



EXCELLENCE IN POLICING INITIATIVE

The Independent Prosecutor Directive

How New Jersey Conducts Independent Investigations into Police Use-of-Force and Death-in-Custody Incidents

There are few investigations more important—or more challenging—than those involving the use of force by law enforcement officers against civilians. In December 2019, Attorney General Grewal issued AG Directive 2019-4, known as the Independent Prosecutor Directive, to outline clear procedures governing such investigations and to ensure that they are done fully, fairly, and independently of any potential bias.

Broadly speaking, the Directive outlines a ten-step process for conducting independent investigations of use-of-force and death-in-custody incidents in compliance with State law. Although the precise timing will vary depending on the case, the first three steps generally occur simultaneously in the immediate aftermath of the incident, while the remaining steps unfold over the course of the investigation.

One of the central players in these investigations is the Office of Public Integrity & Accountability (OPIA), an independent office that Attorney General Grewal established in 2018 to investigate misconduct by public officials. To run the unit, AG Grewal recruited Thomas Eicher, a 30-year veteran of the U.S. Department of Justice with a long track record of prosecuting corrupt public officials under both Democratic and Republican administrations.

The ten steps are:

1. Notification to the Attorney General.

As soon as a local law enforcement agency learns about an officer-involved shooting or civilian death in custody, the agency is required to immediately notify the Attorney General's Office, and OPIA begins reviewing the matter.

2. Arrival of First Responders.

In the moments immediately following the incident, emergency first responders arrive on the scene to address any imminent threats to public safety and minimize loss of life. The first responders are under strict orders to avoid taking any steps that would undermine the subsequent investigation.

3. Selection of the Independent Investigator.

As soon as possible, OPIA determines which agency is going to conduct the independent criminal investigation into the officers' conduct. If the matter involves the death

of a civilian, then OPIA conducts the investigation itself. If the matter involves a non-fatal use of force, then OPIA typically assigns the investigation to another the County Prosecutor's Office, provided that the investigators have no actual or potential conflicts of interest with the officers under investigation.

4. Initial Investigation & Evidence Collection.

After the independent investigator is selected, the initial investigation begins. This typically includes canvassing the scene, interviewing witnesses, collecting evidence, performing forensic analyses, and identifying any audio or video recordings that captured any part of the underlying incident.

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5. Public Release of Incident Footage (if requested).

Once the initial investigation is substantially complete—typically within 20 days—the independent investigator will release audio and video recordings of the incident to any party that requests them. Among other things, this 20-day period ensures that the independent investigators have an opportunity to interview all material witnesses before their recollections can be influenced by the public release of any video recordings.

6. Completed Investigation.

The independent investigators continue their work to the conclusion of the investigation, at which point they prepare a summary of their factual findings, legal analysis, and preliminary recommendations about whether any law enforcement officers should be criminally charged for their involvement in the incident.

7. Independent Supervisory Review of Investigative Findings.

The independent investigators submit their preliminary recommendations to the OPIA Director and/or a member of the Attorney General's leadership team, who then conduct their own review of the case file and make an independent assessment regarding criminal charges.

The Independent Prosecutor Directive is part of the Excellence in Policing Initiative, a sweeping set of policing reforms that Attorney General Grewal announced in December 2019 to promote the culture of professionalism, accountability, and transparency that are hallmarks of New Jersey's best law enforcement agencies. To learn more, visit nj.gov/oag/excellence.

8 Grand Jury Proceedings.

As with any criminal investigation, the ultimate decision about whether to seek a criminal indictment is made by a grand jury, which typically consists of 16 to 23 citizens. Under the Directive, the only time investigators are not required to present a case to the grand jury is when the incident involved a non-fatal use of force and both the independent investigator and the independent second reviewer conclude that the use of force was justified.

9. Announcement of Criminal Charges or Declination.

If the grand jury decides to indict one or more officers, then the independent investigators announce the criminal charges and the officers are placed under arrest. If the grand jury declines to charge the officers, then the investigators are required to issue a public statement that describes both their factual findings and their legal analysis about whether the officers' use of force was justified.

10. Referrals for Administrative Review.

At the conclusion of the investigation, the criminal investigators refer the matter to the chief law enforcement official in the officers' jurisdiction to determine whether any of them should be subject to disciplinary action. The criminal investigators are responsible for ensuring that any disciplinary review is completed in a timely fashion and that appropriate actions are taken based on that review.

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