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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2021-2**

**TO:** All Law Enforcement Chief Executives  
All County Prosecutors

**FROM:** Gurbir S. Grewal, Attorney General

**DATE:** March 30, 2021

**SUBJECT: Directive Protecting Tenants from Illegal Evictions**

The COVID-19 pandemic has threatened not only the health of New Jersey’s residents, but also their livelihoods. More than 1.8 million New Jerseyans have applied for unemployment since the pandemic began, and many households have found it increasingly difficult to cover their basic needs, including housing.

The state and federal governments have taken various steps to address housing insecurity created or exacerbated by the pandemic. In March 2020, for example, Governor Philip D. Murphy issued Executive Order No. 106 (EO 106), which imposed a moratorium on the enforcement of eviction orders until the end of the public health emergency. In September 2020, the federal Centers for Disease Control and Prevention issued its own nationwide eviction moratorium, which has since been extended to June 30, 2021. Taken together, these actions have allowed untold New Jerseyans to remain in their homes during this health crisis.

But it appears that the eviction moratoria have had at least one unintended effect: some landlords, unable to evict tenants through lawful means, have now taken matters into their own hands. In the most egregious cases, landlords have changed locks or shut off utilities without the tenants’ knowledge or approval, leaving residents unable to access their properties and effectively rendering them homeless. These actions—in the middle of a global pandemic—are not simply illegal, they are inhumane.

Law enforcement agencies have an important role to play in preventing these types of illegal evictions. In January 2006, Governor Richard J. Codey signed Public Law 2005, c. 319, which clarified that only an officer of the court can execute an eviction order (formally, an



“execution of warrant for possession”) and made it a crime for landlords and others to evict residents using any other means, including illegal lockouts. Now codified as N.J.S.A. 2C:33-11.1, the law provides an especially powerful tool for preventing illegal evictions during the current pandemic.

Broadly speaking, Section 33-11.1 criminalizes two types of conduct: illegal evictions, and refusals to allow illegally evicted residents to immediately reenter their homes. But unlike many offenses, officers cannot charge a person with violating Section 33-11.1 unless that person has been previously warned by the officer or another public official about the illegality of their conduct. This unusual provision requires officers to take additional measures before they can issue a complaint-summons to any individuals responsible for the illegal eviction.

Section 33.11-1 makes clear what types of illegal evictions trigger the statute: any occasion where a person either “takes possession” or “effectuates a forcible entry or detainer” of a residential property without obtaining the occupant’s consent or complying with lawful eviction procedures. The statute further defines “forcible entry or detainer” as any means of compliance other than lawful eviction procedures, including the use of violence, the changing of locks, or the shutting off of utilities.<sup>1</sup> Any person who engages in such conduct—after being warned of its illegality—can be charged with a disorderly persons offense. Similarly, any person who refuses to “restore immediately” an occupant displaced in such a manner, after receiving a warning, also may be charged with a disorderly persons offense.<sup>2</sup> Section 33.11-1 also includes a recidivist provision, which upgrades the violation to a fourth-degree crime if the offender has been convicted of the same offense any time in the past five years.

Section 33-11.1 includes two other provisions that bear mentioning. First, the law provides that illegally evicted occupants are entitled to reenter their residences “without delay,” and that the occupants who seek reentry shall not be considered trespassers or chargeable with any offense, but only so long as a law enforcement officer is “present at the time of reentry.” Second, the law creates an affirmative duty for officers present during reentry to prevent the landlord or other persons from “obstructing or hindering” such reentry by the occupant.

Taken as a whole, Section 33-11.1 outlines a process for preventing illegal evictions and holding irresponsible landlords accountable, but also imposes several requirements on law enforcement officers not typically found in other criminal statutes. While guidance from prior

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<sup>1</sup> As a practical matter, so long as EO 106 remains in effect, virtually all evictions constitute a violation of Section 33.11-1, insofar as EO 106 has halted the lawful execution of warrants for possession. Note, however, that EO 106 does permit enforcement of removal actions in the rare circumstances when a court determines on its own motion or a motion of the parties that enforcement is necessary in the interest of justice.

<sup>2</sup> Section 33:11-1 does not limit who may be charged for violations, provided that the person either illegally evicted occupants or refused to immediately restore them to their residence. Although the law does not define what constitutes a refusal, the term implies that the person has the power to readmit the displaced occupant, and so this Directive instructs officers to only charge those who can authorize reentry, such as landlords, property owners, or property management executives with decision-making power.

Attorneys General has addressed the requirements of this law, I have determined that officers statewide would benefit from additional guidance on Section 33-11.1 and am issuing this Directive to ensure uniform enforcement across New Jersey. And while COVID-19 has highlighted the problem of illegal evictions, this Directive will remain useful and necessary for officers even after the pandemic ends, and will create a framework to ensure that no New Jersey resident is illegally displaced from their home.

This Directive outlines a four-step process that law enforcement officers must follow when responding to a report of an illegal eviction. As a first step, when officers arrive at the scene, they should attempt to determine the basic facts regarding the eviction or threatened eviction. If the officers identify potential violations of Section 33-11.1, they should promptly issue warnings to the responsible parties. Next, if the officers determine that a tenant was evicted illegally, then they should ensure that the tenant is immediately restored to their residence. Finally, if the warned individuals refuse to comply with requirements of Section 33-11.1, then the officers should promptly charge those individuals by complaint-summons. By following these simple steps, law enforcement officers can ensure compliance with the law and protect tenants from illegal evictions.<sup>3</sup>

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the procedures outlined below. This Directive supersedes the Revised Notice to Law Enforcement Concerning Unlawful Eviction Law issued by Attorney General Milgram on July 20, 2009.

## **I. Law Enforcement Response to Reports of Illegal Evictions**

A. ***Step 1: Determine Facts Regarding Eviction or Threatened Eviction.*** As soon as officers learn of a potential violation of Section 33-11.1, they should attempt to determine the basic facts regarding the eviction or threatened eviction. In particular, officers should seek answers to the following questions:

- *What is the residential property in question?* To trigger Section 33-11.1, the property must be rented or owned for residential purposes, including any house, building, mobile home, or tenement. See N.J.S.A. 2A:18-61.1; see also N.J.A.C. 5:27-3.3(c) (extending eviction law to certain residents of rooming and boarding houses).

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<sup>3</sup> To be clear, this Directive addresses how law enforcement officers should respond to the illegal removal of occupants from their premises, pursuant to Section 33-11.1. It does not address the lawful process for removing occupants via eviction or ejection.

- *Who is the property's occupant?* Typically, the complainant will be an occupant claiming that they were illegally evicted or threatened with illegal eviction. The officers should attempt to determine whether the purported occupant in fact resides at the property. The officers should make this determination based on the totality of the evidence, which can include witness interviews, proof of residency (such as a driver's license or recent utilities bill), and/or an inspection of the premises.
- *Who is evicting the occupant or attempting to do so?* Typically, the evicting party will be the property owner or landlord. In some cases, the eviction or attempted eviction will be performed by an agent of the landlord, such as employees of a property management company.
- *Is the occupant no longer able to access their property?* The officers should determine whether the occupant has in fact been denied access to their residence and is no longer able to reside at the property.
- *Has the evicting party removed the occupant in compliance with the state's lawful eviction procedures?* Generally speaking, landlords can only evict tenants pursuant to a valid "execution of warrant for possession," which must be effectuated by a sheriff's officer or other officer of the court. N.J.S.A. 2A:42-10.16. ***Please note that so long as EO 106 and/or the CDC moratorium remain in effect, officers are prohibited from enforcing executions of warrant, and so as a practical matter almost all evictions during this time violate Section 33-11.1.*** (See Footnote 1.)
- *What steps has the evicting party taken or threatened to take in order to remove the occupant?* Section 33-11.1 prohibits persons from effectuating a "forcible entry or detainer," which the law defines as the entering and holding of a property using any means other than those permitted by the lawful eviction process. The statute includes several examples of improper means, including: (1) violence or threats of violence; (2) statements or actions intended to create fear; (3) moving the occupant's furniture or personal effects outside the premise; (4) entering peaceably and then, by force or threats, turning the occupant out of possession; (5) padlocking or otherwise changing locks to the property; and (6) shutting off vital services, including heat, electricity, or water, in an effort to regain possession.

In seeking answers to these questions, officers should be mindful of their role during Step 1 of this process: to ascertain whether an illegal eviction has occurred, and not to provide legal advice to tenants or others parties. If officers believe that a person requires legal advice about their housing status but cannot afford private counsel, officers should encourage the individual to contact Legal Services of New Jersey at 888-LSNJ-LAW. In addition, the New Jersey Department of Community Affairs has posted a reference guide on the rights and responsibilities of residential landlords and tenants, which is available at [https://www.nj.gov/dca/divisions/codes/offices/landlord\\_tenant\\_information.html](https://www.nj.gov/dca/divisions/codes/offices/landlord_tenant_information.html).

- B. ***Step 2: Issue Warnings to Responsible Persons.*** Based on the information gathered during Step 1, officers should determine whether any person has violated or appears likely to violate Section 33-11.1, either by illegally evicting the occupant (including by forcible entry and detainer) or refusing to allow an illegally evicted occupant to immediately reenter the premises. If a violation has occurred or appears likely to occur, then the officers should instruct the relevant persons to immediately cease their illegal conduct and warn them that failure to do so will result in charges. As soon as practicable, the officers should document in writing who received the warning, when the warning was issued, and what conduct was covered in the warning.<sup>4</sup>

In determining which persons should receive a warning, officers should evaluate who appears to be responsible for the illegal conduct and who has the authority to restore the occupant to the premises. An individual need not be physically present at the premises to be responsible for the violation, provided that the individual directed an agent to perform the illegal eviction or has the authority to allow the occupant to reenter the premises. Depending on the circumstances, if a corporate entity owns or manages the property, then the responsible persons could include corporate executives with the authority to allow or disallow occupants to reenter their homes.

- C. ***Step 3: Ensure Any Illegally Evicted Occupants Are Immediately Restored to Premises.*** If officers conclude that any occupants were illegally evicted in a manner prohibited by Section 33-11.1, then the officers should ensure that the evicting party immediately allow the occupants to reenter and reoccupy the premises.<sup>5</sup> Section 33-11.1 makes clear that reentry should occur “without delay,” and so the officers should ensure that the process take no longer than absolutely necessary to complete. In addition, the law states that officers have an affirmative duty to “prevent the landlord or any other persons from obstructing or hindering” the reentry and reoccupancy of the dwelling. If the evicting party effectuated a “forcible entry or detainer” in connection with the illegal eviction, then the officers should ensure that the evicting party has addressed any obstructions or hindrances arising from such actions, such as a padlock on the entrance or the removal of furniture from the residence.

Section 33-11.1 prohibits officers from charging an illegally evicted occupant with trespass or other offenses if the occupant reenters and reoccupies the dwelling while an officer is present. The law includes no such prohibition on charging occupants who reenter a dwelling when an officer is *not* present. That said, officers are not *required* to

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<sup>4</sup> Each law enforcement agency is responsible for ensuring that officers who subsequently respond to the same location are aware of previously issued warnings.

<sup>5</sup> In carrying out their responsibilities under Section 33-11.1, officers should consider whether any of the involved parties are subject to any other valid court orders—such as a domestic violence restraining order or a protective order relating to certain sex crime convictions—that may restrict their ability to enter or be present at a particular premises. Neither Section 33-11.1 nor EO 106 allows tenants to avoid otherwise valid court orders restricting their access to a location.

charge illegally evicted occupants who reenter their homes without an officer present, and officers should exercise their discretion about such charges based on the totality of the circumstances.

- D. ***Step 4: If Warnings Goes Unheeded, Issue Complaint-Summons.*** If officers issue a warning to an individual during Step 2 and the person nonetheless violates Section 33-11.1, then the officers should promptly charge that person by complaint-summons. The officers need not wait a specified amount of time after issuing the warning before charging the person; as soon as the warned individual indicates their refusal to comply with the law, the officer may issue the complaint-summons. The officer need not charge the person if the individual is making good-faith efforts to restore the illegally evicted occupant to their residence.

In most cases, the defendant will be charged with a disorderly persons offense. If, however, the defendant has been previously convicted of a Section 33-11.1 violation during the past five years, then the violation should be charged as a fourth-degree crime.

## II. Other Provisions

- A. ***Compliance with N.J.S.A. 52:17B-4.6.*** This Directive supersedes the Revised Notice to Law Enforcement Concerning Unlawful Eviction Law issued by Attorney General Anne Milgram on July 20, 2009. Pursuant to N.J.S.A. 52:17B-4.6, this Directive shall be:
1. Transmitted to the chief or director of every municipal police department, every municipal prosecutor, every county prosecutor, and the Superintendent of the New Jersey State Police;
  2. Disseminated to every law enforcement officer operating under the authority of the laws of the State of New Jersey; and
  3. Reinforced at roll calls and academy service training and continuing education programs so to ensure that all officers and prosecutors are educated of their responsibilities under Section 33-11.1.
- B. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

- C. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- D. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- E. **Effective date.** This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal  
Attorney General

ATTEST:



Veronica Allende  
Director, Division of Criminal Justice

Dated: March 30, 2021