

New Jersey Legislature  
Senate Committee on Law and Public Safety

## **Testimony of CJ Griffin, Esq.**

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Hearing on  
Police Reform in New Jersey

## **I. Introduction**

I am the Director of the Justice Gary S. Stein Public Interest Center at Pashman Stein Walder Hayden (PSWH), which is dedicated to a broad range of public interest impact litigation and appellate advocacy that advances social, racial and economic justice, protects civil liberties and constitutional rights, and promotes an open and transparent government.

I write today to encourage the Legislature to take bold actions to truly transform policing in New Jersey. The modest reform measures that we have seen in the past have done little to fix a broken criminal justice system that disproportionately arrests, incarcerates, and uses force against people of color in this state. More of the same simply will not work; we must reimagine policing in New Jersey.

Two bills that I think meet the demands of this historic moment and that will significantly improve policing in New Jersey are S-2656 and A-4283, which were introduced by Senator Weinberg and Assemblyman Wimberly to make police internal affairs (IA) and disciplinary records fully subject to the Open Public Records Act (OPRA). I strongly believe that providing broad transparency in policing is one of the first steps the Legislature must take on this path to meaningful police reform. We have to be able to identify what problems exist before we can take actions to address those problems and ensure that the police are accountable to the public.

## **II. New Jersey's Police Internal Affairs and Disciplinary Processes Are Currently Shrouded in Complete Secrecy**

I have dedicated my career to making government more accessible to the people it serves. For several years, I have represented media entities and individuals in OPRA lawsuits. In my experience, police departments are the most resistant to transparency. I have filed nearly 100 lawsuits seeking police records from law enforcement agencies across the state. In large measure, we have been successful and have obtained favorable decisions that make records relating to police-involved shootings and other uses of force available to the public. See, e.g., North Jersey Media Group Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017) (making police use of force reports and dash camera videos of deadly shootings accessible to public); Wronko v. New Jersey Society for the Prevention of Cruelty to Animals, 453 N.J. Super. 73 (App. Div. 2018) (making the NJSPCA subject to OPRA); Digital First Media v. Ewing Twp., 462 N.J. Super. 389 (App. Div. 2020) (making juvenile use of force reports accessible).

Unfortunately, the area most in need of transparency is completely off-limits to the public under current law: police misconduct investigations and the police disciplinary process. As is the case in all states, allegations of misconduct against police officers are investigated by the department's IA unit. Unlike most states, however, New Jersey police officers investigate themselves without any public oversight because IA records are not available through public records laws. They are shrouded in complete secrecy. There is no sunlight whatsoever.

Courts have repeatedly held IA records are exempt from access under OPRA pursuant to both the Attorney General's Internal Affairs Policy, as well as N.J.S.A. 47:1A-10. See, e.g., Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458 (App.

Div. 2019); Libertarians for Transparent Gov't v. New Jersey State Police, A-5675-16T2 (pp. Div. May 20, 2019); Paff v. Bergen Cty., A-1839-14T1 (App. Div. Mar. 13, 2017). Sadly, courts have also repeatedly refused to grant access to such records even under the common law right of access.

This is true even when the records relate to matters of great concern, such as the former police director of the City of Elizabeth who was confirmed by the Attorney General to have used “racist and misogynistic language” in the workplace.<sup>1</sup> The Appellate Division ruled just last month that the former director’s internal affairs reports are confidential, even though they may shed light on whether other City officials knew about his behavior and looked the other way. See Richard Rivera v. Union County Prosecutor’s Office, Docket No. A-2573-19T3 (App. Div. June 19, 2020). This deprived the public of the opportunity to advocate for full accountability.

Therefore, unless there is a statutory change by the Legislature, our courts have already made it clear that there is no path for the public to gain access to IA and police disciplinary records, not even in the most compelling circumstances. Even where allegations of blatant racism are sustained.

**A. The AG’s Recent Directive Provides Little Transparency and Fails to Meet the Demands of the Moment**

On June 15, 2020, the Attorney General issued Law Enforcement Directive 2020-5 (hereinafter “the Directive”), which will require future disclosure of the names of officers who have received major discipline. This may lead you to believe that additional transparency is not needed, but as the Attorney General himself recently tweeted, even with this proposed change, New Jersey remains at the “back of the pack” when it comes to police transparency.

Yes, even with this new Directive, states like Florida, Alabama, Colorado, Ohio, and many others are far more transparent than New Jersey. See Appendix A. Many states across the nation are also currently contemplating legislation to make IA and disciplinary records public, meaning that if we do not pass S-2656/A-4283 we will fall further behind.

Although the Directive is a welcomed departure from decades of complete and total secrecy in New Jersey’s IA processes, it nonetheless falls far short of the type of transparency that we need or that other states provide. There are several ways that the Directive is insufficient:

***Major Discipline is Rarely Imposed:*** The Directive’s first shortcoming is that it applies only to officers who have received “major” discipline, which is defined as termination, demotion, or a suspension of five days or more. We know from IA annual summary reports that most complaints are not sustained and therefore do not result in *any* discipline whatsoever. Of the small percentage of cases that are sustained, very few have resulted in major discipline.

For example, there were 86 IA investigations concluded in the City of Orange in 2018. Only 13 complaints (15%) were sustained. Only six (7%) resulted in major discipline. This means roughly 93% of cases will remain a total secret.<sup>2</sup>

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<sup>1</sup> The only reason the public knows about this IA investigation result was because the complainants told the press.

<sup>2</sup> Based on data on the Orange Police Department’s website: [https://www.ci.orange.nj.us/police\\_department.html](https://www.ci.orange.nj.us/police_department.html)

Collectively, law enforcement agencies in Mercer County concluded 420 IA investigations in 2019.<sup>3</sup> Of those, 174 (40%) complaints were sustained<sup>4</sup> and major discipline was imposed in only 2. This means that roughly 99.6% of all cases will remain a total secret.

Similarly, law enforcement agencies in Bergen County collectively concluded 758 IA investigations in 2018.<sup>5</sup> Of those, 241 (31.8%) complaints were sustained, but discipline was imposed in only 19.<sup>6</sup> This means that 97.5% of all cases will remain a total secret.<sup>7</sup>

As a result, the Directive applies sunshine to only a very small percentage of IA cases and the remainder linger in the dark.

***We Need Access to Actual Records:*** The Directive's second shortcoming is that it does not require disclosure of any actual records. More specifically, the Directive requires agencies to publish the names of officers who receive major discipline and a "brief summary of their transgressions" and a "statement of the sanction imposed," but does not require disclosure of any actual investigative files or underlying documents. This is not real transparency.

The requirement that agencies publish information about major discipline is not new, other than the fact that the disclosures will now have a name attached to them. Prior disclosures show that these "brief summaries" are often as vague as, "Officer received 10 days suspension for an Administrative Rules and Regulations violation." Going forward, the disclosures will now state "Officer Jones received 10 days suspension for an Administrative Rules and Regulations violation." Obviously, this tells the public very little information by which to determine whether Officer Jones' sanction was reasonable and whether there was true accountability.

Even where agencies disclose more detailed information in their summaries, as some agencies do, there is no way to know whether the disclosure is full and accurate. Without access to actual files, there is no way know whether any major discipline has not been reported or whether the misconduct was inaccurately described. Public records laws exist so we do not have to trust what an agency tells us, yet that is what the Directive requires us to do.

***The Directive is Easy to Evade:*** The Directive's third shortcoming is that it is far too easy to evade. As stated above, it requires disclosure only where an officer is terminated, demoted, or suspended for five or more days. Officers can avoid the disclosure requirement by resigning or retiring in lieu of serious discipline and there will no doubt be a sudden slew of agencies issuing four-day suspensions to avoid the publication requirements.

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<sup>3</sup> Based on data gathered pursuant to OPRA requests.

<sup>4</sup> None of the 17 excessive force complaints filed within the county were sustained.

<sup>5</sup> Based on Bergen County's 2018 Professional Standards Executive Summary: <https://bit.ly/38T3ywZ>

<sup>6</sup> Only 2 of 31 (6.4%) excessive force complaints were sustained.

<sup>7</sup> Unfortunately, even this basic aggregate data was hard to find. Although the Attorney General's Internal Affairs Policy & Procedures requires every law enforcement agency to issue a public synopsis of major discipline and to post internal affairs annual summary reports on their websites, very few agencies actually do. There is no centralized resource for such data and only a handful of the county prosecutors maintained such records, meaning that hundreds of OPRA requests would need to be filed with individual agencies just to get these statistics.

***The Directive is Not Codified By Statute:*** The Directive's fourth shortcoming is the fact that it is not codified by statute. Because it is a mere written policy by the Attorney General, it can be reversed by the next Attorney General with the stroke of a pen. Transparency should not depend upon the whims of any single officeholder; we need permanent access.

Making matters worse, the police unions have challenged the Attorney General's authority to issue the Directive in the first place and have already successfully obtained a stay of the Directive from the Appellate Division. If the unions prevail in their appeals, there will be no disclosure at all. Even if they do not prevail, litigating their appeals will take months and what minimal transparency the Directive provides will almost certainly not occur in 2020.

By passing legislation to make IA and police disciplinary records available to the public, the Legislature will moot the unions' appeals and will ensure that access is permanent.

***We Need Access to Dismissed Complaints:*** The Directive's final and perhaps most serious shortcoming is that it provides no transparency to dismissed complaints or complaints that result in less than major discipline. As stated above, most IA complaints are not sustained. Few excessive force complaints are ever sustained. The Directive provides no transparency over files. They remain shrouded in secrecy.

Yet, that is where transparency is needed the most. The public needs access to investigation files so that it can see how thoroughly an investigation was conducted and what the full weight of the evidence showed. IA complaints are often dismissed because the complainant was intimidated or otherwise unavailable (death, etc.).

There are far too many public examples where IA complaints were dismissed when they should have been sustained. For example, in 2012, Bloomfield Police Officers Orlando Trinidad and Sean Courter filed police reports stating that a motorist, Marcus Jeter, attempted to take Courter's gun and then hit Trinidad. See *State v. Trinidad*, \_\_ N.J. \_\_ (2020). Jeter filed an IA complaint, complaining that he was attacked, but the IA investigation cleared Courter and Trinidad of any wrongdoing. Jeter was criminally charged.

Thankfully Jeter's lawyer thought to file an OPRA request for any police videos of the incident and a dash camera video was provided, which had not been given to Jeter as part of discovery. See [Ex-Bloomfield Cop Gets 5 Years In Jail For Beating Suspect on Garden State Parkway](#), Patch.com (Feb. 24, 2016). The dash cam video showed that the two officers lied; Jeter never attempted to grab Courter's gun, nor did he attack Trinidad. Instead, Trinidad assaulted Jeter. The charges against Jeter were thereafter dismissed and both Trinidad and Courter were subsequently convicted.

According to the *Asbury Park Press*, Trinidad had a long history of IA complaints that were not taken seriously:

In one brutal example, Trinidad mocked his department's mechanism for watching cops, a lawsuit claimed. In 2013, after beating and almost ripping

the ear off an unarmed man, Rodolfo Crespo, in the department's holding area, Trinidad walked to a nearby surveillance camera, looked up, pointed and said "IA" – the initials for the police department's internal affairs unit, the man claimed in his lawsuit.

The city settled the Crespo suit, who claims he suffered a massive laceration to his right ear, a thoracic spine fracture and multiple head traumas. They agreed to a \$363,910 payout. As is standard practice in settlements, no admission of wrongdoing was made by the city.

The Bloomfield Police Department in Essex County knew of at least 37 documented incidents where Trinidad allegedly used force over eight years – beginning when he started with the department in 2006. His use of force incidents made up about 27 percent of the 135 force reports documented by all officers in a 10-year period, one suit claimed.

[Kala Kachmar & Andrew Ford, Bad Cops are Built. Here's How, Asbury Park Press (Jan. 18, 2019).]

The above is just *one* example of misconduct being swept under the rug and IA investigations improperly resulting in a “not sustained” disposition, but there are plenty of others. See, e.g., Alex Napoliello, Ex-Cop Who Gunned Down Ex-Wife Has A Nearly 700-Page Internal Affairs File, NJ Advance Media (May 23, 2018). Importantly, what we do not know are all the examples that remain hidden from public view.

Unfortunately, in New Jersey we are unable to proactively review IA investigation files to root out the complaints that were erroneously dismissed or expose the shoddy IA investigations. Instead, we have to wait until tragic situations occur for IA information to become public. At that point, the damage is already done.

I was not born and raised in New Jersey, so I feel a sense of pride and ownership in having *chosen* to make this state my home. In that regard, I have bragged to friends and fellow advocates about the areas of law where we lead the nation. But, in this area—police transparency—we are, as the Attorney General recognized, at the “back of the pack.” We must not only catch up to most other states; we must *lead*.

Let’s pass S-2656 and A-4283 and give reporters, researchers, and advocates the tools they need to start identifying problems in policing, holding police departments and police officers accountable, and giving lawmakers data they need to implement transformational reform<sup>8</sup>.

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<sup>8</sup> Of course, I also support Civilian Complaint Review Boards (CCRBs) so that members of the community can play a direct role in a police department’s IA process and monitor outcomes, as well as police licensing (an area where New Jersey lags behind at least 45 other states).

# **APPENDIX A**

The following data is from WNYC’s 2015 reporting “[\*Is Police Misconduct a Secret In Your State?\*](#),” but has been updated to reflect legislative changes that have occurred.

<b><u>States Where IA/Discipline Records Are Public</u></b>		
<b>State</b>	<b>More Transparent Than NJ if Directive 2020-5 Struck Down?</b>	<b>More Transparent Than NJ If Directive 2020-5 Upheld?</b>
1. Alabama	Yes	Yes
2. Arizona	Yes	Yes
3. Colorado	Yes	Yes
4. Connecticut	Yes	Yes
5. Florida	Yes	Yes
6. Georgia	Yes	Yes
7. Maine	Yes	Yes
8. Minnesota	Yes	Yes
9. New York	Yes	Yes
10. North Dakota	Yes	Yes
11. Ohio	Yes	Yes
12. Utah	Yes	Yes
13. Washington	Yes	Yes
14. Wisconsin	Yes	Yes
<b><u>States With Partial Access to IA/Discipline Records</u></b>		
<b>State</b>	<b>More Transparent Than NJ if Directive 2020-5 Struck Down?</b>	<b>More Transparent Than NJ If Directive 2020-5 Upheld?</b>
1. Arkansas	Yes	Mixed; Access to records, after balancing test
2. California	Yes	Mixed; Access to records, but narrow categories
3. Hawaii	Yes	Yes, Access to actual records
4. Illinois	Yes	Yes, Access to actual records
5. Indiana	Yes	Yes, Access to actual records
6. Kentucky	Yes	Yes, Access to actual records
7. Louisiana	Yes	Yes, Access to actual records
8. Massachusetts	Yes	Yes, Access to actual records
9. Michigan	Yes	Mixed; Access to records, after balancing test
10. New Mexico	Yes	Yes, Access to actual records
11. Oklahoma	Yes	Yes, Access to actual records
12. South Carolina	Yes	Yes, Access to actual records
13. Tennessee	Yes	Yes, Access to actual records
14. Texas	Yes	Yes, Access to actual records
15. Vermont	Yes	Yes, Access to actual records
16. West Virginia	Yes	Yes, Access to actual records

**States Where IA/Discipline Records Are Confidential**

<b>State</b>	<b>More Transparent Than NJ if Directive 2020-5 Struck Down?</b>	<b>More Transparent Than NJ If Directive 2020-5 Upheld?</b>
1. Alaska	No	No
2. Delaware	No	No
3. Idaho	No	No
4. Iowa	No	No
5. Kansas	No	No
6. Maryland	No	No
7. Mississippi	No	No
8. Missouri	No	No
9. Montana	No	No
10. Nebraska	No	No
11. Nevada	No	No
12. New Hampshire	No	No
<b>13. New Jersey</b>	Directive pending	Directive pending
14. North Carolina	No	No
15. Oregon	No	No
16. Pennsylvania	No	No
17. Rhode Island	No	No
18. South Dakota	No	No
19. Virginia	No	No
20. Wyoming	No	No