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**DIRECTIVE NO. 2011- 2**

**TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE  
ALL COUNTY PROSECUTORS  
SUPERINTENDENT, NEW JERSEY STATE POLICE  
ALL POLICE CHIEFS  
ALL LAW ENFORCEMENT CHIEF EXECUTIVES**

**FROM: PAULA T. DOW, ATTORNEY GENERAL**

**DATE: May 23, 2011**

**SUBJECT: ATTORNEY GENERAL DIRECTIVE REGARDING RETENTION AND  
TRANSMITTAL OF CONTEMPORANEOUS NOTES OF WITNESS  
INTERVIEWS AND CRIME SCENES**

Pursuant to my authority as chief law enforcement officer of the State of New Jersey, and to ensure uniform statewide compliance with the requirements set forth in the Supreme Court's ruling in State v. W.B., \_\_ N.J. \_\_ (2011), I hereby issue the following Directive:

**A. DEFINITIONS**

For the purposes of this Directive:

1. The term "contemporaneous notes" means any notation, whether handwritten, typed, entered into an electronic note-taking device or audio recorded, that describes or memorializes the note taker's personal perception of what transpired in the course of a witness interview or that memorializes the officer's personal observations at the scene of the crime. The term includes notations made after the witness interview, provided that they memorialize the officer's personal recollection of what transpired during the interview. The term does not include, among other things, notations concerning investigative tasks to be accomplished (*i.e.*, a "to do" list), references to



information from outside the interview to be checked against statements made by the witness to verify or dispel the witness's account, possible lines of inquiry, specific questions that were not pursued or actually posed to the witness, and other investigative techniques or deliberative processes.

2. The term "witness interview" means an interview of a witness done in the course of investigating a crime of the first, second, third, or fourth degree under New Jersey law, whether committed by an adult or a juvenile.

## B. GENERAL RETENTION AND TRANSMITTAL RULES

### 1. Prohibition on Policy or Practice of Destroying Contemporaneous Notes of Witness Interviews and Crime Scene Observations

Any existing law enforcement policy or practice to destroy contemporaneous notes of a witness interview or of a crime scene observation after the contents of those notes have been incorporated into a final report is hereby rescinded and prohibited as contrary to the law of this State. Henceforth, when a law enforcement officer during the course of an investigation of a crime conducts or participates in a witness interview, the officer shall retain any original contemporaneous notes of the interview that the officer made. The officer also shall retain any original contemporaneous notes made of his or her personal observations of the crime scene.

### 2. Transmittal of Notes of Witness Interviews and Crime Scene Observations to Prosecuting Agency

Whenever a law enforcement officer transmits to the prosecuting agency a report concerning a witness interview that the officer conducted or participated in, or concerning a crime scene observation made by the officer, the officer shall also transmit to the prosecuting agency a printed or electronic copy of any contemporaneous notes of the interview and/or crime scene observation that had been taken by the officer. For ease of identification, the copy of the contemporaneous notes shall be labeled with the case number on the report.

### 3. Notice to Prosecutor of Material That May be Confidential or Privileged

Whenever a law enforcement officer provides a copy of contemporaneous notes to a prosecuting agency pursuant to paragraph 2 of this Section, the officer shall alert the prosecuting agency if the officer believes that the contemporaneous notes may include or otherwise reveal confidential or privileged information, or where the officer believes that further disclosure of the

contemporaneous notes or any portion thereof may endanger any person or interfere with an investigation. It is the responsibility of the prosecuting agency to determine whether the contemporaneous notes are discoverable pursuant to R. 3:13-3, whether any non-discoverable portions of such notes should be redacted prior to providing discovery, and/or whether it is appropriate or necessary to apply for a protective order denying, restricting or deferring discovery of such notes, or portions thereof, pursuant to R. 3:13-3(f).

4. Effect on Existing Note-Taking Policies and Practices

Nothing in this Directive shall be construed either to require law enforcement officers to take contemporaneous notes of a witness interview or of crime scene observations, or to discourage law enforcement officers from taking any such notes. Nor does this Directive modify existing requirements for electronic recordation of statements pursuant to State v. Cook, 179 N.J. 533 (2004) and R. 3:17.

5. Training on Note-Taking Techniques

When a law enforcement officer take notes of a witness interview, the officer should whenever feasible avoid memorializing what transpired during the course of the interview on the same page that include notations that do not pertain to what transpired during the witness interview (e.g., follow-up investigative tasks to be performed). This approach will enable officers to transmit to the prosecuting agency only those pages that are required to be transmitted pursuant to paragraph 2 of this Section, and will also assist the prosecuting agency in distinguishing and separating notations that must be provided in discovery from non-discoverable material. The Division of Criminal Justice and the County Prosecutors, in consultation with the New Jersey Association of Chiefs of Police, shall develop and make available training materials concerning effective note-taking techniques in furtherance of this Directive.

C. SCOPE, EFFECTIVE DATE AND IMPLEMENTATION

This Directive shall apply to every law enforcement agency and officer operating under the authority of the laws of the State of New Jersey. This Directive shall take effect on May 27, 2011, and shall remain in force and effect unless and until repealed, amended or superseded by Order of the Attorney General. Every police department and law enforcement agency shall take such steps as may be necessary and appropriate to implement this Directive, and every department and agency shall review and, as necessary, revise its rules, regulations, standing operating procedures, and/or training programs to ensure compliance with this Directive.

D. INTERPRETATION

Questions by police agencies or officers concerning the application of this Directive to specific cases should be addressed to the prosecuting agency handling the case. Questions by County Prosecutors regarding the content or interpretation of this Directive should be addressed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau.

Given under my hand and seal, this 23rd day of May, in the year Two Thousand and Eleven, and of the Independence of the United States, the Two Hundred and Thirty-Fifth.



Paula T. Dow  
Attorney General

Attest:



Phillip Kwon  
First Assistant Attorney General