on unusual conduct of the vehicle itself, that is, the manner in which it was being operated. This is not a case, for example, where the officers focused their attention on this vehicle because it was cruising slowly through the open air drug market, or had pulled over to engage suspected drug dealers in conversation as a prelude to an illegal drug transaction. Rather, it appears that the officers' attention was focused on the vehicle because the vehicle and its occupants appeared to be "out of place." Therefore, we must consider what led the officers to suspect that these three individuals were en route to the open air market.

It should be noted that there is no indication in this factual scenario that the officers recognized these specific individuals or this particular vehicle from any prior encounters. Nor is there any indication in this limited "record" that the officers had any objective reason to believe that these particular individuals had previously engaged in criminal or even suspicious activity.

When Officer Smith referred to "[t]he three white guys in the gray

Beemer," we must determine whether he was merely providing his partner with a description of the occupants (just as the use of the term "gray" was used to describe the vehicle), or whether instead the officer's suspicions had actually been aroused by the occupants' race. A fair inference can be drawn that in this case, the occupants' race did indeed play a role in the manner in which the officers drew an inference of criminality and thereafter exercised police discretion. It is therefore likely that a reviewing court would conclude that the burden of production has shifted to the State to provide a race-neutral explanation for why the officers focused their attention on this vehicle and decided to follow it. In other words, it will be incumbent on these officers to explain their actions, demonstrating that race was not involved in their decision-making processes.

If race did in fact play a role in the exercise of police discretion, it is irrelevant that the officers were acting in good faith, and may have earnestly believed that they were doing these citizens a "favor" by initiating a motor vehicle stop before the individuals had an opportunity to engage in conduct that might have led to an arrest and criminal prosecution, or that may have put these citizens at risk of injury given the dangers inherent in illicit drug transactions. It seems evident, moreover, that these officers earnestly hoped to prevent the commission of a crime, and sought to discourage these individuals from attempting in the future to purchase illicit drugs in this town. Certainly, there is no indication at all that these officers are bigoted, or that they in any way sought to harass these individuals based on their race. That is not the test, however, for determining whether the officers had inappropriately relied upon race in exercising police discretion. In the absence of a race-neutral explanation, it appears that these officers violated the State's strict policy prohibiting racially-influenced policing set forth in Attorney General Law Enforcement Directive 2005-1.

Finally, it should be noted that this scenario also involves what could be described as a "pretext" stop, that is, a stop that purports to be a routine motor vehicle stop based on an observed motor vehicle violation, when, in reality, the decision to select this vehicle to be stopped was based on a suspicion of anticipated *criminal* activity. It is critical to note that pretext stops are not automatically illegal. Indeed, the general rule is that it is legally irrelevant that officers have an ulterior or pretextual reason for exercising police discretion, provided that the true reason for the exercise of police discretion is itself permissible. If, in contrast, an ulterior reason for making a stop is based to any degree on the impermissible use of race or ethnicity, then the ensuing exercise of police discretion is tainted to the extent that the officers would not have initiated the stop if the motorists had been of a different race or ethnicity, and in that event, the pretext stop would be deemed to be illegal under the Fourteenth Amendment Equal Protection Clause. In other words, the fact that the officers

actually observed a motor a vehicle violation (which would ordinarily automatically justify a motor vehicle stop under the Fourth Amendment) would *not* salvage the legality of the stop if the decision to actually stop the vehicle was based to any degree on the race or ethnicity of the vehicle occupants.

Discussion of Factual Scenario #5: Pedestrian Encounter in the Town Square

This scenario provides yet another example of a police determination that certain individuals appear to be "out of place" in a particular neighborhood. Although the officers had been instructed to be alert for "suspicious" individuals, they were not responding to a B.O.L.O. ("Be on the Lookout") bulletin for specific suspects. There is simply no description in the scenario of specific individuals who were believed to have committed any of the prior crimes in the town square area. There is no indication in this scenario that Officers Smith and Jones recognized any of the five African-American citizens from an earlier encounter, which might provide some objective basis to believe that they were engaged in inappropriate or illegal conduct. Nor is there anything in the scenario to suggest that the culprits for the prior crimes were believed to be traveling in groups of five or more (which might conceivably distinguish such a group from other persons or couples walking the streets).

Furthermore, while the five African-American males were "talking loudly," there is no indication that they were engaged in disorderly conduct. In other words, these individuals' *conduct* does not appear to provide a basis for police scrutiny or intervention.

Under the Fourth Amendment, police officers do not need to have an articulable suspicion before they can initiate a consensual field inquiry. See State v. Maryland, 167 N.J. 471 (2001). The Fourth Amendment question, therefore, is whether a reasonable citizen in these circumstances would believe that he or she would be free to walk away from the approaching police officers. Even if a reasonable citizen would come to that conclusion at the outset of this encounter, the situation might well have changed once the officer "requested" to see a driver's license. Compare State v. Sirianni, 347 N.J. Super. 382 (App. Div. 2002) (a police request for identification does not, by itself, constitute a seizure or detention within the meaning of the Fourth

Amendment and thus need not be based on reasonable articulable suspicion to believe the person has committed a crime). However, it is likely in these circumstances that many citizens would believe that this request ("I'm gonna need to see a driver's license") was in fact a "demand," and that they would not be permitted to simply walk away without displaying a valid driver's license. See State v. Maryland, 167 N.J. 471 (2001) (an officer would not be deemed to have seized another if his questions were put in a conversational tone, he did not make demands or issue orders and his questions are not overbearing or harassing in nature).

If a reasonable person would interpret the officer's statement as a demand to produce a driver's license, then this encounter would be deemed to be a "Terry" stop – one that would be illegal under the Fourth Amendment because the officers did not at that moment in time have a reasonable articulable suspicion to believe that criminal activity was afoot. Compare State v. Davis, 104 N.J. 490 (1986) (suspects were not free to leave when officer encountered two individuals reported by a citizen informer to be loitering on bicycles at a closed gas station; the officer has posed several questions, including a request for identification; in this case, the "Terry" stop had been based upon reasonable articulable suspicion, and the scope and duration of the stop was held to be reasonable).

As importantly, the police conduct in Factual Scenario #5 appears on its face to violate the Fourteenth Amendment Equal Protection Clause and our statewide nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1. The facts in this scenario raise a clear inference that race played a role in the exercise of police discretion, and that the officers had targeted these five African-American males for police scrutiny and intervention by using their race to distinguish them from the hundreds of other individuals who were walking the streets that night. The limited facts recounted in this scenario suggest that the officers sought to send a clear message to these citizens that they would be closely watched,

and that they are not welcome in the town square district. In these circumstances, it is highly likely that a reviewing court would conclude that the "burden of production" has shifted to the State to provide a race-neutral explanation for the officers' decision to initiate a field inquiry. This means that the officers would be required to explain why they had selected these five individuals from among the others on the street, and to show that they had not relied on race as a factor in making this decision.

It should be noted that it is irrelevant that other citizens out on the street that night appeared to have been intimidated or at least annoyed by the presence of these five African-American males (as evidenced by some citizens choosing to cross to the other side of the street). There is no indication in this scenario that the African-American males had done anything (besides merely being present) to harass other citizens. Private citizens, of course, are not subject to the Fourteenth Amendment Equal Protection Clause and are free to draw any inferences and harbor any suspicions they want to, including fears based on broad-brushed stereotypes. Law enforcement officers, in contrast, are duty bound to comply with all provisions of the Constitution and may not treat citizens as potential criminals or troublemakers based on their race.

It should be noted, finally, that community business leaders clearly wanted and expected the police department to be aggressive in preventing and deterring criminal activity. It is possible that these community leaders might applaud rather than criticize Officers Smith and Jones for the way that they handled the situation. However, police officers in this State are strictly prohibited from using tactics that violate the statewide policy prohibiting racially-influenced policing.

Discussion of Factual Scenario #6: Drive-by Shooting Investigation

The two detectives in this scenario were "following leads" as part of an ongoing investigation of a reported crime, and were not inappropriately relying on race or ethnicity to draw inferences of criminality. Most examples of racially-influenced policing tend to involve spontaneous police-citizen encounters where police officers are first trying to determine proactively whether a crime is being committed. (This typically occurs when an officer is trying to turn a routine encounter such as a traffic stop into a broader criminal investigation.) Police officers in this State are permitted and are expected to pursue leads during the course of an ongoing criminal investigation, wherever they may go, and detectives may focus their attention on any and all persons who may have information about a particular crime or about a particular criminal organization that may be involved in that crime.

In this case, the detectives had reason to believe that the shooting victim was a member of a particular gang. That gang, in turn, was believed to be engaged in ongoing conflicts with other gangs. Furthermore, there is a basis to believe that the shooting itself may have been racially motivated. Race, in other words, is part of this investigation and cannot be ignored or discounted.

The detectives were clearly permitted to speak to the three African-American males in the hospital waiting room. Their very presence at the hospital demonstrated a relationship with the victim, suggesting that they might have pertinent information concerning the circumstances or motivation for the shooting. So too, the detectives could consider the fact that these persons were wearing the "colors" of the Lords gang, again suggesting that they might be aware of information concerning the ongoing intergang rivalry.

It was also entirely appropriate for the detectives to visit locations where other members of the victim's gang are known to congregate. Similarly, it was appropriate for the detectives to go to locations that are believed to be frequented by members of any rival

gang that might have been involved in the shooting. Once at these locations, the detectives would be permitted to canvas patrons in the hope of developing information useful to the ongoing criminal investigation. While this might be described by some as a kind of "fishing expedition," this is appropriate and necessary police work as part of an ongoing criminal investigation.

A question might be raised concerning the manner in which Detectives Smith and Jones selected the individuals sitting at a particular table at the first bar that they visited. (There is nothing in this scenario to suggest that either detective personally recognized any of the persons at this table from prior dealings. Nor does it appear that the detectives had randomly selected this table, or that they were methodically going from table to table seeking information.)

In this scenario, the detectives could properly focus their attention on those persons in the bar who might reasonably be associated with the Northeast Hate Mongers gang. In this instance, the physical appearance of the persons sitting at the table was consistent with gang affiliation irrespective of their race. Their shaved heads and tattoos are physical characteristics that are considered to be a form of expressive *conduct* that the officers could certainly consider in deciding who inside the bar might have information relevant to the ongoing criminal investigation.

But even if the officers had not observed physical traits such as shaved heads and tatoos, they would still have been permitted to choose to first approach the persons at this table as a means of efficiently "pursuing leads" in this particular investigation. It is important to recognize that this scenario does not present a situation where officers on proactive patrol are watching out for "generic" gang members who they might happen to encounter by chance. Rather, these detectives are investigating a specific crime involving a specific gang -- one that has specific membership eligibility criteria. In essence, the detectives were "on the lookout" for persons who could be members of this specific gang as part of an ongoing investigation

of a specific criminal event. In these circumstances, the officers could certainly scan all of the persons present in the bar, and the detectives could properly exclude from further consideration or interaction those persons present in the bar who could not possibly be members of the Northeast Hate Mongers skinhead group by reason of the group's known membership eligibility criteria.

(In this particular example, it is conceivable that *everyone* in the bar was Caucasian, making race simply irrelevant as a "selection" criterion. But if some African American patrons happen to have been present, the detectives certainly need not have perfunctorily approached such minority customers to inquire whether they are aware of Northeast Hate Monger activity, since those minority patrons could not possibly be members of the particular group that is the focus of this part of the ongoing homicide investigation.)

In sum, it seems clear that the detectives in this scenario at no time relied inappropriately upon race in violation of Attorney General Law Enforcement Directive 2005-1.

Discussion of Factual Scenario #7: Residential Burglary Investigation

The police conduct described in this scenario was perfectly lawful and appropriate up to the point where the Lieutenant instructed his subordinate to focus attention initially on those files pertaining to African-American individuals ("Let's start by checking out the black suspects . . ."). That instruction constitutes a violation of the State's nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1. There were no eyewitnesses to the burglaries who reported that the perpetrator was African-American. The Lieutenant in this scenario thus essentially relied on a hunch as a shortcut to expedite the investigation. While law enforcement officers are not prohibited from pursuing hunches, in this instance it would be inappropriate to exercise police discretion based on a race-influenced stereotype of who is more likely to be a burglar, or an addict. See State v. Maryland, 167 N.J. 471 (2001) (police may not rely on a hunch that is "at least in part based on racial stereotyping").

It is important to recognize that the general rule in this State prohibiting any consideration of race or ethnicity in drawing inferences of criminality is not limited to police officers who are assigned to patrol duty. It is true that most examples of racially-influenced policing are likely to involve spontaneous or unplanned encounters with citizens, such as motor vehicle stops where officers are first trying to determine whether any criminal activity may be afoot. It is certainly possible, however, for detectives to violate Attorney General Law Enforcement Directive 2005-1 while investigating one or more crimes that have already been reported.

While detectives (and all other law enforcement officers) are permitted and in fact are expected to diligently pursue leads during the course of the investigation of a specific crime, those officers are generally prohibited from using race or ethnicity as a factor in

exercising discretion when deciding who to place under suspicion and how to treat one or more individuals. (In this instance, the police decision at issue was to put black individuals at the top of the list of suspects to be scrutinized).

The State's non-discrimination policy was violated in this scenario notwithstanding that the Lieutenant's instructions on how to winnow down the list of suspects also included non-racial factors, such as whether the individuals whose files had been collected are likely to be addicts based on prior drug arrests, and whether any of these individuals had recently been released from a jail or prison.

Police officers in this State may *not* consider a person's race or ethnicity to any degree in inferring the likelihood that an individual is more or less likely to be engaged in criminal activity. This strict prohibition applies notwithstanding any anecdotal experience or aggregate statistics concerning the racial or ethnic characteristics of persons who, in the past, committed the same type of crime that is now the subject of ongoing investigation. It is simply inappropriate to use either personal experience or aggregate statistics based on *past* crimes committed by persons of a given race or ethnicity to support an inference that *other* specific individuals of that race or ethnicity are *presently* engaged in criminal activity.

Finally, it should be noted that the conduct described in this scenario would constitute a violation of Attorney General Law Enforcement Directive 2005-1 notwithstanding that, as yet, there has been no Fourth Amendment intrusion. In this scenario, the persons described in the suspect files would not even be aware that they were being scrutinized by police as part of an ongoing criminal investigation. The violation of the State's nondiscrimination policy nonetheless occurred and was complete at the moment that the Lieutenant directed that race be used as a screening factor to winnow down the list of possible suspects.

Discussion of Factual Scenario #8: Scrutinizing and Intercepting Vehicles Coming from the "Source" City

In this scenario, the police conduct violated the statewide nondiscrimination policy set forth in Attorney General Law Enforcement Directive 2005-1 because Officer Smith used the race of vehicle occupants as one of several screening factors to decide which plates to "run," and which vehicles to stop. Attorney General Law Enforcement Directive 2005-1 makes clear that police may not consider a person's race or ethnicity as a factor in drawing an inference that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to treat the person. The violation of that policy occurred in this scenario notwithstanding that the act of "running plates" does not intrude on *Fourth* Amendment privacy or liberty interests.

In this scenario, the police in Westburg were responding to a problem caused by aggressive enforcement in the nearby town of Eastburg, which resulted in the displacement and relocation of drug traffickers. These urban drug sellers were believed to be popping up in other areas, having adapted their criminal *modus operandi* in response to the Eastburg law enforcement initiative so that they could continue to reach and service their lucrative suburban market. The Westburg Police Department in these circumstances was certainly permitted to develop a "profile" based on the new *modus operandi* of the displaced drug traffickers, which could then be used to help identify potential suspects. See State v. Stovall, 170 N.J. 346 (2002). In this instance, moreover, police would be allowed to try to determine a vehicle's point of origin to see if that vehicle matches the profile characteristic of recent travel from the specific jurisdiction known to be a source of drugs. So too, officers would be permitted to consider the number of occupants in a vehicle, consistent with the new *modus operandi* of the displaced Eastburg drug dealers.

Under New Jersey law, police are permitted under the Fourth

Amendment to "run the plates" of a vehicle and this can be done either "randomly" or "for cause." Police in this State, however, are not permitted to access personal information during a so-called "random" lookup (i.e., e.g., a situation involving a vehicle that had not been observed to have committed a violation). See State v. Donis, 157 N.J. 44 (1998). Because Officers Smith and Jones were attempting to determine the likelihood that vehicles traveling westbound on Eastburg Avenue were coming from the City of Eastburg, they needed to access such personal information from the computer database, and so it was necessary for them to limit their scrutiny to vehicles that were observed committing some kind of motor vehicle violation.

This kind of investigation would have been lawful had the officers not considered race in exercising discretion. In this instance, however, a violation of the statewide nondiscrimination policy occurred at the moment the officers decided to explicitly use race as a suspicion factor, notwithstanding that race was not the only factor being considered in deciding which vehicles to target for a "for cause" computer lookup. See State v. Patterson, 270 N.J. Super. 550, 559 (Law Div. 1993) (" . . . an individual's race cannot be considered at all when conclusions are reached or assumed as to a 'profile' suggesting criminal activity").

It is important to note that in this scenario, the officer's conduct would not fall under the so-called "B.O.L.O. (Be on the Lookout) exception" to the general rule prohibiting any consideration of race or ethnicity. It is true that the officers were "looking out" for displaced drug dealers, and it may well be true that many of those dealers were minority citizens. However, the officers had no information pertaining to *specific* individuals. (If, in contrast, the Westburg Police Department had been provided with a list of individuals who were suspected of being Eastburg-based drug dealers who were no longer plying their trade in Eastburg's displaced open air markets, then the Westburg officers would have been allowed to consider an individual's race in determining whether or not that individual was one of the

persons on the specific B.O.L.O. list.) But in this scenario, the Westburg officers were actually relying on a generalized profile, and not a B.O.L.O. list.

Had the Westburg Police Department developed and implemented a *race-neutral* profile, then such conduct would not be deemed to violate Attorney General Law Enforcement Directive 2005-1. If, for example, the officers had "run the plates" of *every* vehicle observed to have committed a violation, or had used some neutral plan (such as random selection) designed to limit officer discretion and provide assurances that the officers were not relying on an impermissible criterion in deciding which plates to check, then our statewide nondiscrimination policy would not have been violated. For example, if Officer Smith had performed a lookup on every third or every fifth observed violator, then he would be able to establish that race or ethnicity had in fact played no role in deciding which plates to run and which violators to ignore.

It should also be noted that by preferentially stopping those vehicles that had been determined to be likely to be traveling from Eastburg, it is conceivable that a comparatively large proportion of those detained vehicles would be transporting minority citizens, reflecting the racial composition of Eastburg. It would be reasonable to anticipate that at least some reviewing courts might in that event be skeptical of the manner in which police exercised discretion, and so officers in those circumstances should be prepared to provide a race-neutral explanation for the exercise of police discretion. (As noted above, this could be done simply by showing that the police had established and scrupulously implemented a race-neutral plan of operation, such as one that relied on random selection, to identify persons who might be displaced Eastburg drug traffickers.)

This scenario also raises questions concerning the use of so-called "pretext stops." The general rule is that police are not prohibited from having an ulterior reason for initiating a motor vehicle

stop, provided that the ulterior reason is not itself unlawful. See, e.g., Whren v. United States, 116 S.Ct. 1769 (1996) (plainclothes narcotics detectives in an unmarked police vehicle stopped defendant's vehicle for a motor vehicle violation for the ulterior purpose of pursuing a drug investigation). In this case, the ulterior purpose was to afford an opportunity to investigate whether the vehicle occupants are engaged in serious criminal activity. Because the police in this scenario had explicitly used racial characteristics in deciding which plates to run (and thus which violators would be more likely to be stopped), the resulting motor vehicle stops were tainted by the Equal Protection violation, notwithstanding that under the Fourth Amendment, an observed motor vehicle violation always provides an "objective" basis to initiate a traffic stop.

It should be noted in this regard that from a *Fourth* Amendment perspective, the police conduct was lawful. Officers who have stopped a vehicle for speeding are generally permitted to pose itinerary questions in an effort to determine why the vehicle was traveling in excess of the speed limit. So too, an officer would be permitted under the Fourth Amendment to order the driver of a lawfully stopped vehicle to exit the vehicle in order to preserve the option of posing similar itinerary questions to other occupants so as to determine whether there are any materially-inconsistent answers that might suggest ongoing criminal activity.

It is true that some reviewing courts today are skeptical when police engage in the practice of "digging," that is, when police use a traffic stop based on an observed motor vehicle violation as a platform from which to launch a *criminal* investigation, resulting in detained motorists being treated as if they were criminal suspects. See Unit 13.5 in the Companion Guide. But in this scenario, the questioning was not protracted (under the Fourth Amendment, courts are mostly concerned with the duration of the liberty intrusion) and was not based on an inarticulable hunch, but rather was predicated upon a determination that the detained motorists matched essential

characteristics of a drug courier profile. (All of this assumes, of course, that any such profile was race-neutral, that is, that race or ethnicity played no part in the officer's decision to stop the vehicle in the first place, the officer's decision to order the driver to exit the vehicle, and the officer's decision to pose probing questions designed to ferret out possible criminal activity.)

But just because the *Fourth* Amendment may not have been violated does not mean that the police conduct was lawful. Indeed, in this scenario, it makes no difference that the police conduct may have complied with the requirements of the Fourth Amendment. By initially considering race in violation of the Equal Protection Clause of the Fourteenth Amendment and Attorney General Law Enforcement Directive 2005-1, all of these encounters would likely be considered to be "fruit of the poisonous tree" and would likely be deemed by a reviewing court to constitute examples of impermissible racial targeting.

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON, NJ 08625-0080

RICHARD J. CODEY
Acting Governor

PETER C. HARVEY
Attorney General

MARIELLEN DUGAN
First Asst. Attorney General

DIRECTIVE

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
SUPERINTENDENT, DIVISION OF STATE POLICE
ALL COUNTY PROSECUTORS
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: ATTORNEY GENERAL PETER C. HARVEY

DATE: September 22, 2005

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-2:

MANDATORY TRAINING FOR ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF NEW JERSEY FOR NATIONAL INCIDENT MANAGEMENT SYSTEM COURSES

On August 5, 2005, Acting Governor Codey entered an Executive Order implementing the National Incident Management System (NIMS). In order to preserve the State's eligibility for federal preparedness assistance, Acting Governor Codey's Executive Order requires all State Department and Agencies to take certain steps to implement NIMS.

President Bush has required that all federal departments and agencies require State and local institutionalization of the NIMS as a prerequisite to federal preparedness assistance. Institutionalization means that NIMS is adopted and implemented for everyday use by first responders. So far, sixty federal grant programs have been identified as requiring NIMS as a prerequisite to award. These include the Department of Justice - COPS Interoperable Communications Technology Program and the Department of Homeland Security - State Homeland Security and UASI Grant Programs.

The following training is hereby required of all law enforcement officers and agencies:

a) all entry level first responders, including firefighters, police officers, emergency medical services providers, public works on-scene personnel, public health on-scene personnel and other emergency responders, and other emergency personnel that require an introduction to the basic components of the ICS, to the ICS-100: Introduction to ICS level, prior to December 31, 2005;

b) all first line supervisors, single resource leaders, lead dispatchers, field supervisors, company officers and entry level positions (trainees) on Incident Management Teams and other emergency personnel that require a higher level of ICS training to the ICS-200: Basic ICS Basic level, prior to December 31, 2006;

c) all middle management, strike team leaders, task force leaders, unit leaders, division/group supervisors, branch directors and Multi-Agency Coordination System/Emergency Operations Center staff to the ICS-300: Intermediate ICS level, prior to December 31, 2007; and

d) all command and general staff, agency administrators and department heads with on-scene incident management responsibilities, emergency managers, areas commander and Multi-Agency Coordination System/Emergency Operations Center managers to the ICS-400: Advanced ICS level, prior to December 31, 2007.

Additional information concerning the implementation and administration of the mandatory minimum training program for veteran law enforcement officers will be distributed by the Domestic Security Task Force. All questions concerning the implementation and administration of this directive shall be directed to Domestic Security Preparedness Task Force in the Office of the Attorney General. A copy of this directive and the supporting materials is also available from the Division of Criminal Justice at www.njdcj.org.

c. Mariellen Dugan, First Assistant Attorney General, OAG
Markus Green, Chief of Staff, Office of the Attorney General, OAG
Vaughn McKoy, Director, Division of Criminal Justice
Jessica S. Oppenheim, Chief, Prosecutors Supervision & Coordination Bureau, Division of Criminal Justice, DCJ

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

RICHARD J. CODEY
Acting Governor

PETER C. HARVEY
Attorney General

MARIELLEN DUGAN
First Asst. Attorney General

RE: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-2

September 22, 2005

Dear Prosecutors and Police Chiefs,

As part of a new National Preparedness vision, the federal government has created a National Incident Management System, which is commonly referred to as "the NIMS." The NIMS consists of a number of components that when fully implemented will provide a common system of emergency incident response and management that will be uniform nationwide. This means that first responders from New Jersey will be able to provide, for example, aid in disaster stricken areas such as Louisiana or Mississippi without learning a new system of incident or resource management. Within New Jersey, implementation of the NIMS will mean that police, fire, emergency medical, public works, public health, emergency management and other first responders will all operate under a uniform command and management system, increasing our capabilities and making our response system even more efficient.

The NIMS on-scene command component, commonly referred to as the Incident Command System (ICS), is based upon the National Wildfire Coordinating Group Incident Command System. This same system has been used by New Jersey's emergency responders for years. Many local law enforcement agencies already have training and experience using ICS. Using NIMS/ICS also provides an excellent framework for planning and organizing non-emergency events, such as community fairs, parades, high school graduations, etc.

In order to assure national implementation of the NIMS, President Bush has directed that all federal departments and agencies require State and local entities to institutionalize NIMS as a prerequisite for receiving federal funding for preparedness assistance.

Institutionalization of NIMS means that NIMS is adopted and implemented for everyday use by first responders. So far, sixty federal grant programs have been identified as requiring NIMS as a prerequisite to award. These include the Department of Justice - COPS Interoperable Communications Technology Program and the Department of Homeland Security - State Homeland Security and UASI Grant Programs.

On August 5, 2005, Governor Codey issued Executive Order 50 (E.O. 50) adopting NIMS statewide and requiring its use on all emergency incidents in New Jersey. For your convenience, I have enclosed a copy of Governor Codey's Executive Order and ask that you share it with other first responders in your community.

The attached Directive requires you to provide the required training to law enforcement officers under your jurisdiction.

The ICS-100: Introduction to ICS course is available through the on-line New Jersey Homeland Security First Responder Training Center at http://www.njlearn.com. The ICS-200: Basic ICS will be available on-line as soon as details regarding its placement on the web are resolved. In addition, the ICS-200 course can be provided through the "train the trainer" program, as described below. The ICS-300: Intermediate ICS and the ISC-400: Advanced ICS courses both require classroom training.

By October 3, 2005, a NIMS specific web site (http:/nims.nj.gov) will be stood-up to provide NIMS related training and information. I encourage you to utilize this website to find answers to common questions.

The New Jersey State Office of Emergency Management, working closely with your County Emergency Management Coordinators, has developed a program to provide the required training and the method for implementation and compliance monitoring of the required training for all first responders within your county or jurisdiction. You should work directly with your County OEM Coordinator on any NIMS-related training or issues. As part of that training program, the Division of Fire Safety in the Department of Community Affairs, the State Forest Fire Service in the Department of Environmental Protection and the State Office of Emergency Management have partnered to make instructors available to deliver these courses or to provide "train the trainer" courses to enable your staff to deliver the training. You can take advantage of that training opportunity by, once again, working directly with your County OEM Coordinator.

If you have any questions regarding the implementation and/or compliance with this NIMS-related training, you may discuss them with Captain Jerome Hatfield, NJSP, New Jersey State Office of Emergency Management at (609) 882-2000 ext. 6051 or LPPHATFJ@gw.njsp.org.

Sincerely yours,

Peter C. Harvey
Attorney General

Attachment: Directive 2005-2

c. Mariellen Dugan, First Assistant Attorney General, OAG
Markus Green, Chief of Staff, Office of the Attorney General, OAG
Vaughn McKoy, Director, Division of Criminal Justice
Jessica S. Oppenheim, Chief, Prosecutors Supervision & Coordination Bureau, Division of Criminal Justice, DCJ

ATTORNEY GENERAL GUIDELINES FOR STATIONHOUSE ADJUSTMENT OF JUVENILE DELINQUENCY OFFENSES

PETER C. HARVEY
ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY

DECEMBER 2005
TRENTON, NEW JERSEY

Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses

Table of Contents

Stationhouse Adjustments 3

Mandatory Availability of Stationhouse Adjustments 3

Stationhouse Adjustments to be Performed by Juvenile Officers 4

List of Available Referral Agencies 4

Offenses to be Considered for Stationhouse Adjustment 4

Excluded Offenses 4

Other Factors to be Considered 5

Minimum Required Process 5

Suggested Additional Techniques 6

Quarterly Reports 7

Appendices 8

Appendix A: Sample Stationhouse Adjustment Agreement – Long Form 8

Appendix B: Sample Stationhouse Adjustment Agreement – Short Form 12

Appendix C: Model Stationhouse Adjustment Warning 14

Appendix D: Stationhouse Adjustment Quarterly Report 15

Attorney General Stationhouse Adjustment Guidelines

Stationhouse Adjustments

A stationhouse adjustment is an alternative method that law enforcement agencies may use to handle first-time juvenile offenders who have committed minor juvenile delinquency offenses within their jurisdiction. The intent of the stationhouse adjustment program is to provide for immediate consequences, such as community service or restitution and a prompt and convenient resolution for the victim, while at the same time benefitting the juvenile by avoiding the stigma of a formal juvenile delinquency record. In many instances, this early intervention will deter the youth from continuing their negative behavior and divert the youth from progressing further into the juvenile justice system.

In a stationhouse adjustment, the juvenile officer typically asks the juvenile, a parent or guardian/caregiver, or other responsible adult designated by the parent or guardian/caregiver (herein referred to as "designee") and the victim to come to the stationhouse to discuss the offense. The officer may refer a juvenile for needed services, and, if property has been stolen or damaged, require the juvenile to make restitution in some form. Usually the officer will discuss the offense with the juvenile's parent or guardian/caregiver and request assurances that the juvenile will not commit any future offenses. This process allows juvenile officers to resolve minor disputes without the need to file a complaint with the court. Victims of minor offenses are often better served since a matter can be resolved locally, providing for a more efficient and expeditious resolution. However, it is important to give the victim the opportunity to have input. Furthermore, the victim always has the right to sign a complaint if he or she objects to a stationhouse adjustment.

Mandatory Availability of Stationhouse Adjustments

All municipal and other law enforcement agencies having patrol jurisdiction within the State of New Jersey shall make stationhouse adjustments available as a method of handling minor juvenile delinquency offenses within their jurisdiction. The goal of standardized guidelines and use of a more uniform method of diverting eligible juveniles is to promote equality within the justice system by providing equivalent access to police diversionary programs regardless of domicile. Stationhouse adjustments shall be conducted in accordance with the standards set forth below. A model stationhouse agreement is attached hereto. Local stationhouse adjustment policies may be modified to account for the availability of local resources and community service opportunities, but all law enforcement agencies having patrol jurisdiction must implement the minimum stationhouse adjustment process described herein regardless of the availability of such resources.

As set forth in the "Quarterly Reports" section of these guidelines, these guidelines require the submission to each County Prosecutor's Office of aggregate data regarding stationhouse adjustments in quarterly reports. This information is not contained in UCR reports. If the County Prosecutor finds that stationhouse adjustments are not being conducted by a particular law enforcement agency, the Prosecutor or his or her designee shall, after consultation

with the Chief Law Enforcement Executive of that agency, take immediate steps to implement a stationhouse adjustment program for that agency. If it appears that a State Police Road Station is not in compliance with this directive, the County Prosecutor's Office shall inform the Superintendent of State Police and the Attorney General of the specific deficiencies in the implementation of a stationhouse adjustment program in the State Police Road Station. Thereafter, the Superintendent shall implement a stationhouse adjustment program in the Road Station.

Stationhouse Adjustments to be Performed by Juvenile Officers

It is strongly recommended that designated juvenile officers[1] should perform stationhouse adjustments. These officers are best suited by training and experience to handle these matters. In instances where no juvenile officer is available it is recommended that the officer or detective handling the case should consult with a juvenile officer prior to conducting a stationhouse adjustment. However, if no juvenile officer is available to consult with or conduct a stationhouse adjustment the stationhouse adjustment should be conducted nevertheless.

List of Available Referral Agencies

The police shall provide, and agencies shall make available, existing lists of referral agencies, contacts and telephone numbers to which officers may refer juveniles. Such lists are usually available from County Youth Services Commissions, the Division of Criminal Justice, Juvenile Justice Commission, or other sources. Referrals may be made in conjunction with a stationhouse adjustment, but are not limited to the stationhouse adjustment process and may be provided immediately, before the process is completed.

Offenses to be Considered for Stationhouse Adjustment

Ordinance violations, petty disorderly persons offenses and disorderly persons offenses shall be considered for stationhouse adjustment. Fourth degree offenses may also be considered for stationhouse adjustment if the juvenile has no prior record that is known to the law enforcement agency.

Excluded Offenses

The following offenses are not subject to stationhouse adjustment and should result in the filing of a juvenile delinquency complaint:

1. Offenses involving the use or possession of a controlled dangerous substance or drug paraphernalia as defined under Chapters 35 or 36 of the Criminal Code shall not be adjusted without permission of the County Prosecutor's Office, as these

---

[1]Every law enforcement agency having patrol jurisdiction is required to designate at least one sworn officer to handle and coordinate juvenile matters. *Attorney General Executive Directive 1990-1, page 12-3 Designation of Juvenile Officers.*

offenses may be evidence of a more serious drug problem requiring intervention by the Family Court.

2. Bias offenses shall not be adjusted without permission of the County Prosecutor's Office.

3. Sexual Offenses shall not be adjusted without permission of the County Prosecutor's Office.

4. Offenses resulting in serious and/or significant bodily injuries shall not be adjusted without permission of the County Prosecutor's Office. Such permission should only be given in cases where the criminal intent of the offender is in doubt and the injuries were unintended.

5. Third degree offenses shall not be adjusted without permission of the County Prosecutor's Office.

6. Offenses shall not be adjusted if the law enforcement agency is aware that the juvenile has other charges already pending before the court.

7. Offenses shall not be adjusted when the juvenile is currently on probation, parole, home detention or other court ordered disposition.

Other Factors to be Considered

Police shall also consider the following factors when determining the appropriateness of conducting a stationhouse adjustment:

1. Police shall consider the age of the offender. Younger offenders, particularly those who may be less able to understand the consequences of their actions may be more appropriate for stationhouse adjustment. However, no juvenile offender is automatically excluded due to age.

2. Police shall consider any record of prior juvenile complaints or stationhouse adjustments. Juveniles with a prior serious offense or more than two minor offenses should ordinarily not receive a stationhouse adjustment.

3. Police shall consider the cooperation and attitude of all parties (juvenile, parents or guardians/caregivers, or designee and victim).

Minimum Required Procedures

At a minimum, a stationhouse adjustment shall consist of:

1. The law enforcement officer warning the juvenile about the future consequences of continued delinquent activity.[2] Officers shall discuss possible Family Court dispositions such as fines, probation, loss of drivers license and incarceration. In addition, officers shall discuss the possible impact of a delinquency record, including fingerprint records and DNA records on future career options.

2. The law enforcement officer must notify the juvenile's parents or guardian/ caregiver about the matter. A parent or guardian/caregiver or designee must be present. If a parent or guardian chooses to designate another adult (the designee) to attend the stationhouse adjustment with the juvenile, that person must be a responsible adult designated by the juvenile's parent or guardian/caregiver, such as a trusted relative, pastor or other mentor. In the event that a parent or guardian/caregiver does not respond to the law enforcement agency's inquiries, the designee may not be chosen by the juvenile or by the law enforcement agency. The willingness of a parent or guardian/caregiver or designee to participate in this process and act in partnership with law enforcement to hold the child accountable for his or her actions is vital to the success of a stationhouse adjustment.

3. If there is a known victim of the alleged offense, the victim must be notified and agree to the process. Where appropriate, victims should be informed that this process is a more efficient and expeditious process that enables a matter to be resolved locally. A stationhouse adjustment may proceed without the active participation of a victim, but shall not proceed over the objection of a victim. A victim who objects to a stationhouse adjustment should be permitted to sign a juvenile delinquency complaint, unless the complaint is clearly frivolous or lacking in probable cause, in which case, the police officer has the discretion pursuant to N.J.S.A. 2B:12-21(b) to refuse to accept the complaint.

4. The juvenile shall agree not to offend again and the juvenile and his or her parent or guardian/caregiver or designee shall be informed that a subsequent offense, or the failure to comply with agreed upon terms of the stationhouse adjustment agreement, may result in the filing of a juvenile delinquency complaint for the offense which has been the subject of the stationhouse adjustment.

5. The law enforcement officer shall complete a stationhouse adjustment form which must be signed by the juvenile and a parent or guardian/caregiver or designee. Two sample stationhouse adjustment forms are attached to these Guidelines. Law enforcement agencies may use either form, a form prescribed by the County Prosecutor, or develop their own form for this purpose.

[2]A sample warning form is attached to these guidelines.

Suggested Additional Techniques

Many police departments have been creative in developing additional stationhouse adjustment techniques that provide an additional degree of accountability and responsibility. Law enforcement agencies employing stationhouse adjustments pursuant to these guidelines are authorized to use other reasonable techniques to enhance the effectiveness of such adjustments.

Examples

- Some departments incorporate mediation into the process in order to assist in resolving neighborhood disputes.
- Departments also require juveniles to agree to make restitution in appropriate cases. This requires an additional time commitment on the part of the law enforcement agency, to follow-up as needed. Restitution plans should be simple and short-term, in order to avoid involving the law enforcement agency in drawn-out collection efforts.
- Some officers have asked the juvenile's parents, guardian/caregiver or designee to agree to deny the juvenile driving privileges for some period of time, as part of an agreement.
- A county-wide program run through a private non-profit, County Youth Services Commission or other governmental agency, to which police departments may send juveniles to perform some type of community service as part of a stationhouse adjustment.
- Performance of community service within the juvenile's municipality.
- Letters of apology or essays on the criminal justice topics are frequently requested by departments to force the juvenile to consider the consequences and the effect of his or her conduct on others.

Quarterly Reports

In addition to maintaining necessary departmental records on each stationhouse adjustment, each law enforcement agency having patrol jurisdiction within the State of New Jersey shall submit quarterly reports of all stationhouse adjustments conducted by that agency to their County Prosecutor's Office. Quarterly reports shall also be completed by State Police patrol units and shall be submitted directly to the Superintendent of State Police. **Since one of the primary benefits to a juvenile of a stationhouse adjustment is the avoidance of the creation of a juvenile delinquency record, no personal identifying information should be submitted in the quarterly reports.** For each stationhouse adjustment the quarterly report shall contain: juvenile's age at time of the offense, ethnicity (as reported by the juvenile), gender, the alleged offense and, if no stationhouse adjustment is conducted, indicate the reason(s) as provided on the form. County Prosecutors' Offices shall retain copies of the quarterly reports for five years. A copy of the quarterly report form is attached to these guidelines.

Appendix A

Sample Stationhouse Adjustment Agreement – Long Form

(Must be read to juvenile and parent/guardian/caseworker/designee)

Case No.: _____ Date of Incident: _____ Juv. ID No.: _____

Ethnicity* _____ D.O.B. _____ Age _____ Sex: M / F

* 1. Caucasian 2. Black 3. Hispanic 4. Asian/Pacific Islander 5. American Indian 6. Southern Asian 7. _____
(If ethnicity is not apparent, ask the subject or her/his parent/guardian/caregiver/designee.)

Juvenile: _____

Parent(s) /Guardian/Caregiver/Designee _____

Address: _____

Offense: _____

I wish to have this matter handled through the process of a stationhouse adjustment. I understand that if I am accepted by the program, a juvenile delinquency complaint will NOT be filed against me with the Superior Court, provided that the below terms and conditions of the program are satisfied.

Parent or Guardian/Caregiver or Designee's and Juvenile's Initials: _____

_____

I understand that I have a right to discuss this matter with an attorney at law of my choosing. However, I also understand that the court will not appoint an attorney for me prior to the filing of a juvenile complaint and it is my responsibility to obtain my own attorney if I wish. I further understand that I do not have to discuss this matter with anyone, including members of the Police Department before I have an opportunity to discuss this matter with an attorney, if I choose to do so.

Parent or Guardian/Caregiver or Designee's and Juvenile's Initials: _____

_____

I understand that participation in the stationhouse adjustment program is completely voluntary. I further understand that I may end my involvement in the program at any time and

have my case proceed in the Family Court as a juvenile delinquency matter. However, in order to participate in the program I must admit and do admit my involvement in the aforementioned offense(s), for which I was taken into custody.

Parent, Guardian/Caregiver or Designee's and Juvenile's Initials: _____

_____

I understand that I have the right to have my matter processed by the Family Court and a request a hearing or a trial. By agreeing to participate in the stationhouse adjustment program, I am waiving my right to a hearing or trial in this matter, provided that the below terms and conditions are satisfied.

Parent, Guardian/Caregiver or Designee's and Juvenile's Initials: _____

_____

I understand that information regarding this incident may be released to any other law enforcement agency, the Family Court, and/or any agency or department connected to the Family Court.

Parent or Guardian/Caregiver or Designee's and Juvenile's Initials: _____

_____

I, _____, agree that I will abide by the following terms
juvenile's name

and/or conditions of the stationhouse adjustment program:

Terms and Conditions

1. _____

_____

_____

_____

2. _____

_____

3. _____

_____

_____

_____

4. _____

_____

_____

_____

5. _____

_____

_____

Juvenile's Certification

(Read to Juvenile)

I, _____, do hereby certify that I have read this

juvenile's name

entire agreement. I agree to the terms and conditions of this agreement and wish to have the above-captioned offense(s) processed by the stationhouse adjustment program. I make this decision freely and voluntarily, and I have not been forced or coerced in any manner.

_____ _____

Juvenile's Signature *Date*

Certification of Parent(s), Guardian/Caregiver(s) or Designee(s)

(Read to Parents/Guardian/Caregiver/Designee)

I/we, _____, do hereby certify that I/we are the parent(s) or guardian/caregiver(s) or designee(s) of _____. I/we have read the entire agreement between my child and the stationhouse adjustment program prior to my

child signing the agreement. I have assisted my child in reading this form if it was necessary and have explained the form to my child and have answered any questions that he or she may have had. I/we do hereby agree to support his/her participation and compliance in the program and will enforce this agreement by informing the police department of any violations of its terms and/or conditions.

_____ _____

Signature of Parent, Guardian/Caregiver or Designee *Date*

_____ _____

Signature of Parent, Guardian/Caregiver or Designee *Date*

Certification of Victim/Complainant

(Read to Complainant)

I agree to have the above juvenile offense handled through the stationhouse adjustment program.

_____ _____

Signature of Victim/Complainant (or telephone authorization) *Date*

Certification of Law Enforcement Officer

I hereby certify that I have read this agreement. I have checked or caused to be checked the juvenile's prior history and have determined that the juvenile is a suitable candidate for the stationhouse adjustment program.

_____ _____

Signature of Law Enforcement Officer *Date*

Appendix B

Sample Stationhouse Adjustment Agreement – Short Form

(Must be read to juvenile and parent/guardian/caseworker/designee)

Case No.: _____ Date of Incident: _____

Arresting Officer: _____

Complainant: _____

Juvenile: _____

Ethnicity* _____ D.O.B. _____ Age _____ Sex: M / F

* 1. Caucasian 2. Black 3. Hispanic 4. Asian/Pacific Islander 5. American Indian 6. Southern Asian 7. _____
(If ethnicity is not apparent, ask the subject or her/his parent/guardian/caregiver/designee.)

Parent(s)/Guardian(s)/Designee: _____

Address: _____

Offense: _____

I _____ agree to have the juvenile listed above guided through
complainant/victim
the stationhouse adjustment program by the _____
law enforcement agency

I understand that _____ cannot be prosecuted before the juvenile
juvenile's name
court if the juvenile fulfills the conditions agreed below.

I _____ admit to my involvement in this offense. I also waive my
juvenile's name
right to a trial in this matter and elect that the above offense be adjusted by the law enforcement agency in this community instead of filing a juvenile complaint with the court. I agree to abide by the following:

Terms and Conditions

1. _____
   _____
   _____
2. _____
   _____
   _____
3. _____
   _____
   _____

Signatures:

Victim/Complainant: _____
(or telephone authorization)

Parent/Guardian/Designee: _____

Juvenile: _____

Officer/Detective: _____

Date: _____

Appendix C

Model Stationhouse Adjustment Warning

Juveniles and their parents, guardians or caregivers or responsible adult designee who participate in a stationhouse adjustment should be warned that any further delinquent offenses may result in serious consequences. A stationhouse adjustment is a substantial benefit to the juvenile, which permits the juvenile to avoid those consequences. However, this benefit is rarely extended to a juvenile more than once.

Possible Consequences of Delinquent Acts

- Juveniles who are charged with serious offenses, or who cannot be relied on to voluntarily appear at future court dates, may be held in detention while awaiting adjudication. Juveniles do not have a right to bail.
- A juvenile delinquency record will be created that will be accessible statewide. While juvenile records are for the most part confidential, records of certain juvenile arrest or adjudications may disqualify a juvenile from owning a firearm or obtaining employment in law enforcement or other sensitive positions.
- Juveniles who are 14 or older and charged with a crime will be fingerprinted and photographed.
- All juveniles, regardless of age, who are adjudicated delinquent for an offense that would be a crime if committed by an adult will be fingerprinted and will have to provide a DNA sample. Both the fingerprints and DNA will be maintained in state and federal databases.
- Serious juvenile offenses will require adjudication by the Family Court. Adjudication is the process by which a judge decides whether a juvenile should be found to have committed a delinquent offense. Juveniles do not have a right to a jury trial but they do have a right to an attorney. If a family is not indigent, the judge may order the family to pay for an attorney to represent their child in serious cases.
- If a juvenile is adjudicated delinquent, the court then must order a disposition. A disposition is similar to the sentence that is imposed on an adult criminal. Some of the most common dispositions are incarceration, short-term incarceration, probation, fines, restitution, driver's license suspension or postponement, community service, or mandatory attendance at some type of treatment program. In some circumstances the judge may also order parents or guardians to participate in the disposition or to pay for the juvenile's treatment.

Appendix D

Stationhouse Adjustment Quarterly Report

Law Enforcement Agency: _____

Name of Person Completing Report: _____

Date: _____

Check Quarter:

1st January 1 - March 31

2nd April 1 - June 30

3rd July 1 - September 30

4th October 1 - December 31

Completed reports must be submitted to the County Prosecutor's Office by the 15th day of month following the close of each quarter. Complete one line of this report for each stationhouse adjustment (1) considered and accepted (2) considered and rejected and (3) completed (including unsuccessful terminations) by your agency during the quarterly reporting period. Indicate the outcome of the adjustment by entering the appropriate code in column five. Codes are listed at the bottom of this form.

Age at Time of Offense	Ethnicity *enter code*	Sex	Prior Contacts	Statutory Citation Offense Adjusted	Outcome *enter code*

Age at Time of Offense	Ethnicity *enter code*	Sex	Prior Contacts	Statutory Citation Offense Adjusted	Outcome *enter code*

Notes:

Race = 1. Caucasian 2. Black 3. Hispanic 4. Asian/Pacific Islander 5. American Indian 6. Southern Asian 7. Other (specify above)

Prior Contacts = Indicate "Y" or "N" for any prior juvenile delinquency complaints or stationhouse adjustments

Statutory Cite = Indicate statutory citation for offense adjusted. If the offense is an ordinance violation simply write in "ordinance."

Outcome = 1. Successfully Completed 2. Parent/Guardian/Caregiver not available or refused participation 3. Juvenile refused participation 4. Victim insisted on formal complaint 5. Not adjusted due to lack of resources 6. Juvenile either committed a new offense or did not complete terms of adjustment agreement, resulting in the filing of a juvenile delinquency complaint 7. Agency considered and rejected stationhouse adjustment

Attach additional sheets as necessary.

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-5

ESTABLISHING UNIFORM STATEWIDE PROCEDURES FOR IMPLEMENTING THE VINE (VICTIM INFORMATION AND NOTIFICATION EVERYDAY) SYSTEM

WHEREAS, Article 1, paragraph 22 of the New Jersey Constitution guarantees the right of all crime victims to be treated with fairness, compassion and respect by the criminal justice system, and to such other specific rights as may be provided by the Legislature; and

WHEREAS, it is appropriate for New Jersey's criminal justice system to use the best available technology to make certain that crime victims are promptly and automatically notified when an offender is released from custody. Registered crime victims should also be able to confirm an offender's custodial status and location at any time and without any cost to the victim; and

WHEREAS, the New Jersey VINE (Victim Information And Notification Everyday) System is a state-of-the-art software system that uses data in the County Correction Information System (CCIS) operated by the Administrative Office of the Courts. The VINE System tracks when an offender is released from custody or is transferred within the correctional system, and can automatically alert crime victims who elect to register with the System; and

WHEREAS, on or about January, 2006, the VINE System will be operational in all twenty-one counties across the State; and

WHEREAS, it is necessary and appropriate to establish statewide procedures for use by all law enforcement agencies to ensure the uniform and efficient implementation of the VINE System;

NOW, THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby **DIRECT** that the following procedures be implemented:

1. Law Enforcement Agencies

A. A Victim Notification Form (VNF), DCJ Revised 3-10-05, shall be completed by a law enforcement officer when either an indictable offense or a domestic violence offense has been reported (See Domestic Violence Procedures Manual).

Law enforcement officers should verify that the victim's name and telephone

number are legible and accurate. Accurate victim contact information is critical to ensure that the victim receives notification when an offender is released from the county correctional facility or the state prison system.

B. The VNF and contact information provided by the victim are to be kept confidential and are not discoverable (See N.J.S.A. 2C:25-26c for Domestic Violence Victims).

C. Law enforcement officers should explain the NJ VINE program to victims. If a victim is interested in participating in the NJ VINE program, the officer should instruct the victim to provide a four-digit personal identification number (PIN) to be inserted in the designated space on the VNF. The officer should then give the victim a copy of the completed VNF, a NJ VINE brochure and a NJ VINE tear-off form.

D. Immediately following an offender's arrest, the law enforcement agency making the arrest ("arresting agency") should notify the victim or victim's family of the arrest (the NJ VINE program will not provide arrest notifications). After the victim is notified of the offender's arrest, the arresting agency shall fax a copy of the VNF to the respective County Prosecutor's Victim-Witness Coordinator or, when appropriate, the Division of Criminal Justice Victim-Witness Coordinator. If the offender is charged with a domestic violence offense, the arresting agency shall fax a copy of the VNF to the Family Court.

E. Notification of an offender's change of custody shall be facilitated through NJ VINE to the victim or victim's family within twenty-four hours of the release when the offender is charged with homicide, vehicular homicide, sex offenses, robbery, carjacking, aggravated assault, arson, domestic violence offenses, kidnapping, child abuse or stalking. Notification to the victim of the release of an offender charged with other offenses shall be made within forty-eight hours after release from custody (See IV. Notification Procedures).

F. When the offender is not lodged in the county correctional facility, notification to the victim of an offender's release is the obligation of the law enforcement agency conducting the criminal investigation ("investigating agency").

2. Arrests on a Warrant or for Violations of Probation or Parole

A. Where an offender is arrested on a county warrant, the VNF will not be required until the offender is brought back to the county issuing the original warrant.

B. When an offender has been arrested for violating probation or parole, the arresting agency should follow the established procedures in their county for completing a VNF.

3. County Correctional Facilities

A. The arresting agency must present a completed VNF to the county correctional facility when an offender charged with an indictable offense or domestic violence-related offense is committed to the facility.

B. Once the offender has been committed to a county correctional facility, it is the responsibility of that facility to notify the victim of any change in the custody of the offender. The county correctional facility will notify victims by activating the NJ VINE system through CCIS.

C. In counties where offenders may be released from custody by the municipal court judge, the county correctional facility will activate NJ VINE when an offender is released to the municipal court. The system will notify the victim that the offender was released from the county correctional facility to the municipal court and that the offender may be released into the community. In these counties, procedures for informing NJ VINE of an offender's custody status following a municipal court appearance will be promulgated by the County Prosecutors.

D. The county correctional facility will activate NJ VINE when an offender is transferred from a county correctional facility to a state prison. NJ VINE will notify the victims of the transfer and advise as to whether they need to re-register with NJ VINE.

4. Notification Procedures

A. After the county correctional facility has activated NJ VINE, the system will attempt to notify the victim by telephone of the offender's custody change at one-half hour intervals for a twenty-four hour period or until confirmation is received that the victim has received the notification. If after the first three attempts, the NJ VINE system has been unable to contact the victim, the system will automatically telephone either the investigating agency or the county correctional facility, as determined by each county, to alert that notification to the victim has been unsuccessful. If a county has opted to have the investigating agency telephoned and the agency does not answer the telephone

call after three attempts, the system will then automatically telephone the county correctional facility. Simultaneously, NJ VINE will continue to attempt to notify the victim at one-half hour intervals for the twenty-four hour period. The County Prosecutors will promulgate procedures for victim notification when the NJ VINE system has been unsuccessful within the proscribed time.

B. If a law enforcement officer attempts to notify a victim of an offender's release, a copy of the updated VNF showing those attempts and contact must be faxed to the respective County Prosecutor's Victim-Witness Coordinator or, when appropriate, to the Division of Criminal Justice Victim-Witness Coordinator.

C. Updates to victim information will only be made by the Victim-Witness Coordinators in each county or, when appropriate, by the Division of Criminal Justice Victim-Witness Coordinator.

5. Other Notifications to Crime Victims

The New Jersey VINE System is designed to provide notifications to registered victims concerning an offender's release from custody or the offender's transfer from one correctional facility to another. All other required notifications to crime victims, such as a change in case status, will continue to be done pursuant to procedures promulgated by the County Prosecutors. Nothing in this Directive shall be construed to limit or preempt the authority of a County Prosecutor to establish procedures to ensure that crime victims are promptly notified of scheduled court hearings and events as may be required by Article 1, paragraph 22 of the New Jersey Constitution, N.J.S.A. 52:4B-44, N.J.S.A. 2C:25-26.1, N.J.S.A. 30:4-6.1, N.J.S.A. 39:5-52, N.J.S.A. 30:123.53a or any other law, and as may be required by the *Attorney General Standards to Ensure the Rights of Crime Victims*.

6. Questions

All questions concerning the interpretation, implementation or enforcement of this law enforcement Directive shall be addressed to the Attorney General or his or her designee.

7. Effective Date

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superceded by the Attorney General.

Given under my hand and seal, this 20 day of December, in the year of our Lord Two Thousand and Five, and of the Independence of the United States, the Two Hundred and Twenty-Ninth.

Peter C. Harvey
Attorney General

Attest:

Vaughn L. McKoy, Director
Division of Criminal Justice

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE 2006-1

NEW JERSEY FORENSIC SCIENCE COMMISSION

WHEREAS, it is the public policy of New Jersey, in accordance with N.J.S.A. 52:17B-98, to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State; and

WHEREAS, the Attorney General is further empowered to establish procedures and implement administrative strategies to enhance and assure the integrity of criminal investigations and prosecutions in New Jersey; and

WHEREAS, in recent years, there have been tremendous advances in the area of forensic science, which technological progress has contributed significantly to the efficacy and efficiency of law enforcement; and

WHEREAS, through its criminal justice system, the State of New Jersey has access to an impressive array of forensic science experts who possess a high degree of skill, knowledge and experience in forensic testing and analysis, including state and county forensic and toxicology laboratory personnel, county prosecutor's offices, the State Police, and the medical examiner system;

WHEREAS, New Jersey has made significant strides in its efforts to maximize the utility of these advanced technologies and human resources in the

criminal justice system, as evidenced by the May 17, 2004 opening of the New Jersey Forensic Science Center, a state-of-the-art forensic laboratory that is part of the Department of Law and Public Safety and located in Hamilton Township, which provides critical technology to assist law enforcement in crime scene investigations and crime solving; and

WHEREAS, the extraordinary resources of New Jersey's state-of-the-art forensic science laboratory and county laboratories can be maximized to enable more effective crime solving and criminal prosecutions in all twenty-one (21) counties; and

WHEREAS, it is in the public interest to optimize the efficiency and productivity of New Jersey's forensic science laboratory by establishing and implementing best practices in the provision of forensic science services throughout the State in an ordered and coordinated fashion;

NOW, THEREFORE, I, Peter C. Harvey, Attorney General of the State of New Jersey, do hereby **ORDER** and **DIRECT** the following:

1. Establishment of the Forensic Science Commission.

a. There is created in the Department of Law and Public Safety the Forensic Science Commission, which shall consist of thirty-two (32) voting members appointed by the Attorney General, including representatives selected from among state and county forensic experts, forensic pathologists, forensic toxicologists,

prosecutors and crime scene examiners. The Attorney General shall designate the chairperson(s) and vice-chairperson of the Commission. Any vacancy on the Commission shall be filled by appointment of the Attorney General.

b. Each member shall serve for an initial term of two (2) years, and thereafter each member shall serve until that member's successor is appointed.

c. Members of the Commission shall receive no compensation for their services.

d. The Commission shall meet no less than four times per year and up to twelve times per year at the direction of the chairperson(s).

e. The Commission shall establish rules and procedures regarding the conduct of its meetings.

2. Duties and Responsibilities of the Forensic Science Commission.

a. The Commission shall promulgate a forensic plan for the State of New Jersey, which shall provide for a clear and consistent state-wide approach to forensic science and crime scene investigation.

b. The Commission shall create an accreditation system for all forensic laboratories in the State of New Jersey, including establishing best practices and recommendations for evidence collection and submission, criminalistic examinations, laboratory protocols and testing procedures in every major forensics area and by establishing training recommendations for staff and creating a "flow-

scheme" for forensic evidence processing.

c. The best practices standards shall be designed to accomplish the following objectives:

(1) establish and maintain the effectiveness, efficiency, reliability and accuracy of forensic laboratories in the State;

(2) ensure that forensic analyses are performed in accordance with the highest scientific standards practicable;

(3) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system by avoiding duplication of efforts, resources and activities and streamlining procedures;

(4) establish efficient case processing which is clear, concise, direct and uniform in order to achieve the lowest turn-around times to deliver the forensic analysis results for effective prosecution of criminal cases;

(5) ensure that all information relevant to solve crimes is extracted from evidence collected and analyzed;

(6) establish minimum requirements for the quality and maintenance of equipment; and

(7) ensure compatibility with other state and federal forensic laboratories to the extent necessary to share and exchange information, data and results of forensic tests and analyses.

d. The Commission shall report annually to the Attorney General, through

the Division of Criminal Justice, regarding the State Forensic Plan and any recommendations the Commission may make regarding the Plan.

3. Access to Departmental Resources.

The Commission shall be authorized to call upon the expertise and assistance of every division, agency, office, bureau and unit within the Department of Law and Public Safety in order to carry out its mission. Each division, agency, office, bureau and unit within the Department of Law and Public Safety is hereby required, to the extent not inconsistent with law, to cooperate with the Commission and to provide such assistance the Commission may require to accomplish the purposes of this Directive.

PETER C. HARVEY
ATTORNEY GENERAL

Attest:

Vaughn L. McKoy
Director, Division of Criminal Justice

DATED: 1/10/06

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 081
TRENTON, NJ 08625-0081

RICHARD J. CODEY
Acting Governor

PETER C. HARVEY
Attorney General

THOMAS J. O'REILLY
Administrator

MEMORANDUM

TO: All Division Directors & Agency Heads
Department of Law and Public Safety

FROM: Thomas J. O'Reilly
Administrator

DATE: January 17, 2006

SUBJECT: Attorney General Administrative Directive No. 2006-1
Establishing the Office of State Police Affairs within
the Department of Law and Public Safety

The attached Directive issued by Attorney General Peter C. Harvey is provided for your information.

TJO/pk
attch.
cc: Attorney General Executive Staff
All Chief Administrative Officers
OAG Library
Principal Staff

ATTORNEY GENERAL ADMINISTRATIVE DIRECTIVE 2006-1

OFFICE OF STATE POLICE AFFAIRS

WHEREAS, the Attorney General and employees of the Department of Law and Public Safety are committed to ensuring that the people of the State of New Jersey are served by law enforcement professionals who conduct themselves in accordance with the highest standards of integrity, proficiency and accountability; and

WHEREAS, the Attorney General, with the responsibility for coordinating all of the law enforcement activities of the Department of Law and Public Safety pursuant to N.J.S.A. 52:17B-4 and N.J.S.A. 52:17B-27, is empowered to supervise the organization of the Department and to implement administrative strategies which coordinate the law enforcement activities of the Department to enhance and assure integrity in the performance of government functions; and

WHEREAS, the Final Report of the State Police Review Team (July 2, 1999) recommended the creation of a special unit within the Office of the Attorney General, to be headed by an Assistant Attorney General who reports to the Attorney General, with the responsibility for oversight of certain aspects of the operations of the Division of State Police; and

WHEREAS, in December 1999, in order to promote law enforcement integrity, deter misconduct, foster community support for the New Jersey Division of State Police and its troopers, and achieve and maintain good practices and procedures for trooper supervision and management, the State of New Jersey entered into a Consent Decree with the United States Department of Justice, Civil

No. 99-5970 (MLC) ("Consent Decree"); and

WHEREAS, the Consent Decree provides for the creation by the Attorney General of an office that is responsible for ensuring implementation of the terms of the Consent Decree, auditing the manner in which the State receives, investigates and adjudicates misconduct allegations involving State troopers, and coordinating with the United States Department of Justice and the Independent Monitoring Team (IMT) appointed pursuant to the Consent Decree; and

WHEREAS, the Office of State Police Affairs (OSPA) was established in the Office of the Attorney General in the Department of Law and Public Safety, with the responsibility for ensuring the implementation of the terms of the Consent Decree as well as the remedial steps and actions described in the Interim and Final Reports of the State Police Review Team; and

WHEREAS, the OSPA has since its inception ably fulfilled its mission by assisting in the implementation of reform recommendations made by the State Police Review Team and, acting in concert with the Attorney General, State Police leadership and enlisted members, the IMT and the United States Department of Justice, has functioned to ensure full compliance with the terms of the Consent Decree; and

WHEREAS, the OSPA and its assigned personnel have developed a heightened level of proficiency and unique insight into the operations of the State Police through the performance of various training and oversight functions, such as overseeing the training of troopers and trooper candidates on cultural

awareness, law enforcement ethics and leadership, constitutional law pertaining to search and seizure and equal protection, and other key issues, monitoring State Police internal investigative processes, prosecuting non-criminal discipline cases brought against troopers accused of misconduct, and conducting internal affairs investigations where the State Police's own internal affairs unit has a conflict of interest; and

WHEREAS, since March 2000, the Independent Monitoring Team (IMT) appointed by the court has, through its coordinated efforts with the OSPA, performed numerous functions under the Consent Decree, including monitoring and reporting on the State's compliance with the Consent Decree, which encompasses review and evaluation of the quality and timeliness of appropriate samples of misconduct investigations, disciplinary actions and interventions, supervisory actions, Management Awareness and Personnel Performance System (MAPPS) data and reports, samples of consent search forms and reports, non-consensual search and drug detection canine reports, motor vehicle stop reports and logs, mobile video recorder (MVR) tapes, and supervisory reviews; and

WHEREAS, the IMT has periodically collected data on the performance of tasks required under the Consent Decree and independently evaluated State Police compliance, and beginning in the year 2000 has biannually issued detailed reports which cover an approximate six months performance period; and

WHEREAS, in April 2004, in response to a joint motion by the State and the Department of Justice, the court terminated oversight by the IMT of the internal

affairs investigations conducted by the State Police Office of Professional Standards, which had previously been required under the Consent Decree, and the OSPA has independently assumed the performance of that critical monitoring function; and

WHEREAS, the State Police's steady progress toward and achievement of full compliance with all of the requirements of the Consent Decree, and the OSPA's role in assisting the State Police achieve these outstanding results, is objectively documented by the assessments set forth in the 13 progress reports filed periodically by the IMT; and

WHEREAS, by its express terms, the Consent Decree is subject to termination by motion, which may be made at any time after both five years have elapsed since entry of the Consent Decree and substantial compliance with the terms of the Consent Decree has been maintained for no less than two years or, prior to that time, on joint motion by the United States and the State if the IMT finds that the State has been in substantial compliance with the terms of the Consent Decree for a period of no less than two years; and

WHEREAS, once the threshold criteria for a joint motion to terminate the Consent Decree have been achieved, and upon termination of the Consent Decree, the IMT will cease to perform the oversight and monitoring functions it has performed in accordance with the terms of the Consent Decree; and

WHEREAS, the objective monitoring and independent oversight functions performed by the IMT have helped promote and support the vigorous, lawful, and

non-discriminatory implementation of law enforcement practices and procedures by the State Police, which has contributed to a system dedicated to protecting the safety and well-being of New Jersey's citizens while maintaining the public's confidence in the institutional integrity of the State Police; and

WHEREAS, in recognition of the strong public interest in perpetuating an appropriate oversight mechanism to serve the salutary purposes of helping maintain, if not exceed, the quality and standards for the equitable and effective provision of law enforcement services established under the Consent Decree, it is appropriate to utilize the OSPA, which has amassed a demonstrable record of experience, integrity and competence, as the successor entity responsible for assuming the oversight and monitoring functions performed by the Independent Monitoring Team (IMT) under the Consent Decree; and

NOW, THEREFORE, I, Peter C. Harvey, Attorney General of the State of New Jersey, do hereby **ORDER** and **DIRECT** the following:

1. For the purpose of providing a mechanism for the continued objective monitoring and independent oversight of the Division of State Police in contemplation of the dissolution of the Consent Decree between the State of New Jersey and the United States Department of Justice, there is hereby established in the Department of Law and Public Safety an Office of State Police Affairs.

2. The Office shall be under the immediate supervision of a director who shall be appointed by the Attorney General and shall be qualified by training,

education and experience in the fields of law enforcement, investigation, criminal practice and procedure and police administration to fulfill the duties and responsibilities prescribed herein. The Director shall operate under the authority and direct supervision of the Attorney General, and shall serve at the pleasure of the Attorney General.

3. Subject to the approval of the Attorney General, the Director shall organize the work of the Office in such bureaus or other organizational units as shall be necessary for its efficient and effective operation and shall assign to the Office such employees in the Department of Law and Public Safety as may be necessary to assist the Director in the performance of his or her duties. All employees of the Office of State Police Affairs, except for secretarial and clerical personnel, shall be deemed confidential employees for the purposes of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-1 et seq.), as revised and amended.

4. The primary duties and responsibilities of the Office of State Police Affairs shall include, but shall not be limited to, the following:

a. Monitor, review, evaluate, audit and report on the conduct of disciplinary, misconduct and internal affairs investigations, actions and interventions, including but not limited to disciplinary, misconduct and internal affairs investigations, actions and interventions which involve allegations of racial profiling, excessive use of force, violations of constitutional rights, discriminatory treatment, and domestic violence perpetrated by troopers;

b. Monitor, review, evaluate, audit and report on the conduct of State Police field operations including, but not limited to, motor vehicle stops, consensual and non-consensual searches of motor vehicles, the deployment of drug-detection canines during motor vehicle stops, the utilization of and data recorded by mobile video and audio equipment in patrol vehicles, and supervisory and management review of any of the foregoing;

c. Monitor, review, evaluate, audit and report on training classes and curriculum for troopers and trooper recruits in the following disciplines: cultural awareness, including race and religious sensitivity, gender awareness, law enforcement ethics and leadership, constitutional law pertaining to search and seizure and equal protection, and other relevant law enforcement issues deemed necessary or appropriate by the Attorney General;

d. Conduct the administrative prosecution of disciplinary and misconduct actions filed against members of the State Police and supersede the State Police's Office of Professional Standards (OPS) in the investigation and disposition of internal affairs matters when, as determined by the Director, circumstances exist which would make investigation and disposition by OPS inappropriate;

e. Refer allegations of any criminal activity by any member of the State Police to the Division of Criminal Justice for investigation and prosecution or other disposition, as appropriate;

f. As specifically directed by the Attorney General, aid and assist the Division of Criminal Justice in conducting the investigation and criminal

prosecution of any member of the State Police alleged to have engaged in criminal activity;

g. Monitor, review, evaluate, audit and report on recruitment efforts and activities for prospective troopers, the conduct of background investigations of State Police academy applicants and matters pertaining to the promotions or proposed promotions of State Police members; and

h. Engage in any other activities, as directed by the Attorney General, which would serve to further the mission of the Office of State Police Affairs consistent with the provisions of this Administrative Directive.

5. To carry out its duties and responsibilities under this Directive, the Office of State Police Affairs shall have all of the powers conferred by law upon the Department of Law and Public Safety, subject to the approval of and as delegated by the Attorney General, and shall be empowered to:

a. Draw upon the expertise and assistance of every division, agency, office, bureau and unit within the Department of Law and Public Safety and any county or local law enforcement agency; and

b. Access information possessed or maintained by any division, agency, office, bureau and unit within the Department of Law and Public Safety related to the work of the Office of State Police Affairs.

6. Every division, agency, office, bureau and unit within the Department of Law and Public Safety shall cooperate with the Director and the Office of State Police Affairs as is necessary to effectuate the purposes of this Directive and every

division, agency, office, bureau and unit within the Department shall make available such information to the Office of State Police Affairs as is necessary, as determined by the Director, to effectuate the purposes of this Directive.

7. The Director shall prepare and issue a report on an annual basis which provides for an objective and independent evaluation of the provision of law enforcement services and administrative operations of the Division of State Police as they relate to the subject matter of this Directive. Such reports shall utilize and be based upon data collected by the Office through its independent monitoring and review functions, duties and activities as set forth in this Directive. Such reports shall be submitted to the Attorney General and may, in the discretion of the Attorney General, be made available to the public.

8. Any provision of any Departmental administrative directive, order, policy or opinion adopted prior to the effective date of this Directive which is inconsistent with the provisions of this Directive is hereby superseded.

9. This Directive shall be effective immediately.

PETER C. HARVEY
ATTORNEY GENERAL

Attest:

B. Stephan Finkel
B. Stephan Finkel, Assistant Attorney General

DATED: 1/13/06

ATTORNEY GENERAL DIRECTIVE, 2006-02

SUPERSEDING DIRECTIVE REGARDING ELECTRONIC RECORDATION OF STATIONHOUSE INTERROGATIONS

(January 17, 2006)

On December 17, 2004, the Attorney General and the County Prosecutors' Association amended a prior policy statement so as to require that when a statement is obtained following a stationhouse interrogation in any case involving a first, second or third degree crime (or any case involving a juvenile age 14 or older suspected of committing a crime enumerated in N.J.S.A. 2A:4A-26a(2)(a)), the law enforcement entity involved either video or audio record any final statement obtained, or any acknowledgment by the suspect of the content of a written statement. That Amended Policy also put into effect a staggered time table with regard to effective dates. For all first and second degree crimes, the electronic recording requirement would go into effect on September 1, 2005. For third degree and juvenile cases, the requirement was to go into effect on January 1, 2006. The Amended Policy also noted that the Attorney General, in consultation with the County Prosecutors' Association, would subsequently make a final determination as to whether to issue a law enforcement directive "requiring expansion of the electronic recordation policy so as to cover the entire stationhouse interrogation process in certain cases."

Thereafter, on October 14, 2005, the New Jersey Supreme Court adopted the recommendations of its Special Committee on the Recordation of Custodial Interrogations. Most significantly, the recommendations included a requirement that police electronically record the entirety of all custodial interrogations occurring in a place of detention for cases in which the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to R. 3:3-1c. The effective dates for that requirement are staggered so as to go into effect for all covered homicide cases on January 1, 2006, and for all other offenses specified in R. 3:3-1c on January 1, 2007.

Upon review and consideration of these two sets of requirements, the Attorney General and the County Prosecutors' Association have determined that having different time frames may be difficult to implement and may cause confusion in the law enforcement community. Accordingly, the Attorney General, the Director of the Division of Criminal Justice, and the County Prosecutors have jointly determined that the two sets of requirements must be harmonized to the greatest extent possible. Electronic recording is a valuable tool to law enforcement. It insures that the suspect's or defendant's statement is accurately recorded and voluntarily made. Electronic recording also protects

detectives/investigators and prosecutors from claims of fabrication, omission or lack of thoroughness.

It is hereby adopted that, consistent with the Supreme Court's actions of October 14, 2005, law enforcement officials shall electronically record the entirety of all custodial interrogations occurring in a place of detention. This recording requirement shall apply to all first, second and third degree crimes. Also, it shall apply to adults and juveniles alike.

The effective dates for the above requirements are staggered. The recording requirement for all homicides listed in R. 3:17 shall go into effect on January 1, 2006. The recording requirement for all other first and second degree crimes shall go into effect on October 1, 2006. The recording requirement for all third degree crimes shall go into effect on January 1, 2007.

All existing policy statements and Directives that are in any way inconsistent with the foregoing provisions are hereby superseded and rescinded.

Peter C. Harvey, Attorney General

ATTEST:

Vaughn L. McKoy, Director

Dated: January 17, 2006

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
25 MARKET STREET - BOX 086 - TRENTON, NJ 08625-0086
PHONE: 609-984-6500

MEMORIALIZATION OF ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATION OF SUSPECT IN CUSTODIAL STATION HOUSE SETTING

County and Indictment No.: _____

Assistant Prosecutor Preparing Form: _____

Interviewing Officer(s) and Police Department:

_____

Type of Crime Charged in Indictment for Which Recordation is Required Under R. 3:17:

_____

Defendant: _____

Date(s) of Interrogation: _____

(a) Was the interrogation electronically recorded? *(check one)* Yes ☐ No ☐
If "Yes" answer (b). If "No" answer (c).

(b) What method of electronic recording was used? *(check one)* Video ☐ Audio ☐ Both ☐

(c) Reason not electronically recorded, if applicable. *(check all that apply)*

_____ Electronic recordation was not feasible.

_____ The statement was a spontaneous statement made outside the course of the interrogation.

_____ The statement was made in response to questioning that is routinely asked during the processing of the arrest of a suspect.

_____ The statement was made by a suspect who indicated, prior to the statement, that he or she would participate in the interrogation only if it were not recorded.

_____ The statement was made during a custodial interrogation that was conducted out-of-state.

_____ The statement was given at a time when the accused was not a suspect for the crime to which that statement relates while the accused was being interrogated for a different crime that does not require recordation.

_____ The interrogation during which the statement was given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed:

_____ Other: *(Explain below)*

_____

Completed original forms should be mailed to:

Division of Criminal Justice - Appellate Bureau
25 Market Street - Box 086 - Trenton, NJ 08625-0086

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2006-5

WHEREAS, it is decidedly in the public interest that the entire law enforcement community should use only clearly acceptable force; and

WHEREAS, it is appropriate to ensure and enhance public confidence in the manner in which the use of deadly force by law enforcement is reviewed to assure adequate justification for the use of such force and to ensure that all investigations of the use of force are conducted in a thorough, fair and impartial manner; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17b-98, states that it is the public policy of this State:

> to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-107a, further states:

> Whenever in the opinion of the Attorney General the interests of the State will be furthered by so doing, the Attorney General may (1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding.

WHEREAS, in order to promote statewide uniformity and accountability, it is appropriate for the Attorney General, in cooperation and consultation with the County Prosecutors, to issue and enforce revised and updated procedures for review of the use of force by law enforcement officers statewide;

NOW, THEREFORE, I, Stuart Rabner, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby direct that:

1. The Director of the Division of Criminal Justice or his designee must be notified immediately, in a manner prescribed by the Division, of any use of force by a law enforcement officer involving death or serious bodily injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm by a law enforcement officer. For the purposes of this Directive, "immediate" notification to the Division

of Criminal Justice shall mean notification to the Director or his designee before any investigation of the incident is undertaken other than to secure the scene and to render medical assistance as required in the circumstances.

2. Investigations pursuant to this Directive by the State will be conducted by the Attorney General's Shooting Response Team (SRT). The SRT is staffed by Division of Criminal Justice investigators and members of the Major Crimes Unit of the Division of State Police under the direction and supervision of an Assistant Attorney General or Deputy Attorney General. The SRT will report directly to the Attorney General or his designee. All persons assigned to the SRT will operate independently from their ordinary chain of command and will report directly through the Deputy Attorney General supervising the investigation to the Attorney General or his designee.

3. When a law enforcement officer employed by a municipal or county agency is involved in the use of force as defined in Paragraph 1, the County Prosecutor's Office in the county of occurrence will conduct the investigation. The Division of Criminal Justice may supersede in the investigation when there is a conflict or if the matter would be better handled at the state level. In the event that the Division of Criminal Justice supersedes, the SRT shall conduct the investigation.

4. When a Prosecutor's Detective or Investigator, Assistant Prosecutor, or Prosecutor is involved in the use of force as defined in Paragraph 1, or a law enforcement officer assigned to a task force supervised by a County Prosecutor's Office is involved in the use of deadly force as defined in Paragraph 1 while acting in the course of such assignment, the SRT will conduct the investigation as described in Paragraph 2. In all such cases, the Director of Criminal Justice, or his designee, shall be notified immediately of the use of deadly force as defined in Paragraph 1.

5. When a State Investigator, Deputy Attorney General or Assistant Attorney General employed by the Division of Criminal Justice or any other law enforcement officer employed by any State or federal agency is involved in the use of force as defined in Paragraph 1, the Director of Criminal Justice or his designee will be immediately notified and the SRT will conduct the investigation, unless the Attorney General or his designee directs the County Prosecutor's Office in the county of occurrence to conduct the investigation. When a law enforcement officer employed by any State, interstate police, or federal agency other than the Division of Criminal Justice or State Police is involved in the use of force as defined in Paragraph 1, the County Prosecutor's Office in the county of occurrence shall immediately notify the Director of Criminal Justice or his designee. The Director or his designee will determine whether it is appropriate to assign the SRT to conduct the investigation or assist the County Prosecutor's Office in conducting the investigation. A non-inclusive list of other State law enforcement agencies include the Bureau of Parole, Department of Corrections, Juvenile Justice Commission, Transit Police, State university or college campus police, Human Services Police, Commission of Investigation, and any armed member of the Division of Fish and Wildlife or State Park Service.

6. When a member of the State Police or any agency supervised by the State Police is involved in the use of force as defined in Paragraph 1, the State Police shall immediately notify

the Division of Criminal Justice. The Division will have the discretion to assign the SRT to conduct the investigation with the SRT or to refer the matter to the appropriate County Prosecutor to conduct the investigation with the assistance of the SRT. The SRT and the assigned Deputy or Assistant Attorney General or Assistant Prosecutor shall report directly to the Attorney General or his designee.

7. Notwithstanding the provisions of Paragraph 3, when a law enforcement officer employed by a municipal or county agency is assigned to a task force or similar joint or cooperative operation or program supervised by or undertaken in conjunction with the State Police, and such law enforcement officer is involved in the use of force as defined in Paragraph 1 while acting in the course of such assignment, the Director of Criminal Justice, or his designee, shall be notified immediately, and the investigation shall be conducted pursuant to Paragraph 6 unless otherwise directed by the Attorney General or his designee.

8. The Attorney General may issue and periodically revise Standards governing the investigation of the use of deadly force by law enforcement officers. These Standards may govern the composition, operations, supervision and investigation protocols of the SRT, and may also govern investigations conducted by County Prosecutors' Offices. Any Standards issued by the Attorney General pursuant to this Paragraph are fully incorporated into this Law Enforcement Directive as if set out fully herein, shall be binding upon all affected law enforcement agencies, and shall automatically supersede and take precedence over any rules and regulations, standing operating procedures, guidelines or protocols issued or employed by the affected law enforcement agencies.

9. Where the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to a grand jury.

10. The Director of the Division of Criminal Justice, or his designee, must be informed of the outcome of all investigations into use of force as defined in Paragraph 1 by law enforcement officers immediately after the conclusion of the investigation by the County Prosecutor and prior to the Prosecutor announcing the findings of a grand jury. The Attorney General or his designee and/or the Director of the Division of Criminal Justice, or designee, as appropriate, will review all such investigations to ensure compliance with all applicable laws, directives, standards and policies.

11. While not specifically permitted under case law or court rule, in some counties grand juries have been permitted to issue "reports" of their findings. The Administrative Director of the Courts and the Attorney General have determined that such "reports" are not authorized by law and that their issuance should cease. Henceforth no "reports" are to issue from grand juries. Prosecutors may, when approved by the Director of the Division of Criminal Justice, issue reports and recommendations based upon specific issues or cases. In no event shall such public reports be based on or disclose grand jury material unless approved by the assignment judge.

12. This Directive shall take effect immediately.

Stuart Rabner
Attorney General

ATTEST:

Gregory A. Paw
Director, Division of Criminal Justice

Dated: Dec. 13, 2006

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2006-5

WHEREAS, it is decidedly in the public interest that the entire law enforcement community should use only clearly acceptable force; and

WHEREAS, it is appropriate to ensure and enhance public confidence in the manner in which the use of deadly force by law enforcement is reviewed to assure adequate justification for the use of such force and to ensure that all investigations of the use of force are conducted in a thorough, fair and impartial manner; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17b-98, states that it is the public policy of this State:

> to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-107a, further states:

> Whenever in the opinion of the Attorney General the interests of the State will be furthered by so doing, the Attorney General may (1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding.

WHEREAS, in order to promote statewide uniformity and accountability, it is appropriate for the Attorney General, in cooperation and consultation with the County Prosecutors, to issue and enforce revised and updated procedures for review of the use of force by law enforcement officers statewide;

NOW, THEREFORE, I, Stuart Rabner, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby direct that:

1. The Director of the Division of Criminal Justice or his designee must be notified immediately, in a manner prescribed by the Division, of any use of force by a law enforcement officer involving death or serious bodily injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm by a law enforcement officer. For the purposes of this Directive, "immediate" notification to the Division

of Criminal Justice shall mean notification to the Director or his designee before any investigation of the incident is undertaken other than to secure the scene and to render medical assistance as required in the circumstances.

2. Investigations pursuant to this Directive by the State will be conducted by the Attorney General's Shooting Response Team (SRT). The SRT is staffed by Division of Criminal Justice investigators and members of the Major Crimes Unit of the Division of State Police under the direction and supervision of an Assistant Attorney General or Deputy Attorney General. The SRT will report directly to the Attorney General or his designee. All persons assigned to the SRT will operate independently from their ordinary chain of command and will report directly through the Deputy Attorney General supervising the investigation to the Attorney General or his designee.

3. When a law enforcement officer employed by a municipal or county agency is involved in the use of force as defined in Paragraph 1, the County Prosecutor's Office in the county of occurrence will conduct the investigation. The Division of Criminal Justice may supersede in the investigation when there is a conflict or if the matter would be better handled at the state level. In the event that the Division of Criminal Justice supersedes, the SRT shall conduct the investigation.

4. When a Prosecutor's Detective or Investigator, Assistant Prosecutor, or Prosecutor is involved in the use of force as defined in Paragraph 1, or a law enforcement officer assigned to a task force supervised by a County Prosecutor's Office is involved in the use of deadly force as defined in Paragraph 1 while acting in the course of such assignment, the SRT will conduct the investigation as described in Paragraph 2. In all such cases, the Director of Criminal Justice, or his designee, shall be notified immediately of the use of deadly force as defined in Paragraph 1.

5. When a State Investigator, Deputy Attorney General or Assistant Attorney General employed by the Division of Criminal Justice or any other law enforcement officer employed by any State or federal agency is involved in the use of force as defined in Paragraph 1, the Director of Criminal Justice or his designee will be immediately notified and the SRT will conduct the investigation, unless the Attorney General or his designee directs the County Prosecutor's Office in the county of occurrence to conduct the investigation. When a law enforcement officer employed by any State, interstate police, or federal agency other than the Division of Criminal Justice or State Police is involved in the use of force as defined in Paragraph 1, the County Prosecutor's Office in the county of occurrence shall immediately notify the Director of Criminal Justice or his designee. The Director or his designee will determine whether it is appropriate to assign the SRT to conduct the investigation or assist the County Prosecutor's Office in conducting the investigation. A non-inclusive list of other State law enforcement agencies include the Bureau of Parole, Department of Corrections, Juvenile Justice Commission, Transit Police, State university or college campus police, Human Services Police, Commission of Investigation, and any armed member of the Division of Fish and Wildlife or State Park Service.

6. When a member of the State Police or any agency supervised by the State Police is involved in the use of force as defined in Paragraph 1, the State Police shall immediately notify

the Division of Criminal Justice. The Division will have the discretion to assign the SRT to conduct the investigation with the SRT or to refer the matter to the appropriate County Prosecutor to conduct the investigation with the assistance of the SRT. The SRT and the assigned Deputy or Assistant Attorney General or Assistant Prosecutor shall report directly to the Attorney General or his designee.

7. Notwithstanding the provisions of Paragraph 3, when a law enforcement officer employed by a municipal or county agency is assigned to a task force or similar joint or cooperative operation or program supervised by or undertaken in conjunction with the State Police, and such law enforcement officer is involved in the use of force as defined in Paragraph 1 while acting in the course of such assignment, the Director of Criminal Justice, or his designee, shall be notified immediately, and the investigation shall be conducted pursuant to Paragraph 6 unless otherwise directed by the Attorney General or his designee.

8. The Attorney General may issue and periodically revise Standards governing the investigation of the use of deadly force by law enforcement officers. These Standards may govern the composition, operations, supervision and investigation protocols of the SRT, and may also govern investigations conducted by County Prosecutors' Offices. Any Standards issued by the Attorney General pursuant to this Paragraph are fully incorporated into this Law Enforcement Directive as if set out fully herein, shall be binding upon all affected law enforcement agencies, and shall automatically supersede and take precedence over any rules and regulations, standing operating procedures, guidelines or protocols issued or employed by the affected law enforcement agencies.

9. Where the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to a grand jury.

10. The Director of the Division of Criminal Justice, or his designee, must be informed of the outcome of all investigations into use of force as defined in Paragraph 1 by law enforcement officers immediately after the conclusion of the investigation by the County Prosecutor and prior to the Prosecutor announcing the findings of a grand jury. The Attorney General or his designee and/or the Director of the Division of Criminal Justice, or designee, as appropriate, will review all such investigations to ensure compliance with all applicable laws, directives, standards and policies.

11. While not specifically permitted under case law or court rule, in some counties grand juries have been permitted to issue "reports" of their findings. The Administrative Director of the Courts and the Attorney General have determined that such "reports" are not authorized by law and that their issuance should cease. Henceforth no "reports" are to issue from grand juries. Prosecutors may, when approved by the Director of the Division of Criminal Justice, issue reports and recommendations based upon specific issues or cases. In no event shall such public reports be based on or disclose grand jury material unless approved by the assignment judge.

12. This Directive shall take effect immediately.

Stuart Rabner
Attorney General

ATTEST:

Gregory A. Paw
Director, Division of Criminal Justice

Dated: Dec. 13, 2006

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE No. 2008-4

CHILD ABDUCTION RESPONSE TEAM

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., declares it to be the public policy of this State "to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State," N.J.S.A. 52: 17B-98;

WHEREAS, protecting our children remains among the highest priorities for every law enforcement agency in the State of New Jersey;

WHEREAS, reports of missing children can be among the most difficult, challenging, and emotionally charged cases a law enforcement agency experiences;

WHEREAS, time can be lost and opportunities wasted when law enforcement responds to a report of a missing child without a plan;

WHEREAS, the approach that a law enforcement agency takes in responding to a report of a missing child may determine whether the child is promptly and safely recovered;

WHEREAS, each stage of a missing child case, from initial investigation through successful recovery, is critical;

WHEREAS, all law enforcement agencies must develop, implement, and periodically refine uniform policies and procedures to ensure swift, decisive, and appropriate action when responding to a report of a missing child;

WHEREAS, cooperation, communication, and coordination among law enforcement agencies is essential to the prompt and successful resolution of missing child cases;

WHEREAS, a standardized response will enable law enforcement to exercise more control over events, react more effectively to unexpected occurrences, and enhance the likelihood of swift and successful resolution of missing child cases;

NOW, THEREFORE, I, ANNE MILGRAM, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-92 et seq., do hereby DIRECT that all law enforcement agencies operating under the authority of the laws of the State of New Jersey shall adhere to the policies and procedures set forth below:

1. Child Abduction Response Team Leaders

Each county prosecutor shall designate two (2) individuals to serve as child abduction response team (CART) leaders. CART leaders, exercising the authority of the county prosecutor, shall oversee all missing child investigations in the county. CART leaders shall also receive standardized child abduction training and oversee CART-related training for law enforcement in the county.

2. County Preparedness

Each county prosecutor shall ensure that his or her county satisfies requirements established by the Attorney General, or her designee, for CART training and CART resources.

Each county prosecutor shall prepare an annual assessment of his of her county's CART resources. The first such assessment shall be submitted to the New Jersey State Police on January 1, 2010.

3. CART Activation

Upon receipt of a report of a missing child, the agency receiving the report shall notify its county CART leader(s) of the report, and shall immediately begin a missing child investigation. The agency receiving the report shall remain the lead agency unless or until the county prosecutor determines otherwise.

For the purposes of this Directive, "missing child" means a person 13 years of age or younger whose whereabouts are not currently known. See N.J.S.A. 52:17B-212.

Nothing in this Directive shall be construed to limit the authority of a county prosecutor to activate a CART response for any missing person.

4. Missing Child Investigations

The State Police shall disseminate and periodically re-issue guidelines, protocols, and/or best practices for investigating missing child cases. Each county prosecutor shall ensure that all missing child investigations in his or her county are conducted in accordance with the guidelines, protocols, and/or best practices disseminated and periodically re-issued by the State Police.

5. Mutual Aid

When investigating a missing child, the county prosecutor responsible for the investigation, or that prosecutor's CART leader(s), may request resources to assist in the missing child investigation from any other law enforcement agency. Any reasonable request for such assistance shall not be denied.

6. AMBER Alert

Pursuant to N.J.S.A. 52:17B-194.3, the State Police activate AMBER Alerts. Upon the request for an activation of an AMBER Alert, the State Police shall immediately notify the CART leader(s) in the county where the AMBER Alert request originated.

7. After Action Reporting

The State Police shall create and distribute to all CART leaders a standardized After Action Report form. Within thirty (30) days of a report of a missing child who is thirteen (13) years of age or younger, the county prosecutor, or the CART leader(s), in the county receiving the initial missing child report, shall complete and submit to the State Police an After Action Report. The State Police shall utilize After Action Reports to evaluate the effectiveness of the CART Program, and enhance guidelines, protocols and best practices.

8. Implementation Instructions

The State Police shall conduct, make available, and/or coordinate periodic trainings throughout the State for personnel involved in missing child cases.

9. Implementation Questions

Questions concerning the implementation of this Directive shall be addressed to the Superintendent of the State Police, or his designee, or where appropriate, to the Attorney General or her designee.

10. Disclaimer

Nothing in this Directive shall be construed to create any rights not otherwise provided by law.

11. Effective Date

This directive shall take effect on January 1, 2009 and shall remain in full force and effect unless and until repealed, modified, or superseded by Order of the Attorney General.

Dated: DECEMBER 1, 2008

Anne Milgram
Attorney General

Attest:

Ricardo Solano
First Assistant Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2009-1

RESTRICTIONS ON USE OF POLYGRAPH EXAMINATIONS

WHEREAS, the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("Act") provides funding to support programs for victims of violence against women;

WHEREAS, this Act includes the STOP Violence Against Women Act (VAWA) Formula Grant Program that provides funding to states and other government units;

WHEREAS, applicants for the VAWA funding must certify compliance with the statutory requirements of the Act as required by 42 U.S.C. 3796gg-4, 3796gg-5 and 3796gg-8 and implemented at 28 CFR Part 90;

WHEREAS, 42 U.S.C. 3796gg-8 requires an applicant to certify that its laws, policies or practices will ensure that law enforcement shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of such an offense;

WHEREAS, it is necessary and appropriate to establish statewide policies and procedures for use by all law enforcement agencies to ensure the implementation of this restriction on the use of polygraph examinations or other truth telling devices in the investigation of sexual offenses;

NOW, THEREFORE, I, ANNE MILGRAM, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-92 et seq., do hereby DIRECT that all law enforcement agencies operating under the authority of the laws of the State of New Jersey shall adhere to the policies and procedures set forth below:

1. Law Enforcement Agencies

A. No law enforcement agency or officer in the State shall ask or require an adult, youth or child victim of an alleged sexual offense as defined in N.J.S.A. 2C 14-1 et seq. to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of an offense.

B. The refusal of a victim to submit to a polygraph examination or other truth telling device shall not prevent the investigation, charging or prosecution of an alleged sexual offense.

2. County Prosecutors

Each county prosecutor shall ensure that all law enforcement agencies and officers within the prosecutor's jurisdiction are aware of and comply with this Directive.

3. **Questions**

All questions concerning the interpretation, implementation or enforcement of this law directive shall be addressed to the Attorney General or her designee.

4. **Effective Date**

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, modified or superseded by Order of the Attorney General.

Dated: 1/5/09

Anne Milgram
Attorney General

Attest:
Ricardo Solano
First Assistant Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PAULA T. DOW
Attorney General

STEPHEN J. TAYLOR
Director

DIRECTIVE NO. 2010 - 1

TO: **DIRECTOR, DIVISION OF CRIMINAL JUSTICE**
ALL COUNTY PROSECUTORS
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: **PAULA T. DOW, ATTORNEY GENERAL**

DATE: **MARCH 9, 2010**

SUBJECT: **ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE**

The primary duty of the Prosecutor is not to convict, but to ensure that justice is done. *State v. Ramseur*, 106 *N.J.* 123 (1987); *State v. Zola*, 112 *N.J.* 384 (1988). In keeping with this trust, the Attorney General and the County Prosecutors hereby intend to provide for the retention of evidence in criminal cases to protect public safety and the interests of crime victims and their families, and to afford to those who are serving a sentence for a crime the opportunity to challenge their convictions, in appropriate cases.

The attached *Attorney General Guidelines for the Retention of Evidence* in criminal cases have been jointly formulated by the Attorney General and the County Prosecutors and are promulgated pursuant to the *Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq.*, which recognizes the importance of public confidence in the administration of criminal justice and provides for the general supervision of the County Prosecutors by the Attorney General as chief law enforcement officer of the State.

THEREFORE, I, Paula Dow, Attorney General, pursuant to the authority granted to the Attorney General of the State of New Jersey by the Criminal Justice Act of 1970, *N.J.S.A.* 52:17B-97 *et seq.*, hereby issue the attached Guidelines to all County Prosecutors, Police Chiefs and Law Enforcement Chief Executives in the State of New Jersey, to be applied in accordance with the terms of this Directive:

1. Adoption of Guidelines

The "*Attorney General Guidelines for the Retention of Evidence*" attached to this Directive and incorporated by reference into this Directive are formally adopted, with the purpose of providing the basis for procedures to be established to govern the retention of evidence in criminal cases throughout the State of New Jersey by law enforcement agencies.

2. Implementation

Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Authorization Policy and Procedures, in accordance with the attached Guidelines, which shall include procedures to be followed both for evidence held by the County Prosecutor's Office and for evidence being held by local law enforcement agencies within the jurisdiction.

3. Questions and Controversies

Questions regarding the content of this Directive or the interpretation, implementation or utilization of these Guidelines should be addressed to the Prosecutors Supervision and Coordination Bureau, Division of Criminal Justice, at (609) 984-2814.

4. Effective Date

This Law Enforcement Directive shall take effect immediately and shall remain in force and effect, unless and until repealed, amended or superseded by order of the Attorney General.

Given under my hand and seal, this 9th day of March, in the year Two Thousand and Ten, and of the Independence of the United States, the Two Hundred and Thirty-Fourth.

Paula T. Dow
Attorney General

Attest:

Phillip Kwon
First Assistant Attorney General

ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE

PAULA T. DOW
ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
AND
THE NEW JERSEY COUNTY PROSECUTORS ASSOCIATION

ISSUED MARCH 2010
TRENTON, NEW JERSEY

Attorney General Guidelines for the Retention of Evidence

Table of Contents

Attorney General Guidelines for the Retention of Evidence 3
Introduction 3

Retention Schedule for Evidence 4
General Provisions 4
Development of Evidence Destruction Policy 4
Authorization Requirement 4
Timeframes for Evidence Destruction 4
1. Homicide Evidence 4
2. Sex Crimes Evidence 5
3. Narcotic Evidence 5
4. Firearms Evidence 6
5. Other Evidence 7
6. Special Circumstances 7

Other Requirements Not Superseded by this Directive 8

Attorney General Guidelines for the Retention of Evidence

Introduction

Law enforcement agencies have schedules in place for the retention of criminal case files and other documentary records that are maintained by their agencies. These records retention schedules are promulgated by the Division of Archives and Records Management (hereinafter DARM) in the Department of State.[1] However, these records retention schedules govern only documentary records such as case files, logbooks, etc. These schedules do not govern the retention of criminal case evidence.

Until now, there has been little direction on the topic of retention of evidence and, as a result, most law enforcement agencies have used the documentary records retention schedules for evidence retention. As criminal forensic science has improved, the volume of evidence gathered at crime scenes has grown exponentially. For many law enforcement agencies, this has created a looming evidence storage crisis.

Although this problem exists in most types of cases, it is most severe for homicide cases, for which an entire room may be required to hold the evidence from just one case. The DARM documentary records retention schedules for law enforcement agencies such as police departments, county prosecutors and county sheriffs provide that homicide records are "permanent." This standard, which can be met for documents through the use of microfilming and destruction of the original documents, is wholly impractical when applied to physical evidence. Although DARM's documentary records retention schedule was not promulgated for application to evidence, agencies adopted it for evidence retention in the absence of other guidance. It is the intention of the Attorney General and the County Prosecutors to promulgate these standards in order to remedy this problem.

---

[1]These records retention schedules can be found online at: http://www.njarchives.org/links/retention.html

Retention Schedule for Evidence

General Provisions

Development of Evidence Destruction Policy

The following timeframes for Evidence Destruction Authorization are suggested for statewide usage by all County Prosecutor's Offices. Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Policy and Procedures.

Authorization Requirement

The mere fact that an item of evidence may satisfy the qualifications for being subject to destruction does not mean that it is automatically destroyed. The appropriate Prosecutor's Office must review and provide authorization pursuant to their respective Policy and Procedures, before any destruction is to take place. The reference to "Prosecutor" contained herein shall include and also refer to the Director of the Division of Criminal Justice for purposes of this document. A County Prosecutor or the Director of the Division of Criminal Justice may designate one or more Assistant Prosecutors or Deputy Attorneys General to authorize evidence destruction on their behalf.

Timeframes for Evidence Destruction

1. Homicide Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or fingerprint evidence that has been submitted to AFIS, or there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

2. Sex Crimes Evidence

a. In all cases where all of the defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court's signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.

d. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or in the case of fingerprint evidence that has been submitted to AFIS, or in cases where there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

e. In cases where the victim has signed a waiver of prosecution, has not contacted the police/prosecutor's office indicating a desire to pursue a prosecution, or has reported as a "Jane Doe" pursuant to the *Standards for Providing Services to Victims of Sexual Assault*, the evidence shall not be authorized for destruction for a minimum of 90 days from the date of the collection of said evidence, and then only after an attempt has been made to notify the victim of the possibility of the destruction of the evidence thereby giving them an opportunity to make a decision on whether they wish to proceed or not with the investigation/prosecution.

f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

3. Narcotic Evidence

a. In all cases where all of the defendants in the case have been charged and all of the defendants are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court's signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.

d. Where a controlled buy or an undercover buy has taken place and the investigation has been officially closed by the investigating agency with no prosecution having been instituted against anyone, after a period of one year and one day, a request for destruction authorization may be submitted.

e. Any controlled dangerous substance that has been submitted to a Forensic Laboratory for analysis and has not been connected to any suspect or defendant and has been submitted as Found Property, a request for destruction authorization may be submitted one year and one day after it has been submitted to the laboratory upon verification by the submitting agency that no prosecution has been instituted relating to the evidence.

f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

4. Firearms Evidence

a. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of the conviction or upon the defendants' expiration of sentence, whichever comes later, a destruction authorization may be submitted. If there is a legal owner of the firearm who is not a defendant in the case and is not otherwise legally disqualified from possessing the firearm, pursuant to any provision of Chapter 58 of the New Jersey Criminal Code, rather than destroying the weapon it should be returned to the owner, if said owner is in possession of necessary permits.

b. Prior to any destruction authorization being granted, no firearms evidence shall be considered for destruction until all necessary tracing tests and IBIS submissions have been completed.

c. In all cases where all defendants have been charged and all defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

d. If the weapon is related to a Homicide case in addition to this section, see Section 1 above.

e. If the weapon is related to a Sex Crimes case, in addition to this section, see Section 2 above.

f. If the weapon is related to a Narcotics case, in addition to this section, see Section 3 above.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

5. Other Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever comes later, a request for destruction authorization may be submitted. If there is a legal owner of said evidence who is not a defendant, no forfeiture proceedings are pending or have been concluded and there are no appeals of said forfeiture action pending and the ownership has not been granted to a law enforcement agency by court order, said property shall be returned to the legal owner of same, rather than being authorized for destruction.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

6. Special Circumstances

a. In cases where the any defendant has been determined by a Court to be Incompetent to stand trial, the evidence must be retained until the defendant has become competent to stand

trial, has died, or the Prosecutor of that respective county has made a determination to not proceed with the prosecution of the defendant.

b. In cases where there is an acquittal of the only defendant or there is a finding of Not Guilty By Reason of Insanity of the only defendant, then the evidence may be authorized for destruction by the Prosecutor of that county, in a timeframe to be determined by the Prosecutor of that county.

Other Requirements Not Superseded by this Directive

Nothing in this policy is intended to require that a law enforcement office retain evidence in circumstances where such evidence would ordinarily be destroyed, returned to its rightful owner, forfeited, or otherwise disposed of pursuant to existing statutes or policies.

Examples include, but are not limited to:

1. *N.J.S.A.* 2C:65-1 *et seq.* Disposition of Stolen Property and Documentary Exhibits
2. *N.J.S.A.* 2C:64-1 *et seq.* Seized or Forfeited Property
3. *N.J.S.A.* 2C:35-21 Destruction of Bulk Seizures of Controlled Dangerous Substances
4. N.J.S.A. 52:4B-36 (l.) Crime Victims Bill of Rights, Prompt Return of Property When No Longer Needed as Evidence

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

PAULA T. DOW
Attorney General

DIRECTIVE NO. 2010-5

TO: Director, Office of Homeland Security and Preparedness
Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
All County Sheriffs
All Police Chiefs
All Law Enforcement Chief Executives

FROM: Paula T. Dow, Attorney General

DATE: December 3, 2010

SUBJECT: **Law Enforcement Directive Promulgating Attorney General Guidelines for the Use of Automated License Plate Readers (ALPRs) and Stored ALPR Data**

In order to fulfill the mission of protecting the public, the New Jersey law enforcement community must take full advantage of new crime-fighting technologies as they become available. Automated license plate readers (ALPRs) are now being used by a number of law enforcement agencies around the nation, and a number of police agencies in New Jersey have recently acquired these devices or are planning to do so in the near future. License plate recognition technology can be used to support a wide range of law enforcement operations and activities, including homeland security, criminal and terrorist suspect interdiction, revoked/suspended driver interdiction, stolen property recovery, stay-away order enforcement and, of course, the apprehension of individuals who are subject to an outstanding arrest warrant.

These devices enable police officers to recognize and take immediate action against vehicles and persons who are subject to an investigative detention or arrest based on a "Be on the Lookout" bulletin. The data collected by ALPRs can also provide solid investigative leads if, for example, a device happened to be scanning license plates near a crime scene, allowing police to locate potential suspects, witnesses, or victims by identifying vehicles that were in the vicinity at the time of the

offense. A careful analysis of stored ALPR data can also be used to detect suspicious activities that are consistent with the *modus operandi* of criminals. This new technology can in this way serve an especially important role in protecting our homeland from terrorist attack, as shown by the fact that many of the devices that are now or soon will be in operation in this State were purchased with homeland security grant monies.

While license plate recognition technology can help to protect public safety, the widespread deployment and use of ALPRs, and especially the collection and storage of data pertaining to individuals who are not reasonably believed to be involved in unlawful activity, raise legal and policy issues. Notably, the New Jersey Supreme Court has held that while police are permitted to "run the plates" of any vehicle they encounter while on patrol, and need not have a particularized reason before checking a vehicle's license plates against a government database, police in this State may not as a result of any such lookup be shown personal identifying information about a motorist unless there is a particularized basis for further police action. See State v. Donis, 157 N.J. 44 (1998). The Guidelines attached hereto are designed to protect the legitimate privacy interests of motorists by implementing the non-disclosure rule established in Donis and by adapting the Donis Court's rationale to the context and capabilities of ALPR technology.

Recognizing that our experience with this new and evolving technology is limited, and that we still have much to learn about how best to incorporate these devices into our arsenal of investigative techniques, it is appropriate for me as the State's chief law enforcement officer to issue uniform statewide guidelines to ensure that ALPRs are used only for *bona fide* law enforcement purposes, and that the data collected by these devices are used in accordance with substantive standards and procedural safeguards that appropriately balance the need for law enforcement agencies to prevent and respond to terrorism and other forms of crime against the legitimate privacy interests of persons operating motor vehicles on the roadways of this State.

THEREFORE, I, Paula Dow, Attorney General of the State of New Jersey, pursuant to the authority granted to me by the Constitution of the State of New Jersey and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 *et seq.*, and in consultation with the Director of the New Jersey Office of Homeland Security and Preparedness, hereby Direct the following:

1. Adoption of Guidelines

The "*Attorney General Guidelines for the Use of Automated License Plate Readers and Stored ALPR Data*" (dated December 3, 2010) attached to this Directive and incorporated by reference into this Directive are hereby adopted and shall be followed and enforced by all law enforcement agencies and officers operating under

the authority of the laws of the State of New Jersey.

2. Implementation

Every law enforcement agency operating under the authority of the laws of the State of New Jersey that possesses or uses one or more automated license plate readers shall, within 45 days of the issuance of this Directive, promulgate and enforce a rule, regulation, standard operating procedure, directive, or order, in a form as may be appropriate given the customs and practices of the agency, which shall comply with and implement the provisions of the attached Guidelines, and which shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's rule, regulation, standard operating procedure, directive, or order shall be subject to discipline. A law enforcement agency operating under the authority of the laws of the State of New Jersey that purchases an automated license plate reader on or after the effective date of this Directive shall not operate the device without having promulgated a rule, regulation, standing operating procedure, directive, or order in accordance with this section.

3. Scope

The provisions of this Directive and of the attached Guidelines pertaining to stored ALPR data apply to all law enforcement agencies operating under the authority of the laws of the State of New Jersey that access or use stored ALPR data, even if the agency does not own or operate an ALPR.

4. Questions and Controversies

All questions concerning the interpretation, implementation, or enforcement of this Directive, or of the attached Guidelines, shall be addressed to the Attorney General or his or her designee.

5. Periodic Review

The Director of the Division of Criminal Justice, in consultation with the Superintendent of the New Jersey State Police, the Director of the Office of Homeland Security, the County Prosecutors, the County Sheriffs, and the New Jersey Association of Chiefs of Police, shall, within one year of the effective date of this

Directive, report to the Attorney General on the implementation of this Directive, and on any recommendations for revising the attached Guidelines.

6. Effective Date

This Directive shall take effect 45 days after it is issued in order to provide an opportunity for law enforcement agencies to comply with its requirements and to establish and enforce policies and procedures consistent with the attached Guidelines. Once effective, this Directive shall remain in force and effect unless and until a repealed, amended, or superseded by Order of the Attorney General.

Paula T. Dow
Attorney General

Attest:
Carolyn Murray
Counsel to the Attorney General

Issued on: December 3, 2010
Effective on : January 18, 2011

ATTORNEY GENERAL GUIDELINES FOR THE USE OF AUTOMATED LICENSE PLATE READERS (ALPRs) AND STORED ALPR DATA

(Issued December 3, 2010; Effective January 18, 2011)

1. PURPOSE AND SCOPE

1.1 Reasons for Promulgating Uniform Statewide Guidelines

The purpose of these Guidelines is to provide direction to law enforcement agencies and officers on the appropriate us e of Automated License Plate Readers (ALPRs) and the data that are collected by these devices and stored for future law enforcement use. These Guidelines are not intended to serve as a comprehensive operational manual. Rather, they are meant to ensure that ALPRs and ALPR-generated data are used in an appropriate manner and only for *bona fide* public safety purposes.

The following Guidelines, which are promulgated pursuant to Attorney General Law Enforcement Directive 2010-5, should be interpreted and applied so as to achieve the following objectives:

- to ensure that "BOLO lists" (the compilation of targeted license plates that an ALPR is "on the lookout" for) that are programmed into the internal memory of an ALPR or that are compared against stored ALPR data are comprised only of license plates that are associated with specific vehicles or persons for which or whom there is a legitimate and documented law enforcement reason to identify and locate, or for which there is a legitimate and documented law enforcement reason to determine the subject vehicle's past location(s) through the analysis of stored ALPR data;

- to ensure that data that are captured by an ALPR can only be accessed by appropriate law enforcement personnel and can only be used for legitimate, specified, and documented law enforcement purposes;

- to permit a thorough analysis of stored ALPR data to detect crime and protect the homeland from terrorist attack while safeguarding the personal privacy rights of motorists by ensuring that the analysis of stored ALPR data is not used as a means to disclose personal identifying information about an individual unless there is a legitimate and documented law enforcement reason for disclosing such personal information to a law enforcement officer or civilian crime analyst; and

- to ensure that stored ALPR data are purged after a reasonable period of time so as to

minimize the potential for misuse or accidental disclosure.

1.2 Applicability of Guidelines

These Guidelines apply to all law enforcement agencies that operate under the authority of the laws of the State of New Jersey that own or operate one or more ALPRs, that collect and maintain ALPR data, and/or that receive or are provided access to ALPR data collected by another agency.

1.3 Non-Enforceability of Rights by Third Parties

These Guidelines are issued pursuant to the Attorney General's authority under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 *et seq.*, to ensure the uniform and efficient enforcement of the laws. These Guidelines impose limitations on the exercise of law enforcement discretion and the use of and access to ALPR-related data that may extend beyond the requirements of the United States and New Jersey Constitutions, and federal and state statutory law. Nothing in these Guidelines should be construed in any way to create any rights beyond those established under the Constitutions, statutes, and regulations of the United States and the State of New Jersey. The provisions of these Guidelines are intended to be implemented and enforced by law enforcement agencies that possess or use ALPRs, the New Jersey Office of Homeland Security and Preparedness, the County Prosecutors, and the Department of Law and Public Safety, and these provisions do not create any rights that may be enforced by any other persons or entities.

3. DEFINITIONS

As used in these Guidelines:

"Automated License Plate Reader" or "ALPR" means a system consisting of a camera, or cameras, and related equipment that automatically and without direct human control locates, focuses on, and photographs license plates and vehicles that come into range of the device, that automatically converts digital photographic images of scanned license plates into electronic text documents, that is capable of comparing scanned license plate text data with data files for vehicles on a BOLO (be on the lookout) list programmed into the device's electronic memory, and that notifies police, whether by an audible alert or by other means, when a scanned license plate matches the license plate on the programmed BOLO list. The term includes both devices that are placed at a stationary location (whether permanently mounted, or portable devices positioned at a stationary location) and mobile devices affixed to a police vehicle and capable of operating while the vehicle is in motion.

"BOLO (Be on the Lookout)" or "BOLO situation" refers to a determination by a law

enforcement agency that there is a legitimate and specific law enforcement reason to identify or locate a particular vehicle, or, in the case of a post-scan BOLO, there is a legitimate and specific reason to ascertain the past location(s) of a particular vehicle.

"BOLO list," sometimes referred to colloquially as a "hot list," is a compilation of one or more license plates, or partial license plates, of a vehicle or vehicles for which a BOLO situation exists that is programmed into an ALPR so that the device will alert if it captures the image of a license plate that matches a license plate included on the BOLO list. The term also includes a compilation of one or more license plates, or partial license plates, that is compared against stored license plate data that had previously been scanned and collected by an ALPR, including scanned license plate data that is stored in a separate data storage device or system.

"Initial BOLO list" refers to the BOLO list that was programmed into an ALPR at the time that the device was being used to scan license plates in the field.

"Post-Scan BOLO list" refers to a BOLO list that is compared against stored data collected by an ALPR, including scanned license plate data that has been transmitted to another device or data storage system.

"Stored data" refers to all information captured by an ALPR and stored in the device's memory or in a separate data storage device or system. The term includes the recorded image of a scanned license plate and optical character recognition data, a contextual photo (*i.e.*, a photo of the scanned vehicle and/or occupants), global positioning system("GPS") data (when the ALPR is equipped with a GPS receiver) or other location information, and the date and time of the scan. The term applies to both alert data and non-alert data that has been captured and stored by an ALPR or in a separate data storage device or system.

"Alert data" means information captured by an ALPR relating to a license plate that matches the license plate on an initial BOLO list or a post-scan BOLO list.

"Immediate alert" refers to an alert that occurs when a scanned license plate matches the license plate on an initial BOLO list and that is reported to the officer operating the ALPR, by means of an audible alarm or by any other means, at or about the time that the subject vehicle was encountered by the ALPR and its license plate was scanned by the ALPR.

"Non-encounter alert" refers to an immediate alert where the officer operating the ALPR is instructed to notify the agency that put out the BOLO without initiating an investigative detention of the subject vehicle or otherwise revealing to the occupant(s) of that vehicle that its location has been detected or that it is the subject of law enforcement attention (*e.g.*, a Violent Gang or Terrorist Organization File (VGTOF) alert).

"Personal identifying information" means information that identifies one or more specific individuals, including an individual's name, address, social security number, vehicle operator's

license number, or biometric records. The term includes personal identifying information that is included within the data comprising a BOLO list, as well as personal identifying information that is learned by checking a license plate scanned by an ALPR against the Motor Vehicle Commission database or any other data system that contains personal identifying information.

"Scan" refers to the process by which an ALPR automatically focuses on, photographs, and converts to digital text the license plate of a vehicle that comes within range of the ALPR.

"Authorized user"means a sworn or civilian employee of a law enforcement agency who has been authorized by the chief of the agency, or by the Attorney General or a county prosecutor or his or her designee, to operate an ALPR, or to access and use ALPR stored data, and who has successfully completed training provided by the agency on the agency's ALPR policy and on these Guidelines.

"Designated supervisor" means a superior officer assigned by the chief of a law enforcement agency to oversee and administer, or to assist in overseeing and administering, the agency's use of ALPRs and stored ALPR data. A law enforcement agency may have more than one designated supervisor.

"Chief" of a department or agency means the highest ranking sworn officer of a law enforcement agency.

"Post-Scan BOLO query" refers to the process of comparing a post-scan BOLO list against stored ALPR data.

"Crime scene query" refers to the process of accessing and reviewing stored ALPR data that had been originally scanned at or about the time and in the vicinity of a reported criminal event for the purpose of identifying vehicles or persons that might be associated with that specific criminal event as suspects, witnesses, or victims.

"Criminal event" means a specific incident, or series of related specific incidents, that would constitute an indictable crime under the laws of the State of New Jersey, whether or not the incident(s) have occurred or will occur within the State of New Jersey. The term includes an attempt or conspiracy to commit a crime, or actions taken in preparation for the commission of the crime, such as conducting a surveillance of the location to identify and evade or thwart security measures, or conducting a rehearsal of a planned crime. The term includes two or more separate criminal acts or episodes that are linked by common participants or that are reasonably believed to have been undertaken by a criminal organization or as part of an ongoing conspiracy.

"Crime trend analysis" refers to the analytical process by which stored ALPR data is used, whether alone or in conjunction with other sources of information, to detect crime patterns by studying and linking common elements of recurring crimes; to predict when and where future crimes may occur; and to link specific vehicles to potential criminal or terrorist activity. The term includes

an automated process in which a computer program analyzes stored data to identify potentially suspicious activity or other anomalies involving one or more scanned vehicles and where such automated analysis is done without disclosing personal identifying information about any individual to an authorized user or any other person except as may be authorized pursuant to Section 10.2.3 of these Guidelines.

4. DEPLOYMENT OF ALPRS

4.1 Restricted Uses

An ALPR and data generated by an ALPR shall only be used for official and legitimate law enforcement business.

4.2 ALPR Scanning Limited to Vehicles Exposed to Public View

An ALPR shall only be used to scan license plates of vehicles that are exposed to public view (*e.g.*, vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shopping mall or other business establishment).

4.3 Supervisory Approval of All ALPR Deployments

An ALPR shall not be deployed in the field unless the deployment has been authorized by the chief of the department or a designated supervisor, or by the Attorney General or designee or a county prosecutor or designee. Such authorization may be given for repeated or continuous deployment of an ALPR (*e.g.*, mounting the device on a particular police vehicle, or positioning the ALPR at a specific stationary location), in which event the deployment authorization shall remain in force and effect unless and until rescinded or modified by the chief or designated supervisor, or the Attorney General or county prosecutor or designee.

4.4 Trained Operators and Analysts

A sworn officer or civilian employee of the department may operate an ALPR or access or use ALPR stored data only if the person has been designated as an authorized user by the chief of the department, or by the Attorney General or designee or a county prosecutor or designee, and has received training from the department on the proper use and operation of ALPRs, the requirements of Attorney General Law Enforcement Directive 2010-5, and these Guidelines, and any policies and

procedures governing the use of ALPRs and ALPR data issued by the department pursuant to Attorney General Directive 2010-5and Section 14 of these Guidelines.

5. MAINTENANCE OF RECORDS

5.1 Records Documenting the Deployment of ALPRs

Each department that owns or operates an ALPR shall maintain a written or electronic record that documents the following information:

date and time when the ALPR was deployed;

whether the ALPR was mobile, or was stationed at a fixed specified location;

the identity of the operator;

whether ALPR data was transferred to any other database or data storage device or system.

5.2 Records Documenting the Use of Stored ALPR Data

Each department that stores ALPR data shall maintain a record of all access to stored ALPR data. The department's ALPR data record keeping system, which may be automated, shall document the following information:

the date and time of access, and, in the case of access to stored non-alert data, the type of access authorized by Section 10.2 of these Guidelines (*i.e.*, post-scan BOLO query, crime scene query, or crime trend analysis);

the authorized user who accessed the stored data;

whether an automated software program was used to analyze stored data;

the designated supervisor who reviewed and approved any disclosure of personal identifying information based upon crime trend analysis when such approval is required by Section 10.2.3 of these Guidelines;

the designated supervisor who approved any use of an automated crime trend analysis computer program that would automatically alert and disclose personal identifying

information in accordance with Section 10.2.3;

any other information required to be documented pursuant to Section 10.2 or any other provision of these Guidelines.

5.3 Maintenance of Records

All written or electronic records of ALPR activity and access to ALPR data shall be maintained by the department for a period of five years, and shall be kept in a manner that makes such records readily accessible to any person authorized by these Guidelines to audit the department's use of ALPRs and ALPR-generated data. When a department employs an automated system to record any information that is required to be documented pursuant to these Guidelines, it shall not be necessary for the department to maintain duplicate records of any events or transactions that are documented by the automated record-keeping system.

6. CONTENT AND APPROVAL OF BOLO LISTS

6.1 Criteria for and Examples of Legitimate BOLO Situations

A license plate number or partial license plate number shall not be included in an ALPR initial BOLO list unless there is a legitimate and specific law enforcement reason to identify or locate that particular vehicle, or any person or persons who are reasonably believed to be associated with that vehicle. A license plate or partial license plate number shall not be included in a Post-Scan BOLO list unless there is a legitimate and specific law enforcement reason to ascertain the past locations(s) of that particular vehicle, or of any person or persons who are reasonably believed to be associated with that vehicle.

Examples of legitimate and specific reasons include, but are not limited to: persons who are subject to an outstanding arrest warrant; missing persons; AMBER Alerts; stolen vehicles; vehicles that are reasonably believed to be involved in the commission of a crime or disorderly persons offense; vehicles that are registered to or are reasonably believed to be operated by persons who do not have a valid operator's license or who are on the revoked or suspended list; vehicles with expired registrations or other Title 39 violations; persons who are subject to a restraining order or curfew issued by a court or by the Parole Board, or who are subject to any other duly issued order restricting their movements; persons wanted by a law enforcement agency who are of interest in a specific investigation, whether or not such persons are themselves suspected of criminal activity; and persons who are on any watch list issued by a State or federal agency responsible for homeland security.

6.2 Batch Downloading of BOLO List Data

BOLO list information may be downloaded in batch form from other databases, including but not limited to the National Crime Information Center (NCIC), National Insurance Crime Bureau, United States Department of Homeland Security, and Motor Vehicle Commission database.

6.3 Updates to BOLO Lists

An initial BOLO list may be revised at any time. In the event that an initial BOLO list is constructed, in whole or in part, with sets of data downloaded from another database, so as to account for any changes that may have been made in the data maintained in those other databases, updates to the initial BOLO list shall, in the case of a mobile unit attached to a police vehicle, be made at the start of each shift, and in the case of an ALPR positioned at a stationary location, be made as frequently as is practicable, and on not less than a daily basis. Information concerning any license plate that is referenced in an AMBER Alert activated by the New Jersey State Police shall be added to the initial BOLO list as expeditiously as possible, and shall remain in the initial BOLO list until the AMBER Alert expires or is withdrawn.

6.4 Special Instructions for Immediate Alert Response

When practicable, the reason for placing a vehicle on BOLO list shall be included with the BOLO and shall be disclosed to the officer who will react to an immediate alert. If for any reason an officer reacting to an immediate alert should not initiate an investigative detention (*e.g.*, where the license plate was included in the BOLO list because the department or any other agency wanted to be notified of the location of the subject vehicle without alerting the driver/occupants that they are the subject of law enforcement attention, such as in the case of Violent Gang or Terrorist Organization File (VGTOF) alert), to the extent feasible, the information attached to the license plate on the BOLO list shall be entered in such a way as to cause the ALPR to clearly designate an immediate alert as a "non-encounter" alert, and shall provide specific instructions to the officer as to who to notify of the alert. See Section 7, infra.

7. POLICE ACTIONS IN RESPONSE TO AN IMMEDIATE ALERT

When an officer operating a vehicle equipped with an ALPR receives an immediate alert, the officer shall take such action in response to the alert as is appropriate in the circumstances. An officer alerted to the fact that an observed motor vehicle's license plate is on the BOLO list may be required to make a reasonable effort to confirm that a wanted person is actually in the vehicle before

the officer would have a lawful basis to stop the vehicle. See State v. Parks, 288 N.J. Super. 407 (App. Div. 1996) (police do not have reasonable suspicion to justify a stop based on a computer check that shows that the operator's license of the registered owner of the vehicle is suspended unless the driver generally matches the owner's physical description (*e.g.*, age and gender)).

An officer reacting to an immediate alert shall consult the database to determine the reason why the vehicle had been placed on the BOLO list and whether the alert has been designated as a non-encounter alert. In the event of a non-encounter alert, the officer shall follow any instructions included in the alert for notifying the law enforcement or homeland security agency that had put out the BOLO. See Section 6.4, supra.

8. SECURITY OF STORED ALPR DATA

8.1 Physical Security and Limited Access

All ALPR stored data shall be kept in a secure data storage system with access restricted to authorized persons. Access to this stored data shall be limited to the purposes described in Section 10 of these Guidelines.

8.2 Differentiation of Stored Positive Alert Data From Non-Alert Data

Stored ALPR data shall be maintained electronically in such a manner as to distinguish alert data from non-alert data so as to ensure that access to and use of non-alert data and any disclosure of personal identifying information resulting from the analysis of non-alert data occurs only as may be authorized pursuant to section 10.2 of these Guidelines. Positive alert data may, as appropriate, be transferred to the appropriate active investigation file, see also Section 10.1, infra, and may as appropriate be placed into evidence in accordance with the department's evidence or records management procedures.

9. RETENTION PERIOD AND PURGING OF STORED DATA

Each law enforcement agency shall, pursuant to the provisions of Section 14 of these Guidelines, establish and enforce procedures for the retention and purging of stored ALPR data in accordance with this Section. ALPR stored data shall be retained for a period of five years, after which, the data shall be purged from the agency's data storage device or system. A law enforcement agency may purge ALPR data before the expiration of the five-year retention period only if the data has been transferred to the State Police Regional Operations Intelligence Center (R.O.I.C.)or any other system that aggregates and stores data collected by two or more law enforcement agencies in accordance with the provisions of these Guidelines. Any ALPR data transferred to another agency

shall indicate the date on which the data had been collected by the ALPR so that the receiving agency may comply with the five-year retention and purging schedule established in this Section. See also Section 11.1 and 11.2, infra.

10. LIMITATIONS ON ACCESS TO AND USE OF STORED ALPR DATA

10.1 Access to Positive Alert Data

An authorized user may access and use stored ALPR alert data as part of an active investigation or for any other legitimate law enforcement purpose, including but not limited to a post-scan BOLO query, a crime scene query, or crime trend analysis. A record shall be made of the access to the data, which may be an automated record, that documents the date of access, and the identity of the authorized user. An authorized user need not obtain approval from the chief or designated supervisor, or Attorney General or county prosecutor or designee, for each occasion on which he or she accesses and uses stored ALPR data. Once positive alert data has been accessed and transferred to an investigation file, it shall not be necessary thereafter to document further access or use of that data pursuant to these Guidelines.

10.2 Access to Non-Alert Data

Access to and use of stored non-alert ALPR data is limited to the following three purposes: a post-scan BOLO query, a crime-scene query, and crime trend analysis. An authorized user does not need to obtain approval from the chief or a designated supervisor, or Attorney General or county prosecutor or designee, for each occasion on which he or she accesses and uses stored non-alert data pursuant to this Section.

10.2.1 Post-Scan BOLO Query

A law enforcement agency is authorized to compare a post-scan BOLO list against stored ALPR data where the results of the query might reasonably lead to the discovery of evidence or information relevant to any active investigation or ongoing law enforcement operation, or where the subject vehicle might be placed on an active initial BOLO list. (For example, a law enforcement agency may review stored non-alert data to determine whether a specific vehicle was present at the time and place where the ALPR data was initially scanned for the purpose of confirming or dispelling an alibi defense, or to develop lead information for the purpose of locating a specified vehicle or person. A law enforcement agency may also check stored data to determine whether a vehicle that was only recently added to an initial BOLO list had been previously observed in the jurisdiction before it had been placed on an initial BOLO list.)

10.2.2 Crime Scene Query

a. A law enforcement agency is authorized to access and use stored non-alert data where such access might reasonably lead to the discovery of evidence or information relevant to the investigation of a specific criminal event as defined in these Guidelines. Note that if the law enforcement agency has reason to believe that a specific person or vehicle was at or near the location of the specific crime at the time of its commission, non-alert stored data might also be examined under the authority of Section 10.2.1 as part of post-scan BOLO query.

b. A crime scene query may not be conducted to review stored non-alert data based on general crime patterns (*i.e., e.g.*, to identify persons traveling in or around a "high crime area"), but rather is limited to situations involving specific criminal events as that term is defined in these Guidelines.

c. The crime scene query of non-alert stored data shall be limited in scope to stored non-alert data that is reasonably related to the specified criminal event, considering the date, time, location, and nature of the specified criminal event. For example, a crime that reasonably involves extensive planning and possible "rehearsals," such as a terrorist attack, would justify examining stored non-alert data that had been scanned and collected days or even weeks or months before the criminal event, and that may have been scanned at a substantial distance from the site of the crime or intended crime (*e.g.*, at any point along a highway leading to the intended crime site). A spontaneous crime, in contrast, might reasonably justify examination of stored non-alert data that was scanned and collected on or about the time of and in closer physical proximity to the criminal event.

d. The law enforcement agency shall document the specific crime or related crimes constituting the criminal event and the date(s) and location(s) of the specific crime(s).

10.2.3 Crime Trend Analysis

a. A law enforcement agency may access and use stored non-alert data for purposes of conducting crime trend analysis, as that term is defined in these Guidelines, when such access and analysis is approved by a designated supervisor and where such analysis is undertaken to produce analytical products that are intended to assist the agency in the performance of its duties. A designated supervisor may authorize one or more authorized users to conduct a method or methods of crime trend analysis on a repeated or continuous basis, in which event such authorization shall remain in force and effect unless and until modified or rescinded by the supervisor. A designated supervisor may also approve the use of an automated software program to analyze stored data to look for potentially suspicious activity or other anomalies that might be consistent with criminal or terrorist activity.

b. Crime trend analysis of stored non-alert data, whether automated or done manually, shall not result in the disclosure of personal identifying information to an authorized user or any other person unless:

1) the agency can point to specific and articulable facts that warrant further investigation of possible criminal or terrorist activity by the driver or occupants of a specific vehicle *(i.e.*, unusual behavior consistent with the *modus operandi* of terrorists or other criminals), and access to the personal identifying information based on those specific and articulable facts has been approved by a designated supervisor. Such approval may be given by a designated supervisor in advance when the crime trend analysis reveals the existence of specified suspicious circumstances that would warrant further investigation and that would justify disclosure of personal identifying information to the authorized user conducting the analysis under the "specific and articulable facts that warrant further investigation" standard of proof established in this Section. The supervisor shall document any and all specified suspicious circumstances for which disclosure of personal identifying information is pre-approved if those suspicious circumstances are revealed by authorized crime trend analysis. When an automated crime trend analysis computer program is used, specified suspicious circumstances that would warrant further investigation and that would justify disclosure of personal identifying information to an authorized user under this Section may also be pre-approved by a designated supervisor and built into the computer program so that if the program identifies the existence of the pre-determined suspicious circumstances, it will automatically alert the authorized user of the suspicious activity and provide to him or her the relevant personal identifying information in accordance with the "specific and articulable facts that warrant further investigation"standard of proof established in this Section; or

2) Disclosure of personal identifying information concerning any vehicle plate scanned by the ALPR is authorized by a grand jury subpoena.

c. Nothing in this Section shall be construed to prohibit a computer program from accessing and comparing personal identifying information of one or more individuals who are associated with a scanned vehicle as part of the process of analyzing stored non-alert data, provided that such personal identifying information is not disclosed to a person unless the "specific and articulable facts that warrant further investigation" standard is satisfied. The "specific and articulable facts that warrant further investigation" standard set forth in this Section applies only to the crime trend analysis of non-alert data, and nothing in this Section shall be construed to limit disclosure of personal identifying information of a person who is the registered owner of a vehicle that is on an initial or post-scan BOLO list (*i.e.*, alert data).

d. For the purposes of this Section, the "specific and articulable facts that warrant further investigation" standard required for the disclosure of personal identifying based upon crime trend

analysis of stored non-alert data is intended to be comparable to the "specific and articulable facts that warrant heightened caution" standard developed by the New Jersey Supreme Court in State v. Smith, 134 N.J. 599, 616-19 (1994) (establishing the level of individualized suspicion required before an officer may order a passenger to exit a motor vehicle stopped for a traffic violation).

e. The law enforcement agency accessing stored non-alert ALPR data for purposes of conducting crime trend analysis shall document: the nature and purpose of the crime trend analysis; the persons who accessed stored non-alert ALPR data for use in conducting that analysis; and the designated supervisor who approved access to ALPR non-alert data. In any instance where personal identifying information is disclosed based upon crime trend analysis of stored non-alert data, the agency shall document the specific and articulable facts that warrant further investigation and the designated supervisor who reviewed those facts and approved the disclosure of personal identifying information, or who pre-approved disclosure of personal identifying information based upon specified circumstances identified by an automated crime trend analysis computer program, or, where applicable, the fact that access to personal identifying information was authorized by a grand jury subpoena.

11. SHARED LAW ENFORCEMENT ACCESS TO STORED ALPR DATA

11.1 Authorization to Share and Aggregate Data

Any ALPR data that may in conformance with these Guidelines be accessed and used by the law enforcement agency that collected the data may be shared with and provided to any other law enforcement agency. Stored ALPR data may be combined with ALPR data collected by two or more law enforcement agencies (*e.g.*, collection of stored data by the State Police Regional Operations Intelligence Center), provided that such aggregated data shall only be retained, accessed, and used in accordance with the provisions of these Guidelines.

11.2 Record of Shared Access and Responsibilities of the Receiving Agency

When ALPR data is made accessible to or otherwise shared with or transferred to another law enforcement agency, the agency that collected the ALPR data shall document the identity of the other agency and the specific officer(s) or civilian employee(s) of that agency who were provided the information. When the transfer of stored ALPR data is done periodically as part of a system for aggregating data collected by two or more law enforcement agencies (*e.g.*, the scheduled and routine transmittal of data to the State Police Regional Operations Intelligence Center), each agency contributing data to the combined database shall maintain a record of the data transfer, which may be an automated record, and shall have and keep on file a memorandum of understanding or agreement or other memorialization of the arrangement for maintaining and populating a database comprised of stored ALPR data collected by multiple law enforcement agencies. Any agency

provided with access to or use of the ALPR data collected by another agency shall comply with all applicable provisions of these Guidelines concerning stored ALPR data and disclosure of personal identifying information.

13. RELEASE OF ALPR DATA TO NON-LAW ENFORCEMENT PERSONS OR AGENCIES

Stored ALPR data shall be treated as "criminal investigatory records" within the meaning of N.J.S.A. 47:1A-1 *et seq.*, and shall not be shared with or provided to any person, entity, or government agency, other than a law enforcement agency, unless such disclosure is authorized by a subpoena or court order, or unless such disclosure is required by the Rules of Court governing discovery in criminal matters. Any agency receiving a subpoena or court order for the disclosure of ALPR data shall, before complying with the subpoena or court order, provide notice to the County Prosecutor, or to the Division of Criminal Justice in the case of any state-level law enforcement agency.

14. PROMULGATION AND ENFORCEMENT OF DEPARTMENTAL POLICIES

14.1 Required Contents of Departmental Policies

Pursuant to the requirements of Attorney General Law Enforcement Directive 2010-5, every law enforcement agency that possesses or uses an ALPR must promulgate and enforce a rule, regulation, standing operating procedure, directive, or order that establishes a comprehensive policy governing the operation of ALPRs, and governing access to, use, and retention of all stored ALPR data. The ALPR policy promulgated by the department must be consistent with the standards and procedural safeguards established in these Guidelines, and each ALPR policy must include the following provisions:

a. The ALPR policy shall provide that the chief of the department will designate one or more superior officers to oversee and administer the agency's ALPR program. These designated supervisors will be authorized to: provide or oversee the training of all officers and civilian employees who are authorized to operate an ALPR or to access or use ALPR stored data; review and approve requests to access and use stored ALPR data to conduct crime trend analysis and/or to access personal identifying information based upon crime trend analysis; and generally to ensure compliance with the department's ALPR policy and these Guidelines.

b. The ALPR policy shall provide that the chief of the department shall designate all

authorized users, and that no officer or civilian employee will be authorized to operate an ALPR, or to access or use ALPR stored data, unless the officer or civilian employee has received training by the department on the proper operation of these devices, and on the provisions of the department's ALPR policy and these Guidelines.

c. The ALPR policy shall implement and enforce the five-years retention period for ALPR stored data established in Section 9 of these Guidelines, and must provide for the purging of all ALPR stored data at the expiration of the five-year term.

d. The ALPR policy shall provide for the documentation of all ALPR-related activities and decisions that are required to be documented by Section 5 or any other provision of these Guidelines, which may be done by an automated record-keeping system, and shall provide that such records documenting the use of ALPRs and ALPR stored data shall be maintained for 5 years and shall be kept in a place and in a manner as to facilitate a review and audit of the department's ALPR program by the County Prosecutor or by the Attorney General or his or her designee.

e. The ALPR policy shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's policy, or these Guidelines, shall be subject to discipline.

f. The ALPR policy shall provide that all significant violations of the agency's policy, or of these Guidelines, including but not limited to all instances involving the unauthorized access or use of ALPR stored data, must be reported to the County Prosecutor, or to the Director of the Division of Criminal Justice in cases involving a state-level agency, upon discovery of the violation. Unless the County Prosecutor or Director elects to conduct or oversee the investigation of the violation, such notification of the violation shall be followed up with a report, approved by the chief of the department, explaining to the County Prosecutor, or to the Director, the circumstances of the violation, and the steps that are being taken to prevent future similar violations.

14.2 Notice of ALPR Policies and Revisions Provided to County Prosecutors or the Division of Criminal Justice

The chief of the department shall provide a copy of the agency's written ALPR policy to the County Prosecutor, or to the Division of Criminal Justice in the case of a state-level agency, at or before the time of promulgation, and shall provide to the County Prosecutor, or to the Division, copies of any amendments or revisions to the agency's ALPR policy at or before the time that such amendments take effect.

15. ALPR PROGRAM ACCOUNTABILITY

15.1 ALPR Program Audits

All ALPR records documenting the use of an ALPR, or access to or use of ALPR stored data, whether kept manually or by means of an automated record-keeping system, shall be subject to review and audit by the County Prosecutor, or by the Attorney General or his or her designee.

15.2 Handling of Complaints

Any complaints about a department's ALPR program made by any citizen or entity shall be forwarded to the appropriate County Prosecutor, or to the Director of the Division of Criminal Justice in the case of a State-level agency, for appropriate review and handling. The County Prosecutor, or Director, may conduct an investigation, or may direct the agency that is the subject of the complaint to conduct an investigation and to report back to the County Prosecutor or Director.

16. SANCTIONS FOR NON-COMPLIANCE

If the Attorney General or his or her designee has reason to believe that a law enforcement agency or officer or civilian employee is not complying with or adequately enforcing the provisions of these Guidelines, the Attorney General may temporarily or permanently suspend or revoke the authority of the department, or any officer or civilian employee, to operate an ALPR, or to gain access to or use ALPR stored data. The Attorney General or her designee may initiate disciplinary proceedings, and may take such other actions as the Attorney General in his or her sole discretion deems appropriate to ensure compliance with these Guidelines.

17. AUTHORITY OF ATTORNEY GENERAL TO GRANT EXEMPTIONS OR SPECIAL USE AUTHORIZATIONS

ALPRs, and all ALPR stored data, shall only be used and accessed for the purposes and in the manner authorized by these Guidelines. In recognition of the need to be able to address issues or circumstances that are not contemplated by these Guidelines, the Attorney General or his or her designee may grant an exemption from any provision of these Guidelines, and may authorize the specific use of an ALPR, or the data collected by or derived from an ALPR, that is not expressly authorized by these Guidelines. Any request by a department to use an ALPR or ALPR-generated data for a purpose or in a manner not authorized by these Guidelines shall be made to the Attorney

General or his or her designee through the Director of the Division of Criminal Justice or his or her designee, who shall make recommendations on whether to grant the agency's specific request for an exemption or special authorization. Such requests shall be made in writing unless the circumstances are exigent, in which event the request by the agency and approval or denial by the Attorney General or his or her designee may be given orally, in which event the circumstances of the request and the approval or denial shall be memorialized in writing as soon thereafter as is practicable.

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

MEMORANDUM

TO: All County Prosecutor's

FROM: Assistant Attorney General Philip S. Aronow
Chief, Prosecutors Supervision & Training Bureau

DATE: June 11, 2014

SUBJECT: Revision to Attorney General Directive 2011-1
Drug Evidence Retention Policy

Attached is the signed version of the revision to AG Directive 2011-1. This includes only the drug evidence retention policy.

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

TO: Elie Honig, Director, Division of Criminal Justice

All County Prosecutors

Colonel Joseph R. Fuentes, Superintendent, New Jersey State Police

All County Sheriffs

All Law Enforcement Chief Executives

FROM: John J. Hoffman, Acting Attorney General

DATE: June 11, 2014

SUBJECT: Revisions to Attorney General Law Enforcement Directive 2011-1 and the "Attorney General Guidelines for the Retention of Evidence" to Authorize the Expedited Post-Conviction Destruction of Excess Quantities of Seized Controlled Dangerous Substances.

Attorney General Law Enforcement Directive No. 2011-1 promulgates the "Attorney General Guidelines for the Retention of Evidence" (hereinafter: Guidelines). The current Guidelines provide that following a conviction, controlled dangerous substances (CDS) that constitute evidence of the offense cannot be destroyed for a period of five years from the date of the conviction or the expiration of sentence, whichever is later. Consequently, prosecutors and police departments are required to store large quantities of CDS for an extended period of time, especially in cases involving very large seizures, which by their nature tend to result in lengthy terms of imprisonment.

This evidence retention policy has proven to be unduly restrictive. The inflexible retention period fails to take into account that the long-term storage of bulk quantities of controlled dangerous substances presents health and security concerns and associated logistical and fiscal burdens on police departments and prosecutors offices.

Prosecutors, of course, always must be mindful of the need to protect the rights of defendants

as well as to safeguard convictions from direct or collateral appellate challenges. Prosecutors nonetheless should be permitted on a case-by-case basis to balance those legal concerns against practical and fiscal considerations. It is therefore appropriate to supplement the Evidence Retention Guidelines to allow a prosecutor in the exercise of sound discretion to authorize the expedited destruction of CDS where the evidence to be destroyed no longer is needed for prosecution purposes and the prosecutor has determined that the post-conviction destruction of such evidence would not jeopardize the conviction(s) that already have been obtained.

Accordingly, notwithstanding the provisions of Section 3(b) of the Evidence Retention Guidelines, after a conviction, a County Prosecutor, or the Director of the Division of Criminal Justice in cases prosecuted by the Division, may authorize in writing the destruction of all or any portion of the excess quantity of controlled dangerous substances, as that term is defined herein, provided that:

a. All post-conviction direct appeals have been concluded, or, in the event that no direct appeal has been filed, one year has elapsed since the entry of the judgment of conviction;

b. No motion for post-conviction relief is pending;

c. the defense attorney(s) of record has/have been given written notice of the prosecutor's intention to destroy the evidence not less than 30 days before the evidence is to be destroyed, and no motion is pending before a court to enjoin or delay the destruction of the evidence;

d. A photographic or video record of the entire quantity of controlled dangerous substance that was seized, and a photographic or video record of all controlled dangerous substances to be destroyed, has been made, and such photographic/video records are maintained in the prosecutor's case file, and

e. A report documenting the date of destruction, quantity, and type of controlled dangerous substance destroyed, and place and method destruction, is prepared and maintained in the prosecutor's case file.

For purposes of this provision, the term "excess quantity of controlled dangerous substances" means that portion of the aggregate quantity of controlled dangerous substance seized that exceeds the statutory amount threshold set forth in N.J.S.A. 2C:35-5b for the highest degree of crime for which the defendant was convicted (*e.g.*, any amount of seized cocaine in excess of five ounces in the case of a first-degree cocaine conviction), except that with respect to a first-degree conviction for manufacturing, distributing, or possession with intent to distribute marijuana in violation of N.J.S.A. 2C:35-b(10)(a), the term means any amount that exceeds five pounds, or 10 plants.

All remaining controlled dangerous substance (*i.e.*, CDS less than the excess quantity) shall be retained and shall be destroyed in accordance with the provisions of Section 3(b) of the Evidence Retention Guidelines. Furthermore, nothing herein or in those Guidelines shall be construed to preclude the County Prosecutor or Director from seeking a destruction order at any time pursuant to N.J.S.A. 2C:35-21.

The Director of the Division of Criminal Justice in consultation with the County Prosecutors shall on or about June 11, 2016 report to the Attorney General on any litigation or administrative or logistical problems arising from the implementation of the foregoing revision to the Evidence Retention Guidelines. The Director's report shall include recommendations on whether the Attorney General should maintain or further revise the foregoing policy authorizing expedited post-conviction destruction of excess quantities of CDS.

The foregoing revisions to Attorney General Law Enforcement Directive 2011-1 and the Evidence Retention Guidelines shall take effect immediately. Any questions concerning these revisions shall be addressed to the Director of the Division of Criminal Justice, or his designee.

John J. Hoffman
Acting Attorney General

DATED: June 11, 2014

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PAULA T. DOW
Attorney General

STEPHEN J. TAYLOR
Director

DIRECTIVE NO. 2011 - 1
REVISES AND REPLACES DIRECTIVE 2010 - 1

TO: **DIRECTOR, DIVISION OF CRIMINAL JUSTICE**
ALL COUNTY PROSECUTORS
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: **PAULA T. DOW, ATTORNEY GENERAL**

DATE: **January 6, 2011**

SUBJECT: **ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE**

On March 9, 2010, I issued Law Enforcement Directive 2010-1, promulgating Guidelines for the Retention of Evidence. During the first year of the implementation of this program, questions have arisen concerning sections of the guidelines that require clarification. Therefore, I am reissuing the directive and guidelines, with necessary amendments to address the questions that have arisen regarding the original guidelines. This Directive and the Attached Guidelines supersede and replace Law Enforcement Directive 2010-1.

The primary duty of the Prosecutor is not to convict, but to ensure that justice is done. *State v. Ramseur*, 106 *N.J.* 123 (1987); *State v. Zola*, 112 *N.J.* 384 (1988). In keeping with this trust, the Attorney General and the County Prosecutors hereby intend to provide for the retention of evidence in criminal cases to protect public safety and the interests of crime victims and their families, and to afford to those who are serving a sentence for a crime the opportunity to challenge their convictions, in appropriate cases.

The attached *Attorney General Guidelines for the Retention of Evidence* in criminal cases have been jointly formulated by the Attorney General and the County Prosecutors and are promulgated pursuant to the *Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq.*, which recognizes the importance of public confidence in the administration of criminal justice and provides

for the general supervision of the County Prosecutors by the Attorney General as chief law enforcement officer of the State.

THEREFORE, I, Paula Dow, Attorney General, pursuant to the authority granted to the Attorney General of the State of New Jersey by the Criminal Justice Act of 1970, *N.J.S.A.* 52:17B-97 *et seq.*, hereby issue the attached Guidelines to all County Prosecutors, Police Chiefs and Law Enforcement Chief Executives in the State of New Jersey, to be applied in accordance with the terms of this Directive:

1. Adoption of Guidelines

The "*Attorney General Guidelines for the Retention of Evidence*" attached to this Directive and incorporated by reference into this Directive are formally adopted, with the purpose of providing the basis for procedures to be established to govern the retention of evidence in criminal cases throughout the State of New Jersey by law enforcement agencies.

2. Implementation

Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Authorization Policy and Procedures, in accordance with the attached Guidelines, which shall include procedures to be followed both for evidence held by the County Prosecutor's Office and for evidence being held by local law enforcement agencies within the jurisdiction.

3. Questions and Controversies

Questions regarding the content of this Directive or the interpretation, implementation or utilization of these Guidelines should be addressed to the Prosecutors Supervision and Coordination Bureau, Division of Criminal Justice, at (609) 984-2814.

4. Effective Date

This Law Enforcement Directive shall take effect immediately and shall remain in force and effect, unless and until repealed, amended or superseded by order of the Attorney General.

Given under my hand and seal, this 6th day of January, in the year Two Thousand and Eleven, and of the Independence of the United States, the Two Hundred and Thirty-Fifth.

Paula T. Dow
Attorney General

Attest:

Phillip Kwon
First Assistant Attorney General

ATTORNEY GENERAL GUIDELINES FOR THE RETENTION OF EVIDENCE

PAULA T. DOW
ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
AND
THE NEW JERSEY COUNTY PROSECUTORS ASSOCIATION

REVISED JANUARY 2011
TRENTON, NEW JERSEY

Attorney General Guidelines for the Retention of Evidence

Table of Contents

Attorney General Guidelines for the Retention of Evidence . . . 3
Introduction . . . 3
Amendments . . . 3

Retention Schedule for Evidence . . . 4
General Provisions . . . 4
Scope of the Guidelines – Applicability to Municipal Court Cases . . . 4
Development of Evidence Destruction Policy . . . 4
Authorization Requirement . . . 4
Completion of Sentence . . . 4
Items Not Needed for Prosecution . . . 4
Educational Use . . . 5
Timeframes for Evidence Destruction . . . 5
1. Homicide Evidence . . . 5
2. Sex Crimes Evidence . . . 5
3. Narcotic Evidence . . . 6
4. Firearms Evidence . . . 7
5. Other Evidence . . . 8
6. Special Circumstances . . . 8

Other Requirements Not Superseded by this Directive . . . 9

Attorney General Guidelines for the Retention of Evidence

Introduction

Law enforcement agencies have schedules in place for the retention of criminal case files and other documentary records that are maintained by their agencies. These records retention schedules are promulgated by the Division of Archives and Records Management (hereinafter DARM) in the Department of State.[1] However, these records retention schedules govern only documentary records such as case files, logbooks, etc. These schedules do not govern the retention of criminal case evidence.

Until now, there has been little direction on the topic of retention of evidence and, as a result, most law enforcement agencies have used the documentary records retention schedules for evidence retention. As criminal forensic science has improved, the volume of evidence gathered at crime scenes has grown exponentially. For many law enforcement agencies, this has created a looming evidence storage crisis.

Although this problem exists in most types of cases, it is most severe for homicide cases, for which an entire room may be required to hold the evidence from just one case. The DARM documentary records retention schedules for law enforcement agencies such as police departments, county prosecutors and county sheriffs provide that homicide records are "permanent." This standard, which can be met for documents through the use of microfilming and destruction of the original documents, is wholly impractical when applied to physical evidence. Although DARM's documentary records retention schedule was not promulgated for application to evidence, agencies adopted it for evidence retention in the absence of other guidance. It is the intention of the Attorney General and the County Prosecutors to promulgate these standards in order to remedy this problem.

Amendments

As with any new policy, unanticipated questions have arisen since the issuance of these Guidelines. Therefore, I am reissuing the directive and guidelines, with necessary amendments to address the questions that have arisen regarding the original guidelines.

---

[1]These records retention schedules can be found online at: http://www.njarchives.org/links/retention.html

Retention Schedule for Evidence

General Provisions

Scope of the Guidelines – Applicability to Municipal Court Cases

These Guidelines apply to all indictable offenses handled in Superior Court. Evidence relating to cases disposed of in Municipal Court, where there is no companion Superior Court case, is not covered by these Guidelines. Evidence from Municipal Court cases, other than DUI cases, may be destroyed one year after the disposition of the Municipal Court case. Evidence used in DUI cases shall be retained for ten years following the disposition of the case. It shall be the responsibility of the law enforcement agency holding the evidence to determine that the municipal court case has been disposed of, and the date of disposition. Once that determination has been made, the law enforcement agency shall not be required to obtain authorization from a County Prosecutor or Municipal Prosecutor prior to destroying the evidence.

Development of Evidence Destruction Policy

The following timeframes for Evidence Destruction Authorization are suggested for statewide usage by all County Prosecutor's Offices. Each County Prosecutor's Office shall develop and follow its own Evidence Destruction Policy and Procedures. The County Prosecutor may impose additional requirements, if necessary.

Authorization Requirement

The mere fact that an item of evidence may satisfy the qualifications for being subject to destruction does not mean that it is automatically destroyed. The appropriate Prosecutor's Office must review and provide authorization pursuant to their respective Policy and Procedures, before any destruction is to take place. The reference to "Prosecutor" contained herein shall include and also refer to the Director of the Division of Criminal Justice for purposes of this document. A County Prosecutor or the Director of the Division of Criminal Justice may designate one or more Assistant Prosecutors or Deputy Attorneys General to authorize evidence destruction on their behalf.

Completion of Sentence

For the purposes of these Guidelines, the expiration of a sentence shall include any post-incarceration supervision or other supervision such as community supervision for life (CSL) or parole supervision for life (PSL).

Items Not Needed for Prosecution

Nothing in these Guidelines shall require the retention of items or portions of seized items that are not required for prosecution of a case. Furthermore, if the evidentiary portion of an object can be removed, the entire object need not be retained. Examples of such items are not limited to

but may include the hard drive of a computer, the "black box" in a vehicle or a bloodstained section of a carpet or a piece of furniture.

Educational Use

The County Prosecutor or the Director of the Division of Criminal Justice may authorize the use of property, otherwise meeting the criteria for destruction, for a bona fide law enforcement educational purpose or for preservation as a historical object.

Timeframes for Evidence Destruction

1. Homicide Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or fingerprint evidence that has been submitted to AFIS, or there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

2. Sex Crimes Evidence

a. In all cases where all of the defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court's signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.

d. In cases where no suspects have been identified but a DNA profile has been obtained and submitted to CODIS, or in the case of fingerprint evidence that has been submitted to AFIS, or in cases where there is no statute of limitations, the evidence shall be retained indefinitely. Only the Prosecutor or their designee, may authorize the destruction of this evidence.

e. In cases where the victim has signed a waiver of prosecution, has not contacted the police/prosecutor's office indicating a desire to pursue a prosecution, or has reported as a "Jane Doe" pursuant to the *Standards for Providing Services to Victims of Sexual Assault*, the evidence shall not be authorized for destruction for a minimum of 90 days from the date of the collection of said evidence.

f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

3. Narcotic Evidence

a. In all cases where all of the defendants in the case have been charged and all of the defendants are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants' expiration of sentence, whichever is later, a request for destruction authorization may be submitted.

c. In all cases where the defendants have been admitted into the Pre-Trial Intervention Program (PTI), have successfully completed PTI, and have been discharged, upon the court's signing an order dismissing the case as to all parties, and upon the expiration of the longest sentence of any co-defendants not admitted into PTI, a request for destruction authorization may be submitted.

d. Where a controlled buy or an undercover buy has taken place and the investigation has been officially closed by the investigating agency with no prosecution having been instituted against anyone, after a period of one year and one day, a request for destruction authorization may be submitted.

e. In cases where a controlled dangerous substance has been submitted to a Forensic Laboratory for analysis and has not been connected to any suspect or defendant and has been submitted as Found Property, a request for destruction authorization may be submitted one year and one day after it has been submitted to the laboratory upon verification by the submitting agency that no prosecution has been instituted relating to the evidence.

f. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

g. Notwithstanding the provisions above, the County Prosecutor or the Director of the Division of Criminal Justice may authorize the use of samples of controlled dangerous substances taken from evidence, for the purpose of training K-9s, provided such use will not compromise any pending criminal prosecution or appeal.

4. Firearms Evidence

a. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of the conviction or upon the defendants' expiration of sentence, whichever comes later, a destruction authorization may be submitted. If there is a legal owner of the firearm who is not a defendant in the case and is not otherwise legally disqualified from possessing the firearm, pursuant to any provision of Chapter 58 of the New Jersey Criminal Code, rather than destroying the weapon it should be returned to the owner, if said owner is in possession of necessary permits.

b. Prior to any destruction authorization being granted, no firearms evidence shall be considered for destruction until all necessary tracing tests and IBIS submissions have been completed.

c. In all cases where all defendants have been charged and all defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

d. If the weapon is related to a Homicide case in addition to this section, see Section 1 above.

e. If the weapon is related to a Sex Crimes case, in addition to this section, see Section 2 above.

f. If the weapon is related to a Narcotics case, in addition to this section, see Section 3 above.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

h. For any firearm that has not been connected to any suspect or defendant and which has been submitted as found property, a request for destruction authorization may be submitted one year and one day after any necessary attempts to trace ownership of the weapon and upon verification that no prosecution has been instituted relating to the evidence.

5. Other Evidence

a. In all cases where all defendants have been charged and all of the defendants in the case are deceased, upon proof of death being submitted, a request for destruction authorization may be submitted.

b. In cases where the defendants were convicted and no appeals or post-conviction relief motions are pending, after a period of 5 years from the date of conviction or upon the defendants expiration of sentence, whichever comes later, a request for destruction authorization may be submitted. If there is a legal owner of said evidence who is not a defendant, no forfeiture proceedings are pending or have been concluded and there are no appeals of said forfeiture action pending and the ownership has not been granted to a law enforcement agency by court order, said property shall be returned to the legal owner of same, rather than being authorized for destruction.

g. In cases involving juvenile defendants who have been charged, except in Homicide cases, and where there is no referral of the case to another court, with or without the juvenile's consent, a request for destruction authorization may be submitted 4 years after the final adjudication or disposition of all juvenile defendants or upon release from custody, whichever is later. Evidence in juvenile cases which are referred (waived) to another court, or in which there are adult co-defendants, shall be subject to the retention periods for adult cases.

6. Special Circumstances

a. In cases where the only defendant has been determined by a Court to be Incompetent to stand trial, the evidence must be retained until the defendant has become competent to stand trial, has died, or the Prosecutor of that respective county has made a determination to not proceed with the prosecution of the defendant.

b. In cases where there is an acquittal of the only defendant or there is a finding of Not Guilty By Reason of Insanity of the only defendant, then the evidence may be authorized for destruction by the Prosecutor of that county, in a timeframe to be determined by the Prosecutor of that county.

Other Requirements Not Superseded by this Directive

Nothing in this policy is intended to require that a law enforcement office retain evidence in circumstances where such evidence would ordinarily be destroyed, returned to its rightful owner, forfeited, or otherwise disposed of pursuant to existing statutes or policies.

Examples include, but are not limited to:

1. *N.J.S.A.* 2C:65-1 *et seq.* Disposition of Stolen Property and Documentary Exhibits
2. *N.J.S.A.* 2C:64-1 *et seq.* Seized or Forfeited Property
3. *N.J.S.A.* 2C:35-21 Destruction of Bulk Seizures of Controlled Dangerous Substances
4. N.J.S.A. 52:4B-36 (l.) Crime Victims Bill of Rights, Prompt Return of Property When No Longer Needed as Evidence

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

PAULA T. DOW
Attorney General

DIRECTIVE NO. 2011- 2

TO: **DIRECTOR, DIVISION OF CRIMINAL JUSTICE**
ALL COUNTY PROSECUTORS
SUPERINTENDENT, NEW JERSEY STATE POLICE
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: **PAULA T. DOW, ATTORNEY GENERAL**

DATE: **May 23, 2011**

SUBJECT: **ATTORNEY GENERAL DIRECTIVE REGARDING RETENTION AND TRANSMITTAL OF CONTEMPORANEOUS NOTES OF WITNESS INTERVIEWS AND CRIME SCENES**

Pursuant to my authority as chief law enforcement officer of the State of New Jersey, and to ensure uniform statewide compliance with the requirements set forth in the Supreme Court's ruling in State v. W.B., __ N.J. __ (2011), I hereby issue the following Directive:

A. DEFINITIONS

For the purposes of this Directive:

1. The term "contemporaneous notes" means any notation, whether handwritten, typed, entered into an electronic note-taking device or audio recorded, that describes or memorializes the note taker's personal perception of what transpired in the course of a witness interview or that memorializes the officer's personal observations at the scene of the crime. The term includes notations made after the witness interview, provided that they memorialize the officer's personal recollection of what transpired during the interview. The term does not include, among other things, notations concerning investigative tasks to be accomplished (*i.e.*, a "to do" list), references to

information from outside the interview to be checked against statements made by the witness to verify or dispel the witness's account, possible lines of inquiry, specific questions that were not pursued or actually posed to the witness, and other investigative techniques or deliberative processes.

2. The term "witness interview" means an interview of a witness done in the course of investigating a crime of the first, second, third, or fourth degree under New Jersey law, whether committed by an adult or a juvenile.

B. GENERAL RETENTION AND TRANSMITTAL RULES

1. Prohibition on Policy or Practice of Destroying Contemporaneous Notes of Witness Interviews and Crime Scene Observations

Any existing law enforcement policy or practice to destroy contemporaneous notes of a witness interview or of a crime scene observation after the contents of those notes have been incorporated into a final report is hereby rescinded and prohibited as contrary to the law of this State. Henceforth, when a law enforcement officer during the course of an investigation of a crime conducts or participates in a witness interview, the officer shall retain any original contemporaneous notes of the interview that the officer made. The officer also shall retain any original contemporaneous notes made of his or her personal observations of the crime scene.

2. Transmittal of Notes of Witness Interviews and Crime Scene Observations to Prosecuting Agency

Whenever a law enforcement officer transmits to the prosecuting agency a report concerning a witness interview that the officer conducted or participated in, or concerning a crime scene observation made by the officer, the officer shall also transmit to the prosecuting agency a printed or electronic copy of any contemporaneous notes of the interview and/or crime scene observation that had been taken by the officer. For ease of identification, the copy of the contemporaneous notes shall be labeled with the case number on the report.

3. Notice to Prosecutor of Material That May be Confidential or Privileged

Whenever a law enforcement officer provides a copy of contemporaneous notes to a prosecuting agency pursuant to paragraph 2 of this Section, the officer shall alert the prosecuting agency if the officer believes that the contemporaneous notes may include or otherwise reveal confidential or privileged information, or where the officer believes that further disclosure of the

contemporaneous notes or any portion thereof may endanger any person or interfere with an investigation. It is the responsibility of the prosecuting agency to determine whether the contemporaneous notes are discoverable pursuant to R. 3:13-3, whether any non-discoverable portions of such notes should be redacted prior to providing discovery, and/or whether it is appropriate or necessary to apply for a protective order denying, restricting or deferring discovery of such notes, or portions thereof, pursuant to R. 3:13-3(f).

4. Effect on Existing Note-Taking Policies and Practices

Nothing in this Directive shall be construed either to require law enforcement officers to take contemporaneous notes of a witness interview or of crime scene observations, or to discourage law enforcement officers from taking any such notes. Nor does this Directive modify existing requirements for electronic recordation of statements pursuant to State v. Cook, 179 N.J. 533 (2004) and R. 3:17.

5. Training on Note-Taking Techniques

When a law enforcement officer take notes of a witness interview, the officer should whenever feasible avoid memorializing what transpired during the course of the interview on the same page that include notations that do not pertain to what transpired during the witness interview (*e.g.*, follow-up investigative tasks to be performed). This approach will enable officers to transmit to the prosecuting agency only those pages that are required to be transmitted pursuant to paragraph 2 of this Section, and will also assist the prosecuting agency in distinguishing and separating notations that must be provided in discovery from non-discoverable material. The Division of Criminal Justice and the County Prosecutors, in consultation with the New Jersey Association of Chiefs of Police, shall develop and make available training materials concerning effective note-taking techniques in furtherance of this Directive.

C. SCOPE, EFFECTIVE DATE AND IMPLEMENTATION

This Directive shall apply to every law enforcement agency and officer operating under the authority of the laws of the State of New Jersey. This Directive shall take effect on May 27, 2011, and shall remain in force and effect unless and until repealed, amended or superseded by Order of the Attorney General. Every police department and law enforcement agency shall take such steps as may be necessary and appropriate to implement this Directive, and every department and agency shall review and, as necessary, revise its rules, regulations, standing operating procedures, and/or training programs to ensure compliance with this Directive.

D. INTERPRETATION

Questions by police agencies or officers concerning the application of this Directive to specific cases should be addressed to the prosecuting agency handling the case. Questions by County Prosecutors regarding the content or interpretation of this Directive should be addressed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau.

Given under my hand and seal, this 23rd day of May, in the year Two Thousand and Eleven, and of the Independence of the United States, the Two Hundred and Thirty-Fifth.

Paula T. Dow
Attorney General

Attest:

Phillip Kwon
First Assistant Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JEFFREY S. CHIESA
Attorney General

ATTORNEY GENERAL
LAW ENFORCEMENT DIRECTIVE NO. 2012-2
(Investigation of Human Trafficking)

Human trafficking is a form of modern-day slavery. It is not only a violation of fundamental human rights but also a serious crime under New Jersey law codified at N.J.S.A. 2C:13-8. Unfortunately, this crime often goes undetected and unreported. Human trafficking victims, given the coercive nature of the crime, feel isolated and powerless, and often are unable, afraid, or otherwise unwilling to seek assistance from law enforcement. Some of these victims feel ashamed, and many are reluctant to identify themselves as victims.

Law enforcement agencies and officers, meanwhile, may not have the training and experience to recognize the telltale indicators of human trafficking when conducting investigations of other offenses that may be associated with human trafficking enterprises, such as prostitution. As a result, some law enforcement officers may not know to pose questions during the course of their investigations that might expose a human trafficking violation.

Police officers in this State should be aware of and watchful at all times for the indicators of human trafficking activity. Vigilance by law enforcement officers is especially important when their duties bring them into contact with the kinds of commercial establishments or places that, past experience has shown, may be used to harbor and conceal human trafficking activities, such as "strip clubs" and other sexually oriented businesses, massage parlors, or nail salons. By way of example, a police officer should know to take note if he or she were to see evidence that suggests that persons are living or sleeping at a commercial establishment that is not ordinarily considered to be a residential premises.

For the foregoing reasons, it is appropriate to enhance and coordinate the State's efforts to identify, investigate, and prosecute this form of criminal activity. Accordingly, by virtue of the authority vested in me by the Constitution and the laws of this State, and in furtherance of securing the benefits of a uniform and efficient enforcement of the criminal law pursuant to N.J.S.A. 52:17B-97 *et seq.*, I hereby promulgate the following DIRECTIVE to all law enforcement agencies and officers operating under the authority of the laws of this State:

I. GENERAL POLICY

It shall be the law enforcement policy of this State to fully and fairly investigate and prosecute violations of N.J.S.A. 2C:13-8 with a view toward deterring human trafficking violations to the greatest extent possible. All law enforcement agencies and officers shall be required: to promptly and thoroughly investigate possible violations of human trafficking; to keep State and county prosecution authorities apprised of human trafficking investigations to ensure that all investigative leads are pursued as appropriate; to make certain that all investigations are properly coordinated; to protect the immediate safety and security of human trafficking victims; and to respect and safeguard the rights of these victims.

II. HUMAN TRAFFICKING LIAISONS

Every County Prosecutor shall designate at least one detective/investigator and at least one assistant prosecutor to serve as the County Prosecutor's Office liaisons to the Division of Criminal Justice on human trafficking matters, and to facilitate and oversee the implementation and compliance with the policies, standards, and procedures set forth in this Directive and in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to Section IV of this Directive. These designated Human Trafficking Liaisons will also serve as points of contact for police agencies for purposes of the notification, referral, and reporting requirements of this Directive.

Each County Prosecutor shall within 30 days of the effective date of this Directive provide to the Director, or his designee, the names and contact information of the designated detective(s)/investigator(s) and assistant prosecutor(s), and shall thereafter promptly notify the Director or his designee of any changes in the names or contact information of these liaisons. All designated liaisons will receive training pursuant to Section VI(B)(1) of this Directive.

III. REQUIREMENT TO CONDUCT PROMPT AND THOROUGH INVESTIGATIONS OR TO PROMPTLY REFER MATTERS FOR INVESTIGATION BY ANOTHER AGENCY

A. Investigation or Referral of Possible Human Trafficking Violations

Whenever a law enforcement officer: a) develops reasonable articulable suspicion to believe that the crime of human trafficking is being or has been committed; b) receives any information from an anonymous or confidential source concerning a possible human trafficking violation under circumstances where the information does not on its face constitute reasonable articulable suspicion; or c) determines, while in the course of investigating a prostitution-related offense pursuant to Section IV(B) of this Directive, that any of the relevant circumstances that are specified in the

investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of Section IV(A) of this Directive exist; the officer or another member of the officer's agency shall either:

(1) promptly investigate the possible human trafficking violation in accordance with the provisions of this Directive; or

(2) promptly refer the matter to the appropriate County Prosecutor's Office, or to the Division of Criminal Justice, for investigation by the County Prosecutor or the Division.

B. Reports on Investigations Conducted By Police Departments

Where an officer or another member of the officer's agency pursues the investigation of a possible violation of N.J.S.A. 2C:13-8 without referring the matter to the County Prosecutor's Office or the Division of Criminal Justice for investigation by the County Prosecutor or Division, the agency shall, within 24 hours of initiating its investigation, notify the County Prosecutor's Human Trafficking Liaison that a human trafficking investigation has been initiated, the circumstances that prompted the investigation, and the results of the investigation to date. Unless and until the agency refers the matter for investigation by the County Prosecutor or Division, or unless and until the County Prosecutor or Division otherwise assumes responsibility for conducting the investigation, the agency or officer shall have a continuing obligation to report on a monthly basis to the County Prosecutor's Human Trafficking Liaison on the status of its investigation.

IV. INVESTIGATION STANDARDS

A. Promulgation of Investigation Standards and Protocols

The Director of the Division of Criminal Justice shall within sixty days of the effective date of this Directive develop and disseminate to all law enforcement agencies investigation standards and protocols to be used by law enforcement agencies and officers when investigating a possible human trafficking violation. These standards shall be designed to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions, and shall include:

1. A detailed description of specific circumstances that are relevant to a possible violation of N.J.S.A. 2C:13-8, which specified relevant circumstances must be investigated to the extent feasible;

2. Guidelines on the specific questions to be posed during an investigation so as to obtain evidence or information concerning the relevant circumstances specified in the

investigation standards and protocols promulgated pursuant to paragraph (1) of this subsection; and

3. A detailed description of the methods of investigation to be used to ensure the integrity and effectiveness of the investigative process. Those investigative methods shall, among other things, specifically address the fear and intimidation that often silences victims of human trafficking. For example, whenever practical, all possible victims and witnesses should be interviewed separately, in the individual's same language, and well outside the presence of the individual's employer, landlord, or any other person who may intimidate or inappropriately influence the possible victim/witness.

B. Special Responsibilities When Investigating Prostitution Offenses

1. Whenever a law enforcement officer has probable cause to believe that a prostitution-related offense has been committed in violation of any provision of N.J.S.A. 2C:34-1, as part of the investigation and handling of the suspected prostitution offense, the officer or another member of the officer's agency shall, whenever feasible, pose questions or otherwise seek to obtain evidence concerning the relevant circumstances that are specified in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of subsection A of this Section. If information learned during the course of the prostitution investigation indicates that any of those specified relevant circumstances exist, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

2. Where the prostitution offense involves a "house of prostitution" as defined in N.J.S.A. 2C:34-1(a)(3) or is otherwise associated with a specific commercial premises (*e.g.*, a massage parlor, "strip club," bar, restaurant, etc.), the agency or officer shall, whenever feasible and lawful, examine the physical premises to determine whether it is being used for residential purposes. If the prostitution investigation reveals that persons may have used a commercial premises as a place of residence, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

3. Nothing in this subsection should be construed to suggest that the obligation to be watchful for indications of human trafficking is limited to circumstances where an agency or officer is investigating the offense of prostitution. The training provided to law enforcement officers pursuant to Section VI of this Directive shall instruct officers to be watchful at all times for indicators of human trafficking activity, and especially whenever police go to places that, past experience has shown, are more frequently associated with human trafficking activity (*e.g.*, sexually oriented businesses, massage parlors, nail salons, etc.). The training shall also instruct officers to be watchful for the indicators of human trafficking activity when present at premises where

legitimate as well as illegitimate commercial activity is occurring, and when investigating other forms of unlawful activity, including but not limited to sexual assault, domestic violence, assault, and robbery, and fire/housing code and labor law violations.

C. Special Responsibilities When Interacting with PossibleVictims

1. All law enforcement officers shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be the victims of human trafficking.

2. If a person reports to a law enforcement officer that he or she is a victim of human trafficking, or relates to a law enforcement officer facts that, if true, would make the person a victim of human trafficking, the law enforcement officer and other members of the officer's agency shall treat the person making the report or relating the information as a human trafficking victim for purposes of this Directive, notwithstanding that the person may have committed an offense (*e.g.*, prostitution), unless and until an investigation determines that any such report or information is false or unfounded.

3. Notwithstanding any other time period for notifying the County Prosecutor's Office or Division of Criminal Justice set forth in this Directive, a law enforcement officer, or another member of the officer's agency, shall notify the County Prosecutor's Human Trafficking Liaison as soon as practicable after receiving the report or information from the possible human trafficking victim so that the County Prosecutor's Office can arrange for any appropriate referrals for victim services.

4. Pursuant to the provisions of N.J.S.A. 52:4B-44.1, the Division of Criminal Justice, working in conjunction with the County Prosecutors, and in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Children and Families, the Superintendent of State Police, and representatives of providers of services to victims of human trafficking and sexually exploited minors, shall develop standards and protocols for providing information and services to these persons. Such standards and protocols shall include coordination of efforts with appropriate federal authorities pursuant to the "Trafficking Victims Protection Reauthorization Act of 2003," 22 U.S.C. Sec. 7101 *et seq*.

5. The training provided pursuant to Section VI of this Directive shall provide instruction on how to protect human trafficking victims, and on how to implement the provisions of this subsection so as to encourage possible victims to fully cooperate in human trafficking investigations. The training programs shall include instruction on the appropriate handling of possible human trafficking victims who may have committed an offense, including instruction on the affirmative defense to the offense of prostitution established in N.J.S.A. 2C:34-1(e). The training programs shall also include information concerning referrals for medical treatment, counseling and advocacy services, and housing/shelter.

D. Supplemental Investigation Standards

The Director of the Division of Criminal Justice may from time to time issue supplemental investigation standards or protocols to be followed by law enforcement agencies and officers to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

V. REPORTING REQUIREMENTS

A. Reporting by Police Upon Arrest or Determination of Probable Cause

Notwithstanding any other time period for making notifications or reporting information set forth in this Directive, when a law enforcement officer makes an arrest or otherwise develops probable cause to believe that the crime of human trafficking has been or is being committed, the arresting officer or another member of the officer's agency shall immediately report the matter to the designated County Prosecutor's Office Human Trafficking Liaison, who shall as soon as practicable, but in no event later than 12 hours, report the matter to the Division of Criminal Justice.

B. Reporting by County Prosecutor of Existing Case Inventory

Each County Prosecutor shall within 60 days of the effective date of this Directive provide to the Director of the Division of Criminal Justice or his designee a listing of all currently pending cases or investigations involving a charge of human trafficking. This list shall include such information as shall be determined by the Director.

C. Reporting by County Prosecutor of Significant Case Events

It shall be the responsibility of the County Prosecutor to promptly notify the Division of Criminal Justice of the following events concerning the investigation or prosecution of a suspected violation of N.J.S.A. 2C:13-8:

1. application for or issuance of an arrest warrant;

2. filing of a criminal complaint;

3. indictment;

4. any disposition of pending charges;

5. application to the Department of Homeland Security for Continued Presence Status or a T Visa for a possible human trafficking victim; and

6. any referral of a human trafficking investigation or prosecution for handling by or in cooperation with the United States Attorneys Office or any federal law enforcement agency, or by a law enforcement or prosecuting agency in any other State.

Such notifications of significant case events to the Division shall be done in a manner as shall be prescribed by the Director.

D. Reports of Aggregate Data and Additional Information

In addition to the notification of significant case events pursuant to subsection C of this Section, each County Prosecutor shall provide to the Division of Criminal Justice such aggregate data and information about human trafficking enforcement activities and services as may be needed to prepare reports for the United States Department of Justice, Bureau of Justice Assistance, or for such other purposes as may be determined by the Director of the Division of Criminal Justice.

E. Implementation of Notification and Reporting Requirements

The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop standardized forms and procedures to facilitate the efficient and uniform implementation by all law enforcement agencies of the notification and reporting requirements of this Directive.

VI. TRAINING

A. In-Service Training Program

The Division of Criminal Justice shall within ninety days of the effective date of this Directive develop human trafficking training programs for law enforcement officers and prosecutors. The Division shall to the extent feasible make the training programs available on-line through the NJLEARN system. The Division may from time to time develop additional human trafficking training programs and aids to facilitate implementation of this Directive and to achieve the goals of enhancing the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

B. Selection of Officers to Receive In-Service Training

1. All Human Trafficking Liaisons designated pursuant to Section II of this Directive shall receive the training developed pursuant to subsection A of this Section, and such additional

training as the Director of the Division of Criminal Justice may from time to time prescribe.

2. The chief executive of every State, county and local law enforcement agency shall identify those sworn officers who would benefit from receiving training on human trafficking based upon their duty assignment, and shall within sixty days of the effective date of this Directive provide to the appropriate County Prosecutor and the Division of Criminal Justice a list of those officers to be trained. Those officers should complete the training, whether through the NJLEARN system or by other means, within ninety days of the training program being made available pursuant to subsection A of this Section. The chief executive of each department shall report to the County Prosecutor and the Division of Criminal Justice on the number of officers who have completed training. This reporting shall be done in a manner and at such times as shall be prescribed by the Director.

3. The Director of the Division of Criminal Justice shall report annually to the Attorney General on the number of officers who have completed human trafficking in-service training, and shall make recommendations as appropriate as to whether the Attorney General should require that additional officers receive in-service training. Nothing herein should be construed to prevent a County Prosecutor from requiring officers who are subject to his or her authority to receive the human trafficking training developed by the Division of Criminal Justice, or to receive additional training developed or approved by the County Prosecutor.

C. Pre-Service Training

1. The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop curricula on the subject of human trafficking for use in the Basic Course for Police Officers and the Basic Course for Investigators. The Division shall submit this curricula to the Police Training Commission for use at all police academies that are subject to the jurisdiction of the Police Training Commission.

2. The Division of State Police shall include human trafficking curricula developed pursuant to paragraph (1) of this subsection in the pre-service training of Trooper recruits in the State Police Training Academy.

VII. AUTHORITY OF COUNTY PROSECUTOR

Nothing in this Directive shall be construed to prevent a County Prosecutor from issuing supplemental directives, procedures or standards governing the investigation and prosecution of human trafficking cases by law enforcement agencies that are subject to the County Prosecutor's authority, provided that those supplemental standards and procedures do not conflict with the standards and procedures set forth in this Directive.

VIII. QUESTIONS

Any questions concerning the interpretation or implementation of this Directive shall be directed to the Director of the Division of Criminal Justice, or his designee.

IX. EFFECTIVE DATE

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superseded by Order of the Attorney General.

Jeffrey S. Chiesa
Attorney General

ATTEST:

Phillip H. Kwon
First Assistant Attorney General

Dated: July 12, 2012

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JEFFREY S. CHIESA
Attorney General

ATTORNEY GENERAL
LAW ENFORCEMENT DIRECTIVE NO. 2012-2
(Investigation of Human Trafficking)

Human trafficking is a form of modern-day slavery. It is not only a violation of fundamental human rights but also a serious crime under New Jersey law codified at N.J.S.A. 2C:13-8. Unfortunately, this crime often goes undetected and unreported. Human trafficking victims, given the coercive nature of the crime, feel isolated and powerless, and often are unable, afraid, or otherwise unwilling to seek assistance from law enforcement. Some of these victims feel ashamed, and many are reluctant to identify themselves as victims.

Law enforcement agencies and officers, meanwhile, may not have the training and experience to recognize the telltale indicators of human trafficking when conducting investigations of other offenses that may be associated with human trafficking enterprises, such as prostitution. As a result, some law enforcement officers may not know to pose questions during the course of their investigations that might expose a human trafficking violation.

Police officers in this State should be aware of and watchful at all times for the indicators of human trafficking activity. Vigilance by law enforcement officers is especially important when their duties bring them into contact with the kinds of commercial establishments or places that, past experience has shown, may be used to harbor and conceal human trafficking activities, such as "strip clubs" and other sexually oriented businesses, massage parlors, or nail salons. By way of example, a police officer should know to take note if he or she were to see evidence that suggests that persons are living or sleeping at a commercial establishment that is not ordinarily considered to be a residential premises.

For the foregoing reasons, it is appropriate to enhance and coordinate the State's efforts to identify, investigate, and prosecute this form of criminal activity. Accordingly, by virtue of the authority vested in me by the Constitution and the laws of this State, and in furtherance of securing the benefits of a uniform and efficient enforcement of the criminal law pursuant to N.J.S.A. 52:17B-97 *et seq.*, I hereby promulgate the following DIRECTIVE to all law enforcement agencies and officers operating under the authority of the laws of this State:

I. GENERAL POLICY

It shall be the law enforcement policy of this State to fully and fairly investigate and prosecute violations of N.J.S.A. 2C:13-8 with a view toward deterring human trafficking violations to the greatest extent possible. All law enforcement agencies and officers shall be required: to promptly and thoroughly investigate possible violations of human trafficking; to keep State and county prosecution authorities apprised of human trafficking investigations to ensure that all investigative leads are pursued as appropriate; to make certain that all investigations are properly coordinated; to protect the immediate safety and security of human trafficking victims; and to respect and safeguard the rights of these victims.

II. HUMAN TRAFFICKING LIAISONS

Every County Prosecutor shall designate at least one detective/investigator and at least one assistant prosecutor to serve as the County Prosecutor's Office liaisons to the Division of Criminal Justice on human trafficking matters, and to facilitate and oversee the implementation and compliance with the policies, standards, and procedures set forth in this Directive and in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to Section IV of this Directive. These designated Human Trafficking Liaisons will also serve as points of contact for police agencies for purposes of the notification, referral, and reporting requirements of this Directive.

Each County Prosecutor shall within 30 days of the effective date of this Directive provide to the Director, or his designee, the names and contact information of the designated detective(s)/investigator(s) and assistant prosecutor(s), and shall thereafter promptly notify the Director or his designee of any changes in the names or contact information of these liaisons. All designated liaisons will receive training pursuant to Section VI(B)(1) of this Directive.

III. REQUIREMENT TO CONDUCT PROMPT AND THOROUGH INVESTIGATIONS OR TO PROMPTLY REFER MATTERS FOR INVESTIGATION BY ANOTHER AGENCY

A. Investigation or Referral of Possible Human Trafficking Violations

Whenever a law enforcement officer: a) develops reasonable articulable suspicion to believe that the crime of human trafficking is being or has been committed; b) receives any information from an anonymous or confidential source concerning a possible human trafficking violation under circumstances where the information does not on its face constitute reasonable articulable suspicion; or c) determines, while in the course of investigating a prostitution-related offense pursuant to Section IV(B) of this Directive, that any of the relevant circumstances that are specified in the

investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of Section IV(A) of this Directive exist; the officer or another member of the officer's agency shall either:

(1) promptly investigate the possible human trafficking violation in accordance with the provisions of this Directive; or

(2) promptly refer the matter to the appropriate County Prosecutor's Office, or to the Division of Criminal Justice, for investigation by the County Prosecutor or the Division.

B. Reports on Investigations Conducted By Police Departments

Where an officer or another member of the officer's agency pursues the investigation of a possible violation of N.J.S.A. 2C:13-8 without referring the matter to the County Prosecutor's Office or the Division of Criminal Justice for investigation by the County Prosecutor or Division, the agency shall, within 24 hours of initiating its investigation, notify the County Prosecutor's Human Trafficking Liaison that a human trafficking investigation has been initiated, the circumstances that prompted the investigation, and the results of the investigation to date. Unless and until the agency refers the matter for investigation by the County Prosecutor or Division, or unless and until the County Prosecutor or Division otherwise assumes responsibility for conducting the investigation, the agency or officer shall have a continuing obligation to report on a monthly basis to the County Prosecutor's Human Trafficking Liaison on the status of its investigation.

IV. INVESTIGATION STANDARDS

A. Promulgation of Investigation Standards and Protocols

The Director of the Division of Criminal Justice shall within sixty days of the effective date of this Directive develop and disseminate to all law enforcement agencies investigation standards and protocols to be used by law enforcement agencies and officers when investigating a possible human trafficking violation. These standards shall be designed to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions, and shall include:

1. A detailed description of specific circumstances that are relevant to a possible violation of N.J.S.A. 2C:13-8, which specified relevant circumstances must be investigated to the extent feasible;

2. Guidelines on the specific questions to be posed during an investigation so as to obtain evidence or information concerning the relevant circumstances specified in the

investigation standards and protocols promulgated pursuant to paragraph (1) of this subsection; and

3. A detailed description of the methods of investigation to be used to ensure the integrity and effectiveness of the investigative process. Those investigative methods shall, among other things, specifically address the fear and intimidation that often silences victims of human trafficking. For example, whenever practical, all possible victims and witnesses should be interviewed separately, in the individual's same language, and well outside the presence of the individual's employer, landlord, or any other person who may intimidate or inappropriately influence the possible victim/witness.

B. Special Responsibilities When Investigating Prostitution Offenses

1. Whenever a law enforcement officer has probable cause to believe that a prostitution-related offense has been committed in violation of any provision of N.J.S.A. 2C:34-1, as part of the investigation and handling of the suspected prostitution offense, the officer or another member of the officer's agency shall, whenever feasible, pose questions or otherwise seek to obtain evidence concerning the relevant circumstances that are specified in the investigation standards and protocols promulgated by the Director of the Division of Criminal Justice pursuant to paragraph (1) of subsection A of this Section. If information learned during the course of the prostitution investigation indicates that any of those specified relevant circumstances exist, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

2. Where the prostitution offense involves a "house of prostitution" as defined in N.J.S.A. 2C:34-1(a)(3) or is otherwise associated with a specific commercial premises (*e.g.*, a massage parlor, "strip club," bar, restaurant, etc.), the agency or officer shall, whenever feasible and lawful, examine the physical premises to determine whether it is being used for residential purposes. If the prostitution investigation reveals that persons may have used a commercial premises as a place of residence, the agency conducting the prostitution investigation shall comply with the investigation, referral, and reporting requirements set forth in Section III (A) of this Directive.

3. Nothing in this subsection should be construed to suggest that the obligation to be watchful for indications of human trafficking is limited to circumstances where an agency or officer is investigating the offense of prostitution. The training provided to law enforcement officers pursuant to Section VI of this Directive shall instruct officers to be watchful at all times for indicators of human trafficking activity, and especially whenever police go to places that, past experience has shown, are more frequently associated with human trafficking activity (*e.g.*, sexually oriented businesses, massage parlors, nail salons, etc.). The training shall also instruct officers to be watchful for the indicators of human trafficking activity when present at premises where

legitimate as well as illegitimate commercial activity is occurring, and when investigating other forms of unlawful activity, including but not limited to sexual assault, domestic violence, assault, and robbery, and fire/housing code and labor law violations.

C. Special Responsibilities When Interacting with PossibleVictims

1. All law enforcement officers shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be the victims of human trafficking.

2. If a person reports to a law enforcement officer that he or she is a victim of human trafficking, or relates to a law enforcement officer facts that, if true, would make the person a victim of human trafficking, the law enforcement officer and other members of the officer's agency shall treat the person making the report or relating the information as a human trafficking victim for purposes of this Directive, notwithstanding that the person may have committed an offense (*e.g.*, prostitution), unless and until an investigation determines that any such report or information is false or unfounded.

3. Notwithstanding any other time period for notifying the County Prosecutor's Office or Division of Criminal Justice set forth in this Directive, a law enforcement officer, or another member of the officer's agency, shall notify the County Prosecutor's Human Trafficking Liaison as soon as practicable after receiving the report or information from the possible human trafficking victim so that the County Prosecutor's Office can arrange for any appropriate referrals for victim services.

4. Pursuant to the provisions of N.J.S.A. 52:4B-44.1, the Division of Criminal Justice, working in conjunction with the County Prosecutors, and in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Children and Families, the Superintendent of State Police, and representatives of providers of services to victims of human trafficking and sexually exploited minors, shall develop standards and protocols for providing information and services to these persons. Such standards and protocols shall include coordination of efforts with appropriate federal authorities pursuant to the "Trafficking Victims Protection Reauthorization Act of 2003," 22 U.S.C. Sec. 7101 *et seq*.

5. The training provided pursuant to Section VI of this Directive shall provide instruction on how to protect human trafficking victims, and on how to implement the provisions of this subsection so as to encourage possible victims to fully cooperate in human trafficking investigations. The training programs shall include instruction on the appropriate handling of possible human trafficking victims who may have committed an offense, including instruction on the affirmative defense to the offense of prostitution established in N.J.S.A. 2C:34-1(e). The training programs shall also include information concerning referrals for medical treatment, counseling and advocacy services, and housing/shelter.

D. Supplemental Investigation Standards

The Director of the Division of Criminal Justice may from time to time issue supplemental investigation standards or protocols to be followed by law enforcement agencies and officers to enhance the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

V. REPORTING REQUIREMENTS

A. Reporting by Police Upon Arrest or Determination of Probable Cause

Notwithstanding any other time period for making notifications or reporting information set forth in this Directive, when a law enforcement officer makes an arrest or otherwise develops probable cause to believe that the crime of human trafficking has been or is being committed, the arresting officer or another member of the officer's agency shall immediately report the matter to the designated County Prosecutor's Office Human Trafficking Liaison, who shall as soon as practicable, but in no event later than 12 hours, report the matter to the Division of Criminal Justice.

B. Reporting by County Prosecutor of Existing Case Inventory

Each County Prosecutor shall within 60 days of the effective date of this Directive provide to the Director of the Division of Criminal Justice or his designee a listing of all currently pending cases or investigations involving a charge of human trafficking. This list shall include such information as shall be determined by the Director.

C. Reporting by County Prosecutor of Significant Case Events

It shall be the responsibility of the County Prosecutor to promptly notify the Division of Criminal Justice of the following events concerning the investigation or prosecution of a suspected violation of N.J.S.A. 2C:13-8:

1. application for or issuance of an arrest warrant;

2. filing of a criminal complaint;

3. indictment;

4. any disposition of pending charges;

5. application to the Department of Homeland Security for Continued Presence Status or a T Visa for a possible human trafficking victim; and

6. any referral of a human trafficking investigation or prosecution for handling by or in cooperation with the United States Attorneys Office or any federal law enforcement agency, or by a law enforcement or prosecuting agency in any other State.

Such notifications of significant case events to the Division shall be done in a manner as shall be prescribed by the Director.

D. Reports of Aggregate Data and Additional Information

In addition to the notification of significant case events pursuant to subsection C of this Section, each County Prosecutor shall provide to the Division of Criminal Justice such aggregate data and information about human trafficking enforcement activities and services as may be needed to prepare reports for the United States Department of Justice, Bureau of Justice Assistance, or for such other purposes as may be determined by the Director of the Division of Criminal Justice.

E. Implementation of Notification and Reporting Requirements

The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop standardized forms and procedures to facilitate the efficient and uniform implementation by all law enforcement agencies of the notification and reporting requirements of this Directive.

VI. TRAINING

A. In-Service Training Program

The Division of Criminal Justice shall within ninety days of the effective date of this Directive develop human trafficking training programs for law enforcement officers and prosecutors. The Division shall to the extent feasible make the training programs available on-line through the NJLEARN system. The Division may from time to time develop additional human trafficking training programs and aids to facilitate implementation of this Directive and to achieve the goals of enhancing the thoroughness, timeliness, quality, and coordination of human trafficking investigations and prosecutions.

B. Selection of Officers to Receive In-Service Training

1. All Human Trafficking Liaisons designated pursuant to Section II of this Directive shall receive the training developed pursuant to subsection A of this Section, and such additional

training as the Director of the Division of Criminal Justice may from time to time prescribe.

2. The chief executive of every State, county and local law enforcement agency shall identify those sworn officers who would benefit from receiving training on human trafficking based upon their duty assignment, and shall within sixty days of the effective date of this Directive provide to the appropriate County Prosecutor and the Division of Criminal Justice a list of those officers to be trained. Those officers should complete the training, whether through the NJLEARN system or by other means, within ninety days of the training program being made available pursuant to subsection A of this Section. The chief executive of each department shall report to the County Prosecutor and the Division of Criminal Justice on the number of officers who have completed training. This reporting shall be done in a manner and at such times as shall be prescribed by the Director.

3. The Director of the Division of Criminal Justice shall report annually to the Attorney General on the number of officers who have completed human trafficking in-service training, and shall make recommendations as appropriate as to whether the Attorney General should require that additional officers receive in-service training. Nothing herein should be construed to prevent a County Prosecutor from requiring officers who are subject to his or her authority to receive the human trafficking training developed by the Division of Criminal Justice, or to receive additional training developed or approved by the County Prosecutor.

C. Pre-Service Training

1. The Division of Criminal Justice, working in cooperation with the County Prosecutors, shall develop curricula on the subject of human trafficking for use in the Basic Course for Police Officers and the Basic Course for Investigators. The Division shall submit this curricula to the Police Training Commission for use at all police academies that are subject to the jurisdiction of the Police Training Commission.

2. The Division of State Police shall include human trafficking curricula developed pursuant to paragraph (1) of this subsection in the pre-service training of Trooper recruits in the State Police Training Academy.

VII. AUTHORITY OF COUNTY PROSECUTOR

Nothing in this Directive shall be construed to prevent a County Prosecutor from issuing supplemental directives, procedures or standards governing the investigation and prosecution of human trafficking cases by law enforcement agencies that are subject to the County Prosecutor's authority, provided that those supplemental standards and procedures do not conflict with the standards and procedures set forth in this Directive.

VIII. QUESTIONS

Any questions concerning the interpretation or implementation of this Directive shall be directed to the Director of the Division of Criminal Justice, or his designee.

IX. EFFECTIVE DATE

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superseded by Order of the Attorney General.

Jeffrey S. Chiesa
Attorney General

ATTEST:

Phillip H. Kwon
First Assistant Attorney General

Dated: July 12, 2012

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

TO: All County Prosecutors

All Municipal Prosecutors

All County Sheriffs

All Police Chief Executives

Joseph R. Fuentes, Superintendent
New Jersey State Police

Elie Honig, Director
New Jersey Division of Criminal Justice

FROM: John J. Hoffman, Acting Attorney General

SUBJECT: Directive to Ensure Uniform Statewide Enforcement of the "Overdose Prevention Act"

DATE: June 25, 2013

1. Introduction and Overview

On May 2, 2013, Governor Christie signed into law the "Overdose Prevention Act" as P.L. 2013, c. 46. A copy of the new law is attached. Pursuant to my authority and responsibility under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 *et seq.*, to ensure the uniform and efficient enforcement of the criminal laws, I hereby issue this Directive to ensure that all police and prosecuting agencies comply with the requirements of the new law.

The provisions of the Overdose Prevention Act that are most relevant to law enforcement officers and agencies are codified at N.J.S.A. 2C: 35-30 and 2C:35-31. The overarching purpose of the statute is to encourage persons to seek immediate medical assistance whenever a drug overdoes occurs. In the past, there have been instances where persons were reluctant or unwilling to call authorities for help for fear that this might lead to an arrest or prosecution for illegal drug use or possession. It is vitally important that medical assistance be rendered as quickly as possible to

persons who are experiencing a drug overdose. The Governor and Legislature have thus determined that lives can be saved by alleviating the fear of arrest and prosecution that might discourage or delay a call for help. To accomplish this vital goal, the new law provides legal protection in the form of immunity from arrest, prosecution, or conviction for a use or simple possession drug charge when a person, in good faith, seeks medical assistance for him/herself or for another. The request for medical assistance that triggers the law's immunity feature may be made by means of the 9-1-1 telephone emergency system or by any other means.

In order to achieve the salutary goal of the Drug Overdose Prevention Act, all law enforcement officers and prosecutors must be familiar with the new law and take steps to ensure that the legal protections afforded under the statute are respected and uniformly enforced throughout the State.

2. Specific Crimes and Offenses That Are Subject to Immunity From Arrest and Prosecution

The Overdose Prevention Act specifically provides that when a person, in good faith, seeks medical assistance for a person believed to be experiencing a drug overdose, whether the person is seeking assistance for him/herself or for another, the person calling for help and the person experiencing the overdose shall not be arrested, charged, prosecuted, or convicted for certain specified criminal offenses. The specified crimes and offenses are as follows:

1) obtaining, possessing, using, being under the influence, or failing to make lawful disposition of any controlled dangerous substance or analog in violation of subsection a., b., or c. of N.J.S.A. 2C:35-10;

2) inhaling the fumes or possessing a toxic chemical in violation of subsection b. of N.J.S.A. 2C:35-10.4;

3) using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation in violation of subsection b., d., or e. of N.J.S.A. 2C:35-10.5;

4) acquiring or obtaining a controlled dangerous substance or analog by fraud in violation of N.J.S.A. 2C:35-13;

5) unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed in violation of N.J.S.A. 2C:35-24; and

6) using or possessing with intent to use drug paraphernalia in violation of N.J.S.A. 2C:36-2, or having under control or possessing a hypodermic syringe or other instrument for using a controlled dangerous substance or analog in violation of subsection a. of N.J.S.A. 2C:36-6.

3. Crimes That Are Not Subject to the Statutory Immunity Feature

It is important to note that the immunity from arrest, prosecution, and conviction afforded under the statute applies only to those crimes and offenses that specifically are enumerated in N.J.S.A. 2C:35-30(a)(1-6) and 2C:35-31(a) (1-6), and that are comprehensively set forth in Section 2 of this Directive. These specified drug-related offenses commonly are referred to as "simple possession" offenses. It is critical to note that the statute does not apply to or in any way limit the authority or discretion of law enforcement officers or prosecutors to investigate, arrest or prosecute an offense involving the manufacture, distribution, or possession with intent to distribute an illicit substance or paraphernalia. The legislative findings set forth in the statute make clear in this regard that, "[i]t is not the intent of the Legislature to protect individuals from arrest, prosecution or conviction for other criminal offenses, including engaging in drug trafficking...." N.J.S.A. 24:6J-2.

Nor does the statute preclude an arrest, prosecution or conviction for the crime of strict liability for drug-induced death in violation of N.J.S.A. 2C:35-9, or the offense of driving while under the influence of an intoxicating substance in violation of N.J.S.A. 39:4-50 or any related drunk/drugged driving offense or indictable crime.

4. Uniform Statewide Enforcement Policy Where Multiple Persons Collaborate in a Request for Medical Assistance

The literal text of the statute affords immunity only to the specific individual who actually sought medical assistance (*e.g.*, the person who placed a 9-1-1 telephone call) and to the person who experienced a drug overdose and was the subject of a good faith request for medical assistance made by another. There may be situations, however, where two or more persons are present when the request for medical assistance is made. Consistent with the spirit of the law and its overriding purpose to reduce disincentives to seeking prompt medical help, where it can reliably be determined that two or more persons were present at the time that the request for medical assistance was made and were aware of and participating in that request, police and prosecutors should proceed as if those persons had collaborated in making the request for medical assistance, even though only one of them actually placed the call to the 9-1-1 emergency system or otherwise made the request for medical assistance. Persons who in this manner collaborated in making the request for medical assistance should not be arrested or prosecuted for an offense enumerated in Section 2 of this Directive.

This enforcement policy, while arguably not required by the literal terms of the statute, is hereby adopted for sound policy reasons. Persons present at the scene of a drug overdose might be chilled from making a request for medical assistance for fear that such a call to authorities might subject friends, family, or colleagues to arrest or prosecution for drug use or possession. It therefore makes sense to refrain from arresting and/or prosecuting persons who reasonably appear to be associated and collaborating with the person who actually places the call for medical help. This policy is not intended, however, to insulate from arrest and prosecution all persons who happen, for

example, to be in a "crack house" or at a party at which a person experiences an overdose. Rather, it is intended to apply only to those individuals who were aware of and collaborated in the request for medical assistance. For example, police should refrain from arresting a person who was aware that someone else had placed a 9-1-1 call for medical assistance and stayed with the person who was experiencing an overdose until help arrived. This enforcement policy would also apply where a person can demonstrate that he or she left the presence of the overdose victim for the purpose of seeking medical assistance, such as by going to a neighbor's house to make a 9-1-1 call. It would not apply, however, to those who flee the scene to avoid apprehension without collaborating in a good-faith effort to seek medical assistance, or to any person who had in any way or by any means *discouraged* others from making a call for assistance.

This enforcement policy is intended to effectuate the goal of encouraging persons to initiate timely requests for medical assistance to the greatest extent feasible. It must be recognized that as a practical matter, police investigating an incident may not be able to establish who is entitled to immunity from arrest and prosecution under the statute (*e.g.*, who placed a 9-1-1 call), much less to establish who may have collaborated in the request for medical assistance for purposes of applying the foregoing enforcement policy. Law enforcement officers and prosecutors are expected to apply the law and this enforcement policy in good faith, recognizing that for practical reasons, persons who seek the benefit of the law's immunity feature must bear responsibility for establishing the factual basis for immunity from arrest or prosecution.

Nothing herein shall be construed to create any rights, privileges, or immunities beyond those expressly established in the Overdose Prevention Act. Nor does the enforcement policy established in this section in any way limit the authority of prosecutors to argue in litigation that the statutory immunity feature does not apply to any individual.

5. Inapplicability of Statutory Immunity When Offense is Discovered Independent of a Request for Medical Assistance

The immunity provisions of the statute apply only when the evidence for an arrest, charge, prosecution or conviction had been obtained as a result of the seeking of medical assistance. N.J.S.A. 2C:35-30(b)(2) and 2C:35-31(b). The immunity feature thus does not extend to simple possession drug offenses that come to the attention of law enforcement by any independent means. Thus, for example, a prosecution for a simple possession drug offense may proceed if the evidence of that offense had been discovered and seized prior to the call for medical assistance (*e.g.*, where police during an encounter see a controlled dangerous substance in plain view and a person on the scene thereafter tells police that he/she or another person is experiencing an overdose and needs medical assistance).

6. Authority to Seize Contraband Even When Immunity Feature Applies

The statute makes clear that it in no way limits the authority of law enforcement officers to seize evidence or contraband, even if the person from whom the evidence was seized is immune from arrest or prosecution for possession of that evidence or contraband. See N.J.S.A. 2C:35-30(c) and 2C:35-31(c).

7. Effective Date and Application to Pending Cases

The new law took effect immediately upon its enactment on May 2, 2013. Any pending prosecution for a covered offense should be dismissed on motion of the prosecutor in any case where the evidence necessary to prove the offense had been discovered or learned about as a result of a good faith call for medical assistance, notwithstanding that the arrest occurred before the effective date of the statute. It is important to note in this regard that the law clearly precludes not only an arrest, but also an ensuing prosecution or conviction. However, any other pending charges relating to evidence seized before May 2, 2013 (*e.g.*, distribution or possession with intent to distribute charges) are not affected by the new law, and such prosecutions involving charges that are not specifically enumerated in N.J.S.A. 2C:35-30(a) or 2C:35-31(a) should be pursued in the normal course.

8. Questions and Controversies

Any questions by police officers or agencies or municipal prosecutors concerning the meaning or implementation of the Overdose Prevention Act should be directed to the appropriate County Prosecutor. Any questions by County Prosecutors concerning the statute should be directed to the Director of the Division of Criminal Justice, or his designee.

If a court invokes the statutory immunity feature over the prosecutor's objection (*i.e.*, in circumstances where the feature should not apply according to the explanation of the law provided in this Directive), the municipal or county prosecutor shall, through the appropriate chain of authority, promptly alert the Director of the Division of Criminal Justice or his designee and should take such actions as may be necessary to preserve the State's right to appeal the decision.

John J. Hoffman
Acting Attorney General

c. Thomas R. Calcagni, First Assistant Attorney General
Lee Vartan, OAG Chief of Staff

CHAPTER 46

AN ACT concerning opioid antidotes and overdose prevention, and supplementing Title 24 of the Revised Statutes and Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.24:6J-1 Short title.

1. This act shall be known and may be cited as the "Overdose Prevention Act."

C.24:6J-2 Findings, declarations relative to overdose prevention.

2. The Legislature finds and declares that encouraging witnesses and victims of drug overdoses to seek medical assistance saves lives and is in the best interests of the citizens of this State and, in instances where evidence was obtained as a result of seeking of medical assistance, these witnesses and victims should be protected from arrest, charge, prosecution, conviction, and revocation of parole or probation for possession or use of illegal drugs. Additionally, naloxone is an inexpensive and easily administered antidote to an opioid overdose. Encouraging the wider prescription and distribution of naloxone or similarly acting drugs to those at risk for an opioid overdose, or to members of their families or peers, would reduce the number of opioid overdose deaths and be in the best interests of the citizens of this State. It is not the intent of the Legislature to protect individuals from arrest, prosecution or conviction for other criminal offenses, including engaging in drug trafficking, nor is it the intent of the Legislature to in any way modify or restrict the current duty and authority of law enforcement and emergency responders at the scene of a medical emergency or a crime scene, including the authority to investigate and secure the scene.

C.24:6J-3 Definitions relative to overdose prevention.

3. As used in this act:

"Commissioner" means the Commissioner of Human Services.

"Drug overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled dangerous substance or another substance with which a controlled dangerous substance was combined and that a layperson would reasonably believe to require medical assistance.

"Medical assistance" means professional medical services that are provided to a person experiencing a drug overdose by a health care professional, acting within the scope of his or her lawful practice, including professional medical services that are mobilized through telephone contact with the 911 telephone emergency service.

"Opioid antidote" means naloxone hydrochloride or any other similarly acting drug approved by the United States Food and Drug Administration for the treatment of an opioid overdose.

"Health care professional" means a physician, physician assistant, advanced practice nurse, or other individual who is licensed or whose professional practice is otherwise regulated pursuant to Title 45 of the Revised Statutes, other than a pharmacist, and who, based upon the accepted scope of professional authority, prescribes or dispenses an opioid antidote.

"Patient" includes a person who is not at risk of an opioid overdose but who, in the judgment of a physician, may be in a position to assist another individual during an overdose and who has received patient overdose information as required by section 5 of this act on the indications for and administration of an opioid antidote.

C.24:6J-4 Immunity from liability for certain prescribers, dispensers.

4. a. A health care professional or pharmacist who, acting in good faith, directly or through a standing order, prescribes or dispenses an opioid antidote to a patient capable, in the judgment of the health care professional, of administering the opioid antidote in an emergency, shall not, as a result of the professional's acts or omissions, be subject to any criminal or civil liability, or any professional disciplinary action under Title 45 of the Revised Statutes for prescribing or dispensing an opioid antidote in accordance with this act.

b. A person, other than a health care professional, may in an emergency administer, without fee, an opioid antidote, if the person has received patient overdose information pursuant to section 5 of this act and believes in good faith that another person is experiencing an opioid overdose. The person shall not, as a result of the person's acts or omissions, be subject to any criminal or civil liability for administering an opioid antidote in accordance with this act. In addition, the immunity provided for in section 7 or section 8 of P.L.2013, c.46 (C.2C:35-30 or C.2C:35-31) also shall apply to a person acting pursuant to this section, provided that the requirements of section 7 or section 8 also have been met.

C.24:6J-5 Patient overdose information.

5. a. A health care professional prescribing or dispensing an opioid antidote to a patient shall ensure that the patient receives patient overdose information. This information shall include, but is not limited to: opioid overdose prevention and recognition; how to perform rescue breathing and resuscitation; opioid antidote dosage and administration; the importance of calling 911 emergency telephone service for assistance with an opioid overdose; and care for an overdose victim after administration of the opioid antidote.

b. In order to fulfill the distribution of patient overdose information required by subsection a. of this section, the information may be provided by the health care professional, or a community-based organization, substance abuse organization, or other organization which addresses medical or social issues related to drug addiction that the health care professional maintains a written agreement with, and that includes: procedures for providing patient overdose information; information as to how employees or volunteers providing the information will be trained; and standards for documenting the provision of patient overdose information to patients.

c. The provision of patient overdose information shall be documented in the patient's medical record by a health care professional, or through similar means as determined by any written agreement between a health care professional and an organization as set forth in subsection b. of this section.

d. The Commissioner of Human Services, in consultation with Statewide organizations representing physicians, advanced practice nurses, or physician assistants, or community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, may develop and disseminate training materials in video, electronic, or other formats to health care professionals or organizations operating community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, to facilitate the provision of patient overdose information.

C.24:6J-6 Awarding of grants.

6. a. The Commissioner of Human Services may award grants, based upon any monies appropriated by the Legislature, to create or support local opioid overdose prevention, recognition, and response projects. County and municipal health departments, correctional

institutions, hospitals, and universities, as well as organizations operating community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction may apply to the Department of Human Services for a grant under this section, on forms and in the manner prescribed by the commissioner.

b. In awarding any grant, the commissioner shall consider the necessity for overdose prevention projects in various health care facility and non-health care facility settings, and the applicant's ability to develop interventions that will be effective and viable in the local area to be served by the grant.

c. In awarding any grant, the commissioner shall give preference to applications that include one or more of the following elements:

(1) prescription and distribution of naloxone hydrochloride or any other similarly acting drug approved by the United States Food and Drug Administration for the treatment of an opioid overdose;

(2) policies and projects to encourage persons, including drug users, to call 911 for emergency assistance when they witness a potentially fatal opioid overdose;

(3) opioid overdose prevention, recognition, and response education projects in syringe access programs, drug treatment centers, outreach programs, and other programs operated by organizations that work with, or have access to, opioid users and their families and communities;

(4) opioid overdose recognition and response training, including rescue breathing, in drug treatment centers and for other organizations that work with, or have access to, opioid users and their families and communities;

(5) the production and distribution of targeted or mass media materials on opioid overdose prevention and response;

(6) the institution of education and training projects on opioid overdose response and treatment for emergency services and law enforcement personnel; and

(7) a system of parent, family, and survivor education and mutual support groups.

d. In addition to any moneys appropriated by the Legislature, the commissioner may seek money from the federal government, private foundations, and any other source to fund the grants established pursuant to this section, as well as to fund on-going monitoring and evaluation of the programs supported by the grants.

C.2C:35-30 Immunity from liability, certain circumstances, for persons seeking medical assistance for someone experiencing a drug overdose.

7. a. A person who, in good faith, seeks medical assistance for someone experiencing a drug overdose shall not be:

(1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;

(2) arrested, charged, prosecuted, or convicted for inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);

(3) arrested, charged, prosecuted, or convicted for using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);

(4) arrested, charged, prosecuted, or convicted for acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13;

(5) arrested, charged, prosecuted, or convicted for unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to P.L.1998, c.90 (C.2C:35-24);

(6) arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6;

(7) subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision.

b. The provisions of subsection a. of this section shall only apply if:

(1) the person seeks medical assistance for another person who is experiencing a drug overdose and is in need of medical assistance; and

(2) the evidence for an arrest, charge, prosecution, conviction, or revocation was obtained as a result of the seeking of medical assistance.

c. Nothing in this section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of this act or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to this act. Nothing in this section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection a. of this section. Nothing in this section shall be construed to limit, modify or remove any immunity from liability currently available to public entities or public employees by law.

C.2C:35-31 Protections for certain persons experiencing a drug overdose.

8. a. A person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance pursuant to section 4 of this act shall not be:

(1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;

(2) arrested, charged, prosecuted, or convicted for inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);

(3) arrested, charged, prosecuted, or convicted for using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);

(4) arrested, charged, prosecuted, or convicted for acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13;

(5) arrested, charged, prosecuted, or convicted for unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to P.L.1998, c.90 (C.2C:35-24);

(6) arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6;

(7) subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, that this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision.

b. The provisions of subsection a. of this section shall only apply if the evidence for an arrest, charge, prosecution, conviction or revocation was obtained as a result of the seeking of medical assistance.

c. Nothing in this section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of this act or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to this act. Nothing in this section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection a. of this section. Nothing in this section shall be construed to limit, modify or remove any immunity from liability currently available to public entities or public employees by law.

9. Sections 1 through 6 of this act shall take effect on the first day of the second month next following enactment, except that the Commissioner of Human Services shall take any anticipatory action in advance thereof as shall be necessary for the implementation of this act and sections 7 and 8 shall take effect immediately.

Approved May 2, 2013.

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

TO: Elie Honig, Director, Division of Criminal Justice
All County Prosecutors

FROM: John J. Hoffman, Acting Attorney General

DATE: September 24, 2014

SUBJECT: Clarification of "Graves Act" 2008 Directive with Respect to Offenses Committed by Out-of-State Visitors From States Where Their Gun-Possession Conduct Would Have Been Lawful

Recent events have focused public attention on how prosecutors exercise discretion in cases where a resident of another state brings into New Jersey a firearm that had been acquired lawfully and that could be carried lawfully by that visitor in the visitor's home jurisdiction. Under current New Jersey law, these otherwise law-abiding persons are subject not only to arrest, prosecution, and conviction for unlawful possession of a firearm, but also to enhanced punishment – a mandatory minimum State Prison sentence – under the "Graves Act."

For the reasons explained below, in most of these cases, imprisonment is neither necessary nor appropriate to serve the interests of justice and protect public safety. Accordingly, and consistent with the manner in which the vast majority of these cases have been handled throughout the State, this memorandum provides that in the absence of case-specific aggravating circumstances, these defendants should not be sentenced to incarceration. Prosecutors can promote this outcome in either of two ways. First, depending on the specific circumstances, it may be appropriate for the prosecutor to allow a defendant to avoid the consequences of a criminal conviction by consenting to his or her application for pretrial intervention (PTI), subject to review and approval by the trial court judge. In making that decision, the prosecutor should consider not only the general aggravating and mitigating factors and PTI criteria set forth in the New Jersey Code of Criminal Justice, but also special facts and circumstances set forth in Section 3 of this memorandum that are particularly relevant to these unusual situations involving otherwise law-abiding persons who inadvertently violate New Jersey's gun laws.

In cases where the prosecutor determines that PTI is not appropriate, this memorandum establishes a rebuttable presumption that the prosecutor will tender an initial plea offer that authorizes the court upon conviction to impose a non-custodial probationary sentence.

1. The 2008 Graves Act Expansion

The Graves Act was expanded in 2008 to include the unlawful simple possession of a handgun. See P.L. 2007, c. 341 (effective January 13, 2008). Before that, the Graves Act sentencing enhancement applied only to convictions for possession of a firearm for an unlawful purpose, or possession of a firearm during the course of committing certain specified predicate crimes.[1] When the Graves Act was reworked substantially in 2008, the Attorney General promulgated the "Attorney General Directive to Ensure Uniform Enforcement of the 'Graves Act'" [hereinafter, "2008 Graves Act Directive," or simply "2008 Directive"]. The 2008 Directive provides guidance to prosecutors in applying the statutory safety valve codified in N.J.S.A. 2C:43-6.2, which may result in a reduction of the sentence to one year imprisonment or to non-custodial probation. The 2008 Directive also provided limited guidance to prosecutors on when to consent to a defendant's application for PTI.

2. The Current Graves Act Framework

Under New Jersey's current statutory framework, prosecutors play a critical role in determining whether a defendant who is the subject of this Directive – i.e., an otherwise law-abiding resident of another state who brings into New Jersey a firearm that had been acquired lawfully and that could be carried lawfully by that visitor in the visitor's home jurisdiction – will be sentenced to State Prison. The Graves Act generally stipulates that persons convicted of the unlawful possession of a firearm must serve 42 months in prison before becoming eligible for parole.[2] The law authorizes two distinct means by which a defendant may avoid the mandatory minimum sentence. The application of both of these exemptions are vested in the sound discretion of the prosecuting authority.

First, a defendant may avoid conviction for a Graves Act crime by being admitted to the PTI program. Under New Jersey law, prosecutors are not permitted to reject categorically a defendant's application for PTI on the grounds that he or she is charged with a crime that is subject to the presumption of imprisonment or a mandatory minimum sentence. See State v. Caliguiri, 158 N.J. 28 (1999). There is, however, a rebuttable presumption that a person charged with a Graves Act

---

1

These predicate crimes, which are listed in N.J.S.A. 2C:43-6c, are: murder (N.J.S.A. 2C:11-3); manslaughter (N.J.S.A. 2C:11-4); aggravated assault (N.J.S.A. 2C:12-1b); kidnapping (N.J.S.A. 2C:13-1); sexual assault (N.J.S.A. 2C:14-2a); aggravated criminal sexual contact (N.J.S.A. 2C:14-3b); robbery (N.J.S.A. 2C:15-1); burglary (N.J.S.A. 2C:18-2); and escape (N.J.S.A. 2C:29-5).

2

For decades, the mandatory minimum sentence had been fixed at 3 years without possibility of parole. Last year, the minimum term of parole ineligibility was increased to 42 months, and the gradation of the underlying gun offense was elevated from a third-degree crime to a second-degree crime. See P.L. 2013, c. 113 (amending N.J.S.A. 2C:43-6c and N.J.S.A. 2C:39-5).

crime is not eligible for PTI. Because unlawful possession of a firearm is graded as a second-degree crime,[3] by law, PTI is available only if there are compelling and extraordinary reasons to justify diverting the case from ordinary prosecution. See State v. Nwobu, 139 N.J. 236, 252-53 (1995).

The second option applies in cases where a defendant is convicted of the Graves Act offense, but the prosecutor files a motion pursuant to N.J.S.A. 2C:43-6.2 to reduce the stipulated 42-month State Prison sentence. This statute serves as a safety valve to avoid imposition of an unjust sentence Assuming that the defendant has not previously been convicted of a gun offense, the Assignment Judge may waive or reduce the stipulated sentence, but only when the prosecutor has filed a motion to authorize a reduced sentence. In such instances, a defendant may be sentenced to one year imprisonment in some cases, or to non-custodial probation in others. Application of this statutory safety valve, in other words, depends on the exercise of reasoned prosecutorial discretion.

3. Addressing Unusual Situations Outside the Heartland of the Graves Act

The prosecution policy set forth in this clarifying memorandum is based on a careful assessment of applicable statutes and actual prosecution practices across the State. On August 8, 2014, upon learning of a pending case that attracted public attention to the operation of the Graves Act, the Division of Criminal Justice instructed all County Prosecutors to refrain from taking any dispositive action or from sentencing any defendant in any case where a resident of another state brought into New Jersey a firearm that had been acquired lawfully and that could be carried lawfully by that visitor in the visitor's home jurisdiction. The Division of Criminal Justice imposed this temporary hold to enable the Division to gather information about how these cases are handled across the State, and to assess the need for further guidance from the Attorney General to ensure appropriate statewide uniformity in the implementation of county prosecution policies and practices.

As noted above, beginning on August 8, the Division of Criminal Justice canvassed all 21 County Prosecutors' Offices to determine how they typically handle cases where an out-of-State visitor brings a lawfully-acquired firearm into New Jersey under circumstances where possession would have been lawful in their home state and where they honestly believed that such possession also was lawful in New Jersey. This survey confirmed that even though these cases are not common, nearly every County Prosecutor has handled at least a few such cases in recent years, and some offices routinely handle several such cases per year. The survey showed that absent some case-specific aggravating circumstance, typically a defendant who commits such inadvertent offense is

---

3

The designation of an offense as a second-degree crime is critical not only to PTI eligibility, but also to a defendant's eligibility for a probationary sentence upon conviction. In 2008, the statute that expanded the Graves Act to include "simple" possession of a firearm, see note 3, infra, also elevated the offense of unlawfully possessing a firearm to a second-degree crime. See P.L. 2007, c. 341 (effective January 13, 2008). Before that, these gun offenses were graded as third-degree crimes, meaning that these defendants upon conviction would have been entitled to a presumption of non-imprisonment if they had not previously been convicted of an offense. See N.J.S.A. 2C:44-1e.

not sentenced to State Prison. This practice reflects a recognition that in these unusual circumstances, a non-custodial probationary sentence typically is sufficient to achieve the deterrence and public safety goals of the Graves Act. The survey also showed that some defendants are admitted to PTI, depending on the case-specific circumstances.

As a general matter, the Graves Act addresses gun possession crimes that pose a greater risk to public safety than the offenses committed by out-of-state visitors who do not realize that their authority to carry a weapon in their home state does not extend into New Jersey. While ignorance of the law is not a defense, see N.J.S.A. 2C:2-4,[4] prosecutors certainly may consider whether a defendant made an honest mistake in determining the level of defendant's culpability for purposes of sentencing. Because this situation falls outside the heartland of the Graves Act, and because the 2008 Directive did not address these unusual cases in detail, it is appropriate to provide further guidance to prosecutors to ensure that case outcomes are uniform, fair, and proportionate, considering the public safety and deterrent purposes undergirding the Graves Act.

4. Scope

This clarifying memorandum applies only to Graves Act cases where the defendant is an out-of-state resident who produces proof that: 1) the firearm had been lawfully acquired in another jurisdiction, 2) defendant's possession would have been lawful in his or her home jurisdiction, and 3) defendant was under the misimpression that such possession was lawful in New Jersey.

Nothing in this memorandum affects or applies to any case where the prosecutor has reason to believe that the defendant had a purpose to use the firearm unlawfully in this State, or where defendant was committing or intended to commit any of the predicate crimes specifically listed in the Graves Act. See note 3, supra. This memorandum, in other words, applies only to cases involving the "simple" unlawful possession of a firearm, and not to cases that would have been subject to the Graves Act before the statute was expanded in 2008. Nor does anything in this memorandum preclude a prosecutor from challenging or discounting a defendant's assertion that the gun possession offense was inadvertent. Rather, the guidance to prosecutors provided in this memorandum presupposes that the three circumstances enumerated above are not disputed.

5. Special Considerations in Reviewing Pretrial Intervention Applications.

Statutory and case law establish a general presumption against allowing any Graves Act defendant – or any person charged with any second-degree crime – to be admitted to the PTI

---

[4] N.J.S.A. 2C:2-4c(3) provides, for example, that a mistake of law is a defense if the actor "diligently pursues all means available to ascertain the meaning and application of the offense to his conduct and honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude."

program. See State v. Nwobu, 139 N.J. 236, 252 (1995) ("That [defendant] is charged with a second-degree crime is the single most important factor involved. To overcome the presumption against PTI, defendant must establish 'compelling reasons' for admission into PTI.... To forestall imprisonment a defendant must demonstrate something extraordinary or unusual...").

While the 2008 Directive generally calls for the "strict enforcement of the presumption of ineligibility for pre-trial intervention" that applies by law to a second-degree gun offense, see Sec. 5, it nonetheless makes clear that prosecutors are not permitted "categorically" to deny a defendant's PTI application. Rather, prosecutors are required on a case-by-case basis to consider all of the relevant factors in the PTI Guidelines and in N.J.S.A. 2C:43-12 to determine whether compelling case-specific reasons overcome the presumption against admission. See State v. Caliguiri, 158 N.J. 28 (1999).

Furthermore, the 2008 Directive expressly provides that a prosecutor may consent to PTI in "rare cases involving extraordinary and compelling circumstances that fall outside the heartland of the legislative policy to deter unauthorized gun possession." Sec. 5a. Notably, the 2008 Directive provides an example of such an extraordinary case: "the defendant has no prior involvement with the criminal justice system, he or she lawfully acquired and possessed the firearm in a different state and the defendant's presence in New Jersey was incident to lawful travel." Ibid. This specific example provided parenthetically in the 2008 Directive contemplated a situation where an out-of-state resident is traveling through New Jersey en route to another State via our interstate highway system. The 2008 Directive did not address other situations where an out-of-state visitor would be more likely to interact with non-motorists in this State while armed with an unlawfully-possessed firearm.

While the parenthetical example in the 2008 Directive confirms that PTI can be a legitimate prosecution option, the Directive provided only limited guidance on when the presumption against PTI might be overcome. To provide further guidance to prosecutors in evaluating PTI applications on a case-by-case basis as required by law, it is appropriate to identify certain special facts and circumstances that prosecutors should consider in these unusual situations.

Accordingly, in exercising reasoned discretion, in addition to considering all applicable aggravating and mitigating factors that apply generally to Graves Act cases and to PTI determinations, prosecutors should when applicable and feasible[5] consider the following special facts that relate specifically to situations where a defendant applying for PTI has established the three circumstances enumerated in Section 2 of this clarifying memorandum:

5

It should be noted that the defendant has the burden of presenting facts in support of his or her PTI application. Prosecutors generally will have no way of knowing, for example, about a defendant's travel itinerary and the extent to which others in this State might have been exposed to the unlawfully-possessed firearm.

a. Minimal Exposure of the Firearm to Persons in New Jersey

The manner and circumstances of the possession minimized the exposure of the firearm to others in this State, thereby reducing the risk of harm. This mitigating fact accounts for the likelihood that persons in New Jersey would be exposed to the dangers posed by the presence of the unlawfully-possessed firearm by focusing on the weapon's accessibility while the defendant would be interacting with other persons while in this State.

This factor considers, for example, whether the firearm was kept in a vehicle at all times while the defendant would be in New Jersey, or whether the defendant carried, or planned or was likely to carry, the firearm on or about his or her person outside a vehicle.

This factor also accounts for the nature and circumstances of the defendant's travel into this State, and the period(s) of time during which the unlawfully-possessed firearm would present a risk to anyone in New Jersey. For example, traveling through New Jersey on an interstate highway with few if any stops presents less danger than a more protracted visit, or multiple visits, where it is likely that the defendant will be interacting with non-motorists in this State.

Under this factor, for example, an unlawfully-possessed firearm kept in a vehicle trunk would present less accessibility and thus less exposure to others than a firearm kept in the passenger cabin of a vehicle.

This factor also accounts for whether the firearm was loaded. An unloaded firearm presents a less immediate risk to persons with whom the defendant might interact.

b. The Gun-Possession Offense was Isolated and Aberrational

Defendant is otherwise a law-abiding person. This clarifying memorandum addresses situations where a person has made an honest mistake in believing that possession of the weapon was lawful. See Section 2, supra. Consistent with that focus, this factor accounts for whether defendant was committing any other separate[6] offense at the time of the unlawful possession of the firearm. Note that it would be expected in these cases that the defendant would have committed some other violation that attracted law enforcement attention, such as a motor vehicle infraction,

---

6 The prosecutor should consider whether any contemporaneous lesser offense was truly separate and distinct from the Graves Act offense conduct, and whether, upon conviction, the court likely would merge any such contemporaneous offense with the Graves Act offense, or impose concurrent sentences.

which led police to discover the unlawfully-possessed firearm. A prosecutor should consider the nature and severity of any other contemporaneous offense (*e.g.*, motor vehicle offense, ordinance violation, disorderly persons offense, or indictable crime[7]), and the risk that the separate offense posed to public or officer safety.

This factor also accounts for any other pending cases against the defendant, defendant's prior criminal and juvenile record, and his or her history of interaction with the juvenile or adult criminal justice systems.

c. Volunteering Presence of Firearm to Police

The defendant on his or her own initiative advised a police officer that a firearm is present. While admitting to the presence of a firearm in response to a police question (*e.g.*, "is there anything in the car I should know about?") is a mitigating circumstance, *volunteering* information about the firearm to police without being prompted to do so is an especially important mitigating factor that tends to confirm that the defendant did not realize that possession of the firearm was unlawful. See note 3, supra.

In contrast, denying the presence of a weapon in response to a question is a significant *aggravating* circumstance, evincing a consciousness of guilt and contradicting defendant's assertion that he or she believed that possession of the weapon was lawful.

d. Surrendering Unloaded Firearm for Safe-Keeping

The defendant presented an unloaded firearm to a hotel clerk for safekeeping to prevent it from being stolen from defendant's vehicle during a hotel stay. This recurring mitigating circumstance suggests a defendant's earnest attempt to minimize the risks associated with the presence of the firearm in this State.

e. Circumstances Concerning Confusion of New Jersey and Other-State Law

The defendant had not been advised of limitations on the right to possess or carry a firearm. Prosecutors may, when feasible, consider the circumstances of defendant's familiarity with gun laws. See note 5, supra (noting that it is defendant's

---

7 It bears repeating that if the defendant while in unlawful possession of the firearm was committing or attempting to commit any of the predicate offenses listed in N.J.S.A. 2C:43-6c and reproduced in note 2, supra, this Memorandum *does not apply*. See Section 2, supra.

responsibility to provide information needed to overcome the presumption against PTI). While everyone is presumed to know the law, a claim of inadvertence should be viewed with greater skepticism if defendant was on *actual* notice that the weapons-carrying authority of his or her home state did not extend to other jurisdictions (*e.g.*, the defendant's out-of-state carry permit – or the application for such a permit – expressly advises that the authority to carry is limited to that jurisdiction).

There is no mathematical formula for evaluating the foregoing special circumstances in relation to the other aggravating and mitigating circumstances that prosecutors must consider in determining whether there are compelling reasons to justify a defendant's admission to PTI. It is not possible in this clarifying memorandum to anticipate every fact and circumstance that might be relevant. Nor is it possible to ascribe the precise weight that should be given to any particular circumstance militating for or against admission to PTI.

6. Procedural Requirements for PTI Approval

The procedural requirements for approving a defendant's application for PTI set forth in Section 5(b), (c) of the 2008 Graves Act Directive (*i.e.*, County Prosecutor or DCJ Director personal approval; statement of reasons sent to Attorney General) are not affected by this clarifying memorandum, and remain in force and effect.

7. Waiver of Imprisonment/Parole Ineligibility Term Pursuant to N.J.S.A. 2C:43-6.2

In cases where a defendant is not admitted to PTI, the prosecutor must decide whether to invoke the mandatory-minimum-sentence safety valve codified at N.J.S.A. 2C:43-6.2, and if so, whether to agree to a non-custodial sentence. As noted above, a survey of County Prosecutors confirms that the general practice in cases involving the situation described in Section 2, supra, is that these defendants are not sentenced to State Prison. That practice comports with governing statutory law. It is especially important to note that the Graves Act's waiver/reduction statute expressly authorizes a probationary sentence. This explicit authority to impose probation was not rescinded or restricted by P.L. 2007, c. 341 (which expanded the reach of the Graves Act), or by P.L. 2013, c. 113 (which increased the mandatory minimum term to 42 months and upgraded the underlying gun offense to a second-degree crime). See notes 1, 3, supra.

In a case where the prosecutor does not consent to PTI but elects to invoke the safety valve codified in N.J.S.A. 2C:43-6.2, there are only two sentencing options: the court either must impose a State Prison sentence with a 12-month term of parole ineligibility, or else impose probation. Because it was necessary for practical reasons to provide an incentive for guilty defendants to make a timely acceptance of responsibility, the 2008 Directive established a rebuttable presumption in typical illegal firearms possession cases that a prosecutor will agree to reduce the 36-month

minimum term then in effect (which has since been increased to 42 months by the recent legislation, discussed in note 1, supra) to 12 months of parole ineligibility. The one-year sentence is referred to in the 2008 Directive as the "standardized" plea offer. See Sec. 6(c)(4). The 2008 Directive includes provisions for both upward and downward departures from the presumptive one-year plea offer. As noted above, in certain circumstances, a prosecutor is authorized to agree to probation. In other specified circumstances, the 2008 Directive instructs a prosecutor to seek the *maximum* term of parole ineligibility under the Graves Act. For example, if the prosecutor determines that the organized crime aggravating factor set forth in N.J.S.A. 2C:44-1a(5) applies, the prosecutor is prohibited from invoking the statutory safety valve unless there is a significant possibility of an acquittal or suppression of critical evidence. See Sec. 6(c)(2).[8]

Although a probationary sentence is permitted by law, the 2008 Directive establishes a "strict presumption" against a prosecutor agreeing to probation. See Sec. 6(c)(3). However, in establishing this general presumption, Section 6 of the 2008 Directive did not address comprehensively the unusual circumstances described in Section 2 of this clarifying memorandum. From the standpoint of proportionality – and consistent with actual practice confirmed by the recent survey of County Prosecutors – it makes little sense to sentence an inadvertent offender to the same 12-month state prison term that is generally imposed on much more culpable gun offenders who currently benefit from the "standardized" one-year plea offer discussed above. It also should be noted that the 2008 Directive recognizes that in addition to considering the aggravating and mitigating circumstances set forth in N.J.S.A. 2C:44-1, "[t]he prosecuting agency may also take into account the likelihood of obtaining a conviction at trial." Sec. 6(c)(1). That provision recognizes that prosecutors may account for how juries will perceive an offense.

Accordingly, in cases described in Section 2 of this clarifying memorandum, except where the prosecutor approves a defendant's application for PTI pursuant to Section 3 supra, the prosecutor shall tender an initial plea offer that allows for probation unless the prosecutor determines that relevant aggravating factors outweigh applicable mitigating factors. In making this determination,

---

8

Another upward adjustment from the standardized one-year sentence is authorized by the Attorney General's Targeted Anti-Gun (TAG) strategy, which has been implemented in the course of the past year in Mercer and Essex Counties in an effort to stem the record number of gun-related crimes and homicides. Under this program, a prosecutor may designate a person charged with unlawful possession of a firearm as a "TAG" defendant based upon specified aggravating circumstances, including, for example, where there is a substantial likelihood that defendant is involved in organized criminal activity within the meaning of N.J.S.A. 2C:44-1(a)(5); where the defendant had brandished, displayed, pointed, discharged, or threatened to discharge the weapon while in a public place; or where the weapon was a defaced or stolen firearm. The TAG program features a "special plea policy" that provides that when a prosecutor applies the TAG designation to a defendant, "such designation shall [for purposes of the 2008 Graves Act Directive] constitute a finding by the prosecutor that the aggravating factors applicable to the offense conduct and offender, including the need to deter others from carrying a loaded firearm in public, outweigh mitigating circumstances." Pursuant to the 2008 Directive, that finding requires the prosecutor to seek imposition of the full term of parole ineligibility authorized by law.

in addition to considering all relevant aggravating and mitigating circumstances that apply generally to Graves Act offenses and offenders, the prosecutor should pay particular attention to the "special facts" described in Section 3, supra.

8. Inconsistent Provisions

Any provisions of the 2008 Graves Act Directive inconsistent with this clarifying memorandum are hereby superseded to the extent of such inconsistency.

9. Questions

Any questions concerning this clarifying memorandum shall be addressed to the Director of the Division of Criminal Justice, or his designee. The Director may share questions and responses with other prosecutors to promote uniformity as appropriate.

10. Effective Date and Retroactive Application

This clarifying memorandum takes effect immediately and shall remain in force and effect unless rescinded or revised by the Attorney General. To the extent practicable, the provisions of this clarifying memorandum shall apply to all pending cases.

John J. Hoffman
Acting Attorney General

DATED: September 24, 2014

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

LAW ENFORCEMENT DIRECTIVE 2014-1

FORMAL OPINION 1-2014

TO: Elie Honig, Director
New Jersey Division of Criminal Justice

All County Prosecutors

All Municipal Prosecutors

Joseph R. Fuentes, Superintendent
New Jersey State Police

All County Sheriffs

All Police Chief Executives

David L. Rebuck, Director
New Jersey Division of Gaming Enforcement

Frank Zanzucchi, Executive Director
New Jersey Racing Commission

Jeffrey S. Jacobson, Director
New Jersey Division of Law

****

Because New Jersey Senate Bill 2460, signed into law by the Governor on October 17, 2014, repeals the Sports Wagering Act in its entirety, Law Enforcement Directive 2014-1 and Formal Opinion 1-2014 are now moot and no longer effective.

****

FROM: John J. Hoffman, Acting Attorney General

SUBJECT: Law Enforcement Directive to Ensure Uniform Enforcement of the Sports Wagering Act's Exemption from Criminal Liability for the Operation of Sports Pools by Casinos and Racetracks

Formal Opinion Addressing the Effects of Law Enforcement Directive 2014-1 on the Sports Wagering Act's Exemption from Civil Liability for the Operation of Sports Pools by Casinos and Racetracks

DATE: September 8, 2014

LAW ENFORCEMENT DIRECTIVE 2014-1

On November 8, 2011, the citizens of New Jersey voted overwhelmingly to amend the New Jersey Constitution to permit the Legislature to repeal prohibitions against the operation of sports pools by casinos and racetracks. Thereafter, Governor Christie signed the Sports Wagering Act, N.J.S.A. 5:12A-1 to -6, to effectuate the will of the people expressed in the constitutional referendum. That statute decriminalized the operation of sports pools by casinos and racetracks, and implemented an extensive licensing and regulatory regime. Those regulations are codified in N.J.A.C. 13:69N-1.1 et seq.

Certain sports leagues claimed that the State's implementation of the Sports Wagering Act violated the federal Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. 3701 et seq. They brought suit in federal court to enjoin the implementation of the Sports Wagering Act. Governor Christie and the other defendants argued that PASPA violated the federal constitution and therefore could not be enforced. The federal district court ruled in favor of the plaintiff sports leagues and, in accordance with PASPA, enjoined the State from licensing or authorizing sports wagering.

Governor Christie and the other defendants appealed to the United States Court of Appeals for the Third Circuit. In September 2013, that court upheld the constitutionality of PASPA on the basis that it does not require States to maintain existing laws and thus does "not prohibit New Jersey from repealing its ban on sports wagering." N.C.A.A. v. Governor of the State of New Jersey, 730 F.3d 208, 232 (3d Cir. 2013), cert. denied, __ U.S. __ (2014) (hereinafter "N.C.A.A. v. Governor" or "Third Circuit opinion"). In holding that New Jersey "may repeal its sports wagering ban," id. at 233, the Third Circuit accepted the positions of the plaintiffs in the case, who had argued that the statute was constitutional because "nothing in [PASPA] requires New Jersey to maintain or enforce its sports wagering prohibitions," and, indeed, that New Jersey's "repeal of its state-law prohibition on the authorization of sports wagering" itself was "in compliance with PASPA." Br. of the United States ("U.S. Br."), No. 13-1713 (3d Cir.) at 28-29; Br. of Leagues ("Leagues Br.") No. 1713 (3d Cir.) at 16.

The specific issues addressed in this Law Enforcement Directive are whether, in light of N.C.A.A. v. Governor, casinos and racetracks would be committing a criminal offense under New Jersey law if they were to operate sports pools as part of their business activities.

The New Jersey Code of Criminal Justice (Title 2C) provides that when determining whether their conduct constitutes a criminal offense, persons may rely on "an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense." N.J.S.A. 2C:2-4(c)(2). Pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., the Attorney General serves as the State's chief law enforcement officer, and is required to ensure the uniform and efficient enforcement of the criminal law and administration of criminal justice. The Attorney General ultimately is responsible for the

enforcement of our State's criminal laws, including our gambling laws, and therefore is the public officer best suited to interpret the Sports Wagering Act and its relationship to Title 2C in view of the Third Circuit opinion. Given the importance of the issues raised by that opinion, it is appropriate to issue clear and authoritative guidance on whether casinos and racetracks are prohibited by our criminal law from operating sports pools, or whether the provisions of the Sports Wagering Act that exempt casinos and racetracks from criminal liability remain in effect.

For the following reasons, sports pools operated by casinos or racetracks continue to be exempted from criminal liability under New Jersey law so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event takes place. See N.J. Const., art. 4, sec. 7, par. 2E and F. Accordingly, no law enforcement or prosecution agency or officer shall, pursuant to N.J.S.A. 2C:37-1 to -9, make an arrest, file a complaint against, or prosecute any person[1] involved in the operation of a sports pool by a casino or racetrack to the extent that such activity takes place consistent with this Law Enforcement Directive.

Title 2C expressly provides that "no conduct constitutes an offense unless the offense is defined by this code or another statute of this State." N.J.S.A. 2C:1-5. Criminal statutes establish the scope of criminal liability not only by defining the material elements of offenses, see N.J.S.A. 2C:1-13(h), (i), but also by creating exemptions or affirmative defenses. In the specific context of gambling, chapter 37 of Title 2C establishes a comprehensive suite of criminal offenses that generally prohibit all persons from promoting gambling or engaging in gambling activity, subject to certain exceptions. See, e.g., N.J.S.A. 2C:37-1(c); N.J.S.A. 2C:37-9.

The Sports Wagering Act, however, provides that "[i]n addition to casino games permitted pursuant to the provisions of P.L.1977, c.110 (C.5:12-1 et seq.) [the Casino Control Act], a casino may operate a sports pool...." N.J.S.A. 5:12A-2(a). It further provides that, "[i]n addition to the conduct of pari-mutuel wagering on horse races under regulation by the racing commission pursuant to chapter 5 of Title 5 of the Revised Statutes, a racetrack may operate a sports pool...." Id. In this manner, the Sports Wagering Act repealed the prohibition against the operation of sports pools by casinos and racetracks, thus exempting those activities from criminal prosecution under New Jersey law. The issue, then, is whether that exemption is consistent with the Third Circuit's ruling. The answer to that question is found in the text and reasoning of the Third Circuit opinion, as well as the concessions made by the plaintiffs in that case.

The Third Circuit made clear that it did "not read PASPA to prohibit New Jersey from repealing its ban on sports wagering." 730 F.3d at 232. The Court reached this conclusion based on the arguments of the sports leagues, which stated that "[n]owhere in its unambiguous text does PASPA order states to keep laws on their books," or "to keep existing laws in effect." Leagues Br. at 16. The United States Department of Justice, which had intervened in the case to defend

[1]The New Jersey Code of Criminal Justice defines "person" to include any natural person and, where relevant, a corporation or an unincorporated association. N.J.S.A. 2C:1-14(g).

PASPA's constitutionality, joined in the leagues' arguments, stating that "nothing in the statute requires New Jersey to maintain or enforce its sports wagering prohibitions," and that "PASPA also allows a state to . . . modify or repeal its prohibitions." U.S. Br. at 29. Summarizing and accepting those arguments, the Third Circuit noted that "no one contends that PASPA requires the states to enact any laws, and we have held that it does not require states to maintain existing laws." 730 F.3d at 235. Indeed, the United States Constitution clearly forbids Congress from requiring a State to criminalize conduct under state law. As the Third Circuit observed, "Congress 'lacks the power directly to compel the States to require or prohibit' acts which Congress itself may require or prohibit." Id. at 227 (quoting New York v. United States, 505 U.S. 144, 166 (1992)).

That federal courts have found the licensing regime of the Sports Wagering Act to be preempted by PASPA does not invalidate the Sports Wagering Act's repeal of prohibitions against the operation of sports pools by casinos and racetracks. Recognizing that the Sports Wagering Act might be challenged under PASPA, the Legislature included a "severability clause" in its statute:

> If any provision of this act, P.L. 2011, c. 231 (C.5:12A-1 et al), or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.
>
> [N.J.S.A. 5:12-2(g).]

The Legislature therefore intended for the provisions of the statute that are not directly invalidated to continue in force and effect. Here, as the Third Circuit made clear, and as the sports leagues and the Department of Justice conceded, PASPA does not prohibit States from repealing state-law prohibitions on sports wagering. The Sports Wagering Act's repeal of prohibitions against sports wagering in casinos and racetracks can be given effect without licensing or otherwise authorizing by law sports wagering, as prohibited by the Third Circuit's decision, and, accordingly, must be given effect. N.J.S.A. 1:1-10.

For the foregoing reasons, it is the view of the Attorney General that, at least, the provisions of the Sports Wagering Act exempting casinos and racetracks from criminal liability for operating a sports pool—specifically, N.J.S.A. 5:12A-2(a), which states that "a casino may operate a sports pool" and that "a racetrack may operate a sports pool," in accordance with how those terms are defined in N.J.S.A. 5:12A-1—remain in force and effect, and all law enforcement and prosecuting agencies in carrying out their duties under the laws of the State of New Jersey shall abide by that exemption.

Any questions concerning this Law Enforcement Directive shall be addressed to the Director of the Division of Criminal Justice.

FORMAL OPINION 1-2014

The issue also has arisen regarding what effect the above Law Enforcement Directive has on the civil proscriptions applicable to sports wagering. See N.J.S.A. 2A:40-1 to -9. It is the Attorney General's statutory role to "[a]ct as the sole legal advisor" of, and to "interpret all statutes and legal documents" governing, state agencies. N.J.S.A. 52:17A-4(e).

As explained in the above Law Enforcement Directive, the Sports Wagering Act provides that a casino or racetrack "may operate a sports pool." Accordingly, sports pools operated by casinos and racetracks are exempted from criminal liability so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event takes place. For the same reason, sports pools operated by casinos and racetracks are exempted from the civil proscriptions of Title 2A, chapter 40, so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event takes place. Accordingly, I hereby instruct that the Department of Law and Public Safety shall not object to or seek civilly to enjoin a sports pool operated by a casino or racetrack to the extent that it is conducted in a manner consistent with this Formal Opinion.

Any questions concerning this Formal Opinion shall be addressed to the Director of the Division of Law.

John J. Hoffman
Acting Attorney General

Dated: September 8, 2014

c. Christopher S. Porrino, Chief Counsel to the Governor
Lee Vartan, Executive Assistant Attorney General
Deborah R. Edwards, Counsel to the Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

Attorney General Law Enforcement Directive 2014-2

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

FROM: John J. Hoffman, Acting Attorney General

DATE: October 28, 2014

SUBJECT: Directive Concerning Heroin and Opiate Investigations/Prosecutions

New Jersey is in the midst of a heroin and prescription opiate crisis. The epidemic is ruining, and too often taking, the lives of countless adolescents and young adults. The situation is dire, and demands urgent attention. It therefore is necessary and appropriate to exercise the Attorney General's authority as the State's chief law enforcement officer under the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 *et seq.*, to ensure that all police and prosecuting agencies throughout the State take steps to address the heroin and opiate abuse crisis in a coordinated fashion to promote uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.

1. *Overdose Prevention Act Training and Compliance*

On May 2, 2013, Governor Christie signed the "Overdose Prevention Act." This law saves lives by encouraging persons to seek immediate medical assistance whenever a drug overdose occurs. In the past, individuals were unwilling to call authorities for help for fear that this might lead to an arrest for illegal drug use or possession. To address that fear, the Act affords immunity from arrest, prosecution, and conviction for a drug use or simple possession charge when a person, in good faith, seeks medical assistance for him/herself or another who is experiencing an overdose.

To ensure that the Act is properly implemented, Attorney General Law Enforcement Directive 2013-1instructs police and prosecutors on the requirements of the law and how to apply it fairly and uniformly. Embracing the spirit of the law and not just its literal text, the Attorney General Directive extends the immunity feature to persons who were present and collaborated in making the call for medical assistance, and not just to the person who actually placed a call for help to 9-1-1.

It is important now to send a strong message to the public by making certain that police officers responding to an overdose event understand and respect the Act's immunity policy. It therefore is appropriate to supplement Directive 2013-1 to establish statewide training requirements to ensure that officers responding to an overdose event understand their responsibilities under the Act and the Attorney General Directive.

Accordingly, it is hereby Directed that:

a. **Development of Statewide Training Program for Police. Within 120 days of the issuance of this Directive, the Division of Criminal Justice shall develop and make available an in-service training program, utilizing the NJLEARN system, if possible, to explain the immunity provisions of the Overdose Prevention Act and Attorney General Law Enforcement Directive 2013-1 as supplemented by this Directive. The Division shall advise the chief executive of every law enforcement agency operating under the authority of the laws of the State of New Jersey when the training program is available, and the means by which officers may participate in the training (*e.g.*, via NJLEARN, if applicable). The Division also shall develop and submit for approval by the Police Training Commission training materials for inclusion in the Basic Course for Police Officers. These pre-service training materials also shall be integrated in the State Police Academy course for recruits.**

b. **Required Training for Certain Officers. The chief executive of every law enforcement agency operating under the authority of the laws of the State of New Jersey shall take such steps necessary to ensure that every sworn officer assigned to patrol duties, every sworn officer who directly supervises officers assigned to patrol duties, and every sworn officer whose duties include investigating the circumstances of or related to an overdose event (*e.g.*, detectives assigned to narcotics enforcement, detectives who might investigate a suspected violation of N.J.S.A. 2C:35-9 (strict liability for drug-induced death), etc.) receives the training developed pursuant subsection a. of this Section. Such officers shall receive the training within 120 days of the training program being made available by the Division of Criminal Justice (*e.g.*, when the program is put on the NJLEARN system). The chief executive 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 agency, documenting that all such officers have completed the training requirement.

c. **Requirement to Investigate Immunity Eligibility Before Making an Arrest. An officer responding to a drug overdose shall not arrest any person present at the scene for violation of any offense eligible for immunity under the Overdose Prevention Act unless the officer has investigated, when feasible, whether the person made or participated in a call for medical assistance. The officer shall make an arrest for violation of an offense enumerated in the Act only after determining, to the extent feasible, that the person is not entitled to immunity from arrest pursuant to the Act and/or Attorney General Law Enforcement Directive 2013-1.**

d. **Notice to Prosecutor of Arrests Made at Scene of an Overdose Event. Whenever an arrest is made at the scene of an overdose event for an offense enumerated in the Overdose Prevention Act that is potentially eligible for immunity protection, the officer shall alert the municipal prosecutor or county prosecutor handling the complaint. The officer shall report on the steps taken to investigate whether the person arrested had made or participated in a call for medical assistance, and the reason why the officer determined, based on the information available to the officer at the scene of the arrest, that the person arrested was not entitled to immunity from arrest. The prosecutor handling the complaint shall as soon as practicable make an independent determination whether the person arrested may be entitled to immunity from prosecution. In the event that the prosecutor determines that the person is entitled to immunity from prosecution under the Act and/or Attorney General Law Enforcement Directive 2013-1, the complaint charging an immunity-eligible offense shall be dismissed as expeditiously as possible.**

2. *Reporting of Law Enforcement Narcan Deployments*

On April 2, 2014, Governor Christie announced the formal launch of a pilot program in Ocean and Monmouth counties to train and equip police officers to administer Narcan (Naloxone Hydrochloride), which is a nasally-injected opioid antidote that can save the life of a heroin or prescription opioid overdose victim. Work by the Ocean County Prosecutor's Office informed the State's pilot through the design of a voluntary program to make Narcan kits available to specially-trained police officers. The pilot program within Ocean and Monmouth counties demonstrated the life-saving capabilities of Narcan, as police officers and first responders reversed numerous opiate overdoses in the months following the initiation of the pilot program. Both before and after the initiation of the pilot program, the Department of Health, the Department of Human Services, and the Attorney General worked with county officials to address legal and regulatory issues that otherwise would have impeded the initiative to equip police officers and EMTs with this life-saving

antidote.

Due in part to the extraordinary cooperation among these state agencies, state-wide expansion of the program was realized quickly. On June 17, 2014, Governor Christie announced the expansion of the Narcan pilot program to all 21 counties in New Jersey and the State Police. Additional law enforcement agencies such as the State Park Police also are exploring having their members equipped with Narcan.

Law enforcement deployment of Narcan as a response to an overdose event is an important data point in the analysis of the State's opiate problem. By fusing this data with other available information from within the Department of Law and Public Safety as well as other State agencies, we will better understand where addiction, abuse, and dependence problems reside within our State. Such knowledge is a powerful tool that will allow us to make critical decisions on how to expend our limited law enforcement, prevention, and treatment resources. Within our Department, efforts are already underway to collect data sets in our fight against the opiate epidemic. The State Police's Drug Monitoring Initiative within its Regional Operations Intelligence Center (ROIC) collects and fuses various data and produces intelligence of great assistance to the law enforcement and public health communities. The usefulness and success of the Drug Monitoring Initiative depends in large part on the quality and timeliness of the information it receives.

Accordingly, it is hereby Directed that:

a. **Reporting Narcan Deployments to the ROIC. Every law enforcement agency operating under the authority of the laws of the State of New Jersey that equips its members with Narcan must develop and enforce policies and procedures to ensure that each deployment of Narcan is documented on a form and in a manner as may be prescribed by the Director of the Division of Criminal Justice. (See form attached hereto as Appendix A. Law enforcement agencies may use a comparable form with the approval of the Director.) Completed Narcan deployment forms shall be collected by the Narcan coordinator for that agency, or, in the case of a municipal law enforcement department, by the county Narcan coordinator. The Narcan coordinator shall report all deployments of Narcan to the ROIC's Drug Monitoring Initiative within 24 hours to ensure timely reporting of overdose events to a centralized location and to allow Drug Monitoring Initiative personnel to analyze the information and produce reports statewide as appropriate.**

3. *Prompt and Thorough Investigation of Possible Violations of N.J.S.A. 2C:35-9 (Strict Liability for Drug-Induced Death)*

New Jersey law holds drug dealers criminally responsible for deaths that result from the

ingestion of controlled dangerous substances that they have distributed. When the Comprehensive Drug Reform Act was adopted in 1987, it included a provision, codified in N.J.S.A. 2C:35-9, that makes it a first-degree crime to unlawfully distribute a controlled substance that results in a death. The statute prescribes strict liability, and it is no defense that the drug user contributed to his or her own death by voluntarily ingesting the substance that caused the death. The statute also applies to every person along the drug distribution chain, and not just to a "retail" distributor who may personally have interacted with the ultimate consumer/decedent.

Historically, the drug-induced death statute has been used sparingly, in part because it is difficult to establish by proof beyond a reasonable doubt who had provided the dose of controlled dangerous substance that caused the death. Experience has shown that to mount a successful prosecution for this crime, it is essential for investigators to move quickly, securing physical evidence before it is removed or destroyed, and taking statements from persons who had witnessed the overdose and/or the transaction in which the fatal dosage had been distributed to the victim.

While the drug-induced death charge must be used with appropriate circumspection, it shall be the law enforcement policy of this State to fully, fairly, and expeditiously investigate and prosecute violations of N.J.S.A. 2C:35-9 with a view toward deterring drug dealers from distributing or dispensing those types of controlled dangerous substances that are most often associated with overdose fatalities.

Accordingly, it is hereby Directed that:

a. **Development of Uniform Drug Overdose Investigation Standards. The Director of the Division of Criminal Justice in consultation with the county prosecutors shall within 120 days issue and thereafter periodically update as needed uniform investigation standards and protocols concerning possible violations of N.J.S.A. 2C:35-9 (strict liability for drug-induced deaths). These standards and protocols shall be followed by all law enforcement officers and agencies that respond to the scene of an overdose event or thereafter investigate the circumstances of an overdose death. The investigation standards shall:**

Emphasize the importance of investigating promptly the circumstances of a suspected drug overdose, securing the scene to preserve physical evidence, identifying and taking statements from witnesses at the earliest possible opportunity, and securing smart phones and applying for search warrants and/or communications data warrants when there is probable cause to believe those devices store information pertaining to the offense;

Include procedures to safeguard the rights afforded under the Overdose Prevention Act so as not to chill persons from seeking immediate medical

attention for an overdose victim;

Include a requirement to keep county prosecutors and, where applicable, the Division of Criminal Justice, apprised of overdose fatality investigations to ensure that all investigative leads and avenues are pursued as appropriate;

b. **Development of Training Program. Within 120 days of the issuance of this Directive, the Division of Criminal Justice shall develop and make available an in-service training program, utilizing the NJLEARN system if possible, to explain the drug overdose investigation standards and protocols promulgated pursuant to subsection a. of this Section. This training may be combined, as appropriate, with the training specified in Section 1.a of this Directive.**

c. **Required Training for Certain Officers. The chief executive of every law enforcement agency operating under the authority of the laws of the State of New Jersey shall take such steps necessary to ensure that every sworn officer assigned to patrol duties, every sworn officer who directly supervises officers assigned to patrol duties, and every sworn officer whose duties include investigating the circumstances of or related to an overdose event (*e.g.*, detectives assigned to narcotics enforcement, detectives who might investigate a suspected violation of N.J.S.A. 2C:35-9 (strict liability for drug-induced death), etc.) receives the training on drug overdose investigation standards and protocols developed pursuant subsection b. of this Section. Such officers shall receive the training within 120 days of the training program being made available by the Division of Criminal Justice (*e.g.*, when the program is put on the NJLEARN system). The chief executive 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 agency, documenting that all such officers have completed the training requirement.**

4. *Enhanced and Coordinated Investigation/Prosecution of Corrupt Healthcare Professionals and "Pill Mills"*

New Jersey's drug trafficking problem is not limited to violent gangs, international drug cartels, and brazen street dealers who ply their trade in open-air markets that erode the quality of life, especially in crime-ridden urban centers. New types of profit-minded drug traffickers have emerged and flourished, exploiting and fueling the epidemic of opiate abuse. One new breed of drug trafficker may have a medical or pharmacy degree, operating a so-called "pill mill" under the veil of a legitimate medical practice and creating a self-sustaining market by capitalizing on the addictive nature of prescription opiates. Another new type of trafficker is essentially a professional patient who engages in organized and carefully researched "doctor shopping." This new breed of drug trafficker is skilled at deceiving unwitting prescribers, not to sate his or her own addiction, but rather for the singular purpose of commercially exploiting the addiction of others by diverting prescribed

medications to the black market for profit.

These profiteers cause enormous harm by the sheer repetition of their crimes and the volume of prescription opiates they introduce into the stream of illicit commerce. For these prolific offenders, therefore, criminal prosecution as large-scale drug traffickers is warranted and necessary to send the strongest possible message, to put them out of business, and deter others from taking their place.

To address these new types of drug trafficker, the Division of Criminal Justice recently created a Prescription Fraud Investigation Strike Team (PFIST) comprised of detectives and deputy attorneys general. The Strike Team operates under the direction of the PFIST Coordinator. The Strike Team's primary mission is to investigate and prosecute corrupt healthcare professionals who purvey dangerous drugs for profit while hiding behind the veil of medical offices. For this initiative to be successful, it is essential that county prosecutors and local police departments assist the PFIST by collecting and sharing information that is needed to identify investigative targets.

The county prosecutors also must monitor the nature and scope of the prescription and heroin abuse problem within their jurisdiction. It will be important, for example, for police and prosecutors to debrief persons who have been arrested for unlawfully possessing/acquiring prescription drugs and to encourage those persons to cooperate by revealing their supplier/prescriber. Because county prosecutors handle the vast majority of cases involving prescription pills and heroin possession, they are in a position to encourage users/buyers to provide information about their supply sources.

Accordingly, it is hereby Directed that:

a. **<u>County Prosecutor Liaisons to PFIST</u>. Every county prosecutor shall within 30 days designate a liaison to the Prescription Fraud Investigation Strike Team who shall serve as an intelligence officer and who shall canvass local police departments and report to the PFIST Coordinator or a member of the Drug Monitoring Initiative at the ROIC on the nature and scope of the prescription fraud problem.**

b. **<u>Notifications of Suspicious Activity to PFIST</u>. Every county prosecutor and law enforcement agency operating under the authority of the laws of the State of New Jersey shall notify the PFIST Coordinator, in a manner as may be prescribed by the Coordinator, when there is reasonable articulable suspicion to believe that a licensed healthcare practitioner has committed a crime involving the prescribing or dispensing of any controlled dangerous substance.**

c. **<u>Specialized Training</u>. The PFIST Coordinator shall develop specialized training on best practices for investigating and prosecuting cases against licensed healthcare practitioners, including training on how to use grand jury subpoenas to obtain relevant**

information from the New Jersey Prescription Monitoring Program (NJPMP). The PFIST Coordinator shall make this training available to county detectives and assistant prosecutors.

d. **Soliciting Cooperation of Prescription Opiate Abusers. When a person is charged with unlawful acquisition, possession, or use of a prescription opiate, before dismissing, downgrading, or negotiating a disposition of the charge, the county prosecutor shall make reasonable efforts to convince the person to cooperate and to provide information concerning the source of prescription drugs and concerning the prescribing/dispensing practices of any practitioner from whom the person obtained a controlled substance or a prescription to obtain such substances.**

5. *Enhanced Prosecution of Drug Traffickers Who Sell Ultradangerous Opiate Mixtures or Heroin Along With Other Opiates*

Drug traffickers constantly are developing new ways to market existing drugs by combining substances to enhance their psychotropic effect and attract users by affording a quicker, more intense, and longer-lasting "high." Recently, law enforcement and health officials learned that heroin sometimes is mixed with the synthetic narcotic fentanyl. This additive enhances the intoxicating effect and significantly increases the risk of overdose and death, especially if the user is not familiar with the enhanced effects of this ultradangerous mixture of narcotic substances. Drug traffickers, of course, do not provide warning labels or dosage instructions to their customers. Nor do they provide labels that identify all of the ingredients and warn of their synergistic effects.

Aside from enhancing prosecution efforts against drug dealers who prepare or sell ultradangerous opiate mixtures, it also is necessary to pay special attention to traffickers who sell heroin in addition to other forms of opiates. That practice makes it easier for users to consume opiate drugs in combination, and makes it easier for persons who are addicted to prescription pills to transition to heroin, because they can progress to that substance without having to find a new supplier.

To address these disturbing developments, it is appropriate to strengthen the Attorney General "Brimage Guidelines," which channel prosecutorial discretion in negotiating guilty pleas for offenses under the Comprehensive Drug Reform Act that carry a mandatory minimum sentence that can only be waived or reduced by the prosecutor pursuant to N.J.S.A. 2C:35-12. These revisions are needed to ensure appropriate punishment for drug dealers who distribute heroin along with other opiates. In addition, consistent with ongoing efforts to reform New Jersey's bail laws and practices to ensure protection of the public, see L. 2014, c. 31, prosecutors must make certain that courts setting bail/pretrial release conditions are alerted when a defendant will be subject to enhanced punishment – and thus have a greater incentive to flee – as a result of these revisions to the Brimage Guidelines.

It also is important to ensure that forensic laboratories test for multiple substances and provide prosecutors with reports that establish when a heroin sample submitted for testing contains any other Schedule I or II narcotic drug.

a. **Revision to Brimage Guidelines. The Revised Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12 (Brimage Guidelines 2) (2004) hereby are amended to provide that in Brimage-eligible cases where the defendant has manufactured, distributed, or possessed with intent to distribute heroin simultaneously with fentanyl or any other Schedule I or II narcotic drug, whether combined by the defendant into a single mixture or not, the prosecutor shall increase the Brimage-calculated term of parole ineligibility by 12-18 months in the case of a first-degree crime, or 6-9 months in the case of a second-degree crime. The Director of the Division of Criminal Justice may issue specific instructions on how to implement this revision to the Brimage Guidelines. To ensure that bail/pretrial release conditions accurately reflect the defendant's sentencing exposure, prosecutors shall apprise a court responsible for setting or reviewing bail/release conditions when a defendant is subject to an enhanced Brimage plea offer pursuant to this Directive.**

b. **Review of Forensic Laboratory Testing Protocols for Ultradangerous Opiate Mixtures. The Superintendent of the Division of State Police, in consultation with the Director of the Division of Criminal Justice and the County Prosecutors, shall review and as appropriate revise forensic testing protocols and procedures used by the New Jersey State Police Forensic Laboratory to facilitate the identification of heroin samples submitted for analysis that also contain any other Schedule I or II narcotic drug in order to identify cases subject to an enhanced Brimage offer pursuant to Section 5.a of this Directive. County Prosecutors who oversee county forensic laboratories shall similarly ensure that laboratories operating under their auspices review and as appropriate revise their testing protocols and procedures to identify ultradangerous opiate mixtures.**

6. *Enhancing the Role of Prosecutors in Enabling Drug Treatment in Lieu of Imprisonment*

The law enforcement community cannot solve the current heroin and prescription opiate epidemic solely by making arrests and incarcerating drug dealers. Some drug offenders, of course, need to be imprisoned. Professional drug traffickers who are motivated by greed must be targeted for appropriately stern punishment commensurate with their culpability. Likewise, drug dealers who participate in street gang activity, intimidate witnesses, carry firearms, or otherwise engage in violence, generally face stern punishment. For certain other drug offenders, however, traditional incarceration may not be necessary.

Indeed, for some non-violent drug offenders who suffer from addiction, incarceration may be a lost opportunity to protect the public from future criminality. Some offenses are committed by addicts while they are under the influence of a mind-altering substance that interferes with their ability to assess risks and make reasoned choices. Many non-violent offenses are committed by addicts who are desperate to raise money to pay for the drugs they crave. Were we to address the underlying addiction that precipitates criminal activity, we could prevent future crimes by breaking a vicious cycle. While the threat of imprisonment can and in appropriate cases should be used to encourage addicted offenders to overcome denial and engage in the rehabilitation process, our overarching goal should be to avoid having to imprison non-violent addicts when a more effective alternative exists.

In 2012, Governor Christie signed a law that calls for the gradual expansion of New Jersey's nationally-acclaimed Drug Court Program by authorizing judges to order addicted non-violent offenders to participate in court-supervised drug treatment whether they ask for treatment or not. The new compulsory treatment provision addresses a major shortcoming of a program that had depended on addicts making rational, farsighted choices – something addicts may not have the capacity or wherewithal to do. The new law is based on a well-established body of scientific research that shows that compulsory treatment works as well if not better than voluntary treatment. Under this statutory framework, the authority and leverage of the criminal justice system is used constructively to overcome an addict's denial, which is one of the characteristics of this disease.

Prosecutors have an important supporting role in the continued success of Drug Court. In many respects, prosecutors are the gatekeepers of the criminal justice system, deciding what charges to bring and how those cases will be presented to courts for adjudication and disposition. In exercising charging and plea negotiation discretion, prosecutors must be careful not to unwittingly discourage addicts from applying to Drug Court, or discourage courts from exercising their authority under the new law to compel addicts to participate in the program.

Prosecutors also have an important role to play in protecting the integrity of the Drug Court admission process. Not all drug dealers are selling to support their own addiction. Many are motivated by greed, rather than driven by drug dependence. Furthermore, there are some profit-minded distributors who will feign addiction in an effort to avoid traditional imprisonment. Given the limitation on the number of treatment beds that are available, those resources must not be wasted on malingerers.

Furthermore, to promote the long-term interests of public safety, sometimes, the request to conduct a diagnostic assessment to determine whether and to what extent a defendant is drug or alcohol dependant should come from an alert prosecutor. While prosecutors generally are not in a position to diagnose a defendant's substance abuse problems, prosecutors should not ignore indications of addiction that are readily apparent from a careful review of the information that is readily available to prosecutors, such as, for example, information in an arrest report that suggests

that the defendant was under the influence of a controlled dangerous substance, or findings or self-admissions of substance abuse memorialized in presentence reports from prior cases. Prosecutors whenever feasible should inform judges about any case-specific circumstances that reasonably suggest that a defendant may suffer from the disease of addiction, and should do so at the earliest opportunity (*e.g.*, a next-day bail review). A prosecutor should not assume that the judge handling the matter is aware of these circumstances merely because this information is captured in court records (*e.g.*, a presentence report from a prior case).

The Drug Court Program embraces the principle that treatment services must be matched to clinical needs. Studies show that clinically-inappropriate treatment (*e.g.*, outpatient treatment when inpatient treatment is needed, or inpatient treatment when it is not needed) produces poor results, and wastes valuable treatment resources. A prosecutor generally would be expected to defer to a TASC (Treatment Assessment Services for the Courts) evaluator's assessment as to the appropriate type and level of care (*e.g.*, inpatient, intensive outpatient, or outpatient treatment). If a prosecutor has concerns about community safety were a defendant to be sentenced to outpatient treatment, rather than automatically objecting to the defendant's admission to Drug Court, a prosecutor instead might consider, for example, whether the interests of public protection would best be served by asking the court to impose a curfew and to require the defendant to wear an ankle bracelet to record his or her movements, at least until the defendant is making good progress in recovery and has earned the privilege of having the monitoring device removed. In this way, a defendant's violation of a court order concerning his or her movements, or his or her presence at the scene of a reported offense, could be ascertained simply by checking the electronic monitoring records.

Ultimately, that approach – finding ways to support treatment with appropriate safeguards rather than objecting automatically to treatment – might better serve the interests of community safety than if the prosecutor were to ask the court to impose a State Prison sentence after which the defendant upon his or her return to society likely would commit new crimes as a result of his or her untreated addiction.

Accordingly, it is hereby Directed that:

a. **Alerting the Court of Possible Addiction. The prosecutor assigned to handle a case involving a non-violent offense shall to the extent feasible review available information concerning any indicia that the offender may be a drug or alcohol dependent person as defined in N.J.S.A. 2C:35-2 (e.g., current arrest report, presentence reports in prior cases, etc.). If the prosecutor becomes aware of information reasonably suggesting that the defendant is a drug or alcohol dependent person, he or she shall report such information to the court at the earliest opportunity.**

b. **Policy to Encourage Drug Court. Where a defendant is eligible for special probation pursuant to N.J.S.A. 2C:35-14, the prosecutor shall request the court at sentencing to**

impose special probation unless the County Prosecutor or designated senior assistant prosecutor, or Director of the Division of Criminal Justice or designated Assistant Attorney General in cases prosecuted by the Division, determines in writing that admission to Drug Court would pose a danger to the community. In making that determination, the prosecutor shall consider whether any conditions of probation (*e.g.*, electronically monitored curfew) are available that adequately would address the community safety concerns.

c. **Approval of Objections Based on Community Safety. A prosecutor shall not object to a defendant being sentenced to special probation pursuant to N.J.S.A. 2C:35-14 on the grounds that defendant's admission to Drug Court would pose a danger to community safety unless the basis for such objection has been reviewed and approved by the County Prosecutor or designated senior assistant prosecutor, or Director of the Division of Criminal Justice or designated Assistant Attorney General in cases prosecuted by the Division, considering whether any conditions of probation (*e.g.*, electronically monitored curfew) are available that would adequately address the community safety concerns.**

d. **Identifying Malingers. In cases being considered for Drug Court where the prosecutor has concerns that a defendant is feigning addiction, the prosecutor shall review the TASC (Treatment Assessment Services to the Courts) evaluation and shall to the extent feasible determine whether the TASC evaluator had reviewed all appropriate collateral documents, including any prior presentence investigation reports. Prosecutors shall make certain that TASC evaluators have access to potentially relevant information that might be found in the prosecutor's files, including information stored in a file pertaining to any other pending case or a prior case involving the defendant.**

e. **Explaining Drug Court Policies and Procedures to Prosecutors. The Division of Criminal Justice in consultation with the County Prosecutors shall develop and periodically update materials for use by assistant prosecutors and deputy attorneys general to explain the prosecutor's role and participation in the Drug Court Program and to ensure statewide uniformity in the exercise of prosecutorial discretion. These materials shall include training on the nature and indications of addiction, and how to review information available in a prosecutor's file to identify indicia of addiction that should be reported to the court pursuant to this Directive.**

f. **Explaining Drug Court to Victims. The Division of Criminal Justice in cooperation with the County Prosecutors and the Office of Victim Witness Advocacy shall within 120 days develop informational materials to explain the Drug Court process to victims, and shall develop standards to be used by assistant prosecutors and deputy attorneys general to ensure that victims' constitutional and statutory rights are respected in cases**

being considered for Drug Court.

g. **CLE Training. The Attorney General Advocacy Institute shall make available continuing legal education programs concerning Drug Court to assistant prosecutors assigned to Drug Court, and to other assistant prosecutors and deputy attorneys general who may handle cases involving defendants who may be eligible for Drug Court.**

7. *Questions*

Any questions concerning this Directive shall be addressed to the Director of the Division of Criminal justice, or his designee.

8. *Effective Date*

This Directive shall take effect immediately, and shall remain in force unless and until rescinded or amended by Order of the Attorney General. With respect to any provision or feature of this Directive for which a specific time period for implementation is not indicated, the provision or feature shall be implemented as soon as practicable.

John J. Hoffman
Acting Attorney General

Dated: October 28, 2014

ATTACHMENT A

NJ Attorney General's Heroin & Opiates Task Force
Naloxone Deployment Reporting Form

Police Department:	Case #:
Date of Overdose: / /	Time of Overdose: : ☐ AM ☐ PM
Location where overdose occurred: (Street address, City)	Address of victim:(Street address, City)
Gender of the victim: ☐ **Male** ☐ **Female** ☐ **Unknown**	**Age:**
Race/Ethnicity ☐ White ☐ Black ☐ Hispanic ☐ Asian/Indian ☐ American Indian ☐ Pacific Islander	

Signs of overdose present (check all that apply)

☐ **Unresponsive** ☐ **Breathing Slowly** ☐ **Not Breathing** ☐ **Blue lips**

☐ **Slow pulse** ☐ **No pulse** ☐ **Other (specify):**

Suspected overdose on what drugs (check all that apply)

☐ **Heroin** ☐ **Benzos/ Barbituates** ☐ **Cocaine/ Crack** ☐ **Suboxone** ☐ **Any other opioid**

☐ **Alcohol** ☐ Methadone ☐ **Don't Know** ☐ **Other (specify):**

Evidence

☐ **Heroin** **Stamp (Text/Color)** **Descibe Image:**

Stamp (Text/Color) **Descibe Image:**

☐ **Opiate Pills** **Pill Type:** **Doctor's Name:**

☐ **Evidence Secured** ☐ **Drugs** ☐ **Paraphernalia**

Details of Naloxone Deployment

Number of doses used:	Did Naloxone work: ☐ **Yes** ☐ **No** ☐ **Not Sure**
If yes, how long did it take to work: ☐ **<1 min** ☐ **1-3 min** ☐ **3-5 min** ☐ **>5 min** ☐ **Don't Know**	
Patient's response to Naloxone ☐ **Responsive and alert** ☐ **Responsive but sedated** ☐ **No response to Naloxone**	
Post-Naloxone withdrawal symptoms (check all that apply) ☐ **None** ☐ **Irritable or Angry**	
☐ **Dope sick (e.g. nauseated, muscle aches, runny nose, and/or watery eyes)** ☐ **Physically Combative**	
☐ **Vomiting** ☐ **Other (specify):**	Did the person live: ☐ **Yes** ☐ **No**
What else was done: ☐ **Sternal Rub** ☐ **Recovery position** ☐ **Rescue breathing** ☐ **Chest compressions**	
☐ **Automatic Defibrillator** ☐ **Yelled** ☐ **Shook them** ☐ **Oxygen**	
☐ **EMS Naloxone** ☐ **Bystander Naloxone** ☐ **Other (specify):**	
Disposition: ☐ **Care transfer to EMS** ☐ **Other (specify):**	
Naloxone Information: Lot #:	Expiration date: / /
Notes / Comments	

Officer's Name	Signature	Date of Report

Please email form to roicadmin@gw.njsp.org and CountyCoordinator@???.gov or fax to NJROIC (609) 530-3650 and (???) ???-??? (Attn:)

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

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

FROM: John J. Hoffman, Acting Attorney General

DATE: November 26, 2014

SUBJECT: Directive Requiring Prosecutorial and Judicial Approval of the Proactive Use of Probationers To Conduct Law Enforcement Investigations

It has been brought to my attention that there have been instances where law enforcement officers or agencies have used persons on probation to engage proactively in law enforcement operations such as "controlled buys" of illicit drugs. Although these probationers are not being asked to commit a criminal offense, see N.J.S.A. 2C:3-3(c)(2),[1] their proactive activities on behalf of law enforcement may require them to violate a condition of probation that they not associate with persons involved in criminal activities. Furthermore, and most significantly, the practice of using a probationer in this manner may undermine the process of rehabilitation, especially if the probationer is drug or alcohol dependent and has been sentenced to special probation ("Drug Court") pursuant to N.J.S.A. 2C:35-14. Accordingly, pursuant to my authority under the Criminal Justice Act, N.J.S.A. 52:17B-97 *et seq.*, to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, it is appropriate to impose limitations on the authority of police and prosecutors to use probationers proactively to support law enforcement investigations.

---

[1] N.J.S.A. 2C:3-3(c)(2) provides that conduct is justifiable (*i.e.*, is not criminal under the New Jersey Code of Criminal Justice), "[w]hen the actor reasonably believes his conduct to be... authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority."

1. General Rule Prohibiting Proactive Use of Probationers Without Prior Authorization

A law enforcement officer or agency operating under the laws of the State of New Jersey shall obtain approval from the County Prosecutor or the Director of the Division of Criminal Justice and from the Assignment Judge or other appropriate judicial authority designated by the Assignment Judge before using, instructing, encouraging, or authorizing a probationer to proactively support a law enforcement investigation. Any violation of this requirement shall be reported immediately to the Attorney General or his designee.

2. Definitions

For purposes of this Directive:

"Probationer" means a person presently serving a term of regular probation pursuant to N.J.S.A. 2C:45-1 or special probation pursuant to N.J.S.A. 2C:35-14 (Drug Court).

"Proactively support a law enforcement investigation" means to commit any act or engage in any course of conduct at the express request of a law enforcement officer or agency where that act or course of conduct 1) would constitute a criminal offense, or an attempt or conspiracy to commit a criminal offense, if committed or engaged in by a person not expressly authorized by a law enforcement officer or agency to commit that act or engage in that course of conduct, or 2) would constitute a violation of a term or condition of probation. Examples of proactive support of a law enforcement investigation include but are not limited to purchasing illicit drugs to be turned over to a law enforcement officer or agency (*i.e.*, a "controlled buy"), or wearing an electronic surveillance device supplied by a law enforcement officer or agency during a meeting or conversation with a subject or target of an investigation. The term does not include providing information to law enforcement authorities about past, ongoing, or future criminal acts committed by others provided that the officer or agency has not used, instructed, encouraged, or authorized a probationer to violate any term or condition of probation, including the requirement to refrain from associating with specified persons or persons involved in criminal activity. Nor does the term include testifying as a cooperating witness.

"Law enforcement officer or agency" means any law enforcement officer or agency acting under the authority of the laws of the State of New Jersey.

"County Prosecutor" includes an assistant prosecutor designated in writing by the County Prosecutor to approve the proactive use of a probationer pursuant to Section 1 of this Directive.

"Director of the Division of Criminal Justice" includes an assistant or deputy attorney

general designated in writing by the Director to approve the proactive use of a probationer pursuant to Section 1 of this Directive.

"Appropriate judicial authority" means the Assignment Judge of the county where defendant's probation is being supervised, or another Superior Court judge or probation officer designated or otherwise authorized by the Assignment Judge to approve a County Prosecutor's application to use a probationer to proactively support a law enforcement investigation.

3. Standard for Prosecutorial Approval

A County Prosecutor or the Director of the Division of Criminal Justice shall not approve the use of a probationer to proactively support a law enforcement investigation unless the prosecutor or Director determines that there are compelling public safety reasons that justify the risk of undermining the person's rehabilitation. If the County Prosecutor or Director approves the use of the probationer to proactively support a law enforcement investigation, the prosecutor or Director shall then apply to the appropriate judicial authority for approval of the proposed use of the probationer to proactively support a law enforcement investigation.

4. Scope of Directive

Nothing in this Directive shall be construed to limit the authority of a prosecutor to use a probationer as a cooperating witness.

Nothing in this Directive shall be construed to limit the authority of a law enforcement officer or agency to receive from a probationer information concerning past, ongoing, or planned criminal activities of which the probationer is aware, provided however that except as authorized under Section 1 of this Directive, the officer or agency shall not use, instruct, encourage, or authorize a probationer to violate any term or condition of probation, including any requirement that the probationer refrain from associating with specified persons or persons involved in criminal activity.

Nothing in this Directive shall be construed to amend the provision in the Attorney General "Law Enforcement Guidelines on the Use of Juveniles as Informants" that requires the consent of a parent/legal guardian before a juvenile may be used as a confidential informant.

5. Questions

Any questions concerning this Directive shall be addressed to the Director of the Division of Criminal Justice, or his designee.

6. Effective Date

This Directive shall take effect immediately, and shall remain in force and effect unless and until rescinded or modified by Order of the Attorney General.

John J. Hoffman
Acting Attorney General

DATED: November 26, 2014

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

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

FROM: John J. Hoffman, Acting Attorney General

DATE: November 26, 2014

SUBJECT: Directive Requiring Prosecutorial and Judicial Approval of the Proactive Use of Probationers To Conduct Law Enforcement Investigations

It has been brought to my attention that there have been instances where law enforcement officers or agencies have used persons on probation to engage proactively in law enforcement operations such as "controlled buys" of illicit drugs. Although these probationers are not being asked to commit a criminal offense, see N.J.S.A. 2C:3-3(c)(2),[1] their proactive activities on behalf of law enforcement may require them to violate a condition of probation that they not associate with persons involved in criminal activities. Furthermore, and most significantly, the practice of using a probationer in this manner may undermine the process of rehabilitation, especially if the probationer is drug or alcohol dependent and has been sentenced to special probation ("Drug Court") pursuant to N.J.S.A. 2C:35-14. Accordingly, pursuant to my authority under the Criminal Justice Act, N.J.S.A. 52:17B-97 *et seq.*, to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, it is appropriate to impose limitations on the authority of police and prosecutors to use probationers proactively to support law enforcement investigations.

---

[1] N.J.S.A. 2C:3-3(c)(2) provides that conduct is justifiable (*i.e.*, is not criminal under the New Jersey Code of Criminal Justice), "[w]hen the actor reasonably believes his conduct to be... authorized to assist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority."

1. General Rule Prohibiting Proactive Use of Probationers Without Prior Authorization

A law enforcement officer or agency operating under the laws of the State of New Jersey shall obtain approval from the County Prosecutor or the Director of the Division of Criminal Justice and from the Assignment Judge or other appropriate judicial authority designated by the Assignment Judge before using, instructing, encouraging, or authorizing a probationer to proactively support a law enforcement investigation. Any violation of this requirement shall be reported immediately to the Attorney General or his designee.

2. Definitions

For purposes of this Directive:

"Probationer" means a person presently serving a term of regular probation pursuant to N.J.S.A. 2C:45-1 or special probation pursuant to N.J.S.A. 2C:35-14 (Drug Court).

"Proactively support a law enforcement investigation" means to commit any act or engage in any course of conduct at the express request of a law enforcement officer or agency where that act or course of conduct 1) would constitute a criminal offense, or an attempt or conspiracy to commit a criminal offense, if committed or engaged in by a person not expressly authorized by a law enforcement officer or agency to commit that act or engage in that course of conduct, or 2) would constitute a violation of a term or condition of probation. Examples of proactive support of a law enforcement investigation include but are not limited to purchasing illicit drugs to be turned over to a law enforcement officer or agency (*i.e.*, a "controlled buy"), or wearing an electronic surveillance device supplied by a law enforcement officer or agency during a meeting or conversation with a subject or target of an investigation. The term does not include providing information to law enforcement authorities about past, ongoing, or future criminal acts committed by others provided that the officer or agency has not used, instructed, encouraged, or authorized a probationer to violate any term or condition of probation, including the requirement to refrain from associating with specified persons or persons involved in criminal activity. Nor does the term include testifying as a cooperating witness.

"Law enforcement officer or agency" means any law enforcement officer or agency acting under the authority of the laws of the State of New Jersey.

"County Prosecutor" includes an assistant prosecutor designated in writing by the County Prosecutor to approve the proactive use of a probationer pursuant to Section 1 of this Directive.

"Director of the Division of Criminal Justice" includes an assistant or deputy attorney

general designated in writing by the Director to approve the proactive use of a probationer pursuant to Section 1 of this Directive.

"Appropriate judicial authority" means the Assignment Judge of the county where defendant's probation is being supervised, or another Superior Court judge or probation officer designated or otherwise authorized by the Assignment Judge to approve a County Prosecutor's application to use a probationer to proactively support a law enforcement investigation.

3. Standard for Prosecutorial Approval

A County Prosecutor or the Director of the Division of Criminal Justice shall not approve the use of a probationer to proactively support a law enforcement investigation unless the prosecutor or Director determines that there are compelling public safety reasons that justify the risk of undermining the person's rehabilitation. If the County Prosecutor or Director approves the use of the probationer to proactively support a law enforcement investigation, the prosecutor or Director shall then apply to the appropriate judicial authority for approval of the proposed use of the probationer to proactively support a law enforcement investigation.

4. Scope of Directive

Nothing in this Directive shall be construed to limit the authority of a prosecutor to use a probationer as a cooperating witness.

Nothing in this Directive shall be construed to limit the authority of a law enforcement officer or agency to receive from a probationer information concerning past, ongoing, or planned criminal activities of which the probationer is aware, provided however that except as authorized under Section 1 of this Directive, the officer or agency shall not use, instruct, encourage, or authorize a probationer to violate any term or condition of probation, including any requirement that the probationer refrain from associating with specified persons or persons involved in criminal activity.

Nothing in this Directive shall be construed to amend the provision in the Attorney General "Law Enforcement Guidelines on the Use of Juveniles as Informants" that requires the consent of a parent/legal guardian before a juvenile may be used as a confidential informant.

5. Questions

Any questions concerning this Directive shall be addressed to the Director of the Division of Criminal Justice, or his designee.

6. Effective Date

This Directive shall take effect immediately, and shall remain in force and effect unless and until rescinded or modified by Order of the Attorney General.

John J. Hoffman
Acting Attorney General

DATED: November 26, 2014

5. INFORMANTS AND CONFIDENTIAL SOURCES OF INFORMATION

In some cases, school officials develop their reasonable grounds to conduct a search based in part on information provided by a confidential source, which in the law enforcement context is sometimes referred to as an "informant" or "informer."

In the school setting, few students could be likened to the paid or professional informers who "work" for law enforcement agencies, or who are cooperating with law enforcement in consideration for a reduced sentence as part of a "plea bargain." Rather, information is typically provided to teachers and school administrators by students on an ad hoc and highly informal basis. For this reason, it is perhaps inappropriate to use an intimidating and colorful term such as "informant" to describe a student who reports facts or suspicious circumstances to school employees. That term is used in this Manual only for convenience and because this terminology is frequently used in the caselaw that discusses when police may rely and act upon information supplied by private citizens, and when police and prosecutors may refuse to divulge the identity of a confidential source of information.

The law distinguishes between two different types of information sources: (1) information provided by persons who are themselves involved in criminal activity, and (2) information provided by persons for whom there is no reason to believe that they have committed crimes or are otherwise untrustworthy. These distinct circumstances are discussed in §§ 5.1 and 5.2, respectively.

Although some students believe that it is inappropriate to "squeal" or "rat" on classmates, in fact, it is important that every member of the school community understand that they have a responsibility to contribute to the safety and security of their classmates and teachers. Students should be made to understand that it is not "cool" to engage in dangerous behavior, such as bringing drugs or weapons on to school grounds. Students must also understand that the best chance for ensuring a safe and secure environment is to let would-be offenders know that they face a significant risk of being caught precisely because their classmates have the courage to report offenses to their teachers and other appropriate school officials.

5.1. Information Reported by Persons Involved in Criminal Activities.

For purposes of Fourth Amendment law, the phrase "confidential informant" generally refers to a person who has knowledge about someone else's criminal behavior because the informant is also involved in the criminal conduct about which he or she is reporting. These informants are said to be "involved in the criminal milieu" and are

distinguished from so-called "citizen" informants, who are not believed to be in any way involved in criminal activity. (The law concerning the latter type of informer is discussed in § 5.2.)

When information is provided by a person who is himself or herself engaged in criminal activity, courts are naturally skeptical about the informant's motives and his or her capacity to be truthful. Consider that information given about a suspected drug dealer may be provided by another drug dealer who hopes to have his "competition" arrested or expelled.

When judging the reliability of information provided by confidential informants, that is, persons who are themselves engaged in criminal activity, courts will examine the "totality of the circumstances" to decide whether the information provided is credible, and whether that information establishes probable cause (in the case of a law enforcement search) or reasonable grounds (in the case of a search to be conducted by school officials under the less stringent legal standard announced in New Jersey v. T.L.O.). A determination of probable cause or, where appropriate, reasonable grounds, will always take into account *all* of the facts and attendant circumstances known to the police officer or school official, as well as all reasonable inferences that can be drawn from those facts or circumstances. Ultimately, the test under the Fourth Amendment is one of reasonableness: would a reasonable school official or police officer believe and rely upon the information provided by the confidential source, considering not only all information known about that source, but also other information that tends to support or contradict the informant's story.

Although the courts have rejected a rigid test to determine the reliability of confidential informants, it is still useful for analytical purposes to refer to what was once known as the "two-pronged" test of informant reliability. Although the United States Supreme Court has technically abandoned this "two-prong" test in favor of a more amorphous "totality of the circumstances" test, see Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the factors that constitute the "two-prongs" remain "highly relevant." See Alabama v. White, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990).

The first "prong" to be considered requires the police officer (or school official) to examine the *basis* for the informant's knowledge. In other words, we must ask, how does the informant know about the suspected crime or incident that he or she is reporting? Was the informant present during an earlier criminal event or transaction? Did the informant actually see someone using or distributing drugs or carrying a

weapon? Did the informant actually see another student place drugs or a weapon into a particular locker or container?

The second "prong" requires police officers or school officials to examine the *veracity* of the informant. Why would a reasonable person believe that this particular confidential informant — who is him/herself involved in criminal activity — is telling the truth? Often, this question is answered by looking at the informant's reputation for truthfulness and his or her "track record" for providing information that has proven to be reliable and truthful in the past.

School officials or police officers should look closely to any motives that the informant may have to lie, as well as to the amount of detail that the informant can provide. When the informant is able to provide these so-called "self-verifying details" about the suspect's criminal conduct, then government officials are better able to determine whether the informant's information is accurate.

One way to bolster a weak "prong" is to conduct some kind of further investigation to corroborate the informant's story. This independent investigation should be conducted *before* a full-blown search is undertaken. Recall that the legality of a search will be determined on the basis of the information that was known to school officials or police officers at the time the search was conducted. An unlawful search cannot be justified by what it reveals, or by information that might have been available to the official conducting the search but that was not actually known and relied upon.

School officials or police officers should always try to determine whether there is any other information that is known or readily available that would lend credibility to the informant's story, including information provided by another independent source and/or an examination of the record or reputation of the person the informant alleges to be involved in criminal activity.

There are a number of other ways to corroborate information provided by an informant. In many cases, it may be appropriate to conduct a surveillance of the suspect (which is not a search under the Fourth Amendment) to see if the suspect engages in any suspicious conduct that would tend to corroborate the information provided by the confidential source, thus indicating that the informant was telling the truth. See Chapter 9 for a more detailed discussion of permissible surveillance techniques.

School officials and police officers should always consider whether the information provided by a confidential source is "stale." Information about a suspect may be so old that it no longer provides probable cause or even reasonable grounds to believe

that the suspect continues to be involved in criminal activity or that evidence of that criminal activity will be found in a particular location. For example, otherwise reliable information that a student kept drugs in a locker during the course of the last school year may not provide reasonable grounds to conduct a search of the locker today, although such information would certainly justify an investigation to determine whether any other information is available to support the suspicion that the student continues to be concealing drugs on school property. (See also Chapter 2.3A(8).)

5.2. Information Provided by Innocent Victims and Witnesses.

As noted above, and especially in the school setting, many if not most "informants," that is, persons who supply information to school officials, are not themselves involved in criminal activity or infractions of school rules. These sources are sometimes referred to in the caselaw as "citizen" informants. They may be innocent witnesses or even the victims of another's unlawful behavior.

There is no reason to assume that a citizen informant — one who is not part of the so-called criminal milieu — is lying when he or she reports suspicious behavior. For this reason, it is not necessary to establish the second "prong" of the above-described two-pronged analysis. Rather, when school officials learn that information is provided by a citizen informant, they can assume that the person is being truthful.

School officials should still consider whether there is some *basis* for the student's knowledge of the reported criminal activity. If, for example, the information learned of concerning a criminal violation or school rule infraction comes from yet another source (i.e., second-hand information), school officials should try to determine whether the original source of the information was reliable. As children, we all played the game "telephone," in which a story would be handed down from playmate-to-playmate until the final version bore little resemblance to the original. School officials in deciding whether information provided to them constitutes "reasonable grounds" must always consider the original source of the information.

Finally, it must be noted that in many cases, courts seem to tacitly assume that a confidential source of information is reliable, especially where there is no reason to believe that the informant is involved in criminal activity or is otherwise untrustworthy. In State v. Moore, 254 N.J. Super. 295 (App. Div. 1992), for example, the court had little difficulty in concluding that a report by a specific student to a guidance counsellor that the defendant possessed a controlled dangerous substance provided reasonable grounds for the assistant principal to conduct a search of a bookbag believed to belong to the defendant, especially since the information was bolstered by the fact that the

assistant principal knew that the defendant had previously been disciplined for possessing a partially-burned marijuana cigarette that had been found in defendant's jacket pocket. 254 N.J. Super. at 296, 299.

So too, in State v. Biancamano, 284 N.J. Super. 654 (App. Div. 1995), certif. denied 143 N.J. 516 (1996), the court, without elaboration, held that when the vice-principal was "informed by a confidential informant that [a particular student] was distributing drugs," the vice-principal "certainly had a reasonable suspicion that [the identified student] might have such drugs in his possession" 284 N.J. Super. at 660. The court in its published decision did not probe deeply into the background of the confidential informant or even how the informant had become aware of the drug-distribution scheme.

5.3. Anonymous Tips.

In common parlance, the terms "anonymous" and "confidential" are sometimes used interchangeably when referring to a source of information. News reporters, for example, will often refer to an "anonymous source" when they really mean a known source of information who has given information with the understanding that the reporter will not reveal the source's identity. In the law, and for the purposes of this Manual, the two terms have distinctly different meanings. An "anonymous" source, sometimes referred to as a "tipster," is one whose identity is unknown to the official receiving and relying upon the information. These kinds of sources are discussed in this subchapter. A "confidential" source, in contrast, is a person whose identity is known to the official receiving and relying upon the source's information, but the official has impliedly or expressly agreed not to disclose the person's identity to others as a practical means of encouraging the person to provide the information. The legal issues involved in preserving the confidentiality of an informant's identity are discussed in Chapter 5.4.

On some occasions, information about criminal activity or school rule infractions is provided to school officials anonymously (i.e., e.g., by means of a unsigned letter). When that occurs, there is no way to know if the individual providing the information was involved in the criminal activity or otherwise has a motive to lie. It may also be difficult if not impossible to demonstrate the tipster's basis of knowledge unless he or she happens to relate that information. (Obviously, when school officials do not know the identity of the source, it is usually not possible to contact the source to obtain more detailed information.) For this reason, as a general proposition, an anonymous tip, by itself, will *not* constitute reasonable grounds to justify an immediate search by school officials. Compare Alabama v. White, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990) (holding that as a general rule, an anonymous tip provided to police

will not, by itself, constitute reasonable articulable suspicion to justify an investigative detention).

In State v. Engerud, the companion case to T.L.O., the New Jersey Supreme Court ruled that the search of the student's locker was unconstitutional because the anonymous tip the school official relied upon did not satisfy the reasonable grounds test. 94 N.J. 331, 348 (1983). Accordingly, when a school official receives information anonymously or "through the grapevine," the better practice would be to conduct some independent investigation — short of conducting a search — to try to confirm or dispel the information provided in the anonymous tip.

This does not mean that in all cases an anonymous tip is not enough to justify a search conducted by school officials. Rather, the reasonableness of the search will depend upon all of the known circumstances and must be decided on a case-by-case basis. The point, however, is that before conducting a search, school officials should pursue all available investigative options that do not entail an invasion of a student's privacy, such as checking with others to determine whether they may be aware of information that corroborates (or refutes) the anonymously-provided information, or by conducting some form of surveillance.

Note also that in State v. Williams, 251 N.J. Super. 617 (Law Div. 1991), the court held that two separate tips coming from two different anonymous sources, when viewed together, *did* provide police with a reasonable articulable suspicion — the close analog to the "reasonable grounds" standard used to justify a search conducted by school officials. In essence, the court in Williams concluded that the whole is greater than the sum of its parts. Each separate tip, viewed independently, might not have been sufficient, but when viewed together provided a reasonable basis to believe that the information provided in the tips was accurate.

5.4. Protecting the Identity of Sources of Information.

Some students will occasionally report information about school infractions or suspected criminal activity. It is critically important for police and school officials to protect the identity of these students. This is necessary not only to protect the safety of these students as against the risk of retaliation, but also to encourage students and other members of the school community to come forward with information that will allow school officials and, where appropriate, law enforcement authorities, to preserve order and discipline and to protect the interests of law-abiding members of the school community.

A state statute, which is part of New Jersey's Rules of Evidence, provides that:

> A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws of this State or of the United States to a representative of the State or the United States or a governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that (a) the identity of the person furnishing the information has already been otherwise disclosed or (b) disclosure of his identity is essential to assure a fair determination of the issues.
> [N.J.S.A. 2A:84A-28 (also codified as Evid. R. 516.).]

Although this statute is commonly referred to as the "informer's privilege," the privilege actually does not belong to the person providing information, but rather belongs to the government "to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with the enforcement of the law." See Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). The statute is designed to encourage citizens to perform their civic duty to communicate knowledge of wrongdoing to law enforcement officials without fear of reprisals. See Grodjesk v. Faghani, 104 N.J. 89, 97 (1986). As a general proposition, courts acknowledge the need to preserve the secrecy of an informer's identity, and have created what has been called a "presumption of confidentiality" that can only be overcome by a "substantial showing of a need" for disclosure. See Cashen v. Spann, 77 N.J. 138 (1978).

What is privileged is the identity of the informer, not the information that the informer may have provided. However, if disclosing the contents of the information would likely reveal the identity of the informer, such disclosure is generally precluded. Grodjesk v. Faghani, supra, 104 N.J. at 96.

In State v. Biancamano, 284 N.J. Super. 654 (App. Div. 1995), the court recently applied the same general principles to confidential information that was provided to school officials. In that case, the vice-principal was informed by a confidential informant that a particular student was distributing drugs. The court had no difficulty in concluding that the principal had reasonable grounds to conduct a search of the student based upon the information provided by the confidential informant.

The court further concluded that the vice-principal need not reveal the identity of his confidential informant, as the informant played no part in the discovery of the

drugs. The person providing the information, in other words, was not an "essential witness on a basic issue in the case." Nor was he or she apparently "an active participant in the crime for which defendant is prosecuted." 284 N.J. Super. at 660, citing to State v. Milligan, 71 N.J. 373, 383-384 (1976).

In light of the Court's recent ruling in State v. Biancamano, school officials in New Jersey appear to have the authority not only to rely upon information provided by confidential sources, but also to keep their sources of information confidential. Of course, if the person is an essential witness to or an active participant in the offense or infraction, a court may compel the disclosure of the informant's identity as a matter of due process and to safeguard the right of a defendant in a criminal proceeding to confront the witnesses against him or to compel the appearance of witnesses who may give testimony that is favorable to the defendant. Even in a non-criminal, school-based disciplinary proceeding, it is conceivable that a school official may in some circumstances be required to disclose the identity of a confidential informant if that informant is an essential witness or active participant in the conduct that forms the basis for the disciplinary proceeding. (In that event, a school official could still extinguish any such confrontation right, thus preserving the confidentiality of the informant's information and identity, by dismissing the disciplinary action.)

It is critical to note that the issue in the Biancamano case was whether the prosecutor was required to disclose the identity of the informant to a defendant in a criminal prosecution. The case does *not* stand for the proposition that a school official may refuse to disclose to a prosecutor the source of information concerning suspected criminal activity. Pursuant to state law and regulations promulgated by the State Board of Education, school officials are required to turn over to law enforcement information concerning at least certain forms of suspected criminal activity, including child abuse or neglect, the unlawful possession and/or distribution of controlled dangerous substances, and the unlawful possession and/or use of firearms. (See Chapter 14 for a more complete discussion of the obligation of school officials to report information to law enforcement.) In the absence of some specific federal or state law or regulation establishing confidentiality, a prosecutor or grand jury may compel any person, including a school official, to produce evidence or testimony concerning possible criminal activity. (Compare the "amnesty" feature described in Chapter 14.1C, which authorizes school officials in certain circumstances to withhold the identity of a student who voluntarily turns over controlled substances.)

Finally, it bears noting that the law governing the protection of confidential information is complicated. Courts must carefully balance the need on the one hand for law enforcement officers to encourage citizens to cooperate with authorities and to avoid

reprisals and retaliation, as against the need on the other hand for a defendant in a criminal prosecution to confront the witnesses against him or her and to have access to information that might provide a viable defense to the criminal charges. Federal law and regulations also impose significant restrictions on sharing and divulging information that was learned in the course of providing alcohol or other drug abuse diagnosis or treatment. See 42 C.F.R. Part 2, discussed in Chapter 14.2.

Any questions concerning the confidentiality of sources of information, or any disputes between school officials and law enforcement agencies with regard to these issues, should be addressed to the county prosecutor or to the Director of the Division of Criminal Justice. (See Chapter 14.5 for a more detailed discussion of the procedures for resolving disputes.)

5.5. Handling Confidential Informants.

As noted above, in most cases, students provide information to teachers or school officials on an informal, ad hoc basis. Few students serve in a capacity that can be likened to paid, professional, or "registered" informers who are said to "work" for law enforcement agencies.

As a general proposition, given the potential for reprisals and retaliation, a school official should not recruit a student to serve as an ongoing source of information about school rule infractions or criminal activity. The better practice is not to ask the student to actively obtain more information, *and in no event should a student be recruited to infiltrate a gang or criminal operation or to go "undercover."* Nor should a school official ask a student to undertake a search or to seize or secure an item for the purpose of turning it over to the school official. (See discussion in Chapter 8.8.) Rather, a student should only be asked to report further information if the student happens to learn of it.

Furthermore, it would be appropriate for the school officials to advise the student of the risks inherent in providing further information, and the student should be encouraged not to divulge to *anyone* (other than the student's parents or legal guardians) that he or she has provided information. As a general proposition, the student should be encouraged to discuss the situation with his or her parents or legal guardian unless this would be clearly inappropriate (as where the student is reporting abusive or otherwise unlawful behavior by a parent or member of the household).

Finally, it must be noted that this subchapter deals only with the use of informants by school officials. For information concerning the appropriate procedures that county prosecutors and police agencies must use in handling juvenile informants,

see the recently released *"New Jersey Law Enforcement Officers' Reference Manual: Handling Juvenile Offenders or Juveniles Involved in a Family Crisis"* developed by the Division of Criminal Justice. That Manual includes new Attorney General Guidelines on the Use of Juveniles as Informants and a model Juvenile Informant Agreement, Liability Waiver, and Parent or Guardian's Consent Form. (These materials are reprinted as Appendix 10 to this Manual.)

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

ROBERT J. DEL TUFO
ATTORNEY GENERAL

August 14, 1991

Dear Chief Executive:

The delivery of effective police service depends in large measure on the quality of leadership by the agency's chief executive. We all recognize the importance to police executives of timely and practical management resources.

For several years the Division of Criminal Justice and the New Jersey State Association of Chiefs of Police have worked together to develop the Police Management Manual as a standard for municipal police management. The manual is designed to provide police executives with practical guidelines necessary to address day-to-day operational concerns.

I am pleased to provide you with Chapter five of the Police Management Manual, "Internal Affairs Policy and Procedures" which deals with a matter of extreme importance to everyone in law enforcement. This chapter, which was prepared after consultation with numerous law enforcement officials, serves as a supplement to the New Jersey Law Enforcement Agency Standards Program begun in October of last year by the Division of Criminal Justice and the State Chiefs Association. It contains standards, policies and procedures for the internal affairs function.

Some highlights of "Internal Affairs Policy and Procedure" include:

- It advocates the establishment of a formal Internal Affairs Unit or function in each police agency. While assignment of personnel may be on a full or part time basis, a structure must be in place to objectively review complaints of officer misconduct.

- It calls for police departments to accept citizen complaints about police conduct

HUGHES JUSTICE COMPLEX • CN 080 • TRENTON, NJ 08625-0080 • 609-292-4919
NEW JERSEY IS AN EQUAL OPPORTUNITY EMPLOYER
FAX 609-292-3508

from any person 24 hours a day, seven days a week, including anonymous complaints.

- It provides for a police department representative to visit the complainant if the complainant cannot file the report in person.

- It calls for all complaints about police officer conduct to be thoroughly and objectively investigated to their logical conclusions.

- It calls for the immediate notification of the county prosecutor in the event of any allegation of criminal misconduct by a police officer, or whenever a firearms discharge results in an injury or death.

- It provides that the accused officer is accorded all of the appropriate due process rights in the internal disciplinary process. This includes the right to be notified of the outcome of all complaint investigations.

- It instructs that citizen complainants be advised of the outcome of an internal investigation or disciplinary proceeding.

- It provides police departments with detailed information and guidelines on conducting thorough internal investigations of any complaints about police conduct.

- It provides police departments with a sample Internal Affairs policy and procedures, as well as sample formats for use in the disciplinary process.

- It calls for an annual report summarizing the types of complaints received and the dispositions of the complaints to be made available to the public. This report would not contain the names of complainants or the accused officers.

As I am sure you will agree, citizen confidence in the integrity of a police department is enhanced by the establishment of meaningful and effective complaint resolution procedures. Toward that end, this chapter is a reflection of our interest in having all police agencies in this state adopt and conscientiously implement these procedures for the handling of citizen complaints.

Recognizing the key role played by officers assigned to the internal affairs function, it is important that they are properly prepared for the task. In the near future we will be establishing a training program for those officers assigned by you to internal affairs responsibilities. Additional details concerning this program will be forthcoming in order that you may identify personnel from your agency who would benefit from such training.

If you have any questions about this chapter or any other portion of the Police Management Manual, please call the Division of Criminal Justice, Police Services Section at (609)984-0960.

Very truly yours,

Robert J. Del Tufo
Attorney General

/rs
c: Robert T. Winter
Director

Division of Criminal Justice

Police Bureau

Police Management Manual

Chapter Five

Internal Affairs Policy and Procedures

August, 1991

New Jersey Department of Law & Public Safety
Division of Criminal Justice

POLICE MANAGEMENT MANUAL
CHAPTER FIVE

INTERNAL AFFAIRS POLICE AND PROCEDURES

Table of Contents

PART ONE

INTERNAL AFFAIRS AND THE DISCIPLINARY PROCESS
- Introduction 1
- Policy Management System 3
- Responsibility for Carrying Out Discipline 5
- Internal Affairs Unit 6
- Staff Inspections 7
- Training 8
- Citizen Complaints 8
- Complaint Process 9
- Conclusion 15

PART TWO

INTERNAL AFFAIRS INVESTIGATIONS
- Selection of Personnel 16
- Investigation Standards 17
- Investigation Techniques 18
- Interviewing Members of the Department 24
- Interviewing the Subject Officer 24
- The Officer as a Subject of a Criminal Investigation . . 29
- The Internal Affairs Report and Conclusion of Fact . . . 29
- Investigation of Firearms Discharges 30

Appendix A.
- MODEL INTERNAL AFFAIRS POLICY AND PROCEDURES 32

Appendix B.
- INTERNAL AFFAIRS COMPLAINT FORM 47

Appendix C.
- INTERNAL AFFAIRS INVESTIGATION DISPOSITION RECOMMENDATIONS 48

Appendix D.
- MODEL PERFORMANCE NOTICE 49

Appendix E.
- SAMPLE CHARGING FORM 50

Appendix F.
- SAMPLE INTERVIEW ADVISEMENT FORM 51

Appendix G.
SAMPLE USE IMMUNITY GRANT ADVISEMENT FORM 52

Appendix H.
SAMPLE RESPONSE LETTER: COMPLAINT ACKNOWLEDGEMENT . . . 53

Appendix I.
SAMPLE RESPONSE LETTER: COMPLAINT NOT SUBSTANTIATED . . 54

Appendix J.
SAMPLE RESPONSE LETTER: POLICY FAILURE 55

Appendix K.
SAMPLE RESPONSE LETTER: COMPLAINT SUBSTANTIATED 56

Appendix L.
STATUTES AND RULES RECOMMENDED FOR REVIEW 57

Appendix M.
MERIT SYSTEM BOARD TIME TABLE AND STEPS FOR DISCIPLINARY ACTION 58

Appendix N.
N.J.D.P.- PRELIMINARY NOTICE OF DISCIPLINARY ACTION . . 62

Appendix O.
N.J.D.P.-FINAL NOTICE OF DISCIPLINARY ACTION 63

PART ONE

INTERNAL AFFAIRS AND THE DISCIPLINARY PROCESS

Introduction

Achieving the desired level of discipline within the police agency is among the most important responsibilities of the police executive. Yet, this is one of the most frequently neglected and outdated processes existing within many police agencies. While the word "discipline" was originally defined as instruction, teaching or training, its meaning has shifted toward a concept of control. This emphasis on control has resulted in discipline being viewed as a negative threat rather than a mechanism for instruction and counseling. Too frequently rules of conduct and disciplinary procedures are used as an end in themselves, their purpose as an aid to reaching department goals is forgotten. This dominance of the negative aspects of discipline diminishes morale and officer productivity.

A First Step

A first step in approaching discipline positively is to rely more on emphasizing instruction and less on control. This requires the police executive to focus on organizational practices. He must first define the goals and objectives of all departmental units. He must then promulgate management's expectations to guide these units toward the realization of those goals. And finally, the police executive must establish a means to monitor performance and to correct improper actions.

This approach to management as it relates to discipline insures that all subordinates know and understand:

1. What must be done;
2. Why it must be done;
2. How it must be done;
3. When it must be done;
4. What constitutes satisfactory performance;
5. When and how to take corrective action.

To achieve this, management must establish workable procedures for documenting all expectations and advising individuals of their duties and responsibilities.

Prevention of Misconduct

Prevention is the primary means of reducing and controlling misconduct. While disciplinary actions are properly imposed on officers who engage in wrongdoing, they are of limited utility if they shield organizational conditions which permit the abuses to occur. Too often, inadequate training and lack of appropriate guidance are factors that contribute to officers' improper performance. The agency should make every effort to eliminate the organizational conditions which may foster, permit, or encourage improper performance of employees. In the furtherance of this objective, special emphasis is placed on the following areas:

Recruitment and selection. Selecting and appointing the highest quality of individuals to serve as law enforcement officers must be a priority of every law enforcement agency. During the selection process, psychological tests and individual interviews should be completed by each candidate in an attempt to identify those who would be best suited for police work. These procedures may also be used for promotional testing, as well as assignment to especially sensitive responsibilities or those that pose the greatest opportunities for abuse or wrongdoing. This procedure must be governed by local policy and contracts.

Training. Recruit and in-service training for police officers should emphasize the sworn obligation of those officers to uphold the laws and provide for the public safety of the citizenry. Police ethics should be a major component in the training curricula, as well as an in-depth examination of the rules, regulations, policies and procedures of the department, including the disciplinary process. There must also be a process to advise veteran officers of any new statutory requirements or significant procedural changes.

Proper training of agency supervisors is critical to the discipline and performance of police officers. Emphasis should be placed on anticipating problems among officers before they result in improper performance or conduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers, and provide professional support in a consistent and fair manner.

Community outreach. Commanding officers should strive to remain informed about and sensitive to the needs and problems of the community. Regularly scheduled meetings with citizen advisory councils as well as informal contact with community leaders should be used to hear the concerns of citizens. These meetings help commanding officers identify potential crisis situations and keep channels of communication open between the agency and the community. The disciplinary process should be publicized and clearly explained in these forums.

Data collection and analysis. The Internal Affairs Unit or function should prepare periodic reports for the police executive that summarize the nature and disposition of all misconduct complaints received by the agency. The report shall include the age, sex, race and other complainant characteristics which might signal systematic or bias motivated misconduct by any member of the department. Terminated complaints should be recorded and the reasons for termination explained. Copies of the internal affairs report should be distributed to all command and supervisory personnel.

An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to the public. The names of complainants and accused officers should not be published in this report.

Policy Management System

The department's policy management system serves as the foundation for effective discipline. A clearly defined policy management system is designed to move the organization toward its stated goals and set the standard for acceptable performance. The system must incorporate a mechanism for the distribution of policies and procedures and provide for periodic review and revision as required. The system should include a classification and numbering system which facilitates cross-referencing where necessary.

Police departments should have a policy management system that includes at least the following:

1. Rules and regulations: A set of guidelines outlining the acceptable and unacceptable behavior of personnel. The rules and regulations shall be promulgated by the appropriate authority as designated by municipal ordinance.

2. Policies: Statements of agency principles that provide the basis for the development of procedures and directives.

3. Procedures: Written statements providing specific direction for performing agency activities. Procedures are implemented through policies and directives.

4. Directives: Documents detailing the performance of a specific activity or method of operation. Directives includes general orders, personnel orders, and special orders.

Wording is different from Internet version

The policy management system should clearly and explicitly

state management's intentions. The reader must understand what management wants to accomplish and what behavior is expected. Each category of documents in the policy management system should be issued in a distinctive, readily identifiable format.

Specific categories of misconduct that are subject to disciplinary action should be precisely defined within the department's policy management system. Any incident of inappropriate behavior may fall into one or more of the following categories:

CRIME: Complaint regarding the involvement in illegal behavior, such as bribery, theft, perjury or narcotics violations.

EXCESSIVE FORCE: Complaint regarding the use or threatened use of excessive force against a person.

ARREST: Complaint that the restraint of a person's liberty was improper or unjust.

ENTRY: Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.

SEARCH: Complaint that the search of a person or property was improper, unjustified or otherwise in violation of established police procedures.

DIFFERENTIAL TREATMENT: Complaint that the taking, failing to take, or method of police action was predicated upon irrelevant factors such as race, attire, age, or sex.

DEMEANOR: Complaint that a department member's bearing, gestures, language or other actions were inappropriate.

SERIOUS RULE INFRACTIONS: Complaint such as disrespect toward supervisor, drunkenness on duty, sleeping on duty, neglect of duty, false statements or malingering.

MINOR RULE INFRACTIONS: Complaint such as untidiness, tardiness, faulty driving, or failure to follow procedures.

In addition, the policy management system should clearly indicate the possible penalties an officer may receive when an allegation of misconduct is substantiated. A scale of progressive disciplinary actions or penalties permitted by law should be used by the police department. Such a scale includes:

1. Counseling
2. Oral reprimand or performance notice
3. Letter of reprimand
4. Loss of vacation time[1]
5. Imposition of extra duty[1]
6. Monetary fine[2]
7. Transfer/reassignment
8. Suspension without pay
9. Loss of promotion opportunity[1]
10. Demotion
11. Discharge from employment

Each officer should have ready access to an official manual which clearly describes and defines categories of misconduct. The disciplinary process should be thoroughly explained in the manual, including precise descriptions of the proper authority of the Internal Affairs Unit, the investigation process, the officer's rights, the hearing process and all appeal procedures available to the officer.

Responsibility for Carrying Out Discipline

A system of rules and regulations specifying proper behavior will not in itself assure effective discipline. Unless there is some method of detecting violations of the rules, and bringing misconduct to the attention of the proper authorities, the written rules will have little meaning. If management fails to act promptly and appropriately when improper conduct has occurred, discipline and the agency's effectiveness will rapidly diminish. When not acted upon, violations of department rules, regulations, policies or procedures become the accepted practice making the written directives meaningless.

Authority to Discipline

Subject to the limitations set forth in N.J.S.A. 40A:14-147 et seq. and municipal ordinances, the police executive is vested with the authority and responsibility for all department discipline. Except for emergency suspensions, all disciplinary action must be approved by the police executive.

---

[1] Penalties not available to agencies covered by New Jersey Department of Personnel regulations.

[2] Agencies operating under the Department of Personnel statutes (N.J.S.A. 11A:2-20) and regulations may only assess a fine in lieu of a suspension where loss of the officer from duty would be "detrimental to the public health, safety or welfare" or if the assessment is restitution or is agreed to by the employee.

To carry out disciplinary tasks successfully, however, responsibility must be delegated by the police executive to individual units within the agency. Although the levels of authority vary within the agency's hierarchy, the failure to carry out responsibilities at any level will contribute to the organization's ineffectiveness. The task of clearly delineating responsibility and authority is essential to effective discipline.

Every supervisor has a responsibility for knowing and following the procedures established by the organization to deal with employee performance which is contrary to expectations. If the supervisor fails to follow these procedures or avoids his responsibility, that supervisor is not conforming to expected behavior and must himself be subjected to some corrective action. Some supervisors occasionally need to be reminded that the fundamental responsibility for direction and control rests with the immediate supervisor at the execution or operations level, not with the police executive.

To provide such direction and control, supervisory personnel must be granted proper authority to carry out their responsibilities. Individual supervisory personnel may be permitted to take certain disciplinary measures, subject to approval of the police executive. These measures may include oral reprimand or performance notice, written reprimand, and written recommendations for other disciplinary actions. The extent of this authority must be clearly stated in the department's policy management system.

Internal Affairs Unit

The Internal Affairs Unit, or responsibility, should be established in each law enforcement agency. Depending upon the need, the Internal Affairs function can be full or part-time. In any event, this function necessitates either the establishment of a unit or officer, or the clear definition of responsibility for carrying out the Internal Affairs function on an as needed basis. The unit shall consist of those members of the department assigned to the Internal Affairs function by the police executive. Personnel assigned to the Internal Affairs function serve at the pleasure of and are directly responsible to the police executive or designated Internal Affairs commander.

The goal of Internal Affairs is to insure that the integrity of the department is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.

Duties and Responsibilities

The Internal Affairs Unit or officer should conduct investigations of allegations of misconduct by members of the department and review the adjudication of minor complaints handled by supervisors. In addition, Internal Affairs should be responsible for the coordination of investigations involving the discharge of firearms by department personnel. Internal Affairs will also be responsible for any other investigation as directed by the police executive.

Internal Affairs may conduct an internal affairs investigation on its own initiative upon notice to, or at the direction of the police executive or Internal Affairs commander. Internal Affairs may refer investigations to the employee's supervisor for action as permitted by department policy and procedures.

Internal Affairs members or officers temporarily assigned to that function should have the authority to interview any member of the department and to review any record or report of the department relative to their assignment. Requests from Internal Affairs personnel, in furtherance of their duties and responsibilities, should be given full cooperation and compliance as though the requests came directly from the police executive.

The Internal Affairs Unit or officer designated by the chief executive shall maintain a comprehensive central file on all complaints received, whether investigated by Internal Affairs or assigned to the officer's supervisors for investigation and disposition. An Internal Affairs case log should be maintained which records the basic information on each case, including the accused officer, allegations, complainant, date received, Internal Affairs officer assigned, disposition and disposition date for each complaint.

Staff Inspections

While the primary responsibility for enforcing department policies rests with the line supervisors, management can not rely solely on those supervisors for the detection of violations. Administrators should know whether or not the plans of the organization are being implemented and carried out as intended. It is necessary for management to know if behavior is, in fact, consistent with rules and regulations, policies and procedures. The task of detecting such defects should be delegated to an Inspection Unit or function.

Large agencies might establish an Inspection Unit operating directly out of the office of the police executive . Small and medium size agencies can successfully accomplish this function by

periodically assigning the inspection task to selected unit commanders. Individuals so assigned must be of unquestioned integrity and hold sufficient rank to achieve the objectives of the inspection function.

Duties and Responsibilities

The inspection function should determine by actual on-site inspection whether the policies of management are being complied with by personnel at the operations level. This function is also responsible for reviewing and evaluating procedures. In addition, the inspection unit or function should evaluate the material resources of the department and their utilization. This includes but is not limited to motor vehicles, communications equipment, office machinery and supplies. The inspection function or unit should report any deficiencies to the police executive, as well as recommend any possible solutions and improvements.

Training

Just as the original meaning of discipline is instruction, police agencies should view "discipline problems" as possible "training problems." Inappropriate behavior on the part of an officer or group of officers should prompt supervisors to review past training and evaluate the need for future training. Perhaps a particular officer needs a refresher course in a certain subject. Or perhaps changes in the law, the police department, or even within the community have given rise to a need for some training never before given to the officer or department as a whole.

From line supervisors up to the police executive, the potential need for training should always be considered when officers exhibit inappropriate behavior. The question should be, "Could training have prevented this behavior, and can training prevent it from happening in the future?"

Training in this sense can be anything from informal counselling of an officer about a particular policy or procedure, through formal department-wide training. The department may also take advantage of other agencies, including police academies, prosecutor's office, Division of Criminal Justice, or other outside entities.

Citizen Complaints

Complaints from the public provide the police executive with invaluable feedback. These complaints, whether substantiated or not, increase awareness of actual or potential problems. The

police executive should view complaints from the public as a means of determining where the police department falls short of its intended goals. Similarly, complaints regarding officer behavior or allegations of misconduct can alert the police executive to problems which require disciplinary action or identify a need for additional training. The police executive must initiate a policy which provides that all citizen complaints are readily accepted and promptly and fully investigated.

> A properly administered complaint review system serves both the special professional interests of the police and the general interests of the community. As a disciplinary device, it can promote and maintain standards of conduct among police officers by punishing -and thereby deterring- aberrant behavior. Just as important, it can provide satisfaction to those civilians who are adversely affected by misconduct. Harold Beral and Marcus Sisk, "The Administration of Complaints by Civilians Against the Police," Harvard Law Review, 77, No. 3, January 1964, p.500.
>
> It is clearly in the interest of the police executive to initiate effective change in the administration of internal discipline. Otherwise, public or police employee groups, or court decisions in civil litigation, may force executives to follow a course other than the one they would have chosen, and thus diminish their control over their agency. National Advisory Commission on Justice Standards and Goals, Report on Police, (Washington, D.C. GPO), P. 470. Also see Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976).

Complaint Process

Agencies operating under the purview of Title 11A must comply with New Jersey Department of Personnel Rules (N.J.A.C. 4A:1-1.1 et seq.). See appendices M, N and O.

Pursuant to N.J.S.A. 40A:14-147, administrative charges must be filed within 45 days of the date the department obtains sufficient information to file charges against an officer.

Accepting Reports Alleging Officer Misconduct

All complaints of officer misconduct should be accepted from all persons who wish to file a complaint regardless of the hour or day of the week. This includes those from anonymous sources, juveniles and persons under arrest or in police custody. Internal Affairs personnel should accept complaints if available. If Internal Affairs is not available, supervisory personnel should accept reports of officer misconduct, and if no supervisory personnel are available, complaints should be accepted by any police officer. At no time should a complainant be told to return to file his report.

Citizens should be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a department representative should visit the individual at his or her home, place of business or other location in order to complete the report.

The Internal Affairs officer, supervisor or other officer receiving the complaint will explain the department's disciplinary procedures to the person making the complaint. He should advise the complainant that they will be kept informed of the status of the complaint and its ultimate disposition. The supervisor should complete the appropriate internal affairs complaint form and have the complainant sign the completed form.

If the complaint is anonymous, the officer accepting the complaint should complete as much of the internal affairs complaint form as he can given the information he has received.

Complaints of differential treatment, demeanor and minor rule infractions should be forwarded to the supervisor or commander of the accused officer. All other complaints should be retained by or forwarded to the Internal Affairs Unit.

Complaints might also be received from other law enforcement agencies, such as neighboring municipal police agencies, the county prosecutor or the F.B.I. In such cases, the complaint should be forwarded to Internal Affairs for immediate handling.

If a complainant comes to a municipal police agency to make a complaint about another police agency, he should be referred to that agency. However, if the complainant expresses fear or concerns about making the complaint directly, he should be referred to the county prosecutor.

All complaints should be investigated, so long as the complaint contains sufficient factual information to warrant an investigation. In cases where the identity of the officer is unknown, the Internal Affairs investigator should use all

available means to determine proper identification. Each complaint should be investigated to its logical conclusion.

Some very minor complaints are merely a misunderstanding on the part of the citizen. If the supervisor accepting the complaint can resolve it to the complainant's satisfaction through an explanation of department rules or procedures, the complaint process will be terminated. In these cases, the resolution should be noted on the complaint form which should then be signed by the complainant and the officer involved, and filed with Internal Affairs.

Immediate Suspension Pending Investigation and Disposition

In cases involving allegations of serious officer misconduct, the police executive may choose to suspend the accused officer pending the outcome of the investigation and subsequent administrative charges, if any. Before immediate suspension of an officer, with or without pay, the police executive should determine if any of the following conditions warranting immediate suspension have been met.

1. The employee is unfit for duty.
2. The employee is a hazard to any person if permitted to remain on the job.
3. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services.
4. The employee has been formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.

In deciding whether or not to continue to pay an officer who has been suspended pending the outcome of the investigation or complaint, the police executive and appropriate authority should consider the seriousness of the offense as well as the possible outcomes should the officer be found guilty.

Investigation and Adjudication of Minor Complaints

Complaints of differential treatment, demeanor and minor rule infractions should be forwarded to the accused officer's commanding officer. The commanding officer should require the officer's supervisor to investigate the allegation of misconduct.

The supervisor investigating the complaint should interview the complainant, all witnesses and the accused officer, as well as review relevant reports, activity sheets, or dispatcher forms. The supervisor should then submit a report to the commanding officer summarizing the matter and indicating the appropriate

disposition. Possible dispositions include:

1. Exonerated:
   a. The alleged incident did occur, but the actions of the accused were justified, legal and proper; or,
   b. the officer's behavior was consistent with agency policy, but there was a policy failure.

2. Substantiated: The investigation disclosed sufficient evidence to clearly prove the allegation.

3. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

4. Unfounded: The investigation indicated that the acts complained of did not occur.

If the supervisor determines that the complaint is unfounded or not sustained and the commanding officer concurs, the investigation report is to be forwarded to Internal Affairs for review and entry in the central log and filing.

If the complaint is sustained, the commanding officer should determine the appropriate disciplinary action. If the action is no more than a written reprimand, a summary of the complaint and notification of the disciplinary action taken should be forwarded to Internal Affairs. If, however, the commander determines that the matter is of a more serious nature it should be forwarded to Internal Affairs for further investigation.

When an oral reprimand or performance notice is given, the officer or employee should be advised that the supervisor or superior officer is giving an oral reprimand. The supervisor should complete an oral reprimand report (a necessary record for progressive discipline) or performance notice and forward it to the commander. A copy should also be given to the officer being disciplined.

Upon approving the oral reprimand or performance notice, the commanding officer will forward the report to be placed in the officer's or employee's personnel file. Six months after the date of the approved oral reprimand or performance notice, the disciplinary report shall be removed from the file and destroyed, provided no other breach of discipline has occurred.

When a written reprimand is given, the supervisor or commanding officer giving such reprimand should advise the subject officer of such and complete a written reprimand report. A copy of the written reprimand report is to be provided to or retained by the officer's supervisor and one copy of the report is to be provided to the officer or employee being disciplined.

The original report, together with any supporting documentation, should be provided to the commanding officer for review.

The commanding officer should review the report and, in writing, either approve or disapprove the report. If disapproved, the commanding officer should direct what action, if any, be taken. Upon final approval, the report should be forwarded to the Internal Affairs Unit and permanently placed in the officer's or employee's personnel file.

Upon final disposition of the complaint, a letter should be sent to the complainant explaining the outcome of the investigation, and the reasons for the outcome decision.

Investigation and Adjudication of Serious Complaints

Where preliminary investigation indicates the possibility of a criminal act on the part of the accused officer, the county prosecutor must be notified immediately. No further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor.

All serious complaints shall be forwarded to the Internal Affairs Unit. This includes complaints of criminal activity, excessive force, improper or unjust arrest, improper or excessive entry, improper or unjustified search, serious complaints of differential treatment or demeanor, serious rule infractions, and repeated minor rule infractions.

The supervisor or commanding officer initiating such action should complete a form recommending an internal affairs investigation. This form, together with any supporting documentation, should be forwarded through the chain of command to the Internal Affairs Unit. Where there is no full-time Internal Affairs Unit or function the report is forwarded to the police executive.

The Internal Affairs commander or police executive will direct such further investigation by the supervisor, commanding officer or Internal Affairs as deemed appropriate.

Internal Affairs shall serve the suspect officer with notification of the Internal Affairs investigation, unless the nature of the investigation requires secrecy. The Internal Affairs investigator should interview the complainant, all witnesses and the accused officer, as well as review relevant reports, activity sheets, and dispatcher forms and obtain necessary information and materials.

Upon completion of the investigation, the Internal Affairs Unit will recommend dispositions for each allegation through the chain of command to the police executive. As previously described, these dispositions may include exonerated, substantiated, not sustained, or unfounded. Each level of review may provide written recommendations and comment for consideration by the police executive.

The police executive, upon reviewing the report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate. If the complaint is unfounded or not sustained, or the subject officer is exonerated, the investigation report should be entered in the central log and filed. Internal Affairs should notify the subject officer of the disposition.

If the complaint is substantiated and it is determined that formal charges should be preferred, the police executive will direct either the commanding officer, supervisor or Internal Affairs to prepare, sign, and serve charges upon the accused officer or employee. The individual assigned shall prepare the formal notice of charges and hearing on the Charging Form. (See sample Charging Form in Appendix E.) This form will also be served upon the officer charged in accordance with N.J.S.A. 40A:14-147 et seq.

The notice of charges and hearing shall direct that the officer charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of plea. The date for entry of plea should be at least five days after the date of service of the charges. If the officer charged enters a plea of guilty, the police executive officer should permit the officer to present factors in mitigation prior to assessing a penalty. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he has been given an opportunity to read and sign it. Internal Affairs will cause the penalty to be carried out and complete all required forms.

If the accused officer makes a written request for a hearing, the police executive will set the date for the hearing as provided by statute and arrange for the hearing of the charges. Internal Affairs shall be responsible for or assist the assigned commander or prosecutor in the preparation of the department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.

The hearing shall be held before the appropriate authority or the appropriate authority's designee. The hearing authority should be empowered to sustain, modify in whole or in part, or dismiss the charges stated in the complaint. The decision of the

hearing authority should be in writing and should be accompanied by findings of fact for each issue in the case.

If the hearing authority finds the complaint against the officer is substantiated, he should fix any of the progressive penalties which he deems appropriate under the circumstances within the limitations of statute and the department's policy management system.

A copy of the decision and accompanying findings and conclusions should be delivered to the officer or employee who was the subject of the hearing and to the police executive if he was not the hearing authority. Upon completion of the hearing, Internal Affairs will complete all required forms (Department of Personnel jurisdictions use the Final Notice of Disciplinary Action form DPF-31B) including the entry of the disposition in the central log. If the charges were sustained Internal Affairs will cause the penalty to be carried out. The report should be permanently placed in the officer's or employee's personnel file.

Upon final disposition of the complaint, a letter should be sent to the complainant explaining the outcome of the investigation, and the reasons for the outcome decision.

Confidentiality

The progress of internal affairs investigations and all supporting materials are considered confidential information. The contents of the internal investigation case files will be retained in the Internal Affairs Unit and clearly marked as confidential. Only the police executive or his designee is empowered to release publicly the details of an internal investigation or disciplinary action.

All disciplinary hearings shall be closed to the public unless the accused officer requests an open hearing.

Conclusion

A clear and comprehensive policy management system delineating the procedures for dealing with allegations of officer misconduct or the improper delivery of police services, and its uniform application, bolsters the integrity of the police department. A responsive and consistent Internal Affairs Unit or officer is an indispensable part of the police administrative process. Its clear existence in the organizational structure gives notice to both the public and employee that the police agency is willing to "police the police."

PART TWO

INTERNAL AFFAIRS INVESTIGATIONS

Selection of Personnel for the Internal Affairs Function

Internal affairs investigations must be considered as important to the community and department as any criminal investigation. An internal investigation may follow one of two divergent tracks or both simultaneously. These are the administrative proceedings track which may result in employment sanctions and the criminal prosecution track which may result in criminal sanctions. Each track may have different standards of proof. What may be admissible for one may not necessarily be admissible for the other.

Consequently, it is important that the Internal Affairs investigator be familiar with proper investigative techniques and legal standards for each type of proceeding. This is necessary so that evidence obtained will be admissible in the proper tribunal and the rights of the officer under investigation will not be inadvertently violated. Therefore, it is essential that experienced investigators be assigned to internal affairs investigations. They should be trained not only in the elements of criminal law, court procedures, rules of evidence and use of technical equipment, but also in the disciplinary and administrative law process. Each investigator must be skilled in interviewing and interrogation, observation, surveillance and report writing.

Personnel assigned to conduct internal affairs investigations should be energetic, resourceful and alert. They must have a keen memory and display a high degree of perseverance and initiative. The Internal Affairs investigator must hold the police responsibility to the community and professional commitment above personal and group loyalties. Internal Affairs personnel must be of unquestioned integrity and possess the moral stamina to perform unpopular tasks. It is important that these investigators possess the ability to withstand the rigors and tensions associated with complex investigations, social pressures and long hours of work. The investigator must possess the ability to be tactful and diplomatic when dealing with members of the department and the community. Finally, it is recommended that personnel assigned to the Internal Affairs function reflect the racial and ethnic spectrum within the community. This is helpful in gaining acceptance by and assuring access to all segments of the community.

Investigation Standards

The most critical aspect of the disciplinary process is the investigation of an allegation of police misconduct. Only after a complete, diligent and impartial investigation can a good faith decision be made as to the proper disposition of the complaint. Decisions based upon such an investigation will support the credibility of the department among its ranks as well as the public at large.

As with all other investigations, lawful procedures must be used to gather all evidence pertaining to allegations against a police officer. Investigations for internal disciplinary or administrative purposes involve fewer legal restrictions than criminal investigations. Restrictions that do exist, however, must be recognized and followed. Failure to do so may result in improperly gathered evidence being overturned during the appeal process. Legal restrictions which apply to internal investigations stem primarily from case law and collective bargaining agreements. They may also have as their basis local ordinances, administrative regulations, Department of Personnel rules or municipal personnel department rules.

Complaints must be professionally, objectively and expeditiously investigated in order to gather all information necessary to arrive at a proper disposition. It is important to document citizens' concerns, even those which might appear to be unfounded or frivolous. If such complaints are not documented or handled appropriately, citizen dissatisfaction will grow, fostering a general impression of department wide insensitivity to citizens' concerns.

By statute (N.J.S.A. 40A:14-147), administrative charges must be filed within 45 days of the date the department has developed sufficient information to file such charges against an officer. In cases involving criminal activity, the forty-five day time period does not start until the final disposition of any criminal proceedings arising out of the incident against the accused officer. Investigation status reports should be prepared every seven days for review by the police executive or Internal Affairs supervisor. A 30-day time period in which to complete the investigation is recommended. Requests for an extension of time to complete an investigation should be submitted in writing. The request should state the reasons which necessitate the extension. Only the police executive, or the officer designated by him to direct the Internal Affairs function, should be authorized to grant an extension.

The filing of legitimate complaints pertaining to department personnel is to be encouraged as a means of holding those personnel accountable to the public. However, the department must simultaneously seek to hold members of the public

responsible for the filing of false and malicious complaints. In such cases, complainants should be informed that legal proceedings may be instituted against them to rectify such deliberate actions.

Investigation Techniques

The investigator assigned an internal investigations case should initially outline the case to determine the best investigative approach and identify those interviews immediately necessary. The investigator should determine if any pending court action or ongoing criminal investigations might delay or impact upon the case at hand. If it appears that the conduct under investigation may have violated the law, the county prosecutor should be immediately notified of the internal affairs investigation.

If the investigation involves a criminal filing against the complainant, wherein the accused officer is the victim of the offense charged, an initial interview should be conducted with the complainant. However, absent extenuating circumstances, no further contact should be made until charges against the complainant are adjudicated.

The Internal Affairs investigator may use any lawful investigative techniques including inspecting public records, questioning witnesses, interviewing the subject officer, questioning fellow employees, and surveillance. Therefore, the investigator must understand the use and limitations of such techniques.

As in any criminal investigation, the following necessary materials, if available, should be obtained: physical evidence, statements or interviews of all witnesses, statements or interviews of all parties of specialized interest (such as doctors, employers, teachers, parents, etc.); all relevant documents, records and reports, activity sheets, complaint cards and radio logs. Special attention should be given to securing records which are routinely disposed of such as telephone and radio transmissions routinely recorded on department taping equipment. In addition, the investigator should check the record bureau files to determine if the subject, complainant, or witnesses have any prior police involvement.

It is generally recommended that the complainant and other lay witnesses be interviewed prior to interviewing sworn members of the department. This will often eliminate the need for having to do second and third interviews with departmental members. However, this procedure does not have to be strictly adhered to if circumstances and the nature of the investigation dictate otherwise.

While the Sixth Amendment right to counsel does not extend to internal investigations, an officer should be permitted to obtain an attorney if so desired. The Sixth Amendment applies to a criminal prosecution or to a proceeding which threatens a person's liberty. See Middendorf v. Henry, 425 U.S. 25, 34, 95 S.Ct. 1287, 47 L.Ed. 2d 556 (1976). However, a department must permit an employee to have a union representative present at an investigative interview if the employee requests representation and the employee reasonably believes the interview may result in disciplinary action. N.L.R.B. v. Weingarten, 420 U.S. 251, 95 S.Ct. 959, 43 L.Ed. 2d 171 (1975).

Where an internal affairs investigation takes the criminal prosecution track, it is important that the employee be made aware of his or her constitutional rights.

Interviewing the Complainant

The complainant should be personally interviewed if circumstances permit. If the complainant cannot travel to the investigator's office, the investigator should conduct the interview at the complainant's home or place of employment. All relevant identifying information concerning the complainant should be recorded, e.g., name, complete address (street, apartment number, city, state), telephone number and area code, race or ethnic identity, sex, date of birth, hair color, eye color, social security number, FBI and SBI numbers, and place of employment (name and address).

All relevant facts known to the complainant should be obtained during the interview. Once the interview is completed, an effort should be made to obtain a formal, sworn statement from the complainant. Depending upon the circumstances, such as a hospitalized complainant, taped statements may be considered in place of the sworn statement.

Witness Interviews

Whenever possible, all witnesses to the matter under investigation should be personally interviewed and formal statements taken. The investigator should attempt to determine if the witness is motivated by prior arrests, a personal relationship with the complainant or member of the department, or other significant factors.

Reports, Records and Other Documents

All relevant reports should be obtained and preserved as expeditiously as possible.

Internal department reports relating to an accused officer's duties should be examined. Examples of such reports are: arrest

reports and investigation reports, radio logs, patrol logs, vehicle logs and evidence logs pertaining to or completed by the officer.

Records and documents of any other agency or organization that could prove helpful in the investigation should be examined. These may include: reports from other police departments, hospital records, doctors' reports, jail records, court transcripts, FBI or SBI records, credit bureau records, corporate lookups (Secretary of State's Office), specialized licenses (real estate, insurance, medical), motor vehicle abstracts and telephone toll analysis. In some instances, subpoenas or search warrants may be necessary to obtain the information.

Physical Evidence

Investigators should obtain all relevant physical evidence. All evidence, such as clothing, hair or fabric fibers, stains, and weapons should be handled according to established evidence procedures.

With respect to radio tapes, the original tape is the best evidence and should be secured at the outset of the investigation. Transcripts or copies of the original recordings can be used as investigative leads. Tapes should be monitored to reveal the totality of the circumstances.

Photographs

In the event of a complaint involving excessive use of force, the following photographic documentation should be obtained when appropriate. Whenever possible, color photography should be used.

1. Photographs of the complainant at the time of arrest or following the alleged incident of excessive force.

2. Photographs of the subject officer in the event that officer was a victim.

3. A recent photo of the officer in the event a photo spread will be used for identification purposes. The photo spread must be properly retained for possible evidentiary purposes.

4. Photographs of the scene of the alleged incident, if necessary.

Physical Tests

Police officers who are the subjects of internal investigations may be compelled to submit to various physical

tests or procedures to gather evidence. Such evidence may be used against them in a disciplinary proceeding.

No person has a constitutional right or privilege to refuse to submit to an examination to obtain a record of his physical features and other identifying characteristics of his physical or mental condition. Evid. R. 25(a). Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:

1. Breath sample
2. Blood sample
3. Requiring suspect to speak
4. Voice recordings
5. Participation in a suspect lineup
6. Handwriting samples
7. Hair and saliva samples

Generally, a person cannot be physically forced to produce this evidence or submit to such tests, although a court order may be obtained to legally compel him to do so. Refusal to comply with the order can result in a contempt of court action, and may also result in a second disciplinary action for failure to comply with a lawful court order.

Polygraph

While a police officer who is the subject of an internal investigation may request a polygraph examination, an employer shall not influence, request or require an employee to take or submit to a lie detector test as a condition of employment or continued employment (N.J.S.A. 2C:40A-1).

An officer cannot be required to submit to a polygraph test on pain of dismissal. Engel v Township of Woodbridge, 124 N.J. Super. 307 (App.Div. 1973).

If a polygraph is used the test must be administered by a qualified police polygraph operator.

Search and Seizure

As a general rule, the Fourth Amendment applies to any action taken by government. Police officers have the right, under the Fourth Amendment, to be free from unreasonable searches and seizures. Fourth Amendment warrant requirements apply to any search of an officer's personal property including clothing, car, home or other belongings.

A voluntary consent to a search may preclude some Fourth Amendment problems from developing. A consent search eliminates the need to determine what threshold standard must be met before

conducting the search or seizure, either for an administrative or criminal investigation. Under New Jersey law, for consent to be legally valid, a person must be informed that he or she has the right to refuse to permit a search. State v. Johnson, 68 N.J. 349 (1975). If a consent search is utilized, the Internal Affairs investigator should follow standard police procedures and have the target officer sign a consent form after being advised of the right to refuse such a search.

In a criminal investigation the standard to obtain a search warrant is probable cause. Generally, a search warrant should be sought to search an area belonging to the subject officer when the officer can reasonably expect to maintain a high level of privacy in that area. Areas and objects in this category include the officer's home, personal car, bank accounts, safety deposit boxes, etc.

Generally, during either administrative investigations or criminal investigations, workplace areas may be searched without a search warrant. The critical question is whether the public employee has a reasonable expectation of privacy in the area or property the Internal Affairs investigator wants to search. The determination of a reasonable expectation of privacy must be decided on a case by case basis. There are some areas in the person's workplace where this privacy expectation can exist just as there are some areas where no such expectation exists. Areas where supervisors or other employees may share or go to utilize files or equipment would present no expectation or diminished expectation of privacy. Included here would be government provided vehicles (patrol cars), filing cabinets, etc.

If a department intends to retain the right to search property which it assigns to officers for their use, including lockers, it should put officers on notice of that fact. This notification will help defeat an assertion of an expectation of privacy in the assigned property by the officer. The agency should issue a directive regarding this matter, as well as include the notice in any employee handbook or personnel manual (including the rules and regulations manual) provided by the department. The notice should also be posted in the locker area and on any bulletin boards. The following is a sample of what the notice should contain:

> The department may assign to its members and employees departmentally owned vehicles, lockers, desks, cabinets, etc., for the mutual convenience of the department and its personnel. Such equipment is and remains the property of the department. Personnel are reminded that storage of personal items in this property is at the employee's own risk. This property is subject to entry and

inspection without notice.

In addition, if the department permits officers to use personally owned locks on assigned lockers and other property, it should be conditioned on the officer providing the department with a duplicate key or the lock combination, whichever is applicable.

At the present time, the law is unclear on the use in a subsequent criminal prosecution of evidence obtained during a warrantless administrative search or inspection of department property. It is therefore advisable to obtain a warrant whenever there exists probable cause to believe that the department property to be searched contains contraband or evidence of a crime.

Any search of departmental or personal property should be conducted in the presence of the subject officer and a property control officer.

Eavesdropping

In accordance with N.J.S.A. 2A:156A-4b, law enforcement non-third party intercepts can be used during internal affairs investigations. Pursuant to that section of the New Jersey Wiretap Act, a law enforcement officer may intercept and record a wire or oral communication using a body transmitter if that officer is a party to the communication or where another officer who is a party to the communication requests or requires that such interception be made. Procedures for such recordings are dictated by individual departmental or agency policy.

There is no prohibition against the monitoring of phones used exclusively for departmental business if an agency can demonstrate a regulatory scheme or a specific office practice, of which employees have knowledge. In such instances, there may be a diminished expectation of privacy in the use of these telephones and monitoring would be acceptable.

Lineups

A police officer may be ordered to stand in a lineup to be viewed by witnesses of complainants. There is no need for probable cause and the officer may be disciplined for refusal. In Biehunik v. Felicetta, 441 F.2d 228 (2d Cir. 1971) cert. den. 403 U.S. 932, 91 S.Ct. 2256, 29 L.Ed. 2d 711 (1971), the court upheld a police department's order to 62 police officers to appear in a lineup for possible identification by citizens alleging they had been assaulted by city police officers. The department did not have probable cause nor a search warrant for this action. The officers had been advised that they faced criminal prosecution as well as administrative sanctions. The

court applied the following test to the department's order:

> Whether upon a balance of public and individual interests, the order...was reasonable under the particular circumstances, even though unsupported by probable cause [Id. at 203].

The Biehunik holding was cited as support of a court ruling that a police department could expose a police officer's hands, uniform and wallet to a "blacklight" to determine whether he was involved in criminal activity. Los Angeles Police Protective League v. Gates, 579 F.Supp. 36 (C.D. Calif. 1984).

The lineup must be constructed so as not to be unfairly suggestive. The same rule applies to photo arrays.

Other Investigative Tools

The law regarding the use of most other investigative tools is the same for internal investigations as for criminal investigations. Constitutional precepts such as due process and right to privacy apply to investigative methods utilized in both administrative and criminal investigations. It must be considered, however, that even those constitutionally permissible methods may be restricted or prohibited by ordinance, department rule, or contract.

Interviewing Members of the Department

Interviews of fellow police officers are critical to the internal investigation process and must be carefully thought out and well planned. When interviewing a police officer as a witness, he must be made aware of the differences between a witness and the subject of the investigation. A form acknowledging that the differences were explained should then be signed by the officer. The statement should include the investigator's name, as well as the date and time the explanation was given.

If, at any time, the officer becomes a subject of the investigation, he should be apprised of that fact and sign an acknowledgment form.

Interviewing the Subject Officer

A public employer may demand that an employee answer questions specifically, directly, and narrowly related to the performance of his official duties, on pain of dismissal, without requiring him to waive his constitutional right against self-

Whenever there is a possibility that the investigation may result in criminal prosecution of the officer or that the county prosecutor may be conducting a separate investigation, the internal affairs investigator should consult with the county prosecutor prior to interviewing the officer.

incrimination. However, if the employer offers the employee the choice between giving incriminating answers or losing his job, that choice makes any answer compelled in violation of the Fifth Amendment. As a result, the answer cannot be used in a subsequent criminal proceeding. Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), Uniformed Sanitation Men Association v. Commission of Sanitation, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968). An employer cannot force an employee to choose between surrendering a constitutional right or his job.

An employer can dismiss an employee for refusing to answer questions where the employee is granted use immunity[3] for his answers and the possibility of self-incrimination is thus removed. Once use immunity has been granted, as a prerequisite to the imposition of discipline for refusal to answer, the employee must be clearly, unambiguously, and expressly advised of the grant of use immunity and of the possible imposition of discipline, including dismissal, for a refusal to answer. Silence can be the basis for a misconduct charge only when there has been a prior explanation of the use immunity to which the employee's statements are entitled. Banca v. Phillipsburg, 181 N.J.Super. 109 (App. Div. 1981).

A public employee has a duty to appear and testify, under pain of removal from office, before any court, grand jury, or the State Commission of Investigation, on matters directly related to the performance of his duties. N.J.S.A. 2A:81-17.2a1. If the employee claims the privilege against self-incrimination after having been informed that his failure to appear and testify would result in removal from office, N.J.S.A. 2A:81-17.2a2 confers use immunity on the testimony and any evidence derived from it, except where the employee is subsequently prosecuted for perjury or false swearing while testifying. This is a self-executing legislative grant of immunity. State v. Gregorio, 142 N.J.Super. 372 (Law Div. 1976). This statute has been held to apply to a departmental/internal investigation to the extent that an employee under investigation is entitled to be clearly, unambiguously, and expressly advised of the grant of use immunity

---

[3]Use immunity can only be granted through the county prosecutor by the Attorney General.

at the outset as a prerequisite to the subsequent imposition of discipline for refusal to answer questions. He is further required to be told that refusal to answer could subject him to that discipline. Banca v. Phillipsburg, 181 N.J.Super. 109 (App. Div. 1981). During a departmental investigation, where an employee is granted use immunity and still refuses to answer questions, the employer's sole recourse to compel a response is to impose discipline. The employer cannot resort to any special court proceeding. In re Toth, 175 N.J.Super. 254 (App. Div. 1980).

Depending upon the circumstances and nature of the complaint, the subject officer may be required to either submit a report detailing his understanding and knowledge of the relevant facts of the investigation or provide a formal statement.

Interviews should take place at the Internal Affairs office or a reasonable and appropriate location designated by the investigating officer. The subject officer's superior should be made aware of the time and place of the interview so the officer's whereabouts are known. Interviews should be conducted at a reasonable hour when the officer is on duty, unless the seriousness of the matter requires otherwise.

Prior to the commencement of any questioning, the officer should be advised of the following:

> "You are being questioned as part of an official investigation of this agency into potential violations of department rules and regulations. You will be asked questions specifically directed and narrowly related to the performance of your official duties and your fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitutions of this State and the United States, including the right not to be compelled to incriminate yourself in a criminal matter. If you fail to exercise this right, anything you say may be used against you in a criminal proceeding. The right to refuse to answer a question on the grounds of your right against self-incrimination does **not** include the right to refuse to answer on the grounds that your answer may reveal a violation of a department policy, rule, or regulation that is not a criminal offense. You may therefore be subject to departmental discipline for refusal to give an answer that would not implicate you in a criminal offense. Anything that you say may be used against you not only in any subsequent department charges, but also in any subsequent criminal proceeding."

This information should be contained in a form which the subject officer signs and which signature is witnessed. See the

sample form in Appendix F.

The employee should be informed of the name and rank of the interviewing investigator and all others present during the interview. The interview can then begin. The questioning must be conducted in an orderly, non-coercive manner, without threat of punitive action or promise of reward. The questioning session must be of reasonable duration, taking into consideration the complexity and gravity of the subject matter of the investigation. The officer must be allowed time for meal breaks and to attend to personal physical necessities.

The department may make an audio or video recording of the interview. A transcript or copy of the recording should be made available to the officer as soon as possible upon request, at his expense.

Any questions asked of officers during an internal investigation must be "narrowly and directly" related to the performance of their duties and the ongoing investigation. Gardner v Broderick, 393 U.S. 273 (1968). Officers do not have the right to refuse to answer questions directly and narrowly related to the performance of their duties. All answers must be fully and truthfully given. However, officers may not be forced to answer questions having little to do with their performance as police officers or unrelated to the investigation.

Unless the officer specifically waives his Fifth Amendment rights, any incriminating statements obtained under direct order will not be admissible in a criminal prosecution, however, they will be admissible in an administrative hearing.

If during the course of an internal investigative interview an officer refuses to answer any questions specifically directed and narrowly related to the performance of duty and fitness for office on the grounds that he may incriminate himself, and if the department deems that in order to properly conduct its investigation it must have the answers to those specific questions, the department should then contact the county prosecutor to initiate procedures to obtain use immunity from the Attorney General for the answers to the questions. Upon obtaining a written grant of immunity, the department should advise the subject officer of the following:

> "You are being questioned as part of an official investigation of this agency into potential violations of department rules and regulations. You will be asked questions specifically directed and narrowly related to the performance of your official duties and your fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitutions of this State and the United States, including the

right not to be compelled to incriminate yourself in a criminal matter. Despite your duty to testify and to answer questions relating to the performance of your official duties or fitness for office, you have a right to refuse to answer any question which would incriminate you in a criminal matter. You have invoked your right to remain silent and you have been granted immunity from criminal prosecution in the event your answers to the narrow questions asked implicate you in a criminal offense. You are now ordered to answer. Therefore, you must answer. No answer given by you pursuant to this order, nor evidence derived from the answer, may be used against you in any criminal proceeding. If you refuse to obey this order to answer, you may be subject to disciplinary charges for that refusal which can result in your dismissal from this agency. Further, although any statement which you make cannot be used against you in any criminal proceeding, any statement you make may be used against you in relation to any subsequent departmental disciplinary proceeding."

This information can be contained in a form which the subject officer signs and which signature is witnessed. See the sample form in Appendix G.

The department may permit officers who have been informed that they are a subject of an internal investigation to consult with counsel or anyone else prior to being questioned about matters concerning their continuing fitness for police service or matters concerning a serious violation of rules and regulations. Such counsel must be sought within a reasonable period of time, without causing the investigation to be unduly delayed.

No constitutional right to counsel exists during an internal administrative interview; therefore, in the absence of contract provisions or personnel rules providing otherwise, an officer has no right to have counsel present unless a criminal prosecution is contemplated. However, if it appears that the presence of counsel or another police officer requested by the subject will not disrupt the investigation, there is little reason to prevent their presence as observers. If the investigation involves criminal allegations, it may be inappropriate to allow a union representative to be present. In any case, the representative cannot interfere with the interview.

If the representative is disruptive or interferes, the investigator can discontinue the interview, documenting the reasons the interview was ended. The investigator must be in control of the interview and cannot allow the representative or subject to take control. It should be made clear that by allowing a representative during a specific interview, the

department is not adopting a general policy to permit counsel during other internal investigation interviews. This clarification must be made because if a subject officer is denied the opportunity to have a representative present, this decision may be deemed arbitrary and unfair.

At the conclusion of the interview, the investigator should review with the subject officer all the information furnished during the interview. This should be done to alleviate any misunderstandings or misinterpretations and to prevent any controversies during a later hearing or trial.

The Officer as a Subject of a Criminal Investigation

Throughout any internal investigation, it is necessary to determine whether the allegations and evidence warrant criminal prosecution of the officer. If it appears that a criminal charge may be warranted, the county prosecutor must be notified immediately. Pursuant to his instructions, the investigation may then proceed. The investigation must adhere to all of the restrictions of a normal criminal investigation. The Miranda warning must be given and a waiver signed prior to any questioning of the accused officer. Search and seizure restrictions and constitutional safeguards must be applied.

The Internal Affairs Report and Conclusion of Fact

At the conclusion of the internal affairs investigation, the investigator will submit a written summary report which should consider all relevant documents, evidence, and testimony in order to determine exactly what happened. A complete account of the situation and any gaps or conflicts in evidence or testimony must be noted. The following should be included in the report:

1. Statement of allegations made by the complainant.

2. Statement of the situation as described by the officer involved.

3. Description of the facts and issues to which the complainant and police officer agree.

4. Description of the issues and allegations to which the complainant and police officer disagree.

5. Evidence which supports or refutes any facts, issues or allegations made.

6. Reference to any pertinent attachments and a synopsis of the attachments.

7. Summarized statements and interviews of witnesses arranged sequentially in terms of time and significance.

8. List of the evidence obtained, its relevance, and its relationship to statements and interviews.

9. Background information on persons named in the report in order to demonstrate their character and credibility (e.g., S.B.I. or F.B.I. records, intelligence information, etc.)

The report must contain a "conclusion of fact" for each allegation of misconduct. The conclusion of fact should be recorded as exonerated, substantiated, not sustained, or unfounded.

If the conduct of any officer was found to be improper, the report shall cite the agency rule, regulation, or order which was violated. Also, any mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training or lack of proper supervision, should be noted.

If the investigation reveals evidence of misconduct not based on the original complaint, this must be reported. A full-scale investigation concerning evidence of misconduct not based on the original complaint should not be instituted until disposition of the original complaint.

Investigation of Firearms Discharges

Whenever a firearms discharge results in an injury or death the county prosecutor is to be notified immediately. Internal affairs personnel will proceed in the investigation as directed by the prosecutor.

All incidents involving officer firearms discharges, whether occurring on or off duty (except at the firearms range), should be thoroughly investigated. The Internal Affairs investigator should review all administrative reports required by the department. These reports should include a description of the incident; the date, time, and location of the incident; the type of firearm used and number of rounds fired; the identity of the officer; and any other information requested by a superior officer.

Agencies that have established a "Shoot Team" to

investigate officer firearms discharge incidents should place those teams under the supervision and control of the Internal Affairs commander when they are engaged in weapons discharge investigations.

In the event of an injury or death, the Internal Affairs Unit should be notified immediately. The involved officer's superior should assist the Internal Affairs investigator as needed.

The primary goal of the internal affairs firearms discharge investigation is to determine the reasonableness of the officer's actions under the circumstances which existed at the time of the incident. In order to make such a determination, the investigator must consider relevant law, Attorney General's policies and guidelines, and department rules and regulations, and policy. In addition to determining if the officer's actions were consistent with the department regulations and policy, the Internal Affairs investigator should also examine the relevance and sufficiency of these policies. The investigator should also consider any relevant mitigating or inculpatory circumstances.

The investigation of a shooting by police should include photographs and ballistics tests as well as interviews with all witnesses, complainants, and the officer involved. All firearms should be treated as evidence according to departmental rules, regulations, and policies. A complete description of the weapon, its make, model, caliber, and serial number must be obtained and, if appropriate, N.C.I.C. and S.C.I.C. record checks should be made.

In a firearms discharge investigation, the investigator must determine if the weapon was an approved weapon issued to the officer, and if the officer was authorized to possess the weapon at the time of the discharge. The investigator must also determine if the weapon was loaded with authorized ammunition. The weapon must be examined for its general operating condition and to identify any unauthorized alterations made to it.

MODEL

Appendix A.

MODEL INTERNAL AFFAIRS POLICY AND PROCEDURES

CIVILIAN COMPLAINTS, DISCIPLINARY PROCEDURES AND INTERNAL AFFAIRS INVESTIGATIONS

ANYTOWN POLICE DEPARTMENT	EFFECTIVE DATE:	REVISION DATE:	PAGE #	SECTION	APPROVED	VOLUME
VOLUME: STANDARD OPERATIONS PROCEDURES	4/1/91					# 1.
STANDARD(S): # 6 INTERNAL AFFAIRS	# PAGES:					CHAPTER SIX
SUBJECT: INTERNAL AFFAIRS S.O.P.	REFERENCES: NJSA 40A:14-118, NJSA 40A:14-147					DIST. 2
ISSUING AUTHORITY/CHIEF OF POLICE: Chief John Anyone						
ATTORNEY GENERAL, PROSECUTOR'S OFFICE, REFERENCE: RULES & REGULATIONS Dated 1/10/1990, DCJ POLICE MANAGEMENT MANUAL-CHAPTER FIVE						EVAL DATE:

I. PURPOSE

This agency is committed to providing law enforcement services that are fair, effective, and impartially applied. Toward that end, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens. Officers' adherence to these standards, motivated by a moral and professional obligation to perform their job to the best of their ability, is the ultimate objective of this agency.

The effectiveness of a law enforcement agency is dependent upon public approval and acceptance of police authority. The department must be responsive to the community by providing formal procedures for the processing of complaints from the public regarding individual officer performance.

The purpose of this policy is to improve the quality of

police services. Citizen confidence in the integrity of the police department increases through the establishment of meaningful and effective complaint procedures. This confidence engenders community support for the police department. Improving the relationship between the police and the citizens they serve facilitates cooperation vital to the department's ability to achieve its goals. An effective disciplinary framework also permits police officials to monitor officers' compliance with department policies and procedures. Adherence to established policies and procedures assists officers in meeting department objectives while a monitoring system permits managers to identify problem areas requiring increased training or direction. Finally, this policy will ensure fairness and due process protection to citizens and officers alike. Heightening officer awareness of the rights afforded them when charged with misconduct will increase their appreciation of comparable rights afforded citizens accused of a crime.

The discipline process shall be used to identify and correct unclear or inappropriate agency procedures. In addition it will highlight organizational conditions that may contribute to any misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers.

II. POLICY

It is the policy of this agency to accept and investigate all complaints of alleged officer misconduct or wrongdoing from any citizen or agency employee. Following a thorough and impartial examination of the available factual information, the officer shall be either exonerated or held responsible for the alleged misconduct. Discipline shall be administered according to the degree of misconduct.

It is the policy of this department that officers and employees, regardless of rank, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, the State of New Jersey, or municipal ordinances constitutes a violation of that oath and trust. Officers are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. In addition, officers may be disciplined for violation of any rule and regulation of the department or for failure to obey any lawful instruction, order, or command of a superior officer or supervisor. Disciplinary action in all matters will be

determined based upon the merits of each case.

It is the policy of this agency that prevention is the primary means of reducing and controlling misconduct. To that end, it is the policy of this agency to discover and correct organizational conditions which permit the misconduct to occur. Special emphasis is placed on recruitment, selection and training of officers and supervisors, community outreach, and the analysis of misconduct complaints and their outcome.

It is the policy of this agency that each officer shall be provided ready access to an official, agency-written manual which contains specific directions for conducting all aspects of police work. Categories of misconduct shall be clearly described and defined, and the disciplinary process shall be thoroughly explained in the manual.

III. PROCEDURES

A. INTERNAL AFFAIRS UNIT

1. The Internal Affairs Unit (or responsibility) is herein established (or defined). The unit shall consist of those members of the department as shall be assigned the Internal Affairs function by the police executive. Personnel assigned to the Internal Affairs function shall serve at the pleasure of and be directly responsible to the police executive or designated Internal Affairs commander.

   a. The goal of Internal Affairs is to insure that the integrity of the department is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.

2. Duties and responsibilities

   a. The Internal Affairs Unit is responsible for the investigation and review of all allegations of misconduct by members of this department.

      (1) Misconduct is defined as:

Depending upon the need the internal affairs function can be full or part-time. In any event, this function necessitates either the establishment of a full-time unit or officer, or the clear definition of responsibility for carrying out the internal affairs function on an as needed basis.

(a) Commission of a crime or an offense; or,
(b) Violation of departmental rules and regulations; or,
(c) Conduct which adversely reflects upon the officer or the department.

b. In addition to investigations concerning allegations of misconduct, Internal Affairs shall be responsible for the coordination of investigations involving the discharge of firearms by department personnel.

c. Internal Affairs shall be responsible for any other investigation as directed by the police executive.

d. Internal Affairs officers may conduct an internal affairs investigation on their own initiative upon notice to, or at the direction of the police executive or Internal Affairs commander.

e. Internal Affairs may refer investigations to the employee's supervisor for action as outlined under §III.C of this policy.

f. Internal Affairs members or officers temporarily assigned to that function, shall have the authority to interview any member of the department and to review any record or report of the department relative to their assignment. Requests from Internal Affairs personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the police executive. Members assigned to the Internal

Affairs Unit or function come under the direct authority of the police executive, reporting directly to the police executive through the Internal Affair's chain of command.

g. The Internal Affairs Unit or an officer designated by the chief executive shall maintain a comprehensive central file on all complaints received by this department whether investigated by Internal Affairs or assigned to the officer's supervisors for investigation and disposition.

h. The Internal Affairs Unit shall prepare periodic reports that summarize the nature and disposition of all misconduct complaints received by the agency for submission to the police executive officer.

i. Copies of the internal affairs report should be distributed to all command and supervisory personnel. Recommendations shall be made for corrective actions for any developing patterns of abuse.

j. An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to members of the public. The names of complainants and accused officers shall not be published in this report.

B. ACCEPTING REPORTS ALLEGING OFFICER MISCONDUCT

Reports should be accepted by supervisory personnel whenever possible. However, if no supervisory personnel are available, complaints should be accepted by any police officer. At no time should a complainant be told to return in order to report a complaint regarding police officer conduct.

1. All department personnel are directed to accept

reports of officer misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a department representative (except in very minor complaints) shall visit the individual at his or her home, place of business or at another location in order to complete the report.

2. Complainants shall be referred to the Internal Affairs Unit is an officer is immediately available.

3. If an Internal Affairs officer is not immediately available, all supervisory personnel are directed to accept the report of officer misconduct.

4. If an Internal Affairs officer and a supervisor are not available, any police officer shall accept the complaint.

5. The officer receiving the complaint will:

   a. Explain the department's disciplinary procedures to the person making the complaint. Advise the complainant that they will be kept informed of the status of the complaint and its ultimate disposition.

   b. Complete the Internal Affairs Complaint Form and have the complainant sign the completed form.

6. All department personnel are directed to accept reports of officer misconduct from anonymous sources. If the anonymous complainant is talking to an officer, the officer should encourage him to submit his complaint in person. In any case, the complaint will be accepted.

   a. In the case of an anonymous complaint, the officer accepting the complaint shall complete as much of the Internal Affairs Complaint Form as he can with the information provided.

7. Complaints shall be handled as follows:

   a. Complaints of differential treatment, demeanor and minor rule infractions shall be forwarded to the supervisor or commander of the accused officer.

   b. All other complaints shall be retained by or forwarded to the Internal Affairs Unit, including complaints of:

      (1) criminal activity;
      (2) excessive force;
      (3) improper or unjust arrest;
      (4) improper or excessive entry;
      (5) improper or unjustified search;
      (6) serious complaints of differential treatment or demeanor;
      (7) serious rule infractions;
      (8) repeated minor rule infractions

C. INVESTIGATION AND ADJUDICATION OF MINOR COMPLAINTS

1. Complaints of differential treatment, demeanor and all minor rule infractions shall be forwarded to the accused officer's commanding officer. The commanding officer shall require the officer's supervisor, if other than the receiving supervisor, to investigate the allegation of misconduct.

2. The supervisor investigating the complaint shall interview the complainant, all witnesses and the accused officer, as well as review relevant reports, activity sheets, or dispatcher forms. The supervisor shall then submit a report to the commanding officer summarizing the matter, indicating the appropriate disposition. Possible dispositions include the following:

   a. Exonerated:
      (1) The alleged incident did occur, but the actions of the officer were justified, legal and proper; or,
      (2) the officer's behavior was consistent with agency policy, but there was a policy failure.

b. Substantiated: The investigation disclosed sufficient evidence to clearly prove the allegation.

c. Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

d. Unfounded: The investigation indicated that the acts complained of did not occur.

3. If the complaint is sustained, the commanding officer shall determine the appropriate disciplinary action. If the action is no more than a written reprimand, a summary of the complaint and notification of the disciplinary action taken shall be forwarded to Internal Affairs. If, however, the commander determines that the matter is of a serious nature it should be forwarded to Internal Affairs for further investigation.

In some police departments, the commanding officer, upon completion of this review, may forward the report to the police executive.

4. If the accused officer's supervisor determines that the complaint is unfounded or not sustained and the commanding officer concurs, the investigation report is to be forwarded to Internal Affairs for review, and entry in the central log and filing.

5. Upon final disposition of the complaint, a letter shall be sent to the complainant by the commanding officer explaining the outcome of the investigation, and the reasons for the outcome decision.

6. Initiation of disciplinary action for minor complaints

a. Oral reprimands or performance notices

(1) When an oral reprimand or performance notice is given, the officer or employee shall be advised that the supervisor or superior officer is giving an oral reprimand and that the oral reprimand report (a necessary record for progressive discipline) or performance notice will be completed and forwarded to the division commander.

(2) The supervisor or superior officer giving the reprimand shall complete an oral reprimand report or performance notice in triplicate, retaining one copy and forwarding the original to the division commander for review. The third copy shall be given to the officer or employee being disciplined.

(3) The commanding officer shall review the report and, in writing, either approve or disapprove the report and the action taken. If disapproved, the commander shall provide recommendations as to what action, if any, be taken by the supervisor.

(4) Upon approving the oral reprimand or performance notice, the commanding officer will forward the report to be placed in the officer's or employee's personnel file.

(5) Six months after the date of the approved oral reprimand or performance notice, the disciplinary report shall be removed from the file and destroyed, provided no other breach of discipline has occurred.

b. Written reprimands

(1) When a written reprimand is given, the supervisor or commanding officer giving such reprimand shall advise the subject officer of such and shall complete a written reprimand report in triplicate.

(2) One copy of the written reprimand report is to be provided to or retained by the officer's supervisor and one copy of the report is to be provided to the officer or employee being disciplined. The original report, together with any supporting documentation, shall be provided to the commanding officer for review.

(3) The commanding officer shall review the report and, in writing, either approve or disapprove the report. If disapproved, the commanding officer shall direct what action, if any, be taken.

(4) Upon final approval, the report shall be forwarded to the Internal Affairs Unit and permanently placed in the officer's or employee's personnel file.

D. INVESTIGATION AND ADJUDICATION OF SERIOUS COMPLAINTS

1. All serious complaints shall be forwarded to the Internal Affairs Unit, including complaints of:

(1) criminal activity;
(2) excessive force;
(3) improper or unjust arrest;
(4) improper or excessive entry;
(5) improper or unjustified search;
(6) serious complaints of differential treatment or demeanor;
(7) serious rule infractions;
(8) repeated minor rule infractions

2. The supervisor or commanding officer initiating such action shall complete a "Recommendation for Internal Affairs Investigation Form." Upon completion, the form, together with any supporting documentation, shall be forwarded through the chain of command to Internal Affairs. (Where there is no full-time Internal Affairs Unit or function the report is forwarded to the police executive.)

3. The Internal Affairs commander or police executive shall direct such further investigation by the original investigating supervisor, commanding officer or Internal Affairs as deemed appropriate.

4. In cases not involving allegations of criminal conduct, the accused officer shall be notified of the complaint once preliminary investigative data has been gathered. Internal Affairs shall serve the suspect officer with the Internal Affairs Investigation Officer Notification Form unless the nature of the investigation requires secrecy.

5. The Internal Affairs investigator shall interview the complainant, all witnesses and the accused officer, as well as review relevant reports, activity sheets, and dispatcher forms and obtain necessary information and materials, such as:

   a. Physical evidence.
   b. Statements or interviews from all witnesses.
   c. Statements or interviews from all parties of specialized interest, such as doctors, employers, lawyers, teachers, legal advisors, parents, etc.
   d. Investigative aids, such as the various reports, activity sheets, complaint cards, and dispatcher's forms.

6. Where preliminary investigative data indicates the possibility of a criminal act on the part of the accused officer, the county prosecutor shall be notified immediately. No further action shall be taken, including the filing of charges against the officer, until directed by the county prosecutor.

7. Interviewing the subject officer

   a. The Internal Affairs investigator shall schedule an interview with the officer.

   b. One person of the officer's choosing may attend the interview session.

      (1) In investigations of criminal allegations, it may be inappropriate for a union representative to be present.

c. Before questioning begins, inform the subject officer of:

(1) The nature of the complaint,
(2) The name of the person in charge of the investigation, and the names of all persons who will be present during questioning.

d. Questioning sessions may be audio or video recorded.

e. If at any time during the questioning session the officer becomes a suspect in a criminal act, the officer shall be so informed and the questioning shall end. Promptly refer the case to the county prosecutor.

8. Upon completion of all possible avenues of inquiry the Internal Affairs investigator shall submit a report to the Internal Affairs commanding officer summarizing the matter indicating the appropriate disposition. Possible dispositions, as defined in §III.C.2 of this policy, include the following:

a. Exonerated,
b. Substantiated,
c. Not sustained, or
d. Unfounded.

9. Complete the IAU Investigation Disposition Recommendations Form. Forward the completed form through each level of the Internal Affairs chain of command for review. Each level may provide written recommendations and comment for consideration by the police executive.

10. Internal Affairs or the police executive, upon completion of the review of the report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate.

11. Upon completion of its investigation with a finding of exonerated, not sustained, or unfounded, Internal Affairs shall notify the subject officer of the investigation (if not

previously notified) and of the recommended disposition.

12. If the complaint is substantiated and it is determined that formal charges should be preferred, the police executive shall direct either the commanding officer, supervisor or Internal Affairs to prepare, sign, and serve charges upon the accused officer or employee.

13. The division commander, supervisor or Internal Affairs, as directed, shall prepare the formal notice of charges and hearing on the Charging Form. (See sample Charging Form in Appendix E.) Such notice shall be prepared and served upon the officer charged in accordance with N.J.S.A. 40A:14-147 et seq.

Agencies operating under the purview of Title 11A must comply with New Jersey Department of Personnel Rules (N.J.A.C. 4A:1-1.1 et seq.) and use the "Preliminary Notice of Disciplinary Action" form (DPF-31A, revised 3-87), and the "Final Notice of Disciplinary Action" form (DPF-31B revised 3-87). See appendix.

14. The notice of charges and hearing shall direct that the officer charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of plea. Such date for entry of plea shall be set within a reasonable time, at least five days after the date of service of the charges.

15. If the officer charged enters a plea of guilty, the police executive officer shall permit the officer to present factors in mitigation prior to assessing a penalty.

16. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he has been given an opportunity to read and sign it. Internal Affairs will cause the penalty to be carried out and complete all required forms.

E. HEARING

1. Upon written notice of a request for a hearing from the accused officer the police executive will set the date for the hearing within a reasonable time and arrange for the hearing of the charges.

2. Internal Affairs shall be responsible for or assist the assigned commander or prosecutor in the preparation of the department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.

3. The hearing shall be held before the appropriate authority or the appropriate authority's designee.

4. The hearing authority should be empowered to sustain, modify in whole or in part, or dismiss the charges stated in the complaint. The decision of the hearing authority should be in writing and should be accompanied by findings of fact for each issue in the case.

5. The hearing authority should fix any of the following punishments which it deems appropriate under the circumstances.

   a. Counseling
   b. Oral reprimand or performance notice
   c. Letter of reprimand
   d. Loss of vacation time
   e. Imposition of extra duty
   f. Monetary fine
   g. Transfer/reassignment
   h. Suspension without pay
   i. Loss of promotion opportunity
   j. Demotion
   k. Discharge from employment.

6. A copy of the decision or order and accompanying findings and conclusions should be delivered to the officer or employee who was the subject of the hearing and to the police executive if he was not the hearing authority.

7. Upon completion of the hearing Internal Affairs

will complete all required forms including the entry of the disposition in the central log.

8. If the charges were sustained Internal Affairs will cause the penalty to be carried out. The report shall be permanently placed in the officer's or employee's personnel file.

If the agency has established a Discipline Review Committee a notice of the pending disciplinary action would be submitted to that committee at this point for its review and comment. Upon reviewing the Discipline Review Committee's comments the police executive will either direct the penalty to be carried out as originally submitted or as amended by him.

F. CONFIDENTIALITY

1. The progress of internal affairs investigations and all supporting materials are considered confidential information.

2. Upon completing a case, Internal Affairs will enter the disposition in the central log.

3. The contents of internal investigation case files will be retained in the Internal Affairs Unit. The files shall be clearly marked as confidential.

4. Only the police executive or his designee is empowered to release publicly the details of an internal investigation or disciplinary action.

5. All disciplinary hearings shall be closed to the public unless the defendant officer requests an open hearing.

Appendix B.
INTERNAL AFFAIRS COMPLAINT FORM

DEPARTMENT	ORI NO.	INTERNAL AFFAIRS CASE NO.

COMPLAINANT

NAME				ALIAS	
ADDRESS					
CITY		STATE	ZIP	PHONE	
DOB	SSN	AGE	SEX	RACE	HISPANIC (CIRCLE) YES NO
EMPLOYER/SCHOOL				PHONE	
ADDRESS			CITY	STATE	ZIP

INCIDENT

NATURE OF COMPLAINT			
COMPLAINT AGAINST (NAME(s))			BADGE NO(s)
DATE	TIME	DATE/TIME REPORTED	HOW REPORTED
OFFENSE/INCIDENT LOCATION		DIST/AREA	BEAT
DESCRIPTION OF OFFENSE/INCIDENT			
DESCRIPTION OF ANY INJURIES			
PLACE OF TREATMENT	DOCTOR'S NAME	DATE OF TREATMENT	
SIGNATURE OF COMPLAINANT			DATE

INTERNAL AFFAIRS USE ONLY

COMPLAINT RECEIVED BY	BADGE NO.	DATE/TIME RECEIVED
RECEIVED BY INTERNAL AFFAIRS BY	BADGE NO.	DATE/TIME RECEIVED

(DCJ 6/91

Appendix C.

INTERNAL AFFAIRS INVESTIGATION DISPOSITION RECOMMENDATIONS

Date:_____ FILE IA-_____

Recommended Disposition:

_____ Unfounded
_____ Not Sustained
_____ Exonerated, Proper Conduct & Policy
_____ Exonerated, Proper Conduct, Policy Failure
_____ Substantiated

Penalty Recommended:_____

ALL REVIEWERS MUST SIGN AND ENTER DATE

1. Reviewed By:_____ Forwarded To:_____
   Date:_____ Comments:_____
   _____
   _____

2. Reviewed By:_____ Forwarded To:_____
   Date:_____ Comments:_____
   _____
   _____

3. Reviewed By:_____ Forwarded To:_____
   Date:_____ Comments:_____
   _____
   _____

CHIEF EXECUTIVE OFFICER, FINAL DISPOSITION:_____
_____
_____
Date:_____ COMMENTS:_____
_____
_____

Appendix D.

MODEL PERFORMANCE NOTICE

HOMETOWN POLICE DEPARTMENT

TO: _____

FROM: _____

You are herein advised that on this _____, 19___

You Are: ☐ Commended ☐ Reprimanded

For _____

_____

_____

_____

Issued By: Received By:

_____ _____

Signature Signature

Officer's Copy

NOTE: This form is usually a three-part form. The original is filed in the officer's personnel file. Commendations remain in the file for the duration of the officer's service. Reprimands are removed from the file after six months if no further infractions have occurred.

Appendix E.

SAMPLE CHARGING FORM

NOTICE OF CHARGE AND HEARING

TO:_____ Date:_____
(Name & Rank of Officer)

TAKE NOTICE that the following charge(s) is (are) preferred against you:

On _____ , 19__ , you _____
_____
_____
_____
in violation of _____
(Statute, Rule and Regulation, Etc.)

On _____ , 19__ , you _____
_____
_____
_____
in violation of _____
(Statute, Rule and Regulation, Etc.)

You must enter a plea of guilty or not guilty, in writing, on or before _____, 19__. You may request a hearing. If a hearing is requested it shall be held on (Date) at (Time) in (Location).

By:_____

I hereby acknowledge service of the within charge(s) this _____ day of _____ , 19___.

Signature:_____

SERVICE of the within charge(s) were made this _____ day of _____, 19____.

By:_____

Appendix F.

SAMPLE INTERVIEW ADVISEMENT FORM

HOMETOWN POLICE DEPARTMENT
INTERNAL AFFAIRS

PRE-INTERVIEW ADVISEMENT

STATEMENT:

You are being questioned as part of an official investigation of this agency into potential violations of department rules and regulations. You will be asked questions specifically directed and narrowly related to the performance of your official duties and your fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitutions of this State and the United States, including the right not to be compelled to incriminate yourself in a criminal matter. If you fail to exercise this right, anything you say may be used against you in a criminal proceeding. The right to refuse to answer a question on the grounds of your right against self-incrimination does <u>not</u> include the right to refuse to answer on the grounds that your answer may reveal a violation of a department policy, rule, or regulation that is not a criminal offense. You may therefore be subject to departmental discipline for refusal to give an answer that would not implicate you in a criminal offense. Anything that you say may be used against you not only in any subsequent department charges, but also in any subsequent criminal proceeding.

I have read and understand the contents of the above statement on this _____ day of_____ , 19____.

Signature:_____

Witnessed by:_____ Time: _____
Location:_____

OTHER PRESENT: _____
_____
_____
_____

Appendix G.

SAMPLE USE IMMUNITY GRANT ADVISEMENT FORM
INTERNAL AFFAIRS

INTERVIEW USE IMMUNITY GRANT ADVISEMENT

STATEMENT:

You are being questioned as part of an official investigation of this agency into potential violations of department rules and regulations. You will be asked questions specifically directed and narrowly related to the performance of your official duties and your fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitutions of this State and the United States, including the right not to be compelled to incriminate yourself in a criminal matter. Despite your duty to testify and to answer questions relating to the performance of your official duties or fitness for office, you have a right to refuse to answer any question which would incriminate you in a criminal matter. You have invoked your right to remain silent and you have been granted immunity from criminal prosecution in the event your answers to the narrow questions asked implicate you in a criminal offense. You are now ordered to answer. Therefore, you must answer. No answer given by you pursuant to this order, nor evidence derived from the answer, may be used against you in any criminal proceeding. If you refuse to obey this order to answer, you may be subject to disciplinary charges for that refusal which can result in your dismissal from this agency. Further, although any statement which you make cannot be used against you in any criminal proceeding, any statement you make may be used against you in relation to any subsequent departmental disciplinary proceeding.

I have read and understand the contents of the above statement on this _____ day of_____ , 19____.

Signature:_____

Witnessed by:_____ Time: _____
Location:_____

OTHER PRESENT: _____
_____
_____
_____

Appendix H.

SAMPLE RESPONSE LETTER: COMPLAINT ACKNOWLEDGEMENT

File: I.A._____

_____, 19____

Dear _____

This will acknowledge receipt of the complaint made by you on _____, 19____, concerning the actions of a member(s) of this department occurring on _____.

An investigation will be conducted into the allegations contained in your complaint and you will be advised of the results of the investigation within approximately four weeks. In the meantime, should a question arise, you can contact this office by calling 555-5555, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.

Very truly yours,

_____
Internal Affairs Unit

cc: Chief Executive Officer

Appendix I.

SAMPLE RESPONSE LETTER: COMPLAINT NOT SUBSTANTIATED

File: I.A._____

_____, 19____

Dear _____:

The Internal Affairs Unit of this department has completed its investigation of your complaint concerning the conduct of Officer _____. The investigation and a review of the all information currently available to this office indicates that the officer followed the appropriate department policies and procedures and acted within performance guidelines.

If you have additional information which you believe should be considered, please contact the Internal Affairs Unit at 555-5555. If no additional information is received within ten days, this case will be considered closed.

We expect our personnel to be always courteous and professional in the performance of their duties. Even so, misunderstandings can and do occur. We need and welcome citizen comment on the performance of our personnel and the services we provide. Those comments are helpful to our policy and procedures evaluation process as well as in determining employee performance.

Thank you for bringing this matter to our attention.

Very truly yours,

Chief of Police

Appendix J.

SAMPLE RESPONSE LETTER: POLICY FAILURE

File: I.A._____

_____, 19____

Dear _____:

The Internal Affairs Unit of this department has completed its investigation of your complaint concerning the conduct of Officer _____. The investigation and a review of the all information currently available to this office verify the facts of your allegation. However, the officer conducted himself in accordance to department policy and procedures. It was determined that, in this instance, the policy failed to achieve the desired results. We are conducting a full review of this policy and regret that it did not serve your needs in this instance.

Thank you for having taken the time to bring this matter to our attention.

Very truly yours,

Chief of Police

Appendix K.

SAMPLE RESPONSE LETTER: COMPLAINT SUBSTANTIATED

File: I.A._____

_____, 19____

Dear _____:

The Internal Affairs Unit of this department has completed its investigation of your complaint concerning the conduct of Officer _____. The investigation and a review of the all information currently available to this office indicates that the officer did not follow the appropriate department policies and procedures. Appropriate administrative action will be taken as provided for in the rules and regulations of this agency.

Thank you for bringing this matter to our attention. We expect our personnel to be always courteous and professional in the performance of their duties. We regret that an expectation occurred in this case. Be assured that your complaint and the subsequent investigation will help us in delivering better police services in the future.

Very truly yours,

Chief of Police

Appendix L.

STATUTES AND RULES RECOMMENDED FOR REVIEW

The following statutes and rules should be reviewed by the chief executive officer and personnel assigned to the Internal Affairs function.

N.J.S.A. 40A:14-118	Creation of Police Force, Adopt Rules and Regulations, Chief of Police, Powers and Duties.
N.J.S.A. 40A:14-128	Term of Office
N.J.S.A. 40A:14-147	Suspension & Removal of Members and Officers
N.J.S.A. 40A:14-150	Review of Disciplinary Hearing (Non Department of Personnel Jurisdictions)
N.J.S.A. 40A:14-151	Judicially Determined Illegal Suspension
N.J.S.A. 40A:14-155	Defense of Members or Officers in Legal Proceedings
N.J.S.A. 11A:2-1 et seq.	Department of Personnel, especially Article 4. Appeals.
N.J.A.C. 4A:1-1.1 et seq.	Personnel (Merit Board Adopted Rules and Procedures), especially N.J.A.C. 4A:2-2.1 through 2.12, Major Discipline.

Appendix M.

MERIT SYSTEM BOARD TIME TABLE AND STEPS FOR DISCIPLINARY ACTION

(Formerly Civil Service Commission)

IMMEDIATE SUSPENSION WITHOUT PAY

TO IMPLEMENT:

	TIME	STEP
A.	Before suspension	Determine whether one of the conditions for immediate suspension exits: 1. The employee is unfit for duty; 2. The employee is a hazard to any person if permitted to remain on the job; or 3. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; 4. The employee has been formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.
B.	Before suspension	To comply with "Loudermill" hearing requirements: Advise the employee either orally or in writing of why an immediate suspension is sought and the charges and general evidence in support of the charges. Provide the employee with sufficient opportunity to review the charges and the evidence and to respond either orally or in writing (at the discretion of the appointing authority), before a representative of the appointing authority.
C.	Within five days	Serve Preliminary Notice of Disciplinary Action (DPF-31A) following suspension.

D.	Within five days following service of DPF-31A, or longer as specified in contract.	Employee may request a departmental hearing on charges specified in the DPF-13A.
E.	Within 30 days following service of DPF-31A, unless longer time agreed to by parties.	Hold departmental hearing.
F.	Within 20 days following departmental hearing.	Serve Final Notice of Disciplinary Action (DPF-31B).

IMMEDIATE SUSPENSION WITH PAY

TO IMPLEMENT:

	TIME	STEP
A.	Before suspension	Determine whether one of the conditions for immediate suspension has been met: 1. The employee is unfit for duty; or 2. The employee is a hazard to any person if permitted to remain on the job; or 3. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or 4. The employee has been formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.
B.	Before suspension	Secure authorization of department head for suspension with pay.
C.	Within five days following suspension	Serve Preliminary Notice of Disciplinary Action (DPF-31A).

D.	Within five days following service of DPF-31A, or longer time as specified in contract.	Employee may request a departmental hearing.
E.	Within 30 days following service of DPF-31A, unless longer time agreed to by parties.	Hold departmental hearing.
F.	Within 20 days following departmental hearing.	Serve Final Notice of Disciplinary Action (DPF-31B). Suspension can be imposed upon service of DPF-31B.

FINE (In lieu of suspension)

TO IMPLEMENT:

	TIME	STEP
A.	Before fine	Determine whether one of the conditions for a fine in lieu of suspension has been met: 1. Restitution; or 2. Suspension of the employee would be detrimental to the public health, safety or welfare; or 3. Employee has agreed to a fine as disciplinary option.
B.	Before fine	Serve Preliminary Notice of Disciplinary Action (DPF-31A)
C.	Within five days following service of DPF-31A, or longer time as specified in contract.	Employee may request a departmental hearing.
D.	Within 30 days following service of DPF-31A, unless longer time agreed to by parties.	Hold departmental hearing.

E.	Within 20 days following departmental hearing.	Serve Final Notice of Disciplinary Action (DPF-31B). Fine can be imposed upon service of DPF-31B.

SUSPENSION OF MORE THAN FIVE DAYS, DEMOTION OR REMOVAL

TO IMPLEMENT:

	TIME	STEP
A.	Before major disciplinary action.	Serve Preliminary Notice of Disciplinary Action (DPF-31A).
B.	Within five days following service of DPF-31A, or longer time as specified in contract.	Employee may request a departmental hearing.
C.	Within 30 days following service of DPF-31A, unless longer time agreed to by parties.	Hold departmental hearing.
D.	Within 20 days following departmental hearing.	Serve Final Notice of Disciplinary Action (DPF-31B). Major disciplinary action can be imposed upon service of DPF-31B.

Appendix N.

Preliminary Notice of Disciplinary Action

DEPARTMENT OF PERSONNEL - STATE OF NEW JERSEY

INSTRUCTIONS: This notice must be served on a permanent employee or an employee serving a working test period in the classified service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine of more than five days at one time; (b) suspensions or fines more than three times or for an aggregate of more than fifteen days in one calendar year; (c) disciplinary demotion from a title in which the employee has permanent status or to which the employee has received a regular appointment; (d) removal; (e) resignation not in good standing. A copy of this preliminary notice must be sent to the Department of Personnel. Subsequent to the day of hearing by the appointing authority, the employee and the Department of Personnel must be served with Form DPF-31 B, Final Notice of Disciplinary Action.

FROM:	JURISDICTION (Local Service)		DEPARTMENT	
	DIVISION, INSTITUTION OR AGENCY	STATE PAYROLL NUMBER	ADDRESS	DATE
TO:	NAME OF EMPLOYEE	TITLE		SOCIAL SECURITY NUMBER
	STREET		CITY AND STATE	

1. You are hereby notified that the following charge(s) has been made against you:
(If necessary, use additional sheets and attach.)

CHARGE(S):

☐ *If checked, charges are continued on attached page*

SPECIFICATION(S):

☐ *If checked, specifications are continued on attached page*

☐ **You are hereby suspended effective** _____
(Check box and indicate if employee is suspended pending final disposition of the matter)

2. ☐ IF YOU DESIRE A DEPARTMENTAL HEARING ON THE ABOVE CHARGE(S), NOTIFY THIS OFFICE WITHIN _____ * DAYS OF RECEIPT OF THIS FORM. IF YOU REQUEST A DEPARTMENTAL HEARING IT WILL BE HELD ON _____, 19____ at (time) _____ at (place of hearing) _____

* *Must be minimum of five days*

3. The following disciplinary action may be taken against you:

☐ **Suspension for** _____ **days, beginning** _____ **and ending** _____

☐ **Removal, effective (date)** _____

☐ **Demotion to position of** _____ **effective (date)** _____

☐ **Resignation not in good standing, effective (date)** _____

☐ **Fine $** _____ *amount* **which is equal to** _____ *number* **days pay**

☐ **Other disciplinary action:** *(explain on attached page)*

SIGNATURE _____ TITLE _____
(Appointing Authority or authorized agent)

NOTICE: Your health insurance coverage may be affected by this action; check with your Personnel Office.

Method of Service *(Check One)*		NAME AND TITLE OF SERVER	DATE SERVED
	☐ PERSONAL SERVICE ⇨		
	☐ CERTIFIED OR REGISTERED MAIL ⇨	Give date of receipt by employee or agent as shown on return receipt postal card and the receipt number:	

DISTRIBUTION: White (Original for Employee), Blue (Employee Copy), Green (Employee representative), Canary (Management), Pink (Management), Goldenrod (Department of Personnel)

DPF-31 A / Revised 10-89

Final Notice of Disciplinary Action

DEPARTMENT OF PERSONNEL ● STATE OF NEW JERSEY

INSTRUCTIONS: This notice must be served on a permanent employee or an employee serving a working test period in the classified service after a hearing of one of the following types of disciplinary actions is taken: (a) suspension or fine of more than five days at one time; (b) suspensions or fines more than three times or for an aggregate of more than fifteen days in one calendar year; (c) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (d) removal; or (e) resignation not in good standing. If the employee does not request or does not appear at the hearing, this notice must be served as the final action. A copy of this notice must be sent to the Department of Personnel and served on the employee by personal service or certified or registered mail.

FROM:	JURISDICTION (Local Service)		DEPARTMENT	
	DIVISION, INSTITUTION OR AGENCY	STATE PAYROLL NUMBER	ADDRESS	DATE
TO:	NAME OF EMPLOYEE	TITLE		SOCIAL SECURITY NUMBER
	STREET		CITY AND STATE	

1. On _____ you were served with a Preliminary Notice of Disciplinary Action **(DPF-31A)** and notified of the pending disciplinary action:

- ☐ **You requested a hearing which was held on** _____
- ☐ **You did not request a hearing.**
- ☐ **You requested a hearing and did not appear at the designated time and place.**

The following charge(s) was dismissed:	The following charge(s) was sustained:
☐ *If checked, charges are continued on attached page*	☐ *If checked, charges are continued on the attached page*

2. The following disciplinary action has been taken against you:

- ☐ **Suspension for** ____ **days, beginning** _____ **and ending** _____
- ☐ **Removal, effective (date)** _____
- ☐ **Demotion to position of** _____ **effective (date)** _____
- ☐ **Resignation not in good standing, effective (date)** _____
- ☐ **Fine $** _____ *amount* **which is equal to** _____ *number* **days pay**
- ☐ **Other disciplinary action:** *(explain on attached page)*

SIGNATURE _____ *(Appointing Authority or authorized agent)* TITLE _____

3. METHOD OF SERVICE (Check One)		NAME AND TITLE OF SERVER	DATE SERVED
	☐ **PERSONAL SERVICE** →		
	☐ **CERTIFIED OR REGISTERED MAIL** →	Give date of receipt by employee or agent as shown on return receipt postal card and the receipt number:	

4. **APPEAL PROCEDURE TO THE EMPLOYEE:** You have a right to appeal disciplinary actions: (a) suspension or fines more than five days at one time; (b) suspensions or fines more than three times or for an aggregate of more than fifteen days in one calendar year; (c) disciplinary demotion; (d) removal or (e) resignation not in good standing. Your letter of appeal must be filed with the Merit System Board within 20 days of receipt of this form. Appeals must be sent to: **Merit System Board, Front & Montgomery Streets, CN 312, Trenton, N.J. 08625.** Appeals must br sent directly to the Merit System Board. Do not give your appeal to your Personnel Office for forwarding to the Merit System Board.

NOTICE: Your health insurance coverage may be affected by this action; check with your Personnel Office.

DISTRIBUTION: White (Original for Employee), Blue (Employee Copy), Green (Employee representative), Canary (Management), Pink (Management), Goldenrod (Department of Personnel)

DPF-31B (Revised 3-87

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

JAMES E. MCGREEVEY
Governor

PETER C. HARVEY
Attorney General

VAUGHN L. MCKOY
Director

AG LE DIRECTIVE NO. 2004-4

TO: ALL COUNTY PROSECUTORS

FROM: AAG Jessica S. Oppenheim, Chief
Prosecutors Supervision and Coordination Bureau

DATE: October 29, 2004

SUBJECT: **ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2004-4:**
Standardization of External Audits of County Prosecutor's Office Forfeiture Funds

Attached is the Attorney General Law Enforcement Directive No. 2004-4 regarding the standardization of external audits of County Prosecutor's Office Forfeiture Funds which became effective October 25, 2004. Also attached is the Manual referred to in the Directive.

jk
Attachments
c. Peter C. Harvey, Attorney General
Mariellen Dugan, First Assistant Attorney General, OAG
Markus Green, Chief of Staff, Office of the Attorney General, OAG
Director John Kennedy, Office of Government Integrity
Vaughn L. McKoy, Director, DCJ
Deborah R. Edwards, Chief of Staff, DCJ
Keith Poujol, Assistant Director, DCJ
Jessica S. Oppenheim, Chief, Prosecutors Supervision & Coordination Bureau, Division of Criminal Justice, DCJ
Chief State Investigator Anne Kriegner

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE No. 2004-4

Standardization of External Audits of County Prosecutor's Office Forfeiture Funds

WHEREAS, it is the policy of the Attorney General that all State, County and Municipal law enforcement agencies shall administer State and Federally forfeited funds and property in a uniform manner, consistent with established State and Federal law, regulations, directives, and standard operating procedures; and

WHEREAS, the Attorney General as the State's chief law enforcement officer, has authority to oversee the Forfeiture operations of the County Prosecutor's Offices and ensure compliance with the forfeiture-related provisions of N.J.S.A. 2C:64-1 et seq.; N.J.S.A. 2C:41-1 et seq.; N.J.S.A. 2C:21-25 et seq.; N.J.S.A. 40A:5-1 et seq.; and, the State of New Jersey Forfeiture Program Administration Standard Operating Procedures (SOP's 1-12); and

WHEREAS, SOP 12 requires County Prosecutors to have a registered municipal accountant (RMA)/certified public accountant (CPA) audit all accounts containing or related to forfeited and seized property, on an annual basis; and

WHEREAS, the Attorney General has surveyed the manner in which the annual RMA/CPA audits of County Forfeiture funds are conducted and has determined that utilization of a standardized format by external auditors would produce more accurate and timely audit results and would allow for more efficient and productive oversight of compliance with SOP's, statutes, regulations, guidelines and directives; and

WHEREAS, this determination was not made in response to any serious existing problem or emergent need, but rather was made in consultation with the County Prosecutors Association of New Jersey to enhance the administration of State and Federally forfeited funds and property;

NOW, THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby ORDER and DIRECT the following:

1. The Office of Government Integrity shall establish a "Manual for External Audits of County Forfeiture Accounts." This manual will contain instructions for the County Prosecutor, the engaged CPA firm, and the Division of Criminal Justice, to assist all parties in complying with applicable statutes, regulations, directives and SOP's.

2. Each County Prosecutor shall have all Forfeiture accounts audited on an annual basis by an external RMA/CPA. The engaged firm shall be provided with a copy of the "Manual for External Audits of County Forfeiture Accounts," and any internal documents necessary to complete the audit. The audit shall include the reports and procedures specified in the manual. The manual will also include formats, reports, and schedules which must be

followed.

3. In that N.J.S.A. 40A:5-4 requires the governing body of each County to have an RMA/CPA audit, on an annual basis, all books, accounts and transactions of County government agencies, the Prosecutor's responsibility for ensuring an **annual** audit **of** forfeiture-related accounts can be satisfied by the County audit conducted pursuant to N.J.S.A. 40A:5-4, provided that the County audit of the Prosecutor's forfeiture-related accounts is conducted, and the audit report is prepared, in conformity with the requirements of the "Manual for External Audits of County Forfeiture Accounts." Otherwise, the County Prosecutor shall arrange for an external audit independent **of** the County audit.

4. Each County Prosecutor shall be responsible for reviewing findings from the annual external audit to ensure compliance with applicable statutes, regulations, directives and SOP's, including this Attorney General Law Enforcement Directive. The Division of Criminal Justice will be responsible for conducting follow-up within 120 days of receipt of a copy of the audit to ensure all findings have been addressed.

This directive shall take effect immediately. However, it shall only apply to audits of Forfeiture accounts commenced after its effective date. In addition, the manual shall be incorporated into the State of New Jersey Forfeiture Program Administration Standard Operating Procedures when that document is next revised.

PETER C. HARVEY
ATTORNEY GENERAL

Attest:

Marcella Bilger

Date: October 25, 2004

New Jersey
Office of the
Attorney General

Attorney General's Approved List of Less-Lethal Ammunition

December 2010

New Jersey Department of Law & Public Safety

Authority:

The following guidance on less-lethal ammunition is provided to assist the New Jersey law enforcement community in their use of force options in accordance with 2C:3-11 –

> *"Less-lethal ammunition" means ammunition approved by the Attorney General which is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body.*

Acceptable less-lethal impact projectiles/ammunition will be only those, which are designed by the manufacturer for single target specific engagement from a minimum standoff distance as prescribed by the manufacturer. Maximum effective distance/range for deployment of specific projectiles shall not exceed the manufacturers specifications for engagement. Intentionally aiming acceptable less-lethal impact ammunition at the head, neck, chest and groin should be avoided unless deadly force is justified, necessary and appropriate. No ammunition designed to be skip-fired, and/or non-target specific will be deemed acceptable.

Acceptable less-lethal impact projectile/ammunition will only be those products designed by their manufacturers to be fired/launched from a 12-gauge shotgun, 37mm or 40mm smooth or rifled bore launching system or paintball type device with a bore diameter between .68 - .691 of an inch.

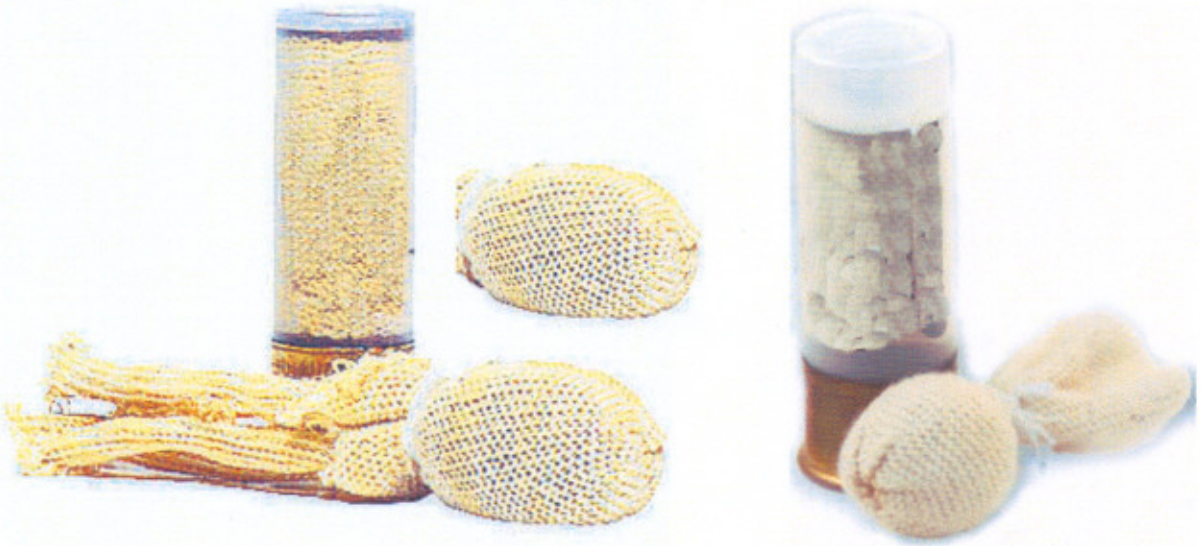
A firing/launching platform not listed above, currently under development and/or marketed to the law enforcement community at a future date, will be required to be reviewed by the New Jersey State Police Weapons and Tactics Committee and the Office of the Attorney General before being added to this list (*see* List of Approved Ammunition, below).

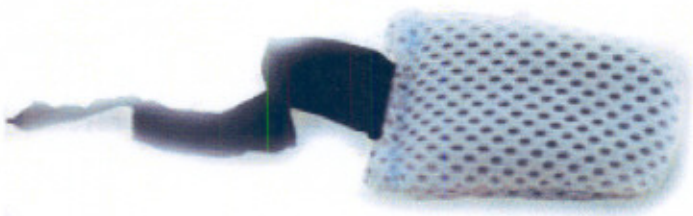
The following comprises a description of types of acceptable less-lethal impact projectiles/ammunition. Specific ammunition fitting the characteristics of the descriptions and examples of this list which have been tested and found compliant are set forth in the list of approved devices below.

12-Gauge

- Non-squared, pelletized or liquid filled media, direct fire, drag and non- drag stabilized kinetic impact bag

EXAMPLES

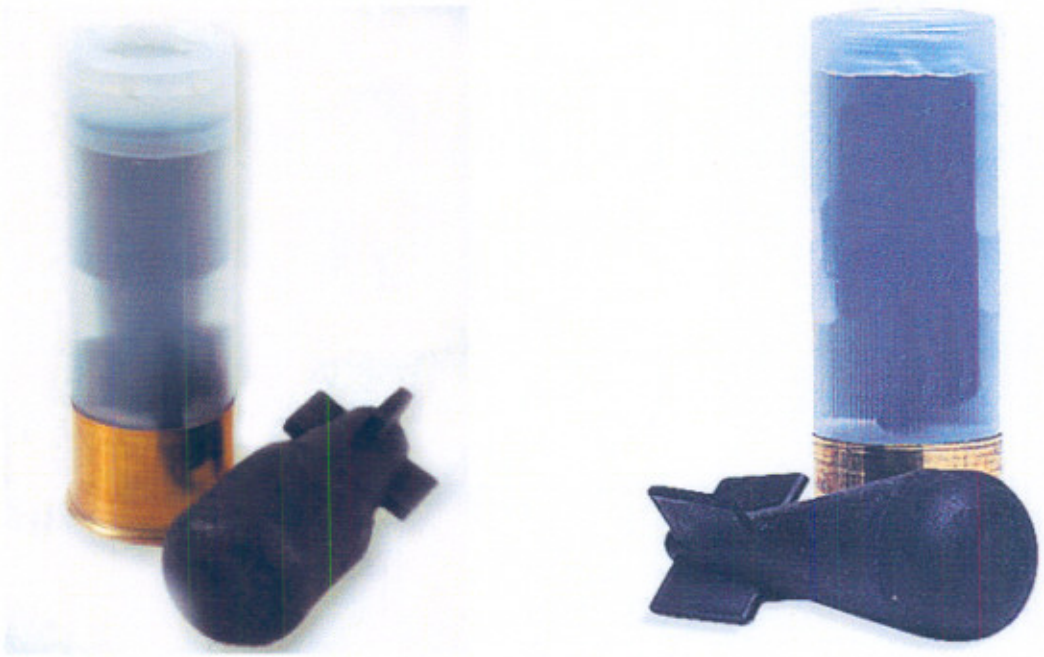




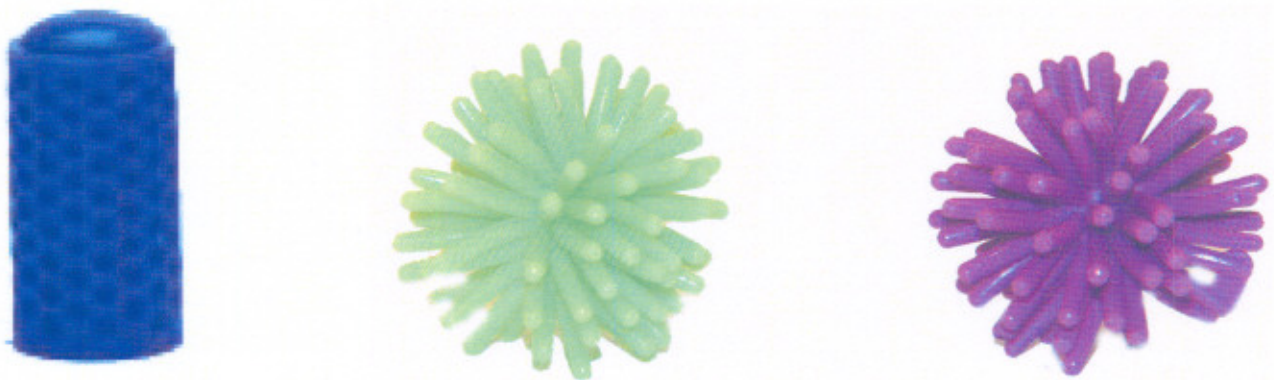
- Plastic, rubber or composite kinetic energy round (includes close, mid and extended range projectiles)

EXAMPLES

Fin Stabilized



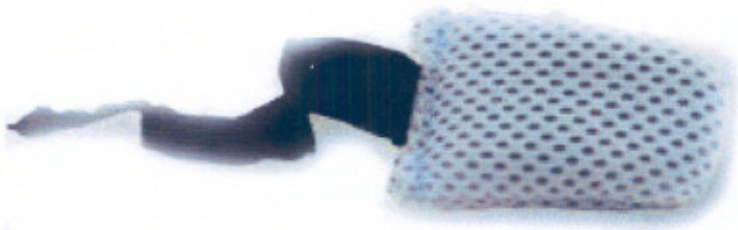
Non-Fin



37MM

- Non-squared, pelletized or liquid filled media, direct fire, drag and non- drag stabilized, kinetic impact bag

EXAMPLES



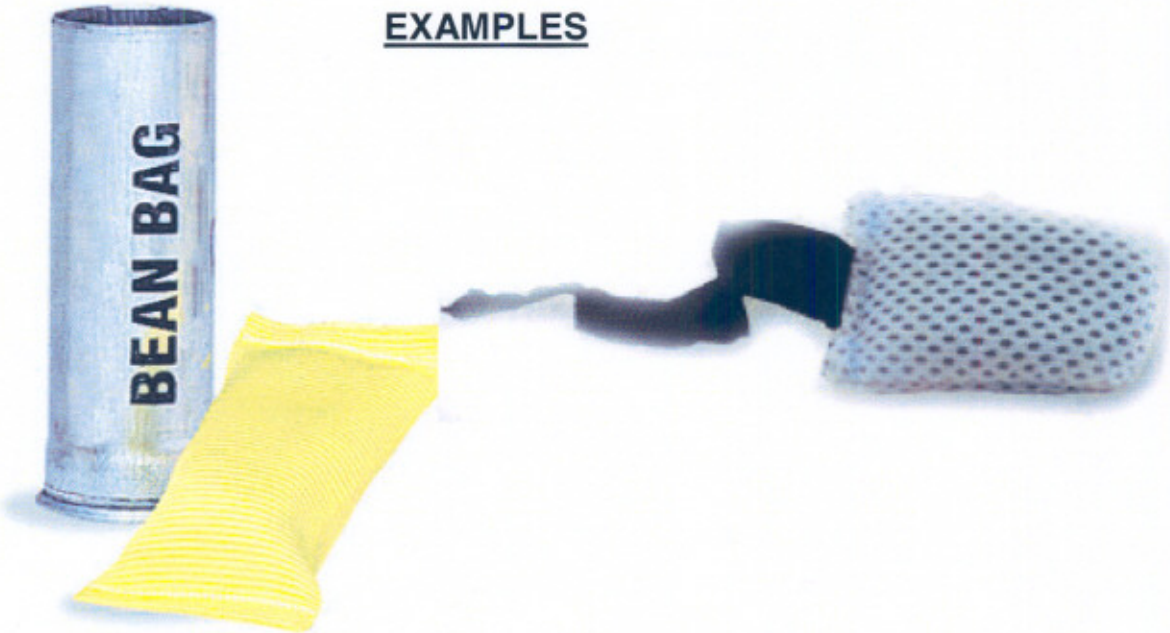
- Single projectile, plastic, rubber, foam or composite (sponge) kinetic energy round (includes mid and extended range projectiles)

EXAMPLES

40mm

- Non-squared, pelletized or liquid filled media, direct fire, drag and non- drag stabilized, kinetic impact bag

EXAMPLES



- Single projectile, plastic, rubber, foam or composite (sponge) kinetic energy round (includes mid and extended range projectiles). Smooth bore or spin (rifled) stabilized

EXAMPLES

Paintball type Platform

- Gel or soft plastic kinetic impact projectile, OC or permanent and temporary marking liquid.

EXAMPLES

List of Approved Ammunition

The following devices have been tested by the New Jersey State Police and are in compliance with the criteria set forth hereinabove. These devices (and only these devices) are approved for use in New Jersey. Officers must be trained in compliance with the Attorney General's Policy before carrying or using these devices.

Defense Technology Corporation

40mm eXact impact XM 1006 - Sponge Round
40mm Direct Impact OC - #6320
37/40mm Bean Bag - #37BR
12 gauge Drag Stabilized Bean Bag - 23DS

Combined Tactical Systems

40mm Spin Stabilized Foam Baton - #4557

A.L.S. Technologies Incorporated

40mm 33 gram REACT Projectile - ALS4006D
37mm Pen-Prevent 150 gram ballistic bag - ALS3704
37mm 21 gram Mono-Baton - ALS3706
12 gauge Hydro-Kinetic Impact Bag - ALS1200
12 gauge Rubber Fin Rocket - ALS1202
2 gauge Pen-Prevent drag stabilized ballistic bag - ALS 1212

Combined Tactical Systems

12 gauge Super Sock Bean Bag #2581

Lightfield Less Lethal Research Inc.

12 gauge Superstar LSSR - 12
12 gauge Superstar LSLR - 12
12 gauge Mid-Range Rubber Slug LMSR 12
12 gauge Extended Range Rubber Slug LERS - 12

This policy recognizes that technology is continuing to evolve in this area. Thus, an agency and/or manufacturer which wishes to have ammunition or a firing/launching platform not specifically listed above approved for use in New Jersey, including those currently available, under development and/or marketed to the law enforcement community at a future date, must submit that ammunition or firing/launching platform to the New Jersey State Police Weapons and Tactics Committee for testing and evaluation.

The New Jersey State Police Weapons and Tactics Committee may require the agency and/or manufacturer to supply samples of the ammunition and/or a firing/launching platform for testing purposes. If the New Jersey State Police Weapons and Tactics Committee finds proposed ammunition and/or a firing/launching platform to be consistent with the Attorney General's Policy, they may propose to the Attorney General that the ammunition and/or firing/launching platform be added to the list of approved ammunition and/or firing/launching platforms.

APPROVED AND ISSUED:

Dated: December 22, 2010

Paula T. Dow
Attorney General of New Jersey

Attest:

Stephen J. Taylor
Director
New Jersey Division of Criminal Justice

FORMAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

NEW JERSEY

1978-1984

JOHN J. DEGNAN
Attorney General
1978-1981

JAMES R. ZAZZALI
Attorney General
1981

IRWIN I. KIMMELMAN
Attorney General
1982-1985

CONTENTS

Opinions Committees iv

Attorneys General of New Jersey v

Formal Opinions 1

Index 294

- New Jersey Constitution 301
- New Jersey Session Laws 301
- New Jersey Statutes 301
- New Jersey Administrative Code 302
- United States Code 302
- Formal Opinions Cited in Later Opinions 302
- Formal Opinions Cited by the Courts 303

FORMAL OPINIONS

OPINIONS COMMITTEES

1978-1981	JUDITH A. YASKIN First Assistant Attorney General
	STEPHEN SKILLMAN Assistant Attorney General Director, Division of Law
	THEODORE A. WINARD Assistant Attorney General
1981	JUDITH A. YASKIN First Assistant Attorney General
	MICHAEL R. COLE Assistant Attorney General Director, Division of Law
	THEODORE A. WINARD Assistant Attorney General
1982-1985	MICHAEL R. COLE First Assistant Attorney General Director, Division of Law
	THEODORE A. WINARD Assistant Attorney General Deputy Director, Division of Law

ATTORNEYS GENERAL OF NEW JERSEY
1704-1984

Alexander Griffith	1704
Thomas Gordon	1714
Jeremiah Basse	1719
James Alexander	1723
Lawrence Smith	1728
Joseph Warrel	1733
Cortlandt Skinner	1754
William Paterson	1776
Joseph Bloomfield	1783
Aaron D. Woodruff	1792
Andrew S. Hunter	1811
Theodore Frelinghuysen	1817
Samuel L. Southard	1829
John Moore White	1833
Richard S. Field	1838
George P. Molleson	1841
Richard P. Thompson	1844
Abraham Browning	1845
Lucius Q.C. Elmer	1850
Richard P. Thompson	1852
William L. Dayton	1857
F.T. Frelinghuysen	1861
George M. Robeson	1867
Robert Gilchrist	1870
Joel Parker	1875
Jacob Vanatta	1875
John P. Stockton	1877
Samuel H. Grey	1897
Thomas N. McCarter	1902
Robert H. McCarter	1903
Edmund Wilson	1908
John W. Wescott	1914
Thomas F. McCran	1919
Edward L. Katzenbach	1924
William A. Stevens	1929
David T. Wilentz	1934
Walter D. Van Riper	1944
Theodore D. Parsons	1949
Grover C. Richman, Jr.	1954
David D. Furman	1958
Arthur J. Sills	1962
George F. Kugler, Jr.	1970
William F. Hyland	1974
John J. Degnan	1978
James R. Zazzali	1981
Irwin I. Kimmelman	1982

February 10, 1978

JAMES J. SHEERAN, *Commissioner*
Department of Insurance
201 East State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1978

Dear Commissioner Sheeran:

You have asked for advice concerning the requirements of the insurance rating laws when a company proposes to adopt a rating system approved for a rating organization of which it was not previously a member, whose loss and expense experience would have been included in the organization's rate filing. For the following reasons, it is our opinion that the Commissioner of Insurance has the authority to make a separate determination as to whether the use or adoption of a rating organization's rating system will result in appropriate rates for an insurer in light of its own particular loss and expense experience and data.

You have advised us that Allstate Insurance Company and several other companies that traditionally have made independent rate filings for private passenger automobile insurance have sought to adopt the rate increase you recently approved for the Insurance Services Office ("ISO"). ISO is a rating organization authorized to make uniform rate filings on behalf of approximately 230 companies that write automobile coverage in New Jersey. Allstate and other independents had individual filings pending contemporaneously with that made by ISO. A separate hearing was held on each rate application and an individual report and recommendations was submitted to you following each hearing. The Hearing Officer has recommended an average overall rate increase for Allstate of approximately seven percent. Although you ultimately approved an increase for ISO averaging about fourteen percent, the Hearing Officer's recommendation on that application was even higher than the amount actually approved for ISO. Following the ISO approval, you were advised by Allstate[1] that it was withdrawing its independent application and would adopt the new ISO rates. We understand that in the past the Department has permitted independent companies to adopt ISO rates after an increase without the formality of full membership in instances where their experience had been filed with ISO but they had not previously authorized ISO to file for rates on their behalf. Similar so-called "Me Too" filings have been allowed to other companies that had not filed their experience with ISO but which had insufficient volume, in any event, to support an independent rate filing. No large independent filer like Allstate, however, has ever previously sought or obtained Department approval to adopt an ISO rate increase upon withdrawal of a separate, pending application.

New Jersey has opted for the prior approval system of establishing

1. For convenience, we will limit the factual discussion to the Allstate situation, but the legal principles would apply to any company that uses or proposes to adopt the system approved for a rating organization where such use would permit rates that were clearly excessive or inadequate for the individual company.

insurance rates, as set forth in N.J.S.A. 17:29A-1 *et seq.* For all kinds of insurance not expressly exempted from the application of the Act, an insurance company may not charge premiums in New Jersey except in accordance with a rating system on file with and approved by the Commissioner. N.J.S.A. 17:29A-15 and 25. An insurance company may develop and file its rating system independently or as a member of a licensed rating organization, which may do so on behalf of all of its member companies. N.J.S.A. 17:29A-2, 4, 6 and 14. Moreover, rating organizations generally must be open to membership by any insurance company. *See* N.J.S.A. 17:29A-3. Rating organizations like ISO provide an economical method for insurance companies with relatively small shares of the market to pool their resources in gathering the complex data needed to support a rate filing. Membership in a rating organization is beneficial to such companies because the cost to each of them of developing independent rate filing data would be excessive. Moreover, ISO and other rating organizations provide the Department of Insurance with a workable method for determining proper rate levels for many small companies in the aggregate; most of these companies are too small to have sufficient loss experience data for the level of actuarial "credibility" necessary for proper rate determinations. For correlative reasons, the larger companies have traditionally made independent rate filings in New Jersey. Each of them writes a percentage of the total market representing a large enough sample for the development of credible loss data, and is able to bear the expense of developing independent statistics in support of an individual rate. Although it would be unusual, it is clear that nothing in the rating laws would prevent Allstate from becoming a member of ISO, which could then file a rating system on behalf of Allstate along with all other member companies.

The question of whether Allstate may simply abandon a pending, independent rate filing and adopt a recent ISO rate increase, however, requires a more comprehensive analysis of the rating laws. The statutory guideline and mandate with respect to the determination of proper rates are that rates shall be approved only if they are neither unreasonably high or excessive nor inadequate for the safeness and soundness of the insurer and they must not be unfairly discriminatory as between similar risks. N.J.S.A. 17:29A-4, 7, 10, 11 and 14. In applying those criteria, the Commissioner is specifically required to consider the following:

> the factors applied by insurers and rating organizations generally in determining the bases for rates; the financial condition of the insurer; the method of operation of such insurer; the loss experience of the insurer, past and prospective, including where pertinent, the conflagration and catastrophe hazards, if any, both within and without this State; to all factors reasonably related to the kind of insurance involved; to a reasonable profit for the insurer, and, in the case of participating insurers, to policyholders' dividends. . . . [N.J.S.A. 17:29A-11.]

In order to assure proper rate determinations, statistical information concerning the loss and expense experience of all insurers must be reported and filed with the Commissioner. N.J.S.A. 17:29A-5. Insurers are

prohibited from giving false or misleading information to a rating organization or to the Commissioner that would affect the proper determination of rates. N.J.S.A.17:29A-16. The public importance of determining proper rates and charging permiums only in accordance with an approved rating system is underscored by the fact that any violation of the act is a ground for the assessment of penalties of up to $500 for each violation. N.J.S.A. 17:29A-22 and 23. The statutory provisions requiring the filing of accurate loss and expense data by insurers and rate approval by the Commissioner based upon factors that vary among companies, such as financial condition, method of operation and loss experience, make the underlying purpose of the legislation clear. The factors to be considered in a rate determination for an independent filer or for a rating organization ordinarily should be based upon the particular loss and expense data of the company or companies that will use the rate ultimately approved. Thus, for example, a company cannot be a member of more than one rating organization, hoping to use whichever rating system would provide the higher rate, as approved. See N.J.S.A. 17:29A-2. And, upon the application of a member, the Commissioner must make a separate determination of whether to allow it to deviate from the rating system approved for its organization. N.J.S.A. 17:29A-10.

The Act does not provide any express guidance as to whether the Commissioner has the authority to make a separate determination bearing on the reasonableness of the rates of a particular member or subscriber to a rating organization. N.J.S.A. 17:29A-10 by its terms refers only to the deviation of a member company from the approved system of a rating organization made on its own application. N.J.S.A. 17:29A-7, however, permits the Commissioner to order an alteration of a previously approved rating system on his own initiative whenever he finds that it results in inadequate or excessive rates. In this case, it is our opinion that in view of the underlying statutory purpose, N.J.S.A. 17:29A-7 would apply even though the Allstate and ISO applications were for alterations of previously filed rating systems (i.e. rate increases) rather than for initial rating systems.

In *Insurance Company of North America v. Howell,* 80 N.J. Super. 236 (App. Div. 1963), the court held that a provision which stated that if the Commissioner failed to approve or disapprove a rating system within 90 days after it was filed, the system would be deemed approved by him, applies only to an original rate filing and not to filings for alterations of existing rating systems. The INA decision does not require, however, that once a rate system has been amended by an approved alteration filed pursuant to N.J.S.A. 17:29A-14, the Commissioner no longer has any power to consider whether the modified rating system produces appropriate rates for an insurer or a rating organization.[2] The insurance

2. Although the question was not decided, the court suggested in the INA case that the Commissioner, in the exercise of the broad powers conferred upon him, might inferentially at any time, direct a change in a previously approved alteration of a rating system in light of insurance experience, even though no express language to that effect appears in Section 14. *See Insurance Company of North America v. Howell, supra* at 251-52.

rating laws should not be interpreted to undermine the intended legislative purpose of insuring that rates are reasonable and adequate. Consequently, it is clear that an application for an increase or other alteration in a rating system does not extinguish the Commissioner's on-going power to determine that rates provided on behalf of an insurer are adequate for the safeness and soundness of the insurer and not unreasonable or excessive with respect to insureds. To construe the insurance rating laws in any other manner would be to reach an inconsistent result and undermine the salutary legislative purpose underlying the enactment of the insurance rating laws. *See State v. Bander,* 56 N.J. 196 (1970); *Marranca v. Harbo,* 41 N.J. 569 (1964).

In light of these underlying principles, it is our judgment that under N.J.S.A. 17:29A-7 the Commissioner has the authority to make a separate determination as to whether the ISO rating system as applied to the expense and loss experience of a particular insurer will produce rates that are not unreasonably high or excessive and are adequate for the safeness and soundness of the insurer. As to ISO members and subscribers, this authority should be exercised only in unusual circumstances where it is reasonably clear that a rating organization's rating system would not provde appropriate rates for an individual insurer consistent with the legislative scheme. On the other hand, it would not ordinarily be appropriate for non-rating organzation members or subscribers to use rating organization rates. This would be particularly true in the Allstate situation where the report and recommendations of a hearing officer who considered the evidence adduced to support the application concluded that, in light of its experience, Allstate was entitled to a percentage increase substantially lower than that which was separately approved for ISO. But even as to non-rating organization members or subscribers there may be individual circumstances in which an insurer's experience is so limited in nature that the rating organization system may be deemed to be appropriate. All of these determinations in individual cases are committed to the sound discretion of the Commissioner of Insurance in carrying out his regulatory responsibilities under the insurance laws.

You are therefore advised that whenever a company uses or proposes to adopt a rating system approved for a rating organization, the Commissioner of Insurance has the authority to make a determination as to whether the rating system applied to the insurer will provide rates that are not unreasonably high or excessive and are adequate for the safeness and soundness of the insurer consistent with the provisions of the insurance rating laws.[3]

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

3. It is suggested that the Department of Insurance should give consideration to the adoption of regulations or guidelines dealing with the circumstances under which an independent evaluation may be made to determine the appropriateness of a rating system approved for a rating organization to the insurer which uses or proposes to adopt such a rating system.

February 14, 1978

ANN KLEIN, *Commissioner*
New Jersey Department of Human Services
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO.2—1978

Dear Commissioner Klein:

You have requested advice as to the scope of State and county welfare agency responsibility respecting the investigation and prosecution of fraud committed by either employees or recipients of the Food Stamp Program. You are hereby advised that the State and counties are obligated to investigate apparent instances of recipient or employee fraud, make demand for the repayment of food stamp coupons issued as a result of fraud or misrepresentation, make an administrative determination as to whether the facts warrant referral of the matter to State or federal authorities for prosecution, and refer the matter to such authorities if appropriate.

The Food Stamp Program [7 U.S.C. §2011 *et seq.,* as amended by P.L. 95-113, 91 Stat. 958 (1977)]* was enacted by Congress in order to alleviate the condition of widespread hunger and malnutrition common among members of low-income households. Food stamps or coupons permit eligible recipients to purchase food at a considerable discount. The coupons themselves are financed by the federal government, while the costs of administering the program are shared by the State and federal governments. 7 U.S.C. §2025(a). The Secretary of Agriculture is charged by Congress with operation of the program on the national level, and in exercise of this function he possesses the delegated authority to promulgate regulations which guide the operation of State programs. 7 U.S.C. §2013(c).

The knowing use, transfer, acquisition, alteration or possession of food stamps, or the vouchers used by recipients to obtain them, in violation of the Food Stamp Act or regulations is a crime under federal law, 7 U.S.C. §2024(b), as is the redemption of food stamps with knowledge that they have been received, used, or transferred in violation of the Act or regulations, 7 U.S.C. §2024(c), provided that the food stamps or vouchers in question are of the value of $100 or more. See also 7 C.F.R. §270.4. Although prosecution under State law for offenses involving the Food Stamp Program was neither encouraged nor proscribed by former federal legislation, recent amendments to the Food Stamp Act clearly provide for a State enforcement role by authorizing the Secretary to fund 75% of the costs of State food stamp investigation and prosecutions. 7 U.S.C. §2025(a), as amended by Food Stamp Act of 1977, §16(a), 91 Stat. 976 (1977).

The Department of Agriculture's regulations specify that once a State food stamp agency determines that food stamps have been fraudulently obtained by recipients, the State shall make demands for the return of food

*All citations to 7 U.S.C. §2011 *et seq.* refer to the current version of this legislation as recently amended by the Food Stamp Act of 1977, P.L. 95-113, §1301 *et seq.,* 91 Stat. 958 (1977).

stamps issued due to such fraud. 7 C.F.R. §271.8(e). However, State responsibility does not terminate upon recovering fraudulently issued stamps, for:

> Demand and payment of any such amounts shall not relieve or discharge such household of any liability, either civil or criminal, for such additional amounts as may be due under any other applicable provisions of law. *Id.*

State as well as federal prosecutions are contemplated by 7 C.F.R. §270.4(d), which specifies that fraud, misrepresentation, or willful failure to report information in connection with food stamp applications is subject to criminal prosecution or civil liability under federal statutes "as well as to any legal sanctions as may be maintained under State law." *Id.*

This policy is further clarified in program instructions periodically issued by the Food and Nutrition Service of the U.S. Department of Agriculture. Thus, FNS(FS) Instruction 736-1 at page 8 (1972) states that:

> It is likely, in any case in which a household has fraudulently obtained coupons, that there have been violations of either State or Federal criminal laws.

In such cases, continues the instruction, it should be determined administratively whether the facts warrant referral of the matter to the appropriate prosecutorial authorities. In the event of such referral, administrative collection action should be withheld until criminal prosecution is either declined or completed, or until such action is approved by the prosecutors. Where, however, the evidence does not warrant referral for criminal prosecution, or where prosecutorial authorities decline to take action, the State agency is responsible to initiate collection action. *Id.*

In New Jersey, the county welfare agencies are responsible for direct administration of the Food Stamp Program and act as agents of the State in this capacity. N.J. Food Stamp Manual (FSM) §111, N.J.A.C. 10:87-1.1(b); *cf. Essex County Welfare Bd. v. Dept. of Inst. & Agencies,* 75 N.J. 232 (1978); *Essex County Welfare Bd. v. Dept. of Inst. & Agencies,* 139 N.J. Super. 47 (App. Div. 1976). Thus, all references to State agencies in the federal statutes and regulations apply to the county welfare agencies with equal force. The provisions of New Jersey's food stamp regulations track their federal counterparts, requiring that possible criminal violations involved in the over-issuance of food stamps be referred to State or federal law enforcement officials (FSM §691.1, N.J.A.C. 10:87-6.41), and that collection activities are to be pursued after completion of the prosecutorial process [FSM §691.2(c), N.J.A.C. 10:87-6.41(a)(2)(iii)].

It is thus apparent that recipients who illegally receive benefits under the Food Stamp Program are subject to both federal and State criminal sanctions. *E.g.* 7 U.S.C. §2024; N.J.S.A. 2A:111-2, -3. *See State v. Jeske,* 13 Wash. App. 118, 533 P.2d 859, 861 (Wash. Ct. App. 1975). An essential duty of State and county welfare agencies is to investigate the facts of all alleged abuses of the program in order to initiate prosecution or collection, or both.

The fact that State or county employees, or employees of vendors which contract with the State to issue food stamps to recipients, are engaged in federal food stamp activities does not in any way insulate them from possible prosecution for violations of State law. Such employees are subject to State prosecution for embezzlement (N.J.S.A 2A:102-1) and other offenses notwithstanding their participation in a federal program. Additionally, they are subject to federal criminal sanctions which punish the unauthorized issuance, use, transfer, acquisition, alteration, possession or presentation of such coupons. 7 U.S.C. §2024; 7 C.F.R. §270.4(b). The State and counties are implicity responsible to investigate the possibility of such offenses and report their findings to State, county or federal authorities, as appropriate, just as they would with offenses by non-food stamp employees.

In sum, prosecutions for abuse of the Food Stamp Program by recipients or employees may be pursued according to State and/or federal law. The State and county welfare agencies have the responsibility to investigate allegations of violations of law, refer such matters to the appropriate prosecutors, and take action to recoup improperly acquired food stamps.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: RICHARD M. HLUCHAN
Deputy Attorney General

April 18, 1978

ANN KLEIN, *Commissioner*
Department of Human Services
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1978

Dear Commissioner Klein:

You have asked for an opinion as to whether the Division of Medical Assistance and Health Services may validly promulgate regulations under the Pharmaceutical Assistance for the Aged (hereafter "P.A.A.") Program, excluding the coverage of prescribed drugs, insulin, insulin syringes or insulin needles for persons who are inpatients in nursing homes or hospitals. For the following reasons, you are advised that payments to pharmacies may not be denied for prescription drugs, insulin, insulin syringes or insulin needles of eligible persons solely on the basis of their being inpatients in nursing homes or hospitals.

The P.A.A. Program was enacted by Laws of 1975, c. 194, as a supplement to the New Jersey Medical Assistance and Health Services

(Medicaid) Act, N.J.S.A. 30:4D-1 *et seq.* As originally implemented, the P.A.A. Program provided for direct reimbursement to certain eligible persons for pharmaceutical costs. As amended by L. 1975, c. 312, effective February 19, 1976, single residents of the State age 65 and over whose annual income is less than $9,000 and any married residents age 65 and over whose combined income is less than $12,000 are eligible for P.A.A. except if the prescription drug costs of an otherwise eligible person are wholly covered by any other plan of assistance or insurance, N.J.S.A. 30:4D-21, 23. Although basic eligibility for P.A.A. was thus broadly defined, P.A.A. availability was narrowly limited by income-related deductible provisions located elsewhere in the statute.

The 1977 amendments, L. 1977, c. 268, effective January 1, 1978, address P.A.A. availability by removing all deductible provisions in the Act and substituting a $1.00 copayment requirement. "Thus all eligible senior citizens' drug costs, less a copayment of $1.00, would be paid by the State." Assembly Institutions, Health and Welfare Committee Statement on S. 1790, dated July 11, 1977. Pursuant to these amendments, regulations implementing the P.A.A. Program were substantially changed. N.J.A.C. 10:69A-4.3(c) was amended to provide:

> P.A.A. does not pay for prescribed drugs, insulin, insulin syringes or insulin needles for persons who are inpatients in nursing homes or hospitals.

Hospital or nursing home inpatients had not been excluded from participation in the Program under previous versions of the Act and its regulations.

In our review of this amended regulation, it is apparent that there is no authority under the Act, as amended, which would allow for the blanket exclusion of inpatients at nursing homes and hospitals as a class from participation in the program. The annual income restrictions and the requirement that other insurance be used to pay for prescription drugs prior to reimbursement by the program are the only legislatively authorized restrictions on eligibility. The eligibility requirements were not affected in any manner by the 1977 amendments. There is no apparent indication of a legislative intent to exclude any category of otherwise eligible senior citizens. The Committee Statement on S. 1790 indicates only that "this legislation would expand coverage to provide assistance to a larger number of elderly citizens . . . ." Therefore, it may be reasonably assumed that the legislature intended to continue as heretofore the coverage of all eligible persons including inpatients at hospitals, nursing homes and related facilities.

In addition, there is no apparent legislative purpose to delegate its prerogative to establish the conditions of eligibility for participation in the program. In this regard, the rule-making authority of the Commissioner of Human Services is found in N.J.S.A. 30:4D-24 which provides:

> The commissioner shall by regulation establish a system of payments or reimbursements and a system for determining eligibility, including provisions for submission of proof of actual and anticipated annual income, and evidence of complete or partial coverage of prescription drug costs by any other assistance or insurance plans.

This statute on its face merely authorizes the Commissioner to establish a system by which the eligibility of individual applicants may be determined under the legislatively prescribed general standards of eligibility. There is no implicit authority in our judgment to allow the Commissioner to set broad conditions of eligibility applicable to classes of senior citizens other than those set forth in the Act. It is therefore clear that a regulation which would exclude from the benefits provided by the Act senior citizens who are inpatients in nursing homes or hospitals would be in excess of the authority granted to the Commissioner in her administration of the P.A.A. Program.

It has been suggested that since the cost of inpatient care at nursing homes and hospitals is so great, income larger than prescribed in the statute may be presumed for any private patient. This is an impermissible assumption. It excludes not only persons who receive income but also persons who liquidate property or other resources to pay for nursing home or hospital care. In using "income" as the principal basis for participation in the program, the legislature apparently recognized the distinction between "income" and "resources" previously established by regulations implementing the Medicaid Program. Compare N.J.A.C. 10:94-4.28 with N.J.A.C. 10:94-4.2. Therefore, unless an otherwise eligible senior citizen's "income" from all sources, including current income produced by resources, exceeds the annual eligibility standards, he or she is eligible for participation in the program without regard to the value of his or her "resources." A determination of inpatient eligibility in the program should be made on a case by case basis and should not assume income in excess of eligibility requirements.*

For these reasons, you are advised that N.J.A.C. 10:69A-4.3(c) which excludes senior citizens who are inpatients in nursing homes or hospitals from the benefits provided by the P.A.A. Program is inconsistent with the governing statutory provisions concerning eligibility and is therefore invalid.

Very truly yours,
JOHN J. DEGNAN
Attorney General

* The Commissioner does have the power to define the term "income" by regulation. This has been done at N.J.A.C. 10:69A-2.1, which provides in part that "[i]ncome received or anticipated shall include all income received from whatever source derived . . . ." Under this regulation, treatment of gifts or contributions from family members as "income" is permissible, since such gifts or contributions are not "resources" held by the P.A.A. eligible person but are currently made available in a given year. Gifts of over $200 have consistently been considered "income" for the purpose of determining Medicaid eligibility, N.J.A.C. 10:4D-4.28, N.J.A.C. 10:94-4.32(a)(8), and a similar interpretation of "gifts" for P.A.A. purposes comports with the supplementary nature of the P.A.A. Program.

April 25, 1978

RUSSELL H. MULLEN, *Acting Commissioner*
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

FORMAL OPINION NO. 4—1978

Dear Commissioner Mullen:

You have asked whether the New Jersey Department of Transportation must receive site plan approval from municipalities for the location of auto transformer substations being constructed as part of the reelectrification of lines of the former Erie Lackawanna Railway Company under a project authorized by the New Jersey Transportation Bond Act of 1968, L. 1968, c. 126, as supplemented (hereinafter "Bond Act"). The project calls for the reelectrification of railroad lines through 37 municipalities and requires, as an integral part, the construction of 16 electrical substations of various types. With few exceptions, the 16 substations are each to be located in different municipalities. Location generally is mandated by considerations such as the source and availability of utility power, the length of track a station must serve, the electrical load to be handled, the proper distribution of power, the proximity to other substations and budget limitations. All substations are to be constructed on property acquired by the State for that purpose.

The New Jersey Supreme Court has addressed the issue of State immunity from local land use regulation on several occasions, concluding that ". . . state agencies are generally immune from the zoning ordinance provisions of a municipality." *Berger v. State,* 71 N.J. 206, 218 (1976); *Rutgers v. Piluso,* 60 N.J. 142, 153 (1972). *See also Town of Bloomfield v. N.J. Highway Authority,* 18 N.J. 237 (1955). The decisions hold that the existence of immunity in a particular case is to be determined from legislative intent. They set forth the key criteria to be examined in making that determination: 1.) The nature and scope of the instrumentality seeking immunity; 2.) the kind of function or land use involved; 3.) the extent of the public interest to be served thereby; 4.) the effect local land use regulation would have upon the enterprise concerned; and 5.) the impact upon legitimate local interests. 71 N.J. at 218. When viewed in light of the above criteria, the legislative history and factual circumstances surrounding this project make it clear that the Department of Transportation is immune from local land use regulation.

The Department of Transportation was established by the Legislature as a principal department in the executive branch of state government with broad powers to develop and promote programs for efficient and economical transportation services on a statewide basis with special emphasis to be given to the preservation and improvement of commuter railroads. N.J.S.A. 27:1A-1 *et seq.* In furtherance of these objectives, the Legislature enacted, and the people approved at a general election, the Bond Act "for the purpose of capital expenditure for the cost of providing an improved public transportation system for the State." The Bond Act specifically reserved $200,000,000 of the proceeds from the sale of bonds for the

improvement of mass transportation facilities and appropriated all proceeds from the sale of bonds to the Department of Transportation for the purposes set forth in the Act. "Improvement of mass transportation facilities" was defined to include "the development, acquisition by purchase, lease or otherwise, the construction, reconstruction, improvement, rebuilding, relocation, renewal, establishment or rehabilitation of mass transportation facilities . . ." as well as "the acquisition of all property rights-of-way, easements and interests therein as shall be necessary for the improvement of mass transportation facilities." The Bond Act further declared that it "is in the public interest that these essential transportation facilities and equipment be provided in the shortest possible time, thereby saving on the anticipated increased construction costs as well as providing a safer, more adequate transportation system." By L. 1968, c. 424, the Legislature appropriated a portion of the bond sale proceeds for various mass transportation projects, including the reelectrification of the Erie Lackawanna and authorized and directed the Commissioner of Transportation "to take such steps as shall be necessary to implement and carry out the program authorized by the New Jersey Transportation Bond Act of 1968. . . ."

The foregoing leaves little doubt that the Department of Transportation, in implementing the reelectrification project is, in the words of the Supreme Court in *Rutgers,* "an instrumentality of the State performing an essential governmental function for the benefit of all the people of the State. . . ." 60 N.J. at 153. As such, the Legislature would not intend that it be subject to restriction or control by local land use regulation. "Indeed" the Court continued, "such will generally be true in the case of all state functions and agencies." 60 N.J. at 153. Moreover, where, as in this case, municipal land use regulation would temporarily delay, and could permanently thwart, a state-wide project of general public benefit which the Legislature has directed be completed in the shortest possible time, the legislative intent to immunize the State agency responsible for the project is apparent. As stated by the Court in *N.J. Turnpike Authority v. Sisselman, et al.,* 106 N.J. Super. 358, 366 (App. Div. 1969) *cert. den.* 54 N.J. 565 (1969),* "To hold otherwise would delay, disrupt, fragmentize and possibly defeat completion of this necessary public project, an extensive project passing through several municipalities." After citing several cases in support of the proposition that the Turnpike Authority and similar agencies are immune from local zoning and planning regulations, the Court explained, "The rationale of these cases is that legislatively created agencies, authorized by the superior governmental authority of the State, may not be subjected to rules and regulations of local governing boards and agencies, in the absence of clear language subjecting the state-created agencies

*The case held that where the Legislature expressly authorized the building of a highway spur by the Turnpike Authority, that agency was not required to refer the project to the local planning board for review and recommendation under N.J.S.A. 40:55-1.3, the source of N.J.S.A. 40:55D-31 in the present Municipal Land Use Law. It is important to note that neither N.J.S.A. 40:55D-31 nor any other provision of the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*, specifically subjects the Department of Transportation to local jurisdiction.

to the jurisdiction of local boards."

Finally, there appears to be no local interest which, when compared to the overwhelming evidence in support of immunity, would lead to the conclusion that the Legislature intended the Department of Transportation to be subject to local land use regulation in connection with this project. It must be emphasized, however, that legitimate local interests may not be arbitrarily disregarded. "And at the very least, even if the proposed action of the immune governmental instrumentality does not reach the unreasonable stage for any sufficient reason, the instrumentality ought to consult with the local authorities and sympathetically listen and give every consideration to local objections, problems and suggestions in order to minimize the conflict as much as possible." *Rutgers v. Piluso, supra,* 60 N.J. at 154. This, in fact, is being done by the Department of Transportation. A series of public meetings have been held to explain the project and its impact to affected communities. Technical meetings with municipal engineers and administrators have been held to discuss the planned location of substations and possible alternatives. Furthermore, an environmental impact assessment is being prepared which will address itself to potential noise, aesthetic and land use impacts of the project and will include a discussion of suggested alternative locations for substations. The assessment will be distributed to all affected municipalities for comment and a public hearing will follow. Only after the above procedure is complete will a final decision be made.

In view of the above, you are advised that the Department of Transportation, in proceeding with the Erie Lackawanna reelectrification project is immune from local land use regulations.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: KENNETH S. LEVY
Deputy Attorney General

May 16, 1978

JOHN CLEARY, *Director*
Office of Cable Television
Board of Public Utilities
101 Commerce Street
Newark, New Jersey 07102

FORMAL OPINION NO. 5—1978

Dear Director Cleary:

You have requested an opinion as to whether ownership of a cable television system by a municipality is permissible under the Cable Television Act. For the following reasons, you are advised that a municipality may own and operate a cable television system.

The Cable Television Act was enacted in 1972 to provide regulation of cable television companies in the public interest under the supervision of an Office of Cable Television [now in the Board of Public Utilities (Board) in the Department of Energy]. The Act defines a cable television company as any "person" owning, controlling, operating or managing a cable television system. A "person" in turn is defined to include specifically "any agency or instrumentality of the state or any of its political subdivisions." N.J.S.A. 48:5A-3(g). The legislative intent to authorize municipal ownership of a cable TV system is further evidenced by N.J.S.A. 48:5A-40 which provides:

> [N]othing herein shall prevent the sale, lease or other disposition by any CATV company of any of its property in the ordinary course of business, nor require the approval of the Board to any grant, conveyance or release of any property or interest therein heretofore made or hereafter to be made by any CATV company to the United States, the State or any county or *municipality* or any agency, authority or subdivision thereof *for public use.* [Emphasis supplied.]

In addition, Board approval is not necessary to validate the title of a municipality to any lands or interest to be condemned under this statute for public use. It is thus clear from these provisions that the legislature has determined that a municipality is a "person" who can own and operate a cable television system for public use.

This legislative intent is additionally reinforced by regulations adopted by the Office of Cable Television. These regulations expressly state that municipalities and other local political sub-divisions are subject to the jurisdiction and regulatory authority of the Office of Cable Television and by definition they are "persons" who can own and operate a cable television system for public use.[1] It is well established that the interpretation of an administrative agency is entitled to great weight in the construction of a statute. *In re Application of Saddle River,* 71 N.J. 14, 24 (1976). These regulations adopted with apparent tacit legislative acquiescence are, therefore, an additional persuasive indication of the presumed legislative purpose to include a municipality within those entities authorized to own and operate a cable TV system.

The general regulatory scheme established by the Act does not present any impediment to a municipality franchising and operating its own cable television system. Although the initial consent is issued by the municipal

1. N.J.A.C. 14:18-1.1(c) provides as follows:

These regulations apply to:
1. Cable television companies which own, control, operate or manage a cable television system;
2. Municipalities, cities and counties where applicable.

N.J.A.C. 14:18-1.2 defines a "Cable Television Company" as "any person owning, controlling, operating or managing a cable television system." A "person" is defined to include: "any agency or instrumentality of the State of New Jersey or any of its political subdivisions."

governing body in which the facilities are to be placed, N.J.S.A. 48:5A-22, the pervasive regulation of rates, charges, services and facilities rests exclusively at the state level with the Office of Cable Television. N.J.S.A. 48:5A-16 to 21. Ample control and checks on the issuance of consents by a municipality to itself are apparent throughout the legislative scheme. A municipal consent must conform "in form and substance to all requirements of this act and all rules, regulations and orders duly promulgated by the director." N.J.S.A. 48:5A-25. The information required concerning an applicant's financial responsibility, technical competence and general fitness are regulated by statute. N.J.S.A. 48:5A-27, 28.

The statute provides procedures for the review of municipal consents and for the resolution by the Office of Cable Television of disputes between CATV companies, municipalities or citizens. N.J.S.A. 48:5A-39; 48:5A-10(b)(d)(e)(f) and (g). A municipality may designate the Office of Cable Television as the "complaint office" to hear complaints of local subscribers. N.J.S.A. 48:5A-26(b). Moreover, and most important, the Board reviews the application and issues the certificate for the construction, extension or operation of the system. N.J.S.A. 48:5A-15 through 21. Any person claiming to be aggrieved on the issuance of a certificate applied for, can demand a hearing, and such complaint, will be heard, if the Board deems that there is reasonable ground for the complaint. N.J.S.A. 48:5A-16(b). There is consequently no implicit statutory prohibition against, municipal ownership and operation of a cable television system.[2]

You are thus advised that municipal ownership of a cable television system is authorized by the Cable Television Act. A municipality may by ordinance franchise such operation, subject to the regulatory approval and continuing jurisdiction of the Office of Cable Television.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BLOSSOM A. PERETZ
Deputy Attorney General

2. If it deems it appropriate, the Board may, through the adoption of rules and regulations, set up separate procedures for municipal CATV approval. N.J.S.A. 48:5A-2, 6, 9, 10; *In re Cable Television,* 132 N.J. Super. 45 (App. Div. 1974).

May 17, 1978

TO SECRETARIES OF ALL PROFESSIONAL BOARDS

FORMAL OPINION NO. 6—1978

A question has arisen as to the number of affirmative votes needed to authorize action to be taken by the several professional boards. It is our opinion that a majority of the existing members of the board is necessary to take action and conduct the business of the professional board.*

This inquiry requires an analysis of N.J.S.A. 45:1-2.2(d) which provides as follows:

> d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof *and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.*

The italicized language was added by recent amendment. Laws of 1977, c. 285.

There is no available legislative history to assist in the interpretation of this statutory section. It is therefore necessary to discern the probable legislative intent from the language of the statute together with the import of its recent amendment. Clearly, prior to its amendment, the statute reflected the common law rule of "quorum." A majority of all the members of a governing body constituted a quorum and in the event of vacancy, a quorum consisted of a majority of the remaining members. *Ross v. Miller,* 115 N.J.L. 61, 63 (S.Ct. 1935). It was likewise the rule at common law that a majority of those assembled in a quorum could take affirmative action and conduct the business of the governmental body. *Ross. v. Miller, supra.*

In the interpretation of a statute, its language should not be regarded to be merely repetitive nor superfluous. *Foy v. Dayko,* 82 N.J. Super. 8,

* Professional board means The New Jersey State Board of Certified Public Accountants, the New Jersey State Board of Architects, the State Board of Barber Examiners, the Board of Beauty Culture Control, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage Counselor Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Opthalmic Dispensers and Opthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, and the X-ray Technician Board of Examiners in the Division of Consumer Affairs; and the New Jersey Real Estate Commission in the Department of Insurance.

13 (App. Div. 1964). It cannot be assumed that the legislature by its amendment simply restated the common law rule, since the amendment specifies a need for an affirmative vote of a majority of the members of the entire board or commission. There are no cases in New Jersey which interpret the meaning of the phrase "the entire board or commission." Analogous cases construing comparable language such as "a majority of all the members" or "a majority of the whole number of councilmen" have held that language to mean a majority of the authorized membership provided by law. *Prezlak v. Padrone,* 67 N.J. Super. 95, 103 (Law Div. 1961). *Dombal v. Garfield,* 129 N.J.L. 555 (S.Ct. 1943); *Ross v. Miller, supra* at 65.

The holdings of these cases which require a majority of "authorized membership" are inapposite to the present situation. A review of the amendatory language clearly demonstrates a legislative purpose to modify the common law rule solely with respect to the number of persons needed to take affirmative action by a professional board. There is no indication of a legislative intent to alter or modify in any manner the number of persons needed to constitute a duly convened quorum; as heretofore a majority of the "existing" membership of the board. A statute should be construed in a manner to give sense and meaning to all of its parts. *Gabin v. Skyline Cabana Club,* 54 N.J. 550, 555 (1969). Also, where a statute derogates from the common law, the statute must be strictly construed. *Boileau v. DeCecco,* 125 N.J. Super. 263, 268 (App. Div. 1973). It may therefore be reasonably assumed to be the legislative intent to continue to require a majority of the existing membership of a professional board to constitute a quorum, but that no action be taken except upon the affirmative vote of a majority of the existing members of the board. A majority of a quorum would not be sufficient unless the same is equivalent to or more than a majority of the existing appointed membership of the professional board.

For these reasons, you are advised that pursuant to N.J.S.A. 45:1-2.2(d) a majority of the membership of a professional board shall constitute a quorum, but that no affirmative action be taken in the conduct of the business of a board unless upon the affirmative vote of the majority of the present appointed members of the board or commission.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

May 18, 1978

JOANNE E. FINLEY, M.D., *Commissioner*
Department of Health
John Fitch Plaza
Trenton, New Jersey

FORMAL OPINION NO. 7—1978

Dear Dr. Finley:

You have asked whether the Public Health Council's adoption of c. 15 of the State Sanitary Code (10 N.J.R. 189) on April 10, 1978 is procedurally defective because its text differs from the text of the proposed rule published on October 6, 1977 (9 N.J.R. 466) and, if so, what corrective action the Council may take. In addition, you have asked by what procedure the Council can postpone the effective date of these regulations should it desire to do so.

On September 12, 1977 the Public Health Council adopted certain proposed rules regulating smoking in public places. The full text of these proposed rules was published in the New Jersey Register on October 6, 1977 and after appropriate notice, a public hearing was held on October 20, 1977. On April 10, 1978 the Public Health Council adopted its rules concerning smoking in public places, but with certain substantive changes with respect to (1) those persons and entities subject to the regulations, (2) the appropriate designation of smoking permitted areas, (3) the responsibility of persons in charge of a public establishment, and (4) a new provision for a waiver of the regulation in individual cases. N.J.A.C. 8:15-1.1 *et seq.* The question therefore posed is whether it was incumbent on the Council to provide new notice to the public of the regulation's intended changes prior to its final adoption. For the following reasons, it is our opinion that it was, and the Council should now readvertise and schedule a public hearing to give interested persons a new opportunity to comment and/or submit data and views with respect to the adopted regulations.

The rule-making authority of the Public Health Council is governed by the provisions of its enabling legislation and by the Administrative Procedure Act. N.J.S.A. 26:1A-1 *et seq.;* N.J.S.A. 52:14B-1 *et seq.* The Council is empowered to adopt the State Sanitary Code as a body of regulations having the force and effect of law "to preserve and improve the public health." N.J.S.A. 26:1A-7. Although neither statute expressly addresses the question of whether the Council may validly adopt a regulation which differs to some degree from the one initially proposed, it is the implicit legislative purpose that the public have an opportunity to be heard on significant changes made in the version adopted by the administrative agency.

N.J.S.A. 26:1A-7 specifically requires the Council to hold a public hearing prior to the final adoption of any sanitary regulation or amendment thereto or repealer thereof. The Council is also directed to publish at least 15 days prior to such hearing a notice of such hearing together with a brief summary of the proposed regulation and a statement as to where the public may obtain copies of the proposed text. N.J.S.A.

52:14B-4(a) in the Administrative Procedure Act provides in pertinent part:

> Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided the agency shall:
>
> 1. Give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register;
>
> 2. Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule.

With particular reference to the present inquiry, there is an express legislative direction that "all interested persons" shall be given notice and an opporunity to comment on either the terms or substance of intended regulatory action. An agency's responsibility in this regard implements the underlying salutary legislative intent to encourage public input in the rule-making activities of state agencies. This is, furthermore, consistent with the general theory of administrative rule-making that the public interest is served by the promulgation of regulations in advance governing the conduct of affected persons to insure predictable governmental decision making. *Boller Beverages, Inc. v. Davis,* 38 N.J. 138, 151, 152 (1962). The legislative purposes are not fully served when a rule adopted by an administrative agency differs in significant respects from a version proposed and submitted to the public for its consideration.

As a result, the Division of Administrative Procedure in the Department of State, the agency charged with the responsibility of administering the Administrative Procedure Act, has promulgated N.J.A.C. 15:15-4.7 which provides:

> (c.) If . . . the agency shall determine to revise the text of a rule previously published, *which revision has the effect of enlarging its original purpose or of increasing the burden upon any person, the adopting agency shall* request publication of any Notice of Intention to adopt or change a rule and shall accord to the public further opportunity to be heard.
>
> (d.) *If, however, the substantive change effected by such revisions shall not have the effect as described in this Section, it shall not be republished* pursuant to this Subchapter, but the agency may proceed to adopt the rule as modified. [Emphasis supplied.]

As adopted, c. 15 of the State Sanitary Code differs in several substantial respects from the text of the original proposal. Specifically, the adopted

regulation contains a number of definitions and exemptions and a number of conditions and/or requirements to separate smokers from nonsmokers, as well as an enforcement provision, that were not present in the proposed version. Although the prohibition of "smoking in certain public places" remains the general objective of the Council, the revisions would increase the "burden" on a number of potential persons or public places. More specifically, the significant revisions in order of their appearance in the adopted text are as follows:

> (1) N.J.A.C. 8:15-1.2(a) precludes the lawful designation of a smoking permitted area unless one of four alternative conditions exists "to minimize the movement of smoke into adjacent 'no smoking' areas:
>
> 1. There is a continuous physical barrier, such as a wall, partition or furnishing of at least 4½ feet in height to separate the 'smoking permitted' or 'no smoking' areas. The barrier may contain doors for exit and entry.
>
> 2. There is a space of at least four feet in width to separate the said areas. This space may be either an unoccupied area or a section of seating area acting as a buffer zone and in which smoking is not permitted.
>
> 3. The ventilation system in the room containing both 'smoking permitted' and 'no smoking' areas has total air circulation (recirculated air plus outside air) of not less than six air changes per hour.
>
> 4. The concentration of carbon monoxide in the 'no smoking' area shall at no time exceed the concentration of carbon monoxide in outside air within 12 feet of the building by more than nine parts per million.

The original proposal did not restrict the nature of the area which the person in charge could designate for smoking. It merely required the designation of a special isolated area where smoking would be permitted. The adopted version of the regulation now specifies that prior to the designation of a smoking area, at least one of four alternative conditions must exist to minimize the movement of smoke into the adjacent nonsmoking area. This section, therefore, increases the potential burden imposed on both the individual who desires to smoke in public and the "person actually in charge" of a public place in which smoking is regulated.

(2) N.J.A.C. 8:15-1.3(a) makes the person in charge of the public place involved "responsible for implementation of and compliance with this regulation." The original proposal did not. In view of the penalty provision which attaches to any violation of the Sanitary Code (N.J.S.A. 26:1A-10), the inclusion of such an enforcement provision is a significant increase in the original burden.

(3) N.J.A.C. 8:15-1.3(c) prohibits the designation of a smoking permitted area larger than 75% of "the total area

used by the public" in any public place and requires that the "no smoking" area be "no less attractive or convenient" than the "smoking permitted" area. The original proposal only established a maximum dimension for smoking areas in restaurants or "eating places." The inclusion of all other public places is a significant increase in scope.

It is our opinion that these revisions have the effect of substantially increasing the burden of compliance upon regulated persons. Consistent with the underlying legislative purpose to provide full and informed public participation in the rule-making activities of state agencies and to allow "all interested persons" with an opportunity to be heard, it is our judgment that another public hearing should have been held on c. 15 prior to its final adoption. Inasmuch as the regulation has not yet become effective, the Council may extend its effective date of July 1, 1978 by filing an order with the Division of Administrative Procedure amending its order of adoption filed on April 18, 1978.[1] This will provide the Council with an additional period of time to again provide the public with adequate notice of its intended action and to hold another public hearing with respect thereto. In that regard and in view of the public interest generated by the adoption of c. 15, it is suggested that the public hearing and the opportunity of the public to comment in writing not be limited to the above discussed revisions but be open to comment on all the smoking regulations in their entirety.

Very truly yours,
JOHN J. DEGNAN
Attorney General

1. An order adopting these rules was filed by the Public Health Council with the Division of Administrative Procedure on April 18, 1978 to become effective on July 1, 1978. In view of our conclusion that the smoking rules of the Public Health Council are procedurally defective, they may not be implemented as of their present effective date of July 1, 1978. Accordingly, without passing on the question of whether or not a change in the effective date of a valid rule is by itself a substantive amendment under the provisions of the Administrative Procedure Act, the Public Health Council, under these unique circumstances, can amend its filed order of adoption to postpone the effective date and thereby allow additional time for it to submit a new proposal in a procedurally correct manner.

May 26, 1978

DONALD T. GRAHAM, *Director*
Division of Marine Services
Department of Environmental Protection
Labor and Industry Building
Trenton, New Jersey 08625

FORMAL OPINION NO. 8—1978

Dear Director Graham:

You have asked whether Laws of 1975, c. 354, N.J.S.A. 12:3-37.1,[1] changes the requirement that the conveyance of an interest in State tidelands must be supported by adequate consideration in the amount of the fair market value of the interest being conveyed. In particular, you wish to know whether the New Jersey Department of Environmental Protection[2] may grant a perpetual lease of such lands to a municipality for no or nominal consideration under the above statute. For the reasons set forth herein you are advised that both questions must be answered in the negative.

Article VIII, §4, par. 2 of the Constitution of 1947[3] establishes a permanent school fund for the equal benefit of all the people of this State. In so doing, the Constitution provides a mechanism whereby the legislature "may" appropriate "money, stock and other property" to that fund. However, the Constitution also establishes that, once appropriated, such "money, stock and other property" is irrevocably dedicated to the school fund. The language of Article VIII is unequivocal; the fund for the support of free public schools is to be "perpetual" and may not be violated "for any other purpose, under any pretense whatever."

The dedication of State-owned lands "now or formerly lying under water" to the permanent school fund by the State legislature (N.J.S.A. 18A:56-5)[4] fulfills the mandate of Article VIII. Thus, the constitutional provision, in conjunction with the legislative enactment, "identifies the fund therein referred to" and operates to protect the fund, both capital

1. "The State is authorized to lease or otherwise permit the municipal use of riparian lands owned by the State and situate within or contiguous to said municipality, when said lease or use is approved by the Department of Environmental Protection, without consideration or at nominal consideration, and to be maintained and used exclusively for park and recreational purposes. Said lease or use agreement shall contain a limitation that if the riparian lands are not maintained and used in accordance with the provisions of this act, such lease or use agreement shall be of no further force and effect."

2. The Natural Resource Council is presently authorized, subject to the approval of the Governor and the Commissioner of the Department of Environmental Protection, to convey State owned riparian lands. Conveyances are signed by the Attorney General and the Secretary of State as attesting witnesses and the Secretary of State affixes the Great Seal to the document. N.J.S.A. 12:3-7; 12:3-10; 13:1B-13; 13:1D-3(b).

3. Substantially a restatement of Article IV, §7, par. 6 of the Constitution of 1844.

4. Initially L. 1894, c. 71, and L. 1903, c. 1, §168, codified as R.S. 18:10-5.

and income derived therefrom, "against trespass by the legislature." *Everson v. Board of Education,* 133 N.J.L. 350, 352, 353 (E. & A. 1945), *aff'd* 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1946); *see State v. Rutherford,* 98 N.J.L. 465, 466, 467 (E. & A. 1923). Together, Article VIII and N.J.S.A. 18A:56-5 prevent the removal of riparian lands from the school fund and impose limits on the use of such lands in order that the fund may not be impaired.

The earliest cases dealing with riparian land questions confirm the inviolability of the school fund. Thus, the restrictions of the Constitution were held to prevent the grant or conveyance of tide flowed lands for less than adequate consideration, even to a municipality for a public purpose. *Henderson v. Atlantic City,* 64 N.J. Eq. 583 (Chan. 1903);[5] *In re Camden,* 1 N.J. Misc. 623 (Sup. Ct. 1923). *Seaside Realty Co. v. Atlantic City,* 74 N.J.L. 178 (Sup. Ct. 1906), *aff'd* 76 N.J.L. 819 (E. & A. 1908), underscored this position by validating L. 1903, c. 387, which required the payment of consideration as then fixed by law for tidelands purchased by a municipality for recreational purposes. By declaring that "the schedule of the rates fixed for all purchasers" was to be applied in this situation, the Court insured that proper compensation was received by the State. 74 N.J.L. at 181. It is clear then, from the early cases, that adequate consideration must be received for land held by, or as a source for, the school fund. *Cf. River Development Corp. v. Liberty Corp.,* 51 N.J. Super. 447 (App. Div. 1958), *aff'd per curiam* 29 N.J. 239 (1959).

Later cases have not changed the basic approach of these early decisions. *Garrett v. State,* 118 N.J. Super. 594, 599 (Ch. Div. 1972), reiterates the *Henderson* proposition that "a gift of (State tidelands), even for public purpose is, unconstitutional." Other cases have affirmed the State's "discretion when and how to transmute this property into money and to make all reasonable regulations for the use of the property until it (is) sold." *Henderson v. Atlantic City, supra,* 64 N.J. Eq. at 587. *See LeCompte v. State,* 65 N.J. 447 (1974) (the State has broad powers in setting the compensation to be paid for any grant of tidal lands); *Atlantic City Electric Co. v. Bardin,* 145 N.J. Super. 438 (App. Div. 1976) (the State may grant a revocable license to lay submarine cable beneath tideland waters and determine the consideration thereof); *LeCompte v. State,* 128 N.J. Super. 552 (App. Div. 1974), *certif. den.* 66 N.J. 321 (1974) (the Natural Resource Council, with the approval of the Governor and the Commissioner, has

5. Dictum in *Henderson v. Atlantic City* suggests that a "privilege could be granted to a municipality to use (State owned tidelands) as a park until such times as the state thought it to the benefit of the school fund to transmute the land into money by sale or lease." 64 N.J. Eq. at 587. N.J.S.A. 12:3-36 permits the use of such lands by a municipality for park and other public purposes "for a nominal consideration" until the State decides to grant a fee in this property to such municipality "or to other grantees for . . . adequate compensation . . . ." *Formal Opinion-1960,* No. 18, which addresses questions raised by N.J.S.A. 12:3-36, interprets "adequate" to mean "constitutionally sufficient" but cautions that this statute may not be used to "indirectly" impair the school fund. *Id.* at 40. Should an "irrevocable conveyance for full consideration at a later date" be in any manner prevented or substantially impeded, then "a lease or permit revocable in law would be(come) perpetual in fact" and, therefore, unconstitutional. *Id.* at 40.

complete discretion as to whether, when and at what price it will issue a grant of riparian lands); *cf. O'Neill v. State Highway Dept.,* 50 N.J. 307 (1967) (the State's interest in riparian lands cannot be lost by adverse possession or prescription, nor can the State be estopped from asserting title to such lands by delay or inaction). *See also Meadowlands Regional Redevelopment Agency v. State,* 112 N.J. Super. 89 (Ch. Div. 1970), *aff'd per curiam* 63 N.J. 35 (1973), *appeal dismissed* 414 U.S. 991, 94 S. Ct. 343, 38 L. Ed. 2d 230 (1973) (expenditures for land reclamation may be deducted from the proceeds paid over to the school fund by the Hackensack Meadowlands Development Commission).

Also, the courts in recent cases have affirmed the well settled proposition that in addition to the interests of the school fund, an essential purpose of the State's ownership in tidelands extends as well to its use for the recreational needs of the citizens of the State in furtherance of the public trust. *Borough of Neptune City v. Borough of Avon-by-the-Sea.* 61 N.J. 296, 309, 310 (1972) and cases cited therein. It is therefore necessary that the constitutional obligation to preserve the assets of the school fund be read together and consistent with the furtherance of the public trust in these tide flowed lands.

Chapter 354 of the Laws of 1975, N.J.S.A. 12:3-37.1, authorizes the State "to lease or otherwise permit the municipal use of riparian lands owned by the State . . . without consideration or at a nominal consideration . . . exclusively for park and recreational purposes." A statute should be interpreted in a manner to render it constitutional. *State v. Profaci,* 56 N.J. 346, 350 (1970). Furthermore, the legislature is deemed to be thoroughly conversant with its own legislation and its judicial construction. *Brewer v. Porch,* 53 N.J. 167, 174 (1969). Thus, the legislature presumably was aware of the line of cases which has consistently held the school fund to be inviolate. It also undoubtedly acted in recognition of the public trust doctrine as well as the constitutional limitations imposed by the school fund. Therefore, it must be assumed to have been the implicit purpose in the enactment of this statute to authorize the grant of riparian lands consistent with these considerations. To grant perpetual leases and irrevocable licenses to municipalities for no or nominal consideration would be an improper exercise of authority by the Natural Resource Council. On the other hand, the use of State tidelands for parks and recreational uses by municipalities in furtherance of the public trust doctrine may be effectuated by the grant of revocable leases or licenses consistent with the interests of the school fund.

In conclusion, therefore, it is our opinion that the Natural Resource Council may not, pursuant to Laws of 1975, c. 354, N.J.S.A. 12:3-37.1, grant a perpetual lease of State tidelands to a municipality for park and recreational purposes at no or nominal consideration. Such a conveyance must be supported by adequate consideration in the amount of the fair market value of the interest being conveyed.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DEBORAH T. PORITZ
Deputy Attorney General

June 23, 1978

JOHN P. CLEARY, *Director*
Office of Cable Television
80 Mulberry Street
Newark, New Jersey 07102

FORMAL OPINION NO. 9—1978

Dear Director Cleary:

You have requested our opinion whether a cable television company may transmit a game which it characterizes as "bingo" without violating state constitutional and statutory provisions regulating gambling. In our judgment the game in question, although called "bingo," is not bingo as constitutionally and statutorily defined. Further, it constitutes "gambling" only within the narrow aspect of sponsorship by service stations. Therefore, in all other respects the game may be lawfully presented.[1]

The Constitution of 1947 declares the strong public policy against gambling. Except for particular forms of gambling specifically mentioned, the Legislature is prohibited from authorizing any kind of gambling:

> unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election. . . . [*N.J. Const.* (1947), Art. IV, §7, ¶2.]

Submission to and authorization by the people are not required with respect to the forms of gambling expressly mentioned in this constitutional section, including "bingo" in subsection A:

> It shall be lawful for bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire companies and first-aid or rescue squads to conduct, under such restrictions and control as shall from time to time be prescribed by the Legislature by law, games of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes, in the specific kind of game of chance sometimes known as bingo or lotto, played with cards bearing numbers or other designations, 5 or more in one line, the holder covering numbers as objects, similarly numbered, are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers of such a card, when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, religious or public-spirited uses, in any municipality, in which a majority of the qualified voters, voting thereon, at a general or special election as the submission thereof shall be prescribed by the Legislature by law, shall authorize the conduct of such games of chance therein.

1. The format is that of "bingo" in all respects except that of consideration paid by the participants. Each game is to last one hour and will feature three prize categories. The viewer achieving diagonal, diamond, up, across or down bingo and who is the first to contact the studio by telephone will be awarded free home box office service for one month. The game will then resume under the same rules, with prizes worth up to $100 being awarded to those viewers achieving X or T bingo and blackout bingo (the entire card being filled). The numbers and letters are pulled at random and by chance from a machine in the studio, with the numbers and letters displayed on a tote board shown to the home audience. Presentation of the game is bottomed upon a contract signed by the cable television company and various merchants whose products are given as prizes and whose names are prominently mentioned. Each of the approximately 35 merchants pays $260 for a 13-week sponsorship period; in return, the cable television company provides, in addition to mention of the sponsor's name, posters and streamers for store windows and bingo cards to be distributed to viewers. The cards are given without charge and without condition of purchase, but a viewer may obtain a card only by visiting one of the participating stores.

The question presented is whether the sort of activity conducted by the cable television company is encompassed by these constitutional provisions. The Supreme Court of New Jersey in *Martell v. Lane,* 22 N.J. 110, 118 (1956), adopted the dictionary definitions by defining "to gamble" as "[t]o stake money or any other thing of value upon an uncertain event; to hazard; wager" and "gambling" as "the act of playing or gaming for stakes." In the following paragraph of *Martell* the court mentioned the constitution prohibition upon legislative sanction of gambling unless authorized by the electorate, thereby indicating that these were the constitutional definitions. In an earlier case, moreover, the court emphasized the element played by risk in gambling activity by defining gambling as "the act of risking or staking anything on an uncertain event." *State v. Western Union Telegraph Co.,* 12 N.J. 468, 490 (1953). The lower courts have held equivalently by stating that "the three components of a gaming episode are price, chance and prize." *State v. Ricciardi,* 32 N.J. Super. 204, 207 (Law Div. 1954), *aff'd* 18 N.J. 441 (1955); *O'Brien v. Scott,* 20 N.J. Super. 132, 137 (Ch.Div. 1952). *See also Formal Opinion No. 17-1961,* dated August 1, 1961.

To be sure, some New Jersey cases have indicated a broader definition of "consideration," but these decisions either dealt with statutory police power enactments more rigorous than the constitutional requirement or offered as legal principle statements apparently at variance with the more modern decisions. In *Hunter v. Teaneck Township,* 128 N.J.L. 164, 168-69 (Sup. Ct. 1942), construing a municipal ordinance prohibiting "game[s] of chance," the former Supreme Court mentioned a line of precendent from other jurisdictions stating that "if the game is designed to and does appeal to, and induces, lures, and encourages, the gambling instinct, it constitutes a game of chance," but Judge (later Justice) Haneman in *O'Brien v. Scott, supra,* lucidly observed that that test "begs the question [since] we are again relegated to an ascertainment of the meaning of the basic word 'gambling.' " 20 N.J. Super. at 137.

The decisions in *State v. Berger,* 126 N.J.L. 39 (Sup. Ct. 1941), and

Furst v. A & G Amusement Co., 128 N.J.L. 311 (E. & A. 1942), are explained by the opinion of the new Supreme Court in *Lucky Calendar Co. v. Cohen*, 19 N.J. 399 (1955). Relying upon those earlier decisions, the *Lucky Calendar* court construed the statute forbidding lotteries as it then existed and held not only that the statute did not require consideration of any kind, *Id.* at 410-14, but that, even if consideration were required, it was present in the form of a participant's inconvenience in simply filling out a coupon. *Id.* at 414-18. With *Berger* having held that payment for admission to a theater was consideration and with *Furst* having held that mere attendance without payment satisfied that requirement, the court in *Lucky Calendar* concluded that the statute demanded only consideration sufficient to sustain a simple contract. *Id.* at 415. Nevertheless, as the Supreme Court itself said, *Id.* at 417, and as the Attorney General later pointed out, *Formal Opinion No. 17-1961, Lucky Calendar* was dealing with a legislative definition. Through N.J.S.A. 2A:121-1 *et seq,* the Legislature had in effect created a statutory type of "gambling" which required no consideration whatever or only the most minimal consideration. The constitutional definition was untouched.[2]

In fact, *Lucky Calendar* when combined with subsequent legislative response supports our conclusion that the game proposed here is neither "gambling" nor "bingo" within their constitutional and statutory meanings. In 1961 the Legislature amended the lottery statute to provide a definition of "lottery" which, while accepting actual inconvenience as a form of consideration, exempted games in which the only consideration was the doing of an act to enter the class of eligible persons. N.J.S.A. 2A:121-6. The Attorney General later held, however, that box-top contests and contests open to patrons of a theater or a store remained unlawful, *Formal Opinion No. 17-1961,* and, presumably in response to this conclusion, the Legislature in 1964 again revised the lottery statute to authorize such games and to circumscribe the meaning of "consideration" so as not to include actual inconvenience:

> As used in this chapter, the term 'lottery' shall mean a distribution of prizes by chance in return for a consideration in the form of money or other valuable thing. Consideration shall not be deemed to exist with respect to a distribution of prizes by chance in a contest where admission to the class of distributees is based upon the submission of a box top, package, label, coupon or other similar article connected with merchandise produced or sold by the sponsor of the contest in the regular course of business, provided that the sales price of said merchandise does not include any direct or indirect charge to the purchaser for the right to participate in such contest. [N.J.S.A. 2A:121-6.]

2. The Court of Errors & Appeals in *Furst v. A. & G Amusement Co.* had intimated that the definition of "consideration" adopted there, which comprehended mere attendance at a theater drawing, was the constitutional definition. 128 N.J.L. at 312. That statement, nonetheless, seems too broad in light of later judicial and legislative action. As has been discussed the Supreme Court and the lower courts have emphasized the requirement of risking something of value, and the Legislature itself has determined, presumably without infringing constitutional boundaries, to revise the statutory definition of "lottery" so as to exclude games in which consideration does not take the form of money or some other item of actual value. That statutory modification would have to be invalidated as unconstitutional if the *Furst* statement concerning attendance without payment of value being consideration were considered constitutional doctrine. But since a statute must be construed so as to render it constitutional if possible, *State v. Profaci,* 56 N.J. 346, 350 (1970); *State v. Hudson County News Co.*, 35 N.J. 284, 294 (1961); *Woodhouse v. Woodhouse,* 17 N.J. 409, 416 (1955), the statement should instead be considered only *dictum.*

Consequently, the lottery statute as it stands now does not condemn games in which consideration does not take the form of money or some other item of actual value. As mentioned, note 2, *infra,* the statute by so providing would violate the state constitution if "consideration" in a constitutional sense included slight inconvenience or even no inconvenience whatever. The New Jersey constitution is, however, "not a grant but a limitation of powers," with the Legislature free to exercise the power of sovereignty if not so restricted. *Gangemi v. Berry,* 25 N.J. 1, 7 (1957); *Behnke v. N.J. Highway Authority,* 13 N.J. 14, 24 (1953); *State v. Baldinotti,* 127 N.J.L. 46, 48 (Sup. Ct. 1941). A statute must, therefore, be interpreted so as to render it constitutional if possible. Cases cited, note 2, *infra.* To conclude that "consideration" is so broad a term would require constitutional voiding of the present version of the lottery statute; the Attorney General declined to so hold in 1961, *Formal Opinion No. 17-1961,* and we reaffirm that determination.

Not only does the constitutional definition of "gambling" encompass only the staking of an item of value upon chance, but this requirement is an element of both the constitutional and statutory definitions of "bingo" and the statutory definition of "lottery." The constitutional provision includes " the selling of rights to participate," and the equivalent statutory definition within the Bingo Licensing Law, N.J.S.A. 5:8-24 *et seq,* requires the "selling [of] shares or tickets or rights to participate. . . ." N.J.S.A. 5:8-25. Without doubt the Legislature, as it once did with regard to lotteries, could regulate as an exercise of the police power an activity which, as that proposed here, does not include the selling of rights to participate, but it has not done so. The only restriction is that of the constitutional provision and the substantially identical statutory definition, and that definition does not comprehend this kind of game, for here rights to participate are not sold, but are given away at no cost to all who ask. Moreover, as has been discussed, the game is not a lottery, since under its present statutory definition the necessary consideration must be "in the form of money or other valuable thing," N.J.S.A. 2A:121-6, and that sort of consideration will not be present.

Our conclusion is buttressed by two federal decisions. In *Federal Communications Comm'n v. American Broadcasting Co.,* 347 U.S. 284, 294, 74 S. Ct. 593, 98 L. Ed. 699 (1954), the Supreme Court of the United States held that the mere listening to a program was not of itself consideration so as to make the game show a lottery within the meaning of a federal statute whose elements were consideration, chance and prize. Similarly, *Caples Co. v. United States,* 243 F. 2d 232, 234 (D.C. Cir. 1957), held that viewers did not provide consideration by journeying to a sponsor's store

to obtain the necessary game card.[3] While these decisions do not directly bear upon New Jersey law, they do reinforce our opinion both that the state constitutional prohibition is relatively narrow and that the game proposed will not violate either that provision or the statutory sections cited.

Although we have concluded, consequently, that the game is generally lawful, we wish to note that the game would be unlawful in one particular. As discussed, the game is not a lottery under the definition of N.J.S.A. 2A:121-6, but the game would constitute a lottery under the statute controlling the retail sale of motor fuels. N.J.S.A. 56:6-1 *et seq.* The statute provides that:

> It shall be unlawful for any retail dealer to use lotteries, prizes, wheels of fortune, punch-boards or other games of chance, in connection with the sale of motor fuels. [N.J.S.A. 56:6-2(f).]

Although "lotteries" is not defined by this statute, the judiciary has declined to adopt the definition of N.J.S.A. 2A:121-6. In *United Stations of New Jersey v. Kingsley,* 99 N.J. Super. 574, 585-86 (Ch. Div. 1968) and *United Stations of New Jersey v. Getty Oil Co.,* 102 N.J. Super. 459, 467-68 (Ch. Div. 1968), the Chancery Division held the definition contained within the lottery statute did not control the Title 56 provision and that, adhering to *Lucky Calendar v. Cohen, supra,* consideration is not required, 99 N.J. Super. at 486, and, alternatively, consideration is present with the mere visiting of the service station by a customer. 102 N.J. Super. at 468. The court so held because the legislative purposes underlying the two statutes differed, the lottery statute having been designed to prevent the public from being defrauded of their money in return for a chance to receive something possibly of less value than the sum invested and the motor fuels trade statute having been designed to regulate the adverse aspects of competition. These decisions, therefore, support still further our conclusion that the Legislature is constitutionally free to impose upon various activities restrictions more or less rigorous in order to protect the public welfare and that it has not done so with respect to the game in question here. Nonetheless, since a gasoline station dealer may not operate a lottery as thus defined at his place of business, he would also violate the statute dealing with the sale of motor fuels if he did so through a communications medium such as cable television. Consequently, a cable television company presenting the proposed game should not contract with service stations to sponsor the game.

3. The position of the Federal Communications Commission adheres to these decisions, for in its letter of June 28, 1976 addressed to the Telamerica Corporation that agency ruled that with no purchase from participating merchants being necessary to participate, "it is our view that the element of consideration is not present and that, accordingly, the proposed cable bingo game would be compliant with our rules."

In summary, we have concluded that the game proposed to be conducted on cable television is lawful except to the extent noted.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BERTRAM P. GOLTZ, JR.
Deputy Attorney General

JOSEPH H. LERNER, *Director*
Division of Alcoholic Beverage Control
Newark International Plaza
U.S. Route 1-9 (Southbound)
P.O. Box 2039
Newark, New Jersey 07114

July 19, 1978

FORMAL OPINION NO. 10—1978

Dear Director Lerner:

You have requested an opinion as to whether holders of State Beverage Distributor's licenses (hereafter S.B.D.'s) may sell malt alcoholic beverages in original containers for off-premises consumption on Sundays and weekdays during the same hours as the sale of alcoholic beverages for on-premises consumption is permissible. It is our opinion that S.B.D. licensees may sell malt alcoholic beverages under these circumstances.

For many years the permissible hours for retail sale of alcoholic beverages for off-premises consumption were governed by a rule of the Division of Alcoholic Beverage Control. N.J.A.C. 13:2-36.1 prohibited sales on Sunday and limited sales on other days to the hours of 9:00 a.m. to 10:00 p.m. In 1971 the Legislature enacted N.J.S.A. 33:1-40.3 which provides as follows:

> Whenever the sale of alcoholic beverages for consumption on the premises and off the premises or either thereof is authorized in any municipality by ordinance or rule or regulation of the Division of Alcoholic Beverage Control, by the holder of a retail consumption or retail distribution license, such ordinance or rule shall authorize the sale of malt alcoholic beverage[s] in original bottle or can containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted and authorized in said municipality.
>
> All parts of ordinances and regulations of the Director of the Division of Alcoholic Beverage Control inconsistent with the provisions of this act are superseded to the extent of such inconsistency.

Therefore, the sale of malt alcoholic beverages for off-premises consumption is permitted during the same days and hours during which municipalities permit the sale of alcoholic beverages for on-premises consumption.

In the resolution of the question of whether the statute includes an S.B.D. licensee,[1] it is significant to note that its literal terms do not restrict its application to any particular class of licensee. The operative language states, without qualification, that under the circumstances described in the statute, a municipal ordinance or Division rule "shall authorize the sale of malt alcoholic beverages in original . . . containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises . . ." While the prefatory language refers to "retail consumption or retail distribution license," it merely describes the contingency which must exist before a right to make such sales arises. It does not place a limitation on the particular class of licensee permitted to make the sale. In the event the Legislature intended such a limitation, it could have stated a qualification in express terms. An additional qualification which the Legislature has failed to include in its own enactment should not be inferred by indirection. *Crastel v. Board of Commissioners, Newark,* 9 N.J. 225, 230 (1952). *See also State v. Congden,* 76 N.J. Super. 493, 501-502 (App. Div. 1962). It is therefore clear that whenever a rule or ordinance permits the sale of alcoholic beverages for on or off-premises consumption by a retail consumption or distribution licensee, then any duly licensed person may sell malt alcoholic beverages for off-premises consumption.

This construction of the plain terms of the statute is reinforced by the underlying legislative purpose. The statement accompanying the bill (S2108) and the Governor's statement indicate it was designed to provide additional convenience to the general public in the purchase of malt beverages. Significantly, both statements make reference to "package stores," a term as readily applicable to S.B.D. licensees as to other distribution licensees. It is therefore apparent that the principal legislative purpose was simply to increase public convenience in the purchase of malt alcoholic beverages. A construction of the statute which would exclude S.B.D. licensees from its terms would be inconsistent with this expressed legislative history.

Furthermore, it would be anomalous to interpret the statute to limit S.B.D. licensees in the sale of malt alcoholic beverages to different hours than any other retailer who is privileged to make package sales. S.B.D.'s historically have been subject to the same hour restrictions as other licensees engaged in comparable sales. A.B.C. Bulletin 380, Item 10. It cannot be assumed that the Legislature intended to substantially depart from this administrative practice and place more onerous hourly restrictions on this small class of licensees. A statute should be interpreted to avoid unreasonable or absurd consequences. *Davis v. Heil,* 132 N.J. Super.

1. S.B.D. licensees are entitled to sell "unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than 144 fluid ounces," both to retail licensees, at wholesale, and to the general public at retail, for off-premises consumption. *See* N.J.S.A. 33:1-11(2c).

283, 293 (App. Div. 1975); *In re The Summit and Elizabeth Trust Co.,* 111 N.J. Super. 154, 168 (App. Div. 1970). Therefore, we conclude that it was the legislative intent that malt alcoholic beverages in original containers be more readily available to the general public by extending the hours and days of sale for all licensees, including S.B.D. licensees.

Parenthetically, assuming the prefatory language of the Act, which refers to the "holder of a retail consumption or retail distribution license," is deemed to be a condition of the authority to make the sale under the statute, an S.B.D. licensee would in any event be encompassed by its terms. The Division of Alcoholic Beverage Control has concluded that an S.B.D. is "in part, a retail licensee." *Re Berkeley Beverage Co.,* A.B.C. Bulletin 331, Item 4. That it is a distribution license is manifested by its name and the nature of the privileges granted by it. N.J.S.A. 33:1-11(2)(c). Also, the Division of Alcoholic Beverage Control has consistently held that retail sales by such licensees are subject to the same regulations which govern retail sales of package goods by other retail distribution licensees. *See Re Riverside Distributors,* A.B.C. Bulletin 611, Item 11; A.B.C. Bulletin 580, Item 10; *Re K & O Liquor Store,* A.B.C. Bulletin 201, Item 7. If the Legislature intended to depart from this administrative practice of maintaining comparability between these classes of licensees, it could have used the specific statutory designation of the kind of license for which it intended the privilege of selling during extended hours to be applicable.[2] The use of the more general terms "retail consumption" and "retail distribution licensee" is a compelling indication that the presumed legislative intent was to encompass all licensees privileged to make retail sales. Therefore, an S.B.D. licensee should be considered a retail distribution licensee as that term is employed in the statute.

In conclusion, you are advised that under the provisions of N.J.S.A. 33:1-40.3 State Beverage Distributor's licensees may sell malt alcoholic beverages in original containers for off-premises consumption on Sundays and weekdays during the same hours as the sale of alcoholic beverages for on-premises consumption is permitted.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MART VAARSI
Deputy Attorney General

2. For example, it could have limited the privileged to "Class C" licenses or to "plenary retail consumption," "seasonal retail consumption," "plenary retail distribution" or "limited retail distribution" licensees. *See* N.J.S.A. 33:1-12. It is evident from other portions of the Alcoholic Beverage law that whenever the Legislature intends for a provision to apply only to a specific type or class of license, it invariably specifies the type or class by its exact statutory designation. *See, e.g.,* N.J.S.A. 33:1-12.14, 15, 17, 23, 25, 26, 27, 28, 29 and 39; N.J.S.A. 33:1-17; N.J.S.A. 33:1-19.1; N.J.S.A. 33:1-23 (c. 246, L. 1977).

September 27, 1978

COLONEL CLINTON L. PAGANO
Superintendent
Division of State Police
Box 68
West Trenton, New Jersey 08625

FORMAL OPINION NO. 11—1978

Dear Colonel Pagano:

In *Formal Opinion No. 23—1977* we concluded that the statutory exemption from the Private Detective Act of 1939 for ". . . any officer or employee solely, exclusively and regularly employed" by an enumerated government agency was applicable only while municipal police officers perform police related activities for and on behalf of the municipality. The performance of police related activities by off duty policemen which are not under the supervision of a municipality, it was further concluded, would subject them to the requirements of the Private Detective Act to the same extent as would police related activities performed by any other person. As a result, we advised that off duty police officers who engage in activity regulated by this Act would be subject to the licensing requirements of the Act except to the extent commercial enterprises and similar private entities made arrangements directly with the employing municipality to use policemen during their off duty hours. Questions have subsequently arisen as to the meaning of that opinion and the interpretation of this Act as it bears on these activities of off duty municipal policemen. As a result, you have asked for clarification.

Initially, it is necessary to review the pertinent statutory provisions in order to determine the nature of the activities comtemplated by the Legislature. N.J.S.A. 45:19-10 makes it unlawful for an unlicensed person to "engage in the private detective business or as a private detective or investigator or advertise his . . . business to be a private detective business" without having first obtained a license to conduct such business from the Superintendent of State Police. The statutes further provide in N.J.S.A. 45:19-11 that any person desiring to conduct a private detective business or the business of a private detective shall file an application with the Superintendent of State Police. The term "private detective business" is defined in N.J.S.A. 45:19-9(a) which states in pertinent part:

> The term 'private detective business' shall mean *the business of conducting* a private detective agency or for the purpose of making for hire or reward any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, ... Also, it shall mean *the furnishing for hire* or reward of watchmen or guards or private patrolmen or other persons to protect persons or property, either real or personal, or for any other purpose whatsoever. [Emphasis supplied.]

The words of a statute are to be given their ordinary and well understood meaning. *Service Armament Co. v. Hyland,* 70 N.J. 550, 556 (1976).

Therefore, in interpreting the above cited statutory language, it is apparent that those police related activities subject to licensure are those which may be fairly characterized as the conduct of a "business" or the "furnishing for hire or reward" of watchmen or guards or private patrolmen to protect persons or property. A business or the conduct of furnishing persons for hire is commonly understood in this context to refer to a "commercial enterprise for profit." *Webster's Seventh New Collegiate Dictionary,* p. 113. This interpretation has been reflected in analogous instances of government regulation. In *Sands v. Board of Examiners of Electrical Contractors,* 54 N.J. 484 (1969), the court was concerned with a regulatory statute dealing with those who engage in the "business as an electrical contractor for hire." The court held that it would be in disregard of the ordinary meaning of those terms to equate electrical work performed as incident to the sale of a private house with engaging in the business of electrical contracting for hire. The court concluded that the statutory language used was intended to reach the typical category of electricians who hire out either to general contractors or individual homeowners. This interpretation was also given to a statute which authorized municipalities to regulate the "business" of trailer camps in *Morris v. Elk Twp.,* 40 N.J. Super. 34 (Law Div. 1956). The placing of one trailer upon a parcel of vacant land would not subject the owner to municipal regulations, since the court characterized a "business" to be a "commercial enterprise for profit." These definitions of the pertinent statutory language reinforce that the present statute was designed by the Legislature to govern a regular business for profit as an independent contractor and not to deal with or affect the use of off duty policemen or any other person by a private commercial establishment to perform police related functions on an employment basis.

The general framework of the statute regulates only those who are conducting a business and holding themselves out generally for hire or to a class of the public to perform those functions. Indeed, the term "private detective business" expressly excludes any employees, investigator or investigators, solely, exclusively and regularly employed by any person, association or corporation insofar as their acts relate solely to the business of their respective employers. N.J.S.A. 45:19-9(a). There is consequently a clear legislative indication to leave free of regulation those persons who act as employees of private commercial establishments to perform police related responsibilities for them at their request and under their direction.

The legislative history of the enactment of the Private Detective Act also supports this view. The statement on Assembly Bill No. A 185, later enacted as Laws of 1939, c. 369, stated that:

> The purpose of this act is to regulate the business of private detective and private detective agencies and to provide such regulations as will establish the business of private detectives on that high plane which will deserve the confidence and respect of the citizens of the State of New Jersey and at the same time protect all persons engaged in the business of private detective against interlopers, racketeers and irresponsible persons who would use their business as private detective to cover up criminal activities and malicious impositions on the public.

The legislative focus was thus with the private detective, private watchman or private patrolman who holds himself out generally to accept public patronage or clientage for profit and to protect the members of the public with whom the detective may deal or otherwise be involved.

It is therefore clear that where arrangements are made with off duty municipal police or any other persons to peform police related activities for private commercial establishments as their employees on either a full or part time basis, those activities would not fall within the intendment of the Act.[1] Rather, the statute would be directed only to those instances where municipal policemen or other persons act as an independent contractor and advertise, hold themselves out, actively pursue and solicit a variety of police related opportunities on a regular basis for hire or profit.[2]

In summary, therefore, it is our opinion that regular members of a municipal police department during their off duty hours or any person may engage in police related activities for private persons or entities without being in violation of the Private Detective Act, so long as those activities do not constitute the business of a private detective or private security guard or watchman.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

1. It should be pointed out that in any instance where a private commercial entity does not employ someone directly to perform police related duties, it has the option, as expressed in our initial opinion (*Formal Opinion No. 23—1977*), to make provision directly with a municipal police department to secure the services of a police officer for these purposes with remuneration paid through the municipality. Of course, this option is available only where a municipality is willing to participate in such an arrangement.

2. It is suggested that the Superintendent of State Police promulgate appropriate rules and guidelines to further define the types or categories of police related activities contemplated by the Act.

November 3, 1978

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION NO. 12—1978

Dear Director Waddington:

The Division of Motor Vehicles has requested an interpretation of the so-called "grandfather" provision of the recently-enacted "Bulk Commodities Transportation Act," N.J.S.A. 39:5E-1 *et seq.* [L. 1977, c. 259]. Specifically, the Division has inquired as to whether or not, or to what extent, applicants who qualify for grandfather status under N.J.S.A. 39:5E-8 are exempt from the requirements set forth in N.J.S.A. 39:5E-7 for issuance of a certificate of public convenience and necessity authorizing operations within this State. Where it has been determined that such a certificate shall issue, the Division has further inquired as to the permissible extent of operations to be authorized thereby. For the following reasons, it is our opinion that once an applicant satisfies the conditions contained in N.J.S.A. 39:5E-8, he is thereby entitled to be issued a certificate of public convenience and necessity, which certificate shall authorize the applicant only to continue those operations in which he was engaged one year prior to the effective date of this act, or on April 10, 1977.

N.J.S.A. 39:5E-7 provides in pertinent part that all intra-state carriers of bulk commodities must obtain a "certificate of public convenience and necessity" from the Division of Motor Vehicles authorizing operations within this State. Said certificate is to be issued by the Division upon written application therefor and a finding that:

> the applicant is fit, willing and able to properly perform the function of a bulk commodities hauler and to conform to the provisions of this act . . . and that the proposed service . . . is in the public interest and consistent with the transportation policy declared in this act,[1] is or will be required by public convenience and necessity;[2] otherwise said application shall be denied. [N.J.S.A. 39:5E-7.]

Application for said certificate pursuant to N.J.S.A. 39:5E-7 is however only one of two statutory methods whereby said certificate can be

1. Factors to be considered in determining whether the proposed service is "in the public interest and consistent with the transportation policy declared in this act" include the applicant's financial responsibility, business reputation, moral character and observance of motor vehicle laws in the operation of his business. N.J.S.A. 39:5E-7(b)(1).

2. The applicant has the burden of proving the need for the proposed service and the inadequacy of existing service. N.J.S.A. 39:5E-7(c).

obtained. The other method is set forth in N.J.S.A. 39:5E-8, the Act's so-called "grandfather clause," which instructs that:

> The director shall issue a certificate . . . to any hauler of bulk commodities . . . who was in operation as such within this State 1 year prior to the effective date of this act provided that:
> a. the operation was continuous since that date . . .
> b. the applicant . . . had a permanent place of business within this State on or before [that date] . . .
> c. the applicant owned or operated under lease at least one motor vehicle registered in this State used in the transportation of bulk commodities on or before [that date] . . . .

The question thus presented is whether bulk haulers who meet the qualifications set forth in N.J.S.A. 39:5E-8 are entitled to a certificate authorizing operations without showing that they are "fit, willing and able" to provide the proposed service and/or that the service is consistent with the transportation policy of the act and/or is required by public convenience and necessity. Clearly, the answer to this question must be in the affirmative.

In this regard, it must be initially recognized that N.J.S.A. 39:5E-8 expresses no intention to require more than what is actually delineated therein. The language is explicit. If the listed qualifications are satisfied, the Director "shall issue" the certificate. Since the Legislature in drafting the act could easily have attached other qualifications onto this provision if it had so desired, it must be concluded that the qualifications actually set forth therein were all that were deemed necessary.

Such reading, moreover, coincides with that attached to a similar provision of the federal transportation code; namely, 49 U.S.C.A. §306,[3] after which various state regulatory schemes (including apparently this one) have been modeled. This provision has consistently been viewed as an exception to the normal requirement of proof of public convenience and necessity, *Gregg Cartage Co. v. United States,* 316 U.S. 74, 83, 62 S. Ct. 932, 86 L. Ed. 1283 (1942); *McDonald v. Thompson,* 305 U.S. 263, 59 S. Ct. 176, 83 L. Ed. 164 (1939), and where its conditions have been met, the applicant's "fitness" has also been seen as not in issue, *Alton R. Co. v. United States,* 315 U.S. 15, 62 S. Ct. 432, 86 L. Ed. 586 (1942); *Winter Garden Company v. United States,* 211 F. Supp. 280, 291 (D.C. Tenn. 1962). *See also Puhl v. Pennsylvania Public Utilities Com'n,* 11 A. 2d 508, 511

3. This provision states that:
> [N]o common carrier by motor vehicle . . . shall engage in any interstate or foreign operations on any public highway . . . unless there is in force . . . a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, that, . . ., if any such carrier or predecessor in interest was in bona fide operation . . . on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time . . ., the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation. . .

(Pa. 1940), interpreting a similar state statute as dispensing with any need to establish public convenience and necessity or fitness or ability to perform the service to be rendered. Rather, the inquiry has always been limited to whether in fact the grandfather conditions have been satisfied and if so, what authority should be granted. A similarly restricted inquiry would appear to be all that should be conducted here.

The question thus remains as to how much authority can and should be granted to the applicant who qualifies for grandfather status under N.J.S.A. 39:5E-8. On the one hand, the Division has indicated that it views as its duty under the statute to limit the authority so granted to only those operations actually conducted by the grandfather applicant on the critical date—a view believed to be fully consistent with the intent and purposes of this act. On the other hand, there is the language, appearing in N.J.S.A. 39:5E-13 of the act which seems to suggest a less restrictive approach:

> Certificates or permits issued pursuant to section 8 [the grandfather provision] . . . shall authorize operations over irregular routes between all points within the State.

After a careful review of the general framework of the statute and its legislative purposes, it is concluded that the authority granted by the statute to a grandfathered applicant refers only to the actual operations conducted by it at the designated time.

Initially, it should be noted that this interpretation of the statute is in accord with the great weight of judicial authority interpreting similar statutes. *See Alton R. Co. v. United States, supra* at 315 U.S. 22; *Loving v. United States,* 32 F. Supp. 464 (D.C. Okla. 1940), aff'd 310 U.S. 609 (1940); *Santini Bros. v. Maltbie,* 23 N.Y.S. 2d 566, 260 App. Div. 545 (1940); *Puhl v. Pennsylvania Public Utilities Com'n, supra;* and other cases cited at 4 A.L.R. 2nd 700. Such statutes have variously been viewed as having as their purpose to assure "substantial parity" between future and prior operations, *Alton R. Co. v. United States, supra,* to recognize and preserve prior "vested" rights, *Crescent Express Lines v. United States,* 49 F. Supp. 92 (D.C. S.D.N.Y. 1943), *aff'd* 320 U.S. 401 (1943), and to avoid any disruption of settled lawful motor carrier service, *A.E. McDonald Motor Freight Lines v. United States,* 35 F. Supp. 132 (D.C. Tex. 1940). These purposes are clearly not served by an interpretation which would afford grandfather applicants a special privilege to conduct more expansive operations than they had conducted before.

To so interpret the "grandfather" provision, moreover, would infect the act with a serious constitutional infirmity, in that any grant of authority to grandfather applicants beyond the scope of their prior operations without a showing of public convenience and necessity or fitness or ability to provide such service would appear to discriminate against non-grandfather applicants and deny them the equal protection of the law to which they are constitutionally entitled. *See Morey v. Dowd,* 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957). The test, as set forth therein, is whether the classification under examination is rationally related to a legitimate state purpose. If so, there is no denial of equal protection. Grandfather authorization limited to the prior operations alone satisfies this criteria,

since it furthers the above-stated purposes of the act and stems from a rational distinction, namely, that the existence of such service itself evidences its future justification in terms of public convenience and necessity, and that the grandfather's prior experience in rendering such service evidences his fitness and ability to continue to do so in the future. Extension of the grandfather preference into operations not heretofore provided, however, serves no such purpose and has no such rational justification. In such a situation, the status quo would not be maintained and the grandfather's prior experience would no longer appear evidential, either as to the public convenience and necessity for the new service or as to his fitness and ability to provide such service.[4] Lacking either a legitimate purpose or a rational justification, it appears doubtful whether such a preference could withstand constitutional challenge.

Additionally, such preference appears at apparent odds with the avowed purposes of the act as a whole. By permitting grandfather haulers to automatically expand their operations to include different commodities or to cover different territories would effectively disable the Division from ascertaining with any degree of certainty whether a particular service is or is not necessary and convenient. *See Grove v. United States,* 40 F. Supp. 503, 505 (D.C. Pa. 1941); *Santini Bros. v. Maltbie, supra* at 568. Once necessary, who could say that it might not later become redundant and vice-versa. Furthermore, the legislative recognition that previously people were "able to engage in this business without having to demonstrate any knowledge of how to safely handle the cargo or the vehicle" (Assembly Transportation and Communications Committee Statement accompanying the bill, L. 1977, c. 259, p. 702) would remain uncorrected in those situations where the grandfather applicant seeks to provide a service for which he has no prior experience. These conflicts thus serve to validate an implicit legislative intent to preclude the extension of the grandfather preference into operations not heretofore provided. To whatever extent the quoted language in N.J.S.A. 39:5E-13 appears contrary to such reading of the statute, the spirit and reason of the legislation must prevail over the literal sense of the terms used. *In re Roche's Estate,* 16 N.J. 579 (1954).[5]

For the reasons expressed above, you are therefore advised that once applicants for a certificate under N.J.S.A. 39:5E-8 satisfy the conditions set forth therein, they are entitled to such a certificate, regardless as to whether or not they might fail to meet one or more of the qualifications contained in N.J.S.A. 39:5E-7. You are further advised that such certificates should only authorize the applicant to continue those operations in which he was engaged one year prior to the effective date of the

4. A hauler of dirt, for example, cannot automatically be considered capable of hauling hazardous materials. Likewise, a rural hauler cannot automatically be presumed to have acquired any familiarity with the problems associated with hauling in a populous, metropolitan area.

5. With this in mind, it is concluded that the quoted language should be construed as no more than a legislative directive to the effect that authorization to grandfather haulers shall not be restricted to specific routes. Rather, it shall be over irregular routes between whatever points or within whatever territory in this State such hauler had operated on the critical date.

act, or on April 10, 1977. If additional authority is requested, either as to use or as to expansion of territory, the same should be viewed and treated as an application for authority under N.J.S.A. 39:5E-7.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: ROBERT M. JAWORSKI
Deputy Attorney General

January 29, 1979

GEORGE H. BARBOUR, *Commissioner*
EDWARD H. HYNES, *Commissioner*
RICHARD B. McGLYNN, *Commissioner*
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 1—1979

Gentlemen:

The State Board of Public Utilities has submitted to the Joint Legislative Committee on Transportation and Communications a report entitled "In the Matter of the Board's Investigation of Lifeline Electric and Gas Rates." You have asked for our opinion as to whether the lifeline rates mentioned in such report will become effective if the Legislature does not take action within 60 days of the submission of the rate and schedule to the legislative committee. You are advised that the rates set forth in the report of the Board of Public Utilities will not become effective if the Legislature fails to take any action with respect to those rates, since the report submitted by the Board of Public Utilities to the Legislature does not contain a "proposed lifeline rate" within the meaning of the Act.

In 1977 the Legislature enacted legislation to authorize the then Public Utilities Commission to adopt schedules of reduced electric and gas utility rates applicable to certain designated consumer income groups. Laws of 1977, c. 440, N.J.S.A. 48:2-29.6 *et seq.* This legislation, commonly referred to as the "Lifeline Law," authorizes the Board to establish a rate for the minimum amount of gas and electricity necessary to supply the minimum energy needs of the average residential user. The Board was also authorized to establish a rate for the minimum amount of gas and electricity to be designated by the Board. On November 28, 1978 the Board of Public Utilities, as a result of its investigation into lifeline rates and a schedule of eligible utility customers, submitted a report to the Joint Senate and Assembly Standing Committee on Transportation and Communications. There has been no official legislative resolution passed or any other action with respect to such report at this time.

The question therefore posed is whether or not the rates and schedule mentioned in the report will become effective and binding on the Board of Public Utilities after the passage of 60 days from the submission of the report to the legislative committees. In order to respond to this issue, the provisions of N.J.S.A. 48:2-29.12(a) are relevant and provide as follows:

> The commission shall submit the proposed lifeline rate and schedule of eligible users to the said joint committee constituted under section 6 for its review. The joint committee shall make such recommendations to the Legislature on the proposed rate and schedule as it may deem advisable.
>
> If within 60 days of the submission of the rate and schedule to the committee, the Senate and General Assembly do not adopt a concurrent resolution approving or disapproving the rate and schedule, the rate and schedule shall be deemed approved.

It is clear from the language on the face of this statute that in order to invoke its terms the Board shall submit *its proposed* lifeline rate and schedule of eligible users to the Joint Committee for its review. In this case, based on our review of the report, it is evident that it does not contain the proposed lifeline rate and schedule of eligible users of the Board of Public Utilities.

It is necessary to briefly refer to certain significant portions of the report. In its introduction, the Board states that "while section 7 requires [it] to provide the legislative committees with certain information, because of the nature of the information obtained, the Board deems it necessary and appropriate to recommend to the Legislature certain amendments to the act." Thus, the Board in its report provides rating information and other pertinent information relating to the lifeline increment, the lifeline program and its administration, to illustrate the nature of its recommendations for legislative change. For example, the Board notes that after calculating a lifeline rate pursuant to the existing statutory standard, discounts to consumers vary significantly among the utilities and, furthermore, in some cases, there would be little or no discount at all. As a result the Board points out that the existing legislative standard of "lowest effective rate" results in divergent and minimal discounts for recipients and that the act should be amended to permit the Board to establish a lifeline rate based upon a fixed cents per therm and per kilowatt hour discount. It is thus apparent that the rating information compiled by the Board was used to illustrate the inadvisability of the use and implementation of such rates pursuant to the existing statutory standard. For this reason and in the context of the recommendation set forth in the Board's Conclusions to the Legislature, it cannot reasonably be said that the Board has proposed "a lifeline rate" intended to be implemented by it after the passage of 60 days. Rather, it has submitted to the Legislature its views with regard to the inadvisability of the existing legislation under the existing factual circumstances. We are therefore unable to characterize the report of the Board as containing the "proposed lifeline rate" envisioned by N.J.S.A. 48:2-29.12(a).

Furthermore, we have no question that the Board has been conferred with discretionary authority to decide whether to propose and implement the legislation. This view is premised on the fact that the act is by its terms directory, rather than mandatory, in tone. Prior to enactment, the bill before the Legislature (A 1830) stated that "the Public Utility Commission shall designate a minimum volume of gas and a minimum quantity of electricity . . . necessary to supply the minimum energy needs of the average residential user. . . . The language of the bill was ultimately amended during its legislative consideration to finally read as follows:

> The Public Utility Commission is hereby *authorized* to designate a minimum volume of gas and a minimum quantity of electricity . . . .

and

> The Public Utility Commission is hereby *authorized* to establish a rate for the minimum amount of gas and electricity established. . . . [N.J.S.A. 48:2-29.7(a), (b).]

The Board therefore has been conferred with the discretion to implement a lifeline program. To set forth certain rating information pertaining to this program in a report generally designed to recommend legislative change is not in our judgment the exercise of that discretion contemplated by the Act.

In conclusion, you are advised that the rates and schedules mentioned in a report of the Board of Public Utilities submitted to the Legislative Committee on Transportation and Communications will not become effective and binding on the Board after the passage of 60 days from the date of its submission, since the report does not contain the "proposed lifeline rate" within the meaning of the Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

February 9, 1979

JOHN J. HORN, *Commissioner*
Department of Labor and Industry
John Fitch Plaza
Trenton, New Jersey

WARREN E. SMITH, *Acting Director*
Division on Civil Rights
Department of Law and Public Safety
Newark, New Jersey

FORMAL OPINION NO. 2—1979

Gentlemen:

You have asked for an opinion as to the continued validity of the New Jersey statutes governing the temporary disability benefits program which limit benefit payments to pregnant women to an eight-week period surrounding childbirth while permitting all other claimants to collect benefits for up to 26 weeks. In particular, you ask whether these statutes are consistent with an amendment to Title VII of the federal Civil Rights Act of 1964 signed into law by President Carter on October 31, 1978. The amendment prohibits discrimination on the basis of pregnancy, childbirth and related medical conditions in public or private employment related benefit programs.

The New Jersey statutes in question, N.J.S.A. 43:21-4(f)(1)(B) and 43:21-39(e), which restrict benefit eligibility for disability associated with normal pregnancy to the four weeks before the expected date of birth and the four weeks following termination of the pregnancy, are analyzed in detail in *Formal Opinion No. 1—1975.* We there concluded that these provisions were consistent with the United State Supreme Court's opinion in *Geduldig v. Aiello,* 417 U.S. 484 (1974), which upheld the constitutionality of similar pregnancy provisions in California's temporary disability benefits law.

The new federal amendment, P.L. 95-555, adds the following new subsection to §701 of the Civil Rights Act:

> (k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; *and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work,* and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. [Emphasis added.]

The amendment provides that it shall become effective 180 days after

enactment—or May 1, 1979.

The legislative history of the new amendment makes clear that its purpose was to nullify the Court's holding in *Geduldig* as well as its subsequent decision in *General Electric Co. v. Gilbert,* 429 U.S. 125 (1976), which reached a similar result with respect to private benefit programs under Title VII. *See* H.R. Rep. No. 95-948, 95th Cong., 2d sess. 11, reprinted in 1978 U.S. Code Cong. & Ad. News 6525.[1] It is clearly established in this regard that Title VII applies to states and their political subdivisions, *Fitzpatrick v. Bitzer,* 427 U.S. 445, 448-449 (1976), and operates to invalidate conflicting state laws as well as discriminatory actions of public or private employers authorized by such laws. *E.g., Kober v. Westinghouse,* 480 F.2d 240, 245-246 (3rd Cir. 1973).

Insofar as the New Jersey provisions allow female claimants to collect disability benefits for normal pregnancy[2] under State and private plans for a maximum of only eight weeks while all other claimants are potentially eligible for up to 26 weeks, the statutes plainly conflict with the federal amendment and may no longer be enforced as of the May 1 effective date of the amendment. In the meantime, the Department of Labor and Industry should seek amendatory legislation to bring these statutes into conformity with Title VII as amended.

You are therefore advised that N.J.S.A. 43:21-4(f)(1)(B) and 43:21-39(e) are inconsistent with the recent amendment to the federal Civil Rights Act of 1964 insofar as they treat disability associated with normal pregnancy and delivery differently from other disabilities. These provisions will no longer be enforceable in their present form as of May 1 of this year. At that time, claims for disability benefits based on pregnancy, childbirth or related medical conditions must be treated the same, for purposes of eligibility and benefit payments, as all other claims.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MICHAEL S. BOKAR
Deputy Attorney General

1. The Report of the House Committee on Education and Labor, through an apparent oversight, fails to make specific reference to the *Geduldig* decision. It does, however, explicitly point to the fact that "five states have temporary disability laws under which employees of private employers are assured partial wage replacement if they become temporarily disabled." It specifically cites in this respect the New Jersey law, which it notes covers complications of pregnancy "on same basis as other disabilities" while covering disability associated with normal pregnancy for "four weeks before and four weeks after childbirth." This explicit reference to the five states with laws of this kind, including the California law considered in *Geduldig,* leaves no doubt as to the intent of Congress to effectively nullify the Court's holding in that case by preempting state laws that treat disability associated with normal pregnancy on a different basis than complications of pregnancy and other disabilities.

2. In *Formal Opinion No. 1—1975,* we concluded that these provisions treat disability associated with *complications* of pregnancy, such as caesarian section delivery and vaginitis, no differently from other disabilities for which up to 26 weeks of benefits may be paid. Hence, our conclusion here as to the invalidity of these provisions directly affects only normal pregnancy.

February 22, 1979

JOSEPH A. LE FANTE, *Commissioner*
Department of Community Affairs
363 West State Street
Trenton, New Jersey

FORMAL OPINION NO. 3—1979

Dear Commissioner LeFante:

The Department of Community Affairs has requested an interpretation of the Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 *et seq.* Specifically, the Department has asked whether it has jurisdiction to hear cases arising under N.J.S.A. 20:4-1 where a municipality is the displacing agency. You are advised that the Department does have jurisdiction to hear such cases.

The New Jersey Relocation Assistance Act of 1971, N.J.S.A 20:4-1 *et seq.* (hereinafter "Act"), is designed to establish a uniform policy for the fair and equitable treatment of persons displaced by State and local acquisition of real property. N.J.S.A. 20:4-2. The Act provides that persons and businesses displaced by a taking agency shall be compensated by relocation payments made to them by the taking agency in the amount specified by the Act. N.J.S.A. 20:4-4. The Act establishes the Commissioner of Community Affairs as the Act's administrator and grants to the Commissioner the power to adopt rules and regulations necessary to assure:

> that any person aggrieved by a determination as to eligibility for a payment authorized by this act, or by the amount of a payment, may have his application reviewed by the head of the taking agency or other appropriate officer. [N.J.S.A. 20:4-10(a)(3).]

This provision permits the head of the taking agency to review cases where a person is aggrieved by the decision of that taking agency.* Thus, a municipal official is the appropriate person to review a decision of a taking agency where the taking agency is a municipality. However, the Act also grants review power to an "other appropriate officer." This additional grant of review power demonstrates an obvious intent to permit review of relocation matters by a party other than the head of the taking agency. The answer to the present inquiry, then, turns on whether the Commissioner of Community Affairs is an "appropriate officer" as this term is used in the Act.

The Relocation Act, as orginally introduced as Assembly Bill No. 2320 on April 1, 1971, provided that the Attorney General and not the Commissioner of Community Affairs was to be the state officer responsible for the Act's administration. The Attorney General was to be granted authority to adopt rules and regulations providing for administrative review of decisions of taking agencies. The Commissioner of Community Affairs was substituted as the administrator of the Act prior to its final adoption by the Legislature. This change indicates the legislative intent to involve the Department of Community Affairs in relocation matters, presumably because of the Department's high degree of expertise in administering the State's existing Relocation program pursuant to the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 *et seq.* From this designation of the Commissioner of Community Affairs as administrator of the Act it may also be reasonably assumed to have been the legislative purpose that this official act as arbiter in complaints brought pursuant to the Act. The Commissioner has the greatest familiarity statewide with the operation of the Act and is the "appropriate officer" to rule on its proper enforcement.

*A "taking agency" is defined as "the entity, public or private, including the State of New Jersey, which is condemning private property for a public purpose under the power of eminent domain." N.J.S.A. 20:4-3(a).

Support for this view may be found in §10(b) of the Act and in that section of the regulations pertaining to grievance procedures, N.J.A.C. 5:11-2.16. Section 10(b) provides that:

> The Commissioner may prescribe such other regulations *and procedures,* consistent with the provisions of this act, as he deems necessary or appropriate to carry out this act. [Emphasis supplied.]

The general clause enables the Commissioner to promulgate procedural regulations as he may find necessary to implement the provisions of the Act. Pursuant to this broad regulatory power the Commissioner has promulgated a series of regulations setting forth the grievance procedure to be followed in hearings conducted pursuant to the Act. For example, Subsection (a) provides that

> An application for a hearing must be filed with the Commissioner within 15 business days of the receipt by the applicant therefore of notice of the action, ruling, notice or order complained of.

Subsection (g) indicates in pertinent part that

> [A] hearing shall be conducted by a hearing examiner designated by the Commissioner. . . .

This grievance procedure is clearly consistent with the broad legislative authorization given to the Commissioner to prescribe appropriate procedures to carry out the Act. Indeed, the Commissioner has in fact exercised the authority to review the applications of aggrieved parties for relocation assistance payments since the adoption of the Act in 1971. The interpretation of a statute by an agency entrusted with its administration is entitled to great weight in discerning the probable legislative intent. *Pringle v. N.J. Department of Civil Service,* 45 N.J. 329, 323-3 (1965); *Lill v. Director, Division of Alcohol Beverage Control,* 142 N.J. Super. 242, 250 (App. Div. 1976).

These procedural regulations of the Commissioner of Community

Affairs were recently reviewed by the New Jersey Supreme Court in the context of an appeal dealing with reimbursement for relocation expenses. *Paterson Redevelopment Agency v. Max Schulman, et al.,* 78 N.J. 378 (1979). In its consideration of the questions of the defendant's failure to exhaust administrative remedies, the Supreme Court opined concerning the above cited regulations:

> The regulations, in accordance with the mandates of the Administrative Procedure Act, further provided for grievance procedures including hearings before an examiner designated by the Commissioner. N.J.A.C. 5:11-2.16. These procedures were not followed by defendants.
>
> It is clear from the foregoing that the proper procedure to be followed in relocation cases is for the claimant to present his demands, including any necessary substantiating documents, to the local agency. If the claimant is dissatisfied with the amounts granted, he should then request a hearing as provided in N.J.A.C. 5:11-2.16. Only after the hearing has taken place and a final adverse agency determination has been entered may the claimant request judicial intervention by appeal as of right to the Appellate Division. R. 2:2-3(a)(2).

It is thus clear that the authority of the Commissioner of Community Affairs to hear cases arising under the Relocation Assistance Act of 1971 has been reinforced by the Supreme Court's specific recognition of the propriety of the Commissioner's assertion of jurisdiction in this area.

In conclusion, you are advised that the Commissioner of Community Affairs has the jurisdiction to hear cases brought under the Relocation Assistance Act of 1971 where a municipality is the displacing agency.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DENNIS J. KRUMHOLZ
Deputy Attorney General

March 1, 1979

HOWARD H. KESTIN, *Director and Chief Administrative Law Judge*
Office of Administrative Law
234 East State Street
Trenton, New Jersey 08608

FORMAL OPINION NO.4—1979

Dear Judge Kestin:

You have asked for an opinion as to the effect of the Act which establishes an independent Office of Administrative Law on the existing positions of Hearing Officers and/or Examiners in the respective agencies of State government. Also, you inquire as to the effect of the State Agency Transfer Act on these positions, as such Act is expressly mentioned in the Act creating the Office of Administrative Law. For the following reasons, it is our opinion that the functions and responsibilities of Hearing Officers-Examiners in the respective state agencies, insofar as they pertain to presiding over contested cases as are required by the Administrative Procedure Act, have now been abolished and placed exclusively by the Legislature in the Office of Administrative Law. As a result, the Chief Examiner and Secretary of the Civil Service Commission should conduct an investigation in accordance with civil service laws and regulations to determine the continuing need for such positions and the tenure, seniority and demotional rights of employees serving in those capacities.

In order to properly evaluate the implications of this Act, Laws of 1978, c. 67, N.J.S.A. 52:14F-1 *et seq.,* it is necessary to briefly review its operative provisions. In its most pertinent aspect, the Act provides:

> All hearings of a state agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [Laws of 1978, c. 67, subsection 8(c).

In order to implement this legislative purpose, the Director of the Office of Administrative Law shall, among other things, assign an administrative law judge to any agency empowered to conduct contested cases to preside over such proceedings in contested cases as are required by sections 9 and 10 of P.L. 1968, c. 410 (C. 52:14B-10). Section 5n. In addition, the Director may assign an administrative law judge to any agency to conduct or assist in matters other than the conduct of contested cases or administrative adjudications, including rule-making and investigative hearings, as requested by the head of an agency. Section 5o. The full-time administrative law judges referred to in the Act shall be appointed by the Governor and serve for terms of five years and until the appointment and qualification of their successors. Section 4. The Director of the Office of Administrative Law may, in addition, appoint additional administrative law judges on a temporary or case basis as may be necessary for the proper performance of the duties of the office. Section 5m.

From this statutory framework, it is clear that the responsibility for the hearing of a contested case other than those heard by the head of the agency itself [1] and heretofore presided over by persons employed by the respective state agencies has now been centralized and placed by the Legislature under the supervision of a new single state agency. Typical of the hearings[2] that would be transferred from the departments to the Office of Administrative Law are: (1) hearings conducted by the Department of Environmental Protection required to be held "before the commissioner or a member of the department designated by him," N.J.S.A. 13:1G-13, for persons charged with violations of codes, rules and regulations of the Department, N.J.S.A. 13:1G-11; (2) hearings by the Department of Health to be held before the "commissioner or a member of the department designated by him," N.J.S.A. 26:1A-45; and (3) hearings under N.J.S.A. 18A:6-9 giving the Commissioner of Education "jurisdiction to hear and determine all controversies and disputes arising under school laws, excepting those governing higher education."

It is significant to note, however, that although the responsibility to conduct and preside over hearings of a state agency required to be conducted as a contested case has been placed by the Legislature in administrative law judges in the Office of Administrative Law, there has been no express or implicit legislative indication from the terms of the Act to transfer existing hearing officer-examiner positions or their occupants employed in the respective state agencies to the Office of Administrative Law. In fact, the general tenor of the statute providing for the selection of administrative law judges by the Governor for terms of five years suggests a legislative intent to abolish the responsibility heretofore assumed by hearing officers-examiners and place the same in the newly created Office of Administrative Law. In the event the Legislature intended to transfer the existing positions of hearing officer-examiners and/or their occupants and/or to preserve employment rights arising under Title 11, where applicable, it could have stated its intention in unmistakable terms. Therefore, it can reasonably be concluded that the Act does not provide any authority to transfer existing positions as hearing officers-examiners and their occupants employed in the operating state agencies to the Office of Administrative Law.

1. Under section 10b of the Act, it is provided that unless a specific request is made by the agency, no administrative law judge shall be assigned by the Director to hear contested cases with respect to any matter where the head of the agency, a commissioner, or several commissioners, are required to conduct, or determine to conduct, the hearing directly and individually. Moreover, it should also be noted that nothing in the Act shall be construed to deprive the head of any agency of the authority to determine whether a case is contested, or to adopt, reject or modify the findings of fact and conclusions of law of an administrative law judge. Section 9a.

2. A partial lisitng of other examples of the hearing function vested in the commissioners of the various departments may be found at: N.J.S.A. 17:1-8.8. (Department of Banking); N.J.S.A. 10:5-8 (Division on Civil Rights); N.J.S.A. 11:1-20 (Department of Civil Service); N.J.S.A. 55:13A-6 (Department of Community Affairs); N.J.S.A. 30:11-3, 30:11-16 *et seq.*, 30:11A-8 (Department of Human Services).

The provisions of the State Agency Transfer Act, N.J.S.A. 52:14D-1 *et seq.*, do not alter this conclusion. Section 11 of the Act provides that it shall be subject to the provisions of the State Agency Transfer Act. In order to determine the effect of those provisions, it is important to review the terms and general purpose of the State Agency Transfer Act.

The State Agency Transfer Act was enacted in 1971 and its title indicates that it is

> An act concerning the organization and reorganization of the State Government, relating to the transfer of functions, powers and duties from one agency to another by law. . . .

In its operative provision, the Act provides that "[w]henever by law *an agency* of the State Government *is transferred,* the provisions of this Act shall apply unless otherwise provided by the act effecting such transfer." N.J.S.A. 52:14D-3. The Act then provides a means for the transfer of appropriations and other monies available to the transferor agency and the rights of employees under Title 11, Civil Service, and any pension law or retirement system as a result of such transfer.

From its terms and its purpose, the State Agency Transfer Act has no application to the present situation insofar as it bears on hearing officers-examiners in the several state agencies. That Act was prinicpally enacted to deal with the implications of reorganizations in the agencies of State government where the same is effected by law. In this sense, this law would seem to complement the provisions of the Executive Reorganization Act or in instances when substantive governmental reorganization is accomplished by direct legislation. In this instance, there has been no expression of legislative intent to reorganize or transfer any of the agencies of state government to the Office of Administrative Law but merely to place a new function or responsibility in that agency. Therefore, it can be assumed to have been the probable legislative intent in including a reference to the State Agency Transfer Act to refer solely to the rights of those employees heretofore employed by the predecessor agency, Division of Administrative Procedure, now transferred to the Office of Administrative Law.[3]

For these reasons, it is our opinion that the identified functions, powers and duties heretofore exercised by hearing officers-examiners employed by the several state agencies insofar as they pertain to presiding over contested cases has been placed by the Legislature in administrative law judges employed by the Office of Administrative Law. Further, it is also our opinion that the functions of hearing officers-examiners in the respective state agencies insofar as they pertain to presiding over contested cases have been abolished by reason of the enactment of Laws of 1978, chapter 67. The Chief Examiner and Secretary, in accordance with normal

3. "All the functions, powers and duties heretofore exercised by the Division of Administrative Procedure in the Department of State pursuant to the Administrative Procedure Act, P.L. 1968, c. 410 (C. 52:14B-1 *et seq.*) are transferred to and vested in the Office of Administrative Law created by this amendatory and supplementary act." Section 2.

civil service practices, should conduct an investigation to determine the continuing need for those positions and the appropriate civil service tenure, seniority and demotional rights of occupants of those positions.[4]

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

4. In a statement of the Senate, State Government, Federal and Interstate Relations Committee and the Veterans Affairs Committee, it is stated that the application of the provisions of the State Agency Transfer Act would grandfather in present employees of agencies whose functions are being transferred to the new Office of Administrative Law and that "grandfathering" would be inclusive of those employees presently serving as hearing officers. In our judgment, this statement of these Committees has no support in either the terms or purposes of the enactment. We cannot accept the same as conclusive of the overall legislative intent.

March 2, 1979

SIDNEY GLASER, *Director*
Division of Taxation
Taxation Building
West State & Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1979

Dear Director Glaser:

You have asked for our opinion as to whether pension income received by a non-resident of New Jersey from a public or private pension plan is subject to the Gross Income Tax Act. For the reasons set forth below, you are advised that such pension income is subject to the Tax Act.*

N.J.S.A. 54A:2-1 provides for imposition of the tax upon every individual's "New Jersey gross income as herein defined . . ." subject to certain deductions, limitations and modifications set forth in the act. The term "gross income" is defined in N.J.S.A.54A:5-1(j) to include

> pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of [the sections of public pension laws which provide an exemption of such benefits from state taxation]. . . .

* The particular inquiry which prompted this request concerns non-resident retired teachers receiving pensions from the Teachers Pension and Annuity Fund. The Fund is a public State administered pension plan created pursuant to N.J.S.A. 18A:66-1 *et seq.*

It is clear, therefore, that the Legislature has imposed the tax upon all pension and annuity income. The only question is whether a pension income recipient is exempted from the income tax because he or she is no longer a resident of New Jersey.

With respect to non-residents, the Tax Act specifically provides that:

> The income of a nonresident individual shall be that part of his income derived from sources within this State as defined in this act. [N.J.S.A. 54A:5-5.]

"Income derived from sources within New Jersey" is, in turn, defined to include:

> compensation, net profits, gains, dividends, interest or income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:
>
> * * *
>
> 2. In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; . . . [N.J.S.A. 54A5-8.]

Since pension income is "income enumerated and classified under Chapter 5", and since pension benefits received from a public or private pension plan for work performed in New Jersey are attributable to a profession or occupation carried on within New Jersey, such pension income is "income derived from sources within New Jersey" and is subject to the income tax.

Accordingly, you are advised that pension income received by non-residents from a public or private pension plan in New Jersey is subject to the New Jersey Gross Income Tax Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DOUGLAS G. SANBORN
Deputy Attorney General

March 12, 1979

ANGELO R. BIANCHI, *Commissioner*
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 6—1979

Dear Commissioner Bianchi:

You have inquired whether, pursuant to the statutory provisions which establish the Office of Administrative Law, hearings held on branch banking applications will be required to be conducted by adminstrative law judges rather than by Departmental hearing officers. You are advised that such hearings need not be conducted by an administrative law judge under provisions of that Act.

The hearings at issue are those conducted in connection with applications by banks (commercial banks and savings banks) for full branch offices, N.J.S.A. 17:9A-20A, applications by banks to relocate principal or branch offices, N.J.S.A. 17:9A-22, applications by savings and loan associations for establishment of full and limited facility branch offices, N.J.S.A. 17:12B-26 and applications by savings and loan associations to relocate existing branch offices to a different trade area, N.J.S.A 17:12B-27.1(4). In each instance, the Commissioner is empowered to conduct such investigation *or* hearing *or* both, as he deems advisable, in order to determine whether the application meets the pertinent statutory criteria for approval. Pursuant to N.J.A.C. 3:1-2.3, an objector may request that the Department hold a hearing. If a request for hearing is granted, the hearing may be held before the Commissioner, or before a deputy commissioner, hearing officer or any employee of the Department authorized by the Commissioner, N.J.A.C. 3:1-2.9(a).

Currently, the vast majority of the hearings are conducted by the Departmental hearing officer. At such hearings, the applicant and the objectors are accorded the opportunity to be heard, to introduce exhibits into evidence and to present and cross-examine witnesses, N.J.A.C. 3:1-2.13(a).

Pursuant to a recent amendment to the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*

> All hearings of a State agency required to be conducted as a *contested case* under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [N.J.S.A. 52:14B-10(c).] [Emphasis added.]

Thus, the key inquiry is whether the Department's branch hearings represent "contested cases" as that term is defined in the Administrative Procedure Act. If so, they will be required to be conducted under the auspices of an administrative law judge. N.J.S.A. 52:14B-2(b) defines "contested case" as:

> a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of *specific parties are required by constitutional right or by statute* to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after *opportunity for an agency hearing.* [Emphasis added.]

As a preliminary matter, it should be noted that the Administrative Procedure Act does not "create a substantive right to an administrative hearing", *In re Application of Modern Industrial Waste Service,* 153 N.J. Super. 232, 237 (App. Div. 1977). Rather, the Act prescribes the procedures to be followed in the event an administrative hearing is otherwise required by statute or constitutional considerations. *Id.* Even if an administrative hearing is required by statute, the nature of that hearing must be examined towards the goal of determining whether the ultimate agency decision or determination disposes of the "legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties. . . ." In such instance, the agency acts in a quasi-judicial fashion and there is a "contested case" as defined by N.J.S.A. 52:14B-2(c). Conversely, if the purpose of the hearing is to provide a forum for the expression of public sentiment on proposed agency action or if the hearing is "informational" in nature, the agency acts in a legislative manner and the hearing is not conducted as a contested case, *Public Interest Research Group v. State,* 152 N.J. Super. 191, 206 (App. Div.) *certif. den.* 75 N.J. 538 (1977); *Wildlife Preserves Inc. v. Borough of Lincoln Pk.,* 151 N.J Super. 533, 542 (App. Div. 1977); *In re Matter of Public Hearings,* (C.O.A.) 142 N.J. Super. 136, 151-52 (App. Div.) *certif. den.* 72 N.J. 457 (1976).

The courts have examined the nature of the Department's branch application procedures and have concluded that hearings are not mandated by constitutional right, *Elizabeth Federal Savings and Loan Assn. v. Howell,* 24 N.J. 488, 505 (1957). In *First National Bank of Whippany v. Trust Co. of Morris Cty.,* 76 N.J. Super. 1, 8 (App. Div. 1962) the court expressly found that a hearing on a branch banking application is not necessary to comply with constitutional due process requirements. The court stated:

> [W]here the Legislature constitutes an administrative official [the Commissioner] as its *alter ego,* it is merely carrying out its exclusive function to establish public policy in fields in which the public interest is the primary object to be served and individual interests are only incidentally affected. *Id.*

The Court noted that in fixing the standards for the processing and approval of branch applications:

> [T]he obvious emphasis is pointed at the benefit to the *public* and not at any advantage to a banking institution by the applicant or established objectors. . . . [Emphasis in original.]

The determination of the Commissioner to approve or disapprove a branch application is conceived as primarily benefiting the public and only in-

cidentally of benefit to the applicant or objector. The discretionary hearing, if held, is designed to elicit views of objector institutions or others that might aid the Commissioner in determining whether the public interest will be served by approval or denial of the application.

It is also apparent both from the language of the branching statutes and judicial interpretation thereof, that a statutory right to a hearing is not available to either the applicant or an objector. The relevant statutory sections provide alternatively for Departmental investigation or hearing or both "as the Commissioner may determine to be advisable", N.J.S.A 17:9A-20A, N.J.S.A. 17:9A-22C, N.J.S.A 17:12B-26, and N.J.S.A. 17:12B-27.1(4); *In re Application of the Summit & Elizabeth Trust Co.,* 111 N.J. Super. 154, 164 (App. Div. 1970); *First National Bank of Whippany, supra.*

It is therefore clear that in accordance with the decision in *First National Bank of Whippany, supra,* and the branch banking statute a hearing on a branch banking application is neither required by constitutional right nor by statute. As a result, branch banking proceedings are not contested cases within the meaning of the Administrative Procedure Act and need not be conducted by administrative law judges.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MARK S. RATTNER
Deputy Attorney General

* It is noteworthy, however, that in any instance where the Commissioner requests and the Director of the Office of Administrative Law approves, an administrative law judge may be assigned to conduct such hearings. N.J.S.A 52:14F-5(o) provides the Director of the Office of Administrative Law shall "[a]ssign an administrative law judge or other personnel to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings, if so requested by the head of an agency and if the director deems appropriate".

March 16, 1979

ANGELO R. BIANCHI, *Commissioner*
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1979

Dear Commissioner Bianchi:

You have asked for an opinion as to whether the Commissioner of Banking has the authority to inquire into and/or investigate certain lending practices of a depository institution under the New Jersey Home Mortgage

Disclosure Act (Antiredlining Act), where such practices tend to have a disproportionate impact on certain neighborhoods in this State. Specifically, certain financial institutions in the Newark banking market limit mortgage loans to properties which are owner-occupied or are single-family dwellings. For example, one institution will accept mortgage applications only on 1 to 2 family owner-occupied residences. Another will accept applications on 1 to 4 family units but requires that these units be owner-occupied. The effect of these restrictive lending criteria is felt particularly hard in Essex County's urbanized areas. In Newark, based upon 1970 data, only 7.4% of the housing would qualify under a 1 family, owner/occupancy requirement. In Orange, only 15.6% of the housing would qualify under this requirement. In contrast, 92.8% of North Caldwell's housing units meet the 1 family, owner/occupancy requirement. The ultimate question is whether the Antiredlining statute applies where the "effect" of an institution's lending policy is to exclude from loan consideration significant portions of the housing in a given area merely because that area's general housing characteristics fail to meet the institution's lending criteria. It is our opinion that the Commissioner has the authority to find a violation of the Act when a depository institution's lending criteria acts to disproportionately exclude home financing in certain neighborhoods and such lending terms are unsupported by a reasonable analysis of the lending risks associated with applicants for given loans or the condition of the properties to secure those loans.

One of the major purposes of the Antiredlining Act is to "prohibit the arbitrary denial of mortgage loans on the basis of the location of the property to be mortgaged," N.J.S.A. 17:16F-1. In furtherance of this purpose is N.J.S.A. 17:16F-3 which provides, in pertinent part:

> No depository institution shall discriminate, on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with the applicant for a given loan or the condition of the property to secure it, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions, or provisions of any mortgage loan on real property located in the municipality in which a depository institution has a home or branch office, or in any municipality contiguous to such municipality, merely because such property is located in a specific neighborhood or geographical area.

If the Commissioner of Banking finds that a depositor institution's lending practices are in violation of the Act, he is vested with authority to order that institution to cease such unlawful practices, N.J.S.A. 17:16F-9. Prior to the issuance of a cease and desist order the depository institution will be afforded a hearing, N.J.A.C 3:1-9.11.

For present purposes, the relevant inquiry is whether the Act applies when the effect of an institution's lending criteria, although not explicitly based on geographical limits, is the disproportionate exclusion of properties in certain neighborhoods. Several principles provide a helpful frame of reference within which to discuss the issue. First, an administrative agency possesses only those powers expressly or impliedly granted

it by the Legislature, *Kingsley v. Hawthorne Fabrics Inc.*, 41 N.J. 521, 528 (1964). The agency may not act in excess of that legislative grant of authority. Thus, it must be asked what the Legislature intended by the use of the term "discriminate" in N.J.S.A. 17:16F-3. If discrimination based upon explicit geographic lending criteria must be shown, a lending practice which merely results in the exclusion of properties in certain neighborhoods will not be a violation of the Act. The second relevant principle derives from the fact that the Antiredlining statute is remedial in nature. It is designed to prohibit practices which the Legislature has viewed as destructive to the fabric of the State's urban centers, N.J.S.A. 17:16F-1. As remedial legislation, the act is entitled to a liberal construction which will further its essential purpose, *State v. Meinken,* 10 N.J. 348, 352 (1952).

A review of the statement accompanying Senate Bill No. 1091, which was enacted as N.J.S.A. 17:16F-1 *et seq.*, supports the view that lending policies discriminatory in effect are prohibited by N.J.S.A. 17:16F-3. A bill statement may be relied upon as evidence of the actual intent of the Legislature, *State v. Sanchez,* 149 N.J. Super. 381, 394 (Law Div. 1977). The statement on Senate Bill No. 1091 indicates that:

> The term redlining is used to refer *both* to outright denial of mortgage money *and varying the terms of the loan in a manner that clearly constitutes discrimination.* [Emphasis added.]

Several examples of varying the terms of the loan are discussed, including refusal to lend on properties older than a prescribed number of years, excessive down payments and charging higher interest rates than on properties located in other areas. None of these loan terms explicitly exclude properties based upon neighborhood, but the discussion of these lending devices indicate a legislative awareness that the lending practices of depository institutions may be neutral on their face and yet have a discriminatory impact. For example, a lending policy which refuses loans on all properties older than a prescribed number of years will, even if applied to all mortgage applications in an institution's lending area, impact disproportionately on urban centers. In the same manner, an owner-occupancy requirement or a single-family requirement, may operate to exclude a large percentage of residences from particular urban neighborhoods. The exclusion results "merely because such proper[ties] [are] located in a specific neighborhood" and the neighborhood's general physical characteristics fail to meet the institution's uniform lending criteria.

It would be inconsistent with the examples given in the bill statement, as well as with the remedial purpose of the statute, to interpret N.J.S.A. 17:16F-3 to apply only to cases where geographical criteria are clearly established. Where an institution's lending policy, even if uniformly applied, has a discriminatory impact on properties in given geographical areas, it reasonably may be assumed to have the implicit legislative purpose to grant the Commissioner of Banking the authority to inquire whether a violation of the Antiredlining Act has occurred. You are therefore advised that the Commissioner has the authority to find a depository institution in violation of the Antiredlining Act when that institution's

lending criteria for home financing have a disproportionate impact on certain neighborhoods and those lending criteria have not been proven by the lending institution at a hearing held by the Commissioner to be supported by a reasonable analysis of the risks associated with the applicants for given loans or the condition of the properties used to secure those loans.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: MARK S. RATTNER
Deputy Attorney General

April 23, 1979

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
Whittlesey Road
Trenton, New Jersey 08628

FORMAL OPINION NO. 8—1979

Dear Commissioner Fauver:

You have requested our opinion as to whether it is within the authority of a chief executive officer of a state correctional institution to restore commutation credits to an inmate when those credits have been previously forfeited by the inmate as a result of his flagrant misconduct. For the following reasons you are advised that, in the discretion of the chief executive officer, such commutation credits may be restored to the inmate.

N.J.S.A. 30:4-140 governs the allowance of commutation credits to inmates in state correctional institutions. This statute provides in pertinent part:

> For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional institution for a minimum-maximum term there shall be remitted to him from both the maximum and minimum term of his sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then time credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence. No time credits shall be calculated as provided for herein on time served by any person in custody between his arrest and the imposition of sentence. In case of any flagrant misconduct the

board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as to them shall seem just.*

It is clear from this statutory language that, although an inmate has an entitlement to commutation credits, the chief executive officer may declare a forfeiture of all or part of those credits in appropriate cases.

Although the statute does not in express terms authorize the restoration of forfeited commutation credits, the underlying statutory scheme for institutional discipline of inmates in state correctional institutions provides implicit support for that practice. The Department of Corrections is responsible for providing for the custody, care and discipline of those persons committed to state correctional institutions, N.J.S.A. 30:1B-3. In particular, the commissioner and the chief executive officer of such institution possess inherent authority for the maintenance of prison discipline as well as for the establishment of procedures to effectuate that responsibility. *Avant v. Clifford,* 67 N.J. 496, 549 (1975); N.J.S.A. 30:4-4. *See also,* N.J.S.A. 30:1B-6(g). Since the appropriate management of a penal institution requires the discipline of its inmates, the cases have recognized that prison officials possess wide and pervasive discretion in the treatment of inmates in matters of internal prison management and discipline. *See McCloskey v. State of Maryland,* 337 F.2d 72, 74 (4th Cir. 1964); *Gahagan v. Pennsylvania Bd. of Probation and Parole,* 444 F.Supp. 1326 (E.D. Penn. 1978); *Urbano v. McCorkle,* 334 F.Supp. 161, 167 (D. N.J. 1971) supplemented by 346 F.Supp. 51 (D. N.J. 1972) *aff'd* 481 F.2d 1400 (3rd Cir. 1973); *Davis v. United States,* 316 F.Supp. 80, 82 (E.D. Mo. 1970) *aff'd* 439 F.2d 1118 (8th Cir. 1971); *Avant v. Clifford, supra,* at pp. 563-564 (Conford, J. concurring).

In view of the broad statutory framework conferring authority for the discipline of inmates, we cannot assume that it can be the legislative purpose, in the absence of an express indication to the contrary, that a restoration of commutation credits is foreclosed. Implicit in the authority to declare a forfeiture of credits is the discretion to revoke such a forfeiture. Furthermore, an administrative agency has been held to have the inherent authority to reopen and modify its determinations. *Burlington County Evergreen Park Mental Hospital v. Cooper,* 56 N.J. 579, 600 (1970); *Mount v. Trustees of Public Emp. Retirement System of New Jersey,* 133 N.J. Super. 72, 82 (App. Div 1975). Additionally, a statute should be construed with regard to its purpose and consistent with related statutes in the area. *Appeal of N.Y. State Realty & Terminal Co.,* 21 N.J. 90, 98 (1956); *Apartment Management Co. v. Tp. Comm. of Union Tp.,* 140 N.J. Super.

* N.J.S.A. 30:4-4a provides in pertinent part:

> Whenever in any law, rule, regulation, contract, document, judicial or administrative proceeding or otherwise, reference is made to the board of managers of any institution, the same shall mean and refer to the chief executive officer of the institution. . . .

Thus, pursuant to this statute, the authority to declare the forfeiture of commutation time credits resides in the chief executive officer of the correctional institution in which the inmate is incarcerated.

220, 224 (App. Div. 1976); *N.J. Prop.-Liab. Ins. Guar. Co. v. Sheeran,* 137 N.J. Super. 345, 351 (App. Div. 1975) *certif. den.* 70 N.J. 143 (1976). Thus, since the authority conferred on prison officials to declare a forfeiture of commutation credits is an aspect of their ability to maintain prison discipline, we can reasonably assume that the legislature intended to confer concomitant authority on those prison authorities to restore commutation credits in those cases where the interests of prison management and discipline are similarly served.

In conclusion, it is our opinion that the existing administrative practice permitting the restoration of commutation credits previously forfeited under N.J.S.A. 30:4-140 is within the authority of prison officials where the same is implemented in a manner that is neither arbitrary nor capricious and is consistent with the best interests of the inmates and prison management and discipline.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: EUGENE M. SCHWARTZ
Deputy Attorney General

May 4, 1979

SIDNEY GLASER, *Director*
Division of Taxation
Taxation Building
West State & Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 9—1979

Dear Director Glaser:

You have asked for our opinion as to whether temporary disability benefits received by an employee from either the "State Plan"[1] or a "private plan"[2] established pursuant to the Temporary Disability Benefit Law, are excludable from gross income under the New Jersey Gross Income Tax Act. For the reasons set forth below, you are advised that such benefits are excludable from gross income.[3]

N.J.S.A. 54A:2-1 provides in pertinent part that:

> There is hereby imposed a tax for each taxable year . . . on the New Jersey gross income as herein defined of every individual . . ., subject to the deduction, limitations and modifications hereinafter provided. . . .

"Gross income" is defined in N.J.S.A. 54A:5-1:

> New Jersey gross income shall consist of the following categories of income:

> a. salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property. . . .

Temporary disability benefits received from a private plan or the State Plan are within the ambit of "gross income" as defined in the Tax Act, since the right to such benefits arises by virtue of the employee's employment, and since such benefits are funded and/or paid (at least in part) by the employers. Unless specifically excluded by N.J.S.A. 54A:6-1 through 6-15, such benefits are subjected to tax under N.J.S.A. 54A:5-1.[4] N.J.S.A. 54A:6-1 provides that:

1. The Temporary Disability Benefits Law, N.J.S.A. 43:21-25 *et seq.*, provides for the establishment of a state disability benefits fund, in which contributions of employers and employees are deposited. N.J.S.A. 43:21-46(a). The state disability benefits fund is in the custody of the State Treasurer, and is held in trust for the payment of temporary disability benefits. Such benefits are payable to "covered individuals" as defined in N.J.S.A. 43:21-27(b) in certain circumstances set out in the Law. *See* N.J.S.A. 43:21-37 through 42. This form of disability coverage is referred to as coverage under the "State Plan."

2. As an alternative to contributing to the State Plan, an employer may, under certain circumstances, establish a private disability plan for its employees, which plan is subject to review by the Division of Employment Security. A private plan must, in effect, provide beneftis to employees which equal or exceed the benefits provided by the State Plan, without requiring that the employees contribute more than they would be required to contribute under the State Plan. N.J.S.A. 43:21-32.

3. It has been suggested that N.J.S.A. 54A:6-13, which provides an exclusion for "all payments and benefits received under any unemployment insurance law," could be construed to provide an exclusion for temporary disability payments received under N.J.S.A. 43:21-25 *et seq.* Although it is true that the Temporary Disability Benefits Law is a supplement to the Unemployment Compensation Law, N.J.S.A. 43:21-1 *et seq.*, and is codified as Article 2 of the "Unemployment Compensation" Chapter (Chapter 21) of Title 43, Subtitle 9, the Benefits Law itself recognizes that there is a difference between an unemployment compensation law and a disability benefit law. N.J.S.A. 43:21-30 provides:

> No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the Federal Government. . . .

And, the Act itself is entitled "Temporary Disability Benefits Law," N.J.S.A. 43:21-25, to be distinguished from the "Unemployment Compensation Law," N.J.S.A. 43:21-1. Furthermore, other states' temporary disability laws may or may not be codified as an "unemployment compensation" law, and there does not appear to be any reason or intent to treat such payments differently for purposes of the Tax Act. Accordingly, although N.J.S.A. 54A:6-13 (like N.J.S.A. 54A:6-6(a)) supports our conclusion that this type of benefit was intended to be excluded, that section cannot reasonably be read to provide the exclusion.

4. That such benefits would be subject to tax under N.J.S.A. 54A:5-1 is fully consistent with, indeed supported by, the specific exclusions from gross income of federal social security benefits (N.J.S.A. 54A:6-2), railroad retirement benefits (N.J.S.A. 54A:6-3), and unemployment insurance benefits (N.J.S.A. 54A:6-13).

> The items in sections 54A:6-2 to 54A:6-9, inclusive, shall be specifically excludable from gross income.

N.J.S.A. 54A:6-6 provides an exclusion for:

> Compensation for injuries or sickness.
> a. Amounts received under workmen's compensation acts as compensation for personal injuries or sickness.
> b. The amount of damages received, whether by suit or agreement, on account of personal injuries or sickness.
> c. *Amounts received through accident or health insurance for personal injuries or sickness.*
> d. Amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of the United States or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the Foreign Service Act of 1946. [Emphasis added.]

This exclusion provision is essentially similar to §104 of the Internal Revenue Code ("I.R.C."); that exclusion provision, entitled "Compensation for injuries or sickness," reads as follows:

> (a) In general.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include—
>
> (1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;
> (2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;
> (3) *amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee. or (B) are paid by the employer);* and
> (4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended. [22 U.S.C. 1081; 60 Stat. 1021.[[Emphasis added.]

In view of the substantial similarity of these provisions which provide exclusions from taxable income, as well as several others,[5] it may be reasonably assumed that the Legislature was aware of these exclusions in the Internal Revenue Code and intended to specifically incorporate them

into the tax act. It is appropriate, therefore, to look to §104 of the I.R.C. as an aid in interpreting N.J.S.A. 54:6-6. *See* 2A Sutherland, *Statutory Construction,* §52.02 at 328-329 (4th Ed. 1973).

§104(a)(3) of the I.R.C. provides an exclusion for "amounts received through accident or health insurance." for purposes of §104(a)(3), that term includes "amounts received from a sickness and disability fund for employees maintained under the law of a state. . . ." §105(e) of the I.R.C.[6] Thus, under the Internal Revenue Code the exclusion of "amounts received through accident or health insurance" has been applied to temporary disability benefits payments received, whether from the employer or the employer's plan, from an insurance company, or from [a] State fund. . . ." *See* Rev. Rul. 75-479, 1975-2 CB 44 and Rev. Rul. 75-499, 1975-2 CB 43; amplifying Rev. Rul. 72-191, 1972-1 CB 45. Since N.J.S.A. 54:6-6(c) was patterned after §104(a)(3), the likely legislative intent was the temporary disability benefits received from the State Plan or a private plan are amounts received from "accident or health insurance" and excludable from gross income under the Tax Act. On the other hand, since the Legislature did not incorporate a limitation on the exclusion with regard to amounts attributable to contributions by an employer as set forth in section 104(a)(3),[7] we conclude that it intended to exclude the entire amount of temporary disability benefits from gross income under the Tax Act.

In conclusion, you are advised that temporary disability benefits received from the State Plan or a private plan are excludable from gross income under the Tax Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DOUGLAS G. SANBORN
Deputy Attorney General

5. The following exclusion provisions of the Tax Act and the I.R.C. are also substantially identical: N.J.S.A. 54A:6-4 and I.R.C. §101; N.J.S.A. 54A:6-5 and I.R.C. §102; N.J.S.A. 54A:6-7(b) and I.R.C. §113; N.J.S.A. 54A:6-8 and I.R.C. §117.

6. Even prior to the inclusion of §105(e) in the I.R.C., the Supreme Court of the United States held that temporary disability payments received from an employer's plan were receipts from "health insurance" as that term was used in the exclusion provision which antedated §104(a)(3). *Haynes v. United States,* 353 U.S. 81, 77 S. Ct. 649, 1 L. Ed. 2d 671 (1957).

7. §104(a)(3) limits the exclusion to amounts

> [O]ther than [those] received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer.

May 9, 1979

MR. THOMAS RUSSO, *Director*
Division of Medical Assistance
and Health Services
Department of Human Services
324 East State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 10—1979

Dear Mr. Russo:

The Department of Health, which assists in administering the program for setting the rate of reimbursement payable to nursing homes under the New Jersey Medical Assistance and Health Services Act (N.J.S.A. 30:4D-1 *et seq.*) (Medicaid), has asked whether any nursing home dissatisfied with the rate set for it should have its administrative appeal heard by an administrative law judge. It is our opinion that such a rate reimbursement appeal is a contested case and should be heard by an administrative law judge.

By authority of N.J.S.A. 30:4D-7(b) the Division of Medical Assistance and Health Services in the Department of Human Services is responsible for determining the amount of payment for services rendered to Medicaid recipients by providers of medical services. *See Formal Opinion No. 8-1976.* Reimbursement rates for certified nursing home providers participating in the Medicaid program are set in accordance with Cost Accounting and Rate Evaluation (CARE) regulations adopted by the Department of Human Services (N.J.A.C. 10:63-3 *et seq.*) and administered in substantial part by the Department of Health. Nursing home rates are set prospectively on an annual basis, depending on the fiscal year used by the facility for its accounting purposes. A rate is based on the specific cost data submitted by the particular facility and is set in terms of a *per diem* amount for that particular nursing home.

The CARE regulations make available two stages of administrative appeal to resolve disputes concerning the rate that is initially established. N.J.A.C. 10:63-3.20. The nursing home may request a meeting with a Health Department rate analyst for review and adjustment of the rate (Level I Appeal). Thereafter, the home may request a conference with a panel of representatives of the Departments of Health and Human Services. On occasion the panel may include a representative of the Department of Transportation which furnishes appraisals of the value of nursing home land and property, elements that are factored in the reimbursement rate. This "Level II" appeal is conducted in an informal manner. It concludes by the panel's submitting a memorandum containing its recommendations to the Director of the Division of Medical Assistance and Health Services, who makes the final administrative decision.

Through the recent amendments to the Administrative Procedure Act (L. 1978, c. 67), N.J.S.A. 52:14B-1 *et seq.*, 52:14F-1 *et seq.*, all "contested cases" heard by a State agency must be conducted by an administrative

law judge instead of by Departmental hearing officers. N.J.S.A. 52:14B-10(c). A "contested case" is defined by N.J.S.A. 52:14B-2(b) as:

> a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their, interests, after opportunity for an agency hearing.

Thus where, by statute or constitutional law, a hearing is required before a State agency may determine the legal rights of specific parties, the matter constitutes a "contested case" which must be heard by an administrative law judge. *See Public Interest Research Group v. State of New Jersey,* 152 N.J. Super. 191, 205, (App. Div. 1977), certif. denied, 75 N.J. 538 (1977); *Formal Opinion No. 6-1979.*

In considering whether a nursing home rate dispute is a "contested case" within the scope of N.J.S.A. 52:14B-2(b), it should be noted that the Medicaid statute requires that the State "provide that either the recipient or the provider shall be afforded the opportunity for a fair hearing within a reasonable time on any valid complaint." N.J.S.A. 30:4D-7(f). This statutory hearing right, however, has been interpreted by the Department of Human Services to apply only to cases involving a recipient's eligibility for assistance termination or suspension of a provider agreement, or the payment of claims for services rendered. N.J.A.C. 10:49-1.16. From the inception of the nursing home rate-setting program the Department of Human Services has consistently held to the position that a rate dispute is not suitable to formal hearing. The issues in such a case are frequently matters of estimation, judgement and policy; in addition, any rate that is set is always subject to the limitation of available appropriated funds, N.J.S.A. 30:4D-2, 30:4D-7.

Rate-setting has, indeed, long been viewed as a quasi-legislative function and, where the Legislature entrusts that rate-setting power to an administrative agency, that agency is constrained by no greater procedural requirements than would otherwise apply to the Legislature itself. *Consolidation Coal Co. v. Kandle,* 105 N.J. Super. 104, 113 (App. Div. 1969), *aff'd* 54 N.J. 11 (1969); *Public Serv. Coordinated Transport v. State,* 5 N.J. 196, 214 (1950). Accordingly, neither the Legislature nor the delegated agency would be under a duty to provide a hearing before fixing a flat rate or maximum levels of increase on a general or Statewide basis. *Jamouneau v. Harner,* 16 N.J. 500, 522 (1954), *cert. denied,* 349 U.S. 904, 75 S. Ct. 580, 99 L. Ed. 1241 (1955).

The nursing home rate-setting program, however, does not mirror the pure legislative model of setting a uniform rate across the board for all facilities regardless of individual differences. The program instead sets a certain reimbursement rate for a particular facility taking into consideration that facility's own operating expenses, property evaluation and working capital needs. The CARE regulations expressly recognize that because of unusual situations inequities may result from strict adherence to the initial rate, and they provide for review of the special circumstances of

the facility. N.J.A.C. 10:63-3. The nursing home rate-setting program is thus directed towards establishing the legal right of a *specific party* to a rate of reimbursement for services it provides to Medicaid recipients.* Moreover, by statute the facility is entitled to a reasonable rate for those services, N.J.S.A. 30:4D-7(b).

Although rate-making powers may be characterized as legislative or quasi-legislative, a rate determination in many respects will also require the exercise of quasi-judicial functions when property rights of specific facilities are at stake. *Central R. Co. v. Department of Public Utilities,* 7 N.J. 247, 257 (1951). In such instances rate-making will combine "the elements of policy making and adjudication, being a blend of prescription for the future with the disposition of a particular, immediate petition." *Yellow Cab Corp. v. City Council of Passiac,* 124 N.J. Super. 570, 580 (Law Div. 1973). It has been expressly established by case law that where the property interests of a specific facility are involved in fixing a rate of reimbursement, due process requires the affording of an opportunity for a hearing thereon by the facility. Thus, in *St. Joseph Stock Yards Co. v. United States,* 298 U.S. 38, 56 S. Ct. 720, 80 L. Ed. 1033 (1935), the action of the Secretary of Agriculture in prescribing maximum charges for a stockyard company's services was attacked as a confiscation of the company's property. The Court stated that the "fixing of rates is a legislative act." 298 U.S. at 50. Yet it went on to hold that

> When the Legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. . . .
>
> . . . [T]he Constitution fixes limits to the rate-making power by prohibiting the deprivation of property without due process of law or the taking of private property for public use without just compensation. . . . It is not difficult for . . . [administrative agencies] to observe the requirements of law in giving a hearing and receiving evidence. [298 U.S. at 51-52.]

In *Ohio Bell Tel. Co. v. Public Utilities Comm'n,* 301 U.S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 (1937), the Court reversed an order of a State Commission setting the rates chargeable by a telephone company for intrastate telephone service to its subscribers because factual data on which the Commission had relied, including the valuations of the company's land, labor, buildings and equipment, had not been disclosed to the company. The Court stated, "The right to . . . [a fair and open] hearing is one of 'the rudiments of fair play' . . . assured to every litigant by the Fourteenth Amendment as a minimal requirement. . . . There can be no compromise

* It is noteworthy that these appeal procedures for nursing home rate reimbursement are governed by the same statutory provisions which deal with hospital rate reimbursement where the Department of Health has expressly recognized the need for a formal hearing.

on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored." 301 U.S. at 304-305. It is apparent from these cases that

> [W]hile rate-making is labelled a legislative process, the due process clause of the U.S. Constitution provides that no one shall be deprived of his property without due process of law, and the 'due process' which must be accorded includes the affording of an opportunity for a hearing. [*Yellow Cab Corp. v. City Council of Passaic, supra,* 124 N.J. Super. at 579.]

See also Cunningham v. Department of Civil Service, 69 N.J. 13, 21 (1975); *In re Matter of Public Hearings* (C.O.A.) 142 N.J. Super. 136, 151-152 (App. Div. 1976), *certif. denied,* 72 N.J. 457 (1976).

The type of hearing that must be afforded necessarily depends on whether adjudicative facts are at issue in the individual case. *Cunningham v. Department of Civil Service, supra,* 69 N.J. at 22-23, *Yellow Cab Corp. v. City Council of Passaic, supra,* 124 N.J. Super. at 580; Davis, *Administrative Law* §7.04 at 420-426 (1958). As noted in *Yellow Cab Corp. v. City Council of Passaic, supra,* 124 N.J. Super. at 580-582, administrative agency rate-making is a blend of quasi-judicial and quasi-legislative functions, entailing a consideration of large questions of public policy, reference to broad data from surveys, studies and experience as well as a determination of discrete facts. Where, as in the nursing home rate-setting process, final agency decisions are based on individual grounds for administrative appeal, including the factual characteristics, situation and valuation of the facility's property, an adjudicative hearing is required. Davis, *Administrative Law, supra,* §7.04 at 421.

Accordingly, you are advised that since an opportunity to be heard is required before a rate dispute concerning a specific nursing home may be finally resolved by agency decision, such a dispute constitutes a "contested case" that should be heard by an administrative law judge. Provision for hearing before an administrative law judge may be superimposed upon an informal administrative scheme for voluntary resolution of the dispute and may be substituted for both or either one of the existing appeal levels.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By CHARLOTTE KITLER
Deputy Attorney General

May 14, 1979

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 11—1979

Dear Director Waddington:

You have inquired as to whether or not a truck (or truck and trailer combination) registered in another state but found on a New Jersey highway in excess of the weight listed on its foreign certificate of registration is in violation of N.J.S.A. 39:3-84.3, which makes it unlawful for:

> any commercial motor vehicle, tractor, trailer or semitrailer [to be] *found* on a highway with a gross weight of vehicle and load *in excess of the weight limitation permitted by the certificate of registration for the vehicle* or in excess of the gross weight limitations imposed by the Title for vehicle and load or an axle weight in excess of the axle weight limitations imposed by this Title . . . . [Emphasis supplied.]

Alternatively stated, your question is whether or not the term "certificate of registration" as used in the statute was intended to encompass *foreign* registrations as well as New Jersey registrations. For the following reasons, we conclude that it was not.

Initially, it must be noted that the statute is penal and quasi-criminal in its nature, and so must be strictly construed. *State v. Gratale Brothers, Inc.,* 26 N.J. Super. 581 (App. Div. 1953). Even so, the statute must be read in relation to the mischief and evil sought to be suppressed and effect must be given to the terms of the statute in accordance with their fair and natural acceptation. *State v. Ferro,* 128 N.J. Super. 353 (App. Div. 1974).

At least as to the gross weight limitations for vehicle and load and the axle weight limitations of this statute, the intent and purpose of the law is plainly to protect our highways and highway structures from damage by overweight vehicles. *State v. Gratale Brothers, Inc., supra* at 584. Recognized in that light, such provisions have been constitutionally upheld when applied to trucks registered out-of-state as well as in-state. *Morris v. Duby,* 274 U.S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1926).[1] Such a purpose, however, is not so apparent here, where two identical trucks both registered in New Jersey and both subjecting our highways to the same load and distribution (axle weight), could be treated differently under the statute depending only upon the fees accompanying their registration application.[2] Viewed thusly, this aspect of the statute appears as merely the enforcement arm of a revenue measure (N.J.S.A. 39:3-20) the purpose of which is to

1. In this case the Supreme Court was called upon to examine an Illinois gross weight limitation similar to ours in the face of a constitutional challenge that it placed an undue burden on interstate commerce. The court sustained the limitation, finding it a reasonable and non-discriminatory means to further a legitimate state objective.

compel voluntary payment of the correct registration fee to the State of New Jersey by the owners of trucks registered *in this State. See State v. Youngstown Cartage Co.,* 105 N.J. Super. 223, 225 (Co. Ct. 1969), wherein the court recognized that "a weight in excess of the registered weight is not of itself a cause of damage to the highways." and *State v. Levitan Interstate Transport, Inc.* 58 N.J. Super. 345, 351 (Co. Ct. 1959), wherein it was noted that to not enforce N.J.S.A. 39:3-84.3 in the particular situation under review there would "make possible an evasion of the revenue provisions of N.J.S.A. 39:3-20 . . ." To apply this portion of the statute to trucks registered out-of-state, therefore, could in no way be viewed as rationally related to its purpose since the subject registration fees would be paid to the state of registration and not to New Jersey.

Moreover, since the subject provision is plainly inapplicable on its face to trucks registered in states which do not require registration based upon gross weight,[3] *State v. Olean Transp. Corp.,* 39 N.J. Super 236 (Co. Ct. 1956), a determination that our statute was intended to apply to trucks registered out-of-state appears even less viable. Such would lead to the rather anamolous result that a truck registered in a state requiring registration based upon "unladen weight" and found in New Jersey in excess of such "unladen weight" would be immune from prosecution[4] while this same truck, if registered in a state where registration is based upon gross weight and found in excess of its registered gross weight, would be subject to prosecution. Such a result cannot have been intended. Rather, it must be concluded that the legislature intended that the subject overweight provision apply only to vehicles registered in New Jersey as a means of enforcing its registration laws. *State v. Youngstown Cartage Co., supra.*

The above determination is mindful of the apparently contrary conclusions reached in *State v. Olean Transp. Corp., supra.* and *State v. Levitan Interstate Transport, Inc., supra.* Suffice it to say that unlike *State v. Youngstown Cartage Co., supra.* these decisions are not precisely on point with the situation present here. In *Olean,* for example, the only question for determination was whether or not our statute applied to a tractor registered in a state that required registration to be based upon the vehicle's "unladen weight" rather than its "gross weight."[5] The court concluded that it did not, adding in dictum, however, that in its view the statute did

2. N.J.S.A. 39:3-20 provides that:

> a. The Director is authorized to issue registrations for commercial motor vehicles . . . upon application therefor and payment of a fee based on the gross weight of the vehicle [meaning the vehicle and its load] . . . . [T]he minimum registration fee shall be $50.00 plus $8.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

Thus, a truck registered for 6,000 pounds (having paid a fee of $58.50), for example, could not be prosecuted under N.J.S.A. 39:3-84.3 when found on the highway weighing 5,500 pounds, whereas if only a $50.00 registration fee had been paid for this same truck, a summons could issue.

3. At least ten states, as you have indicated in your request for advice, require that registration be based upon the truck's "unladen weight."

4. This is assuming that the vehicle and load did not exceed either the maximum gross weight limitation or the axle weight limitation set forth in our statute.

5. See footnote 3.

apply to trucks registered in other states that required gross weight to be listed on registration certificates. The question presented in *Levitan* was whether or not our statute applied to a combination of a New Jersey registered tractor and a trailer registered in another state that required gross weight to be listed on its registration certificate. The court concluded that it did, specifically rejecting the defendant's contention that the statute was limited in application to only combinations of vehicles *wholly* registered in New Jersey. The situation here, on the other hand, concerns only vehicles or combinations of vehicles *wholly* registered *out-of-state.*

To whatever extent the language in either of those cases goes beyond their narrow holdings, moreover, it is found unpersuasive. Both courts base their decision at least in part on their recognition of the purpose of the act to protect our highways, but fail to realize, as recognized in *Youngstown* and as noted above, that such purpose only applies to the maximum gross weight and axle weight limitations of the act. Furthermore, the reasoning in *Levitan* appears additionally suspect for reason that it rests upon the court's fear that:

> To uphold defendant's contention is to make possible an evasion of the revenue provisions of N.J.S.A. 39:3-20, a statutory construction not to be favored. A New Jersey trucker would be enabled to register his tractor at a minimum fee and haul an out-of-state trailer and load over the New Jersey highways with immunity from any complaint for overweight of vehicle and load as evidenced by the combined certificates of registration. [*Id.* at 350.]

However persuasive such observation may have appeared at the time this decision was reached, it no longer appears so following amendment of N.J.S.A. 39:3-20 and N.J.S.A. 39:3-84.3 prohibiting the operation of combinations of New Jersey tractors and out-of-state trailers on New Jersey highways in excess of twice the gross weight listed on the New Jersey tractor's registration certificate and prescribing fines based upon such excess. L. 1963, c. 166, §§1 and 2. The "immunity" feared by the Court in *Levitan* thus no longer exists. The existence of these amendments, in fact, can be seen as evidence of a legislative disapproval of the approach taken by the court in *Levitan,* since the out-of-state trailer's registration certificate in such a situation is now irrelevant to the determination as to whether or not a violation has occurred under the statute or as to how much of a fine should be assessed. These determinations are now to be based solely upon the gross weight listed on the New Jersey tractor's certificate of registration and the total weight of the combination.

For the reasons set forth above, you are therefore advised that a truck registered in another state and found on a New Jersey highway in excess of the weight listed on its foreign certificate of registration (but within the maximum gross weight and axle weight limitations of the act) is not in violation of N.J.S.A. 39:3-84.3.

Very truly yours.
JOHN J. DEGNAN
Attorney General

By: ROBERT M. JAWORSKI
Deputy Attorney General

June 13, 1979

DR. FRED G. BURKE, *Commissioner*
Department of Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 12—1979

Dear Dr. Burke:

The Department of Education has asked for our opinion as to the validity of United States citizenship requirements for teachers under a recent decision of the United States Supreme Court in *Ambach v. Norwick,* 441 U.S. 68 (1979).

The statute governing the qualifications of a permanent teaching staff member requires an applicant to be a citizen of the United States "except that any citizen of any other country, who has declared his intention of becoming a United States citizen and to whom there has been issued a teaching certificate in accordance with law, may be employed as a teacher so long as he holds a valid teacher's certificate . . . ." N.J.S.A. 18A:26-1. The State Board of Examiners is authorized to issue a teacher's certificate to an alien who has declared his intention of becoming a United States citizen, but any such certificate may be revoked where the holder has either abandoned his efforts to become a United States citizen, or shall not have become a United States citizen within five years of the date of its issuance. N.J.S.A. 18A:26-8.1.

In *Formal Opinion No. 10—1974* we concluded that the indiscriminate ban set forth in the statutes on the employment and tenure of teachers who are aliens was constitutionally invalid in the absence of a special circumstance inherent in a particular teaching position. Our opinion was then premised on the holding of the United States Supreme Court in *Sugarman v. Dougall,* 413 U.S. 634 (1973). The Court held at that time that a broad provision of New York Civil Service law which indiscriminately prohibited the employment of aliens in the competitive civil service was in violation of the Fourteenth Amendment to the United States Constitution.

In *Ambach* the Court addressed the specific question as to the constitutional validity of a New York statutory ban on the employment of aliens as teachers in the New York public schools. That statute was in many respects similar to the governing New Jersey statutes insofar as it provides for a ban on the employment of persons as teachers who are not either citizens of the United States or have not made diligent application to become a citizen.

In *Ambach* the appellees satisfied all of the educational requirements set for certification as a public school teacher but consistently refused to seek citizenship in spite of their eligibility to do so. The Court reviewed its earlier decisions in this area and again recognized, as it had in *Sugarman,* that a state could "in an appropriately defined class of positions, require citizenship as a qualification for office." *Ambach, supra,* at 1593. The court stated that where a governmental function fulfilled a fundamental obligation of government to its constituency, it was within

the authority of a state to exclude aliens from such governmental positions. *See also: Foley v. Connelie,* 435 U.S. 291 (1978). In its application of these principles to the case at hand, the court stated:

> In determining whether, for purposes of equal protection analysis, teaching in public schools constitutes a governmental function, we look to the role of public education and to the degree of responsibility and discretion teachers possess in fulfilling that role. *See id.,* at 297. Each of these considerations supports the conclusion that public school teachers may be regarded as performing a task 'that go[es] to the heart of representative government.' *Sugarman v. Dougall, supra,* at 647.
>
> Public education, like the police function, 'fulfills a most fundamental obligation of government to its constituency,' *Foley,* at 297. The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions:
>
> 'Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a prinicipal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.' *Brown v. Board of Education,* 347 U.S. 483, 495 (1954). [*Ambach, supra,* at 76, 77.]

The Court concluded that since public school teachers perform an essential "governmental function" the New York statutory restriction bore a rational relationship to a legitimate state purpose and was consistent with the Fourteenth Amendment to the United States Constitution.

The New Jersey statutory scheme is essentially the same and serves similar purposes as the New York statutes considered in *Ambach.* You are therefore advised that those New Jersey statutes which require a teaching staff member to demonstrate that he is a citizen of the United States or has declared his intent of becoming a citizen are supported by a legitimate governmental purpose and are consitutionally valid.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

July 16, 1979

JOAN HABERLE, *Secretary Director*
Real Estate Commission
201 East State Street
Trenton, New Jersey

FORMAL OPINION NO. 13—1979

Dear Ms. Haberle:

You have asked for our opinion as to whether attorneys authorized to practice law in New Jersey are totally exempt from the licensure requirements and regulatory provisions of the Real Estate License Act. You are advised that with the exception of activities pertinent to and within the scope of their responsibilities in the practice of law, attorneys are subject to its provisions.

Your inquiry turns on an interpretation of the exemption provision of the Real Estate License Act, which states as follows:

> The provisions of this article shall not apply to any person, firm, partnership, association or corporation who, as a bona fide owner or lessor, shall perform any of the aforesaid acts with reference to property owned by him nor shall they apply to or be construed to include attorneys at law, receivers, trustees in bankruptcy, executors, administrators, or persons selling real estate under the order of any court or the terms of a deed of trust, state banks, federal banks, savings banks and trust companies located within the state, or to insurance companies incorporated under the insurance laws of this state. [N.J.S.A. 45:15-4.]

The historical development of this statutory exemption and its textual setting provide clear support for the view that it is limited to those real estate activities which are encompassed within the practice of law. This statute as originally enacted by Laws of 1921, c. 141, §2, provided as follows:

> The provisions of this act shall not apply to any person, firm, association, partnership or corporation, who as owner or lessor, shall perform any of the acts aforesaid with reference to property owned by them; nor shall the provisions of this act apply to persons holding a duly executed power of attorney from the owner for the sale, lease or exchange of real estate; nor shall this act be construed to include in any way attorneys at law; nor shall it be held to include a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court, nor to a trustee selling real estate under a deed of trust.

It was amended by Laws of 1925, c. 243, §3, to state in part:

> [N]or shall the provisions of this act apply or be construed to include attorneys-at-law, or a receiver, trustee in bankruptcy, executor, administrator or to any person or corporation selling real estate under the order of any court, or under the terms of a deed of trust.

It is significant that the amendatory language deleted the words "in any way" with regard to the exemption provided for attorneys.

In 1929, the statutory exemption was further expanded to include state banks, federal banks, savings banks and trust companies and insurance companies. Laws of 1929, c. 341, §1. This amendment was obviously designed to enable these financial institutions to conduct their usual activities with regard to mortgages and other real estate encumbrances without running afoul of the provisions of the Real Estate License Act.

In the context of this legislative history, it is important to note that the exemption for attorneys has been grouped with those persons or institutions who by their very nature would be circumscribed in carrying out general real estate activities. For example, trustees, receivers and administrators are all authorized to carry out specific legal responsibilities under certain limited circumstances. Also, it cannot be reasonably assumed that the legislature intended to permit banking institutions and insurance companies to engage in real estate activities outside the scope of their legitimate functions as banking institutions and insurance companies. In the construction of a statute, the meaning of a doubtful phrase may be ascertained by consideration of the company in which it is found and the meaning of words which are associated with it. *Boileau v. De Cecco,* 125 N.J. Super. 263, 267 (App. Div. 1973), *aff'd* 65 N.J. 234 (1974); *Dept. of Health v. Sol Schnoll Dressed Poultry Co.,* 102 N.J. Super. 172, 177 (App. Div. 1968). Therefore, the scope of the exemption provided for attorneys may be reasonably inferred from the nature of the exemptions pertinent to the other entities enumerated in the statute. The exemption for attorneys would be limited to those activities performed in carrying out their professional responsibilities in the practice of law.

Moreover, the exemption provisions of the Real Estate License Act should be interpreted consistent with the overall legislative purpose to regulate the real estate business in the public interest. It is well established that each part of a statute should be construed in a manner consistent with the principal legislative intent. *State v. Bander,* 56 N.J. 196, 201 (1970). In the event an attorney were permitted to engage freely and without restraint in all aspects of the real estate business a regulatory void would be created. For example, licensees must maintain and make available books of accounts and records of transactions for inspection by the Real Estate Commission. N.J.A.C. 11:5-1.13. A similar requirement is imposed by court rule on attorneys with regard to monies received in the practice of law. However, "[i]ncome received . . . as a real estate agent . . . is not received from the practice of law and therefore should not be deposited in such business account." New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion No. 124. It should not be assumed that the legislature by its enactment of an exemption for attorneys intended to allow persons who happen to be attorneys to engage in the real estate business without being subject to regulation either by the Real Estate Commission or the Supreme Court of New Jersey. Rather, the more

reasonable reading of the exemption was that attorneys would be exempt from regulation by the Real Estate Commission for activities which are within the practice of law and thus regulated by the Supreme Court.

In those jurisdictions where courts have found an unlimited exemption for attorneys to engage in the business of real estate, the statutory framework is significantly different from that found in N.J.S.A. 45:15-4. In *Weinblatt v. Parkway-St. Johns Place Corp.*, 241 N.Y.S. 721, 722 (Sup. Ct. 1930), *aff'd* 243 N.Y.S. 810 (App. Div. 1930), a New York court found an unlimited exemption. The New York statute provided as follows:

> The provisions of this article shall not apply to receivers, referees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or public officers while performing their official duties, or attorneys at law. [N.Y. Real Property Law §442-f (McKinney's 1968).]

Unlike the New Jersey statute, the language of this enactment places limits on all of the enumerated categories other than attorneys at law. Similarly, in *Kribbs v. Jackson,* 129 A. 2d 490, 495 (Sup. Ct. 1957), a Pennsylvania court held that attorneys are exempted from licensure under their act. The Pennsylvania statute contains specific limiting language pertaining to all of its enumerated exempted persons and entities, except those regarding attorneys. 63 Pa. Stat. §432(c).

Even where a statute provided no clear indication of the underlying legislative purpose, a Texas court has found the attorney exemption to be a limited one. In *Sherman v. Bruton,* 497 S.W. 2d 316 (Tex. Ct. Civ. App. 1973), the court considered a statute which provided "nor shall this Act be construed to include in any way services rendered by an attorney at law." Notwithstanding that the statute did not contain specific limiting language regarding attorneys, as in fact it did regarding public officers or employees, the court stated:

> We do not understand this language to mean that an attorney, solely by virtue of his license to practice law, is authorized to engage generally in the business of a real estate broker . . . We interpret the expression 'services rendered by an attorney at law' to mean services rendered by a licensed attorney whose engagement for legal services has created the relationship of attorney and client. [citations omitted] If a lawyer is employed to render legal services, §6(3) exempts him from the requirements of article 6573a, even though some of the services he renders as an attorney, such as negotiations for a sale or lease, would fall within the function of a real estate broker, as defined in Section 4 of that article. [497 S.W. 2d at 321.]

See also, Avent v. Stinnett, 513 S.W. 2d 89, 94 (Tex. Ct. Civ. App. 1974).

Thus an unlimited exemption for attorneys has been found to exist only where the statutory language unequivocally demonstrates a legislative purpose to permit it. We find no evidence of a legislative intent to allow

for such an unlimited exemption from the New Jersey Real Estate Act.[1] Rather, a reading of the statutory language, along with its historical development, leads us to conclude that the legislature intended to immunize attorneys from the provisions of the Real Estate License Act only with respect to those activities encompassed by the practice of law.

It is therefore our opinion that with the exception of those real estate activities carried out as part of their professional duties in the practice of law, attorneys are subject to the licensure requirements and regulatory provisions of the Real Estate License Act.[2]

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ELISE GOLDBLAT
Deputy Attorney General

1. In addition, it should be noted that although this provision for exemption was enacted so that attorneys would not be prohibited in the performance of their duties in the practice of law, the New Jersey Supreme Court has imposed independent limitations on the real estate activities of attorneys. The New Jersey Supreme Court Advisory Committee on Professional Ethics (hereinafter referred to as Supreme Court Committee) has concluded that an attorney may not serve as an attorney in connection with any transaction initiated by him as a real estate broker. Supreme Court Committee Opinion No. 312. The Supreme Court Committee has also specifically applied this prohibition to an attorney who is also a salesperson. Supreme Court Committee Opinion No. 411. Furthermore, Disciplinary Rule 2-102(D) expressly states:

> A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

Thus, an attorney engaged in the real estate business is required to divorce this business from the practice of law, and services rendered as a real estate broker or salesperson should be rendered in a nonlegal capacity. *See,* Supreme Court Committee Opinion No. 124.

It is not our purpose to delineate between real estate activities engaged in by a broker or salesperson and those activities engaged in by an attorney within the practice of law. The Supreme Court of New Jersey has been vested with jurisdiction over the regulation of the practice of law. Article 6, §2, ¶3 of the 1947 New Jersey Constitution. Therefore, appropriate guidelines in this area may be provided by the Supreme Court or by its Advisory Committees.

2. To the extent this opinion is inconsistent with informal advice given to the Real Estate Commission in 1971, that informal advice is overruled and superseded by this formal opinion.

July 31, 1979

LEWIS B. THURSTON, III
Executive Director
Election Law Enforcement Commission
28 West State Street—11th Floor
Trenton, New Jersey 08608

FORMAL OPINION NO. 14—1979

Dear Mr. Thurston:

The Election Law Enforcement Commission has asked whether N.J.S.A. 19:34-45 prohibits a bank from establishing a political action committee for its employees. This inquiry was prompted by information received by the Commission from a national bank indicating that the bank intends to use its own funds for the establishment and administration of a political committee, the officers and members of which will be the bank's employees and the purpose of which is to solicit voluntary contributions from the employees. The contributions are to be maintained in a separate fund and will be used by the committee to influence the nomination or election of certain candidates for federal, State and local public office. The members of the committee will consist of its "organizers and such other individuals as may thereafter be admitted to membership." For the following reasons, you are advised that while N.J.S.A. 19:34-45 does not absolutely prohibit the establishment of such a committee, it does preclude the use of the bank's own monies to establish and administer a political action committee, and/or to solicit contributions from its employees.

Originally enacted in 1911 as part of a comprehensive election corruption practices act, N.J.S.A. 19:34-45 provides in pertinent part:

> No corporation carrying on the business of a bank . . . shall pay or contribute money or anything of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

The statute plainly prohibits direct contributions of money or other thing of value by a bank for political purposes.

There is no legislative history of this statute which would shed light upon your inquiry. Its federal counterpart, 2 U.S.C. §441b (formerly 18 U.S.C. §610), orginally enacted in 1907, however, has an abundance of congressional history which has been examined by the Supreme Court of the United States. The federal law provides in pertinent part:

> It is unlawful for any national bank, or any corporation organized by any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever to make a money contribution in connection with the election at which Presidential and Vice-Presidential elections or a Senator or Representative in . . . Congress is to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices. . . . [2 U.S.C. §441b.][1]

In 1971, the statute was amended to define "contribution and expenditure." In doing so, Congress specifically excluded from such definition the "establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes . . ." but only if the contributions are given voluntarily and with knowledge of their intended political use.

The scope of the federal law as proscribing the establishment of political committees or funds both prior and subsequent to the 1971 amendment was examined by the Supreme Court of the United States in *Pipefitters Local Union No. 562 v. United States,* 407 U.S. 385, 92 S.Ct. 2247, 33 L.Ed. 2d 11 (1972). In that case, a union and three of its officers were convicted of conspiracy to violate 18 U.S.C. §610, the predecessor of 2 U.S.C. §441b, by maintaining a separate political fund to which union members and union employees contributed. Upholding the convictions, the Court of Appeals characterized the political fund as a "subterfuge" through which the unions made political contributions of union monies. The 1971 amendments, which expressly legalized the union activity involved, became effective after oral argument in the Supreme Court. In reversing the Court of Appeals and remanding for a new trial on the issue of voluntariness of contributions to the fund, the Court observed that the congressional purpose in enacting 18 U.S.C. §610 was not only to destroy the influence over elections exercised by holders of large aggregates of capital through financial contributions but also to prevent corporate or union officials from using corporate or union funds for contributions to political parties without the consent of the shareholders or union members. After an examination of these purposes and the extensive congressional history of the statute, it concluded that the law as originally enacted was never intended to prohibit a corporation from making, through the medium of a political fund organized by it, political contributions or expenditures so long as the monies expended were volunteered by those asked to contribute. 92 S.Ct. at 2257. However, the Court further held that:

> [N]owhere . . . has Congress required that the political organization be formally or functionally independent of union [or corporate] control or that union [or corporate] officials be barred from soliciting contributions or even precluded from determining how the monies raised will be spent. . . . When Congress

1. As applied to national banks, 2 U.S.C. §441b extends its proscriptions to political contributions affecting local and state elections as well as federal. *See United States v. Clifford,* 409 F.Supp. 1070, 1073 (E.D. N.Y. 1976). However, 2 U.S.C. §453 provides that the federal law and regulations thereunder ". . . supersede and preempt any provisions of State law with respect to election to Federal office." Thus, state laws, such as N.J.S.A. 19:34-45, which proscribe contributions to state elections are not preempted. *Cf.* 11 C.F.R. §114.2(a)(1).

> prohibited labor [or corporate] organizations from making contributions or expenditures in connection with federal elections, it was, of course, concerned not only to protect minority interests within the union [or corporate] but to eliminate the effect of aggregated wealth on federal elections. But the aggregated wealth it plainly had in mind was the general union [or corporate] treasury—not the funds donated by union [or corporate] members of their own free and knowing choice. . . . [92 S.Ct. at 2264-2265.]

Thus, the political fund need not be formally or functionally independent of union or corporate control, but the monies comprising the fund must be segregated and the contributions from members and employees must be voluntary and with the knowledge of their intended political use. 92 S.Ct. at 2264. The 1971 amendment to the Corrupt Practices Act specifically authorizing the establishment of a separate political fund was held to merely codify what was existing law and congressional intent. 92 S.Ct. at 2262.

Pertinent to your inquiry, the Court did, however, observe that the 1971 amendment appeared to make one substantive change in the prior law by authorizing the use of union or corporate monies for the establishment, administration, and solicitation of contributions for a political fund. In light of the congressional emphasis upon protecting minority union or shareholder interests and maintaining a strict segregation of monies found to be a significant motivating factor for the enactment of the original statute, "the evidence is strong . . .," observed the Court, that prior to 1971 ". . . Congress believed the costs of organization of new union political funds had to be financed [exclusively from voluntary contributions] . . . ." 92 S.Ct. at 2271.

It has been suggested that the congressional concern for protecting minority stockholders and union members from nonconsential expenditure of corporate or union funds for political purposes was at best a secondary concern. *Cort v. Ash,* 422 U.S. 82, 95 S.Ct. 2080, 2089, 45 L.Ed. 2d 26 (1975). It has also been suggested that the nature of the relationship between unions and their members may be different from that between corporations and stockholders. *Id.* However, the congressional history of the 1907 act, which did not extend to labor unions until 1943, analyzed by the Supreme Court in *Pipefitters,* does appear to support the conclusion that the 1907 act was not intended to proscribe the establishment of a voluntary political committee or fund, so long as the fund was created and supported by volunteered, noncorporate monies.

This balanced approach attributed by the Court in *Pipefitters* to Congress in fashioning the 1907 Corrupt Practices Act recognizes a sensitivity towards a need for controlling the potential corruptive use of corporate or union funds by corporate or union officials without consent of shareholders, union members or employees as well as the constitutionally required deference to the First Amendment rights of the individuals and corporate and union organizations involved. It is this balanced approach which has guided the Supreme Court of the United States in construing the scope of the 1907 act not only in *Pipefitters* but in other cases as well.

Thus, in *United States v. C.I.O.,* 335 U.S. 106, 68 S.Ct. 1349, 92 Law Ed. 1849 (1948), the Court held that the Corrupt Practices Act did not prohibit the publication of a union newspaper at the union's expense which contained a statement urging the election of a particular candidate and which was distributed to union members. On the other hand, in *United States v. International Union United Auto, etc., Workers,* 352 U.S. 567, 77 S.Ct. 529, 1 L.Ed. 2d 563 (1957), the Court held that the use of union funds to sponsor a commercial television broadcast designed to reach the general public to influence the electoral process constitutes a violation of the federal Corrupt Practices Act.

Enacting N.J.S.A. 19:34-15 three years after the 1907 federal Corrupt Practices Act, it is reasonable to assume that the New Jersey Legislature operated under the same objectives as did Congress.[2] We therefore conclude that N.J.S.A. 19:34-45 was not intended to prohibit the establishment of a separate political fund contributed to voluntarily by members of a political action committee with knowledge of the intended political use of the fund. It is further concluded, however, that a bank's corporate funds may not be used to establish, administer or solicit contributions for the political fund.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ERMINIE L. CONLEY
Assistant Attorney General

2. It is significant that following the lead of Congress, several states have recently amended their corrupt practices laws to specifically authorize the use of corporate funds to establish and maintain a political fund. *See* Pa. Stat. Ann. Tit. 25, §3225(c); Tex. Elec. code Ann., Art. 14.06(A)(C). *See also* N.Y. Elec. Law, Art. 14, §14-116(b).

August 2, 1979

ANGELO R. BIANCHI, *Commissioner*
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 15—1979

Dear Commissioner Bianchi:

You have inquired whether, pursuant to the statutory provisions which establish the Office of Administrative Law, hearings held on applications for the issuance of a charter to a capital stock association[1] should be conducted by administrative law judges rather than by Departmental hearing officers. You are advised that such hearings should be conducted by administrative law judges under the provisions of that Act.

1. A capital stock association is any insured State savings and loan association as defined by N.J.S.A. 17:12B-244(a).

The hearings in question are those conducted upon application by a capital stock association for a charter pursuant to N.J.S.A. 17:9A-244 *et seq.* The hearing is mandated by N.J.S.A. 17:12B-16. Widespread notice of an application for a new charter is required by N.J.S.A. 17:12B-17. The notice must be published in a newspaper which circulates in the municipality in which the association proposes to operate. Additionally, a copy of the notice must be mailed to every association which has a principal or branch office within the county of the proposed principal office site. At the hearing, the Commissioner must afford an opportunity to be heard to any party so desiring, N.J.S.A. 17:12B-19. The Commissioner shall also make such independent examination or investigation as he deems necessary, N.J.S.A. 17:12B-19.[2]

Currently, hearings on charter applications are conducted by the Departmental hearing officer. At such hearings, the applicant and any objectors are accorded the opportunity to be heard, to introduce exhibits into evidence and to present and cross-examine witnesses, N.J.S.A. 3:1-2.13(a).

Pursuant to a recent amendment to the Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*:

> All hearings of a State agency required to be conducted as a *contested case* under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [N.J.S.A. 52:14B-10(c).] [Emphasis added.]

Therefore, the key inquiry is whether the Department's charter hearings represent "contested cases" as that term is defined in the Administrative Procedure Act. If so, they will be required to be conducted under the auspices of an administrative law judge. N.J.S.A. 52:14B-2(b) defines "contested case" as:

> a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other *legal relations of specific parties are required by constitutional right or by statute* to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, *after opportunity for an agency hearing.*] [Emphasis added.]

Thus, where by statute or constitutional law, a hearing is required before a State agency may determine the legal rights of "specific parties," the matter constitutes a "contested case" which must be heard by an administrative law judge. *See Public Interest Research Group v. State of New Jersey,* 152 N.J. Super. 191, 205 (App. Div. 1977), *certif. denied,* 75 N.J. 538 (1977).

2. The charter approval procedures for capital stock associations are quite similar to those prescribed for mutual associations, banks and savings banks, N.J.S.A. 17:12B-13 *et seq.*, N.J.S.A. 17:9A-10 *et seq.* Therefore, the conclusions reached herein are likewise applicable to those proceedings.

Of primary importance, therefore, in this case is the fact that a hearing is mandated by statute, N.J.S.A. 17:12B-16, as a condition precedent to the approval of a charter for a savings and loan association, and the focus of charter hearings to a substantial degree is on the individual and specific aspects of the applicant's eligibility and capability, N.J.S.A. 17:12B-20. In drawing a distinction between a charter application of a bank or savings bank and a branch banking application, the Appellate Division in *In Re The Summit and Elizabeth Trust Co.,* 111 N.J. Super. 154, 164 (1970) stated in pertinent part:

> The Agency inquiry as to . . . [branch applications] is less stringent and, indeed a formal hearing is not a prerequisite . . . . The Commissioner may act upon plenary and completely informative data supplied to him by the applicant and any objecting bank. The crucial findings to be made are whether the interests of the public will be served and whether conditions in that locality afford reasonable promise of successful operation, N.J.S.A. 17:9A-20. [Citations omitted.][3]

In contrast to the approval of a branch application:

> [T]he issuance of a bank charter must be preceded by application, hearing, notice, publication and findings as set forth in N.J.S.A. 17:9A-9, 10, 11. In addition to requisite findings as to public interest and probable success, there must be adequate findings as to such elements as capital structure, stock subscriptions, name, location, deposit liabilities, directorship and management.[4] [*Summit and Elizabeth Trust Co., supra,* 164-65.]

In sum, because these charter application hearings are required by statute and are held in order to determine the legal rights and privileges of "specific parties," it is clear that such hearings are contested cases within the meaning of the Administrative Procedure Act. You are, therefore, advised that these charter hearings should be conducted by an administrative law judge, unless the Commissioner deems it appropriate to himself act as the hearing officer.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: MARK S. RATTNER
Deputy Attorney General

3. The characterization of a branching application for purposes of the Administrative Procedure Act was considered in *Formal Opinion No. 6,* dated March 12, 1979. Since those hearings were not required by statute nor mandated by constitutional right, *First National Bank of Whippany v. Trust Co. of Morris Cty.,* 76 N.J. Super. 1, 6 (App. Div. 1962), it was concluded that a branching hearing was not a contested case and need not be referred to an administrative law judge.

4. The requisite findings for approval of a charter for a State association are quite similar to those for approval of a charter for a bank or savings bank, *compare* N.J.S.A. 17:9A-11 with N.J.S.A. 17:12B-20 (mutual associations), N.J.S.A. 17:12B-249 (capital stock associations).

August 3, 1979

BETTY WILSON, *Acting Commissioner*
Department of Environmental Protection
Labor and Industry Building
Room 802
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 16—1979

Dear Ms. Wilson:

The Division of Solid Waste Administration has inquired whether all or some of the increased expenses which may accrue to local governments, including counties acting as solid waste management districts and municipalities, as a result of solid waste management plan implementation pursuant to the Solid Waste Management Act are excluded from the budgetary limitations imposed upon local governmental units by the Local Government Cap Law. For the reasons more fully set forth herein, you are hereby advised that municipal and county expenditures resulting from implementation of the Solid Waste Management Act are generally subject to the limitations imposed by the Cap Law; however, certain specific expenditures may be excluded from the Cap Law's limitations by virtue of that Act's provision for exceptions.

The Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.* was enacted in 1976 as part of what has commonly been referred to as the "State income tax package." The purpose of the Cap Law, as is expressly provided by statute, is to assist in controlling the spiraling costs of local government in order to protect the homeowners of the State from undue local real estate tax increases. N.J.S.A. 40A:4-45.1; *N.J. State P.B.A., Local 29 v. Town of Irvington,* 80 N.J. 271 (1979). In order to effectuate this stated purpose, the Cap Law prohibits municipalities, other than those having a municipal purposes tax levy of $0.10 or less per $100.00, from increasing their budgets by more than 5% of the preceding fiscal year's final appropriations. N.J.S.A. 40A:4-45.3. In like manner, counties are prohibited from increasing their respective tax levies in excess of 5% of the preceding fiscal year's county tax levy. N.J.S.A. 40A:4-45.4

In addition to expressly recognizing the need to control the spiraling costs of local government, the Legislature also indicated in enacting the Cap Law that efforts to limit local government spending must not so constrain local units so as to render it impossible for them to provide necessary services to their residents. N.J.S.A. 40A:4-45.1. Thus, in order to assure that the limitations imposed upon local units by the Cap Law do not unduly constrain municipalities and counties, the Legislature made provision for certain specified exceptions to such limitations. N.J.S.A. 40A:4-45.3 and 40A:4-45.4.

One of the major exceptions from the limitations imposed upon local units by the Cap Law is the exclusion for expenditures mandated after the effective date of the Cap Law pursuant to State or Federal Law. N.J.S.A. 40A:4-45.3(g) and N.J.S.A. 40A:4-45.4(e). In *Formal Opinion 3-1977,* we had occasion to interpret this statutory exception. At that time,

we concluded that the exception is intended to exclude from the Cap Law's limitation municipal and county expenditures from programs required by newly enacted legislation in order to avoid the harsh result of forcing local governments to cut other services to provide funds for newly created programs not included in previous budgets. *Formal Opinion 3-1977.* Moreover, we concluded that the only reasonable construction that could be given to these exceptions is one that would exclude only those expenditures for programs mandated by legislation enacted after the effective date of the Cap Law. *Formal Opinion 3-1977.* Such a construction gives meaning to all of the words in the statutory provisions in question and avoids a construction that would undermine the expressed legislative purpose to limit local government spending.

The Solid Waste Management Act amendments about which you have inquired were enacted on February 23, 1976. L. 1975, c. 326* Pursuant to the amendments, each county of the State is designated as a solid waste management district, N.J.S.A. 13:1E-19, and is required to develop and then implement a comprehensive ten year solid waste management plan for collection and disposal of solid waste in each district. N.J.S.A. 13:1E-20 *et seq.* The gist of your inquiry is whether expenditures incurred by municipalities or counties in implementing these solid waste management plans are exempt from the Cap Law's limitations on expenditures.

It is clear from the previous discussion contained herein relative to N.J.S.A. 40A:4-45.3(h) and N.J.S.A. 40A:4-45.4(e) that any expenditures that might be deemed mandated by the amendments to the Solid Waste Management Act do not fall within the Cap Law's exceptions for mandated expenditures inasmuch as such amendments were enacted nearly six months prior to the August 18, 1976 effective date of the Cap Law. L.1976, c. 68, §7. Although municipal and county expenditures incurred relative to implementation of the Solid Waste Management Act will in all probability be incurred after the effective date of the Cap Law, we concluded in *Formal Opinion 3-1977* that such a factor was not controlling so long as the statutory enactment in question embodying the mandate preexisted the effective date of the Cap Law.

In spite of the fact that expenditures incurred by municipalities and counties pursuant to the Solid Waste Management Act are not generally excluded from the limitations imposed by the Cap Law by virtue of N.J.S.A. 40A:4-45.3(g) and N.J.S.A. 40A:4-45.4(e), there are various exceptions contained in the Cap Law that may be relevant to excluding from the Cap Law's limitations certain expenditures that are incurred in the course of implementing a solid waste management plan. For example, specifically excluded from the Cap Law's limitations are amounts spent by a municipality or a county with respect to use, services or provision of any project, facility or public improvement for solid waste pursuant to any contract between a municipalitiy or a county and any other county, municipality, district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political sub-division of the

* The effective date of these amendments was July 1, 1976 which is based upon the enactment of the annual appropriation act, L. 1976, c. 42, eff. July 1, 1976. L. 1975, c. 326 §38.

State, N.J.S.A. 40A:4-45.3(j); N.J.S.A. 40A:4-45.4(f). Thus, although there is not a blanket exclusion from the Cap Law for expenditures incurred by local units in implementing solid waste management plans under the Solid Waste Management Act, provision is made for local units to exclude substantial portions of their expenditures relative to solid waste services.

Additionally, the Cap Law permits municipalities to exclude from their budget caps capital expenditures funded by any source other than the local property tax. N.J.S.A. 40A:4-45.3(b). Counties are provided with a similar exception that excludes from the Cap Law's limitations capital expenditures funded by any source other than the county tax levy. N.J.S.A. 40A:4-45.4(b). Accordingly, a local unit could construct solid waste facilities financed through bonding without being subject to the Cap Law's limitations. Moreover, the debt service on such bonds would also be exempt from the Cap Law for both municipalities and counties. N.J.S.A. 40A:4-45.3(d); N.J.S.A. 40A:4-45.4(d).

In municipalities, but not counties, expenditure of amounts derived from new or increased service fees imposed by ordinance are excluded from the limitations imposed by the Cap Law. N.J.S.A. 40A:4-45.3(h). Thus, any new or increased service fees derived from solid waste facilities or otherwise could be expended without limitation by the Cap Law in implementing a solid waste management plan. Yet another exception from the Cap Law is provided to municipalities for expenditure of funds constituting local matching shares in federal or state aid programs. N.J.S.A. 40A:4-45.3(b); *Formal Opinion 3-1977.* Thus, a municipality may spend an amount necessary to secure state or federal funds available for use in implementing a solid waste management plan provided that the financial share of the municipality will not increase final municipal appropriations by more than 5% of the previous year's final appropriation. Finally, municipalities are also allowed to exclude from the Cap Law's limitations expenditures of amounts approved by referendum. N.J.S.A. 40A:4-45.3(i). Thus, a municipality may opt to leave it to its voters to determine whether expenditures necessary to implement a solid waste management plan shall be blanketly excluded from the Cap Law's limitations or whether such expenditures will have to be either accommodated within the cap or else excluded through another applicable exception.

In conclusion, you are advised that municipal or county expenditures for implementation of solid waste management plans pursuant to the Solid Waste Management Act are not generally exempt from the limitations imposed upon local government spending by the Local Government Cap Law as mandated expenditures inasmuch as the pertinent amendments to the Solid Waste Management Act were enacted prior to the effective date of the Cap Law. However, you are further advised that certain expenditures incurred by a municipality or a county in implementing a solid waste management plan may be excluded from the limits imposed by the Cap Law by virtue of the various specific exceptions provided therein.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: BENJAMIN D. LAMBERT
Deputy Attorney General

August 10, 1979

ADAM K. LEVIN, *Director*
Division of Consumer Affairs
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 17—1979

Dear Director Levin:

You have asked several questions concerning the interpretation and implementation of the New Jersey Prescription Drug Price and Quality Stabilization Act, L. 1977, c. 240, N.J.S.A. 24:6E-1 *et seq.* (hereinafter referred as "the Act"). Each of the questions will be dealt with in order.

I

Your initial inquiry is whether a pharmacist should substitute a generic drug listed on the list of interchangeable drug products (the formulary) in a situation where he has a prescription on a form not imprinted with the two choices: "substitution permissible" and "do not substitute." It is our opinion for the following reasons that a pharmacist should substitute a generic drug listed on the formulary unless the prescriber expressly prohibits substitution.

N.J.S.A. 24:6E-7 provides in pertinent part:

> Every prescription blank shall be imprinted with the words, 'substitution permissible' and 'do not substitute' and shall contain space for the physician's or other authorized prescriber's initials next to the chosen option. Notwithstanding any other law, unless the physician or other authorized prescriber explicitly states that there shall be no substitution when transmitting an oral prescription or, in the case of a written prescription, indicates that there shall be no substitution by initialing the prescription blank next to 'do not substitute' a different brand name or nonbrand name drug product of the same established name shall be dispensed by a pharmacist if such different brand name or nonbrand name drug product shall reflect a lower cost to the consumer and is contained in the latest list of interchangeable drug products published by the council; . . .

N.J.S.A. 24:6E-11 specifies penalties for any violation of the Act, and further provides:

> However, failure of the prescriber to utilize the form of prescription designated in section 8 of this act [N.J.S.A. 24:6E-7] shall not invalidate the prescription as written, if said prescription is otherwise valid.

The question arises whether the words "as written" mean a prescription on a form other than designated by the statute should be followed unless the prescriber expressly permits substitution. An analysis of the

statutory scheme and the underlying legislative history indicates that such an interpretation would be inconsistent with the purposes of the Act.

It is clear from a reading of the statute, N.J.S.A. 24:6E-7 that a prescriber is in each case required to make an express statement that no substitution is permissible. The statute does not require the prescriber to make an express statement that substitution is permissible. An instructive basis for comparison is the New York generic drug law, which states in part:

> (1) A pharmacist shall substitute a less expensive drug product . . . provided that the following conditions are met:
>
> (a) The prescription is written on a form which meets the requirements of subsection six of section sixty-eight hundred ten of this article and the prescriber places his signature above the words 'substitution permissible,' or in the case of oral prescriptions, the prescriber must expressly state that substitution shall be permitted; . . . [N.Y. Educ. Law § 6816a (McKinney).]

Unlike the New York law, the New Jersey law places the burden upon the prescriber to *prohibit* substitution. In the case of an orally transmitted prescription (of necessity not on the required form), the prescriber must explicitly prohibit substitution to prevent it from occurring.

The probable legislative intent expressed in the statutory language is reinforced by the statement on the first version of Assembly Bill No. 2021.

> We must encourage return of doctor-pharmacist health care partnership. Most doctors do not have time, nor facility, to evaluate all drugs they prescribe; pharmacists now make choice under present law, when doctors prescribe generically; a prestigious Drug Research Board's recent resolution urged that physicians be required to delegate product selection to pharmacist *except where doctors explicitly elect to make choice themselves—exactly what this bill provides.* [Emphasis added.]

For these reasons it is our opinion that notwithstanding the actual prescription form used, a pharmacist is required to substitute pursuant to the provisions of the Act unless a prescriber expressly prohibits substitution.

II

You have asked whether a pharmacist may substitute a less expensive generic drug not listed on the formulary without first securing the approval of the prescriber where the prescription specifically indicates "substitution permissible" or "substitute generic." For the following reasons, it is our opinion that a pharmacist must contact and secure the approval of a prescriber prior to substituting a particular drug unless the substituted drug is a less expensive generic equivalent listed on the formulary.

This question turns on the interpretation of N.J.S.A. 24:6E-8, which provides:

> Notwithstanding any other law, where a different brand name or nonbrand name drug product of the same established name shall reflect a lower cost to the consumer and no drug product of such established name is included in the latest list of interchangeable drug products published by the council, or where in the professional judgment of the pharmacist there is no valid proof of efficacy for the drug product prescribed, or the pharmacist's patient profile record discloses drug sensitivity, allergies or adverse reactions to the drug product prescribed, or there exists a more appropriate drug product than the drug product prescribed, a different brand name or nonbrand name drug product shall be dispensed by the pharmacist, provided, however, that such action by a pharmacist shall be authorized only if in each case the pharmacist notifies the prescriber of the drug product to be dispensed and the name of the manufacturer thereof, and receives the approval of the prescriber to substitute such drug product for the drug product prescribed. The pharmacist shall be required to indicate on the prescription the date and time of the prescriber's approval and whether the approval was communicated orally or in writing.

This statutory section was designed to deal with circumstances where a pharmacist desires to substitute a drug which is not listed as equivalent on the formulary. This would be true not only when the intended substitution would be of a lower priced drug but also when a pharmacist determines that a nonequivalent drug should be substituted for medical reasons. In each of these cases, a different drug product "shall be authorized only if in each case the pharmacist notifies the prescriber" of the drug to be dispensed "and receives the approval of the prescriber" to make the substitution.

The specific issue posed here is whether the approval of the prescriber to substitute a drug not listed on the formulary is applicable where a prescriber specifically indicates "substitution permissible" or "substitute generic." An examination of the language of the act and its legislative history indicates that prior approval must be obtained from the prescriber in such cases.

N.J.S.A. 24:6E-8 expressly includes the situation in which:

> a different brand name or nonbrand name drug product of the same established name shall reflect a lower cost to the consumer and no drug product of such established name is included in the latest list of interchangeable drug products. . . .

Where such a situation exists, substitution is "authorized only if *in each case*" the pharmacist first advised the prescriber of the product to be provided, and receives the approval of the prescriber for the specific substitution. It would not be adequate for the prescriber to state in advance "substitution permissible" or "substitute generic," since the prescriber would neither have been advised of nor have approved the actual product being substituted.

An examination of a legislative report reveals an intent to treat equivalent generic drugs not listed on the formulary and nonequivalent drugs recommended by the pharmacist in the same manner. A report prepared by Assemblyman Martin A. Herman (hereinafter referred to as the Herman Report) on Assembly Bill 1257 (an earlier similar version of the bill enacted into law) stated as follows:

> This legislation recognizes that a substantial drug interchange list will not occur overnight. As patents expire, new drugs are manufactured to compete, or a new line of generics appears, there will be a lapse time between this entry into the market place and administrative review.
>
> To meet this problem, and to encourage what should be present good pharmaceutical practices, section (5) requires: that where a doctor prescribes a drug for which there is a lower priced generic equivalent not on the list, or the pharmacist's patient profile record discloses drug sensitivity, allergies or adverse reactions to the drug product prescribed by the patient's physician or for which there is no demonstrated efficacy to the drug prescribed, the pharmacist may substitute the cheaper or more effective drug products, but only with the doctor's prior consent. [Herman Report, p. 7.]

Similarly, the Statement of the Senate Institutions, Health and Welfare Committee accompanying the bill states:

> [A]nother provision of the bill allows the pharmacist to substitute another drug for the prescribed drug, even when the drug to be substituted does not appear on the council's list, *provided* he first obtains the prescriber's approval.

The legislative purpose is clear that a pharmacist is required to obtain the specific approval of a prescriber before substituting a nonequivalent drug for reasons of efficacy, allergies or appropriateness. The legislative intent was to treat such substitutions in precisely the same manner as substitutions of equivalent drugs not listed on the formulary. It is therefore our opinion that unless a substitution is of a less expensive equivalent listed on the formulary, a pharmacist must obtain the approval of the prescriber to substitute such drug product for the product prescribed.

III

You have asked for our opinion as to the treatment of prescriptions written in other states. For the following reasons, you are advised that prescriptions written in other states should be treated under the Act in the same manner as prescriptions written in New Jersey.

Prescriptions written in other states would not generally be set forth in the format called for by the Act. Moreover, a prescriber in another state could not be presumed to have prescribed with the New Jersey Act or formulary in mind. Although the statute expressly provides that such

prescriptions would be valid notwithstanding the failure to utilize the designated form (N.J.S.A. 24:6E-11), the question remains whether such a prescription should be treated in the same manner as a New Jersey prescription with respect to substitution.

One of the policies behind the Act is to require prescribers unfamiliar with available equivalent drug products to make an express choice between the specific product prescribed and a formulary substitution. The presumption is clearly in favor of substitution. This determination having been made, prescriptions written in other states should be treated in the same manner as prescriptions written in New Jersey. The prescriber should be required to expressly prohibit substitution. Since only interchangeable drugs from the formulary may be substituted, unless the prescriber expressly authorizes a specific drug, the public is fully protected.

There are various practical considerations in support of this conclusion. Both the states of New York and Pennsylvania have generic drug laws which require the use of prescription forms containing the words "substitution permissible" or "do not substitute." N.Y. Educ. Law §6816a (1)(a) (McKinney); Pa. Stat. Ann. Tit. 35, §960.3(A) (Purdon). The Pennsylvania statute is similar to the Act in that substitution is mandated unless the prescriber expressly indicates to the contrary. There is a compelling basis for treating Pennsylvania prescriptions in the same manner as those written in New Jersey. Although the New York statute requires a prescriber to expressly authorize substitution, that statute also provides that "in the event a patient chooses to have a prescription filled by an out of state dispenser, the laws of that state shall prevail." N.Y. Educ. Law, §6816a(2). Therefore, in the case of a prescription written in New York State, the laws of that jurisdiction would call for the application of the New Jersey Act.

It is consequently clear that the substantial majority of prescriptions written in other states and received by New Jersey pharmacists will have been written in states whose own laws favor the treatment of those prescriptions in accordance with the New Jersey statute. We cannot assume that the legislature intended a contrary result. It is therefore our opinion that prescriptions written in other states and presented to pharmacists in New Jersey are to be treated in all respects in the same manner as prescriptions written in New Jersey.

IV

You have asked whether a pharmacist should dispense a less expensive generic drug listed on the formulary in a situation where the prescription specifies an inexpensive generic drug by its brand name. It is our opinion for the following reasons that where a pharmacist has a less expensive generic drug listed on the formulary in stock, he is under an obligation to substitute the less expensive generic drug even where the prescription calls for a relatively inexpensive branded generic.

The significance of this inquiry can be illustrated by reference to certain facts before the legislature in its consideration of this enactment. There was a general recognition that many major drug manufacturers who produce branded drugs also produced so-called "branded generics":

> [T]his class of drug is characterized by having a significantly lower price than the long established brand or brands but still bearing the name of a reputable maker. . . . *These drugs cost more than true generics* and acutally represent some drug manufacturer's answer to the increase in generic prescribing by physicians.
>
> . . . .
>
> One would assume that in addition to the extra profit that may be made by establishing a drug product line designated as a 'Branded Generic' are these considerations: . . . that acknowledging among themselves that generically equivalent drugs can be produced at much lower costs, that while they will so promote their product to doctor and pharmacist alike, 'Branded Generic' is another way of still holding out . . . 'that only brand names will do the job . . .'—'*Prescribe generically . . . but not quite generically . . .*' In other words, use our product. *Don't compare price.* We'll do it for you. [Herman Report, pp. 42-44.] [Emphasis added.]

The issue therefore posed is whether a pharmacist must substitute a lower priced generic drug for the prescribed "branded generic" where the branded generic is not the lowest priced product listed on the formulary. The language of the statute as well as the legislative history expressed in the Herman Report indicates that such a substitution should be made. N.J.S.A. 24:6E-7 states that "a different brand name or nonbrand name drug shall be dispensed" by the pharmacist if the product "shall reflect a lower cost to the consumer" and is contained on the formulary. In addition, the Herman Report reflects the understanding that true generics generally are less expensive than branded generics and an implicit purpose to maximize consumer savings. There is no expression of legislative purpose to exempt prescriptions for branded generics from the requirements of the Act where a less expensive equivalent true generic drug is available for sale to the consumer.

It should be parenthetically noted that the Act is designed towards assuring the safety and interchangeability of all drugs listed on the formulary. *See* N.J.S.A. 24:6E-6. Where a pharmacist has a lower priced listed generic equivalent in stock, there would be no reason to deny the consumer the savings of the true generic. Although a consumer may opt for a branded generic, the statute is quite clear that this is a choice to be made by the consumer. *See* N.J.S.A. 24:6E-7. You are therefore advised that where a pharmacist has a less expensive generic drug listed on the formulary in stock, he is under an obligation to substitute the less expensive generic drug, even where the prescription calls for a relatively inexpensive branded generic.

* * *

In summary, you are advised with respect to all of your inquiries as follows: The Act requires substitution of a less expensive generic drug product listed on the formulary for the brand product prescribed, unless the prescriber expressly prohibits substitution. This is true even where a prescription, whether written in New Jersey or out of state, does not use

the form of prescription set forth in the Act. Where a pharmacist desires to substitute a drug product not listed on the formulary including the substitution of a less expensive equivalent drug product, a pharmacist must obtain the specific prior approval of a prescriber even where express general authorization for generic substitution has been given. Finally, substitution is mandated where a prescription calls for a relatively inexpensive branded generic drug and the pharmacist has in stock a less expensive generic drug listed on the formulary.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

August 28, 1979

GEORGE H. BARBOUR, *President*
Board of Public Utilities
101 Commerce Street
Newark, New Jersey 07102

FORMAL OPINION NO. 18—1979

Dear President Barbour:

You have inquired as to whether the Hackensack Meadowlands Development Commission (HMDC) can direct the flow of solid waste sought to be disposed of in the Hackensack Meadowlands District (District), to specific waste disposal facilities within said District. It is our opinion that N.J.S.A. 13:17-1 *et seq.* vests such authority in the HMDC.

The HMDC was established in 1968 by the enactment of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 *et seq.* (hereinafter the "Act"), to oversee the orderly, comprehensive reclamation and development of approximately 21,000 acres of marsh and meadowlands which were declared to be a "land resource of incalculable opportunity for new jobs, homes and recreational sites, N.J.S.A. 13:17-1. The Legislature declared that these land resources needed "special protection from air and water pollution and *special* arrangement for the provision of facilities for the disposal of solid waste". *Id.* (Emphasis added.) Thus, solid waste managment in the District was to be one of HMDC's main concerns and the Act vested it with broad authority to deal with this problem. N.J.S.A. 13:17-1 et seq.; *Mun. San. Landfill Auth. v. HMDC,* 120 N.J. Super. 118 (App. Div. 1972); *Kearny v. Jersey City Incinerator Auth.,* 140 N.J. Super. 279 (Ch. Div. 1976).

The Act authorizes the HMDC to formulate a master plan for development in the District. In doing so it must provide disposal facilities for solid waste generated within or brought into the District. N.J.S.A. 13:17-10; N.J.S.A. 13:17-11. The HMDC is also authorized to adopt codes

and standards for the disposal of solid waste. N.J.S.A. 13:17-11. It may acquire, construct, maintain and/or operate solid waste facilities and charge and collect fees for the use of these facilities. N.J.S.A. 13:17-10. Additionally, it is authorized to eliminate existing landfilling techniques and develop new disposal technology. N.J.S.A. 13:17-1; N.J.S.A. 13:17-9(a); N.J.S.A. 13:17-10; N.J.S.A. 13:17-11(a); *Mun. San. Landfill Auth. v. HMDC, supra.* Finally, the Act expressly provides that the written consent of the HMDC is required before anyone can treat or dispose of solid waste in the District. N.J.S.A. 13:17-10(d).

It is clear from the above that the regulatory scheme established by the Act vests the HMDC with broad power to regulate waste treated and disposed of in the District. This includes the authority to control the flow of solid waste within the District. To conclude otherwise would seriously frustrate the legislative intent of the Act by impairing the HMDC's ability to effectively eliminate existing disposal techniques of a less environmentally sound nature, *i.e.,* landfilling, and develop and implement new technology in the waste disposal field such as resource recovery. Thus, it is apparent that in order to permit the HMDC to carry out its mandate regarding waste disposal in the District and the orderly development and reclamation of the region, the Legislature intended that the HMDC would have the authority to control the flow of waste within its boundaries.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

August 28, 1979

ANN KLEIN, *Commissioner*
Department of Human Services
Capital Place One
222 South Warren Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 19—1979

Dear Commissioner Klein:

A question has arisen as to the authority of special policemen at Marlboro State Hospital to patrol the perimeter roads adjacent to that institution. You are advised that special policemen at Marlboro Hospital have the authority to patrol the perimeter roads adjacent to the institution as a means to insure the preservation of order on institutional property and to facilitate the apprehension and return of escapees.

The Commissioner of the now Department of Human Services with the approval of the Attorney General may appoint special policemen for

each state institution. The powers and duties of special policemen are set forth in N.J.S.A. 30:4-14 as follows:

> [W]ithin the territory prescribed and for the time limited he [special policeman] shall have the same powers as a constable of the county or a police officer of a city in criminal cases. *His special duty shall be to preserve order in and about the institution* with power to arrest and hold any offender against the public peace within the limits of his commission. [Emphasis supplied.]

N.J.S.A. 30:4-160 provides that the New Jersey state hospitals shall include the state hospital at Marlboro and "all farms, grounds or places where the inmates thereof may from time to time be maintained, kept, housed or employed."

A resolution of this question turns on a determination of the meaning of the phrase "about the institution" in the above cited statute. Although there is no helpful legislative history, it is instructive to note that where the legislature enacted analogous statutes describing the territorial jurisdiction of special state police forces, it stated its intent to include the streets adjacent to state property. For example, N.J.S.A. 52:17B-9.2 grants authority to the State Capitol police "at, around and between state grounds." Also, N.J.S.A. 18A;6-4.5 empowers campus police officers at the respective state colleges "on contiguous streets and highways." In order to discern the legislative intent, statutes dealing with the same subject matter should be construed together. *Loboda v. Clark Tp.,* 40 N.J. 424, 435 (1963). It is reasonable to assume that by its use of the phrase "in and *about* the institution", the legislature intended not only to encompass the existing buildings and lands of the hospital but also all of the perimeter roads and streets surrounding the hospital premises. It may therefore be concluded that the duties and authority of a police officer enumerated in N.J.S.A. 30:4-14 extended to the perimeter roads of the State institution so long as the exercise of authority on these perimeter roads relates to the primary responsibility of special policemen to preserve institutional order.

This conclusion is reinforced by N.J.S.A. 30:4-116 which provides that:

> The chief executive officer of any state institution, or any subordinate officer or employee of the institution appointed by him in writing as a special officer, shall have power to arrest without warrant any inmate committed thereto by order of any court, who shall leave such institution, without first obtaining a parole or discharge, and return him or her to the institution. *For purpose of retaking, the chief executive officer or special officer may go to any place either within or without the state, where the escaped inmate may be.* [Emphasis added.]

It is well established that in interpreting the scope of an administrative officer's powers, an officer should be deemed to have, in addition to the express authority conferred on him, such incidental authority as may be

reasonably necessary to achieve the desired legislative objectives. *Cammarata v. Essex County Park Commission,* 26 N.J. 404, 411 (1960). It would be unreasonable to assume that hospital policemen could effectively prevent escapes and return wanderers without patrolling the roads adjacent to the hospital property.

For these reasons, you are advised that the jurisdiction of special policemen appointed at State intitutions extends to and includes the perimeter roads adjacent to those institution so long as the exercise of authority on such perimeter roads is consistent with the primary responsibility to preserve institutional order. In addition, special policemen have the incidental authority to patrol the perimeter roads contiguous to those institutions as a necessary means to preserve order on the institution premises and to further the apprehension and return of escapees and wanderers.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

October 1, 1979

ANN KLEIN, *Commissioner*
Department of Human Services
Capital Place One
222 South Warren Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 20—1979

Dear Commissioner Klein:

The Division of Youth and Family Services has asked for an opinion as to whether it may refuse to process the adoption application of a married couple solely because they have refused to consent in advance to blood transfusions for their children should they become necessary. The applicants are Jehovah's Witnesses and such consent would violate their religious beliefs. It is our opinion that the Division of Youth and Family Services may take into account a refusal to consent to a blood transfusion for a prospective adopted child along with other pertinent factors bearing on the best interests of the child, but a refusal to provide such consent alone should not be determinative of the best interests of the child in all cases.

It is axiomatic that the primary consideration "in awarding custody of a child is the promotion of the best interests and welfare of the child." *In re Adoption of E,* 59 N.J. 36, 45 (1971). N.J.S.A. 9:3-37. Further, it

is fundamental that determination of the best interests of the child cannot be made "on the basis of speculative and sweeping generalizations." *In re Adoption of E, supra,* 59 N.J. at 56. The decision must be made "in a highly individualistic manner," according to the needs and circumstances of the particular child. *Id.* "Each case is decided on its own facts and circumstances." *Fantony v. Fantony,* 21 N.J. 525, 537(1956).

In identifying the best interests of the individual being considered for adoption, "the paramount considerations are the child's safety, happiness and mental, physical and emotional welfare." *Hoy v. Willis,* 165 N.J. Super. 265, 276 (App. Div. 1978). Any number of factors applicable to these considerations may be relevant to the ultimate evaluation. The income and financial ability to support the child, as well as the living conditions of the prospective adopting family, are important. *See In re Adoption by B,* 63 N.J. Super. 98, 105 (App. Div. 1960). The educational level, work record and marital relationship of those wishing to adopt may be part of the evaluation. *See id.; In re Guardianship of B.C.H.,* 108 N.J. Super. 531, 539 (App. Div. 1970). The psychological attachments formed by the child are often of vital importance. *Sorentino v. Family & Children's Society,* 72 N.J. 127 (1976). Questions of ethics and morality, insofar as they relate to the child's well-being, may also play a part in the decision. *In re Adoption of E, supra,* 59 N.J. at 49-50. Religion, too, may be relevant, and ". . . when coupled with other considerations may be a factor to be weighed by the court in determining the advisability of granting an adoption of a child, that factor barring special circumstances . . . is not and cannot be controlling." *Id.* at 50.

The refusal of prospective adopting parents to consent, in advance, to a blood transfusion for their adoptive child is an insufficient reason to disqualify them from consideration for adoption. The likelihood that a particular child would need a blood transfusion is not great. Moreover, if a blood transfusion should become necessary, a court would exercise its *parens patriae* power to order the transfusion in the best interest of the child. *State v. Perricone,* 37 N.J. 463 (1962), *cert. den.* 371 U.S. 890 (1962); *see John F. Kennedy Memorial Hospital v. Heston,* 58 N.J. 576 (1971). Where a transfusion becomes necessary, then, the State has adequate means at its disposal to protect the child's physical well-being.

On the other hand, the religious practice of the prospective adoptive parents should not always be ignored. It may be considered as a factor in the decision. *See In re Adoption of E, supra,* 59 N.J. at 47-50. The best interests of the child would undoubtedly permit the Division to elect not to place a hemophiliac child for adoption in the home of Jehovah's Witnesses. By the same token, however, the best interests of the child may differ depending on a prior relationship with the adopting parents. For example, a prospective adoptive child may have formed psychological attachments in a foster home which has provided love, guidance and physical well-being. To prohibit an adoption in such a case solely because of a possibility that a blood transfusion may be needed in the future clearly would be inconsistent with the best interests of the child.*

In conclusion, a refusal by Jehovah's Witnesses to consent to provide blood transfusions should not be used by the Division of Youth and Family Services as the sole basis on which to prohibit adoptions by those

persons. However, a refusal to consent to blood transfusions may be taken into account along with other pertinent factors bearing on the best interests of the child.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: JOSEPH M. GORRELL
Deputy Attorney General

* An administrative policy to impose a blanket prohibition on the adoption of children by Jehovah's Witnesses also raises questions under the Freedom of Religion Clause of the First Amendment to the United States Constitution. Since the likelihood or the need for a transfusion is remote and could in any event be ordered by a court, there is some question whether there would be a constitutionally sufficient justification in furtherance of the best interests of the child for such an absolute ban.

October 9, 1979

CHRISTOPHER DIETZ, *Chairman*
New Jersey State Parole Board
Whittlesey Road
Trenton, New Jersey

FORMAL OPINION NO. 21—1979

Dear Chairman Dietz:

On September 1, 1979 the New Jersey Code of Criminal Justice became effective. The Code substantially revises and codifies the State's criminal law and also impacts on the parole process. As a result, you have asked for our advice with regard to the interpretation of N.J.S.A. 2C:43-9(b) and 2C:46-2 insofar as those statutes bear on the parole revocation process under the jurisdiction of the State Parole Board. In particular, you inquire whether N.J.S.A. 2C:43-9(b) prohibits the forfeiture of credit for time served on parole ("street time") and whether the Parole Board has the authority to revoke parole where a parolee has failed to pay a fine in the manner directed by the Board. It is our opinion that the forfeiture of "street time" on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code. The Parole Board however does retain its preexisting authority to revoke parole because of the failure of a parolee to pay a fine.

Prior to the enactment of the Penal Code, N.J.S.A. 30:4-123.24 provided for the forfeiture of "street time" upon the revocation of parole by the Parole Board. This meant an offender, whose parole had been revoked and then reincarcerated, would lose credit against his sentence for all or part of the time spent on parole. The maximum expiration date of the sentence ordinarily would be administratively extended. The specific

reason for the revocation of the parole would determine the precise amount of the forfeiture. *Bonomo v. New Jersey State Parole Board,* 104 N.J. Super. 226 (App. Div. 1969).

In 1968 a Criminal Law Revision Commission was created by the Legislature and charged with the responsibility of developing a new comprehensive criminal code. The Commission recommended that the practice of forfeiting "street time" upon parole revocation be abolished. The Commission stated:

> A change in existing law is effected by Section 2C:43-9c concerning the period of time which an offender could be required to serve in prison or on reparole, following a revocation of parole. The longer of either the parole term or the maximum sentence, viewed from the date of conviction, governs. It is this period for which the offender may be re-imprisoned upon revocation of parole or subjected to supervision upon re-parole. Time served successfully upon parole prior to revocation serves to reduce the parole term and the maximum sentence despite a later revocation; the offender is not required to 'back up' and serve again in prison any time that he has served upon parole.
>
> We think that this arrangement serves the sense of justice which offenders share with other men and that it is, therefore, desirable in itself and a constructive influence upon correction." [Vol. II. *Final Report of the New Jersey Criminal Law Revision Commission,* p. 322.]

The legislature adopted that recommendation and N.J.S.A. 2C:43-9(b)* provides:

> If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the parole board *but shall not exceed the original sentence* determined from the date of conviction. [Emphasis added.]

Consequently, it is clear that the maximum expiration date of a sentence may not be extended. The forfeiture of "street time" upon the revocation of an offender's parole would no longer be permissible.

With regard to the question concerning fine payments, the Parole Board is authorized by N.J.S.A. 30:4-123.15 to release an inmate on parole upon condition that any fine imposed on such inmate be paid through the probation office of the county of commitment in amounts to be fixed by the Parole Board. The failure of an inmate to pay such a fine in the manner directed by the Board would be sufficient cause for the revocation of parole.

* N.J.S.A. 2C:43-9(c) was redesignated as N.J.S.A. 2C:43-9(b) by the Amendments to the Code approved on August 29, 1979. L. 1979, c. 178.

The Code also deals with the imposition and collection of fines. In those instance where an individual is delinquent in the payment of his fine, N.J.S.A. 2C:46-2(a) provides in pertinent part:

> When a defendant sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court, upon the motion of the person authorized by law to collect the fine or restitution, the motion of the prosecutor or upon its own motion, may recall him, or issue a summons or a warrant of arrest for his appearance. After a hearing, the court may reduce the fine or restitution, suspend it, or modify the payment or installment plan, or, if none of these alternatives is warranted, may impose a term of imprisonment to achieve the objective of the sentence. The term of imprisonment in such case shall be specified in the order of commitment.

Thus, a court is empowered to impose one of several alternatives, including imprisonment, on an individual for his failure to pay a fine. In light of this authority of a sentencing court, your inquiry is whether the Board's authority derived from N.J.S.A. 30:4-123.15 to revoke parole for the failure to pay a fine has been repealed by the Criminal Code. It is our opinion that the Board retains its authority in this area.

It is clear that the express terms of N.J.S.A. 2C:46-2 do not prohibit the Parole Board from exercising its authority to revoke the parole of a parolee who is delinquent in the payment of a fine. To construe N.J.S.A. 2C:46-2 to do so would suggest that the mechanism for the revocation of parole set forth in N.J.S.A. 30:4-123.15 has been impliedly repealed by the Criminal Code. In establishing the underlying legislative intent, repeals by implication are not favored. In the absence of an express repealer, there must be a clear showing of a legislative purpose to effect a repeal. *New Jersey State P.B.A. v. Morristown,* 65 N.J. 160, 164 (1974). A review of the legislative history reveals a Criminal Law Revision Commission recommendation that the payment of a fine should be a matter for the sentencing court and not for the parole authority. Vol. II, *Final Report, supra,* at 351. It further stated that N.J.S.A. 30:4-123.15 be expressly repealed. This recommendation was not accepted by the legislature and the authority of the Parole Board to revoke parole for the failure to pay a fine has been left intact.

In addition, although both N.J.S.A. 30:4-123.15 and N.J.S.A. 2C:46-2 are designed to insure that fines be paid, the legislative purposes behind the enforcement mechanism set forth in those statutes are quite different. A sentencing court under N.J.S.A. 2C:46-2 is given broad authority to supervise an offender in order to insure compliance with its sentence. The Parole Board is charged with the responsibility to revoke parole in those cases where a parolee has given evidence by his conduct that he is unfit to be further at liberty. N.J.S.A. 30:4-123.23. In appropriate cases the failure of a parolee to pay a fine in the manner directed by the Parole Board shall constitute sufficient cause for revocation of parole. N.J.S.A. 30:4-123.15 and N.J.S.A. 2C:46-2 therefore have distinct and independent legislative objectives. We cannot assume therefore that the legislature by

its enactment of the Code intended to modify the existing authority of the Parole Board to revoke parole for the failure to pay a fine.

In conclusion, you are advised that the Code of Criminal Justice prohibits the forfeiture of "street time" in cases of parole revocation. You are further advised that the Parole Board continues to retain the authority to revoke parole in appropriate cases where a parolee fails to make fine payments in the manner directed by the Board.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 11, 1979

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION NO. 22—1979

Dear Director Waddington:

You have asked whether certain Division of Motor Vehicles license suspension proceedings should be conducted by administrative law judges under the Administrative Procedure Act. You have also asked whether the Division may conduct "pre-hearing conferences" in certain cases in order to attempt to resolve them informally with the consent of the parties prior to formal hearing. For the following reasons, it is our opinion that both of these questions should be answered in the affirmative.

I

It is essential to identify the specific type of case to which you refer. Such a case arises when the Division is notified by a court that a motorist has been convicted of a traffic violation or other violation of the Motor Vehicle Code (N.J.S.A. 39:1-1 *et seq.*). Pursuant to N.J.S.A. 39:5-30,[1] the Director has the authority to sanction the offending motorist; with possible sanctions including probation, warning, driver improvement school, and suspension. Notice of proposed suspension is sent to the motorist and a

1. Point system suspensions pursuant to N.J.S.A. 39:5-30.3 also fall within this general category. The point system functions by assigning a specific number of points for each conviction of a traffic violation as set forth in N.J.A.C. 13:19-10.1 *et seq.* When a motorist accumulates 12 or more points within a three-year period, suspension is proposed. Credits are available in particular circumstances, e.g., three credits for each 12-month period of violation-free driving, etc.

"hearing" (sometimes referred to as an "interview" or "conference") is conducted upon request by a hearing officer or "driver improvement analyst" designated by the Director. The motorist normally may introduce evidence of mitigating circumstances, his need for a license, and anticipated hardships resulting from a suspension. At the recommendation of his designee, the Director then provides an appropriate sanction.

A recent amendment to the Adminstrative Procedure Act mandates that:

> All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director of the Office of Administrative Law, except as provided by this amendatory and supplementary act. [N.J.S.A. 52:14B-10(c).]

Thus, the key inquiry is whether the Division's hearings in these cases represent "contested cases" as that term is defined in the Administrative Procedure Act. If so, they will be required to be conducted by an administrative law judge, rather than by Division hearings officers.

At the outset it must be recognized that:

> Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. [*Bell v. Burson,* 402 U.S. 535, 539 (1971).]

In recognition of this fact, the drafters of the Administrative Procedure Act specifically indicated that license revocation proceedings, with certain exceptions, are to be considered as "contested cases." Thus, N.J.S.A. 52:14B-11 mandates that:

> No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases . . . Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.
>
> This section does not apply (1) where a statute provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee

> to maintain insurance coverage as required by any law or regulation.[2]

See also N.J.A.C. 13:19-1.13, incorporating this language almost verbatim into the Division's own regulations.

The only question then is whether license suspension cases fall within any of these three exceptions. N.J.S.A. 39:5-30 provides that the Director may suspend or revoke a driver's license for any violation of the Motor Vehicle Code "after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof." The statute then authorizes the Director to summon witnesses "to give testimony *in a hearing* which he holds *looking toward* a revocation of a license" (emphasis supplied) and to delegate the actual conduct of said hearing to designated employees, who shall then recommend to him "in writing, whether the said licenses or certificates shall or shall not be suspended or revoked." Likewise, N.J.S.A. 39:5-30.3 (governing point system suspensions) states that:

> An accumulation of 12 points within a 3 year period may cause a driver to be subject to a hearing . . . on a rule to show cause why his driver's license should not be suspended. . . .

Clearly, neither statute provides that the Director "is not required to grant a hearing" and, in fact, the implication in each is to the contrary.[3] Under both statutes, the Director, after being informed of a licensee's conviction under the Motor Vehicle Act, has complete discretion as to whether, and in what form, an administrative sanction should be imposed. Lastly, none of these cases concern suspensions for failure to maintain insurance. The license suspension proceedings in the present situation, therefore, falling as they do within none of the exceptions listed in N.J.S.A. 52:14B-11, should be conducted as "contested cases" before administrative law judges.

2. A comparable provision in the Federal Administrative Procedure Act, 5 U.S.C.A. 558(c), which states that "[w]hen application is made for a license required by law, the agency . . . within a reasonable time, shall set and complete [contested case-type] proceedings," has been literally interpreted as independently mandating contested case-type hearings in all license application situations, *United States Steel Corp. v. Train,* 556 F. 2d 822, 833-34 (7 Cir. 1977), *New York Path. & X-Ray Lab, Inc. v. Immigration & N.S.,* 523 F. 2d 79, 82 (2 Cir. 1975). *But see Anti-Pollution League v. Castle,* 572 F. 2d 872, n. at 879 (1 Cir. 1978); *Marathon Oil v. Environmental Protection Agency,* 564 F. 2d 1253, n. at 1260-61 (9 cir. 1977), holding that such provision is primarily concerned merely with setting forth the *timing* of administrative hearings in those license suspension cases which otherwise fall within the definition of a "contested case."

3. The holding in *Tichenor v. Magee,* 4 N.J. Super. 467 (App. Div. 1949) that a hearing is discretionary under N.J.S.A. 39:5-30 no longer appears viable, and particularly in light of judicial pronouncements in more recent cases championing the individual's right to a hearing in license suspension situations. *E.g., Bell v. Buson, supra; Bechler v. Parsekian,* 36 N.J. 242 (1961); *Kantor v. Parsekian,* 72 N.J. Super. 588 (App. Div. 1962).

II

With reference to your question concerning the informal settlement of license suspension proceedings, the Administrative Procedure Act provides that:

> Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order. [N.J.S.A. 52:14B-9(d).]

Since no law prohibits an informal disposition prior to hearing it is clear that the Division may conduct "pre-hearing conferences." In the event an informal voluntary disposition cannot be agreed to after such a conference, a "contested case" hearing should be conducted by an administrative law judge.

It is, therefore, our opinion that Motor Vehicle license suspension hearings held pursuant to N.J.S.A. 39:5-30 should be conducted by administrative law judges as "contested cases." It is further our opinion that the Division of Motor Vehicles may conduct "pre-hearing conference" in an attempt to informally dispose of these license suspension proceedings with the consent of the parties.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: ROBERT M. JAWORSKI
Deputy Attorney General

October 17, 1979

LOUIS J. GAMBACCINI, *Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey

FORMAL OPINION NO. 23—1979

Dear Commissioner Gambaccini:

You have asked whether it would be lawful for insurance companies to be involved in the support of public bond issues. The immediate occasion for your inquiry was the selection of the chairman of the board of a major insurance company to head up a Citizens' Coalition to campaign for passage of the Transportation Rehabilitation and Improvement Bond Issue by the voters on November 6. For the following reasons, it is our opinion that there would be no statutory impediment to insurance companies' involvement in public bond referenda.

The controlling statute in this situation is N.J.S.A. 19:34-32 which makes it a misdemeanor[1] for insurance corporations or associations doing

1. Under the terms of the newly enacted Penal Code, a misdemeanor shall constitute for purposes of sentencing a crime of the fourth degree. N.J.S.A. 2C:43-1(b).

business in New Jersey, as well as their officers, directors, stockholders, attorneys or agents to:

> [D]irectly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee, organization or corporation, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person or money or property so used. . . .

While it is clear that contributions to or in aid of political parties, committees, organizations or candidates would violate the above provision, the answer to your inquiry turns on whether the statute's prohibition on corporate payments for "any political purpose whatsoever" should be interpreted as barring corporate contributions in support of or opposition to a public referendum.

The meaning of the phrase "for any political purpose whatsoever" may be determined by its textual setting in the statutory provision. It is immediately preceded by a ban on corporate contributions for or in aid of a political party or organization, a candidate for political office or for nomination to a political office. All of the items enumerated have a distinctly partisan political character. When general words follow specifically named things of a particular class, the general words should be understood as limited to things of the same class or the same general character. *Transcontinental Gas Pipe Line Corp. v. Dept. of Conservation.* 43 N.J. 135, 146 (1964). It may therefore be assumed that the legislature only intended to prohibit corporate contributions made to or in aid of essentially partisan political objectives and not to embrace a nonpartisan public referendum on an issue of statewide importance. This reading of the statute is also consistent with the rule of statutory construction that in the event of an ambiguity, a criminal statute should be afforded the narrowest possible effect (*State v. Alvearío,* 154 N.J. Super. 135 (App. Div. 1977); *State v. Brenner,* 132 N.J.L. 607, 611 (E. & A. 1945)), which in this case is again to limit its application to only partisan political contributions and expenditures.

This conclusion is supported by case law which stands for the proposition that a statutory ban on corporate political contributions to aid or assist in a public referendum would raise serious questions under the Freedom of Speech Clause of the First Amendment to the United States Constitution. In *First National Bank of Boston v. Belotti,* 98 S.Ct. 1407 (1978), a Massachusetts statute restricted corporate contributions in support of a public referendum to only instances when an issue "materially affected" a corporation's business, property or assets. The United States Supreme Court held the statute to be in violation of the First Amendment since the speech which is protected by the Freedom of Speech Clause would include that of a corporation informing the public on matters of general interest. Although the Court acknowledged a legitimate government interest in preventing the corruption of elected officials (which led to the enactment of laws regulating corporate participation in partisan elections),

it concluded that there was insufficient justification to restrict corporate contributions and expenditures for the purpose of influencing a vote on a public referendum. The Court stated:

> [T]here has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda. . . . Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections [citations omitted] simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. . . . [98 S.Ct. at 1423.]

In this instance, an interpretation of N.J.S.A. 19:34-32 to prohibit corporate contributions toward the passage or defeat of a public bond referendum would be clearly inconsistent with the decision of the Court in *Belotti.*

The decision of the United States Court of Appeals in *Schwartz v. Rommes,* 495 F. 2d 844 (2d Cir. 1974), dealt with a New York statute which is almost identical to N.J.S.A. 19:34-32. In that case the New York Telephone Company's financial contributions to a committee in support of a proposed state transportation bond issue were challenged as violative of the state statute. The court held that contributions to a nonpartisan transportation bond referendum were not encompassed within the meaning of "any political purpose whatsoever." The court noted that:

> Corporate funds paid to a candidate or political party have the potential of creating debts that must be paid in the form of special interest legislation or administrative action. In contrast, when the issue is one to be resolved by the public electorate monies paid by a corporation for public expression of its views create no debt or obligation on the part of the voters to favor a corporate contributor's special interest. [495 F. 2d at 851.]

2. An analogous statute in N.J.S.A. 19:34-45 provides that no corporation carrying on the business of a bank, savings bank, cooperative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company or having the right to condemn land or franchises in public ways shall pay or contribute money to aid the nomination or election of any person or to aid or promote the interests of any political party. There is in this instance no prohibition on contributions or expenditures "for any political purpose whatsoever" and the ban is directed solely to persons and political parties. Consequently, there also would be no legal impediment to contributions and expenditures by the corporations enumerated in that statutory section to influence the vote on a nonpartisan public referendum.

Although we conclude there would be no statutory impediment under the election laws, it should be made clear that the Board of Public Utilities could determine in individual instances to disapprove such expenditures as allowable expenses in a rate case.

The Court of Appeals concluded that to construe the statute in any other manner would raise serious questions as to its constitutionality.

In sum, it may be assumed to be the legislative purpose that the New Jersey statute serves the same valid objectives as comparable statutes interpreted by the courts. The legislative ban on corporate contributions for "any political purpose whatsoever" in N.J.S.A. 19:34-32 would not, therefore, include a prohibition on aid or assistance to a nonpartisan public referendum. You are therefore advised that an insurance corporation and its officers or agents are not prevented from providing financial or other support toward the passage of the 1979 Transportation Rehabilitation and Improvement Bond Issue.[2]

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

October 23, 1979

SIDNEY GLASER, *Director*
Division of Taxation
West State and Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 24—1979

Dear Director Glaser:

You have asked whether a surviving spouse who was less than 55 years old at the time of his or her senior citizen spouse's death is entitled to the additional annual homestead rebate of $50 on attaining age 55. You are advised that unless the surviving spouse is over 65, or is permanently and totally disabled, or was 55 at the time of his or her eligible spouse's death, the surviving spouse is not eligible for the additional $50 rebate.

All residents and citizens of New Jersey are entitled to homestead rebates on real property owned and used as a principal residence. N.J.S.A. 54:4-3.80. Additionally:

> *If such citizen and resident* of this State is of the age of 65 or more years, or is less than 65 years of age yet permanently and totally disabled, as "disabled" is defined in the "New Jersey Gross Income Tax Act" (54A:1-2f), or *is the surviving spouse of a deceased citizen and resident of this State* who during his lifetime received a real property tax deduction pursuant to this act or P.L. 1963, c. 172 (C. 54:4-8.40 et seq.), upon the same conditions, with respect to real property, notwithstanding that said surviving spouse is under the age of 65 and is not permanently and totally

> disabled, *provided that said surviving spouse was 55 years of age or older at the time of death of said citizen* and resident and remains unmarried, said taxpayer *shall* annually, upon proper claim being made therefor, *be entitled to an additional rebate*. . . . [N.J.S.A. 54:4-3.80a.] [Emphasis added.]

The constitutional authority for the statute is found in Art. VIII Sec. 1, para. 5 of the New Jersey Constitution which provides for the homestead rebates as follows:

> The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates, and subject to such limits, as may be provided by law. Such rebates or credits *may include a differential rate or credit to citizens and residents who are* of the age of 65 or more years, or less than 65 years of age who are permanently and totally disabled according to the provisions of the Federal Social Security Act, or are *55 years of age or more and the surviving spouse* of a deceased citizen or resident of this State who during his lifetime received, or who, upon the adoption of this amendment and the enactment of implementing legislation, would have been entitled to receive a rebate or credit related to property taxes. [Emphasis added.]

You have suggested that a comparison of the underlined passages in the above-quoted statutory and constitutional provisions reveals that the language of the constitutional authorization is broader than the statutory enactment. An examination of the legislative history of these two provisions, however, indicates that the Constitution was amended with the specific intent of authorizing additional rebates for senior citizens and surviving spouses with the precise requirements of the statute in mind (i.e., age 55 or older at the death of the senior citizen spouse). N.J.S.A. 54:4-3.80 was originally enacted as part of L. 1976, c. 72. Between its referral to the Assembly Taxation Committee of the same year, 24 separate actions on this bill (A 1330, 1976) were taken by the legislature. Thus, the bill was frequently amended and carefully considered. The bill originally contained language providing for the additional senior citizen rebate which extended that additional rebate to surviving spouses who were 55 at the time of their senior citizen spouse's death.

On May 13, 1976 the Attorney General issued *Formal Opinion No. 15—1976* which concluded that the additional senior citizen rebate set forth in A-1330 violated the constitutional mandate in Art. VIII, Sec. 1, para. 1 requiring uniformity in property taxation. At that time, Art. VIII, Sec. 1, para. 5 of the Constitution only provided as follows:

> The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates, and subject to such limits, as may be provided by law.

The reaction to the *Formal Opinion* was swift. On the very same day the Senate Revenue Finance and Appropriations Commitee deleted the unconstitutional language from the pending bill. However, on May 19, 1976 the Senate restored the provisions providing for additional senior citizen rebates. On May 24, 1976, Assembly Concurrent Resolution No. 109 which was eventually passed and adopted by the voters amending and adding the second sentence to Art. VIII, Sec. 1, para. 5 of the Constitution was introduced. The intention of the proposed constitutional amendment clearly was to make differential senior citizen rebates constitutional. This intention was expressly set forth in the sponsor's statement on the concurrent resolution:

> The purpose of this amendment is to provide for a differential homestead rebate or credit on property taxes for senior citizens, disabled persons or their surviving spouses. The senior citizen and disabled homestead rebate or credit, under this amendment, follows the person who otherwise qualifies.
>
> The Constitutional Amendment is *designed to eliminate questions of interpretation of the language granting differential homestead tax rebates or credits for senior citizens, the disabled and surviving spouses* which have arisen by virtue of a recent opinion of the Attorney General which seriously affects the application of differential homestead exemptions for senior citizens *presently provided for in Assembly Committee Substitute Official Copy Reprint, for Assembly Bill No. 1330 of 1976 now pending before the Legislature.* [Emphasis added.]

The subsequent history of ACR 109 1976 and A 1330, 1976 are so inextricably intertwined that one can reasonably conclude that they were viewed by the Legislature as part of a package granting to surviving spouses additional rebates consistent with the statutory formulation. ACR 109 passed in the Assembly on July 2. A 1330 passed in the Assembly on July 7. Both were passed in the Senate on July 8. The Governor approved the statute on August 30, 1976. The voters approved the constitutional amendment on November 2, 1976.

It is an established principle of statutory construction that contemporaneous enactments of the Legislature are to be read consistently and harmoniously whenever possible. *Department of Labor and Industry v. Cruz.* 45 N.J. 372, 377 (1965). By similar reasoning, the same principle should also apply in the interpretation of a constitutional amendment proposed to the people contemporaneously with the enactment of a statute *in pari materia.* The usual situation in which this principle is applied is the case of a statute enacted subsequent to the formal adoption of a constitutional provision. The principle would appear even more applicable in the present situation of statutory and constitutional provisions approved contemporaneously by the Legislature and directed to the same subject matter.

Therefore, it is our opinion that the Legislature intended Art. VIII, Sec. 1, para 5 of the Constitution to only authorize the additional rebate provided for by N.J.S.A. 54:4-3.80 for surviving spouses who are 55 or

more at the time of a senior citizen spouse's death. The constitutional provision does not provide authorization to grant a senior citizen homestead rebate to a surviving spouse who attains age 55 after the death of the eligible senior citizen spouse.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JOSEPH C. SMALL
Deputy Attorney General

* In any event, the constitutional amendment in Art. VIII, Sec. 1 para. 5, is permissive in character and authorizes the legislature to enact in its discretion a homestead rebate law which may include rebates to residents who are "55 years of age or more and the surviving spouse." It is clear that pursuant to this constitutional authorization, the legislature could enact a statute which was more restrictive than the constitutional provision. Therefore, a legislative determination to limit the rebate to only that class of surviving spouse who is at least 55 at the time of the death, of his or her spouse would be consistent with the constitutional amendment even if it could be read to permit the legislature to extend the benefit to surviving spouses who were under that age at the time of their spouse's death.

October 23, 1979

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
Whittlesey Road
Post Office Box 7387
Trenton, New Jersey 08628

FORMAL OPINION NO. 25—1979

Dear Commissioner Fauver:

In *Formal Opinion No. 21-1979,* dated October 9, 1979, it was concluded that the forfeiture of credit for time served on parole (street time) on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code of Criminal Justice. As a result of that opinion, you have asked whether a parolee should continue to receive credit toward his sentence for a period of time during which he has absconded from and avoided parole supervision. For the following reasons, it is our opinion that credit for time served on parole may not be claimed for a period of time during which a parolee has unlawfully absconded and absented himself from parole supervision.

N.J.S.A. 2C:43-9(b) provides:

> If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the parole board *but shall not exceed the original sentence* determined from the date of conviction. [Emphasis added.]

Although the statutory language provides that the term of further imprisonment upon revocation of parole should not exceed the original sentence, it is well established that a "mere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of a sentence." *Anderson v. Corall,* 263 U.S. 193, 196, 44 S.Ct. 43, 68 L.Ed. 247 (1923). A parolee remains in the constructive custody of the superintendent of the institution from which he was paroled and under the immediate supervision of the State Parole Board. N.J.S.A. 30:4-123.15; *Anderson, supra.* Therefore, time served on parole would constitute the service of a sentence. *Anderson, supra; Zerbst v. Kidwell,* 304 U.S. 359, 58 S.Ct. 872, 82 L.Ed. 399 (1938). On the other hand, an unlawful absence from such custody and supervision would not constitute the service of a sentence. Rather, such an occurrence may be compared to an escape of a prisoner or to the reincarceration of a parolee for a subsequent offense. In either event, the running of the original sentence would clearly be tolled. *Anderson, supra; Zerbst, supra; Shaw v. Hatrak,* 164 N.J. Super. 414, 418, 419 (App.Div. 1978). Consequently, an administrative extension of a maximum expiration date of a sentence on the recommitment of a parolee to coincide with the period of time during which the parolee has unlawfully absented himself, would not increase the original sentence in contravention of N.J.S.A. 2C:43-9(b).

This conclusion is supported by principles of statutory construction. It is clear that legislation should not be interpreted in a manner to reach unreasonable or absurd results. *State v. Gill,* 47 N.J. 441, 444 (1966). Were an absconder to be given credit for a period of time during which he was not under parole supervision, he could avoid recommitment at all if he avoided recapture until his maximum sentence had expired.[1] The Legislature certainly cannot be assumed to have intended such an absurd result. Another principle of statutory construction is that primary regard must be given to the fundamental purpose for which the legislation was enacted and the spirit of the law will control over a literal reading of its terms. *N.J. Builders, Owners and Managers Assn. v. Blair,* 60 N.J. 330, 338 (1970). The overall legislative objective to insure the public safety by preventing the commission of offenses through the deterrent influence of sentences and the confinement of offenders would be frustrated if a parolee were to be given credit toward his sentence for a period of time during which he has absconded from and avoided parole supervision. N.J.S.A. 2C:1-2(b)(3).

This conclusion draws further support from a review of the legislative history of the statute.[2] The N.J. Criminal Law Revision Commission in

1. An absconder from parole supervision may not be charged with escape under the new Code. N.J.S.A. 2C:29-5(a).

2. N.J.S.A. 2C:43-9(c), recommended by the Commission, was substantially identical to N.J.S.A. 2C:43-9(b), which was ultimately enacted.

providing recommendations to the Legislature perceived the extension of a maximum expiration date of a sentence for a minor violation of parole to be unjustifiably harsh. Vol. II, *Final Report of the New Jersey Criminal Law Revision Commission,* p. 322. The Commission stated that under the terms of its proposed revision:

> [T]*ime served successfully* upon parole prior to revocation serves to reduce the parole term and the maximum sentence despite a later revocation; the offender is not required to 'back up' and serve again in prison any time that he has served upon parole. [*Final Report* at 322.][3] [Emphasis supplied.]

Thus, although it was the objective of the Commission to eliminate the dual effect of both a recommitment of a parolee and the forfeiture of credit for time served successfully on parole, it is readily apparent that it was not its purpose to provide credit on parole for the time during which a parolee has avoided parole supervision. The Commission could not have contemplated the period during which a parolee remained unlawfully absent from parole supervision as being "time served successfully on parole." The Legislature enacted N.J.S.A. 2C:43-9(b) as recommended by the Criminal Law Revision Commission and it may be presumed that it was conversant with and accepted the Commission's recommendations as its own.

For these reasons, it is our opinion that a parolee, on revocation of parole, may not receive credit on a sentence for a period of time during which he has unlawfully absconded and absented himself from parole supervision. Therefore, the maximum expiration date of the original sentence may be administratively extended upon revocation of parole for a period of time equal to the time during which a parolee has unlawfully absented himself from parole supervision.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. SHIRE
Deputy Attorney General

3. The Commission noted that where the revocation was based upon the commission of a crime while on parole, a separate sentence could additionally be imposed upon conviction for the crime.

November 9, 1979

WILLIAM FAUVER, *Commissioner*
Department of Corrections
Whittlesey Road
P. O. Box 7387
Trenton, New Jersey 08628

CHRISTOPHER DIETZ, *Chairman*
New Jersey State Parole Board
Whittlesey Road
P. O. Box 7387
Trenton, New Jersey 08628

FORMAL OPINION NO. 26—1979

Gentlemen:

You have requested our advice as to whether a sentence to the state prison can be aggregated with a sentence to a county correctional institution for the purpose of determining a single parole eligibility date. Further, assuming the propriety of such aggregation, you have inquired as to the appropriate manner of awarding commutation credits on such a combined sentence. For the following reasons, you are advised that the New Jersey State Parole Board is vested with the authority to determine a single parole eligibility date on a combined sentence required to be served in the state prison. You are also advised that commutation credits provided in N.J.S.A. 30:4-140 should be credited to an inmate on aggregated terms of confinement required by law to be served in the state prison.

In August 1978 the legislature adopted a new comprehensive Penal Code for the State of New Jersey to become effective on September 1, 1979. N.J.S.A. 2C:1-1 *et seq.* With regard to the question at hand, the Code of Criminal Justice provides a means for the determination at the place of confinement of offenders sentenced under its provisions. N.J.S.A. 2C:43-10. A person sentenced to a term of imprisonment of less than one year should be committed to the jail, penitentiary or workhouse of the county in which he is convicted, except that in a county of the first class having a workhouse or penitentiary no sentence of greater than six months shall be made to a county jail. N.J.S.A. 2C:43-10(c). An offender sentenced to a term of imprisonment of one year or greater should be committed to the Department of Corrections and incarcerated in the state prison, except than an offender may be committed to a county penitentiary or workhouse where the sentence does not exceed 18 months. N.J.S.A. 2C:43-10(a), (b). It is therefore clear from this statutory scheme that the place of confinement is determined by the length of the sentence imposed by the court.[1] Furthermore, where a person is sentenced to more than one term of imprisonment and the sentences are consecutive, N.J.S.A.

1. It should be noted that an individual may be sentenced to an indeterminate term of incarceration. The parole authority with respect to such sentences resides in the appropriate Board of Trustees and not the State Parole Board. *See* N.J.S.A. 30:4-146 et seq., 30:4-153 *et seq.*

2C:43-10(d) provides that "the terms shall be aggregated for the purpose of determining the place of imprisonment . . . ."[2]

In order to determine the role of the Parole Board under this amended statutory scheme, it is necessary to briefly review the existing authority of that agency. The Parole Board has been given the duty to determine the time and conditions under which persons serving sentences in the state prison may be released on parole.[3] N.J.S.A. 30:4-123.5. Further, the Parole Board has been vested with the responsibility to determine the parole of inmates sentenced to county correctional institutions where an inmate has been sentenced to a term having a maximum greater than one year and who has served at least one year of such term.[4] N.J.S.A. 30:4-123.35. In sum, therefore, the Parole Board is the paroling authority for offenders sentenced to confinement in the state prison or to county correctional facilities for a period of one year or more.

A reading of the statutory authority of the Parole Board together with the newly imposed requirements regarding the place of confinement of inmates would, therefore, lead to the following conclusions. An offender sentenced to multiple consecutive county sentences that total 12 months

2. While the statute does not provide a definition of consecutive terms of incarceration, it should be noted that sentences which are concurrent in part and consecutive in part may properly be aggregated for purposes of the calculation of parole eligibility dates. *Formal Opinion No. 8—1977. Memorandum Opinion of Attorney General 1959—P-4.* There is no reason why the same result should not obtain for purposes of determining the place of imprisonment under an aggregated sentence. Therefore, multiple county sentences or a multiple state/county sentence, which are concurrent in part and consecutive in part, may be aggregated in order to determine where the offender is to be confined.

3. N.J.S.A. 30:4-123.5 provides in pertinent part:

> It shall be the duty of the board to determine when, and under what conditions, subject to the provisions of this act, persons now or hereafter serving sentences having fixed minimum and maximum terms or serving sentences for life, in the several penal and correctional institutions of this State may be released upon parole.

This statute defines the Board's parole jurisdication with respect to inmates serving minimum-maximum terms in state institutions. Such inmates are state prison inmates since N.J.S.A. 2A:164-17 requires that all sentences to the state prison be for a minimum-maximum term. *Cf.* N.J.S.A. 30:4-148; 30:4-155. The Penal Code does away with minimum-maximum terms. Rather, an offender is sentenced for a specific term of years, N.J.S.A. 2C:43-6; 2C:43-7. However, this change in the style of sentencing was not meant by the legislature to delimit the Board's jurisdiction with respect to inmates sentenced under the Penal Code and committed to the state prison. N.J.S.A. 2C:43-9(a).

4. The pertinent part of N.J.S.A. 30:4-123.35 provides:

> any prisoner in a county penitentiary serving a term having a maximum greater than a year and who has served at least one year of such term shall be permitted to make application to the board for parole.

The statute refers to inmates serving sentences in the county penitentiaries. However, parole eligiblity is available to inmates of county jails and county workshouses on the same conditions applicable to inmates of county penitentiaries under N.J.S.A. 30:4-123.35. *Davis v. Heil,* 132 N.J. Super. 283 (App. Div. 1975), *aff'd* 68 N.J. 423 (1975).

or greater in the aggregate would be confined in the state prison unless a county has a penitentiary or workhouse. Thus, the State Parole Board would be the paroling authority for such an inmate, since he would in all likelihood be confined in the state prison and the total aggregate length of sentences imposed is greater than one year. N.J.S.A. 30:4-123.35. It is furthermore clear that where the total of multiple county sentences in the aggregate exceeds 18 months, an individual would be required to be confined in the state prison (N.J.S.A. 2C:43-10(d), N.J.S.A. 2C:44-5(a)(2)), and the Parole Board would be the paroling authority for such an offender. In any case where it is determined by a court to be appropriate to impose consecutive sentences in whole or in part to state and county correctional institutions (N.J.S.A. 2C:44-5), an offender should be confined in the state prison since the total aggregate sentence would be in excess of one year. The Parole Board would in this case as well be the paroling authority, since the offender is confined in the state prison and the total aggregate length of sentences is greater than one year. In all of the above cases, therefore, an offender is within the authority of the Parole Board and it may determine a single parole eligibility date for the aggregated sentence required to be served in the state prison.

There is no similar statutory provision which provides for the aggregation of sentences for the determination of the place of confinement prior to the enactment of the Criminal Code. It is our opinion, however, that the same conclusion should obtain in those cases as well. N.J.S.A. 30:4-123.10 provides in pertinent part:

> Whenever, after the effective date of this act, 2 or more sentences to run consecutively are imposed at the same time by any court of this State upon any person convicted of crime herein, there shall be deemed to be imposed upon such person a sentence the minimum of which shall be the total of the minimum limits of the several sentences so imposed, and the maximum of which shall be the total of the maximum limits of such sentences. For purposes of determining the date upon which such a person shall be eligible for consideration for release on parole, the board shall consider the minimum sentence of such person to be the total aggregate of all the minimum limits of such consecutive sentences and the maximum sentence of such person to be the total aggregate of all of the maximum limits of such consecutive sentences.
>
> With regard to consecutive sentences imposed upon prisoners prior to July 3, 1950, and also with regard to consecutive sentences imposed upon prisoners subsequent to July 3, 1950, by different courts at different times, all such consecutive sentences, with the consent of the prisoner, may be aggregated by the board to produce a single sentence, the minimum and maximum of which shall consist of the total of the minima and maxima of such consecutive sentences. Such aggregation shall be for the purpose of establishing the date upon which such prisoner shall be eligible for consideration for release on parole.

It is clear that minimum-maximum consecutive sentences required to be served in the state prison may be aggregated for purposes of determination of a single parole eligibility date on both sentences. Although the express terms of the statute do not refer to the aggregation of state prison sentences with consecutive sentences to county correctional institutions, the decision of the Supreme Court of New Jersey in *Cain v. New Jersey State Parole Board,* 78 N.J. 253 (1978), provides a compelling analogy. The court held in that case that consecutive sentences to a county correctional institution, irrespective of the length of each term, may be aggregated for purposes of the determination of a single parole eligibility date under N.J.S.A. 30:4-123.10. The fixed term imposed in a sentence to a county institution is to be taken as both a minimum and maximum for the purposes of aggregation under the statute.

Consequently, it would seem reasonable to assume that the Parole Board should similarly have jurisdiction to aggregate and determine a single parole eligibility date for consecutive sentences to the state prison and to a county correctional institution which in the aggregate total one year or more. An inmate sentenced to consecutive state and county sentences would be within the authority of the Parole Board on account of the state prison sentence even without regard to the length of the consecutive county sentence. Also, N.J.S.A. 30:4-123.10 expressly provides that all consectutive minimum-maximum sentences may be aggregated for the purpose of determining parole eligibility. It is clear from *Cain* that county sentences may be regarded as minimum-maximum sentences for the purposes of aggregation. Secondly, sentence aggregation for minimum-maximum terms is essentially for the purpose of determining a point at which, during the service of a sentence, an offender may be released from confinement in a custodial facility.[5] To require an inmate to shuttle between the state prison and a county penal facility in order to serve a portion of a sentence to that facility before total release from confinement would frustrate the underlying legislative benefit conferred by the provision for aggregation of sentences. *In re Fitzpatrick,* 9 N.J. Super. 511 (Cty. Ct. 1950), *aff'd* 14 N.J. Super. 213 (App. Div. 1951). Finally, the aggregation of sentences under these circumstances would have the beneficial effect of harmonizing the treatment of inmates sentenced prior to the effective date of the Penal Code with those sentenced after that date.

In sum, the Parole Board has the authority to determine a single parole eligibility date for an inmate who is sentenced to either consecutive terms in the state prison and in a county correctional facility or to multiple terms in a county correctional facility which in the aggregate total more than one year. This conclusion is consistent with the underlying holding of the Supreme Court of New Jersey in *Cain* that criminal offenders should be considered for parole release by the State Parole Board without regard to the length of their individual sentences if the aggregate total of those sentences is for a duration of greater than one year.

5. Parole has been defined as a procedure whereby a prisoner is permitted to serve the final portion of his sentence *outside* the gates of the institution on certain terms and conditions in order to prepare him for his eventual return to society. *In re Clover,* 34 N.J. Super. 181, 188 (App. Div. 1955).

You further inquire, assuming state and county consecutive sentences and multiple county sentences should be aggregated for determining the place of incarceration in the state prison, as to the appropriate manner of providing commutation/good time credits on an aggregated sentence. It is necessary to briefly review the legislative provision for commutation and good time credits in both state and county correctional institutions in order to put this question in the proper context. Prior to the enactment of the Penal Code, inmates of the state prison serving minimum-maximum sentences received commutation credits for continuous orderly deportment. This served to reduce both the minimum and maximum terms of such sentence. N.J.S.A. 30:4-140. The entire appropriate statutory entitlement was credited to the inmate as of his commitment to the state prison and was subject to divestment only if the inmate engaged in flagrant misconduct, *Formal Opinion No. 16—1976.* Similarly, inmates serving sentences in county jails and penitentiaries were permitted to receive, on account of good conduct, a remission with respect to the service of their sentences. N.J.S.A. 2A:164-24. Both of these statutes, then, enhance the ability of officials to maintain discipline in correctional facilities. Since these statutes were not repealed by the legislature when it enacted the Code of Criminal Justice, it is evident that the legislature intended these credits to be applied to sentences imposed under the Code.

Although inmates of both state and county correctional institutions are eligible to receive credits for good behavior, the statutory scheme for the award of credits is different. An inmate of a county correctional institution cannot receive more than one day of credit in the remission of his sentence for every six days of his sentence, regardless of the length of the sentence. On the other hand, commutation credits are remitted to inmates of state correctional institutions on a progressive schedule linked directly by N.J.S.A. 30:4-140 to the length of the sentence in years or a fractional part thereof. Therefore, the place of confinement mandated by law is determinative of the manner in which good time credits are received by an inmate.

It is evident on the face of N.J.S.A. 30:4-140 that the legislature has directed prison officials to remit the progressive time credits upon any person committed to any state correctional institution. Where an offender by reason of his term of imprisonment is deemed to be a state prison inmate, he should receive commutation credits as of the date that his sentence requires confinement in the state prison. In the case of multiple state prison/county correctional institution sentences, an inmate should be awarded the progressive commutation credits set forth in N.J.S.A. 30:4-140 on the total aggregated sentence for which an inmate must be confined in the state prison. Where N.J.S.A. 2C:43-10 mandates that a sentence or multiple sentences to a county correctional institution be served in the state prision, commutation credits provided under N.J.S.A. 30:4-140 should be awarded to an inmate as of the date that such county inmate must be confined in the state prison.

In conclusion, it is our opinion that the State Parole Board has the authority to compute a single parole eligibility date on an aggregated sentence required to be served in the state prison. It is further our opinion that the Department of Corrections should award commutation credits

provided by N.J.S.A. 30:4-140 on the full aggregated sentence required to be served in the state prison.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

December 20, 1979

JOANNE E. FINLEY, M.D., M.P.H.
Commissioner of Health
Department of Health
Health and Agriculture Building
Trenton, New Jersey 08625

FORMAL OPINION NO. 27—1979

Dear Dr. Finley:

You have asked whether regulations recently adopted by the Public Health Council of the Department of Health with respect to smoking in certain public places have been superseded by provisions of the State's new criminal code.

The Public Health Council, which consists of eight members appointed by the Governor, is empowered, among other functions, to adopt "such reasonable sanitary regulations *not inconsistent with* the provisions of this act or *the provisions of any other law of this State* as may be necessary properly to preserve and improve the public health in this State." (Emphasis added.) Such regulations are designated as the State Sanitary Code. N.J.S.A. 26:1A-7. The Sanitary Code "may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey," including, among other designated functions, "prohibiting nuisances hazardous to human health." *Ibid.*

In December 1978 a public hearing on proposed smoking regulations was conducted by former Judge Goldmann on behalf of the Council. Following the submission of an extensive Report and Recommendations, the Council in April 1979 adopted smoking regulations substantially as proposed in a notice published in the New Jersey Register in November 1978. N.J.A.C. 8:15-1.1 *et seq.* Essentially, the regulations which apply to certain restaurants, retail food stores, health care facilities, and places of public assembly or attendance, require the owner or operator of such establishments to restrict smoking to designated "smoking permitted" areas and to provide adequate mechanical means of ventilation of smoke in these areas. They are scheduled to go into effect on January 1, 1980.

The Sanitary Code regulations contain a specific reference to the provision of the new Code of Criminal Justice that imposes quasi-criminal

penalties against persons who smoke in certain public places. N.J.A.C. 8:15-1.5(c). N.J.S.A. 2C:33-13 reads in full as follows:

> a. Any person who smokes or carries lighted tobacco in or upon any bus or other conveyance, other than in the places provided, is a petty disorderly person.
>
> b. Any person who smokes or carries lighted tobacco in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance under authority of R.S. 40:48-1 and 40:48-2 or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted, is guilty of a petty disorderly persons offense. Notwithstanding the provisions of 2C:43-3, the maximum fine which can be imposed for violation of this section is $200.00.
>
> c. *The provisions of this section shall supersede any other statute and any rule or regulation adopted pursuant to law.* [Emphasis added.]

This provision replaced a more narrow provision of Title 2A that prohibited smoking or carrying lighted tobacco only in buses or trolley cars and made violations punishable by a maximum fine of $25. N.J.S.A. 2A:170-65.

The issue here is whether the subsection of N.J.S.A. 2C:33-13 that "supersedes any other statute and any rule or regulation adopted pursuant to law" serves to invalidate the Sanitary Code regulations in question. Obviously, this repealing clause cannot be read literally, for to do so would mean the obliteration of every other existing law and regulation. On the other hand, there can be no doubt from the language of this clause that it was intended to be far-reaching. Since the superseding clause of N.J.S.A. 2C:33-13 does not explicitly designate that "statutes, rules or regulations" intended to be repealed, it is appropriate in attempting to ascertain the precise scope of this clause to seek whatever guidance may be gleaned from the statute's legislative history. As the court stated in *Cath. Char., Dio. of Camden v. Pleasantville,* 109 N.J. Super. 475, 485 (App. Div. 1970), "It is . . . clear that when uncertainties or ambiguities exist it is appropriate for the court, in order to ascertain legislative intent, to examine the history of the enactments, including any statements attached to the bills which were enacted into law."

The legislative history of N.J.S.A. 2C:33-13 unequivocally establishes a legislative intent to supersede the Sanitary Code regulations at issue. A statement on the Assembly bill that culminated in N.J.S.A. 2C:33-13 states that its purpose is "to clarify that smoking in a public place is to be governed by the municipal ordinance or by the owner or person responsible for the operation of the pubic place." Any doubt left by this statement respecting the intent to preclude regulation of smoking in public places by government bodies other than municipalities is dispelled by the statement filed by the Senate Judiciary Committee. That statement avers that the purpose of N.J.S.A. 2C:33-13 is "to clarify that smoking in a public place is to be governed by the municipal ordinance or by the owner or

person responsible for the operation of the public place and *not by rule or regulations of an executive agency. The amendment would preclude enforcement of smoking regulations by an executive agency.*" (Emphasis added.)

We are mindful of the significant public health objectives underlying adoption of the Sanitary Code smoking regulations. As noted at the outset, however, the very statute pursuant to which the regulations were adopted states that Code regulations promulgated by the Public Health Council must be consistent with State statutes. *See Borden's Farm Products v. Board of Health,* 36 N.J. Super. 104, 114 (Law Div. 1955). In view of the unequivocal evidence of legislative intent to preclude the Council from adopting or enforcing regulations respecting smoking in public places, it must be concluded that the Sanitary Code regulations in question are superseded by N.J.S.A. 2C:33-13.

For these reasons, it is our opinion that the regulations promulgated by the Public Health Council dealing with smoking in public places in N.J.A.C. 8:15-1.1 *et seq.* have been superseded by the Code of Criminal Justice. Accordingly, the regulations may not be implemented or enforced.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

January 10, 1980

JOSEPH P. LORDI, *Chairman*
Casino Control Commission
379 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1980

Dear Chairman Lordi:

You have inquired with regard to the legality of a backgammon tournament which a casino hotel operator proposes to sponsor at its business premises. The hotel operator is currently undecided as to whether or not to charge a nominal admission fee to the tournament or to permit free participation by the contestants. We have concluded that the proposed backgammon tournament would not violate the criminal laws of New Jersey provided that no admission fee is charged, either directly or indirectly, for participation in the tournament.

The backgammon tournament format at issue is fairly standard and has been utilized at casinos throughout the world, including Las Vegas, Monte Carlo and Paradise Island in the Bahamas. Backgammon is a game in which a series of counters are moved over a board with the object of placing all the counters in a prescribed position. The movement of the

counters is governed by the roll of dice. The results of a throw of the dice are applicable only to the contestant on behalf of whom the dice are thrown. Certain positioning of the counters in the course of the game will increase the probability of victory. A player who is adept at manipulating his or her counters to attain favorable positions has an advantage. Nonetheless, no matter how skilled a player is, she or he can only manipulate the counters in conformity to the roll of the dice. Hence, an unskilled player who attains a series of favorable throws of the dice can defeat a more skilled player whose throws of the dice preclude advantageous movement of her or his counters.

The sponsor of the proposed tournament intends to conduct the contest on a limited participation basis. The number of entries will be finite. Each player will engage in a single game of backgammon with another player. The loser is eliminated from the competition, while the winner goes on to play another round against another player. The single elimination process is repeated in a series of rounds until only one player remains undefeated. He or she is the winner of the competition. The tournament itself consists of a number of such single elimination contests so that each player has more than one opportunity to win. The winners of these various competitions are rewarded with valuable prizes, including substantial quantities of cash.

The purpose of the tournament is to promote commercial activity at the hotel and casino in which the tournament is being conducted. Additional spinoff benefits may accrue to other enterprises doing business in the general area. The tournament's sponsors hope to schedule it at a period when lessened commercial activity is anticipated at the hotel-casino.

New Jersey's Constitution establishes an antigambling policy. *N.J. Const.* (1947), Art. IV, §7, par. 2; *see F.O. No. 9, 1978.*[1] The Legislature has effectuated this policy through a series of statutory enactments. Those enactments applicable in the criminal context are embodied in the provisions of N.J.S.A. 2C:37-1 *et seq.* which superseded, on September 1, 1979, N.J.S.A. 2A:112-1 *et seq.* and N.J.S.A. 2A:121-1 *et seq. See* N.J.S.A. 2C:98-2.

Pursuant to N.J.S.A. 2C:37-2 promoting gambling is a criminal offense punishable by a scale of sanctions which range from a third degree crime to a disorderly persons offense. Criminal liability for maintaining a place where gambling activity is taking place is created by N.J.S.A. 2C:37-4.

1. The constitutional prohibition on legislatively authorized gambling provides:

> No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes casted by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by the legally qualified voters of the State voting at a general election . . . . [*N.J. Const.* (1947), Art. IV. §7, par. 2.]

Casino gambling, state lotteries to aid education and raffles and bingo games sponsored by charitable organizations have been exempted from this anti-gambling proscription. *N.J. Const.* (1947), Art. IV, §7, par. 2(A), (B), (C).

N.J.S.A. 2C:37-1(b) provides:

> "Gambling" means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

This definition requires that a participant must risk "something of value" before any gambling can occur. "Something of value" is separately defined in N.J.S.A. 2C:37-1(d) as such items as money or tokens or such intangible forms of consideration as extensions of credit or free entries into games for which a charge is generally exacted.[2] If the participants in the backgammon tournament were required to pay any admission fee directly or indirectly, then they would be "risking" something of value on their chances of success in the tournament. However, the absence of any admission fee would preclude a finding that any gambling activity could occur because the backgammon players would not be risking "something of value." This same analysis would apply to the question of whether the backgammon tournament was a "lottery," within the meaning of N.J.S.A. 2C:37-1 *et seq.* Lotteries are defined as a specialized form of gambling scheme in which "something of value" is tendered as a consideration for participation. N.J.S.A. 2C:37-1(h). Once again, the absence of an admission fee establishes that nothing of value, as defined in the Code of Criminal Justice, will be transferred by the participants to the promoters or sponsors of the backgammon tournament. It seems clear that the definition of "something of value" in N.J.S.A. 2C:37-1(d) means that mere participation, or presence, by a contestant will not constitute "consideration" sufficient to support the existence of a lottery in violation of the criminal law. This is consistent with recent views on the scope of the concept of "consideration" in the gambling and lottery context. *See, e.g., F.O. No. 9, 1978.*

Finally, the promotors of the backgammon tournament have asserted that, "no betting of any kind on the players or the outcome will be permitted or sanctioned." This is essential because any betting, including the formation of pools or "auctions" in which monies are divided based upon the results of the tournament, would constitute "gambling" within the meaning of N.J.S.A. 2C:37-1(b). The promotors or facilitators of any such pools or auctions would be criminally liable for promoting gambling in violation of N.J.S.A. 2C:37-2. If the hotel-casino operators know that such gambling activity is taking place on portions of their premises open to the general public, then they and the hotel-casino will be criminally liable under N.J.S.A. 2C:37-4 for maintaining a gambling resort. *See*

2. N.J.S.A. 2C:37-1(d) provides:

> "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly comtemplating transfer of money or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

N.J.S.A. 2C:37-1(j). Provided that no such activity is permitted and that no admission fee is assessed either directly or indirectly such as by conditioning participation on the purchase of any goods or services, the proposed backgammon tournament will not contravene the criminal laws of New Jersey.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: EDWIN H. STIER
Assistant Attorney General

January 18, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1980

Dear Mr. Skokowski:

You have raised questions as to whether municipalities and counties are permitted to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds or to participate in commercially managed investment firms providing plans for deferred compensation. You are hereby advised that municipalities and counties are not authorized to enter into agreements with either non-profit or commercially-operated organizations which provide for the investment of deferred compensation funds.

Any municipality or county may set up a deferred compensation plan for its employees. N.J.S.A. 43:15B-1 *et seq.* A local unit which establishes such a plan must designate one or a group of its public officials or its governing body as the "named fiduciary" responsible for implementing the plan. The named fiduciary is empowered to take "any steps reasonably necessary to implement the plan *consistent with this act* (emphasis added)" and with the requirements of the Internal Revenue Service. N.J.S.A. 43:15B-3(e). N.J.S.A. 43:15B-3(a) requires that the employer (the local unit) shall invest all moneys from the plan which are not needed for immediate payment of benefits in one of three specific ways: interest-bearing securities in which savings banks of the State are authorized to invest their funds; deposits in interest-bearing accounts; or deposits in the State of New Jersey Cash Management Fund. N.J.S.A. 43:15B-3(b) further provides that if the State creates a deferred payment compensation plan, the local units may participate in that plan. (Such a plan was created

through the enactment of L. 1978, c. 39, N.J.S.A. 52:18A-163 *et seq.*) However, N.J.S.A. 43:15B-1 *et seq.* contains no specific provision authorizing the local units to enter into agreements with organizations offering deferred compenation plans.

In fact, the legislative history of the act clearly indicates that the Legislature did not intend to permit such activity. When the act was first introduced on February 9, 1976, as A-1475, it authorized local units to invest deferred compensation funds in interest-bearing securities in which savings banks of the State were authorized to invest their funds or to make deposits in interest-bearing accounts. Additionally, the bill specifically authorized the investment of such funds in plans which involved either the purchase of a group annuity contract from an insurance company or

> b. Entering into a trust and other agreements with a national non-profit organization offering a deferred compensation plan as a service to employers. [A-1475, §5b.]

Clearly, this version of the bill would have permitted the use of outside deferred compensation plans by local units as an alternative to investment in interest-bearing securities in which savings banks of the State might invest their funds, to deposits in interest-bearing accounts or to the purchase of group annunity contracts.

In April of 1977, a bill, S-3223, was introduced to create the State of New Jersey Cash Management Fund and to permit local units to deposit their moneys in the Fund instead of in approved banks or trust companies.* Subsequently, on June 27, 1977, the Senate amended A-1475. The amendment deleted section 5 of the bill, which permitted use of national non-profit deferred compensation plans, and added a new section 3 which permitted the local units to invest in the New Jersey Cash Management Fund or in any State deferred compensation plan which might be created in the future. Further, on December 1, 1977, the Senate also deleted from the bill a separate paragraph, originally part of §5, which permitted the employer to enter into an agreement with an entity designated by the employee to provide for the investment of amounts of deferred compensation. *See* Governor's comments to Assembly Bill No. 1475, December 1, 1977. These amendments clearly indicate that the Legislature intended to remove from the local units the option of using private deferred compensation plans or investment services and instead to limit the investment or deposit of unneeded deferred compensation funds by such units to other specific, statutorily delineated categories of investment.

Such an interpretation is supported by a comparison of N.J.S.A. 43:15B-1 *et seq.*, with the express language in N.J.S.A. 52:18A-163 *et seq.*, which established the New Jersey State Employees Deferred Compensation Board. In contrast to the provisions of N.J.S.A. 43:15B-1 *et seq.*, the latter statute explicitly provides that the New Jersey State Employees Deferred Compensation Board may contract.

* S-3223 was enacted and was signed into law on November 2, 1977, as L. 1977, c. 281. It established the State and New Jersey Cash Management Fund, N.J.S.A. 52:18A-90.4, and authorized local units to participate therein. N.J.S.A. 40A:5-14.

> [w]ith one or more private organizations for the administration of all or part of the [deferred compensation] plan, including the management and investment or either thereof of deferred and deducted salary funds . . . . [N.J.S.A. 52:18A-167(a)(2).]

The Board's decision to make such a contract is subject to the prior approval of the State Investment Council. *Id.* The statute also provides that such private organizations may not distribute information about any deferred compensation program or benefits without prior approval from the Division of Investment. N.J.S.A. 52:18A-167(d).

Thus, where the Legislature intended to authorize the use of private deferred compensation plans, it did so through an explicit, regulated scheme. N.J.S.A. 43:15B-1 *et seq.* lacks any such specific authorization for the use of private deferred compensation organizations. Further, since specific permissive language was actually deleted from the original bill, it is reasonable to conclude that the Legislature did not intended to permit local entities to participate in privately operated plans or to permit named fiduciaries of the local units to make agreements with non-profit entities for the investment of deferred compensation funds. Rather, the statutory scheme provides that local entities are to invest any deferred compensation funds, not immediately required for use, only in those types of investments which the Legislature has expressly described in the act.

In conclusion, you are advised that counties and municipalities are not authorized to participate in commercially managed deferred compensation plans or to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds. You are further advised, however, that such local units may participate in any deferred payment compensation plan established by the State for the State's employees and, through such a plan, in any deferred compensation plans administered and managed by private organizations with whom the New Jersey State Employees Deferred Compensation Board may contract.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: SUSAN L. REISNER
Deputy Attorney General

January 18, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1980

Dear Mr. Skokowski:

You have raised questions as to whether municipalities and counties are permitted to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds or to participate in commercially managed investment firms providing plans for deferred compensation. You are hereby advised that municipalities and counties are not authorized to enter into agreements with either non-profit or commercially-operated organizations which provide for the investment of deferred compensation funds.

Any municipality or county may set up a deferred compensation plan for its employees. N.J.S.A. 43:15B-1 *et seq.* A local unit which establishes such a plan must designate one or a group of its public officials or its governing body as the "named fiduciary" responsible for implementing the plan. The named fiduciary is empowered to take "any steps reasonably necessary to implement the plan *consistent with this act* (emphasis added)" and with the requirements of the Internal Revenue Service. N.J.S.A. 43:15B-3(e). N.J.S.A. 43:15B-3(a) requires that the employer (the local unit) shall invest all moneys from the plan which are not needed for immediate payment of benefits in one of three specific ways: interest-bearing securities in which savings banks of the State are authorized to invest their funds; deposits in interest-bearing accounts; or deposits in the State of New Jersey Cash Management Fund. N.J.S.A. 43:15B-3(b) further provides that if the State creates a deferred payment compensation plan, the local units may participate in that plan. (Such a plan was created through the enactment of L. 1978, c. 39, N.J.S.A. 52:18A-163 *et seq.*) However, N.J.S.A. 43:15B-1 *et seq.* contains no specific provision authorizing the local units to enter into agreements with organizations offering deferred compenation plans.

In fact, the legislative history of the act clearly indicates that the Legislature did not intend to permit such activity. When the act was first introduced on February 9, 1976, as A-1475, it authorized local units to invest deferred compensation funds in interest-bearing securities in which savings banks of the State were authorized to invest their funds or to make deposits in interest-bearing accounts. Additionally, the bill specifically authorized the investment of such funds in plans which involved either the purchase of a group annuity contract from an insurance company or

> b. Entering into a trust and other agreements with a national non-profit organization offering a deferred compensation plan as a service to employers. [A-1475, §5b.]

Clearly, this version of the bill would have permitted the use of outside deferred compensation plans by local units as an alternative to investment in interest-bearing securities in which savings banks of the State might invest their funds, to deposits in interest-bearing accounts or to the purchase of group annunity contracts.

In April of 1977, a bill, S-3223, was introduced to create the State of New Jersey Cash Management Fund and to permit local units to deposit their moneys in the Fund instead of in approved banks or trust companies.* Subsequently, on June 27, 1977, the Senate amended A-1475. The amendment deleted section 5 of the bill, which permitted use of national non-profit deferred compensation plans, and added a new section 3 which permitted the local units to invest in the New Jersey Cash Management Fund or in any State deferred compensation plan which might be created in the future. Further, on December 1, 1977, the Senate also deleted from the bill a separate paragraph, originally part of §5, which permitted the employer to enter into an agreement with an entity designated by the employee to provide for the investment of amounts of deferred compensation. *See* Governor's comments to Assembly Bill No. 1475, December 1, 1977. These amendments clearly indicate that the Legislature intended to remove from the local units the option of using private deferred compensation plans or investment services and instead to limit the investment or deposit of unneeded deferred compensation funds by such units to other specific, statutorily delineated categories of investment.

Such an interpretation is supported by a comparison of N.J.S.A. 43:15B-1 *et seq.*, with the express language in N.J.S.A. 52:18A-163 *et seq.*, which established the New Jersey State Employees Deferred Compensation Board. In contrast to the provisions of N.J.S.A. 43:15B-1 *et seq.*, the latter statute explicitly provides that the New Jersey State Employees Deferred Compensation Board may contract.

> [w]ith one or more private organizations for the administration of all or part of the [deferred compensation] plan, including the management and investment or either thereof of deferred and deducted salary funds . . . . [N.J.S.A. 52:18A-167(a)(2).]

The Board's decision to make such a contract is subject to the prior approval of the State Investment Council. *Id.* The statute also provides that such private organizations may not distribute information about any deferred compensation program or benefits without prior approval from the Division of Investment. N.J.S.A. 52:18A-167(d).

Thus, where the Legislature intended to authorize the use of private deferred compensation plans, it did so through an explicit, regulated scheme. N.J.S.A. 43:15B-1 *et seq.* lacks any such specific authorization for the use of private deferred compensation organizations. Further, since specific permissive language was actually deleted from the original bill, it is reasonable to conclude that the Legislature did not intended to permit

* S-3223 was enacted and was signed into law on November 2, 1977, as L. 1977, c. 281. It established the State and New Jersey Cash Management Fund, N.J.S.A. 52:18A-90.4, and authorized local units to participate therein. N.J.S.A. 40A:5-14.

local entities to participate in privately operated plans or to permit named fiduciaries of the local units to make agreements with non-profit entities for the investment of deferred compensation funds. Rather, the statutory scheme provides that local entities are to invest any deferred compensation funds, not immediately required for use, only in those types of investments which the Legislature has expressly described in the act.

In conclusion, you are advised that counties and municipalities are not authorized to participate in commercially managed deferred compensation plans or to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds. You are further advised, however, that such local units may participate in any deferred payment compensation plan established by the State for the State's employees and, through such a plan, in any deferred compensation plans administered and managed by private organizations with whom the New Jersey State Employees Deferred Compensation Board may contract.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: SUSAN L. REISNER
Deputy Attorney General

January 25, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1980

Dear Commissioner English:

The Solid Waste Administration has requested an opinion interpreting the Solid Waste Management Act and the Solid Waste Utility Control Act of 1970, to determine whether solid waste management districts, acting pursuant to solid waste management planning, have the authority to require that solid waste generated within the districts be directed to specific waste disposal facilities. Please be advised that the planning districts have authority to formulate a solid waste management plan showing the destination of wastes generated within the districts, and that the New Jersey Department of Environmental Protection has final authority to approve and render operative such a plan. Similarly, the Board of Public Utilities Commissioners may designate a solid waste management district as a franchise area to be served by one or more persons engaged in solid waste disposal, and in this manner the B.P.U. may exercise control over the destination of the waste stream.

At the outset, it is important to recognize that environmentally sound

solid waste disposal, as well as the efficient and economical provision of solid waste collection and disposal services, are matters which directly affect the public health, safety and welfare. N.J.S.A. 13:1E-2, N.J.S.A. 48:13A-2. *Hackensack Meadowlands v. Mun. Landfill Authority,* 68 N.J. 451 (1975); *Southern Ocean Landfill v. Ocean Tp.,* 64 N.J. 190 (1974). The Legislature has therefore enacted a comprehensive scheme mandating the strict regulation of all solid waste collection and disposal operations. N.J.S.A. 13:1E-1 *et seq.,* N.J.S.A. 48:13A-1 *et seq.* To ensure environmental quality, the Act prohibits any person from engaging "in the collection or disposal of solid waste" without obtaining approval from the DEP. N.J.S.A. 13:1E-5(a). Moreover, in order to assure the economic integrity of the operation, no person may engage "in the business of solid waste collection or solid waste disposal until a certificate of public convenience and necessity" is issued by the B.P.U., N.J.S.A. 48:13A-1, 6 *et seq.* In combination, these statutes provide for a far-reaching regulatory program designed to remedy the "grave problem" to the public health generated by improper solid waste collection and disposal. N.J.S.A. 13:1E-2.

The Act initiates this overall solid waste management scheme by mandating a regional planning approach as a basis for solid waste collection and disposal throughout the State. N.J.S.A. 13:1E-2, 4, 5, 20 *et seq.* This planning required by the Act consists of several distinct stages, and commences with the promulgation by the DEP of "general guidelines sufficient to initiate the solid waste management process by solid waste management districts . . ." N.J.S.A. 13:1E-6(a)(3). These "planning districts" are coincidental with the twenty-one counties and the Hackensack Meadowlands Development Commission. N.J.S.A. 13:1E-19.

The next step in the planning process is actual plan formulation and development by the planning districts. N.J.S.A. 13:1E-20, 21. This entails comprehensive planning studies to obtain regional data, including an inventory and appraisal of all facilities within the district. N.J.S.A. 13:1E-21. The waste disposal needs of the region, as well as a strategy to be applied in meeting same, are also to be developed, N.J.S.A. 13:1E-21, and a site plan depicting the location of "suitable sites to provide solid waste facilities" to meet such regional needs must be prepared. N.J.S.A. 13:1E-21(b)(3). It is also required that during this planning process, the districts analyze the "solid waste collection systems and transportation routes" within the respective districts. N.J.S.A. 13:1E-21(a)(4). The clear objective is thus to commence formulation of a management plan which most effectively and economically controls waste collection and disposal. N.J.S.A. 13:1E-2, 6, 7, 20 *et seq.*

After the district plan is formulated, the plan must then be submitted to the public for comment at a public hearing. N.J.S.A. 13:1E-23(c), N.J.S.A. 13:1E-24(c)(e). Thereafter, the district must "adopt or reject, in whole or in part, the solid waste management plan." N.J.S.A. 13:1E-23(e). Any plan so adopted must include all facilities approved by the DEP during the district's period of initial plan formulation. N.J.S.A. 13:1E-4(b).

Finally, after promulgation of the guidelines and after these prior stages of plan development, public hearings, and adoption of a plan in whole or in part by a district, the planning scheme is concluded by submission of the plan to the Commissioner of the DEP for review and final

approval. The Commissioner has authority to modify, reject or approve such plans, and to set forth the procedures to be followed by a district upon remand of the plan. N.J.S.A. 13:1E-24. In the final analysis, the Commissioner is authorized to "adopt and promulgate any modification or replacement he deems necessary with respect to the solid waste management plan." N.J.S.A. 13:1E-24(g). This power is to be exercised so as to encourage "maximum practicable use of resource recovery" facilities. N.J.S.A. 13:1E-6(a)(3), 6(b)(1), N.J.S.A. 13:1E-21(b)(2). The districts must then implement the plan ordered and approved by the Commissioner. N.J.S.A. 13:1E-24(f).

It is against the background of this mandatory planning system that the question herein presented must be considered. Review of the Act demonstrates that the actual authority granted to the districts is to plan for solid waste management within the district, and subsequently to implement the respective solid waste management plans. N.J.S.A. 13:1E-20 *et seq.* As an integral part of this planning process, the district is to develop a strategy to most effectively provide waste disposal services to the region. N.J.S.A. 13:1E-21(b)(2). The districts are to consider, among others, such planning elements as transportation routes, economic impacts, suitable sites, and encouragement and implementation of resource recovery. N.J.S.A. 13:1E-21. The apparent intent of such comprehensive planning is to coordinate solid waste management on a regional and State-wide basis. N.J.S.A. 13:1E-2. The management plan developed by the district may therefore provide for the channelization of wastes to specific facilities if such planning is reasonably deemed to best effectuate the regional strategy so formulated. District planning may thus provide an effective blueprint setting forth the disposal sites for wastes generated within the region. See, N.J.S.A. 13:1E-20, 21 and N.J.S.A. 13:1E-2(c), where the Act refers to "particular facilit[ies] . . . [which have been] designated [in the plan] as the place of disposal . . .".

Since the DEP is required, after approval of the plan, to register only those facilities (including collection and disposal operations) which conform to the district plan, any new registration may be conditioned upon receipt of wastes as directed in the district plan. N.J.S.A. 13:1E-4, 5, 26. Moreover, the registrations of existing facilities, in appropriate instances, may be amended by the DEP to reflect the provisions of the district plan, N.J.S.A. 13:1E-5(c), thereby bringing present facilities into compliance with the legislative objective and planned concept to direct waste in such a manner as to effect environmentally sound and economically efficient solid waste management. As a result of district planning, a waste management strategy directing the solid waste stream to specific facilities may be developed by the districts. After approval of such a district plan by the DEP, the strategy may be implemented by the respective districts, N.J.S.A. 13:1E-4, 20 *et seq.*

Similarly, the B.P.U. is integrally involved in this management process. Not only can the B.P.U. designate a district as a "franchise area to be served by one or more persons engaged in solid waste collection . . . [and] disposal," but also by regulating the rate structures of solid waste facilities, the B.P.U. can encourage a marketplace where the new and established operators may be motivated towards conformity with the district plan. N.J.S.A. 48:13A-5, N.J.S.A. 48:13A-4, 7; N.J.S.A. 13:1E-2, 22, N.J.S.A. 48:2-25. In this manner, the strategy directing wastes to specific disposal/processing facilities can be further effectuated.*

It is therefore our opinion that the Solid Waste Management Act and the Solid Waste Utility Control Act establish the authority of the solid waste districts through their comprehensive planning to direct the flow of wastes to selected destinations. The exercise of administrative authority by the DEP can effectuate compliance with the district plans, and the B.P.U. can either directly franchise an area, or otherwise influence the marketplace through rate-setting in such a manner as to affect the flow of waste materials throughout the districts. N.J.S.A. 13:1E-1 *et seq.*, N.J.S.A. 48:13A-1 *et seq.* N.J.S.A. 48:2-1 *et seq.* Therefore, through the combined abilities of the districts, the DEP and the B.P.U., solid waste generated within a district may be directed to specific waste disposal facilities.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: NATHAN M. EDELSTEIN
Deputy Attorney General

* The overall management scheme set forth in the Act and the Utility Act involving regulation of both the environmental and economic aspects of solid waste collection, utilization and disposal may necessitate control over the flow of wastes from point of generation to final disposal. *See, Public Hearing Before New Jersey Legislature Senate Committee(s) on Energy, Agriculture and Environment and County and Municipal Government on Senate Bill No. 624* (Solid Waste Management)(1974) (Statement of Senator Matthew Feldman); N.J.S.A. 13:1E-2, N.J.S.A. 48:13A-2. If, for example, the complex technology associated with resource recovery is to be phased in throughout the State, as required in the Act, N.J.S.A. 13:1E-2, 6, 21, then the waste stream must be directed in such a manner as to encourage the development of these facilities. *Cf. In re Combustion Equipment Associates, Inc.*, 169 N.J. Super. 305 (App. Div. 1979). The means selected by the Legislature to accomplish such a comprehensive waste management program is regional planning, from which will be determined "the most efficient, sanitary and economical ways of collection, disposing, limiting, and utilizing solid waste . . ." N.J.S.A. 13:1E-2(b)(6), *see also,* N.J.S.A. 48:13A-2, 5. These regional plans then form the basis against which any application for a solid waste collection or disposal registration must be evaluated by the DEP, N.J.S.A. 13:1E-4, 26, and upon which the B.P.U. is to exercise its licensing authority, N.J.S.A. 48:13A-5, 6.

January 31, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 4—1980

Dear Mr. Skokowski:

You have inquired as to whether amounts to be raised by a municipality to cover an anticipated deficit in the budget of a municipally owned or operated utility are to be considered as exempt from the municipality's cap under the Local Government Cap Law. For the reasons set forth below, you are advised that those amounts which a municipality may appropriate in anticipation of a deficit in its utility budgets for a forthcoming fiscal year are not exempt from a municipality's budget cap.

Municipalities are by statute authorized to establish or acquire and to own or operate various types of public utilities. N.J.S.A. 40:62-1 *et seq.* Further, they are authorized to establish rental or other charges for such services as may be provided by such utilities. N.J.S.A. 40:62-13; N.J.S.A. 40:62-77. The revenues generated by the operation of such utilities as well as the appropriations made for such operations are required to be set forth in a separate section of the budget of any municipality which owns or operates such a utility. N.J.S.A. 40A:4-33. Such appropriations are further required to be separated into at least three categories, specifically operations, interest and debt retirement, and deferred charges and statutory expenditures. N.J.S.A. 40A:4-34. Additionally, all moneys derived from the operation of such a utility, as well as any other moneys applicable to its support, are to be segregated and kept in a separate fund known as a "utility fund" and are, subject to N.J.S.A. 40A:4-35, to be applied only to the payment of the operating and upkeep costs and the debt service charges of the utility. N.J.S.A. 40A:4-62.

In the event that the operation of a municipally owned or operated public utility has resulted or will result in a deficit, then a municipality is required to include in its utility budget an appropriation sufficient to cover such a deficit. N.J.S.A. 40A:4-35. The purpose underlying this requirement would clearly appear to be a furtherance of the general policy of the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, that all local governing bodies operate on a "cash basis" and accordingly appropriate sufficient moneys in their annual budgets to meet all anticipated expenditures during the course or the fiscal year. N.J.S.A. 40A:4-2; N.J.S.A. 40A:4-3.

N.J.S.A. 40A:4-45.3(e) excludes from a municipality's budget cap any amounts appropriated to fund a preceding year's deficit. It provides as follows:

> In the preparation of its budget a municipality shall limit any increase in said budget to 5% over the previous year's final appropriations subject to the following exemptions:

* * *

> e. Amounts required for funding a *preceding year's* deficit; . . . [Emphasis supplied.]

As was noted in *Formal Opinion No. 3—1977*, p. 9, the apparent intent of the Legislature in providing for such an exclusion was to exempt from the spending limitation established by the Local Government Cap Law any amounts necessary to fund *deficits from preceding years* created by the failure of local governments to realize revenues anticipated for such years. Futher, as was noted in that opinion, the exclusion created by N.J.S.A. 40A:4-45.3(e) serves to ensure that appropriations made to cover a preceding year's deficit which has resulted from a shortfall in the collection of anticipated revenues in the preceding year, whether for general municipal or municipal utility purposes, will not occasion cuts in other government services in the following year. *Formal Opinion No. 3—1977*, p. 9.

In construing a statute, it is clear that the language in the provision is to be given its ordinary and well-understood meaning unless an explicit indication exists to the contrary. *Service Armament Co. v. Hyland*, 70 N.J. 550 (1976); *Safeway Trails, Inc. v. Furman*, 41 N.J. 467 (1964), *cert. denied* 370 U.S. 14, 85 S. Ct. 144, 13 L. Ed. 2d 84. In reading N.J.S.A. 40A:4-45.3(e) in light of this principle, it is evident from the plain and ordinary meaning of the language in the provision that the Legislature intended that the exclusion set forth therein apply only to deficits which had arisen in a preceding fiscal year and not to deficits which are anticipated in the coming fiscal year. *Formal Opinion No. 3—1977* reflects this conclusion. Such a conclusion is also supported by the fact that where the Legislature has intended to encompass both existing and anticipated deficits in a statutory provision, it has done so explicitly in a manner which indicates that it intends to encompass both. *See* N.J.S.A. 40A:4-35. Further, whereas not excluding appropriations to cover a preceding year's deficit from a municipality's cap might well have the consequence of reducing the appropriations available for other necessary governmental services, such is not the case with regard to anticipated deficits since a governing body which owns or operates a public utility can for a forthcoming fiscal year increase the rental or other charges it makes for the services provided by the utility to ensure that the revenues available to the utility will meet the cost of such a utility. *See, e.g.*, N.J.S.A. 40:62-13; N.J.S.A. 40:62-77. A municipality may then, without being restricted under the Local Government Cap Law, to appropriate such revenues to offset anticipated costs in the operations of the utility. You are, therefore, advised that a municipality may not exclude from its budget cap any amounts appropriated to cover an anticipated deficit in the budget of a municipal owned or operated utility.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: DANIEL P. REYNOLDS
Deputy Attorney General

February 26, 1980

HON. DONALD P. LAN
Secretary of State
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1980

Dear Secretary Lan:

You have requested an opinion as to whether a candidate for election to the Legislature must meet the qualifications for office set forth in the State Constitution by election day or by the day he assumes office. For the reasons set forth herein, you are advised that a candidate for the Senate or General Assembly must satisfy the minimum age requirement at the time that he is sworn into office, that he must have met the respective citizenship and residency qualifications by election day, and that he must be entitled to the right of suffrage on the day that he files a certificate of acceptance with the Secretary of State, be that at the time of filing a petition or upon accepting a write-in nomination.

The qualifications for eligibility for the Legislature are set forth in *N.J. Const.*, Art. IV, §1, par. 2:

> No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the district for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years and have been a citizen and resident of the State for two years, and of the district for which he shall be elected for one year, next before his election. No person shall be eligible for membership in the Legislature unless he be entitled to the right of suffrage.

Thus, a candidate for either the General Assembly or the Senate must meet a set of three general qualifications:

1. minimum age requirement (Senate—30 years; General Assembly—21 years),
2. citizenship and residency requirements (Senate—"citizen and resident of the State for four years, and of the district . . . one year"; General Assembly—"citizen and resident of the State for two years, and of the district . . . one year"), and a
3. requirement that he be entitled to the right of suffrage.

The general rule is that the time as of which eligibility to an office is to be determined is to be discovered in applicable statutes or constitutional provisions. *Murray v. Murray,* 7 N.J. Super. 549, 556 (Law Div. 1950). In this case, the phrase "next before his election" would not appear to qualify the respective minimum age requirements; indeed, such a coupling would not provide a sensible phrase sequence [*e.g.* "shall . . . have attained the age of thirty years, . . . next before his election"]. Since the minimum age is a requisite to "membership" in the Legislature, it must

be assumed, in the absence of any further qualifier, that it must be satisfied by the time that the individual will be sworn into office. *Cf. Wurtzel v. Falcey,* 69 N.J. 401 (1976).

However, the phrase "next before his election" manifestly is intended to apply to the citizenship and residency requirements. Accordingly, by election day, a candidate for the Senate must "have been a citizen and resident of the State for four years and of the district . . . one year," and a candidate for General Assembly must "have been a citizen and resident of the State for two years and of the district . . . one year." These citizenship and residency requirements are computed backwards from election day.

The Constitution also sets forth as a requirement of membership in either house of the Legislature that the person be "entitled to the right of suffrage." A separate provision of the Constitution defines those persons who shall be entitled to the right of suffrage, *N.J. Const.,* Art. II, par. 3(a).* Although the Constitution provides no definitive guide as to the time when this constitutional requirement must be satisfied, the procedural provisions of the election laws do impose certain requirements. In this regard, a candidate for the Legislature is obliged to file a petition with the Secretary of State to appear either on the primary election ballot or directly on the general election ballot. N.J.S.A. 19:13-3, 19:13-9, 19:23-6, 19:23-14. A candidate nominated for office in a petition must annex to such petition a certificate indicating, among other things, that "the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made." N.J.S.A. 19:13-8, 19:23-15. Likewise, an individual nominated by write-in votes must thereafter file a similar certificate of acceptance. N.J.S.A. 19:23-16. In view of these statutory requirements, a candidate for the Legislature must be entitled to the right of suffrage at the time of filing a petition or, alternatively, at the time of filing a certificate accepting a write-in nomination.

You are therefore advised that a candidate for election to the Legislature must meet the qualifications for office set forth in the *New Jersey Constitution,* Art. IV, §1, par. 2 as follows: he must satisfy the minimum age requirement by the day he is sworn into office; he must meet the citizenship and residency requirements by election day, and he must be entitled to the right of suffrage on the day that he files a certificate with the Secretary of State accepting the nomination, be it as an accompaniment to his petition or in response to a write-in vote.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JANICE S. MIRONOV
Deputy Attorney General

*Art. II, par. 3(a) reads in relevant part:

> Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

See also, N.J.S.A. 19:4-1, 19:31-5.

February 29, 1980

JERRY F. ENGLISH, *Commissioner*
Department of Environmental Protection
P.O. Box 1390
Trenton, New Jersey 08625

FORMAL OPINION NO. 6—1980

Dear Commissioner English:

Our advice has been requested on certain questions pertaining to the expanded implementation of the permit requirements of the Waterfront Development Law. N.J.S.A. 12:5-1, *et seq.* The threshold question is whether the Waterfront Development Law authorizes the Department of Environmental Protection to regulate development on uplands adjacent to navigable waters or streams. It is our opinion that the statute provides jurisdiction to regulate any development on the "water-front" portion of uplands adjacent to navigable waters or streams.

N.J.S.A. 12:5-3, the key operative provision of the law, provides as follows:

> All plans for the development of any water-front upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water-front development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

Thus, the statute requires State approval for any "water-front development" that is either similar or dissimilar to the specifically mentioned types of development. The inquiries therefore are, what area is physically encompassed by the term waterfront and what constitutes development.

The Waterfront Development Law was passed in 1914. The legislative history reveals that it was passed in response to a need for the State to assume a direct role in the regulation of harbor development for competitive economic reasons. In its 1914 Fourth Preliminary Report to the Legislature prior to passage of the legislation, the temporary New Jersey Harbor Commission recommended direct State control over the "waterfront, the waterways and the upland adjacent thereto". *Fourth Preliminary Report of the New Jersey Harbor Commission,* p. 6 (1914). Clearly, then, the perceived need for this remedial law was to regulate uplands as well as water areas.

This conclusion is reinforced by the unambiguous dictionary meaning accorded to the term waterfront. According to Webster's New Collegiate Dictionary (1977 ed.) it means "land, land with buildings, or a section

of a town fronting or abutting on a body of water". *Black's Law Dictionary* (4th ed. 1968), defines waterfront as "land or land with buildings fronting on a body of water". See *City of Long Beach v. Lisenby,* 175 Cal. 575, 166 P. 333, 335, cited in *Black's.* Thus, without reasonable doubt the term waterfront as used in the Waterfront Development Law, was intended to include the uplands adjacent to navigable waters or streams.

On the ancillary question of what constitutes "development" requiring a permit, the listing of specific structures in N.J.S.A. 12:5-3 followed by the statement "or any other similar or dissimilar water-front development", can reasonably be viewed as inclusive of all structures of whatever type under the permit requirement. Under this view, the specific examples are seen as merely illustrative of typical waterfront structures, but by no means intended by the Legislature as exhaustive or limiting in any way. In its *Fourth Preliminary Report* the Harbor Commission also touched upon this issue and called for State approval of any improvement or construction whatever. *Fourth Preliminary Report of the New Jersey Harbor Commission,* p. 9 (1914). Thus, consistent with the expressed legislative purpose to remedy the perceived evil of unregulated waterfront development, it may be concluded that the Legislature intended to require a permit for all structures erected in the waterfront area. To conclude otherwise and give the term development a limited meaning obviously would tend to frustrate the essential underlying purpose of the Waterfront Development Law.

Your second inquiry is to what extent does the waterfront extend, and in particular, may the Department extend it by rule or otherwise to 1000 feet from the water. While it is certain that the concept of regulating a waterfront includes regulating development on uplands, the concept or term waterfront is elusive in its precise spatial definition. However, in light of the purpose of the law in promoting and safeguarding water oriented activities and in light of the direct waterfront nature of the specific examples of development mentioned in N.J.S.A 12:5-3, it must be concluded that the waterfront to be regulated under the law is no larger than the area of the first substantial land use that directly adjoins the water and not an area extending 1000 feet inland. Since regulation of the first substantial land use (or area where that potential use will take place) is enough to promote and protect water oriented activities by insuring access, availability to dockage, etc., and since it is also large enough by definition, to encompass any development as called for by N.J.S.A. 12:5-3, the law does not contemplate regulation extending automatically 1000 feet inland.*

It is also necessary to address the nature of the substantive standards to be adopted by the Department in its administration of the permit requirements of the Waterfront Development Law. The permissible scope

* More precise definition of the waterfront should be undertaken by administrative rule. For example, a rule regulating at least the first 100 feet would be appropriate since it can reasonably the assumed that the first significant land use will occupy at least that large an area (a typical building lot is in excess of 100 feet deep). Moreover, the rule could indicate that where the potential area for the first significant land use extends more than 100 feet inland, a permit will be required for that entire use of the waterfront, subject to a reasonable maximum distance limitation.

of such regulations lies in an understanding of the legislative purpose in enacting the Waterfront Development Law. That purpose was to promote the development and revitalization as well as to safeguard the port facilities and waterfront resources for the public's overall economic advantage. Fourth Preliminary Report, *supra.* The Waterfront Development Law therefore justifies the adoption of standards to insure access to the State's waterways for all water-dependent uses and, conversely, standards discouraging nonwater-dependent uses from usurping the waterfront. Futhermore, a variety of other considerations may come into play in the determination of an appropriate use in a particular case so long as they are in furtherance of the essential purposes underlying the Waterfront Development Law. For example, the development of extensive high rise housing on the waterfront would not be consistent with the legislative purpose to insure access to waterways for water dependent uses and at the same time denial of a permit may serve the purpose of protecting the scenic or aesthetic appearance of the waterfront. In summary, therefore, so long as regulations adopted under the Waterfront Development Law are designed to carry out and are in futherance of the primary intent of the Waterfront Development Law, they may be permissibly used to control the exercise of administrative discretion in the issuance of waterfront development permits.

In summation, it is our advice that the Department may regulate the portion of uplands adjacent to the State's navigable waterways that constitutes the waterfront, but that the waterfront is a relatively narrow strip of land whose precise geographical limit should be defined by rule in accordance with the criteria set forth in this opinion. In addition the substantive standards that are to be used to guide Department permit decisions under the Waterfront Development Law must be in accord with the Legislature's intent to promote the development, revitalization and safeguarding of the waterfront for the public's overall economic wellbeing.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JOHN M. VAN DALEN
Deputy Attorney General

March 28, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1980

Dear Mr. Skokowski:

A question has arisen with regard to whether payments made for municipal services provided to newly constructed redevelopment or housing projects undertaken pursuant to the Urban Renewal Corporation and Association Law of 1961, the Urban Renewal Nonprofit Corporation Law of 1965, or the New Jersey Housing Finance Agency Law may be excluded from the budget cap of a municipality. For the reasons set forth herein, you are advised that any revenue generated by such payments for services provided to redevelopment projects constructed pursuant to the Urban Renewal Corporation Law of 1961 and the Urban Renewal Nonprofit Corporation Law of 1965, which is in excess of the amount of revenue which was generated by the payment of taxes on improvements located on the property prior to the construction of such new projects would fall outside of a municipal budget cap. You are further advised, for the reasons set forth herein, that any revenue generated by such payments for services provided to housing projects constructed pursuant to the New Jersey Housing Finance Agency Law which is in excess of the amount of revenue which was generated by the payment of taxes on the property, and any improvements situated thereon, prior to the construction of such projects would also be outside of a municipal budget cap.

The Urban Renewal Corporation and Association Law of 1961, N.J.S.A. 40:55C-40 *et seq.,* and the Urban Renewal Nonprofit Corporation Law of 1965, N.J.S.A. 40:55C-77 *et seq.,* were enacted for the purpose of encouraging the investment of private capital, and the participation of private enterprise and civic minded citizens respectively, in the restoration and elimination of blighted areas in the State's municipalities. N.J.S.A. 40:55C-41; N.J.S.A. 40:55C-78. To accomplish these purposes, the two acts authorize municipalities to enter into special financial arrangements with urban renewal corporations, urban renewal associations, and urban renewal nonprofit corporations for the purpose of having such corporations or associations undertake projects for the redevelopment of such blighted areas. N.J.S.A. 40:55C-49 to 64; N.J.S.A. 40:55C-92 to 96. In order to enter into such special financial arrangements, such corporations must meet certain requirements set forth in the acts, N.J.S.A. 40:55C-54; N.J.S.A. 40:55C-55.1; N.J.S.A. 40:55C-88, and must also submit an application to the municipality for approval of the projects which they desire to undertake. N.J.S.A. 40:55C-58; N.J.S.A. 40:55C-91. Upon municipal approval of a project, the municipality then enters into a financial agreement with the corporation or association. N.J.S.A. 40:55C-59; N.J.S.A. 40:55C-92. In such agreements, the municipality agrees to exempt from

taxation any improvements constructed or acquired by such a corporation or association. N.J.S.A. 40:55C-59(b); N.J.S.A. 40:55C-92(b). The corporation or association agrees to undertake the approved project and, in the case of the Urban Renewal Corporation and Association Law, to limit the profits or dividends payable to the association or corporation, or, in the case of the Urban Renewal Nonprofit Corporation Law, to pay any profits to the municipality.

Further, the two acts specifically provide that improvements made by an urban renewal corporation or an urban renewal association pursuant to such an agreement are to be exempt from taxation for certain periods of time as set forth in the acts. N.J.S.A. 40:55C-65; N.J.S.A. 40:55C-97. In lieu of making normal tax payments, an urban renewal corporation or association is instead required to make payment to the municipality of *"an annual service charge for municipal services supplied to the project."* *Id.* The amount of such payments is to be a percentage of the annual gross revenues of the project or, alternatively, if such an amount cannot be calculated, a percentage of the total cost of the project. *Id.*

The New Jersey Housing Finance Agency Law, N.J.S.A. 55:14J-1 *et seq.*, contains similar provisions with regard to housing projects financed by the agency. N.J.S.A. 55:14J-30. The law provides that the governing body of any municipality in which such a housing project is to be located may provide that such project shall be exempt from real property taxation provided that the sponsor of the project shall enter into an agreement with the municipality *"to make payments to the municipality in lieu of taxes for municipal services."* N.J.S.A. 55:14J-30(b). Such agreements may provide for the payment by the sponsor to the municipality of up to 20% of the annual gross revenue from each project situated in the municipality. *Id.*

The Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.*, was enacted for the purpose of limiting the annual increase in spending by municipalities and counties without constraining these bodies to the point of rendering the provision of necessary governmental services impossible. N.J.S.A. 40A:4-45.1. To accomplish this purpose, the Legislature established an overall limitation on annual increases in spending by local governing bodies but also set forth certain specified exceptions to this limitation. N.J.S.A. 40A:4-45.3; N.J.S.A. 40A:4-45.4.

One of these exceptions, set forth at N.J.S.A. 40A:4-45.3(h), provides that a municipality may exclude from its budget cap the expenditure of amounts derived from new or increased service fees imposed by ordinance. The evident intent of this exception is to permit a municipality to expend the increase in income generated from new sources of revenue while not altering the basic restraint which the Local Government Cap Law places on spending supported by existing revenue sources. In this respect, this exception is similar in intent to the exception provided by N.J.S.A. 40A:4-45.3(a) which exempts from a municipality's budget cap the amount of new revenue generated by the increase in a municipality's valuations based solely on applying the municipality's preceding year's general tax rate to the assessed value of new construction or improvements. *See Formal Opinion No. 3-1977,* and *City of Clifton v. Laezza,* 149 N.J. Super. 97, 100 (App. Div. 1977). It is also clear that the exemption provided for the expenditure of revenues generated by new or increased service fees was

intended by the Legislature to encompass only the net increase in revenues derived from such new or increased fees and not to include the revenues being generated by fees already in existence.

Since payments made pursuant to N.J.S.A. 40:55C-65, N.J.S.A. 40:55C-97 and N.J.S.A. 55:14J-30(b) are expressly for the purpose of paying for municipal services provided to newly constructed redevelopment and housing projects, they clearly fall within both the language and the evident intent of N.J.S.A. 40A:4-45.3(h). Clearly, to the extent that payments made pursuant to N.J.S.A. 40:55C-65 and N.J.S.A. 40:55C-97 generate revenue for a municipality in excess of the amount of revenue which was generated by tax payments on any improvements located on the site of such projects prior to the construction of the new projects, they constitute new service fees which provide new sources of income for the municipality. Similarly, to the extent that payments made pursuant to N.J.S.A. 55:14J-30(b) generate revenue in excess of the amount of revenue generated by taxes paid on the property, and any improvements situated thereon, prior to the construction of such projects, they also constitute new service fees which provide new sources of revenue for a municipality. Furthermore, excluding the expenditure of such increased amounts of revenue derived from such payments from a municipality's budget cap would also be consistent with the overall purposes of the Local Government Cap Law. Since such an exclusion would only be equal to the amount of new revenue derived from payments made for services provided to newly constructed redevelopment or housing projects, it would not alter the basic restraint which the Local Government Cap Law imposes upon increases in spending and, in turn, the taxes required to support such spending. Accordingly, such an exclusion would not undermine the relief which the statute is intended to provide to the State's municipal taxpayers.

Alternatively, by not permitting the exclusion of such amounts from the cap limitation, the other purpose of the statute of not restraining municipalities to the point of rendering the provision of necessary governmental services impossible would be frustrated. Construction of redevelopment and housing projects undertaken pursuant to N.J.S.A. 40:55C-40 *et seq.*, N.J.S.A. 40:55C-77 *et seq.*; and N.J.S.A. 55:14J-1 *et seq.*, creates a need for additional municipal services. In fact, as noted, the explicit purpose of the payments to be made pursuant to N.J.S.A. 40:55C-65, N.J.S.A. 40:55C-97 and N.J.S.A. 55:14J-30(b) is to compensate the municipality for providing such services to such newly constructed projects. Were the additional amount of revenue generated by such payments made pursuant to these statutory provisions not excluded from a municipality's cap, the result would be that the municipality would have to provide additional services to such projects without the benefit of the increase in revenues which such projects generate for the municipality. Such a result would seem clearly contrary to the express purpose of the law as set forth in N.J.S.A. 40A:4-45.1 of not restraining municipalities to the point where they cannot provide necessary governmental services. Thus, in addition to clearly falling within the specific language of N.J.S.A. 40A:4-45.3(h), the exclusion of expenditures of the additional amount of revenue derived from such payments from a municipality's budget cap for municipal services provided to such projects would also be consistent with

the overall purposes of the statute.

In calculating the amount of such payments for municipal services which may be excluded from a municipality's spending limitation, it is evident, as noted above, that only the net increase in revenues generated by the payment of such fees may be excluded from the limitation. While the revenues which were generated by the improvements on property on which new redevelopment projects are constructed and the revenues which were generated by the property, and improvements situated thereon, on which new housing projects are constructed prior to the construction of such projects were real property taxes and not service fees, it is necessary and reasonable to treat such prior real property taxes as preexisting sources of revenue in calculating the net increase in revenues generated by such fees.* Such treatment is necessary in order to carry out both the clear intent of the specific exemption set forth in N.J.S.A. 40A:4-45.3(h) and the overall scheme of the Local Government Cap Law. Accordingly, in calculating the amount of such payments which may be excluded from a municipality's spending limitation, an appropriate adjustment must be made to deduct the amount of real property taxes so generated prior to the construction of the project from the amount of fees generated by the project to obtain the net increase in revenue which may be excluded from the municipality's spending limitation.

In conclusion, you are advised that the expenditure of revenue generated from payments made for municipal services provided to newly constructed redevelopment projects pursuant to the provisions of the Urban Renewal Corporation and Association Law and the Urban Renewal Nonprofit Corporation Law which is in excess of the amount of revenue which was generated by real property taxes on improvements located on the project site prior to the construction of such projects may be excluded from a municipality's budget cap. You are further advised that the expenditure of revenue generated from payments made for municipal services provided to newly constructed housing projects pursuant to the New Jersey Housing Finance Agency Law which is in excess of the amount of revenue which was generated by real property taxes on the property and any improvements located thereon prior to the construction of such projects may also be excluded from a municipality's budget cap.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: DANIEL P. REYNOLDS
Deputy Attorney General

* The tax exemption provided by N.J.S.A. 40:55C-65 and N.J.S.A. 40:55C-97 applies only to the improvements constructed in a redevelopment project and not the underlying land which continues to be taxed in the same manner as other real property. Thus, in calculating the increase in revenues generated by the payment of service fees in lieu of taxes under these two provisions, the increase would be the amount by which such payments exceed any taxes which were paid on any improvements which may have been located on the site of such a project prior to the construction of such a project. In contrast, in the instance of a new housing project which is exempt from taxation by virtue of N.J.S.A. 55:14J-30(b), both the land on which such a project is constructed and the improvements constructed thereon are exempt from taxation. Accordingly, in calculating the net increase in revenues generated by payments made in lieu of taxes pursuant to N.J.S.A. 55:14J-30(b), the increase would be the amount by which such payments exceed any taxes which were paid on the property and any improvements situated thereon prior to the construction of such a project.

April 1, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 8—1980

Dear Commissioner English:

You have requested an opinion as to whether there is any statutory or legal impediment to purchasing property at a price in excess of the appraised value. You are hereby advised that there is no statutory impediment restricting the Commissioner from exercising reasonably based administrative discretion to purchase property at a price in excess of appraised value.

The Legislature has enacted three separate laws dealing with the acquisitions of property by the Commissioner of the Department of Environmental Protection with funds realized from the sale of "Green Acres Bonds". They are N.J.S.A. 13:8A-1; 19 and 35. Under all three bond issues, the Commissioner is authorized to utilize the proceeds of the sale of the bonds to acquire lands for recreation and conservation purposes. The acts further provide that the lands may be acquired by purchase or otherwise on such terms and conditions as the Commissioner shall determine. N.J.S.A. 13:8A-6; 27 and 40. The guidelines to be utilized by the Commissioner in acquiring property are set forth in N.J.S.A. 13:8A-23 and 39. They include inter alia, seeking a reasonable balance among all areas of the State for recreational and conservation facilities; limiting acquisition to predominantly open and natural lands, and avoiding acquisition of lands actively devoted to agriculture.

The Commissioner, in connection with the acquisition of lands by the State, is granted the authority to do all things necessary or useful and convenient including making arrangements for and directing engineering, inspection, legal, financial . . . and other professional services, estimates and advice; and prescribing rules and regulations to implement any provisions of the act. *See* N.J.S.A. 13:8A-16 and 53. As part of the Commissioner's authority to obtain estimates, we are informed two independent appraisals are obtained from a prequalified list of appraisers to estimate the fair market value of the property. The appraisers are required

to notify the property owner and offer the property owner the opportunity to accompany the appraiser during his inspection of the property. The appraisals once completed are reviewed in accordance with the procedures as set forth in the Appraisal and Appraisal Review Manual of the Division of Right of Way at the Department of Transportation.

The appraisals and a certification by the Department of Transportation form the basis for negotiations with the owner of the property proposed to be acquired. Both the appraisals and the review express the opinions of the appraisers as to their estimate of fair market value. In most instances the appraisal has relied upon comparable sales to estimate market value. They are aids to the Commissioner in ascertaining just compensation to be paid for the property.

The authority of the Commissioner of Environmental Protection to acquire lands is similar to that granted by N.J.S.A. 27:7-22 to the Commissioner of Transportation. The Department of Transportation, through the exercise of executive discretion, has made provisions for the acquisition of property in excess of the estimates of just compensation. The Department of Transportation defines any settlement made or authorized by the responsible official which is in excess of the estimate of just compensation, as an administrative settlement. The Department requires that the rationale for the settlement be set forth in writing. The extent of the written explanation is a judgement determination, consistent with the situation, circumstances and amount of money involved.

Furthermore, the determination of how much the state will offer for a given piece of property always requires a judgment as to the likely outcome of condemnation proceedings with regard to that property in the event the state is forced to exercise its power of eminent domain. Those circumstances which lead to the conclusion that a condemnation award would likely be in excess of the state's appraised value would also warrant a voluntary acquisition in excess of that amount. The conclusion that such a possibility exists would be based on factors such as a rereview of all current appraisal information, examination of all current sales information, appraisal reports and other pertinent information supplied by the landowner. In all cases, therefore, an acquisition at a price in excess of the appraised value should be justified on its individual merits and properly documented.

In conclusion, therefore, broad authority has been vested in the Commissioner in the disbursement of public funds for the acquisition of property under the Green Acres statutes. It is our opinion there would be no statutory impediment to the Commissioner reasonably exercising her discretion based on adequate and documented justification to acquire property at a price in excess of the state's appraised valuation.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT P. GRABOWSKI
Deputy Attorney General

April 3, 1980

MR. BARRY SKOKOWSKI
Acting Director
Division of Local Government Services
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 9—1980

Dear Mr. Skokowski:

You have asked for our opinion concerning the meaning of an Act dealing with the disclosure of the identity of stockholders or partners prior to the award of a contract to be paid out of public funds.

In 1977, the Legislature enacted a law which requires corporations or partnerships to disclose the identity of major stockholders or partners prior to the award of a contract, the cost of which is to be paid out of public funds. N.J.S.A. 52:25-24.2 provides in relevant part as follows:

> [N]o corporation or partnership shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, *unless prior to the receipt of the bid* or accompanying the bid of said corporation, or said partnership, there is submitted a statement setting forth the names and address of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own 10% or greater interest therein, as the case may be. [Emphasis added.] [N.J.S.A. 52:25-24.2.]

The essential question posed is whether the filing of a disclosure statement is applicable in an instance where an agreement is to be entered into with a public agency after public advertisement for competitive bids or whether the statutory requirement extends to any instance where the performance of work or the furnishing of materials is to be paid with or out of public funds. The question therefore more sharply drawn is whether the term "bid" should be interpreted to mean the taking of competitive bids after public advertisement or whether it should be given its more general meaning of an offer to perform work or to supply materials.

This State has a well established legislative scheme governing the making of contracts by the State and by local governmental units. This scheme includes the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.*, the Public School Contracts Law, N.J.S.A. 18A:18A-1 *et seq.*, and statutes such as N.J.S.A. 52:32-2 which govern contracts for construction, alteration or repair of state buildings and N.J.S.A. 52:34-6 *et seq.* which govern the award of State contracts. These statutes are all aimed at preserving

the integrity of the process by which public contracts are awarded. *Hillside Tp. v. Sternin,* 25 N.J. 317, 322 (1957).

The disclosure requirement mandated in the Act was also designed to further the integrity of the competitive bidding process. In *George Harms Construction Co. v. Borough of Lincoln Park,* 161 N.J. Super. 367 (Law Div. 1978), the court held that the submission of a disclosure statement under the Act is a mandatory and material part of the award of a contract let by competitive bids and cannot be waived or cured. The court noted:

> The Legislature in enacting N.J.S.A. 52:25-24.2 expressed its clear purpose to insure that all members of a governing body and the public be made aware of the real parties in interest with whom they are asked to contract. Thus the public, as well as public officials, can identify any real or potential conflicts of interest arising out of the awarding of public contracts, or can identify those bidders who lack the requisite responsibility. . . .
>
> The [Local Public Contracts Law] provides the framework for the solicitation of public bids. The 1977 statute evinces a supervening requirement imposed on the bidding framework . . . . [*George Harms Construction Co. v. Borough of Lincoln Park, supra,* at 372-73.]

It is therefore clear that the court concluded that the disclosure act was an integral part of the overall process for competitive bidding in the Local Public Contracts Law.

Since the statute which requires the disclosure of the identity of principal partners or stockholders complements and serves the same salutary purpose as laws governing the award of contracts by the State, local school boards and local governing bodies, it is reasonable to assume the Legislature intended the term "bid" to be interpreted in a manner consistent with those related laws. In the Local Public Contracts Law the term "bid" is used to denote an offer resulting from the scheme of publicly advertised bidding. *See, e.g.* N.J.S.A. 40A:11-4. Likewise, the Local School Contracts Law and the laws governing State contracts use the term "bid" to refer to an offer made in the context of publicly advertised bidding. N.J.S.A. 18A:18A-5(d), 37; N.J.S.A. 52:34-6; N.J.S.A. 52:32-2. By contrast, offers made without such public advertising are referred to as "negotiated prices" or "quotations." N.J.S.A. 40A:11-5(3), 6.1; N.J.S.A. 18A:18A-37; N.J.S.A. 52:34-9(e).[1] "The import of any word or phrase is to be gleaned from . . . statutes in *pari materia.*" *State v. Brown,* 22 N.J.

1. Legislative committee statements to L. 1977, c. 33 (A-22) indicate that the bill was aimed at "bid contracts" of the various governmental bodies named in the bill. *Assembly Municipal Government Committee, Statement to Assembly No. 22* (1976); *Senate State Government, Federal and Interstate, Relations and Veterans Affairs Committee, Statement to Assembly No. 22* (1976). In the context of the scheme created in pre-existing laws governing public contracts, of which the Legislature was surely aware, the term "bid contract" would refer to a contract awarded through public advertisement and competitive bidding.

405, 415 (1956). Therefore, the term bid should be construed to have been used in the Act in the same sense as it was used in these statutes regarding public contracts.

Further support for this conclusion is found in statutes enacted contemporaneously with L. 1977, c. 33. Within a few months of March, 1977, the date on which L. 1977, c. 33 was approved, the Legislature enacted two other statutes relating to the awarding of public contracts, both of which use the term "bid" to refer to publicly advertised competitive bids. One of the statutes, L. 1977, c. 53, adopted on April 5, 1977, was a series of amendments to the Local Public Contracts Law. Among the amendments was the deletion of the phrase "lowest responsible bidder" where the phrase had referred to a solicited quotation rather than a competitive bid. The Legislature replaced this phrase with the expression "lowest responsible quotation received." L. 1977, c. 53, §4. This change further emphasizes the distinction between a "bid" and an offer arrived at without public advertisement. On June, 2, 1977, the Legislature enacted L. 1977, c. 114 (N.J.S.A. 18A;18A-1 *et seq.*), the Public School Contracts Law, which specifies a scheme of competitive bidding to be used by public school districts in awarding contracts. Like the Local Public Contracts Law, L. 1977, c. 114 uses the term "bid" to refer to publicly advertised bids and refers to other offers as "negotiated prices" or "quotations". *See* N.J.S.A. 18A:18A-5(d), 37.

Since L. 1977, c. 33 and the two statutes discussed above were enacted in the same session of the Legislature and all deal with the award of public contracts, it is reasonable to assume that they all use the term "bid" in the same sense.

> Application of the rule that statutes in pari materia should be construed together is most justified . . . in the case of statutes relating to the same subject that were passed at the same session of the legislature. [2A Sutherland, *Statutory Construction,* §51.03, at 299 (4th Ed. 1973).]

Reading the three statutes together, it is clear that the term "bid" as used in L. 1977, c. 33 means an offer made after public advertisement for competitive bids.

In summary, therefore, it is our opinion that a disclosure statement should be submitted only in an instance where a statute requires public advertisement for competitive bids. The disclosure requirement is thus limited to those proposed contracts over the dollar amount for which competitive bidding is mandated. Similarly, the disclosure requirement would apply to the performance of work such as professional services only in those instances where the governing statutes require such contracts to be advertised for competitive bids.[2]

2. In the case of the Local Public Contracts Law, for example, public advertisement for bids is required, with certain specified exceptions, for contracts involving expenditures in excess of $2,500, N.J.S.A. 40A:11-3, 4, and contracts for professional services are not required to be awarded through competitive bidding. N.J.S.A. 40A:11-5(i)(a).

Finally, although the Act only requires disclosure statements where publicly advertised bidding is involved, we note that the Act does not prohibit the imposition of more extensive disclosure requirements than those mandated by the Act. The purpose of the disclosure statements is to make the members of the governing body aware of the real parties in interest with whom they are dealing and to identify "any real or potential conflicts of interest arising out of the awarding of public contracts." *Statement on the Bill, Assembly No. 22* (1976); *George Harms Constr. Co. v. Bor. of Lincoln Pk., supra,* at 372. Clearly, a voluntary administrative extension of the disclosure requirement to include nonadvertised bidding should be encouraged as a means to further protect the integrity of the government's procurement process.

Very truly yours,
JOHN J DEGNAN
Attorney General
By: SUSAN L. REISNER
Deputy Attorney General

May 1, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 10—1980

Dear Mr. Skokowski:

You have requested advice as to the proper construction of the provisions of N.J.S.A. 40A:4-46 which provide as follows:

> A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditures to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

Specifically, you have inquired as to whether the word "or" in the first sentence of N.J.S.A. 40A:4-46 is to be read disjunctively or conjunctively. Construing the term disjunctively would permit the making of an emergency appropriation by a local unit for either a purpose which is not foreseen at the time of the adoption of the local unit's budget or

for a purpose for which adequate provision was not made in such a budget. Construing the term conjunctively would mean that an emergency appropriation could be made only if the purpose for which the appropriation was made was not foreseen at the time of the adoption of the local unit's budget and if adequate provision was not made for that purpose in the budget. For the reasons set forth herein, you are advised that the term "or" in N.J.S.A. 40A:4-46 should be read conjunctively and that an emergency appropriation can only be made if the purpose for which it is made was not foreseen at the time of the adoption of the local unit's budget and a pressing need for public expenditure exists.

In construing a statutory provision, it is essential that the construction rendered be consistent with, and not frustrate, the basic policy of the statute as a whole. *New Jersey Builders, Owners and Managers Ass'n. v. Blair,* 60 N.J. 330 (1972). N.J.S.A. 40A:4-46 is part of what is commonly known as the Local Budget Law. N.J.S.A. 40A:4-1 *et seq.* This statute governs preparation, adoption and implementation of the budgets of all local units, *i.e.,* municipalities and counties in the State of New Jersey. It prescribes the manner in which they are to be arranged and the manner in which such budgets may be modified following their initial adoption. It provides that all such budgets shall be prepared on a "*cash basis.*" N.J.S.A. 40A:4-3. A "cash basis" budget is defined in the law as a budget which ensures that there will be sufficient cash collected to meet all debt service requirements, to pay for all necessary operations of the local unit for the fiscal year and to cover all mandatory payments required to be made during the year. N.J.S.A. 40A:4-2. The statute also provides that no moneys may be expended unless a proper appropriation is contained in the budget and that the expenditure is not in excess of that appropriation. N.J.S.A. 40A:4-57; *State v. Boncelet,* 107 N.J. Super. 444, 449-450 (App. Div. 1969). Further, that part of the Local Budget Law known as the Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.,* limits the amount by which a local governing body's budget may increase annually. As well, the statute specifically sets forth the procedures which must be followed by a local unit in adopting its annual budget. N.J.S.A. 40A:4-4 to 4-10. It requires that a public hearing be conducted following advertisement of the budget to ensure that the taxpayers of the local unit will have an opportunity to comment upon and present objections to the proposed budget. N.J.S.A. 40A:4-6, 7 and 8.

The purpose underlying these requirements is to ensure that a municipality, in carrying out its financial affairs, will make ends meet within its fiscal year and will not make expenditures which will depart from the amounts appropriated in the budget for that year. *State v. Boncelet, supra* at 450. By prescribing the manner in which local budgets are to be administered, the statute serves to inculcate sound business principles and practices into municipal economic administration as well as providing members of the taxpaying public with a better understanding of the financial affairs of local government. *Kotlikoff v. Tp. of Pennsauken,* 131 N.J. Super. 590 (Law Div. 1974).

It is clear, upon consideration of the above-noted provisions of the Local Budget Law and the policies they are intended to serve, that N.J.S.A. 40A:4-46 must be read to require that an emergency appropriation can

only be adopted if an emergent situation arises which was not foreseen at the time of the adoption of the budget and for which adequate provisions do not exist in the budget. First, the "cash basis" budget requirement which underlines the entire Local Budget Law is explicitly intended to ensure that a county or a municipality make sufficient appropriations in its annual budget to provide for all necessary services for the coming year. N.J.S.A. 40A:4-2. Since tax bills are prepared on the basis of the size of such appropriations, N.J.S.A. 40A:4-17, it is essential that the appropriations be sufficient to cover an entire year. Further, this requirement serves to prevent deficit spending and the borrowing which generally ensues from emergency appropriations to meet current operations. To construe N.J.S.A. 40A:4-46 to include appropriations which should properly have been included in the local unit's annual budget would clearly serve to subvert this requirement.

Secondly, construing N.J.S.A. 40A:4-46 to encompass only sudden and unforeseen expenditures serves to protect the participation which the local unit's taxpayers are intended to have in the budget making process. The Local Budget Law requires that such taxpayers be given an opportunity to be heard concerning the manner in which the budget is made up. N.J.S.A. 40A:4-8. To permit emergency appropriations to be made after this process has been completed for purposes which should have been anticipated and provided for in the budget would undermine such public participation in the budget process. It would allow a local governing body to expend more for its basic operations than the taxpayers were advised it would during the budget adoption process.

Third, N.J.S.A. 40A:4-46 should not be interpreted to undermine the policy of the Local Government Cap Law. That law is intended to control the increase in the cost of local government and accordingly to place a limit on increases in the amounts appropriated for basic governmental services from one year to the next. N.J.S.A. 40A:4-45.1; *N.J. State P.B.A., Local 29 v. Town of Irvington,* 80 N.J. 272, 289-290 (1979). To permit the adoption of emergency appropriations to provide additional moneys above a local governing body's cap limitation to fund basic services for which appropriations could and should have been made in the annual budget adopted at the beginning of the year clearly would frustrate this purpose.

Thus, it is evident from a consideration of the legislative policies which underlie the Local Budget Law that N.J.S.A. 40A:4-46 was not intended to provide a means for making appropriations for which provision could have been made in the annual budget of a local governing unit. Rather, in enacting this provision, the Legislature clearly contemplated that only those expenditures which are necessitated by sudden, unanticipated and unforeseen circumstances for which adequate provision could not have been made in the annual budget would be included within its scope.

Moreover, a review of the specific language of N.J.S.A. 40A:4-46 clearly reinforces the conclusion that this is the proper construction. It is well established that, in ascertaining the intent of a statute, primary reference must be made to the language of the statute, *Lane v. Holderman,* 23 N.J.304 (1957), and that such language must be read in accordance with its plain, ordinary and well-understood meaning. *Service Armanent Co. v. Hyland,* 70 N.J. 550 (1976); *Safeway Trails, Inc. v. Furman,* 41 N.J. 467,

cert. denied 379 U.S. 14, 85 S. Ct. 144, 13 L. Ed. 2d 84. The term "emergency" is defined in *Webster's New Dictionary of the American Language, Second College Edition,* 1972, as a "sudden, generally unexpected occurrence or set of circumstances demanding immediate action." This definition indicates that the commonly understood meaning of the word is that of something sudden and unforeseen. Further, N.J.S.A. 40A:4-46 provides that such an appropriation shall be made to meet a "pressing need." Clearly, this contemplates something other than the types of expenditures which a local governing body would routinely make for its normal governmental operations.

Further, the courts of this State have construed the term "emergency" in a manner consistent with this definition. In *Scatuorchio v. Jersey City Incinerator Authority,* 14 N.J. 72, 87 (1953), the court noted, in construing the term "emergency" as used in R.S. 40:50-1, that it should be given its generally accepted meaning unless inconsistent with the manifest intent of the Legislature or unless a different meaning is expressly indicated. Further, the court went on to state that, in general parlance, the term "emergency" means a "sudden or unexpected occurrence or condition calling for immediate action." *Scatuorchio v. Jersey City Incinerator Authority, supra* at 88. Finding that the circumstances in the case indicated that the situation before the court was neither sudden nor unforeseeable, the court concluded that no true emergency existed. *Scatuorchio v. Jersey City Incinerator Authority, supra* at 90 to 93.

Similarly, in construing those statutory provisions relating to the making of emergency appropriations by boards of education under N.J.S.A. 18A:22-21, and its predecessor, R.S. 18:6-55, the courts have also held that the term "emergency" is to be read as "a sudden or unexpected occurrence or condition calling for immediate action." *Bd. of Ed. of Elizabeth v. Elizabeth,* 13 N.J. 589, 593 (1953); *Newark Teachers Assoc. v. Bd. of Education,* 108 N.J. Super. 34, 47 (Law Div. 1969). In each case, although the literal language of the statutes in question provided that an additional appropriation could be made where the appropriation made in the annual budget had been underestimated *or* where an appropriation was necessary to meet an emergency, *see* N.J.S.A. 18A:22-21, the courts held that an additional appropriation could be made after the adoption of an annual budget only in the event that an "emergency," as defined by the courts, existed and further noted that, in the orderly conduct of school affairs, budgeting must be an annual process except for real emergencies. *Bd. of Ed. of Elizabeth v. Elizabeth, supra* at 593-594; *Newark Teachers Assoc. v. Bd. of Education, supra* at 47.

Finally, with regard to judicial construction of the Local Budget Law itself, the courts have held that additional expenditures may be incurred by a local governing unit following the adoption of its budget in the event of "bona fide emergencies," *Home Owners Construction Co. v. Glen Rock,* 34 N.J. 305, 315 (1961), or where a judgement requiring expenditures is entered following the adoption of the unit's annual budget. *In re Salaries Prob. Off. Bergen County,* 58 N.J. 422 (1971). *See also Lyons v. Bayonne,* 101 N.J. L. 455 (S. Ct. 1925); *Murphy v. West New York,* 130 N.J.L. 341 (S. Ct. 1943) and *Mount Laurel Township v. Local Finance Board,* 166 N.J. Super. 254 (App. Div. 1978), *aff'd* 79 N.J. 397 (1979) in which the decisions

reflect a judicial view that emergencies are sudden and unforeseen occurrences for which the making of appropriations in an annual budget could not have been anticipated.

Thus, it is clear that N.J.S.A. 40A:4-46 must be construed to require that an emergency appropriation may be made only for a purpose which was not foreseen at the time that the local governing body's budget was adopted. While the literal language of the provision may provide that such an appropriation can be made for a purpose which is not foreseen at the time of the adoption of its budget *or* for which adequate provision was not made in such a budget, it is well established that the words "and" and "or" are often used interchangeably and that "or" may be construed as the conjunctive "and" if to do so is consistent with the legislative intent of the statute in which it is used. *Red Bank Regional Ed. Ass'n. v. Red Bank Regional High School Bd. of Ed.*, 151 N.J. Super. 435 (App. Div. 1977), *aff'd* 78 N.J. 122 (1978); *State v. Holland,* 132 N.J. Super. 17 (App. Div. 1975). As indicated above, construing the word "or" in N.J..S.A. 40A:4-46 as "and" is clearly consistent with the overall legislative intent and policy of the Local Budget Law, with the commonly understood meaning of the language in N.J.S.A. 40A:4-46 and with the judicial decisions which have been rendered regarding N.J.S.A. 40A:4-46 and other similar statutes. For these reasons, you are hereby advised that an emergency appropriation pursuant to N.J.S.A. 40A:4-46 can only be made for a purpose which was not foreseen at the time of the adoption of a local unit's budget and for which adequate provision was not made therein.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

May 28, 1980

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
P.O. Box 7387, Whittlesey Road
Trenton, New Jersey 08628

FORMAL OPINION NO. 11—1980

Dear Commissioner Fauver:

You have asked for our advice as to whether to work credits and/or commutation credits should be awarded to sex offenders sentenced for offenses committed under Title 2A prior to its repeal by the Penal Code. You have also asked whether those sex offenders who are subsequently resentenced under the Penal Code may be granted work credits and/or commutation credits. In the event these credits are available, the further question raised is whether they should be provided from the date of the

original sentence under Title 2A prior to its repeal by the Penal Code or from the date of a resentence under the Penal Code. For the following reasons, you are advised that commutation credits should not be remitted to sex offenders sentenced under Title 2A for an offense committed prior to the effective date of the Penal Code. You are also advised, however, that sex offenders resentenced under the Penal Code should be granted commutation credits from the date of a resentence under Penal Code. Finally, sex offenders may be awarded work credits in remission of sentence for appropriate documented work performed on and subsequent to the effective date of a resentence under the penal Code.

A brief discussion of the historical development of the pertinent statutes is necessary to put these questions in the proper perspective. N.J.S.A. 2A:164-10 provided that no statute relating to the remission of a sentence by way of commutation time for good behavior or for work performed should apply to any person committed as a sex offender but that provision could be made for monetary compensation to be paid in lieu of remission of sentence for work performed. In August 1978 the legislature enacted a comprehensive revision of the criminal laws of the State known as the Penal Code to be effective on September 1, 1979. N.J.S.A. 2C:1-1 *et seq.* The preexisting ban on the award of commutation credits and work credits to sex offenders was reenacted in N.J.S.A. 2C:47-6. In August 1979 the legislature enacted several amendments to the Penal Code including an express repeal of N.J.S.A. 2C:47-6, Laws of 1979, c. 178, §147. Therefore, on the effective date of the Penal Code the preexisting statutory prohibition on the award of commutation and/or work credits in remission of sentence was no longer part of the statutory law.

Prior to the enactment of the Penal Code, inmates in the state prison serving minimum-maximum terms received commutation credits for continuous orderly deportment. The entire statutory entitlement was credited to the inmate as of the date of his commitment to the state prison. Credits were subject to divestment only after the inmate had engaged in flagrant misconduct. N.J.S.A. 30:4-140 provides in pertinent part:

> For every year or fractional part of a year of sentence imposed upon *any person committed to any state correctional institution for a minimum-maximum term* there shall be remitted to him from both the *maximum and minimum* term of his sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein . . . ." [Emphasis supplied.]

Clearly, the statute was restricted to those inmates in the state prison serving determinate minimum and maximum terms. *In re Zienowicz,* 12 N.J. Super. 563, 573 (Cty. Ct. 1951). *See also Torres v. Wagner,* 121 N.J. Super. 457, 459 (App. Div. 1972). Sex offenders, on the other hand, were sentenced to indeterminate terms. Consequently, in addition to an express ban in N.J.S.A. 2A:164-10, there existed no affirmative authority to credit sex offenders with commutation time for good behavior.

The major change effected by the Penal Code is that sex offenders are now sentenced to a specific term of years rather than to an indeterminate term. N.J.S.A. 2C:47-3(b) provides:

> In the event that the court shall sentence a person as provided herein, the court shall notwithstanding set the sentence in accordance with Chapters 43 and 44 of this code.

A sex offender would now be sentenced to a determinate term in the same manner as are other inmates incarcerated in state correction facilities. Therefore, in addition to a legislative repeal of the preexisting ban on the award of commutation credits to sex offenders, credits may not be remitted against the specific term of such a sentence.[1]

It is clear, however, that commutation credits should not be awarded to those sex offenders now serving indeterminate terms under sentence imposed prior to the effective date of the Penal Code. At the time of the imposition of those sentences, there existed an express prohibition on the award of commutation credits to sex offenders and the affirmative authority to award commutation credits was limited to inmates serving a specific minimum and maximum term of years. Furthermore, an award of commutation credits to this class of sex offenders would not be in furtherance of the legislative purpose underlying the provision of these credits. Commutation credits are permitted to inmates as of the date of commitment to state correctional institutions in order to enhance the ability of prison officials to maintain discipline.

> The granting of forfeiture of commutation credits . . . requires the exercise of judgment by state prison authorities based upon their observation and evaluation of the prisoner's conduct . . . . [*Torres v. Wagner, supra,* at 460.]

It would not be consistent with this underlying legislative intent to provide for the award of commutation credits for a period of time during which state prison officials were not authorized to credit inmates with time for good behavior.

A further question then arises as to whether sex offenders who have been given new sentences under the Penal Code should be awarded commutation credits, and whether these credits should be computed from the date of original sentence or from the date of a new sentence under the Penal Code. Under the terms of N.J.S.A. 2C:1-1d(2), any person under sentence of imprisonment for an offense committed prior to the effective date of the Penal Code may move to have a sentence reviewed by the court. The court may impose a new sentence consistent with the provisions of the Penal Code. In the case of a sentence of imprisonment for an offense committed prior to the Penal Code there was no specific term of years from which commutation credits could be remitted. Only sex offenders who have been resentenced under the terms of the Penal Code would serve

1. The Penal Code has eliminated minimum-maximum terms and substituted sentences for a specific term of years. N.J.S.A. 30:4-140, which authorizes the award of commutation credits to enhance the ability of state prison officials to maintain discipline in correctional facilities, was not repealed by the Penal Code. It is therefore evident that the legislature intended that these credits be applied to sentences imposed under the Penal Code. *See Formal Opinion No. 26—1979.*

determinate sentences. Since a determinate sentence is the functional equivalent to a minimum-maximum sentence, commutation credits should be awarded from the date of the imposition of a new sentence under the Penal Code.

You have also inquired as to the circumstances under which sex offenders may be awarded work credits. Work credits are granted to state prison inmates pursuant to N.J.S.A. 30:4-92 which provides in pertinent part:

> Compensation for inmates of correction institutions may be in the form of cash or remission of time from sentence or both . . . .

N.J.S.A. 2A:164-10, however, provided that sex offenders should not be compensated by the remission of time from their sentences but that provision be made for monetary compensation. It follows that work credits should not be remitted against the sentences of those sex offenders sentenced pursuant to the provisions of Title 2A. First, those offenders had entitlement to only monetary compensation in lieu of remission of time for any work performed. Secondly, there was no determinate sentence from which a remission of time could be taken.

The legislature as part of its enactment of the Penal Code repealed the preexisting prohibition on the award of work credits in the remission of sentences of sex offenders. Laws of 1979, c. 178, §147. The legislature further specifically provided that sex offenders would now be sentenced to a specific term of years rather than to an indeterminate term. It is, therefore, clear that state prison officials are authorized to give work credits to sex offenders incarcerated in state correction institutions either in the form of compensation for work performed or, in the case of a remission of time, only from those determinate sentences imposed by a court under the Penal Code.

In conclusion, it is our opinion that neither work credits in remission of time nor commutation credits may be awarded to a sex offender against time spent in custody under sentence for an offense committed under Title 2A prior to its repeal by the Penal Code. You are further advised that a sex offender resentenced under the provisions of the Penal Code may be awarded commutation credits and/or work credits in remission of sentence, to be computed only as of the date of his resentence to a determinate term under the Penal Code.[2]

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

2. An award of commutation and work credits to sex offenders sentenced under Title 2A for crimes committed prior to the Penal Code is not required by Section 2C:1-1d(1) which provides in pertinent part:

> *The provisions of the code governing the treatment and the release or*

discharge of prisoners, . . . shall apply to persons under sentence for offenses committed prior to the effective date of the code . . . .

The new criminal Code does not provide for the award of work or commutation credits. The authority to grant these credits is provided by N.J.S.A. 30:4-140 and N.J.S.A. 30:4-92 which have not been amended by the enactment of the criminal code. There, consequently, is no provison of the new criminal code governing the treatment, release or discharge of prisoners to be applied to sex offenders sentenced for offenses committed prior to the effective date of the Code.

June 9, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
P.O. Box 1390
Trenton, New Jersey 08625

FORMAL OPINION NO. 12—1980

Dear Commissioner English:

You have requested an opinion interpreting the Solid Waste Management Act and the Solid Waste Utilities Control Act, to determine whether authorization exists for the establishment of "uniform average rates for solid waste disposal utilities within a Solid Waste Management District."

It is important to recognize from the outset that environmentally sound solid waste disposal, as well as the efficient and economical provision of solid waste collection and disposal services, are matters which directly affect the public health, safety and welfare. *Hackensack Meadowlands v. Mun. Landfill Authority,* 68 N.J. 451 (1975); *Southern Ocean Landfill v. Ocean Tp.,* 64 N.J. 190 (1974). The Legislature has therefore enacted a comprehensive scheme mandating the strict regulations of all solid waste collection and disposal operations. N.J.S.A. 13:1E-1 *et seq.,* N.J.S.A. 48:13A-1 *et seq.* To ensure environmental quality, the Solid Waste Management Act (1970), N.J.S.A. 13:1E-1 *et seq.,* (hereinafter the "Act") prohibits any person from engaging "in the collection or disposal of solid waste" without obtaining approval from the Department of Environmental Protection (hereinafter "DEP") N.J.S.A. 13:1E-5(a). Moreover, in order to assure the economic integrity of the operation, no person may engage "in the business of solid waste collection or solid waste disposal" until a certificate of public convenience and necessity is issued by the B.P.U., N.J.S.A. 48:13A-1, 6 *et seq.* (Solid Waste Utility Control Act of 1970) (hereinafter the "Utility Act"). In combination, these statutes provide for a far-reaching regulatory program designed to remedy the "grave problem" to the public health generated by improper solid waste collection and disposal. N.J.S.A. 13:1E-2.

The Act initiates this overall solid waste management scheme by mandating a regional planning approach as a basis for solid waste collection and disposal throughout the State. N.J.S.A. 13:1E-2, 4, 5, 20 *et seq.*

This planning required by the Act consists of several distinct stages, and commences with the promulgation by the DEP of "general guidelines sufficient to initiate the solid waste management process by solid waste management districts . . . ." N.J.S.A. 13:1E-6(a)(3). These "planning districts" are coincidental with the twenty-one counties and the Hackensack Meadowlands Development Commission. N.J.S.A. 13:1E-20.

The next step in the planning process is actual plan formulation and development by the planning districts, N.J.S.A. 13:1E-20, 21. This entails comprehensive planning studies to obtain regional data, including an inventory and appraisal of all facilities within the district. N.J.S.A. 13:1E-21. The waste disposal needs of the region, as well as a strategy to be applied in meeting same, are also to be developed, N.J.S.A. 13:1E-21, and a site plan depicting the location of "suitable sites to provide solid waste facilities" to meet such regional needs must be prepared. N.J.S.A. 13:1E-21(b)(3). It is also required that during this planning process, the districts analyze the "solid waste collection systems and transportation routes" within the respective districts. N.J.S.A. 13:1E-21(a)(4). The clear objective is thus to commence formulation of a management plan which most effectively and economically controls waste collection and disposal. N.J.S.A. 13:1E-2, 6, 20 *et seq.*

In conjunction with the DEP, the Board of Public Utilities Commissioners is integrally involved in this management process. Under §24 of the Act, N.J.S.A. 13:1E-24, and after receipt by the Commissioner of a solid waste management plan adopted in its entirety, the DEP is required to submit a copy of the plan to the Board of Public Utilities Commissioners for review and recommendations on the "economic aspect of the plan." Similarly, under the Utility Act the B.P.U. is authorized to designate a district as a "franchise area to be served by one or more persons engaged in solid waste collection . . . and disposal." N.J.S.A. 48:13A-4, 5, 7. The B.P.U. is also vested with the fundamental authority to establish the rate structures of solid waste facilities. N.J.S.A. 48:13A-1 *et seq.,* N.J.S.A. 48:2-25.

Through the joint abilities of the B.P.U., the districts, and the DEP, an overall solid waste management program to provide for the efficient and economical collection and disposal of solid wastes throughout the State can thus be effected. Equalized rates to be paid by consumers for solid waste collection and disposal services may be included within this management plan.

In this regard, only the B.P.U. is generally authorized to determine rates for individual solid waste utilities, N.J.S.A. 48:13A-1 *et seq.,* N.J.S.A. 48:2-1 *et seq.,* N.J.S.A. 13:1E-2(b)(5), N.J.S.A. 13:1E-27. In setting such rates, the B.P.U. is to consider the legislative intent to encourage efficient and economic waste disposal N.J.S.A. 13:1E-1 *et seq.,* and the B.P.U. may also exercise its rate-making authority in a manner to best insure environmental quality, N.J.S.A. 13:1E-2(b)(5). Moreover, since solid waste utilities, due to their competitiveness, may be differentiated from other public utilities, which are generally monopolistic, the B.P.U. may account for such differences in determining rates for solid waste utilities N.J.S.A. 48:2-25, *In Re Application of Saddle River,* 71 N.J. 14 (1976). The B.P.U. therefore has substantial flexibility in making rates for solid waste facilities

so as to best effectuate objectives of the Act and the Utility Act, N.J.S.A. 48:13A-1, 7, N.J.S.A. 13:1E-2.*

Equally as important, however, uniform costs to consumers may be effected through district planning even though independent rates are set for each solid waste facility. The broad planning authority vested in the districts includes the ability to develop an economic strategy to direct the flow and manner of solid waste collection, utilization and disposal. N.J.S.A. 13:1E-1 *et seq.* As part of this economic planning, methodologies can be devised to pass on to consumers a uniform cost of service even though each facility operates pursuant to an independent rate schedule. As an example, a "weighted average" may be an acceptable element within a district planning strategy. If proposed by a district, and approved by the DEP, this "weighted average" approach would calculate an equalized charge to be paid by consumers, with all such revenues distributed by an implementing agency to facilities within a district based upon a formula encompassing such variables as wastes received over a specific period of time and the independent rate base of each facility. Similarly, the B.P.U. through its franchising powers may equalize or control costs within a region by directing wastes to specific facilities, each with an approved rate base, N.J.S.A. 48:13A-5, and too, uniform rates may also be set if the solid waste facilities are public authorities pursuant to N.J.S.A. 13:1E-22.

Also, it is important to note as we have spelled out in great detail in *Formal Opinion No. 3—1980,* a solid waste management plan developed by a district may provide for the direction or control of the flow of wastes to a specific facility in order to encourage environmentally and economically sound solid waste planning. This may serve as a practical alternative to encourage equalized rates for consumers. This is illustrated by efforts to offset the prohibitive costs of the Hackensack Meadowlands Development Commission baler through the management of the flow of wastes directed to that facility. Although the particulars of any given economic approach within a district-wide solid waste management strategy must be left to the district plans, the authority to plan in such fashion may be found in the Act. *See* N.J.S.A. 13:1E-2(b)(5), 2(b)6, 21(b)(2), and N.J.S.A. 48:13A-1 *et seq.*

In sum, the Solid Waste Management Act and the Solid Waste Utilities Control Act are broadly fashioned preventative and remedial statutes designed to bring about environmentally sound and economically efficient solid waste management. In conjunction, the Acts provide for the development of district plans which may propose equalized rates to be paid by

* An exception to the exclusive rate-making authority of the B.P.U. appears to exist at N.J.S.A. 13:1E-22, where the Legislature has empowered boards of chosen freeholders and the Hackensack Meadowlands Development Commission to provide for *rates and charges* "necessary in development and formulation of a solid waste management plan . . . ." Such authority is limited to those instances when the respective board(s) of chosen freeholders of the Hackensack Commission has entered into a contract or agreement with a public authority for the furnishing of solid waste collection and disposal services. Moreover, the B.P.U. retains jurisdiction to order an adjustment in such a contract in order to assure that the rates and charges are "just and reasonable". N.J.S.A. 48:13A-7, *In Re Application of Saddle River,* 71 N.J. 14, 25 (1976).

consumers. Upon submission of the plan(s) to the DEP, and after consultation with the B.P.U., the DEP may approve, modify or reject same. The B.P.U. may then set individual rates, or designate a franchise so as to reflect the provisions and economic strategy of the district plans. It is therefore our opinion that solid waste management districts are authorized by these acts in the development of solid waste management plans to direct the waste stream to preferred facilities and, in conjunction with the DEP and B.P.U., to require the establishment of uniform average solid waste disposal rates.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: NATHAN M. EDELSTEIN
Deputy Attorney General

June 13, 1980

New Jersey Board of Optometrists
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 13—1980

Dear Members of the Board:

You have asked for our advice as to whether the Board of Optometrists may require its prior approval of vision service plans. For the following reasons, it is our opinion that the Board has the authority to establish a requirement for its prior approval of those elements of vision service plans which concern the rendering of optometric care services to members of the plan. You are further advised, however, that it would be beyond the authority of the Board to either restrict its right of prior approval to solely nonprofit vision service plans or to require a vision service plan to operate on an "open panel" basis.

At the outset, it is necessary to refer to the definition of a vision service plan under the Board's regulation, N.J.A.C. 13:38-2.7, which provides in pertinent part:

> a plan offered by a non-profit association or corporation whose objective shall be to foster the conservation of human eyesight whereby [licensed optometrists] can offer their professional services upon a planned payment basis to members of groups desiring said services . . . .

It may be assumed that to the extent a vision service plan is operated on a profit making basis it would not qualify to receive the Board's approval to operate. The initial inquiry, therefore, is focused directly on whether the Board may, consistent with its enabling authority, limit vision service

plans to those solely operated on a nonprofit basis. In responding to this question, it is clear that an administrative agency has only such authority as is expressed by law or may be inferred therefrom by implication. *State v. Traffic Tel. Workers' Federation of New Jersey,* 2 N.J. 335 (1949). Although the Board may have had its reasons for limiting its approval to solely nonprofit plans, there is no evidence of legislative intent to foreclose the operation of vision care plans under the Board's jurisdiction to solely nonprofit plans. For this reason, it is our opinion that the definition contained in N.J.A.C. 13:38-2.7, which limits the right of the Board's prior approval to solely nonprofit plans, is beyond the parameters of the statute. In order for the Board to properly exercise its authority over these plans, this regulation should be amended to include both nonprofit and profit making vision service care plans.

The specific regulation pertaining to the nature of the Board's review is contained in N.J.A.C. 13:38-2.8(a) which provides as follows:

> In approving a vision service plan, the Board shall ascertain whether said vision service plan provides:
> 1. A sufficient number and geographic distribution of participating optometrists so as to provide for a free choice of practitioners.
> 2. A range and type of services which complies with the provisions of N.J.S.A. 45:12-11 and sections 1 (Minimum examination) and 2 (Examination equipment) of this subchapter.
> 3. That the participating optometrists possess the necessary equipment to provide the services set forth in the vision service plan.

A review of the Board's authority in its enabling legislation discloses no express reference to the regulation of vision service plans. However, it is clear that enabling legislation dealing with the practice of optometry in the State is predicated on the exercise of the State's police power to protect the public against incapacity, incompetence, deception and fraud in the rendering of optometric services. *Abelson's Inc. v. New Jersey Board of Optometrists,* 3 N.J. Super. 332 (Ch. Div. 1949), *aff'd* 5 N.J. 412 (1950); *New Jersey Optometric Association v. Hillman Kohan, et al.,* 144 N.J. Super. 411 (Ch. Div. 1976), *aff'd* 160 N.J. Super. 81 (App. Div. 1978); *New Jersey State Board of Optometrists v. Reiss,* 83 N.J. Super. 47 (App. Div. 1964). The Board has the inherent authority to protect the public against abuses in the providing of optometric services. It would follow that it also could take such reasonable measures as would be necessary to review and approve vision service care plans to protect the public against these abuses.

Given the Board's broad rule-making authority over vision service plans, the further issue posed is the nature and scope of the Board's inquiry into those plans. The structure, operation and implementation of a vision service plan would include, for example, fee structures, patient contribution, reimbursement procedures and other general operating and administrative procedures. Although there is a broad and diverse range of elements contained within a vision service plan, it is clear that the Board may only

exercise its jurisdiction with regard to those elements bearing on patient care. A requirement of limited prior approval may permissibly be set forth by Board regulation where such requirement bears a reasonable relationship to those specific areas expressly or implicitly contemplated by the Board's enabling legislation. Clearly, a requirement that a vision service plan provides minimum examination* and equipment standards reasonably relates to providing safe, competent and effective eye care. Similarly, a requirement that an optometrist possesses certain equipment necessary to render particular services contemplated by the plan, reasonably relates to the providing of quality patient care.

The Board's present regulation, in addition to providing for minimum equipment and examination standards pertaining to quality patient care, imposes a requirement that a plan contains a sufficient number and geographical distribution of participating optometrists. N.J.A.C. 13:38-2.8(a)1. This regulation presumably reflects an administrative determination that only open panel plans are permissible, i.e., plans which do not restrict the number of optometirsts to be used by plan members. There again is no direct evidence of legislative intent to authorize the Board to deal with this substantive component of a vision service plan. Moreover, a limited panel plan conceivably could render safe, adequate and proper vision care consistent with the salutary objectives underlying the Optometry Act. Therefore, it is our opinion that N.J.A.C. 13:38-2.8(a)1 is beyond the Board's rule-making authority and is invalid.

In conclusion, you are advised that the Board does not have the authority to limit its right of prior approval of vision service plans to solely those of a nonprofit character. The Board's authority to review and approve vision service plans is confined to those elements which reasonably relate to the provision of quality patient eye care. Finally, a requirement which allows only "open panel" plans to operate is beyond the authority of the Board set forth in its enabling legislation. You are further advised that the exercise of the Board's right of prior approval over vision service plans should be carried out in a reasonable manner, within a reasonable period of time and after full consultation with the Office of the Attorney General.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

* In *In Re Weston,* 36 N.J. 258 (1961), the New Jersey Supreme Court has upheld a regulation prescribing minimum examination standards to be consistent with the Board's statutory authorization.

June 19, 1980

JOSEPH A. LaFANTE, *Commissioner*
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 14—1980

Dear Commissioner LaFante:

An opinion has been requested whether the construction of resource recovery facilities by counties or county authorities pursuant to the Solid Waste Management Act of 1970 is subject to the requirements of the Local Public Contracts Law. For the following reasons, it is our opinion that such construction of resource recovery facilities by counties or county authorities is subject to the terms and provisions of the Local Public Contracts Law.

The Solid Waste Management Act (hereinafter the "Act") sets forth a comprehensive regulatory scheme intended to assure environmentally sound solid waste collection and disposal throughout New Jersey. N.J.S.A. 13:1E-2. The Act not only vests the Department of Environmental Protection with broad administrative authority to register such solid waste operations within the State, but it establishes an extensive solid waste management planning scheme to provide for the efficient, economical and environmentally sound collection and disposal of solid waste. N.J.S.A. 13:1E-2, 6, 20 *et seq.* The Act expressly declares as its policy the encouragement of "resource recovery through the development of systems to collect, separate, recycle and recover metals, glass, paper and other materials of value for reuse or for energy production." N.J.S.A. 13:1E-2(b)(7). *See* N.J.S.A. 13:1E-6(b)(1), 21(b)(2).

To implement this planning program throughout the State, the Act identifies twenty-two planning districts which include each county and the Hackensack Meadowlands District. N.J.S.A. 13:1E-19. Each district is required to develop a comprehensive area-wide solid waste management plan, which is subject to final review and approval by the Department of Environmental Protection. N.J.S.A. 13:1E-20 *et seq.* Each district is authorized in the development and formulation of its district plan "to enter into any contract or agreement with any public authority within any solid waste management district providing for or relating to solid waste collection and solid waste disposal. . . ." N.J.S.A. 13:1E-22. The Act further provides that every action taken by any county pursuant to its terms is a "county purpose" and that in "the performance of any responsibilities or requirements pursuant to [the Act], any county may adopt and come under the 'County Solid Waste Disposal Financing Law.' " N.J.S.A. 13:1E-25(a)(b).

Under the County Solid Waste Disposal Financing Law, N.J.S.A. 40:66A-31.1 *et seq.*, any county or county authority is authorized to "purchase, construct, improve, extend, enlarge or reconstruct solid waste disposal facilities within such county . . ." and may "make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act . . . ." N.J.S.A. 40:66A-31.4(1), (6). In combination, the Solid Waste Management Act and

the County Solid Waste Disposal Finance Law thus appear to vest the counties with authority to contract for the collection and/or disposal of solid waste as part of their solid waste management planning responsibilities.

The question presently raised is whether such a contract is subject to the terms and provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* The Legislature has directly addressed this issue in the County Solid Waste Disposal Finance Law where it is provided that any contract entered into by a county pursuant to that act is "subject to P.L. 1971, c. 198 'Local Public Contracts Law' (c. 40A:11-1 *et seq.*)." Similarly, the Solid Waste Management Act requires that any contract between a county and a public authority regarding solid waste collection and disposal must "conform to all the requirements of law for contracts or agreements made by any public authority . . . ." N.J.S.A. 13:1E-22.

Furthermore, the construction of resource recovery facilities under the Local Public Contracts Law is consistent with a legislative policy to guard against favoritism, improvidence, extravagance and corruption. *L. Pucillo & Sons, Inc. v. Mayor & Council of Bor. of New Milford,* 73 N.J. 349 (1977). These objectives are complementary to the legislative concern to effectuate the most efficient and economical solutions to the statewide crisis in solid waste management, as expressed in both the Solid Waste Management Act and the Solid Waste Utility Control Act of 1970, N.J.S.A. 48:13A-1 *et seq.* The Supreme Court has noticed, in fact, that the solid waste industry has historically "tended to inefficiency in the form of wasteful fragmentation and conflicting licensing requirements, [and] was fraught with the potential for abuse in the form of favoritism, rigged bids, official corruption, and the infiltration of organized crime." *In re Application of Saddle River,* 71 N.J. 14, 22 (1976). The court thus proceeded to determine that when read together, these statutes intend to keep solid waste collection and disposal utilities within the ambit of the Local Public Contracts Law: "[I]n view of the strong public policy favoring competitive bidding and the whole tenor of the Solid Waste Utility Control Act, we think it evident that the Legislature intended that municipalities enter into solid waste contracts only after advertising for competitive bids . . . . We hold, therefore, that contracts negotiated with solid waste disposal and collection utilities do not at present fall under the exception of N.J.S.A. 40A:11-5(1)(f) . . . ." *In re Application of Saddle River,* 71 N.J. 14, 24, 32 (1976). It therefore appears clear that in addition to an express legislative requirement for the construction of resource recovery facilities by counties pursuant to the Local Public Contracts Law, a system of competitive bidding is in furtherance of public policy generally in the area of solid waste management.

You are accordingly advised that the construction of resource recovery facilities by counties under their statutory authority regarding solid waste collection and disposal is subject to the terms and provisions of the competitive bidding requirements of the Local Public Contracts Law.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: NATHAN M. EDELSTEIN
Deputy Attorney General

July 7, 1980

G. THOMAS RITI, *Director*
Division of Public Welfare
Department of Human Services
2525 Quakerbridge Road
Trenton, New Jersey

FORMAL OPINION NO. 15—1980

Dear Director Riti:

You have asked for our opinion as to whether a municipality organized under an optional form of government is empowered to abolish its local assistance board.

A resolution of your question requires an analysis of the Optional Municipal Charter Act (Faulkner Act) and the applicable provisions of the "General Public Assistance Law." Municipalities are required to:

> provide public assistance to the persons eligible thereto, residing therein or otherwise when so provided by law, which shall be administered by a local assistance board according to law and in accordance with this Act and with such rules and regulations as may be promulgated by the Commissioner. [N.J.S.A. 44:8-114.]

The local assistance boards are composed of from three to five persons appointed by the chief executive of the municipality upon the approval of the governing body. N.J.S.A. 44:8-115.

These provisions of the General Public Assistance Law were enacted in 1947 (L.1947, c. 156), three years before the enactment of the Faulkner Act. (L.1950 c. 210). The issue to be determined is whether by the enactment of the Faulkner Act, municipalities have been given the power to administratively abolish or reorganize local assistance boards. The Faulkner Act provides for the adoption of certain optional plans of municipal government by the voters. N.J.S.A. 40:69A-1 *et seq., Bucino v. Malone,* 12 N.J. 330 (1953).[1] Optional plans available to municipalities are various versions of Council-Manager plans, N.J.S.A. 40:69A-81 to 69A-114.5 and Mayor-Council plans, N.J.S.A. 40:69A-31 to 69A-80. The Act contains a number of provisions pertinent to the instant question. A starting point is N.J.S.A. 40:69A-30 which provides, in part, that:

> [T]he general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this article . . . All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

1. In 1979, 87 of the 567 New Jersey municipalities were governed under the Faulkner Act, *Stop-Pay-Hikes v. Town Council of Irvington,* 166 N.J. Super. 197, 206 (Law Div. 1979), *aff'd* 170 N.J. Super. 393 (App. Div. 1979).

Among the powers granted to the municipal council under a Council-Manager form of government is the authority to:

> continue or create, and determine and define the powers and duties of such executive and administrative departments, boards and offices, in addition to those provided for herein, as it may deem necessary for the proper and efficient conduct of the affairs of the municipality. [N.J.S.A. 40:69A-90.]

Moreover, this same statute further provides that "(a)ny department, board or office so continued or created may at any time be abolished by the municipal council." N.J.S.A. 40:69A-90.

Under a Mayor-Council form of government, the council is empowered to establish "a department of administration and . . . other departments, not exceeding 9 in number." N.J.S.A. 40:69A-43. The statute further provides that "(a)ll of the administrative functions, powers and duties of the municipality, other than those vested in the office of the municipal clerk, shall be allocated and assigned among and within such departments." N.J.S.A. 40:69A-43. The only limitation on municipal authority which appears in the statute is a requirement that municipalities with a Mayor-Council government and having a population over 250,000 must establish a board of alcoholic beverage control. N.J.S.A. 40:69A-43(e). The statute clearly limits this restriction on municipal authority to the creation of an alcoholic beverage control board.

In addition, N.J.S.A. 40:69A-26 provides that, upon adoption of one of the optional forms of government, a "municipality shall thereafter be governed by the plan adopted, by the provisions of this act common to optional plans and by all applicable provisions of *general law.*" A general law is defined, in part, as:

> any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities . . . . [N.J.S.A. 40:69A-28.]

The issue in the present situation is whether the organization of a local assistance board set forth by statute is encompassed as a general law binding on all municipalities.

It is a familiar rule in the interpretation of statutes that the determinative factor is legislative intent. *Clifton v. Zweir,* 36 N.J. 309, 322 (1962); *Mentus v. Irvington,* 79 N.J. Super. 465, 472 (Law Div. 1963). "[T]his intent must be our only guide." 79 N.J. Super. at 472. The history of the Faulkner Act provides a persuasive indication of the legislative purpose. In the *Final Report,* of a commission which drafted the legislation it was stated:

> [T]he Commission has sought to provide sufficient flexibility in the several plans so that each municipality could decide for itself how it wished to organize its local administration, within the general principle that each administrative department should be headed by a single executive. *This would not permit the past practice of quasi-independent boards in many fields where they have been common,* but the plans allow the operation of general laws in those fields in which boards or commissions are essential to carry out particular functions or discharge special trusts. These exceptions include, for example boards of education, boards of health and boards of zoning adjustment." [*Final Report of the Commission on Municipal Government,* at p. 13 (1949).] [Emphasis added.]

It is significant that the Commission did not include a local assistance board among those enumerated as essential to carry out a particular function. Moreover, the nature of the boards mentioned in the *Report* is significantly different from that of a local assistance board. Boards of zoning adjustment, for example, have been referred to as "quasi-independent" boards. *Mentus v. Irvington, supra.* Boards of education and boards of health are frequently involved in making policy determinations for the municipality. A local assistance board, in contrast, is involved solely in carrying out administrative decisions. The statute provides that local public assistance "shall be administered by a local assistance board according to law and in accordance with this act and with such rules and regulations as may be promulgated by the Commissioner." N.J.S.A. 44:8-114. Policy is set by the Division of Public Welfare through regulations issued by the Commissioner of Human Services and binding upon the municipalities. *State v. Malone,* 164 N.J. Super. 47 (Ch. Div. 1978). Clearly, the supervision of local public assistance programs by the Division at the State Level obviates the need for an independent policy making body in a municipality.

The legislative purpose behind the enactment of the Faulkner Act was to allow municipalities to abolish independent boards. In *Myers v. Cedar Grove Tp.,* 36 N.J. 51, 59 (1961) the Court stated:

> [T]he idea of diminishing the power of the new governing body by extending the number of separate and independent bodies is incompatible with the statutory scheme for the centralization of sweeping legislative and administrative authority in the Council and Manager. [36 N.J. at 50.]

Also, *Am. Fed. State, Cty. Mun. Emp. v. Hudson Welf. Bd.,* 141 N.J. Super. 25 (Ch. Div. 1976) provides compelling support for the proposition that Faulkner Act municipalities are empowered to abolish their local assistance boards. The court held that a county, organized under the Optional County Charter Act, was authorized to abolish an independent county welfare board mandated by statute and incorporate the board and its functions within one of the county's administrative departments. *Id.* at 35. The court reached this conclusion after finding that "the clear expressed intent of the Legislature and the meaning of the act is to give

the new county governments created under the law the sweeping power to restructure their form as they see fit consistent with the Constitution of New Jersey and general law." *Id.* at 32. Since "(i)t is obvious that the Faulkner Act was used as the model for the Optional County Charter Law," *Citizens for Charter Change, Essex Cty. v. Caputo,* 136 N.J. Super. 424, 439 (App. Div. 1975), *certif. den.* 74 N.J. 268 (1975), it is reasonable to conclude that the Legislature intended the Faulkner Act to permit a municipality to abolish and reorganize its local welfare agency.[2]

It is therefore our opinion that municipalities governed by an optional form of government may reorganize or abolish their local assistance board.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BARBARA A. HARNED
Deputy Attorney General

2. Although Faulkner Act municipalities are empowered to abolish or reorganize local assistance boards, municipalities are required to provide general assistance in conformity with applicable provisions of general law found in Title 44 and in the regulations of the Division of Welfare. As noted in *Am. Fed. State, Cty. Mun. Emp. v. Hudson Welf. Bd.,* "(m)andated services must continue [even though] how they are to be administered is to be a decision of the elected . . . officials." 141 N.J. Super. at 32-33. *See also, State v. Malone, supra.*

July 11, 1980

JOHN R. JAMIESON, *Deputy Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

FORMAL OPINION NO. 16—1980

Dear Mr. Jamieson:

You have inquired whether the Department of Transportation may accept interest free federal loans and in turn lend the borrowed federal funds to public and private employers for the acquisition of vanpool vehicles consistent with the Constitution and the Commissioner's statutory powers. Your inquiry presents the following three issues which will be discussed separately:

I. Does the Department's borrowing of federal funds violate the Debt Limitation Clause of the New Jersey Constitution?
II. Does the Department's lending of the borrowed federal funds violate the constitutional provisions banning a loan of the credit of the State or appropriation of money for a private purpose?

III. In connection with a program to defray the acquisition cost of vanpool vehicles, does the Commissioner of Transportation have the statutory power to accept federal loans and to lend the funds to public and private employers?

Section 126 of the Federal-Aid Highway Act of 1978, 23 U.S.C. §146, authorizes the U.S. Secretary of Transportation, using Federal-aid funds, to make grants and loans to States and other governmental bodies in order to financially assist eligible ridesharing projects, including defraying the acquisition costs of vanpool vehicles. The federal act, however, limits federal assistance for the cost of acquiring vanpool vehicles to loans, and not grants. The federal loans amount to 75 percent of the acquisition costs. Current federal regulations, as amended by the 1978 Act, provide that federal loans may be made "as long as appropriate provision is made for repayment of this cost within a period of less than four years." 23 C.F.R. §656.7(3) (1976).

As part of its vanpool assistance program, the New Jersey Department of Transportation would accept the interest free federal loans and obligate itself to repay the federal loans within four years. The Department would then lend the borrowed funds to counties, municipalities, governmental or quasi-governmental agencies, and private corporations or individuals in the amount of 75 percent of the acquisition cost of the vanpool vehicle.

By executed agreement, the vanpooler would agree to repay the loan within four years. The Department would retain the vehicle's certificate of title in its possession until the loan has been fully repaid. The certificate of title would indicate that the Department is the secured party with regard to that vehicle. The agreement with the recipient of the loan would state that the primary purpose of the vanpool project is to utilize vanpool vehicles to transport specific employees, between their homes or appointed pick up areas and their place of employment, and for employment related trips during the work day in order to reduce fuel consumption, traffic congestion, parking difficulties, and pollution. Other use would be permitted only upon written determination by the Department that such use is not inconsistent with the general objectives of the vanpool project. Utilization of the vanpool vehicle for illegal purposes, or on a regular basis for other than passenger transportation, would be cause for termination of the agreement and all balances of the loan would become immediately due. The recipient would also agree to comply with all applicable state and federal statutes and obligations relating to vanpool project operations during the term of the contract. Finally, the agreement would provide that the Department is not obligated to use any funds other than those provided by the federal government for the vanpool program in fulfilling any of the terms or conditions of the contract.

I

The first question presented by your inquiry is whether the Department's receipt of the federal funds in the form of loans violates the Debt Limitation Clause of the State Constitution. The Debt Limitation Clause of our Constitution provides as follows:

> The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. *This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States.* Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God. [*N.J. Const.* Art. 8, §2, ¶3.] [Emphasis added.]

Formal Opinion No. 23—1975 considered the applicability of the Debt Limitation Clause to loans from the federal government. The Commissioner of Transportation had inquired whether the Commuter Operating Agency could accept federal loans for purposes generally authorized by the Agency's enabling legislation. After reviewing the history of the sentence which exempts federal funds from the Debt Limitation Clause, the opinion concluded that the receipt of federal loans by the Agency was consistent with the constitutional mandate. The opinion stated:

> [T]he monies made available in the present legislation would be loans and not grants and would not be treated the same as general funds of the State. It is clear that all such funds would continue to be an obligation of the State to the Federal Government until repaid, and the basic agreement is thus between the two governments rather than between the State and a third party. [F.O. No. 23-1975.]

Any federal money deposited with this State, whether as grants or loans, is therefore unaffected by the Debt Limitation Clause. In the matter at hand, the Department would be accepting interest free federal loans and would be obligated to repay the principal within four years. Please be advised that the Department's receipt of the federal loans falls within the federal funds exemption of the Debt Limitation Clause and is therefore constitutionally permissible.

II

The second question presented by your inquiry is whether the State's subsequent lending of the borrowed federal funds to public and private employers for the acquisition of vanpool vehicles violates the constitutional provisions banning a loan of the credit of the State or an appropriation of money for private purpose. The pertinent constitutional provisions are as follows:

> The credit of the State shall not be directly or indirectly loaned in any case. . . . [*N.J. Const.* Art. 8, §3, ¶1.]
>
> No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever. . . . [*N.J. Const.* Art. 8, §3 ¶3.]

In *Roe v. Kervick,* 42 N.J. 191 (1964), the New Jersey Supreme Court discussed the factors which determine whether a statutory program of public financial assistance violates the constitutional ban on loan or appropriation of public money. The court stated that, in order for a program to be constitutional, the financial assistance must be primarily for a public purpose; the contractual consideration must be primarily for a public purpose; the contractual consideration must be intimately associated with executing the public purpose and must not be merely the obligation to repay the loan; the paramount factor in the contract between the State and the recipient must be the accomplishment of the public purpose; and any private advantage is merely incidental and subordinate. *Id.,* at 218. The Court also stated that there must be a reasonable measure of control by the public agency by means of contract, statute and regulation such that the recipient represents "the controlled means by which the government accomplished a proper objective" *Id.,* at 219, 222. *See also Bayonne v. Palmer,* 41 N.J. 520 (1966).

In construing the meaning of "public purpose," the Court, in *Roe v. Kervick, supra,* stated that:

> Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government . . . . To be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. [*Id.,* at 207.]

The Court also recognized that "the modern trend of judicial thought is to expand and construe liberally the meaning of public purpose." *Id.,* at 226.

In the matter at hand, the Department would accept interest free federal loans, and then lend the funds to public and private employers in amounts of 75 percent of the acquisition cost of the vanpool vehicles. To pass constitutional muster, such assistance must be primarily for a public purpose. Congress has declared it "to be national policy that special effort should be made to promote commuter modes of transportation which conserve energy, reduce pollution and reduce traffic congestion" and

has directed the U.S. Secretary of Transportation to assist in the establishment of vanpool programs. 23 U.S.C. §146 (notes). The Department initiated its vanpool loan program in response to the federal legislation.

Based upon the dynamic concept of public purpose and upon the legislative findings, the lending of the borrowed federal funds herein to assist in the acquisition of vanpool vehicles by public and private employers primarily serves a public purpose. In addition, there is the required measure of control to ensure that the public purpose is accomplished. The loan agreement provides that the primary purpose of the vanpool vehicle is to transport specified employees to and from work and for employment related trips during the work day. Use of the vehicle which is inconsistent with the general objectives of the vanpool project is cause for termination of the agreement.

Please be advised that the Department's lending of borrowed federal funds does not violate the constitutional prohibition against loaning the state's credit or appropriating money for a private purpose.

III

Although the Department's program is consistent with the Constitution, the final question presented by your inquiry is whether the Commissioner of Transportation has the statutory authority to accept interest free federal loans in connection with a departmental program to lend the borrowed federal funds to employers to defray the acquisition costs of the employers' vanpool vehicles.

In the "Transportation Act of 1966," N.J.S.A. 27:1A-1, *et seq.,* the Legislature established the Department of Transportation as a principal department in the executive branch of the State government. The Legislature intended the act:

> to establish the means whereby the full resources of the State can be used and applied in a coordinated and integrated matter [sic] to solve and assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and *implement* comprehensive plans and *programs for all modes of transportation development in the State;* and to coordinate the transportation activities of State agencies, State-created public authorities, and other public agencies with transportation responsibility within the State. [N.J.S.A. 27:1A-1.] [Emphasis added.]

As head of the Department of Transportation, the Commissioner has been delegated extensive powers and functions in the area of all transportation modes. N.J.S.A. 27:1A-5. The Commissioner has also been given a broad legislative mandate to "(d)o whatever may be necessary or desirable to effectuate the purposes of this Title (Title 27 Highways)." N.J.S.A. 27:7-21(i). In addition, N.J.S.A. 27:8-2 authorizes the Commissioner" . . . to receive and apply any money received from the federal government for road work to any work he shall have authority to do." N.J.S.A. 27:7-1 defines road "work" to include "all other things and

services necessary or convenient for the performance of the duties imposed by this title (Title 27 Highways)." Moreover, it is well settled that the statutory powers of the Commissioner are to be liberally construed. *Township of Hopewell, et al v. Goldberg, et al,* 100 N.J. Super. 589 (App. Div. 1968), *certif. denied,* 52 N.J. 500 (1968); *State v. Maas & Waldstein Co.,* 83 N.J. Super. 211 (App. Div. 1964). In *Township of Hopewell, et al v. Goldberg, et al, supra,* the court stated:

> Our Legislature has clearly indicated its intent that New Jersey participate in the Federal aid highway program. It has empowered the Highway Commissioner to perform whatever acts are required by Federal Statute to qualify the State for Federal highway aid . . . The powers granted the Commissioner under the various State statutes must be construed liberally so as to carry out the basic purpose of providing adequate highway facilities throughout the State. Participation in the Federal highway aid program is clearly within the scope of the statutes. [101 N.J. Super. 589, 595 (App. Div. 1968).]

The Department initiated its program to assist employers interested in acquiring vanpool vehicles as a result of federal highway legislation. Section 126 of the Federal-Aid Highway Act of 1978 provides:

> *In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities,* the Secretary may approve for Federal financial assistance from funds apportioned under sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title, projects designed to encourage the use of carpools and vanpools. (As used hereinafter in this section, *the term "carpool" includes a vanpool.)* Such a project may include, but is not limited to, such measures as providing carpool opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, *acquiring vehicles appropriate for carpool use,* designating existing facilities for use as preferential parking for carpools. [23 U.S.C. §146(a).] [Emphasis added.]

In the interest of conserving energy and reducing pollution and traffic congestion, the federal legislation directs the Secretary of Transportation to assist both public and private employers who are interested in establishing carpooling and vanpooling programs. *See* §126(d)-(h) of Pub. L. 95-599, 23 U.S.C. §146 (notes). The Secretary is authorized to make grants and loans in amounts not exceeding 75 percent of the cost of eligible projects. The Act provides, however, that federal financial assistance in connection with the acquisition costs of vanpool vehicles is limited to loans. These funds are available to New Jersey only through the Department of Transportation, which is the State agency designated to receive federal-aid highway funds. *See* 23 U.S.C. §117.

Initiated as a result of the federal legislation, the Department's vanpool loan program is in furtherance of one of the broad purposes of the

Department—the implementation of programs for all modes of transportation development in the State. The program is intended to reduce traffic congestion on highways and to enhance the use of highways. Utilizing federal funds in the form of loans, the program assists employers in defraying the acquisition costs of vanpool vehicles. Although not regularly available to the public, the primary purpose of the vehicle is to transport eight to fifteen participating employees between their homes or appointed pick up areas and their place of employment. In light of the purposes of the program and the liberal construction to be given to the powers of the Commissioner, the Department's vanpool loan program is in furtherance of the purposes of the Department and falls within the statutory powers of the Commissioner.

In responding to your inquiry, the impact, if any, of the New Jersey Public Transportation Act of 1979, L. 1979, c. 150, on the power of the Commissioner of Transportation to engage in the vanpool loan program must also be considered. In addition to amending the powers of the Commissioner, N.J.S.A. 27:1A-5, the recent legislation created the New Jersey Transit Corporation to provide public transportation services. N.J.S.A. 27:25-1 *et seq.,* The Act, however, defines "public transportation services" to include "paratransit services," N.J.S.A. 27:25-3(e), which are in turn defined to include:

> any service, other than motorbus regular route service and charter services, including, but not limited to, dial-a-ride, nonregular route, jitney or community minibus, and shared-ride services such as *vanpools,* limousines or taxicabs *which are regularly available to the public. Paratransit services shall not include limousine or taxicab service reserved for the private and exclusive use of individual passengers.* [N.J.S.A. 27:25-3(d).] [Emphasis added.]

Since the Department's vanpool loan program herein is essentially a program to assist employers to establish non-profit vanpools exclusively for employees and does not contemplate vanpooling which is regularly available to the public, the power of the Commissioner to engage in this program is unaffected by the New Jersey Public Transportation Act of 1979.

In conclusion, please be advised that the Department has the statutory authority to accept the interest free federal loans and in turn to lend the funds to public and private employers to defray the acquisition costs of vanpool vehicles.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: JOHN J. REILLY
Deputy Attorney General

July 15, 1980

New Jersey Department of Optometrists
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 17—1980

Dear Members of the Board:

You have asked for our opinion as to the validity of N.J.A.C. 13:38-1.4 and 13:38-1.7 which deal with solicitation by optometrists for the purpose of selling optometric services or materials. For the following reasons, you are advised that those regulations of the Board are invalid.

In order to deal with the validity of these regulations it is necessary at the outset to consider the section of the Optometry Act dealing with solicitation by optometrists. N.J.S.A. 45:12-11(p) provides that the Board shall have the power to revoke or suspend any license to practice optometry where an optometrist has been found to be:

> Soliciting in person or through an agent or agents for the purpose of selling ophthalmologic materials or optometric services or employing what are known as 'chasers,' 'steerers,' or 'solicitors,' to obtain business.

It may be assumed that such solicitation of business by optometrists or their agents was viewed by the Legislature to be inconsistent with appropriate professional standards governing the relationship between an optometrist and his patient. Also, a ban on in person solicitation of patients was presumably designed to prohibit those business practices which tend to exert pressure on prospective patients in order to make speedy, uninformed or ill-conceived decisions with regard to the purchase of optometric services and related goods.

The regulations adopted by the Board dealing with solicitation provide as follows:

> a. Any statement, printed, written or oral, published, posted or circulated, directly or indirectly, by any person, firm, corporation, group or association, which quotes or specifies the name of any individual optometrist, firm or partnership of optometrists or any person, firm or corporation employing or having associated with him or it one or more optometrists, by way of especially recommending the professional services of said optometrist, firm or corporation in conjunction with the announcement of the consummation of any contract, agreement or arrangement for professional services with said optometrist, firm or corporation, in which announcement of the said contract, agreement or arrangement offer optometric services at a stipulated fee, or any variation of such a fee, or as being free, or at a fee which is represented to be smaller than ordinary fees or which purports to offer discounts or any other inducement or advantages to prospective recipients of such services, unless in conjunction with a vision service plan approved by the Board, shall be *prima facie* evidence of soliciting through agents; within the meaning of N.J.S.A. 45:12-11(p) on the part of the optometrist or optometrists so named, specified or involved.
>
> b. This shall be conclusive if the optometrists are shown to be accessories to the contract, agreement or arrangement by satisfactory evidence of their providing or rendering optometric services in accordance with the contract, agreement or arrangement. [N.J.A.C. 13:38-1.4.]
>
> Within the meaning of N.J.S.A. 45:12-11(p), any optometrist who offers or provides optometric services and/or contact lenses and/or eyeglasses at a fee less than his usual fee, in consideration of the patient being associated with any person, association, organization or corporation, shall be considered as soliciting for the purpose of selling ophthalmic materials or optometric services, unless such optometric services and/or contact lenses and/or eyeglasses are offered in conjunction with a vision service plan approved by the Board. [N.J.A.C. 13:38-1.7.]

It is clear at once from a reading of these regulations that they are designed to achieve objectives beyond those contemplated by the statute. N.J.A.C. 13:38-1.4 prohibits any communication of information of the identity of any optometrists or firm employing or having one or more optometrists where such communication is in conjunction with any agreement offering optometric services at a stipulated fee or smaller than ordinary fees or which purports to offer discounts, inducements, or advertising or recipients of those services. Since the statutory section was enacted to only prohibit what the Legislature regarded as unprofessional practices inherent in the in person solicitation of business for the purpose of selling ophthalmologic materials or optometric services, it is evident that a regulatory prohibition against the communication of information pertaining to either the services of an optometrist or a stipulated fee would exceed the regulatory scope contemplated by the statute. Similarly, the offering of optometric services at a fee less than the usual fee in consideration of a patient being associated with a third party plan is not encompassed within the legislative objective concerning the prohibition against in person solicitation.

This conclusion is supported by the rule of statutory construction that a legislative enactment should not be interpreted in a manner to raise substantial questions as to its constitutionality. *Woodhouse v. Woodhouse,* 17 N.J. 409 (1955); 2A *Sutherland, Statutory Construction,* (3d ed. 1973), §45.11 at 33-34. To interpret N.J.S.A. 45:12-11(p) as statutory authority to prohibit the communication of information to the public concerning the services and fees charged by optometrists, would raise a substantial question under the First Amendment to the United States Constitution. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 248, 48 L.Ed.2d 346 (1976); *Bates v. State Bar of Arizona,* 433 U.S. 350, 53 L.Ed.2d 810 (1977). In *Ohralik v. Ohio State Bar Association,* 436 U.S. 477, 56 L.Ed.2d 444 (1978), the Supreme Court of the United States held that a state's valid concern with regard to the regulation of

in person solicitation in the legal profession is limited to those aspects of solicitation that involve fraud, undue influence, intimidation, over reaching and other forms of vexatious conduct. The valid objectives of the Legislature in the case of the profession of optometry under N.J.S.A. 45:12-11(p) would essentially be the same. The statute, therefore, cannot be interpreted to allow for a regulatory prohibition on the truthful advertising or communication of routine information concerning the provision of ophthalmologic materials and optometric services. For these reasons, it is our opinion that N.J.A.C. 13:38-1.4 and 13:38-1.7 are not consistent with N.J.S.A. 45:12-11(p) and are, therefore, invalid.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DOUGLAS J. HARPER
Deputy Attorney General

October 6, 1980

DR. FRED PRICE, *Secretary*
Board of Examiners
Department of Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 18—1980

Dear Dr. Price:

On September 23, 1974 this office advised the Commissioner of Education in *Formal Opinion No. 10—1974* that statutory citizenship requirements on the employment or tenure of teachers who are aliens were constitutionally invalid. On June 13, 1979 in *Formal Opinion No. 12—1979,* we advised the Commissioner that as a result of a decision of the United States Supreme Court in *Ambach v. Norwick,* 441 U.S. 68 (1979), New Jersey statutes, which require a teaching staff member to either demonstrate that he is a citizen of the United States or has declared his intent of becoming a citizen, are supported by a legitimate governmental purpose and are valid. It is clear, therefore, that at the present time a noncitizen may not be certified by the Board of Examiners in the Department of Education to teach in the public schools unless he or she has satisfied the requirements of the governing statute dealing with United States citizenship.[1]

A question has now arisen as to the status of those noncitizens who have been certified by the Board of Examiners at some point in time between the issuance of *Formal Opinion No. 10—1974* and our most recent advice to the Commissioner on June 13, 1979 in *Formal Opinion No. 12—1979* that those statutes requiring citizenship are constitutional and fully operative. From a cursory examination of those statutes, it is apparent

to have been the underlying legislative policy to require all persons teaching in the public schools and certified by the Board to be citizens of the United States. It would be inconsistent with this overall legislative purpose to allow noncitizens to continue to teach and be certified in the public schools of this State. It is therefore our opinion that those noncitizens who are the subject of this inquiry are required to become United States citizens as a condition to continuing to teach in the public schools and to hold their certificates. In order to implement the statutory mandate, the Board should require those persons to either produce valid proof of citizenship or to declare a present intent to become a United States citizen.

An additional issue posed concerns the responsibility of the Board towards those noncitizens who fail to acquire United States citizenship within five years of the filing of a declaration of intent. N.J.S.A. 18A:6-39 in pertinent part provides that a teacher's certificate issued to a noncitizen *shall be cancelled* by the Board if the holder has not become a citizen within five years of its date of issuance. N.J.S.A. 18A:26-8.1 provides that any such certificate *may be* revoked by the Board in its discretion if the holder shall not have become a United States citizen within five years. These two statutory sections therefore are inconsistent on their face with regard to the Board's discretion to revoke certification (N.J.S.A. 18A:26-8.1) on the one hand, and its obligation to cancel a certificate (N.J.S.A. 18A:6-39) on the other hand, where the holder thereof shall not have become a United States citizen within five years.

In order to resolve this inconsistency, it is necessary to briefly review the pertinent legislative history. Both of these statutory sections were adopted by the legislature in a single piece of omnibus legislation which

1. There are two statutory sections which deal with United States citizenship requirements for teachers in the public schools. N.J.S.A. 18A:6-39 provides as follows:

> The board may, with the approval of the commissioner, issue a teacher's certificate to any citizen of any other country, who has declared his intention of becoming a United States citizen and who is otherwise qualified but any such certificate shall be void, and shall be canceled by the board, if the holder thereof shall not become a United States citizen within five years of the date of its issuance, and it may be revoked within said period by the board, if the board is satisfied that the holder thereof has abandoned his efforts to become a United States citizen or has become disqualified for such citizenship but no teacher certified, pursuant to this section, shall acquire tenure unless and until United States citizenship shall have been granted to him.

N.J.S.A. 18A:26-8.1 provides as follows:

> The state board of examiners may, with the approval of the commissioner, issue a teacher's certificate to teach in the public schools to any citizen of any other country who has declared his intention of becoming a United States citizen and who is otherwise qualified, but any such certificate may be revoked by the state board of examiners if the board is satisfied that the holder thereof has abandoned his effforts to become a United States citizen, or has become disqualified for citizenship, or shall not have become a United States citizen, within five years of the date of its issuance.

See *infra* for a discussion of the controlling statutory section.

recodified Title 18 into Title 18A. Laws of 1967, c. 271. N.J.S.A. 18A:6-39 is substantially the same as an earlier statutory section in N.J.S.A. 18:13-4.2 enacted as Laws of 1956, c. 158. N.J.S.A. 18A:26-8.1, however, in pertinent part, appears for the first time in the recodification of Title 18 by Laws of 1967, c. 271. In the absence of a legislative indication as to which of these two conflicting statutory sections should govern the revocation of a certificate of a noncitizen, it is necessary to resort to the rule of statutory construction that the legislature should not be deemed to have enacted repetitious or surplus legislation. *Peper v. Princeton University Board of Trustees,* 77 N.J. 55, 68 (1978). Rather, it is reasonable to assume that the legislature intended its latest and newest expression of legislative policy on the subject to govern. For these reasons, the provisions of N.J.S.A. 18A:26-8.1 are applicable. A certificate may be revoked in the discretion of the Board of Examiners on a case by case basis if the holder shall not have become a citizen of the United States within five years.[2]

In summary, you are advised that those noncitizens who have been certified by the Board of Examiners at some point in time between the issuance of *Formal Opinion No. 10—1974* on September 23, 1974 and the issuance of *Formal Opinion No. 12—1979* on June 13, 1979 are now required to conform with the provisions of N.J.S.A. 18A:26-8.1. They should either produce proof of citizenship or declare a present intent to become a United States citizen. You are further advised that the Board of Examiners has the discretion whether or not to revoke the certificate issued to a noncitizen under the facts of an individual case where the holder either has abandoned his efforts to become a citizen or has become disqualified or shall not have become a citizen within five years of a declaration of intent to do so.

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

2. It should be noted, however, that notwithstanding a decision by the Board of Examiners not to revoke the certificate of a noncitizen in an individual case, no person shall be deemed to have acquired tenure in the public schools unless he shall become a United States citizen. N.J.S.A. 18A:38-3.

October 21, 1980

JOHN J. REILLY, *Executive Director*
New Jersey Racing Commission
404 Abington Drive
East Windsor, New Jersey 08520

FORMAL OPINION NO. 19—1980

Dear Mr. Reilly:

The Racing Commission has asked for our opinion concerning a form of pari-mutuel wagering known as "pick six." In particular, the question is whether an ingredient of "pick six" which provides for a carry-over of an undistributed percentage of a pari-mutuel pool to the next racing day is permissible. For the following reasons, it is our opinion that the use of "pick six" pari-mutuel wagering at New Jersey racetracks would be inconsistent with the racing laws.

At the outset, it is necessary to describe in specific terms the nature of the form of pari-mutuel wagering known as the "pick six." Each bettor selects the first horse in each of six consecutive races designated as the pick six races. The pick six pool is held entirely separate from all other pools and is not part of a daily double, exacta, trifecta or other wagering pool. The net amount in the pari-mutuel pool is distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six consecutive races comprising the pick six. In the event there is no ticket which correctly designates the winner of all six races, 50% of that racing date's net amount available for distribution to winners would be distributed among the holders of tickets correctly designating the most consecutive winning selections. The remaining undistributed 50% of the pari-mutuel pool would be carried over and included as part of the pick six pool for the next racing date. In the event a holder correctly designates all six race winners on any date for which there has been a carry-over, all monies carried over, as well as 50% of the amount for that individual racing date, shall be distributed among such ticket holders. On any racing date where there is a carry-over and no distribution of prize money can be made to a holder correctly designating all six race winners, the undistributed pool shall be carried over and included in the pick six pool for the next racing date.

The governing statutory section of the racing laws which bears on whether or not this form of pari-mutuel wagering is permissible is N.J.S.A. 5:5-64 which provides in pertinent part:

> In every pool where the patron is required to select three or more horses, *every holder of a permit shall distribute all sums deposited in each pool to the winners thereof,* less an amount which shall not exceed 25% of the total deposits, plus the breaks. [Emphasis added.]

The above quoted language clearly provides that every permit holder distribute all sums deposited in each pool to the winner thereof, less a specified percentage of the total deposits. At issue, therefore, is whether

in an instance where there is no pari-mutuel ticket held which correctly designates the winner of all six consecutive races, an undistributed 50% of said pool may be carried over and included as part of the pick six pool of the next racing date. The question presented therefore, stated in other words, is whether the statute mandates the distribution of the total net amount wagered among the winning contributors to a pool or, on the other hand, whether a portion of the net total amount may be retained and added to the total amount wagered by a separate group of contributors on a horse race conducted on a subsequent racing date. Since the statutory language requires the permit holder to distribute all sums in each pool to the winners thereof, it is necessary to ascertain the meaning of a "pool."

The racing laws do not provide any definition of the word "pool" nor is there any available legislative history to assist in its interpretation. It is therefore a well established rule of statutory construction that in the interpretation of the words of a statute resort should be made to the common sense or commonly understood meaning of the term. *Service Armament Co. v. Hyland,* 70 N.J. 550, 556 (1976). In horse racing a "pool" has been defined to mean the combination of a number of persons, each staking a sum of money on the success of a horse in a race, the money to be divided among the successful bettors according to the amount put in by each. *United States v. Berent,* 523 F. 2d 1360, 1361 (C.A. 9th Cir. 1975); *Lacey v. Palmer,* 24 S.E. 930, 931 (Va. 1896). The term "pool" has also been defined by the courts to mean a system of betting which provides for the distribution of the total amount wagered among the successful contributors in proportion to their respective contributions thereto. *Delaware Steeplechase and Racing Association v. Wise,* 27 A. 2d 357, 362 (Del. 1942); *Feeney v. Eastern Racing Association,* 22 N.E. 2d 259, 260 (Mass. 1939); 38 C.J.S. *Gaming* §1 (1943). In *Pompano Horse Club v. State,* 111 So. 801, 812 (Fla. 1927), the Florida Supreme Court referred to the commonly understood means for the distribution of monies by result of a horse race as an instance when:

> . . . a group of persons, each of whom has contributed money to a common fund and received a ticket or certificate representing such contribution, adopt a horse race, the result of which is uncertain, as a means of determining, by chance, which members of the group have won and which have lost upon a redivision of that fund, each contributor having selected a stated horse to win such race. . . .

This citation of judicial authority establishes that a "pool" is created by the combination of the total wagers made on a specific horse race or races which total wagers are contemplated to be distributed under a formula to successful bettors on those races. In the case of pick six, it is provided that where there is no bettor successfully selecting winners in six consecutive races, 50% of the undistributed pool shall be carried over and added to a combination of wagers contributed by a separate class of patrons with regard to races held on the next succeeding racing day. The remaining 50% of that racing date's net amount available for distribution would be distributed among the holders of tickets correctly designating

the next most consecutive winning selections. It is clear, therefore, that pick six wagering is inconsistent with the responsibility of the holder of a permit under the statute to provide for the distribution of all net sums deposited in each pool to the winners thereof. Rather, in the case of pick six, only a portion of the total net accumulated fund would be distributed to the winning patrons who have successfully selected winning horses in a race or races for which the common fund of wagers has been created. For this reason, it is our opinion that a form of pari-mutuel wagering on horse races known as pick six, which contains a provision for a carry-over of an undistributed percentage of a pari-mutuel pool to horse races conducted on the next racing day, is inconsistent with N.J.S.A. 5:5-64. Therefore, it would be necessary for enabling legislation to be enacted to authorize this form of pari-mutuel wagering.

Very truly yours
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 24, 1980

JOHN J. HORN, *Commissioner*
Department of Labor and Industry
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 20—1980

Dear Commissioner Horn:

You have asked whether sick leave payments to employees constitute "wages" within the meaning of the Unemployment Compensation Law and the Temporary Disability Benefits Law. If they do, the worker may include them as part of his base year earnings when he files a claim for benefits.[1] The total amount of a worker's base year earnings is a crucial part of his claim, because they are used to determine both his eligibility for benefits and the amount of benefits he will receive.[2] The remuneration earned by employees is also crucial in one other respect. It is used in computing the unemployment and disability insurance taxes paid each year by the worker and his employer. For the following reasons, it is our

1. Your inquiry does not encompass sick payments made to employees in accordance with an employer's state-approved private plan under the Temporary Disability Benefits Law. It is clear that those sick payments in which an employer is paying the equivalent of statutory disability benefits are compensation for wage loss during illness or disability and would not be deemed wages or remuneration. *Bartholf v. Board of Review,* 36 N.J. Super. 349 (App. Div. 1955).

opinion that sick leave payments are wages within the meaning of those laws.

Unemployment benefits are payable to otherwise eligible claimants who, during the base year preceding the filing of their claim, have earned in covered employment a total of at least $2,200, or, alternatively, have earned a minimum of $30 for each of 20 weeks. N.J.S.A. 43:21-4(e) and 19(t). The term "wages" is defined in the act as "remuneration paid by employers for employment . . . ." N.J.S.A. 43:21-19(o). "Remuneration" is defined as "all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash." N.J.S.A. 43:21-19(p). And "employment" means "service . . . performed for remuneration or under any contract of hire, written or oral, express or implied." N.J.S.A. 43:21-19(i)(1)(A).

These definitions, liberal on their face, have been construed expansively by our courts. In particular, the decisions make clear that payments to employees may constitute "remuneration" under the act even where made for weeks in which the employee performed no services. Thus, the term has been held to include holiday pay, *DiMisele v. General Motors Corp.* 29 N.J. 427 (1959); vacation pay, *Butler v. Bakelite Co.*, 32 N.J. 154, 164-165 (1960); severance pay, *Owens v. Press Publishing Co.*, 20 N.J. 537 (1956) and *Dingleberry v. Bd. of Review,* 154 N.J. Super. 415 (App. Div. 1977), and compensation drawn by corporate officers on an irregular basis, *Paramus Bathing Beach v. Div. of Employment Sec.*, 31 N.J. Super. 128 (App. Div. 1954).

In *Paramus Bathing Beach* the court enunciated the principle in these words:

> The presence of the relationship of employer and employee is not necessarily conditional upon the concurrent and coexistent performance of some actual exertion by the employee. An employer may hire a man to do something who does nothing, or a man may be hired 'to stand by' during intervening periods of the year. And then there are holidays, *intervals of illness or disability,* lack of work, and the like, during which the employment with pay continues. [*Id.* at 133.] [Emphasis added.]

While no New Jersey decision directly addresses the subject of sick leave payments, the underscored words of the above quotation suggest in dictum that such benefits likewise constitute remuneration under the act. This conclusion is supported by the Appellate Division's comments on *Paramus*

2. The definitions of wages and other pertinent terms in the Temporary Disability Benefits Law, N.J.S.A. 43:21-27, are virtually identical to those in the Unemployment Compensation Law, N.J.S.A. 43:21-19. The two laws, moreover, are construed *in pari materia* since they "are 'mutually complementary and . . . illuminat[e] each other.' " *Continental Gas, Co. v. Knuckles,* 142 N.J. Super. 162, 166 (App. Div. 1976); *see* N.J.S.A. 43:21-42(a). In the interest of simplicity, therefore, there will be no further reference to the Disability Benefits Law in this opinion; references to the Unemployment Compensation Law should be understood to apply to the other act as well.

Bathing Beach in *Bartholf v. Bd. of Review,* 36 N.J. Super. 349 (App. Div. 1955), decided a year later. The court there specifically quoted the reference to "Intervals of illness or disability . . . during which the employment with pay continues." While declaring it unnecessary to definitively resolve the matter, the court explicitly agreed that "periods of occasional or incidental illness for which the employer nevertheless pays the employee the usual wages as a matter of custom or policy may be regarded as qualifying base weeks . . . ." *Id.* at 356.

Finally, in the only reported decision elsewhere squarely addressing the issue, the Commonwealth Court of Pennsylvania held that paid sick leave constitutes remuneration under that state's unemployment compensation law. In *Unemployment Comp. Board of Review v. Buss,* 362 A. 2d 1113 (Pa. Commw. Ct. 1976), the functions being performed by the claimant for the Postal Service were transferred to another city. He was then offered the right to go on paid annual leave or sick leave, but chose instead to go on unpaid leave status in order to qualify for a pension. In holding him ineligible for unemployment benefits for this period, the court stated:

> Claimant was entitled to annual and/or sick leave pay for services performed. This leave pay, which he chose not to accept, accrued to him as a result of services performed. Since he is owed remuneration for the claim weeks, the Board did not err when it denied claimant unemployment compensation benefits. [*Id.* at 1115.]

Similarly, sick leave payments would, for the same reason, constitute remuneration properly includable in a worker's base year earnings for purposes of determining his benefit eligibility and amount.

The Pennsylvania court's holding, in *Buss,* and the dicta to the same effect expressed by our Appellate Division in *Paramus Bathing Beach* and *Bartholf,* are consistent with the nature of paid sick leave. Such leave as generally understood in public and private employment represents a remunerative benefit granted an ill or injured worker in consideration for services performed for a specific period of time or as a general incident of the employment relationship. In the public sector the Civil Service Act, for example, defines sick leave as "absence from post of duty of an employee because of illness, accident, exposure to contagious disease, attendance upon a member of the employee's immediate family seriously ill requiring the care or attendance of such employee, or absence caused by death in the immediate family of said employee." N.J.S.A. 11:4-2. The act allows classified public employees one day of paid sick leave for each month of service in the first calendar year following permanent appointment, and 15 days in each succeeding year. *Ibid.* This allowance is similar to sick leave benefits typically granted in private employment, whether under a collective bargaining agreement or as a matter of customary practice.[3]

In sum, as the Pennsylvania Supreme Court has put the matter, "sick leave like vacation pay is an incident or benefit provided under the work agreement and is an entitlement like wages for services performed." *Temple*

v. Pennsylvania Dept. of Highways, 285 A. 2d 137, 139 (1971). *Cf. Bd. of Ed. Piscataway Tp. v. Piscataway Main.* 152 N.J. Super. 235, 243-244 (App. Div. 1977) ("Unquestionably, sick leave or other leaves of absence are matters that directly and intimately affect the terms and conditions of employment.") No less than vacation, holiday and severance pay, therefore, paid sick leave constitutes remuneration for purposes of the Unemployment Compensation and Temporary Disability Benefits Law.

For these reasons, it is our opinion that sick leave payments to public or private employees are "wages" within the meaning of the Unemployment Compensation Law and the Temporary Disability Benefits Law. They must therefore be included in a worker's earnings in determining his eligibility for benefits and in computing the payroll taxes paid by the worker and his employer under these programs.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MICHAEL S. BOKAR
Deputy Attorney General

3. The same is not true, on the other hand, of sick leave injury (SLI) benefits paid to public employees under the Civil Service Act. In addition to the 15 days of paid sick leave to which classified employees are entitled under N.J.S.A. 11:4-2, that provision directs the Civil Service Commission to adopt regulations allowing payments "for longer periods" at or below the worker's regular salary where he sustains a work-related injury or illness. The Commission's regulations governing SLI, as amended in January 1980 (*see* 12 N.J.R. 383(b)), state that where benefits are recommended by the appointing authority and approved by the Department of Civil Service, an employee who is unable to perform his job shall receive benefits at full pay for a period not exceeding one year. N.J.A.C. 4:1-17.9(a). Significantly, the regulations provide that SLI benefits must be reduced by the amount of any worker's compensation benefits awarded the employee for the same disability. *Ibid.* It is implicit from these regulations that SLI constitutes, like worker's compensation itself, wage-loss replacement benefits rather than remuneration for services rendered. Hence, SLI benefits are not "wages" or "remuneration" within the meaning of the unemployment and temporary disability benefits law.

October 28, 1980

MR. BARRY SKOKOWSKI
Acting Director
Div. of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 21—1980

Dear Mr. Skokowski:

A question has arisen as to whether moneys received by municipalities in the form of Urban Aid are to be appropriated within the spending caps of such municipalities under the Local Government Cap Law or whether, alternatively, such moneys are to be treated as a modification to be excluded from the statute's limitation. For the reasons set forth below, you are advised that appropriations of Urban Aid moneys are to be treated as a modification under the statute. You are further advised that, in calculating a municipality's permissible spending increase under the Local Government Cap Law, appropriations of Urban Aid in a municipality's budget for a preceding year are to be deducted from the municipality's final appropriations for that year to derive the base upon which the increase is calculated for the current year.

The Local Government Cap Law was enacted for the express purpose of limiting the spiraling cost of local government. N.J.S.A. 40A:4-45.1; *N.J. State P.B.A., Local 29 v. Town of Irvington,* 80 N.J. 271, 281 (1979). To accomplish this purpose, the statute limits municipalities having a municipal purposes tax levy in excess of $0.10 per $100. from increasing the final appropriations of their municipal budgets by more than five percent over the previous year's appropriations. N.J.S.A. 40A:4-45.2; *N.J. State P.B.A., Local 29 v. Town of Irvington, supra* at 281. However, the statute also provides for a number of exceptions from, or modifications to, this limitation. N.J.S.A. 40A:4-45.3. These modifications are intended to provide certain flexibility to municipalities in complying with the statute's limitation, see, for example, N.J.S.A. 40A:4-45.3(i), to avoid imposing constraints upon municipalities to the point where it would be impossible to provide necessary services to their residents, *see* N.J.S.A. 40A:4-45.1, *N.J. State P.B.A., Local 29 v. Town of Irvington, supra* at 283, and N.J.S.A. 40A:4-45.3(g), and to prevent certain other public interests, such as the ability to market bonds, from being jeopardized. *See* N.J.S.A. 40A:4-45.3(d) and N.J.S.A. 40A:4-45.3(j).

One of the exceptions set forth in the statute provides for the exclusion from the statute's spending limitation of

> programs funded wholly or in part by Federal or State funds in which the financial share of the municipality is not required to increase the final appropriations by more than 5%. . . . [N.J.S.A. 40A:4-45.3(b).]

The purpose of this exception was reviewed in *Formal Opinion No. 3-1977* as being to exclude from the statute's spending limitation all expenditures

of federal or state aid money as well as all local matching expenditures necessary to secure federal or state aid for municipal governments. *See also* Attorney General's *F.O. 5—1977.* Accordingly, the appropriation and expenditure of state aid moneys by a municipality subject to the statute's spending limitation would be excluded from the spending limits pursuant to N.J.S.A. 40A:4-45.3(b).

In 1978, legislation was enacted for the purpose of providing state aid to certain municipalities to enable such municipalities to maintain and upgrade municipal services and to offset local property taxes. L. 1978, c. 14. N.J.S.A. 52:27D-178 *et seq.* Under the statute, a sum is annually appropriated by the Legislature for apportionment among qualifying municipalities. N.J.S.A. 52:27D-179. Such moneys, which are commonly referred to as "Urban Aid," may then be expended by these municipalities pursuant to the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.* N.J.S.A. 52:27D-181.

There can be no doubt that, consistent with the intent of N.J.S.A. 40A:4-45.3(b), moneys received by municipalities as Urban Aid are clearly "state aid" moneys. Consequently, the appropriation and expenditure of such moneys are to be excluded from the statute's spending limitation and should be treated as a modification for the purposes of the implementation of that law.

It should be noted that the treatment of Urban Aid moneys as a modification to a municipal spending limit requires that such moneys be deducted from a municipality's final appropriations for the preceding year in the calculation of the municipality's permissible cap increase for a current fiscal year. As stated in *Attorney General's Formal Opinion No. 3—1977*, a municipality should use a specific formula in the calculation of its permissible cap increase. A municipality should subtract from its final appropriations for a previous year those appropriations which qualified as modifications during that year. This will yield the base upon which a municipality calculates its permissible spending increase for the current fiscal year. Modifications must be considered as exclusions both in the computation of the base from the previous year's appropriations and in the determination of the amount of appropriations which must be included within the spending limitation for the forthcoming fiscal year. To do otherwise would mean that there would be no point of comparison between the two years. In sum, appropriations of moneys received as Urban Aid under Laws of 1978, c. 14, should be treated as a modification in the computation of the base figure upon which a municipality's spending increase is calculated and in the determination of those appropriations which must be made within its permissible spending limitation for the current fiscal year.

That this is the proper manner in which to treat Urban Aid moneys under the Local Government Cap Law is further evident upon consideration of the consequences of treating such moneys as being included within the Statute's spending limitation. In a case where the amount of Urban Aid is included within this limitation, it would inflate a municipality's cap base. In turn, the amount by which the municipality may increase its overall expenditures for the coming fiscal year would be proportionately inflated. The residents of the municipality would consequently, through

the payment of municipal taxes, be required, contrary to the clear intent of the statute, to support spending increases in excess of the 5% limit established by the statute. These consequences further demonstrate that the appropriation of Urban Aid moneys must be treated as a modification under the Local Government Cap Law.

In conclusion, you are advised that appropriations of Urban Aid moneys received pursuant to L. 1978, c. 14 should be treated as a modification under the Local Government Cap Law. You are further advised that, in the calculation of a municipality's permissible spending increase, the appropriation of Urban Aid in a municpal budget for a preceding year should be deducted from the final appropriations in that year to derive a base amount from which a permissible spending increase for a current year is determined.*

Very truly yours,
JOHN J. DEGNAN
Attorney General
By: DANIEL P. REYNOLDS
Deputy Attorney General

* It is provided in the 1981 State Appropriations Act that in 1980 municipal budgets appropriations of municipal aid moneys by qualifying municipalities, or line item moneys contained in the Act for municipalities that no longer qualify, may be treated as an exception to the spending limitation. It is also provided that the treatment of such moneys as an exception to this spending limitation shall not alter the amount upon which the five percent annual increase is calculated in 1980 budgets for such municipalities. In the preparation of 1981 municipal budgets, however, municipalities should be governed in their determination of appropriate spending limits by the conclusions set forth in this opinion.

October 31, 1980

T. EDWARD HOLLANDER
Chancellor
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 22—1980

Dear Chancellor Hollander:

For the past several years, this office has expressed its concern over the increasing use of corporate entities formed and utilized by some of the state colleges to carry out various functions of the institutions. We have been informed that state colleges have formed corporations which operate student centers and campus pubs, manage dormitories and engage in other functions normally controlled by the college administration. As a general rule, these corporations have been set up by college personnel,

are managed by a board of directors, dominated and controlled by college employees, utilize both college facilities and office space and are funded to varying degrees with state money. Nonetheless, these corporations do not comply with any of the rules and regulations which state colleges are subjected to by statute, such as bidding laws, civil service requirements and treasury regulations concerning state funds. For the following reasons, you are hereby advised that such activities are improper and may not continue absent statutory authorization.

It is clear that the college corporations are instrumentalities of the state. The corporations are controlled by college officials, have the use of state facilities, expend state funds and effectuate state functions. Courts in various jurisdictions have uniformly held under similar circumstances that such entities are in fact instrumentalities and components of the colleges which created them. For example, in *Brown v. Wichita State University,* 540 P. 2d 66 (Kan. 1975), *mod.* 547 P. 2d 1015, (1976), the court held that a corporation created by the college and controlled by it must be "considered a mere instrumentality of the University," *Id.* at 76. In *DeBonis v. Hudson Valley Community College,* 389 N.Y.S. 2nd 647 (1977), the court utilized the same analysis in concluding that a purportedly "independent" corporation controlled by the college was in actuality an arm of the state which accordingly must comply with New York's public bidding law. *See also Shriver v. Athletic Council of Kansas State University,* 564 P. 2d 451 (Kan. 1977); *Good v. Associated Students of the University of Washington,* 542 P. 2d 762 (Wash. 1975). Accordingly, the college corporations at issue are clearly state entities which are subject to all general statutory and regulatory requirements imposed upon the colleges which created them, including the fiscal, contractual and budgetary requirements mandated by N.J.S.A. 18A:64-6(e), 18A:64-6(k), and 18:A:64-18.

Moreover, even if the corporations were structured so as to be truly independent of the colleges, their present operation at the colleges would remain improper. It is a settled principle of law that a statutory body may not delegate its essential managerial prerogatives to a private body. *Group Health Insurance Co. v. Howell,* 40 N.J. 436 (1963), *aff'd after remand,* 43 N.J. 104 (1964). Pursuant to N.J.S.A. 18A:64-2 and N.J.S.A. 18A:64-6, it is the college Board of Trustees which is statutorily required to exercise supervision and control over the institution. Clearly the Legislature intended that the trustees would manage and administer the colleges themselves or through their respective presidents and other officers and employees. The Legislature has given no indication that the boards or their officers and employees may authorize purportedly private, independent, non-profit corporations to assume any significant responsibilities traditionally associated with the colleges. *See N.J. Dept. of Transportation v. Brzoska,* 139 N.J. Super. 510 (App. Div. 1976); *Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education* 78 N.J. 144 (1978).

Finally, it should be noted that even if a corporation could be deemed truly independent of its parent college, and was engaged in a function which may be legitimately contracted out to a private concern, college transactions with that entity would necessarily entail compliance with statutory requirements concerning contracts with private entities. For example, if the college determined that it did not desire to operate a campus cafeteria service itself, there would not be any authority for the college to award the contract unilaterally to the purportedly independent college corporation. Rather, the college would be required to enter into such a contract only after compliance with applicable competitive bidding statutes. *See* N.J.S.A. 52:34-6, *et seq.*

In conclusion, you are hereby advised that state colleges may not use independent corporate entities to carry out college functions unless all statutory and administrative requirements imposed on state agencies are satisfied. Therefore, the following interim steps must immediately be taken:

1. All corporate employees must be advised that the corporations are in actuality components of the colleges and that the functions and duties of the corporations will be brought within the control of the college adminstration;
2. The Department of Civil Service must be provided a list of names and job functions of corporation employees so that appropriate college job titles can be created;
3. Corporate purchases must utilize the procedures set forth in the applicable state bidding laws;
4. Certified audits of corporate accounts must be forwarded to the Chancellor and the State Treasurer; and
5. The Legislature must be advised of the status of college corporate accounts prior to submission of budget requests.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General

November 17, 1980

BARRY SKOKOWSKI, *Acting Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 23—1980

Dear Mr. Skokowski:

You have raised a question with us concerning the manner in which the proceeds of the sale of municipal assets are to be treated under the Local Government Cap Law. Your question is whether such proceeds are to be treated in the same manner as all other modifications under the statute, that is, as a modification to the statute's spending limitation both in the year in which such proceeds are appropriated and in the year subsequent to such appropriation. For the reasons which are set forth in

Formal Opinion No. 3—1977, you are advised that the amount of such proceeds are to be treated in the same manner as are other modifications under the statute, that is, as a modification both in the year in which such proceeds are appropriated in a municipality's budget and in the following year in calculating the municipality's CAP base.

The manner in which appropriations which qualify as modifications should be treated under the law was exhaustively reviewed in Attorney General's *Formal Opinion No. 3—1977.* The answer to your question is readily apparent to a reader of that opinion and we need not repeat it extensively here. Suffice it to say that it was stated in that opinion that a municipality in calculating its permissible spending increase should use a specific formula. A municipality should subtract from its final appropriations for the previous year those appropriations which qualified as modifications during that year under one or more of the provisions of N.J.S.A. 40A:4-45.3. In this manner a municipality derives a base upon which it calculates its permissible spending increase for the coming fiscal year. This spending increase is computed by multiplying the CAP base by 5%. The CAP base and the allowable increase are added together to yield the amount a municipality may expend within its spending limit.

It has therefore always been clear under *Formal Opinion No. 3— 1977* that appropriations which fall within one of the modifications set forth in N.J.S.A. 40A:4-45.3 should be treated as a modification both in the year in which such appropriations are made and in the calculation of a municipality's CAP base in the following year. Since in the present situation the proceeds of the sale of a municipality's assets have been provided as an exception to the statute's spending limitation, N.J.S.A. 40A:4-45.3(h), the proceeds of a sale should be treated as a modification to the statute's spending limit in the manner set forth in the formal opinion. To do otherwise, i.e., to allow the amount of such proceeds to become part of a municipality's CAP base in a subsequent year, would permanently expand the base and allow for a permanent increase in municipal expenditures in excess of an amount contemplated by the Legislature.

In conclusion, you are advised that consistent with the reasoning set forth in *Formal Opinion No. 3—1977* the proceeds of the sale of a municipality's assets should be treated as a modification both in the year in which the proceeds are appropriated in a municipality's budget and in the calculation of the municipality's CAP base for the subsequent year.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

* We understand that the Division may not have treated such sales in accordance with *Formal Opinion No 3—1977* over the past three years and that to alter that position now may cause substantial disruption in such municipalities which have relied upon the Division's tolerance of their erroneous treatment of such sales. That is regrettable and we would expect that they may look to the Legislature for redress.

November 24, 1980

EDWIN H. ALBANO, M.D.
President
N.J. State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

FORMAL OPINION NO. 24—1980

Dear Dr. Albano:

You have requested our opinion regarding the constitutionality of that portion of the act regulating podiatry, which authorizes licensure of podiatrists through endorsement of licenses issued in other jurisdictions, but only if the podiatrist then establishes legal residence in New Jersey and practices only in this State. You are advised that that provision is unconstitutional.

The podiatry statute contains two sections bearing upon the licensing of podiatrists. Under N.J.S.A. 45:5-3 an applicant may obtain a license through examination after first having submitted to the Board various documentation concerning his background; not mentioned are any requirements that the applicant, either before or after being licensed, must reside or work in New Jersey. The alternate route for licensure is N.J.S.A. 45:5-7, which authorizes the Board to issue a license through endorsement of a license to practice podiatry previously issued in another jurisdiction. Under this alternative, by contrast, the applicant does face residency and practice requirements, for the applicant "shall, within six months after the issuance of his license hereunder, remove to this State, establish his permanent and only legal residence and cease to operate his practice in the State from which he applies and not use such license for part-time practice in this State."* The statute thus differentiates between two types of podiatry licensees—those licensed by examination and those licensed through endorsement of a sister state license—and imposes upon the latter class regulatory requirements not imposed upon the former.

As a general matter, a legislatively-chosen system of regulation will stand "[i]f the need [for governmental control] is not wholly illusory and the regulation imposed is reasonably calculated to satisfy the need . . .," for "[i]f the subject is within the police power of the State, even debatable questions as to reasonableness of the means employed are not for the courts but for the Legislature." *N.J. Chapter, American Institute of Planners v. N.J. State Bd. of Professional Planners,* 48 N.J. 581, 600 (1967). Nevertheless, a genuine public need upon which the regulatory constraints are to operate must exist, for a statute "may not transcend public need and must bear a real and substantial relationship to the objectives of the [legislation]." *Hudson Circle Servicecenter, Inc. v. Kearny,* 70 N.J. 289, 301 (1976).

Moreover, "[w]hile the due process and equal protection guarantees are not coterminous in their spheres of protection, equality of right is fundamental in both." *Washington National Ins. Co. v. Bd. of Review,* 1 N.J. 545, 553 (1949). As the Supreme Court of New Jersey has said:

> Each forbids class legislation arbitrarily discriminatory against some and favoring others in like circumstances. It is essential that the classification itself be reasonable and not arbitrary, and be based upon material and substantial distinctions and differences reasonably related to the subject matter of the legislation or considerations of policy and that there be uniformity within the class. [*Id.*]

Equal protection "requires more of a state law than nondiscriminatory application within the class it establishes. . . . It also imposes a requirement of some rationality in the nature of the class singled out." *Rinaldi v. Yeager,* 384 U.S. 305, 308-309, 86 S. Ct. 1497, 16 L. Ed. 2d 577 (1966). Stated another way, "[a]lthough the Legislature has broad discretion in selecting those who shall be affected by its enactments, such selection must be reasonable and include all those who naturally fall within the class." *DeMonaco v. Renton,* 18 N.J. 352, 358 (1955).

Upon reviewing the podiatry statute, there does not appear to be any rational basis for imposing upon podiatrists licensed through endorsement obligations of residency and practice not imposed upon podiatrists licensed through examination. To be sure, the State does have an interest in assuring that a professional licensee maintain adequate contacts with it as the

* The pertinent portion of the provision reads:

"Any applicant for a license to practice podiatry upon proving that he has been examined and licensed by the examining and licensing board of another State, territory of the United States, or the District of Columbia, may in the discretion of the board be granted a license to practice podiatry without further examination upon payment to the board of a licensee fee of $100.00; provided, such applicant shall furnish proof that he can fulfill the requirements demanded in the other sections of this chapter relating to applicants for admission by examinations; provided further, that the laws of such State, territory or the District of Columbia accords equal reciprocal rights to a licensed podiatrist of this State, who desires to practice his profession in such State, territory or the District of Columbia; provided further, that said applicant has been in lawful and ethical practice of podiatry in the State, territory or District of Columbia from which he applies for 5 full consecutive years next prior to filling his application; *and provided further, that said applicant shall, within 6 months after the issuance of his license hereunder, remove to this State, establish his permanent and only legal residence and cease to operate his practice in the State from which he applies and not use such license for part-time practice in this State. An affidavit setting forth his intention to comply with the requirements of this proviso must be filed with the application for license.* In any such application for a license without examination, all reciprocalquestions of academic requirements of other states, territories or the District of Columbia shall be determined by the board. The board shall consider each application for such license on its individual merits and may, in its discretion and without establishing a precedent, waive the requirements for internship in lieu of 10 or more years of active and continuous ethical practice outside of this State.

"The board may issue to any licensed podiatrist of this State, known to it to be of good moral character and who has conducted an ethical practice in this State, and who desires to remove his residence and practice to another state, a certificate or certification authenticated with its seal, which shall attest such information as may be necessary for competent boards of other states to determine reciprocity qualifications, upon payment of a fee of $10.00."

licensing jurisdiction. *See e.g.* R. 1:21-1(a), requiring a New Jersey-licensed attorney either to be domiciled and maintain a bona fide office for the practice of law in New Jersey or, if not domiciled in New Jersey, maintain within the State his principal office for the practice of law; *Wilson v. Wilson,* 416 F. Supp. 984, 986-988 (D. Ore. 1976) (3 judge court), *aff'd mem.* 430 U.S. 925, 97 S. Ct. 1540, 51 L. Ed. 2d 768 (1977), holding that an applicant to the bar may be required to state his intent to be a resident at the time of admission; *Lipman v. Van Zant,* 329 F. Supp. 391, 401-404 (N.D. Miss. 1971) (3 judge court), holding that a state may require residency at the time of the bar examination for character investigation. Consequently, were the sort of residency and practice requirements set forth in N.J.S.A. 45:5-7 imposed upon *all* podiatry licensees, whether licensed by endorsement or examination, there would be no constitutional infirmity. As the matter stands, however, one category of licensees—those licensed through endorsement of sister state licenses—has been singled out, and therefore some characteristic which is unique to podiatry licensees by endorsement and which engenders a particular kind of regulatory difficulty must be identified in order to justify the classification. Having been unable to identify any reasonable basis for this classification, we conclude that the statutory scheme denies endorsement licensees due process and equal protection of the law, *U.S. Const.,* Amend. XIV.

You are advised therefore that that portion of N.J.S.A. 45:5-7 which conditions the licensure of podiatrists through endorsement of licenses issued in other jurisdictions upon the podiatrist's establishing legal residence in New Jersey and practicing only in the State is unconstitutional and should not be enforced.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: BERTRAM P. GOLTZ, JR.
Deputy Attorney General

December 5, 1980

T. EDWARD HOLLANDER, *Chancellor*
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 25—1980

Dear Chancellor Hollander:

You have asked whether the Board of Higher Education has the statutory authority to regulate foreign medical schools operating in New Jersey. The reason for your inquiry is that a number of foreign medical schools have contracted with New Jersey hospitals to permit their matriculating students to observe and conduct clinical procedures in those hospi-

tals. This educational experience is credited by the medical school as satisfactory completion of the students' requisite seventh and eight semesters of clinical instruction. For the following reasons, you are hereby advised that the Board of Higher Education does not have the authority to license foreign medical schools nor regulate their course of instruction in the state.

The Board of Higher Education has been vested with the general authority to supervise the system of higher education and to regulate institutions of higher education operating in the state. N.J.S.A. 18A:3-13. The Board is also required to license institutions of higher education operating in the state. N.J.S.A. 18A:68-6. N.J.S.A. 18A:68-3 prohibits the offering of instruction leading toward the attainment of a degree without a license obtained by the Board of Higher Education. That statute provides:

> No corporation shall furnish instruction or learning in the arts, sciences, *or professions* for the purposes of admitting any person to the grade of a degree, or shall confer or participate in conferring a degree, giving to any person a diploma of graduation or of proficiency in a course of study, in learning, or in scientific arts or methods, within this state, until it shall have filed a certified copy of its certificate of incorporation with the board of higher education and obtained from such board a license to carry on the business under rules as the board of higher education may prescribe. [Emphasis supplied.]

Similarly, N.J.S.A. 18A:68-6 prohibits the award of collegiate degrees without approval by the Board. This licensing scheme concerning collegiate institutions has been upheld as an appropriate area of regulation by the Board of Higher Education. *Shelton College v. State Board of Education,* 48 N.J. 501 (1967).

However, despite the general authority conferred on the Board of Higher Education to regulate institutions of higher education, there is a separate regulatory enactment dealing with medical schools. N.J.S.A. 18A:68-12 provides:

> No school or college shall be conducted within this state for the purpose of training or qualifying its students to practice medicine or surgery or any branch thereof or any method for the treatment of disease or any abnormal physical conditions without first securing from the state board of medical examiners a license authorizing it so to do.

The relevant statutory framework also contains a detailed legislative directive concerning the method by which such licensure shall occur. The statutes concern the information which the medical school must supply to the medical examiners in support of a licensing request, N.J.S.A. 18A:68-13, the nature of the branch of medicine which is to be taught, N.J.S.A. 18A:68-15, the term of any such license, N.J.S.A. 18A:68-16, and the penalty for violation of these statutory provisions, N.J.S.A. 18A:68-18.

It is a familiar principle of statutory construction that when two enactments deal with the same subject, one in a more general manner and the other in specific and concrete terms, the latter will supersede the former and be controlling in a given situation. *State v. Hotel Bar Foods,* 18 N.J. 115 (1955); *In Re Salaries for Probation Officers of Hudson County,* 158 N.J. Super. 363 (App. Div. 1978). The Board of Higher Education has been authorized in general terms to regulate the offering of higher education in the professions. On the other hand, the legislature in specific and comprehensive terms has placed the responsibility for the regulation and licensure of medical training upon the Board of Medical Examiners.[1] Therefore, it may reasonably be assumed the legislature intended that exclusive jurisdiction inheres in the Board of Medical Examiners as it pertains to the licensure of medical schools. This is further supported by another related rule of statutory construction that a specific later enacted statute would generally govern over an earlier more general one. *Cirangle v. Maywood Board of Education,* 164 N.J. Super. 595 (Law Div. 1979). In this case, the specific statutory scheme with respect to the regulation of medical education was enacted more than eight years after the Board of Education (now Board of Higher Education) was given general authority over institutions of higher education.

For these reasons, it is clear that while the Board of Higher Education has been given supervisory authority over instruction in higher education generally, the Board of Medical Examiners is the exclusive state agency to exercise regulatory control over medical schools. You are therefore advised that the Board of Higher Education does not have the authority to license and regulate medical schools conducted within the state.[2]

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General

1. L. 1924, c. 184, was entitled "an act for the licensing of schools and colleges for the purpose of training or qualifying students to practice medicine . . ."

2. We note that the Board of Higher Education has been given express supervisory authority over the determination of the educational curriculum and program of the College of Medicine and Dentistry. N.J.S.A. 18A:65G-6. The regulatory authority which the Board exercises over the College of Medicine and Dentistry is in no way affected by this opinion. Moreover, we understand that the Department of Higher Education in exercising this authority has developed significant expertise for the review of academic degree programs in the area of medical education. It would, therefore, be appropriate for the Board of Medical Examiners to obtain the assistance of the Department of Higher Education in carrying out its regulatory functions in the area of medical education.

December 8, 1980

BARRY SKOKOWSKI, *Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 26—1980

Dear Mr. Skokowski:

You have requested us to provide futher advice with regard to those circumstances which are necessary to warrant the adoption of an emergency appropriation by a local governmental unit. The pertinent statute is N.J.S.A. 40A:4-46 which provides as follows:

> A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

In *Formal Opinion No. 10—1980* (hereinafter *Formal Opinion No. 10*), you were advised that an emergency appropriation made pursuant to N.J.S.A. 40A:4-46 could only be made to meet expenditures which were necessitated by sudden, unanticipated and unforeseen circumstances for which adequate provision was not made in a municipality's budget. This conclusion was reached after an analysis of the basic intent and policies underlying the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, of the language of N.J.S.A. 40A:4-46 itself and of the manner in which the language set forth therein has been construed by the courts. In *Formal Opinion No. 10* it was further concluded that the word "or" in the first sentence of N.J.S.A. 40A:4-46 should properly be read as meaning "and" in order to be consistent with the legislative intent.

Questions have now arisen as to the conclusions reached in that Opinion and specifically as to the conclusion with regard to the proper construction of the term "or." After consideration of the questions raised, it is our opinion that the term "or" need not be read to mean "and" in order to effectuate the legislative intent of N.J.S.A. 40A:4-46. Rather, the word "or" can properly be accorded its commonly understood and generally accepted meaning as a disjunctive, and not a conjunctive, term. However, reading the term in this manner does not alter the overall conclusion of *Formal Opinion No. 10* that N.J.S.A. 40A:4-46 requires that an emergency appropriation may only be made to meet an immediate need for expenditure which results from emergent, that is, from sudden, unexpected or unanticipated, circumstances.

It was noted in *Formal Opinion No. 10* that the Local Budget Law, N.J.S.A. 40A:4-1 *et seq.*, of which N.J.S.A. 40A:4-46 is an integral part,

requires that municipal and county budgets be prepared on a "cash basis." A "cash basis" budget is defined in the statute as a budget which ensures that there will be sufficient cash collected to meet all debt service requirements, to pay all necessary operations of the local unit and to cover all mandatory payments required by law during the local governing body's fiscal year. N.J.S.A. 40A:4-2. Since tax bills are prepared on the basis of the amount of such appropriations, N.J.S.A. 40A:4-17, it is essential that the appropriations be sufficient to cover an entire year. Further, to ensure public participation in the process of preparing such a budget and permit public comment upon the amounts to be expended for public services during the course of the year, the law requires advertisement of the budget and a public hearing with regard to same prior to its final adoption. N.J.S.A. 40A:4-6, 7 and 8. These requirements are intended to ensure that a local governing body will not make expenditures which will exceed the amounts appropriated in the budget for that year. *State v. Boncelet,* 107 N.J. Super. 444, 450 (App. Div. 1969).

It was accordingly reasoned that the emergency appropriation process provided for by N.J.S.A. 40A:4-46 was not intended merely to provide a means for the making of supplemental or additional appropriations which a local governing body chose not to make in its annual budget. Such a construction would undermine the very purpose of requiring the adoption of a cash basis budget as well as subverting the public participation for which the Local Budget Law provides. Rather, the intent and policies of that statute clearly require that appropriations made pursuant to N.J.S.A. 40A:4-46 be made to meet expenditures necessitated by emergencies, that is, by sudden and unanticipated circumstances requiring immediate responsive action.

It was further noted in *Formal Opinion No. 10* that such a conclusion was supported upon consideration of the specific language in N.J.S.A. 40A:4-46. As noted, the commonly understood meaning of the term "emergency" is a "sudden, generally unexpected occurrence or set of circumstances demanding immediate action." *Webster's New Dictionary of the American Language, Second College Edition,* 1972. It was noted that the courts of this State have construed the term "emergency" in this manner. *Scatuorchio v. Jersey City Incinerator Authority,* 14 N.J. 72, 87-93 (1953); *Bd. of Ed. of Elizabeth v. Elizabeth,* 13 N.J. 589, 593-594 (1953); *Mount Laurel Township v. Local Finance Board,* 166 N.J. Super. 254, 256-257 (App. Div. 1978), *aff'd* 79 N.J. 397 (1979); *Newark Teachers Assoc. v. Bd. of Education,* 108 N.J. Super. 34, 47 (Law Div. 1969); *Lyons v. Bayonne,* 101 N.J.L. 455-457 (S. Ct. 1925). Thus, the very language of N.J.S.A. 40A:4-46, i.e., the use of the term "emergency" to define and describe the type of appropriation permitted to be made under that provision, indicates that the provision was intended to authorize appropriations to meet expenditures necessitated by sudden and unanticipated circumstances requiring immediate action. Therefore, *Formal Opinion No. 10* concluded that the term "or" in the first sentence of N.J.S.A. 40A:4-46 should be read as meaning "and", since to do so would be consistent with the overall intent of the provision.

However, it is clear upon further consideration that reading the word "or" as meaning "and" is neither required nor necessary in order to

preserve the basic intent of the provision. Construing "or" in the first sentence of the statutory section as meaning the disjunctive "or" would mean either that an emergency appropriation could be made for a purpose which was not foreseen at the time of the adoption of a local governing body's budget or that an emergency appropriation could be made for a purpose for which adequate provision was not made in such a budget. In either case, the types of appropriations which could properly be made would nevertheless be limited to appropriations made to deal with "emergencies," that is, with sudden and unanticipated occurrences or circumstances requiring immediate action.

An emergency appropriation could thus be made for a purpose which was not foreseen at the time of the adoption of a local budget, such as the reconstruction of a municipal road or bridge which had collapsed, provided that circumstances of an emergent nature created the need to make such an appropriation. Alternatively, an emergency appropriation could be made for a purpose which was foreseen at the time of the adoption of a local budget but for which adequate provision was not made. An example would be an instance where a municipality made appropriations for fire protection in its budget but experienced an unexpectedly large number of fires or a fire of an unexpectedly great magnitude during the course of the year which in turn caused the municipality's fire protection appropriation to be expended at a more rapid rate than the municipality had anticipated. In these situations, however, the circumstances creating the need for the emergency appropriation would have to be emergent, that is, sudden and unanticipated.

For these reasons, you are hereby advised that *Formal Opinion No. 10—1980* is modified to the extent it is now our opinion that a local government unit may make an emergency appropriation either for a purpose which was not foreseen at the time of the adoption of its budget or, in the alternative, for a purpose for which adequate provision was not made therein. You are further advised, however, that, consistent with the advice given in that Opinion, an emergency appropriation made pursuant to N.J.S.A. 40A:4-46 may only be adopted to meet expenditures necessitated by sudden, unanticipated and unexpected circumstances which require immediate action.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

January 14, 1981

HON. FRED G. BURKE
Commissioner of Education
Department of Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1981

Dear Commissioner Burke:

The Department of Education has submitted for our review a contract between the Essex County Educational Services Commission and the Education and Training Consultants, Inc., concerning the provision of educational services to non-public school pupils. The Department indicates that this contract was not submitted by the Commission to either the State Board of Education or to you for review prior to its execution. The question specifically posed, therefore, is whether the Commission, pursuant to the terms of the contract, may appropriately relinquish its responsibilities for the provision of these educational services to a private, profit-making organization.

In accordance with this contract, executed on July 8, 1980, the private corporation, Education and Training Consultants, Inc., is to provide fifty hours of actual instructional time to all pupils enrolled in the "Direct Services to Non-Public Schools Project."[1] The private corporation further agreed to provide the educational services in accordance with a Program Plan approved by the Commission or its Executive Director. The Plan was to provide:

> school and instructional calendars, class size, teacher performance evaluation, teacher professional development, student assessment and evaluations, group in-put, both public and non-public instructional materials to be used, the educational strategies to be employed and such other matters as may be deemed necessary by the Commission and/or its Executive Director.

The contract stated that instruction was to be provided in mobile classrooms leased by the Commission and that the private corporation was to assume responsibility for lease payments on these vehicles.

In exchange for the performance of these services, the private contractor was to receive "in ten (10) equal monthly installments for each enrolled

1. At the time the contract was entered into, it was estimated that the number of non-public school pupils, enrolled in various aspects of the "Project," would be:

1. Compensatory Education	9,000
2. English as a Second Language	1,800
3. Corrective Speech Services	4,500
4. Supplementary Instruction without VI-B	450
5. Supplementary Instruction with VI-B	450
6. Home Instruction	180
7. Examination and Classification of Potentially Handicapped	1,800

student . . . an amount equal to the pupil costs as set forth in the . . . bid proposal . . ." The total cost of pupil services, as set forth in the bid proposal, was $3,900,114. These monthly payments were to be made by the Commission as it received the moneys due it from local school districts on whose behalf the educational services were to be provided. From these monthly installments would be deducted the lease payments for the mobile classrooms and a charge representing the "administrative services provided by the Commission to carry out the purpose and effect" of the contract.

The contract term is from July 1, 1980 to June 30, 1981 and the agreement contains the following provision:

> In the event this entire contract shall be found to be void, illegal, or against public policy, then this contract shall be deemed to be null and void *ab initio* and all rights, obligations and duties hereunder shall be considered terminated and at an end.

In order to determine the propriety of this contractual arrangement, it is necessary to consider two provisions of the school law: the first governing educational services commissions and the second structuring the provision of certain remedial and auxiliary educational services to pupils in both public and nonpublic schools.

In 1968, the Legislature enacted c. 243, P.L. 1968, N.J.S.A. 18A:6-51 *et seq.*, which authorized the establishment of educational services commissions. This Act defined a commission as:

> an agency established or to be established in one or more counties for the purpose of carrying on programs of educational research and development and providing to public school districts such educational and administrative services as may be authorized pursuant to rules of the State Board of Education. [N.J.S.A. 18A:6-51(a).]

In order to establish an educational services commission, the interested boards of education must file a petition with the State Board of Education together with a report setting forth the needed educational services to be provided by the Commission, the cost of same and "a method of financing the operation . . . until such can be financed under its first regularly adopted budget. . ." If the State Board determines that the need for the proposed educational services commission exists and that the operation of the commission is feasible, "it shall approve the petition and so notify the petitioning boards of education." N.J.S.A. 18A:6-52.

Once a commission is established, its board of directors:

> shall from time to time determine what services are to be provided by the commission, subject to the approval of and pursuant to rules of the State Board of Education. It shall determine the cost of providing such services, and may enter into contracts with member school districts to provide such services. [N.J.S.A. 18A:6-63.]

Similarly, N.J.S.A. 18A:6-69 provides that the purpose for which an educational services commission was approved may be enlarged, "upon application to and approval by the State Board of Education." Furthermore, an educational services commission is specifically authorized to employ teachers, principals and other employees necessary to provide the educational services so approved by the State Board of Education. N.J.S.A. 18A:6-65.

In accordance with this detailed statutory scheme, on November 29, 1978, the Essex County Superintendent of Schools, on behalf of the petitioning boards of education, requested approval for the establishment of an Educational Services Commission in Essex County. The Program Plan submitted for the proposed commission included, *inter alia,* the provision of educational services to 105 non-public schools. With regard to these services, the Plan specified:

> It is anticipated that both diagnostic and instructional services will be provided and that compensatory education will also be included for those non-handicapped students attending non-public facilities.
>
> These services can be divided into six specific areas. These are:
> 1. Examination and classification of students potentially handicapped.
> 2. Speech correction services for students defined to have minor articulation disorders.
> 3. English as a second language.
> 4. Supplementary instruction.
> 5. Home instruction services.
> 6. Compensatory education.

The Plan also provided that resident students requiring services outside the County would be contracted for by the Commission and further that the Commission would "accept tuition students for districts outside Essex County whose students attend any of the (non-public) schools being serviced."

The State Board of Education at its meeting of December 6, 1978, approved establishment of the Educational Services Commission for Essex County for the provision of the educational services included in its Program Plan.[2] The Commission was, therefore, authorized to provide certain remedial and auxiliary educational services to non-public school pupils.

These educational services were authorized by c. 192, P.L. 1977 and c. 193, P.L. 1977. The intent of this legislation was to insure that the State "provide remedial services for handicapped children" and "furnish on an equal basis auxiliary services" to all pupils in the State in both public and non-public schools. N.J.S.A. 18A:46-19.1 and 18A:46A-1. "Auxiliary ser-

2. On January 2, 1980, the Essex County Educational Services Commission sought an enlargement of its original purpose pursuant to N.J.S.A. 18A:6-69. The State Board, at its January 9, 1980 meeting approved expansion of services provided to local districts to include direct computer services. This change of purpose does not implicate the subject matter of the present opinion.

vices," authorized by c. 192, were defined as "compensatory education services; supportive services for acquiring communication proficiency in the English language for children of limited English-speaking ability; supplementary instruction services; and, home instruction services." N.J.S.A. 18A:46A-2(c). These services were only to be provided those "children who would be eligible for such services and for the appropriate categorical program support if they were enrolled in the public schools of the State." N.J.S.A. 18A:46A-4. Furthermore, the law specifically precludes the provision of these services in a church or sectarian school. However, a local board of education "may contract with an *educational improvement center, an educational service commission or other public or private agency* other than a church or sectarian school, *approved by the commissioner* for the provision of auxiliary services." N.J.S.A. 18A:46A-7. (Emphasis added.) In addition to these services, c. 193, P.L. 1977, authorizes the provision of diagnostic and therapeutic services to handicapped pupils attending non-public schools. N.J.S.A. 18A:46-19.1, *et seq.* Local boards of education may also contract with educational services commissions or other public or private agencies for the provision of these services. N.J.S.A. 18A:46-19.7. However, both legislative enactments, and the regulations adopted by the State Board of Education to implement them, require that the Commissioner of Education approve such contractual arrangements. N.J.S.A. 18A:46A-7; 18A:46-19.7; N.J.A.C. 6:28-5.3, 6:28-6.3.

Although the above described statutory provisions require local boards of education to provide auxiliary, diagnostic and therapeutic services to non-public pupils resident within their borders, the costs for such services are met entirely with State aid. Pursuant to the statutory scheme, on November 1 of each year, local boards of education are informed of the amount of State aid they may anticipate in their budget for the next school year for the provision of these services. The entitlement of State aid is based on the Statewide average cost of providing these services to public school pupils multiplied by the number of non-public school pupils expected to receive such services. N.J.S.A. 18A:46A-11, 12; 18A:46-19.8; N.J.A.C. 6:28-5.5; 6:28-6.5. Local school districts are paid State aid for these services "in equal amounts beginning on the first day of September and on the first day of each month during the remainder of the school year." Should the amount of State aid received by a district exceed the costs incurred by the district for the provision of educational services to non-public school pupils, the district's State aid for the following year would be reduced to the extent of such surplus. Moreover, a district is not required to make expenditures for those services in "excess to the amount of State aid received." N.J.S.A. 18A:46A-14, 15; 18A:46-19.8.

Pursuant to this statutory scheme, local boards of education contracted with the Essex County Educational Services Commission, during the 1979-80 school year, for the provision of auxiliary, diagnostic and therapeutic services for those non-public school pupils within their districts entitled to these services. Consistent with the provisions of N.J.S.A. 18A:46A-13 and 18A:46-19.8, the monthly State aid payments necessary to meet these educational costs were made to the local school districts. Upon receipt, the districts forwarded the State aid moneys to the Essex County Commission in accordance with their contractual agreement. This

arrangement was in harmony with the statutory scheme governing the provision of educational services to non-public school pupils and fully comported with the purposes for which the Commission had been authorized by the State Board of Education. Prior to the commencement of the 1980-81 school year, however, the Commission entered into a contract with Education and Training Consultants, Inc., a private, profit-making corporation, which is the subject of the present inquiry. The question projected is whether this further contractual arrangement is consistent with the requirements of N.J.S.A. 18A:6-51 *et seq.*, 18A:46-19.1 *et seq.*, and 18A:46A-1 *et seq.*

It is a fundamental tenet of statutory construction that the overall intention of the Legislature is the controlling factor in interpreting a statute. *Presberg v. Chelten Realty, Inc.*, 136 N.J. Super. 78 (Cty. Ct. 1975); Sands, *Sutherland Statutory Construction*, §45.05. Legislative intent must be gathered from the plain language of the statute under review. *Ritt v. Ritt*, 98 N.J. Super. 590, 595 (Chan. Div. 1967). In construing the laws of this State, words and phrases are to be read and construed with their context and shall "be given their generally accepted meaning according to the approved usage of the language." N.J.S.A. 1:1-1.

Furthermore, when seeking legislative intent the nature of the subject matter, the contextual setting and statutes *in pari materia* must all be viewed together and the import of particular words and phrases is controlled accordingly. *State Bd. of Medical Examiners v. Warren Hospital*, 102 N.J. Super. 407 (Cty. Ct. 1968), *aff'd* 104 N.J. Super. 409 (App. Div. 1969). Indeed, statutes relating to the same subject matter, both special and general, must be construed together as a unitary and harmonious whole so that each will be fully effective. *Bergen County Bd. of Taxation v. Borough of Bogota*, 104 N.J. Super. 499 (Law Div. 1969); Sands, *Sutherland Statutory Construction* §51.03.

The subject matter of the statutory provisions under consideration is the provision of educational services. As such, they find their ultimate source in Art. VIII, §4, ¶1 of the New Jersey Constitution which provides:

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

A consistent theme throughout the decisions of the Supreme Court of New Jersey in the landmark *Robinson* litigation was the preeminence of education among the various constitutional rights. *Robinson v. Cahill*, 62 N.J. 473 (1973), *cert. den.* 414 U.S. 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973). However, the Education Clause has been consistently construed to allow the Legislature to provide a "thorough and efficient" system of public schools by any means which achieves the ultimate constitutional objective. Historically, the Legislature has discharged its obligation by the creation of local school districts which have the primary responsibility of providing a thorough and efficient education for the children within their districts. *West Morris Reg. Bd. of Ed., et al., v. Sills, et al.*, 58 N.J. 464 (1971); *Board of Education of Elizabeth v. City Council*, 55 N.J. 501 (1970); *Board*

of Ed., E. Brunswick Tp. v. Tp. Council, 48 N.J. 94 (1966).

It is equally well established that local boards of education, as local governmental units, are but creations of the State. As such, they are capable of only exercising those powers granted them, either expressly or by fair implication, by the Legislature. *Fair Lawn Ed. Assn. v. Fair Lawn Bd. of Ed.,* 79 N.J. 574, 579 (1979); *Board of Ed. of Belvidere V. Bosco,* 138 N.J. Super. 368 (Law Div. 1975). The powers of educational services commissions are similarly circumscribed by the legislative act authorizing their establishment.

The act governing educational services commissions specifically states that such agencies are to be established to "carry on" programs of educational research and "to provide" educational and administrative services to public school districts as authorized by the State Board of Education. Indeed, the State Board is only to approve the establishment of an educational services commission when it has ascertained the need for the services which the commission proposes to provide to local boards of education. Once approved by the State Board, the Commission may enter into contracts with school districts "to provide for such services." Furthermore, the Commission is specifically empowered to employ "teachers, principals and other employees" needed to furnish the approved services to local school districts.

From the language utilized in the statute, it is clear that the Legislature intended to create, under certain circumstances, a public agency which would provide educational services on a consolidated or regional basis, to local boards of education. Clearly, the purpose of such undertaking was to upgrade the quality of services which an individual local district might be able to provide or to assure the provision of these services on a cost efficient basis.

Reading this provision within the context of the education laws, it is clear that the Legislature, which has already created local districts to discharge its responsibility under the Education Clause, has further authorized the creation of regional public agencies to assist districts in the performance of their educational functions. There is nothing in the statute authorizing the creation of these entities which indicates that such commissions may contract with private agencies for the performance of instructional services.[3] Indeed, the language selected by the legislature supports the conclusion that the Commission, upon authorization and approval by the State Board, is to furnish instructional services directly to local districts and may employ teachers and principals necessary to the performance of these educational services. To construe this statute otherwise would permit local school districts to enter into arrangements whereby their essential function, the provision of instructional services, would be performed by non-public agencies. To so remove "public education" from the public sphere would effectively frustrate the ongoing monitoring of these services by the Commissioner and State Board of Education, as was mandated by the Public School Education Act of 1975, N.J.S.A. 18A:7A-10, and

3. This opinion is strictly limited to the propriety of a contractual arrangement between an educational services commission and local school districts for the provision of instructional services.

enthusiastically approved by the Supreme Court of New Jersey in *Robinson v. Cahill,* 69 N.J. 449, 459-461 (1976). A departure so radical from the legislative scheme generally governing public education is not to be inferred from the mere silence of N.J.S.A. 18A:6-51 *et seq.* on the subject of contracts with private entities for instructional services. Indeed, where the Legislature has determined it necessary to permit local districts the flexibility of discharging their educational functions by means of a private agency, it has specifically authorized those limited arrangements by statute. Pursuant to N.J.S.A. 18A:46-14(g), local boards may provide special education to handicapped children by sending these children to privately operated day classes. However, such arrangements are only to be made if all other public options are "impractical" and only with the "consent of the commissioner." More recently, local boards have been authorized to enter into contracts with private vocational schools for vocational education courses if such course "cannot be provided by" public entities or where the private schools can "provide substantially equivalent training at a lesser cost." N.J.S.A. 18A:54-10.1. However, such arrangements are subject to detailed regulations adopted by the State Board of Education, N.J.S.A. 18A:54-10.2 and 4, N.J.A.C. 6:46-9.1 *et seq.,* and each contract for these services must be approved by the Commissioner "in writing" before its execution. N.J.S.A. 18A:54-10.4. Additionally, each private school entering into these contractual arrangements is to "make its records available for inspection by the Commissioner or his designated representative." N.J.S.A. 18A:54-10.3.[4]

The final issue to be considered is whether N.J.S.A. 18A:46A-1 *et seq.* and 46:19.1 *et seq.* provide an independent statutory basis for the contract between the Commission and the private agency. Pursuant to those statutory provisions, a local board of education is primarily responsible for the provision of auxiliary, diagnostic and therapeutic educational services to the non-public school pupils resident within its district and receives State aid to meet the costs of providing such services. Local boards, however, may "contract with an educational improvement center, educational services commission or other public or *private agency approved by the commissioner"* for the provision of these services. From the stautory scheme, it is manifest that the local board has the primary responsibility for providing these services and the option of providing them either directly or by contract with certain public or private agencies. However, it may

4. It is clear that in the limited instances where the Legislature has permitted local boards to enter into contracts with private entities for the provision of instructional programs, it has only been under circumstances where the State officials responsible for assuring the quality of public education have had explicit control over those arrangements. Even assuming that the authority to enter into the present contractual arrangement may be inferred from the language of N.J.S.A. 18A:6-5.1 *et seq.,* the Commission failed to comply with the requirement that this highly significant change in its program plan be submitted to the State Board for approval. Had such application been made, the State Board would have had the opportunity to review its propriety and educational soundness, and to impose any conditions on its approval deemed necessary to assure accountability on the part of the private agency. However, in the present situation, the approval process established by N.J.S.A. 18A:6-51 *et seq.* was simply not followed.

only contract with a private agency if it is approved by the Commissioner. Construing this statute in harmony with N.J.S.A. 18A:6-51, *et seq.*, it is clear that appropriate services to be provided by an educational services commission are those mandated by N.J.S.A. 18A:46A-1, *et seq.* and 46-19.1, *et seq.* Therefore, the State Board of Education appropriately approved that function as part of the proposed services to be provided by the Essex County Educational Services Commission. The local districts, consistent with the statutory scheme, chose to fulfill their responsibilities to non-public school pupils by contracting with a public agency, the Essex County Educational Services Commission. The statutory language makes it abundantly clear that the option of contracting with a private agency was only available to local boards of education and the boards in question rejected that option. The commission has no similar grant of discretion and cannot unilaterally negate the board's choice by entering into a contract with a private agency. Moreover, arrangements between local boards of education and private agencies for the provision of these educational services would only be consistent with the statutory scheme if the private agency were approved by the Commissioner. This statutorily required approval was not sought by the commission in the present matter.

Construing N.J.S.A. 18A:6-51, *et seq.*, within the context of the education laws as a whole and with special reference to the statutes governing educational services to non-public school pupils, it is concluded that only local boards of education have the authority to enter into contracts with private agencies for the provision of auxiliary, diagnostic and therapeutic educational services to non-public school pupils. Furthermore, such contracts may only be entered into if the private agency is approved by the Commissioner of Education. Finally, an educational services commission may only provide those services authorized by the State Board of Education and any change in the services to be provided by the Commission must be reviewed and approved by that body. For these reasons, you are advised that the Essex County Educational Services Commission acted beyond the legitimate scope of its authority when it entered into the present contract with Education and Training Consultants, Inc. Not only did the Commission act without express statutory authorization, but it also entered into this agreement without seeking the review and approval of the State Board or the approval of the Commissioner of Education. Indeed, under the latter circumstances, even local boards of education could not have validly entered into this arrangement.

Very truly yours,
JOHN J. DEGNAN
Attorney General

BY: MARY ANN BURGESS
Deputy Attorney General

February 5, 1981

DR. T. EDWARD HOLLANDER
Chancellor
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1981

Dear Chancellor Hollander:

A question has arisen concerning the applicability of state statutory requirements such as bidding laws, civil service, and treasury and budget laws to non-profit corporations known as alumni associations and development funds. We have been advised that these are independent organizations which are incorporated and controlled by private individuals for the primary purpose of engaging in fund-raising activities for various state colleges.

In *Formal Opinion No. 22—1980,* it was concluded that state colleges may not use independent corporate entities to carry out college functions unless statutory and administrative requirements imposed on state agencies were satisfied. In many instances those corporations are virtually indistinguishable from the state colleges with which they are associated. Such organizations are incorporated and controlled by college officials and are often utilized to carry out activities more appropriately supervised by the college administration. In contrast, however, development and alumni associations are controlled by boards of directors which are independent of both the boards of trustees and administrators of their affiliated colleges. These corporations do not utilize office space or employees of the college to any significant extent, provide for their own liability insurance and do not supervise or effectuate activities traditionally associated with a college administration. Most importantly, both the allocation and disbursement of the funds donated to, or raised by these corporations are made available to the colleges in the sole discretion of the corporate board of directors. The state colleges do not control, either directly or indirectly, the activities of these corporations, nor do these entities purport to carry out state mandated functions. For these reasons, you are advised that alumni associations and development funds which are in their organization and operation totally independent of state colleges and whose sole purpose is fund-raising activities, are not subject to statutory and other requirements imposed on state agencies.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General

March 10, 1981

DANIEL O'HERN, *Counsel to the Governor*
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1981

Dear Counsel O'Hern:

You have asked for an opinion as to the constitutionality of Laws of 1981, c. 27, which authorizes the legislature through the adoption of concurrent resolutions to disapprove rules and regulations proposed by state administrative agencies and to suspend adopted agency rules. For the following reasons, it is our opinion that Laws of 1981, c. 27, is unconstitutional.

Laws of 1981, c. 27, was enacted as an amendment and supplement to the Administrative Procedure Act. It requires all state agencies to submit all proposed rules prior to their adoption to the Senate and General Assembly. The Senate and General Assembly may then within a period of 60 days through the adoption of concurrent resolutions disapprove rules in whole or in part or delay their effective date for an additional period of 60 days. Also, the act provides authority for a joint legislative committee to review any rules proposed or adopted after the effective date of the act, and upon receiving the committee's report, the Senate and General Assembly may adopt a concurrent resolution suspending the rule for a period of 60 days.

The question directly posed by this legislation is whether its provisions provide a constitutionally appropriate means for the legislature to participate in the review and oversight of the rule-making activities of state agencies. The legislature normally is authorized to exercise its substantive law-making powers through the passage of bills in a manner consistent with the State Constitution. For example, a bill must be read three times in each house; one full calendar day must intervene between the second and third reading, and the bill must be adopted by a majority of all the members of each house. Art. 4, §4, ¶6. More importantly, the State Constitution includes a "presentment" clause which requires "every bill which shall have passed both houses shall be presented to the Governor for his approval or veto." Art. 5, §1, ¶ 14(a).

It is a well established proposition that concurrent resolutions passed without executive review have no effect as general legislation. *Moran v. LaGuardia,* 1 N.E. 2d 961, 962 (N.Y. Ct. of App. 1936); Gibson, *Congressional Concurrent Resolutions: An aid to statutory interpretation?,* 37 A.B.A.J. 421 (1951); 1A *Sutherland Statutory Construction* (4th ed. 1972) §29.03. Their effect is limited to the internal administration of parliamentary business or to the expression of legislative sentiment or opinion. Myers, *Joint Resolutions are Laws,* 28 A.B.A.J. 33 (1942). *See also, State v. Atterbury,* 300 S.W. 2d 806, 817, 818 (Mo. S.Ct. 1957). This proposition was discussed by the Supreme Court of New Jersey in *In the Matter of the Application of New York, Susquehanna and Western Railroad Company,* 25 N.J. 343 (1957). The railroad applied to the Board of Public Utilities commissioners for permission to curtail service. Following protracted hearings, the Senate adopted a concurrent resolution declaring the policy of the legislature against further curtailment of passenger rail service pending the final report of a Rapid Transit Commission. The Board of Public Utilities commissioners thereupon suspended all further proceedings until the submission of the report of the Commission. The Supreme Court in assessing the impact of the Senate concurrent resolution on the Board of Public Utilities declared:

> It is perfectly clear that the concurrent resolution is not an act of legislation. Art. 4, §4, ¶ 6, of the Constitution of 1947 prescribes the procedure for the passage of 'bills and joint resolutions.' The Constitution is silent with respect to concurrent resolutions. . . . The Executive Article refers only to bills in fixing the procedure for final executive action. . . . The resolution here involved is a concurrent one and of course was never submitted to the governor for his action. Except within the precincts of the legislature or perhaps where it acquires force by virtue of some specific statute, a concurrent resolution is ordinarily an expression of sentiment or opinion, without legislative quality or any coercive or operative effect. . . . [*In re Susquehanna* at 348.]

The court therefore held that the decision of the Board of Public Utilities to suspend proceedings should be reversed because the legislature may not by concurrent resolution control the functions of an administrative agency.

It is clear that under the terms of this statute the exercise of the power of disapproval over rule-making activities of state administrative agencies through the passage of concurrent resolutions is not a procedural act concerned with the internal business of the legislature or an expression of legislative opinion. It is rather a form of law-making having a direct substantive and operative effect on the rights and duties of the citizens of New Jersey without the constitutionally required opportunity for gubernatorial review and approval.

This same conclusion was reached by the court in *State v. A.L.I.V.E. Voluntary,* 606 P. 2d 769 (Alas. 1980), in reviewing legislation similar to c. 27. The court held that a statute which would permit the legislature by concurrent resolution to disapprove a regulation of a state agency was in violation of the state's constitutional means prescribed for the enactment of legislation. The court noted that when the legislature wishes to act in an advisory capacity, it may do so by resolution; but when it means to take action having a binding effect on those outside the legislature, it may do so only by following the enactment procedures in the state constitution.

Also, a recent comprehensive opinion of the United States Attorney General is directly supportive of this conclusion. In an opinion to Secretary of Education Hofstedler, dated June 6, 1980, Attorney General Civiletti concluded that §432 of the General Education Provisions Act was unconstitutional. That provision authorized Congress by concurrent resolutions that are not submitted to the President for his approval or veto to disapprove regulations promulgated by the Secretary of Education for programs administered by the Department of Education. The Attorney General pointed out that the legislative veto device found in the federal

statute was equivalent to legislation insofar as its practical effect was to allow Congress to bring a halt to substantive programs carried out at the administrative level. For that reason, the legislative veto device was found by the United States Attorney General to be inconsistent with the Presentment Clause of the United States Constitution which required all legislation to be submitted to the President for his approval or veto.

In summary, therefore, the exercise of the legislative veto as set forth in this legislation is equivalent to the enactment of legislation because it permits the legislature through the passage of concurrent resolutions to, in effect, block the execution of substantive programs by the Executive Branch. In fact, the necessary effect of a legislative veto by the passage of concurrent resolutions is to interfere with the implementation of a statutory program until the administrative agency promulgates further regulations in compliance with the policies of the legislature. For these reasons, you are advised that those provisions of Laws of 1981, c. 27, which provide for the disapproval of agency rules and regulations through the passage of concurrent resolutions by the Senate and General Assembly is inconsistent with the state constitutional means for the passage of legislation and for the presentment of the same to the governor for his review and approval.* Administrative agencies of state government should be directed that those provisions have no force and effect and state agencies should not conform their rule-making activities to the provisions of that act on its effective date.

Very truly yours,
JUDITH A. YASKIN
Acting Attorney General

* Also, there are serious constitutional questions as to whether this legislation is consistent with Art. 3 of the State Constitution providing for the separation of powers. The provisions of this legislation allow the legislature to interfere with substantive programs administered by state agencies through its rules and regulations. This is a function traditionally assigned and committed to the Executive Branch of state government.

May 13, 1981

JOAN H. WISKOWSKI, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION NO. 4—1981

Dear Director Wiskowski:

The Division of Motor Vehicles has asked for an opinion with regard to its authority to impose a one year revocation of driving privileges for the refusal of a motorist to submit to a breath chemical test. Specifically, the issue posed is whether a one year revocation should be imposed where a motorist who has previously been convicted of the substantive offense of driving while under the influence of intoxicating liquor is subsequently arrested on probable cause for driving while under the influence and refuses to take the breath chemical test. For the following reasons, you are advised that the Division of Motor Vehicles should impose a one year revocation of driving privileges in an instance where a motorist has been arrested for a subsequent drinking-driving violation and refuses to take a breath chemical test. You are further advised that there need not be a conviction on the subsequent substantive offense to warrant the imposition of the one year revocation for a refusal to take a breath chemical test.

The pertinent provision in this case is N.J.S.A. 39:4-50.4(b) which provides:

> Any revocation of the right to operate a motor vehicle over the highways of this State for refusing to submit to a chemical test shall be for 90 days *unless the refusal was in connection with a subsequent offense of this section,* in which case, the revocation period shall be 1 year. . . . [Emphasis supplied].

In *Formal Opinion No. 13—1977,* dated June 8, 1977, the Attorney General advised the Director of Motor Vehicles that a one year revocation of driving privileges should be imposed in an instance where a motorist refuses to take a breath chemical test in connection with a subsequent substantive offense of driving while intoxicated with or without regard to whether there has been a prior breath refusal connected with a previous offense. In *In the Matter of Bergwall,* 85 N.J. 382 (1981), the Supreme Court of New Jersey substantially for the reasons stated in the dissent in the Appellate Division reported at 173 N.J. Super. 431 (App. Div. 1980) held in effect that N.J.S.A. 39:4-50.4(b) should be implemented by the Division of Motor Vehicles in a manner consistent with the advice given by the Attorney General, i.e., a one year revocation of driving privileges should be imposed in an instance where a breath refusal is in connection with a subsequent substantive offense of drunk driving with or without regard to a prior breath refusal.

The question remains, which is the focus of your inquiry, whether a second or subsequent offense needed to warrant the imposition of the enhanced one year revocation was intended to require that a motorist be

convicted of a subsequent offense or rather whether an arrest on probable cause for having committed such an offense is sufficient. The legislative history underlying the enactment of this provision provides guidance. In the "Statement to the Senate Bill, No. 1423," page 2, item 8 (May 24, 1976) prepared by the Senate Law, Public Safety and Defense Committee, it is indicated that the Motor Vehicle Study Commission recommendation regarding amendment of penalty provision of the refusal statute was:

> 1st-6 mos.+
> Alcohol Education or
> Rehabilitation Subsq.
> to Prior DWI Conv.
> in 15 yrs.—2 yr.

From this language, it is apparent that the one-year suspension was intended to apply in all cases where the refusal followed a prior driving while intoxicated conviction. No other prerequisite is indicated. More specifically, no requirement is indicated that the refusal must be followed by conviction on the related drinking-driving charge before the one-year penalty shall apply.

Similarly, in the "Statement to Senate Bill, No. 1423," p. 2 (September 27, 1976) prepared by the Assembly Judiciary, Law, Public Safety and Defense Committee, it is stated that the bill, as amended, would provide, among other things, that the:

> Penalties for refusing the breath test would be a 90-day license suspension if no prior offense or 1 year suspension *if a prior* conviction within 15 years. [Emphasis added].

Again, there is no indication that anything more than the existence of a prior drinking-driving conviction followed by a refusal to take the breath test is needed before the one-year suspension will apply. It appears that probable cause to believe that the offense has been committed when coupled with the existence of the prior driving while intoxicated conviction was apparently thought sufficient by the Legislature to trigger the enhanced penalty provision for a breath refusal.

This was also the understanding of the Governor when he signed the bill into law. In his Statement upon signing of Senate Bills Nos. 1416-1423, p. 4, released February 24, 1977, it was stated that:

> Refusal to take the breath test after arrest for suspected drunken driving will result in a 90 day license suspension if no prior conviction exists and one year if there has been prior conviction within 15 years.

Again, the import is clear—conviction on the driving while intoxicated charge which accompanied the breath test request and refusal is *not* a prerequisite to imposition of the one-year suspension.

This conclusion, drawn from the available legislative history, is fully consistent with an apparent legislative purpose to encourage motorists who

have previously been convicted of driving while intoxicated and who are again arrested for that same offense to take the breathalyzer test. This presumed legislative purpose is reflected in the Motor Vehicle Study Commission's 1975 report, which report was substantially relied upon by the legislature in drafting its extensive amendments in 1977 to the Motor Vehicle Act. The Commission noted that:

> If an individual is a second offender under the impaired statute, it is advantageous for him to refuse the test, since the penalty he must receive, if convicted, is two years loss of license. If he is charged with driving while under the influence, he faces either a two or ten year revocation, depending on his prior record. By refusing the test, he deprives the state of objective evidence of intoxication or impairment (and perhaps evidence of his own innocence) and risks a six-month suspension. . . .
>
> . . . .
>
> It is presently advantageous for an individual to refuse the breath test since the refusal suspension penalty is so much shorter than any penalty imposed under N.J.S.A. 39:4-50 except for a first 'impaired' offense. That advantage should be removed from the law so that more individuals will be induced to take the test. [Report of the Motor Vehicle Study Commission, September 1975, at pp. 147-48, 150-51.]

Therefore, it should be noted that if a conviction on a subsequent driving while under the influence charge is required as a precondition to the imposition of a one year revocation for refusal to take a breath test, the incentive to take a breath test will be lost, i.e., in the event a motorist believes he can win acquittal on the subsequent offense by refusing to take the breath test, he would have every reason to do so for he would also thereby avoid the one year suspension for the breath refusal. On the other hand, under an interpretation of the statutory language which would allow the imposition of the one year revocation whether or not a conviction is obtained on the drinking-driving violation, the incentive to take the breath test clearly exists.

For these reasons, you are advised that the Director should impose a one year revocation of driving privileges in an instance where a motorist who has previously been convicted of the substantive offense of driving while under the influence of intoxicating liquor has again been arrested on probable cause for the offense and refuses to take a breath chemical test. There need not be a conviction obtained on the substantive offense to warrant the imposition of the one year revocation for a breath refusal.

Very truly yours,
JAMES R. ZAZZALI
Attorney General
By: ROBERT M. JAWORSKI
Deputy Attorney General

July 13, 1981

CHRISTOPHER DIETZ, *Chairman*
State Parole Board
Whittlesey Road
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1981

Dear Chairman Dietz:

You have requested advice on several questions with regard to that provision of the Penal Code which governs the disposition, treatment and parole of sex offender inmates sentenced to the Adult Diagnostic and Treatment Center (hereinafter referred to as ADTC or Center). Your questions are concerned with whether various categories of inmates should be deemed eligible for parole consideration by the Parole Board only after recomendation by a special classification review board or, on the other hand, whether categories of inmates should be regarded eligible for parole consideration subject to the provisions of Title 30 governing parole.

Prior to providing an analysis of each of the specific inquires made by you, it is necessary to review both the applicable provisions of the pre-Code legislation and those now made a part of the Penal Code which govern the treatment and parole of sex offenders. Under N.J.S.A. 2A:164-8, sex offenders were eligible for release under parole supervision at any time after their confinement upon a recommendation of the special classification review board that they were "capable of making an acceptable social adjustment in the community."[1] The same administrative procedure and standard for release of sex offenders are in effect with the adoption of the Penal Code in N.J.S.A. 2C:47-5.

In N.J.S.A. 2C:47-4, however, the legislature has made provision for the release of those sex offenders transferred out of the ADTC. The precise statutory language is essential to a disposition of your inquiries and it is therefore set forth at length as follows:

> a. The Commissioner of the Department of Corrections, upon commitment of such person, shall provide for his treatment in the Adult Diagnostic and Treatment Center.
>
> b. The Commissioner may, in his discretion, order the transfer of a person sentenced under this chapter out of the Adult Diagnostic and Treatment Center. In the event of such a transfer the conditions of confinement and release of such person transferred shall no longer be governed by this chapter.

1. The statute, repealed by Laws of 1978, c. 95, effective September 1, 1979, provided in pertinent part:

> Any person committed to confinement, as provided for in section 2A:164-6 of this title, may be released under parole supervision when it shall appear to the satisfaction of the state parole board, after recommendation by a special classification review board appointed by the state board of control of institutions and agencies, that such person is capable of making an acceptable social adjustment in the community.

> c. If, in the opinion of the commissioner, upon the written recommendation of the Special Classification Review Board continued confinement is not necessary, he shall move before the sentencing court for modification of the sentence originally imposed.

It is clear from a straightforward reading of subsection b that in any instance where the Commissioner of Corrections in the exercise of his discretion orders the transfer of a person sentenced under the Penal Code out of the ADTC, the conditions of confinement and parole release of such an inmate should no longer be governed by those provisions governing the parole of sex offenders, but rather those enactments in Title 30 generally governing the parole of inmates incarcerated in state correctional institutions.

The question, then, arises as to whether the provisions for parole release set forth in N.J.S.A. 2C:47-4(b) apply both to those sex offenders sentenced under the repealed Sex Offenders Act and not resentenced under the Penal Code and to those sex offenders resentenced under the Penal Code. In this regard, it is necessary to again refer to the statutory language in subsection b which provides in pertinent part that "the Commissioner may, in his discretion, order the transfer of a person *sentenced under this chapter* out of the Adult Diagnostic and Treatment Center." It is apparent that the legislature intended that this provision apply only to that class of sex offender "sentenced under the Penal Code." Although provisions of the Code for the release of prisoners are generally applicable to those under sentence for offenses committed prior to its effective date, N.J.S.A. 2C:1-1d(1),[2] in this instance the legislature has made specific reference to only those sex offenders sentenced under the Penal Code. Consistent with the rule of statutory construction that a specific statutory section governs over the terms of a more general one, it is fair to conclude that the legislature did not intend to extend the provisions of N.J.S.A. 2C:47-4(b) to those sex offenders who have not been resentenced under the Penal Code.

This conclusion is supported by the fact that the enactment of the Penal Code did not in itself reduce or otherwise affect pre-Code sentences. The reduction of pre-Code sentences may only be accomplished upon motion with a showing of disparity in sentences with equivalent offenses and for good cause shown for resentencing. N.J.S.A. 2C:1-1d(2). Therefore, those sex offenders, whether or not transferred out of the ADTC, who have not been resentenced under the Code, continue to serve sentences under the Sex Offender Act prior to its repeal, integral to which eligibility for parole release upon the recommendation of a special classification review board.

2. The statute provides as follows:

> The provisions of the code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to the effective date of the code, except that the minimum or maximum period of their detention or supervision shall in no case be increased.

The legislative policy underlying the Sex Offender Act prior to its repeal was recently reviewed by the Appellate Division in *Savad v. Corrections,* 178 N.J. Super. 386, 390 (App. Div. 1981). The court stated that:

> Progress through treatment and therapy to an acceptable social adjustment was the legislative goal of the repealed Sex Offender Act. Upon satisfactory rehabilitation from their aberrations pre-Code sex offenders . . . were immediately eligible for parole. At the other extreme, their maximums were those fixed by law for the crimes for which they were committed.
>
> Their terms of confinement were thus bounded: release at any time upon satisfactory rehabilitation and social adjustment up to the statutory maximum term of imprisonment. . . .

The major change effected by the enactment of the Penal Code is that sex offenders are sentenced to a specific term of years rather than to an indeterminate term. N.J.S.A. 2C:47-3(b). A sex offender, consequently, is now sentenced to a determinate term in the same manner as are other inmates incarcerated in state correctional institutions.

The legislative policy underlying the sentencing procedures provided for sex offenders under the Penal Code must be considered together with significant changes made in laws concerning eligibility for parole consideration in the 1979 Parole Act. Related statutes must be interpreted together to discern a consistent legislative pattern. *Loboda v. Clark Tp.,* 40 N.J. 424, 435 (1963). In the parole legislation, it is provided that eligibility should be determined for each adult inmate sentenced to a specific term of years. N.J.S.A. 30:4-123.51a. It is apparent that the legislature intended to refer to a specific term of years mandated by a court under the Penal Code and not to an indeterminate term. Consequently, only those sex offenders sentenced or resentenced under the Penal Code would be eligible for parole under non-ADTC guidelines established by the 1979 Parole Act. Those sex offenders transferred out of the ADTC who have not been resentenced under the Code, continue to be eligible for parole release only upon the recommendation of the special classification review board.

There can be no doubt but that this proposition applies not only to inmates transferred by the Commissioner subsequent to their being resentenced under the Code, but also to those sex offenders in the general prison population transferred out of the ADTC prior to resentencing under the Penal Code. The provisions of the Code for the release or discharge of prisoners are clearly applicable to those under sentence for offenses committed prior to its effective date. N.J.S.A. 2C:1-1d(1). The statutory procedure for the release and parole of sex offenders who are transferred out of the ADTC consequently, by operation of the statute, applies to both sex offenders originally transferred under the repealed Sex Offender Act as well as those transferred for the first time under the Code.

In light of this background, your first inquiry concerns the treatment of an inmate sentenced to a term in the Center prior to the effective date of the Penal Code and who is transferred out of the Center to a state prison facility prior to the effective date of the Code and who is not resentenced under the Code. It is our opinion that since in that case an inmate has

not been resentenced under the Code, the provisions of N.J.S.A. 2C:47-4(b) are not applicable and the inmate should be considered eligible for release under parole supervision consistent with the terms of N.J.S.A. 2A:164-8

The second category posed by you is an inmate sentenced to a term in the Center prior to the effective date of the Code and who is transferred out of the Center to a state prison facility prior to the Code and who is resentenced under the Code. It is clear that under those circumstances, since a sex offender has been resentenced under the Code, the provisions of N.J.S.A. 2C:47-4(b) are applicable and the conditions of confinement and release of such a person should be governed by those provisions of Title 30 governing parole release. This conclusion, furthermore, is supported by the decision of the United States District Court in *McCray v. Dietz,* 517 F. Supp. 787 (D. N.J. 1980), where the court held that an inmate resentenced under the Code who had been transferred out of the Center prior to the enactment of the Code, was entitled to an immediate parole release hearing under non-ADTC parole guidelines.

In the third category, a sex offender is sentenced to a term in the Center prior to the enactment of the Code and is transferred out of the Center to a state prison facility after the enactment of the Code and is not resentenced under the Code. Again, in this case, a sex offender has not been resentenced under the provisions of the Code and, as in the first example, the provisions of N.J.S.A. 2A:164-8 should govern eligibility for release under parole supervision.

Finally, the last category of sex offender is sentenced to a term in the Center prior to the enactment of the Code and is transferred out of the Center to a state prison facility after the enactment of the Code and is resentenced under the Code. There can be no question but that the provisions of N.J.S.A. 2C:47-4(b) directly apply in that situation and the conditions of confinement and release of such a sex offender should be governed by the non-ADTC guidelines governing parole set forth in Title 30.

Very truly yours,
JAMES R. ZAZZALI
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

August 14, 1981

GEORGE MINISH, *Chairman*
New Jersey Racing Commission
404 Abbington Drive
Twin Rivers Town Center
East Windsor, New Jersey 08520

FORMAL OPINION NO. 6—1981

Dear Chairman Minish:

You have asked for an opinion as to the administrative authority of the New Jersey Racing Commission under existing statutory law to approve a system of "telephone wagering" (more commonly known as dial-a-bet) at licensed racetracks. It is our opinion for the following reasons that the Commission does not have the authority to permit telephone wagering under existing racing laws and that specific amendatory legislation must be enacted to provide necessary enabling authority.[1]

"Telephone wagering" is an arrangement wherein an individual may place on deposit with a given racetrack a certain sum of money so that he may place a bet by telephone on the outcome of a race being conducted at the track. The amount of the bet would be limited by the money on deposit in the account. The racetrack employee receiving the message would enter the wager into the pari-mutuel system and any winnings would be credited to the individual account. All wagers received in this manner would be maintained under the control and supervision of the racetrack permittee.

At the outset, it is clear that a proposal wherein a permittee maintains an account on behalf of an individual bettor in which monies are deposited and winnings are credited and withdrawn from time to time at the option of a bettor may not be implemented by the Racing Commission absent amendatory legislation. The existing statutes make explicit a requirement that each holder of a permit distribute *all* sums deposited in a pari-mutuel pool less specifically enumerated exceptions. N.J.S.A. 5:5-64 and 66. For example, there is an express provision to withhold a specific percentage of the total deposit, plus the breaks, and in other instances to hold and set aside in special trust accounts to be used to increase purses and grant awards, to establish a sire stakes program and for other related purposes.

1. In 1939 the 1844 Constitution was amended to authorize conduct of pari-mutuel wagering on horse races in this state. Art. 4, §7, ¶2 of the 1947 New Jersey Constitution specifically approves those forms of gambling which had heretofore been submitted and popularly approved. The text of the amendment approved in 1939 provides in pertinent part that it shall be lawful to hold, carry on and operate race meetings in duly legalized racetracks at which the pari-mutuel system of betting shall be permitted. The use of the words "at which" indicates a purpose to confine the pari-mutuel system of betting to the confines of the legalized racetrack. We have been informed that in the case of telephone wagering, the pari-mutuel system of betting will continue to be maintained and operated by the permittee and within the racetrack enclosure. Consequently, it is our opinion that "telephone wagering" would not be inconsistent with the Constitution and there would be no need for a constitutional amendment or popular referendum to approve of its use.

N.J.S.A. 5:5-66. In addition, "all sums held by any permit holder for payment of outstanding pari-mutuel tickets not claimed by the person or persons entitled thereto within six months from the time such tickets are issued shall be paid to the Commission upon the expiration of such six month holding period." N.J.S.A. 5:5-64. There is consequently a specific exception created by the legislature to the general rule requiring distribution of all sums deposited in any pool, for the holding by a permittee of outstanding unclaimed pari-mutuel winnings for a period of not more than six months. On the other hand, there is not even implicit authorization for the creation of a special individual "telephone wagering" account wherein monies may be deposited and claimed and accumulated winnings withdrawn or maintained under the supervision and control of a permittee on an ongoing and indefinite basis. If the legislature intended to authorize the setting up of these special accounts as part of the overall system of pari-mutuel wagering, it should state its intent to do so in unmistakably clear terms.

The proposal for "telephone wagering" also implicates the provisions of N.J.S.A. 5:5-62 of the racing laws. That statutory subsection provides as follows:

> Any permit holder conducting a horse race meeting under the act may provide a place or places in the race meeting grounds or enclosure at which such holder of a permit may conduct and supervise the pari-mutuel system of wagering by patrons on the result of the horse races conducted by such permit holder at such meeting, and such pari-mutuel system of wagering upon the result of such horse races held at such horse race meeting and within such race track and at such horse race meeting shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto, be held or construed to be unlawful, other statutes of the State of New Jersey to the contrary notwithstanding.

There is no available legislative history or case law to help in the interpretation of this section. It is therefore necessary to interpret the plain meaning of the language of the statute consistent with its presumed overall legislative objective. In this vein, it is important to note that the legislature as an exception to the general prohibition against gaming in this state has authorized a permit holder to provide a place in the race meeting grounds or enclosure at which the permittee may conduct the pari-mutuel system of wagering by patrons on the result of horse races conducted by the permit holder. The language used by the legislature is not without purpose. It would seem apparent that it was the intent to exempt pari-mutuel betting from the general statewide prohibition on gaming only when such betting is carried out by patrons who are physically present at the racetrack. It follows that one who is not personally present at the racetrack to place a bet is not a patron thereof and would not come within the pari-mutuel exemption. In the present situation, it is apparent that in the case of telephone wagering a pari-mutuel system of wagering by patrons is not in fact being conducted at the racetrack consistent with the statutory

language. The wager is not being made or entered into the pari-mutuel system "at the race meeting grounds or enclosure" by the patron but rather made or entered into the system by an employee of the permittee at the specific direction of another. Further, the giving of authorization to an employee of a permittee to place a bet on behalf of an individual bettor is inseparable from the act of "placing" a bet itself while outside of the racetrack enclosure. To sanction such a procedure would sanction a system of wagering clearly beyond the legislative contemplation in its enactment of N.J.S.A. 5:5-62.

Moreover, until 1939 a pari-mutuel system of betting at racetracks in New Jersey was outlawed. Such gaming was prohibited by the State Constitution at that time. In 1939 at a popular referendum the public gave its approval to a system of pari-mutuel betting at New Jersey racetracks. Pursuant to this authorization, the Racing Commission was created by the legislature in 1940 to establish the regulatory framework for the racing industry. The statutory and administrative controls and the regulatory scheme is both comprehensive and minutely elaborate. In fact, horse racing with attendant legalized gambling is "strongly affected by a public interest" and has been held to be a "highly appropriate" subject for close regulatory supervision. *Jersey Down, Inc. v. Division of New Jersey Racing Commission,* 102 N.J. Super. 451, 457 (App. Div. 1968). Consequently, it is our opinion that in this area of sensitive governmental regulation a new proposal of this character should receive careful and explicit legislative approval prior to its being administratively implemented.

For all of these reasons, you are advised that specific amendatory legislation is necessary to clarify the responsibilities of a permittee in the establishment and maintenance of special accounts to carry out telephone wagering and to specifically authorize this innovative form of wagering by bettors on the result of horse races conducted by permit holders under the racing laws.

Very truly yours,
JAMES R. ZAZZALI
Attorney General

October 7, 1981

HONORABLE CLIFFORD GOLDMAN
State Treasurer
Department of Treasury
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1981

Dear Treasurer Goldman:

You have asked for an opinion as to the tax consequences of checks received by a casino licensee to obtain an extension of credit to gamble, which are not deposited in accordance with the check cashing provisions

of the Casino Control Act and are later dishonored. You are advised that uncollected checks (commonly referred to in the industry as markers or counterchecks) received by a casino licensee and not deposited in accordance with the provisions of the act do not constitute taxable gross revenue.

The act imposes upon casino licensees a tax calculated at 8% of the gross revenue. Gross revenue is defined as:

> The total of all sums, including checks received by a casino licensee pursuant to section 101 of this act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or 4% of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. [N.J.S.A. 5:12-24.]

At the outset it is clear from a straightforward reading of the statutory language that all sums actually received by a licensee from gaming operations should be included within gross revenue. Thus, a check collected by a licensee is money actually received and would constitute gross revenue whether or not the check has been received in accordance with section 101 of the Act. Also, the Legislature has clearly mandated that those checks received by a casino licensee pursuant to the requirements of section 101 of the act, whether collected or not, are includable in gross revenue. The issue posed in the present situation is whether checks not received pursuant to section 101 and not actually collected constitute gross revenue.

In order to fully address this question, it is necessary to briefly touch on the statutory conditions to be satisfied by a licensee when accepting checks, from gambling patrons. N.J.S.A. 5:12-101(b) and (c) provide for specific conditions concerning the receipt and deposit of checks by a casino licensee.[1] It is further provided in subsection (f) that "any check cashed, transferred, conveyed or given in violation of this act shall be invalid and unenforceable."

In *Resorts International Hotel v. Salomone,* 178 N.J. Super. 598 (App. Div. 1981), a casino licensee brought an action to recover credit extended to the defendant on the issuance of checks which were not deposited in accordance with the specific requirements of the statute. The court noted, in response to an argument that the underlying obligation survived the invalidation of the negotiable instrument, that "the legislature sufficiently

1. Subsection (b) requires that all checks must be dated but not postdated, made payable to the licensee, presented to a cashier in exchange only for credit slips equal to the amount of the check, and deposited by the licensee in accordance with the check cashing provisions of N.J.S.A. 5:12-101(c). The check cashing provisions require that checks in an amount less than $100 are to be deposited within seven banking days of the transaction; checks in an amount between $1000 but less than $2500 are to be deposited within fourteen banking days of the transaction, and checks in an amount of $2500 or more are to be deposited within ninety banking days of the transaction.

signified its intention to void the gambling obligation represented by these checks when it provided that only 'checks cashed in conformity with the requirements of this act' shall be valid and enforceable." *Resorts International, supra* at 605, 606. It is apparent therefore to have been the underlying legislative intent that there be no obligation created on a check unless the requirements of the act are satisfied and, correspondingly, no accrued right in the licensee to receive payment on such a check.

Therefore, a sensible reading of the definition of gross revenue found in N.J.S.A. 5:12-24 in light of the legislative policy underlying the act leads to the following conclusions. A check processed by a casino licensee in conformity with the act's provisions regarding the receipt of checks and later dishonored by a patron is a valid and enforceable obligation and should be included within gross revenue.[2] On the other hand, a check received by a licensee which has not been processed in conformity with the requirements of the act and is later dishonored, creates no valid accrued right to payment and would not logically be included within a casino's taxable gross revenues. These conclusions not only carry out the policy underlying the act but are specifically mandated by the language of the statute which encompasses within gross revenue only those "checks received by a casino licensee *pursuant to section 101 of this act* whether collected or not . . . ."

For these reasons, you are advised that checks received by a casino licensee which are not deposited in accordance with the provisions of the act and are later dishonored do not constitute taxable gross revenue.

Very truly yours,
JAMES R. ZAZZALI
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

2. It should be noted that with regard to those checks deposited in conformity with section 101 of the act and deemed by a licensee to be uncollectible, the statute provides for a deduction from gross revenue for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or 4% of the total of all sums including checks. A check which is not deposited in conformity with section 101 and is uncollectible cannot be considered a bad debt.

November 6, 1981

WILLIAM J. JOSEPH, *Director*
Division of Pensions
20 West Front Street
Trenton, New Jersey

FORMAL OPINION NO. 8—1981

Dear Director Joseph:

You have asked for our advice as to whether the State Health Benefits Commission is required to extend an increased level of reimbursement under the Blue Shield benefits formula to all local participating employers and to their employees. This increased level of reimbursement is commonly known as the 1420 Series which the State has determined to provide to its employees. The occasion for your inquiry is the recently negotiated agreement between the State and its unions. It is provided therein, among other things, that the State shall provide the 1420 Series Blue Shield benefits for its employees. We are informed that the Health Benefits Commission has determined, or will soon determine, to implement the terms of the collective negotiations agreement and to provide those benefits to all state employees effective January 1, 1982. For the following reasons, it is our opinion that under the governing statutory framework, the Health Benefits Commission is required to extend this level of reimbursement under Blue Shield to all participating local employers and their employees.

At the outset, in order to understand the State Health Benefits Act as it applies to both the State and to participating employers, it is necessary to outline the basic statutory framework. In 1961, the legislature enacted the State Health Benefits Act and defined an eligible employee to mean a full time employee of the State of New Jersey. N.J.S.A. 52:14-17.25, 26. A State Health Benefits Commission was created consisting of the Treasurer, Commissioner of Banking and Insurance and the President of the Civil Service Commission, to administer the terms of the Act and to negotiate and arrange for the purchase of contracts from licensed carriers providing hospital and medical expense benefits covering employees of the State and their dependents. The Commission's discretion to purchase contracts was qualified by the proviso that the health benefits provided equal or exceed certain minimum standards specified in the Act, and more importantly that such "coverage is available to all eligible employees and their dependents. . . ." N.J.S.A. 52:14-17.28. In 1964 the legislature extended the State Health Benefits Act to include participation by counties, municipalities, public agencies and school districts. N.J.S.A. 52:14-17.34. Acting thereunder, participating public employers may, and a substantial number have, purchased coverage for their employees through the State Health Benefits Commission.

In light of this statutory backdrop, it is appropriate to deal with the specific issue posed, i.e., whether the Commission is obligated to extend the increased level of reimbursement provided to state employees to all of those participating employers and their employees. Critical to this issue are the following provisions. N.J.S.A. 52:14-17.28 enacted as part of the 1961 statute first made applicable to state employees provides that:

> The Commission shall not enter into a contract under this act unless the benefits provided thereunder equal or exceed the minimum standards specified in section 5 [52:14-17.29] for the particular coverage which such contract provides; and unless coverage is *available to all eligible employees* and their dependents on the basis specified by section 7. [Emphasis supplied.]

Also pertinent to this issue is N.J.S.A. 52:14-17.36 enacted as part of the 1964 supplement to the act which provides:

> All provisions of that act will, except as expressly stated herein, be construed as to participating employers and to their employees and to dependents of such employees the same as for the state, employees of the state and dependents of such employees.

These two statutory provisions evidence a legislative interest in assuring equality of treatment for all public employees. The Commission may not enter into a contract unless coverage is available to all eligible employees and their dependents. Further, that statutory mandate on the exercise of the Commission's discretion must be construed by the terms of the 1964 supplement to now extend to participating local employers and to their employees in the same manner as for the employees of the state. It follows, therefore, that in the event the State determines to provide for an increased level of reimbursement for state employees, it is required in the exercise of this discretion to make that level of reimbursement available to all local participating employers in the same manner as it has for the State and its employees.

This view is supported by the legislative history. Senate Bill No. 46 (1963) was introduced to provide for the extension of the Health Benefits Act to local political subdivisions.* The statement on the bill provided that municipalities, counties and school districts could join the Health Benefits Program and obtain the same benefits as were then provided to state employees. Moreover, we have been informed that it has been the administrative practice of the State Health Benefits Commission during the past 17 years to extend to local employers and their employees the same hospital, medical and surgical benefits as have been provided to state employees. A long-standing administrative practice for a period of several years without any legislative interference is entitled to great weight as to the probable legislative intent. *Radiological Society of New Jersey v. Sheeran,* 175 N.J. Super. 367, 379 (App. Div. 1980).

This conclusion is also reinforced by a separate statutory section designed to encourage equality of treatment and health benefits for all public employees both at the State and local levels. N.J.S.A. 40A:10-25 provides that it shall be the duty of any public employer who enters into

* Senate Bill No. 46 was conditionally vetoed by Governor Hughes for its failure to separate the claims experience for the State and local groups. Senate Bill No. 314 was introduced as a replacement for Senate Bill No. 46 and after providing for separation of claims experience for State and local employers was enacted substantially as originally proposed in Senate Bill No. 46.

a group insurance health contract on behalf of its employees to file a copy with the State Health Benefits Commission. It also directs that the Commission report not less than every two years to the Governor and the legislature as to these contracts:

> and shall make such recommendations concerning the contracts and the coverage thereunder as it deems appropriate *to achieve uniformity of coverage and benefits for employees throughout the state.* [Emphasis supplied.]

For these reasons, it is our judgment that the overall statutory framework evinces both an express and implicit legislative intent to insure equality of benefits between both state and local employees under the program administered by State Health Benefits Commission. Consequently, in the event the Commission determines to provide for an increased level of reimbursement under Blue Shield (Series 1420) to state employees it is required to extend that same level of reimbursement in those contracts purchased by it on behalf of all local participating employers.

Very truly yours,
JUDITH A. YASKIN
Acting Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

December 24, 1981

MARTIN B. DANZIGER, *Acting Chairman*
Casino Control Commission
3131 Princeton Pike
Trenton, New Jersey 08625

FORMAL OPINION NO. 9—1981

Dear Chairman Danziger:

You have requested our opinion as to the legality of a proposed craps tournament to be held at Resorts International Casino. For the following reasons, it is our opinion that a proposed craps tournament would be in violation of the Penal Code's prohibition against gambling when an entry fee is charged as a condition of participation in the tournament.

We have been informed that upon payment of an entry fee of approximately $250 any person may participate in the tournament. Participants are required to buy into the tournament by purchasing approximately $750 in special tournament chips which can only be used in the tournament. Participants draw for numbered positions at the craps tables and at the end of the first round of tournament play, two players at each table with the highest amount of money advance to the second round. At the end of the second round, the one player with the highest amount of money

advances to the third and final round. We are further informed that the final round will be played at one table with a maximum of 14 players. At the end of the final round, the three players with the highest amounts of money will be declared the first, second and third place winners and will receive cash and merchandise prizes in addition to the monies won at the individual craps games. The overall purpose of the tournament is to encourage additional persons to visit and spend time in Atlantic City and to take advantage of its hotel, tourist and entertainment facilities during a slow tourist period for the resort.

At the outset, it is clear that the gaming tournament described above is not a gaming activity specifically enumerated in the Casino Control Act. An authorized game under the Act is defined to mean roulette, baccarat, black jack, craps, Big 6 wheel, slot machines and any variations or composites of such games. N.J.S.A. 5:12-5. There is no express or implicit mention of a gaming tournament. Further, the proposed gaming tournament is not a variation or alteration of the existing craps game conducted by a licensee, but rather it is in essence an innovative and independent kind of gaming using an authorized game as its central component. This conclusion is supported not only by the provision for the award of a separate prize to the tournament winner but also by the requirement for an entry fee not normally charged to participate in an authorized game.

The question therefore posed is, assuming the proposed craps tournament is not in and by itself an authorized game or variation thereof under the Act, whether the tournament is consistent with the criminal law prohibition against illegal gambling. The promoting of gambling is a criminal offense punishable by sanctions which range from a third degree crime to a disorderly persons offense.* N.J.S.A. 2C:37-2. Gambling is defined by the Penal Code to mean the:

> staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. [N.J.S.A. 2C:37-1b.]

* The strong public policy against gambling in this jurisdiction is spelled out in Art. 4, §7, ¶2 of the 1947 New Jersey Constitution as follows:

> No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election, except that, without any such submission or authorization; . . .

Constitutional amendments have been approved to exempt casino gambling, state lotteries to aid education and raffles and bingo games sponsored by charitable organizations from the broad prohibition on gambling. Art. 4, §7, ¶¶2(A), (B), (C) and (D). Pari-mutuel wagering on horse races was approved in a popular referendum held in 1939. This public policy is also expressed in the several enactments in the criminal laws dealing with illegal gambling, lotteries and other unauthorized gaming activities.

"Something of value" is defined to mean

> any money or propety, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [N.J.S.A. 2C:37-1d.]

The definitional section on gambling requires a participant to risk something of value upon the outcome of a contest of chance. In the proposed craps tournament, the players pay an entry fee as a condition to participation. Something of value is then risked on the chance of success in the tournament. It is contemplated that all monies including the entry fee would be recouped out of the prize awarded to the winner.

This interpretation of the statutory prohibition against gambling is consistent with the common law definition. In *State v. Berger,* 126 N.J.L. 39 (S. Ct. 1941), the defendant, movie operator, charged a $.30 admission fee to the theater which included the right to play a game called "payme." The game was played with cards on which numbered squares were printed. Patrons would draw by lot small rubber balls from a basket. Each ball contained a letter and a number and if the number appeared on the card, a player would punch out that square. When any player succeeded in punching out five squares, he would be declared the winner of the game and receive a credit voucher redeemable in merchandise. It was argued that because the players did not contribute or make up the fund out of which the vouchers were paid in order to participate, there was no element of risk and no violation of the act. The court held that the defendant had conducted an illegal game under the Gaming Act because the admission fee was something of value paid to the movie operator for the privilege of participating in the game and "[e]ach player took the chance of getting something of value in addition to that of seeing the picture." *State v. Berger, supra,* at 43. Accordingly, it is our judgment that as was the case in *Berger,* the payment of an entry fee is the risking of something of value on the chance of success in the outcome of the tournament. It would constitute an essential element of an unauthorized gambling scheme.

This issue was also considered by the Attorney General in *Formal Opinion No. 1—1980,* dated January 10, 1980. In that case, the essential component of a proposed tournament at a casino licensee was the conduct of a game called backgammon. The Attorney General concluded that the payment of an entry fee directly or indirectly as a condition to participation in the tournament made the tournament a form of illegal gambling. Although in the present situation the central component of the tournament may be a game authorized under the act, there is no meaningful difference from the tournament reviewed in *Formal Opinion No. 1, supra.* The payment of an entry fee (in addition to the wager made to participate in a craps game) similarly brings this tournament within the purview of the criminal law definition of illegal gambling.

In sum, therefore, it is our opinion that a proposed craps tournament to be held at Resorts International is a form of gambling prohibited by the provisions of the Penal Code.

Very truly yours,
JAMES R. ZAZZALI
Attorney General
By: THEODORE A. WINARD
Assistant Attorney General

April 14, 1982

JAMES BARRY, *Director*
Division of Consumer Affairs
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 1—1982

Dear Director Barry:

You have asked for an opinion as to the effective date of the Plain Language Act with respect to those consumer contracts subject to the federal Truth in Lending Act. For the following reasons, you are advised that the effective date of the Plain Language Act with respect to that category of consumer contracts is November 30, 1982.

Amendments to the Plain Language Act were signed into law on January 11, 1982, Laws of 1981, c. 464. Section 11 of the Act is pertinent to your inquiry and provide in part:

> This act shall take effect April 15, 1982 but with respect to consumer contracts which are subject to the federal Truth in Lending Act (P.L. 90-321, 15 U.S.C. §1601 et seq.), this act shall take effect 60 days after the next revision of regulations made pursuant to that act or April 15, 1982, which ever is later. . . .

Since the amendment is structured to "take effect 60 days after the next revision of regulations made pursuant to that act . . .", it is necessary to discern the probable legislative intent behind the meaning of that phrase. There is no legislative history which provides any clarification. Therefore, the Act should be construed sensibly and in light of developments at the federal level with regard to the promulgation of regulations under the federal Truth in Lending Act.

The Truth in Lending Act (15 U.S.C. §1601 et seq.) was amended by Congress on April 1, 1980. The Federal Reserve System published revised regulations in the Federal Register on April 7, 1981 (12 C.F.R. Part 226). The proposed mandatory effective date of the revised regulations was determined to be April 1, 1982. On December 26, 1981, however, President Reagan signed into law an amendment to the Act which delayed the

effective date of the federal law until October 1, 1982 (P.L. 97-110). The Federal Reserve System then deferred the anticipated mandatory effective date for the revised regulations from April 1, 1982 until October 1, 1982 (47 F.R. 755 January 7, 1982). No other revised federal regulations have been proposed since April 7, 1981 and there are no other anticipated revisions to be made to those regulations in the foreseeable future.

It is instructive to note that amendments to the federal Truth in Lending Act were under consideration in Congress at the same time an amendment to the Plain Language Act was being considered by the legislature. The Plain Language Act does not provide that the Act become effective 60 days after April 1, 1982 which was the initial effective date for the federal regulations. Rather, it must be assumed that the legislature was concerned that changes in federal regulations were a possibility when it referred to "the next revision of regulations." Since there have been no other "revision of regulations" or anticipated "revision of regulations" other than a delay in the mandatory effective date of the revised regulations, it is fair to conclude that the Plain Language Act becomes operative with regard to those consumer transactions 60 days after the new mandatory effective date for those revised regulations.

Moreover, the Plain Language Act must be construed sensibly and in a manner to avoid anomalous or absurd results. *Planned Parenthood v. State,* 75 N.J. 49 (1977), *Monmouth County v. Wissel,* 68 N.J. 35 (1975), *Roman v. Sharper,* 53 N.J. 338 (1979), *State v. Gill,* 47 N.J. 44 (1966). It cannot be seriously contended that the 60 day period commences when the Federal Reserve System again prepares new revised regulations. The Act would in that case be rendered a nullity because its implementation would with respect to that category of consumer transaction would be indefinitely delayed.

An interpretation that the effective date is November 30, 1982 is supported by the overall purpose of the Plain Language Act. The delay in implementation for that category of consumer contracts was undoubtedly enacted to avoid conflicts and confusion between the requirements of state and federal law. The presumed legislative purpose was to avoid confusion and promote better understanding by deferring the effective date of the Plain Language Act until 60 days after the effective date of revisions to federal regulations. Since those regulations become effective on a mandatory basis on October 1, 1982, requirements of the Plain Language Act should take effect on November 30, 1982.

In conclusion, you are advised that the Plain Language Act should take effect on November 30, 1982 with respect to consumer contracts subject to the federal Truth in Lending Act.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General
By: THOMAS W. GREELISH
First Assistant Attorney General

May 28, 1982

SIDNEY GLASER, *Director*
Division of Taxation
West State and Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1982

Dear Director Glaser:

You have asked for an opinion as to whether there is any impediment under the Motor Fuel Act to a motor fuel retail dealer establishing one price for gasoline for credit card customers and another lesser price for gasoline for cash customers. For the following reasons it is our opinion that there is no impediment to a motor fuel retail dealer establishing two separate prices for the sale of gasoline, provided any discount to cash sale customers approximates the measurable value of economic benefit accruing to the retailer from the sale being conducted by cash rather than on credit.

Your inquiry has been occasioned by recent decisions made by certain producer-distributors of motor fuels to allocate the cost of credit sales to credit card customers only, rather than allocating such costs among all customers as had been the practice in the past. Most major fuel oil distributors maintain an extensive credit card program whereby card holders may utilize credit cards to purchase motor fuels and other products. In the past, a motor fuel retailer was not charged a fee for participating in the credit card program. Retailers have sold motor fuel to consumers at a single price. In effect, cash consumers have subsidized the cost of extending credit to those consumers who qualify for credit card purchases. Costs of administration of the credit card program have risen in the past decade. As a consequence, it is proposed that a motor fuel retail dealer will be charged a credit card processing fee on each credit card transaction. This would presumably reflect the cost of extending credit and administering the credit card program. Each motor fuel retailer will pass its additional cost on to its credit card customers and, at the same time, offer a cash discount to those consumers who elect to pay cash for a motor fuel or other products. We are further informed that the typical cash discount provided to a cash customer would approximate the retail dealer's saving of the credit card costs imposed by the distributor if the customer had purchased by credit card.

The New Jersey statute regulating the retail pricing of motor fuel is the Motor Fuel Act, N.J.S.A. 56:6-1 *et seq.* To achieve the legislative purpose to prevent fraudulent and unfair practices in the retailing of motor fuel, the Act requires the conspicuous posting on pumps of the selling price of motor fuel, including taxes; requires that the posted prices remain in effect for 24 hours; and "a retail dealer shall not sell at any other price than the price, including tax, so posted." N.J.S.A. 56:6-2(a). Section (e), most pertinent to your inquiry, then provides that

> No rebates, allowances, concessions or benefits shall be given, directly or indirectly, so as to permit any person to obtain motor fuels from a retail dealer below the posted price or a net price lower than the posted price applicable at the time of the sale.

Clearly, if the difference in price charged to a credit card and to a cash customer constitutes either a rebate, allowance or concession, the proposal would be interdicted by the statute.

This provision of the Motor Fuel Act forbidding a retail gasoline dealer from giving a rebate or a concession to his customers has been subject to judicial interpretation. *Sperry and Hutchinson Co. v. Margetts,* 15 N.J. 203 (1954); *Glaser v. Downs,* 126 N.J. Super. 10 (App. Div. 1973) *cert. den.* 64 N.J. 513 (1974). In *Sperry and Hutchinson,* trading stamps were given by retailers to cash customers at the rate of one stamp for each 10¢ of purchased motor fuel. The court held that the offering of a cash discount "is not within the letter of the statutory interdiction; nor would be inimical to the reason and spirt of the act." The court specifically held that the statutory prohibition of "rebates, allowances, concessions or benefits" did not prohibit the true cash discount. The court stated:

> The avowed purpose of this statutory regulation is the prevention, in the public interest, of fraudulent and unfair practices in the retailing of motor fuel. But there is no suggestion in the enactment itself of a design to outlaw the true cash discount as a means to this end. Indeed, its omission from the category of forbidden acts and conduct contained in subdivision (e) makes reasonably clear an intention *contra.* Compare R.S. 56:4-7(a), where the Legislature expressly distinguished between 'trade discounts' and 'cash discounts.' Certain it is that, quite apart from power, we cannot assume from the nature of the expressed policy that the Legislature had in view the interdiction of this well established and commonly known general trade practice of a discount for cash, available to all alike. [*Sperry, Id.* at 208, 209.]

It is important to note, that the crucial ingredient of the court's decision was its conclusion that a true cash discount is a discount equated to the value to the dealer of an immediate cash payment:

> [T]he discount is measured by the economic worth to the merchant of the prompt use of the money and the corresponding reduction in working capital requirements, and the avoidance of the expense of maintaining credit facilities and the inevitable laws from bad debts. [*Id.* at 207.]

The Supreme Court reasoned that a discount based on the value of an immediate cash payment "is a term of payment merely, not a price adjustment; it is a mode of financing, not a reduction in the price . . . it does not in any real sense work an inequality of price within the intendment of subdivision (e)." *Id.* at 207, 208*

It is our judgment that the instant proposal does not differ in any material way from the "cash discount" approved by the Supreme Court in *Sperry.* A dealer may sell motor fuel to his cash customers at a lower

price either through a direct reduction in the price at the time of sale or by providing customers with redeemable trading stamps. In both instances, the discount is consistent with the act provided that the customer's payment in cash has a definite and measurable economic value to the retail dealer. In this case, we are informed that the retail dealer would save a credit card fee which he would pay to the distributor if the customer purchased by credit card. On the other hand, if the difference in price amounts to more than a genuine cash discount, the proposal would clearly be in contravention of the statutory prohibition against rebates and allowances.

The Director of Taxation has been authorized to promulgate rules and regulations as he may deem necessary to properly implement the Motor Fuel Act. N.J.S.A. 56:6-6. The director may suspend or revoke the license held by any retail dealer for a violation of any of the provisions of the act. N.J.S.A. 56:6-14. Also, the grant of express power to the Director is attended by such incidental authority as is fairly and reasonably necessary to make it effective. *See Cammarata v. Essex County Park Comm'n.*, 26 N.J. 404, 411 (1958). In light of the need to establish a genuine cash discount to approximate the economic benefit to the retail dealer of providing a discount to cash customers, the Director may adopt rules and regulations to define the parameters of an appropriate cash discount in the motor fuel industry. The Director should consider all of the relevant data from major producers or distributors of motor fuels in this state, including the existing trade customs in the industry. Also, the Director may adopt regulations relating to the manner of providing discounts and their conspicuous disclosure, including the posting of price signs. *See* N.J.S.A. 56:6-2.1 to 2.5. For example, the Director should determine whether the retail dealer should reduce the price at the time of payment to reflect the cash discount or, alternatively, whether the retail dealer should compute the discount into the "metered" price and sell the gasoline at cash-only pumps.

In conclusion, it is our opinion that there is no statutory impediment under the Motor Fuel Act to a motor fuel retail dealer establishing one price for the sale of gasoline to its credit customers and a separate lower price to its cash customers, provided a discount would approximate the economic value to the retailer of providing a discount to his cash customers.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

* In *Glaser v. Downs, supra,* the Appellate Division of the Superior Court held that the giving of three trading stamps for each purchase of 10¢ of motor fuel did fall within the statutory prohibition. Therefore, while acknowledging the general propriety of the providing of cash discounts, the court concluded a triple stamp program exceeded the permissible cash discount in the trade.

June 8, 1982

HONORABLE MICHAEL M. HORN
Commissioner of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1982

Dear Commissioner Horn:

You have asked for an opinion as to whether a secondary mortgage loan licensee may provide for an increase in the rate of interest charged during the first three years of the loan. For the following reasons, you are advised that a rate increase on a secondary mortgage loan may not take effect during the first three years of the term of the loan.

Your inquiry is occasioned by the enactment of Laws of 1981, c. 103, Sec. 8 which provides in part:

> No rate increase shall take effect during the first 3 years of the term of the loan, or thereafter, (a) unless at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (b) unless at least 365 days have elapsed without any increase in the rate.

The issue posed, from a cursory reading of the language of the statute, is whether or not the qualifying conditions under which an increase may be made, set forth in (a) and (b), modify only the clause "or thereafter" or whether those qualifying conditions also modify the phrase "during the first three years of the term of the loan." It is clear that a rate increase would be permissible during the first three years if those qualifying conditions were deemed to apply.

In order to determine the probable legislative intent, it is appropriate to refer to the rule of statutory construction that full effect should be given to every word of a statute. The Legislature should not be assumed to have used meaningless language or surplusage. *Gabin v. Skyline Cabana Club,* 54 N.J. 550, 555 (1969); *Central Constr. Co. v. Horn,* 179 N.J. Super. 95, 102 (App. Div. 1981); *Newark Bd. of Ed. v. Newark Teachers Union,* 152 N.J. Super. 51, 60 (App. Div. 1977). It is at once apparent that to interpret the qualifying conditions for an increase in the rate of interest to apply to both the clause "or thereafter" and to "during the first three years of the term of the loan" would render that latter phrase meaningless and superfluous. It seems more reasonable to assume that if the Legislature intended to allow for a rate increase during the entire term of a secondary mortgage loan, it would not have drawn a distinction between the first three years of the loan and thereafter. Consequently, it is our reading of the probable legislative intent that the qualifying conditions imposed by (a) and (b) were only designed to modify the phrase "or thereafter" and thereby indicate that an interest rate could only be increased after three years have expired on the mortgage loan.

This construction of the language of the statute is supported by its overall legislative purpose. The law removed specific interest rate ceilings previously established in connection with a wide variety of loans, including, for example, bank installment loans (N.J.S.A. 17:9A-53, -54), educational loans (N.J.S.A. 17:9A-53.4), bank advance loans (N.J.S.A. 17:9A-59.6), small loans (N.J.S.A. 17:10-14), as well as secondary mortgage loans (N.J.S.A. 17:11A-44). In amending each of the statutes fixing interest rate ceilings on these loans, the Legislature generally provided that the initial interest rate to be charged shall be "such rate or rates as may be agreed by the bank [or lender] and the borrower."[1] Nonetheless, it is obvious that the Legislature recognized the hardship to consumers and other borrowers if interest rates were dramatically and frequently increased by a lender during the course of a loan. Accordingly, in each instance, the statute includes statutory safeguards as to the frequency of interest rate increases, the size of the increase as well as the method of notice to the borrower of the increase. Clearly, these safeguards were intended to provide protection for consumers against unstable short-term market rates. A prohibition against interest rate increases during the first three years of a loan is a vital part of the legislative safeguards provided to consumers and borrowers against short-term interest rate fluctuations.

Further, the remarks of Governor Byrne on signing the bill provide additional insight as to the probable meaning of the act. Where a statute is ambiguous on its face, the messages and statements of the chief executive may be used to determine the legislative intent. *State v. Madden,* 61 N.J. 377, 388 (1972); *Caldwell v. Township of Rochelle Park,* 135 N.J. Super. 66, 73-74 (Law Div. 1975). Governor Byrne made the following statement on signing the bill into law:

> [A] lender may not alter the interest rate during the first three years of the loan. Although the language in the bill could be clearer, I read it to restrict a lender's right to alter interest rates until the loan is at least three years old.

The statement made by Governor Byrne is consistent with a sensible reading of the language of the statute and its beneficial legislative purpose. For these reasons, you are advised that an increase in a rate of interest charged on a secondary mortgage loan may not take effect during the first three years of the loan.[2]

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: DENNIS R. CASALE
Deputy Attorney General

1. Such rates, however, may not exceed the criminal usury rate of 30% for individuals and 50% for corporations, as established by N.J.S.A. 2C:21-19, as amended by P.L. 1981, c. 104.

2. It should be noted that the statute uses the same language with regard to permissible interest rate increases for bank installment loans, educational loans and small loans. For all of the reasons stated above, it is also our opinion that an increase in the interest rate during the first 3 years of each of these loans would likewise be prohibited. On the other hand, the statute provides that the interest rate to be charged on a bank advance loan may be increased from time to time provided the notice requirements are satisfied. It is clear that where the Legislature intended to allow for increases in the interest rate during the entire term of the loan, it stated its intent in unmistakable terms.

July 8, 1982

G. THOMAS RITI, *Director*
Division of Public Welfare
3525 Quakerbridge Road
Trenton, New Jersey 08619

FORMAL OPINION NO. 4—1982

Dear Director Riti:

A question has arisen with regard to the proper construction of certain amendments to the Local Government Cap Law as such amendments pertain to the financing of municipal and county welfare programs. More specifically, the question relates to the types of municipal and county expenditures which would be encompassed by the provisions of Section 1(l) and Section 2(g) of L. 1981, c. 56 and which, as a consequence, could be excluded from the limitations established by the Local Government Cap Law upon increases in spending by local government units. For the reasons set forth below, you are advised that L. 1981, c. 56 would encompass those expenditures of Federal or State funds for administrative or other purposes made by a municipality or county for welfare programs funded wholly or in part by such funds, as well as those expenditures for administrative or other purposes made by a municipality or county as part of a welfare program in order to provide matching funds upon which the receipt of Federal or State funds is conditioned.

The Local Government Cap Law, L. 1976, c. 68, N.J.S.A. 40A:4-45.1 *et seq.,* was enacted in 1976 for the purpose of controlling the spiraling costs of local government in the State of New Jersey. In 1981, the Legislature enacted several amendments to the statute. L. 1981, c. 56; L. 1981, c. 61; L. 1981, c. 64. Included among these enactments were a number of amendments to those provisions of the Local Government Cap Law which set forth the exceptions to the spending limitations set forth in the statute. L. 1981, c. 56, Sections 1 and 2. Among the amendments to the provisions pertaining to such exceptions were those set forth at Section 1(l) and Section 2(g) of L. 1981, c. 56.

The first of these provisions, Section 1(l) was enacted as a substitute for that part of N.J.S.A. 40A:4-45.3(b) which was deleted in the course of enactment of L. 1981, c. 56. As initially enacted in 1976, N.J.S.A. 40A:4-45.3(b) had provided for the exclusion from a municipality's spending limitation of the following:

> b. Capital expenditures funded by any source other than the local property tax, *and programs funded wholly or in part by Federal or State funds in which the financial share of the municipality is not required to increase the final appropriations by more than 5%;* [Emphasis supplied.]

In enacting L. 1981, c. 56, the Legislature deleted that part of N.J.S.A. 40A:4-45.3(b) which followed the words "local property tax" and inserted as a separate subparagraph in N.J.S.A. 40A:4-45.3(1), a parallel provision which provides for the exclusion from a municipal spending limitation of the following:

> 1. Programs funded wholly or in part by Federal or State funds and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures; . . .

In addition to making this change in N.J.S.A. 40A:4-45.3, the Legislature also determined to establish a new exemption for similar county expenditures. Unlike the provisions of N.J.S.A. 40A:4-45.3(b) pertaining to municipalities prior to its amendment by L. 1981, c. 56, under the Local Government Cap Law as initially enacted in 1976 there was no authorization for counties to exclude from their spending limitation any amounts raised in their tax levies to provide matching funds for Federal or State aid. The Legislature therefore, in enacting L. 1981, c. 56, included Section 2(g) which provides for the exclusion from the statutory limitation on increases in a county tax levy of the following:

> d. That portion of the county tax levy which represents funding to participate in any Federal or State aid program and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures: . . .

The question to be addressed concerns the proper construction of these two provisions as they pertain to expenditures made to support the operations of municipal and county welfare programs. In resolving this question, reference must be made both to the construction accorded to the Local Government Cap Law, and in particular to N.J.S.A. 40A:4-45.3(b), prior to the enactment of L. 1981, c. 56 and to the legislative intent evidenced during the enactment of the amendment.

In *Formal Opinion No. 3-1977,* the Attorney General addressed the proper interpretation of the language of N.J.S.A. 40A:4-45.3(b) as that provision existed prior to the amendment by L. 1981, c. 56. In particular, the Opinion discussed the construction to be accorded to that part of N.J.S.A. 40A:4-45.3(b) which pertained to "programs funded wholly or in part by Federal or State funds, in which the financial share of the municipality is not required to increase the final appropriations by more than 5%;". The Attorney General advised that this provision was intended to exclude from the statute's spending limitation upon municipalities all expenditures made by municipalities for programs funded either wholly by Federal or State funds or partly by Federal or State funds and partly

by local matching funds upon which receipt of Federal or State funds was conditioned. *Id.* In reaching this conclusion, the opinion noted that N.J.S.A. 40A:4-45.3(b) represented an underlying legislative policy to encourage and enable local governments to participate fully in these types of programs free of the spending restrictions set forth in the statute. *Id.* Thus, it was concluded that the intent of this provision was to exclude from the spending limitation all expenditures of Federal and State aid money as well as all local matching expenditures necessary to secure Federal or State aid for municipal governments.

In *Formal Opinion No. 5-1977,* an inquiry was made as to whether county and municipal shares of public welfare assistance could be excluded from the statute's spending limitation. It was concluded that municipal expenditures made to match and secure available Federal and State aid funds could be excluded from the municipal spending limitation under the provisions of N.J.S.A. 40A:4-45.3(b). It also noted, however, that no similar exclusion existed at that time with regard to comparable expenditures by counties. *Id.* Thus, it was opined that N.J.S.A. 40A:4-45.3(b) encompassed only municipal expenditures of Federal or State aid money and municipal expenditures made to match and secure Federal or State aid for municipal governments.

In enacting L. 1981, c. 56, it is evident that the Legislature intended that the exemption provided under Section 1(1) for programs funded wholly or in part by Federal or State funds and amounts received or to be received from Federal, State or other funds in reimbursement for local expenditures, was intended to be interpreted in the same manner as N.J.S.A. 40A:4-45.3(b) had been interpreted in *Formal Opinion No. 3-1977.* First, in enacting Section 1(1) of L. 1981, c. 56, the Legislature utilized the same language, *i.e.,* "[P]rograms funded wholly or in part by Federal or State funds . . . ." Further, the Senate County and Municipal Government Committee Statement concerning Senate Bill No. 734, the bill which was enacted as L. 1981, c. 56, explicitly indicated that the legislation was intended to provide for the exemption of "expenditures funded wholly or in part by Federal or State funds, or for which reimbursement is provided by Federal, State or other funds, *as such exemption is currently being interpreted pursuant to Attorney General's Formal Opinion No. 3-1977* . . . ." (Emphasis supplied.) This statement clearly indicates that the interpretation set forth in *Formal Opinion No. 3-1977,* with regard to the exemption from the statute's spending limitation on municipalities for programs funded wholly or in part by Federal or State funds and for expenditures for which reimbursement is provided by Federal, State or other funds, was to be continued in the implementation of the Section 1(1) of L. 1981, c. 56.

Turning to the question of the appropriate construction of Section 2(g) of L. 1981, c. 56, that provision creates an exemption from the spending limitation upon counties similar to that provided by Section 1(1) for municipalities. As noted above, the Local Government Cap Law, as initially enacted, did not contain any authorization for counties to exclude from their spending limitation those amounts which they were required to expend in order to obtain Federal or State aid funds. *Formal Opinion No. 5-1977.* In particular, it was noted that, under the statute as it then

existed, counties, could not exclude from their spending limitation those expenditures made by counties as a condition for participation in federally funded public assistance programs.

It would seem evident that, in enacting Section 2(g) of L. 1981, c. 56, the Legislature intended to provide an exemption from the spending limitation on counties, similar to that which already had existed for municipalities, for those amounts expended by counties as matching shares in order to participate in federally funded and State funded programs. Section 2(g) of L. 1981, c. 56 exempts from the limitation upon increases in a county's tax levy "[T]hat portion of the county tax levy which represents funding to participate in any Federal or State aid program . . . ." This language would clearly seem to contemplate those appropriations made by a county from its tax levy which would be necessary to fund its share of and to consequently participate in any Federal or State aid programs. Further, the language of the Senate County and Municipal Government Committee Statement to Senate Bill No. 734 indicates, as noted above, a clear legislative intent both to provide an exemption under the Local Government Cap Law for local government expenditures funded wholly or in part by Federal or State funds or for which reimbursement is provided by Federal, State or other funds and to have the exemption so provided interpreted in the same manner as *Formal Opinion No. 3-1977* had interpreted the exemption previously provided for municipalities.

In light of this clear statement of legislative intent, it is evident that Sections 1(1) and 2(g) of L. 1981, c. 56, are intended to exclude from the statutory limitation on increases in municipal appropriations and county tax levies those expenditures made by municipalities and counties of Federal or State aid dollars, those expenditures for which such bodies are entitled to receive reimbursement from Federal, State or other funds, and those expenditures made by such bodies for the purpose of providing matching funds for available Federal or State aid monies. Accordingly, in the administration of a municipal or county welfare program, a municipality or county may properly exclude from its spending limitation any Federal or State monies it might expend for which it is entitled to receive reimbursement from Federal or State funds. Such monies would, by way of example, include those amounts of State funds which a municipality would receive from the State for provision of public assistance within the municipality pursuant to N.J.S.A. 44:8-108 *et seq,* and those amounts of Federal funds which a county would receive for expenditures made pursuant to 42 U.S.C.A. 603(a)(1) and (3) and N.J.S.A. 44:10-5 for the provision of aid to families with dependent children and for the proper and efficient administration of that aid program.

A county or municipality may likewise exclude from its spending limitation any county or municipal funds appropriated and expended for the purpose of matching available Federal or State funds where the availability of such funds is conditioned upon the appropriation and expenditure of such matching funds. By way of example of such types of matching funds, these amounts would include those monies which a county would appropriate pursuant to N.J.S.A. 44:10-5 to provide matching dollars for those Federal and State funds available under 42 U.S.C.A. 603(a)(1) and N.J.S.A. 44:10-5 to provide aid to families with dependent

children as well as those amounts which a county would appropriate to provide matching dollars for those Federal funds available under 42 U.S.C.A. 603(a)(3) and N.J.S.A. 44:10-5 to meet the administrative costs for that program.

By the same token, however, a municipality or county would not be authorized to exclude from its spending limitations those amounts which it might expend for the support of such programs where the monies expended are not either Federal or State funds, reimbursible from such funds or expended to match Federal or State funds the receipt of which is conditioned upon the expenditure by the local unit of matching funds. To conclude otherwise would be to ignore the manner in which N.J.S.A. 40A:4-45.3(b), as it existed prior to L. 1981, c. 56, had previously been interpreted in *Formal Opinion No. 3-1977* and the explicit indication of legislative intent in the Senate County and Municipal Government Committee Statement to Senate Bill No. 734 that the amendments effected to the Local Government Cap Law through the enactment of L. 1981, c. 56 were intended to be interpreted in the same manner. An example of the type of expenditures which would not fall within N.J.S.A. 40A:4-45.3(1) or N.J.S.A. 40A:4-45.4(g) would be those municipal expenditures made to meet the cost of administering public assistance within a municipality pursuant to N.J.S.A. 44:8-137. Such expenditures do not involve Federal or State funds, are not reimbursible from any such funds and are not made to match any Federal or State funds available for this purpose. Rather, such costs are borne solely by the municipality. N.J.S.A. 44:8-137.

In conclusion, you are, therefore, advised that municipalities and counties may exclude from their spending limitations under the Local Government Cap Law those expenditures made for programs funded entirely by Federal or State funds, those expenditures for which reimbursement from Federal or State funds is available and those expenditures which are made to provide matching funds upon which the receipt of Federal or State funds is conditioned.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

June 22, 1982

HONORABLE KENNETH R. BIEDERMAN
State Treasurer
Department of Treasury
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1982

Dear Treasurer Biederman:

You have asked for our advice as to the authority of the Lottery Commission to use three new proposed lottery games to be played on consumer-operated video lottery game terminals as part of the New Jersey State lottery. For the following reasons, it is our opinion that there is no constitutional nor statutory bar to the incorporation of these proposed lottery games as part of the New Jersey State lottery.

This proposal presents an innovative means for stimulating public interest in the state-operated lottery. Therefore, it is necessary to describe the proposal in some detail in order that the legal problems may be placed in the proper perspective. Generally, a consumer-operated video games terminal allows a lottery participant to directly operate a terminal with a television screen which displays a lottery game and the game's instructions. The first proposed game to be offered is a bingo game. In this game, the player deposits $1 into the lottery terminal; four colored bingo boards, each with 25 squares, appear on the television screen, a bingo mixer appears on the screen and the numbered balls begin to tumble and mix. Inside the terminal an electronic computer conducts an electronic drawing to select a numbered bingo ball. The random number selected by the process would range between 1 and 75 corresponding to the numbers appearing on the displayed bingo boards. As soon as a number is drawn, the bingo boards are checked and each occurrence of the selected number on any of the boards is then circled. If any row, column or diagonal of any of the four bingo boards is filled, the player wins the prize associated with that bingo board. A small computer printer inside the terminal would print out a prize winning ticket. The video lottery terminal would be connected to a large computer at a central site in the state.

In the second proposed game, a TV screen would show a planet in space with 150 areas of land marked off with boundary lines. Of the 150 locations, there will be at least three occurrences of each prize amount offered in a treasure chest. The video lottery terminal computer conducts a random drawing that randomly scatters the prize amounts to the 150 locations. The player would select five of the 150 areas for an astronaut to dig for the buried treasure.

In the third proposed game, a five digit score is developed as a result of the player's participation in a amusement game. The five digit score is the player's five digit number in a drawing conducted by the computer terminal. If the player matches all five digits in order, he or she wins the top prize. If the right-most four digits match, a lesser prize would be won and so forth.

From this description of the proposed video games, certain basic

premises are established. All of the games would be games of pure chance without any element of skill. Prizes will be distributed as a result of an electronic randomization among the lottery participants who will have paid monetary consideration to participate in the lottery game.

The public policy of this state has traditionally condemned gambling by lotteries. The Constitution of 1844 expressly forbade lotteries or the sale of lottery tickets within the state. Art. 4, §7, ¶2. In 1897 this provision was extended to deny the right of the legislature to authorize "pool—selling, bookmaking or gambling of any kind." The Constitution of 1947 while generally continuing the ban on legislation authorizing gambling contained specific exceptions to the prohibition. It continued the authorization for pari-mutuel betting on horse races first permitted in 1939 and authorized veterans, charitable, education and other similar organizations to conduct bingo or lotto and to hold raffles. In 1969 a popular referendum was held to authorize the legislature to direct the operation of a state lottery. This amendment appears as Art. 4, §7, ¶2 of the State Constitution and reads as follows:

> C. It shall be lawful for the Legislature to authorize the conduct of State lotteries restricted to the selling of rights to participate therein and the awarding of prizes by drawings when the entire net proceeds of any such lottery shall be for State institutions, State aid for education.

This amendment was implemented by the legislature by the enactment of the State Lottery Law, L. 1970, c. 13, which established a State Lottery Commission with power to promulgate rules and regulations governing the establishment and operation of a state lottery as it deems necessary and desirable.

The constitutional amendment does not provide any clue or definition of its important operative terms, for example, the word "lotteries" or the phrases "selling of rights to participate," or "the awarding of prizes by drawings." Since the probable meaning of these phrases are significant to the resolution of your inquiry, it is necessary to review the commonly understood meaning of those phrases at the time of the adoption of the 1969 amendment.

In this regard, a preliminary question arises as to whether a video lottery game terminal is a "slot machine" and whether or not the same is comprehended within a "lottery." The term "slot machine" was unknown at the common law. *State v. Brandt,* 122 N.J.L. 488, 489 (Sup. Ct. 1939). The question of the definition of a slot machine first arose in the context of whether a "pinball" game fell within the purview of a "slot machine." In *Sterling Distributors v. Keenan,* 135 N.J. Eq. 508 (E. & A. 1944) the Court of Errors and Appeals defined the term as any machine started by dropping a coin into the slot which could entitle the operator to a prize if he should win. Also, in *State v. Ricciardi,* 18 N.J. 441 (1955) the Supreme Court rejected arguments that a "slot machine" applied only to the classic "one-armed bandit." The court held that a pinball machine fell within the interdiction of a statute prohibiting the keeping of slot machines where the result was dictated by chance alone. The import of

the court's decision is that any mechanical device or machine would be subject to the statutory prohibition against the use of a slot machine where the traditional elements of consideration, chance and prize were found in its operation.

The definition of a slot machine is now found in both the Criminal Code and the Casino Control Act. It is generally defined as:

> Any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash, whether the payoff is made automatically from the machine or in any other manner whatsoever. [N.J.S.A. 2C:37-1f; 5:12-45.]

From this discussion of both the judicial and statutory interpretation of the meaning of a slot machine, it is clear that the video lottery games terminal falls within those definitions. It is a machine or device which is available to operate upon the insertion of a coin. Depending on chance, the operation of the machine terminal may deliver or entitle the player to receive a monetary prize.

Notwithstanding our characterization of the video terminal as a form of "slot machine," slot machines in certain cases have been found to be a proper component of a "lottery." For example, a slot machine has been held to be a form of lottery where the perpetrators used the machine as a means to carry into execution an illegal scheme or plan. *State v. Coats,* 74 P. 2d 1102, 1106 (Ore. 1938); *State, et al. v. Circuit Court,* 148 So. 522 (Fla. 1933); *Commissioner v. McClintock,* 154 N.E. 264 (Mass. 1926), a slot machine containing mint rolls and providing for the distribution of premium checks held to be a lottery for the machine was deemed a scheme for the distribution of prizes by chance; *In re Rogers,* 118 P. 242 (Cal. 1911), cigar vending machine would dispense at uncertain intervals three cigars for the price of one and held to be a lottery; *Theyer v. State,* 37 S.E. 96 (Ga. 1900), a nickel slot machine which entitled a player to a cigar and in addition thereto a prize in the amount of 100 cigars for a "royal flush" held to be part of a lottery; *Loiseau v. State,* 22 So. 138 (Ala. 1897). *See also* Annotation, "Coin-Operated or slot machine as lottery, 101 A.L.R. 1126 (1936).

Also, under the case law in this state:

> A lottery is defined as being a scheme for the distribution of prizes by chance, a game of hazard in which small sums are ventured for the chance of obtaining a larger value either in money or other valuables. Where a pecuniary consideration is paid and it is determined by lot or chance, according to some scheme held out to the public what the party who pays the money is to have for it, or whether he is to have anything, it is a lottery. [*State v. Lovell* 39 N.J.L. 461.]

Moreover, the classic form of lottery involved the distribution of prizes by the random selection of a number at some chance event. *See State v. Shorts,* 32 N.J.L. 398 (Sup. Ct. 1868). A lottery was also defined by the criminal law, N.J.S.A. 2A:121-6 prior to its repeal in 1979 as "a distribution of prizes by chance in return for a consideration in the form of money or other valuable thing." Also, the Code of Criminal Justice, enacted in 1979, defines a lottery as:

> an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value. [N.J.S.A. 2C:37-2h.]

Certain common features of a lottery are apparent from both the common law and statutory definition. It was contemplated a lottery would be a public scheme involving multiple participants or players. Also, an essential ingredient of the definition is that a lottery is a game of chance. In the present situation, the video lottery game terminal, although a form of slot machine, is the component for carrying into execution an innovative means of public lottery. The winner thereof is determined by a method of randomized electronic selection so that the prize is determined by pure chance.[1] For these reasons, it is our opinion that the use of a video terminal would permissibly fall within the meaning of a "lottery" under Art. 4, §7, ¶2.

Also, although the use of the proposed video games does not include the purchase of tickets in order to play, there is little doubt in characterizing the depositing of money into the video terminal as the "selling of rights to participate." Also, the constitutional language does not provide any definition of the term "drawing." It may reasonably be assumed that the framers had in mind some form of random selection so that the result be determined purely by chance. The courts have defined "drawing" as not only the act of randomly selecting a winning ticket from among many tickets but also "in a generic sense meaning any chance event upon which the . . . activity is based." *State v. Gatling,* 95 N.J. Super. 103, 109 (App. Div. 1967). A random selection of a winner by computer or electronic

1. In an opinion letter dated Sept. 8, 1981 to the Director of the New York State Lottery, New York Attorney General Abrams rendered an opinion concerning the installation of certain electronic games as part of that state's lottery. The Attorney General concluded that those specific games were prohibited by both the Constitution and statutory law of the State of New York. It is clear to us that the games considered by Attorney General Abrams are distinguishable in a meaningful way from the present proposal. There, blackjack and red devil games were expressly characterized as predominantly games of skill where a player was pitted against a single game machine. In the present situation, it is contemplated that the games be premised on pure chance through a randomized electronic selection mechanism and available to multiple players on a statewide basis.

means would in our opinion fall within the constitutional meaning of a "drawing."

Further, not only does the proposal for the incorporation of a video lottery games terminal as part of the state lottery conform with the literal terms of the State Constitution, but also with its intended scope and purpose. Certain indicia of the framers intent are discernible from public hearings held on the concurrent resolution. Assemblyman Brown expressed the view that the exact nature and structure of the games should be left to the legislature to decide in its discretion at some future date:

> There are so many forms of lottery that I truly feel . . . that the mechanics of it should be left to a later date when public opinion has shown itself as to what it desires. I think the purpose now is to determine do the people or do not the people want this particular thing.
>
> * * *
>
> Now the mechanics can always be worked out later and my own thoughts are very flexible on it because . . . the least amount of revenue anticipated would considerably swell the state's treasury . . . . [Public Hearings before Assembly Judiciary Committee on *Assembly Concurr. Resolu.* 22 Page 7, 9.]

Also, the hearings reveal the intent of the legislature to compete with illegal numbers games so that the state could cut into the profits reaped by organized crime. *Id.* at 5. However, it was consistently agreed by all speakers that the specific format for conducting a lottery should be left to a later date and to those persons responsible for implementing it. Although the legislature could not have comprehended the present proposal in 1969, it is clear to us that it does not fall outside of their broad consensus. Consequently, it is our judgment that there would be no impediment from either the constitutional language or from its basic objective and history to the implementation of a video lottery games similar to the one discussed above.

The statutory framework governing the operation of a state lottery was enacted in 1970. N.J.S.A. 5:9-1 *et seq.* A State Lottery Commission was established with power "to promulgate such rules and regulations governing the establishment and operation of a state lottery as it deems necessary and desirable in order that the mandate of the people, expressed in their approval of the amendment . . . to the Constitution . . . may be fully implemented." It was further provided that rules and regulations may include:

1. The type of lottery to be conducted.

* * *

4. The manner of selecting the winning tickets or shares.
5. The manner of payment of prizes to the holders of winning tickets or shares, including, subject to the approval of the State Treasurer, provision for payment of prizes not to exceed $599.00 by agents licensed hereunder out of moneys received from sales of tickets or shares.

6. The frequency of the drawings or selections of winning tickets or shares, without limitation.
7. Without limit as to number, the type or types of locations at which tickets or shares may be sold.
8. The method to be used in selling tickets or shares. N.J.S.A. 5:9-7.

From this enumeration of the powers of the Commission, the legislature intended to confer broad and pervasive regulatory discretion on the members of the Commission in the actual conduct of the lottery and in structuring its games.

The statutory direction in subsection (5) concerning the payment of prizes to the holders of winning tickets or shares does not pose any obstacle.[2] Although the proposed video game entails no purchase of a ticket in order to play, there should be little difficulty in perceiving the depositing of money into the terminal as the sale of a "share" in the lottery. There is no statutory definition of a share but the term is generally defined as the "portion belonging to, due to, or contributed by, an individual." *Webster's Third International Dictionary (1976).* In the present context, the statutory "share" is the opportunity given to the player to participate in the lottery game and to win a prize. Accordingly, there is no impediment to the exercise of the discretion of the Lottery Commission to adopt a proposal of this nature under the State Lottery Law.

In conclusion, therefore, you are advised that there is no constitutional or statutory bar to the incorporation of a consumer-operated video games terminal into and to be made a part of the New Jersey State lottery.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

2. A reported case interpreting the state lottery law is *Karafa v. N.J. State Lottery Commission,* 129 N.J. Super. 499 (Ch. Div. 1974). The court held that a lost lottery ticket may not be established by a judicial determination and that it was incumbent on the winner to produce the winning ticket to claim the prize. The court's opinion was predicated to a great extent on the then existing regulatory scheme of the Lottery Commission to require the presentation and validation of a winning ticket. It is therefore apparent that substantial amendments to existing rules and regulations must be made in order to accommodate the video games terminals as part of the Lottery Commission program.

September 17, 1982

HONORABLE MICHAEL M. HORN
Commissioner of Banking
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 6—1982

Dear Commissioner Horn:

You have asked for our advice as to whether there is any impediment to a bank or savings bank chartered under the laws of this State allowing customers of a banking institution chartered in another state or by the federal government to access their accounts in those banking institutions through automatic teller machines (ATM's) located at New Jersey banks or savings banks. It is our opinion that access by customers of a bank chartered in another state or by the federal government to their accounts in those banking institutions through an ATM located at New Jersey banks or savings banks is permissible where the ATM is established, operated and maintained by the New Jersey banking institution.

In order to place the legal issue into the proper context, it is appropriate to discuss the existing scheme for computer operated access in New Jersey and the manner by which access to accounts in foreign banking institutions would affect the existing scheme. We are informed that several New Jersey banks and savings banks are members of a computer support system known as the "Money Access Service." The banks and savings banks have purchased an ATM which is accessed by holders of cards designated as "money access cards." The cards are issued by the banks or savings banks after having determined the qualifications of those customers eligible to receive and use the cards, which prominently identify the New Jersey banking institution through which they were obtained. Further, we are told that each bank or savings bank may determine to exclude cardholders of one or more other banking institutions from having access to the terminal established by it and may terminate access even after it has been previously granted. Moreover, each banking institution retains the discretion to limit the type of banking transactions that the cardholders of other banking institutions may conduct at the terminal. As a general proposition, you have advised us that customers of banking institutions who participate in "Money Access Service" may make deposits withdrawals, balance inquiries and, in that manner, access both time and demand accounts through the use of the ATM's located throughout the State.

Your specific inquiry is based on proposals made by those New Jersey financial institutions who presently are members of the Philadelphia National Bank's (PNB) "Money Access Service." It is contemplated that these New Jersey banking institutions would allow cardholders of financial institutions outside of New Jersey who participate in PNB's "Money Access Service" to have access to time and demand accounts in those out-of-state banking institutions. This would be done on the same terms and conditions presently in place for access by cardholders of New Jersey

banking institutions who participate in the system, except that no acceptance of deposits is proposed. It is envisioned under this proposed scheme that a cash withdrawal made at an ATM is in effect a request to the out-of-state institution to wire funds to a customer at the ATM. The transaction is processed through the central MAC computer support system maintained by PNB in Pennsylvania. In the event the funds requested are available in the customer's account, approval for the disbursement of those funds is wired by the institution to the ATM for transmittal to the customer.

An analysis of whether this proposal is consistent with New Jersey banking law must commence with N.J.S.A. 17:9A-19L, which provides as follows:

> Except as otherwise provided by law, no foreign bank as defined in section 315 [N.J.S.A. 17:9A-315], shall establish, operate or maintain in this State any full branch office, minibranch office or communication terminal branch office.

A foreign bank is defined by the banking laws to include banks organized under the laws of other states as well as nationally chartered banks having their principal offices in other states. N.J.S.A. 17:9A-315. A "branch office" is generally defined to include any office, unit or terminal at which any business that may be conducted in a principal office of a bank or savings bank may be transacted. N.J.S.A. 17:9A-1(14). A communication terminal branch office is defined as:

> a branch office of a bank or savings bank which is either manned by a bona fide third party under contract to a bank or savings bank or unmanned and which consists of equipment, structure or systems, by means of which information relating to financial services rendered to the public is transmitted and through which transactions with banks and savings banks are consummated, either instantaneously or otherwise. [N.J.S.A. 17:9A-1(17).]

Since an ATM may either constitute a "branch office" or a "communication terminal branch office" of a foreign banking institution, it is apparent that such a foreign banking institution may not establish, operate or maintain that facility in this jurisdiction. Although there is no definitive legislative history as to the import of the statutory prohibition, words and phrases in a statute should be given their generally accepted meaning unless some special or different meaning is expressly indicated. *Scatuorchio v. Jersey City Incinerator,* 14 N.J. 72, 87 (1953); *Abbotts Dairies, Inc. v. Armstrong,* 14 N.J. 319 (1954); *Grogan v. DeSapio,* 11 N.J. 308, 323 (1953). The term "establish" is commonly defined to mean "to bring into being on a firm or permanent basis" or "to install or settle in a position, place or business." The word "maintain" is defined as "to keep in existence or continuance" or "to provide for the upkeep and support of; carry the expenses of." The word "operate" is generally defined to mean "to be or keep in operation." *Random House College Dictionary,* Revised Edition (1980). Consequently, the statutory prohibition is designed to prohibit

those foreign banking institutions from taking steps to "establish, operate or maintain in this State" any branch office or terminal branch office.

However, it is noteworthy that the instant proposal does not suggest a foreign bank would either establish, operate or maintain a branch office or a communication terminal branch office in this jurisdiction. Banks and savings banks chartered under the laws of this State have installed the ATM's presently located and currently in use in this jurisdiction. These facilities have been installed with the approval of the Commissioner of Banking pursuant to N.J.S.A. 17:9A-20(c). Moreover, we have been informed that banks and savings banks chartered under the laws of this State have determined the physical location of the ATM, the type and model of the ATM and that no other financial institution, including any foreign banking institution, participated in any manner with the decision to install the ATM nor shared in the cost of the establishment and maintenance of the ATM. Further, we have been informed under the terms of the proposal the banks or savings banks chartered in this State will bear the entire cost and expense of supporting and assisting the ATM. No other institution nor PNB will share in the profits or control of the facility. The foreign financial institution will pay a transaction fee to the New Jersey institution operating the ATM for each transaction but the foreign banking institution will have no employees maintaining the ATM nor will it maintain any office in connection with the operation of the ATM in this State. We are further informed that the daily operation of the ATM remains at the discretion of the New Jersey financial institution under the supervision of the Commissioner of Banking. For example, New Jersey financial institutions will retain the discretion to determine whether cardholders of foreign banking institutions will have access to the ATM, whether to terminate such access, and whether to expand or restrict the scope and degree of banking services to be provided.

It is clear from this factual description of the proposal that the foreign banking institutions participating in the computer support system known as "Money Access Service" will neither establish, maintain nor operate a branch office or communication terminal branch office in this jurisdiction.[1] The branch office or the communication terminal branch office will retain their character in all particulars as branches of a New Jersey financial institution under the supervision of the Commissioner of Banking and subject to the laws of this jurisdiction.[2]

Moreover, this conclusion is supported by a significant opinion issued by the U.S. Comptroller of the Currency interpreting the McFadden Act, 12 U.S.C. §36, to permit national banks to utilize an ATM across state lines where the ATM has been established by a bank headquartered in

1. Parenthetically, any notion that a principal-agent relation exists between the out-of-State institution and New Jersey institution is not supportable. Among the essential charcteristics of a principal-agent relation is the right of a principal to control the conduct of the agent with respect to matters entrusted to him. *Restatement (Second) of Agency* §14 (1957). As more fully spelled out above, there is no control or supervision exercised by an out-of-State banking institution over the ATM's solely established, operated and maintained by the New Jersey institutions.

another state if (1) the compensation for its use is on a transactional fee basis and (2) such use does not give to national banks a competitive advantage over state banks situated in those states. *Comptroller's Letter Opinion* No. 153, (July 1980) CCH Fed. Banking Law Rep. §§85,234-85,235. The Comptroller based his opinion on the holding of the court in *Independent Bankers Ass'n of America v. Smith,* 534 F. 2d 921 (D.C. Cir. 1976) *cert. den.* 429 U.S. 862 (1976), that:

> any facility which performs the traditional bank functions of receiving or disbursing funds is a 'branch' within the meaning of [12 U.S.C. §36(f)] if (1) the facility is *established (i.e., owned or rented)* by the bank, and (2) it offers the bank's customers a convenience that gives the bank a competitive advantage over other banks (national or state). [Emphasis added.] [534 F. 2d at 951.]

The Comptroller, focusing on the above-quoted language, noted that utilizing ATM's on some basis other than ownership or rent, e.g., on a transactional fee basis, would not constitute branch banking under federal law and, therefore, would be permissible even on an interstate basis.

A resolution of this question, however, does not put the matter to rest. N.J.S.A. 17:9A-316B provides that a foreign bank may transact business in this State only as executor or as testamentary trustee or guardian. Thus, foreign banks are generally prohibited from transacting business in this State. The issue of a foreign bank transacting business in this jurisdiction has never been addressed by the New Jersey courts (other than in the context of a foreign bank acting as an executor or testamentary trustee under a will). However, the meaining of a statutory prohibition

2. It should be noted that under the McFadden Act, 12 U.S.C. §36, a national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches at any point within the state in which the association is situated, if such establishment and operation are at the time authorized to state banks by the statute law of the state in question. 12 U.S.C. §36(c). Thus, the branching laws applicable to national banks incorporate the state branching laws of the state in which the national bank is located. Nonetheless, it is well settled that what constitutes a national bank "branch" is a threshold question of federal law to be determined without resort to state law. *First Nat. Bk. in Plant City v. Dickerson,* 396 U.S. 122, 133-134 (1969); *Independent Bankers Ass'n. of America v. Smith,* 534 F. 2d 921, 933 (D.C. Cir. 1976) *cert. den.* 429 U.S. 862 (1976). In this regard, the court in *Independent Bankers Ass'n of America v. Smith, supra,* held that under 12 U.S.C. §36(f), an automatic teller machine (also known as a "customer-bank communication terminal")established and operated by a national bank is a branch of that bank since it is a facility where deposits are received, checks are paid and money is lent. 534 F. 2d at 938-948. *Accord Colorado ex rel. Banking Board v. First National Bank of Fort Collins,* 540 F. 2d 497 (10 Cir. 1976); *Illinois ex rel. Lignouil v. Continental Illinois National Bank,* 536 F. 2d 176 (7th Cir. 1976) *cert. den.* 429 U.S. 871 (1976); *Missouri ex rel. Kosterman v. First National Bank in St. Louis,* 538 F. 2d 219 (8th Cir. 1976) *cert. den.* 429 U.S. 941 (1976). As a branch, a national bank could not lawfully install an ATM in a state other than the one in which its principal office is situated, unless authorized by the law of the state in which the ATM is to be located. 12 U.S.C. §36(c).

against foreign corporations transacting business in this jurisdiction has been addressed by the courts in many different contexts. It is generally recognized that the phrase "transacting business" is a term not susceptible of precise definition and that each case must be dealt with on its own circumstances. *See Materials Research Corp. v. Metron,* 64 N.J. 74, 79 (1973). Common indicia of "transacting business" include the physical presence of a foreign corporation in the State through the holding or leasing of office space, employment of personnel paid by the foreign corporation and located in the state, a significant percentage of business volume in the state compared to the corporation's overall transactions as well as the authority of employees in the state to consummate transactions without confirmation by the foreign corporation's home office. *See United States Time Corp. v. Grand Union,* 64 N.J. Super. 39 (Ch. Div. 1960) (where Connecticut corporation had no office or telephone listings in New Jersey, employed two salesmen who did not reside in New Jersey and whose orders were subject to acceptance at corporation's home office, where New Jersey sales represented some 2 percent of total volume of business, corporation was not "doing business" in the State, and hence was not required to comply with regulatory provisions of New Jersey Corporation Act in order to maintain suit); *Eli Lilly & Co. v. Sav-On Drugs, Inc.,* 57 N.J. Super. 291 (Ch. Div. 1959), *aff'd* 31 N.J. 591 (1960), *aff'd* 366 U.S. 276, (1961) (where Indiana corporation maintained an office in New Jersey, reimbursed its district manager for all expenses incident to maintenance and operation of the office, paid salary of secretary in the office and paid the salary of 18 detail men working in the State under the supervision of the district manager, the corporation was "doing business" in the State and was required to have registered under Corporation Act in order to maintain suit); *Materials Research Corp. v. Metron, supra* (where foreign corporation maintained no office in New Jersey, act of foreign corporation's sales engineer in soliciting orders in New Jersey which were subject to acceptance by home office in New York did not warrant conclusion that corporation was "transacting business" in New Jersey so as to require it to file a certificate of authority before maintaining action in State). *See also Taub v. Colonial Coated Textile Corp.* 54 A.D. 660, 387 N.Y.S. 2d 869 (1976) (where bank organized under laws of foreign country maintains no office, agent or branch in New York and only conducts its business in New York through New York correspondent bank, it is not "doing business" in New York for purposes of long-arm jurisdiction statute); *Bank of America v. Whitney Central Bank,* 261 U.S. 171, 173, (1922) (where a foreign bank has no place of business in New York and no employees or offices there, it was not "transacting business" in New York for purposes of federal jurisdiction when its New York business was conducted by New York banks on a correspondent basis).

It is at once obvious that the instant proposal differs in a material degree from those instances where the courts have determined a foreign corporation has transacted business in this jurisdiction. It bears repeating that the banking transaction will originate in an ATM established, maintained and operated by a New Jersey financial institution consistent with the laws of this State. Further, we are informed that these interstate transactions will not represent a major portion of the foreign bank's overall

business. Moreover, the consummation of the transaction by the New Jersey bank or savings bank is subject to the receipt of instructions by the New Jersey institution from the foreign bank's home offices. It is contemplated that the foreign institution will not employ any personnel in this State in conjunction with the ATM, nor will it maintain any office or other form of tangible presence in New Jersey. For these reasons, it is our view that under the specific facts outlined in the proposal, PNB or other foreign state chartered banking institution or national bank would not be "transacting business" in this State within the meaning of the prohibition set forth in N.J.S.A. 17:9A-316.

For these reasons, it is our opinion that there is no statutory impediment to a bank or savings bank chartered under the laws of this State allowing customers of a banking institution chartered in another state or by the federal government to access their accounts in those banking institutions through automatic teller machines established, operated and maintained by the New Jersey banking institutions under the supervision of the Commissioner of Banking.[3]

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

3. It should be noted that the Commissioner has pervasive powers to limit or control the exent to which state-chartered banks permit access by foreign bank customers to ATM's located at branch offices established and maintained by the New Jersey institutions. These powers are derived not only from the Commissioner's authority to adopt regulations concerning the operation of communication terminal branch offices, N.J.S.A. 17:9A-20G, but also from his general supervisory powers over banks and savings banks as contained in N.J.S.A. 17:9A-266 *et seq.*

November 10, 1982

HONORABLE JAMES J. BARRY, JR.
Director, Division of Consumer Affairs
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 7—1982

Dear Director Barry:

You have asked for an opinion as to whether individual Retirement Accounts (IRA), Keogh Plans, Simplified Employee Pension Plans, and bank deposit accounts are consumer contracts within the meaning of the Plain Language Law. For the following reasons, you are advised that all language contained in documents required to open and maintain an IRA account providing professional investment and management services for a fee or a Keogh Plan for self-employed individuals should conform with the "plain language" requirements of the Law, with the exception of language contained or copied from an Internal Revenue Service (IRS) model account form.

The Plain Language Law requires that a consumer contract shall be written in a simple, clear, understandable and readable way. N.J.S.A. 56:12-2. A creditor, seller, insurer or lessor may be liable to a consumer for damages if the failure to write a consumer contract in a simple, clear, understandable and readable way caused the consumer to be substantially confused about his rights and remedies under the agreement. N.J.S.A. 56:12-3. It is further provided that there shall be no liability if a consumer contract is in conformity with an opinion of the Attorney General that the agreement conforms with the plain language requirements of the act. It is therefore clear that prior to invoking the jurisdiction of the Attorney General, it must be determined whether an agreement is a "consumer contract" within the meaning of the law. For purposes of your inquiry, a "consumer contract" is defined in pertinent part to mean a written agreement in which an individual:

> f. Contracts for services including professional services, for cash or on credit and the money, property or services are obtained for personal, family or household purposes. 'Consumer contract' includes writings required to complete the consumer transaction.

Consequently, each of the investment retirement or bank deposit accounts mentioned in your inquiry must be reviewed separately to determine whether they fall within the meaning of a consumer contract as defined by law.

A Keogh Plan is a retirement account which is established by employers for the benefit of the employer or eligible employees. As a general rule, a Keogh Plan is not a consumer contract because the services are not obtained for personal, family or household purposes. Only in an instance where a self-employed individual establishes a Keogh Plan for himself is there an agreement pursuant to which services are obtained for personal, family or household purposes.

A Simplified Employee (SEP) Pension Plan is a plan which permits an employer to pay either $15,000.00 or 15% of an employee compensation (whichever is less) to an individual retirement account. As with Keogh Plans, SEPs are not consumer contracts for personal, family or household purposes.

An IRA provides for the creation of retirement plans by individuals through tax incentives. Contributions to such plans are deductible for federal income tax purposes and no federal tax is paid on earnings on the funds until they are withdrawn. An IRA may include investment services for which a financial institution charges a commission or fee. Also, an IRA may provide in certain cases for investments directed by the customer for which a fee or commission may be charged by the institution for the administration and management of the account.

At the outset, it is clear to us that an IRA which does not provide for investment or management services does not qualify as a "consumer contract". In that instance a consumer does not pay a fee to a financial institution for professional services. A financial institution does not invest, reinvest, acquire, sell, exchange or manage investments. The money placed into that form of IRA is often invested in savings accounts or Certificates

of Deposit either with a nominal or no charge to the depositor and comingled with other deposit monies of the banking institution.

In other cases, an individual may enter into a written agreement with an entity such as a brokerage firm to obtain investment services or the professional management of a variety of investments "self directed" by the depositor. Although the statute does not provide any definition of the meaning of "professional services," a statute should be interpreted according to its common meaning unless some technical or special meaning is indicated. *Service Armament Co. v. Hyland,* 70 N.J. 550, 556 (1976). A profession is generally defined as a calling requiring specialized knowledge and often long and intensive academic preparation. *Webster's Seventh Collegiate Dictionary,* p. 680. "Professional services" are defined in the Local Public Contracts Law to mean services rendered by a person authorized by law to practice a recognized profession whose practice is regulated by law and the performance of which services requires knowledge of an advanced type acquired by a formal course of specialized instruction. N.J.S.A. 40A:11-2(6). The activities of financial institutions are highly regulated under State law and investment decisions are commonly made by persons who have acquired a specialized knowledge and skill in the area. Moreover, trustees and fiduciaries must "exercise care and judgment . . . which persons of ordinary prudence and reasonable discretion exercise in the managment of and dealing with the property and affairs of another." Furthermore, it is provided that "if a fiduciary has special skills or is named as the fiduciary on the basis of representation of such skills or expertise, he is under a duty to exercise those skills." N.J.S.A. 3B:20-13. There can be no question therefore that the investment and management services provided by these entities with regard to the IRA accounts of their customers may be properly characterized as a form of professional services within the meaning of the Plain Language Law.

A bank deposit account is not a contract for professional services nor is a bank deposit account a trust. In *Kronish v. Howard Savings Institution,* 161 N.J. Super. 592 (App. Div. 1978) the court held that deposits paid by mortgagors to mortgagees as a reserve for payment of taxes were not trusts. Further, the court held that the question of whether an agreement is a trust or a debt depends upon the intention of the parties. If the intention is that the money should be kept or used as a separate fund for the benefit of the payor or a third person, a trust is created. If the intention is that the party receiving the money shall have the unrestricted use thereof being liable to pay back a similar amount, with or without interest, a debt is created. This same reasoning was followed by the Supreme Court in *State v. Atlantic City Electric Co.,* 23 N.J. 259 (1957), where the court held that there is a strong presumption that a debt is created rather than a trust when the recipient of money obligates himself to pay a fixed rate of interest. The court also found that there was no trust created because there was no indication in the agreement that the parties intended a relation of confidence. It is therefore clear that a bank deposit account like an IRA account, which does not provide for professional investment or management services, contemplates a creditor-debtor relationship and does not include the receipt of services by the consumer. Neither then would be included as a consumer contract under the Plain Language Law.*

A further question arises as to whether those documents used in the establishment of an IRA fall within the meaning of a consumer contract. The answer is in the affirmative. N.J.S.A. 56:12-1 provides in pertinent part that a consumer contract includes writings required to complete the consumer transaction. Also, N.J.S.A. 56:12-6 provides as follows:

> The use of specific language in a consumer contract required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency shall not violate this act.

We are informed that the IRS provides sponsors of IRA's with model forms. In an instance where an IRA form is adopted by the plan sponsor, there can be no question that the specific language in those documents does not violate the Plain Language Law, since the document has been approved by a published interpretation of a federal agency. We are further advised that IRA sponsors are not required to use the model forms supplied by the IRS. IRA prototype forms are prepared by the sponsor and reviewed by the IRS as to whether the prototype is consistent with federal requirements. Since the statutory language clearly requires a published interpretation of a federal agency to remove an agreement from the purview of the act, it is clear that a prototype form does fall within the meaning of a consumer contract under law. Finally, federal income tax regulations require an IRA sponsor to provide a consumer with a disclosure statement. A disclosure statement, therefore, is clearly a writing required to complete the consumer transaction and is a consumer contract within the meaning of the law.

In conclusion, it is our opinion that a Keogh Plan established by an employer other than a self employed individual and a Simplified Employee Pension Plan are not consumer contracts within the meaning of the Plain Language Law. Further, although some IRA and bank deposit accounts are not consumer contracts within the meaning of the law, an IRA account providing for investment or management services for a fee or commission is a consumer contract that must conform with the requirements of the act. Finally, it is our opinion that language in IRA's patterned on IRS required model account forms are not subject the the requirements of the act but language in prototype forms reviewed by the IRS would be subject the requirements of the act.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: J. MICHAEL BLAKE
Deputy Attorney General

* A consumer may set up an IRA by buying an annuity or endowment contract from a life insurance company. This form of IRA is not subject to the Plain Language Act. It is subject to the Life and Health Insurance Policy Language Simplification Act. *See* N.J.S.A. 56:12-1(c).

December 13, 1982

JOSEPH F. MURPHY,
Commissioner of Insurance
201 East State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 8—1982

Dear Commissioner Murphy:

You have inquired whether the extension of a regulation establishing procedures for the nonrenewal of "No-Fault" coverages to include physical damage coverages is authorized. For the following reasons, you are advised that the extension of the procedures concerning the nonrenewal of "No-Fault" coverages to include physical damage coverages in automobile insurance policies by N.J.A.C. 11:3-8.1(g) is a valid and enforceable exercise of the Commissioner's rule making power.

Effective January, 1973, the Commissioner adopted regulations which placed restrictions on insurance carriers seeking to nonrenew private passenger automobile policies containing "No-Fault" coverages. N.J.A.C. 11:3-8.1 *et seq.*[1] The regulation in part provides that a notice of nonrenewal is not valid unless it is mailed 60 to 90 days prior to the expiration of the current policy and sets forth the reason(s) for nonrenewal. Section (b). Additionally, the notice must include the text of the portion of the rule permitting the nonrenewal and specific facts which bring the insured under the rule. Section (b)(1). Reasons for nonrenewal deemed to have the Commissioner's approval are set forth at sections (e) and (f). These reasons include, among other things, an insured's involvement in prior accidents, his violation of motor vehicle laws, his use of the car in professional racing, his physical or mental impairment, and his refusal to submit to a medical examination. Additionally, N.J.A.C. 11:3-8.1(d) provides that "any refusal to renew an automobile insurance policy not based upon such reasons be submitted to the Commissioner of Insurance no later than 90 days prior to the expiration of the policy and shall only be issued to the insured with the consent of the Commissioner."

On October 18, 1976, the Department adopted N.J.A.C. 11:3-8.1(g) which provides that "this rule (N.J.A.C. 11:3-8.1 *et seq.*) shall apply to *all* private passenger automobile coverages when included in a policy providing for personal injury protection and liability coverage." In effect, the amendment prohibits auto insurers from nonrenewing physical damage coverages (i.e., collision, comprehensive, etc.) unless the nonrenewal is in compliance with the standards of the existing regulation.

The question presented is whether or not the Commissioner has the authority to regulate the nonrenewals of physical damage coverages. The requisite statutory support is amply supplied by N.J.S.A. 17:22-6.14a 1 and 2 which state in pertinent part:

1. The Commissioner's power to promulgate regulations relative to the nonrenewal of "No-Fault" coverages was confirmed by the Supreme Court in *Sheeran v. Nationwide Mutual Insurance Co., Inc.*, 159 N.J. Super. 417 (Ch. 1978), *aff'd* 163 N.J. Super. 40 (App. Div. 1978), *modified on other grounds*, 80 N.J. 548 (1979).

> All property and casualty insurers doing business in New Jersey shall, upon request of the Commissioner of Insurance, file with the Department of Insurance a copy of their current underwriting guidelines, together with any amendments thereto or modification thereof. Such guidelines, amendments or modifications shall not be arbitrary, capricious or unfairly discriminatory. Where a policy of insurance is not renewed because of failure to meet the then current underwriting standards, the notice of nonrenewal shall identify the underwriting standard and specify in detail the factual basis upon said underwriting standard has not been met.

There is no ambiguity. N.J.S.A. 17:22-6.14a l requires that all property and casualty insurers maintain underwriting guidelines which are not arbitrary, capricious or unfairly discriminatory. Further, these guidelines must be made available to the Department of Insurance upon the request of the Commissioner. N.J.S.A. 17:22-6.14a 2 imposes an obligation on an insurer which intends to nonrenew a policy based on the insured's failure to meet company underwriting standards. Namely, the notice of nonrenewal delivered to the insured must identify the standard upon which the nonrenewal is premised and state the specific factual basis establishing the insured's failure to meet that standard. Given the straightforward terminology of the act there can be little question that it sufficiently authorizes the Commission to review the validity of a company's underwriting standards and to determine whether a nonrenewal is reasonably based on those standards.

N.J.A.C. 11:3-8.1 *et seq.* provides the mechanism by which the Commissioner has implemented the statute. N.J.A.C. 11:3-8.1(d) requires that, at least 90 days prior to the expiration of an automobile insurance policy, a carrier must provide the Commissioner of Insurance with a statement of the reasons for the nonrenewal. The "reasons" (for nonrenewal), as that term is used in this regulation, mean acceptable underwriting reasons relied upon by the insurer in deciding to nonrenew an insured's coverages.[2] After review, the Commissioner will consent to or disapprove the use of that reason. Obvious reasons for nonrenewal, listed at N.J.A.C. 11:3-8.1(e), are deemed to have the approval of the Commissioner and express consent based on any of these reasons is not required. In the event the Commissioner determines that the reasons underlying a proposed nonrenewal submitted to him are not either arbitrary, capricious or discriminatory, the insurer may notify the insured of the intent to nonrenew. It is clear that section (d) of the rule establishes a procedure by which the Commissioner may both request that certain underwriting guidelines be filed with the Department and determine whether those underwriting guidelines are consistent with the statutory standard.

In addition, it is appropriate to examine the statute in light of its surroundings and objectives in order to ascertain the statutory policy sought to be achieved. *In re Berardi,* 23 N.J. 485, 491 (1957); *Schierstead*

2. We are advised that the reasons deemed to have the Commissioner's prior consent, set forth at N.J.A.C. 11:3-8.1(e), are essentially underwriting standards.

v. City of Brigantine, 20 N.J. 164, 169 (1955); *Ward v. Scott,* 11 N.J. 117, 123 (1952). In June, 1970, the Commissioner of Insurance declared a 90-day moratorium on all policy terminations. Effective October 13, 1970, N.J.S.A. 17:22-6.14a *et seq.,* entitled "An Act concerning insurance to improve the stability and availability of insurance protection for the public . . ." became the law in this State. Shortly thereafter, amendments to that act, N.J.S.A. 17:22-6.14a 1 and 2 required that a notice of nonrenewal must set forth a valid underwriting basis for the nonrenewal and particularized facts establishing that the insured has failed to meet the requirements of that guideline. The Commissioner of Insurance is specifically authorized to implement the act, to the extent he determines necessary, by rules and regulations to prevent the arbitrary nonrenewal of coverages vital to the interests of the insuring public.

The regulations set forth at N.J.A.C. 11:3-8.1 *et seq.* as amended, are entirely consistent with the legislative purpose. The regulations require that nonrenewals be limited to those instances where good cause for the nonrenewal can be established. The renewal provisions of that regulation are also totally consistent with the principle that a closely regulated business, having entered a given field of operation, may be required to continue to provide services essential to the public interest despite its preference to discontinue such services. *See Pennsylvania Railroad Co. v. Bd. of Public Utility Commissioners,* 11 N.J. 43 (1952); *DeCamp Bus Lines v. Transportation Department,* 182 N.J. Super. 42 (App. Div. 1981).

In conclusion, it is our opinion that the adoption of N.J.A.C. 11:3-8.1(g) is a permissible exercise of the Commissioner's authority to regulate the nonrenewal of auto property damage coverage by insurers in the State.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General
By: PATRICK J. HUGHES
Deputy Attorney General

January 18, 1983

HONORABLE MICHAEL M. HORN
Commissioner of Banking
Department of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1983

Dear Commissioner Horn:

You have requested advice as to whether a bank may assess a prepayment penalty against a borrower who prepays an installment loan prior to the due date of the first payment. You are hereby advised that a bank is permitted to assess a prepayment penalty against a borrower who prepays a loan prior to the due date of the first payment.

Article 12 (N.J.S.A. 17:9A-53 *et seq.*) of the Banking Act of 1948, N.J.S.A. 17:9A-1 *et seq.*, provides limitations upon the authority of banks to make installment loans. Among the limitations imposed upon banks with respect to installment loans is that contained in N.J.S.A. 17:9A-54A which provides in relevant part that:

> *if the loan is prepaid within 12 months after the first payment is due, a bank may charge a prepayment penalty* of not more than (a) $20.00 on any loan up to and including $2000.00; (b) an amount equal to 1% of the loan on any loan greater than $2000.00 and up to and including $5000.00; and (c) $100.00 on any loan exceeding $5000.00. [Emphasis added.]

The meaning of this statute must be sought from the language in which the statute is framed. *Vreeland v. Byrne,* 72 N.J. 292, 302 (1977); *Sheeran v. Nationwide Mutual Ins. Co., Inc.,* 80 N.J. 548, 556 (1979). It is clear from a plain reading of this statute that the Legislature established an outside date prior to which prepayment penalties could be assessed against the borrower. This outside date is "within 12 months after the first payment is due," and any payment made prior to the first installment due date is clearly within that time period. Had the Legislature intended otherwise, it could have simply provided that prepayment penalties could not be imposed if the loan is prepaid prior to the date the first installment payment is due. In the absence of such express language, it cannot be presumed that the Legislature intended to impose such a limitation.

Moreover, a statute should be read to give effect to the true intent of the Legislature, *Alexander v. Power & Light Co.,* 21 N.J. 373, 378 (1956), and cannot be construed so as to lead to absurd, unreasonable or anomalous results. *Schwartz v. Dover Public Schools in Morris County,* 180 N.J. Super. 222, 226 (App. Div. 1981); *Citizens for Charter Change in Essex County v. Caputo,* 151 N.J. Super. 286, 290 (App. Div. 1977). The apparent purpose of this statute was to recognize that a bank has initial costs and expenses associated with making a loan and that if the loan is prepaid early, there may be insufficient earnings to compensate the bank for these costs and expenses. This rationale would obviously apply to a loan paid

prior to the due date of the first payment. To interpret the statute to bar imposition of a prepayment penalty in such a circumstance would not only violate this apparent legislative intent, but would also lead to absurd and anomalous results in that a bank would not be able to charge a prepayment penalty in the very case where it may be most justifiable.

For the foregoing reasons, it is our opinion that a bank may assess a prepayment penalty against a borrower when an installment loan is prepaid prior to the due date of the first payment on the loan.*

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General
By DENNIS R. CASALE
Deputy Attorney General

* It should be noted that P.L. 1981, c. 103 amended a variety of other consumer loan and contract statutes to permit a prepayment penalty to be imposed "if the loan [or contract] is prepaid within 12 months after the first payment is due." Such prepayment penalties may be imposed for small business loans (N.J.S.A. 17:9A-59.28); sales finance company loans (N.J.S.A. 17:16C-40.1); retail installment contracts (N.J.S.A. 17:16C-41) and home repair contracts (N.J.S.A. 17:16E-69). For the reasons stated above, it is also our opinion that prepayment penalties may be assessed against borrowers if any of these loans or contracts are prepaid prior to the date the first installment payment is due.

January 18, 1983

MR. BARRY SKOKOWSKI, *Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1983

Dear Director Skokowski:

Several questions have been raised by local governmental entities with regard to bidding under the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* Since the Division of Local Government Services in the Department of Community Affairs is authorized to assist local governments in all matters affecting the administration of the Local Public Contracts Law, we are providing you with advice concerning specific questions that have been identified by local governmental entities.

I

What are the criteria that are to be utilized in defining "goods contracts" from "service contracts"

The Local Public Contracts Law applies to all contracts whether or

not the contracts involve the purchase of goods or services. N.J.S.A. 40A:11-3 states:

> Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any other sums expended or to be expended for the performance of any work or services in connection with the same immediate program, undertaking, activity or project or the furnishing of similar materials or supplies during the same fiscal year paid with or out of public funds, does not exceed the total sum of $4,500 in the fiscal year, may be made negotiated or awarded by a contracting agent . . . without public advertising for bids. . . .

The term "materials" is defined in N.J.S.A. 40A:11-2(5) as including

> goods and property subject to article 2 of Title 12A of the New Jersey Statutes, apparatus, or any other tangible thing, except real property or any interest therein.

The term "work," as defined in N.J.S.A. 40A:11-2(9), includes:

> services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a contracting unit . . .

Therefore, under the Local Public Contracts Law, if the cost of the contract exceeds the statutory threshold of $4,500, and involves the furnishing or hiring of materials or supplies or involves the performance of work, the public bidding requirements apply unless, as to any particular purchase or contract, the Local Public Contracts Law provides a statutory basis for waiving the requirement of open and competitive bidding.

While the distinction between "goods" and "services" does not have importance in terms of the application of the general requirement for public bidding under the Local Public Contracts Law, the distinction does have importance with respect to the ability of local contracting agencies to make purchases under contracts awarded by the State through its Division of Purchase and Property in the Department of Treasury. N.J.S.A. 52:25-16.1 states that:

> The Director of the Division of Purchase and Property may include, in any such contract or contracts on behalf of the State, a provision for the purchase of such *materials, supplies* or *equipment* by any county, municipality or school district from such contractor or contractors. . . . [Emphasis added.]

A companion provision of the Local Public Contracts Law N.J.S.A. 40A:11-12 states:

> Any contracting unit under this act may without advertising for bids or having rejected all bids obtained pursuant to advertising

> therefor, purchase any *materials, supplies or equipment* under any contract or contracts for such *materials, supplies or equipment* entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury.

Under N.J.S.A. 52:25-16.3, the Director of the Division of Purchase and Property is to distribute a list of current contracts each year to all local contracting units so that they may determine whether to make purchases under the State contracts or proceed with their own purchases. In this regard, the Division of Local Government Service guidelines state:

> The Division of Purchase and Property periodically makes information available to local officials regarding state contracts which may be utilized. This service in a number of cases has produced savings for local governments and should be considered by all local units. It is suggested that local units authorize their purchasing agents to participate in this program by ordinance or resolution.

It is important to emphasize that the ability of the local contracting unit to make purchases under a State contract turns upon the inclusion in the State contract of a provision allowing such purchases. The plain language of N.J.S.A. 52:25-16.1 makes clear that the Director of the Division of Purchase and Property may include provision for local government purchases when the contract involves *only* the acquisition of materials, supplies or equipment. Similarly, the language of N.J.S.A. 52:25-16.1 indicates that contracts which involve *only* the performance of work are not subject to extension for local government purchasing. The authority of the Director of the Division of Purchase and Property under N.J.S.A. 52:25-16.1 is less clear with regard to local government purchasing under contracts which provide for the acquisition of materials, supplies and equipment as well as related personal services.

As indicated above, the term "materials" is defined in N.J.S.A. 40A:11-2(5) and this definition incorporates the definition of goods in Article 2 of the Uniform Commercial Code, N.J.S.A. 12A:1-101 *et seq.* In N.J.S.A. 12A:2-105, the term "goods" is defined as items that are movable at the time of identification to the contract." In *Meyers v. Henderson Construction Co.,* 147 N.J. Super. 77 (Law Div. 1977), the Court held that a contract to furnish all labor, materials, tools and equipment to install over-head doors was a contract for the sale of goods governed by the Uniform Commercial Code. The Court in *Meyers* applied the test set forth by the Court in *Bonebrake v. Cox,* 499 F. 2d 951 (8th Cir. 1974) and approved in *Pittsburgh-DesMoines Steel Co. v. Brookhaven Manor Water Co.,* 532 F. 2d 572 (7th Cir. 1976).

> The test for inclusion or exclusion is not whether they are mixed [contracts], but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (e.g. contract with artist for painting) or is a transaction of sale, with

labor incidentally involved (e.g. installation of a water heater in a bathroom. [*Bonebrake v. Cox, supra,* 499 F. 2d at 960.]

A determination as to whether the service component or goods component predominates in an overall contract involving the provision of materials, supplies and equipment and personal services related thereto must be made on a case by case basis based upon the terms of a particular contract. If any local contracting unit has specific questions in this regard as to any particular contract whereunder the Director of the Division of Purchase and Property has provided for local government purchases, these questions should be brought to the attention of the Director of the Division of Purchase and Property. These questions may then be referred to the Attorney General for an appropriate legal opinion.

II

How should governmental purchases be aggregated for purposes of determining whether the statutory threshold of $4,500 has been reached?

As stated above, the Local Public Contracts Law requires public bidding when the contract price exceeds the threshold of $4,500. *See* N.J.S.A. 40A:11-3. The question has been raised as to the manner in which it is to be determined whether the statutory threshold has been reached. N.J.S.A. 40A:11-7 generally provides that, for purposes of determining whether particular purchases or contracts fall below the statutory threshold of $4,500, contracts are not to be divided. This statute states:

> No purchase, contract or agreement, which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the purchase, contract or agreement, includes the furnishing of additional work, shall be subdivided, so as to bring it or any of the parts thereof under the maximum price or cost limitation of $4,500.00 thus dispensing with the requirement of public advertising and bidding therefor, and in purchasing or contracting for, or agreeing for the furnishing of, any services, the doing of any work or the supplying of any materials or the supplying or hiring of any materials or supplies, included in or incident to the performance or completion of any project, program, activity or undertaking which is single in character or inclusive of the furnishing of additional services or buying or hiring of materials or supplies or the doing of additional work, or which requires the furnishing of more than one article of equipment or buying or hiring of materials or supplies, all of the services, materials or property requisite for the completion of such project shall be included in one purchase, contract or agreement.

The principle is well established in New Jersey that bidding statutes are enacted for the benefit of the taxpayers. Their purposes are to guard against favoritism, improvidence, extravagance and corruption. The goal of the bid laws is to secure for the public the benefits of unfettered competition. *Terminal Construction Corp. v. Atlantic City, Sewerage Auth.,*

67 N.J. 403, 409-410 (1975). The public bidding laws are to be interpreted with sole reference to the public good. The general rule of strict construction of the bid laws is reflected in the observation of Justice Francis in *Hillside Tp. v. Sternin.* 25 N.J. 317, 326 (1957):

> In this field it is better to leave the door tightly closed than to permit it to be ajar, thus necessitating forevermore in such cases speculation as to whether or not it was purposely left that way.

The provision of N.J.S.A. 40A:11-7 must be read in light of the general principles stated above. This statute reflects a considered legislative statement that there be no evasion of the bidding requirements by division of contracts so as to avoid the statutory threshold of $4,500. N.J.S.A. 40A:11-7 indicates in the plainest terms that the nature of character of the purchase, contract or agreement must be looked to in deciding whether the $4,500 limit has been reached. If a project or undertaking is single in character, then its component parts must be aggregated for purposes of applying the requirement of public bidding. The $4,500 limitation is, as stated in N.J.S.A. 40A:11-3, based upon the total expenditures during the fiscal year. Therefore undertaking which are singular in character, and which involve purchases during the course of an entire fiscal year, should be aggregated and not divided as stated in N.J.S.A. 40A:11-7. As the Division of Local Government Services has stated in its advisory guidelines:

> The spirit and intent of the law is that contracting units should anticipate and aggregate their needs for various articles and services, consolidating their needs into bulk for various articles and services, consolidating their needs into bulk purchasing specifications which can be periodically advertised rather than making repeated purchases throughout the year on an as-needed basis.

Additional advisory guidelines have been provided by the Division of Local Government Services and should be looked to by local contracting officers in meeting their statutory obligations. The Division guidelines state:

1. The law does not refer to $4,500 *per vendor* as the criterion.
2. All expenditures for equipment, materials and supplies, work and services (excluding force account) must be added together if they are for the same project, program, activity or undertaking. This places the emphasis on the purchases being added up according to what they are spent for rather than who they are bought from or the individual nature of the various components. The law defines "project" as "any work, undertaking, program, activity, development, redevelopment, construction or reconstruction of any area or areas," but does not define "program, activity or undertaking."
3. Materials and supplies used regardless of departmental lines should be grouped together if:
   a. They are commonly made, stocked or sold by the same sources.

b. They are all used on the same project.
c. They are normally needed over the course of a fiscal year. The figure is to be projected for the full fiscal year, and not year-to-date.

These guidelines are not meant to cover all contracting situations. Indeed it would be difficult to provide general guidelines that would have application to the myriad contracting situations faced by the municipalities and other contracting units. The public bidding laws must be applied practically and sensibly with the understanding that the important public policies served by the bid laws are best carried out by favoring the utilization of the bid process.

III

Treatment of travel costs and costs of conferences under the Local Public Contracts Law

Several questions have been raised with regard to costs incurred by public officials in the attendance of conferences related to their official responsibilities. These conferences may entail expenditures for travel, meals and lodging. The question raised is whether all of these costs should be aggregated or whether they may be divided consistent with N.J.S.A. 40A:11-7. The question has also been raised as to whether attendance at a conference is an item that may be purchased without advertisement for bids.

In this regard it should be noted that N.J.S.A. 40A:5-16.1 states:

> [T]he governing body of any local unit may, by resolution, provide for and authorize payment of advances to officers and employees of the local unit toward their expenses for authorized official travel and expenses incident thereto. Any such resolution shall provide for the verification and adjustment of such expenses and advances and the repayment of any expenses and advances and the repayment of any excess advanced by means of detailed bill of items or demand and the certifications or affidavit required by N.J.S.A. 40A:5-16 which shall be submitted within 10 days after the completion of the travel for which an advance was made.

This statute suggests that official travel and expenses incident thereto are costs that are to be borne initially by the public official either out-of-pocket or with funds advanced for this purpose. The public body reimburses the public official for these incurred costs and does so in a manner consistent with the provisions of N.J.S.A. 40A:5-16.1. Thus according to the statutory scheme, it would appear that the purchases of, for example, transportation or lodging would be purchases made by the affected public officials rather than by the local governing body. Whereas the local governing body does ultimately bear the cost of these expenses, it does so pursuant to the statute and in a manner of reimbursement to the public officers.

Reading the provisions of N.J.S.A. 40A:5-16.1 with the provisions of the Local Public Contracts Law would suggest, therefore, that the reimbursement of official travel expenses by a local governing body would not be the sort of purchase, contract or agreement that comes within the scope of N.J.S.A. 40A:11-1 *et seq.* As stated above N.J.S.A. 40A:11-3 imposes the public bidding requirement for the furnishing or hiring of materials or supplies, or for the performance of any work. In light of the specific provisions of N.J.S.A. 40A:5-16.1, it would appear that the reimbursement of official travel expenses are not the sort of "purchases, contracts or agreements" that the Local Public Contracts Law was intended to cover. Again, these purchases are purchases made by the officials directly. Their reimbursement is subject to review and oversight by the governing body, and any such reimbursement should be made with strict conformity to the statutory requirements of N.J.S.A. 40A:5-16.1

IV

Public Bidding on contracts for services performed at building acquired under in Rem Tax Foreclosure Act.

The question has been raised as to whether in rem tax foreclosures sever the existing contractual realtionships with superintendent personnel in properties acquired by foreclosure under the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-104.29 *et seq.* Property taxes become a lien on the land for which they are assessed on or after the first day of January of the year after the taxes are assessed. N.J.S.A. 54:5-6. When the taxes remain unpaid as of July first of the year following the year in which the taxes became due, the municipality may enforce its lien by selling the property, N.J.S.A. 54:5-19, and the municipality may be the purchaser at the sale. N.J.S.A. 54:5-34. The officer conducting the sale issues a certificate of sale and delivers same to the purchaser. N.J.S.A. 54:5-46. Pursuant to N.J.S.A. 54:5-54, the owner of the property, or one with an interest therein, may redeem within six months from the time when the municipality purchased the property. The municipality may proceed under the In Rem Tax Foreclosure Act to summarily bar the right of redemption if six months have expired from the date of the tax sale. N.J.S.A. 54:5-104.34(a). A judgment entered in an in rem tax foreclosure proceeding:

> shall give full and complete relief, in accordance with the provisions of this act, and in accordance with any other statutory authority, to bar the right of redemption, and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, and to adjudge an absolute and indefeasible estate of inheritance in fee simple in the lands therein described, to be vested in the plaintiff.

With the entry of the final decree, the local government becomes vested with an estate in fee in the lands. *Clark v. Jersey City,* 8 N.J. Super. 33, 38 (App. Div. 1950). The municipality is collecting the rents and profits from the properties, and is charged with the duties and responsibilities that flow from ownership. Payments to superintendent personnel are payments made with public funds. Since the services performed by superintendents and other personnel constitutes the "performance of work," the contracts or agreements with these individuals is subject to the Local Public Contracts Law if the cost thereof exceeds $4,500.

The question has also been raised as to whether the municipality may give superintendent personnel free apartments and minimal salary in lieu of bidding. The value of the free apartment is clearly consideration flowing to the personnel. Considered along with the payment of a minimal salary, if the total yearly cost exceeds $4,500 there is no basis to avoid public bidding. It is also important to emphasize that depending on the number and source of the personnel needed to superintend a building or buildings, aggregation of several personal service contracts might be required. In any event, the fact that use of an apartment is being offered as payment rather than cash does not bring the contract out from under the requirements of the Local Public Contracts Law.

V.

Conclusion

For the reasons stated herein, you are advised that the Local Public Contracts Law applies to all purchases of goods and services. Local governments may make purchases under contracts awarded by the Director of the Division of Purchase and Property of materials, supplies and equipment pursuant to N.J.S.A. 52:25-16.1. Local contracting units may purchase services under State contracts but only if those services are incidental to the procurement of materials, supplies and equipment. Local contracting units should aggregate all purchases in strict compliance with N.J.S.A. 40A:11-7 in order to further the purposes of the public bidding laws. Travel expenses incurred by local government officials are subject to reimbursement in accordance with N.J.S.A. 40A:5-16.1 and need not be subject to public bidding pursuant to the Local Public Contracts Law. Finally, contracts with superintendent personnel in properties acquired under the In Rem Tax Foreclosure Act are subject to the terms of the Local Public Contracts Law.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: JOSEPH L. YANNOTTI
Deputy Attorney General

March 14, 1983

DAVID F. MOORE, *Chairman*
Tidelands Resource Council
CN 401
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1983

Dear Chairman Moore:

The Tidelands Resource Council has asked for our advice concerning the exercise of its authority to fix a price for a grant of an interest in state owned tidelands. In particular, the Council has inquired whether it may fix a price in an amount less than fair market value for a grant of state owned tidelands which have been improved by private parties in good faith. For the following reasons, it is our opinion that the Council does have the discretion to fix a price for a grant of the state's interest in tidelands based on its underlying value without any improvements. It is also our opinion that in an instance where the state's claim to tidelands is in dispute, the Council's determination of an appropriate price should reflect the strength of the state's claim to those lands as determined by the Attorney General.

A review of the legislative scheme demonstrates that the legislature has given the Council broad discretion to fix an appropriate price for a grant of state owned tidelands.[1] The statutory provisions, however, do not provide any specific guidance for the determination of an appropriate price but rather provide only some general direction. For example, the price should be "reasonable" (N.J.S.A. 12:3-7) or "within the limits prescribed by law" (N.J.S.A. 12:3-16), or "reasonable, fair and adequate," (N.J.S.A. 12:3-47).[2] This lack of detailed guidance reflects a legislative recognition of the need for broad delegations of discretion to agencies exercising proprietary functions which involve price determinations. *Atlantic City Electric Co. v. Bardin,* 145 N.J. Super. 438, 444-445 (App. Div. 1976). These statutory provisions have been construed as entrusting to the Council discretion subject to approval of the Governor and the Commissioner of

1. With certain exceptions, the state is the owner of all lands that have been flowed by the tides up to the high water line. This doctrine and all of its difficulties are reflected in numerous recent decisions including *Gormley v. Lan,* 88 N.J. 26 (1981); *Newark v. Natural Resource Council in the Dept. of Environmental Protection,* 82 N.J. 530 (1980); *Borough of Wildwood Crest v. Masciarella,* 51 N.J. 352 (1968); *Ward Sand & Materials Co. v. Palmer,* 51 N.J. 51 (1968); *O'Neill v. State Highway Dep't,* 50 N.J. 307 (1967), but in November 1981 a constitutional amendment, Art. 8, §5, ¶1 was adopted which provides that lands which have not been tidally flowed for 40 years shall not be riparian and state owned unless within the 40 year period the state has specifically defined and asserted a claim pursuant to law. With respect to lands that were not tidally flowed for 40 years immediately before the adoption of the constitutional amendment, the state was given an additional year after the adoption of the amendment to assert its claim. *See also Dickinson v. the Fund for the Support of Free Public Schools,* 187 N.J. Super. 224 (App. Div. 1982).

2. The single exception is N.J.S.A. 13:1B-13.9, applying to riparian meadowlands, which is discussed *infra.*

Environmental Protection to fix such price or compensation as it shall see fit for the conveyance of State tidelands. *LeCompte v. State,* 128 N.J. Super. 552, 560 (App. Div. 1974), *cert. den.* 66 N.J. 321 (1974); *LeCompte v. State* (related case), 65 N.J. 447, 451, 452 (1974).

The Council's discretion, however, is not unlimited. It is circumscribed by the relationship between the tidelands and the public school fund. All tidelands owned by the State or the proceeds from their sale as well as the income resulting from such ownership are irrevocably pledged to a fund for the support of the public schools. N.J.S.A. 18A:56-5 provides in pertinent part as follows:

> All lands belonging to this state now or formerly lying under water are dedicated to the support of public schools. All moneys hereafter received from the sales of such lands shall be paid to the board of trustees, and shall constitute a part of the permanent school fund of the state.

This legislative commitment of the proceeds of the sale or lease of state owned tidelands toward the support of public schools is a long-standing one and has continued in substantially similar terms since 1894. It is carried out by the depositing of the proceeds of the sale, lease or conveyance of tidelands in a constitutionally mandated irrevocable fund from which income is annually appropriated to assist public schools. Article 8, §4, ¶2 provides in part:

> The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provisions of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, and for the equal benefit of all the people of the State; and it shall not be competent, except as hereinafter provided, for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever.

In the exercise of its discretion to set an appropriate price for a grant of the state's tidelands, the Council is obliged to obtain sufficient consideration generally equivalent to fair market value to implement the above stated constitutional and legislative objective to use those tidelands as a source for the support of free public schools. But it is also clear that the Council need not obtain for the benefit of the school fund the full fair market value of improved property in all instances.[3] Rather, the Council may convey improved state owned tidelands at a consideration below its equivalent fair market value where a reduction from fair market value is justified by the equities of a particular case. Payment of the value of the land in its unimproved state may then in appropriate instances satisfy the legislative dedication.

In *Meadowlands Reg. Dev. Agency v. State,* 112 N.J. Super. 89, 130-131 (Ch. Div. 1970), *aff'd per curiam* 63 N.J. 35 (1973), the court considered a challenge to the validity of L. 1968, c. 404, §99, dealing with the development and reclamation of the Hackensack Meadowlands. This section provides as follows:

> The net proceeds from the sale, lease or transfer of the State's interest in the meadowlands shall be paid to the Fund for the Support of Free Public Schools established by the Constitution, Article VIII, Section IV, *after deducting from the net proceeds any expenditures of the Hackensack Meadowlands Development Commission for reclaiming land within the district.* The amount of said deduction for reclamation shall be paid to the Hackensack Meadowland Development Commission. [N.J.S.A. 13:1B-13.13.] [Emphasis added.]

Thus under this section, the school fund receives, in effect, the value of the land less the value of the improvements made by the Hackensack Meadowlands Development Commission. This arrangement was found by the court to be in compliance with Art. 8, §4, ¶2 and the statutory dedication of the tidelands to the support of public schools.

Also, in an instance where state owned tidelands have been improved by record owners in good faith under color of title, the Council need not obtain for the school fund the value of those improvements. The Council may take into account various equities which arise in favor of the improver or successor in title. These equities were first recognized by the Supreme Court in a case concerning the former tide flowed status of improved Meadowlands. The court stated:

> We are mindful that the actual application on the ground of the legal test of tideland ownership, to which we will presently refer, presents some obsecure and difficult situations in which private equities, particularly with respect to improvements, may be entitled to protection consistent with the preservation of the State's interests. . . . [*O'Neill, supra* at 322.]

This proposition established by *O'Neill* is generally consistent with general principles of law in analogous cases. The equities in favor of one who has in good faith made improvements on the land of another have long been recognized. Generally stated, where, under all the circumstances, the result will be fair and equitable to both the owner and the improver,

3. *Atlantic City Electric Co. v. Bardin, supra* at 446; *Seaside Realty Co. v. Atlantic City,* 74 N.J.L. 178, 181-182 (Sup. Ct. 1906) *aff'd* 76 N.J.L. 819 (E. & A. 1908). See also cases where constitutional restrictions were held to prevent the grant of tide flowed lands for less than adequate consideration even to a municipality for a public purpose, *Henderson v. Atlantic City,* 64 N.J. Eq. 583 (Chancery 1903); *In re Camden,* 1 N.J. Misc. 623 (S. Ct. 1923), but which also have confirmed the state's "discretion when and how to transmute this property into money, . . ." *Henderson* at 587.

relief of one form or another may be afforded to the improver. See, for example, *Brick Twp. v. Vannell,* 55 N.J. Super. 583 (App. Div. 1959) (stating the rule that an improver will be awarded the value of improvements mistakenly made on another's land where the mistake does not result from culpable negligence and the true owner has actual or constructive knowledge); *Citizens & So. Nat. Bank v. Modern Homes Const. Co.,* 149 S.E. 2nd, 326, 248 S. C. 130 (1966) (improver permitted to remove a house constructed by mistake where mortgagee would be compensated for any resulting damage and would thus be deprived of nothing to which he was justly entitled); see also *Campbell v. Roddy,* 44 N.J. Eq. 244 (E.&A. 1888); *State v. Jones,* 27 N.J. 257, 261-263 (1958) (condemnor who enters upon another's property and makes improvements thereon prior to condemning is not required to pay the property owner for the value of such improvements), see also 4 Nichols on *Eminent Domain,* §13.15 at p. 13-91 (1981); N.J.S.A. 2A:35-3 (good faith improver may set off value of improvements against plaintiff's damages to the extent thereof).

The relevance of the improvers' equities in the case of the state's tidelands is particularly compelling. Owners of tidelands with record title who make improvements in good faith based on their apparent ownership interest in those lands do so at their own expense and for their own benefit. Also, a purchaser of an improved parcel after several conveyances following the original improvement may have a "difficult" time in ascertaining whether those lands were once tidal flowed. *Gormley v. Lan, supra* at 29. An improver's or a subsequent purchaser's equity in those improvements may be recognized with no detriment to the state by a conveyance for a price based on the current value without the improvements. The state relinquishes only that improvement that was added at the expense and for the sole benefit of the owner in possession. Consequently, an allowance given for the equitable interest of the improver or present owner of improvements in those cases does not impair the property contemplated by the legislature to be held for the support of public schools. Further, an allowance given to a prospective grantee for the value of improvements made in good faith is a demonstration of the fundamental responsibility of the Council to act fairly. In *Newark v. Natural Resource Council,* 133 N.J. Super. 245, 250 (L. Div. 1974) *aff'd* 148 N.J. Super. 297 (App. Div. 1977), the trial court in describing the Council's obligation with respect to formerly tide flowed lands dedicated to the support of public schools stated:

> Thus, the State, as represented by respondent Council, has a solemn duty to preserve these assets. However, it cannot act in a manner which violates the more fundamental duties of a sovereign to act reasonably and in a manner which least harms its citizens.

This proposition was expressly recognized by the legislature in the case of tidelands situated in the meadowlands. Meadowlands are defined as lands "now or formerly consisting chiefly of salt water swamps, meadows, or marshes." N.J.S.A. 13:1B-13.1(a) The Council has been expressly directed to take into account improvements made by record owners in

good faith in fixing the consideration for grants of those lands. N.J.S.A. 13:1B-13.9 provides:

> The Council shall further determine the fair market value of the property at the time of the lease, conveyance, license or permit and shall fix the proper consideration to be charged . . . In determining such consideration the Council shall take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in question. . . .

The good faith of the improving party under that statute was considered by the court in *LeCompte v. State, supra.* An upland owner having no claim of ownership to the state's adjoining unimproved tidelands made improvements on those lands between the time of her application for a grant and before receiving the grant. The court found that N.J.S.A. 13:1B-13.9 was inapplicable in that circumstance since the state's title was never in dispute. It therefore concluded that the fair market value of the property in its improved state was an appropriate measure of consideration. The court further stated, on the other hand, that the good faith standard spelled out in the statute would be applicable to meadowlands improved in good faith by a record owner under color of title to which the state only has a potential claim of ownership. The court stated: "Obviously . . . it would be entirely inequitable to determine the fair market value of the property in its improved state." Therefore, it can be fairly concluded that *LeCompte* establishes the principle that an allowance of credit for good faith improvements in the fixing of a price for a grant of tidelands to which the state has only made a claim is consistent with the constitutional and statutory dedication.

The "good faith" standard set forth in N.J.S.A. 13:1B-13.9 is on its face obviously directed to the meadowlands because of the widespread filling and development which has taken place in those lands. There is no reason to assume, however, that the legislature intended that the good faith of an improving party in possession would be strictly limited to meadowlands or to have less force with regard to tidelands outside of meadowlands. Clearly, problems concerning improvements made on tidelands by a record owner to which the state either has or may make a claim can be present anywhere in the state. In its dedication of proceeds from the sale of tidelands to the support of public schools, it cannot be inferred that the legislature intended to aggrandize the school fund with the value of the improvements made at the expense of a private owner acting in good faith who has mistakenly made improvements on other than meadowlands. It is our judgment that where there is any doubt, an interpretation of legislative intent to lead to such an inequitable result should be avoided. Therefore, it is our conclusion that the Council has the discretion to grant the state's interest in tidelands upon which improvements have been made in good faith by record owners under color of title for a price based upon the current fair market value of the state's interest in those lands without the improvements.

In addition, the Council has the authority to make a grant of the

state's interest in tidelands where the state's claim to title is disputed. In many cases, the state has made a claim of ownership to filled lands based upon mapping and scientific findings as to the former tide flowed status of those lands. The state's demonstration of title often is a complex one. It is dependent upon the adequate definition and assertion of a claim in in individual cases. Therefore, the record owner in possession often vigorously disputes the state's claim and the strength of the state's claim is in effect no greater than its ability to prove it pursuant to law. Consequently, in those circumstances, a grant of the state's interest is nothing more than a relinquishment of its right to litigate its title with the record owner. Where the state's claim to a particular parcel is less than entirely clear, the Council has the discretion to fix a price for a grant of the state's interest at an appropriate fraction of the value of indisputable clear title to the parcel. Such a conveyance of the state's interest for less that the fair market value of the parcel is in our judgment consistent with the legislative dedication of the proceeds of the sale of tidelands to the support of public schools. Certainly the legislative dedication of tidelands as property held by the state for the support of public schools is referenced to those lands over which the state can demonstrate its claim of ownership. Since the determination of the strength of the state's claim is dependent upon a careful evaluation of the adequacy of the state's proofs of ownership and its ability to successfully demonstrate that ownership in court, a judgment to give a grant at a fraction of its fair market value should be made only after the receipt of advice from the Attorney General.

As a general proposition the Council in fixing a price should be guided by a reasonable estimate of the fair market value of the state's interest being conveyed. This is particularly true in cases of unimproved tidelands to which the state has undisputed title. A reasonable estimate of the fair market value should also serve as a reference point in establishing an appropriate price where either allowances are made to the record owner for improvements made in good faith or where allowances are being made because of questions concerning the ability of the state to prove its claim to disputed tidelands. In the case of improvements, an allowance may be made only after the Council has made a thorough inquiry into the facts of each case. In particular, those facts which bear on the knowledge or opportunity for knowledge of the applicant to the existence of the state's title and the extent to which either the applicant for a grant was responsible for making the improvements in question or paid its predecessor in record title for those improvements should be explored. It also would be important to know what, if any, alternative recourse an applicant may have to recover the cost of improvements from a predecessor in record title or other responsible party. The Council then may take these and any other relevant factors into account in fixing an appropriate price. When it is satisfied after receiving appropriate legal advice, the Council may make a commensurate allowance to the fair market value of the state's interest in those lands being granted.

In sum, it is our opinion that the Tidelands Resource Council has the discretion to grant the state's interest in tidelands upon which improvements have been made in good faith by a record owner under color of title for a price based upon a reasonable estimate of fair market value of

state's interest without such improvements. It is also our opinion that the price set by the Council for a grant of the state's interest where the state's claim to record title is in dispute may be adjusted to reflect an evaluation of the state's ability to successfully establish its claim of ownership.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

March 18, 1983

SCOTT A. WEINER
Executive Director
Election Law Enforcement Commission
28 West State Street, Suite 1114
CN-185
Trenton, New Jersey 08625

FORMAL OPINION NO. 4—1983

Dear Director Weiner:

You have asked for our advice as to whether statutory prohibitions on the making of political contributions by an insurance company doing business in this State extend to an out of state non-insurance holding corporation which owns all of its capital stock. You have further asked whether the non-insurance subsidiary corporations of the holding corporation are prohibited from making political contributions. For the following reasons, you are advised that a non-insurance holding corporation owning a majority of stock in an insurance company licensed to do business in this state is prohibited from making political contributions either in its own right or through its non-insurance subsidiary corporations.[1]

There are two statutory sections in the election law which address the question of corporate political contributions. N.J.S.A. 19:34-32 specifically forbids insurance corporations or associations from making any direct or indirect contributions for any political purpose whatsoever. N.J.S.A. 19:34-45 imposes a similar prohibition and provides in more comprehensive terms that:

> No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, elec-

1. The applicability of these provisions must be limited to contributions to candidates for political office under the government of this state or any of its political subdivisions, to any political party in this state or for any political purpose whatsoever in this state. It must be presumed that the Legislature did not intend any extraterritorial effect unless the language of the statute admits of no other construction. *Sandberg v. McDonald,* 248 U.S. 185, (1918).

> tric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the State or any county or municipality, and *no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation,* shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party. [Emphasis supplied.]

At issue is whether, and to what extent, these prohibitions apply to corporations holding an ownership interest in an insurance corporation or to non-insurance subsidiaries of such a holding company.

In the instant matter, the Legislature's intention with regard to contributions by holding companies of the listed industries has been clearly articulated. No corporation owning or holding the majority of stock in a corporation conducting any of these businesses may make political contributions. The mandate is absolute and unambiguous. The words of the statute are to be given their ordinary and well understood meaning according to approved usage of the language. *Service Armament Company v. Hyland,* 70 N.J. 550 (1976).

Moreover, the underlying statutory purpose supports a conclusion that the Legislature intended an absolute ban on political contributions by such holding companies. Although there is little legislative history available concerning the New Jersey statutes, reference to their federal counterpart, 2 U.S.C. 441(b) (formerly 28 U.S.C. 610) is instructive.[2] The primary congressional concern underlying the enactment of that statute was the growing use of aggregated corporate wealth to control the election process and to influence elective officials to act in a manner favoring corporate interests over those of the general public. *Cort v. Ash,* 422 U.S. 66 (1975); *United States v. International Union United Auto etc., Workers,* 352 U.S. 563 (1957). It is reasonable to infer that N.J.S.A. 19:34-45, originally enacted only three years after the federal act, was intended to address the same evil, corporate influence over government officials.

Additionally, the nature of the corporations listed at N.J.S.A. 19:34-45 compels the conclusion that the Legislature particularly intended to insulate elective officials from the influence of regulated industries. Each business listed in the act may be characterized as of a type strongly affected

2. That statute, enacted in 1907, states in pertinent part:

> It is unlawful for any national bank or any corporation organized by any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever to make a money contribution in connection with the election at which Presidential and Vice-Presidential elections or a Senator or Representative in . . . Congress is to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices. . . .

with a public interest. Each business has been made the subject of extensive and pervasive government regulation. Comprehensive regulatory programs, vital to the protection of the public, could become prime targets of elected officials seeking to satisfy perceived debts to corporate benefactors affiliated with a regulated industry. An absolute legislative ban on political contributions by companies holding a majority interest in a regulated industry, such as insurance, is consistent with its intention to eliminate the corruptive influence of corporate political contributions.

The statutory ban on political contributions by a corporation holding a majority interest in a regulated company embraces any subsidiary in which the holding corporation has a controlling interest. This is due to the nature of the holding company—subsidiary company relationship. "The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies." *North American Co. v. Securities and Exchange Commission,* 327 U.S. 686, 701 (1946). The holding company is capable of materially influencing every operation of its subsidiary corporations, including its political expenditures.

Political contributions, whether paid by a corporation holding the majority interest in an insuance company or by any of its wholly owned or controlled subsidiaries could create a political debt. The repayment of such a debt may take the form of unduly favorable regulatory treatment of the insurance company. To permit the "sister" subsidiary to make these political contributions would allow the holding company to do indirectly that which it is forbidden to do directly. A statute should not be interpreted to reach an unreasonable or anomalous result inconsistent with the salutary legislative goal. *State v. Gill,* 47 N.J. 441 (1966).

In conclusion, it is our opinion that an insurance company doing business in this state and any non-insurance holding corporation of such an insurance company or any of the holding company's subsidiary corporations are prohibited from making political contributions to any candidate for political office under the government of this state or any of its political subdivisions, to any political party in this state or for any political purpose whatsoever in this state.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General
By: PATRICK J. HUGHES
Deputy Attorney General

April 21, 1983

WILLIAM J. JOSEPH, *Director*
Division of Pensions
20 West Front Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1983

Dear Director Joseph:

A question has arisen concerning the validity of the mandatory retirement ages established for members of certain New Jersey uniformed services by State pension programs in light of *EEOC v. Wyoming,* 460 U.S. 226 (1983). In *Wyoming,* the Supreme Court concluded that Congress could properly extend application of the Age Discrimination in Employment Act (ADEA) to the States. It is our opinion that statutory provisions which require a member of a state administered retirement system to retire prior to his or her attaining age 70 are invalid and unenforceable.

The ADEA prohibits discrimination in employment on the basis of age against individuals between 40 and 70 years of age. 29 U.S.C. §§623(a) and 631(a). As originally enacted, the ADEA provided that, notwithstanding the other provisions of the Act, it shall not be unlawful for an employer to "observe the terms of . . . any bona fide employee benefit plan such as a retirement, pension or insurance plan which is not a subterfuge to evade the purposes of [the Act], except that no employee benefit plan shall excuse the failure to hire any individual." P.L. 90-202, §4(f)(2). In 1978, however, this provision was amended to provide that "no such . . . employee benefit plan shall require or permit the involuntary retirement of any individual . . . because of the age of such individual." P.L. 95-156, §2(a), codified at 29 U.S.C. §623(f)(2). This prohibition would directly affect the State Police Retirement System (SPRS), N.J.S.A. 53:5A-8(a)(2), the Police and Firemen's Retirement System (PFRS), N.J.S.A. 43:16A-5(1), the Consolidated Police and Firemen's Pension Fund (CPFPF), N.J.S.A. 43:16-1, and the law enforcement officers subchapter of the Public Employees Retirement System (PERS), N.J.S.A. 43:15A-99, all of which provide, in certain circumstances, for the mandatory retirement of their members prior to age 70.

Under the 1978 amendment to the ADEA, a general requirement in a pension plan that persons retire prior to age 70 constitutes a *prima facie* violation of the statute. *EEOC v. Chrysler Corp.,* 546 F. Supp. 54, 67-68 (E.D. Mich. 1982); *Campbell v. Connelie,* 542 F. Supp. 275, 278 (N.D.N.Y. 1982); *see* 29 C.F.R. §1625.9. The forced retirement on the basis of age of persons younger than age 70 imposed by the State uniformed services pension progams may therefore be justified only if the retirement ages established thereby are demonstrated to be bona fide occupational qualifications (BFOQ). 29 U.S.C. §623(f)(1) provides that it shall not be unlawful for an employer to take any actions otherwise prohibited by the Act "where age is bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentation is based on reasonable factors other than age. . . ."

The BFOQs subject to this exception are not further defined by the

statute. The applicable legislative history is silent as to the scope this provision should be afforded. *See* H.R. Rep. 805, 90th Cong., 1st Sess., reprinted in [1967] U.S. Code Cong. & Ad. News 2213, 2222. However, the Equal Employment Opportunity Commission which is charged with the enforcement of this Act, has stated in a regulation interpreting this provision that, for a mandatory retirement age to be valid, the alleged BFOQ must be "reasonably necessary to the essence of the business," and a reasonable factual basis must exist for the belief either that "all or substantially all" of the affected age group would be unable to safely and efficiently perform the duties of the job involved, or that it is impossible to ascertain the continued fitness of persons over the mandatory retirement age on an individualized basis. 29 C.F.R. §1625.6(b). This standard has been implicitly recognized by Congress as the appropriate test for determining whether a mandatory retirement age constitutes a valid BFOQ. *See* S. Rep. No. 95-493, 95th Cong., 2nd Sess. 1-2, [1978] U.S. Code Cong. & Ad. News at 513-14; H.R. Conf. Rep. No. 95-950, 95th Cong., 2nd Sess. 7, [1978] U.S. Code Cong. & Ad. News at 528-29. In addition, this standard has been endorsed by the courts virtually without exception. *See, e.g., Usery v. Tamiami Trail Tours, Inc.,* 531 F.2d 224, 236 (5th Cir. 1976); *EEOC v. City of St. Paul,* 671 F. 2d 1162, 1166 (8th Cir. 1982); *Smallwood v. United Airlines,* 661 F. 2d 303, 307 (4th Cir. 1981), *cert. denied* 456 U.S. 1007 (1982); *EEOC v. City of Allegheny,* 519 F. Supp. 1328, 1333 (W.D. Pa. 1981).

You are therefore advised that the provisions of the SPRS, N.J.S.A. 53:5A-8(a)(2), the PFRS, N.J.S.A. 43:16A-5(1), the law enforcement officers subchapter of the PERS, 43:15A-99, and the CPFPF, N.J.S.A. 43:16-1, which require the mandatory retirement on the basis of age of persons younger than age 70 are invalid and unenforceable. However, such mandatory retirement provisions could be validly established in an amended format if their application is limited to the specific uniformed positions in which continued fitness is reasonably necessary to job performance or protection of the public safety, and it can be established as a factual matter either that all of the persons above such retirement age would be unable to adequately perform their duties or that it would be impossible or impractical for the State to determine the fitness of persons older than the prescribed age on an individualized basis.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

June 1, 1983

HONORABLE WALTER N. READ, *Chairman*
Casino Control Commission
3131 Princeton Pike, Bldg. #5
Box CN208
Princeton, New Jersey 08625

FORMAL OPINION NO. 6—1983

Dear Chairman Read:

The Casino Control Commission has requested our opinion whether certain casino-related promotional activities are lawful under those provisions of the Code of Criminal Justice concerning gambling. Among the promotions in question are those related to charter bus tours, in which, under one alternative, all bus patrons receive free gifts upon arrival or, under the second alternative, the bus patrons must participate in a drawing for a chance of winning free prizes. Also of interest are promotions within the casinos themselves, by which tickets are distributed free to all who wish to participate in drawings or other activities. It is our conclusion a promotion should be deemed to be gambling only if a participant risks "something of value" such as money, tangible or intangible property or personal services, on the outcome of a contest of chance based on an understanding or agreement something of value will be won in the event of a specific outcome.

Public policy in New Jersey is strongly against gambling. Except for particular forms of gambling specifically mentioned in the State Constitution the Legislature is prohibited from authorizing any kind of gambling "unless the specific kind, restrictions and control thereof" has been approved at a popular referendum. N.J. Const. (1947), Art. IV, §7, ¶2. The Legislature over the decades has complemented the constitutional prohibition with statutory proscriptions on gambling, the most recent being Chapter 37 of the Code of Criminal Justice. N.J.S.A. 2C:37-1 et seq. N.J.S.A. 2C:37-2 thus defines as criminal the promotion of gambling, while the succeeding sections make criminal the possession of gambling records and the maintenance of a gambling resort. N.J.S.A. 2C:37-3, 4.

Although the Legislature has expressed in this fashion its intent to ban gambling, the more specific characteristics of that prohibition can be ascertained only by considering the statutory definitions of the various elements of the gambling offense. It is these definitions which demarcate the boundary between the lawful and unlawful. "Gambling" is defined as:

> staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. [N.J.S.A. 2C:37-1(b).]

In pertinent part "something of value" is defined as:

> any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [N.J.S.A. 2C:37-1(d).][1]

The "something of value" definition is plainly critical to identifying gambling activity, since gambling does not exist if the participant is not risking something of value or is not entertaining the beliefs that he may receive something of value.

Although the "something of value" definition is not entirely free of ambiguity, its phrasing indicates that legislative intent was to exclude from the statutory elements comprising the gambling offense the sort of personal inconvenience which will constitute consideration sufficient to support a contract. The definition may be parsed to encompass (1) money or property, (2) any token, object or article exchangeable for money or property and (3) any form of credit or promise which either contemplates the transfer of money or property or which involves the extension of a service, entertainment or playing privilege. An analysis of the first two categories produces the conclusion that only money or property or tangible items standing in their stead constitute "something of value." Some analytical difficulty does arise upon consideration of the third category. While its first part continues the pattern of specifying surrogates for money or property, this time by the intangible surrogate of "any form of credit or promise" which contemplates "transfer of money or property or of any interest therein," its second part is more confusing in its reference to "any form of credit or promise" which involves "extension of a service, entertainment or a privilege of playing at a game or scheme without charge." Some of this last phraseology seems not entirely to mesh with the concept of something being risked. However, the precise extent and under what particular circumstances these final words of the "something of value" definition might apply to the risking aspect of a gambling incident need not be decided here, for in all events the activities described require the person involved to bear far more of a burden than that minimal inconvenience which would bind him to a contract.[2]

Difficulty can sometimes be encountered in ascertaining whether, in the context of particular circumstances, money or property or their tangible or intangible surrogates are in fact being risked. In some situations the risking is self-evident, as when a participant hands over money to the

1. Also of significance is the definition of "lottery," which means:

> an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value. [N.J.S.A. 2C:37-1(h).]

operator of a game only then to be allowed to sit down and play. In other situations, however, the nexus between payment and the opportunity to win is more ambiguous, as when the payment made constitutes consideration for both a gambling and a non-gambling activity. The courts have devised standards according to which this sort of operation might be judged, with differentiation being made between "closed participation" and "flexible participation" operations. As a Pennsylvania court has said:

> In the "closed participation" system, as applied to theatre "bank nights," an admission price must be paid to the theatre owner for a theatre ticket in order that the person so purchasing may be assigned a number which is drawn by chance, or lot, in some manner. There need be no increase in the price of the theatre ticket purchased by the possible winner, the price paid for the ticket including the price paid for the chance. . . . [*Commonwealth v. Lund,* 142 Pa. Super. 208, 15 A. 2d 839, 842 (Super. Ct. 1940)]

The *Lund* court held that:

> a drawing conducted upon the basis of a "closed participation" is a lottery, even though the price or cost of the chance is included in the original price of the theatre ticket. In other words, in such a scheme the purchase of the ticket and the fact that one cannot contend for the prize unless he has purchased such a ticket, establishes the fact of consideration. . . . [*Ibid.*]

In the "flexible participation" operation, by contract, "some sort of method is employed by means of which some persons get chances to win

2. Over the decades the courts in New Jersey have struggled to specify the outermost boundary of the "something of value" concept—the least measure of detriment borne which, when combined with the other elements of chance and winnings, will constitute gambling. *State v. Berger,* 126 N.J.L. 39 (Sup. Ct. 1941), and *Furst v. A. & G. Amusement Co.,* 128 N.J.L. 311 (E. & A. 1942), were "Bank Night" cases typical of many from across the nation, in which movie theatres sold drawings for prizes in which those paying an admission price to the motion picture as well as those who did not could participate. The *Furst* court in particular emphasized that "[t]hose that have not paid for admission to the motion picture must at some inconvenience wait outside to be sure of hearing the announcement and of entering the theatre promptly thereafter." 128 N.J.L. at 313. *State v. Berger,* 126 N.J.L. at 43. It was stated in *Formal Opinion* No. 9—1978, however, these decisions do not represent a definition of gambling for purposes of the New Jersey Constitution. At the time of the early decisions the Legislature had in effect created a statutory type of "gambling" which required no consideration whatever or only the most minimal consideration. That this choice by the Legislature does not limit the legislative prerogative to adopt a less-encompassing definition is clear from the later enactment which exempted from the lottery prohibition the minor personal inconvenience incurred in submitting a boxtop or package label so as to participate in a game. N.J.S.A. 2A:121-6 (repealed). This legislative prerogative to choose a narrow definition is exemplified as well by the current definition in the Code of Criminal Justice, which in terms of its risking aspect concerns only valuable items or kinds of personal effort calling for substantially more than mere personal inconvenience.

without purchasing any theatre ticket." Under those circumstances the trier of fact must determine whether something of value is being risked and whether gambling is therefore occurring by considering "the character and practical operation of the scheme as a whole, and not by rare instances of departure from the general scheme and practice." *Id.* at 845.

A number of the promotions would be or have been held in the casinos themselves. Many of the promotions which have been brought to our attention are variations or composites of the six authorized casino gambling games. It is the Casino Control Commission which possesses the expertise and the responsibility for determining whether they are suitable for casino use. N.J.S.A. 5:12-5. *See IGP-EAST, Inc. v. Div. of Gaming Enforcement,* 182 N.J. Super. 562, 566 (App. Div. 1982). Other types of promotion held in the casinos include the "Winter of Winners" promotion where seven hourly drawings were held each day, with three winning tickets drawn per hour. No purchase or casino play was required to participate, and entry tickets having no cash value were available on request to anyone visiting the casino. Each drawing was for cash and merchandise prizes, with there also being daily, weekly and monthly drawings and a grand prize drawing the last day. Under another promotion, "One on the House," participation was similarly broad, with all persons except casino employees and their immediate families eligible to participate by means of coupons having no cash value. On these facts, the promotions do not constitute gambling in general or lotteries in particular. As discussed, the statutory definition of "gambling" hinges upon the phrase "something of value;" the statutory definition of "lottery," N.J.S.A. 2C:37-1(h), does so as well.[1] Here, apparently no risking of something of value is made, either from the standpoint of the individual participants or from the standpoint of the operation as a whole. It appears quite unlike the old "Bank Night" scheme, which was often held unlawful because, even though payment was not literally required, the majority of participants did pay to secure a more favorable position in claiming potential winnings. *Commonwealth v. Lund, supra.* 15 A. 2d at 846. In this instance, by contrast, no such hidden inducement exists for playing, and consequently the operations appear to be genuinely open to all without the necessity of risk.

The same conclusion may be reached with regard to one of the kinds of charter bus tour promotions which have been devised, though not with regard to the other kind. Under the first kind a patron will pay between, $8.50 and $16.50 for the tour to and from Atlantic City, but will receive from the casino a bonus in the form of $10.00 in coins and coupons redeemable for food. It will be recalled that under the Code of Criminal Justice "gambling" means risking something of value "upon the outcome of a contest of chance," N.J.S.A. 2C:37-1(b), with "contest of chance" meaning a game in which "the outcome depends in a material degree upon an element of chance. . . ." N.J.S.A. 2C:37-1(a). Considering that apparently every bus patron receives the bonus without exception, gambling does not exist because of the absence of the chance element. Obviously a casino or a tour bus operator may give away its property if it so desires. That it does so in hopes of attracting a larger patronage and of ultimately higher profits is of no legal consequence.

There is great difficulty with the second kind of charter bus tour

promotion, however. There the bonus is not given to all of the bus patrons. Instead, the bonus would be given only to those patrons selected by a drawing; moreoever, only those patrons buying tickets for that bus tour would be eligible to participate. Not only is the element of chance present,[3] but the chance element functions within the kind of closed participation scheme discussed earlier. The inevitable inference must be that those who bought bus tour tickets did so at least partially because of the drawing and that some part of the puchase price was staked upon the game. Under these circumstances, the promotion is unlawful.

In some instances the bus tour operator is not associated with the casino. The monetary payments made by bus patrons do not themselves constitute the "pot" from which winnings are drawn, for those payments are kept by the operator to cover the costs and profits of the bus operation while the winnings are provided by the casino. Nevertheless, this lack of identity between something of value staked and something of value won does not alter the character of the event as gambling, assuming that all other statutory elements are present. Gambling—the risking of something of value upon the outcome of a contest of chance upon an agreement of understanding of possibly receiving something of value, N.J.S.A. 2C:37-1(b)—is a contract, *Lucky Calendar Co. v. Cohen,* 19 N.J. 399, 414-416 (1955), and, as a principle of general contract law, "[i]t matters not from whom the consideration moves or to whom it goes" as long as "it is bargained for as the exchange for the promise. . . ." *Coast Nat'l Bank v. Bloom,* 113 N.J.L. 597, 602 (E. & A. 1934); *Guaclides v. Kruse,* 67 N.J. Super. 348, 354 (App. Div. 1961). This principle is particularly pertinent to current New Jersey statutory law. As mentioned, "gambling" occurs under N.J.S.A 2C:37-1(b) when something of value is risked upon the agreement that something of value will be won in the event of a specified outcome of a contest of chance or a future contingent event. Nothing in this definition nor in the gambling provisions in their entirety intimates a legislative requirement for identity of wagers and winnings; nor does there appear any such requirement for identity of the person taking the bets and the person distributing the winnings. In view of the social mischief intended to be controlled, *Lucky Calendar Co. v. Cohen,* 19 N.J. at 410, the Legislature is not likely to have imposed such a requirement upon no apparent rationale.

In summary, gambling can occur only when a participant risks "something of value," and that term in its legislative definition means the participant's risking of money or property or tangibles or intangibles as well as personal effort standing in their stead. The definition does not include lesser acts of personal inconvenience. Whether something of value is being risked in any particular situation, moreover, is to be ascertained by considering all of the relevant circumstances. The proposed promotions held in the casinos by which free tickets or coupons are given to all interested persons in anticipation of later drawings for prizes are lawful. The charter bus tour promotions which give a bonus to each bus patron without

3. It is important to note that a game may be a "contest of chance" notwithstanding that the skill of the contestant may also be a factor therein. *Boardwalk Regency v. Attorney General,* 188 N.J. Super. 372 (Law Div. 1982).

exception, is lawful, because of the absence of the element of chance. Another bus tour promotion is not lawful, however, since the bonus there is available to only bus patrons whose names are selected in a drawing and the inference must be that part of the patron's ticket price was staked upon the outcome of the drawing. The promotion is equally unlawful when the payments to the bus operator do not represent the source of the winnings ultimately paid by the casino because that sort of identity is not statutorily required.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

July 5, 1983

PAMELA S. POFF, *Director*
Division on Civil Rights
Room 400
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 7—1983

Dear Director Poff:

You have asked for our opinion as to whether it is unlawful under the Law Against Discrimination for a lending institution to include inquiries in credit applications concerning the marital status of a prospective borrower. The Division on Civil Rights has received numerous inquiries from lending institutions as to whether a designation of marital status may be included on an application for credit when the information is necessary to either enable the institution to obtain an enforceable security interest or to create a valid lien, pass clear title, or waive inchoate rights to property. For the following reasons, it is our opinion that under the Law Against Discrimination a lender may make an inquiry in order to enable it to protect its interest in security provided on account of the loan. A lender, however, may not make an inquiry as to the marital status of a prospective borrower in order to ascertain his or her credit worthiness.

The Law Against Discrimination ("LAD") N.J.S.A. 10:5-12(i), provides that it shall be unlawful:

> For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution to whom application is made for any loan or extension of credit. . . .
>
> 2. To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirect-

> ly, any limitation, specification or discrimination as to . . . marital status . . . or any intent to make any such limitation, specification or discriminaton; unless otherwise required by law or regulation to retain or use such information.

The evident purpose of this section was to preclude blatant or subtle efforts by lenders to collect information about credit applicants for the purpose of practicing marital status discrimination. It was also designed to preclude lenders from attempting to discourage married or unmarried persons from applying for credit by indicating, directly or indirectly, the lender's intent to discriminate on the basis of marital status. The LAD is "aimed at subtle and covert activities designed to defeat its policy as well as at outright and blatant violations." *Wilson v. Sixty Six Melmore Gardens,* 106 N.J. Super. 182, 185 (App. Div. 1969). *See Passaic Daily News v. Blair,* 63 N.J. 474, 484-488 (1973) (placing job advertisements in sex-segregated advertising columns constitutes the making of a specification, limitation or discrimination based on sex). Where a creditor makes an inquiry as to marital status in a situation where there is no valid business need for that information, or where a valid business need is not obvious and is not explained to the applicant, it is reasonable to infer that the inquiry was actually made for the purpose of excluding or discouraging applicants on the basis of marital status.

On the other hand, there are certain situations in which a lender may have a valid business necessity at an appropriate stage of a credit application process for inquiring about an applicant's marital status. The Federal Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §1691, *et seq.,* for example, generally prohibits inquiries regarding marital status, *Harbaugh v. Continental Ill. Bank and Trust Co.,* 615 F. 2d 1169 (7th Cir. 1980), but allows a creditor:

> to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness. [15 U.S. §1691(b)(1)].

The ECOA also permits a creditor to request "the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings. . ." 15 U.S.C. §1691d(a). Moreover, in New York, a state having a civil rights statute similar to the LAD,[1] the Division of Human Rights has adopted a regulation which provides that

> it shall not be considered an expression of limitation, specification or discrimination on the basis of sex or marital status if

1. The *New York Executive Law,* §296-a(1)(c), provides that it shall be unlawful for a creditor:

> To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to . . . marital status. . . .

> 2. where application is made for a mortgage and the creditor determines that the signature of the spouse is required in order to pass clear title in the event of a default, a creditor requests information concerning marital status, provided that the information disclosed by such inquiry is used solely for the purpose of perfecting title. [9 N.Y.C.R.R. §466.7.]

The foregoing statutory and regulatory provisions contemplate situations in which a creditor may have valid business reasons for inquiring about the marital status of a credit applicant. These include situations where a loan is to be secured by property in which the applicant's spouse has an ownership interest or in which the spouse may have inchoate rights.

Although the LAD by its literal terms could be read to prohibit all inquiries by creditors regarding marital status, it is fundamental that the statute is to be interpreted sensibly in accordance with its remedial purpose. *N.J. Builders, Owners and Managers Assn. v. Blair,* 60 N.J. 330, 338 (1972). Moreover, "the matter of statutory construction . . . will not justly turn on literalisms . . . it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation." Id. at 339, *quoting New Jersey City Chapter Prop. Owner's Assn. v. City Council,* 55 N.J. 86, 100 (1969). It would be inconsistent with common sense to presume that the Legislature intended to preclude creditors from making inquiries regarding marital status in situations where such information is necessary to obtain an enforceable security interest. On the other hand, inquiries should be made only where needed for a valid business purpose and at the stage of the application process where such information is clearly needed. Moreover, to avoid the appearance of an intent to discourage applicants on the basis of marital status, such inquiries should be accompanied by a clearly worded written explanation of their business purpose and by a statement that the applicant's marital status will not be used to determine credit worthiness.[2]

In conclusion, it is our opinion that there is no absolute impediment under the Law Against Discrimination to an inquiry made by a lender as to the marital status of a prospective borrower provided, however, any inquiry, whether contained in an application for credit or otherwise, must be supported only by valid business concerns of the lender reasonably relating to the ascertainment and protection of the lender's rights and remedies. It is also our opinion that an inquiry should not be made either as a reason or subterfuge for an investigation into the credit worthiness of the applicant.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

2. In order to clearly define the obligations of creditors under N.J.S.A. 10:5-12(i), it is strongly recommended that the Division on Civil Rights and the Department of Banking jointly promulgate regulations setting forth situations in which creditors may make inquiries regarding marital status and specifying procedures to be followed by them.

July 11, 1984

COLONEL CLINTON L. PAGANO
Superintendent
Division of State Police
Department of Law and Public Safety
River Road
P.O. Box 7068
West Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1984

Dear Superintendent Pagano:

You have asked for our opinion as to whether the requirement of certain statutes, that persons appointed to the uniformed law enforcement and firefighting services shall be between 21 and 35 years of age, is valid under the Age Discrimination in Employment Act (ADEA).[1] That Act provides that it shall be unlawful "to fail or refuse to hire . . . any individual [between the ages of 40 and 70] . . . because of such individual's age." 29 U.S.C. §§623(a)(1) and 631(a).

The constitutionality of applying the ADEA to the States was upheld by the United States Supreme Court in *EEOC v. Wyoming,* 103 S. Ct. 1054 (1983). As a result of this decision, it was concluded in *Formal Opinion* No. 5-1983 that the applicable provisions of the State uniformed services pension statutes which require the mandatory retirement of their members prior to age 70 were invalid and unenforceable under the ADEA. For the following reasons, you are advised that maximum hiring ages established by the noted statutes for the uniformed law enforcement and firefighting services are similarly invalid and unenforceable.[2]

It is settled that a restriction which uniformly bars the employment of persons age 40 and older is a *prima facie* violation of the ADEA. *EEOC v. County of Allegheny,* 705 F. 2d 679, 680 (3rd Cir. 1983). Such a hiring age ceiling is permissible under the Act only if demonstrated to be a bona fide occupational qualification (BFOQ) within the meaning of 29 U.S.C. §623(f)(1), which provides that it shall not be unlawful for an employer to take any action otherwise prohibited "where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age." Although the BFOQs subject to this exception are not further defined by the statute, the Equal Employment Opportunity Commission (EEOC), which is charged with the enforcement of this statute, has promulgated a regulation which states that a BFOQ will be valid only where:

> (1) the age limit is reasonably necessary to the essence of the business, and either (2) that all or substantially all individuals excluded from the job involved are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. [29 C.F.R. §1625.6(b).]

The regulation further provides that, "[i]f the employer's objective in asserting a BFOQ is the goal of public safety, the employer must prove that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact." *Ibid.*

Two reported decisions have upheld maximum hiring ages for law enforcement personnel under these BFOQ standards. In *EEOC v. Missouri State Highway Patrol,* 555 F. Supp. 97 (W.D. Mo. 1982), the court held that a maximum hiring age of 32 for State troopers validly furthered public safety by maximizing the career length of the average trooper, since "[t]he safest patrolman is one who has acquired several years of experience," and "[a]n experienced patrolman is best able" to serve as an administrator, the job most senior troopers performed, after approximately 11 years experience as a trooper with line duties. 555 F. Supp. at 106. Similarly, in *Poteet v. City of Palestine,* 620 S.W. 2d 181 (Tex. Civ. App. 1981), the court upheld the refusal of a municipal police department to consider applications from persons older than age 40 on the ground that the court had "a factual basis for believing" that it would be impossible or impracticable to assess the physical fitness of persons older than age 36 on an individualized basis and that, accordingly, "[the] public safety would be jeopardized to some degree by eliminating the employer's hiring policy. . . ." 620 S.W. 2d at 184-185.

However, the validity of such maximum hiring ages in the law enforcement field has been decisively rejected by several other courts. In *EEOC v. County of Los Angeles,* 706 F. 2d 1039 (9th Cir. 1983) *cert. den.* 104 S. Ct. 984-985 (1984), the Court of Appeals recognized that police work is physically arduous and requires strength, ability and good reflexes, but affirmed the conclusion of the district court that a maximum hiring age of 35 for county sheriffs and fire department helicopter pilots was invalid since the ability to perform these tasks, as well as the prospective risk from such ailments as heart disease, could be detected by the use of simple, inexpensive and extremely reliable physical performance tests. 706 F. 2d at 1043-1044. The same conclusion was reached in *EEOC v. County of Allegheny, supra,* and *Rodriguez v. Taylor,* 428 F. Supp. 1118 (E.D. Pa. 1976), *damage award vacated* 569 F. 2d 1231 (3rd Cir. 1977), *cert. den.*

1. Identical maximum hiring restrictions are imposed by State statute with respect to State Police, *see* N.J.S.A. 53:1-9, State motor vehicle inspectors, *see* N.J.S.A. 39:2-6.1, as well as with respect to paid municipal firefighters and municipal police officers. N.J.S.A. 40A:14-12,127.

2. In EEOC, the potential impact of the ADEA on a state's mandatory retirement policy was held to be an insignificant intrusion into the area of integral state operations under the Tenth Amendment to the United States Constitution. The court noted that a state would still be in a position to assess the fitness of its employees because the Act only requires the state to achieve its goals in a more individualized manner through a demonstration that age is a bona fide occupational qualification for the particular job involved. The invalidation of uniform maximum entry level ages by the ADEA is no greater an intrusion into the area of integral state operations since in this case the state may also demonstrate that a maximum entry level age is a bona fide occupational qualification for certain jobs in the uniformed law enforcement and firefighting services.

436 U.S. 913 (1978), where the courts invalidated maximum hiring ages of 40 for police officers and municipal security officers on the ground that there was no evidence that substantially all persons over this age would be unable to safely and efficiently perform the duties of these jobs or that it would be impossible to test applicants individually.

It is our opinion that the results reached by these latter cases are more consistent with the applicable provisions of the ADEA. First, there appears to be a valid distinction, as recognized by the court in *EEOC v. County of Los Angeles,* between the physical demands of inter-city bus driving, where age restrictions have been upheld, and police work. The validity of a hiring age restriction for the uniformed services must be considered in light of the fact that the physical demands of such positions, and hence the degenerative consequences of age, are less subtle than those involved in bus driving and are thus easier to objectively ascertain. *See Aaron v. Davis,* 414 F. Supp. 453, 462 (E.D. Ark. 1976). Moreover, the overwhelming weight of authority, involving law enforcement and the related profession of fire fighting, holds that the ability of particular individuals to perform these jobs may adequately be determined on the basis of existing medical testing procedures, and has rejected the contention accepted by the court in *Poteet v. City of Palestine* that an employer need only show that it had a reasonable basis for believing that such procedures would be inadequate. *See EEOC v. County of Los Angeles, supra; EEOC v. County of Allegheny, supra; Rodriguez v. Taylor, supra; Orzel v. City of Wauwatosa Fire Dept.,* 697 F. 2d 743, 755 (7th Cir.) *cert. den.* 104 S. Ct. 484 (1983) *EEOC v. City of St. Paul,* 671 F. 2d 1162, 1166 (8th Cir. 1982); *Johnson v. Mayor and City Council of Baltimore,* 515 F. Supp. 1287, 1298-99 (D. Md. 1981), *cert. den.* 455 U.S. 944 (1982); *Aaron v. Davis, supra,* 414 F. Supp. at 463.

In addition, the conclusion reached by the court in *EEOC v. Missouri State Highway Patrol,* 555 F. Supp. at 106, that a hiring age restriction may constitute a BFOQ because it provides the most collectively experienced police force appears, in essence, to be a restatement of the argument that an age restriction may be valid on the ground that it ensures the maximum return on the economic investment made by the State in training new recruits. *See Smallwood v. United Airlines,* 661 F. 2d 303, 307 (4th Cir. 1981) *cert. den.* 456 U.S. 1007 (1982). However, it is settled that such economic considerations may not be used to establish an age restriction as a BFOQ. *Ibid.; EEOC v. County of Los Angeles, supra,* 706 F. 2d at 1042; 29 C.F.R. §860.103(h); *cf. City of Los Angeles Dept. of Water & Power v. Manhart,* 435 U.S. 702, 716-717 (1978) (cost-jusitification defense not available in Title VII action). Finally, there is no suggestion that the maximum hiring age restriction in the uniformed services is based upon any specific medical or other factual findings regarding the ability of persons above the prescribed age to perform his or her duties. However, it is established that such age restrictions must "be based on something more than mere speculation or the subjective belief" that persons older than a prescribed age are incapable of handling the physical demands of a job, and that in the absence of specific factual proof thereof an age limit will not be sustained. *Orzel v. City of Wauwatosa Fire Dept., supra,* 697 F. 2d at 755; *accord, EEOC v. County of Allegheny, supra,* 705 F. 2d at

681; *EEOC v. County of Santa Barbara,* 666 F. 2d 373, 376 (9th Cir. 1982).

You are therefore advised that the requirement of statutes that appointees to the uniformed law enforcement and firefighting services shall be no older than 35 are invalid and unenforceable under the ADEA.[3] A maximum hiring age may be validly adopted in an amended format only when it can be shown that all or substantially all of the persons above a prescribed maximum hiring age are unable to perform the duties of the position or that it is impossible to assess the fitness of individual applicants over the prescribed age on an individual basis.

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

3. The ADEA by its terms protects only persons between the ages of 40 to 70 against discrimination in employment. The New Jersey statutory scheme establishes a maximum hiring age for the uniformed services at 35. It would be unreasonable though to assume that the legislature intended a maximum hiring age to apply for persons between 35 and 40 when persons up to 30 years over the age of 40 are not subject to a comparable limitation. A statute should be interpreted sensibly and not to reach an anomalous or irrational result. *Suter v. San Angelo Foundry & Mach. Co.,* 81 N.J. 150 (1979); *Federal Paper Bd. Co., Inc. v. Borough of Bogota,* 129 N.J. Super. 308 (App. Div. 1974). Moreover, a statute may be deemed to be severable only where the offensive portion can be excised without impairing the principal object of the statute as a whole. *110-112 Van Wagenen Avenue Co. v. Julian,* 101 N.J. Super. 230, 235 (App. Div. 1968). In the instant situation, the application of maximum hiring ages to a limited group of persons between the ages of 35 to 40 would not only be unreasonable but also inconsistent with the apparent purpose of the statute to prohibit the appointment of *all* persons of whatever age over 35.

November 15, 1984

HONORABLE MICHAEL M. HORN
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION NO. 2—1984

Dear Treasurer Horn:

It has been brought to our attention that Public Question Number 2 ("The Human Services Facilities Construction Bond Act"), which was presented on the ballot and approved by the people at the General Election held on November 6, 1984, contained language concerning the refinancing of bonds authorized by the Act which does not appear in section 22 of Senate Bill No. 2095, The Human Services Facilities Construction Bond Act of 1984. The question is raised whether the Issuing Officials may lawfully issue bonds pursuant to the provision of the Bond Act. For the following reasons, it is our opinion that the inclusion of additional wording on the ballot concerning the refinancing of bonds authorized by the Act

constitutes an immaterial deviation from the substantive objective of the Bond Act and the Issuing Officials may lawfully and properly issue the bonds.

On September 13, 1984, the Legislature passed Senate Bill No. 2095, the Human Services Facilities Construction Bond Act of 1984 (hereinafter referred to as the Bond Act or Act). The Act authorized the creation of a debt of the State of New Jersey through the issuance of bonds as direct obligations of the State in the sum of $60 million for the purpose of capital expenditures for the cost of construction of human services facilities. Specifically, it authorized capital expenditures for renovation and improvement of human services facilities; for the maintenance of physical plant accreditation standards; to upgrade solid waste facilities at human services institutions; for grants to establish alternative residential facilities for deinstitutionalized individuals, and for the replacement, rehabilitation, repair and improvement of human services facilities. The Act contained the usual provisions with respect to the issuance of State bonds. It provided that the bonds shall be serial bonds, term bonds, or a combination thereof, which shall be subject to redemption prior to maturity and which shall mature and be paid not later than 35 years from the date of issuance. It also authorized the Issuing Officials to issue refunding bonds and in an amount not to exceed the amount necessary to effectuate the refinancing of all or any bonds issued pursuant to the Act, for the purpose of refinancing any bonds issued pursuant to the Act, subject to the enactment of legislation providing for the issuance of refunding bonds in accordance with and under the authorization of N.J. Const. (1947), Art. 8, Sec. 2, par. 3.

Of significance is the following provision contained in Section 22 of the Act:

> For the purpose of complying with the provisions of the State Constitution this act shall, at the general election to be held in the month of November, 1984, be submitted to the people. To inform the people of the contents of this act, it shall be the duty of the Secretary of State, after this section takes effect, and at least 15 days prior to the election, to cause this act to be published in at least 10 newspapers published in the State and to notify the clerk of each county of this State of the passage of this act, and the clerks respectively, in accordance with the instructions of the Secretary of State, shall cause to be printed on each of the ballots, the following:. . .
>
> HUMAN SERVICES FACILITIES
> CONSTRUCTION BOND ISSUE
>
> Should the 'New Jersey Human Services Facilities Construction Bond Act of 1984,' which authorizes the State to issue bonds in the amount of $60,000,000.00 for the planning, construction, reconstruction, development, erection, acquisition, extension, improvement, rehabilitation, and equipping of human services facilities, *[and in a principal amount sufficient to refinance all or any of these bonds if it will result in a present value savings,]* and providing the ways and means to pay for the principal and interest on these bonds, be approved?
>
> INTERPRETIVE STATEMENT
>
> Approval of this act will authorize the sale of $60,000,000.00 in bonds to be used (1) to bring human services facilities into compliance with Life Safety Code requirements; (2) to maintain physical plant accreditation standards; (3) to upgrade solid waste facilities at human services institutions; (4) to provide grants to establish alternative residential facilities for deinstitutionalized individuals; **and** (5) to replace, rehabilitate, repair and improve human services facilities* [; (6) and provide bonds in a sufficient amount to refinance all or any of these bonds if it will result in a present value savings]*. (Emphasis in original).

The Act explained that the matter enclosed in brackets above [thus] was not enacted and was to be omitted in the law.

Pursuant to section 22 of the Act, the Secretary of State certified to the county clerks of the respective counties that there should appear on the ballot to be voted upon by the voters of the entire State at the General Election to be held on November 6, 1984, as Public Question No. 2, the question and interpretive statement appearing in the Act. The question and interpretive statement published on the ballot used at the election were identical to that set forth in the Act, except that the material contained within the brackets, dealing with how the bonds might be refinanced, was not deleted from, and therefore remained included in, the question and interpretive statement appearing on the ballot with the brackets themselves having been removed from the text. The question so published and stated in the official ballot was also contained in the General Election Sample Ballots distributed to voters in advance of the General Election. The Act was approved by a wide majority of the voters in the General Election of November 6, 1984. In view of the fact that the question and interpretive statement published on the official ballot for the General Election contained information concerning the possible refinancing of the bonds, which had been deleted from the question and interpretive statement stated in the Act, the precise issue is whether bonds may be issued by the State of New Jersey under and pursuant to the Act.

It is significant to note that the Act specifically contained a provision (Section 19) authorizing the Issuing Officials to issue refunding bonds and in an amount necessary to effectuate the refinancing of all or any bonds issued pursuant to the Act, at any time and from time to time, for the purpose of refinancing any bond issue pursuant to the Act, subject to the enactment of legislation providing for the issuance of refunding bonds in accordance with and under the authorization provided by N.J. Const. (1947), Art. 8, Sec. 2, par. 3. The Act further provided that such refunding bonds would constitute direct obligations of the State of New Jersey, and the faith and credit of the State would be pledged for the payment of the principal thereof and the interest thereon. Thus, the information included in the question on the ballot stating that the bonds would be issued "in

a principal amount sufficient to refinance all or any of these bonds if it will result in a present value savings," and the information incorporated in the interpretive statement stating that approval of the Act "will . . . provide bonds in a sufficient amount to refinance all or any of these bonds if it will result in a present value savings" was not substantially different from the refinancing provisions actually contained in Section 19 of the Act.

More importantly, voter approval of the wording on the ballot authorizing the creation of a debt for the purpose of refinancing all or a portion of any outstanding bonds was not even required. Pursuant to an amendment to Art. 8, §2, ¶3, of the State Constitution, approved at the General Election of November 8, 1983, no voter approval is required for any law authorizing the creation of a debt in an amount for the refinancing of all or a portion of any outstanding debts of the state. The wording on the ballot concerning the possible refinancing of bonds which had in fact been deleted by the legislature from the question and interpretive statement in the Act was superfluous. It did not in any way materially alter the substantive object of the Act specifying the principal amount of bonds to be issued and the several purposes to which the proceeds of such bonds would be applied.

The great weight of authority recognizes that the inclusion of information in a question or interpretive statement concerning the technical or financial details of a bond issue, which is in excess of, and not required by, the statute authorizing the placement of the question on the ballot, is unlikely to affect in a meaningful way the choice of the electorate. Consequently, courts have regarded the incorporation of such information as an insubstantial irregularity that does not vitiate the validity of the election. *E.g., Knappenberger v. Hughes,* 35 N.E. 2d 317 (Ill. Sup. Ct. 1941); *Anselmi v. Rock Springs,* 80 P. 2d 419 (Wyo. Sup. Ct. 1938); *Allison v. Phoenix,* 33 P. 2d 927 (Az. Sup. Ct. 1934). Thus, in *Anselmi v. Rock Springs, supra,* the public question placed on the ballot included a provision that the bonds to be issued by the City of Rock Springs, Wyoming, would be issued in an amount not exceeding 2% of the assessed valuation of the city, when computed together with outstanding general bonds. In actuality, the total bond indebtedness of the city at the time of the election was already nearly 4% of the assessed valuation and would be approximately 5-1/2% when computed together with the proposed bonds. Nevertheless, the court approved the bonds. In doing so, the court noted that Wyoming Law did not require that a statement of the city's total indebtedness be included in the question placed on the ballot. Under these circumstances, the information included in the ballot was treated as surplusage which, even though incorrect, was found to be an insignificant irregularity which did not cast doubt on the validity of the election. 80 P. 2d at 424-425. Similarly, in *Knappenberger v. Hughes, supra,* the statute providing that a question be placed on the ballot concerning whether or not an Illinois banking act should be amended did not require or provide that an explanatory statement of the question be included on the ballot. However, the Secretary of State added an interpretive statement on the ballot explaining the purpose of the proposed amendment. In rejecting the contention that the election was rendered invalid because the ballot was not in the form

prescribed by the General Assembly, the court held that although the Secretary of State "overstepped his authority in having [the unnecessary information] placed on the ballot . . . the error was on the side of giving the voters more information and, if not stated so as to mislead them, it affords no ground for declaring the election void." 35 N.E. 2d at 320. Likewise, in *Smith v. Calhoun Community Unit School Dist. No. 40,* 157 N.E. 2d 59 (Ill. Sup. Ct. 1959), the Illinois Supreme Court considered the validity of school bonds to be issued by two counties. A special election for the purpose of submitting the bond issue question to the voters was called for by a resolution adopted by the two counties. The question, as set forth in the resolution, included information specifying the maturity dates of the bonds. However, when the question appeared on the ballot, one of the maturity dates was omitted from the question. As in *Anselmi v. Rock Springs, supra,* the Illinois School Code did not require that information pertaining to the maturity dates of school bonds be set forth in public questions concerning such bond issues. In approving the bonds, the court stated:

> It is well settled that an official ballot will not be vitiated by the incorporation of information beyond that required by the statute. When such additional information is incorporated in the ballot, the test is whether it would tend to confuse or misinform a voter so as to affect his free choice .... There is nothing misleading about the official ballot used in this election. [157 N.E. 2d at 63; citations omitted.]

Furthermore, even in instances where there have been mistakes, misstatements or omissions concerning financial provisions of proposed bond issues which appear in the ballot itself, bond statutes so approved by the voters have not been declared invalid; such irregularities do not have the tendency to mislead, deceive or confuse the people and are not considered subtantial. *E.g., Dunlap v. Williamson,* 369 P. 2d 631 (Okl. Sup. Ct. 1962); *State v. Maxwell,* 60 N.E. 2d 183 (Ohio Sup. Ct. 1945); *San Diego County v. Hammond,* 59 P. 2d 478 (Cal Sup. Ct. 1936). Where the ballot itself correctly sets forth the essential provisions of the bond proposition to be passed upon by the electorate (as in the present situation involving the Human Services Facilities Construction Bond Act (1984)), a misstatement, irregularity or omission of an insubstantial nature in a public question appearing on the election ballot will not suffice to vitiate the law authorizing the proposed bonds. *State v. McGlynn,* 135 N.E. 2d 632 (Ohio Ct. of App. 1955).

In *Formal Opinion* No. 6-1964, issued on December 29, 1964, a question was raised as to the significance of differences between the Higher Education Construction Bond Act of 1964 as enacted and as published by the Secretary of State. The Attorney General concluded that there was no legal defect with respect to the publication because it constituted substantial compliance with the provisions of the Bond Act. It was reasoned that where the differences pertained to technical changes and minor alterations in phraseology and where the published act fully set forth the specific amount of indebtedness incurred for higher education

purposes, those differences did not materially alter the substantive provisions of that Bond Act. Similarly, in the instant situation, the differences between the Bond Act and the wording presented on the ballot dealing with refinancing have no tendency to mislead, deceive or confuse the public with respect to the basic legislative object to incur a debt in the amount of $60 million for improvements to human services facilities.

Decisions which have declared bond acts invalid because of defects in election notices or in the statement of the public questions submitted usually have involved instances where particular provisions or terms of proposed bonds have been in conflict with specific statutory requirements, *Mann v. City of Artesia,* 76 P. 2d 941 (N.M. Sup. Ct. 1938), or where general provisions have been construed by state courts to require the inclusion of the subject matter omitted. *People v. Chicago, Rock Island & Pacific R. Co.,* 128 N.E. 2d 710 (Ill. Sup. Ct. 1955).

New Jersey decisions pertaining to elections in general clearly support the conclusion that the Bond Act has been lawfully adopted. In *Sharrock v. Keansburg,* 15 N.J. Super. 11 (App. Div. 1951) it was contended that an election should be invalidated because of the failure of the county clerk to cause to be printed on the ballot the explanatory statement of the public question in the exact verbiage appearing in the pertinent section of the statute. The court noted that the explanatory statement printed on the ballot "displayed more clarity of expression than the one contained in the statute" and found that the variance in language was clearly insubstantial, stating:

> [I]f it is evident that notwithstanding the dereliction of duty of the officer there was a fair election and an honest return and no violation of such matters as the recognized inherent and inviolable rights of the voters, the courts in the public interest have frequently ignored the harmless irregularity.
>
> . . . .
>
> The right of suffrage in a government of and by a free people must always be regarded with jealous solicitude. To overthrow the expressed will of a large number of voters for no fault of their own and solely because of some harmless irregularity would in many cases defeat the paramount object of the election laws [15 N.J. Super. at 18-19].

It has thus been recognized by the New Jersey courts that technical irregularities in election procedures cannot serve to invalidate the results of an otherwise fair election and thus frustrate the expressed will of the electorate. In *Wene v. Meyner,* 13 N.J. 185, 196 (1953), this essential policy was aptly expressed.

> Where, as here, there is an unwitting omission of a formal requirement otherwise supplied in substance, the ballots are invulnerable; the overturning of the result in such circumstances would frustruate the will of the voters for errors and omissions of form not related to the merits; and this would do violence to

> the legislative will. In this regard, acts and omissions by the district board mandatory before election may for reasons of policy be deemed directory after the election, if it indubitably appears that the election result was not thereby prejudiced. The question is essentially one of fairness in the election. An election is not vitiated by the defaults of election officers not involving malconduct or fraud, unless it be shown that thereby the free expression of the popular will in all human likelihood has been thwarted.

The text of Public Question No. 2 on the official ballot contained all of the information set forth in Section 22 of Senate Bill No. 2095. Thus, the statement contained the question to be voted upon as well as the interpretive statement appearing in the Act. The incorporation on the ballot of additional information concerning how the bonds might be refinanced was merely superfluous. Because the Act already specifically set forth the manner in which the bonds could be refinanced, the inclusion of this information was not misleading; but rather a harmless irregularity. If anything, the voters were given more information than was necessary under the Act and, significantly, voter approval for such refinancing was not required pursuant to Art. 8, Sec. 2, par. 3. It is thus clear that the inclusion of the information on the ballot which had been deleted from the Act concerning the refinancing of bonds did not constitute a material deviation from the substantive objective of the Bond Act. For these reasons, it is our opinion the Human Services Facilities Construction Bond Act of 1984 was duly and validly approved by the people at the General Election. The Issuing Officials may lawfully issue bonds in accordance with the provisions of the Human Services Facilities Construction Bond Act of 1984.

Very truly yours,
MICHAEL R. COLE
Acting Attorney General

INDEX TO ATTORNEY GENERAL'S OPINIONS 1978-1984

A.

Administrative Law, Office of—
- Hearings on branch banking applications are not contested cases required to be conducted before administrative law judge. F.O. 6, 1979.
- Jurisdiction over contested cases lies in OAL. F.O. 4, 1979.

Administrative Rules—
- Procedural defects in Public Health Council's adoption of rules regulating smoking require new notice and opportunity for hearing. F.O. 7, 1978.

Adoption—
- Refusal of advance consent for blood transfusion does not bar Jehovah's Witnesses from adoption rights. F.O. 20, 1979.

Advertising—
- Regulations which prohibit optometrists from soliciting optometric services are invalid. F.O. 17, 1980.

Age—
- Maximum hiring age for law enforcement personnel valid only when it is impossible to assess fitness of individual applicants over prescribed age. F.O. 1, 1984.
- Statutory provisions requiring mandatory retirement prior to age 70 invalid. F.O. 5, 1983.

Alcohol Beverage Control, Division of—
- Malt beverages may be sold for off-premises consumption during same days and hours that municipalities permit on-premises consumption of alcoholic beverages. F.O. 10, 1978.

Attorney and Client—
- Attorneys subject to licensure requirements of Real Estate Act except for professional duties within the scope of practice of law. F.O. 13, 1979.

Automobile—
- Dept. of Transportation may lend federal funds to employers for purchase of van pool vehicles. F.O. 16, 1980.

Automobile—
- *See also* Motor Vehicles.

B.

Banks and Banking—
- Anti-Redlining Act violated when criteria for home mortgages has disproportionate effect on certain neighborhoods. F.O. 7, 1979.
- Bank may assess prepayment penalty against borrower who prepays an installment loan prior to due date of first payment, F.O. 1, 1983.
- Bank moneys may not be used to establish or administer a political action committee. F.O. 14, 1979.
- Customers of out-of-state banking institutions may access their accounts through automatic teller machines operated by New Jersey banks. F.O. 6, 1982.
- Hearings on bank charter applications are contested cases and must be conducted by administrative law judge. F.O. 15, 1979.
- Hearings on branch banking applications are not contested cases required to be conducted before administrative law judge. F.O. 6, 1979.
- Interest rate on secondary mortgage loan may not be increased during first three years of loan term. F.O. 3, 1982.
- Lending institution may inquire into marital status of prospective borrower in order to protect its security interest. F.O. 7, 1983.

Bingo—
- Cable television bingo game does not violate state gambling law. F.O. 9, 1978.

Bonds—
- Additional wording included on ballot of Human Services Facilities Construction Bond Act of 1984 did not constitute material deviation from substantive objective of Act. F.O. 2, 1984.
- Insurance corporation may give financial support to passage of Transportation Rehabilitation and Improvement Bond Issue. F.O. 23, 1979.

C.

Cable Television, Office of—
- Municipality may own and operate cable television system. F.O. 5, 1978.
- Television bingo game does not violate state gambling law. F.O. 9, 1978.

Casino Control Commission—
- Casino may sponsor backgammon tournament provided no admission is charged. F.O. 1, 1980.
- Casino-related promotions constitute unlawful gambling only if participant risks something of value. F.O. 6, 1983.
- Proposed casino craps tournament violates Penal Code's prohibition against gambling. F.O. 9, 1981.

Citizens and Citizenship—
- Public school teachers must satisfy statutory citizenship requirements. F.O. 18, 1980.
- State can require public school teachers to be or declare intention to become citizens. F.O. 12, 1979.

Colleges and Universities—
- Alumni associations and development funds organized and operated independent of state colleges are not subject to statutory requirements imposed on state agencies. F.O. 2, 1981.
- State Colleges may not form independent corporations to carry out college functions unless all statutory requirements imposed on state agencies are satisfied. F.O. 22, 1980.

Community Affairs, Department of—
- Construction of resource recovery facilities subject to Local Public Contracts Law. F.O. 14, 1980.
- Jurisdiction to hear cases under Relocation Assistance Act. F.O. 3, 1979.
- Treatment of proceeds of sale of municipal assets under Local Government Law. F.O. 23, 1980.
- Urban aid moneys treated as modification under Local Government Cap Law. F.O. 21, 1980.

Consumer Affairs, Division of—
- IRA and Keough Plan accounts providing professional management services for a fee are consumer contracts and should conform to Plain Language Law, N.J.S.A. 56:12-2. F.O. 7, 1982.

Corporations—
- State Colleges may not form independent corporations to carry out college functions unless all statutory requirements imposed on state agencies are satisfied. F.O. 22, 1980.

Corrections, Department of—
- Chief executive officer of prison has discretion to restore forfeited commutation credits. F.O. 8, 1979.
- Commutation and/or work credits awarded to sex offenders under Penal Code. F.O. 11, 1980.
- Parolee who absents himself from parole supervision cannot claim credit for "street time." F.O. 25, 1979.
- Single parole eligibility date should be calculated on aggregated sentence. F.O. 26, 1979.

Counties—
- Construction of resource recovery facilities subject to Local Public Contracts Law. F.O. 14, 1980.
- Not authorized to participate in commercially managed deferred compensation plans. F.O. 2, 1980.

D.

Domicile and Residence—
- Residency requirement for licensure of podiatrists unconstitutional. F.O. 24, 1980.

Durgs and Narcotics—
- Pharmacists must substitute generic drugs unless expressly prohibited by prescriber. F.O. 17, 1979.

E.

Education, Commissioner of—
- Auxiliary services contract must be approved by Commissioner of Eduation. F.O. 1, 1984.

Education, Department of—
- State can require public school teachers to be or declare intention to become citizens. F.O. 12, 1979.
- Public school teachers must satisfy statutory citizenship requirements. F.O. 18, 1980.

Educational Services Commission—
- Auxiliary services contract between private agency and local school board must be approved by Commissioner of Education. F.O. 1, 1984.

Election Law Enforcement Commission—
- Bank moneys may not be used to establish or administer political action committee. F.O. 14, 1979.
- Insurance corporation may give financial support to passage of Transportation Rehabilitation and Improvement Bond Issue. F.O. 23, 1979
- Non-insurance holding corporation of insurance company licensed to do business in this state is prohibited from making political contributions. F.O. 4, 1983.

Elections—
- Additional wording included on ballot of Human Services Facilities Construction Bond Act of 1984 did not constitute material deviation from objective of Act. F.O. 2, 1984.
- Qualifications for office. F.O. 5, 1980.

Eminent Domain—
- Department of Community Affairs has jurisdiction to hear cases under Relocation Assistance Act. F.O. 3, 1979.
- No legal impediment to State purchase of property in excess of appraised value. F.O. 8, 1980.

Environmental Protection, Department of—
- DEP may regulate development on "water-front" portion of uplands adjacent to navigable waters or streams. F.O. 6, 1980.
- Solid waste management districts authorized to direct waste to preferred facilities and to establish uniform rates. F.O. 12, 1980.
- Solid waste management districts may require that waste be directed to specific disposal facilities. F.O. 3, 1980.

F.

Food Stamp Program—
- State and county welfare agencies responsible for investigation of abuses in Food Stamp program. F.O. 2, 1978.

Freedom of Religion—
- Refusal of advance consent for blood transfusion does not bar Jehovah's Witnesses from adoption rights. F.O. 20, 1979.

G.

Gaming—
- Cable television bingo game does not violate State gambling law. F.O. 9, 1979.
- Casino may sponsor backgammon tournament provided no admission is charged. F.O. 1, 1980.
- Casino-related promotions constitute unlawful gambling only if participant risks something of value. F.O. 6, 1983.

New Jersey State Lottery may use consumer-operated video game. F.O. 5, 1982.
N.J.S.A. 5:5-64 does not permit carryover of undistributed percentage of pari-mututal pool to the next racing day. F.O. 19, 1980.
Proposed casino craps tournament violates Penal Code's prohibition against gambling. F.O. 9, 1981.
Uncollected checks received by casino licensee and not deposited in accordance with N.J.S.A. 5:12-101(b) and (c) do not constitute taxable gross income. F.O. 7, 1981.

Government Immunity and Liability—
Dept of Transportation is immune from local land use regulations in proceeding with Erie Lackawanna reelectrification project. F.O. 4, 1978.

Green Acres Program—
No legal impediment to State purchase of property in excess of appraised value. F.O. 8, 1980.

H.

Hackensack Meadowlands Development Commission—
HMDC has authority to control flow of solid waste within District. F.O. 18, 1979.

Health Benefits Commission, State—
Equality of benefits for all public employees at State and local level. F.O. 8, 1981.

Health, Department of—
Nursing home rate reimbursement appeal is contested case. F.O. 10, 1979.

Higher Education, Department of—
Alumni association and development funds organized and operated independent of state colleges are not subject to statutory requirements imposed on state agencies. F.O. 2, 1981.
Board of Higher Education does not have authority to license foreign medical schools nor regulate their course of instruction. F.O. 25, 1980.
State colleges may not form independent corporations to carry out college functions unless all statutory requirements imposed on state agencies are satisfied. F.O. 22, 1980.

Hospitals and Nursing Homes—
Rate reimbursement appeal is contested case. F.O. 10, 1979.
Senior citizens who are inpatients in nursing homes or hospital may not be excluded from benefits of Pharmaceutical Assistance for the Aged Program. F.O. 3, 1978.

Hospitals and Nursing Homes—
See also Psychiatric Hospitals.

Human Services, Commissioner—
Senior citizens who are inpatients in nursing homes or hospitals may not be excluded from benefits of Pharmaceutical Assistance for the Aged program. F.O. 3, 1978.

Human Services Facilities Construction Bond Act of 1984—
Additional wording included on ballot did not constitute material deviation from substantive objective of Act. F.O. 2, 1984.

Husband and Wife—
Lending institution may inquire into marital status of prospective borrower in order to protect its security interest. F.O. 7, 1983.
Senior citizen homestead rebate available to surviving spouse who meets certain conditions. F.O. 24, 1979.

I.

Insurance—
Commissioner of Insurance has authority to determine reasonable rates as applied to particular insurance. F.O. 1, 1978.
Insurance corporation may give financial support to passage of Transportation Rehabilitation and Improvement Bond Issue. F.O. 23, 1979.
Non-insurance holding corporation of insurance company licensed to do business in this state is prohibited from making political contributions. F.O. 4, 1983.
Regulation of insurers' nonrenewal of auto property damage coverage. F.O. 8, 1982.

Interest—
Rate on secondary mortgate loan may not be increased during first three years of long term. F.O. 3, 1982.

Intoxicating Liquors—
Malt beverages may be sold for off-premises consumption during same days and hours that municipalities permit on-premises consumption of alcoholic beverage. F.O. 10, 1978.

J.

Jehovah's Witnesses—
Refusal of advance consent for blood transfusion does not bar Jehovah's Witnesses from adoption rights. F.O. 20, 1979.

L.

Labor and Industry, Department of—
Sick leave payments constitute wages for purpose of calculating base year earnings under N.J.S.A. 43:21-27. F.O. 20, 1980.

Legislature—
Legislative veto of agency rules by concurrent resolution violates N.J. Constitution. F.O. 3, 1981.
Qualifications for office. F.O. 5, 1980.

Licenses—
Motor vehicle license suspension hearing is contested case and must be conducted by Administrative Law Judge. F.O. 22, 1979.

"Lifeline" Law—
Board of Public Utilities report does not contain proposed "lifeline" rate. F.O. 1, 1979.

Local Government Cap Law—
Expenditures for programs reimbursed by Federal or State funds excluded from cap. F.O. 4, 1982
Moneys appropriated in anticipation of deficit in municipally owned utility not exempt from budget cap. F.O. 4, 1980.
Municipal or county expenditures for implementation of solid waste management plans not generally exempt from local government cap. F.O. 16, 1979.
Municipality may make emergency appropriation for purpose unforseen at time of budget adoption or for which provision was inadequate. F.O. 26, 1980.
Portion of revenue generated by in-lieu of tax payments may be excluded from municipal budget cap. F.O. 7, 1980.
Treatment of proceeds of sale of municipal assets. F.O. 23, 1980.
Treatment of Urban Aid moneys. F.O. 21, 1980.

Local Government Services, Division of—
Bidding requirements of Local Public Contracts Law applies to all purchase of goods and services. F.O. 2, 1983.
Counties and municipalities not authorized to participate in commercially managed deferred compensation plans. F.O. 2, 1980.
Emergency appropriations under N.J.S.A. 40A:4-46 can only be made for purpose unforseen at adoption of municipal budget. F.O. 10, 1980.

Lotteries—
Cable television bingo game does not violate state gambling law. F.O. 9, 1978.
New Jersey State Lottery may use consumer operated video game. F.O. 5, 1982.

M.

Marlboro State Hospital—
Special police have authority to patrol perimeter adjacent to institution. F.O. 19, 1979.

Marriage and Divorce—
Lending institution may inquire into marital status of prospective borrower in order to protect its security interest. F.O. 7, 1983.

Medical Assistance and Health Services, Division of—
Senior citizens who are inpatients in nursing homes or hospitals may not be excluded from benefits of Pharmaceutical Assistance for the Aged Program. F.O. 3, 1978.

Medical Examiners, State Board of—
Board of Higher Education does not have authority to license foreign medical schools nor regulate their courses of instruction. FO.O. 25, 1980.

Medicare and Medicaid—
Senior citizens who are inpatients in nursing homes or hospitals may not be excluded from benefits of Pharmaceutical Assistance for the Aged Program. F.O. 3, 1978.

Mortgages—
Anti-Redlining Act violated when criteria for home mortgages has disproportionate effect on certain neighborhoods. F.O. 7, 1979.
Interest rate on secondary mortgage loan may not be increased during first three years of loan term. F.O. 3, 1982.

Motor Vehicles—
Conviction on subsequent alcohol related offense not required to revoke driving privileges of motorist who refuses to take breath chemical test on subsequent drunk-driving violation. F.O. 4, 1981.
Truck found on New Jersey highway loaded in excess of weight limitation specified on its foreign registration does not violate N.J.S.A. 39:3-84.3. F.O. 11, 1979.

Motor Vehicles, Division of—
Certificates issued to intrastate carriers of bulk commodities under grandfather clause permit limited activities only. F.O. 12, 1978.
Motor vehicle license suspension hearing is contested case and must be conducted by Administrative Law Judge. F.O. 22, 1979.

Municipal Corporations—
Budgets—Emergency appropriations under N.J.S.A. 40A:4-46 can only be made for purpose unforseen at adoption of local budget. F.O. 10, 1980.
Budgets—Moneys appropriated in anticipation of deficit in municipally owned utility not exempt from budget cap. F.O. 4, 1980.
Budgets—Municipality may make emergency appropriation for purpose unforseen at time of budget adoption or for which provision was inadequate. F.O. 26, 1980.
Budgets—Portion of revenue of in-lieu of tax payments may be excluded from municipal budget cap. F.O. 7, 1980.
Budgets—Spending limitations of cap law do not apply to expenditures made to provide matching funds. F.O. 4, 1982.
Budgets—Treatment of proceeds of sale of municipal assets under Local Government Cap Law. F.O. 23, 1980.
Department of Community Affairs has jurisdiction to hear cases under Relocation Assistance Act. F.O. 3, 1979.
Municipality may own and operate cable television system. F.O. 5, 1978.
No authorization to participate in commercially managed deferred compensation plans. F.O. 2, 1980.

N.

Natural Resource Council—
Absent adequate compensation, Natural Resource Council may not grant perpetual lease of State tidelands to municipality. F.O. 8, 1978.

New Jersey Racing Commission—
Amendatory legislation required to permit telephone wagering at licensed racetracks. F.O. 6, 1981.
N.J.S.A. 5:5-64 does not permit carryover of undistributed pari-mutual pool to the next racing day. F.O. 19, 1980.
New Jersey State Lottery—
May use consumer operated video games. F.O. 5, 1982.
Nursing Homes—
See Hospitals and Nursing Homes.

O.

Officers—
Qualifications for office. F.O. 5, 1980.
Optometrists, New Jersey Board of—
Board's right to prior approval over vision service plans is limited to provision of quality eye care. F.O. 13, 1980.
Regulations which prohibit optometrists from soliciting optometric services are invalid. F.O. 17, 1980.

P.

Parole Board, New Jersey State—
Board may revoke parole for failure to pay fines but may not impose forfeiture of "street time." F.O. 21, 1979.
Commutation and/or work credits awarded to sex offenders under Penal Code. F.O. 11, 1980.
Parole eligibility status of sex offenders sentenced to Adult Diagnostic and Treatment Center. F.O. 5, 1981.
Parolee who absents himself from parole supervision cannot claim credit for "street time." F.O. 25, 1979.
Single parole eligibility date should be calculated on aggregated sentence. F.O. 26, 1979.
Penalties—
Bank may assess prepayment penalty against borrower who prepays an installment loan prior to due date of first payment. F.O. 1, 1983.
Pensions—
Income received by non-resident from New Jersey pension source is subject to Gross Income Tax. F.O. 5, 1979.
Pensions, Division of—
Equality of health benefits for all public employees at state and local level. F.O. 8, 1981.
Statutory provisions requiring mandatory retirement prior to age 70 invalid. F.O. 5, 1983.
Pharmaceutical Assistance for the Aged—
Senior citizens who are inpatients in nursing homes or hospitals may not be excluded from benefits of program. F.O. 3, 1978.
Pharmacy, Board of—
Pharmacists must substitute generic drugs unless expressly prohibited by provider. F.O. 17, 1979.
Plain Languge Law—
Effective date. F.O. 1, 1982.
IRA and Keough Plan accounts providing professional management services for a fee are consumer contracts and should conform to Plain Language Law, N.J.S.A. 56:12-2. F.O. 7, 1982.
Police and Peace Officers—
Off duty municipal police may engage in police related activities so long as they do not constitute business of private detective. F.O. 11, 1978.
Special police at Marlboro State Hospital have authority to patrol perimeter raods adjacent to institutions. F.O. 19, 1979.
Preemption—
Dept. of Transportation is immune from local land use regulations in proceeding with Erie Lackawanna reelectrification project. F.O. 4, 1978.
Pregnancy—
Temporary disability claims based upon pregnancy or childbirth must be treated the same as all other claims. F.O. 2, 1979.
Prisons—
Chief executive officer of prison has discretion to restore forfeited commutation credits. F.O. 8, 1979.
Professional Boards—
Board of Higher Education does not have authority to license foreign medical schools or regulate their course of instruction in this state. F.O. 25, 1980.
Majority of membership of a professional board constitutes a quorum. F.O. 6, 1978.
New Jersey Board of Optometrists right to prior approval over vision service plans is limited to provision of quality eye care. F.O. 13, 1978.
Residency required for licensure of podiatrists through endorsement of out-of-state licenses is unconstitutional. F.O. 24, 1980.
Psychiatric Hospitals, State—
Special police at Marlboro State Hospital have authority to patrol perimeter roads adjacent to institutions. F.O. 19, 1979.
Public Contracts—
Auxiliary services contact between private agency and local school board must be approved by Commissioner of Education. F.O. 1, 1984.
Bidding requirements of Local Public Contracts Law apply to all purchases of goods and services. F.O. 2, 1983.
Construction of resource recovery facilities subject to Local Public Contracts Law. F.O. 14, 1980.
Mandatory disclosure of principal partners or stockholders prior to award of public contrat designed to protect integrity of public bidding process. F.O. 9, 1980.
Public Funds—
Dept. of Transportation may lend federal funds to employers for purchase of vanpool vehicles. F.O. 16, 1980.
No legal impediment to State purchase of property in excess of appraised value. F.O. 8, 1980.
Public Health Council—
Procedural defects in Public Health Council's adoption of rules regulating smoking require new notice and opportunity for hearing. F.O. 7, 1978.
Regulation of smoking in public places is governed by municipal ordinance. F.O. 27, 1979.
Public Officials and Employees—
Counties and municipalities not authorized to participate in commercially managed deferred compensation plans. F.O. 2, 1980.
Public Utilities—
Municipality may own and operate cable television system. F.O. 5, 1978.
Public Utilities, Board of—
Board report does not contain proposed "lifeline" rate. F.O. 1, 1979.
Hackensack Meadowlands Development Commission has authority to control flow of solid waste within District. F.O. 18, 1979.
Solid waste management districts may require that waste be directed to specific disposal facilities. F.O. 3, 1980.
Public Welfare, Division of—
Municipalities governed by Optional Municipal Charter Act may abolish local assistance board. F.O. 15, 1980.
Spending limitations of N.J.S.A. 40A:4-45.1 *et seq.* do not apply to expenditures for matching funds or for programs reimbursed entirely from federal or state funds. F.O. 4, 1982.

Q.

Quorums—
Majority of membership of a professional board constitutes a quorum. F.O. 6, 1978.

R.

Real Estate Commission—
Attorneys subject to licensure requirements of Real Estate Act except for professional duties within scope of practice of law. F.O. 13, 1979.
Riparian Lands—
Absent adequate compensation, Natural Resources Council may not grant perpetual lease of state tidelands to municipality. F.O. 8, 1978.
DEP may regulate development on water-front portion of uplands adjacent to navigable waters or streams. F.O. 6, 1980.

S.

Sales—
Motor fuels retailers may offer discounts for cash sales. F.O. 2, 1982.
Schools and School Districts—
Auxiliary services contract between private agency and local school board must be approved by Commissioner of Education. F.O. 1, 1981.
State can require public school teachers to be or declare intention to become citizens. F.O. 12, 1979.
Separation of Powers—
Legislative veto of agency rules by concurrent resolution violates N.J. Constitution. F.O. 3, 1981.
Sex Discrimination—
Lending institution may inquire into marital status of prospective borrower in order to protect its security interest. F.O. 7, 1983.
Temporary disability claims based upon pregnancy or childbirth must be treated the same as all other claims. F.O. 2, 1978.
Smoking—
Procedural defects in Public Health Council's adoption of rules regulating smoking require new notice and opportunity for hearing. F.O. 7, 1978.
Regulation of smoking in public places is governed by municipal ordinance. F.O. 27, 1979.
Solid Waste Management—
Districts authorized to direct waste to preferred facilities and to establish uniform rates. F.O. 12, 1980.
Municipal or county expenditures for implementation of solid waste management plans not generally exempt form Local Government Cap Law. F.O. 16, 1979.
Solid waste management districts may require that waste be directed to specific disposal facilities. F.O. 3, 1980.
Solid Waste Utility Control Act. F.O. 3, 1980.
State Police, Division of—
Maximum hiring age for law enforcement personnel valid only when it is impossible to assess fitness of individual applicants over prescribed age. F.O. 1, 1984.
Statutory Construction—
Certificates issued to intrastate carriers of bulk commodities under "grandfather" clause permit limited activities only. F.O. 12, 1978.
Effective date of Plain Language Act. F.O. 1, 1982.
Emergency appropriations under N.J.S.A. 40A:4-46 can only be made for purpose unforseen at adoption of municipal budget. F.O. 10, 1980.

T.

Taxation—
Income received by non-resident from New Jersey pension source is subject to Gross Income Tax. F.O. 5, 1979.
Senior citizen homestead rebate available to surviving spouse who meets certain conditions. F.O. 24, 1979.
Temporary disability benefits excludable from Gross Income Tax. F.O. 9, 1979.

Teachers—
Public school teachers must satisfy citizenship requirements. F.O. 18, 1980.
State can require public school teachers to be or declare intention to become citizens. F.O. 12, 1979.
Television and Radio—
Municipality may own and operate cable television system. F.O. 5, 1978.
Temporary Disability Benefits—
Claims based on pregnancy or childbirth must be treated same as all other claims. F.O. 2, 1979.
Excludable from New Jersey Gross Income Tax. F.O. 9, 1979.
Tidelands—
Absent adequate compensation, Natural Resource Council may not grant perpetual lease of state tidelands to municipality. F.O. 8, 1978.
Discretion to fix price for grant of state's interest in tidelands based on underlying value without improvements. F.O. 3, 1983.
Transportation, Department of—
Immune from local land use regulations in proceeding with Erie Lackawanna reelectrification project. F.O. 4, 1978.
Insurance corporation may give financial support to passage of Transportation Rehabilitation and Improvement Bond Issue. F.O. 23, 1979.
May lend federal funds to employers for purchase of vanpool vehicles. F.O. 16, 1980.

V.

Vanpools—
See Transportation, Dept. of

W.

Waterfront Development Law—
DEP may regulate development on "water-front" portion of uplands adjacent to navigable waters or streams. F.O. 6, 1980.
Welfare Assistance—
State and county welfare agencies responsible for investigation of abuses in Food Stamp Program. F.O. 2, 1978.
Women—
Temporary disability benefits based upon pregnancy or childbirth must be treated the same as all other claims. F.O. 2, 1979.
Words and Phrases—
"Bid"—Mandatory disclosure of principal partners or stockholders prior to award or public contract designed to protect integrity of bidding process. F.O. 9, 1980.
"Certificate of registration"—Truck found on New Jersey highway loaded in excess of weight limitation specified on its foreign registration does not violate N.J.S.A. 39:3-84.3. F.O. 11, 1979.
"Consumer contract"—F.O. 7, 1982.
"Emergency"—Municipality may make emergency appropriation for purpose unforseen at time of budget adoption or for which provision was inadequate. F.O. 26, 1980.
"Emergency"—Emergency appropriations under N.J.S.A. 40A:4-46 can only be made for purpose unforseen at adoption of municipal budget. F.O. 10, 1980.
"Pool"—as used in N.J.S.A. 5:5-64. F.O. 19, 1980.
"Rebate"—F.O. 2, 1982.
"Street time"—Board may revoke parole for failure to pay fines but may not impose forfeiture. F.O. 21, 1979.
"Wages"—Sick leave payments constitute wages for purpose of calculating base year earnings under N.J.S.A. 43:21-27. F.O. 20, 1980.
"Water-front"—DEP may regulate development on water-front portion of uplands adjacent to navigable waters or streams. F.O. 6, 1980.

Y.

Youth and Family Services, Division of—
Refusal of advance consent for blood transfusion does not bar Jehovah's Witnesses from adoption rights. F.O. 20, 1979.

Z.

Zoning—
Dept. of Transportation is immune from local land use regulation in proceeding with Erie Lackawanna reelectrification project. F.O. 4, 1978.

NEW JERSEY CONSTITUTION OF 1947

Art. IV, sec. 1, par. 2	F.O. 5, 1980	Art. V, sec. 1, par. 14(a)	F.O. 3, 1981
	F.O. 3, 1981	Art. VIII, sec. 1, par. 5	F.O. 24, 1979
Art. IV, sec. 7, par. 2	F.O. 9, 1978	Art. VIII, sec. 2, par. 3	F.O. 2, 1984
	F.O. 1, 1980	Art. VIII, sec. 3, par. 1	F.O. 16, 1980
Art. IV, sec. 7, par. 2	F.O. 9, 1981	Art. VIII, sec. 3, par. 3	F.O. 16, 1980
	F.O. 5, 1982	Art. VIII, sec. 4, par. 2	F.O. 8, 1978
	F.O. 6, 1983		F.O. 3, 1983

NEW JERSEY SESSIONS LAWS

L. 1970, c. 13	F.O. 5, 1982	L. 1981, c. 103	F.O. 3, 1982
L. 1981, c. 27	F.O. 3, 1981	L. 1981, c. 464	F.O. 1, 1982
L. 1981, c. 56	F.O. 4, 1982		

NEW JERSEY STATUTES

2A:121-6	F.O. 9, 1978	19:34-32	F.O. 22, 1979
2A:164-8	F.O. 5, 1981	19:34-45	F.O. 14, 1979
2A:164-10	F.O. 11, 1980		F.O. 4, 1983
2C:33-13	F.O. 27, 1979	20:4-1 *et seq.*	F.O. 3, 1979
2C:37-1*et seq.*	F.O. 1, 1980	24:6E-1	F.O. 17, 1979
	F.O. 6, 1983	26:1A-7	F.O. 7, 1978
2C:37-2	F.O. 9, 1981		F.O. 27, 1979
2C:43-9(b)	F.O. 21, 1979	27:1A-1 *et seq.*	F.O. 4, 1978
	F.O. 25, 1979	30:4-14	F.O. 19, 1979
2C:46-2	F.O. 21, 1979	30:4-92	F.O. 11, 1980
2C:47-4(b)	F.O. 5, 1981	30:4-123.15	F.O. 21, 1979
2C:47-5	F.O. 5, 1981	30:4-123.23	F.O. 21, 1979
5:5-62	F.O. 6, 1981	30:4-140	F.O. 8, 1979
5:5-64	F.O. 19, 1980		F.O. 26, 1979
5:8-24*et seq.*	F.O. 9, 1978		F.O. 11, 1980
5:12-24	F.O. 7, 1981	30:4D-1 *et seq.*	F.O. 3, 1978
5:12-101(b) and (c)	F.O. 7, 1981		F.O. 10, 1979
10:5-12(i)	F.O. 7, 1983	33:1-40.3	F.O. 10, 1978
12:3-7	F.O. 3, 1983	39:2-6.1	F.O. 1, 1984
12:3-37.1	F.O. 8, 1978	39:3-84.3	F.O. 11, 1979
12:5-3	F.O. 6, 1980	39:4-50.4(b)	F.O. 4, 1981
13:1B-13.13	F.O. 3, 1983	39:5-30	F.O. 22, 1979
13:1E-1 *et seq.*	F.O. 12, 1980	39:5E-1 *et seq.*	F.O. 12, 1978
13:1E-2	F.O. 3, 1980	40:55C-40 *et seq.*	F.O. 7, 1980
	F.O. 14, 1980	40:55C-77 *et seq.*	F.O. 7, 1980
	F.O. 16, 1980	40:55D-31	F.O. 4, 1978
13:8A-1 *et seq.*	F.O. 8, 1980	40:62-1 *et seq.*	F.O. 4, 1980
13:17-1 *et seq.*	F.O. 18, 1979	40:66A-31.1 *et seq.*	F.O. 14, 1980
17:6F-1	F.O. 7, 1979	40:69A-90	F.O. 15, 1980
17:9A-10	F.O. 15, 1979	40A:4-45.1 *et seq.*	F.O. 16, 1979
17:9A-10A	F.O. 6, 1979		F.O. 7, 1980
17:9A-54A	F.O. 1, 1983	40A:4-45.3	F.O. 23, 1980
17:9A-315	F.O. 6, 1982	40A:4-45.3(e)	F.O. 4, 1980
17:11A-44	F.O. 3, 1982	40A:4-46	F.O. 10, 1980
17:12B-13	F.O. 15, 1979		F.O. 26, 1980
17:12B-16	F.O. 15, 1979	40A:5-16.1	F.O. 2, 1983
17:29A-1	F.O. 1978	40A:10-25	F.O. 8, 1981
18A:6-51	F.O. 1, 1981	40A:11-1 *et seq.*	F.O. 14, 1980
18A:6-39	F.O. 18, 1980		F.O. 2, 1983
18A:26-1	F.O. 12, 1979	40A:11-7	F.O. 2, 1983
18A:26-8.1	F.O. 18, 1980	40A:14-12	F.O. 1, 1984
18A:56-5	F.O. 8, 1978	40A:14-127	F.O. 1, 1984
	F.O. 3, 1983	43:15A-99	F.O. 5, 1983
18A:68-12	F.O. 25, 1980	43:15B-1 *et seq.*	F.O. 2, 1980

43:16-1	F.O. 5, 1983	52:14B-2(b)	F.O. 10, 1979
43:16A-5(1)	F.O. 5, 1983	52:14B-10(b)	F.O. 6, 1979
43:21-4(f)(1)(B)	F.O. 2, 1979		F.O. 15, 1979
43:21-19	F.O. 20, 1980	52:14B-10(c)	F.O. 15, 1979
43:21-25	F.O. 9, 1979	52:14B-109(c)	F.O. 22, 1979
43:21-27	F.O. 20, 1980	52:14D-1 *et seq.*	F.O. 4, 1979
43:21-39(e)	F.O. 2, 1979	52:14F-1 *et seq.*	F.O. 4, 1979
44:8-14	F.O. 15, 1980	52:14F-5(o)	F.O. 6, 1979
45:1-2.2(d)	F.O. 6, 1978	52:14A-163 *et seq.*	F.O. 2, 1980
45:5-7	F.O. 24, 1980	52:25-16.1	F.O. 2, 1983
45:12-11(p)	F.O. 17, 1980	52:25-24.2	F.O. 9, 1980
45:15-4	F.O. 13, 1979	53:1-9	F.O. 1, 1984
45:19-9(a)	F.O. 11, 1978	54:4-3.80	F.O. 24, 1979
48:2-29.6 *et seq.*	F.O. 1, 1979	54:5-104.29 *et seq.*	F.O. 2, 1983
48:5A-40	F.O. 5, 1978	54A:5-8	F.O. 5, 1979
48:13A-1 *et seq.*	F.O. 12, 1980	52A:6-1	F.O. 9, 1979
48:13A-2	F.O. 3, 1980	55:14J-30(b)	F.O. 7, 1980
52:14-17.28	F.O. 8, 1981	56:6-1 *et seq.*	F.O. 2, 1982
52:14-17.36	F.O. 8, 1981	56:12-1 *et seq.*	F.O. 1, 1982
52:14B-1 *et seq.*	F.O. 7, 1978	56:12-2	F.O. 7, 1982

NEW JERSEY ADMINISTRATIVE CODE

3:1-9.11	F.O. 7, 1979	13:19-10.1 *et seq.*	F.O. 22, 1979
10:63-3 *et seq.*	F.O. 10, 1979	13:38-1.4	F.O. 17, 1980
10:69A-4.3(c)	F.O. 3, 1978	13:38-2.7	F.O. 13, 1980
11:3-8.1 *et seq.*	F.O. 8, 1982	13:38-2.8(a)	F.O. 13, 1980
13:2-36.1	F.O. 10, 1978		

UNITED STATES CODE

2 U.S.C. § 4416	F.O. 14, 1979	29 U.S.C. § 623(a)(1)	F.O. 1, 1984
7 U.S.C. § 2011 *et seq.*	F.O. 2, 1978	29 U.S.C. § 631(a)	F.O. 1, 1984
15 U.S.C. § 1601 *et seq.*	F.O. 1, 1982		

ATTORNEY GENERAL'S OPINIONS CITED IN LATER OPINIONS 1978-1984

F.O. 18, 1960	cited in	F.O. 8, 1978	F.O. 5, 1977	F.O. 21, 1980
F.O. 17, 1961		F.O. 9, 1978	F.O. 8, 1977	F.O. 26, 1979
F.O. 6, 1964		F.O. 2, 1984	F.O. 13, 1977	F.O. 4, 1981
F.O. 10, 1974		F.O. 18, 1980	F.O. 23, 1977	F.O. 11, 1978
		F.O. 12, 1979	F.O. 8, 1978	F.O. 1, 1980
F.O. 1, 1975		F.O. 2, 1979	F.O. 6, 1979	F.O. 10, 1979
F.O. 8, 1976		F.O. 10, 1979		F.O. 15, 1979
F.O. 15, 1976		F.O. 24, 1979	F.O. 12, 1979	F.O. 18, 1980
F.O. 16, 1976		F.O. 26, 1979	F.O. 21, 1979	F.O. 25, 1979
F.O. 3, 1977		F.O. 16, 1979	F.O. 1, 1980	F.O. 9, 1981
		F.O. 4, 1980	F.O. 10, 1980	F.O. 26, 1980
		F.O. 7, 1980	F.O. 22, 1980	F.O. 2, 1981
		F.O. 21, 1980	F.O. 5, 1983	F.O. 1, 1984
		F.O. 23, 1980		

FORMAL OPINIONS CITED BY THE COURTS

F.O. 107, 1940	*Bechler v. Parsekian,* 36 N.J. 242 (1961)
F.O. 78, 1950	*Safeway Trails v. Furman,* 41 N.J. 467 (1964)
F.O. 37, 1951	*Sheridanville, Inc. v. Borough of Wrightstown,* 125 F. Supp. 743 (D.N.J. 1954)
F.O. 13, 1953	*State v. Son,* 179 N.J. Super. 549 (App. Div. 1981)
F.O. 27, 1953	*Scheff v. Township of Maple Shade,* 149 N.J. Super. 448 (App. Div. 1977), *certif. den.,* 75 N.J. 13 (1977)
F.O. 5, 1955	*Weinstein v. City of Newark,* 100 N.J. Super. 199 (Law Div. 1968)
F.O. 23, 1956	*State v. Profita,* 183 N.J. Super. 425 (App. Div. 1982)
F.O. 10, 1957	*Bulman v. McCrane,* 64 N.J. 105 (1973)
F.O. 2, 1959	*Bulman v. McCrane,* 64 N.J. 105 (1973)
F.O. 15, 1959	*Citizens for Charter Change in Essex County v. Caputo,* 151 N.J. Super. 286 (App. Div. 1977), *certif. den.,* 75 N.J. 527 (1977)
F.O. 25, 1959	*Reisdorf v. Borough of Mountainside,* 114 N.J. Super. 562 (Law Div. 1971)
F.O. 11, 1960	*Safeway Trails v. Furman,* 41. N.J. (1964)
F.O. 12, 1961	*Rubin v. Glaser,* 166 N.J. Super. 258 (App. Div. 1979), *aff'd,* 83 N.J. 299 (1980)
F.O. 16, 1961	*State v. City of Newark,* 87 N.J. Super. 38 (Law Div. 1965)
F.O. 21, 1961	*Bulman v. McCrane,* 64 N.J. 105 (1973)
F.O. 1, 1962	*Salorio v. Glaser,* 82 N.J. 482 (1980), *cert. den.,* 449 U.S. 874 (1980), *appeal after remand,* 93 N.J. 447 (1983), *cert. den.,* U.S. (1983)
F.O. 4, 1964	*Georgia v. Suruda,* 154 N.J. Super. 439 (Law Div. 1977)
F.O. 3, 1969	*State Board of Education v. Netcong Board of Education,* 108 N.J. Super. 564 (Ch. Div. 1970), *aff'd,* 57 N.J. 172 (1970), *cert. den.,* 401 U.S. 1013 (1971)
F.O. 12, 1974	*Chamber of Commerce of Eastern Union County v. Leone,* 141 N.J. Super. 114 (Ch. Div. 1976), *aff'd,* 75 N.J. 319 (1978)
F.O. 16, 1974	*Summit Policemen's Benevolent Association v. State,* 133 N.J. Super. 262 (Law Div. 1975)
F.O. 4, 1975	*In the Matter of Schmidt and Sons, Inc.,* 79 N.J. 344 (1979)
F.O. 7, 1975	*In the Matter of the Adoption of B.,* 152 N.J. Super. 546 (Cty. Ct. 1977)
F.O. 10, 1975	*Merritt v. Headley,* 169 N.J. Super. 63 (App. Div. 1979)
F.O. 24, 1975	*Wittie Electric Co. Inc. v. State,* 139 N.J. Super. 529 (App. Div. 1976)
F.O. 28, 1975	*Hinfey v. Matawan Regional Board of Education,* 77 N.J. 514 (1978)
F.O. 9, 1976	*Perthy Amboy General Hospital v. Middlesex County Board of Freeholders,* 158 N.J. Super 556 (Law Div. 1978)
F.O. 11, 1976	*State v. Leonardis,* 73 N.J. 360 (1977)
F.O. 22, 1976	*Union County v. State,* 149 N.J. Super. 399 (Law Div. 1977)
F.O. 27, 1976	*Fasolo v. Board of Trustees, Division of Pensions,* 181 N.J. Super. 434 (App. Div. 1981), *later app.,* 190 N.J. Super. 573 (App. Div. 1983)
F.O. 29, 1976	*Cole v. Woodcliff Lake Board of Education,* 155 N.J. Super. 398 (Law Div. 1978)
F.O. 29, 1976	*Crifasi v. Borough of Oakland,* 151 N.J. Super. 98 (Law Div. 1977), *aff'd in part and rev'd in part,* 156 N.J. Super. 182 (App. Div. 1978)
F.O. 29, 1976	*Dunn v. Laurel Springs,* 163 N.J. Super. 32 (App. Div. 1978)
F.O. 29, 1976	*Houman v. Pompton Lakes,* 155 N.J. Super. 129 (Law Div. 1977)
F.O. 29, 1976	*Jenkins v. Newark Board of Education,* 166 N.J. Super. 357 (Law Div. 1979), *aff'd,* 166 N.J. Super. 300 (App. Div. 1979)
F.O. 30, 1976	*Caldwell v. Lambrou,* 161 N.J. Super. 284 (Law Div. 1978)
F.O. 30, 1976	*Houman v. Pompton Lakes,* 155 N.J. Super. 129 (Law Div. 1977)
F.O. 3, 1977	*Clark v. Degnan,* 163 N.J. Super. 344 (Law Div. 1978), *mod.,* 83 N.J. 393 (1980)
F.O. 3, 1977	*N.J. State Policemen's Benevolent Association v. Irvington,* 80 N.J. 271 (1979)
F.O. 7, 1977	*Gillen v. Sheil,* 174 N.J. Super. 386 (Law Div. 1980)
F.O. 8, 1977	*State v. Lucas,* 164 N.J. Super. 57 (Law Div. 1978)
F.O. 13, 1977	*In the Matter of Bergwall,* 173 N.J. Super. 431 (App. Div. 1980), *rev'd* 85 N.J. 382 (1981)

F.O. 15, 1977	*N.J. Association of Health Care Facilities v. Finley,* 83 N.J. 67 (1980), *cert. den. and app. dism'd, Wayne Haven Nursing Home v. Finley,* 449 U.S. 944 (1980)
F.O. 22, 1977	*Belmar Policemen's Benevolent Association v. Belmar,* 89 N.J. 255 (1982)
F.O. 27, 1977	*In the Matter of the Board of Education of Upper Freehold Regional School District,* 86 N.J. 265 (1981)
F.O. 1, 1978	*In Re Allstate Insurance Company,* 179 N.J. Super. 581 (App. Div. 1981)
F.O. 2, 1978	*Dickinson v. Fund for Support of Free Public Schools,* 187 N.J. Super. 320 (Law Div. 1982), *rev'd,* 187 N.J. Super. 224 (1982), *aff'd in part and rev'd in part,* 95 N.J. 65 (1983)
F.O. 4, 1979	*N.J. Civil Service Association v. State,* 88 N.J. 605 (1982)
F.O. 13, 1979	*Spirito v. N.J. Real Estate Commission,* 180 N.J. Super. 180 (App. Div. 1981)
F.O. 10, 1980	*Camden v. Skokowski,* 88 N.J. 304 (1982)
F.O. 10, 1980	*Passaic v. Local Finance Board,* 88 N.J. 293 (1982)
F.O. 26, 1980	*Passaic v. Local Finance Board,* 88 N.J. 293 (1982)
F.O. 3, 1981	*General Assembly of New Jersey v. Byrne,* 90 N.J. 376 (1982)
F.O. 4, 1981	*State v. Grant,* 196 N.J. Super. 470 (App. Div. 1984)
F.O. 5, 1981	*State v. Smith,* 190 N.J. Super. 21 (App. Div. 1982)

Division of Criminal Justice

The Property and Evidence Function

October 1989

LAPS

TABLE OF CONTENTS

INTRODUCTION i

PROPERTY RECORDS 1
- Centralized Filing System 1
- Property Reports 2
- Records Retention 4

PROPERTY STORAGE FACILITY 4
- Volume and Type of Property 5
- Security 5
- Temporary Storage 5

PROPERTY OFFICER 6

AUDITS 7

DISPOSITION OF PROPERTY 7
- Return to Owner or Finder 7
- Forfeiture 8
- Destruction of Property 9

PROPERTY CONTROL POLICY AND PROCEDURE 9

MARKING AND PACKAGING PROPERTY AND EVIDENCE 10

APPENDIX A A-1
Model Property & Evidence Policy

INTRODUCTION

The property and evidence function is an integral and essential part of every law enforcement agency. Every day, police officers come into custody of lost or stolen property, contraband, and any manner of evidence. The law enforcement agency is charged with establishing a system for the secure and efficient classification, inventory, retrieval, and disposition of these items. To accomplish this goal, the law enforcement agency must specifically:

- Establish a system of documentation to track property from its receipt to its eventual disposition.

- Establish a secure and orderly storage facility to meet the needs of the particular agency.

- Establish a property officer to be responsible for the department's property and evidence function.

- Provide for periodic and special audits of the contents of the property storage facility to insure continuing accuracy.

- Provide for the proper and timely disposition of property and evidence.

- Provide policy, training and adequate supplies for the consistent marking and packaging of property.

- Establish a written uniform policy and procedure to be followed by police officers in all aspects of property handling.

This chapter will discuss each of the above and provide direction with relevant references. For clarity sake, the term "property" shall be used to refer to both evidence per se and all other property taken into police custody, unless otherwise indicated.

PROPERTY RECORDS

The maintenance of an orderly, accurate and contemporary record system is essential to the overall property function. The property record system should include a centralized filing system and a system of property reports and receipts to record the details of each property transaction. These records serve several purposes:

- Inventory of items in custody;

- Inventory of items that have been disposed of and released from custody or destroyed;

- Chronological record of the chain of custody of each item.

In addition, the records of a property transaction may in fact become evidence themselves to verify or dispute some fact about that item of property.

The maintenance of the property records should be assigned to the designated property officer to insure that the type and manner of entries are consistent.

Centralized Filing System. Each law enforcement agency must have a centralized filing system which contains information on all property which is taken into police custody. This single source filing system provides consistency and uniformity to the overall property records system. Any inquiry about property should begin at the centralized filing system, where sufficient references will identify the appropriate detailed records.

There are several important principals to be followed in maintaining a centralized filing system. These principals apply whether the centralized record in a bound log book or a computerized data base.

First, the data must be permanent. It must be maintained for a considerable period, and the individual records may have data added, but not deleted. This permanence is available in both a log book and in an electronic data base.

Second, the centralized filing system must be secure against damage, destruction or theft. Here, the electronic system provides more simplicity through data backup with off-site storage. A log book would require either secure containment, such as a fireproof safe, or frequent photocopying with off-site storage.

Third, the centralized filing system must be accessible for all authorized personnel. Access for entering data should be limited to the designated property officer. However, other officers must often track or locate property in the absence of the property officer, and therefore must be able to review the centralized record. This is easier with a log book, since a

computerized system requires the officer to have a working knowledge of the system.

The centralized file should contain the following information for all property in police custody:

1. An identification number unique to the property.

2. Description of each item of the property, including particular identifiers such as make and model and unique identifiers such as serial number and owner applied number.

3. Name of person(s) to whom property is related (defendant, owner, finder).

4. Date that each item came into police custody.

5. Identity of officer who took custody of property (name, initials, badge or employee number).

6. Location where each item is stored.

7. Date that each item was entered into storage.

8. Identity of officer who entered property into storage.

9. Date of each time that item was removed from storage or police custody.

10. Identity of officer who removed item from storage or police custody each time it was removed.

11. Reason the item was removed (e.g. trial or lab) for each time it was removed.

12. Date of final disposition of each item.

13. Manner of disposition (returned to owner, destroyed, turned over to another agency, etc.).

14. Identity of officer responsible for authorizing final disposition.

15. Identity of officer responsible for carrying out final disposition.

Property Reports. In addition to the centralized filing system, the law enforcement agency must have reports to collect the detailed information for all property on a case specific basis. Most agencies currently use some form of a property/vehicle report based on the LEIRS

system. Each agency should carefully review its form to determine if improvements can be made.

Property reports should include, at a minimum, the following information:

1. Incident report number.

2. File number.

3. Date property is received, confiscated, turned into headquarters, etc.

4. Date of the loss or theft of property.

5. Indication whether the property is stolen, lost, found, seized as evidence, recovered or held for safekeeping.

6. Storage location.

7. Name, address, and phone number of the person who found the property or was in possession of the property.

8. Owner's name, address and phone number (if the owner of the property is different from the person listed above).

9. Location where property was recovered, found or confiscated.

10. Item number and full description of each item, including:

    a. Make, model, serial number and owner applied number.

    b. Quantity (estimate if necessary).

    c. Value (estimate if necessary).

    d. Vehicle make, model, year, body type, color, registration number and state, and vehicle identification number (VIN).

11. Signature of person completing the report.

12. Chain of custody record. The following entries should be made each time property is transferred from one person to another:

    a. Item number.

b. Date the property is being transferred from one person to another.

c. The printed name and signature of the person relinquishing custody of the property.

d. The printed name and signature of the person receiving the property.

e. The specific purpose of the change of custody, such as "Court," "Returned to Owner," etc.

In cases with many transfers of custody of an item, it may be necessary to attach a chain of custody continuation page to the property report. Each item listed above should be reflected on this chain of custody continuation page.

Many departments use multi-part forms which are separated soon after the preliminary information is entered. It is essential that all later entries are consistently made on one part of the form. Photocopies can be made of the new, updated property report and distributed as necessary. The dated entry will allow the reader to identify the most recent update.

Model Property Description Report (Short Form), Property Description Report (Long Form), Chain of Custody continuation page, and Victim Property Loss Report are found in the model Property S.O.P in Appendix A. These forms were developed by the Division of Criminal Justice Police Bureau's Police Data Processing Project. The purpose of these forms is to combine the thorough collection of information and efficient entry of information into an electronic database.

Records Retention. Records retention requirements promulgated by the New Jersey Department of State, Division of Archives and Records Management are found in the New Jersey Records Manual (March, 1986). A second reference for records retention is the New Jersey Prosecutor's Manual (October, 1988 Revision) published by the New Jersey County Prosecutors Association.

PROPERTY STORAGE FACILITY

The law enforcement agency must provide adequate space to organize and maintain a property vault which will facilitate the storage, auditing and retrieval of property and evidence. In addition, the storage facility must provide adequate security and control.

The design of a property vault will be unique for every law enforcement agency. The three primary considerations are the volume and type of property held, the overall security of the agency facility, and the total available space.

Volume and Type of Property. In designing a property vault, the total volume of property to be stored should be forecasted as far as possible into the future. In addition, the various types of property to be stored should be reviewed. This includes, but is not limited to: weapons, ammunition, volatile or toxic substances, perishable items, valuable items, and cash. Consideration should also be given to the different types and quantities of controlled dangerous substances seized and held by the department. The agency may wish to establish different policies for the storage of such diverse items.

In determining total storage area, it is important to remember that mere storage is not enough. The vault must have ample space to be organized to facilitate the location, retrieval and audit of the property. In other words, all property must be readily accessible.

The property vault should contain a refrigerator for the storage of perishables, such as blood. A safe or other separately secured container should be provided for the storage of cash, jewelry and other small, valuable items.

Security. Security is an extremely important consideration in the maintenance of a property vault. The vault must be situated, constructed, secured and protected in such a way as to prevent accidental or deliberate tampering, damage or loss of property.

The property vault would ideally be located within a police headquarters which is staffed twenty-four hours a day. In this case, the property vault should have its own alarm system. In the alternative, it should be located in an area of a police facility which is completely secure from unauthorized access. In this case, the police facility and the property vault should have separate alarm capabilities.

The vault should be constructed with materials which would frustrate attempts to breach the perimeter walls, floor and ceiling. There should be only one entrance, with a steel door, steel frame and dead bolt locks. The alarm system should contain both an entrance switch on the door and some type of interior backup, such as motion or infrared sensors. The control panel for the alarm system should be inside the vault, with a time delay for deactivation.

The vault should also have an automatic fire suppression system to limit damage in case of accidental fire or arson. Special consideration should be given to the type of chemicals used in the fire suppression system in relation to the contents of the vault.

Construction of storage within the vault will vary with the department's needs. The use of shelves, pins, pegboards, cabinets, racks and any combination thereof will depend on the specific needs of the agency. The key is organization.

Temporary Storage. Facilities for temporary storage of property should be available when the property officer is unavailable. For instance, a series of airport type metal lockers could be used by department personnel until the property officer can assume custody of the property.

These lockers can either stand alone outside of the vault, or be installed in one wall of the vault. By installing them, the property officer has access to items placed in temporary storage from the inside the vault itself. Keys to the lockers must be a type that can not be reproduced without proper written authorization.

Procedures for temporary storage of property should require the officer to place the property into a locker compartment, lock the locker and retain possession of the key. The property officer, upon coming on duty, would remove the property from the sealed locker by using a master key. The property officer would then place the property items in the vault after following proper inventory and logging procedures. The property officer should prepare and issue a receipt to the officer that recovered the property when the officer appears to turn in the key to the locker used for temporary storage.

PROPERTY OFFICER

To maintain the continuity of the property function, the chief law enforcement officer should delegate the property control function to one specific officer. The primary duties of the property officer include the preservation and safeguarding of all property, as well as the disposition of all property. In medium to large departments, the duties of a property officer can be a full time assignment for one or more officers. In smaller departments, the property officer duties along with other duties might be assigned to one officer. If this is the case, the chief law enforcement officer must insure that the property function is receiving the time, effort and attention that it needs.

The property officer's duties, responsibilities and authority should be clearly defined by department rules and policies. At a minimum, the property officer shall:

1. Maintain appropriate written records, including records which reflect the chain of custody of property while it is in the possession of the police department.

2. Maintain the property in a place and under conditions which eliminate as much as possible any risks of loss or tampering.

3. Maintain physical control of property until it is properly disposed.

Access to evidence and the property vault must be restricted to the property officer. One other officer, preferably the property officer's supervisor, should have access in case the property officer is unable to perform his duties.

AUDITS

Audit procedures are essential to maintaining the integrity of the property function. There should be a complete audit of stored property as well as selected or random audits of completed transactions on a routine annual basis. In addition, there should be a complete audit whenever there is a change of property officer, unit supervisor, chief law enforcement officer or change of any other personnel with responsibility over or access to the property. An audit should also be conducted if there is any indication or suspicion of a breach of integrity in the property system. These audits should be conducted by the designated property officer with assistance and verification provided by another officer. To provide a completely independent source of verification, a representative of the county prosecutor's office could assist the property officer during the audit.

An audit should begin with a complete inventory of all items currently in the property vault. The inventory of the property vault should then be used to verify the accuracy of the central filing system. An audit of completed transactions should be conducted by examining the case files to verify that required notifications and release authorizations have been properly submitted. In addition, a legitimate basis for the release decision should be clearly apparent in the file.

DISPOSITION OF PROPERTY

The police department must provide for the proper and timely disposition of property and evidence. This is necessary to maintain the property storage facility and property records in an orderly fashion. Failure to promptly purge property leads to overloading limited storage space, continues the department's liability longer than necessary and makes auditing procedures more difficult and time consuming.

Seized property may be disposed of by forfeiture or by returning it to the owner. Forfeited property may be disposed of by destruction or by public sale or auction. Found property may be disposed of by returning it to the owner, returning it to the finder, by destruction or by public sale or auction. These dispositions are controlled by state statute, state retention regulations, Attorney General and county prosecutor's guidelines, and police department policy. Each police department must have a written policy on the disposition of property consistent with the above sources. Police departments should contact their municipal attorney, the county prosecutor's office or the Division of Criminal Justice Police Bureau with any questions concerning property disposition.

Return to Owner or Finder. When stolen property comes into the custody of police, N.J.S.A. 2C:65-1 et seq. provides that law enforcement agencies may release the property to the owner. The law specifies that the agency enter a description of the property into its central filing system and make a complete photographic record of the property. This photographic record may

be introduced as evidence in any court in lieu of the property.

A law enforcement agency may immediately return stolen property to its rightful owner where the agency is satisfied there is no dispute as to ownership.

If the person entitled to stolen property is unknown, the law enforcement agency may apply to the court for an order to release the property from the custody of the agency. The application, which must specify the property for which a release is sought, can be made six months after the final determination of the case. The property will then be disposed at public sale, with proceeds going to the state, county or municipality, whichever was the prosecuting authority.

When property is found by a civilian, turned over to the police department for safekeeping, and the owner does not claim the property for six months, N.J.S.A. 40A:14-157(b) provides that the property shall be returned to the finder.

N.J.S.A. 53:1-26.1 and N.J.S.A. 40A:14-157(a) state that property which is found by a state or municipal law enforcement officer and remains unclaimed becomes the property of the state or municipality, which may provide for its sale at public auction.

Abandoned motor vehicles which are found or recovered shall be disposed of pursuant to N.J.S.A. 39:10A-1 et seq. If the vehicle is not stolen, the agency should attempt to notify the owner of the recovery. If the vehicle is not certifiable for a junk title certificate, and the owner does not claim it a minimum of twenty and a maximum of ninety business days after the agency has taken possession of the it, the vehicle can be sold at public auction. If the vehicle is certifiable for a junk title certificate and the owner does not claim it within fifteen business days after the agency has taken possession of it, the vehicle can be sold at public auction.

The owner or any other person entitled to take possession of the vehicle may do so at any time before sale. The owner must pay reasonable costs for the removal and storage of the vehicle and any fine, penalty and court costs assessed against him for a violation which gave rise to the seizure of the vehicle.

Forfeiture. Law enforcement agencies are referred to N.J.S.A. 2C:64-1 et seq. as the primary statutory source on the forfeiture of property. The law provides that property is subject to forfeiture if it is "prima facie contraband" (e.g., controlled dangerous substances, illegally possessed firearms), if it was used in furtherance of an unlawful activity (e.g., vehicles used to smuggle contraband), or if it is the proceeds of illegal activity (e.g., currency or assets earned by drug transactions).

Any property subject to forfeiture under N.J.S.A. 2C:64-1 et seq. may be seized by a law enforcement officer and held by a law enforcement agency as evidence pending a criminal prosecution. If no criminal proceeding is instituted, law enforcement officers may seize and

hold without court process property which is "prima facie contraband" or which poses an immediate threat to the public health, safety or welfare.

If a criminal proceeding is instituted, "prima facie contraband" shall be retained by the state until entry of judgment or dismissal of the criminal proceeding, including any appeals, and then shall be forfeited to the entity funding the prosecution. When property other than prima facie contraband is subject to forfeiture, such forfeiture may be effected by a civil action. Civil forfeiture proceedings must begin within ninety days of the seizure of the property. Police departments should contact their county prosecutor regarding any civil forfeiture action.

Property which has been forfeited shall be destroyed if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare. All other forfeited property shall become the property of the entity funding the prosecuting agency.

The forfeiture law also provides that the entity prosecuting the case shall divide the forfeited property or any proceeds resulting from the forfeiture with any other law enforcement agency that participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture. Distribution of forfeited property or any proceeds among participating agencies will be in proportion to that agency's contribution to the case. Such forfeited property and proceeds shall be used solely for law enforcement purposes.

Destruction of Property. "Prima facie contraband" may be destroyed after entry of judgment or dismissal of the criminal proceeding, including the appeal process, if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare.

In any case involving a bulk seizure of a controlled dangerous substance, the prosecuting authority may apply to the trial court for an order to destroy all or some portion of the seized substance before the completion of criminal proceedings. If the law enforcement agency has such a bulk seizure and wants to destroy it, the agency should contact the prosecutor handling the case.

Documentary exhibits shall be destroyed only after the clerk of the court has posted a notice in the county describing the exhibit and indicating the date after which the exhibit will be destroyed.

PROPERTY CONTROL POLICY AND PROCEDURE

The chief law enforcement officer should develop and implement written policy governing the property and evidence function. This policy should outline the responsibilities and duties of officers as they apply to the handling of property. The policy also provides practical, step-by-step procedures for the receipt, handling, packaging, storage and reporting functions pertaining to property. Appendix A contains a model property and evidence policy which can be

used as a guideline for a police department in developing its own written policy.

MARKING AND PACKAGING PROPERTY AND EVIDENCE

All property and evidence must be identified and marked to insure that it can be identified in the future. In addition, the property must be securely packaged to preserve the contents and prevent accidental loss or deliberate tampering. Methods of marking and packaging property will vary from department to department. It is important that the department's methods are consistent and clearly defined by written policy.

It is essential the methods for marking and packaging property be in conformity with accepted practice. The Evidence Manual published by the Division of State Police Special and Technical Services Section is an excellent source of information concerning the marking and packaging of property and evidence.

M O D E L

APPENDIX A
Model Property & Evidence Policy

1.0 APPLICATION

1.1 The property and evidence procedures hereafter described shall be followed for all recovered, stolen, found or confiscated property coming into the possession of any member of this department.

2.0 PROPERTY MARKING AND PACKAGING

2.1 The New Jersey State Police Special and Technical Services Section Evidence Manual will be used as a guide in the marking and packaging of property.

2.2 Each item will be properly marked with the date and the officer's initials, if possible, then tagged and/or placed in appropriate size envelopes or bags which are provided.

2.3 The tag which accompanies articles being turned in to the Property Officer will include the following information on the tag or outermost container (bag or envelope):

2.3.1 Incident Report number

2.3.2 Date of recovery

2.3.3 Location of recovery

2.3.4 Owner of property, if known

2.3.5 Brief description of article

2.3.6 Officer's name and identification number

2.4 Should there be numerous small items relating to the same case, after each item has been tagged, enveloped, etc., place all the items in one or more larger bags, marking each larger bag with the Incident Report number and the item numbers contained in said bag.

3.0 PROPERTY SUBMISSION

3.1 Property officer available

3.1.1 A property description report, as described in Section 6.0, shall be completed. The officer will then present the labeled article(s) and property description report to the officer in charge for review.

3.1.2 The officer in charge shall review the article(s) to insure that they are properly labeled and the property description report is accurately completed. The officer in charge will then initial the property description report to indicate the evidence or recovered property has been processed correctly.

3.1.3 The officer who took custody of the property will then submit the property, along with the property description report, to the property officer for safekeeping.

3.2 Holding locker procedure

3.2.1 In the event an officer has property to be submitted for safekeeping in the property room, and the property officer is not available to accept same, the property description report will be completed, up to the chain of custody section. In the first chain of custody section, entries will be made under ITEM NO., DATE, RELINQUISHED BY and PURPOSE FOR CHANGE OF CUSTODY. No other entries are made.

3.2.2 The officer in charge will inspect the property for proper identification, labeling and packaging, as well as the property description report.

3.2.3 The officer in charge will then accompany the officer who took custody of the evidence to the property holding locker, where the officer will place both the property and the completed property description report. The locker must then be properly secured by the officer who took custody of the evidence, under the supervision of the officer in charge.

3.2.4 When the property officer removes the property from the holding locker, he will complete the first chain of custody section of the property description report under RECEIVED BY.

3.2.5 Copy 2 of the property description report will then be returned to the

submitting officer with the property officer's signature showing receipt of property.

3.3 Property Submission: Refrigerated Material

3.3.1 If any material or substance (evidence) must be refrigerated, and the property officer is available, the officer shall deliver the property to the property officer.

3.3.2 If any material or substance (evidence) must be refrigerated, and the property officer is unavailable, the material or substance shall be placed into the refrigerator located in the Detective Bureau. This will be done through one of the detectives on duty, or, if there is no detective on duty at the time, the on-call detective is to be contacted. The property description report will be signed in the same manner as if it were to be stored in the holding locker. No such material or substances are to be refrigerated at any other place unless it is absolutely necessary.

3.4 Laboratory Cases

3.4.1 In cases where the physical evidence requires laboratory analysis or other handling by outside agencies, this department shall transport the evidence to and from the laboratory or other agency and obtain a report of the analysis or other handling before turning the evidence over to the County Prosecutor's Office. In particular cases, this procedure may be changed with the approval of the Assistant Prosecutor to whom the case is assigned.

3.5 Request for Evidence Form

3.5.1 If it is necessary for an officer to obtain evidence for court proceedings, he must first submit a Request for Evidence Form to the property officer as soon as that officer becomes aware that such evidence is required.

3.5.2 Evidence required for courtroom presentation will not be released to the officer making the request until the date of the courtroom testimony.

3.5.3 Prior to the release of secured evidence, the form will be completed by both the property officer and the officer making the request for the evidence.

3.5.4 The officer receiving the evidence for courtroom presentation is required to return that evidence intact to the officer in charge on duty at police headquarters immediately following the termination of the court hearing.

3.5.5 The officer in charge will obtain the Request for Evidence Form which was completed for the transaction of the evidence (filed in a predesignated location) and review the form and the evidence being returned.

3.5.6 Once the officer in charge is satisfied that everything is in order, the form will receive the appropriate entry from the officer in charge and the officer returning the evidence.

3.5.7 The officer in charge will then accompany the officer returning the evidence to the holding locker where the officer returning the evidence will place both the evidence and the completed Request for Evidence Form in the holding locker.

3.5.8 The officer returning the evidence will properly secure the locker under the supervision of the officer in charge.

4.0 PROPERTY OFFICER DUTIES

4.1 The Property Officer shall maintain written records which reflect the chain of possession of the evidence during the time the evidence is in the custody of the police department.

4.2 The Property Officer shall maintain physical evidence in a place, and under conditions which guarantee that the evidence cannot be tampered with.

5.0 STOLEN PROPERTY

5.1 Identifying Stolen Property

5.1.1 If an officer locates property which he suspects might be stolen, he may have the Control Desk operator check the NCIC/SCIC terminal for any record of it being stolen. The officer must provide the following information for such checks:

a. Description of article (TV, stereo, radar detector, etc.)

b. Brand name of article (RCA, Sony, GE, etc.)

c. Model number or name

d. Serial number of the article

e. Any owner ID numbers (O.A.N.).

5.1.2 Any property which has been identified as being stolen should always be confirmed through the law enforcement agency which has entered the item into the terminal.

5.2 Identification of Stolen Motor Vehicles

5.2.1 There are two ways to determine if a motor vehicle has been reported stolen:

a. NCIC/SCIC terminal check of the license plate number

b. NCIC/SCIC terminal check of the Vehicle Identification Number (VIN).

5.2.2 NCIC/SCIC Terminal Check of Registration Number

a. Supply the Control Desk operator with the registration number of the vehicle, along with issuing state information.

b. The Control Desk operator will run "wants" for the vehicle on both a State and Federal level.

5.2.3 NCIC/SCIC Terminal Check of the Vehicle's VIN

a. The officer must supply the Control Desk operator with complete description of the vehicle, including the manufacturer, model, body style, color, year and VIN.

b. The Control Desk operator will run "wants" on both State and Federal level.

5.2.4 Whenever there is a "hit" on a stolen motor vehicle, the officer shall always check with the law enforcement agency issuing the want to confirm

that the vehicle is stolen.

5.3 Entry of Stolen Property into NCIC/SCIC Terminal

5.3.1 When an officer is investigating a theft where property that has been stolen has sufficient identifiers, the officer should make every effort to obtain this information for entry into the NCIC/SCIC terminal. Once this information has been obtained, it is to be provided to the Control Desk operator who will make the entry. The teletype number shall be logged on the officer's incident report.

5.3.2 If this information is not available, but there is enough of a description of the articles taken, the officer should make sure that at least teletype information be dispatched through the Control Desk operator as soon as the report has been received.

5.4 Stolen/Recovered Bicycles

5.4.1 Whenever a bicycle is reported stolen or recovered, the investigating officer shall complete a Bicycle ID Report. This report will be completed in addition to the officer's Incident Report.

5.4.2 The Bicycle ID Report will be turned over to the Control Desk Operator who will maintain a file of these reports for future reference.

5.4.3 Whenever an officer recovers a bicycle, he will reference the information obtained from the recovered bicycle with the Bicycle ID Reports on file at the Control Desk.

5.4.4 The officer will initiate the same teletype procedures which are normally utilized with any stolen article.

6.0 REPORT PROCEDURE

6.1 Purpose of the PROPERTY DESCRIPTION REPORT

6.1.1 The Property Description Report (Short or Long Form) shall be used to report the following:

a. Stolen property.
b. Lost property.

c. Found property.
d. Seized property.
e. Recovered property.
f. Burned property.
g. Damaged/destroyed property.
h. Property held by a police authority for safekeeping.

6.1.2 The Property Description Report (Short or Long Form) shall be submitted following the recovery or loss of any property. When a Property Description Report is submitted in conjunction with an Investigation Report, the INCIDENT NO. and the DEPT. CASE NO. must coincide with the corresponding blocks on the Investigation Report.

6.1.3 The officer will use a Property Description Report (Short Form) and as many Property Description Reports (Long Form) as necessary to completely record the listed information for each item of property and each transfer of custody.

6.2 This report shall be prepared in four copies on the forms provided.

6.3 Routing of the four copies shall be as follows:

6.3.1 Copy 1, Copy 2 and Copy 3 - Will accompany the property to the Property Officer or placed into the Holding Locker with the property until the Property Officer completes the chain of custody section.

6.3.2 Copy 1 - Will be forwarded to the Records Unit with the Incident Report.

6.3.3 Copy 2- Will be returned to the submitting officer with the property officer's signature showing receipt of property.

6.3.4 Copy 3 - Will be retained by the Property Officer until the property is released or otherwise disposed of, and the transaction completely noted on the report; then, will be forwarded to the Records Unit.

6.3.5 Copy 4 - To be given to the person the property was taken or received from, as their receipt.

6.4 This report shall be accurate, factual, clear, concise, complete and free of errors in spelling and grammar. Appropriate abbreviations are acceptable. Complete all boxes, i.e., if information is unknown, enter "UNK", if not available, enter dash

(-), if not applicable, enter "N/A".

6.5 The report shall be typed whenever possible. If the report must be hand-written, it must be printed clearly and with black ink.

6.6 Reviewing officers shall make certain that all personnel comply with this procedure.

6.7 Instructions for preparation of PROPERTY DESCRIPTION REPORT (SHORT FORM)

1. DEPARTMENT - The name of the law enforcement agency that takes the report will be entered here.

2. ORI NO - Enter the department's National Crime Information Center (NCIC) New Jersey Identifier Number.

3. INCIDENT NO - The department may use this box to enter a local Incident/Event number.

4. PROS CASE NO - This box will be used for the County Prosecutor's Office to enter their case number.

5. DEPT CASE NO - This box may be used by the local department for entering a case/report number.

6. VICTIM NO. OF VICTIMS - Enter the victim number and the total number of victims involved with this incident.

   Example: If three victims were robbed as part of the same incident, and this is the second victim of the three, enter "2/3."

7. OWNERS NAME - Enter the full name (last, first, middle) of the owner of the property, if known.

8. PHONE (AREA) - Enter the full phone number of the owner, if known.

9. OWNERS ADDRESS - Enter the full address(premise number, street name, municipality, state and zip), if known.

10. DATE OF LOSS - Enter the date of loss (month-day-year).

11. LOCATION OF LOSS - Enter the location of loss, if known(premise number, street name, municipality, state and zip).

12. NCIC NO. - Enter the National Crime Information Center(NCIC) or Teletype number if a message has been sent on related property.

13. FINDER/POSSESSORS NAME - Enter the full name (last, first, middle) of the person who was in possession of the property, either a finder of property or a person who is encountered in possession of the property.

14. PHONE (AREA) - Enter the full phone number and area code of the person who was in possession of the property.

15. DATE NCIC CANCELLED - Enter the date that the NCIC message for the property was cancelled or cleared.

16. FINDER/POSSESSORS ADDRESS - Enter the full address (street number, street name, municipality, state and zip), of the finder or person who was in possession of the property.

17. TELETYPE NO. - Enter the Teletype of NCIC number of the message sent that relates to the property indicated.

18. LOCATION OF RECOVERY/SEIZURE - Enter the full address (street number, street name, municipality, state and zip) of the location where the property was recovered or seized.

19. DATE OF RECOVERY/SEIZURE - Enter the appropriate date, month, day, year.

BLOCKS 20 THROUGH 26 ARE TO BE USED IF THE PROPERTY IS A VEHICLE

20. YEAR - Enter the year of the vehicle.

21. MAKE - Enter the make of the vehicle.

22. MODEL - Enter the model of the vehicle.

23. BODY TYPE - Enter the body type of the vehicle.

24. COLOR - Enter the color(s) of the vehicle.

25. REGISTRATION NO./STATE - Enter the vehicle's plate/registration number and the State it is registered in.

26. V.I.N. - Enter the vehicle's full Vehicle Identification Number.

27. ITEM NO. - Enter the item of each piece of property recovered or seized, relating to the case.

28. PROPERTY CODE - Enter the Property Description Code number from the code table located in the center of the report.

29. PROPERTY STATUS - Enter the Property Status code number from the code table located in the center right portion of the report.

30. ESTIMATED/QUANTITY - Enter the quantity or the estimated quantity of items.

31. UNIT OF MEASURE - Enter the appropriate Unit Of Measure code if necessary, from the code table located in the center portion of the report.

32. DESCRIPTION/O.A.N. - Enter a description of the property and any Owner Applied Numbers that may exist.

33. SERIAL NUMBER - Enter the full serial number of the property if it exists.

34. ESTIMATED VALUE - Enter the estimated value of the property.

35. DISPOSITION OF ITEM - Enter the disposition of the property from the Disposition Code Table, located in the center right portion of the report.

36. PRINT RANK/OFF. NAME - PRINT the rank and name of the officer doing the report.

37. BADGE NO. - Enter the badge number, if used, of the officer doing the report.

38. REPORT DATE - Enter the date of the report, month, day, year.

39. PAGE NO. OF PAGES - If additional page(s) are needed to describe property relating to the case, indicate which page and the total number of

pages that are being submitted.

40. REVIEWED BY - For use by the person in the agency after reviewing and approving the report(s).

BLOCKS 41 THROUGH 45 ARE TO BE USED FOR TRACKING THE CHAIN OF CUSTODY OF THE ITEMS RELATED TO THE CASE.

41. ITEM NO. - Enter the Item Number of the piece of property that will be moved.

42. DATE - Enter the date that the item was moved, month, day, year.

43. RELINQUISHED BY - PRINT the full name of the officer/person who is releasing property.

44. RECEIVED BY - PRINT the full name of the officer/person who is receiving property.

45. PURPOSE FOR CHANGE OF CUSTODY - Enter the purpose for which the property is changing custody. Examples of change of custody may be for transportation to the lab, to court, for destruction, for return to owner or for auction.

6.8 Instructions for preparation of PROPERTY DESCRIPTION REPORT (LONG FORM)

1. DEPARTMENT - The name of the law enforcement agency that takes the report will be entered here.

2. ORI NO - Enter the department's National Crime Information Center (NCIC) New Jersey Identifier Number.

3. INCIDENT NO - The department may use this box to enter a local Incident/Event number.

4. PROS CASE NO - This box will be used for the County Prosecutor's Office to enter their case number.

5. DEPT CASE NO - This box may be used by the local department for entering a case/report number.

27. ITEM NO. - Enter the item of each piece of property, recovered or seized, relating to the case.

28. PROPERTY CODE - Enter the Property Description Code number from the code table located in the center of the report.

29. PROPERTY STATUS - Enter the Property Status code number from the code table located in the center right portion of the report.

30. ESTIMATED/QUANTITY - Enter the quantity or the estimated quantity of items.

31. UNIT OF MEASURE - Enter the appropriate Unit Of Measure code if necessary, from the code table located in the center portion of the report.

32. DESCRIPTION/O.A.N. - Enter a description of the property and any Owner Applied Numbers that may exist.

33. SERIAL NUMBER - Enter the full serial number of the property if it exists.

34. ESTIMATED VALUE - Enter the estimated value of the property.

35. DISPOSITION OF ITEM - Enter the disposition of the property from the Disposition Code Table, located in the center right portion of the report.

36. PRINT RANK/OFF. NAME - PRINT the rank and name of the officer doing the report.

37. BADGE NO. - Enter the badge number, if used, of the officer doing the report.

38. REPORT DATE - Enter the date of the report, month, day, year.

39. PAGE NO OF PAGES - If additional page(s) are needed to describe property relating to the case, indicate which page and the total number of pages that are being submitted.

40. REVIEWED BY - For use by the person in the agency after reviewing and approving the report(s).

7.0 DISPOSITION

7.1 Forfeiture

7.1.1 If property subject to forfeiture in an indictable or juvenile case, other than prima facie contraband, is seized by this department, the Detective Bureau must notify the Evidence and Property Control Unit of the County Prosecutor's Office, in writing, within one week of the seizure. If forfeiture proceedings are approved, the property subject to forfeiture must be immediately turned over to the Evidence and Property Control Unit of the County Prosecutor's Office. If forfeiture is declined, the property should be returned to its owner provided that the property has no evidential value.

7.1.2 A completed file should be given to the Assistant Prosecutor as soon as possible, but not later than 30 days after seizure.

7.1.3 Civil forfeiture proceedings must begin within 90 days of seizure of the property to be forfeited.

7.1.4 See N.J.S.A. 2C:64-1 et seq. for the law concerning forfeitures.

7.2 Disposition of Stolen Property and Documentary Exhibits

7.2.1 When any article of stolen property comes into the custody of this department, the property officer shall enter in the property book a description of the article and shall attach a number to each article, and make a corresponding entry. The assigned detective shall make and retain a complete photographic record of the property.

7.2.2 Upon receipt of satisfactory proof of ownership of the property, and upon presentation of proper personal identification, and with the consent of the County Prosecutor's Office, the property officer may release the property to the person presenting such proof.

7.2.3 The person receiving the property shall be asked to view the photograph taken pursuant to Section 7.2.1 to verify that it accurately depicts the property that is being released to his custody. The person receiving the property shall sign a sworn declaration of ownership. This department shall retain the photograph and the sworn declaration.

7.2.3 See N.J.S.A. 2C:65-1 et seq. for the law concerning the disposition of stolen property and documentary exhibits.

7.3 Tangible Personal Property - Recovered and Disposition

7.3.1 Where tangible personal property comes into the possession of the police department, by finding and recovery, by a member of the police force acting in the line of duty, and if the owner or his whereabouts is unknown and cannot be ascertained, or if the owner shall refuse to receive the property, then the property shall not be disposed of for 6 months, except in cases of motor vehicles, which shall be for 3 months. The municipality, by resolution, may then provide for the sale, in whole or in part, of any such property, at public auction. Moneys received from the sale of any such property shall be paid into the general municipal treasury. All unclaimed moneys coming into the possession of the police department shall be turned over within 48 hours to the municipal treasurer for retention in a trust account and, after 6 months, if unclaimed by any person entitled thereto, be paid into the general municipal treasury.

7.3.2 Whenever any money or tangible personal property other than a motor vehicle is found or discovered by any person other than by a member of the police department acting in the line of duty, and the finder shall have given or shall give custody of the found money or tangible personal property to the police department for the purpose of assisting the police to find the owner thereof, the police department shall retain custody of said money or tangible property for a period of 6 months. If the money or tangible personal property is unclaimed during the 6 month period by the person entitled thereto, the money or property shall be returned by the police department to the finder, who shall be deemed the sole owner thereof.

7.3.4 See N.J.S.A. 40A:14-157 for the law concerning the disposition of tangible personal property found or recovered.

7.4 Disposition of Controlled Dangerous Substances: Disorderly Persons Offense

7.4.1 The New Jersey State Police will not examine marijuana weighing less than 50 grams (disorderly persons offense) unless the defendant has appeared in Municipal Court and entered a plea of not guilty. When drafting complaints charging defendants with possession of less than 50 grams of marijuana, schedule the case to be heard on the closest court date

following the arrest. If the defendant pleads not guilty on his first court appearance, the court will schedule another date so that the evidence may be examined and the results obtained.

7.4.2 In a disorderly persons case involving a controlled dangerous substance, our department shall maintain the controlled dangerous substance until at least 60 days following final judgement in the case. If a defendant is convicted of the disorderly persons offense, the final judgement would be measured from the date the defendant is sentenced. If an appeal is pending, the final judgement would be when the appeal is decided. It is incumbent on the law enforcement agency to track appeals.

7.4.3 The County Prosecutor's Office submits a copy of the judgement entered on municipal appeals to the person designated to handle record keeping for each police department. If the defendant is found guilty and the decision appealed to a higher court, that action will be noted on the judgement. The opinion is considered rendered when received by this office. Any questions about status, decision, or opinions on municipal appeals or questions about appeals on an indictable matter should be directed to the Head Clerk, Appellate and Motion Practice Section.

7.4.4 At the expiration of 60 days following the final judgement, our department shall destroy the controlled dangerous substance at a facility designated by the Prosecutor's Office. The controlled dangerous substance shall be destroyed within one year of the final judgement. All aspects of the destruction shall be documented on the Uniform Destruction of Evidence Form. Notice to and approval of the Chief of the Trial Section is not necessary for the destruction of controlled dangerous substances in a disorderly persons offense, or where the amount and type of drug would qualify for disorderly persons offense treatment.

7.5 Disposition of Controlled Dangerous Substances: Indictable or Juvenile Offense

7.5.1 In an indictable case or for a juvenile offense involving controlled dangerous substances where the County Prosecutor's Office seizes the controlled dangerous substance, the controlled dangerous substance shall be turned over to the Evidence & Property Control Unit immediately.

7.5.2 In an indictable case or for a juvenile offense involving controlled dangerous substances where our department seizes the controlled dangerous substance, we shall maintain custody of the evidence until the

assistant prosecutor to whom the case is assigned directs that the evidence be turned over to the County Prosecutor's Office. When the evidence has been turned over to the County Prosecutor's Office, the Evidence & Property Control Unit shall maintain the controlled dangerous substance until at least 70 days following the final judgement in the case. If an appeal is taken, the evidence should be held until the expiration of the appeal. At the expiration of 70 days following final judgement, the Evidence & Property Control Unit shall make contact with the Chief of the Trial Section of the County Prosecutor's Office and/or the Narcotics Squad Prosecutor and seek approval for destruction of the controlled dangerous substance. The request and approval must be in writing. If the Chief of the Trial Section or Narcotics Squad Prosecutor approves destruction, the Evidence & Property Control Unit shall destroy the controlled dangerous substance at a designated facility. All aspects of the destruction shall be documented.

7.5.3 In an indictable case or for a juvenile offense where our department seizes a controlled dangerous substance but is not called upon to turn the controlled dangerous substance over to the County Prosecutor's Office, we shall maintain the controlled dangerous substance until at least 70 days following final judgement in the case. If an appeal is taken, the evidence should be held until the conclusion of the appeal. At the expiration of the 70 days following judgement, we shall request approval from the Chief of the Trial Section or Narcotics Squad Prosecutor of the Prosecutor's Office for destruction of the evidence. The request for the destruction and the approval must be in writing. If the Chief of the Trial Section or Narcotics Squad Prosecutor approves destruction of the evidence, our department shall destroy the controlled dangerous substance at a designated facility. All aspects of the destruction shall be documented. All controlled dangerous substances approved for destruction should be destroyed within one year of the written approval from the Chief of the Trial Section or Narcotics Squad Prosecutor.

7.5.4 If after the conviction of the defendant there is still an investigation pending concerning other prospective defendants relating to the possession or distribution of that substance, the substance may be retained if reports are duly filed justifying non-destruction.

7.6 Disposition of Controlled Dangerous Substances with no prosecution

7.6.1 If the police department comes into possession of controlled dangerous

substances, for example by finding, and a viable prosecution cannot be developed in relation to the drug, then it should be retained for at least 60 days. The controlled dangerous substance shall be destroyed within one year of its receipt. All aspects of the destruction shall be documented on the Uniform Destruction of Evidence Form. Notice to and approval of the Chief of the Trial Section or Narcotics Squad Prosecutor is not necessary in this situation unless a significant quantity or quality of controlled dangerous substance is involved. The term "significant quantity" should at least mean enough controlled dangerous substance to support a charge of possession with intent to distribute if the owner or possessor were known.

7.7 Controlled Dangerous Substance Destruction process

7.7.1 Documentation of the destruction of controlled dangerous substances must be done through the utilization of the "Uniform Destruction of Evidence Form." When a request for destruction is made, the original and two copies shall be sent to the Chief of the Trial Section or Narcotics Squad Prosecutor. One copy shall be retained by our department. If destruction is approved the original and two copies will be returned to our department. When the evidence is destroyed, a completely executed copy should be left with the contact person for the authorized destruction facility. An original and one copy would then be retained by our department. Controlled dangerous substances and firearms should not be included on the same destruction of evidence form.

7.7.2 In a juvenile case the Chief of the Trial Section or Narcotics Squad Prosecutor will refer the requests to the Director of the Juvenile Division for his approval.

7.7.3 It will be the responsibility of the assigned officer to destroy the evidence and a copy of the Uniform Destruction of Evidence Form will be left with the contact person or his representative at the facility. The role of the contact person for the authorized facilities is limited. He will simply make arrangements for the destruction and will be present during the destruction of the controlled dangerous substance; it is not his responsibility to insure the integrity of the destruction process. The authorized facilities are simply providing a place for the evidence to be destroyed. Our assigned officer shall call the contact person prior to bringing the controlled dangerous substance for destruction in order to allow the contact person to make the necessary arrangements. It is not necessary for the contact person to sign the Uniform Destruction of Evidence Form.

7.7.4 No fewer than two witnesses shall observe the officer destroy the controlled dangerous substance at the authorized facility. The contact person should not be counted as a witness. The witnesses shall also sign the Uniform Destruction of Evidence Form in the appropriate place.

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PAULA T. DOW
Attorney General

STEPHEN J. TAYLOR
Director

October 14, 2011

TO: ALL COUNTY PROSECUTORS
SUPERINTENDENT OF STATE POLICE

FROM: PAULA T. DOW, ATTORNEY GENERAL

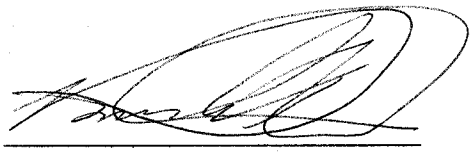
RE: *Conducted Energy Devices*

Please be advised that following a review of commercially available conducted energy devices by the Division of State Police, I have determined that State, county and municipal law enforcement agencies may move forward with the purchase and deployment of these devices. At this time, the X2 and X26 models manufactured by Taser International have been shown to meet the criteria established in the Attorney General's *Revised Policy on Conducted Energy Devices*, a copy of which is enclosed for your ease of reference. Other devices may eventually be shown to meet the criteria, and I anticipate that this technology will continue to develop and that new devices will become commercially available over time. Specific test data will be made available to individual law enforcement agencies by the State Police upon request.

The Police Training Commission has developed and approved mandatory training that must be completed by any law enforcement officer who is issued a conducted energy device. Officers authorized to carry a device will be required to complete training provided by the manufacturer of the device. In addition, officers will be required to complete training governing the use of conducted energy devices under New Jersey law. To ensure that this training can proceed expeditiously, the Division of Criminal Justice Training Academy will conduct "train-the-trainer" programs to develop a cadre of instructors who can provide training to individual law enforcement agencies.

Law enforcement agencies may begin the process of selecting and purchasing devices, and scheduling training by the manufacturer. Please remind all law enforcement agencies within your jurisdiction that the deployment and use of the these devices must comply with the Attorney

General's *Revised Policy on Conducted Energy Devices*. In addition, no device may be deployed until the mandatory training program approved by the Police Training Commission has been completed.



Paula T. Dow
Attorney General of New Jersey

REVISED ATTORNEY GENERAL POLICY ON CONDUCTED ENERGY DEVICES

Approved and Effective on October 7, 2010

I. Scope

The following supplemental policy governs the use of conducted energy devices. The original policy concerning these devices that had been issued on November 23, 2009 is hereby revised and replaced based upon the recommendations of the County Prosecutors, the New Jersey Association of Chiefs of Police, and other law enforcement professionals. These professionals expressed concern that the original policy was too restrictive both in terms of the number of officers who might be authorized to carry and use a conducted energy device, and the circumstances when the device might be deployed. In some instances, the original policy would have prohibited the use of a conducted energy device even though an officer would be allowed to use *deadly* force. The following revised supplemental policy, developed in consultation with State, county and local law enforcement executives, brings the rules governing the use of conducted energy devices more closely in line with the policy governing the use of less lethal ammunition (dated March 19, 2008). Under the following revised supplemental policy, conducted energy devices, like less-lethal ammunition, are considered to be a form of "enhanced" mechanical force.

The term "conducted energy device" is defined in Section III of this policy. These weapons fall under the broader category of "stun guns," as that term is defined in the New Jersey Code of Criminal Justice. Specifically, N.J.S.A. 2C:39-1(t) provides that the term stun gun means "any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person."

Pursuant to N.J.S.A. 2C:39-3(h), any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree. N.J.S.A. 2C:39-3(g)(1) further provides in pertinent part that, "[n]othing in subsection h. (generally prohibiting the knowing possession of stun guns) shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General." This supplemental policy shall constitute an exemption from the provisions of N.J.S.A. 2C:39-3(h) for any law enforcement officer authorized pursuant to this policy to deploy or use a conducted energy device during an actual law enforcement operation, and for any officer who is participating in a training program pursuant to this policy.

II. Policy

1. It is the general policy of the State of New Jersey that law enforcement officers should only use the degree or intensity of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time force is used. The reasonableness of force must be judged from the perspective of a reasonable law enforcement officer on the scene at the time of the incident. The Attorney General's Use of Force Policy (rev. 2000) formally recognizes five distinct types of force: constructive authority, physical contact, physical force, mechanical force, and deadly force. The Attorney General's supplemental policy on less lethal ammunition (2008) essentially established a distinct level of force, known as enhanced mechanical force, which, according to the Report to the Attorney General on Less-Lethal Ammunition (February 13, 2008) submitted by the Attorney General's Advisory Group to Study Less-Lethal Force, is "an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force."

2. The Attorney General's Use of Force Policy (rev. 2000) provides that deadly force may only be used when an officer reasonably believes that such force is *immediately* necessary to protect an officer or another person from *imminent* danger of death or serious bodily injury. (Emphasis added to highlight one of the key distinctions between the standard for using deadly force and the standard for using enhanced mechanical force, such as less-lethal ammunition. The latter type of force does not require that the threat of death or serious bodily injury be imminent or immediate.) Deadly force may not be used against persons whose conduct is injurious only to themselves. (This restriction also distinguishes the standard for using deadly force from the standard for using less-lethal ammunition, which may be used to prevent a person from killing or seriously injuring him/herself.)

3. The risks and benefits associated with the use of a conducted energy device are in many respects comparable to the risks and benefits associated with the use of less-lethal ammunition. In certain situations, a conducted energy device may reduce the risk of death or injury to police officers, to innocent bystanders

and victims, and also to the persons who are subject to arrest and against whom this form of less lethal force would be directed. The device may thus allow officers to resolve a confrontation without it escalating to a level where deadly force is required. Accordingly, this policy allows law enforcement agencies the ability to use these devices as a less lethal alternative, while limiting the circumstances when a conducted energy device may be deployed. These restrictions are in most instances comparable to the current restrictions imposed on the use of less-lethal ammunition, but are adapted in this supplemental policy to address the unique characteristics, practical utility, and potential for abuse of conducted energy devices. In certain circumstances, such as when a conducted energy device is directed against a person who is restrained by handcuffs, or when the device is used in "drive stun mode" (*i.e.*, held in direct physical contact with the suspect rather than being fired from a distance), this policy imposes additional restrictions that are comparable to those that apply to the use of deadly force.

4. While conducted energy devices are designed and intended to be used as less lethal weapons, these devices can result in serious bodily injury, or death. The risk of causing immediate or long-term injury depends on many factors, including but not limited to the terrain on which the targeted person is standing, given the risk that the device might cause the person to fall uncontrollably. Officers equipped with conducted energy devices must at all times recognize the seriousness and potential lethality of these weapons. Accordingly, this supplemental policy establishes strict requirements for carrying, displaying, and using these devices. The rules set forth in this supplemental policy, including procedural safeguards such as the provisions of this policy that require that a digital video record be made and preserved of all incidents where a conducted energy device is fired or discharged, and requiring a thorough investigation and report to the Attorney General of every such incident, are designed to ensure that conducted energy devices are used during actual operations only when and in the manner expressly authorized by this supplemental policy.

5. This policy limits the circumstances when a conducted energy device may be deployed, and prohibits use of these weapons in certain circumstances and for certain purposes. For example, a conducted energy device may not be fired or discharged against a person who is exhibiting only passive resistance to an officer's

order to move from or to a place, to get onto the ground, or to exit a vehicle. Rather, under this supplemental policy, the device may only be used when it is reasonably necessary to temporarily incapacitate a physically combative person in order to prevent the person from causing death or serious bodily injury to him/herself, the officer, or another person, or to prevent the escape of a violent offender.

6. Any firing or discharge of a conducted energy device against a person, except as authorized by this supplemental policy, is prohibited. Any intentional misuse or reckless abuse of any such device will not be tolerated and will result in administrative discipline, criminal prosecution, or both.

III. Definitions

"**Conducted energy device**" means any device approved by the Attorney General that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

"**Fire**" means to cause the darts/electrodes of a conducted energy device to be ejected from the main body of the device and to come into contact with a person for the purpose of transmitting an electrical charge or current against the person.

"**Discharge**" means to cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a conducted energy device.

"**Drive stun mode**" means to discharge a conducted energy device where the main body of the device is in direct contact with the person against whom the charge or current is transmitted.

"Spark display" means a non-contact demonstration of a conducted energy device's ability to discharge electricity that is done as an exercise of constructive authority to convince an individual to submit to custody.

IV. Authorized Officers

1. The chief executive of a law enforcement agency shall determine the number of officers who are authorized to carry and use a conducted energy device.

2. An officer shall not carry or use a conducted energy device during an actual operation unless the officer has been expressly authorized in writing by the chief executive of the department, considering the officer's experience and demonstrated judgment, and the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The chief executive of the department shall have the continuing responsibility to ensure that all officers authorized to carry or use a conducted energy device remain qualified by experience, demonstrated judgment, and training and Police Training Commission-approved qualification and re-qualification procedures to be equipped with these weapons, and the chief executive may at any time limit, suspend, or revoke the authority of an officer to carry or use a conducted energy device.

3. A law enforcement officer authorized to carry and use a conducted energy device pursuant to this supplemental policy shall be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun provided by his or her department.

V. Authorization to Use Conducted Energy Devices

1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:

    a. i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing death or serious bodily injury to him/herself, an officer, or any other person; or,

ii) the officer believes such force is reasonably necessary to prevent the immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily injury; and

b. the individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force to prevent the individual from causing death or serious bodily injury to him/herself or any other person.

2. An officer shall not direct an electrical charge or current against a person who has already received an electrical charge from a conducted energy device unless the person, despite the initial discharge, continues to pose a threat of causing death or serious bodily injury to him/herself, an officer, or any other person. The person shall be given a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands before being subjected to a second or subsequent discharge, unless the person's conduct after the initial discharge creates a risk of death or serious bodily injury that is so immediate that any delay in applying a second or subsequent discharge would likely result in death or serious bodily injury.

   In the event that a second or subsequent discharge is authorized and necessary, the officer shall, when feasible, point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying any such second or subsequent discharge.

3. An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:

   a) the officer reasonably believes based on the suspect's conduct while handcuffed that such force is immediately necessary to protect the officer, the suspect, or another

person from imminent danger of death or serious bodily injury; and,

b) the use of physical or mechanical force (*e.g.*, a baton or pepper spray) is not immediately available to be employed, has been tried and failed to stop the imminent threat of death or serious bodily injury, reasonably appears to be unlikely to stop the imminent threat if tried, or would be too dangerous to the officer or an innocent person to employ.

In the event that a conducted energy device is discharged against a person who is restrained by handcuffs, the officer shall point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying the discharge.

4. An officer shall not use a conducted energy device in drive stun mode unless the officer reasonably believes based on the suspect's conduct that discharging the device in drive stun mode is immediately necessary to protect the officer, the suspect, or another person from imminent danger of death or serious bodily injury.

5. A law enforcement officer shall not be required to exhaust the option of using a conducted energy device before using lethal ammunition in any circumstance where deadly force would be justified and authorized pursuant to the Attorney General's Use of Force Policy.

VI. Unauthorized uses of Conducted Energy Devices

The following uses are prohibited:

1. A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment.

2. A conducted energy device shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle.

3. A conducted energy device shall not be fired or discharged to prevent a person from committing property damage.

4. A conducted energy device shall not be fired or discharged against the operator of a moving vehicle.

5. Two or more conducted energy devices shall not be discharged upon a person at the same time.

VII. Training and Qualification

1. No officer shall be authorized to carry or use a conducted energy device during an actual operation until having completed a training course and qualification procedure approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The training program shall include a component on how to interact with an emotionally disturbed person, how to recognize mental illness, and techniques to de-escalate a psychiatric crisis to prevent injury or death.

2. A person participating in a training course approved by the Police Training Commission shall during such training be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun.

3. All law enforcement officers authorized to carry and use a conducted energy device pursuant to this supplemental policy shall qualify, and thereafter re-qualify semi-annually, in a training course and qualification procedure approved by the Police Training Commission.

VIII. Deployment Techniques

1. An officer issued a conducted energy device shall determine and record on an appropriate log, prior to field deployment, that the device, including the video recording function, is functional.

2. When feasible, the officer should warn the person against whom the conducted energy device is directed that the officer intends to fire the weapon. If a second or subsequent discharge is authorized by this supplemental policy, the officer, when feasible, should warn the person that the officer intends to discharge the device again. It shall not be necessary for an officer to warn the person of the impending firing/discharge of the device, or to provide the person with an opportunity to submit to law enforcement authority before firing/discharging the device, if the person's conduct is creating a risk of death or serious bodily injury that is so immediate that any delay in firing/discharging the device would likely result in death or serious bodily injury (*e.g.*, where the person is actively engaged in committing an aggravated assault, or is actively engaged in an attempt to commit suicide or an act of self mutilation).

3. An officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or a demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety. An officer may also unholster and/or exhibit a conducted energy device or conduct a spark display if another officer on the scene has unholstered and/or exhibited a firearm in accordance with the Attorney General's Use of Force Policy.

4. An officer may, through verbal commands, threaten to use a conducted energy device, so long as the officer's purpose is limited to creating an apprehension that the device will be used if necessary.

5. An officer should not fire a conducted energy device if there is a substantial risk that the electrode/darts will strike an innocent person unless firing the device in such circumstances is

reasonably necessary to protect the innocent person(s) from being killed or seriously injured by the person against whom the conducted energy device is targeted.

6. To ensure officer safety, when feasible, at least one law enforcement officer other than the one deploying the conducted energy device should be present, be armed with lethal ammunition, and be prepared to deploy deadly force in the event that the use of a conducted energy device for any reason fails to incapacitate the suspect and prevent him or her from causing death or serious bodily injury to the officer equipped with the device, or any other person.

7. During the deployment of a conducted energy device, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.

8. An officer trained and authorized to carry a conducted energy device should be aware of any targeting recommendations made by the manufacturer.

9. A conducted energy device may be used in conjunction with a distraction device, water-based chemical agent, or less-lethal ammunition. If the individual has already received an electrical charge from a conducted energy device, officers should, when feasible, provide the person a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands, considering the physiological effects of the discharge, before deploying a distraction device, chemical agent, or less-lethal ammunition.

10. A conducted energy device shall not be directed against a person who is situated on an elevated surface (*e.g.*, a ledge, scaffold, near a precipice, etc.) unless reasonable efforts have been made to prevent or minimize a fall-related injury (*e.g.*, deploying a safety net).

11. A conducted energy device shall not be used in, on, or immediately adjacent to a body of water in which the targeted person could fall during any stage of the application of the electrical current generated or transmitted by the device.

12. A conducted energy device shall not be used in any environment where an officer knows or has reason to believe that a potentially flammable, volatile, or explosive material is present that might be ignited by an open spark, including but

not limited to pepper spray with a volatile propellant, gasoline, natural gas, or propane.

13. While officers must at all times respect the seriousness and potential lethality of a conducted energy device, an officer should use particular care when considering whether to use a conducted energy device against a individual who is particularly vulnerable due to age (either elderly or young) or due to a known or reasonably apparent medical condition (*e.g.*, a pregnant female).

IX. Handling of Injured Suspects

Subjects against whom a conducted energy device has been directed shall be transported to a medical facility for examination if they suffer bodily injury or request medical attention.

X. Reporting and Evaluation

1. In all instances when a conducted energy device is fired or discharged, or where a spark display is conducted during an actual operation, the law enforcement officer who employed such force shall complete:

a. Any reports made necessary by the nature of the underlying incident, and,

b. A use of force report as required by the Attorney General's Use of Force Policy.

c. A Conducted Energy Device Report.

2. In all instances when a conducted energy device is fired at or discharged upon a person, a higher-ranking supervisor shall investigate the circumstances and outcome of the device's use. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive information on all relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force. Upon receipt, the chief executive shall issue a finding on whether the firing and all discharges complied with the Attorney

General's Supplemental Policy on Conducted Energy Devices. The chief executive shall forward the report to the County Prosecutor within 3 business days of the firing/discharge, unless the County Prosecutor grants the chief executive's request for a reasonable extension of time within which to forward the report for good cause shown.

3. The County Prosecutor shall review all reports detailing conducted energy device firings/discharges occurring within his or her jurisdiction. The Prosecutor shall within 7 days of the device's firing/discharge forward to the Director of the Division of Criminal Justice the investigation report(s) prepared by the chief executive of the department, along with a memorandum or letter indicating whether the Prosecutor concurs or disagrees with the findings of the chief executive of the department as to the propriety of the firing/discharge(s). A Prosecutor may request a reasonable extension of time within which to report to the Director of the Division of Criminal Justice when the Prosecutor believes that an incident requires further investigation to determine whether the firing/discharge(s) complied with this supplemental policy. The Prosecutor may conduct any such further investigation, or may direct the chief executive of the department to do so. The Director of the Division of Criminal Justice shall report to the Attorney General on the propriety of the firing/discharge(s).

4. In all instances when a conducted energy device is fired at or discharged upon a person, a superior officer designated by the chief of the department employing the officer who fired or discharged the device shall take custody of and secure the device. The superior officer shall safeguard the digital information in that device concerning the incident. The chief executive officer of each department that employs the use of conducted energy devices shall issue a rule, regulation, standing operating procedure or other appropriate order to establish a system to ensure that the internal digital recording systems of these devices are maintained, and that the data contained therein cannot be tampered with, and cannot be accessed or erased except by duly authorized supervisors. After the information is safeguarded, the device may be returned to deployment consistent with the department's policies. The information stored in the device concerning the use of force incident (*i.e., e.g.*, data concerning the time the weapon was fired, the time of all electrical discharges, and video recordings of the firing of the weapon and all electrical discharges) shall be preserved and reported on in the report of the incident prepared pursuant to paragraph 2 of this Section.

XI. Approved Conducted Energy Devices

The New Jersey State Police, in consultation with the Division of Criminal Justice, shall develop a list of specifications and characteristics of conducted energy devices that may be deployed and used pursuant to this supplemental policy. Those specifications will include the following requirements:

1. The device must be capable of making a date- and time-stamped digital record of each occurrence when the darts/electrodes are fired, and of each occurrence when an electrical current is discharged.

2. The device must be capable of making a digital video recording of each such firing and electrical discharge, where the focus of the internal camera is centered on the person against whom the conducted energy device was targeted.

3. The device must safeguard all such digital data and video recordings to ensure that they can be accessed or erased only by appropriate supervisory personnel in accordance with rules, regulations, standing operating procedures or orders promulgated pursuant to this supplemental policy.

The list of specifications and characteristics shall be submitted to the Attorney General for approval and dissemination. No law enforcement agency shall purchase, possess, deploy, fire, or discharge any conducted energy device pursuant to this supplemental policy unless the device satisfies the specifications and characteristics approved by the Attorney General. The private ownership or possession of a conducted energy device or any other form of stun gun is strictly prohibited and is subject to criminal prosecution.

XII. Sanctions for Non-Compliance

If the Attorney General or designee has reason to believe that a law enforcement agency or officer is not complying with or adequately enforcing the provisions of this supplemental policy, the Attorney General may temporarily or permanently suspend or revoke the authority of the department, or any officer, to possess or use conducted energy devices, may initiate disciplinary or criminal prosecution proceedings, and may take such other actions as the Attorney General in her sole

discretion deems appropriate to ensure compliance with this supplemental policy.

USE OF FORCE

Attorney General's Use of Force Policy

Issued April 1985
Revised June 2000

Preface

The provisions of this revised policy are a product of the collective efforts and judgment of the New Jersey Use of Force Advisory Committee. Throughout the deliberation process, each member of the committee worked conscientiously to reach a consensus in this area of critical importance to law enforcement officers and the citizens of this state. The New Jersey Use of Force Advisory Committee realized that the law alone could not achieve the goal of properly guiding the use of force by the police. The letter of the law needed to be supplemented with clear policy guidance designed to prepare officers to react appropriately when confronted with a use of force situation.

Policy

Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of every sworn law enforcement officer to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this policy. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. The use of force should never be considered routine. In determining to use force, the law enforcement officer shall be guided by the principle that the degree of force employed in any situation should be only that reasonably necessary. Law enforcement officers should exhaust all other reasonable means before resorting to the use of force. It is the policy of the State of New Jersey that law enforcement officers will use only that force which is objectively reasonable and necessary.

This policy reinforces the responsibility of law enforcement officers to take those steps possible to prevent or stop the illegal or inappropriate use of force by other officers. Every law enforcement officer is expected and required to take appropriate action in any situation where that officer is clearly convinced that another officer is using force in violation of state law. Law enforcement officers are obligated to report all situations in which force is used illegally by anyone. This policy sends a clear message to law enforcement officers that they share an obligation beyond the requirements of

the law. Officers are encouraged to do whatever they can to interrupt the flow of events before a fellow officer does something illegal and before any official action is necessary. Law enforcement officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.

Deciding whether to utilize force when authorized in the conduct of official responsibilities is among the most critical decisions made by law enforcement officers. It is a decision which can be irrevocable. It is a decision which must be made quickly and under difficult, often unpredictable and unique circumstances. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decisionmaking in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to provide the best guidance and direction possible to police officers throughout this state when called upon to confront and address the most difficult of situations. Law enforcement officers whose actions are consistent with the law and the provisions of this policy will be strongly supported by the law enforcement community in any subsequent review of their conduct regarding the use of force.

Definitions

A. Constructive Authority

1. Constructive authority does not involve actual physical contact with the subject, but involves the use of the law enforcement officer's authority to exert control over a subject.

2. Examples include verbal commands, gestures, warnings, and unholstering a weapon.

3. Pointing a firearm at a subject is an element of constructive authority to be used only in appropriate situations.

B. Physical Contact

1. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.

2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.

C. Physical Force

1. Physical force involves contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the law enforcement officer's authority, or to protect persons or property.

2. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

D. Mechanical Force

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the law enforcement officer's authority.

2. Examples include the use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying.

E. Deadly Force

1. Deadly force is force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm.

2. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force.

3. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

F. Reasonable Belief

1. Reasonable belief is an objective assessment based upon an evaluation of how a reasonable law enforcement officer with comparable training and experience would react to, or draw

inferences from, the facts and circumstances confronting and known by the law enforcement officer at the scene.

G. Imminent Danger

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter absent action by the law enforcement officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations.

2. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the law enforcement officer, but is carrying a weapon and running for cover.

H. Substantial Risk

1. Any discharge of a firearm entails some risk of an unintended outcome. A substantial risk exists when a law enforcement officer disregards a foreseeable likelihood that innocent persons will be endangered.

2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by innocent persons exposes those persons to a substantial risk of harm.

I. Law Enforcement Officer

1. Any person sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, or is currently employed by a public safety agency and is authorized to carry a firearm under *N.J.S.A.* 2C:39-6.

I. Authorization and Limitations

A. Use of Force

1. A law enforcement officer may use physical force or mechanical force when the officer reasonably believes it is immediately necessary at the time:

a. to overcome resistance directed at the officer or others; *or*

b. to protect the officer, or a third party, from unlawful force; *or*

c. to protect property; *or*

d. to effect other lawful objectives, such as to make an arrest.

B. Use of Deadly Force

1. A law enforcement officer may use deadly force when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

2. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect

a. whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; *and*

b. who will pose an imminent danger of death or serious bodily harm should the escape succeed; *and*

c. when the use of deadly force presents no substantial risk of injury to innocent persons.

3. If feasible, a law enforcement officer should identify himself/herself and state his/her intention to shoot before using a firearm.

C. Restrictions On The Use of Deadly Force

1. A law enforcement officer is under no obligation to retreat or desist when resistance is encountered or threatened. However, a law enforcement officer shall not resort to the use of deadly force if the officer reasonably believes that an alternative to the use of deadly force will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.

2. A law enforcement officer shall not use deadly force to subdue

persons whose actions are only destructive to property.

3. Deadly force shall not be used against persons whose conduct is injurious only to themselves.

4. Under current state statutes the discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as bean bag ammunition or rubber bullets. For that reason, these and similar less lethal means of deadly force can only be used when an officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

5. A law enforcement officer shall not discharge a weapon as a signal for help or as a warning shot.

6. While any discharge of a firearm entails some risk, discharging a firearm at or from a moving vehicle entails an even greater risk of death or serious injury to innocent persons. The safety of innocent people is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.

   a. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, officers shall not fire from a moving vehicle, or at the driver or occupant of a moving vehicle unless the officer reasonably believes:

      (1) there exists an imminent danger of death or serious bodily harm to the officer or another person; *and*

      (2) no other means are available at that time to avert or eliminate the danger.

   b. A law enforcement officer shall not fire a weapon solely to disable moving vehicles.

D. Exhibiting a Firearm

1. A law enforcement officer shall not unholster or exhibit a firearm

except under any of the following circumstances:

a. For maintenance of the firearm;

b. To secure the firearm;

c. During training exercises, practice or qualification with the firearm;

d. When circumstances create a reasonable belief that it may be necessary for the officer to use the firearm;

e. When circumstances create a reasonable belief that display of a firearm as an element of constructive authority helps establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety.

II. Training Requirements

A. Every law enforcement agency is required to conduct and document semi-annual training for all officers on the lawful and appropriate use of force and deadly force. This training must be designed to reflect current standards established by statutory and case law, as well as statewide, county and individual agency policy. It should include but not necessarily be limited to the use of force in general, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force.

III. Use of Force Reports

A. In all instances when physical, mechanical or deadly force is used, each officer who has employed such force shall complete

1. Any reports made necessary by the nature of the underlying incident; *and*

2. Use of Force Report (Attachment A or agency required format)

IV. Notifications and Reporting

A. Immediate Notifications

1. County and municipal law enforcement agencies shall immediately notify the county prosecutor when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.

2. County prosecutor’s offices shall immediately notify the Division of Criminal Justice when a member of their agency uses physical, mechanical or deadly force which results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by agency personnel.

3. State law enforcement agencies shall immediately notify the Division of Criminal Justice when the use of physical, mechanical or deadly force results in death or serious bodily injury, or when injury of any degree results from the use of a firearm by a law enforcement officer.

B. Reporting

1. County prosecutors shall within 24 hours report to the Division of Criminal Justice all situations where the use of deadly force by a law enforcement officer results in death or serious bodily injury, or in situations where any injury results from the use of a firearm by a law enforcement officer.

2. For all situations involving the use of physical, mechanical or deadly force, county and municipal law enforcement agencies shall report at least annually to the county prosecutor in a manner established by the prosecutor.

3. For all situations involving the use of physical, mechanical or deadly force, state law enforcement agencies shall report at least annually to the Division of Criminal Justice in a manner established by the Director of the Division of Criminal Justice.

Attachment A

Model Use of Force Report

_____ POLICE DEPARTMENT

USE OF FORCE REPORT

A. Incident Information

Date	Time	Day of Week	Location	**INCIDENT NUMBER**

Type of Incident

☐ Crime in progress ☐ Domestic ☐ Other dispute ☐ Suspicious person ☐ Traffic stop

☐ Other (specify)

B. Officer Information

Name (Last, First, Middle)		Badge #	Sex	Race	Age	Injured Y / N	Killed Y / N
Rank	**Duty assignment**	**Years of service**		**On-Duty Y / N**		**Uniform Y / N**	

C1. Subject 1 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N
☐ Under the influence ☐ Other unusual condition (specify)	Arrested Y / N		Charges			

Subject's actions (check all that apply)	Officer's use of force toward this subject (check all that apply)	
☐ Resisted police officer control	☐ Compliance hold	Firearms Discharge
☐ Physical threat/attack on officer or another	☐ Hands/fists	☐ Intentional
☐ Threatened/attacked officer or another with blunt object	☐ Kicks/feet	☐ Accidental
☐ Threatened/attacked officer or another with knife/cutting object	☐ Chemical/natural agent	
☐ Threatened/attacked officer or another with motor vehicle	☐ Strike/use baton or other object	Number of Shots Fired _____
☐ Threatened officer or another with firearm	☐ Canine	Number of Hits _____
☐ Fired at officer or another		[Use 'UNK' if unknown]
☐ Other (specify)	☐ Other (specify)	

C2. Subject 2 (List only the person who was the subject of the use of force by the officer listed in Section B.)

Name (Last, First, Middle)	Sex	Race	Age	Weapon Y / N	Injured Y / N	Killed Y / N
☐ Under the influence ☐ Other unusual condition (specify)	Arrested Y / N		Charges			

Subject's actions (check all that apply)	Officer's use of force toward this subject (check all that apply)	
☐ Resisted police officer control	☐ Compliance hold	Firearms Discharge
☐ Physical threat/attack on officer or another	☐ Hands/fists	☐ Intentional
☐ Threatened/attacked officer or another with blunt object	☐ Kicks/feet	☐ Accidental
☐ Threatened/attacked officer or another with knife/cutting object	☐ Chemical/natural agent	
☐ Threatened/attacked officer or another with motor vehicle	☐ Strike/use baton or other object	Number of Shots Fired _____
☐ Threatened officer or another with firearm	☐ Canine	Number of Hits _____
☐ Fired at officer or another		[Use 'UNK' if unknown]
☐ Other (specify)	☐ Other (specify)	

➤ If this officer used force against more than two subjects in this incident, attach additional USE OF FORCE REPORTS.

Signature:	Date:
Print Supervisor Name:	Supervisor Signature:

7/2001

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

PAULA T. DOW
Attorney General

October 7, 2010

TO: All County Prosecutors

All Law Enforcement Chief Executives

All County Sheriffs

Colonel Joseph R. Fuentes
Superintendent, New Jersey State Police

Stephen J. Taylor
Director, Division of Criminal Justice

SUBJECT: Revised Supplemental Policy on Conducted Energy Devices (approved and effective October 7, 2010)

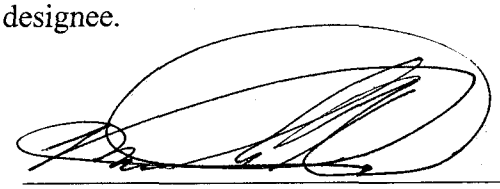
I am pleased to issue a Revised Supplemental Policy on the use of conducted energy devices (CEDs). The new policy, a copy of which is attached, takes effect immediately and replaces the original conducted energy device policy that had been issued on November 23, 2009. I am also attaching a document that succinctly explains some of the more significant changes that have been made to the original CED policy.

Many law enforcement professionals had expressed concern that the original policy was too restrictive in that it had imposed arbitrary limits on the number, rank, and duty assignment of police officers who might be allowed to carry and use a conducted energy device. A number of law enforcement professionals had also expressed concern that the original policy prohibited officers from using a conducted energy device in certain circumstances where this less-lethal weapon might help to resolve a confrontation before it becomes necessary for an officer to resort to deadly force. In some instances, the original policy would have prohibited the use of a conducted energy device even though an officer would be authorized to use *lethal* force.

As you know, this past summer, I asked the Division of Criminal Justice to reach out to the law enforcement community to solicit specific comments and recommendations on how to improve this aspect of New Jersey's use of force policy. I am very thankful for all of the thoughtful comments that we received. A clear consensus emerged on what needed to be done to improve the original conducted energy device policy, and these recommendations are reflected in the attached revised supplemental policy.

It is important to note that the revised policy continues to impose significant restrictions on the use of these weapons by police officers. For example, a conducted energy device may not be used against a person who is only passively resisting law enforcement commands. Rather, this weapon may only be fired against a person when necessary to prevent the targeted person from causing death or serious bodily injury to him/herself, an officer, or another person, or to prevent the escape of a person for whom there is probable cause to arrest for a crime in which the suspect caused or attempted to cause death or serious bodily injury. Aside from establishing strict substantive standards for when a law enforcement officer is authorized to fire or discharge a CED, the attached revised policy continues to impose strict *procedural* safeguards, including a requirement that a digital video recording be made of every instance where the device is discharged. Furthermore, the revised policy continues to require police departments to conduct a prompt, thorough investigation after every discharge of a conducted energy device. The findings of these investigations must be reviewed by the County Prosecutor, and then forwarded to me.

Once again, I am grateful for the input that my office received from the law enforcement community on this important public and officer safety initiative. I remain convinced that collaboration and consultation produces the best results, and in this instance, I think that we have come up with a fair and balanced use of force policy that will, ultimately, provide police officers with a practical alterative to using deadly force in appropriate situations. Any questions concerning the implementation of the revised CED policy should be directed to Division of Criminal Justice Director Stephen J. Taylor, or his designee.



Paula T. Dow
Attorney General

Dated: October 7, 2010

c. First Assistant Attorney General Phillip H. Kwon
Carolyn Murray, Counsel to the Attorney General

REVISED ATTORNEY GENERAL POLICY ON CONDUCTED ENERGY DEVICES

Approved and Effective on October 7, 2010

I. Scope

The following supplemental policy governs the use of conducted energy devices. The original policy concerning these devices that had been issued on November 23, 2009 is hereby revised and replaced based upon the recommendations of the County Prosecutors, the New Jersey Association of Chiefs of Police, and other law enforcement professionals. These professionals expressed concern that the original policy was too restrictive both in terms of the number of officers who might be authorized to carry and use a conducted energy device, and the circumstances when the device might be deployed. In some instances, the original policy would have prohibited the use of a conducted energy device even though an officer would be allowed to use *deadly* force. The following revised supplemental policy, developed in consultation with State, county and local law enforcement executives, brings the rules governing the use of conducted energy devices more closely in line with the policy governing the use of less lethal ammunition (dated March 19, 2008). Under the following revised supplemental policy, conducted energy devices, like less-lethal ammunition, are considered to be a form of "enhanced" mechanical force.

The term "conducted energy device" is defined in Section III of this policy. These weapons fall under the broader category of "stun guns," as that term is defined in the New Jersey Code of Criminal Justice. Specifically, N.J.S.A. 2C:39-1(t) provides that the term stun gun means "any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person."

Pursuant to N.J.S.A. 2C:39-3(h), any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree. N.J.S.A. 2C:39-3(g)(1) further provides in pertinent part that, "[n]othing in subsection h. (generally prohibiting the knowing possession of stun guns) shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General." This supplemental policy shall constitute an exemption from the provisions of N.J.S.A. 2C:39-3(h) for any law enforcement officer authorized pursuant to this policy to deploy or use a conducted energy device during an actual law enforcement operation, and for any officer who is participating in a training program pursuant to this policy.

II. Policy

1. It is the general policy of the State of New Jersey that law enforcement officers should only use the degree or intensity of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time force is used. The reasonableness of force must be judged from the perspective of a reasonable law enforcement officer on the scene at the time of the incident. The Attorney General's Use of Force Policy (rev. 2000) formally recognizes five distinct types of force: constructive authority, physical contact, physical force, mechanical force, and deadly force. The Attorney General's supplemental policy on less lethal ammunition (2008) essentially established a distinct level of force, known as enhanced mechanical force, which, according to the Report to the Attorney General on Less-Lethal Ammunition (February 13, 2008) submitted by the Attorney General's Advisory Group to Study Less-Lethal Force, is "an intermediate force option between mechanical force and deadly force, requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force."

2. The Attorney General's Use of Force Policy (rev. 2000) provides that deadly force may only be used when an officer reasonably believes that such force is *immediately* necessary to protect an officer or another person from *imminent* danger of death or serious bodily injury. (Emphasis added to highlight one of the key distinctions between the standard for using deadly force and the standard for using enhanced mechanical force, such as less-lethal ammunition. The latter type of force does not require that the threat of death or serious bodily injury be imminent or immediate.) Deadly force may not be used against persons whose conduct is injurious only to themselves. (This restriction also distinguishes the standard for using deadly force from the standard for using less-lethal ammunition, which may be used to prevent a person from killing or seriously injuring him/herself.)

3. The risks and benefits associated with the use of a conducted energy device are in many respects comparable to the risks and benefits associated with the use of less-lethal ammunition. In certain situations, a conducted energy device may reduce the risk of death or injury to police officers, to innocent bystanders

and victims, and also to the persons who are subject to arrest and against whom this form of less lethal force would be directed. The device may thus allow officers to resolve a confrontation without it escalating to a level where deadly force is required. Accordingly, this policy allows law enforcement agencies the ability to use these devices as a less lethal alternative, while limiting the circumstances when a conducted energy device may be deployed. These restrictions are in most instances comparable to the current restrictions imposed on the use of less-lethal ammunition, but are adapted in this supplemental policy to address the unique characteristics, practical utility, and potential for abuse of conducted energy devices. In certain circumstances, such as when a conducted energy device is directed against a person who is restrained by handcuffs, or when the device is used in "drive stun mode" (*i.e.*, held in direct physical contact with the suspect rather than being fired from a distance), this policy imposes additional restrictions that are comparable to those that apply to the use of deadly force.

4. While conducted energy devices are designed and intended to be used as less lethal weapons, these devices can result in serious bodily injury, or death. The risk of causing immediate or long-term injury depends on many factors, including but not limited to the terrain on which the targeted person is standing, given the risk that the device might cause the person to fall uncontrollably. Officers equipped with conducted energy devices must at all times recognize the seriousness and potential lethality of these weapons. Accordingly, this supplemental policy establishes strict requirements for carrying, displaying, and using these devices. The rules set forth in this supplemental policy, including procedural safeguards such as the provisions of this policy that require that a digital video record be made and preserved of all incidents where a conducted energy device is fired or discharged, and requiring a thorough investigation and report to the Attorney General of every such incident, are designed to ensure that conducted energy devices are used during actual operations only when and in the manner expressly authorized by this supplemental policy.

5. This policy limits the circumstances when a conducted energy device may be deployed, and prohibits use of these weapons in certain circumstances and for certain purposes. For example, a conducted energy device may not be fired or discharged against a person who is exhibiting only passive resistance to an officer's

order to move from or to a place, to get onto the ground, or to exit a vehicle. Rather, under this supplemental policy, the device may only be used when it is reasonably necessary to temporarily incapacitate a physically combative person in order to prevent the person from causing death or serious bodily injury to him/herself, the officer, or another person, or to prevent the escape of a violent offender.

6. Any firing or discharge of a conducted energy device against a person, except as authorized by this supplemental policy, is prohibited. Any intentional misuse or reckless abuse of any such device will not be tolerated and will result in administrative discipline, criminal prosecution, or both.

III. Definitions

"**Conducted energy device**" means any device approved by the Attorney General that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

"**Fire**" means to cause the darts/electrodes of a conducted energy device to be ejected from the main body of the device and to come into contact with a person for the purpose of transmitting an electrical charge or current against the person.

"**Discharge**" means to cause an electrical charge or current to be directed at a person in contact with the darts/electrodes of a conducted energy device.

"Drive stun mode" means to discharge a conducted energy device where the main body of the device is in direct contact with the person against whom the charge or current is transmitted.

"Spark display" means a non-contact demonstration of a conducted energy device's ability to discharge electricity that is done as an exercise of constructive authority to convince an individual to submit to custody.

IV. Authorized Officers

1. The chief executive of a law enforcement agency shall determine the number of officers who are authorized to carry and use a conducted energy device.

2. An officer shall not carry or use a conducted energy device during an actual operation unless the officer has been expressly authorized in writing by the chief executive of the department, considering the officer's experience and demonstrated judgment, and the officer has successfully completed a training course approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The chief executive of the department shall have the continuing responsibility to ensure that all officers authorized to carry or use a conducted energy device remain qualified by experience, demonstrated judgment, and training and Police Training Commission-approved qualification and re-qualification procedures to be equipped with these weapons, and the chief executive may at any time limit, suspend, or revoke the authority of an officer to carry or use a conducted energy device.

3. A law enforcement officer authorized to carry and use a conducted energy device pursuant to this supplemental policy shall be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun provided by his or her department.

V. Authorization to Use Conducted Energy Devices

1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:

    a. i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing death or serious bodily injury to him/herself, an officer, or any other person; or,

ii) the officer believes such force is reasonably necessary to prevent the immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily injury; and

b. the individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force to prevent the individual from causing death or serious bodily injury to him/herself or any other person.

2. An officer shall not direct an electrical charge or current against a person who has already received an electrical charge from a conducted energy device unless the person, despite the initial discharge, continues to pose a threat of causing death or serious bodily injury to him/herself, an officer, or any other person. The person shall be given a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands before being subjected to a second or subsequent discharge, unless the person's conduct after the initial discharge creates a risk of death or serious bodily injury that is so immediate that any delay in applying a second or subsequent discharge would likely result in death or serious bodily injury.

   In the event that a second or subsequent discharge is authorized and necessary, the officer shall, when feasible, point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying any such second or subsequent discharge.

3. An officer shall not direct an electrical charge or current against a person who is restrained by handcuffs unless:

   a) the officer reasonably believes based on the suspect's conduct while handcuffed that such force is immediately necessary to protect the officer, the suspect, or another

person from imminent danger of death or serious bodily injury; and,

b) the use of physical or mechanical force (*e.g.*, a baton or pepper spray) is not immediately available to be employed, has been tried and failed to stop the imminent threat of death or serious bodily injury, reasonably appears to be unlikely to stop the imminent threat if tried, or would be too dangerous to the officer or an innocent person to employ.

In the event that a conducted energy device is discharged against a person who is restrained by handcuffs, the officer shall point the main body of the device so that the focus of the device's internal video camera is centered on the person in order to record the circumstances justifying the discharge.

4. An officer shall not use a conducted energy device in drive stun mode unless the officer reasonably believes based on the suspect's conduct that discharging the device in drive stun mode is immediately necessary to protect the officer, the suspect, or another person from imminent danger of death or serious bodily injury.

5. A law enforcement officer shall not be required to exhaust the option of using a conducted energy device before using lethal ammunition in any circumstance where deadly force would be justified and authorized pursuant to the Attorney General's Use of Force Policy.

VI. Unauthorized uses of Conducted Energy Devices

The following uses are prohibited:

1. A conducted energy device shall not be used or threatened to be used to retaliate for any past conduct or to impose punishment.

2. A conducted energy device shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle.

3. A conducted energy device shall not be fired or discharged to prevent a person from committing property damage.

4. A conducted energy device shall not be fired or discharged against the operator of a moving vehicle.

5. Two or more conducted energy devices shall not be discharged upon a person at the same time.

VII. Training and Qualification

1. No officer shall be authorized to carry or use a conducted energy device during an actual operation until having completed a training course and qualification procedure approved by the Police Training Commission in the proper use and deployment of conducted energy devices. The training program shall include a component on how to interact with an emotionally disturbed person, how to recognize mental illness, and techniques to de-escalate a psychiatric crisis to prevent injury or death.

2. A person participating in a training course approved by the Police Training Commission shall during such training be exempt from criminal liability under N.J.S.A. 2C:39-3(h) for knowing possession of a stun gun.

3. All law enforcement officers authorized to carry and use a conducted energy device pursuant to this supplemental policy shall qualify, and thereafter re-qualify semi-annually, in a training course and qualification procedure approved by the Police Training Commission.

VIII. Deployment Techniques

1. An officer issued a conducted energy device shall determine and record on an appropriate log, prior to field deployment, that the device, including the video recording function, is functional.

2. When feasible, the officer should warn the person against whom the conducted energy device is directed that the officer intends to fire the weapon. If a second or subsequent discharge is authorized by this supplemental policy, the officer, when feasible, should warn the person that the officer intends to discharge the device again. It shall not be necessary for an officer to warn the person of the impending firing/discharge of the device, or to provide the person with an opportunity to submit to law enforcement authority before firing/discharging the device, if the person's conduct is creating a risk of death or serious bodily injury that is so immediate that any delay in firing/discharging the device would likely result in death or serious bodily injury (*e.g.*, where the person is actively engaged in committing an aggravated assault, or is actively engaged in an attempt to commit suicide or an act of self mutilation).

3. An officer shall not unholster a conducted energy device during an actual operation unless the officer reasonably believes that it may be necessary for the officer to use the conducted energy device. An officer shall not exhibit a conducted energy device to a person or conduct a spark display during an actual operation unless the officer reasonably believes that display of the device and/or a demonstration of its ability to discharge electricity as an exercise of constructive authority would help to establish or maintain control in a potentially dangerous situation in an effort to discourage resistance and ensure officer safety. An officer may also unholster and/or exhibit a conducted energy device or conduct a spark display if another officer on the scene has unholstered and/or exhibited a firearm in accordance with the Attorney General's Use of Force Policy.

4. An officer may, through verbal commands, threaten to use a conducted energy device, so long as the officer's purpose is limited to creating an apprehension that the device will be used if necessary.

5. An officer should not fire a conducted energy device if there is a substantial risk that the electrode/darts will strike an innocent person unless firing the device in such circumstances is

reasonably necessary to protect the innocent person(s) from being killed or seriously injured by the person against whom the conducted energy device is targeted.

6. To ensure officer safety, when feasible, at least one law enforcement officer other than the one deploying the conducted energy device should be present, be armed with lethal ammunition, and be prepared to deploy deadly force in the event that the use of a conducted energy device for any reason fails to incapacitate the suspect and prevent him or her from causing death or serious bodily injury to the officer equipped with the device, or any other person.

7. During the deployment of a conducted energy device, the deploying officer shall, when feasible, continually evaluate the options selected against changing circumstances.

8. An officer trained and authorized to carry a conducted energy device should be aware of any targeting recommendations made by the manufacturer.

9. A conducted energy device may be used in conjunction with a distraction device, water-based chemical agent, or less-lethal ammunition. If the individual has already received an electrical charge from a conducted energy device, officers should, when feasible, provide the person a reasonable opportunity to submit to law enforcement authority and to comply with law enforcement commands, considering the physiological effects of the discharge, before deploying a distraction device, chemical agent, or less-lethal ammunition.

10. A conducted energy device shall not be directed against a person who is situated on an elevated surface (*e.g.*, a ledge, scaffold, near a precipice, etc.) unless reasonable efforts have been made to prevent or minimize a fall-related injury (*e.g.*, deploying a safety net).

11. A conducted energy device shall not be used in, on, or immediately adjacent to a body of water in which the targeted person could fall during any stage of the application of the electrical current generated or transmitted by the device.

12. A conducted energy device shall not be used in any environment where an officer knows or has reason to believe that a potentially flammable, volatile, or explosive material is present that might be ignited by an open spark, including but

not limited to pepper spray with a volatile propellant, gasoline, natural gas, or propane.

13. While officers must at all times respect the seriousness and potential lethality of a conducted energy device, an officer should use particular care when considering whether to use a conducted energy device against a individual who is particularly vulnerable due to age (either elderly or young) or due to a known or reasonably apparent medical condition (*e.g.*, a pregnant female).

IX. Handling of Injured Suspects

Subjects against whom a conducted energy device has been directed shall be transported to a medical facility for examination if they suffer bodily injury or request medical attention.

X. Reporting and Evaluation

1. In all instances when a conducted energy device is fired or discharged, or where a spark display is conducted during an actual operation, the law enforcement officer who employed such force shall complete:

a. Any reports made necessary by the nature of the underlying incident, and,

b. A use of force report as required by the Attorney General's Use of Force Policy.

c. A Conducted Energy Device Report.

2. In all instances when a conducted energy device is fired at or discharged upon a person, a higher-ranking supervisor shall investigate the circumstances and outcome of the device's use. The investigating supervisor shall report on the incident to the chief executive of the department, providing the chief executive information on all relevant circumstances, deployment, and outcome, including whether the deployment avoided injury to an officer and avoided the need to use deadly force. Upon receipt, the chief executive shall issue a finding on whether the firing and all discharges complied with the Attorney

General's Supplemental Policy on Conducted Energy Devices. The chief executive shall forward the report to the County Prosecutor within 3 business days of the firing/discharge, unless the County Prosecutor grants the chief executive's request for a reasonable extension of time within which to forward the report for good cause shown.

3. The County Prosecutor shall review all reports detailing conducted energy device firings/discharges occurring within his or her jurisdiction. The Prosecutor shall within 7 days of the device's firing/discharge forward to the Director of the Division of Criminal Justice the investigation report(s) prepared by the chief executive of the department, along with a memorandum or letter indicating whether the Prosecutor concurs or disagrees with the findings of the chief executive of the department as to the propriety of the firing/discharge(s). A Prosecutor may request a reasonable extension of time within which to report to the Director of the Division of Criminal Justice when the Prosecutor believes that an incident requires further investigation to determine whether the firing/discharge(s) complied with this supplemental policy. The Prosecutor may conduct any such further investigation, or may direct the chief executive of the department to do so. The Director of the Division of Criminal Justice shall report to the Attorney General on the propriety of the firing/discharge(s).

4. In all instances when a conducted energy device is fired at or discharged upon a person, a superior officer designated by the chief of the department employing the officer who fired or discharged the device shall take custody of and secure the device. The superior officer shall safeguard the digital information in that device concerning the incident. The chief executive officer of each department that employs the use of conducted energy devices shall issue a rule, regulation, standing operating procedure or other appropriate order to establish a system to ensure that the internal digital recording systems of these devices are maintained, and that the data contained therein cannot be tampered with, and cannot be accessed or erased except by duly authorized supervisors. After the information is safeguarded, the device may be returned to deployment consistent with the department's policies. The information stored in the device concerning the use of force incident (*i.e.*, *e.g.*, data concerning the time the weapon was fired, the time of all electrical discharges, and video recordings of the firing of the weapon and all electrical discharges) shall be preserved and reported on in the report of the incident prepared pursuant to paragraph 2 of this Section.

XI. Approved Conducted Energy Devices

The New Jersey State Police, in consultation with the Division of Criminal Justice, shall develop a list of specifications and characteristics of conducted energy devices that may be deployed and used pursuant to this supplemental policy. Those specifications will include the following requirements:

1. The device must be capable of making a date- and time-stamped digital record of each occurrence when the darts/electrodes are fired, and of each occurrence when an electrical current is discharged.

2. The device must be capable of making a digital video recording of each such firing and electrical discharge, where the focus of the internal camera is centered on the person against whom the conducted energy device was targeted.

3. The device must safeguard all such digital data and video recordings to ensure that they can be accessed or erased only by appropriate supervisory personnel in accordance with rules, regulations, standing operating procedures or orders promulgated pursuant to this supplemental policy.

The list of specifications and characteristics shall be submitted to the Attorney General for approval and dissemination. No law enforcement agency shall purchase, possess, deploy, fire, or discharge any conducted energy device pursuant to this supplemental policy unless the device satisfies the specifications and characteristics approved by the Attorney General. The private ownership or possession of a conducted energy device or any other form of stun gun is strictly prohibited and is subject to criminal prosecution.

XII. Sanctions for Non-Compliance

If the Attorney General or designee has reason to believe that a law enforcement agency or officer is not complying with or adequately enforcing the provisions of this supplemental policy, the Attorney General may temporarily or permanently suspend or revoke the authority of the department, or any officer, to possess or use conducted energy devices, may initiate disciplinary or criminal prosecution proceedings, and may take such other actions as the Attorney General in her sole

discretion deems appropriate to ensure compliance with this supplemental policy.

State of New Jersey

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

JON S. CORZINE
Governor

ANNE MILGRAM
Attorney General

September 17, 2009

To: All County Prosecutors

All Law Enforcement Chief Executives

Colonel R. Fuentes
Superintendent, New Jersey State Police

From: Anne Milgram, Attorney General

Subject: New Jersey Police Vehicular Pursuit Policy

Please find enclosed the latest revision to the New Jersey Police Vehicular Pursuit Policy. The policy outlines the proper procedures to be followed when police officers are confronted with the possibility of pursuing a fleeing vehicle. As in previous revisions, the primary purpose of the policy is to secure a balance between the protection of the lives and safety of the public and police officers, and law enforcement's duty to enforce the law and apprehend violators.

The latest revision addresses two important concerns: (1) officers are reminded that during the process of "closing the gap" while in pursuit, they are subject to the laws governing the right of way pursuant to N.J.S.A. 39:4-91 and 92; and (2) officers are also reminded to factor in the existence of controlled intersections during a pursuit. This revision also requires police departments to determine whether collisions involving a police vehicle were preventable.

Implementation of this policy provides greater safety to the public as well as law enforcement personnel, while facilitating enforcement of the law. Any questions concerning the implementation of this new policy should be addressed to Criminal Justice Director Deborah L. Gramiccioni, or her designee.

Sincerely,

Anne Milgram
Attorney General

C: Ricardo Solano, First Assistant Attorney General
Deborah Gramiccioni, Director, Division of Criminal Justice

VEHICULAR PURSUIT

New Jersey Police Vehicular Pursuit Policy

Issued December 1985
Revised January 1993
Revised September 1999
Revised December 2001
Revised July 2009

PREFACE

In developing the policy revisions issued in 1993, the New Jersey Task Force on Police Vehicular Pursuit Policy was mindful of the requirement that such a policy appropriately weigh a police officer's sworn duty to apprehend lawbreakers with the obligation to protect life and the public safety. Throughout the process, each member of the Task Force worked conscientiously to reach a consensus in this area of critical importance.

The 1993 policy revision significantly broadened the scope of the 1985 guidelines. The Task Force was particularly cognizant of the important role played by police supervisors in the implementation of any pursuit policy. Police supervisors occupy a pivotal role in assessing the degree of risk inherent in any pursuit and in properly balancing that risk against the need to apprehend a fleeing offender. The 1993 policy outlined the responsibility of police supervisors to manage and control pursuit activity.

The 1999 policy revision provides law enforcement agencies with the discretion to use authorized tire deflation devices during vehicular pursuits, and the 2001 revision further refines the section on authorized tire deflation devices. Agencies should be advised that this policy does not govern the use of tire deflation devices in situations other than vehicular pursuits. The Task Force was convinced early on that any sound vehicular pursuit policy is necessarily based on complete and accurate information about pursuit incidents. In order to ensure that such information is continually available, the policy requires that all law enforcement officers engaged in pursuit incidents file a pursuit incident report. The Task Force did not take lightly the imposition of another reporting requirement. It did, however, strongly believe that the risks and potential consequences inherent in the conduct of vehicular pursuits are such that this measure is warranted. The Task Force considered the entire range of incidents for which police officers are now required to file formal reports and concluded that vehicular pursuits would rank among the most critical on any such list.

The 2009 policy revision clarifies a police officer's responsibilities with respect to Title 39 when he or she is attempting to close the distance between the officer and the alleged offender. The revision states that when attempting to close the distance, police officers are subject to all motor vehicles laws including those laws governing the right of way. The revision also directs law enforcement agencies to investigate all collisions involving a law enforcement vehicle to determine whether the accident could have been prevented.

The Task Force strongly believed that the value of its efforts will ultimately be

determined by the manner in which this policy is implemented. Successful implementation will be a direct result of the effort invested to train and inform police officers about the policy's content. Toward that end, the policy requires that all police officers attend in-service vehicular pursuit training twice a year.

The Task Force knew that the policy had to provide specific guidance as to the conditions under which the initiation of pursuits should be authorized. Some of the most difficult issues considered by the Task Force arose as it dealt with this key portion of the policy. The New Jersey Police Vehicular Pursuit Policy Task Force readily concluded that the severity of 1st and 2nd degree crimes was such that law enforcement officers should have the discretion to pursue, but the appropriate course of action was not so quickly apparent with respect to some other offenses.

The question of how to deal with the 3rd degree offense of car theft is complex and not susceptible to easy resolution. While the Task Force found that the majority of pursuits statewide were for motor vehicle offenses, a number of pursuits undertaken during the three year period reviewed were pursuits of stolen cars. Task Force members were also aware that tragic consequences have occurred over the same period as a result of some stolen car pursuits. Such tragedies, no matter how infrequent, certainly militate against authorizing the pursuit of car thieves. Nonetheless, car theft is a particularly egregious problem in our society at the present time. Not only has car theft become epidemic in some of our communities, but experience has shown that it is often the prelude to the commission of more serious violent crime. We would not, by a blanket prohibition of such pursuits, want to send a false signal to would-be car thieves that they can go about their illegal business with impunity.

There is no simple, guaranteed correct answer to this policy question. The Task Force believed that in the final analysis, pursuit of stolen cars, like other serious crimes, must be left to the discretion of the police officer. Of course, the policy makes it clear that if there are other viable means to apprehend a car thief, or if there is a fair likelihood that the car thief can and will be apprehended within a reasonable future time, or if the risks involved in the pursuit are simply too substantial, then a vehicular pursuit should be avoided. Also, it should be clear that this policy is not meant to imply that prolonged pursuit should be a routine response to joy riding if such a situation could be reasonably determined in advance of the pursuit. As is so often true with difficult law enforcement issues, an oversimplified and quick response to a complex problem does not often serve the best interests of either the police or the public. It is the consensus of the Task Force that pursuits of stolen automobiles, as with all other pursuits, should be avoided whenever possible. However, the Task Force also believes that relying on the combined judgement of police officers and police supervisors will sufficiently safeguard the public.

NEW JERSEY POLICE VEHICULAR PURSUIT POLICY

PURPOSE OF POLICY

The primary purpose of this policy is to secure a balance between the protection of the lives and safety of the public and police officers, and law enforcement's duty to enforce the law and apprehend violators. Since there are numerous situations which arise in law enforcement that are unique, it is impossible for this policy or any standard operating procedure to anticipate all possible circumstances. Therefore, this policy is intended to guide a police officer's discretion in matters of vehicular pursuit.

This policy has been formulated to provide minimum statewide requirements to direct law enforcement activities in this very critical area of police practice. However, police department size, population density and other characteristics vary among communities in this state. Therefore, county and local law enforcement agencies are expected to develop individual standard operating procedures which account for departmental variations, yet are consistent with this policy.

Deciding whether to pursue a motor vehicle is among the most critical decisions made by law enforcement officers. It is a decision which must be made quickly and under difficult, often unpredictable circumstances. In recognition of the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for a decision not to engage in a vehicular pursuit or to terminate an ongoing vehicular pursuit based on the risk involved, even in circumstances where this policy would permit the commencement or continuation of the pursuit. Likewise, police officers who conduct pursuits consistent with this policy will be strongly supported by the law enforcement community in any subsequent review of such actions.

DEFINITIONS

A. Authorized Tire Deflation Device: A device designed and intended to produce a controlled deflation of one or more tires of a pursued vehicle, and capable of operation consistent with criteria established in this policy.

B. Boxing In: The surrounding of a violator's moving vehicle with moving pursuit vehicles which are then slowed to a stop along with the violator's vehicle.

C. Divided Highway: A road which includes a physical barrier between traffic traveling in opposite directions.

D. Heading Off: An attempt to terminate a pursuit by pulling ahead of, behind or toward a violator's moving vehicle to force it to the side of the road or to otherwise come to a stop.

E. Law Enforcement Officer: Any person sworn to uphold the laws of the State of

New Jersey Police Vehicular Pursuit Policy New Jersey, and who is certified by the Police Training Commission or whose training has included Pursuit/Emergency Driving, and who is currently employed by a public safety agency.

F. Paralleling:

1. Street Paralleling: Driving a police vehicle on a street parallel to a street on which a pursuit is occurring.

2. Vehicle Paralleling: A deliberate offensive tactic by one or more patrol vehicles to drive alongside the pursued vehicle while it is in motion.

G. Pursuit Driving: Pursuit driving is an active attempt by a law enforcement officer operating a motor vehicle and utilizing emergency warning lights and an audible device to apprehend one or more occupants of another moving vehicle when the officer reasonably believes that the driver of the fleeing vehicle is aware of the officer's attempt to stop the vehicle and is resisting apprehension by increasing vehicle speed, ignoring the officer or otherwise attempting to elude the officer.

H. Pursuit Vehicles:

1. Primary Unit: The police vehicle that initiates a pursuit or any unit that assumes control of the pursuit as the lead vehicle (the first police vehicle immediately behind the fleeing suspect).

2. Secondary Unit: Any police vehicle which becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.

I. Roadblock: A restriction or obstruction used or intended for the purpose of preventing free passage of motor vehicles on a roadway in order to effect the apprehension of a violator.

1. Avenue of Escape: A gap in a roadblock which requires the violator to decrease the vehicle's speed to permit the violator to bypass the roadblock.

2. Blocking Vehicle: A motor vehicle, often a law enforcement vehicle, which is placed perpendicular to a roadway or angled in such a way as to create a roadblock.

J. Supervisor: A police officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other police officers.

K. Vehicle Contact Action: Any action undertaken by the pursuing officer intended to result in contact between the moving police vehicle and the pursued

vehicle.

L. Violator: Any person who a police officer reasonably believes: (1) has committed an offense of the first or second degree or an offense enumerated in Appendix A of this policy, or (2) poses an immediate threat to the safety of the public or other police officers.

I. DECIDING WHETHER TO PURSUE

A police officer has the authority, at all times, to attempt the stop of any person suspected of having committed any criminal offense or traffic violation. It is clear that while it is the officer who initiates the stop, it is the violator who initiates the pursuit. The officer's decision to pursue should always be undertaken with an awareness of the degree of risk to which the law enforcement officer exposes himself and others. The officer must weigh the need for immediate apprehension against the risk created by the pursuit.

A. Authorization to Pursue

1. A police officer may only pursue

   a. When the officer reasonably believes that the violator has committed an offense of the first or second degree, or an offense enumerated in Appendix A of this policy, or

   b. When a police officer reasonably believes that the violator poses an immediate threat to the safety of the public or other police officers.

2. Pursuit for motor vehicle offenses is not authorized under the above criteria unless the violator's vehicle is being operated so as to pose an immediate threat to the safety of another person.

B. In the event that one of the authorization requirements is satisfied, a pursuit should not be automatically undertaken. An officer must still consider the following factors:

1. Likelihood of successful apprehension.

2. Whether the identity of the violator is known to the point where later apprehension is possible.

3. Degree of risk created by pursuit

   a. Volume, type, speed and direction of vehicular traffic.

   b. Nature of the area: residential, commercial, school zone, open highway,

etc.

c. Population density and volume of pedestrian traffic

d. Environmental factors such as weather and darkness

e. Road conditions: construction, poor repair, extreme curves, intersections controlled by traffic signals or signs, ice, etc.

4. Police Officer characteristics

a. Driving skills

b. Familiarity with roads

c. Condition of police vehicle

C. Terminating the pursuit

1. The pursuing officer shall terminate the pursuit

a. If instructed to do so by a supervisor, or

b. If the officer believes that the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the violator, or

c. If the violator's identity is established to the point where later apprehension may be accomplished and where there is no immediate threat to the safety of the public or police officers, or

d. If the pursued vehicle's location is no longer known or the distance between the pursuing vehicles and the violator's vehicle becomes so great that further pursuit is futile, or

e. If there is a person injured during the pursuit and there are no police or medical personnel able to render assistance, or

f. If there is a clear and unreasonable danger to the police officer or the public. A clear and unreasonable danger exists when the pursuit requires that the vehicle be driven at excessive speeds or in any other manner which exceeds the performance capabilities of the pursuing vehicles or police officers involved in a pursuit, or

g. If advised of any unanticipated condition, event or circumstance which substantially increases the risk to public safety inherent in

the pursuit.

II. ROLE OF THE PURSUING OFFICER

A. The decision to initiate and/or continue a pursuit requires weighing the need to immediately apprehend the violator against the degree of risk to which the officer and others are exposed as a result of the pursuit.

B. Upon the commencement of a pursuit, the pursuing officer will immediately activate emergency lights, audible device and headlights.

C. Once the pursuit has been initiated, the primary unit must notify communications and a superior officer providing as much of the following information as is known:

1. Reason for the pursuit.

2. Direction of travel, designation and location of roadway.

3. Identification of the violator's vehicle: year, make, model, color, vehicle registration number and other identifying characteristics.

4. Number of occupants.

5. The speed of the pursued vehicle.

6. Other information that may be helpful in terminating the pursuit or resolving the incident.

III. VEHICULAR PURSUIT RESTRICTIONS

A. No pursuits will be conducted

1. In a direction opposite to the flow of traffic on a divided highway.

2. In a police vehicle in which an individual who is not a law enforcement officer is either the driver or passenger.

B. No more than two police vehicles (primary unit and secondary unit) shall become actively involved in a pursuit unless otherwise specifically directed by a supervisor.

C. A motorcycle officer may initiate a pursuit, but will relinquish primary unit status immediately upon the participation of a marked police vehicle.

D. An unmarked police vehicle will not participate in a vehicular pursuit unless it is equipped with an emergency light and an audible device. The unmarked car

shall relinquish primary unit status immediately upon the participation of a marked vehicle.

E. To diminish the likelihood of a pursuit, a police officer intending to stop a vehicle for any violation of the law shall, when possible and without creating a threat to public safety, close the distance between the two vehicles prior to activating emergency lights and an audible device. Police officers shall recognize that while attempting to close the distance and prior to the initiation of a pursuit and the activation of emergency lights and an audible device, they are subject to all motor vehicle laws governing the right of way (*e.g. N.J.S.A.* 39:4-91 and -92).

F. Throughout the course of a vehicular pursuit, pursuing officers shall not attempt to overtake or pass the violator's moving vehicle.

G. During the course of a pursuit and when approaching an intersection controlled by traffic signals or signs, or any other location at which there is a substantially increased likelihood of collision, the operator of any pursuit vehicle shall, prior to entering the intersection, reduce the vehicle's speed and control the vehicle so as to avoid collision with another vehicle or a pedestrian. The officer shall observe that the way is clear before cautiously proceeding through the intersection. At all other times including an attempt to close the distance prior to the initiation of a pursuit, police officers shall observe the applicable laws governing the right of way at intersections and other locations.

H. Officers involved in a pursuit will not engage in vehicle paralleling.

I. There shall be no street paralleling along the route unless the pursuit passes through a patrol's assigned area. A patrol that is parallel-street-pursuing shall not join or interfere with a pursuit, and shall stop all pursuit-related activity at the boundary of its assigned area.

J. Boxing in or heading off a violator's moving vehicle is permitted only under extraordinary circumstances. These tactics substantially increase the risk inherent in the pursuit and shall only be employed:

1. At low speeds, and

2. With the approval of a supervisor, or

3. In response to an imminent threat to the safety of the public or a police officer.

K. Roadblocks must only be employed as a last resort in circumstances where deadly force would otherwise be justified.

1. The use of a roadblock must be authorized by a supervisor.

2. At no time will a roadblock be established until all pursuing police vehicles

are made aware of the roadblock and its location and have acknowledged this awareness.

3. Once a roadblock has been established and a vehicle or barricade has been positioned in the roadway, there shall be:

   a. adequate distance to see the roadblock

   b. an avenue of escape

   c. no one in the blocking vehicle(s).

L. Officers involved in a pursuit shall not fire any weapon from or at a moving vehicle nor engage in any vehicle contact action except as a last resort to prevent imminent death or serious injury to the officer or another person where deadly force would otherwise be justified.

IV. AUTHORIZED TIRE DEFLATION DEVICES

A. Law enforcement agencies may choose to utilize authorized tire deflation devices during the course of a vehicular pursuit. Agencies which choose to employ this strategy may only utilize devices authorized by this policy. As with all operational decisions made during the conduct of a vehicular pursuit, the use of such devices is subject to the assessment of inherent risk balanced against the need to apprehend a fleeing offender.

B. To be authorized for deployment and use under the vehicular pursuit policy, the tire deflation device must:

   1. Be capable of producing a controlled deflation of one or more tires of a pursued vehicle;

   2. Be capable of being deployed or activated immediately before the pursued vehicle drives over it, and removed or deactivated immediately after the pursued vehicle drives over it; and

   3. Allow the officer to remain a safe distance from the roadway at the time of deployment or activation.

C. Prior to the deployment and use of an authorized tire deflation device, the law enforcement agency shall

   1. Modify its vehicular pursuit policy to provide for the proper use of the authorized tire deflation device; and

   2. Train all officers in the use of the authorized tire deflation device.

a. Training must include practical, hands-on operation of the authorized tire deflation device.

D. Use of an authorized tire deflation device

1. An authorized tire deflation device may be utilized only after supervisory approval.

2. An authorized tire deflation device shall not be used to stop motorcycles, mopeds, or similar vehicles.

3. The authorized tire deflation device should not be used in locations where specific geographic features (e.g., sharp curves, alongside of rivers, steep embankments, etc.) increase the risk of serious injury to the officer, violator or public.

4. Deployment locations should have reasonably good sight distances to enable the officer to observe the pursuit and other traffic as it approaches.

5. The officer deploying the authorized tire deflation device should not attempt to overtake and pass a high speed pursuit in order to position the device.

E. Deployment

1. The officer deploying the authorized tire deflation device should do so from a position of safety.

2. The officer deploying the authorized tire deflation device should be in position to allow sufficient time for deployment.

3. The supervisor must coordinate the efforts of all law enforcement units involved in the pursuit.

4. The communications operator shall notify all units of the location of the authorized tire deflation device deployment.

F. Use of the authorized tire deflation device

1. The officer operating the authorized tire deflation device should take a position of safety as the pursued vehicle approaches.

2. The officer shall deploy or activate the authorized tire deflation device immediately before the pursued vehicle arrives at the point where it would impact the device.

3. The officer shall remove or deactivate the device immediately

after the pursued vehicle goes over the authorized tire deflation device.

4. The officer should immediately notify communications if the pursued vehicle impacted the authorized tire deflation device, if the officer observed any signs of deflation, and the direction and operation of the pursued vehicle after the impact.

G. Reporting

1. After deployment or use of the authorized tire deflation device, the law enforcement agency shall include at least the following information in the narrative of the vehicle pursuit report:

a. Date, time and location of deployment and activation

b. Officer who deployed and activated the authorized tire deflation device

c. Results of the use of authorized tire deflation device:

(1) on the pursued vehicle;

(2) on other vehicles, property or people; and

(3) on the authorized tire deflation device itself.

V. ROLE OF THE SUPERVISOR

Upon being notified or becoming aware of the pursuit, the supervisor shall decide as quickly as possible whether or not the pursuit should continue.

A. The supervisor shall permit a pursuit to continue only if

1. There is a reasonable belief that the violator has committed an offense of the first or second degree, or an offense enumerated in Appendix A of this policy, or

2. There is a reasonable belief that violator poses an immediate threat to safety of the public or other police officers.

B. The supervisor shall order a pursuit terminated at any time if he or she concludes that the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the violator.

C. The supervisor shall order the pursuit terminated if the suspect's identity is established to the point where later apprehension may be accomplished and where there is no immediate threat to public safety.

D. In recognition of the overall population density and volume of vehicular traffic in this State, and the increased risk attendant to prolonged vehicular pursuits, a supervisor shall order the termination of any pursuit of protracted duration unless the supervisor determines that further pursuit is justified to respond to an immediate threat to public safety.

E. The supervisor shall ensure, for the duration of the pursuit, that this policy and agency procedures are followed by all officers.

VI. ROLE OF POLICE COMMUNICATIONS

A. The communications operator shall:

1. Immediately notify a police supervisor of a pursuit in progress if a supervisor has not already been otherwise notified;

2. Keep the supervisor apprised of the duration and progress of the pursuit.

B. When possible, a police supervisor shall determine whether there is a need to assume control over and coordinate pursuit related communications.

C. All law enforcement agencies shall establish procedures to ensure that radio channels remain open for pursuit related transmissions and that all necessary information is made available to officers involved in the pursuit.

VII. REINSTATING PURSUITS

A. Reinstatement of any previously terminated pursuit shall be undertaken consistent with the authorization criteria for originally initiating a pursuit.

VIII. INTERJURISDICTIONAL PURSUITS

A. The original pursuing jurisdiction shall provide timely notification of a pursuit in progress to any other jurisdiction into which the pursuit enters.

1. Notifying another jurisdiction that a pursuit is in progress is not a request to join the pursuit. The pursuing agency shall advise if assistance is necessary. Whenever the pursuing officers are unfamiliar with the roadways and terrain of the jurisdiction into which the pursuit has entered, the pursuing agency shall, when possible, seek the assistance of, and be prepared to relinquish the pursuit to, the other agency.

IX. PURSUIT REPORTING

A. All law enforcement officers who operate law enforcement vehicles in vehicular pursuit situations shall be required to file a pursuit incident report. Pursuit incident reports are to be filed in a manner established by agency operating

procedures and should contain, at a minimum, the following information:

1. Location, date and time of pursuit initiation.

2. Location, date and time of pursuit termination.

3. Highest speed achieved, weather conditions, road surface and description of pursuit area.

4. Reasons for initiating and terminating the pursuit.

5. Consequences of the pursuit, such as accidents, injuries or fatalities.

6. Whether or not the violator was apprehended.

7. The offenses with which the violator was charged.

B. All law enforcement agencies shall prepare an annual agency Vehicular Pursuit Summary Report for submission to the county prosecutor. The annual report shall be submitted on the Police Vehicular Summary Report Form and shall contain the following information:

1. Total number of pursuits.

2. Number of pursuits resulting in accident, injury, death and arrest.

3. The number and type of vehicles involved in accidents (police, violator, third party).

4. A description of individuals injured or killed (police, violator, third party).

5. The number of violators involved and arrested in pursuit incidents, including passengers.

6. The number of pursuits in which an authorized tire deflation device was used.

X. VEHICULAR PURSUIT REVIEW

A. All law enforcement agencies shall establish procedures for the formal review of all pursuit incident reports.

B. Pursuit incidents should be reviewed for compliance with applicable policy and department operating procedures.

C. Pursuit incidents should also be reviewed to identify the need for remedial training of individual officers or specific areas of emphasis in agency-wide

training regarding pursuit situations and the application of pursuit policies and procedures.

D. Periodic review of pursuit incidents and summary pursuit information should be conducted in order to identify any additions, deletions or modifications warranted in departmental pursuit procedures.

E. Every law enforcement agency shall conduct an investigation when one of its vehicles collides with another vehicle or any other object during the course of a pursuit. The investigation shall determine whether the collision could have been prevented. A copy of the report shall be made available to the county prosecutor. In every case where the collision could have been prevented, the report shall set forth the actions taken by the agency to address the cause or causes of the collision (*e.g.* remedial training, revision of department policy, disciplinary action, etc.).

XI. TRAINING

A. All officers shall attend in-service vehicular pursuit training twice annually.

B. Vehicular pursuit training shall consist of knowledge of applicable statutes, familiarization with statewide police pursuit policy and departmental procedures, decision making skills, and the use of an authorized tire deflation device if employed by the agency.

C. An annual report shall be filed with the county prosecutor or, in the case of certain state law enforcement agencies, with the Director of the Division of Criminal Justice. The report will confirm in-service pursuit training of all police officers in conjunction with semi-annual firearm requalification and the use of force training.

INDIVIDUAL AGENCY POLICIES

Law enforcement agencies may adopt more restrictive policies as to pursuit procedures or more extensive training and reporting requirements. In the event an agency chooses to do so, the agency policies and procedures will prevail with respect to applicability to that agency's personnel.

APPENDIX A TO NEW JERSEY POLICE VEHICULAR PURSUIT POLICY

OFFENSES IN ADDITION TO THOSE OF THE FIRST AND SECOND DEGREE FOR WHICH VEHICULAR PURSUIT MAY BE AUTHORIZED UNDER SUBSECTION IA(1)(a)

Vehicular Homicide 2C:11-5

Aggravated Assault 2C:12-1b

Criminal Restraint 2C:13-2

Aggravated Criminal Sexual Contact 2C:14-3a

Arson 2C:17-1b

Burglary 2C:18-2

Automobile Theft 2C:20-2

Theft by Extortion 2C:20-5

Escape 2C:29-5

Manufacturing, Distributing or Dispensing of CDS 2C:35-5b

POLICE PURSUIT INCIDENT REPORT

1. Department	2. Incident No.	3. Pursuit date
4. Officer	5. Badge No.	6. Car No.
7. Supervisor notified	8. Badge No.	9.
10. Initiating agency	11. Initiating officer	
12. Location officer became involved	13. Time officer became involved	14. Highest speed
15. Location officer terminated	16. Time officer terminated	17. Approx. distance in pursuit (miles)

18. Weather

☐ Clear ☐ Rain ☐ Snow ☐ Other _____

19. Road surface

☐ Dry ☐ Wet ☐ Ice or snow ☐ Other _____

20. Area

☐ Residential ☐ Commercial ☐ Highway ☐ Rural

21. Reason pursuit initiated

☐ Traffic violation (describe)_____ ☐ DWI

☐ Warrant (describe)_____ ☐ Stolen Car

☐ Assisting other agency (name)_____

☐ Suspected criminal involvement (describe)_____

☐ Other _____

22. Tire Deflation Device

☐ Tire deflation device used Type _____ Effect _____

23. Reason pursuit terminated

☐ Pursued voluntarily stopped/surrendered ☐ Pursued stopped in accident

☐ Pursued voluntarily stopped/attempted flight on foot ☐ Pursued escaped in vehicle

☐ Apprehended ☐ Officer decision

☐ Escaped ☐ Officer vehicle in accident

☐ Pursued forced to stop/vehicle disabled ☐ Supervisor decision

☐ Other (describe)_____

24. Number of people injured		25. Number of people killed	
_____ # Pursued vehicle	_____ # Police vehicles	_____ # Pursued vehicle	_____ # Police vehicles
_____ # Third party vehicles	_____ # Pedestrians	_____ # Third party vehicles	_____ # Pedestrians

26. Number of vehicles in accidents		27. No. of people in pursued vehicle	28. Number of people arrested
_____ Pursued vehicle	_____ # Police vehicles		
_____ # Third party vehicles			

29. List charges for driver

30. Signature	31. Date	32. Reviewed by

(DCJ 7/2009)

POLICE PURSUIT INCIDENT REPORT
Instructions

1. Department: Enter the name of the agency involved in the pursuit and completing the report.
2. Incident No.: Enter the agency's unique number for the incident involving the pursuit.
3. Pursuit date: Enter the date on which the pursuit occurred (or began if it went past midnight).
4. Officer: Enter the name of the officer involved in the pursuit and completing the report.
5. Badge No.: Enter the badge number or other identifier of the officer in Block #4.
6. Car No.: Enter the car or unit number of the vehicle that the officer in Block #4 used in the pursuit.
7. Supervisor Notified: Enter the name of the first supervisor who was notified that a pursuit had been initiated.
8. Badge No.: Enter the badge number or other identifier of the supervisor in Block #7.
9. : *This block reserved for use by the agency.*
10. Initiating agency: Enter the name of the law enforcement agency that *originally* began the pursuit.
11. Initiating officer: Enter the name of the law enforcement officer who *originally* began the pursuit.
12. Location officer became involved: Enter the location that the officer in Block #4 became involved in the pursuit.
13. Time officer became involved: Enter the time that the officer in Block #4 became involved in the pursuit (use military time).
14. Highest speed: Enter the highest speed reached during the pursuit by the officer in Block #4.
15. Location officer terminated: Enter the location that the officer in Block #4 terminated involvement in the pursuit.
16. Time officer terminated: Enter the time that the officer in Block #4 terminated involvement in the pursuit (use military time).
17. Approx. distance in pursuit (miles): Enter the approximate distance that the officer in Block #4 was involved in the pursuit. Use miles and tenths of miles.
18. Weather: Check the box(es) that apply to the weather at the time the officer in Block #4 became involved in the pursuit.
19. Road surface: Check the box(es) that apply to the road conditions at the time the officer in Block #4 became involved in the pursuit.
20. Area: Check the box(es) that apply to the type(s) of area that the pursuit went through during the involvement of the officer in Block #4.
21. Reason pursuit initiated: Check the box(es) that apply to the reason that the pursuit was initiated. If the officer in Block #4 *is different than* the officer in Block #11, indicate the reason(s) for which the pursuit *originally* began.
22. Tire deflation device: Check if a tire deflation device was used. If a tire deflation device was used, enter the type of device used (manufacturer and model) and the effect (for example, "2 tires punctured" or "pursued driver evaded device").
23. Reason pursuit terminated: Check the box(es) that apply to the reason that the officer in Block #4 terminated involvement in the pursuit.
24. Number of people injured: Enter the total number of people injured as a result of the pursuit in each of the categories.
25. Number of people killed: Enter the total number of people killed as a result of the pursuit in each of the categories.
26. Number of vehicles in accidents: Enter the total number of vehicles involved in accidents as a result of the pursuit in each of the categories.
27. No. of people in pursued vehicle: Enter the total number of people in the pursued vehicle at the time that the officer in Block #4 became involved in the pursuit.
28. Number of people arrested: Enter the total number of people arrested as a result of the pursuit, even if the charges were not directly related to the pursuit (e.g., a passenger in the vehicle had an outstanding warrant which was discovered after

the pursuit).

29. List charges for driver: List all of the offenses with which the driver was charged.
30. Signature: Signature of the officer in Block #4.
31. Date: Enter the date that the report was completed.
32. Reviewed by: This block can be initialed or signed by a supervisor after reviewing the report.

POLICE PURSUIT SUMMARY REPORT

Agency	County
Reporting Period	
Person completing report I am	Date completed
Phone number	

1. Number of pursuits initiated	
2. Number of pursuits resulting in accidents	
3. Number of pursuits resulting in injuries (NO DEATHS)	
4. Number of pursuits resulting in death	
5. Number of pursuits resulting in arrest	
6. Number of vehicles in accidents	
a. Pursued vehicles	
b. Police vehicles	
c. Third party vehicles	
7. Number of people injured	
a. Pursued vehicles	
b. Police vehicles	
c. Third party vehicles	
d. Pedestrians	
8. Number of people killed	
a. Pursued vehicles	
b. Police vehicles	
c. Third party vehicles	
d. Pedestrians	
9. Number of people arrested	
10. Number of pursuits in which a tire deflation device was used	

(DCJ 7/2009)