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ATTORNEY GENERAL GUIDELINES

TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Andrew J. Bruck, Acting Attorney General

DATE: December 7, 2021

SUBJECT: **Promoting Diversity in Law Enforcement Recruiting and Hiring**

In order to most effectively serve the communities of New Jersey, it is important for law enforcement agencies to strive for workforces that reflect the diversity of the jurisdictions they serve and that can effectively interact with all community members. With this need in mind, in October 2020 the Legislature passed a law requiring each law enforcement agency in New Jersey to establish a program designed to ensure every agency was “comprised of law enforcement officers who reflect the diversity of the population of the community the agency is charged with protecting.” N.J.S.A. 52:17B-4.10 et seq. (the “Act”). The Act directed the Attorney General to develop these Guidelines to ensure its uniform application.

These Guidelines describe the process by which each agency shall establish a program to (1) identify underrepresented groups and (2) take action to address any underrepresentation. Additionally, in accordance with the Act, these Guidelines set forth procedures for the collection and reporting of demographic data regarding recruiting, hiring, promoting, and other personnel actions concerning law enforcement officers in New Jersey.¹

It is important to note that most large law enforcement agencies in New Jersey are governed by civil service statutes and regulations. *See* N.J.S.A. 11A:1-1 et seq.; N.J.A.C. 4A: 1-1.1 et seq. This system requires the agency to hire police officer candidates from certified lists supplied by the New Jersey Civil Service Commission (“CSC”) following a state-administered testing process. The CSC typically administers this testing process every two to three years, and the CSC uses the results to compile a ranked list of qualified law enforcement candidates. For agencies that utilize this process, they are limited to the list of qualified candidates provided by CSC—only candidates who fail background checks, medical/psychological exams, residency requirements (or similar, non-discretionary factors), may be removed from or bypassed on the lists.

¹ Nothing in these Guidelines shall impair a law enforcement agency’s otherwise legally permitted recruiting and hiring practices.



More specifically, pursuant to the CSC’s “rule of three,” the CSC provides an agency seeking to hire a new officer with the top three candidates from the CSC’s certified list. The hiring agency is then limited to those three candidates to fill the vacancy. Veterans of military service who pass the exam are given preference and placed at the top of the certified list.

As a result, agencies governed by civil service will face additional processes in their efforts to address underrepresentation. These Guidelines provide suggestions for actions to be taken in that regard, including making CSC test preparation courses widely available. In addition, agencies should be aware of and become familiar with 2021 legislation, P.L.2021, c.234, 235, 236, which aim to address various barriers to diversity that arise in CSC jurisdictions and contain certain CSC data collection requirements.

Definitions

- ***Applicant.***
 - *Non-civil service jurisdictions:* An “applicant” in a non-CSC jurisdiction is an individual seeking employment as a law enforcement officer and who has submitted a completed employment application as provided by the hiring law enforcement agency, regardless of whether or not the individual has undergone an examination, a background check, or any other prerequisites to employment used by the hiring agency.
 - *Civil service jurisdictions:* An “applicant” in a CSC jurisdiction is an individual seeking employment as a law enforcement officer and who (1) is included on a CSC certified list of eligible candidates received by a hiring law enforcement agency and (2) responded timely to the hiring agency with an expression of interest in the position. “Applicant” also includes individuals who are exempted from the CSC examination requirement under N.J.S.A. 11A:4-1.3 and who submit a completed employment application as provided by the hiring agency.
- ***Appointment.*** A law enforcement officer is “appointed” by the resolution of the agency’s governing body.
- ***Law enforcement agency.*** Defined in the Act as a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which has by statute or ordinance the responsibility of detecting and enforcing the general criminal laws of this State.²
- ***Law enforcement officer.*** Defined in the Act as any person who is employed as a permanent full-time member of an enforcement agency, who is statutorily empowered to act for the detection, investigation, arrest, and conviction of persons violating the criminal laws of this State and statutorily required to successfully complete a training course

² Because the N.J. Department of Corrections (DOC) is not assigned the “responsibility of detecting and enforcing the general criminal laws of this State,” DOC does not fall within the Act’s statutory definition of “law enforcement agency.”

approved, or certified as being substantially equivalent to an approved course, by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.).

I. Establishing a Program

- A. ***Purpose.*** As expressly required by the Act, each law enforcement agency in the State shall establish a program (the “Program”) “in furtherance of the goal of the agency being comprised of law enforcement officers who reflect the diversity of the population of the community the agency is charged with protecting.” Each agency shall make a good faith effort to meet specific goals for recruiting a diverse workforce, in terms of people of color and gender diversity.³
- B. ***Setting goals.*** Each agency will be responsible for establishing its own specific Program goals. In forming its Program goals, the agency should—at least annually—analyze the demographics of its law enforcement officers and determine if there is a substantial disparity between the racial, ethnic, and gender representation within the law enforcement officer ranks as compared with the racial, ethnic, and gender representation in the relevant population of the jurisdiction served by the agency.⁴ Any demographic group for which there is a substantial disparity, in terms of less representation on the police force, should be considered an “underrepresented” group. In determining whether a disparity is substantial, agencies should consider whether reducing the disparity would help achieve the Act’s goal of each agency’s police force “reflect[ing] the diversity of the population of the community the agency is charged with protecting” and thereby making the police force more effective at promoting public safety. The Program goals should describe (1) the identified underrepresentation of any group, (2) the means for addressing the underrepresentation, and (3) the intended time frame for doing so.
- C. ***Addressing underrepresentation.*** Identified underrepresentation may be addressed by some or all of the below-listed actions, as well as others, which should be detailed in the Program goals. The means of addressing underrepresentation shall not include quotas or any other legally impermissible provisions.
1. Using recruitment methods that target underrepresented demographic groups, especially local recruitment efforts. This approach may include outreach to law

³ We recognize, however, that achieving a truly diverse workforce involves numerous other considerations in addition to the race, ethnicity, and gender categories specified in the Act. For example, LGBTQ+ Law Enforcement Liaisons operating throughout the state perform valuable engagement with members of that community.

Finally, the Act referred to “minorities,” but these Guidelines will refer to “people of color” when referring to racial and ethnic diversity.

⁴ Demographic data for local populations—searchable by municipality and county—is available at the U.S. Census website: <https://data.census.gov/cedsci/>.

Additionally, the following URL links to a pre-filtered table on the Census website that shows data for the adult population of all New Jersey municipalities and counties: <https://data.census.gov/cedsci/table?q=hispanic%20or%20latino%20and%20not%20hispanic%20or%20latino%20by%20race&g=0400000US34,34%24050000,34%24160000&tid=DECENNIALPL2020.P4&hidePreview=true>.

enforcement officer organizations based on race, ethnic group, gender, or religion;⁵ local colleges with significant student diversity; minority-serving educational institutions;⁶ and military veterans. Such methods may also include ensuring recruitment materials that (1) reflect visible diversity, (2) are reviewed by a diverse team prior to release, and (3) are delivered by a diverse recruiting team. The diversity of those conducting applicant interviews should also be considered. Finally, recruiting methods may involve establishing pipeline programs that foster and enhance an interest in law enforcement among diverse youth populations as early as middle school.

2. Implementing standardized forms in the application process that reduce subjective responses that may impact the hiring of underrepresented groups, and training the recruiting and hiring team on explicit and implicit bias.
3. Instituting clear criteria for hiring and an oversight process for reviewing hiring decisions. With respect to hiring, consider making publicly available information on examples of background-check issues that can disqualify applicants.
4. Assessing whether particular hiring eligibility requirements adversely affect any underrepresented group and, if so, reassessing whether the requirement is essential. If the requirement is deemed essential, consider developing appropriate supportive initiatives or alternative paths, such as remedial training or deferral options. For example, if background checks consistently disqualify an underrepresented group due to prior financial issues such as bad credit history or bankruptcy, consider whether a mechanism for waiving the requirement in appropriate cases is warranted.
5. Assessing what the barriers are to applications by underrepresented groups and devising solutions to overcome those barriers. For example, underrepresented groups may not submit applications because the process is online and potential applicants do not have ready access to resources to complete the application. In such a case, the Program might seek to address the problem by using mobile units equipped with computers to allow onsite applications.
6. Connecting with community stakeholders for underrepresented groups in order to better understand the factors affecting those groups in the application process.
7. Establishing mentorship programs for applicants from underrepresented groups that provide support for resume review and physical training requirement preparation, as well as mentorship for current officers seeking promotion. In civil service jurisdictions particularly, working with the CSC's mentoring program for applicants pursuant to P.L.2021, c.235.

⁵ Such organizations include: Hispanic American Law Enforcement Association, Hispanic Law Enforcement Association of Union County, Muslim American Law Enforcement Association, National Coalition of Latino Officers, National Organization of Black Law Enforcement Executives (NJ Chapter), New Jersey Asian American Law Enforcement Officers Association, New Jersey Latino American Trooper Society, New Jersey Muslim Officers Society, and New Jersey Women in Law Enforcement.

⁶ A list of minority-serving institutions is available at <https://cmsi.gse.rutgers.edu/content/msi-directory>.

8. Raising awareness about the police officer testing and hiring process through flyers, advertising on social media, and appearing at job fairs and community events. In civil service jurisdictions, partnering with the CSC itself may be beneficial.
 9. In civil service jurisdictions, partnering with community stakeholders, including law enforcement organization affinity groups (see note 5), or the CSC itself (see P.L.2021, c.234 (requiring CSC to aid exam prep in certain low-income communities)), to identify and encourage free civil service test preparation programs, and encouraging diverse potential applicants to attend.
- D. ***Methods of evaluation.*** The Program shall include methods for evaluating whether the goals are achieved, which should include, but are not limited to, performing the above demographic analysis described in Section I.B at least annually, determining whether any substantial disparities have been reduced, and revising the Program goals accordingly.
 - E. ***Additional contingent measures.*** The Program should provide that additional contingent measures will be taken if the Program goals are not met under the methods of evaluation implemented pursuant to Section I.D.
 - F. ***Public posting.*** The Program, including a description of the data used to determine the existence of any underrepresentation, shall be posted on the official Internet website of each law enforcement agency not later than June 7, 2022, which is six months from the issuance of these Guidelines.

II. **Monitoring**

The County Prosecutor shall, from time to time, review the results of the Programs for each county and municipal law enforcement agency within its jurisdiction, and provide input, feedback, or recommendations to the respective agencies as the Prosecutor deems appropriate. The County Prosecutor shall report an annual summary of each agency Program within its jurisdiction for the preceding calendar year to the Attorney General by the last day of February. The Attorney General shall, from time to time, review the results of the Programs for each State law enforcement agency, and provide input, feedback, or recommendations to the respective agencies as the Attorney General deems appropriate.

III. **Annual Reporting**

- A. ***Data to be included.*** By January 31st of each year, each State law enforcement agency shall report to the Attorney General, and each municipal and county law enforcement agency shall report to the County Prosecutor with jurisdiction over the agency (who will in turn gather and transmit the information to the Attorney General), the following information for the preceding calendar year. The information should not include the names of each individual. See Appendix A for the agency reporting form, which will also generate the agency's annual report.

1. The age, gender, race, and ethnicity of the law enforcement officers currently appointed to the law enforcement agency as of December 31 (or, if that data is unavailable, data from a different date reasonably close to year-end) of the preceding calendar year;
 2. The age, gender, race, sexual orientation (if provided),⁷ and ethnicity of applicants for a law enforcement officer position in the preceding calendar year;
 3. The age, gender, race, and ethnicity of applicants appointed to the agency in the preceding calendar year, with transfer applicants listed separately;
 4. The reasons for denying applicants an appointment to the law enforcement agency (Appendix A contains a list of denial reasons); and
 5. The age, gender, race, and ethnicity of each law enforcement officer eligible for promotion and promoted within the agency in the preceding calendar year, including the position to which the officer was promoted.
- B. ***First reporting date.*** The first reporting date shall be January 31, 2022, and the information reported should cover the time period from the effective date of these Guidelines through December 31, 2021.
- C. ***Demographic data collection.*** The data collected should follow the below standards, as reflected in Appendix A (which may be updated in the future). Demographic information should be collected from applicants and promotion candidates on a distinct form from any application so as to remain separate from the selection process.
1. Race:
 - i. American Indian or Alaska Native
 - ii. Asian
 - iii. Black or African American
 - iv. Native Hawaiian or other Pacific Islander
 - v. White
 - vi. Two or more races
 - vii. Other
 2. Ethnicity:
 - i. Hispanic or Latino
 - ii. Not Hispanic or Latino
 3. Gender:

⁷ As with all demographic reporting categories, applicants cannot be required to provide sexual orientation. The sexual orientation reporting category applies only to applicants, not current officers. We recognize that in civil service jurisdictions, it may not be possible to capture the sexual orientation category.

- i. Female
- ii. Male
- iii. X or Non-Binary

4. Sexual orientation (for applicant reporting only):

- i. Do you identify as LGBTQ+, yes or no?

D. ***Additional requirements.*** The annual reports described in Section III.A should also include the agency's summary of the data based on the below prompts that are also included in Appendix A:

- 1. Whether the agency is governed by civil service rules;
- 2. A description of the agency's application process, to include when in the hiring process a formal application is submitted, and when appointment occurs if hired;
- 3. A description of the data used to determine any underrepresentation;
- 4. A detailed assessment as to whether representation has improved for any previously identified underrepresented groups;
- 5. Any new or modified Program goals to be implemented in the upcoming year.

E. ***Publishing.*** The data collected pursuant to Section III.A shall be published in the respective annual reports of each municipal and State law enforcement agency, and for county law enforcement agencies, in the annual report of the County Prosecutor with jurisdiction over that agency.

- 1. Each law enforcement agency shall update the description of its Program on the agency's official Internet website accordingly, at least after each annual reporting.
- 2. The Attorney General will gather the information provided under Section III and assemble it into an annual report to be issued to the Governor, the President of the Senate, and the Speaker of the General Assembly, and to be posted on the official Internet website of the Department of Law and Public Safety by April 30 of each year. The Attorney General's annual report will distinguish between jurisdictions governed by Civil Service rules and those that are not.

IV. **Other Provisions**

A. ***Non-enforceability by third parties.*** Nothing in these Guidelines shall be construed in any way to create any substantive right that may be enforced by any third party.

B. ***Questions.*** Any questions regarding these Guidelines or their implementation should be directed to the Director of the Division of Criminal Justice, or their designee.