

New Jersey S2656/A5301 Frequently Asked Questions

This document includes Frequently Asked Questions related to New Jersey Senate Bill 2656/ Assembly Bill 5301.

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Last Update: March 27, 2021

Bill Overview: S2656/A5301 would make law enforcement disciplinary records accessible as government records under the New Jersey Open Public Records Act (OPRA). It was introduced in the New Jersey State Senate in June 2020 by Senator Loretta Weinberg (LD-37). Assemblywoman Verlina Reynolds-Jackson (LD-15) introduced a companion bill A5301, which is identical to S2656, in the Assembly in January 2021. Passing of this bill will bring New Jersey into line with states that already grant much more public access to police disciplinary records, including Florida, Texas and New York.

FAQ 1: Didn't Attorney General Grewal's Directive 2020-05, announced on June 15, 2020, already address this concern related to police disciplinary records and transparency? **No.**

FAQ 2: Is it true that police unions have sued to stop the implementation of Attorney General Directives 2020-05 and 2020-06? **Yes.**

FAQ 3: Do other states make their police disciplinary files available to the public? **Yes.**

FAQ 4: Is special right of access to Internal Affairs records given when a person is being tried in a criminal case? **No.**

FAQ 5: Will passing S2656/A5301 result in an increase in frivolous or nuisance complaints (also known as vexatious complaints) resulting in harm to a police officer's reputation? **No.**

FAQ 6: Has S2656/A5301 been publicly supported by any police chiefs, departments or law enforcement organizations in New Jersey or nationally? **Yes.**

FAQ 7: Will S2656/A5301 have an adverse effect on police officers in the form of loss of privacy, damage to reputation, and/or physical danger via retaliation? **No.**

FAQ 8: Is there a cost implication with this bill in regards to the processing of the OPRA requests? **No.**

FAQ 1: Didn't Attorney General Grewal's Directive 2020-05 announced on June 15, 2020 already address this concern related to police disciplinary records and transparency?

No. Attorney General Grewal's Directive 2020-05, currently being challenged in the courts by police unions, requires changes to the Internal Affairs Policy & Procedures so that "every law enforcement agency shall publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints" AND "publish on the agency's public website a brief synopsis of all complaints where termination, reduction in rank or grade, and/or suspension of more than five days was assessed to an agency member. This synopsis shall include the identity of each officer subject to final discipline, a brief summary of their transgressions, and a statement of the sanction imposed."

As the Star Ledger Editorial Board has noted, Grewal's directive, "would not uncover more than a fraction of abuses, or hold all bad cops accountable, or detail how cops police themselves. It only exposes those resulting in major disciplines of five-plus days, or worse, without providing significant details."

In testimony for the July 15, 2020 Senate Committee on Law and Public Safety, Attorney CJ Griffin noted as evidenced by analysis of Internal Affairs summary reports, 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. CJ's analysis of Internal Affairs summary reports across the state show that between 93% to 99.6% of all cases will remain a total secret to the public under the AG Directive 2020-05 if upheld in the courts.

According to Attorney Jennifer Sellitti, the AG's directive is a step in the right direction but continues to shield many cases from the public, including those of lesser discipline and cases not sustained. She states that "for other professions – like lawyers, electricians, and hairdressers – the public has access to all complaints levied, and we trust the public to differentiate between legitimate and illegitimate complaints. Why do police officers – those we entrust to use force and carry weapons – receive special treatment?"

Sources:

https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-5_Major-Discipline.pdf

<https://www.nj.com/opinion/2020/07/grewals-call-for-more-police-transparency-heres-the-best-way-to-get-it-editorial.html>

<https://www.nj.com/opinion/2020/06/revealing-some-bad-cops-is-a-good-start-but-we-must-go-further-opinion.html>

<https://njopra.com/wp-content/uploads/2020/07/7.14.2020-Testimony-of-CJ-Griffin-on-Police-Reform-1.pdf>



FAQ 2: Is it true that police unions have sued to stop the implementation of Attorney General Directives 2020-05 and 2020-06?

Yes. Days after Attorney General Gurbir Grewal issued Directives 2020-05 and 2020-06, the State Troopers Fraternal Association filed suit, with several other unions joining them, to stop the release of names of New Jersey State Police who received major discipline resulting in termination of employment, reduction in rank or grade, and/or a suspension greater than five days.

Major disciplinary violations can include conduct involving, among other things, excessive force against civilians, racially derogatory comments, driving while intoxicated, domestic violence, theft, the filing of false reports, and/or conduct that results in criminal charges against the officer.

This litigation made it clear that “not all of my law enforcement colleagues see the benefit of this type of transparency,” Attorney Grewal said. During 17 minutes of testimony on July 15, 2020, in the Senate Law and Public Safety Committee, the Attorney General conceded that, “New Jersey needs to end its outlier status and move towards greater openness. We can and should be a national leader on this issue.”

The directive was upheld in a State Appeals Court, but is now being heard in the New Jersey Supreme Court. S2656/A5301 is a necessary step in addressing New Jersey’s outlier status and will bring New Jersey in line with 30 other states that are more transparent than New Jersey when it comes to police disciplinary records.

Sources:

<https://www.nj.com/news/2020/06/cops-sue-to-stop-release-of-disciplined-officers-names-it-could-hurt-their-families-they-say.html>

<https://www.nj.com/opinion/2020/07/grewals-call-for-more-police-transparency-heres-the-best-way-to-get-it-editorial.html>

<https://www.nj.com/news/2020/10/nj-can-release-names-of-disciplined-cops-state-appeals-court-rules.html>

<https://www.njleg.state.nj.us/media/mp.asp?M=V/2020/SLP/0715-1000AM-H0-1.mp4&S=2020>



FAQ 3: Do other states make their police disciplinary files available to the public?

Yes. Based on a project of WNYC in 2015, 29 states, including Texas, Florida, and Alabama are more transparent than New Jersey. Since that time, states like New York have made significant changes to increase transparency. New York recently repealed a law that kept the discipline records of officers secret for decades.

In more than a dozen states including Alabama, Colorado, Georgia and Florida, police disciplinary records are generally available to the public.

See additional details at <https://project.wnyc.org/disciplinary-records/> and a map created from this data [here](#).

Sources:

<https://project.wnyc.org/disciplinary-records/>

<https://www.nytimes.com/2021/03/08/nyregion/nypd-discipline-records.html>

FAQ 4: Is special right of access to Internal Affairs records given when a person is being tried in a criminal case?

No. It would only seem fair that a defendant, or accused, should know about past misconduct committed by the officers who arrested them and will testify against them in court, but this is not the case.

According to Attorney Jennifer Sellitti, criminal defendants and the lawyers that represent them are in the dark when it comes to learning about prior misconduct of officers in New Jersey. "There is a reason the union is fighting so hard to preserve the status quo: The current rules heavily favor police. There is a presumption of non-disclosure in criminal cases that can only be overridden when the public interest outweighs officer privacy."

The current rules require the defense attorney to know about the misconduct prior to meeting the legal standard for access to Internal Affairs records which is nearly impossible to do as New Jersey has never released the names of officers who engage in misconduct.

Source: <https://www.njspotlight.com/2020/07/op-ed-accused-must-have-access-to-police-disciplinary-records/>



FAQ 5: Will passing S2656/A5301 result in an increase in frivolous or nuisance complaints (also known as vexatious complaints) resulting in harm to a police officer's reputation?

No. There is no evidence for this despite police unions repeating this claim in New Jersey and nationally. Currently, very few complaints that are investigated through the Internal Affairs process are unfounded or frivolous.

Transparency actually benefits law enforcement on this issue of frivolous complaints. Because the complaints would be public under S2656/A5301, as well as the investigation files, the public will be able to review the complaint and the file and see for themselves that the complaint was frivolous and the situation was investigated properly.

Right now the complainant can file the complaint and speak to the press about it, yet there is no access to records to show that the complaint was properly investigated and found to be frivolous. Police agencies can't even discuss the complaint in response to a press inquiry. It's all a secret, which keeps police officers from clearing their name and reporters from being able to verify allegations.

Also, when records are released, police would of course have a First Amendment right to speak out and explain why it was frivolous and why they were not guilty.

Additionally, states like Florida and Ohio and more than a dozen others make both sustained and unsustained complaints public. No harm has followed as a result. By making them all available, the public is able to see that police are responding to complaints, investigating properly, and being transparent about it.

Here's an example of how transparency could work. This Florida agency posts their closed case summaries online. See

<https://www.pcsoweb.com/Data/Sites/1/media/2019-11-20.pdf>

This summary states that the complaint was unsubstantiated. The public can then request the actual investigation files to see why that was true and if it was thoroughly investigated.

As a result of the disclosure and transparency, police will be more likely to conduct thorough investigations because someone will hold them accountable when they do not.

Sources: <https://twitter.com/CJGriffinEsg/status/1374084079562407944>

Brief Of Amicus Curiae The American Civil Liberties Union of New Jersey, Association Of Criminal Defense Lawyers of New Jersey, Libertarians For Transparent Government, Latino Leadership Alliance Of New Jersey, New Jersey Foundation For Open Government from Superior Court of New Jersey Appellate Division Docket No: A-4006-18-t3



FAQ 6: Has S2656/A5301 been publicly supported by any police chiefs, departments or law enforcement organizations in New Jersey or nationally?

Yes. The National Coalition of Latino Officers, which is headquartered in New Jersey, is publicly supporting the bill. So is the Law Enforcement Action Partnership (LEAP, a nonprofit organization comprised of law enforcement officers, prosecutors, and others across the nation). A group of LEAP officers in Florida and Ohio, both places that have open Internal Affairs records, recently wrote Governor Murphy to express their support for S2656/A5301, stating “we believe that transparency of police misconduct records is benefiting law enforcement in our state and would do the same in New Jersey.”

Source:

https://d3n8a8pro7vhmx.cloudfront.net/njisi/pages/691/attachments/original/1603219431/NJ_Coalition_for_Police_Transparency_S2656_Letter_.pdf?1603219431

FAQ 7: Will S2656/A5301 have an adverse effect on police officers in the form of loss of privacy, damage to reputation, and/or physical danger via retaliation?

No. There is no evidence to support this concern. This bill addresses privacy concerns by ensuring that certain information pertaining to the law enforcement officer, or the officer’s family, the complainant, or the complainant’s family, and a witness, or the witness’ family, such as medical records (including fitness of duty records), phone numbers, and home addresses, will be redacted to protect those individuals.

It is also important to note that per statute NJSA 47:1A-3b and the New Jersey Supreme Court decision in North Jersey Media Group, Inc. vs Township of Lyndhurst the names of officers who use force and deadly force are already public.

As for damage of reputation, a recent [study](#) of 344 law enforcement administrators (mainly police chiefs) in twelve states that allow some or total access to law enforcement disciplinary records found that “contrary to the popular narrative that most or all law enforcement officials oppose public access to misconduct records... More administrators than not said they support laws requiring public access to misconduct records, and many said they would favor disclosure even if not required by law.” While 13% of administrators believed officers had suffered reputational harm, mainly embarrassment, due to disciplinary records being accessible to the public, almost five times as many, 60% of them, believed their department or community had benefited from disclosure of such records. These administrators argue that accessible records improved public trust, fostered transparency, and showed that misconduct was being taken seriously by law enforcement.

As for physical danger, in the 2019 study, only one of the 344 law enforcement administrators indicated that an officer had experienced physical harm as a result of disclosure, and it was unclear from the response whether the incident involved actual or threatened physical harm.

Source: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552012



FAQ 8: Is there a cost implication with this bill in regards to the processing of the OPRA requests?

No. First, there's no reason to believe there would be a massive influx of requests. Furthermore, this bill will actually make it easier for custodians. Right now, if a custodian gets a request for Internal Affairs files, they are to engage in a comprehensive balancing test to decide whether to release them under OPRA. This results in a lot of back and forth and ambiguity with time and money wasted. With the passing of this bill there will no longer be any grey area. The records are public, and all the custodian has to do is redact what is required under law and share. Additionally, municipalities would no longer need to engage in litigation related to common law suits which can cost them thousands of dollars.

