

TO: Police Chiefs, Public Safety Directors, and Fund Commissioners

FROM: Chief Harry Earle (Ret.)
J. A. Montgomery Consulting

DATE: October 26, 2020

RE: Election Process Considerations for the Law Enforcement Leader

The election process is upon us, and the law enforcement community is tasked with ensuring that our citizens have a safe place to cast their vote. Preparation is the key and having a conversation with our personnel about security, procedures, and the law may reduce the challenges our officers could be confronted with when responding to a call for service at a polling location.

Many of you are likely aware of the directive issued by New Jersey Attorney General Grewal regarding elections. This bulletin, which is attached for your convenience, details prohibitions on voter intimidation as well as providing guidance regarding the role of police officers at voting locations.

Specific information that can be used to help our law enforcement clients can be accessed through the “National Police Foundation” and the “Crime and Justice Institute.”

National Police Foundation – *Policing in a Time of Elections*

This resource contains numerous categories of actions that police leaders may want to consider as election day quickly approaches.

- Election day social media messaging for the police agency
- Election day considerations for field police supervisors
- Training items for 9-1-1 call takers regarding election matters

Policing in a Time of Elections can be viewed here: <https://www.policefoundation.org/elections/>

Crime and Justice Institute – *Preparing for the 2020 Election*

This resource breaks down helpful information into three specific periods, *Pre-Election*, *Election Day*, and the *Post-Election Period*.

Preparing for the 2020 Election can be viewed here:

<https://www.cj institute.org/assets/sites/2/2020/10/Elections-Public-Safety-Framework-Oct-2020-FULL.pdf>



State of New Jersey

PHILIP D. MURPHY
Governor

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

TO: All Law Enforcement Chief Executives
All County Prosecutors

FROM: Gurbir S. Grewal, Attorney General

DATE: October 16, 2020

SUBJECT: Guidance on the Role of Law Enforcement in Election Activities

This year's election is proceeding under unprecedented circumstances, presenting challenges for voters and law enforcement officers alike. While there fortunately have not been significant verified incidents of voter intimidation in New Jersey, there have been troubling reports of voter interference from other states. For that reason, I am issuing this guidance concerning certain election laws and the role of law enforcement officers in elections.

This guidance is not meant to be exhaustive. Its purpose is to emphasize both specific rules regarding law enforcement activity at polling places, as well as the importance of protecting voters from intimidation and coercion. This information is designed to help all of you—our state's law enforcement leaders—remain fully informed about the upcoming election, so that we can work together to avoid the problems and challenges faced elsewhere.

As FBI Director Christopher Wray recently noted, the right to vote in free and fair elections is “one of our most cherished rights and a foundation for our democracy.” With your assistance and cooperation, we will ensure that this year's election is conducted safely, securely, and in accordance with our country's highest democratic ideals.

State, County, and Local Law Enforcement Officers at Polling Places

New Jersey's law enforcement officers are entrusted with the special responsibility and authority to keep residents safe. Nevertheless, the involvement of law enforcement in election-related activities—even in the lawful performance of official duties—may cause unease for some New Jersey residents seeking to exercise their right to vote. In part for this reason, existing state laws limit the involvement of both on- and off-duty law enforcement officers in elections. At the county and local levels, civilian election officials—not law enforcement officers—are in charge of administering elections, just as at the state level, it is the Division of Elections within the



Office of the Secretary of State—not the Department of Law & Public Safety or the Office of the Attorney General—that is entrusted with election-administration responsibilities.

During an election, including the counting and canvassing of votes, responsibility for preserving the peace and maintaining good order in polling places lies principally with the district board officials (commonly known as “poll workers”) for the polling place. *See* N.J.S.A. 19:6-15. In addition, county superintendents of elections and their staff may remove from any polling place or other place where an election is being held any person who violates the state’s election laws or in any way unlawfully interferes with the conduct of an election. *See* N.J.S.A. 19:32-25. In the rare cases where such action is necessary, these election officials may call upon police officers to assist with the arrest or removal of individuals who refuse to comply with the election laws or the lawful commands of election officials. *See, e.g.* N.J.S.A. 19:32-22; N.J.S.A. 19:32-45.

In some cases, law enforcement officers of the municipality in which a polling place is situated may be detailed to assist the district board in performing its functions. *Id.* These duty assignments are generally made at the request of the district board through the relevant municipal officials. *See id.*; *see also* N.J.S.A. 19:6-16. “Any police officers so assigned shall, *under the direction of the board*, enforce the election laws, maintain order, peace and quiet during the hours of registry and election, and assist the members of the board in carrying the ballot box or boxes to the office of the municipal clerk after the ballots are counted.” N.J.S.A. 19:6-16 (emphasis added); *see also* N.J.S.A. 19:6-30 (stating that the district board in each election district “possess[es] full power and authority to direct the police on duty to maintain regularity and order, and to enforce obedience to their lawful commands during their sessions respectively”). The officers may not, however, assume the duties of a board member. *See* N.J.S.A. 19:6-16. Nor may they act as challengers for any party or candidate or on a public question. *Id.*

Law enforcement officers assigned to polling places may wish to familiarize themselves with the ways in which the rules for in-person voting on November 3, 2020, will differ from the rules in past years. *See generally* Frequently Asked Questions – November 3rd, 2020 General Election, <https://www.nj.gov/state/elections/assets/pdf/publications/njvotes-faq-2020-0923.pdf>. At the same time, law enforcement officers must remain mindful that administration of these rules is the responsibility of civilian election officials, not law enforcement officers.

As a general matter, however, an *off-duty* officer who is not assigned to a polling place for official purposes is permitted to serve as a member of the district board of elections or, if duly authorized, to serve as a challenger for a political party or a candidate or on public question. *See* N.J.S.A. 19:6-15.1. However, under no circumstances may such an officer wear a police officer’s uniform or carry an exposed weapon while acting in such capacity. *See* N.J.S.A. 19:6-15.1 (making it a criminal offense to do so); *see also* N.J.S.A. 19:7-1 *et seq.* (concerning appointment of challengers).

Prohibitions on Voter Intimidation

Among the laws that law enforcement officers may be called upon to enforce on and before Election Day are laws securing the right to vote and protecting voters from intimidation and harassment. Unfortunately, as Election Day approaches and voting has started across the country, we have already started to hear allegations of voter intimidation in other states.

New Jersey has strong protections in place against voter intimidation, including several that were enacted following our 1981 gubernatorial election. During that election, a political party allegedly intimidated voters on Election Day by posting at polling places off-duty law enforcement officers who wore armbands identifying them as members of a “National Ballot Security Task Force.” Some of these off-duty officers wore equipment normally associated with law enforcement personnel, such as two-way radios and firearms. These tactics prompted the Legislature to enact some of the rules discussed above limiting law enforcement officers’ activity relating to elections.

For similar reasons, federal law imposes even more stringent restrictions on federal officers and employees’ involvement in elections. *See, e.g.*, 18 U.S.C. § 592 (generally prohibiting deployment of federal troops or armed men at any place where an election is held, except where “necessary to repel armed enemies of the United States”); *id.* § 593 (prohibiting interference in elections by an officer or member of the Armed Forces of the United States); *id.* § 595 (prohibiting interference in elections by other federal employees).

Other laws that protect voters from intimidation apply generally to all members of the public. For example, it is a crime of the second degree for any person, including an election official or law enforcement officer, to knowingly and willfully intimidate, threaten or coerce—or attempt to intimidate, threaten or coerce—another person from voting, attempting to vote, or urging or aiding another person to vote or attempt to vote. *See* N.J.S.A. 19:34-1.1. State law also prohibits any person from using or threatening use of force, violence, or restraint; inflicting or threatening to inflict any injury, damage, harm or loss; or in any manner practicing intimidation upon or against any person, in order to “induce or compel” that person to vote or refrain from voting or voting for any particular person or on account of that person having voter or refrained from voting. *See* N.J.S.A. 19:34-28. Likewise, it is a federal crime to intimidate, threaten, or coerce—or attempt to intimidate, threaten, or coerce—any other person for the purpose of interfering with their right to vote or to vote as they may choose in a federal election. *See* 18 U.S.C. § 594. These protections apply at all times and locations, including but not limited to polling places, ballot drop boxes, and their immediate surroundings.

Obstructing or interfering with a voter’s free exercise of the elective franchise—at a polling place or elsewhere—is also illegal. *See* N.J.S.A. 19:34-29; *see also* N.J.S.A. 19:34-20 (making it a crime of the third degree to in any way willfully hinder or prevent a voter from casting their legal vote, knowing such person has a right to vote); N.J.S.A. 19:34-20 (making it a crime of the third degree to tamper with, injure, mutilate, destroy or render unfit for use, any ballot box); N.J.S.A. 19:63-28(a) (making it a crime of the third degree to prevent or attempt to prevent by fraud the voting by mail of any person legally entitled to do so); N.J.S.A. 19:34-6(a) (making it a crime of the third degree to obstruct the entrance to any polling place, obstruct or interfere with any voter, or loiter in or near a polling place).

Certain additional restrictions apply within 100 feet of polling places. On Election Day, it is prohibited to engage in electioneering in this restricted area, N.J.S.A. 19:34-6; N.J.S.A. 19:34-15, or to display, sell, give, or provide any political badge, button or other insignia to be worn in the restricted area (other than official badges furnished by a county board of elections), N.J.S.A. 19:34-19. Electioneering includes oral or printed communications (such as messages on signs, leaflets, t-shirts, masks, etc.) in support of, or opposition to, a candidate, campaign, party, or public question on the ballot.

Individuals who aid or abet violations of election laws may also be subject to criminal liability. *See* N.J.S.A. 19:34-20; N.J.S.A. 19:63-28(b). Of course, individuals engaged in voter intimidation or obstruction also may be in violation of laws that do not pertain specifically to elections. Criminal laws concerning weapons, assault, harassment, bias intimidation, and paramilitary activity (N.J.S.A. 2C:39-14) are among the many potentially relevant statutes. Law enforcement officers called upon to address voter intimidation or obstruction should consider the applicability of both the election laws and generally applicable statutes.

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In addition to issuing this Guidance, my office is requesting that each County Prosecutor designate an Assistant Prosecutor to serve as the principal point of contact matters relating to the upcoming election, if they have not already done so. Designation of a key point of contact for each County Prosecutor's Office will enable effective communication across law enforcement agencies, including with the designated points of contact for election-related matters in the Office of the Attorney General and the Office of Public Integrity and Accountability.

Should a law enforcement agency require additional guidance as to the application of the principles set forth in this memorandum, please contact in the first instance the appropriate Assistant Prosecutor in your County Prosecutor's Office and/or your county board of elections and/or superintendent of elections, depending on whether the matter is criminal or civil in nature. The Office of the Attorney General will provide an update if any policy discussed above changes.



Gurbir S. Grewal
Attorney General

ATTEST:



Andrew Bruck
First Assistant Attorney General

Issued on: October 16, 2020