

New York State Police Reform and Reinvention Collaborative Plan

Executive Order 203

I. Introduction:

On June 12, 2020, Governor Andrew A. Cuomo issued an executive order directing municipalities that employ police officers to actively engage stakeholders in the local community and develop locally approved plans for the strategies, policies and procedures of local police agencies. In accordance with this order, The Herkimer County Sheriff's Office entered a collaborative effort to move through a county wide process to enact police reform plans. This reform plan regarding the operations and services provided by the Herkimer County Sheriff's Office and the Herkimer County District Attorney's Office will meet the mandated changes proscribed by New York State Executive Order 203.

II. Agency Profile:

The Sheriff's Office currently employs 7 full time Deputy Sheriffs and 10 part timers. We are a unique agency in that we are one of two counties in the state that do not have an active road patrol. The Deputy Sheriffs are responsible for county building security, serving civil processes, welfare fraud investigation, navigation of county waterways, county warrants, school resource officers, and pistol permit background investigations. The Corrections Division is made up of peace officers.

The Herkimer County District Attorney's Office employs one full time Investigator who is a certified police officer.

III. Reform Plan Members

- James Wallace, Herkimer County Executive
- Vincent Bono, Herkimer County Chairman
- John Stephens, Public Safety and Emergency Management
- Jeffrey Carpenter, Herkimer County District Attorney
- Timothy Seymour, Commissioner of Herkimer County Social Services
- Scott Scherer, Herkimer County Sheriff
- Scott Leskovar, Undersheriff
- Jeffrey Crim, Chief Deputy
- Kristen Snyder-Branner, Herkimer County Office of Mental Health
- Keith Bowers, Herkimer County Public Defender Office
- Maureen Petrie, Executive Director of Catholic Charities
- Mark Polkosnik, Ph.D. Herkimer County Community College
- Virendranath Dhaniram, business owner/village official
- Mary Kline, Director- Adult, Early Childhood and Outreach Education
- H. Edmund Reed, Pastor - Christian Bible Church

Virtual meetings held on the following dates:

- Wednesday January 20, 2021 Initial discussion to discuss the issues and timeline to enact the reform
- Wednesday February 10, 2021 Provided members with questionnaire that addresses reform topics
- Wednesday February 17, 2021 Responses returned and used to develop a plan outline
- Wednesday February 24, 2021 Plan proposal to members
- Monday March 1, 2021 Draft of the plan made available for public comment on county webpage

IV. Mandated Reforms:

A. Civil Penalties for Filing False Reports on Members of a Protected Class

1. This mandate establishes civil penalties for falsely summoning a police officer when there is no reason to believe a crime, offense, or threat has been committed involving a member of a protected class. (Effective June 13, 2020)

Action taken: No active road patrol, defer to local police.

B. Require Police Officers to Report the Discharge of Weapons

1. This mandate requires a police officer or peace officer (whether on or off duty) who discharges his or her weapon under circumstances where a person could be struck by a bullet to verbally report the incident within six hours, and file a written report within forty-eight hours. (Effective September 13, 2020)

Action taken: The use of force policy and procedure of the Herkimer County Sheriff's Office was amended to conform to the model policy issued by the New York State Municipal Police Training Council.

C. Require the reporting of Police Acts or Omissions Resulting in a Persons Death to the Office of Special Investigation

1. This mandate establishes an Office of Special Investigation within the Office of the Attorney General which will have investigative authority and criminal jurisdiction for any incident involving the death of a person caused by an act or omission by a police officer or peace officer employed as a correction officer or contracted by an education, public health, social service, parks or housing agency. Where an investigation concludes that the death or matters relating to the death or investigation of the death involved criminal conduct, the Office will be empowered to prosecute and alleged offenses. (Effective April 2021)

Action taken: Establish and maintain communication with the Attorney General's Office.

D. Ban Choke Holds

1. The Eric Garner Anti Choke Hold Act creates the crime of aggravated strangulation (making it a Class C Felony) and establishes criminal penalties for a police officer or peace officer who uses a choke hold that causes serious physical injury or death. (Effective June 12, 2020)

Action taken: The policy and procedure of the Herkimer County Sheriff's Office was amended to conform to the model policy issued by the New York State Municipal Police Training Council and updated mandatory in-service training concerning the use of force techniques.

E. Require Medical Response for Arrestees

1. This mandate affirms an individual's right to medical and mental health attention while under arrest or otherwise in custody of a police officer or peace officer. Failure to provide reasonable and good faith medical assistance could result in a cause of action against the officer, representative and/or entity. (Effective June 15, 2020)

Action taken: The use of force policy and procedure of the Herkimer County Sheriff's Office was amended to conform to the model policy issued by the New York State Municipal Police Training Council.

F. Require Policing Statistics to be Reported to the Division of Criminal Justice Services

1. This requires courts to compile and publish data concerning arrests and court proceedings involving low-level offenses such as violations and traffic offenses. Such report will include aggregate and anonymized demographic information such as race, ethnicity and sex. This bill requires police departments to submit annual reports on arrest-related deaths to the Department of Criminal Justice Services, as well as the Governor and the State Legislature. (Effective December 12, 2020)

Action taken: The Sheriff's Office reports all required data to the Department of Criminal Justice Services via the Ejustice portal including hate crimes and bias incidents.

G. Recording of Law Enforcement Activity

1. This mandate provides that a person not under arrest or in the custody of a law enforcement official has the right to record police activity and to maintain custody and control of that recording and of any property or instruments used by that person to record such activities. A person in custody or under arrest does not, by that status alone, forfeit such right to record. (Effective July 13, 2020)

Action taken: Mandate added to mandatory in-service training.

H. Provide the Public Access to Personnel Records of Deputies and Correctional Officers

1. The repeal of Civil Rights Law 50-a, which had made all personnel records used to evaluate the performance toward continued employment or promotion of police officers, firefighters, paramedics, correction officers, or peace officers confidential and not subject to inspection or review without the individual's express written consent or a court order. This legislation also amends the New York State Freedom of Information Law (FOIL), subjecting any record created in furtherance of a law enforcement disciplinary proceeding to disclosure under FOIL. The new FOIL provisions require specific sensitive personal information, including medical history, to be redacted from such records prior to being disclosed.

(Effective June 13, 2020)

Action taken: The Sheriff's Office will comply with the legislation to maintain transparency.

V. Employing Smart and Effective Policing Standards and Strategies

A. Procedural Justice and Community Policing

The Herkimer County Sheriff's Office serves the law enforcement needs of all the citizens of the County, and strives to do so in a professional manner, respecting the rights of all our citizens without regard to race, color, nationality, creed, gender or sexual orientation. Our policy and procedures are developed and carried out with that goal in mind and our Deputy Sheriffs are selected, trained, and supervised with that goal in mind. These concepts are modeled after the NYS Municipal Police Training Council and are reflected in the following documents:

1. Department Mission Statement
2. Code of Conduct
3. Rules and Regulations
4. Anti-harassment Policy
5. Work Place Violence Prevention Policy
6. Domestic Violence Prevention Policy

- B. The Herkimer County Sheriff's Office has partnered with Catholic Charities to include mandatory in-service training that addresses mental health awareness and sensitivity.
- C. The Herkimer County Sheriff's Office has partnered with the Department of Social Services to include their employee training regarding Implicit Bias, Civil Rights, LGTBQIA+ Community, and Disproportionate Minority Representation. Deputies often pair with human services, probation, and any other applicable service provider to work with clients in need of multiple services.
- D. The Herkimer County Sheriff's Office maintains a positive relationship with the District Attorney's Investigator to provide timely discovery material to aid the speedy trial reforms.
- E. The Herkimer County Sheriff's Office is in compliance with the model policy of recording custodial interviews established by the Municipal Police Training Council.

VI. Use of Force and De-escalation

A. The Herkimer County Sheriff's Office is compliant with the most up to date policies and procedures issued by the State of New York concerning the use of force against members of the community. These standards are governed by:

1. New York State Municipal Police Training Council
2. New York State Division of Criminal Justice Services
3. New York State Penal Law Article 35
4. New York State Executive Law 840
5. New York State Executive Law 837

B. The Herkimer County Sheriff's Office has added a block of instruction to the annual mandatory in-service training to include the newly added reforms that address:

- Ban on choke holds
- De-escalation techniques
- Duty to intervene
- Providing medical assistance
- Reporting requirements

VII. Law Enforcement Assisted Diversion Programs

A. Herkimer County has several agencies that offer support services to divert people, in appropriate cases, away from the criminal justice system in the early stages to offer alternatives to incarceration. These programs are utilized by Deputies and the District Attorney's Office. Such services can be found in:

1. The Office of Mental Health
2. The Department of Social Services
3. The Department of Probation
4. Persons In Need of Supervision
5. Herkimer County Catholic Charities
6. Drug Court for substance abuse victims
7. Mobile Crisis Assessment Team
8. Veterans Outreach Services
9. Beacon Center

VIII. Community Based Outreach

A. The Herkimer County Sheriff's Office participates in several events and programs throughout the county that fosters a positive relationship between its employees and members of the community.

- Operation Safe Child
- Project Lifesaver
- Yellow Dot Program
- PAUSE NY enforcement
- Office of the Aging Annual Picnic
- Free food and milk distribution
- Prescription Drug Take Back events
- StopDWI programs
- Sex Offender Registry and compliance
- Shop with a Cop
- Firearm Safety Training Course
- Escort charity rides and events
- Sheriff's Summer Camp
- Youth Bicycle Helmet give away
- Elderly Abuse/Safety presentation to senior
- Boater Safety
- Speed trailers for traffic safety

B. School Resource Officers

1. The Herkimer County Sheriff's Office currently has an officer stationed in the following schools. Deputies have an annual contract with each school district where they report every day that school is in session and any other time they are requested by the school. They give lessons to students about substance abuse, impaired driving and bullying. They also pair with school officials for home visits to students needing assistance.

- West Canada Valley
- Poland Central School
- Mount Markham
- Central Valley Academy
- Owen D. Young
- BOCES (Herkimer and Ilion campuses)

IX. Recruiting and Supporting Personnel

- A. The Herkimer County Sheriff's Office must conform to the New York State Civil Service Law when hiring new employees. This agency has made the following steps to increase potential hires in the hope to better diversify the department:
1. Requested our Civil Service Director to open the written entrance exam to adjoining counties
 2. Partners with the criminal justice academy conducted at the Herkimer County Community College to reach a broader base of candidates
 3. Partners with the police academy conducted by the Little Falls Police Department to reach a broader base of candidates
- B. It is the recommendation of this agency to amend the statute that requires potential hires to maintain a ranking in the top three of the written exam to be considered for employment. It would be more beneficial to have a pass-fail scoring system that would allow the department heads to put more weight into the extensive background investigation portion of the process. This would give all members of the community an opportunity to be considered on merit and character more than only scoring in the top percentile.

X. Conclusion

Herkimer County will continue to work closely with its community partners to ensure that the Herkimer County Sheriff's Office and District Attorney's Office maintain a standard of excellence and consistently provides the highest possible level of law enforcement services to the community. Herkimer County recognizes the importance of public safety throughout the community and is committed to utilizing all resources available in order to ensure the safety and well-being of its citizens.