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**TO: ALL BERGEN COUNTY LAW ENFORCEMENT EXECUTIVES,
OFFICERS-IN-CHARGE, AND SHERIFF**

FROM: PROSECUTOR MARK MUSELLA

DATE: JUNE 22, 2020

**SUBJECT: BERGEN COUNTY PROSECUTOR'S OFFICE LAW ENFORCEMENT
DIRECTIVE NO. 2020-8 REVISED INTERNAL AFFAIRS PROCEDURES
AND PUBLIC DISCLOSURE OF SERIOUS LAW ENFORCEMENT
DISCIPLINARY VIOLATIONS**

BACKGROUND

The current unrest in our country has once again made evident the tensions between law enforcement and some of the communities we serve. It is therefore an appropriate time for us to reassess our relationships with these communities and the procedures which guide and discipline our profession. This reassessment should make us better law enforcement officers and help to heal some of the divisions in our society. The Bergen County Prosecutor's Office ("BCPO") has been involved in this reassessment since I became Bergen County Prosecutor a little over a year ago and we had planned to implement modifications to Bergen County's Internal Affairs ("IA") procedures when the Attorney General's Revised Internal Affairs Policy and Procedures ("IAPP") took effect. You will recall that the IAPP was issued to take effect on April 1, 2020, but was stayed because of the Covid-19 health crisis. However, recent events have persuaded us that these modifications must be issued now, to assure all of Bergen County's diverse communities that we remain in the forefront of modern policing and are committed to fair and equal treatment for all our residents.

This Directive is therefore issued to address disparities in the way Bergen County police agencies conduct IA investigations and address the uneven level of discipline imposed on police officers among the various agencies. While the majority of police departments perform their IA function in a fair and admirable fashion, our experience with our county's various IA units reveals a wide variation in the quality of the IA function



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among those agencies. Additionally, our experience also reveals a disparity among police agencies in the level of discipline imposed upon officers for similar disciplinary violations. This is not surprising, given that the BCPO oversees 72 separate agencies, each with its own law enforcement executive and disciplinary culture. However, predictability and fairness to officers and our obligation to be, as well as to appear consistent, to the general public mandate that there be a general uniformity of disciplinary procedures and discipline across the county.

Additionally, on June 15, 2020 our Attorney General issued his Directive Requiring Public Disclosure of the Identities of Officers Who Commit Serious Disciplinary Violations (“AG Directive”) (copy annexed hereto as Exhibit A). The AG Directive mandates the future disclosure of the identities of officers who commit serious disciplinary infractions, defined as infractions that have sanctions of termination, reduction in rank or grade or suspensions greater than five days. The AG Directive is directly relevant to the IA function of our departments and requires a consistent approach to the investigation of IA matters and the imposition of police discipline.

I MODIFIED INTERNAL AFFAIRS PROCEDURES

A. As the Chief law enforcement agency of Bergen County, the BCPO exercises supervisory authority over all Bergen County law enforcement agencies. This includes close supervision of the IA function of our law enforcement agencies. Police hiring decisions are closely related to the IA function, since IA units generally conduct pre-hiring background investigations of applicants for police positions. Proper background investigations are critical to ensuring that only properly vetted and qualified individuals are approved for police positions. They help to ensure that those individuals hired as police officers will conduct themselves properly and in accordance with police discipline. Therefore, in order to ensure in-depth background investigations and the proper vetting of applicants for police positions by Bergen County police agencies, the BCPO Confidential Investigations Unit (“CIU”) will develop specific metrics that local agencies must fulfill in conducting these background investigations. Additionally, law enforcement executives will be required to certify to the BCPO that their agencies’ background investigations meet the required metrics prior to hiring applicants for police positions. To ensure compliance with these requirements, the BCPO CIU will conduct random audits of law enforcement background investigation procedures and correct those procedures when necessary.

B. It is evident that IA investigations of allegations of criminal, excessive force against civilians, and racially or bias motivated behavior by police officers deeply implicates the interests of the general public, as well as individual victims. These interests require that the public remains assured that these investigations are performed in a thorough and disinterested fashion. The BCPO exercises strict supervisory authority and guidance over all of these investigations and many of them are already being conducted by the BCPO. However, in order to ensure full public confidence in all of these investigations, all well based allegations of criminal violations, excessive force, and racially motivated or biased behavior against a particular group must be referred to the BCPO CIU for full

investigation. In appropriate cases, the BCPO will recommend the discipline that should be imposed.

C. Presently, the BCPO requires all Bergen County law enforcement agencies to conduct annual self-audits of their IA units. As noted, most departments perform their IA functions well, but there are variations in the procedures and thoroughness of these investigations. Therefore, to foster uniform procedural and in-depth IA investigations, the BCPO CIU will audit local departments' IA units on a random basis. These audits will include detailed recommendations for improvements as well as the direct monitoring of IA units in appropriate cases to ensure compliance.

D. Finally, also in an effort to promote consistency across the county, IA officers and law enforcement executives will be trained on the principles of police discipline, including consistent and proper progressive discipline. This training will be included in the Attorney General's mandated training on his Revised IAPP.

These procedural modifications are a significant departure from current IA practice in our county. They will require planning by all Bergen County law enforcement agencies, including the BCPO, as well as the reallocation of manpower. To afford sufficient time for planning and reallocation of personnel, these new procedures will not take effect until January 1, 2021.

II PUBLIC DISCLOSURE OF SERIOUS DISCIPLINARY VIOLATIONS

As noted, the AG Directive requires that going forward the violations of those officers who have received serious discipline by a termination, reduction in rank or grade, or more than five days suspension must be publicly identified. The AG Directive notes that the State Police will publish the names of State Troopers who have received such discipline since 2000. This raises the issue of the proper policy for Bergen County with respect to disclosing the identities of those Bergen County officers who received comparable discipline prior to June 15, 2020, the date of the AG Directive.

The issue of retrospective reporting of the identities of police officers who received serious discipline prior to June 15, 2020 raises concerns of balancing the fairness to the individual officers involved and the need for transparency to the public. As noted previously, the level of discipline for similar offenses can vary widely across our county and the concept of progressive discipline may distort the significance of disciplinary sanctions, since progressive discipline requires increasing sanctions for minor, even trivial offenses, which might involve a greater than five day suspension, but have no substantial bearing on an officer's integrity or fitness. On the other hand, we must acknowledge the public's interest in knowing about officer misconduct that raises serious concerns about fitness for duty or systemic problems within a police agency. In this regard the AG Directive is helpful, since it identified the violations that raise those serious concerns; they

are violations involving excessive force against civilians, racially motivated misconduct, driving while intoxicated, domestic violence, theft, the filing of false reports and conduct that results in criminal charges. AG Directive 3.

Balancing all of these considerations, including fairness to individual officers and the need for transparency to the public, this Directive requires all Bergen County law enforcement executives to implement the letter and spirit of the AG Directive as follows:

1. On an annual basis, every Bergen County law enforcement agency shall publish on its public website a report summarizing the types of internal affairs complaints against its officers and the disposition of those complaints. This report must be statistical in nature.
2. On a semi-annual basis, every Bergen County law enforcement agency shall submit to the BCPO CIU and publish on its public website a brief synopsis of all complaints where a termination, reduction in rank or grade, and/or suspension of more than five days was assessed to an agency officer on or after June 15, 2020. This synopsis shall include the identity of each officer subject to final discipline, a brief summary of the transgressions, and a statement of the sanctions imposed. This synopsis shall not contain the identities of the complainants. The initial synopsis will be due on December 31, 2020. Future synopses are due on June 30 and December 31 of each year, thereafter.
3. By October 1, 2020, to the extent records are available, every Bergen County law enforcement agency shall submit to the BCPO CIU and publish on the agency's public website a brief synopsis of all complaints from January 2000 to September 30, 2020 where a termination, reduction in rank or grade, and/or suspension of more than five days was assessed as final discipline to a currently active duty agency officer for a violation involving excessive force to a civilian, racially or bias motivated violations, driving while intoxicated, domestic violence, theft, the filing of false reports or conduct that resulted in criminal charges. This synopsis shall include the identity of each officer subject to final discipline, a brief summary of transgressions, and the sanctions imposed. This synopsis shall not contain the identities of the complainants.

We also remind you that you may always highlight the outstanding work performed by the vast majority of our law enforcement officers. Their promotions, commendations, heroism and everyday aid and support rendered to our communities should be publicized on your websites and in your local news media, so that the public is fully informed of how vital law enforcement is to the safety, security and well being of all of our residents.

We are confident that the IA modifications contained in this Directive will result in more consistent and thorough IA investigations and a county-wide IA system that is more accountable to the public as well as fair to all county law enforcement officers. We are also confident that the requirements for reporting the identities of police officers for the

violations detailed in this Directive strikes a fair balance between the rights of the officers involved and the transparency necessary for public scrutiny.

III FUTURE PLANNING

The measures implemented in this Directive are only initial steps that must be taken in the general reassessment of Bergen County law enforcement. We are considering others; such as mandating formal standard operating procedures for all Bergen County police agencies; assisting these agencies with police accreditation; making body worn cameras more widely available; more diverse police training; and increased community outreach where we listen to our communities. These and other initiatives will require the commitment of financial resources, meticulous planning, collaboration among the entire police community and, most important, commitment by us as representatives of law enforcement to make ourselves better and to strengthen trust with our communities.

As always, I thank you for your cooperation.



MARK MUSELLA
BERGEN COUNTY PROSECUTOR

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