

January 2021

Risk Analysis of Law Enforcement Mandates, Directives, and Guidelines New Jersey Attorney General Directive, 2020-13 Revising Use of Force Policy and Procedures

Law Enforcement Bulletin 2021-01

J.A. Montgomery Consulting specializes in creating and implementing risk control and safety programs to improve safety, protect agency reputations, and minimize litigation claims.

Newly created or revised directives, guidelines, and laws are often issued or enacted that commonly dictate law enforcement agency personnel's everyday actions. It is incumbent upon police leaders to implement agency-specific directives, policies, or training programs so that all employees operate within the defined parameters of any new or revised guideline, directive, or legislation.

Effective Risk Management involves issuing policies or providing training based on the latest laws or mandated directives and entails a systematic review of how these mandates may pose a risk to the agency. Physical injury to employees and civilians, reputation harm, financial loss, employee discipline, criminal investigation of employees, and lawsuits may result if agencies do not effectively analyze the latest mandates, identify potential risks, develop strategies, and continually manage the measures and protocols implemented to reduce or mitigate these hazards. This process can also improve overall agency efficiency and unlock opportunities for the improvement of every employee.

J.A. Montgomery Consulting has developed this new product to help agencies go beyond basic policy implementation and encourage police leaders to closely examine individual new mandates or legislation that contain provisions that enhance risk, even when employees receive agency or other training and policy guidance.

The attached Risk Analysis is not all-encompassing, and it is not a full overview of the New Jersey Attorney General Use of Force Directive. Police leaders should approach the implementation of any new policy, directive, or training with the necessary stakeholders to maximize the effectiveness of a risk analysis. Such stakeholders should include the municipal attorney whenever possible. Depending upon the subject, they may also include command staff members, front line personnel, civilian employees, human resource professionals, community members, and union representatives.

The attached document, "*Risk Analysis of the New Jersey Attorney General Revising Use of Force Policy and Procedures Directive*" is designed to serve as a starting point for agency personnel to have discussions about the risks that this new directive will create and to help develop mitigation strategies that are designed to reduce that risk. A fillable PDF agency worksheet has been provided – "*Risk Analysis of the New Jersey Attorney General Directive 202-13.*" The worksheet offers direction and provides a starting point for leaders.

If you have any questions, please contact your J.A. Montgomery Law Enforcement Risk Control Consultant.

This bulletin is intended for general information purposes only. It should not be construed as legal advice or legal opinion regarding any specific or factual situation. Always follow your organization's policies and procedures as presented by your manager or supervisor. For further information regarding this bulletin, contact your Safety Director at 877.398.3046.

Directive(s):	1	New Jersey Attorney General Directive 2020-13: Revising Use of Force Policy and Procedures	Issued:	12/21/20	Effective:	12/31/21

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Item #	Directive Page #	General Subject/Item	Potential Risk/Concern	Potential Actions/Risk Mitigation
1	N/A	General Policy Implementation	Not implementing the revised policy when required nor changing other policies that may need revisions due to this new directive creates substantial risk.	The redaction of existing policies and issuing new or revised policies to agency members.
2	li	Core Principle 1 – The Sanctity of Human Life	The Agency mission statement may not align with principles of the new directive, which may be raised by community members or during criminal prosecutions or litigation.	Agencies may wish to consider reviewing their mission statements to determine if language from Core Principle 1 should be included.
3	li	Core Principle 6 - Medical Assistance	The policy states – “consistent with the officer’s training.” It is unclear what training officers should have, as many officers have not received extensive medical training. If an officer is accused of not providing medical care, it may be easy for them to indicate that they were not provided the proper medical training or lacked consistency.	Agencies should begin to bolster and create a consistent medical training program now. There is a tremendous risk to the agency if/when officers claim that they have not been trained after a person questions or accuses an officer of not providing medical care.
4	li	Core Principle 6 Medical Assistance (Also applies to Core Principle Six – Duty to Render Medical Assistance, Page 18)	Officers and emergency vehicles may not be equipped with adequate medical equipment, or such equipment may be inconsistent. If an officer is accused of not providing medical care, it may be easy for them to indicate that they were not	Agencies should inventory their existing medical equipment and supplies and have a regular inspection program of such equipment and supplies. Such supplies should mirror the training provided. Supplies and equipment

			provided the proper medical equipment or that it is not consistent.	should be generally the same type and positioned in the same locations inside of patrol vehicles and areas where prisoners are detained. Agencies may also wish to examine their stance on the “scoop and run” of both officers critically injured and/or civilians. (Scoop and run refers to the practice of transporting a critically injured person to a medical facility by law enforcement as opposed to waiting for EMS.
5	li	Core Principle 7 – Review Uses of Force	Supervisors will be placed in the position to not only know the use of force policy but may also have to report that they were trained on how to evaluate the use of force.	Provide supervisor specific training with a documented curriculum for supervisors on the best practices of reviewing the use of force.
6	lii	Definitions – “Active Assailant”	Other existing policies, such as “Active Shooter,” “Active Shooter Hostile Event,” and policies addressing schools and other mass gathering locations may need to be updated to reflect this definition.	Review such other policies determine if the definition should be changed in other policies.
7	lii	Definitions – “Civil Disturbance”	Review other policies such as “Civil Disturbance,” “Protest Policies,” and policies addressing K-9 to determine if the definition should be changed in other policies.	Review such other policies to determine if the definition should be changed in other policies.
8	V	Definitions – “Peaceful Protestor”	Review other policies such as “Civil Disturbance,” “Protest Policies,” and policies address K-9 to determine if the definition should be changed in other policies.	Review such other policies determine if the definition should be changed in other policies.
9	V, 9	Section on Positional Asphyxiation – “a person handcuffed or restrained should be raised to a seated or standing position.” Also, Section 3.6 and 3.6.1: (Positional Asphyxiation) “Safety Officer”	Existing agency policies, such as but not limited to “Prisoner Security,” “Handling Crisis Incidents,” or “Handling Prisoners,” may need modifications. The term “Safety Officer” is introduced in Section 3.6.1, and the directive states that one should be designated “whenever possible.” The policy does not define the responsibilities of a “Safety Officer.” The review of body camera video or other videos at a later time may show that no such designation ever occurred. In addition, without clear agency policy direction, one supervisor in an agency may regularly designate a “Safety Officer,” but others in the	Agencies should review other existing policies to determine if changes are needed – examples include policies that address the use of restraint chairs and “spit hoods.” Create a uniform process reinforced with practical training of the role of a safety officer and ensure the practice is consistently applied in the agency.

			same department may never do so. This inconsistency creates substantial risk.	
10	2-3	Core Principle Two: Section 2.4: “Critical Decision-Making Model” (Subsection a and b)	Consider how dispatch plays a role with “Critical Decision-Making” and stress the importance of training for dispatchers and call-takers. Failure to train the dispatcher in this new directive and how they play a role in this “Critical Decision Making” creates substantial risk and safety concerns.	Collaborate with Public Safety Answering Points and create a training program for 911 Operators and Public Safety Telecommunicators regarding their critical role in the decision-making process.
11	4	Section 2.7 and 2.8 (Behavioral and Mental Crisis)	911 Operators and Dispatchers may not be familiar with the proper procedures for handling a mental health crisis call for service in consideration of this newly revised N.J. Use of Force Directive. A simple way to look at this is to ask if a Dispatcher knows what “CIT” is and if they have any idea when a “CIT” officer is on duty? When the answer is anything but “yes,” there is a risk. Additionally, when there is a lack of consistency, there is a substantial risk. For example, one dispatcher may “try to find” an available CIT Officer on his/her own, where perhaps another may only do so when directed by a supervisor.	Agencies should consider what policies (if any) they may have that directs call-takers, dispatchers, officers, and supervisors, to alert officers who have specific training for handling mental health calls, such as a CIT Officer.
12	6	Section 3.2 (Considerations when using Force) – Carefully review the use of “must” that is included in the beginning. Further review of subsection “h” (availability of options)	This section is related to the above concerns with CIT. Officers may use force and later asked why they did not wait for a CIT Officer. The Officer may simply tell the truth and say... “I had no idea one was even working.” This may be applicable to the Officer’s agency, or in smaller agencies, a CIT Officer was available and directly across the border, and there was no thought or procedure to seek that resource.	Agencies should consider what policies (if any) they may have that governs when a CIT Officer is dispatched or requested. When examining this issue, agencies should consider how mutual aid may play a role in this decision process. For example, an agency may have very few CIT Officers, but the bordering agency has an abundance of CIT Officers.
13	7	Section 3.3 (Level of Resistance) Subsection a – “cooperative person.”	Vehicles that are completely unmarked or “ghosted” have significant value and are needed in law enforcement, but officers need to be aware that such an appearance may have an effect on a “cooperative person” in consideration of this policy.	Agencies may wish to have control mechanisms in place regarding their use of unmarked vehicles for regular patrol duty. Proper policy and training on the use of unmarked vehicles and plainclothes officers may help reduce the risk of injury and claims.
14	8	Section 3.5 (Defensive Tactics and Pain Compliance Techniques)	The directive indicates that officers may only apply pain compliance techniques for which the Officer has received “department-approved training...” The term “pain compliance” is not defined. The failure to have a solid	Agencies should begin the process of identifying department-approved standards. Policy, training, documentation, and implementation of the curriculum should be

			curriculum, specific training, precise definition, and consistency creates substantial risk.	undertaken before the new UOF directive goes into effect. Agencies should ensure that every employee has a clear understanding of what “pain compliance” is.
15	11	Section 3.8 (use of force for crowd management)	Review other policies such as “Civil Disturbance,” “Protest Policies,” and policies address K-9 to determine if the definition should be changed in other policies.	Review such other policies determine if the definition should be changed in other policies.
16	11	Section 3.8.1 (Subsection a)	Body-worn camera or other video footage may capture inconsistent language or various formats of language utilized, and this may create risk.	Agencies may wish to consider having prepared instructions that can be consistent when dispersing crowds.
17	13	Section 4.3 (Requirements to Use Deadly Force)	The use of officers in plain clothes (non-uniform) has great value, but absent specific training and policy guidance, this procedure may create a substantial risk.	Agency training should include the dynamics of plainclothes officers and how that can affect escalation/de-escalation in consideration of this Attorney General Directive. Additionally, agency policies should detail provisions for plainclothes (on duty) use of officers.
18	16	Section 4.8.3 (Supervisors)	It is unclear how agencies that do not have supervisors always on duty will address this requirement.	Agencies should begin to discuss this issue now. Additionally, similar to specific training for use of force review for supervisors, agencies may wish to have agency-specific supervisor training for pursuit review and decision making considerations for pursuit continuance.
19	19	Core Principle Seven – Duty to Report and Review Uses of Force	Supervisors will be placed in the position to not only know the use of force policy but may also have to demonstrate that they were trained on how to evaluate the use of force.	Agencies should develop a curriculum or participate in training that is specific for those officers that will be responsible for reviewing use of force incidents.
20	20	Section 7.6 Annual review of overall department use of force) Subsection B – “risk-based and randomly selected basis”	This is somewhat unclear and perhaps will be addressed in the training program being provided by the Office of the Attorney General.	There must be consistency in the agency with respect to what is “risk-based” and what is “random.” Agencies may also wish to select videos based on the type of call for service that required a video recording to ensure a BWC activation and recording took place. This is different from selecting videos to review from a list of recorded videos as that process will not identify incidents that should have been recorded but were not.

21	2	Addendum B – Vehicle Pursuit Policy, Section 2.7	“Ghost Pursuits” are not addressed in the policy, but the language in this section states that an attempt to stop a violator is not a pursuit if the violator follows all traffic regulations. A “ghost pursuit” is when an officer attempts to stop a violator, and the vehicle flees, and the Officer follows a short distance but never calls in via radio the pursuit. The risk is that a review of BWC footage may find a pattern of ghost pursuits or simply stated short burst pursuits that were not properly documented or reviewed. An officer who crashes and a review by plaintiffs of his/her past body-worn camera or other video recordings that shows a practice of “ghost pursuits” will trigger tremendous liability.	Agencies should consider training officers and implementing mechanisms to eradicate ‘ghost pursuits.’”
22	8	Addendum B – Vehicle Pursuit Policy, Section 5.5	Police vehicle identifiers have become less visible due to subdued graphic styles and hidden emergency lights. Such vehicles appear to meet the criteria of a marked vehicle in the directive. However, vehicles of this type involved in a pursuit may create risk. Additionally, vehicles that are not “pursuit-rated” by the vehicle manufacturer but yet are considered “marked” as per the Attorney General Directive may pose a risk if involved in a pursuit.	Agencies may want to consider defining a “marked” or “unmarked” vehicle, perhaps even creating their own “special service category” while more closely defining what types of vehicles may engage in a pursuit beyond those that are “marked” or “unmarked.” The agency should evaluate as to whether such a low visible police vehicle with hidden emergency lights and “ghost decals” would serve as the safest option for a pursuit. The agency may also wish to address the appropriate definition of a “pursuit-rated” vehicle.
23	12	Addendum B – Vehicle Pursuit Policy, Section 7.2	The directive dictates that the specific language to be utilized by supervisors is “pursuit authorized” or “terminate pursuit.” Without specific training and policy guidance, jargon may be utilized, which may create a risk for injury if an officer fails to understand the direction. Furthermore, if a pattern is found during litigation that agency members consistently did not utilize the specified language, there will be enhanced risk.	Agency training and policy should stress the importance of utilizing the language required by the policy. It should also be a part of the regular supervisory review process to ensure it is not replaced with jargon such as “go ahead,” “you are good,” “You’d better stop, or “let him go.”
24	13	Addendum B – Section 8 Role of Police Communications	Failing to train 911 call takers and Dispatchers creates risk.	Ensure that training for dispatchers takes place and is documented.
25	14	Section 11.1 – Pursuit Reporting	Body-worn cameras and other video footage disclose that officers involved in a pursuit did not complete the required reports. A broad review of such video footage that	Ensure that training emphasizes and that such pursuit reviews ensure that all operators of all

			determines a pattern of officers not completing reports will create substantial risk, especially when an officer is involved in a significant motor vehicle crash during a pursuit.	vehicles involved in the pursuit complete a report.
26	15	Section 12.2 – BWC and Other Video of pursuits.	This is similar to the risk concern raised in Section 7.6. “risk-based” and “random” are not clearly defined.	The agency needs to ensure consistency to avoid risk.



AGENCY WORKSHEET
**Risk Analysis of New Jersey Attorney
 General Directive 2020-13: Revising Use
 of Force Policy and Procedures**

1/13/21

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Consideration: This document has been provided as a resource for law enforcement leaders to assist them or their staff members as they have conversations, form workgroups, or assign responsibilities to address potential risks associated with the specified directive. This is not a stand-alone document and does not include the full risk analysis details that are included on the full version of the Risk Analysis.

Item #	General Subject/Item	Potential Actions/Risk Mitigation	Specific Agency Actions Needed (if any)	Person(s) Responsible	Outcomes/Status
1	General Policy Implementation	Redaction of existing policies and issuing new or revised policy to members.			
2	Core Principle 1 – The Sanctity of Human Life	Agencies may wish to consider reviewing their mission statements to determine if language from Core Principle 1 should be included.			
3	Core Principle 6 - Medical Assistance	Agencies should begin to bolster and create a consistent medical training			

		<p>program now. There is tremendous risk to the agency if/when officers claim that they have not been trained after a person questions or accuses an officer of not providing medical care.</p>			
4	<p>Core Principle 6 Medical Assistance (Also applies to Core Principle Six – Duty to Render Medical Assistance, Page 18)</p>	<p>Agencies should inventory their existing medical equipment and supplies and have a regular inspection program of such equipment and supplies. Such supplies should mirror the training provided. Supplies and equipment should be generally the same type and positioned in the same locations inside of patrol vehicles and areas where prisoners are detained. Agencies may also wish to examine their stance on “scoop and run” of both officers critical injured and/or civilians. (Scoop and run refers to the practice of transporting a critically injured person to a medical facility by law enforcement as opposed to waiting for EMS.</p>			
5	<p>Core Principle 7 – Review Uses of Force</p>	<p>Provide supervisor specific training with a documented curriculum for supervisors on the best practices of reviewing use of force.</p>			

6	Definitions – “Active Assailant”	Review such other policies to determine if the definition should be changed in, other policies.			
7	Definitions – “Civil Disturbance”	Review such other policies to determine if the definition should be changed in, other policies.			
8	Definitions – “Peaceful Protestor”	Review such other policies to determine if the definition should be changed in, other policies.			
9	Positional Asphyxiation Also Section 3.6 and 3.6.1: (Positional Asphyxiation) “Safety Officer”	Agencies should review other existing policies to determine if changes are needed – examples include policies that address use of restraint chairs and “spit hoods” Create a uniformed process reinforced with practical training of the role of a safety officer and ensure the practice is consistently applied in the agency.			
10	Core Principle Two: Section 2.4: “Critical Decision Making Model” (Subsection a and b)	Collaborate with Public Safety Answering Points and create a training program for 911 Operators and Public Safety Telecommunicators regarding their critical role in the decision making process in consideration of the revised NJ AG Use of Force Directive.			
11	Section 2.7 and 2.8	Agencies should consider what policies (if any) they			

	(Behavioral and Mental Crisis)	may have that directs call-takers or dispatchers to alert officers who have specific training for handling mental health calls, such as a CIT Officer.			
12	Section 3.2 (Considerations when using Force) Further review of subsection “h” (availability of options)	Agencies should consider what policies (if any) they might have that governs when a CIT Officer is dispatched or requested. When examining this issue, agencies should consider how mutual aid might play a role in this decision process. For example, an agency may have very few CIT Officers, but the bordering agency has an abundance of CIT Officers.			
13	Section 3.3 (Level of Resistance) Subsection a – “cooperative person”	Agencies may wish to have control mechanisms in place regarding their use of unmarked vehicles for regular patrol duty. Proper policy and training on the use of unmarked vehicles and plain-clothes officers may help reduce the risk.			
14	Section 3.5 (Defensive Tactics and Pain Compliance Techniques)	Agencies should begin now in planning and implementing a curriculum (if they choose to use this technique). Agencies should ensure that every employee has a clear understanding of what “pain compliance” is.			

15	Section 3.8 (use of force for crowd management)	Review such other policies to determine if the definition should be changed in other policies.			
16	Section 3.8.1 (Subsection a)	Agencies may wish to consider having prepared instructions that can be consistent when dispersing crowds.			
17	Section 4.3 (Requirements to Use Deadly Force)	Agency training should include the dynamics of plain-clothes officers and how that can affect escalation/de-escalation. Additionally, agency policies should detail provisions for plain clothes (on duty) use of officers.			
18	Section 4.8.3 (Supervisors)	Agencies should be begin to discuss this issue now. Additionally, similar to specific training for use of force review for supervisors, agencies may wish to have agency specific supervisor training for pursuit review and decision making considerations for pursuit continuance.			
19	Core Principle Seven – Duty to Report and Review Uses of Force	Agencies should develop a curriculum or participate in training specific for those that will be responsible to review use of force incidents.			
20	Section 7.6 Annual review of overall	It is imperative that there is consistency in the agency with respect to what is “risk			

	department use of force) Subsection B – “risk-based and randomly selected basis”	based” and what is “random.” Agencies may also wish to select videos based on the type of call for service that required a video recording to ensure a BWC activation and recording took place. This is different from selecting videos to review from a list of recorded videos as that process will not identify incidents that should have been recorded but were not.			
21	Addendum B – Vehicle Pursuit Policy, Section 2.7	Agencies should consider training officers and implementing mechanisms to eradicate ‘ghost pursuits.’			
22	Addendum B – Vehicle Pursuit Policy, Section 5.5	Agencies may want to consider defining a “marked” or “unmarked” vehicle; perhaps even creating their own “special service category” while more closely defining what types of vehicles may engage in a pursuit beyond those that are “marked” or “unmarked.” The agency should evaluate as to whether such a low visible police vehicle with hidden emergency lights and “ghost decals” would serve as the safest option for a pursuit. The agency may also wish to address the appropriate definition of a “pursuit rated” vehicle.			

		Many agencies have purchased large vehicles or heavy-duty pickup trucks that are “marked” and have “emergency lights,” but may be as safe to operate in a pursuit.		
23	Addendum B – Vehicle Pursuit Policy, Section 7.2	Agency training and policy should stress the importance of utilizing the language required by the policy. It should also be a part of the regular supervisory review process to ensure it is not replaced with jargon such as “go ahead,” “you are good,” “You’d better stop, or “mines well let him go.”		
24	Addendum B – Section 8 Role of Police Communications	Ensure that training for dispatchers takes place and is documented.		
25	Section 11.1 – Pursuit Reporting	Ensure that training emphasizes and that such pursuit reviews ensure that all operators of all vehicles involved in the pursuit complete a report.		
26	Section 12.2 – BWC and Other Video of pursuits.	The agency needs to ensure consistency to avoid risk.		