



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

Testimony of the Maine Municipal Association

Neither For Nor Against

LD 1416 - An Act To Limit Qualified Immunity of Law Enforcement Officers in Maine Civil Rights Act Claims

And

LD 214 - An Act To Eliminate Qualified Immunity for Police Officers

April 29, 2021

Senator Carney, Representative Harnett and members of the Judiciary Committee, my name is Rebecca Graham, and I am providing testimony neither for nor against LD 214 and LD 1416 on behalf of MMA's Legislative Policy Committee.

Municipal officials and our residents want intelligent, reasoned and highly trained individuals to fill the role of law enforcement officers in our communities. This requires a well-funded system of specialized training, attractive salaries, thorough background checks and the right tools for these individuals we task with facing situations thankfully the majority of us will never experience.

We can have well trained, kindhearted, ethical employees but they will always be human, and the law has evolved to understand and address this fact.

Qualified immunity is one of those tools that recognizes these employees are called on to make split second decisions under extreme stress in rapidly evolving dangerous scenarios and those decisions have consequences for everyone. When they have acted with due regard to their training, and the policies of the agency they represent, they and their families deserve our protection to the same degree those on the receiving end of those decisions deserve justice.

Granting individuals in this circumstance a summary judgement is the opportunity for system change because it is at this point the injured party and the courts place the onus back on the agency to determine if the policies require review or are in line with accepted practice. Removing this option means the focus is entirely on the individual and not the system.

Municipal officials share the desire to eradicate bad cops from our ranks, however the legislative reforms must be proportional, and evidence-based to protect the existing workforce and attract and retain the brightest community-oriented officers. This requires unified bipartisan investment.

It is important to note that these bills propose a two-track enforcement system for civil rights violations. Nothing in these bills will change the federal application of qualified immunity. This will only impact violations of Maine's Civil Rights Act. Federal thresholds will still apply. Creating two paths to evaluating the actions of police officers could easily make it harder for individuals filing cases to have their claims reviewed in a timely way while costing twice as much for their pursuit. It will most certainly create work for lawyers, but the results may not be what is expected.

As the Supreme Court recognized in the *Harlow v. Fitzgerald* case in 1982, that there is a cost to our social fabric for opening public officials up to unchecked litigation that include: "expenses associated, the diversion of official energy from pressing public issues and the deterrence of able citizens from accepting public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or most irresponsible, in the unflinching discharge of their duties."¹

Recruitment is an enormous challenge for municipal law enforcement agencies currently and we need to make sure the conditions for employment attract and protect the best candidates. Removal of the protection afforded under the current system to our best and brightest employees means we will likely lose them leaving municipalities with exactly the individuals we do not want in these roles to fill the gaps. Municipal officials want tools to help identify and remove those individuals not lose our diligent public servants.

Qualified immunity was constructed to "strike a balance between the competing values of vindicating constitutional rights and protecting public officials from meritless suits."² Municipal police find themselves in these situations daily, and because of this, far more likely to attract such suits.

For these reasons, officials find the proposed approach under LD 214 entirely unworkable as drafted.

Dismantling qualified immunity is not a panacea to eradicate bad cops. Nothing about this process protects bad actors in anyway. Summary judgements are a judicial objective review of circumstances to determine if a reasonable trained individual could feasibly make the same decision under the same set of complex circumstances. It is not a get out of jail free card for bad actors or an institutional shroud of secrecy. It only provides protection from civil damages and only in accordance with clearly established law and it is not as available as everyone believes it is.

Most excessive force claims where qualified immunity is denied is usually because there is a dispute of facts surrounding the event. Even when qualified immunity is denied, there is no guarantee that a court will weigh against the officer. However, whenever those facts are in dispute, or the law is not clear on its application in the circumstances, and there are questions around feasibility for the officer to give provide a warning the courts does not grant qualified immunity and leaves it to the jury to decide. (See attached Drouin judgment)

While the more balanced approach offered in LD 1416 with limits on personal liability is welcomed, the net effect will mean greater public expenditures as police are unable to secure professional insurance due to the nature of their positions. Additionally, Sec. 15 MRSA §4686 (1) A denies qualified immunity if the alleged "violation involved the person's using or threatening to use physical force or violence against a person".

¹ 457 U.S. 800,814 (1982)

² 457 U.S. 800, 815 (1982)

The threat of physical force is a necessary element of the daily duties of a law enforcement officer. While the goal of all law enforcement interactions is voluntary compliance, the threat of physical force and restraint is an element of every arrest, and a necessary response to protect life and property. Officials do not want our officers to second guess using the threat of physical force to detain an individual when responding to a domestic assault, bar fight, or removal of an unwanted person from a business or residence.

Municipal officials want to work together with our state partners and do better in partnership with reform. The national conversation arrived here through government underfunding for a wide set of tools and health and social service programs, and then asks our police to be the stop gap for the fall out. It is municipal police led programming that has created the in-community diversion and health responses to many of these public crises. We need our police to feel empowered to take these same chances to develop problem solving programming with confidence that they have our support.

However, it remains important to evaluate Maine's system at its current level of highly trained professionals that work in very different environments.

Officials see that in practice in Maine, qualified immunity is not readily available to bad actors, but it does protect our good ones. Should this committee choose to move forward with these proposals, the Association would like to work with you to keep our public officials protected in balance with their exposure to the associated risks of public service.

United States Court of Appeals For the First Circuit

No. 17-1451

JASON BEGIN,
Plaintiff, Appellee,

v.

LAURA DROUIN,
Defendant, Appellant,
CITY OF AUGUSTA, MAINE,
Defendant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. John C. Nivison, U.S. Magistrate Judge]

Before

Torruella, Kayatta, and Barron,
Circuit Judges.

Edward R. Benjamin, Jr., with whom Kasia S. Park and Drummond Woodsum were on brief, for appellant.

Bradford A. Pattershall, with whom Law Office of Bradford A. Pattershall, LLC, Matthew D. Bowe, and Law Office of Matthew D. Bowe were on brief, for appellee.

November 16, 2018

KAYATTA, Circuit Judge. Officer Laura Drouin of the Augusta, Maine police department shot plaintiff Jason Begin as Begin was cutting himself with a knife in the waiting area of the Riverview Psychiatric Center's local office. Begin later sued Drouin under 42 U.S.C. § 1983, alleging a deprivation of his constitutional rights. After discovery, Drouin moved for summary judgment, arguing that she was immune to Begin's damage claims because a reasonable officer in her position would have thought that Begin posed an immediate threat to Drouin or to the Riverview employees who had been meeting with Begin just before he pulled out his knife. The district court denied her motion, and Drouin filed this interlocutory appeal. For the following reasons, we dismiss the appeal to the extent it challenges the district court's assessment of the factual record under Fed. R. Civ. P. 56, and we otherwise affirm the denial of summary judgment.

I.

An order denying a motion for summary judgment, not being a final judgment, usually provides no occasion for an appeal. See 28 U.S.C. § 1291. An exception applies when such an order rejects a qualified immunity defense tendered in response to a claim of official malfeasance in violation of section 1983. In that instance, the state official may secure interlocutory review of a district court's conclusion that the official must stand trial. Mitchell v. Forsyth, 472 U.S. 511, 530 (1985). Such review,

however, has limits. We cannot consider challenges to the district court's determination of "which facts a party may, or may not, be able to prove at trial." Johnson v. Jones, 515 U.S. 304, 313 (1995); McKenney v. Mangino, 873 F.3d 75, 81 (1st Cir. 2017). To the contrary, we "simply take, as given, the facts that the district court assumed when it denied summary judgment." Johnson, 515 U.S. at 319. And to the extent the district court fails to expressly articulate a relevant finding of fact, we review the record "to determine what facts the district court, in the light most favorable to the nonmoving party, likely assumed." Id.

We therefore begin consideration of this appeal by describing the events not as they necessarily occurred, but rather as the district court determined that jurors might reasonably find them to have occurred, or as otherwise viewed most favorably to Begin. Id. at 311, 319.

A.

Between 2004 and 2014, Begin resided at a locked psychiatric hospital, Riverview Psychiatric Center, to which he had been committed following an acquittal on a felony theft charge by reason of insanity. In early 2014, he obtained a supervised release permitting him to live in a group residential program setting. One year later, questions arose concerning his compliance with the terms of his community placement. These questions led to

a meeting between Begin and three members of Riverview's outpatient treatment team at their office in Augusta, Maine.

Begin's responses and behavior during that meeting convinced the Riverview team that he needed to be recommitted. Anticipating that Begin would be upset by this decision, Gregory Smith, a member of the team, called the Augusta Police Department to request that an officer be present when they informed Begin and then to transport him to Riverview's commitment facility. When Drouin arrived at the office, Smith told her that Begin might become uncooperative upon learning that he was being recommitted. Smith also said that Begin had some history of violence, but provided no further details. Begin is a large man, weighing roughly 265 pounds. Drouin was armed with her service gun, a Taser, an expandable baton, and pepper spray.

Meanwhile, Begin was in the office's waiting area just beginning to receive the news that he would be returned to Riverview that afternoon. Drouin waited out of sight with several other Riverview employees in an adjacent hallway that entered directly into the waiting area. While Drouin could not hear the whole conversation, she did overhear Begin say that he was not going back to the hospital, even as he was told that he had no choice in the matter and that a police officer was there to transport him. One of the Riverview employees then signaled Drouin to approach.

The parties' stipulation and Drouin's own statement of undisputed facts indicate that when Drouin approached the entrance to the waiting area she saw two individuals: A mental health contractor named Philip Hunt, who had transported Begin to the Riverview office, and Begin. Hunt was initially seated up to six feet from Begin. A physician's assistant named Russell Kimball had previously been standing in front of Begin as he told Begin he was being recommitted, but the record to which the parties direct us does not show where Kimball was when Drouin reached the waiting area.

As Drouin approached, Begin stood up. Begin made no attempt to start forward. Instead, he reached into his pocket with his right hand; announced, "I should have done this moons ago"; pulled out a black folding knife; and brought it down hard on his left arm. He did not say anything to anyone as he slashed his arm. Hunt, who was the person closest to Begin when he pulled out the knife, backed out of the way when he saw Drouin approaching.

About one second after Begin pulled out his knife, Drouin drew her firearm and yelled "hey, hey, hey" in Begin's direction. As Begin continued to cut at his arms, Drouin fired three shots, hitting Begin twice in the chest and once in the left shoulder. At that point, Drouin estimates that about four to six seconds had passed since she first saw Begin. She had not given Begin any

express warnings or commands. Drouin stopped shooting when Begin fell to the floor. Handcuffing him, she called for an ambulance.

The district court determined for summary judgment purposes that while some Riverview employees were "in close proximity" to both Begin and Drouin, no one was "between" Drouin and Begin when Begin raised the knife. Further, it is accepted that Drouin herself was as far as twenty feet from Begin when she fired, and that Begin remained stationary, cutting himself while making no threats or movements towards anyone.

Just over a year later, Begin sued Drouin and the City of Augusta in federal district court under 42 U.S.C. § 1983. That statute authorizes suit against any person who, acting under color of state law, violates the federal constitutional or statutory rights of another. Begin's complaint alleged that Drouin violated his Fourth Amendment right to be free from unreasonable seizures when she shot him.

The parties agreed to have the case heard by a United States magistrate judge exercising the jurisdiction of the district court under 28 U.S.C. § 636(c)(1). After discovery, Drouin moved for summary judgment based, in part, on her qualified immunity to federal damage claims arising out of the performance of her official duties as a public employee. See generally Harlow v. Fitzgerald, 457 U.S. 800 (1982).

In a detailed and carefully researched opinion, the magistrate judge (hereinafter "the district court") denied Drouin's motion. Reasoned the district court, the law at the time Drouin shot Begin was clear that under the circumstances she could not constitutionally shoot Begin unless he posed an immediate threat to herself or others and only after, if feasible, providing some kind of warning. The court further found that the evidence, as it stood on the summary judgment record, would allow a jury to decide either way on the questions whether Begin posed an immediate threat and whether a warning was feasible.

II.

A.

The parties agree that Drouin's stated reason for shooting Begin was to protect herself and the other individuals present from Begin when he whipped out his knife. The law in this circuit has long been clear that the "use of deadly force . . . is reasonable (and, therefore, constitutional) only when 'at a minimum, a suspect poses an immediate threat to police officers or civilians.'" McKenney, 873 F.3d at 81 (quoting Jarrett v. Town of Yarmouth, 331 F.3d 140, 149 (1st Cir. 2003) (per curiam)). Further, when feasible, a warning must be given first. Id. at 82 (citing Tennessee v. Garner, 471 U.S. 1, 11-12 (1985); Young v. City of Providence ex rel. Napolitano, 404 F.3d 4, 23 (1st Cir. 2005)).

Whether an immediate threat exists is a question of fact for the jury as long as the evidence is sufficient to support such a finding. See Tolan v. Cotton, 134 S. Ct. 1861, 1867-68 (2014) (reversing summary judgment for a police officer because "[a] jury could well have concluded that a reasonable officer would have heard Tolan's words not as a threat"). In this case, the district court determined that the evidence could support a jury finding "that Plaintiff did not pose an immediate threat to Defendant Drouin and the others who were present." That determination -- that the evidence was sufficient to support a jury verdict on an issue of fact -- is not a ruling that we can review on this interlocutory appeal. Johnson, 515 U.S. at 311.

B.

The conclusion that a jury could find here the absence of the immediate threat necessary to make a shooting constitutional does not by itself mean that a jury could also find Drouin liable. Police officers do not have the luxury of calmly considering the circumstances they face as if they were jurors or judges. "[P]olice officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary" Graham v. Connor, 490 U.S. 386, 396-97 (1989). Drouin therefore cannot be held liable, even if Begin's rights were in fact violated, unless the right implicated was "clearly established" and the plaintiff

can "show that an objectively reasonable officer would have known that [her] conduct violated the law." Conlogue v. Hamilton, No. 17-2210, 2018 WL 4927553, at *3 (1st Cir. Oct. 11, 2018). In practice, qualified immunity doctrine "gives government officials breathing room to make reasonable but mistaken judgments," thereby guarding "all but the plainly incompetent or those who knowingly violate the law" from liability. Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011) (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

What the law does or does not clearly establish for purposes of assessing a qualified immunity defense is itself a question of law. See Morse v. Cloutier, 869 F.3d 16, 22 (1st Cir. 2017) ("Generally, a claim that a certain body of facts makes out a violation of clearly established law is deemed to present a question of law, and, thus, is reviewable." (citing Camilo-Robles v. Hoyos, 151 F.3d 1, 8 (1st Cir. 1998))). So while we do not reconsider the facts as found by the district court or as otherwise viewed favorably to the plaintiff, we do consider afresh, and without deference to the district court, whether given those facts it was clear that no objectively reasonable officer would have believed the use of deadly force was lawful. See McKenney, 873 F.3d at 82.

In determining whether an objectively reasonable police officer would have thought it lawful to shoot Begin, a crucial

consideration is the exact number and location of the Riverview employees relative to Begin at the moment Drouin fired. See id. Neither party points us to testimony by Begin or the Riverview employees clearly locating themselves on a diagram of the room, nor even describing narratively with any precision exactly where they were at the time of the shooting. Drouin reports seeing only one person other than Begin in the waiting area as she reached the entrance, and that was the person who then proceeded to back away from Begin. The size of the room itself, we are not told. On appeal, Drouin simply asserts that the others were "within striking distance of Begin," but that is wishful gloss that claims no support in the district court's Rule 56 assessment of the undisputed facts.

The district court did find that there was evidence the Riverview personnel were in "close proximity" to both Drouin and Begin, but that no one was "between" Drouin and Begin when Begin raised the knife, and that no one faced any immediate threat from Begin. Does this mean only that no one was in the direct line of fire? Or does it mean that no one was in the room between Begin and Drouin as she stood with gun drawn facing him standing stationary in front of his chair? Given the unchallengeable Rule 56 finding that a jury could find that Begin posed no immediate threat to anyone but himself, and given the ambiguous record concerning precisely where each person stood at the moment

Drouin decided to fire, we have no choice but to assume that Begin could not have reached out and stabbed anyone first without advancing as many as twenty feet toward the barrel of Drouin's raised gun. This reading of the ambiguous record on interlocutory review provides an unwelcoming backdrop for Drouin's immunity defense.

Indeed, nowhere in her sixty-one pages of briefing does Drouin claim that a reasonable officer would have fired were she twenty feet away from Begin with all of the Riverview employees aside or behind her, or otherwise similarly removed from Begin, and Begin offering no hint of an advance. Rather, Drouin predicates most of her argument upon her preferred, but presently unacceptable, spin on the record as locating "three people . . . within striking distance of Begin."

Our review of our own case law suggests why Drouin never argues that she can prevail even if no one was closer to Begin than she was. In our 2017 decision in McKenney, we considered the state of the law as it was clearly established as of April 2014, approximately nine months before the events at the heart of this case transpired. 873 F.3d at 78. We determined that "well-settled precedents" addressed "the lawfulness of using deadly force against an individual who was suicidal, armed, slow in gait, some distance away from the officer, and had received no commands or warnings for several minutes." Id. at 83. The specific assumed

facts in McKenney placed the plaintiff sixty-nine feet away, armed with a gun and moving slowly towards an officer positioned behind a car at the time he was shot. There was clear visibility, six minutes had passed since the officers had ordered McKenney to drop his weapon, and no one warned him that he would be shot if he did not comply. Id. at 79. The officer knew McKenney was suicidal, and McKenney was not pointing his gun at anyone when the officer fired. Id. at 78. On such assumed facts, we held that a jury could hold the officer liable for violating clearly established law.

Of course no two cases are identical. But a case need not be identical to clearly establish a sufficiently specific benchmark against which one may conclude that the law also rejects the use of deadly force in circumstances posing less of an immediate threat. Id. at 82-83 (quoting al-Kidd, 563 U.S. at 741); Alfano v. Lynch, 847 F.3d 71, 76 (1st Cir. 2017) ("[T]here is no requirement of identity. In arguing for clearly established law, a plaintiff is not required to identify cases that address the 'particular factual scenario' that characterizes his case." (citing Matalon v. Hynnes, 806 F.3d 627, 633 (1st Cir. 2015))). We must assume on the record in this case that Drouin knew that Begin was intent on harming himself, that he threatened no one else by word or movement, and that he had not received any warning or order from Drouin. While Begin was closer to Drouin (twenty feet) than McKenney was to the officer who shot him (sixty-nine feet), Begin

had a knife while McKenney had a gun. We think that an objectively reasonable officer would regard a knife at twenty feet as posing no greater threat to an armed police officer than does a gun at sixty-nine feet. Nor do the facts here otherwise render Begin more threatening than McKenney. So, given that the law at the time the officer in McKenney fired clearly established that that shooting was unlawful on the plaintiff's version of the facts, then the facts here -- as we must assume them to be -- also support such a finding.

III.

None of the foregoing means that Drouin in fact did anything wrong. Rather, it simply means that we cannot set aside on this record the district court's conclusion that the evidence viewed most favorably to Begin could support a verdict for Begin. Whether the evidence actually presented at trial continues to provide that support remains to be seen.

For the foregoing reasons, we dismiss the appeal in part for want of appellate jurisdiction to the extent Drouin challenges the district court's assessment of the record, and we otherwise affirm the district court's denial of summary judgment.

MAINE CHIEFS OF POLICE ASSOCIATION

MODEL POLICY

	Effective Date 12-01-2018	Number 1-10
Subject Investigation of Employee Misconduct		
Distribution All Sworn Personnel	Amends/Supersedes 1-10, 1-11 dated 01/11/2012	

I. Purpose

The purpose of this policy is to establish uniform procedures for addressing complaints of misconduct by agency personnel. These procedures will govern the investigation and resolution of complaints that are brought to the attention of the agency. The procedures are designed to ensure that the integrity of the agency is maintained through an internal system whereby objectivity, fairness, and justice are ensured by an impartial investigation and review. An additional purpose of this policy is to ensure that complaint information is compiled, tracked, analyzed, and made available to the Chief Law Enforcement Officer for use in managing the agency. **MLEAP 2.04**

II. Policy

Establishment of procedures for investigating complaints and allegations of employee misconduct and criminal conduct is crucial to demonstrate and protect this agency's integrity. This agency shall accept and investigate fairly and impartially all complaints of employee misconduct and criminal conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner. The procedures addressed in this policy will be administered in a manner consistent with applicable collective bargaining agreements and/or the jurisdiction's personnel policy and Local, State and Federal Law. **BOT 9-1, BOT 10-1**

Given that this is a statutorily mandated policy, officers must abide by this agency's policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees. **BOT 9-14, BOT10-5**

III. Confidentiality of Investigations

Internal Affairs investigations are conducted for the internal use of this agency. These investigations are to be kept confidential in accordance with State Law. The agency reserves the right, however, to provide information regarding investigations to the agency's legal counsel, the Maine Criminal Justice Academy, or the appropriate prosecutorial authority, if warranted. All other releases of Internal Affairs information will be done only as mandated by a court, in keeping with collective bargaining agreements, or with the employee's and the agency's consent. **BOT 9-13**

IV. Definitions

Complaint - Means any clear, specific and articulate allegation of employee misconduct which, if true, would constitute a violation of law or the standard operating procedures of this agency.

Employee - Means any full-time or part-time person, whether paid or volunteer that represents or works for this agency and approved by the Chief Law Enforcement Officer or designee.

Investigator - Means any supervisory officer who is assigned by the CLEO or designee, to formally investigate, or assist in the formal investigation of, any complaint of employee misconduct.

V. Procedures **BOT 9-2**

A. Receiving Complaints

1. This agency will accept and document all complaints of employee misconduct. No complainant will be turned away. Anonymous complaints will be accepted; however, because of the difficulties in investigating these types of complaints, citizens will be encouraged to identify themselves. In any case, the complaint will be accepted.

2. It is the responsibility of the on-duty Supervisor or other designated supervisory officer to meet with citizen complainants regarding allegations of employee misconduct. If no Supervisor is on duty, the complainant will be given instructions on how to contact a supervisor.
3. The Supervisor shall:
 - a. Interview the complainant and complete a Complaint Form. Intoxicated complainants shall be interviewed in spite of their intoxication. The degree of their intoxication shall be noted and a subsequent interview shall be arranged at the earliest possible time.
 - b. Ask the complainant to provide an oral narrative briefly describing the complaint and then briefly summarize the complaint in writing on the Complaint Form.
 - c. Ask the complainant to sign the statement of affirmation on page two of the Complaint Form. If the complainant refuses, make note of the refusal on the form and advise the complainant that the refusal to sign shall be considered by the Internal Affairs investigator in evaluating the scope of the investigation and by the command staff for evaluating the truthfulness of the complaint.
 - d. Complete a Supplemental Memo report detailing objective observations of the complainant's behavior (e.g. intoxicated, yelling, aggressive). The Supervisor shall also note any physical injuries and request photographs of visible injuries.
 - e. The Supervisor shall submit the completed Complaint Form directly to the Chief Law Enforcement Officer (CLEO) either in person or by sealed envelope. In an incident involving criminal activity, excessive force, improper arrest, entry or search, or conduct which violates a person's civil rights the CLEO will be notified immediately. The CLEO will be notified verbally of all other incidents the next business day by the Supervisor receiving the complaint.

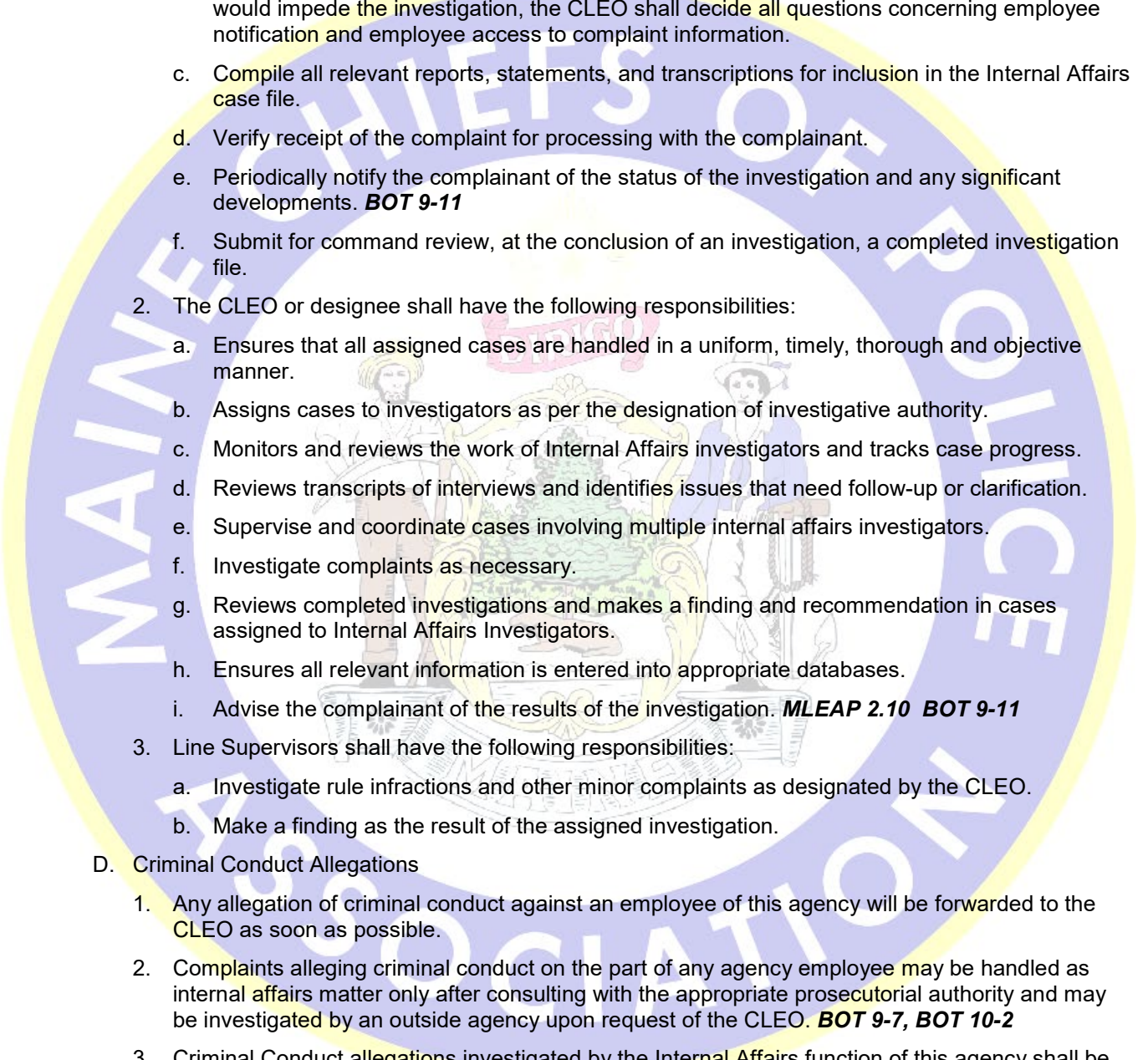
MLEAP 2.07 BOT 9-8

B. Assignment of Complaint Investigations

1. The CLEO shall review the Complaint Form and designate each complaint for investigation by either a line supervisor or an IA investigator. The CLEO shall use the following criteria for determining the investigative authority: **MLEAP 2.06 BOT 9-3, 9-6**
 - a. The following types of complaints shall be investigated by internal affairs: **BOT 9-4, 9-6**
 - i. criminal activity;
 - ii. excessive force;
 - iii. improper arrest;
 - iv. improper entry;
 - v. improper search;
 - vi. conduct which violates a person's civil rights;
 - vii. any rule infractions that would bring the Department into disrepute or risk the safety of fellow officers or the public;
 - viii. repeated minor violations;
 - ix. notice of claim related incidents;
 - x. any other matter as directed by the CLEO.
 - b. Minor rule infractions (e.g. tardiness, demeanor issues) shall be investigated by the line supervisor of the subject officer.
2. If the CLEO is satisfied that a complaint has been satisfactorily resolved at the supervisor level, he will close the complaint and send a conclusion notification to the complainant.
3. The CLEO shall assign the complaint to an Internal Affairs investigator or return the Complaint Form to the appropriate line supervisor for investigation and resolution.

C. Investigation of Complaints

1. Internal Affairs investigators shall have the following responsibilities:
 - a. Conduct thorough, timely, investigation of all complaints assigned by the CLEO.

- 
- b. Once a complaint has been designated for investigation by Internal Affairs, the IA Investigator shall advise the employee, in some confidential, written manner, that a complaint has been made and that an investigation will be conducted. The notice will include the name of the complainant, the nature of the allegations, and copies of the employee's rights and duties. In addition, the employee will normally be afforded the opportunity to read the initial complaint form. If the disclosure of the existence of the complaint or the identity of the complainant would impede the investigation, the CLEO shall decide all questions concerning employee notification and employee access to complaint information.
- c. Compile all relevant reports, statements, and transcriptions for inclusion in the Internal Affairs case file.
- d. Verify receipt of the complaint for processing with the complainant.
- e. Periodically notify the complainant of the status of the investigation and any significant developments. **BOT 9-11**
- f. Submit for command review, at the conclusion of an investigation, a completed investigation file.
2. The CLEO or designee shall have the following responsibilities:
- a. Ensures that all assigned cases are handled in a uniform, timely, thorough and objective manner.
- b. Assigns cases to investigators as per the designation of investigative authority.
- c. Monitors and reviews the work of Internal Affairs investigators and tracks case progress.
- d. Reviews transcripts of interviews and identifies issues that need follow-up or clarification.
- e. Supervise and coordinate cases involving multiple internal affairs investigators.
- f. Investigate complaints as necessary.
- g. Reviews completed investigations and makes a finding and recommendation in cases assigned to Internal Affairs Investigators.
- h. Ensures all relevant information is entered into appropriate databases.
- i. Advise the complainant of the results of the investigation. **MLEAP 2.10 BOT 9-11**
3. Line Supervisors shall have the following responsibilities:
- a. Investigate rule infractions and other minor complaints as designated by the CLEO.
- b. Make a finding as the result of the assigned investigation.
- D. Criminal Conduct Allegations
1. Any allegation of criminal conduct against an employee of this agency will be forwarded to the CLEO as soon as possible.
2. Complaints alleging criminal conduct on the part of any agency employee may be handled as internal affairs matter only after consulting with the appropriate prosecutorial authority and may be investigated by an outside agency upon request of the CLEO. **BOT 9-7, BOT 10-2**
3. Criminal Conduct allegations investigated by the Internal Affairs function of this agency shall be conducted in accordance to this policy. **BOT 10-3**
- E. Findings and Discipline
1. The CLEO shall review the Internal Affairs Investigation and shall give final approval to the written disposition of the case as follows: **BOT 9-12**
- a. Sustained - Sufficient evidence exists to indicate that the employee did, in fact, commit one or more of the alleged acts. The Department shall have the burden of proving that a violation is sustained by a preponderance of the evidence.

- b. Exonerated - The incident occurred, but the employee's actions were justified, lawful and proper. No violation of Department rule, regulation or procedure or Local, State or Federal law has been proven.
 - c. Unfounded - Reasonably credible evidence exists to indicate the complainant's allegations are false.
 - d. Cleared Exceptionally - The Department is unable to investigate the matter due to:
 - i. the failure of the complainant to cooperate with the investigation;
 - ii. the unavailability of the complainant (death, relocation, etc);
 - iii. the departure of the subject officer;
 - iv. or other circumstances that prevent the Department from investigating a complaint.
 - v. Policy Failure – A flaw in policy was responsible for the incident.
 - 2. The CLEO may afford the employee an opportunity for an informal hearing with the CLEO, prior to the outcome of the imposition of discipline or corrective action, to discuss the outcome of the investigation. The employee shall be entitled to representation at that hearing.
 - 3. The CLEO shall make the final decision as to the imposition of disciplinary or corrective action. Discipline shall be administered in accordance to this agency's discipline policy.
 - 4. In the event that a law enforcement officer is convicted of a crime or violation or engages in conduct that could result in suspension or revocation of the law enforcement officer's certificate and the CLEO of this agency has knowledge of the conviction or conduct, then the CLEO shall expeditiously notify the Director of the Maine Criminal Justice Academy with the name of the law enforcement officer and a brief description of the conviction or conduct. **BOT 10-4**
- F. Relief from Duty
- 1. If the complaint against an employee is serious enough to warrant immediate action, the matter shall be referred immediately to the ranking officer on duty. The ranking officer shall determine if the employee involved shall be relieved from duty. An order relieving an employee from duty shall not be construed as a suspension or other disciplinary action. If an employee is relieved from duty in this manner, the employee should be instructed when to report back to duty. In the event of any such action, the CLEO will be notified as soon as practical. A Complaint Form must be completed for all such incidents.
 - 2. Any supervisor may relieve an employee from duty anytime the Supervisor feels that the employee is unable to effectively carry out his duties. In the event of any such action, the CLEO will be notified as soon as possible.
 - 3. Employees shall receive their normal pay for the period that they are relieved from duty, unless said period is later made part of an appropriate suspension without pay or is reviewed by the CLEO and acted on pursuant to the CLEO's authority, under the jurisdiction's personnel policy.
- G. Member's Duties and Rights During an Internal Affairs Investigation
- 1. The member's duties and rights contained in this section shall be applicable to any investigation by Internal Affairs. The failure of the supervisor to afford an employee these rights does not entitle the employee to disobey the orders of a supervisor. The supervisor's failure to allow an employee to exercise these rights will be considered by the CLEO prior to imposition of any discipline against the employee.
 - 2. Any collective bargaining agreement provisions regarding employee rights shall be adhered to in an internal affairs investigation. **BOT 9-9**
- H. Employee statements to Internal Affairs
- 1. The employee will be instructed to provide information to Internal Affairs which is specifically, directly and narrowly related to the employee's duties or fitness for duty. An employee may be instructed to provide information about off-duty conduct if there is a sufficient relationship between the employee's off-duty conduct and the employee's official duties. Statements made by the employee during an internal affairs investigation, and subject to Fifth Amendment protection, will not be used against an employee in a criminal proceeding. However, a matter may be

referred for further investigation by a criminal investigator or the Maine Criminal Justice Academy Complaint Review Committee if the CLEO deems it appropriate.

2. Employees may request to have an attorney or union attorney present and available for consultation during any Internal Affairs interview. That attorney or union attorney present is not entitled to interfere with the interview.
3. An employee's statement to Internal Affairs may be provided in any one of the following forms, at the discretion of the Internal Affairs Investigator:
 - a. a written statement completed and signed by the employee;
 - b. a transcription of a taped interview with the Internal Affairs Investigator to which the employee has attested to the truthfulness of the transcription.
 - c. or an Investigator's summary of a taped interview with the employee to which the employee has attested to the truthfulness of the summary.
4. The same methods as in #3 above may be utilized by the Internal Affairs Investigator, at his discretion, to obtain statements from civilian witnesses.
- I. Rights and Duties During an Internal Affairs Investigation
 1. All interviews will be conducted at a time determined by the interviewer unless the seriousness of the investigation is such that an immediate interview is required. Every attempt will be made to conduct the interview within thirty days of the filing of the Complaint Form.
 2. The interview will be held at the agency or at location determined by the interviewer.
 3. Written statements shall be submitted to the Internal Affairs Investigator immediately upon his request. The failure to submit a statement upon request, without good cause, will result in discipline.
 4. During interviews conducted by more than one internal affairs investigator, there will be one designated interviewer.
 5. Employees under investigation shall not use or be subjected to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the Internal Affairs investigator as an inducement to answer questions.
 6. All Internal Affairs interviews with employees will be recorded. All other interviews will also be recorded, if practical. The Internal Affairs investigator will have discretion in determining if a transcript of the interview or a summary should be prepared. If the recordings are not transcribed, the recordings will be retained as part of the investigation file until the investigation is resolved. A copy of the recording shall be provided to the employee upon his written request at the conclusion of the investigation
 7. All investigations shall be conducted without unreasonable delay. An employee who is the subject of a complaint will be advised of the final outcome of the investigation, in writing, within 30 days of employee's interview with the Internal Affairs Investigator. If the investigation cannot be completed within 30 days of the employee's interview, the CLEO may grant an extension, in writing, of the 30-day time period to the Internal Affairs Investigator. The employee who is the subject of the complaint, will be given an explanation of the delay and will be advised within ten days of the completion of the investigation and its submission to the CLEO for review by the Internal Affairs Investigator. An employee or the employee's representative may contact the CLEO at any time to ascertain the status of the investigation of a complaint filed against the employee. **MLEAP 2.05 BOT 9-10**
 8. Prior to any hearing with the CLEO concerning possible disciplinary action, an employee will be allowed access to all information and/or documents upon which the contemplated discipline is based, unless in the judgment of the CLEO circumstances warrant anonymity.
 9. The Administration maintains photographs of all current employees. The agency reserves the right to allow complainants or witnesses to view those photographs to identify officers whose identity is material to a formal internal affairs investigation. Officers may be required to periodically have a new photograph taken to update the file.

10. Employees will only be asked to submit to a polygraph examination if the examination is material to a current formal Internal Affairs investigation and only upon individual written authorization from the CLEO.

J. Notice of Claim

Whenever the department receives a civil Notice of Claim or is the subject of a civil lawsuit alleging an incident that would constitute a complaint, the CLEO shall initiate an Internal Affairs Investigation. The investigation will be conducted in accordance with the procedures outlined in this policy.

K. IA File Security

1. The CLEO shall maintain a secure locked cabinet that contains a record of all complaints against this agency and its employees. Confidentiality of these files shall be maintained in accordance to collective bargaining agreements and applicable laws. (For State employees – 5 M.R.S. §7070, for County employees – 30-A M.R.S. §503 and for Municipal employees – 30-A M.R.S. §2702) **MLEAP 2.09 BOT 9-13**

L. Sexual Harassment Complaints

The investigation of allegations of sexual harassment of a Department employee by another employee shall be handled in accordance with the provisions of this SOP. If in the judgment of the CLEO a fair and impartial investigation is impossible within the Department, or at the request of the complainant, the CLEO may request the jurisdiction's top administrator to assign an investigator from outside the Department. That investigator shall follow the procedures established in this SOP.

MLEAP 2.11 BOT 9-7

M. Public Comment on Administrative Investigations

For legal, contractual, and policy reasons, public comment on administrative investigations shall be limited to the CLEO or the CLEO's designee. Inquiries from the news media or public shall be referred to the CLEO. The items of information released by the CLEO or the CLEO's designee upon request will be in accordance with applicable State and Federal Law.

PER ORDER OF: _____

Chief Executive Officer

ADVISORY

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. Prior to implementation, it is recommended that this model policy be reviewed and that any changes necessary for your agency be incorporated. The watermark may be removed by going to page layout, click on watermark, and click on remove watermark.

*** DISCLAIMER ***

This model policy does not create a higher legal standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third-party claims and is not intended for use in any civil actions.

Any questions regarding the policy may be directed to the MCOPA Policy Committee.

Deputy Chief Jason Moen, jmoen@auburnmaine.gov Chairperson

Chief Doug Bracy dbracy@yorkpolice.org

Chief Jack Peck jpeck@FarmingtonPD.org

Chief Mark Leonard vzchief800@yahoo.com

Chief Brian MacMaster brian.macmaster@maine.gov

Major Chris Cloutier chris.cloutier@maine.gov

Chief Deputy Tim Carroll tcarroll@knoxcountymaine.gov

Detective Peter Lizanecz peter.lizanecz@maine.gov

MAINE CHIEFS OF POLICE ASSOCIATION

MODEL POLICY

	Effective Date 07/01/2021	Number 1-11
Subject Bias-Based Profiling		
Distribution All Personnel	Amends/Supersedes NEW	

I. Purpose

The purpose of this policy is to prohibit employees from bias-based profiling.

II. Policy

It is the policy of this law enforcement agency to safeguard the state and federal rights of all individuals without regard to race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry.

Bias-based profiling and/or any other discriminatory practice by members of this agency is strictly prohibited. This includes stops, detentions, or asset seizures and forfeitures efforts based on race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry. This agency also requires that individuals are only stopped or detained when legal authority exists to do so and that members of this agency base their enforcement actions solely on an individual's conduct and behavior or specific suspect information. **BOT 13-1**

Given this is a statutorily mandated policy, officers must abide by this agency's policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees. **BOT 13-4**

III. Definitions

Bias-Based Profiling: Means targeting an individual based on a trait common to a group for enforcement action to include, but not limited to race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry. **BOT 13-2**

Enforcement Activities: Activities both on and off-duty undertaken by department personnel that arise from their authority related to employment, oath of office, state statute, or federal law. Activities include traffic contacts, field contacts, arrests, investigations, asset seizure and forfeiture, and general law enforcement contact with citizens.

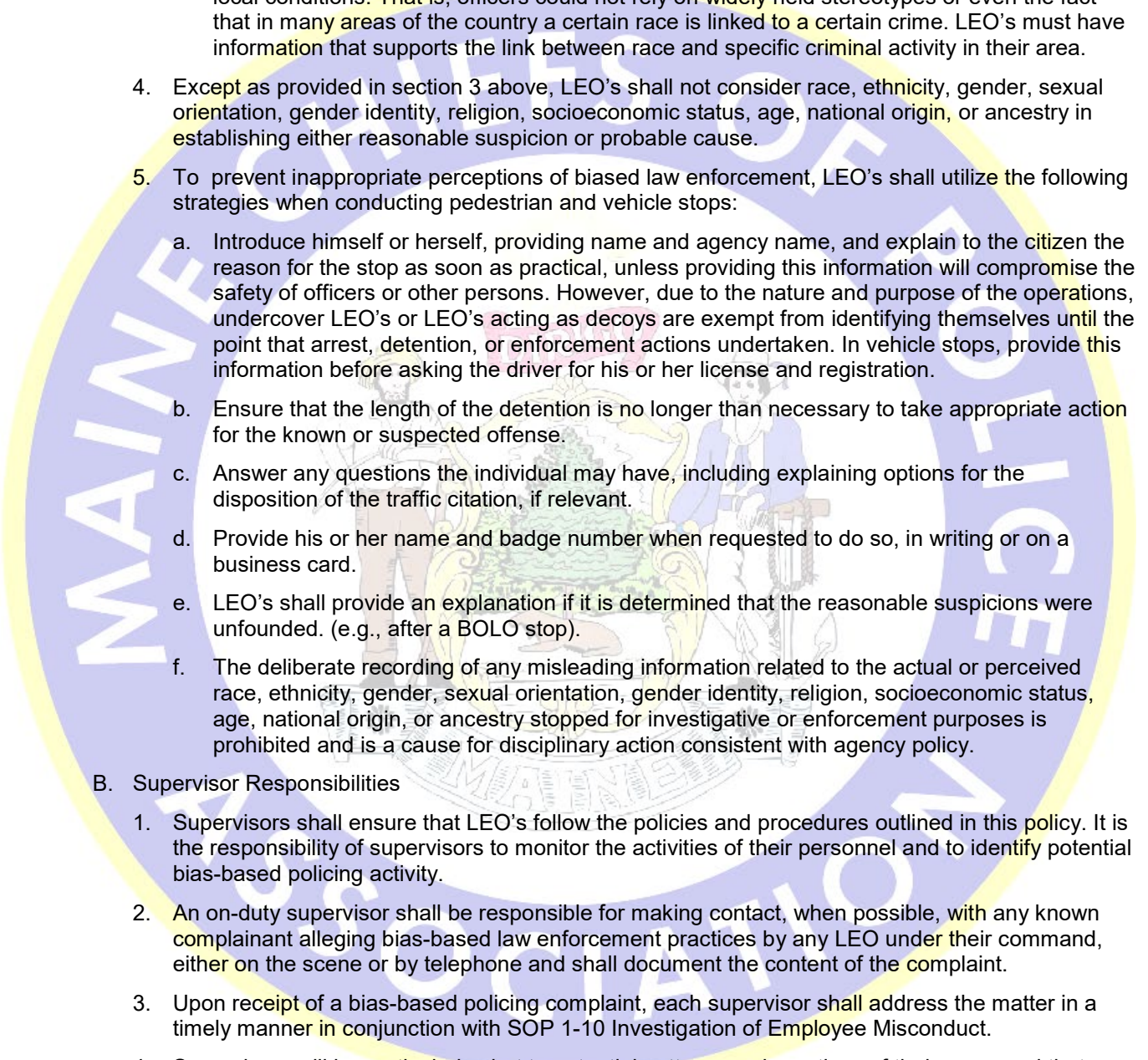
Probable Cause: A set of facts or circumstances based on reliable information or personal knowledge or observation by an officer, which reasonably shows or would warrant an ordinary prudent reasonable officer in believing that a person has committed, is threatening, or is about to commit some criminal violation of the law.

Reasonable Suspicion: A suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

IV. Procedures

A. Employee Responsibilities

1. All department employees, whether sworn, civilian, or volunteer, shall treat every person with courtesy and respect when interacting with the public and will conduct all law enforcement duties in a professional manner.
2. All investigative detentions, traffic stops, arrests, searches, and seizures of property by department employees will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the United States Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions which support probable cause or reasonable suspicion for an arrest, traffic stop, or investigative detention.

- 
3. LEO's may consider the reported race, ethnicity, or national origin of a specific suspect or suspects based on credible, reliable, locally-relevant information that links a person of a specific race to a particular criminal incident or links a specific series of crimes in an area to a group of individuals of a particular ethnicity.
 - a. The criteria of locally relevant **requires** that the information linking race to crime be based on local conditions. That is, officers could not rely on widely held stereotypes or even the fact that in many areas of the country a certain race is linked to a certain crime. LEO's must have information that supports the link between race and specific criminal activity in their area.
 4. Except as provided in section 3 above, LEO's shall not consider race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry in establishing either reasonable suspicion or probable cause.
 5. To prevent inappropriate perceptions of biased law enforcement, LEO's shall utilize the following strategies when conducting pedestrian and vehicle stops:
 - a. Introduce himself or herself, providing name and agency name, and explain to the citizen the reason for the stop as soon as practical, unless providing this information will compromise the safety of officers or other persons. However, due to the nature and purpose of the operations, undercover LEO's or LEO's acting as decoys are exempt from identifying themselves until the point that arrest, detention, or enforcement actions undertaken. In vehicle stops, provide this information before asking the driver for his or her license and registration.
 - b. Ensure that the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense.
 - c. Answer any questions the individual may have, including explaining options for the disposition of the traffic citation, if relevant.
 - d. Provide his or her name and badge number when requested to do so, in writing or on a business card.
 - e. LEO's shall provide an explanation if it is determined that the reasonable suspicions were unfounded. (e.g., after a BOLO stop).
 - f. The deliberate recording of any misleading information related to the actual or perceived race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry stopped for investigative or enforcement purposes is prohibited and is a cause for disciplinary action consistent with agency policy.
- B. Supervisor Responsibilities
1. Supervisors shall ensure that LEO's follow the policies and procedures outlined in this policy. It is the responsibility of supervisors to monitor the activities of their personnel and to identify potential bias-based policing activity.
 2. An on-duty supervisor shall be responsible for making contact, when possible, with any known complainant alleging bias-based law enforcement practices by any LEO under their command, either on the scene or by telephone and shall document the content of the complaint.
 3. Upon receipt of a bias-based policing complaint, each supervisor shall address the matter in a timely manner in conjunction with SOP 1-10 Investigation of Employee Misconduct.
 4. Supervisors will be particularly alert to potential patterns and practices of their personnel that may indicate bias based profiling and treatment of individuals.

V. Allegations of Bias Based Policing

- A. Whenever a person complains that a LEO has engaged in practices prohibited by this policy, the LEO will immediately notify his or her supervisor for advisement of the situation.
1. When practical to do so, the supervisor will report to the scene to mediate the situation.

2. LEO's accused of bias-based activity shall provide the complainant(s) with the full name and agency telephone number of the LEO's immediate supervisor, and the contact name and agency telephone number of Administration.
 3. LEO's accused of bias-based activity shall complete a memorandum detailing the incident, the allegation made, the purpose for the pedestrian or motor vehicle stop, detention, investigative activity, or arrest. The Memorandum shall be directed to the CLEO and submitted through the LEO's chain of command.
- B. Any person who believes he or she was stopped, detained, or searched based solely on a biased based profile may file a complaint with the agency. LEO's receiving such a complaint shall follow procedures outlined by SOP 1-10 Investigation of Employee Misconduct.
 - C. Should the Attorney General's Office receive a complaint of bias-based profiling, the Chief of Investigations of the Office of the Attorney General will review the complaint and determine whether an investigation is warranted and, if so, will coordinate any such investigation with this agency to assure that it is thorough and completed in a timely fashion. The Chief of Investigations will also, as necessary, provide recommendations and support to law enforcement agencies regarding their review, investigation, and resolution of a complaint.
 - D. Investigations of allegations of bias-based policing shall be conducted in a like and consistent manner in conjunction with SOP 1-10 Investigation of Employee Misconduct.

VI. Review and Reporting Requirements MLEAP 2.01 BOT 13-3

- A. Dependent on the findings of each complaint as well as the specific factors involved, corrective measures will be taken to remedy violations of this policy. Corrective measures may include but are not limited to training, counseling, policy review, and discipline up to and including termination of employment. In addition, members may face civil and criminal liability in accordance with Title 42 U.S.C. 1983, Title 42 U.S.C. 14141 and Title 18 U.S.C. 242.
- B. The CLEO shall notify the Office of the Attorney General of any complaint of bias-based profiling made against any member of the agency and the results of said investigation of the complaint.
- C. Annually, the CLEO or designee will conduct a documented administrative review of agency practices and citizen complaints/concerns received to ensure that illegal or biased based profiling is not occurring during operations of this agency. Additionally, any necessary training issues or policy changes will be addressed.
- D. If a pattern is identified, the CLEO shall be responsible for ensuring that an investigation is conducted to determine whether LEO's of the department have violated the provisions of this policy and/or any other department policies and procedures.

VII. Retaliation

- A. No person will be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because he or she filed such a complaint.
- B. No member of this agency, regardless of rank, shall retaliate against any fellow LEO, official, civilian, or volunteer for reporting incidents of bias-based policing or for participating in or cooperating with the investigation of those incidents.
- C. Actions or behaviors found to constitute retaliation shall be immediately addressed and may lead to disciplinary action up to and including termination.

VIII. Training MLEAP 2.01

- A. Members shall receive biennial training on bias-based policing.
- B. Training topics may include field contacts, traffic stops, search issues, asset seizure and forfeiture, interview techniques, cultural diversity, discrimination, and community support.
- C. Training on bias-based policing shall be documented

PER ORDER OF: _____
Chief Executive Officer

ADVISORY

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. Prior to implementation, it is recommended that this model policy be reviewed and that any changes necessary for your agency be incorporated. The watermark may be removed by going to page layout, click on watermark, and click on remove watermark.

*** DISCLAIMER ***

This model policy does not create a higher legal standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third-party claims and is not intended for use in any civil actions.

Any questions regarding the policy may be directed to the MCOPA Policy Committee.

Chief Jason Moen jmoen@auburnmaine.gov Chairperson
Assistant Director Jack Peck jack.d.peck@maine.gov
Chief Mark Leonard vzchief800@yahoo.com
Chief Brian MacMaster brian.macmaster@maine.gov
Sheriff Tim Carroll tcarroll@knoxcountymaine.gov
Major Chris Cloutier chris.cloutier@maine.gov

MAINE CHIEFS OF POLICE ASSOCIATION

MODEL POLICY

	Effective Date 03-01-2018	Number 2-01
Subject Law Enforcement Role and Authority		
Distribution All Sworn Personnel	Amends/Supersedes 2-01 Professional Responsibilities dated 09-15-11	

I. Purpose

To define the basic role and authority of the Agency including the Agency's purpose and priorities.

II. Policy

The mission of the Agency is to provide, without prejudice, the highest degree of service and commitment to the citizens it serves. Foremost in this mission is the protection of life and property. Specifically, officers are responsible for the maintenance of peace; enforcement of laws and ordinances; the detection, identification and apprehension of criminals; the prevention and investigation of crimes; regulation of traffic and the performance of any service that will improve the quality of life by providing for the security and safety of its citizens.

Officers shall adhere to the Law Enforcement Code of Ethics and shall diligently and efficiently carry out their responsibilities. All persons shall be treated courteously, respectfully and fairly, regardless of the officer's personal attitudes or bias. Officers shall not allow their actions to be affected by a person's race, religion, sex, sexual orientation or political affiliation. Officers are expected to maintain excellence in the performance of duty and the highest standards of integrity and ethics.

III. Law Enforcement Agency Role

A. Oath of Office **MLEAP2.03**

1. Prior to assuming sworn status, personnel of this agency must take an oath of office to uphold the laws and the Constitutions of the United States and the State of Maine. The (Municipal or County) Clerk under the direction of the Chief Law Enforcement Officer and the (City Council, Board of Selectmen, County Commissioners) shall administer the oath.
2. All officers shall abide by the following Code of Ethics: **MLEAP2.02**

As a law enforcement officer, my fundamental duty and obligation is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression, or intimidation, and the peaceful against violence or disorder; and to protect the constitutional rights and freedoms of all the people whom I have been sworn to uphold.

While I consider the way I choose to conduct my private affairs a personal freedom, I accept the responsibility for my actions, as well as inactions, while on duty or off duty, when those actions bring disrespect to the public image of my employer, my fellow officers or the law enforcement profession.

I vow to perform all my duties in a professional and competent manner. I consider the abilities to be courageous in the face of danger and to exercise restraint in the use of my powers and authorities to be the ultimate public trust. I accept that I must consistently strive to achieve excellence in learning the necessary knowledge and skills associated with my duties. I will keep myself physically fit and mentally alert so that I am capable of performing my duties according to the standards of quality expected of my position.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I vow to be fully truthful and honest in my dealings with others. I deplore lies and half-truths that mislead or do not fully inform those who must depend upon my honesty. I will obey the very laws that I am sworn to uphold. I will seek affirmative ways to comply with the standards of my department and the lawful direction of my supervisors.

I vow to treat others with courtesy at all times. I consider it to be a professional weakness to allow another's behavior to dictate my response. I will not allow others' actions or failings to be my excuse for not performing my duties in a responsible and professional and expected manner. I will affirmatively seek ways to avoid conflicts and potential conflicts of interest that could comprise my official authority or public image.

I recognize the badge of my office as a symbol of public faith, and I hold the authority in my position to be an affirmation of the public trust in me as an Auburn Police Officer. I do not take this trust lightly. As long as I remain in this position, I will dedicate myself to maintaining this trust and upholding all the ideals of the law enforcement profession.

This agency in conjunction with the Maine Chiefs of Police Association and the International Chiefs of Police Association has adopted the following Oath of Honor:



Rigid adherence to the principles set out above is mandatory for anyone accepting a position in this agency.

Acceptance of these principles should not be perfunctory; it should be weighed carefully. Citizens are quick to criticize any misconduct of members of the agency; the community places a trust in police officers and expects them to conduct themselves so as to merit this trust. Members should be proud to hold a position that demands so much. There must be a moral philosophy and strong appreciation of the need for service in any profession. Unwavering adherence to such a moral philosophy will earn for police officers the respect and support of the public.

3. All non-sworn employees shall abide by the following Code of Ethics;
 - As a civilian employee of this agency, I regard myself as a member of an important and honorable profession.
 - I WILL keep myself in the best physical and mental condition at all times.
 - I WILL perform my duties with efficiency to the best of my ability.
 - I WILL be truthful at all times. My conduct and performance of duties will be accomplished in an honest manner, and in compliance with the laws; local, county, state, and country.
 - I WILL adhere to the confidentiality of the Law Enforcement profession.
 - I WILL NOT, in the performance of my duties, work for unethical advantage or personal profit.
 - I WILL recognize at all times that I am a public safety employee, and that ultimately I am responsible to the public.
 - I WILL give the most efficient and impartial service of which I am capable at all times.
 - I WILL be courteous in all my contacts at all times.
 - I WILL regard my fellow employees with equality, dignity, and respect.
 - I WILL be loyal to my fellow employees, my superiors and my agency.

- I WILL accept responsibility for my actions.
 - I WILL strive to do only those things that will reflect honor on my fellow employees, my agency and me.
4. All employees shall receive ethics training biennially.

IV. Enforcement Authority

Pursuant to Title 30-A M.R.S.A. §2671(MUNICIPAL AGENCY) ; §381 (COUNTY AGENCY) and within the limits established by the Constitution of the United States and the State of Maine, the sworn officers of this agency are empowered to enforce all Federal, State and local laws and ordinances within the jurisdiction of the agency. All newly sworn officers must successfully complete the basic course of instruction at the Maine Criminal Justice Academy or its equivalent and be agency qualified in the use of a firearm prior to being authorized to carry a firearm, make arrests or enforce the law.

A. Discretion

Sworn personnel of the agency shall utilize discretion in a manner that will ensure that their enforcement authority is exercised in a fair and judicious manner. Police response to any situation should involve an assessment of all rational legal and moral alternatives that are in the best interests of the police, the community and the alleged offender. Police officers should never exercise their discretion in a manner that will create an unreasonable risk to public safety or fellow officers.

The use of discretion shall at all times be consistent with the philosophy, goals and objectives of the agency.

B. Duty Responsibilities

Sworn officers are always subject to duty although periodically relieved of its routine performance. Proper police action must be taken whenever required. The administrative delegation of the enforcement of certain laws and ordinances to particular units does not relieve other officers from the responsibility of taking prompt, effective police action within the scope of those laws and ordinances when a situation confronting the officer requires it. Officers should be aware, however, that units may be operating in a plainclothes capacity in those areas.

C. While on duty, officers shall at all times take appropriate action to:

1. protect life and property;
2. provide emergency first aid to the injured;
3. preserve the peace;
4. prevent crime;
5. detect and arrest violators of the law;
6. enforce Federal, State and local laws and ordinances according to Department policy; and
7. keep his/her supervisor or the dispatcher informed of his/her location and activity.

D. The following are suggested areas where an officer may wish to use their discretion to employ an alternative measure of response:

1. the enforcement of laws, i.e., a warning rather than a summons; a summons rather than an arrest;
2. prosecution and plea-bargaining;
3. the resolution of conflicts or disputes between citizens; and
4. utilization of social service agencies and medical facilities rather than the criminal justice system.

PER ORDER OF: _____

Chief Executive Officer

*****ADVISORY*****

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. Prior to implementation, it is recommended that this model policy be reviewed and that any changes necessary for your agency be incorporated. The watermark may be removed by going to page layout, click on watermark, and click on remove watermark.

***** DISCLAIMER *****

This model policy does not create a higher legal standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third-party claims and is not intended for use in any civil actions.

Any questions regarding the policy may be directed to the MCOPA Policy Committee.

Deputy Chief Jason Moen, jmoen@auburnmaine.gov Chairperson

Chief Doug Bracy dbracy@yorkpolice.org

Chief Jack Peck jpeck@FarmingtonPD.org

Chief Mark Leonard vzchief800@yahoo.com

Chief Brian MacMaster brian.macmaster@maine.gov

Major Chris Cloutier chris.cloutier@maine.gov

Chief Deputy Tim Carroll tcarroll@knoxcountymaine.gov

Detective Peter Lizanecz peter.lizanecz@maine.gov



Bias-Free Policing

January 2021

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- ***Model Policy***: Provides police agencies with concrete guidance and directives by describing in sequential format the manner in which actions, tasks, and operations are to be performed.
- ***Concepts & Issues Paper***: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.

Model Policy

Updated: January 2020

Bias-Free Policing

I. PURPOSE

The purpose of this policy is to emphasize this agency's commitment to fair and bias-free treatment of all people and to clarify the circumstances in which agency personnel may consider specified characteristics when carrying out duties. Fair and bias-free policing enhances legitimate law enforcement efforts and promotes trust within the community.

II. POLICY

People having contact with agency personnel¹ shall be treated in a fair, impartial, bias-free, and objective manner, in accordance with law, and without consideration of specified characteristics as defined in this policy.²

III. DEFINITIONS

Biased Policing: Discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of agency personnel toward classes of people based on specified characteristics.³

Fair and Bias-free Treatment: Conduct of agency personnel wherein all people are treated in the same manner under the same or similar circumstances irrespective of specified characteristics.

Police Services: Sometimes referred to as community caretaking functions, these are actions and activities that may not directly include enforcement of the law, but that contribute to the overall well-being of the public. These include, but are not limited to, such tasks as welfare checks; death notifications; public assistance to persons who may be lost, confused, or affected by mental or physical illness; traffic control; medical emergencies; lifesaving services; crime prevention; public information; and community engagement.

Specified Characteristics: For the purposes of this policy, real or perceived personal characteristics, to include but not limited to race, ethnic background, national origin, immigration status, gender, gender identity/expression, sexual orientation, religion, socioeconomic status, age, disability, or political affiliation.

¹ The term "personnel" is used throughout this document. However, agencies should consider whether sworn, civilian, or reserve officers, volunteers, interns, cadets, explorers, or any individual engaged in agency-sponsored mentoring activities should be included.

² For additional discussion, to include procedures for ensuring employees are adhering to the guidance found in this document and for responding to alleged or actual violations of this policy, please refer to the IACP Policy Center documents on Standards of Conduct and Investigation of Allegations of Employee Misconduct available at <https://www.theiacp.org/policycenter>.

³ Agencies should be prepared to recognize all forms of bias in the delivery of police services, whether the bias is based on prejudice towards specified characteristics, nepotism and favoritism, or other factors.

IV. PROCEDURES

A. Fair and Impartial Treatment

1. Biased policing is prohibited both in enforcement of the law and the delivery of police services.
2. Agency personnel shall take equivalent enforcement actions and provide bias-free services to all people in the same or similar circumstances. This does not mean that all people in the same or similar circumstances must be treated identically. Reasonable concessions and accommodations may be, and sometimes should be made, for example when dealing with people with disabilities, injury, or illness.
3. Agency personnel may only consider specified characteristics when credible, timely intelligence relevant to the locality links a person or people with a specified characteristic(s) to a particular unlawful incident, or to particular unlawful incidents or criminal patterns.⁴
4. Restrictions on the use of specified characteristics do not apply to law enforcement activities designed to strengthen the agency's relationship with its diverse communities.

B. Compliance

1. Where appropriate, agency personnel are encouraged to intervene at the time the biased policing incident occurs. Agency personnel who witness or who are aware of instances of biased policing shall report the incident to a supervisor.
2. Supervisors shall:
 - a. Ensure that all agency personnel in their command are familiar with the content of this policy and shall be alert and respond to indications that biased policing is occurring.
 - b. Respond to violations of this policy with training, counseling, discipline, or other remedial intervention as appropriate to the violation.
 - c. Ensure that those who report instances of biased policing are not subject to retaliation.
3. Information on biased-policing complaints and any additional relevant information shall be provided to the chief executive officer or their designee in a manner most suitable for administrative review, problem assessment, and development of appropriate officer-level and/or agency-level corrective actions. At least annually, a summary of biased-policing complaints should be provided to the chief executive or their designee.

C. Training

All agency personnel will receive basic and periodic in-service training and, where deemed necessary, remedial training on subjects related to fair and bias-free policing, to include legal aspects and the psychology of bias. Agencies should test the impact of their training on changes in officers' attitudes, knowledge, and behavior, and confirm that the training is having the intended effect.⁵ If the training is found not to have the intended impact, or produces unintended consequences, alternative training or retraining should be considered.

⁴ Agencies may also wish to consider utilizing the following, alternative language: Agency personnel shall not consider specified characteristics when performing law enforcement duties or delivering police services except when such characteristics are part of a specific subject description.

⁵ This can be accomplished through partnerships with academic institutions familiar with training evaluations.

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their legal advisor before implementing any policy.

© Copyright 2020. Agencies are encouraged to use this document to establish one customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia, U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.

Concepts & Issues Paper

Updated: January 2021

Bias-Free Policing

I. INTRODUCTION

A. Purpose of the Document

This paper is designed to accompany the Model Policy Bias-free Policing established by the IACP Law Enforcement Policy Center. This paper provides essential background material to provide deeper understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and agencies.

B. Background

For years, law enforcement professionals have faced accusations of racial profiling or biased policing. Social psychological research has facilitated the understanding of bias and prejudice, thereby helping law enforcement leaders design interventions to produce bias-free policing.

Social psychologists originally thought there was just one form of prejudice; now labeled “explicit bias.” With explicit bias, individuals link groups (e.g., groups based on gender, race/ethnicity, sexual orientation) to negative stereotypes. Those stereotypes impact the person’s perceptions and behavior, producing discriminatory behavior that is deliberate. Racism is an example of explicit bias. Social psychologists later discovered “implicit bias” as a second way that bias might manifest. Through implicit bias, individuals link groups to stereotypes, but it is not necessarily expressed in outward hostility toward those groups. As with explicit bias, stereotypes can impact perceptions and behavior, producing discriminatory behavior. A key difference, however, is that individuals are not consciously aware of implicit biases. Implicit biases can manifest in people who, at the conscious level, reject biases, stereotypes, and prejudice. The discovery of implicit bias showed that even well-intentioned people have biases that impact their perceptions and behavior.¹

Research has found that implicit bias impacts everyone, with specific studies showing bias manifesting among members of various professional groups, such as doctors, other health professionals, medical students, educators,

¹ For an overview and reviews of recent research, see the *State of the Science: Implicit Bias Reviews* produced annually by the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, found at <http://kirwaninstitute.osu.edu/researchandstrategicinitiatives/implicit-bias-review/>

judges, and lawyers.² Research has also addressed implicit biases specifically in law enforcement professionals; such biases can be based on race, gender, socio-economic status, gender identity, or other characteristics of individuals.³

The expanded, science-based understanding of bias can help negate the polarizing views that have impacted police-community relations and can assist in bringing law enforcement and community members together around a common understanding of the issue. Through increased understanding of the nature of bias, law enforcement and community members can recognize that bias in policing is sometimes unconscious and inadvertent.

Increased knowledge on the topic can also guide agencies in their efforts to produce fair and bias-free policing. Agency leaders need to focus those efforts on both types of biases (explicit and implicit). Despite efforts to prevent it, agency personnel⁴ with explicit biases can and do make their way into agencies. In response, agencies must identify these individuals and hold them accountable for discriminatory behavior, with sanctions up to and including termination. However, agency leaders should also recognize that even their most exemplary employees may engage in behavior influenced by implicit bias. This fact results in the need to adopt a comprehensive strategy to promote fair and bias-free policing.

C. Definitions

Biased policing is defined herein as discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of agency personnel toward classes of individuals based on specified characteristics.⁵ Conversely, *fair and bias-free treatment* refers to conduct of agency personnel wherein all people are treated in the same manner under the same or similar circumstances irrespective of specified characteristics.

Police services, while sometimes referred to as community caretaking functions, are actions and activities that may not directly include enforcement of the law but that contribute to the overall well-being of the public. These include, but are not limited to, such tasks as welfare checks; death notifications; public assistance to persons who may be lost, confused, or affected by mental or physical illness; traffic control; medical emergencies; lifesaving services; crime prevention; public information; and community engagement.

“Police services” are specifically referenced to ensure that agencies promote fair and bias-free policing across all activities. A key aspect of a fair and bias-free policing policy is to convey to personnel when it is and is not acceptable for them to use specified characteristics when making decisions. Some agencies only apply their fair and bias-free policing policy parameters to an enforcement-based subset of police activities, such as detentions, arrests, and searches. It is recommended, however, that agencies apply their directives, not just to activities focused on enforcing the law, but also to those that reflect positive police services.

Specified characteristics refer to real or perceived personal characteristics, to include but not limited to race, ethnic background, national origin, immigration status, gender, gender identity/expression, sexual orientation, religion, socioeconomic status, age, disability, or political affiliation. This list is not exhaustive but is intended to identify the factors that are most likely to produce differential decisions on the part of law enforcement employees. There is no single “correct set” of characteristics within a fair and bias-free policing policy, and the list an agency adopts might depend in part on the demographics and characteristics of a jurisdiction as well as its applicable laws and regulations.

² See e.g., Hirsch et al., (2015). The interaction of patient race, provider bias, and clinical ambiguity on pain management decisions. *The Journal of Pain*, 16(6): 558–568. Okonofua, J.A., & Eberhardt, J.L. (2015). Two strikes: Race and the disciplining of young students. *Psychological Sciences*. Richardson, L.S. & Goff, P.A. (2013). Implicit racial bias in public defender triage. *The Yale Law Journal*, 12(8): 2626–2649.

³ See e.g., Fridell, L.A. & Lim, H. (2016). Assessing the racial aspects of police force using the implicit and counter bias perspectives. *Journal of Criminal Justice*, 44: 36–48. Kahn, K.B. et al., (2016). Protecting whiteness: White phenotypic racial stereotypicality reduces police use of force. *Social Psychological and Personality Science*, 7(5): 403–411.

⁴ The term “personnel” is used throughout this document. However, agencies should consider whether sworn, civilian, or reserve officers, volunteers, interns, cadets, explorers, or any individual engaged in agency-sponsored mentoring activities should be included.

⁵ Agencies should be prepared to recognize all forms of bias in the delivery of police services, whether the bias is based on prejudice towards specified characteristics, nepotism and favoritism, or other factors.

Agencies should be selective, however, as it is inadvisable for an agency to adopt a list that is too long to be meaningful and memorable.

D. Importance of Policy

A fair and bias-free policing policy is a critically important element of an agency's strategy to addressing bias. It should serve as the foundational vehicle to convey the agency leadership's commitment to fair and impartial policing. In addition, a policy can augment training by informing personnel when it is and is not acceptable for specified characteristics to play a role in decision-making.

II. DEVELOPING A COMPREHENSIVE FAIR AND BIAS-FREE POLICING STRATEGY

Adopting a policy is only one component of a comprehensive fair and bias-free policing strategy. Other strategies include (a) the leadership message, (b) recruitment and hiring, (c) supervision and accountability, (d) training, (e) measurement/assessment, (f) operations, and (g) community outreach.⁶

A. Leadership

The leaders within an agency must convey to both personnel and community members their commitment to fair and bias-free policing. Agency leaders should recognize that overarching statements indicating there is no biased policing within the agency are ineffective. A much more constructive message recognizes the moral and constitutional imperative of fair and bias-free policing, conveys the commitment on the part of the agency to continuously promote fair and bias-free policing, and presents information regarding the ways the agency is pursuing the ideals of fair and bias-free policing through the adoption of a comprehensive strategy.

B. Recruitment and Hiring

Law enforcement agencies should consider what values they want to see in the applicants they attract and the recruitment methods most likely to attract those applicants. Striving to recruit, hire, and retain candidates who share the agency's values helps shape the organizational culture. Seeking a diverse pool of applicants can help achieve this goal, and law enforcement leaders have long recognized the value of, and geared their efforts toward, soliciting applications from diverse individuals. To encourage a diverse range of applicants, agencies should make consistent and ongoing attempts to establish positive community-police relationships with every component of the community. In addition to recruiting for diversity, agencies should utilize the science of bias to guide their attempts to hire people who will provide police services in an unbiased fashion and should guard against the human biases that can impact managerial decisions, including those linked to hiring.⁷

C. Training

Modern training on this topic is geared toward implicit bias awareness and is a key component of an agency's efforts to produce fair and bias-free policing.⁸ Agencies should consider available research regarding effective training methodologies in this area. General training should be provided to all agency employees and should include topics such as:

- the science of bias;
- how biases might manifest in police work;

⁶ Fridell, L.A. (2017). *Producing bias-free policing: A science-based approach*. New York, NY: Springer Publishing and the George Mason University Center for Evidence-Based Criminology; Glaser, J. (2015). *Suspect race: Causes and consequences of racial profiling*. New York, NY: Oxford University Press.

⁷ Fiske, S.T., & Krieger, L.H. (2013). Policy implications of unexamined discrimination: Gender bias in employment as a case study. In Shafir, E. (Ed). *The behavioral foundations of public policy*. Princeton, NJ: Princeton University Press, pp. 52 – 74. Fridell (2017), Ibid.

⁸ Fridell, L. A. & Brown, S. (2015). Fair and impartial policing: A science-based approach. *The Police Chief*, June, pp. 20 – 25.

- the consequences of biased policing for personnel, community members, and agencies; and
- skills and practices for producing fair and bias-free policing based on the large body of research that has identified how individuals can identify, reduce, and/or manage their own biases.⁹

Supervisors should receive bias-awareness training, augmented with guidance on how to identify and respond to individuals under their command who may be manifesting implicit or explicit bias. Additionally, supervisors should be trained to recognize how bias might influence their own operational or managerial decisions and how to speak with individuals and groups about the sensitive topic of biased policing.

Training provided to command-level personnel should discuss the issues, challenges, and promising practices linked to the various elements of the agency's comprehensive strategy to promote fair and bias-free policing. In addition to bias-awareness training, agencies should provide scenario-based judgmental training that conditions officers to focus not on demographics, but on indicators of threat (e.g., behavior).¹⁰

D. Supervision and Accountability

Agencies must train, prepare, and support supervisors so they will ensure impartial and bias-free policing. Further, agencies should utilize existing accountability mechanisms, such as personnel evaluations, in-car or body-worn cameras, early intervention systems, and complaint review to promote fair and bias-free policing.¹¹

E. Measurement & Assessment

There have been concerted efforts in some jurisdictions to measure biased policing. Initially, these measurements were based largely on vehicle stop data collection; however, some agencies have extended measurement efforts to use of force, police contacts with the public, and other police activities. The collection and reporting of data that includes subject demographics can be an important part of an agency's efforts to promote fair and bias-free policing and how these efforts are perceived by the community. A data collection program can convey to the community a commitment to fair and bias-free policing, accountability, and transparency. These efforts, however, must be undertaken with an understanding on the part of both law enforcement and community members regarding what these data can and cannot reveal about bias in policing. While it is not difficult to show disparity where one group is disproportionately represented among people who are stopped in their vehicles or detained on the street, the real challenge for agency analysts and their social science partners is determining the causes or sources of that disparity. Concluding that "disparity" is the same as "bias" is not correct, as some portion of the identified disparity may be produced, in part, by other legitimate factors.

Although measuring biased policing is not a simple task, such efforts can be helpful for assessing the efficacy of programmatic efforts and determining if changes are needed to training, policy, and/or procedures.

F. Operations

Agency leaders must ensure that their operations promote fair and bias-free policing and address the perceptions of it on the part of community members. First, agency leaders should understand the increased risk of bias associated with high-discretion, crime-control-focused activities.¹² While proactive-policing activities cannot be eliminated, the associated risks of bias can and should be reduced by educating personnel on their biases. Additionally, agencies can

⁹ See Staats, C. et al., (2016). *State of the Science: Implicit Bias Review*, 2016 Edition. Columbus Ohio: Kirwan Institute for the Study of Race and Ethnicity. Staats, et al., (2017). *State of the Science: Implicit Bias Review*, 2017 Edition. Columbus Ohio: Kirwan Institute for the Study of Race and Ethnicity.

¹⁰ Fridell, L. (2016). Can better training solve cops' implicit biases? *Democracy Journal*, August. At <https://democracyjournal.org/arguments/can-better-training-solve-cops-implicit-biases/>

¹¹ See the IACP Policy Center documents on Early Intervention Systems available at <https://www.theiacp.org/resources/policy-center-resource/early-warning-system> and Investigation of Allegations of Employee Misconduct available at <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

¹² Epp, C.R., Maynard-Moody, S., Haider-Markel, D. (2014). *Pulled Over: How police stops define race and citizenship*. White, M.D., & Fradella, H.F. (2016). *Stop and frisk: The use and abuse of a controversial policing tactic*. New York: New York University Press.

replace “unfocused, massive enforcement efforts”¹³ with focused, information-led strategies that target behaviors instead of populations. Second, law enforcement leaders should prioritize strategies that promote *both* crime and traffic control, considering the increased potential for bias in these areas, *and* police legitimacy.¹⁴

G. Community Outreach

Agencies’ engagement of their many diverse communities is an important part of an effort to promote fair and bias-free policing and manage perceptions of bias. Virtually all agencies have programs to strengthen the relationship between the community and the agency. As part of outreach efforts, agencies should provide opportunities for employees to interact with diverse groups within the community.¹⁵ However, these agency programs should not overshadow the importance of ensuring that every interaction between an officer and a community member reflects the elements of procedural justice.¹⁶

III. PROCEDURES

An agency’s fair and bias-free policing policy should declare that biased policing is prohibited, convey in more detail what is meant by the term “biased policing,” outline key compliance mechanisms, and specify agency training on the topic.

A. Bias-free Treatment

Agencies should explicitly prohibit biased policing whether personnel are enforcing the law or delivering police services. While bias-free policing means that personnel will, in general, treat people in similar situations the same way, policy should recognize that there are situations wherein reasonable concessions and/or accommodations should be made based on the characteristics of individuals. An officer, for example, might adopt different tactics and/or provide different services to a person with a disability, injury, or illness. Such accommodations are intended to provide better service and should therefore not be prohibited by the policy so long as the treatment is bias-free for persons in like situations.

Policy should also inform personnel when it is and is not acceptable to consider specified characteristics when making decisions associated with enforcing the law or delivering police services. There are two major models for setting the parameters on the use of specified characteristics. One model, the narrower of the two, states that personnel cannot consider specified characteristics unless the characteristic(s) is part of a specific suspect description. The second model recognizes the legitimacy of using specified characteristics that are associated with a specific suspect description as articulated in the first model but goes further in allowing the use of characteristics for making duty-related decisions. Pursuant to this model, personnel can use the specified characteristics when credible, verified, and timely intelligence relevant to the locality links a person or people with a specified characteristic(s) to a particular unlawful incident, or to particular unlawful incidents or criminal patterns. The key elements of this model include:

- *Local relevance.* This element requires that the intelligence be linked to a specific, limited geographic area, such as a park, an intersection, or a neighborhood.
- *Link between the specified characteristic and a particular crime or crime category.* This requires that, in the geographically relevant area, there is a group that exhibits the specified characteristic that is linked to

¹³ Obbie, M. (2015, September 3). This is a fundamentally different way of policing. *Slate*. Retrieved from http://www.slate.com/articles/news_and_politics/crime/2015/09/meet_susan_herman_the_woman_bill_bratton_has_tasked_with_repairing_the_nypd.single.html

¹⁴ Lum, C. & Nagin, D. (2015). Reinventing American policing: A seven-point blueprint for the 21st century. *Translational Criminology*, Fall, 2 – 5, 11.

¹⁵ For instance, with one program, new recruits can partake in an at-length (e.g. one-week) engagement with concerned community members to learn about the characteristics of the community and the importance of understanding diverse community needs and perceptions.

¹⁶ Mazerolle, L., Sargeant, E., Cherney, A., Bennett, S., Murphy, K., Antrobus, El., & Martin, P. (2013). *Procedural justice and legitimacy in policing*. New York, NY: Springer Publishing and the George Mason University Center for Evidence-Based Criminology. Tyler, T.R. & Huo, Y. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation. See also <https://cops.usdoj.gov/proceduraljustice>.

a particular crime (e.g., robbery) or category of crimes (drug-related crimes). The geographic parameter and the specific link between a demographic group and a crime or category of crimes are both important elements; this model does not provide license to consider a particular characteristic just because that group is disproportionately involved in criminal activity in the jurisdiction. Even if certain groups exhibiting a specified characteristic are disproportionately represented among people who commit overall crime in a jurisdiction, law enforcement professionals are not justified in treating individuals as if they represent that stereotype or generalization.

- *Credible and timely intelligence.* Any actions involving the use of specified characteristics must be linked to credible, verified, and timely information or intelligence that is not based on biases, rumor, or unverifiable reports.
- *Confluence of factors.* The use of specified characteristics in these limited circumstances does not allow for law enforcement intervention with *any person with the specified characteristic*, but rather allows personnel to add this variable to other factors (e.g., behavior, location, time of day) in making a duty-related decision. For instance, the specified characteristic might become a part of the totality of circumstances that produces reasonable suspicion to detain.

There is no general consensus as to which model is preferable. Some argue that the first model is straightforward and is relatively easy for an agency to train and enforce, while others state that the second model is necessary for effective policing. Regardless of which model an agency adopts, strict oversight is required to ensure that this directive is being appropriately followed.

Neither model allows for police intervention where an individual exhibits characteristics that are merely inconsistent with those of the general population of the geographic area. If the decision to intervene does not meet the parameters of the first or second models above, and instead is merely based on the agency personnel's belief that the person "does not belong," it is inconsistent with the agency's commitment to fair and bias-free policing. Further, such police behavior may be legally and/or constitutionally prohibited.¹⁷ To highlight this restriction on the use of specific characteristics, agencies may elect to add a provision to their policy stating that it is biased policing if agency personnel decisions and/or actions are based on the fact that the individual's specified characteristics are different from the specified characteristics of the majority of the residents in the area in which the individual is found.

While limits on the use of specified characteristics should be established, there may be situations where an agency legitimately focuses some of its outreach activities to particular groups exhibiting certain specified characteristics because the agency's relationship with those groups needs strengthening. Agencies should recognize the value of prioritizing, for instance, attendance at community meetings and participation in other events aimed at increasing positive interactions with disenfranchised or vulnerable population groups.

B. Compliance

Agencies should utilize existing mechanisms for promoting personnel compliance with all applicable laws, policies, and procedures, including those relevant to promoting fair and bias-free policing. Because of the importance of fair and bias-free policing and because individuals may ignore or be unaware when they are impacted by their implicit biases, it is important that personnel be encouraged to intervene appropriately when they believe that biased policing is occurring. Clear violations, particularly deliberate ones, should be reported to a supervisor.

Supervisors should be tasked with ensuring that the individuals in their command know and understand the contents of the agency's fair and bias-free policing policy. They also must be alert and respond to indications of biased policing and work to identify and intervene with individuals who are acting upon their biases.

¹⁷ In the United States, finding a legitimate Fourth Amendment basis for intervening with such "out of place" people (e.g., waiting the few minutes it takes to identify a traffic violation on the part of a driver) does not change the fact that pulling the driver over because they are demographically "out of place" arguably violates the Fourteenth Amendment provision requiring equal protection of the law.

Agencies should track complaints of biased policing, compiling annual reports for review by the chief executive or their designee.

C. Training

Training is an important component of an agency's comprehensive strategy to promoting fair and bias-free policing. As noted previously, this should include implicit bias awareness training. Additionally, the training should include coverage of the legal aspects of this issue, to include legal requirements related to equal protection and unlawful discrimination. Agencies should provide all employees with initial and periodic training on this topic, ideally with curricula that reinforces the key principles from basic training but with new applications, methods, and advanced topics to reduce boredom and complacency. Agencies should consider using actual cases examples where officers exhibit negative or positive behaviors in relation to fair and bias-free policing. Interactive scenario-based training with officers on this topic is highly recommended. Agencies should test the impact of their training on changes in officers' attitudes, knowledge, and behavior, and confirm that the training is having the intended effect. This can be accomplished by partnering with academic institutions familiar with conducting training evaluations. If the training is found not to have the intended impact or produces unintended consequences, alternative training or retraining should be considered.

© Copyright 2020. Agencies are encouraged to use this policy to establish one customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia, U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.



International Association of Chiefs of Police
44 Canal Center Plaza, Suite 200
Alexandria, VA 22314
703.836.6767 | FAX 703.836.4743
www.theIACP.org

The Future of Qualified Immunity

By Wes Jackson

In response to calls for qualified immunity reform, state and federal lawmakers have started to act.



■ Wesley (Wes) Jackson is a partner in Freeman Mathis & Gary LLP's Atlanta office. He practices in the government and tort and catastrophic loss practice groups, where he represents local governments and law enforcement officers in Section 1983 litigation and virtually every type of related state-law claim. He is a member of DRI and the Georgia Defense Lawyers Association.

An Examination of Federal and State Proposals





Qualified immunity is under attack. The doctrine is designed to protect public officials from litigation and liability for alleged civil rights abuses where their conduct was “objectively reasonable,” albeit unconstitutional. *See*

Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Objections to qualified immunity have simmered for years in various corners of the legal world. Those objections boiled over during the summer of 2020 in the wake of several high-profile police shootings or other use-of-force incidents, including the deaths of George Floyd and Breonna Taylor.

Even some judges are openly criticizing qualified immunity, specifically in light of the current protests. For example, Federal District Court Judge Carlton W. Reeves, after chronicling nearly twenty recently reported instances of police violence, wrote:

Over the decades, ... judges have invented a legal doctrine to protect law enforcement officers from having to face any consequences for wrongdoing. The doctrine is called “qualified immunity.” In real life it operates like absolute immunity.

Jamison v. McClendon, No. 3:16-CV-595-CWR-LRA, 2020 U.S. Dist. LEXIS 139327, at *4 (S.D. Miss. Aug. 4, 2020). And while that sentiment reflects the current frustrations of those who have practical objections to the defense, United States Supreme Court Justice Clarence Thomas has repeatedly asserted a jurisprudential objection for years: qualified immunity, in its current form, is a purely judge-made doctrine that has no basis in the Constitution or the text of 42 U.S.C. §1983—the codified right of action for civil rights violations against which qualified immunity shields public officials.

In a limited way, these calls to reform qualified immunity came to fruition in some parts of the country this past summer. No less than four bills designed either to abolish qualified immunity outright or to reform the doctrine drastically were presented in the United States Senate and House of Representatives. None became law. Reformers achieved greater success in state legislatures: Colorado and Connecticut each created state causes of action for violations of civil rights that do not allow for the defense of qualified immunity, at least in its current form.

For its part, the Supreme Court (Justice Thomas aside) has been reluctant to answer the call to end qualified immunity. Perhaps that is because Congress and some state legislatures appear ready to take up the cause themselves.

Attorneys who defend public officials and local governments must pay close attention to these developments. Despite the Supreme Court’s reticence, proposed changes to qualified immunity and other law enforcement reforms could significantly change how we advocate for our governmental clients. Importantly, objections to qualified immunity go beyond the doctrine itself. While qualified immunity is the nominal target of calls for police reform, the criticisms against it more broadly implicate nearly every aspect of civil rights claims, including whether an officer’s conduct is scrutinized through the lens of objective reasonableness or the officer’s subjective belief about the constitutionality of his or her conduct, who indemnifies individ-

ual officers, whether and when employing government agencies can be directly liable for constitutional violations, whether these claims are litigated in state or federal courts, and who pays plaintiffs' attorneys' fees.

The purpose of this article is to examine recent proposals to end or reform qualified immunity and discuss how these changes might affect our clients.

No less than four bills designed either to abolish qualified immunity outright or to reform the doctrine drastically were presented in the United States Senate and House of Representatives. None became law.

Background: Qualified Immunity for Individual Officers

Before addressing why some want to end qualified immunity, let's look at what it is and how it relates to civil claims asserting constitutional violations.

42 U.S.C. §1983, which is part of the Civil Rights Act of 1871, provides a cause of action against "every person" who under color of law abridges the constitutional or federal statutory rights of a citizen. This standard has two interrelated components: (1) a "person" who (2) causes a deprivation under "color of any statute, ordinance, regulation, custom, or usage, of any State...." Thus, §1983 defendants will be persons acting under "color of law" (or, sometimes, "color of state law").

Notwithstanding its enactment in 1871, §1983 did not gain steam as a tool to obtain civil damages from state officials for constitutional violations until 1961, when the Supreme Court decided *Monroe v. Pape*. In *Monroe*, the Supreme Court determined that Congress intended "to give a remedy

to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." 365 U.S. 167, 172 (1961). Civil rights claims ballooned in the federal courts in the years after *Monroe*.

Naturally, the additional litigation against public officials brought with it certain "social costs." As the Supreme Court recognized in *Harlow v. Fitzgerald* in 1982: These social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.

457 U.S. 800, 814 (1982) (alteration in original) (internal quotation marks and citation omitted). Recognizing that some balance must be achieved between vindicating constitutional guarantees through litigation and protecting innocent public officials from meritless claims, the Supreme Court in *Harlow* sought to devise a rule of immunity for public officials that would dispense of unmeritorious §1983 claims as early in litigation as practicable.

That is not to say that no immunity doctrines preceded *Harlow*. Soon after *Monroe*, the Supreme Court recognized that some public officials, such as police officers, should be entitled to "the defense of good faith and probable cause" to §1983 claims because such defenses were available to officers at common law for analogous claims of false arrest and imprisonment. *Pierson v. Ray*, 386 U.S. 547, 557 (1967). But as the Supreme Court later explained in *Harlow*, this "good faith" immunity contained both objective and subjective elements. "The objective element involves a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights,'" whereas the "subjective component refers to 'permissible intentions,'" i.e., whether the official maliciously intended to cause injury or deprive another of constitutional rights. *Harlow*, 457 U.S. at 815 (citation omitted).

But the problem with the "subjective" component of this common-law immunity, the Court recognized in *Harlow*, is that subjective state-of-mind inquiries are

essentially questions of fact that often must be decided by a jury at a costly trial rather than earlier in a case on summary judgment. *Id.* at 815–16. The subjective element thus defeats the social benefits of the immunity defense because it is too easily overcome by bare allegations of "malice," and therefore does not strike the proper balance between the competing values of vindicating constitutional rights and protecting public officials from meritless suits. *Id.*

Thus, the Court in *Harlow* dispensed of any subjective component of qualified immunity and reframed the doctrine in its current form: "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818. The Court went on to explain that an objective determination of the reasonableness of an officer's conduct, informed by "clearly established law," would more easily allow for courts to rule on an officer's qualified immunity defense on or before summary judgment. *Id.* at 818–19.

Section 1983 Claims Against Government Entities.

While this article focuses on qualified immunity—which is a defense for individual public officials—it is important to recognize that claims and defenses concerning individual officers do not exist in a vacuum. At the end of the day, the purpose of a §1983 claim is to obtain a collectable monetary judgment. Thus, calls to reform qualified immunity often implicate another important potential defendant: the local governments that employ the individual officers.

As discussed above, §1983 only applies to "persons" acting under color of state law. Initially, §1983 was not read to include governmental entities. See *Monroe v. Pape*, 365 U.S. 167 (1961). Seventeen years after *Monroe* was decided, however, the Supreme Court reversed course and held that local governments were "persons" under the statutory language, and as such, *could* be sued under the statute. See *Monell v. New York City Dep't. of Soc. Servs.*, 436 U.S. 658 (1978).

Importantly though, *Monell* did not provide for *respondeat superior* or vicarious liability against government entities for the misconduct of their employees. The Court in *Monell* held that, to recover against a local governmental entity, the plaintiff must show that a “policy or custom” of the local government itself caused the plaintiff to suffer a constitutional deprivation. *Id.* at 694. In other words, actions by government employees must involve creating or enforcing municipal policy or custom, so that imposing liability on the municipality is based on municipal wrongdoing.

Thus, in practice, direct actions against local governments often do not afford plaintiffs a viable remedy for constitutional violations where the individual officer is entitled to qualified immunity. *Monell*, then, adds to many critics’ frustration with the qualified immunity defense.

The Criticisms

Qualified immunity in its modern form now has three elements: (i) the defendant must establish that the officer engaged in a discretionary function. *Harlow*, 457 U.S. at 818. If the defendant meets this burden, the burden shifts to the plaintiff to show both (ii) that he or she suffered an underlying constitutional violation and (iii) that the officer’s conduct violated clearly established law. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

Of these three steps, it is the third that has drawn the most criticism. The “clearly established law” prong of the qualified immunity analysis essentially makes it the plaintiff’s burden to show not only that his or her constitutional rights were actually violated (that is the second prong, or the “constitutional violation” analysis), but that the constitutional right at issue was objectively “clearly established” at the time. “For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). “This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful... but it is to say that in the light of pre-existing law the unlawfulness must be apparent.” *Id.* As recently as 2017, the Supreme Court has unan-

imously held that “‘clearly established law’ should not be defined at a high level of generality.” *White v. Pauly*, 137 S. Ct. 548, 552 (2017). Rather, “the clearly established law must be ‘particularized’ to the facts of the case.... Otherwise, plaintiffs would be able to convert the rule of qualified immunity into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.” *Id.*

Critics of qualified immunity argue that such an exacting requirement of “clearly established law” is simply too high to allow for the meaningful vindication of the constitutional rights of citizens. *Manzanares v. Roosevelt Cnty. Adult Det. Ctr.*, 331 F. Supp. 3d 1260, 1293 n.10 (D.N.M. 2018). They also complain that the “clearly established law” prong is a legal fiction at odds with how public employees actually make their decisions. As one judge put it:

Factually identical or highly similar factual cases are not... the way the real world works. Cases differ. Many cases have so many facts that are unlikely to ever occur again in a significantly similar way.... The Supreme Court’s obsession with the clearly established prong assumes that officers are routinely reading Supreme Court and [Court of Appeals] opinions in their spare time, carefully comparing the facts in these qualified immunity cases with the circumstances they confront in their day-to-day police work.... It strains credulity to believe that a reasonable officer, as he is approaching a suspect to arrest, is thinking to himself: “Are the facts here anything like the facts in *York v. City of Las Cruces*?”

Id.

These sentiments reflect practical frustrations with the qualified immunity doctrine—one might say they represent the view that the Supreme Court in *Harlow* and its subsequent cases regarding “clearly established law” did not strike the right balance between protecting public officials and providing an avenue for citizens to vindicate their constitutional rights. The outcome, according to Justice Sonia Sotomayor, is a “troubling asymmetry” that is “not just wrong on the law; it also sends an alarming signal to law enforcement officers and the public. It tells officers that they can shoot first and think later, and it tells the public

that palpably unreasonable conduct will go unpunished.” *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting).

An additional practical objection to §1983 immunities that goes hand-in-hand with objections to qualified immunity is the shield that *Monell* provides to governmental entities that employ misbehaving officials. Thus, in practice, a governmental employee

Importantly though,

Monell did not provide for *respondeat superior* or vicarious liability against government entities for the misconduct of their employees. The Court in *Monell* held that, to recover against a local governmental entity, the plaintiff must show that a “policy or custom” of the local government itself caused the plaintiff to suffer a constitutional deprivation.

who violated a citizen’s constitutional rights could be immune from judgment via qualified immunity if the right at issue was not “clearly established” at the time of the incident, while at the same time the official’s employing governmental agency could be immune under *Monell* if no governmental policy, practice, or custom caused the official to violate the plaintiff’s constitutional rights. In such a situation, the citizen—whose rights have been violated—has no recourse against either the offending official or the official’s employer.

But as referenced in the introduction, there are also those with jurisprudential objections to the doctrine of qualified immunity, and Justice Thomas is their flagbearer. While Justice Thomas frequently joins the majority when it finds an officer is entitled to qualified immunity, he often notes he does so out of respect for precedent, notwithstanding his “growing concern with

■ ■ ■ ■ ■
Calls to reform qualified immunity have been directed at the Supreme Court, Congress, and state legislatures. Who will act first?

our qualified immunity jurisprudence.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1870 (2017) (Thomas, J., concurring). Justice Thomas objects to qualified immunity because the doctrine is no longer tethered to the text of the Civil Rights Act of 1871 or its common law backdrop. According to Justice Thomas, the Court’s “qualified immunity precedents instead represent precisely the sort of ‘free-wheeling policy choices’ that we have previously disclaimed the power to make.” *Id.* at 1871 (Thomas, J., concurring).

Who Will Act—the Court, Congress, or the States?

Calls to reform qualified immunity have been directed at the Supreme Court, Congress, and state legislatures. Who will act first?

The Court: A Hesitant Reformer?

How has the Supreme Court as a whole responded to these criticisms? Interestingly, the Supreme Court appeared poised to answer, in one way or another, some of these criticisms at the end of its 2019 term in 2020. During the months before the term concluded, the Court had accumulated no fewer than nine petitions for certiorari that posed challenges to the doctrine of qualified immunity. See John Elwood, *Relist Watch:*

Looking for the living among the dead, SCOTUS Blog (May 27, 2020, 11:29 AM), <https://www.scotusblog.com>. However, near the end of the term on June 15, 2020, the Court denied all nine petitions. Justice Thomas was the lone dissenter in the denials, where he reiterated: “I continue to have strong doubts about our §1983 qualified immunity doctrine.” *Baxter v. Bracey*, 140 S. Ct. 1862, 1865 (Thomas, J., dissenting) (2020).

What might explain the Court’s apparent willingness to accumulate so many certiorari petitions that implicate the qualified immunity doctrine during the course of the 2019 term, only to deny them in June 2020—just as calls for police reform and the end of qualified immunity were reaching a fever pitch? Of course, no one can say for sure. But the denials coincidentally came just days after a bill designed to abolish qualified immunity was presented in the House of Representatives on June 4, 2020. Furthermore, in early June 2020, Colorado became one of the first states to create a state cause of action to vindicate civil rights violations *without* a qualified immunity defense.

Perhaps the Court would prefer to defer to state and federal legislative responses to qualified immunity. Perhaps not. Either way, the legislative proposals on both the state and federal level portend significant changes to how civil rights claims may be litigated in the future.

Federal Bills: Symbolic, but No Traction (Yet)

While the Court may have created qualified immunity in its current form nearly forty years ago, Congress has not acted to reclaim its authority to define the contours of §1983 and its defenses. At least, not until last summer, when no fewer than four bills were presented—two in the Senate and two in the House of Representatives—that called to end or reform qualified immunity.

Three of those bills—H.B. 7085, H.B. 7120, and S.B. 4142—were sponsored by Democrats. They all provided:

It shall not be a defense or immunity to any action brought under this section that the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when it was committed. Nor shall it be a defense or immunity

that the rights, privileges, or immunities secured by the Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.

Ending Qualified Immunity Act, H.R. 7085, 116th Cong. §4 (2020), <https://www.congress.gov>; Ending Qualified Immunity Act, S.B. 4142, 116th Cong. §4 (2020), <https://legiscan.com>; George Floyd Justice in Policing Act, H.R. 7120, 116th Cong. §102 (2020), <https://legiscan.com>. On March 3, 2021, the House passed another version of the George Floyd Justice in Policing Act that included the same operative language. See George Floyd Justice in Policing Act, H.R. 1280, 117th Cong. §102 (2021), <https://legiscan.com>. Notably, this language seeks to remove the defense of qualified immunity without providing for any similar defense in its absence. What is more, these bills would not only have done away completely with the “objective” defense of qualified immunity, but they also would have taken away any claim to the “good faith” immunity that was available to officials at common law when §1983 was first enacted in 1871. Thus, the only real defense to a §1983 civil rights claim, under these proposed changes, would be that the defendant did not, in fact, violate the plaintiff’s constitutional rights. Whether the claimed right in any given case was newly recognized by a court would be completely irrelevant to the official’s defense, even if “the state of the law was... such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.” H.R. 7085, 116th Cong. §4 (2020); H.R. 1280, 117th Cong. §102 (2021).

On their face, then, the four Democratic bills proposed in the United States Congress would deprive even officers whose conduct was subjectively or objectively reasonable in light of all available information of any immunity from §1983 claims. While the proposed changes would drastically alter how we litigate §1983 claims by eradicating both qualified and good-faith immunity, it remains to be seen whether such federal legislation is politically feasible at this time. The first three proposals—introduced at the height of public protests

against police violence in the summer of 2020—were symbolic more than anything else and had little chance of passage in a Republican-controlled senate. But with an evenly split Senate in 2021 and a Democratic president and vice president, H.R. 1280 has a better chance of becoming law. At minimum, the four bills together show momentum on one side of the aisle to initiate some kind of change in the future.

In contrast to the Democratic bills, one bill introduced in the Senate (S.B. 4036) by a lone Republican—Senator Mike Braun of Indiana—did not call for the outright removal of all immunity to §1983 claims but would have drastically reformed the available defenses in §1983 cases. Reforming Qualified Immunity Act, S.B. 4036, 116th Cong. (2020), <https://legiscan.com>. While S.B. 4036 did not gain any traction in the Senate (indeed, Senator Braun stopped promoting it after receiving pushback from police unions, *see* Payton Knobeloch, *Sen. Braun Halts Qualified Immunity Bill Amid Fox News Interview, Police Union Backlash*, WFYI.org (July 2, 2020), <https://www.wfyi.org>), it proposed several changes not only to qualified immunity specifically but also to how liability is assigned in §1983 cases more generally.

Specifically, S.B. 4036 would have prohibited the defense of qualified immunity and good-faith immunity in the same terms as those proposed in the three Democratic bills. However, S.B. 4036 proposed new defenses to §1983 claims that were, more or less, watered-down versions of the current “clearly established law” analysis. Under S.B. 4036, an official would not be liable for a §1983 claim if there was a final judgment from a court of competent jurisdiction at the time of the incident holding that the “specific conduct alleged to be unlawful was consistent with the Constitution of the United States and Federal laws,” and that the official reasonably believed as much. S.B. 4036, 116th Cong. (2020).

This defense in S.B. 4036 turns the “clearly established law” analysis on its head: instead of making it the *plaintiff’s* burden to show prior caselaw clearly establishing some conduct to be *unconstitutional*, it would now be the *defendant’s* burden to show prior caselaw affirmatively establishing that his or her specific conduct was consistent with the constitution.

Finally, S.B. 4036 differs from those bills proposed by Democrats insofar as it addresses the *Monell* hurdle to obtaining judgments against an officer’s employing agency. Under S.B. 4036, it appears an employing agency can be liable for an official’s constitutional violation *even if* one of the enumerated defenses in S.B. 4036 shields the individual officer from liability. Thus, the bill is designed to make it easier for citizens whose constitutional rights are violated to obtain a collectable monetary judgment from the employing governmental agency, even if the individual official is judgment proof or otherwise entitled to an immunity defense.

In sum, these federal bills represent some traction on both sides of the aisle for qualified immunity reform. The Democratic bills appear to be more of a symbolic indictment of qualified immunity, given that they do not propose a realistic alternative to the doctrine. S.B. 4036 provides a more nuanced approach but, when compared to some bills that have actually passed in state legislatures, does not go very far in addressing concerns of holding individual officers personally liable for their constitutional violations.

State Legislation: Colorado and Connecticut

The federal bills have not withstood any real political test. While they reflect the starting points proposed in Congress, they may be best described as “aspirational.” But that is not the case with legislation addressing qualified immunity that has actually passed on the state-level. Indeed, the future of qualified immunity may rest in the states’ hands, given the Supreme Court’s reluctance to recalibrate the doctrine and the current political divide in Congress.

Colorado

The state of Colorado passed S.B. 20-217, known as the “Enhance Law Enforcement Integrity” bill, in June 2020. S.B. 20-217 (Col. 2020), <https://leg.colorado.gov>. The bill addresses a range of law enforcement topics, including requiring that body-worn cameras be made available to law enforcement officers, mandating the state-wide reporting of use-of-force incidents, and prohibiting certain law enforcement actions in response to protests, among

other measures. For our purposes, the new legislation also defines a civil cause of action for deprivation of civil rights and metes out liability in a manner that addresses criticisms of qualified immunity and the lack of *respondeat superior* liability against employing agencies.

Importantly, the bill expressly states that “qualified immunity is not a defense to lia-

In sum, these federal bills represent some traction on both sides of the aisle for qualified immunity reform. The Democratic bills appear to be more of a symbolic indictment of qualified immunity, given that they do not propose a realistic alternative to the doctrine. S.B. 4036 provides a more nuanced approach but, when compared to some bills that have actually passed in state legislatures, does not go very far in addressing concerns of holding individual officers personally liable for their constitutional violations.

bility pursuant to” the section that creates a cause of action against individual officers for violations of Colorado’s state civil rights

provisions. S.B. 20-217 (Col. 2020) (§13-21-131(2)(B)). However, the bill does retain something akin to “good faith” immunity for officers in their individual capacity by requiring the peace officer’s employing agency to indemnify the officer for any liability, settlement, or civil judgment as long as *the employer* does not determine that the officer “did not act upon a good faith

■ ■ ■ ■ ■
While the Colorado bill
would likely lead to an
increase in civil rights claims
in that state, the bill does
include a countervailing
measure designed to
minimize frivolous civil
rights suits by allowing for
attorneys’ fees *against* a
plaintiff where judgment
is entered in favor of the
defendant and the court
finds any of the plaintiff’s
claims were “frivolous.”

and reasonable belief that the action was lawful.” *Id.* at §13-21-131(4). If the employing agency makes such a determination, the officer may be personally liable for the lesser of 5 percent or \$25,000 of a civil judgment or settlement. If such an officer is unable to pay any judgment, the employer will have to pick up this additional 5 percent or \$25,000 of the judgment—*unless* the officer is convicted of a criminal violation for his or her conduct giving rise to the civil claim.

While the Colorado bill would likely lead to an increase in civil rights claims in that state, the bill does include a countervailing

measure designed to minimize frivolous civil rights suits by allowing for attorneys’ fees *against* a plaintiff where judgment is entered in favor of the defendant and the court finds any of the plaintiff’s claims were “frivolous.” This provision differs from §1983 claims, which provides an avenue for an award of attorneys’ fees to a prevailing plaintiff under 42 U.S.C. §1988, but does not put plaintiffs at risk of paying attorneys’ fees for otherwise frivolous claims.

So how does Colorado’s new civil rights statute strike the balance between vindicating civil rights violations and protecting public officials and the efficient operation of government, as compared to §1983? Generally, most individual officers in Colorado will fare better under Colorado’s cause of action than they would in federal court for a §1983 claim. Because officers who act in good faith will be indemnified 100 percent by their employer, they need not fear a civil judgment unless their employing agency (as opposed to a judge or jury in the civil action) determines their conduct was unreasonable. And even then, the officer’s personal exposure is capped at \$25,000 *unless* the officer is convicted of a crime in relation to his or her conduct.

On the other hand, local governments would face greater exposure to civil claims under Colorado’s scheme than they would under §1983. Indeed, the overall effect of Colorado’s scheme is to abolish qualified immunity as a defense and shift liability to the local government for any violation of civil rights, unless the officer is ultimately criminally convicted for his or her conduct.

The Colorado scheme, then, tinkers with some of the variables in play for §1983 claims, while trying to maintain a balance between the competing social benefits discussed in *Harlow*: while the law does away with any *Monell*-type immunity (or sovereign immunity) for state-law civil rights claims and thus could expand the amount of litigation faced by local governments, officers who act in good faith will largely remain immune from judgments against them personally. Thus, plaintiffs can more easily assert civil rights claims under the Colorado statute and individual officers are less likely to face personal exposure to civil judgments, but these benefits come at the societal costs imposed by what will likely be an increase in civil rights litigation.

(Shortly before publication of this article, New Mexico became the latest state to enact a bill removing qualified immunity as a defense to civil rights claims under state law. *See* H.B. 4, § 4 (N.M. 2021), nmlegis.gov. While that bill is not fully analyzed here, its approach is similar to Colorado’s in that it removes the defense of “qualified immunity” for individual officers while requiring their employing agencies to indemnify the officers of liability.)

Connecticut

Like Colorado, Connecticut also created a state cause of action for civil rights violations by law enforcement officials in the summer of 2020. Similar to the Colorado law, the Connecticut law would require a municipality to indemnify individual officers who are sued under the law, the costs of which the municipality can recover from the officer if the officer’s conduct was malicious, wanton, or willful. H.B. 6004 (Conn. 2020), <https://www.cga.ct.gov>.

But unlike the Colorado law, the new Connecticut provision does not clearly address qualified immunity as a defense and, in fact, appears to include a defense that may even be *broader* than qualified immunity in its current form by granting immunity to police officers if they “had an objectively good faith belief that [their] conduct did not violate the law.” *Id.* at Sec. 41(d).

What is an “objectively good faith belief”? The Connecticut bill does not define the terms of this immunity, but it could arguably include *both* an “objectively reasonable” analysis akin to the modern “clearly established law” analysis and the subjective “good faith” defense formerly available at common law. Thus, while the Connecticut bill has been hailed as the second example of a state “curbing qualified immunity,” *see* Ilya Somin, *Connecticut Passes Law Curbing Qualified Immunity—but with Loopholes*, Volokh Conspiracy (Aug. 2, 2020, 5:47 PM), <https://reason.com>, the bill arguably provides for a broader, if ambiguously defined, defense to civil rights claims than the current “clearly established law” analysis for qualified immunity.

What Does the Future Hold for Qualified Immunity?

What are the major takeaways of these various proposals to limit qualified immunity?

Mandatory Indemnification

Perhaps the most common theme in many of the proposed reforms is to require local government agencies to indemnify law enforcement officers. In this sense, the proposals operate more as a way of overriding *Monell* in such a way that the defense of qualified immunity becomes moot. Of course, one purpose of §1983 is to keep individual officers accountable for truly egregious or bad-faith violations of civil rights. The Colorado law retains this accountability by making officers personally liable if they act in bad faith, up to \$25,000.

No “Clearly Established Law” Analysis

S.B. 4036, the Colorado law, and the Connecticut law all do away with the detailed but “objective” “clearly established law” component of officers’ individual immunity, while still retaining some form of “good faith” immunity. But how do these proposals respond to the concerns discussed in *Harlow* that a subjective test could create a question of fact requiring a trial? For its part, the Colorado law simply removes the subjective “good faith” analysis from the purview of courts and leaves it to the employing agency. The

other bills, though, still inject a question of subjective good faith into the analysis—and such bills could hamper summary judgment wins for the defense.

Litigation in State Court

To the extent that state legislatures continue to make it easier to vindicate civil rights violations in state courts, we may see the future of civil rights litigation shift away from federal courts. Currently, the prevailing wisdom is that §1983 defendants fare better in federal court, which often has more defense-friendly procedural rules and pleading standards (such as the *Twombly/Iqbal* pleading standard—which is more demanding than the “no set of facts” pleading standard used in some state courts—and automatic interlocutory appeals for denials of immunity).

Different Standards for Different Public Officials

A notable feature of the Colorado and Connecticut laws is that they only apply to law enforcement officials. However, §1983 defendants often include other state officials (teachers, commissioners, elected officials,

administrators, etc.), and they are just as entitled to the defense of qualified immunity on §1983 claims as law enforcement officers. In this sense, the state proposals really only curb qualified immunity for a subset of traditional §1983 defendants. Of course, this is understandable given that many of the most visible and newsworthy cases involving qualified immunity concern the use of excessive or lethal force, and law enforcement officers naturally comprise the bulk of excessive force defendants. Even so, to the extent legislatures seek only to rein in qualified immunity as it applies in the law enforcement context, it will likely continue to live on for other government officials.

Conclusion

The future of qualified immunity remains to be seen. For its part, the Supreme Court appears reluctant to toy with the doctrine, especially if federal and state legislatures continue to propose their own reforms. But absent some action from the United States Congress or Supreme Court, we may see more states follow in the footsteps of Colorado and Connecticut as they create their own cause of action to vindicate civil rights violations. **FD**

dri™ Young Lawyers seminar



REGISTER NOW!

June 23–25, 2021
Minneapolis, MN

Check dri.org for schedule updates.

SENATE No. 2963

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

SENATE, November 30, 2020

Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color (Senate, No. 2820) (amended by the House by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4866),-- reports, a “Bill relative to justice, equity and accountability in law enforcement in the Commonwealth.” (Senate, No. 2963).

For the Committee:

William N. Brownsberger
Sonia Chang-Díaz

Claire D. Cronin
Carlos González

SENATE No. 2963

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to justice, equity and accountability in law enforcement in the Commonwealth.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide justice, equity and accountability in law enforcement, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 3 of the General Laws is hereby amended by adding the following
2 4 sections:-

3 Section 72. (a) There shall be a permanent commission on the status of African
4 Americans. The commission shall consist of: 3 persons appointed by the governor from a list of
5 not less than 5 nominees provided by the Massachusetts branches of the National Association for
6 the Advancement of Colored People New England Area Conference; 3 persons appointed by the
7 president of the senate; and 3 persons appointed by the speaker of the house of representatives.
8 Members of the commission shall be residents of the commonwealth who have demonstrated a
9 commitment to the African American community. Members shall be considered special state
10 employees for purposes of chapter 268A.

(b) A member of the commission shall serve a term of 3 years and until a successor is appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority for the balance of the unexpired term.

(c) The commission shall annually elect from among its members a chair, a vice chair, a treasurer and any other officers it considers necessary. The members of the commission shall receive no compensation for their services; provided, however, that members shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(d) The commission shall be a resource to the commonwealth on issues affecting African Americans. It shall be a primary function of the commission to make policy recommendations, based on research and analysis, to the general court and executive agencies that: (i) ensure African Americans equitably benefit from and have access to government services in the same manner as other citizens of the commonwealth; (ii) amend laws, policies and practices that have benefited citizens of the commonwealth to the exclusion of African Americans; and (iii) promote solutions that address the impact of discrimination against African Americans. Further, the commission shall: (A) promote research and be a clearinghouse and source of information on issues pertaining to African Americans in the commonwealth; (B) inform the public and leaders of business, education, human services, health care, judiciary, state and local governments and the media of the historical and current implications of systemic racism on the African American community across the commonwealth and the unique cultural, social, ethnic, economic and educational issues affecting African Americans in the commonwealth; (C) serve as a liaison between government and private interest groups with regard to matters of unique interest and concern to African Americans in the commonwealth; (D) identify and recommend qualified African Americans for appointive positions at all levels of government, including boards and

commissions; (E) assess programs and practices in all state agencies as they affect African Americans using a racial equity framework; (F) advise executive agencies and the general court on the potential effect on African Americans of proposed legislation and regulations using a racial equity framework; (G) monitor executive and legislative action purported to eliminate systemic racism for its impact on African Americans using a racial equity framework; and (H) generally undertake activities designed to enable the commonwealth to realize the full benefit of the skills, talents and cultural heritage of African Americans in the commonwealth.

(e) Annually, not later than June 2, the commission shall report the results of its findings and activities of the preceding year and its recommendations to the governor and to the clerks of the house of representatives and senate.

(f) The powers of the commission shall include, but not be limited to: (i) directing a staff to perform its duties; (ii) holding regular, public meetings and fact-finding hearings and other public forums as necessary; (iii) using the voluntary and uncompensated services of private individuals, agencies and organizations that may from time to time be offered and needed, including provision of meeting places and refreshments; (iv) establishing and maintaining offices that it considers necessary, subject to appropriation; (v) enacting by-laws for its own governance; (vi) contracting or collaborating with academic institutions, private sector consultants or other professionals for research and analysis; and (vii) recommending policies and making recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of subsection (d).

(g) The commission may request information and assistance from state agencies as the commission requires.

(h) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds for any of the purposes of this section. The commission shall receive settlement funds payable to the commonwealth related to matters involving racial discrimination or other bias toward African Americans; provided, that the attorney general shall deposit any such settlement funds into the separate account with the state treasurer; provided, however, that the commission shall not receive more than \$2,000,000 in settlement funds in any single fiscal year or cumulatively more than \$2,500,000 in settlement funds in any period of 5 fiscal years. Funds received under this subsection shall be deposited in a separate account with the state treasurer, received by the treasurer on behalf of the commonwealth and expended by the commission in accordance with law.

(i) The commission staff shall consist of an executive director, employees, consultants and unpaid volunteers who assist the commission in effectuating its statutory duties. The commission shall appoint the executive director for a term of 3 years.

Section 73. (a) There shall be a permanent commission on the status of Latinos and Latinas. The commission shall consist of: 3 persons appointed by the governor from a list of not less than 5 nominees provided by gateway municipalities as defined in section 3A of chapter 23A where 40 per cent or more of the population are Latinos and Latinas; 3 persons appointed by the president of the senate; and 3 persons appointed by the speaker of the house of representatives from a list of not less than 5 nominees provided by the Massachusetts Black and Latino Legislative Caucus. Members of the commission shall be residents of the commonwealth who have demonstrated a commitment to the Latino and Latina community. Members shall be considered special state employees for purposes of chapter 268A.

(b) A member of the commission shall serve a term of 3 years and until a successor is appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority for the balance of the unexpired term.

(c) The commission shall annually elect from among its members a chair, a vice chair, a treasurer and any other officers it considers necessary. The members of the commission shall receive no compensation for their services; provided however, that members shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(d) The commission shall be a resource to the commonwealth on issues affecting Latinos and Latinas. It shall be a primary function of the commission to make policy recommendations, based on research and analysis, to the general court and executive agencies that: (i) ensure Latinos and Latinas equitably benefit from and have access to government services in the same manner as other citizens of the commonwealth; (ii) amend laws, policies and practices that have benefited citizens of the commonwealth to the exclusion of Latinos and Latinas; and (iii) promote solutions that address the impact of discrimination against Latinos and Latinas. Further, the commission shall: (A) promote research and be a clearinghouse and source of information on issues pertaining to Latinos and Latinas in the commonwealth; (B) inform the public and leaders of business, education, human services, health care, judiciary, state and local governments and the media of the historical and current implications of systemic racism on the Latino and Latina community across the commonwealth and the unique cultural, social, ethnic, economic and educational issues affecting Latinos and Latinas in the commonwealth; (C) serve as a liaison between government and private interest groups with regard to matters of unique interest and concern to Latinos and Latinas in the commonwealth; (D) identify and recommend qualified Latinos and Latinas for appointive positions at all levels of government, including boards and

commissions; (E) assess programs and practices in all state agencies as they affect Latinos and Latinas using a racial equity framework; (F) advise executive agencies and the general court on the potential effect on Latinos and Latinas of proposed legislation and regulations using a racial equity framework; (G) monitor executive and legislative action purported to eliminate systemic racism for its impact on Latinos and Latinas using a racial equity framework; and (H) generally undertake activities designed to enable the commonwealth to realize the full benefit of the skills, talents and cultural heritage of Latinos and Latinas in the commonwealth.

(e) Annually, not later than June 2, the commission shall report the results of its findings and activities of the preceding year and its recommendations to the governor and to the clerks of the house of representatives and senate .

(f) The powers of the commission shall include, but not be limited to: (i) directing a staff to perform its duties; (ii) holding regular, public meetings and fact-finding hearings and other public forums as necessary; (iii) using the voluntary and uncompensated services of private individuals, agencies and organizations that may from time to time be offered and needed, including provision of meeting places and refreshments; (iv) establishing and maintaining offices that it considers necessary, subject to appropriation; (v) enacting by-laws for its own governance; (vi) contracting or collaborating with academic institutions, private sector consultants or other professionals for research and analysis; and (vii) recommending policies and making recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of subsection (d).

(g) The commission may request information and assistance from state agencies as the commission requires.

(h) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds for any of the purposes of this section. The commission shall receive settlement funds payable to the commonwealth related to matters involving racial discrimination or other bias toward Latinos and Latinas; provided, that the attorney general shall deposit any such settlement funds into the separate account with the state treasurer; provided, however, that the commission shall not receive more than \$2,000,000 in settlement funds in any single fiscal year or cumulatively more than \$2,500,000 in settlement funds in any period of 5 fiscal years. Funds received under this subsection shall be deposited in a separate account with the state treasurer, received by the treasurer on behalf of the commonwealth and expended by the commission in accordance with law.

(i) The commission staff shall consist of an executive director, employees and consultants and unpaid volunteers who assist the commission in effectuating its statutory duties. The commission shall appoint the executive director for a term of 3 years.

Section 74. (a) There shall be a permanent commission on the status of persons with disabilities. The commission shall consist of: 3 persons appointed by the president of the senate; 3 persons appointed by the speaker of the house of representatives; 1 person appointed by the minority leader of the senate; 1 person appointed by the minority leader of the house of representatives; 7 persons appointed by the governor; the attorney general or their designee; the state treasurer or their designee; the state secretary or their designee; the executive director of the disabled persons protection commission or their designee; 1 person from the University of Massachusetts medical school Work Without Limits program; 1 person from the Massachusetts Disability Policy Consortium; 1 person from the Association of Developmental Disabilities Providers, Inc.; and 1 person from the Massachusetts Developmental Disabilities Council.

(b) Members of the commission shall be drawn from diverse racial, ethnic, religious, age, disability, sexual orientation, gender identity and expression and socio-economic backgrounds, and should have personal experience, professional background or demonstrated interest on issues relating to persons with disabilities. It shall be the goal of the commission to include representation from a broad spectrum of disabilities, as well as perspectives of family members, disability advocacy organizations, human service agencies, regional employment collaboratives and business and labor organizations throughout the commonwealth.

(c) The commission shall be an independent agency of the commonwealth and shall not be subject to the control of any other department or agency. Members of the commission shall be subject to the provisions of chapter 268A as they apply to special state employees.

(d)(1) A member of the commission shall serve a term of 3 years and until a successor is appointed, or the member is reappointed by their appointing or nominating authority.

(2) Vacancies in the membership of the commission shall be filled by the original appointing or nominating authority for the balance of the unexpired term. If the position was filled by a nominating body, the replacement member shall be selected from solicited nominations. If the nominating body or appointing authority does not fill a position, the existing members of the commission shall fill the vacancy from a pool of qualified applicants pursuant to subsection (b).

(3) Nominations for vacancies in the membership shall be solicited through an open application process using a uniform and accessible application, which accommodates candidates of all abilities. Appointments shall be announced not later than April 1 of each year.

(4) The commission shall elect from among its members a chair, a vice-chair, a clerk, a treasurer and any other officers it deems necessary to carry out its mission.

(5) The members of the commission shall receive no compensation for their services, but shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(e) An executive director shall be selected by the commission and may hire staff. The executive director shall be qualified by his or her experience working on issues relating to persons with disabilities, organizing research and reports, advocacy and communication skills and demonstrated leadership abilities. The executive director shall not simultaneously serve as a member of the commission.

(f) The commission shall work to advance the cause of all persons with disabilities in the commonwealth. The commission shall be empowered to (i) study, review, advise and report on:

(A) any disparities across service or geographical areas concerning the range of available options within state disability services; (B) the status of transportation for persons with disabilities including access to employment opportunities; (C) the effect of public assistance for persons with disabilities as it pertains to earning limits and eligibility for subsidies for food, housing, child care and other benefits; (D) establishing school-to-work activities for transition aged youth with disabilities that establish a bridge to self-sufficiency and engage school supports, family members and employers; (E) the status of the strategic plan to make the commonwealth a model employer by seeking to increase the number of people with disabilities employed by the executive branch; (F) the enhanced enforcement of state requirements that promote diversity in state government employment; and (G) the number of persons with disabilities who apply for

189 state disability services and are unsuccessful in receiving services; (ii) facilitate and promote
190 public awareness to encourage inclusion of persons with disabilities as employees and vendors
191 within the private and public sector workforce, including under-represented business sectors of
192 all sizes; (iii) assess programs and practices in all state agencies as they affect persons with
193 disabilities, as the commission deems necessary and appropriate; (iv) advise executive and
194 legislative bodies regarding the impact of proposed legislation on persons with disabilities; and
195 (v) promote and facilitate collaboration among local disability commissions, disability rights
196 advocacy organizations and disability employment service providers.

197 (g) The commission shall annually, not later than October 31, report the results of its
198 findings and activities of the preceding fiscal year and its recommendations, which may include
199 draft legislation, to the governor, the house and senate committees on ways and means, the clerks
200 of the house of representatives and the senate, the joint committee on children, families and
201 persons with disabilities and the joint committee on labor and workforce development.

202 (h) The powers of the commission shall include, but not be limited to: (i) using voluntary
203 and uncompensated services of private individuals, agencies and organizations as may from time
204 to time be offered and needed; (ii) reviewing policies and legislation and make recommendations
205 to agencies and officers of the state and local subdivisions of government to effectuate the
206 purposes of subsections (f) and (g); (iii) selecting an executive director and to acquire adequate
207 staff to perform its duties; (iv) establishing and maintain such offices as it may deem necessary;
208 (v) enacting by-laws for its own governance; (vi) establishing subcommittees or regional
209 chapters of the commission as it deems necessary; and (vii) holding regular, public meetings and
210 fact-finding hearings and other public forums as it may deem necessary.

(i) Public meetings should be held in a manner accessible to and welcoming of persons of all abilities with necessary accommodations to ensure broad participation. Notices of meetings and other information shall be posted to a publicly accessible website that also accommodates persons who are visually impaired.

(j) The commission may request from all state agencies such information and assistance as the commission may require.

(k) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds, for any of the purposes of this section. Such funds shall be deposited in a separate account with the state treasurer, be received by the state treasurer on behalf of the commonwealth and be expended by the commission in accordance with commission by-laws and state and federal law.

Section 75. (a) There shall be a permanent commission on the social status of Black men and boys to study and examine issues which disproportionately have a negative impact on Black men and boys in the commonwealth. The commission shall: (i) signal that the issues facing the Black male population are a national priority; (ii) develop solutions to these issues and (iii) help eliminate the obstacles facing Black men and boys. The commission should work to improve economic, education, criminal justice, public safety, housing, health and wellness, father-hood and mentorship outcomes of Black men and boys in the commonwealth.

(b) The commission shall consist of 21 members: 2 persons appointed by the speaker of the house of representatives, 2 persons appointed by the president of the senate, the commissioner of public health or their designee; the commissioner of social services or their designee; the commissioner of education or their designee; 1 additional member from the

department of education appointed by the commissioner of education; the commissioner of youth services or their designee; the commissioner of correction or their designee; the secretary of labor and workforce development or their designee; 3 additional persons appointed by the speaker of the house of representatives, none of whom shall be members of the general court; 3 additional persons appointed by the president of the senate, none of whom shall be members of the general court; and 3 persons appointed by the Massachusetts Black and Latino Legislative Caucus or its successor organization, none of whom shall be a member of the general court.

Members of the commission shall be selected from diverse religious, age, sexual orientation, socio-economic and geographical backgrounds from throughout the commonwealth and shall have a sincere desire or experience in working toward the improvement of the social status of black men and boys. Members shall be subject to the provisions of chapter 268A as they apply to special state employees.

(c) Members shall serve terms of 3 years and until their successors are appointed. Members may be reappointed in the same manner in which they were originally appointed.

Vacancies in the membership of the commission shall be filled by the original appointing authority for the balance of the unexpired term.

The commission shall elect from among its members a chair, a vice chair, a treasurer and any other officers it deems necessary.

The members of the commission shall receive no compensation for their services, but shall be reimbursed for any usual and customary expenses incurred in the performance of their duties.

(d) The commission shall conduct an ongoing study of all matters concerning the social status of Black men and boys in the commonwealth. In furtherance of that responsibility, the commission shall: (i) study, review and report on the social status of Black men and boys in the commonwealth; (ii) inform leaders of business, education, health care, state and local governments and the media of issues pertaining to Black men and boys, (iii) serve as a liaison between government and private interest groups concerned with issues affecting Black men and boys; (iv) serve as a clearinghouse for information on issues pertaining to Black men and boys; (v) identify and recommend policies and programs to be implemented by state departments, agencies, commissions, and boards that will lead to the improved social status of Black men and boys, as the commission deems necessary and appropriate; and (vi) promote and facilitate collaboration among local agencies, including community-based organizations in the state, as the commission deems necessary and appropriate.

The commission shall annually, not later than August 31, report the results of its findings and activities of the preceding year and its recommendations to the governor and to the clerks of the house of representatives and senate.

(e) The powers of the commission shall include, but not be limited to: (i) using such voluntary and uncompensated services of private individuals, agencies and organizations as may from time to time be offered and needed; and (ii) recommending policies and making recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of this section.

(f) The powers of the commission shall include: (i) selecting an executive director and acquiring adequate staff to perform its duties, subject to appropriation, provided that said persons

are not members of said commission; (ii) establishing and maintaining such offices as it may deem necessary, subject to appropriation; (iii) enacting by-laws for its own governance; and (iv) holding regular, public meetings and to hold fact finding hearings and other public forums as it may deem necessary.

(g) The commission shall set its own meeting schedule.

(h) The commission may request from all state agencies such information and assistance as the commission may require. Each state agency shall cooperate with requests from the commission and shall provide such information and assistance requested, as permitted under the state law.

The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds for any of the purposes of this section. Such funds shall be deposited in a separate account with the state treasurer, be received by the state treasurer on behalf of the commonwealth and be expended by the commission in accordance with law.

SECTION 2. Clause Twenty-sixth of section 7 of chapter 4 of the General Laws is hereby amended by striking out subclause (c), as appearing in the 2018 Official Edition, and inserting in place thereof the following subclause:-

(c) personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.

SECTION 3. Section 17 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in lines 15 and 16, the words “, the municipal police training committee”.

SECTION 4. Said chapter 6 is hereby further amended by striking out section 116, as so appearing, and inserting in place thereof the following section:-

Section 116. As used in sections 116 to 116E, inclusive, and 116G to 116J, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Committee on police training and certification” or “committee”, the committee on police training and certification established in section 4 of chapter 6E.

“Law enforcement officer” or “officer”, as defined in section 1 of chapter 6E.

SECTION 5. The first paragraph of subsection (a) of section 116A of said chapter 6, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The committee on police training and certification shall establish, within the recruit basic training curriculum, a course for police schools, academies and programs for the training of law enforcement officers in the commonwealth in the handling of domestic violence and sexual violence complaints and shall develop guidelines for law enforcement response to domestic violence and sexual violence.

SECTION 6. The second paragraph of said subsection (a) of said section 116A of said chapter 6, as so appearing, is hereby amended by striking out the first sentence.

317 SECTION 7. Said section 116A of said chapter 6, as so appearing, is hereby further
318 amended by striking out, in lines 95 and 98, the words “municipal police training committee”
319 and inserting in place thereof, in each instance, the following words:- committee on police
320 training and certification.

321 SECTION 8. Section 116B of said chapter 6, as so appearing, is hereby amended by
322 striking out, in lines 1 and 4, the words “municipal police training committee” and inserting in
323 place thereof, in each instance, the following words:- committee on police training and
324 certification.

325 SECTION 9. Said section 116B of said chapter 6, as so appearing, is hereby further
326 amended by striking out, in line 6, the words “police academies” and inserting in place thereof
327 the following words:- police schools, academies and programs.

328 SECTION 10. Section 116C of said chapter 6, as so appearing, is hereby amended by
329 striking out subsection (a) and inserting in place thereof the following subsection:-

330 (a) The committee on police training and certification shall develop and establish within
331 the recruit basic training curriculum a course for police training schools, academies and
332 programs for the training of law enforcement officers in the commonwealth in law enforcement
333 and related public safety technology. The course of instruction shall stress the use and
334 application of technology to increase public safety.

335 SECTION 11. Said section 116C of said chapter 6, as so appearing, is hereby further
336 amended by striking out, in lines 13 and 14, the words “, no later than January first, nineteen
337 hundred and ninety-seven,”.

SECTION 12. Said section 116C of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 31 and 37, the words “municipal police training committee” and inserting in place thereof, in each instance, the following words:- committee on police training and certification.

SECTION 13. Said section 116C of said chapter 6, as so appearing, is hereby further amended by striking out, in line 40, the words “one to six” and inserting in place thereof the following words:- 1 to 5.

SECTION 14. Section 116D of said chapter 6, as so appearing, is hereby amended by striking out, in line 1, the words “municipal police training committee” and inserting in place thereof the following words:- committee on police training and certification.

SECTION 15. Said section 116D of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words “student officers’ course of study” and inserting in place thereof the following words:- recruit basic training curriculum.

SECTION 16. Section 116E of said chapter 6, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) The committee on police training and certification shall develop and establish within the recruit basic training curriculum a course for police training schools, academies and programs for the training of law enforcement officers in bicycle safety enforcement and develop guidelines for traffic enforcement for bicyclist safety.

SECTION 17. Said section 116E of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 25 and 28, the words “municipal police training committee”

359 and inserting in place thereof, in each instance, the following words:- committee on police
360 training and certification.

361 SECTION 18. Section 116G of said chapter 6, as so appearing, is hereby amended by
362 striking out subsection (a) and inserting in place thereof the following subsection:-

363 (a) As used in this section, “bias-free policing” shall have the same meaning as defined in
364 section 1 of chapter 6E.

365 SECTION 19. Said section 116G of said chapter 6, as so appearing, is hereby further
366 amended by striking out, in line 6, the words “municipal police training committee” and inserting
367 in place thereof the following words:- committee on police training and certification.

368 SECTION 20. Said section 116G of said chapter 6, as so appearing, is hereby further
369 amended by striking out, in lines 8 and 32, each time it appears, the word “local”.

370 SECTION 21. Said section 116G of said chapter 6, as so appearing, is hereby further
371 amended by inserting after the word “enforcement”, in line 9, the following words:- officers and.

372 SECTION 22. Subsection (b) of section 116G of said chapter 6, as so appearing, is
373 hereby amended by striking out clauses (ii) and (iii) and inserting in place thereof the following 4
374 clauses:-

375 (ii) practices and techniques for law enforcement officers in civilian interaction and to
376 promote procedural justice, which shall emphasize de-escalation and disengagement tactics and
377 techniques and procedures, including developmentally appropriate de-escalation and
378 disengagement tactics, techniques and procedures and other alternatives to the use of force for
379 minor children, that build community trust and maintain community confidence;

(iii) handling emergencies and complaints, including, but not limited to, those involving victims, witnesses or suspects with mental illness, substance use disorder, trauma history or developmental or intellectual disabilities, which shall include training related to common behavior and actions exhibited by such individuals, strategies law enforcement officers may use for reducing or preventing the risk of harm and strategies that involve the least intrusive means of addressing such incidences and individuals while protecting the safety of the law enforcement officer and other persons; provided, however, that training presenters shall include certified mental health practitioners with expertise in the delivery of direct services to individuals, including victims, witnesses or suspects with mental illness, substance use disorder, trauma history or developmental or intellectual disabilities in emergency situations;

(iv) practices and techniques related to responding to mass gatherings or protests that shall emphasize de-escalation and minimizing the necessity for use of force; and

(v) cultural competency.

SECTION 23. Said chapter 6 is hereby further amended by inserting after section 116G the following 3 sections:-

Section 116H. (a) The committee on police training and certification, established in section 4 of chapter 6E, shall establish and develop an in-service training program designed to train school resource officers, as defined in section 37P of chapter 71. Such program shall include training on: (i) the ways in which legal standards regarding police interaction and arrest procedures differ for juveniles compared to adults; (ii) child and adolescent cognitive development, which shall include instruction on common child and adolescent behaviors, actions and reactions as well as the impact of trauma, mental illness, behavioral addictions, such as

gaming and gambling disorder, and developmental disabilities on child and adolescent development and behavior; (iii) engagement and de-escalation tactics that are specifically effective with youth; and (iv) strategies for resolving conflict and diverting youth in lieu of making an arrest. Such program shall also include training related to: (i) hate crime identification and prevention training curriculum including acquisition of practical skills to prevent, respond to and investigate hate crimes and hate incidents and their impacts on victim communities; (ii) anti-bias, anti-racism and anti-harassment strategies; (iii) bullying and cyberbullying; and (iv) comprehensive training to help school resource officers interact effectively with school personnel, victim communities and build public confidence with cooperation with law enforcement agencies.

(b) The course of instruction, the learning and performance objectives and the curriculum and standards for training developed pursuant to this section shall be developed in consultation with experts on child and adolescent development and child trauma and with educators and attorneys experienced in juvenile and education law and preventing and addressing youth hate crimes.

Section 116I. The committee on police training and certification, established in section 4 of chapter 6E, shall establish and develop within the recruit basic training curriculum a program for regional and municipal police training schools for the training of law enforcement officers in the commonwealth in appropriate interactions with persons on the autism spectrum and those with other intellectual and developmental disabilities. The program shall include training for law enforcement response to individuals on the autism spectrum and those with other intellectual and developmental disabilities who are victims or witnesses to a crime or suspected or convicted of a crime.

Section 116J. The committee on police training and certification, in consultation with the executive office of public safety and security, and subject to the approval of the Massachusetts peace officer standards and training commission, shall establish and develop basic and in-service training programs designed to train officers on the regulation of physical force under section 14 of chapter 6E. Such programs shall be included in basic and in-service training for all law enforcement officers.

SECTION 24. Sections 117 and 118 of said chapter 6 are hereby repealed.

SECTION 25. Section 156 of said chapter 6, as appearing in the 2018 Official Edition, is hereby amended by striking out, in lines 8 and 9, the words “executive director of the municipal police training committee” and inserting in place thereof the following words:- training director of the Massachusetts peace officer standards and training commission.

SECTION 26. Said chapter 6 is hereby further amended by adding the following section:-

Section 220. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Biometric surveillance system”, any computer software that performs facial recognition or other remote biometric recognition.

“Facial recognition”, an automated or semi-automated process that assists in identifying or verifying an individual or capturing information about an individual based on the physical characteristics of an individual’s face, head or body, that uses characteristics of an individual’s face, head or body to infer emotion, associations, activities or the location of an individual;

provided, however, that “facial recognition” shall not include the use of search terms to sort images in a database.

“Law enforcement agency”, as defined in section 1 of chapter 6E.

“Other remote biometric recognition”, an automated or semi-automated process that assists in identifying or verifying an individual or capturing information about an individual based on an individual’s gait, voice or other biometric characteristic or that uses such characteristics to infer emotion, associations, activities or the location of an individual; provided, however, that “other remote biometric recognition” shall not include the identification or verification of an individual using deoxyribonucleic acid, fingerprints, palm prints or other information derived from physical contact.

“Public agency”, any: (i) agency, executive office, department, board, commission, bureau, division or authority of the commonwealth; (ii) political subdivision thereof; or (iii) authority established by the general court to serve a public purpose.

“Public official”, any officer, employee, agent, contractor or subcontractor of any public agency.

(b) Absent express authorization in a general or special law to the contrary, it shall be unlawful for a public agency or public official to acquire, possess, access, use, assist with the use of or provide resources for the development or use of any biometric surveillance system, or to enter into a contract with or make a request to any third party for the purpose of acquiring, possessing, accessing or using information derived from a biometric surveillance system.

465 Except in a judicial proceeding alleging a violation of this section, no information
466 obtained in violation of this section shall be admissible in any criminal, civil, administrative or
467 other proceeding.

468 (c)(1) Subsection (b) shall not apply to acquisition, possession or use of facial recognition
469 technology by the registrar of motor vehicles to verify an individual's identity when issuing
470 licenses, permits or other documents pursuant to chapter 90 and perform searches of its facial
471 recognition databases at the request of law enforcement agencies made pursuant to a warrant or
472 emergency as set forth in paragraph (2).

473 (2) Law enforcement agencies may request that the registrar of motor vehicles perform a
474 facial recognition search: (i) to execute a warrant duly authorized by a justice of the superior
475 court based on probable cause that the search will to lead to evidence of the commission of a
476 violent felony offense under the laws of the commonwealth; or (ii) without a warrant if the law
477 enforcement agency reasonably believes that an emergency involving immediate danger of death
478 or serious physical injury to any individual or group of people requires the performance of a
479 facial recognition search without delay; provided, that the request shall be made in writing and
480 narrowly tailored to address the emergency and shall document the factual basis for believing
481 that an emergency requires the performance of a facial recognition search without delay.

482 Not later than 48 hours after the law enforcement agency obtains access to records, the
483 agency shall file with the superior court in the relevant jurisdiction a signed, sworn statement
484 made by a supervisory official of a rank designated by the head of the agency setting forth the
485 grounds for the emergency search. Absent an order for delayed notice issued by a justice of the
486 superior court or the issuance of a subsequent warrant, all individuals identified by such a search

487 shall be provided notice that they were subject to a facial recognition search within 72 hours.

488 Any order for delayed notice shall, to the fullest extent possible without further endangering the
489 public, detail the ongoing nature of the emergency and the continuing and immediate threat to
490 public safety and shall not be valid for more than 72 hours without a further order for delayed
491 notice.

492 (3) The registrar of motor vehicles shall document, as a public record, each use of facial
493 recognition, except those authorized by clause (i) of paragraph (2). Such documentation shall
494 include: the name of the registry of motor vehicles employee who performed the search; the date
495 and time of the search; the number of matches returned, if any; the name and position of the
496 requesting individual and employing law enforcement agency; a copy of the warrant, or if no
497 warrant exists, a copy of the written emergency request; and data detailing the individual
498 characteristics included in the facial recognition request.

499 (4) Annually, not later than March 31, the registrar of motor vehicles shall publish on its
500 website: (i) the total number of facial recognition searches performed at the request of law
501 enforcement agencies during the previous calendar year; (ii) the total number of facial
502 recognition searches conducted pursuant to a warrant; (iii) the total number of facial recognition
503 emergency searches conducted; and (iv) the number of facial recognition searches requested by
504 each law enforcement agency.

505 (d) Notwithstanding subsection (b), a public agency may: (i) acquire and possess personal
506 electronic devices, such as a cell phone or tablet, that utilizes facial recognition technology for
507 the sole purpose of user authentication; (ii) acquire, possess and use automated video or image
508 redaction software; provided, that such software does not have the capability of performing facial

509 recognition or other remote biometric recognition; and (iii) receive evidence related to the
510 investigation of a crime derived from a biometric surveillance system; provided, that such
511 evidence was not knowingly solicited by or obtained with the assistance of a public agency or
512 any public official in violation of subsection (b).

513 SECTION 27. Section 18 of chapter 6A of the General Laws, as appearing in the 2018
514 Official Edition, is hereby amended by striking out, in line 4, the words “; the municipal police
515 training committee”.

516 SECTION 28. Section 18½ of said chapter 6A, as so appearing, is hereby amended by
517 striking out, in lines 8 and 9, the words “, the municipal police training committee,”.

518 SECTION 29. Section 18X of said chapter 6A, as so appearing, is hereby amended by
519 striking out, in line 16, the words “municipal police training committee” and inserting in place
520 thereof the following words:- committee on police training and certification.

521 SECTION 30. The General Laws are hereby amended by inserting after chapter 6D the
522 following chapter:-

523 CHAPTER 6E.

524 MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION.

525 Section 1. As used in this chapter, the following words shall, unless the context clearly
526 requires otherwise, have the following meanings:

527 “Agency”, a law enforcement agency.

528 “Appointing agency”, the agency appointing a law enforcement officer.

529 “Bias-free policing”, policing decisions made by and conduct of law enforcement
530 officers that shall not consider a person’s race, ethnicity, sex, gender identity, sexual orientation,
531 religion, mental or physical disability, immigration status or socioeconomic or professional level.

532 “Chair”, the chair of the commission.

533 “Chokehold”, the use of a lateral vascular neck restraint, carotid restraint or other action
534 that involves the placement of any part of law enforcement officer’s body on or around a
535 person’s neck in a manner that limits the person’s breathing or blood flow with the intent of or
536 with the result of causing bodily injury, unconsciousness or death.

537 “Commission”, the Massachusetts peace officer standards and training commission
538 established pursuant to section 2.

539 “Commissioner”, a member of the commission.

540 “Committee”, the committee on police training and certification established pursuant to
541 section 4.

542 “Conviction”, an adjudication of a criminal matter resulting in any outcome except
543 wherein the matter is dismissed or the accused is found to be not guilty, including, but not
544 limited, to an adjudication of guilt with or without the imposition of a sentence, a plea of guilty,
545 a plea of nolo contendere, an admission to sufficient facts, a continuance without a finding or
546 probation.

547 “Deadly force”, physical force that can reasonably be expected to cause death or serious
548 physical injury.

549 “Decertified”, an officer whose certification is revoked by the commission pursuant to
550 section 10.

551 “De-escalation tactics”, proactive actions and approaches used by an officer to stabilize a
552 law enforcement situation so that more time, options and resources are available to gain a
553 person’s voluntary compliance and to reduce or eliminate the need to use force including, but not
554 limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a
555 person, creating distance between the officer and a threat and requesting additional resources to
556 resolve the incident, including, but not limited to, calling in medical or licensed mental health
557 professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential
558 medical or mental health crisis.

559 “Division of standards”, the division of police standards established pursuant to section 8.

560 “Division of training”, the division of police training and certification established
561 pursuant to section 4.

562 “Executive director”, the executive director of the commission appointed pursuant to
563 subsection (g) of section 2.

564 “Imminent harm”, serious physical injury or death that is likely to be caused by a person
565 with the present ability, opportunity and apparent intent to immediately cause serious physical
566 injury or death and is a risk that, based on the information available at the time, must be instantly
567 confronted and addressed to prevent serious physical injury or death; provided, however, that
568 “imminent harm” shall not include fear of future serious physical injury or death.

“Law enforcement agency”, (i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department; (ii) a sheriff’s department in its performance of police duties and functions; or (iii) a public or private college, university or other educational institution or hospital police department.

“Law enforcement officer” or “officer”, any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to section 58 or section 63 of chapter 22C; a special sheriff appointed pursuant to section 4 of chapter 37 performing police duties and functions; a deputy sheriff appointed pursuant to section 3 of said chapter 37 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

“Necessary”, required due to a lack of an available, effective alternative that was known or should have been known to a reasonable person in the circumstances.

“Officer-involved injury or death”, any event during which an officer: (i) discharges a firearm, as defined in section 121 of chapter 140, actually or proximately causing injury or death to another; (ii) discharges any stun gun as defined in said section 121 of said chapter 140, actually or proximately causing injury or death to another; (iii) uses a chokehold, actually or proximately causing injury or death of another; (iv) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another; (v) discharges rubber pellets

from a propulsion device, actually or proximately causing injury or death of another; (vi) deploys a dog, actually or proximately causing injury or death of another; (vii) uses deadly force, actually or proximately causing injury or death of another; (viii) fails to intervene, as required by section 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or (ix) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.

“Serious bodily injury”, bodily injury that results in: (i) permanent disfigurement; (ii) protracted loss or impairment of a bodily function, limb or organ; or (iii) a substantial risk of death.

“Totality of the circumstances”, the entire duration of an interaction between a law enforcement officer and a person, from the first contact through the conclusion of the incident, including consideration of contextual factors the law enforcement officer knew or should have known during such interaction.

“Training director”, the training director appointed by the committee pursuant to section 4.

“Untruthful” or “untruthfulness”, knowingly making an untruthful statement concerning a material fact or knowingly omitting a material fact: (i) on an official criminal justice record, including, but not limited to, a police report; (ii) while testifying under oath; (iii) to the commission or an employee of the commission; or (iv) during an internal affairs investigation, administrative investigation or disciplinary process.

Section 2. (a) There shall be a Massachusetts Peace Officer Standards and Training Commission consisting of 9 members: 3 of whom shall be appointed by the governor, 1 of whom shall be a

613 police chief, 1 of whom shall be a retired justice of the superior court and 1 of whom shall be a
614 social worker appointed from a list of 5 nominations submitted by the National Association of
615 Social Workers, Inc., Massachusetts chapter; 3 of whom shall be appointed by the attorney
616 general, 1 of whom shall be a law enforcement officer below the rank of sergeant, 1 of whom
617 shall be a law enforcement officer appointed from a list of 5 nominations submitted by the
618 Massachusetts Association of Minority Law Enforcement Officers, Inc. and 1 of whom shall be
619 an attorney licensed to practice law in the commonwealth appointed from a list of 5 nominations
620 submitted by the civil rights and social justice section council of the Massachusetts Bar
621 Association; and 3 of whom shall be appointed jointly by the governor and attorney general, 1 of
622 whom shall be appointed from a list of 5 nominations submitted by the Massachusetts
623 commission against discrimination.

624 (b) Other than as provided for in subsection (a), all commissioners shall be civilians and
625 no commissioner shall have been previously employed as a law enforcement officer or be a
626 retired law enforcement officer. The civilian commissioners shall have experience or expertise
627 in law enforcement practice and training, criminal law, civil rights law, the criminal justice
628 system, mental health, post-traumatic stress disorder, crisis intervention, de-escalation techniques
629 or social science fields related to race or bias. The governor shall designate the chair of the
630 commission. The commission shall include people of color and women, at least in such
631 proportion as these groups exist in the commonwealth's population as periodically determined by
632 the state secretary as the commonwealth's chief census officer. The members of the commission
633 shall represent diverse geographic areas of the commonwealth, including urban, rural and
634 suburban areas.

The commissioners shall take an oath to faithfully and impartially execute their duties as commissioners.

(c) Each commissioner shall be a resident of the commonwealth within 90 days of appointment and, while serving on the commission, shall not: (i) hold, or be a candidate for, federal, state or local elected office; (ii) hold an appointed office in a federal, state, or local government; or (iii) serve as an official in a political party. Not more than 7 commissioners shall be from the same political party. The members of the commission shall be compensated for work performed for the commission at such rate as the secretary of administration and finance shall determine.

(d) Each commissioner shall serve for a term of 5 years or until a successor is appointed and shall be eligible for reappointment; provided, however, that no commissioner shall serve more than 10 years. The governor may remove a commissioner if the commissioner: (i) is guilty of malfeasance in office; (ii) substantially neglects the duties of a commissioner; (iii) is unable to discharge the powers and duties of the commissioner's office; (iv) commits gross misconduct; or (v) is convicted of a felony.

(e) Seven commissioners shall constitute a quorum and the affirmative vote of a majority of commissioners present and voting shall be required for an action of the commission. The commission shall meet monthly and at other times as it shall deem necessary or upon the written request of 4 commissioners or the chair; provided, however, that notice of all meetings shall be given to each commissioner and to other persons who request such notice. The commission shall adopt regulations establishing procedures, which may include electronic communications, by

656 which a request to receive notice shall be made and the method by which timely notice may be
657 given.

658 (f) The commission shall annually elect 1 of the commissioners to serve as secretary and
659 1 of the commissioners to serve as treasurer. The secretary shall keep a record of the proceedings
660 of the commission and shall be the custodian and keeper of the records of all books, documents
661 and papers filed by the commission and of its minute book. The secretary shall cause copies to be
662 made of all minutes and other records and documents of the commission and shall certify that
663 such copies are true copies, and all persons dealing with the commission may rely upon such
664 certification.

665 (g) The commission shall appoint an executive director, who shall not be a member of the
666 commission. The executive director shall serve at the pleasure of the commission, shall receive
667 such salary as may be determined by the commission, and shall devote full time and attention to
668 the duties of the office. The executive director shall be a person with skill and experience in
669 management, shall be the executive and administrative head of the commission and shall be
670 responsible for administering and enforcing the provisions of law relative to the commission and
671 to each administrative unit thereof. The executive director may, subject to the approval of the
672 commission, employ other employees, consultants, agents and advisors, including legal counsel,
673 and shall attend meetings of the commission. In the case of an absence or vacancy in the office
674 of the executive director or in the case of disability as determined by the commission, the
675 commission may designate an acting executive director to serve as executive director until the
676 vacancy is filled or the absence or disability ceases. The acting executive director shall have all
677 of the powers and duties of the executive director and shall have similar qualifications as the
678 executive director.

(h) The executive director may, subject to the approval of the commission, appoint such persons as the executive director shall consider necessary to perform the functions of the commission; provided, however, that chapter 31 and section 9A of chapter 30 shall not apply to commission employees. If an employee serving in a position which is classified under said chapter 31 or in which an employee has tenure by reason of said section 9A of said chapter 30 shall be appointed to a position within the commission which is not subject to said chapter 31, the employee shall, upon termination of service in such position, be restored to the position which the employee held immediately prior to such appointment; provided, however, that the employee's service in such position shall be determined by the civil service commission in accordance with the standards applied by that commission in administering said chapter 31. Such restoration shall be made without impairment of the employee's civil service status or tenure under said section 9A of said chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled such employee. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which such person would otherwise have been eligible. The executive director and employees of the commission shall be classified as group 1 pursuant to paragraph (g) of subdivision (2) of section 3 of chapter 32.

(i) No employee of the division of standards, established pursuant to section 8, or the executive director shall have previously been employed as a law enforcement officer, previously employed by a law enforcement agency or be a retired law enforcement officer or retired from a law enforcement agency; provided, however, that such employee may have been a previous employee of or have retired from the division of standards.

(j) The commission shall be a commission for the purposes of section 3 of chapter 12.

(k) Any vacancy occurring on the commission shall be filled within 90 days by the original appointing authority. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member they succeed and shall be eligible for re-appointment.

Section 3. (a) The commission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:

(1) act as the primary civil enforcement agency for violations of this chapter;

(2) establish minimum officer certification standards pursuant to section 4;

(3) certify qualified applicants;

(4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the commission deems reasonable;

(5) receive complaints from any source and preserve all complaints and reports filed with the commission for the appropriate period of time;

(6) establish minimum agency certification standards pursuant to section 5;

(7) certify qualified agencies;

(8) withhold, suspend or revoke certification of agencies;

(9) conduct audits and investigations pursuant to section 8;

(10) appoint officers and approve employees to be hired by the executive director;

721 (11) establish and amend a plan of organization that it considers expedient;

722 (12) execute all instruments necessary or convenient for accomplishing the purposes of
723 this chapter;

724 (13) enter into agreements or other transactions with a person, including, but not limited
725 to, a public entity or other governmental instrumentality or authority in connection with its
726 powers and duties under this chapter;

727 (14) appear on its own behalf before boards, commissions, departments or other agencies
728 of municipal, state or federal government;

729 (15) apply for and accept subventions, grants, loans, advances and contributions of
730 money, property, labor or other things of value from any source, to be held, used and applied for
731 its purposes;

732 (16) provide and pay for advisory services and technical assistance as may be necessary
733 in its judgment to carry out this chapter and fix the compensation of persons providing such
734 services or assistance;

735 (17) prepare, publish and distribute, with or without charge as the commission may
736 determine, such studies, reports, bulletins and other materials as the commission considers
737 appropriate;

738 (18) gather facts and information applicable to the commission's obligation to issue,
739 suspend or revoke certifications for: (i) a violation of this chapter or any regulation adopted by
740 the commission; (ii) a willful violation of an order of the commission; (iii) the conviction of a

741 criminal offense; or (iv) the violation of any other offense which would disqualify a person from
742 being certified;

743 (19) conduct investigations into the qualifications of all applicants for certification;

744 (20) request and receive from the state police, the department of criminal justice
745 information services or other criminal justice agencies, including, but not limited to, the Federal
746 Bureau of Investigation and the federal Internal Revenue Service, such criminal offender record
747 information relating to the administration and enforcement of this chapter;

748 (21) demand access to and inspect, examine, photocopy and audit all papers, books and
749 records of any law enforcement agency;

750 (22) levy and collect assessments, fees and fines and impose penalties and sanctions for a
751 violation of this chapter or any regulations promulgated by the commission;

752 (23) restrict, suspend or revoke certifications issued under this chapter;

753 (24) conduct adjudicatory proceedings in accordance with chapter 30A;

754 (25) refer cases for criminal prosecution to the appropriate federal, state or local
755 authorities;

756 (26) issue subpoenas and compel the attendance of witnesses at any place within the
757 commonwealth, administer oaths and require testimony under oath before the commission in the
758 course of an investigation or hearing conducted under this chapter;

759 (27) maintain an official internet website for the commission;

(28) adopt, amend or repeal regulations in accordance with chapter 30A for the implementation, administration and enforcement of this chapter, including, but not limited to, regulations: (i) governing the conduct of proceedings hereunder; (ii) determining whether an applicant has met the standards for certification; (iii) establishing minimum standards for internal agency review of complaints of officer-involved injuries or deaths and recommendations to the commission regarding retraining, suspension or revocation of officer certification to ensure consistency across agencies; (iv) establishing a physical and psychological fitness evaluation pursuant to section 4 that measures said fitness to ensure officers are able to perform essential job duties; and (v) identifying patterns of unprofessional police conduct, including, but not limited to, patterns of: (A) escalating behavior that may lead to the use of excessive force or conduct that is biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level; (B) an increase in the frequency of complaints regarding an individual officer or agency; or (C) the number of complaints regarding an officer or agency that are at least 1 standard deviation above the mean for similarly situated officers or agencies for a defined period; and

(29) refer patterns of racial profiling or the mishandling of complaints of unprofessional police conduct by a law enforcement agency for investigation and possible prosecution to the attorney general or the appropriate federal, state or local authorities; provided, however, that if the attorney general has reasonable cause to believe that such a pattern exists based on information received from any other source, the attorney general may bring a civil action for injunctive or other appropriate equitable and declaratory relief to eliminate the pattern or practice.

(b) The commission shall have the power to issue a specialized certification for an individual acting, or intending to act, as a school resource officer, as defined in section 37P of chapter 71; provided, however, that a person shall not be appointed as a school resource officer, as defined in said section 37P of said chapter 71, unless specially certified as such by the commission.

Section 4. (a)(1) There shall be within the commission a division of police training and certification. The purpose of the division of police training and certification shall be to establish uniform policies and standards for the training and certification of all law enforcement officers including a basic recruit training curriculum and an in-service training curriculum for law enforcement officers, subject to the approval of the commission. The head of the division shall be the training director, who shall be appointed by the committee on police training and certification.

(2) To ensure the specific training and educational needs of each agency are met, the division of police training and certification may create specialized basic and in-service training programs, subject to the approval of the commission, for: (i) officers of the department of the state police; (ii) deputy sheriffs; (iii) municipal officers; (iv) special, intermittent and reserve officers; and (v) any other class of officers, as the division of police training and certification determines is necessary.

(b) The division of police training and certification shall be under the management and control of a committee on police training and certification. The committee shall consist of: 5 chiefs of police to be appointed by the governor from nominations submitted by the Massachusetts Chiefs of Police Association Incorporated, 1 of whom shall be from the western

804 Massachusetts region, 1 of whom shall be from the central Massachusetts region, 1 of whom
805 shall be from the southeastern Massachusetts region, 1 of whom shall be from the northeastern
806 Massachusetts region and 1 of whom shall be from the Massachusetts Bay Transportation
807 Authority; 1 chief of police selected by the Massachusetts Chiefs of Police Association
808 Incorporated; 1 police officer to be appointed by the governor from nominations submitted by
809 the Massachusetts Police Association, Inc. executive board and the Massachusetts Police
810 Training Officers Association, Inc. executive board; the chair of the Massachusetts Association
811 of Minority Law Enforcement Officers, Inc.; the president of the Massachusetts Association of
812 Women in Law Enforcement, Inc.; the commissioner of police of the city of Boston or a
813 designee; the colonel of state police or a designee; 2 sheriffs appointed by the governor; the
814 attorney general or a designee; and 1 person to be appointed by the secretary of public safety and
815 security. All such appointments shall be for terms of 3 years with successors appointed in a like
816 manner.

817 (c) The following persons, or their designees, shall be advisory, nonvoting members of
818 the committee: the personnel administrator; the commissioner of correction; the commissioner of
819 youth services; the commissioner of probation; the chair of the parole board; the executive
820 director of the committee on criminal justice; the chief justice of the trial court of the
821 commonwealth; the chief justice of the district court department; the secretary of education; the
822 chair of the criminal justice section council of the Massachusetts Bar Association; and the special
823 agent in charge of the Boston field office of the Federal Bureau of Investigation, if consent is
824 given by the director of the bureau. The governor shall appoint 7 additional advisory, nonvoting
825 members of the committee, 1 of whom shall be an administrator of a city or town, 1 of whom
826 shall be a clerk of the superior court, 1 of whom shall be a member of the committee for public

counsel services, 1 of whom shall be a social worker, 1 of whom shall be a mental health clinician, 1 of whom shall be a sheriff of a county or a former county and 1 of whom shall be a district attorney of a district, or their respective designees.

(d) No person shall be eligible for admission to committee-certified police schools, programs or academies or for appointment as a law enforcement officer or for employment with an agency if they are listed in the national decertification index or the database of decertified law enforcement officers maintained by the commission pursuant to clause (i) of subsection (a) of section 13. The committee, subject to the approval of the commission, shall set policies and standards for the screening of all applicants for admission to committee-certified academies and shall set policies and standards for the screening for all applicants for certification and recertification as law enforcement officers, including, but not limited to, standards on background investigations for all applicants.

(e)(1) The committee, subject to the approval of the commission, shall set policies and standards for the training of all law enforcement officers, including, but not limited to, the training mandated by sections 116A to 116E, inclusive, and sections 116G to 116J, inclusive, of chapter 6, chapter 22C, section 36C of chapter 40, sections 96B and 97B of chapter 41 and section 24M of chapter 90.

(2) The committee shall coordinate with the center for responsive training in crisis intervention established pursuant to section 25 of chapter 19 on all behavioral health-related training.

(f)(1) The committee shall, subject to approval of the commission, establish minimum certification standards for all officers that shall include, but not be limited to: (i) attaining the age

of 21; (ii) successful completion of a high school education or equivalent, as determined by the commission; (iii) successful completion of the basic training program designed by the committee and approved by the commission; (iv) successful completion of a physical and psychological fitness evaluation approved by the commission; (v) successful completion of a state and national background check, including, but not limited to, fingerprinting and a full employment history; provided, that if the applicant has been previously employed in law enforcement in any state or United States territory or by the federal government, the applicant's full employment record, including complaints and discipline, shall be evaluated in the background check; (vi) passage of an examination administered by the committee and approved by the commission; (vii) possession of current first aid and cardiopulmonary resuscitation certificates or equivalent, as determined by the commission; (viii) successful completion of an oral interview; and (ix) being of good moral character and fit for employment in law enforcement, as determined by the commission.

(2) The commission shall not issue a certificate to an applicant who: (i) does not meet the minimum standards enumerated in paragraph (1) or the regulations of the commission; (ii) has been convicted of a felony or whose name is listed in the national decertification index or the database of decertified law enforcement officers maintained by the commission pursuant to clause (i) of subsection (a) of section 13; or (iii) while previously employed in law enforcement in any state or United States territory or by the federal government, would have had their certification revoked by the commission if employed by an agency in the commonwealth.

(3) The commission may issue a certificate to a qualified applicant consistent with the provisions of this chapter. The commission shall determine the form and manner of issuance of a certification. A certification shall expire 3 years after the date of issuance.

871 (4) An officer shall remain in compliance with the requirements of this chapter and all
872 rules and regulations promulgated by the commission for the duration of their employment as an
873 officer.

874 (g) No agency shall appoint or employ a person as a law enforcement officer unless the
875 person is certified by the commission.

876 (h) The committee, in consultation with the division of police standards, shall create and
877 maintain a database containing records for each certified law enforcement officer, including, but
878 not limited to:

879 (1) the date of initial certification;

880 (2) the date of any recertification;

881 (3) the records of completion of all training and all in-service trainings, including the
882 dates and locations of said trainings;

883 (4) the date of any written reprimand and the reason for said reprimand;

884 (5) the date of any suspension and the reason for said suspension;

885 (6) the date of any arrest and the charge or charges leading to said arrest;

886 (7) the date of, and reason for, any internal affairs complaint;

887 (8) the outcome of an internal affairs investigation based on an internal affairs complaint;

888 (9) the date of any criminal conviction and crime for said conviction;

(10) the date of any separation from employment with an agency and the nature of the separation, including, but not limited to, suspension, resignation, retirement or termination;

(11) the reason for any separation from employment, including, but not limited to, whether the separation was based on misconduct or whether the separation occurred while the appointing agency was conducting an investigation of the certified individual for a violation of an appointing agency's rules, policies, procedures or for other misconduct or improper action;

(12) the date of decertification, if any, and the reason for said decertification; and

(13) any other information as may be required by the commission.

(i) Each certified law enforcement officer shall apply for renewal of certification prior to its date of expiration as prescribed by the commission. The commission shall not recertify any person as a law enforcement officer unless the commission certifies that the applicant for recertification continues to satisfy the requirements of subsection (f).

(j) The commission shall promulgate regulations for the committee to maintain a publicly available and searchable database containing records for law enforcement officers. In promulgating the regulations, the commission shall consider the health and safety of the officers.

Section 5. (a) All law enforcement agencies shall be certified by the commission.

(b) The committee, subject to the approval of the commission, shall establish minimum certification standards for all law enforcement agencies that shall include, but shall not be limited to, the establishment and implementation of agency policies regarding: (i) use of force and reporting of use of force; (ii) officer code of conduct; (iii) officer response procedures; (iv) criminal investigation procedures; (v) juvenile operations; (vi) internal affairs and officer

910 complaint investigation procedures; (vii) detainee transportation; and (viii) collection and
911 preservation of evidence.

912 (c) An agency shall remain in compliance with the requirements of this chapter and all
913 rules and regulations promulgated by the commission.

914 Section 6. (a) The committee on police training and certification shall approve and may
915 revoke the approval of police training schools, academies and programs and shall promulgate
916 rules and regulations, subject to the approval of the commission, establishing reasonable
917 standards pertaining to approval and revocation of the approval of said schools, academies and
918 programs and relating to courses of study, attendance requirements, equipment and facilities and
919 qualifications of instructors. No police training school, academy or program shall be approved
920 unless it provides for the training of officers to serve in a rape prevention and prosecution unit.
921 The committee shall conduct periodic evaluations and inspections of training schools, academies
922 and programs.

923 (b) The committee on police training and certification may establish a course within the
924 recruit basic training curriculum for police training schools, academies and programs to train
925 officers on the application of section 34A of chapter 94C and section 12FF of chapter 112 and
926 the procedures for response to calls for assistance for drug-related overdoses. The committee
927 may periodically include within its in-service training curriculum a course of instruction on the
928 application of said section 34A of said chapter 94C and the procedures for response to calls for
929 assistance for drug-related overdoses. Upon request of the committee, the executive office of
930 public safety and security, in collaboration with the department of public health, shall facilitate

931 the collection and sharing of resources regarding the application of said section 34A of said
932 chapter 94C.

933 Section 7. (a) The committee on police training and certification shall develop and
934 establish, within its recruit basic training curriculum and its in-service training curriculum
935 available to in-service trainees, a course for police training schools, academies and programs for
936 the training of law enforcement officers on mental wellness and suicide prevention. The course,
937 which shall consist of 2 hours of total instruction annually, shall teach law enforcement officers
938 how to: (i) utilize healthy coping skills to manage the stress and trauma of policing; (ii)
939 recognize the symptoms of post-traumatic stress disorder within themselves and other officers;
940 and (iii) recognize the signs of suicidal behavior within themselves and other officers.

941 (b) The course shall include information on the mental health resources available to help
942 law enforcement officers and shall be designed to reduce and eliminate the stigma associated
943 with law enforcement officers receiving mental health services.

944 (c) The course of instruction shall be developed by the committee on police training and
945 certification in consultation with appropriate groups and individuals having an interest and
946 expertise in law enforcement mental health and suicide prevention.

947 (d) All law enforcement officers shall annually attend and complete a course on mental
948 wellness and suicide prevention.

949 Section 8. (a) There shall be within the commission a division of police standards. The
950 purpose of the division of police standards shall be to investigate officer misconduct and make
951 disciplinary recommendations to the commission.

(b)(1) The head of an agency shall transmit any complaint received by said agency within 2 business days to the division of police standards, in a form to be determined by the commission; provided, that the form shall include, but shall not be limited to: (i) the name and commission certification identification number of the subject officer; (ii) the date and location of the incident; (iii) a description of circumstances of the conduct that is the subject of the complaint; (iv) whether the complaint alleges that the officer's conduct: (A) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level; (B) was unprofessional; (C) involved excessive, prohibited or deadly force; or (D) resulted in serious bodily injury or death; and (v) a copy of the original complaint submitted directly to the agency; provided, however, that the commission may establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.

(2) Upon completion of the internal investigation of a complaint, the head of each agency shall immediately transmit to the division of police standards an investigation report in a form to be determined by the commission; provided, that the form shall include, but shall not be limited to: (i) a description of the investigation and disposition of the complaint; (ii) any disciplinary action recommended by internal affairs or the supervising officer; and (iii) if the recommended disciplinary action included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(3) Upon final disposition of the complaint, the head of each agency shall immediately transmit to the division of police standards a final report in a form to be determined by the

commission; provided, that the form shall include, but shall not be limited to: (i) any disciplinary action initially recommend by internal affairs or the supervising officer; (ii) the final discipline imposed and a description of the adjudicatory process; and (iii) if the disciplinary action recommended or imposed included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(4) If an officer resigns during an agency investigation, prior to the conclusion of an agency investigation or prior to the imposition of agency discipline, up to and including termination, the head of said agency shall immediately transmit to the division of police standards a report in a form to be determined by the commission; provided, that the form shall include, but shall not be limited to: (i) the officer's full employment history; (ii) a description of the events or complaints surrounding the resignation; and (iii) a recommendation by the head of the agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

(5) Notwithstanding any general or special law or collective bargaining agreement to the contrary, nothing shall limit the ability of the head of an agency to make a recommendation in their professional judgement to the commission relative to the certification status of an officer, after having followed the agency's internal affairs procedure and any appeal therefrom.

(c)(1) The division of police standards shall initiate a preliminary inquiry into the conduct of a law enforcement officer if the commission receives a complaint, report or other credible evidence that is deemed sufficient by the commission that the law enforcement officer:

(i) was involved an officer-involved injury or death;

(ii) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted;

(iii) engaged in conduct prohibited pursuant to section 14;

(iv) engaged in conduct prohibited pursuant to section 15; or

(v) the commission receives an affirmative recommendation by the head of an appointing agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

(2) The division of police standards may initiate a preliminary inquiry into the conduct of a law enforcement officer upon receipt of a complaint, report or other credible evidence that is deemed sufficient by the commission that the law enforcement officer may have engaged in prohibited conduct. All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential, except that the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding.

(3) The division of police standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(d) The division of police standards may audit all records related to the complaints, investigations and investigative reports of any agency related to complaints of officer misconduct or unprofessionalism, including, but not limited to, personnel records. The commission shall

1018 promulgate rules and regulations establishing an audit procedure; provided, however, that said
1019 rules and regulations shall not limit the ability of the division of police standards to initiate an
1020 audit at any time and for any reason.

1021 (e) The division of police standards shall create and maintain a database containing
1022 information related to an officer's: (i) receipt of complaints and related information, including,
1023 but not limited to: the officer's appointing agency, date, a description of circumstances of the
1024 conduct that is the subject of the complaint and whether the complaint alleges that the officer's
1025 conduct: (A) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation,
1026 religion, mental or physical disability, immigration status or socioeconomic or professional level;
1027 (B) was unprofessional; (C) involved excessive, prohibited or deadly force; or (D) resulted in
1028 serious bodily injury or death; (ii) allegations of untruthfulness; (iii) failure to follow
1029 commission training requirements; (iv) decertification by the commission; (v) agency-imposed
1030 discipline; (vi) termination for cause; and (vii) any other information the commission deems
1031 necessary or relevant.

1032 (f) The division of police standards shall actively monitor the database to identify
1033 patterns of unprofessional police conduct. Upon identification of a pattern of unprofessional
1034 police conduct, the division of police standards may recommend the evidence in its possession
1035 for review in a preliminary inquiry.

1036 (g) The division of police standards shall be a law enforcement agency and its employees
1037 shall have such law enforcement powers as necessary to effectuate the purposes of this chapter,
1038 including the power to receive intelligence on an applicant for certification or an officer certified
1039 under this chapter and to investigate any suspected violations of law.

Section 9. (a)(1) The commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony.

(2) If, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, the commission concludes by a preponderance of the evidence that a law enforcement officer has engaged in conduct that could constitute a felony and upon a vote to initiate an adjudicatory proceeding of said conduct, the commission shall immediately suspend an officer's certification.

(3) The commission may, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer who is arrested, charged or indicted for a misdemeanor, if the commission determines by a preponderance of the evidence that the crime affects the fitness of the officer to serve as a law enforcement officer.

(4) The commission may, pending preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer if the commission determines by a preponderance of the evidence that the suspension is in the best interest of the health, safety or welfare of the public.

(5) A suspension order of the commission issued pursuant to this subsection shall continue in effect until issuance of the final decision of the commission or until revoked by the commission.

(b) The commission shall administratively suspend the certification of an officer who fails to complete in-service training requirements of the commission within 90 days of the deadline imposed by the commission; provided, however, that the commission may promulgate reasonable exemptions to this subsection, including, but not limited to, exemptions for: (1) injury or physical disability; (2) a leave of absence; or (3) other documented hardship. The commission

1062 shall reinstate the certification of an officer suspended pursuant to this subsection upon
1063 completion of the in-service training requirements of the commission.

1064 (c) The commission shall administratively suspend the certification of an officer with a
1065 duty to report information to the commission pursuant to section 8 who fails to report such
1066 information. The commission shall reinstate the certificate of an officer suspended pursuant to
1067 this subsection upon completion of said report.

1068 (d) A law enforcement officer whose certification is suspended by the commission
1069 pursuant to subsection (a), (b) or (c) shall be entitled to a hearing before a commissioner within
1070 15 days. The terms of employment of a law enforcement officer whose certification is suspended
1071 by the commission pursuant to said subsection (a) (b) or (c) shall continue to be subject to
1072 chapter 31 and any applicable collective bargaining agreement to which the law enforcement
1073 officer is a beneficiary.

1074 Section 10. (a) The commission shall, after a hearing, revoke an officer's certification if
1075 the commission finds by clear and convincing evidence that:

1076 (i) the officer is convicted of a felony;

1077 (ii) the certification was issued as a result of administrative error;

1078 (iii) the certification was obtained through misrepresentation or fraud;

1079 (iv) the officer falsified any document in order to obtain or renew certification;

1080 (v) the officer has had a certification or other authorization revoked by another
1081 jurisdiction;

1082 (vi) the officer is terminated by their appointing agency, and any appeal of said
1083 termination is completed, based upon intentional conduct performed under the color of office to:
1084 obtain false confessions; make a false arrest; create or use falsified evidence, including false
1085 testimony or destroying evidence to create a false impression; engage in conduct that would
1086 constitute a hate crime, as defined in section 32 of chapter 22C; or directly or indirectly receive a
1087 reward, gift or gratuity on account of their official services;

1088 (vii) the officer has been convicted of submitting false timesheets in violation of section
1089 85BB of chapter 231;

1090 (viii) the officer knowingly files a written police report containing a false statement or
1091 commits perjury, as defined in section 1 of chapter 268;

1092 (ix) the officer tampers with a record for use in an official proceeding, as defined in
1093 section 13E of chapter 268;

1094 (x) the officer used force in violation of section 14;

1095 (xi) the officer used excessive use of force resulting in death or serious bodily injury;

1096 (xii) the officer used a chokehold in violation of said section 14;

1097 (xiii) the officer engaged in conduct that would constitute a hate crime, as defined in
1098 section 32 of chapter 22C;

1099 (xiv) the officer engaged in the intimidation of a witness, as defined in section 13B of
1100 chapter 268;

1101 (xv) the officer failed to intervene, or attempt to intervene, to prevent another officer
1102 from engaging in prohibited conduct or behavior, including, but not limited to, excessive or
1103 prohibited force in violation of section 15;

1104 (xvi) the officer is not fit for duty as an officer and the officer is dangerous to the public,
1105 as determined by the commission.

1106 (b) The commission may, after a hearing, suspend or revoke an officer's certification if
1107 the commission finds by clear and convincing evidence that the officer:

1108 (i) has been convicted of any misdemeanor;

1109 (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation,
1110 religion, mental or physical disability, immigration status or socioeconomic or professional level
1111 in their conduct;

1112 (iii) has a pattern of unprofessional police conduct that commission believes may
1113 escalate;

1114 (iv) was suspended or terminated by their appointing agency for disciplinary reasons, and
1115 any appeal of said suspension or termination is completed; or

1116 (v) has repeated sustained internal affairs complaints, for the same or different offenses.

1117 (c) The commission may reinstate the certificate of an officer suspended pursuant to
1118 subsection (b) at the expiration of the suspension, if the commission finds that all conditions of
1119 the suspension were met.

1120 (d) The commission may, after a hearing, order retraining for any officer if the
1121 commission finds substantial evidence that the officer:

1122 (i) failed to comply with this chapter or commission regulations, reporting requirements
1123 or training requirements;

1124 (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation,
1125 religion, mental or physical disability, immigration status or socioeconomic or professional level
1126 in their conduct;

1127 (iii) used excessive force;

1128 (iv) failed to respond an incident according to established procedure;

1129 (v) has a pattern of unprofessional police conduct;

1130 (vi) was untruthful, except for a statement or action that mandates revocation pursuant to
1131 subsection (a);

1132 (vii) was suspended or terminated by their appointing agency for disciplinary reasons,
1133 except those reasons which mandate revocation pursuant to said subsection (a);

1134 (viii) fails to intervene to prevent another officer from engaging in prohibited conduct or
1135 behavior, except a failure to intervene in conduct that mandates revocation pursuant to said
1136 subsection (a); or

1137 (ix) would benefit in their job performance if retrained.

1138 (e) The commission shall immediately notify the officer and the head of the appointing
1139 agency of the officer who is decertified, suspended or ordered to undergo retraining of the order.

1140 (f) The commission shall conduct preliminary inquiries, revocation and suspension
1141 proceedings and hearings, and promulgate regulations for such proceedings and hearings,
1142 pursuant to sections 1, 8 and 10 to 14, inclusive, of chapter 30A. Any decision of the commission
1143 relative to a preliminary inquiry, revocation and suspension proceeding shall be appealable
1144 pursuant to chapter 30A. No adverse action taken against a certification by the commission
1145 pursuant to this section shall be appealable to the civil service commission established under
1146 chapter 31. No employment action taken by an appointing authority that results from a
1147 revocation by the commission pursuant to subsection (a) shall be appealable to the civil service
1148 commission established under chapter 31.

1149 (g) The committee shall publish any revocation order and findings. The committee shall
1150 provide all revocation information to the national decertification index. No officer may apply for
1151 certification after that officer's certification has been revoked pursuant to this section.

1152 (h) The commission shall not institute a revocation or suspension hearing pursuant to this
1153 section until the officer's appointing agency has issued a final disposition or 1 year has elapsed
1154 since the incident was reported to the commission, whichever is sooner. If the officer notifies the
1155 commission that the officer wishes to suspend such hearing pending an appeal or arbitration of
1156 the appointing agency's final disposition, the commission shall suspend the hearing; provided,
1157 however, that any delay in instituting a revocation or suspension hearing shall not exceed 1 year
1158 from the officer's request. If the officer notifies the commission that the officer wishes to
1159 suspend such hearing pending the resolution of criminal charges, the commission shall suspend
1160 the hearing; provided, however, that the officer's certification shall be suspended during the
1161 pendency of any delay in such hearing. This subsection shall not impact the commission's
1162 authority to suspend a certification pursuant to section 9.

1163 Section 11. Neither any agency, nor a sheriff, nor the executive office of public safety nor
1164 any entity thereunder shall employ a decertified officer in any capacity, including, but not limited
1165 to, as a consultant or independent contractor.

1166 Section 12. No officer or employee of the commonwealth or of any county, city, town or
1167 district shall discharge an officer or employee, change their official rank, grade or compensation,
1168 deny a promotion or take any other adverse action against an officer or employee or threaten to
1169 take any such action for providing information to the commission or testifying in any
1170 commission proceeding.

1171 Section 13. (a) The commission shall maintain a publicly available database of orders
1172 issued pursuant to section 10 on the commission's website, including, but not limited to: (i) the
1173 names of all decertified officers, the date of decertification, the officer's last appointing agency
1174 and the reason for decertification; (ii) the names of all officers who have been suspended, the
1175 beginning and end dates of suspension, the officer's appointing agency and the reason for
1176 suspension; and (iii) the names of all officers ordered to undergo retraining, the date of the
1177 retraining order, the date the retraining was completed, the type of retraining ordered, the
1178 officer's appointing agency and the reason for the retraining order.

1179 (b) The commission shall cooperate with the national decertification index and other
1180 states and territories to ensure officers who are decertified by the commonwealth are not hired as
1181 law enforcement officers in other jurisdictions, including by providing information requested by
1182 those entities.

1183 Section 14. (a) A law enforcement officer shall not use physical force upon another
1184 person unless de-escalation tactics have been attempted and failed or are not feasible based on

the totality of the circumstances and such force is necessary to: (i) effect the lawful arrest or detention of a person; (ii) prevent the escape from custody of a person; or (iii) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm; provided, however, that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the regulations promulgated by the committee on police training and certification pursuant to subsection (d) of section 15.

(b) A law enforcement officer shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.

(c) A law enforcement officer shall not use a chokehold. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow.

(d) A law enforcement officer shall not discharge any firearm into or at a fleeing motor vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm to a person.

(e) When a police department has advance knowledge of a planned mass demonstration, it shall attempt in good faith to communicate with organizers of the event to discuss logistical plans, strategies to avoid conflict and potential communication needs between police and event participants. The department shall make plans to avoid and de-escalate potential conflicts and

designate an officer in charge of de-escalation planning and communication about the plans within the department. A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of rubber pellets from a propulsion device or release or order the release of a dog to control or influence a person's behavior unless: (i) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and (ii) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, rubber pellets or dog is proportionate to the threat of imminent harm. If a law enforcement officer utilizes or orders the use of tear gas or any other chemical weapon, rubber pellets or a dog against a crowd, the law enforcement officer's appointing agency shall file a report with the commission detailing all measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using the tear gas or other chemical weapon, rubber pellets or dog. The commission shall review the report and may make any additional investigation. After such review and investigation, the commission shall, if applicable, make a finding as to whether the pre-event and contemporaneous de-escalation tactics were adequate and whether the use of or order to use such tear gas or other chemical weapon, rubber pellets or dog was justified.

Section 15. (a) An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

(b) An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the

1230 circumstances shall report the incident to an appropriate supervisor as soon as reasonably
1231 possible but not later than the end of the officer's shift. The officer shall prepare a detailed
1232 written statement describing the incident consistent with uniform protocols. The officer's written
1233 statement shall be included in the supervisor's report

1234 (c) A law enforcement agency shall develop and implement a policy and procedure for
1235 law enforcement personnel to report abuse by other law enforcement personnel without fear of
1236 retaliation or actual retaliation.

1237 (d) The committee on police training and certification shall promulgate rules and
1238 regulations, subject to the approval of the commission, for the administration and enforcement of
1239 this section and section 14; provided, however, that such regulations may authorize the use of
1240 necessary, proportionate and non-deadly force for purposes not explicitly specified in this
1241 chapter where de-escalation tactics have been attempted and failed or are not feasible based on
1242 the totality of the circumstances.

1243 Section 16. The commission shall annually report to the general court, the governor and
1244 the attorney general concerning: (1) all officer-involved injuries or deaths that occurred during
1245 the preceding fiscal year, including: (i) the total number of officer-involved injuries or deaths;
1246 (ii) the number of officer-involved injuries or deaths reported by each agency; and (iii) any
1247 operational, policy, regulatory or legislative recommendations to reduce the number and
1248 seriousness of officer-involved injuries or deaths; (2) all officers who were decertified during the
1249 preceding fiscal year, including: (i) the total number of officers who were decertified; (ii) the
1250 reasons for revocation of the certificate and the frequency of each reason; (iii) the average
1251 number of complaints an officer who was decertified received over the course of their tenure as

1252 an officer and on a per annum basis; (iv) the frequency with which said complaints alleged bias
1253 on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or
1254 physical disability, immigration status or socioeconomic or professional level; (v) the frequency
1255 with which said complaints alleged use of excessive or prohibited force or officer-involved
1256 injuries or deaths; (vi) the frequency with which an officer who was decertified failed to meet
1257 training requirements established by the commission and their appointing agency; and (vii) the
1258 frequency with which an officer who was decertified was subject to discipline, including, but not
1259 limited to, retraining or suspension, by the commission and their appointing agency prior to
1260 decertification; (3) all suspensions that occurred during the preceding fiscal year, including: (i)
1261 the total number of suspensions; (ii) the reasons for suspensions of the certificate and the
1262 frequency of each reason; (iii) the average number of complaints an officer who was suspended
1263 received over the course of their tenure as an officer and on a per annum basis; (iv) the frequency
1264 with which said complaints alleged bias on the basis of race, ethnicity, sex, gender identity,
1265 sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or
1266 professional level; (v) the frequency with which said complaints alleged use of excessive or
1267 prohibited force or officer-involved injuries or deaths; (vi) the frequency with which an officer
1268 who was suspended failed to meet training requirements established by the commission and their
1269 appointing agency; and (vii) the frequency with which an officer who was suspended was subject
1270 to discipline, including, but not limited to, retraining or previous suspension, by the commission
1271 and their appointing agency prior to suspension; (4) all retraining orders imposed by the
1272 commission that occurred during the preceding fiscal year, including: (i) the total number of
1273 retraining orders, by type of retraining ordered; (ii) the reasons for retraining and the frequency
1274 of each reason, by type of retraining ordered; (iii) the average number of complaints an officer

who was subject to a retraining order, by type of retraining ordered, received over the course of their tenure as an officer and on a per annum basis; (iv) the frequency with which said complaints alleged bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level, by type of retraining ordered; (v) the frequency with which said complaints alleged use of excessive or prohibited force or officer-involved injuries or deaths, by type of retraining; (vi) the frequency with which an officer who was subject to a retraining order, by type of retraining ordered, failed to meet training requirements established by the commission and their appointing agency; and (vii) the frequency with which an officer who was subject to a retraining order was previously subject to discipline, by type of retraining ordered, including, but not limited to, retraining or suspension, by the commission and their appointing agency; (5) the total number of injuries or deaths of police officers; and (6) any other action the commission has taken. The commission shall make such further reports on matters within its jurisdiction as necessary.

SECTION 31. Section 35EEE of chapter 10 of the General Laws, inserted by section 14 of chapter 69 of the acts of 2018, is hereby amended by striking out the words “There shall be a Municipal Police Training Fund which shall consist of amounts credited to the fund in accordance with this section” and inserting in place thereof the following words:- There shall be a Police Training Fund which shall consist of amounts credited to the fund in accordance with this section.

SECTION 32 Subsection (b) of said section 35EEE of said chapter 10, as appearing in said section 14 of said chapter 69, is hereby amended by striking out the words “municipal police training committee” and inserting in place thereof the following words:- committee on police training and certification.

1298 SECTION 33. Said section 35EEE of said chapter 10 is hereby further amended by
1299 striking out subsection (c), as appearing in said section 14 of said chapter 69, and inserting in
1300 place thereof the following subsection:-

1301 (c) Expenditures from the fund shall be made to provide funding for: (i) the operating
1302 expenses of the committee on police training and certification established by section 4 of chapter
1303 6E; (ii) basic recruit training for new law enforcement officers; (iii) mandatory in-service
1304 training for veteran law enforcement officers; (iv) specialized training for veteran law
1305 enforcement officers and reserve and intermittent law enforcement officers; and (v) the basic
1306 training program for reserve and intermittent law enforcement officers.

1307 SECTION 34. Subsection (d) of said section 35EEE of said chapter 10, inserted by
1308 section 2 of chapter 153 of the acts of 2018, is hereby amended by striking out the words
1309 “municipal police training committee” and inserting in place thereof, in each instance, the
1310 following words:- Massachusetts peace officer standards and training commission

1311 SECTION 35. Said subsection (d) of said section 35EEE of said chapter 10, inserted by
1312 said section 2 of said chapter 153, is hereby further amended by striking out the words “The
1313 executive office of public safety and security” and inserting in place thereof the following
1314 words:- The Massachusetts peace officer standards and training commission established in
1315 section 2 of chapter 6E.

1316 SECTION 36. Clause (xi) of said subsection (d) of said section 35EEE of said chapter 10,
1317 as appearing in section 2 of said chapter 153, is hereby amended by striking out the word
1318 “municipality” and inserting in place thereof the following word:- agency

SECTION 37. Chapter 12 of the General Laws is hereby amended by striking out section 11H, as appearing in the 2018 Official Edition, and inserting in place thereof the following section:-

Section 11H. (a)(1) Whenever any person or persons, whether or not acting under color of law, interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. Said civil action shall be brought in the name of the commonwealth and shall be instituted either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the person whose conduct complained of resides or has his principal place of business.

(2) If the attorney general prevails in an action under this section, the attorney general shall be entitled to: (i) an award of compensatory damages for any aggrieved person or entity; and (ii) litigation costs and reasonable attorneys' fees in an amount to be determined by the court. In a matter involving the interference or attempted interference with any right protected by the constitution of the United States or of the commonwealth, the court may also award civil penalties against each defendant in an amount not exceeding \$5,000 for each violation.

(b) All persons shall have the right to bias-free professional policing. Any conduct taken in relation to an aggrieved person by a law enforcement officer acting under color of law that results in the decertification of said law enforcement officer by the Massachusetts peace officer

standards and training commission pursuant to section 10 of chapter 6E shall constitute interference with said person's right to bias-free professional policing and shall be a prima facie violation of said person's right to bias-free professional policing and a prima facie violation of subsection (a). No law enforcement officer shall be immune from civil liability for any conduct under color of law that violates a person's right to bias-free professional policing if said conduct results in the law enforcement officer's decertification by the Massachusetts peace officer standards and training commission pursuant to section 10 of chapter 6E; provided, however, that nothing in this subsection shall be construed to grant immunity from civil liability to a law enforcement officer for interference by threat, intimidation or coercion, or attempted interference by threats, intimidation or coercion, with the exercise or enjoyment any right secured by the constitution or laws of the United States or the constitution or laws of the commonwealth if the conduct of said officer was knowingly unlawful or was not objectively reasonable.

SECTION 38. Section 11J of said chapter 12, as so appearing, is hereby amended by striking out, in lines 1 and 2, 16 and 34 and 35, each time they appear, the words "section eleven H or eleven I" and inserting in place thereof, in each instance, the following words:- subsection (a) of section 11H or section 11I.

SECTION 39. Said section 11J of said chapter 12, as so appearing, is hereby further amended by striking out, in line 30, the words "section eleven H" and inserting in place thereof the following words:- subsection (a) of section 11H.

SECTION 40. Section 25 of chapter 19 of the General Laws, as so appearing, is hereby amended by striking out, in lines 88 and 89, the words "executive director of the municipal

police training committee” and inserting in place thereof the following words:- training director of the Massachusetts peace officer standards and training commission.

SECTION 41. Section 25 of chapter 19 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the word “police” and inserting in place thereof the following words:- responsive.

SECTION 42. Paragraph (1) of subsection (c) of said section 25 of said chapter 19, as so appearing, is hereby amended by striking out clauses (vi) and (vii) and inserting in place thereof the following 3 clauses:- (vi) assist municipal police departments to cover backfill costs incurred in sending staff to training; provided, however, that reimbursement shall not exceed the actual cost of the sending department's backfill; (vii) promote the use and adequate resourcing of trained community-based crisis response resources to assist residents when an exclusive police response is not best suited to address the concerns raised or is inappropriate or unnecessary; and (viii) stipulate that each municipal police department receiving reimbursement provide information necessary for the center to evaluate the goals described in paragraph (3), including the percentage of the municipality's police sergeants, lieutenants and other officers who directly oversee patrol officers who have received the center's recommended training and the percentage of the municipality's patrol officers who have received the center's recommended training.

SECTION 43. Paragraph (2) of said subsection (c) of said section 25 of said chapter 19, as so appearing, is hereby amended by striking out clauses (v) and (vi) and inserting in place thereof the following 4 clauses:- (v) best practices, including efforts to prioritize de-escalation tactics and techniques in crisis response situations; (vi) institutional and structural racism and implicit bias; (vii) best practices for responding to mass gatherings or protests that shall

1384 emphasize de-escalation and minimizing the necessity for use of force; and (viii) community
1385 policing principles.

1386 SECTION 44. Section 3 of chapter 22C of the General Laws, as so appearing, is hereby
1387 amended by striking out, in lines 6 and 7, each time it appears, the word “he” and inserting in
1388 place thereof, in each instance, the following words:- the colonel.

1389 SECTION 45. Said section 3 of said chapter 22C, as so appearing, is hereby further
1390 amended by striking out the second paragraph and inserting in place thereof the following
1391 paragraph:-

1392 The governor, upon the recommendation of the secretary of public safety and security,
1393 shall appoint the colonel, who shall be qualified by training and experience, to direct the work of
1394 the department. At the time of appointment, the colonel shall have not less than 10 years of full-
1395 time experience as a sworn law enforcement officer and not less than 5 years of full-time
1396 experience in a senior administrative or supervisory position in a police force or a military body
1397 with law enforcement responsibilities. The appointment shall constitute an appointment as a
1398 uniformed member of the department and shall qualify the colonel to exercise all powers granted
1399 to a uniformed member under this chapter. The colonel shall serve at the pleasure of the
1400 governor and shall devote their full time during business hours to the duties of the office.

1401 SECTION 46. Section 10 of said chapter 22C, as so appearing, is hereby amended by
1402 striking out, in lines 3, 40, 52, 54, 61, 63 and 65, each time it appears, the word “he” and
1403 inserting in place thereof, in each instance, the following words:- such officer.

1404 SECTION 47. Said section 10 of said chapter 22C, as so appearing, is hereby further
1405 amended by striking out, in line 27, the words “reached his twenty-first birthday” and inserting
1406 in place thereof the following words:- attained the age of 21.

1407 SECTION 48. Said section 10 of said chapter 22C, as so appearing, is hereby further
1408 amended by striking out, in line 30, the words “he has reached his thirty-fifth birthday” and
1409 inserting in place thereof the following words:- the person has attained the age of 35.

1410 SECTION 49. Said section 10 of said chapter 22C, as so appearing, is hereby further
1411 amended by striking out the third paragraph and inserting in place thereof the following
1412 paragraph:-

1413 A person shall not be enlisted as a uniformed member of the state police except in
1414 accordance with this section and section 11; provided, however, that other than for an
1415 appointment made pursuant to section 3, a person employed as a police officer for an agency
1416 other than the department of state police, including, but not limited to, an agency of the
1417 commonwealth or any political subdivision of the commonwealth, shall not be allowed to
1418 transfer into a position as a uniformed member of the state police.

1419 SECTION 50. Said section 10 of said chapter 22C, as so appearing, is hereby further
1420 amended by striking out, in lines 66 and 71, each time it appears, the word “his” and inserting in
1421 place thereof, in each instance, the following words:- such officer’s.

1422 SECTION 51. Said chapter 22C is hereby further amended by inserting after section 10
1423 the following section:-

1424 Section 10A. The colonel may establish a cadet program within the department and may
1425 admit as a state police cadet, for a period of full-time on the job training, a citizen resident in the
1426 commonwealth who: (i) is not less than 19 years of age and not more than 25 years of age; (ii)
1427 would otherwise be found suitable for appointment for initial enlistment as a uniformed member
1428 of the state police pursuant to sections 10, 11 and 14, with the exception of the physical fitness
1429 standards therein; (iii) has passed a qualifying physical fitness examination, as determined by the
1430 colonel; and (iv) has passed a qualifying examination, as determined by the colonel.

1431 The qualifying examination shall be conducted under the direction of the colonel who
1432 shall, after consultation with the personnel administrator, determine its form, method and subject
1433 matter. The qualifying examination shall fairly test the applicant's knowledge, skills and abilities
1434 that can be fairly and reliably measured and that are actually required to perform the primary or
1435 dominant duties of the position of state police cadet.

1436 A person who has attained the age of 19 on or before the final date for the filing of
1437 applications for the state police cadet program shall be eligible to take the qualifying
1438 examination for the state police cadet program. A person who has attained the age of 26 on or
1439 before the final date for the filing of applications for the state police cadet program shall not be
1440 eligible to take the qualifying examination for the state police cadet program.

1441 Admission as a state police cadet shall not be subject to the civil service law or rules and
1442 a state police cadet shall not be entitled to any benefits of such law or rules. The colonel shall
1443 immediately report, in writing, any admission as a state police cadet made pursuant to this
1444 section to the secretary of public safety and security and the personnel administrator. Admission
1445 shall be for a term of service of not less than 12 months as determined by the department and

1446 may be terminated at any time. A state police cadet's term of service shall be terminated if the
1447 state police cadet fails to maintain a passing grade in any course of study required by the colonel.
1448 A state police cadet shall be required to meet the physical fitness standards required for
1449 appointment for initial enlistment as a uniformed member of the state police within 12 months of
1450 the state police cadet's admission to the state police cadet program. A state police cadet shall be
1451 an at-will employee. A state police cadet shall receive such compensation and such leave with
1452 pay as the colonel shall determine in consultation with the personnel administrator. The colonel
1453 shall establish requirements for successful completion of the state police cadet program.

1454 The colonel shall determine the duties and responsibilities of state police cadets. A state
1455 police cadet shall not carry arms and shall not have any power of arrest other than that of an
1456 ordinary citizen. A state police cadet shall be considered an employee of the commonwealth for
1457 the purposes of workers' compensation.

1458 While participating in the state police cadet program, a state police cadet shall not be
1459 subject to or entitled to the benefits of any retirement or pension law, nor shall any deduction be
1460 made from a state police cadet's compensation for the purpose thereof; provided, however, that a
1461 state police cadet who successfully completes the state police cadet program and is appointed to
1462 the department of state police pursuant to section 11 or is appointed as a police officer in a
1463 municipal police department, the Massachusetts bay transportation authority police force, the
1464 office of law enforcement within the executive office of energy and environmental affairs or the
1465 University of Massachusetts or becomes an employee, as defined in section 1 of chapter 32, shall
1466 have any state police cadet service considered as creditable service, as defined in said section 1
1467 of said chapter 32, for purposes of retirement if the state police cadet pays into the annuity
1468 savings fund of the retirement system in 1 sum or in installments, upon such terms and

conditions as the board may prescribe, not later than 1 year after appointment as described above, such amount as the retirement board determines equal to that which the state police cadet would have paid had the state police cadet been a member of the retirement system during the period of training as a state police cadet, together with buyback interest.

SECTION 52. Section 11 of said chapter 22C, as appearing in the 2018 Official Edition, is hereby amended by striking out, in lines 19 and 20, each time it appears, the word “his”, and inserting in place thereof, in each instance, the following words:- the uniformed member’s.

SECTION 53. Said section 11 of said chapter 22C, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraph:-

Notwithstanding any provision of this section to the contrary, the colonel may appoint for initial enlistment as a uniformed member of the state police any person who has successfully completed the state police cadet program pursuant to section 10A and who is willing to accept such appointment. Appointment for initial enlistment as a uniformed member of the state police under this paragraph shall terminate that person’s admission as a state police cadet. Not more than 1/3 of the total number of appointments to the state police in any single recruit training troop shall be made pursuant to this paragraph. The colonel shall immediately report, in writing, any appointment made pursuant to this paragraph to the personnel administrator.

SECTION 54. Said chapter 22C is hereby further amended by striking out section 13, as so appearing, and inserting in place thereof the following section:-

Section 13. (a) A uniformed member of the state police who has served for at least 1 year and against whom charges have been referred shall be tried by a board to be appointed by the colonel or, at the request of the officer, a board consisting of the colonel. A person aggrieved by

1491 the finding of the trial board under this subsection may appeal the decision of the trial board
1492 under sections 41 to 45, inclusive, of chapter 31. A uniformed officer of the state police who has
1493 been dismissed from the state police force after a trial under this subsection, or who resigns
1494 while charges to be tried by a trial board are pending against the uniformed officer, shall not be
1495 reinstated by the colonel.

1496 (b) Notwithstanding subsection (a), the colonel may administratively suspend without
1497 pay a uniformed member who has served for at least 1 year if: (i) the uniformed member had a
1498 criminal complaint or indictment issued against them; (ii) the department has referred the
1499 uniformed member to a prosecutorial agency for review for prosecution; or (iii) there are
1500 reasonable grounds to believe that the uniformed member has engaged in misconduct in the
1501 performance of the uniformed member's duties that violates the public trust.

1502 Prior to such administrative suspension, the department shall provide the uniformed
1503 member notice of, and the underlying factual basis for, the administrative suspension. After such
1504 notice, the colonel or the colonel's designee shall hold a departmental hearing at which the
1505 uniformed member shall have an opportunity to respond to the allegations. Following the
1506 departmental hearing and upon a finding that there are reasonable grounds for such
1507 administrative suspension without pay, the colonel may administratively suspend without pay
1508 such uniformed member immediately. The administrative suspension without pay shall not be
1509 appealable under sections 41 to 45, inclusive, of chapter 31; provided, however, that the
1510 administrative suspension without pay may be appealed as provided in section 43.

1511 A uniformed member who is administratively suspended without pay pursuant to this
1512 section may seek a review by the colonel or the colonel's designee of the administrative

1513 suspension without pay after 1 year from the date of the administrative suspension and every
1514 year thereafter, or sooner if the uniformed member can demonstrate a material change in
1515 circumstances. The decision of the colonel or the colonel's designee after such review may be
1516 appealed under said sections 41 to 45, inclusive, of said chapter 31.

1517 (c) Notwithstanding subsection (a), the colonel may impose on a uniformed member who
1518 has served at least 1 year any permanent discipline that does not involve a suspension of pay,
1519 loss of accrued vacation time, loss of rank or seniority or termination without provision for a trial
1520 by a trial board under said subsection (a). Prior to imposing such discipline, the department shall
1521 provide the uniformed member notice of, and the underlying factual basis for, the discipline.
1522 After such notice, the colonel or the colonel's designee shall hold a departmental hearing at
1523 which the uniformed member shall have an opportunity to respond to the allegations. Following
1524 the departmental hearing and upon a finding that there are reasonable grounds for discipline, the
1525 colonel may impose such discipline immediately.

1526 An order imposing discipline pursuant to this subsection shall not be appealable under
1527 sections 41 to 45, inclusive, of chapter 31; provided, however, that such order may be appealed
1528 as provided in section 43.

1529 SECTION 55. Section 20 of said chapter 22C, as so appearing, is hereby amended by
1530 inserting after the word "shall", in lines 1 and 5, the following words:- , subject to the approval
1531 of the committee on police training and certification established in chapter 6E,.

1532 SECTION 56. Section 21 of said chapter 22C, as so appearing, is hereby amended by
1533 striking out the first and second sentences and inserting in place thereof the following 2
1534 sentences:- The colonel may, subject to the approval of the committee on police training and

1535 certification established in chapter 6E, conduct programs for training police officers of the cities
1536 and towns of the commonwealth and for those employees who are authorized to exercise police
1537 powers in the various state departments or agencies and the colonel shall appoint necessary
1538 instructors. Said programs shall be conducted and instructors appointed in accordance with said
1539 chapter 6E.

1540 SECTION 57. Said chapter 22C is hereby further amended by striking out section 26, as
1541 so appearing, and inserting in place thereof the following section:-

1542 Section 26. (a) The colonel may promote uniformed members of the state police who are
1543 deemed eligible for promotion by the colonel to the title of noncommissioned officer, lieutenant
1544 or captain. A promotion shall be based on the uniformed member's total promotional score,
1545 which shall be based on the sum of scores earned on a competitive promotional examination
1546 calculated pursuant to subsection (b) and longevity calculated pursuant to subsection (e).

1547 (b) For a uniformed member who is not a veteran, the uniformed member's competitive
1548 promotional examination score shall be based on the number of points awarded to the uniformed
1549 member for correct answers on such examination divided by the total number of possible points
1550 to be earned on the examination, multiplied by 75. For a uniformed member who is a veteran, the
1551 uniformed member's competitive promotional examination score shall be based on the number
1552 of points awarded to the member for correct answers on such examination divided by the total
1553 number of possible points to be earned on the examination, multiplied by 100, plus 2, multiplied
1554 by 0.75.

1555 (c) A uniformed member shall not be eligible for promotion unless the uniformed
1556 member was awarded not less than 70 per cent of the total number of possible points to be earned
1557 on the competitive promotional examination.

1558 (d) Promotional examinations shall be open to a uniformed member who is a: (i)
1559 noncommissioned officer who has completed not less than 5 years of service as a uniformed
1560 member immediately before the final date for the filing of applications for such examination and
1561 who has completed, in the immediately preceding year, 1 full year of service in the next lower
1562 rank or title; (ii) lieutenant who has completed at least 1 year of service in the next lower rank or
1563 title immediately before the final date for the filing of applications for such examination and who
1564 has completed not less than 8 years of service as a uniformed member prior to the final date for
1565 filing applications for such examination; or (iii) a captain who has completed at least 1 year of
1566 service in the next lower rank or title immediately before the final date for the filing of
1567 applications for such examination and who has completed not less than 12 years of service as a
1568 uniformed member prior to the final date for filing applications for such examination.

1569 (e) (1) A noncommissioned officer shall be granted 1 longevity point for each full month
1570 of service since appointment to the department, up to a maximum of 120 months, computed as of
1571 the final date for the filing of applications for such promotion. The member's longevity score
1572 shall be the total longevity points granted divided by 120, multiplied by 25.

1573 (2) A lieutenant shall be granted 1 longevity point for each full month of service since
1574 appointment to the department, up to a maximum of 180 months, computed as of the final date
1575 for the filing of applications for such promotion. The member's longevity score shall be the total
1576 longevity points granted divided by 180, multiplied by 25.

(3) A captain shall be granted 1 longevity point for each full month of service since appointment to the department, up to a maximum of 240 months, computed as of the final date for the filing of applications for such promotion. The member's longevity score shall be the total longevity points granted divided by 240, multiplied by 25.

(f) Prior to making any promotions in accordance with this section, the colonel shall publish and distribute in the orders of the department for each title in the department a list of the members who are eligible for promotion to each such title in the order in which each member shall be considered for such promotion; provided, however, that such order shall be based upon the final determination by the colonel in accordance with subsections (b) and (e). Each eligible list for promotion shall be used by the colonel to fill vacancies for a period of 2 years from the initial date of publication; provided, however, that, if a new eligible list has not been established after such 2-year period, each eligible list shall continue to be used by the colonel for promotions until a new eligible list is established. A promotion to a vacancy occurring in any title for which an examination is conducted in accordance with this section shall be made from the first 3 members on such list who are eligible for the promotion and who are willing to accept such promotion.

SECTION 58. Section 23 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 8, the word "appointments" and inserting in place thereof the following words:- admissions, appointments.

SECTION 59. Said section 23 of said chapter 22C, as so appearing, is hereby further amended by striking out, in line 10, the word "uniformed" and inserting in place thereof the following words:- cadets, uniformed.

1599 SECTION 60. Subsection (a) of section 24A of said chapter 22C, as so appearing, is
1600 hereby amended by striking out the second sentence and inserting in place thereof the following
1601 sentence:- If the member seeking to return to work in the position of a sworn member of said
1602 department exceeds a 1-year in break of service, the colonel shall not allow the member to return
1603 to such position if the member fails, as determined by the colonel, to successfully pass a
1604 background investigation, drug testing, applicable physical fitness testing, psychological testing
1605 and complete retraining approved by the committee on police training and certification
1606 established in chapter 6E.

1607 SECTION 61. Said section 24A of said chapter 22C, as so appearing, is hereby further
1608 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

1609 (d) Any member, retired for disability for more than 3 years shall not return to active
1610 service for the department if such member fails to meet the requirements set forth in paragraph
1611 (a) and fails to complete the police training approved by the committee on police training and
1612 certification established in chapter 6E.

1613 SECTION 62. Section 40 of said chapter 22C, as so appearing, is hereby amended by
1614 striking out, in line 4, the words “and to” and inserting in place thereof the following words:-
1615 and, subject to the approval of the committee on police training and certification established in
1616 chapter 6E, to.

1617 SECTION 63. Section 63 of said chapter 22C, as so appearing, is hereby amended by
1618 inserting after the word “skill”, in line 17, the following words:- ; provided, however, that such
1619 officers shall remain subject to certification and training requirements of the Massachusetts
1620 peace officer standards and training commission established in chapter 6E.

1621 SECTION 64. Section 64 of said chapter 22C, as so appearing, is hereby amended by
1622 striking out the second sentence and inserting in place thereof the following sentence:- Such
1623 special state police officers shall: (i) serve for 1 year, subject to removal by the colonel; (ii)
1624 receive such training and certification as the Massachusetts peace officer standards and training
1625 commission established in chapter 6E shall direct; and (iii) have the same power to make arrests
1626 as the state police of any criminal offense committed in or upon lands or structures located in the
1627 town of Framingham within the charge of said director.

1628 SECTION 65. Section 68 of said chapter 22C, as so appearing, is hereby amended by
1629 striking out the first sentence and inserting in place thereof the following sentence:- The colonel
1630 may, at the request of the director of the bureau of special investigations, with the approval of the
1631 fraudulent claims commission, appoint as special state police officers employees of said bureau
1632 who have undergone training and certification as required by the Massachusetts peace officer
1633 standards and training commission established in chapter 6E.

1634 SECTION 66. Section 2JJJJ of chapter 29 of the General Laws, as so appearing, is hereby
1635 amended by striking out, in lines 6 and 7, the words “municipal police training committee, under
1636 section 116 of chapter 6” and inserting in place thereof the following words:- committee on
1637 police training and certification established pursuant to section 4 of chapter 6E.

1638 SECTION 67. Section 2 of chapter 31 of the General Laws, as so appearing, is hereby
1639 amended by striking out, in line 49, the words “eight of chapter thirty-one A” and inserting in
1640 place thereof the following words:- 8 of chapter 31A; provided, however, that the commission
1641 shall not have jurisdiction to hear an appeal of a decision by the Massachusetts peace officer

1642 standards and training commission established pursuant to chapter 6E to take adverse action
1643 against a law enforcement officer under section 10 of said chapter 6E.

1644 SECTION 68. The first paragraph of section 42 of said chapter 31, as so appearing, is
1645 hereby amended by adding the following sentence:- This section shall not apply to a person who
1646 is the subject of disciplinary action or other employment-related consequences by an appointing
1647 agency, as defined in section 1 of chapter 6E, that results from decertification under section 10 of
1648 said chapter 6E.

1649 SECTION 69. Section 43 of said chapter 31, as so appearing, is hereby amended by
1650 adding the following paragraph:-

1651 This section shall not apply to a person who is the subject of disciplinary action or
1652 employment-related consequences by an appointing agency, as defined in section 1 of chapter
1653 6E, that results from decertification under section 10 of said chapter 6E.

1654 SECTION 70. Section 36C of chapter 40 of the General Laws, as so appearing, is hereby
1655 amended by striking out, in lines 1 and 2, the words “members of municipal police departments,
1656 and all uniformed members of the state police shall” and inserting in place thereof the following
1657 words:- law enforcement officers, as defined in section 1 of chapter 6E, shall.

1658 SECTION 71. The first paragraph of said section 36C of said chapter 40, as so appearing,
1659 is hereby amended by striking out the third sentence and inserting in place thereof the following
1660 sentence:- Said training shall be approved and coordinated by the committee on police training
1661 and certification, and shall be included in the curriculum of all police training schools, academies
1662 and programs.

1663 SECTION 72. Said section 36C of said chapter 40, as so appearing, is hereby further
1664 amended by striking out, in lines 11 and 16, the word “police” and inserting in place thereof, in
1665 each instance, the following words:- law enforcement.

1666 SECTION 73. Section 96A of chapter 41 of the General Laws, as so appearing, is hereby
1667 amended by inserting after the word “felony”, in line 1, the following words:- or whose name is
1668 listed in the national decertification index or the database of decertified law enforcement officers
1669 maintained by the Massachusetts peace officer standards and training commission pursuant to
1670 chapter 6E.

1671 SECTION 74. Said chapter 41 is hereby further amended by striking out section 96B, as
1672 so appearing, and inserting in place thereof the following section:-

1673 Section 96B. Every person who receives an appointment to a position in which they will
1674 exercise police powers in a law enforcement agency, as defined in section 1 of chapter 6E, shall,
1675 prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course
1676 of study approved by the committee on police training and certification, established in section 4
1677 of said chapter 6E. Chapter 31 and any collective bargaining agreement notwithstanding, any
1678 person so attending such a school, academy or program shall be deemed to be a student officer
1679 and shall be exempted from said chapter 31 and any collective bargaining agreement for that
1680 period during which they are assigned to a police training school, academy or program; provided,
1681 however, that such person shall be paid the regular wages provided for the position to which they
1682 were appointed and such reasonable expenses as may be determined by the appointing authority
1683 and shall be subject to chapter 152.

Every law enforcement officer, as defined in section 1 of chapter 6E, appointed to a position in any such agency, shall be assigned to and shall attend a prescribed course of study approved by the committee on police training and certification for in-service officers training at such intervals and for such periods as said committee, subject to approval of the Massachusetts peace officer standards and training commission established in section 2 of said chapter 6E, may determine. Any such police officer who receives an appointment to a position of higher rank shall also complete such other courses of supervisory training as the committee, subject to approval of the commission, may determine. While attending such school, academy or program or completing such courses, such persons shall be paid their regular wages as a law enforcement officer and shall receive such reasonable expenses as may be determined by the appointing authority.

Failure of an appointed person to comply with this section prior to exercising police powers shall result in the appointed person's removal by the appointing authority. Failure of an appointed person to satisfactorily complete the prescribed course of study shall prevent the Massachusetts peace officer standards and training commission from issuing a certification to said person.

SECTION 75. Section 97B of said chapter 41, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words "municipal police training committee established by section one hundred and sixteen of chapter six" and inserting in place thereof the following words:- the division of police training and certification established pursuant to section 4 of chapter 6E.

1705 SECTION 76. Said section 97B of said chapter 41, as so appearing, is hereby further
1706 amended by striking out, in lines 21 and 22, the words “municipal police training committee”
1707 and inserting in place thereof the following words:- the committee on police training and
1708 certification established in section 4 of chapter 6E.

1709 SECTION 77. Said chapter 41 is hereby further amended by inserting after section 98G
1710 the following section:-

1711 Section 98H. An agreement by a law enforcement agency, as defined in section 1 of
1712 chapter 6E, to settle a complaint of professional misconduct by a law enforcement officer, as
1713 defined in said section 1 of said chapter 6E, shall not include a nondisclosure, non-disparagement
1714 or other similar clause in a settlement agreement between the law enforcement agency and a
1715 complainant unless the complainant requests such provision in writing.

1716 SECTION 78. Section 37L of chapter 71 of the General Laws, as appearing in the 2018
1717 Official Edition, is hereby amended by inserting after the third paragraph the following
1718 paragraph:-

1719 School department personnel and school resource officers, as defined in section 37P,
1720 shall not disclose to a law enforcement officer or agency, including local, municipal, regional,
1721 county, state and federal law enforcement, through an official report or unofficial channels,
1722 including, but not limited to, text, phone, email, database and in-person communication, or
1723 submit to the department of state police’s Commonwealth Fusion Center, the Boston Regional
1724 Intelligence Center or any other database or system designed to track gang affiliation or
1725 involvement, any information relating to a student or a student’s family member from its
1726 databases and other recordkeeping systems including: (i) immigration status; (ii) citizenship; (iii)

1727 neighborhood of residence; (iv) religion; (v) national origin; (vi) ethnicity; or (vii) suspected,
1728 alleged, or confirmed gang affiliation, unless it is germane to a specific unlawful incident or to a
1729 specific prospect of unlawful activity the school is otherwise required to report. Nothing in this
1730 paragraph shall prohibit the sharing of information: (i) for the purposes of completing a report
1731 pursuant to section 51A of chapter 119; (ii) upon the specific, informed written consent of the
1732 eligible student, parent or guardian; (iii) to comply with a court order or lawfully issued
1733 subpoena; (iv) in connection with a health or safety emergency pursuant to the provisions of 603
1734 C.M.R. 23.07(4)(e); or (v) for the purposes of filing a weapon report with the local chief of
1735 police pursuant to this section.

1736 SECTION 79. Said chapter 71 is hereby further amended by striking out section 37P, as
1737 so appearing, and inserting in place thereof the following section:-

1738 Section 37P. (a) As used in this section the following words shall, unless the context
1739 clearly requires otherwise, have the following meanings:

1740 “Chief of police”, the chief of police or the board or officer having control of the police
1741 department in a city or town.

1742 “Commission”, the model school resource officer memorandum of understanding review
1743 commission established in subsection (b).

1744 “Model memorandum of understanding”, the model school resource officer memorandum
1745 of understanding developed by the commission.

1746 “School resource officer”, a duly sworn municipal police officer with all necessary
1747 training, up-to-date certificates, including special school resource officer certification as required

by subsection (b) of section 3 of chapter 6E or a special officer appointed by the chief of police charged with: (i) providing law enforcement; (ii) promoting school safety and security services to elementary and secondary public schools; and (iii) maintaining a positive school climate for all students, families and staff. For the purpose of this section, a school resource officer shall be exempt pursuant to subsection (j) of section 10 of chapter 269, while serving in the officer's official capacity.

(b) There shall be a model school resource officer memorandum of understanding review commission to develop and review the model memorandum of understanding and make recommendations for changes to the model memorandum of understanding as the commission deems appropriate.

The commission shall include: the commissioner of elementary and secondary education and the secretary of the executive office of public safety and security, who shall serve as co-chairs; the attorney general or a designee; the child advocate or a designee; the chief justice of the juvenile court or a designee; the secretary of health and human services or a designee; the executive director of the Massachusetts Association of School Superintendents, Inc. or a designee ; the president of the Massachusetts Chiefs of Police Association Incorporated or a designee; the president of the Massachusetts Major City Chiefs, Inc. or a designee; the training director of the committee on police training and certification established in section 4 of chapter 6E or a designee; the executive director of the mental health legal advisors committee established in section 34E of chapter 221 or a designee; the executive director of Citizens for Juvenile Justice, Inc. or a designee; the executive director of the Children's League of Massachusetts, Inc. or a designee; a Massachusetts public school superintendent, to be appointed by the senate president; a Massachusetts public school teacher, to appointed by the speaker of the house of

1771 representatives; a Massachusetts public school social worker, to be appointed by the minority
1772 leader of the senate; a parent or guardian of a child in a Massachusetts public school, to be
1773 appointed by the minority leader of the house of representatives; and 4 members to be appointed
1774 by the governor: 1 of whom shall be a representative of the Massachusetts Association of School
1775 Committees, Inc., 1 of whom shall be a representative of Massachusetts School Counselors
1776 Association, Inc. and 2 of whom shall be representatives from Massachusetts youth organizations
1777 with proven records of supporting services and programs for high numbers of youths in order to
1778 ensure healthy development and social responsibility.

1779 The model memorandum of understanding shall be developed for schools and police
1780 departments as the minimum requirement for schools to formalize and clarify implementation of
1781 the partnership between the school and the school resource officer. In conducting such
1782 development and review, the commission shall determine the necessary provisions to achieve the
1783 district's educational and school safety goals and to help maintain a positive school environment
1784 for all students.

1785 The model memorandum of understanding shall, at minimum, describe: (i) the mission
1786 statement, goals and objectives of the school resource officer program; (ii) the roles and
1787 responsibilities of the school resource officer, the police department and the school; (iii) the
1788 process for selecting school resource officers; (iv) the mechanisms to incorporate school resource
1789 officers into the school environment, including school safety meetings; (v) information sharing
1790 between school resource officers, school staff and other partners; (vi) the organizational structure
1791 of the school resource officer program, including supervision of school resource officers and the
1792 lines of communication between the school district and police department; (vii) training for
1793 school resource officers, including, but not limited to, continuing professional development in

1794 child and adolescent development, conflict resolution and diversion strategies, de-escalation
1795 tactics and any other training required by the Massachusetts peace officer standards and training
1796 commission established in section 2 of chapter 6E; and (viii) the manner and division of
1797 responsibility for collecting and reporting the school-based arrests, citations and court referrals
1798 of students to the department of elementary and secondary education in accordance with
1799 regulations promulgated by the department.

1800 The model memorandum of understanding shall expressly state that school resource
1801 officers shall not: (i) serve as school disciplinarians, enforcers of school regulations or in place of
1802 licensed school psychologists, psychiatrists or counselors; and (ii) use police powers to address
1803 traditional school discipline issues, including non-violent disruptive behavior.

1804 In carrying out its duties under this section, the commissioner of elementary and
1805 secondary education shall work with the executive office of public safety and security to provide
1806 the commission with any data and information they consider relevant to the commission's duties.

1807 The commission shall meet every 5 years for the purpose of developing and reviewing
1808 the model memorandum of understanding. The model memorandum of understanding shall be
1809 subject to final approval by the co-chairs of the commission and shall be made publicly available
1810 by the department of elementary and secondary education, distributed to school districts and filed
1811 with the clerks of the house of representatives and senate.

1812 Members shall not receive compensation for their services but may receive
1813 reimbursement for the reasonable expenses incurred in carrying out their responsibilities as
1814 members of the commission. The commissioner of elementary and secondary education shall
1815 furnish reasonable staff and other support for the work of the commission. Prior to issuing its

recommendations, the commission shall provide the opportunity to seek public input across regions of the commonwealth. It shall not constitute a violation of chapter 268A for a person employed by a school district to serve on the commission or to participate in commission deliberations that may have a financial impact on the district or municipality employing that person. The commission may establish procedures to ensure that no such person participates in commission deliberations that may directly affect the school districts employing those persons.

(c) The executive office of public safety and security, in consultation with the department of elementary and secondary education, shall make available to all communities the model memorandum of understanding, statements of operating procedures and advisories on how to establish said documents.

(d) For the purpose of fostering a safe and healthy environment for all students through strategic and appropriate use of law enforcement resources and to achieve positive outcomes for youth and public safety, a chief of police, at the request of the superintendent and subject to appropriation, shall assign at least 1 school resource officer to serve the city, town, commonwealth charter school, regional school district or county agricultural school. In the case of a regional school district, commonwealth charter school or county agriculture school, the chief of police of the city or town in which the school is located shall, at the request of the superintendent, assign the school resource officer who may be the same officer for all schools in the city or town. Annually, not later than August 1, the superintendent shall report to the department of elementary and secondary education and publicly present to the relevant school committee: (i) the cost to the school district of assigning a school resource officer; (ii) a description of the proposed budget for mental, social or emotional health support personnel for the school; and (iii) the number of school-based arrests, citations and court referrals made in the

1839 previous year disaggregated as required by the department of elementary and secondary
1840 education.

1841 In assigning a school resource officer, the chief of police shall assign an officer that the
1842 chief believes would strive to foster an optimal learning environment and educational community
1843 that promotes a strong partnership between school and police personnel. The chief of police shall
1844 give preference to candidates who demonstrate the requisite personality and character to work
1845 effectively with children, youth and educators in a school environment with a demonstrated
1846 ability to work successfully with a population that has a similar racial and ethnic background as
1847 those prevalent in the student body, and who have received specialized training relating to
1848 working with adolescents and children, including cognitive development, de-escalation tactics,
1849 as defined in section 1 of chapter 6E and alternatives to arrest and diversion strategies. The
1850 appointment shall not be based solely on seniority. The performance of a school resource officer
1851 shall be reviewed annually by the superintendent and the chief of police.

1852 The superintendent and the chief of police shall adopt, at minimum, the model
1853 memorandum of understanding developed by the commission pursuant to subsection (b) and may
1854 add further provisions as they mutually deem fit; provided, however, that no further provision
1855 included in the memorandum of understanding adopted by said superintendent and said chief of
1856 police shall conflict with or omit any provisions of this section. The final memorandum of
1857 understanding adopted by the superintendent and the chief of police shall be made public and
1858 placed on file annually with the department of elementary and secondary education and in the
1859 offices of the school superintendent and the chief of police.

1860 The chief of police, in consultation with the school superintendent, shall establish
1861 operating procedures to provide guidance to school resource officers about daily operations,
1862 policies and procedures. At a minimum, the operating procedures as established by the chief of
1863 police, shall describe the following for the school resource officer:

1864 (i) the school resource officer uniform;

1865 (ii) use of police force, arrest, citation and court referral on school property;

1866 (iii) a statement and description of students' legal rights, including the process for
1867 searching and questioning students and circumstances requiring notification to and presence of
1868 parents and administrators;

1869 (iv) chain of command, including delineating to whom the school resource officer reports
1870 and how school administrators and the school resource officer work together;

1871 (v) performance evaluation standards, which shall incorporate monitoring compliance
1872 with the memorandum of understanding and use of arrest, citation and police force in school;

1873 (vi) protocols for diverting and referring at-risk students to school and community-based
1874 supports and providers; and

1875 (vii) information sharing between the school resource officer, school staff and parents or
1876 guardians.

1877 (e) Each school shall annually file its final memorandum of understanding and operating
1878 procedures with the department of elementary and secondary education. The department of
1879 elementary and secondary education shall collect data on the number of mental and social

1880 emotional health support personnel and the number of school resource officers employed by each
1881 local education agency and shall publish a report of the data on its website. The department shall
1882 promulgate rules or regulations necessary to carry out this section.

1883 (f) Notwithstanding subsection (d), if the chief of police, in consultation with the
1884 superintendent, determines that there are not sufficient resources to assign a school resource
1885 officer to serve the city, town, regional school district or county agricultural school, the chief of
1886 police shall consult with the department of state police to ensure that a school resource officer is
1887 assigned, subject to appropriation, pursuant to the requirements of this section; provided, further,
1888 that if a state police officer is assigned to a city, town, regional school district or county
1889 agricultural school, said assignment shall not be based solely on seniority and a candidate shall
1890 be considered who would strive to foster an optimal learning environment and educational
1891 community; provided, further, that there shall be placed on file in the office of the superintendent
1892 and the department of state police the final memorandum of understanding clearly defining the
1893 roles and duties of the school resource officer.

1894 (g) No public employer shall be liable for injury, loss of property, personal injury or
1895 death caused by an act or omission of a public employee while acting in the scope of the public
1896 employee's employment and arising out of the implementation of this section. This section shall
1897 not be construed as creating or imposing a specific duty of care.

1898 The department of elementary and secondary education shall collect and publish
1899 disaggregated data regarding school-based arrests, citations and court referrals of students to the
1900 department and shall make such report available for public review.

SECTION 80. The second paragraph of section 32A of chapter 75 of the General Laws, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- Every officer who receives an appointment to a position on a full-time basis in which that person may exercise police powers for any of the campuses of the University of Massachusetts, shall, prior to exercising those police powers, be certified pursuant to chapter 6E.

SECTION 81. Section 24M of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out paragraph (1) and inserting in place thereof the following paragraph:-

(1) The committee on police training and certification established in section 4 of chapter 6E shall provide training, including, but not limited to alcohol education concerning the aforesaid sections, to all law enforcement personnel throughout the commonwealth.

SECTION 82. Section 32E7/8 of said chapter 90, as so appearing, is hereby amended by striking out, in line 5, the word "Municipal".

SECTION 83. Section 63 of said chapter 90, inserted by section 10 of chapter 122 of the acts of 2019, is hereby amended by adding the following subsection:-

(h) A law enforcement agency, as defined in section 1 of chapter 6E, shall not engage in racial or other profiling. The attorney general may bring a civil action in the superior court for injunctive or other equitable relief to enforce this subsection. For the purposes of this subsection, "racial or other profiling" shall mean differential treatment by a law enforcement officer based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity or sexual orientation in conducting a law enforcement action, whether intentional or evidenced by statistically-significant data showing disparate treatment;

provided, however, that “racial or other profiling” shall not include the use of such characteristics, in combination with other factors, to apprehend a specific suspect based on a description that is individualized, timely and reliable.

SECTION 84. Section 2 of chapter 90C of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following 2 paragraphs:-

Each police chief appointed by the trustees of the commonwealth’s state universities and community colleges under section 22 of chapter 15A shall certify to the registrar, on or before January first of each year, that:

(1) the police officers appointed by the trustees at the state university or community college have been certified pursuant to chapter 6E;

(2) said officers have completed the annual in-service training required by the committee on police training and certification established in said chapter 6E;

(3) the state university or community college police department submits uniform crime reports to the Federal Bureau of Investigation;

(4) a memorandum of understanding has been entered into with the police chief of the municipality wherein the state university or community college is located outlining the policies and procedures for utilizing the municipality’s booking and lock-up facilities, fingerprinting and breathalyzer equipment if the state university or community college police department does not provide booking and lock-up facilities, fingerprinting or breathalyzer equipment; and

1943 (5) the state university or community college police department has policies and
1944 procedures in place for use of force, pursuit, arrest, search and seizure, racial profiling and motor
1945 vehicle law enforcement.

1946 Nothing in this section, except the previous paragraph, shall limit the authority granted to
1947 the police chiefs and police officers at the state universities and community colleges under said
1948 section 22 of said chapter 15A or section 18 of chapter 73.

1949 SECTION 85. Section 1 of chapter 111 of the General Laws, as so appearing, is hereby
1950 amended by inserting after the definition of “Inland waters” the following definition:-

1951 “Law enforcement-related injuries and deaths”, injuries and deaths caused by a law
1952 enforcement officer or correction officer, whether employed by the commonwealth, a county, a
1953 municipality or other public or private entity, and occupational fatalities of a law enforcement
1954 officer or correction officer.

1955 SECTION 86. Said chapter 111 is hereby further amended by inserting after section 6D
1956 the following section:-

1957 Section 6E. The department shall collect and report data on law enforcement-related
1958 injuries and deaths. The commissioner shall promulgate regulations necessary to implement this
1959 section, including, but not limited to, protocols and procedures for the reporting of law
1960 enforcement-related injuries and deaths to the department by physicians and other licensed health
1961 care professionals.

1962 SECTION 87. Section 8 of chapter 111B of the General Laws, as appearing in the 2018
1963 Official Edition, is hereby amended by inserting after the word “station”, in lines 3, 7, 13, 26, 28,

1964 35, 36, 37, 43, 46 and 57, in each instance, the following words:- or the Dukes county sheriff's
1965 office.

1966 SECTION 88. Section 131 of chapter 140 of the General Laws, as so appearing, is hereby
1967 amended by striking out, in lines 597 and 598, the words "municipal police training committee"
1968 and inserting in place thereof the following words:- committee on police training and
1969 certification.

1970 SECTION 89. Section 31 of chapter 147 of the General Laws, as so appearing, is hereby
1971 amended by striking out, in lines 3 and 4 and lines 6 and 7, the words "municipal police training
1972 committee" and inserting in place thereof, in each instance, the following words:- Massachusetts
1973 peace officer standards and training commission.

1974 SECTION 90. Chapter 231 of the General Laws is hereby amended by inserting after
1975 section 85AA the following section:-

1976 Section 85BB. (a) A law enforcement officer, as defined in section 1 of chapter 6E, who
1977 knowingly submits to a state agency, state authority, city, town or agency, as defined in said
1978 section 1 of said chapter 6E, a false or fraudulent claim of hours worked for payment and
1979 receives payment therefor or knowingly makes, uses or causes to be made or used a false record
1980 or statement material to a false or fraudulent claim of hours worked for payment that results in a
1981 law enforcement officer receiving payment therefor or any person who conspires to commit a
1982 violation of this section shall be punished by a fine of 3 times the amount of the fraudulent wages
1983 paid or by imprisonment for not more than 2 years.

1984 SECTION 91. Chapter 265 of the General Laws is hereby amended by inserting after
1985 section 13H the following section:-

1986 Section 13H½. (a) For the purposes of this section “law enforcement officer” shall mean
1987 a police officer, an auxiliary, intermittent, special, part-time or reserve police officer, a police
1988 officer in the employ of a public institution of higher education pursuant to section 5 of chapter
1989 15A, a public prosecutor, a municipal or public emergency medical technician, a deputy sheriff,
1990 a correction officer, a court officer, a probation officer, a parole officer, an officer of the
1991 department of youth services, a constable, a campus police officer who holds authority as a
1992 special state police officer or a person impersonating one of the foregoing.

1993 (b) A law enforcement officer who commits an indecent assault and battery on a person
1994 who has attained the age of 14 and who is in the custody or control of such law enforcement
1995 officer shall be punished by imprisonment in the state prison for not more than 5 years, or by
1996 imprisonment for not more than 2½ years in a jail or house of correction. In a prosecution
1997 commenced under this subsection, a person shall be deemed incapable of consent to contact of a
1998 sexual nature with a law enforcement officer.

1999 (c) A law enforcement officer who commits an indecent assault and battery on an elder or
2000 person with a disability, as defined in section 13K, and who is in the custody or control of such
2001 law enforcement officer shall be punished by imprisonment in the state prison for not more than
2002 10 years, or by imprisonment in the house of correction for not more than 2½ years, and a law
2003 enforcement officer who commits a second or subsequent such offense shall be punished by
2004 imprisonment in the state prison for not more than 20 years. In a prosecution commenced under
2005 this subsection, a person shall be deemed incapable of consent to contact of a sexual nature with
2006 a law enforcement officer.

2007 (d) A law enforcement officer who commits an indecent assault and battery on a person
2008 in their custody or control who is known to such law enforcement officer as having an
2009 intellectual disability shall for the first offense be punished by imprisonment in the state prison
2010 for not less than 5 years or not more than 10 years; and for a second or subsequent offense shall
2011 be punished by imprisonment in the state prison for not less than 10 years. Except in the case of a
2012 conviction for the first offense for violation of this subsection, the imposition or execution of the
2013 sentence shall not be suspended, and no probation or parole shall be granted until the minimum
2014 imprisonment herein provided for the offense shall have been served. In a prosecution
2015 commenced under this subsection, a person shall be deemed incapable of consent to contact of a
2016 sexual nature with a law enforcement officer.

2017 (e) A law enforcement officer who commits an indecent assault and battery on a child
2018 under the age of 14 and who is in the custody or control of such law enforcement officer shall be
2019 punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in
2020 the house of correction for not more than 2 and one-half years. A prosecution commenced under
2021 this subsection shall neither be continued without a finding nor placed on file. In a prosecution
2022 commenced under this subsection, a child under the age of 14 shall be deemed incapable of
2023 consent to contact of a sexual nature with a law enforcement officer.

2024 SECTION 92. Section 22 of said chapter 265, as appearing in the 2018 Official Edition,
2025 is hereby amended by adding the following subsection:-

2026 (c) A law enforcement officer who has sexual intercourse with a person in the custody or
2027 control of the law enforcement officer shall be found to be in violation of subsection (b),
2028 provided, however, that for the purposes of this subsection, "sexual intercourse" shall include

vaginal, oral or anal intercourse, including fellatio, cunnilingus or other intrusion of a part of a person's body or an object into the genital or anal opening of another person's body. In a prosecution commenced under this subsection, a person shall be deemed incapable of consent to sexual intercourse with such law enforcement officer. For the purposes of this subsection, "law enforcement officer" shall mean a police officer, an auxiliary, intermittent, special, part-time or reserve police officer, a police officer in the employ of a public institution of higher education pursuant to section 5 of chapter 15A, a public prosecutor, a municipal or public emergency medical technician, a deputy sheriff, a correction officer, a court officer, a probation officer, a parole officer, an officer of the department of youth services, a constable, a campus police officer who holds authority as a special state police officer or a person impersonating any of the foregoing.

SECTION 93. Section 10A of chapter 269 of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 and 3 and lines 17 and 18, the words "municipal police training committee" and inserting in place thereof, in each instance, the following words:- committee on police training and certification.

SECTION 94. Chapter 276 of the General Laws is hereby amended by inserting after section 2C the following section:-

Section 2D. (a) A warrant that does not require a law enforcement officer to knock and announce their presence and purpose before forcibly entering a residence shall not be issued except by a judge and only if the affidavit supporting the request for the warrant: (i) establishes probable cause that if the law enforcement officer announces their presence their life or the lives of others will be endangered; and (ii) includes an attestation that the law enforcement officer

2051 filing the affidavit has no reason to believe that minor children or adults over the age of 65 are in
2052 the home.

2053 (b) A police officer executing a search warrant shall knock and announce their presence
2054 and purpose before forcibly entering a residence unless authorized by a warrant to enter pursuant
2055 to subsection (a).

2056 (c) An officer shall not dispense with the requirements of subsections (a) and (b) except
2057 to prevent a credible risk of imminent harm as defined in section 1 of chapter 6E.

2058 (d) Evidence seized or obtained during the execution of a warrant shall be inadmissible if
2059 a law enforcement officer violates this section.

2060 SECTION 95. Subsection (a) of section 100F of said chapter 276, as appearing in the
2061 2018 Official Edition, is hereby amended by striking out the first sentence and inserting in place
2062 thereof the following sentence:- A petitioner who has not more than 2 records as an adjudicated
2063 delinquent or adjudicated youthful offender may, on a form furnished by the commissioner and
2064 signed under the penalties of perjury, petition that the commissioner expunge the record or
2065 records; provided, however, that multiple offenses arising out of the same incident shall be
2066 considered a single offense for the purposes of this section.

2067 SECTION 96. Subsection (a) of section 100G of said chapter 276, as so appearing, is
2068 hereby amended by striking out the first sentence and inserting in place thereof the following
2069 sentence:- A petitioner who has not more than 2 records of conviction may, on a form furnished
2070 by the commissioner and signed under the penalties of perjury, petition that the commissioner
2071 expunge the record or records; provided, however, that multiple offenses arising out of the same
2072 incident shall be considered a single offense for the purposes of this section.

SECTION 97. Subsection (a) of section 100H of said chapter 276, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- A petitioner who has not more than 2 records that do not include an adjudication as a delinquent, an adjudication as a youthful offender or a conviction may, on a form furnished by the commissioner and signed under the penalties of perjury, petition that the commissioner expunge the record or records; provided, however, that multiple offenses arising out of the same incident shall be considered a single offense for the purposes of this section.

SECTION 98. Said chapter 276 is hereby further amended by striking out section 100I, as so appearing, and inserting in place thereof the following section:-

Section 100I. (a) The commissioner shall certify that a record or records that are the subject of the petition filed pursuant to section 100F, section 100G or section 100H are eligible for expungement provided that:

(1) any offense resulting in the record or records that are the subject of the petition is not a criminal offense included in section 100J;

(2) all offenses that are the subject of the petition to expunge the record or records occurred before the petitioner's twenty-first birthday;

(3) all offenses that are the subject of the petition to expunge the record or records, including any period of incarceration, custody or probation, occurred not less than 7 years before the date on which the petition was filed if the record or records that are the subject of the petition include a felony, and not less than 3 years before the date on which the petition was filed if the record or records that are the subject of the petition only include a misdemeanor or misdemeanors;

2095 (4) other than motor vehicle offenses in which the penalty does not exceed a fine of \$50
2096 and the record or records that are the subject of the petition to expunge, the petitioner does not
2097 have any other criminal court appearances, juvenile court appearances or dispositions on file
2098 with the commissioner; provided, however, multiple offenses arising out of the same incident
2099 shall be considered a single offense for the purposes of this section;

2100 (5) other than motor vehicle offenses in which the penalty does not exceed a fine of \$50,
2101 the petitioner does not have any criminal court appearances, juvenile court appearances or
2102 dispositions on file in any other state, United States possession or in a court of federal
2103 jurisdiction; and

2104 (6) the petition includes a certification by the petitioner that, to the petitioner's
2105 knowledge, the petitioner is not currently the subject of an active criminal investigation by any
2106 criminal justice agency.

2107 Any violation of section 7 of chapter 209A or section 9 of chapter 258E shall be treated as a
2108 felony for purposes of this section.

2109 SECTION 99. Notwithstanding any general or special law or collective bargaining
2110 agreement to the contrary, on or before June 30, 2021, every law enforcement agency, as defined
2111 in section 1 of chapter 6E of the General Laws, shall provide to the Massachusetts peace officer
2112 standards and training commission, in a form to be determined by the commission, a
2113 comprehensive disciplinary record for each law enforcement officer, as defined by said section 1
2114 of said chapter 6E, employed by said agency, including, but not limited to: (i) every complaint of
2115 which the officer was the subject of during the course of their employment with the agency; and
2116 (ii) all disciplinary records of the officer, including the final disposition of a complaint, if any,

2117 and any discipline imposed. On or before December 1, 2021, the commission shall provide to
2118 each agency a list of each officer currently employed in the commonwealth, and each agency
2119 shall provide to the commission, in a form to be determined by the commission, a comprehensive
2120 disciplinary record for each law enforcement officer previously employed by said agency or a
2121 transferor agency for which the agency is the transferee agency, including, but not limited to: (i)
2122 every complaint of which the officer was the subject of during the course of their employment
2123 with the agency; and (ii) all disciplinary records of the officer, including the final disposition of a
2124 complaint, if any, and any discipline imposed.

2125 SECTION 100. Notwithstanding subsections (b), (c), and (d) of section 2 of chapter 6E
2126 of the General Laws, in making the initial appointments to the Massachusetts peace officer
2127 standards and training commission, the governor shall appoint 3 commissioners for a 1-year
2128 term; the attorney general shall appoint 3 commissioners for a 2-year term; and the governor and
2129 the attorney general shall jointly appoint 1 commissioner for a 3-year term, 1 commissioner for a
2130 4-year term and 1 commissioner for a 5-year term. Thereafter, as the term of a commissioner
2131 expires, their successor shall be appointed for a 5-year term pursuant to said section 2 of said
2132 chapter 6E. A person appointed pursuant to this section for less than 5 years shall be eligible for
2133 re-appointment to the commission for 2 full 5-year terms.

2134 SECTION 101. The initial appointments to the Massachusetts peace officer standards and
2135 training commission under section 2 of chapter 6E of the General Laws shall be made not later
2136 than April 1, 2021. All subsequent appointments shall be made within 30 days of an expired term
2137 or, if the vacancy is due to something other than an expired term, within 90 days.

SECTION 102. (a) Notwithstanding section 4 of chapter 6E of the General Laws, a law enforcement officer, as defined in section 1 of said chapter 6E, who has completed an academy or training program certified by the municipal police training committee or the training programs prescribed by chapter 22C of the General Laws on or before the effective date of this section and is appointed as a law enforcement officer as of the effective date of this section, shall be certified as of the effective date of this section. No officer who is certified pursuant to this section shall be required to complete or repeat a basic training program if such officer previously completed a basic training program provided or approved by the municipal police training committee or its predecessor, the criminal justice training council or received previous basic training that the Massachusetts peace officer standards and training commission deems equivalent to Massachusetts training standards.

(b) All law enforcement officers who have completed a reserve training program on or before the effective date of this section shall be certified as of the effective date of this section. Prior to the expiration of that certification, the officer shall complete additional training as required by the committee on police training and certification.

(c) Any training waiver or exemption granted by the municipal police training committee prior to the effective date of this section shall expire 6 months after the effective date of this section. Any person who has not completed an academy or training program certified by the municipal police training committee or the training programs prescribed by said chapter 22C on or before the effective date of this section, and has been appointed to a law enforcement position as of the effective date of this section, shall not exercise police powers following the expiration of any training waiver or exemption under this section. Prior to the expiration of this 6-month period, the person may obtain from the committee on police training and certification a waiver or

an extension of time necessary to complete training according to a work plan approved by the committee on police training and certification.

(d) The certification of a law enforcement officer who has graduated from an academy or training program certified by the municipal police training committee or the training programs prescribed by said chapter 22C who is certified as a result of this section and whose last names begin with: (i) A to H, inclusive, shall expire 1 year after the effective date of this section; (ii) I to P, inclusive, shall expire 2 years after the effective date of this section; and (iii) Q to Z, inclusive, shall expire 3 years after the effective date of this section.

SECTION 103. (a) There shall be a commission to review and make recommendations on: (i) improving, modernizing and developing comprehensive protocols for the training of state and county correction officers and juvenile detention officers; (ii) establishing clear limitations on the use of physical force by state and county correction officers and juvenile detention officers; and (iii) requiring that an inmate and the inmate's legally designated representative have the right to obtain a copy of all records relating to any use of force incident involving the inmate including, but not limited to, written reports, investigations, video and audio recordings and photographs; (iv) making a public record, and to what extent, records relating to any use of force incident involving an inmate; and (v) creating an independent body with the power to certify, renew, revoke or otherwise modify the certification of state and county correction officers and juvenile detention officers and the power to receive, investigate and adjudicate complaints of officer misconduct.

(b) The commission shall consist of: a former judge appointed by the chief justice of the supreme judicial court who shall serve as chair; the commissioner of correction or a designee; 1

2183 correctional officer who shall be appointed by the New England Police Benevolent Association,
2184 Inc.; the president of the Massachusetts Sheriffs Association, Inc. or a designee; the
2185 commissioner of the department of youth services or a designee; 1 correction officer who shall
2186 be appointed by the president of the Massachusetts Correction Officers Federated Union; 1
2187 member appointed by American Federation of State, County and Municipal Employees Council
2188 93 who shall be an employee of the department of youth services and who shall have not less
2189 than 5 years of experience working in a department of youth services secure facility; the
2190 executive director of Citizens for Juvenile Justice, Inc. or a designee; the executive director of
2191 Prisoners' Legal Services or a designee; the president of the Boston branch of the National
2192 Association for the Advancement of Colored People New England Area Conference or a
2193 designee; the executive director of Lawyers for Civil Rights, Inc. or a designee; the president of
2194 the Massachusetts Bar Association or a designee; 2 members appointed by the Massachusetts
2195 Black and Latino legislative caucus who shall not be members of the caucus; 2 members
2196 appointed by the Massachusetts House Asian Caucus who shall not be members of the caucus;
2197 the executive director of the American Civil Liberties Union of Massachusetts, Inc. or a
2198 designee; and 2 members who shall be appointed by the governor, 1 of whom shall be a member
2199 of the LGBTQ community and 1 of whom shall be a formerly-incarcerated woman.

2200 (c) In order to establish clear limitations on the use of physical force by correctional
2201 officers, the commission shall collect and analyze data on the use of force against inmates. The
2202 department of correction and sheriffs' departments shall provide the commission access to any
2203 and all reports written pursuant to 103 CMR 505.13 (1) and (2), or successor provisions. The
2204 commission shall ascertain whether the information provided is uniform, standardized and

2205 reasonably complete and, if not, shall recommend policies to increase uniformity, standardization
2206 and completeness.

2207 (d) The commission shall report and file its findings and recommendations, including any
2208 legislation, with the clerks of the house of representatives and senate and the joint committee on
2209 public safety and security not later than December 31, 2021.

2210 SECTION 104. (a) As used in this section, the following words shall, unless the context
2211 clearly requires otherwise, have the following meanings:

2212 “Biometric data”, computerized data relating to the physical, physiological or behavioral
2213 characteristics of a natural person, which allow or confirm the unique identification of such
2214 person, including, but not limited to, facial recognition, fingerprints, palm veins,
2215 deoxyribonucleic acid, palm prints, hand geometry or iris recognition.

2216 “Body-worn camera”, a portable electronic recording device worn on a law enforcement
2217 officer’s person that creates, generates, sends, receives, stores, displays and processes
2218 audiovisual recordings or records audio and video data of law enforcement-related encounters
2219 and activities.

2220 “Facial recognition software”, a category of biometric software that maps an individual’s
2221 facial features mathematically and stores the data as a faceprint.

2222 “Law enforcement officer”, as defined in section 1 of chapter 6E of the General Laws.

2223 “Law enforcement-related activities”, activities by a law enforcement officer, including,
2224 but not limited to, traffic stops, pedestrian stops, arrests, searches, interrogations, investigations,
2225 pursuits, crowd control, traffic control or non-community caretaking interactions with an

2226 individual while on patrol; provided, however, that “law enforcement-related activities” shall not
2227 include completion of paperwork alone or only in the presence of other law enforcement officers
2228 or civilian law enforcement personnel.

2229 “Recording”, the process of capturing data or information stored on a recording medium.

2230 (b) The executive office of public safety and security, in collaboration with the executive
2231 office of technology services and security, shall establish the law enforcement body camera task
2232 force. The task force shall propose regulations establishing a uniform code for the procurement
2233 and use of body-worn cameras by law enforcement officers to provide consistency throughout
2234 the commonwealth. The task force shall propose minimum requirements for the storage and
2235 transfer of audio and video recordings collected by body-worn cameras. The task force shall
2236 conduct not fewer than 5 public hearings in various parts of the commonwealth to hear testimony
2237 and comments from the public.

2238 (c) The task force shall consist of 25 members: the secretary of public safety and security
2239 or a designee; the secretary of technology services and security or a designee; the attorney
2240 general or a designee; a member appointed by the committee for public counsel services; a
2241 district court judge appointed by the chief justice of the supreme judicial court; 2 members
2242 appointed by the Massachusetts Black and Latino legislative caucus who shall have expertise in
2243 constitutional or civil rights law; 1 member appointed by the chair of the Massachusetts Minority
2244 Law Enforcement Officers Association; 1 member appointed by the chair of the Massachusetts
2245 Minority State Police Officers Association, Inc.; 1 member appointed by the chair of the
2246 Massachusetts Latino Police Officers Association, Inc.; 1 member appointed by the chair of the
2247 Massachusetts Association of Women in Law Enforcement, Inc.; 2 members appointed by the

2248 Massachusetts House Asian Caucus who shall have expertise in constitutional or civil rights law;
2249 the president of the Massachusetts Sheriffs' Association or a designee; 1 member appointed by
2250 the Massachusetts Coalition of Police, Inc.; the colonel of state police or a designee; the
2251 president of the Massachusetts District Attorneys Association or a designee; the executive
2252 director of the American Civil Liberties Union of Massachusetts, Inc. or a designee; the president
2253 of the Boston branch of the National Association for the Advancement of Colored People New
2254 England Area Conference or a designee; the president of the Massachusetts Defense Lawyers
2255 Association, Inc., or a designee; and 5 members appointed by the governor, 1 of whom shall be a
2256 police chief in a municipality with a body camera pilot program and a population of not fewer
2257 than 100,000 people, 1 of whom shall be a police chief in a municipality with a body camera
2258 pilot program and a population of not more than 50,000 people, 1 of whom shall be an expert on
2259 constitutional or privacy law who is employed by a law school in the commonwealth, 1 of whom
2260 shall be an elected official in a municipality with a body camera pilot program and 1 of whom
2261 shall be a representative of a law enforcement labor organization.

2262 (d) The task force shall elect a chair and vice-chair. A meeting of the task force may be
2263 called by its chair, the vice-chair or any 3 of its members. A quorum for the transaction of
2264 business shall consist of 7 members. All members of the task force shall serve without
2265 compensation. The executive agencies convening the task force shall assign administrative
2266 personnel to assist the work of the task force. The task force shall meet not less than 12 times. In
2267 addition to taking public testimony, the task force shall seek the advice of experts specializing in
2268 the fields of criminology, education, criminal or family law or other related fields, as appropriate.

2269 (e) On or before July 31, 2022, the task force shall, by majority vote, adopt recommended
2270 regulations for law enforcement agencies. The regulations recommended by the task force shall

2271 include, but not be limited to: (i) standards for the procurement of body-worn cameras and
2272 vehicle dashboard cameras by law enforcement agencies, including a requirement that such
2273 cameras or associated processing software include technology for redacting the images and
2274 voices of victims and bystanders; (ii) standards regarding the use of facial recognition or other
2275 biometric-matching software or other technology to analyze recordings obtained through the use
2276 of such cameras; provided, however, that such standards may prohibit or allow such use subject
2277 to requirements based on best practices and protocols; (iii) standards for training law
2278 enforcement officers in the basic use of such cameras; (iv) standards for: (A) the types of law
2279 enforcement encounters and interactions that shall be recorded and what notice, if any, shall be
2280 given to those being recorded; and (B) when a camera should be activated and when to
2281 discontinue recording; (v) a requirement that a camera be equipped with pre-event recording,
2282 capable of recording at least the 30 seconds prior to camera activation; (vi) a requirement
2283 preventing an officer from accessing or viewing any recording of an incident involving the
2284 officer before the officer is required to make a statement about the incident; (vii) standards for
2285 the identification, retention, storage, maintenance and handling of recordings from body
2286 cameras, including a requirement that recordings be retained for not less than 180 days but not
2287 more than 30 months for a recording not relating to a court proceeding or ongoing criminal
2288 investigation or for the same period of time that evidence is retained in the normal course of the
2289 court's business for a recording related to a court proceeding; (viii) standards pertaining to the
2290 recordings of use of force, detention or arrest by a law enforcement officer or pertaining to
2291 ongoing investigations and prosecutions to assure that recordings are retained for a period
2292 sufficient to meet the needs of all parties with an interest in the recordings; (ix) standards for the
2293 security of facilities in which recordings are kept; (x) requirements for state procurement of

2294 contracts for body-worn cameras and for data storage through which qualified law enforcement
2295 agencies may purchase goods and services; (xi) best practice language for contracts with third-
2296 party vendors for data storage, which shall provide that recordings from such cameras are the
2297 property of the law enforcement agency, are not owned by the vendor and cannot be used by the
2298 vendor for any purpose inconsistent with the policies and procedures of the law enforcement
2299 agency; (xii) procedures for supervisory internal review and audit; (xiii) sanctions for improper
2300 use of cameras, including a requirement that a law enforcement officer who does not activate a
2301 body-worn camera in response to a call for assistance shall include that fact in their incident
2302 report and note in the case file or record the reason for not activating the camera; (xiv) sanctions
2303 for tampering with a camera or recordings and for improper destruction of recordings; (xv)
2304 regulations pertaining to handling requests for the release of information recorded by a body-
2305 worn camera to the public; (xvi) requirements for reporting by law enforcement agencies
2306 utilizing body-worn cameras; (xvii) a retention schedule for recordings to ensure that storage
2307 policies and practices are in compliance with all relevant laws and adequately preserve
2308 evidentiary chains of custody and identify potential discovery issues; and (xviii) a process by
2309 which body camera footage may be included in a public record.

2310 (f) Not later than July 31, 2021, the task force shall file an interim report on its work
2311 product, including its proposed regulations under subsection (e) and any proposed legislation that
2312 is necessary to effectuate the regulations with the clerks of the house of representatives and the
2313 senate and the joint committee on public safety and homeland security.

2314 SECTION 105. (a) Notwithstanding any special or general law to the contrary, there
2315 shall be a special legislative commission established pursuant to section 2A of chapter 4 of the
2316 General Laws to conduct a study on the use of facial recognition technology by the

2317 Massachusetts Department of Transportation. The commission shall consist of 15 members: 2 of
2318 whom shall be the chairs of the joint committee on the judiciary or their designees, who shall
2319 serve as co-chairs; 1 of whom shall be the minority leader of the house of representatives or a
2320 designee; 1 of whom shall be the minority leader of the senate or a designee; 1 of whom shall be
2321 the chief justice of the supreme judicial court or a designee; 1 of whom shall be the attorney
2322 general or a designee; 1 of whom shall be the secretary of public safety and security or a
2323 designee; 1 of whom shall be the state auditor or a designee; 1 of whom shall be the registrar of
2324 motor vehicles or a designee; 1 of whom shall be the colonel of state police or a designee; 1 of
2325 whom shall be the executive director of the American Civil Liberties Union of Massachusetts,
2326 Inc. or a designee; 1 of whom shall be the chief counsel for the committee for public counsel
2327 services or a designee; 1 of whom shall be the president of the Massachusetts Sheriffs'
2328 Association or a designee; 1 of whom shall be the president of the Massachusetts District
2329 Attorneys Association or a designee; and 1 of whom shall be the executive director of the
2330 Massachusetts Technology Collaborative or a designee.

2331 The commission shall evaluate the use of facial recognition technology in the
2332 commonwealth and make recommendations to the legislature. The commission shall: (i) examine
2333 and evaluate the facial recognition system operated by the registry of motor vehicles and provide
2334 recommendations for regular independent bias testing; (ii) propose standards to ensure accuracy
2335 and equity of the system based on age, race, gender and religion; (iii) examine access to the
2336 facial recognition system and the management of information derived from it, including, but not
2337 limited to, data retention, data sharing and audit trails; (iv) identify which federal agencies, if
2338 any, have access to databases maintained by the commonwealth that catalogue images of faces
2339 and the authorization for, and terms of, such access; (v) evaluate the requirement for a warrant by

2340 law enforcement agencies to perform facial recognition searches, including, but not limited to,
2341 enhanced requirements to perform a search similar to those set forth in section 99 of chapter 272
2342 of the General Laws; (vi) provide recommendations for due process protections of criminal
2343 defendants when facial recognition technology is used in any part of an investigation; (vii)
2344 provide recommendations to ensure privacy for the public; and (viii) provide recommendations
2345 for adequate training and oversight on the use of facial recognition technology.

2346 For the purposes of this section, “facial recognition” shall mean an automated or semi-
2347 automated process that assists in identifying or verifying an individual or capturing information
2348 about an individual based on the physical characteristics of an individual’s face, head or body,
2349 that uses characteristics of an individual’s face, head or body to infer emotion, associations,
2350 activities or the location of an individual; provided, however, that “facial recognition” shall not
2351 include the use of search terms to sort images in a database.

2352 (b) The commission shall submit its findings and recommendations relative to the use of
2353 facial recognition technology by filing the same with the clerks of the house of representatives
2354 and senate and the governor not later than December 31, 2021.

2355 SECTION 106. (a) There shall be, pursuant to section 2A of chapter 4 of the General
2356 Laws, a special legislative commission on emergency hospitalizations pursuant to subsection (a)
2357 of section 12 of chapter 123 of the General Laws. The commission shall: (i) study how often
2358 emergency hospitalizations are used by law enforcement professionals; (ii) examine the impact
2359 of emergency hospitalizations on law enforcement resources; (iii) create best practices for
2360 coordination of services for hospitalized individuals by law enforcement and medical

professionals; and (iv) determine how to reduce police interactions with individuals frequently subject to emergency hospitalization.

(b) The commission shall consist of 11 members: the commissioner of mental health or a designee; the secretary of public safety and security or a designee; the executive director of the mental health legal advisors committee established in section 34E of chapter 221 of the General Laws or a designee; 2 law enforcement officers, as defined in section 1 of chapter 6E of the General Laws, to be appointed by the speaker of the house of representatives, of whom at least 1 shall reside in a gateway municipality as defined in section 3A of chapter 23A of the General Laws; 2 clinical social workers to be appointed by the president of the senate, of whom at least 1 shall reside in a gateway municipality, as defined in said section 3A of said chapter 23A; the president of the Massachusetts Medical Society or a designee; the president of the Massachusetts Nurses Association or a designee; the president of the Massachusetts Chiefs of Police Association Incorporated or a designee; and the president of the Massachusetts Coalition of Police, Inc. or a designee.

(c) The commission shall conduct a thorough review of the policies and procedures related to emergency hospitalizations pursuant to subsection (a) of section 12 of chapter 123 of the General Laws. The goals of the special commission shall be to: (i) develop strategies that reduce the amount of police resources and police interactions with individuals hospitalized pursuant to said subsection (a) of said section 12 of said chapter 123; (ii) better determine how law enforcement and medical professionals can coordinate services to advance the shared goals of public safety and public health in the commonwealth; and (iii) make recommendations, including, but not limited to, policy or legislative changes, related to emergency hospitalizations.

(d) The commission shall submit its report and recommendations, together with drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of the house of representatives and the senate not later than September 30, 2021.

SECTION 107. (a) Notwithstanding any general or special law to the contrary, there shall be established, pursuant to section 2A of chapter 4 of the General Laws, a special legislative commission to study and examine the civil service law, personnel administration rules, hiring procedures and by-laws for municipalities not subject to the civil service law and state police hiring practices.

(b) The commission shall consist of 29 members; 3 members appointed by the governor, 1 of whom shall be a member of a police officers' union, 1 of whom shall be a member of a firefighters' union and 1 of whom shall be a member of a correctional officers' union; 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc. or the executive director's designee; 1 of whom shall be the president of the Boston branch of the National Association for the Advancement of Colored People New England Area Conference or the president's designee; 1 of whom shall be the chair of the Massachusetts Law Enforcement Policy Group, Inc.; 1 of whom shall be the president of the Massachusetts Chiefs of Police Association Incorporated or the president's designee; 1 of whom shall be the president of the Fire Chiefs' Association of Massachusetts, Inc. or the president's designee; 1 of whom shall be the chair of the Massachusetts Association of Minority Law Enforcement Officers, Inc. ; 1 of whom shall be the colonel of state police or the colonel's designee; 1 of whom shall be the chairman of the civil service commission or the chairman's designee; 1 of whom shall be the secretary of administration and finance or the secretary's designee; 1 of whom shall be the president of the Massachusetts Bar Association or the president's designee; 1 of whom shall be

2406 the secretary of public safety and security or the secretary's designee; 1 of whom shall be the
2407 president of the Mass. Veterans' Service Agents Association, Inc. or the president's designee; 1
2408 of whom shall be the secretary of veterans' services or the secretary's designee; 1 of whom shall
2409 be the commander of the Disabled American Veterans, Department of Massachusetts, Inc., or the
2410 commander's designee; 1 of whom shall be the executive director of the Massachusetts
2411 Municipal Association, Inc. or the executive director's designee; 1 of whom shall be the chair of
2412 the Massachusetts Black and Latino Legislative Caucus or the chair's designee; 1 of whom shall
2413 be the chair of the Massachusetts House Asian Caucus or the chair's designee; 4 members of the
2414 house of representatives, 2 of whom shall be appointed by the speaker of the house of
2415 representatives, 1 of whom shall be the house chair of the joint committee on public service or
2416 the chair's designee and 1 of whom shall be appointed by the minority leader of the house of
2417 representatives; 4 members of the senate, 2 of whom shall be appointed by the senate president, 1
2418 of whom shall be the senate chair of the joint committee on public service or designee and 1 of
2419 whom shall be appointed by the minority leader of the senate; and the attorney general or the
2420 attorney general's designee. The speaker of the house of representatives shall appoint 1 co-chair
2421 from the house appointees to the commission and the senate president shall appoint 1 co-chair
2422 from the senate appointees to the commission.

2423 (c) The commission shall study the employment, promotion, performance evaluation and
2424 disciplinary procedures for civil service employees, including, but not limited to: (i) the hiring
2425 and recruitment processes for civil service positions; (ii) the use of civil service eligible lists, the
2426 statutory merit preference status and the hiring from those eligible lists; (iii) all current civil
2427 service examinations and the use of the examinations for hiring and promotions; (iv) collective
2428 bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to civil

2429 service employees; and (vi) identifying any barriers that exist in hiring, recruiting or promoting
2430 civil service employees.

2431 (d) The commission shall study the employment, promotion, performance evaluation and
2432 disciplinary procedures of municipalities not subject to the civil service law, including, but not
2433 limited to: (i) the hiring and recruitment procedures and by-laws for municipalities; (ii) all
2434 examinations administered by municipalities and the use of the examinations for hiring and
2435 promotions; (iii) the use of minimum eligibility guidelines and hiring qualifications or
2436 preferences; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal
2437 procedures as applied to municipal employees; and (vi) identifying any barriers that exist in
2438 hiring, recruiting or promoting municipal employees.

2439 (e) The commission shall study employment, promotion, performance evaluation and
2440 disciplinary procedures of the department of state police, including, but not limited to: (i) hiring
2441 and recruitment laws and procedures; (ii) the requirements of chapter 22C of the General Laws;
2442 (iii) all examinations used by the state police for hiring and promotions; (iv) collective
2443 bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to
2444 officers of the Massachusetts state police; and (vi) identifying any barriers that exist in hiring,
2445 recruiting or promoting officers of the department of state police.

2446 (f) The commission shall evaluate the feasibility of creating a statewide diversity office
2447 within the executive office of administration and finance to establish affirmative action plans and
2448 guidelines for municipalities, oversee the implementation of these plans and guidelines and
2449 monitor noncompliance. The commission shall examine the feasibility and cost of hiring or
2450 appointing a diversity officer for every city or town with a municipal police or fire department.

2451 (g) The commission shall make recommendations for changes to the civil service law to
2452 improve diversity, transparency and representation of the community in recruitment, hiring and
2453 training of civil service employees, including, but not limited to, any changes to civil service
2454 exams, merit preference status, eligible lists and appointment from eligible lists by hiring
2455 authorities. The commission shall make recommendations to improve diversity, transparency and
2456 representation of the community in recruitment, hiring and training for municipalities not subject
2457 to the civil service law and for the department of state police.

2458 (h) The commission shall hold its first meeting not later than 30 days after the effective
2459 date of this act and shall meet at least monthly thereafter. The commission shall submit a report
2460 of its study and any recommendations, together with any draft legislation necessary to carry
2461 those recommendations into effect, by filing the same with the governor, the speaker of the
2462 house of representatives and the president of the senate and the clerks of the house of
2463 representatives and senate on or before September 30, 2021.

2464 SECTION 108. (a) Notwithstanding any special or general law to the contrary, there shall
2465 be a special legislative commission established pursuant to section 2A of chapter 4 of the
2466 General Laws to study the establishment of a statewide law enforcement officer cadet program.
2467 The commission shall consist of 21 members: 2 of whom shall be the chairs of the joint
2468 committee on public safety and homeland security or their designees, who shall serve as co-
2469 chairs; 2 of whom shall be the chairs of the joint committee on the judiciary or their designees; 1
2470 of whom shall be the chair of the Massachusetts Black and Latino Legislative Caucus or a
2471 designee; 1 of whom shall be the chair of the Massachusetts House Asian Caucus or a designee;
2472 1 of whom shall be the attorney general or a designee; 1 of whom shall be the secretary of public
2473 safety and security or a designee; 1 of whom shall be the colonel of state police or a designee; 1

2474 of whom shall be the commissioner of correction or a designee; 1 of whom shall be the training
2475 director of the Massachusetts peace officer standards and training commission or a designee; 1 of
2476 whom shall be the executive director of the American Civil Liberties Union of Massachusetts,
2477 Inc. or a designee; 1 of whom shall be the president of the Boston branch of the National
2478 Association for the Advancement of Colored People New England Area Conference or a
2479 designee; and 8 of whom shall be appointed by the governor, 1 of whom shall be from the State
2480 Police Association of Massachusetts, 1 of whom shall be from the Massachusetts Chiefs of
2481 Police Association Incorporated, 1 of whom shall be from the Massachusetts Police Association,
2482 Inc., 1 of whom shall be from the Massachusetts Coalition of Police, Inc., 1 of whom shall be
2483 from the Massachusetts Sheriffs Association, Inc., 1 of whom shall be from the Massachusetts
2484 Association of Minority Law Enforcement Officers, Inc.; 1 of whom shall be from the
2485 Massachusetts Association of Women in Law Enforcement, Inc. and 1 of whom shall be from
2486 the Association of Chiefs of Police - State Universities of Massachusetts.

2487 (b) The appointments made by the governor pursuant to subsection (a) shall include
2488 women and people of color in such proportion as these groups exist in the commonwealth's
2489 population as periodically determined by the state secretary as the commonwealth's chief census
2490 officer.

2491 (c) The commission shall evaluate the establishment of a statewide law enforcement
2492 officer cadet program in the commonwealth through which all law enforcement agencies, as
2493 defined in section 1 of chapter 6E of the General Laws, may hire law enforcement officers and
2494 shall make recommendations to the legislature. The commission shall study the feasibility and
2495 benefits of establishing said cadet program, including, but not limited to: (i) impact on diversity
2496 within law enforcement agencies; (ii) impact on veteran preference hiring within law

2497 enforcement agencies; (iii) recommendations to ensure increased diversity across law
2498 enforcement agencies; (iv) proposed standards for admission to the statewide cadet program,
2499 including, but not limited to, age, education and physical, psychological and mental health; (v)
2500 proposed standards, including form, method and subject matter, for a qualifying examination
2501 which shall fairly test the applicant's knowledge, skill and abilities that can be fairly and reliably
2502 measured and that are actually required to perform the primary or dominant duties of a law
2503 enforcement cadet; (vi) proposed standards for completion of the cadet program and enlistment
2504 as a uniformed law enforcement officer; (vii) recommended cadet compensation and benefits,
2505 including, but not limited to, insurance coverage, retirement and pension benefits; (viii) the
2506 feasibility of providing specialized training required for appointment to a particular agency or by
2507 a city or town; and (ix) any other information the commission deems relevant.

2508 (d) The commission shall submit its findings and recommendations relative to the
2509 establishment of a statewide law enforcement cadet program by filing the same with the clerks of
2510 the house of representatives and the senate and the governor not later than December 31, 2021.

2511 SECTION 109. Notwithstanding any general or special law to the contrary, a person who
2512 is appointed as a school resource officer, as defined in section 37P of chapter 71 of the General
2513 Laws, as of the effective date of this act may continue in such appointment without receiving a
2514 certification to serve as such pursuant to subsection (b) of section 3 of chapter 6E of the General
2515 Laws; provided, however, that they receive said certification by December 31, 2021.

2516 SECTION 110. (a) There shall be established, pursuant to section 2A of chapter 4 of the
2517 General Laws, a special legislative commission on structural racism in correctional facilities of
2518 the commonwealth. The commission shall investigate and study disparate treatment of persons of

2519 color incarcerated at state and county correctional facilities and determine the role of structural
2520 racism in those disparities.

2521 (b) The special legislative commission shall consist of 17 members: 4 of whom shall be
2522 members of the house of representatives to be appointed by the speaker of the house, 1 of whom
2523 shall be a member of the Massachusetts Black and Latino Legislative Caucus and 1 of whom
2524 shall be a member of the Massachusetts House Asian Caucus; 2 of whom shall be members of
2525 the senate to be appointed by the senate president; 2 of whom shall be appointed by the governor,
2526 1 of whom shall be the secretary of public safety and security; 1 of whom shall be the president
2527 of the Massachusetts Sheriffs Association, Inc. or a designee; 1 of whom shall be the president of
2528 the Massachusetts Correction Officers Federated Union or a designee; 1 of whom shall be the
2529 executive director of the American Civil Liberties Union of Massachusetts, Inc. or a designee; 1
2530 of whom shall be the president of the Urban League of Eastern Massachusetts, Inc. or a designee;
2531 1 of whom shall be the executive director of Roca, Inc. or a designee; 1 of whom shall be the
2532 chief executive officer of UTEC, Inc. or a designee; 1 of whom shall be the executive director of
2533 Prisoners' Legal Services or a designee; 1 of whom shall be the executive director of GLBTQ
2534 Legal Advocates & Defenders, Inc. or a designee; 1 of whom shall be the executive director of
2535 Massachusetts Coalition for the Homeless, Inc. or a designee; and 1 of whom shall be the chair
2536 of the New England Chapter of the American Immigration Lawyers Association or a designee.

2537 (c) The special commission shall conduct a thorough review of the policies and
2538 procedures in place at state and county correctional facilities, both as written and as
2539 implemented, to determine if there are disparities in the treatment of persons of color and if
2540 structural racism at these facilities is a cause of those disparities. The special commission shall
2541 also conduct a thorough review of the access to educational, vocational or other programming

2542 options for incarcerated inmates and if there are disparities in access for persons of color and if
2543 structural racism is a cause of those disparities. The special commission shall make
2544 recommendations to eliminate any disparities in the treatment of persons of color found at state
2545 and county facilities including policy or legislative changes.

2546 (d) The special commission shall submit its report and recommendations, together with
2547 drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of
2548 the house of representatives and the senate not later than September 30, 2021.

2549 SECTION 111. (a) There shall be established, pursuant to section 2A of chapter 4 of the
2550 General Laws, a special legislative commission on structural racism in the parole process. The
2551 commission shall make an investigation and study into disparate treatment of persons of color in
2552 the parole process and determine the role of structural racism in those disparities.

2553 (b) The special legislative commission shall consist of 13 members: 3 of whom shall be
2554 members of the house of representatives to be appointed by the speaker of the house, 1 of whom
2555 shall be a member of the Massachusetts Black and Latino Legislative Caucus and 1 of whom
2556 shall be a member of the Massachusetts House Asian Caucus; 2 of whom shall be members of
2557 the senate to be appointed by the senate president; 2 of whom shall be appointed by the governor,
2558 1 of whom shall be a member of the parole board; 1 of whom shall be the executive director of
2559 the American Civil Liberties Union of Massachusetts, Inc. or a designee; 1 of whom shall be the
2560 president of the Boston branch of the National Association for the Advancement of Colored
2561 People New England Area Conference or a designee; 1 of whom shall be the executive director
2562 of Roca, Inc. or a designee; 1 of whom shall be the executive director of the Massachusetts
2563 Coalition for the Homeless, Inc. or a designee; 1 of whom shall be the chief executive officer of

2564 UTEC, Inc. or a designee; and 1 of whom shall be the executive director of Prisoners' Legal
2565 Services or a designee.

2566 (c) The special commission shall conduct a thorough review of the parole process to
2567 determine if there are disparities in the treatment of persons of color in the granting or denying of
2568 parole and if structural racism is a cause of those disparities. The special commission shall also
2569 conduct a thorough review of any disparities in conditions of release placed on persons of color
2570 and if structural racism is a cause of those disparities. The special commission shall make
2571 recommendations to eliminate any disparities in the treatment of persons of color found in the
2572 parole process including policy or legislative changes.

2573 (d) The special commission shall submit its report and recommendations, together with
2574 drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of
2575 the house of representatives and the senate not later than September 30, 2021.

2576 SECTION 112. (a) There shall be established, pursuant to section 2A of chapter 4 of the
2577 General Laws, a special legislative commission on structural racism in the Massachusetts
2578 probation service, referred to in this section as the commission. The commission shall make an
2579 investigation and study into disparate treatment of persons of color in the probation process and
2580 determine the role of structural racism in those disparities.

2581 (b) The special legislative commission shall consist of 13 members: 3 of whom shall be
2582 members of the house of representatives to be appointed by the speaker of the house, 1 of whom
2583 shall be a member of the Massachusetts Black and Latino Legislative Caucus and 1 of whom
2584 shall be a member of the Massachusetts House Asian Caucus; 2 of whom shall be members of
2585 the senate to be appointed by the president of the senate; 1 of whom shall be appointed by the

governor; 1 of whom shall be the commissioner of probation; 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc. or a designee; 1 of whom shall be the president of the Boston branch of the National Association for the Advancement of Colored People New England Area Conference or a designee; 1 of whom shall be the executive director of Roca, Inc. or a designee; 1 of whom shall be the chief executive officer of UTEC, Inc. or a designee; 1 of whom shall be the executive director of the Massachusetts Coalition for the Homeless, Inc. or a designee; and 1 of whom shall be the chief counsel of the committee for public counsel services or a designee.

(c) The special commission shall conduct a thorough review of the probation process to determine if there are disparities in the treatment of persons of color in the probation system and if structural racism is a cause of those disparities. The special commission shall also conduct a thorough review of any disparities in conditions or revocation of probation for persons of color and if structural racism is a cause of those disparities. The special commission shall make recommendations to eliminate any disparities in the treatment of persons of color found in the parole process including policy or legislative changes.

(d) The special commission shall submit its report and recommendations, together with drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of the house of representatives and the senate not later than September 30, 2021.

SECTION 113. The model school resource officer memorandum of understanding review commission established pursuant to section 37P of chapter 71 of the General Laws shall convene not later than March 31, 2021 and shall develop its first model memorandum of understanding not later than February 1, 2022 for implementation starting in the 2022 school year.

2608 SECTION 114. Notwithstanding section 75 of chapter 3 of the General Laws, the
2609 following initial members of the commission on the status on Black men and boys shall be
2610 appointed for the following terms:

2611 (a) The speaker of the house of representatives shall appoint, on or before May 1, 2021, 1
2612 member for a term of 1 year, 1 member for a term of 2 years and 1 member for a term of 3 years.

2613 (b) The president of the senate shall appoint, on or before May 1, 2021, 1 member for a
2614 term of 1 year, 1 member for a term of 2 years and 1 member for a term of 3 years.

2615 (c) The Massachusetts Black and Latino Legislative Caucus or its successor organization
2616 shall appoint, on or before May 1, 2021, 1 member for a term of 1 year, 1 member for a term of 2
2617 years and 1 member for a term of 3 years.

2618 SECTION 115. Notwithstanding any general or special law to the contrary, the
2619 committee on police training and certification, established in section 4 of chapter 6E of the
2620 General Laws, shall investigate and study the benefits and costs of consolidating existing
2621 municipal police training committee training academies located in Boylston, Plymouth,
2622 Randolph, Reading and in Western Massachusetts and the 9 reserve or intermittent academies
2623 authorized by the municipal police training committee into a single, full time training institution
2624 with full time instructional staff. As part of the study, the committee on police training and
2625 certification shall identify feasible and appropriate locations for such a campus or facility within
2626 the commonwealth. The study, including any recommendations for legislation, shall be filed with
2627 the clerks of the house and senate, the house and senate committees on ways and means and the
2628 joint committee on public safety and homeland security not later than December 31, 2021.

2629 SECTION 116. (a) There shall be established, pursuant to section 2A of chapter 4 of the
2630 General Laws, a special legislative commission to investigate and study the impact to the
2631 administration of justice of the qualified immunity doctrine in the commonwealth. Said
2632 investigation and study shall include, without limitation, an analysis of the origins of qualified
2633 immunity and its present interpretation by the courts of the commonwealth, and the legal and
2634 policy rationale for, and the legal and policy impact of, the qualified immunity doctrine in the
2635 commonwealth.

2636 (b) The special legislative commission shall consist of 15 members: 2 of whom shall be
2637 the chairs of the joint committee on the judiciary or their designees, who shall serve as co-chairs;
2638 2 of whom shall be members of the house of representatives appointed by the speaker of the
2639 house; 1 of whom shall be a member of the house of representatives appointed by the minority
2640 leader; 2 of whom shall be members of the senate appointed by the president of the senate; 1 of
2641 whom shall be a member of the senate appointed by the minority leader; 3 of whom shall be
2642 appointed by the governor, 1 of whom shall be a member of a police officers' union, 1 of whom
2643 shall be a member of a firefighters' union and 1 of whom shall be a retired justice of the appeals
2644 court; 1 of whom shall be the executive director of the American Civil Liberties Union of
2645 Massachusetts, Inc. or a designee; 1 of whom shall be the president of the Massachusetts Bar
2646 Association or a designee; 1 of whom shall be the executive director of the Massachusetts
2647 Municipal Association, Inc. or a designee; and 1 of whom shall be the president of the Boston
2648 branch of the National Association for the Advancement of Colored People New England Area
2649 Conference or a designee.

(c) The special legislative commission shall submit a report of its study and recommendations, together with legislation, if any, to the clerks of the house of representatives and the senate on or before September 30, 2021.

SECTION 117. (a) The community policing and behavioral health advisory council, established in subsection (e) of section 25 of chapter 19 of the General Laws, shall study and make recommendations for creating a crisis response and continuity of care system that delivers alternative emergency services and programs across the commonwealth that reflect specific regional, racial, ethnic and sexual orientation needs and differences in delivering such services. The study shall include, but not be limited to: (i) a comprehensive review and evaluation of existing crisis intervention, alternative emergency response and jail diversion models, services and programs in the commonwealth at the state, county and municipal level and models used effectively in other jurisdictions; (ii) a method for evaluating the effectiveness of existing crisis intervention, alternative emergency response and jail diversion models, services and programs in diverting individuals from the criminal justice system and emergency departments to appropriate care; (iii) recommendations for expanding effective crisis intervention and jail diversion models, services and programs identified in clause (ii) across the commonwealth; (iv) identification of crisis response training programs and protocols for law enforcement officers and 911 telecommunicators that reflect best practices and a plan for standardizing systems and aligning such programs and protocols across the commonwealth; (v) identification of outcome measurements and data collection procedures to be used to evaluate the effectiveness of the crisis response system and its components; (vi) an analysis of the federal Substance Abuse and Mental Health Services Administration national guidelines for behavioral health crisis care, including regional crisis call centers and mobile crisis teams; and (vii) an estimate of the additional costs or

2673 cost savings of implementing the council's recommendations under this section and possible
2674 sources of funding for delivering the crisis response and continuity of care system at the state,
2675 county and municipal levels. In developing recommendations for a crisis response and jail
2676 diversion system, the council, where appropriate, shall prioritize non-police community-based
2677 programs.

2678 (b) The council may commission an independent research or academic organization with
2679 expertise in clinical social work, criminal justice, behavioral health jail diversion modalities and
2680 accessible analysis of quantitative and qualitative data and communication of study results to
2681 conduct the study. The council shall facilitate the collection of data needed to complete the study
2682 pursuant to a memoranda of understanding with the department of mental health, the executive
2683 office of public safety and security, the executive office of health and human services and
2684 relevant social service agencies.

2685 (c) The study shall be designed in consultation with interested stakeholders, including,
2686 but not limited to, the president of the National Association for the Advancement of Colored
2687 People New England Area Conference, the American Civil Liberties Union of Massachusetts,
2688 Inc.; the National Association of Social Workers, Inc.; the Massachusetts Association for Mental
2689 Health, Inc.; the Association for Behavioral Healthcare, Inc. and members of the general court.

2690 (d) Not later than July 1, 2022, the council shall submit the study's findings to the clerks
2691 of the senate and house of representatives, the joint committee on mental health, substance use
2692 and recovery, the joint committee on public health, the joint committee on health care financing,
2693 the joint committee on public safety and homeland security and the center for responsive training
2694 in crisis intervention established pursuant to section 25 of chapter 19 of the General Laws. The

2695 study's findings shall be published on the department of mental health's website. Not later than 3
2696 months after receiving the study's findings, the council shall solicit public comment and hold not
2697 less than 4 public hearings, 1 of which shall be held in Berkshire, Franklin, Hampshire or
2698 Hampden county and 1 of which shall be held in the Worcester area.

2699 (e) The council shall report on existing and innovative crisis response models and
2700 recommend legislation or regulations to advance and strengthen non-police solutions to crisis
2701 response and jail diversion. The report shall incorporate the study's findings and issues raised in
2702 public comments and hearings. The report and recommendations shall be submitted to the clerks
2703 of the senate and house of representatives and the joint committee on mental health, substance
2704 use and recovery not later than July 1, 2023.

2705 (f) The center for responsive training in crisis intervention shall consider the council's
2706 recommendations for incorporation into regional training opportunities and training curricula.

2707 SECTION 118. Notwithstanding any general or special law to the contrary, the
2708 committee on police training and certification, in consultation with the executive office of public
2709 safety and security, shall promulgate regulations requiring law enforcement agencies to
2710 participate in critical incident stress management and peer support programs to address police
2711 officer mental wellness and suicide prevention as well as critical incident stress and the effect on
2712 public safety. The programs shall be created internally within an agency or agencies may
2713 collaborate within a regional system. The programs shall include, but shall not be limited to,
2714 mental wellness and stress management pre-incident and post-incident education, peer support,
2715 availability and referral to professional resources and assistance. The committee shall ensure that
2716 each officer is notified of the program during each 3-year certification cycle under this act.

2717 SECTION 119. Notwithstanding any general or special law to the contrary, not later than
2718 June 30, 2021, the committee on police training and certification shall issue guidance on
2719 developmentally appropriate de-escalation and disengagement tactics, techniques and procedures
2720 and other alternatives to the use of force for minor children that may take into account contextual
2721 factors including, but not limited to, the person's age, disability status, developmental status,
2722 mental health, linguistic limitations or other mental or physical condition.

2723 SECTION 120. Notwithstanding any general or special law to the contrary, section 100I
2724 of chapter 276 of the General Laws, as inserted by section 97, shall apply to any pending petition
2725 for expungement filed pursuant to sections 100F, 100G or 100H of said chapter 276 that was
2726 filed on or before the effective date of this act. Any petition for expungement filed pursuant to
2727 said sections 100F, 100G or 100H of said chapter 276 that was denied before the effective date
2728 of this act solely because the petitioner had more than 1 record as an adjudicated delinquent or
2729 adjudicated youthful offender or of a conviction may immediately refile the petition under said
2730 section 100I of said chapter 276.

2731 SECTION 121. (a) Notwithstanding any general or special law to the contrary, the
2732 Massachusetts peace officer standards and training commission, established in section 2 of
2733 chapter 6E of the General Laws, shall authorize the transfer of each employee of the municipal
2734 police training committee employed prior to the effective date of this act to become an employee
2735 of the Massachusetts peace officer standards and training commission, subject to said chapter 6E
2736 of the General Laws.

2737 (b) All employees of the municipal police training committee transferred to the service of
2738 the commission shall be transferred without impairment of seniority, retirement or other statutory

2739 rights of employees, without loss of accrued rights to holidays, sick leave, vacation and other
2740 benefits, and without change in union representation or certified collective bargaining unit as
2741 certified by the state labor relations commission or in local union representation or affiliation,
2742 except as otherwise provided in this act. Terms of service of employees of the program shall not
2743 be deemed to be interrupted by virtue of transfer to the commission.

2744 (c) Nothing in this section shall be construed to confer upon any employee of the
2745 municipal police training program any right not held immediately before the date of said transfer
2746 to the commission or to prohibit any reduction of salary grade, transfer, reassignment,
2747 suspension, discharge, layoff or abolition of position not prohibited before such date.

2748 (d) The terms and conditions of any collective bargaining agreement that is in effect upon
2749 such transfers authorized by this section shall continue in effect until the stated expiration date of
2750 such agreement, at which point the agreement shall expire; provided, however, that all such
2751 employees shall continue to retain their right to collectively bargain under chapter 150E of the
2752 General Laws and shall be considered employees of the Massachusetts peace officer standards
2753 and training commission established pursuant to chapter 6E of the General Laws for the purposes
2754 of said chapter 150E.

2755 SECTION 122. Subsection (a) of section 14 of chapter 6E shall take effect on December
2756 1, 2021.

2757 SECTION 123. Subsection (d) of section 15 of chapter 6E shall take effect on September
2758 1, 2021.

Municipal Law Enforcement Summit



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org



Welcome

Guest WIFI Code

S00n2bSun

Zeros not O's

- Introductions
 - House keeping items – bathrooms, coffee, lunch, blue light
 - Background on effort
 - Joint Standing Committee on Criminal Justice and Public Safety

Chief Joseph Massey Waterville Police Department

17 Patrol officers, 6 Sgts, 4 Detectives, 8 Communications Officers

Major Service Center Community- Two Universities

Large Seasonal and Day time population- Large proportion of University, Hospital, and non-profit land ownership

Dedicated Community Policing positions:

South End Neighborhood Enhanced Police Officer

Elder Service Officer

School Resource Officer

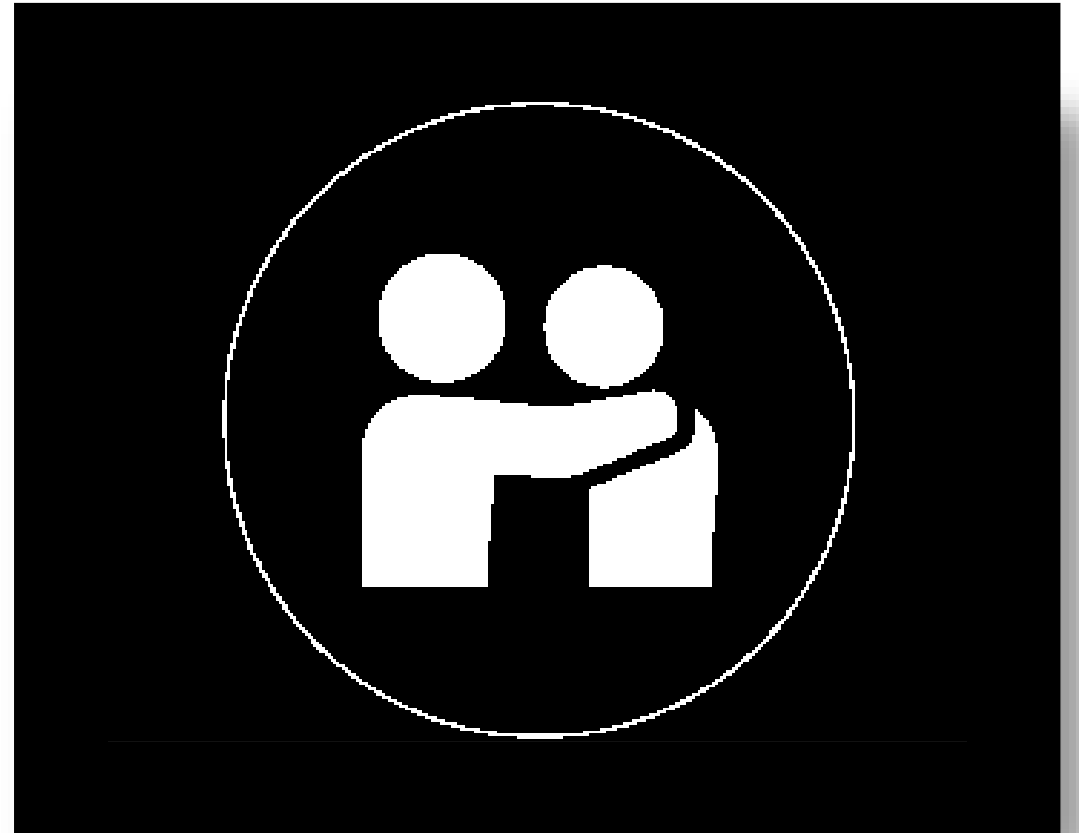
Operation Hope- 1 dedicated coordinators- 12 Angel Volunteers

Residential population 15,324



Midnight Team Program

- The Midnight Team began in 1996 after a tragic incident in Waterville served as the catalyst to bring together law enforcement and mental health workers to address the very real challenges of reaching and assisting individuals in mental health crisis on the streets and in their homes.
 - History of this program
 - How did this program lose funding?
 - What are the impacts of that loss on officers? Community?



Operation Hope

- Shift from police management to philanthropy management
- Regional cooperation to avoid competing for finite local funding
- 1 dedicated coordinating officers 1 program administrator
- Reliance on 12 “Angels”- Volunteers
- Successes, Challenges, Future Needs



Recruitment Approaches

- Investing in training and the officer
 - Make sure the loss of an employee is because they are an attractive candidate for larger agency- not unhappy
 - College Relationships- Adjunct faculty
 - High School Relationships-Tech School



Chief Jared Mills

Augusta Police Department

- Chief (1), Deputy Chief (1), Lieutenants (2), Staff Sergeants (2) Sergeants (6) and Patrol Officers (32) Patrol Division (22) Support Services Division (10) with (5) of those positions being detectives (9) Reserve Dispatchers (3) Parking Enforcement Officers (1.5) Administrative Assistant (1) Secretary (1) Clerk (1.5) and Animal Control Officer (1)
 - Large Seasonal and Day time population
 - Large proportion of University, State, hospital and non-profit land ownership

Dedicated Community Policing Positions

- (2) School Resource officers,
- (1) Community Resource officer
- (1) Crisis Team MH Officer

Residential population 18,367



Mental Health Ride Along Case Manager

- State Funded -Mental Health Crisis Worker
- Provides immediate situational Intensive Case Management, crisis support and referral services to the community
- Acts as the conduit between law enforcement and the mental health providers in our community by recognizing the officer needs and merging that with the assessments, diagnosis and MH verbiage the Officers may not be privy too.
- Routine de-escalations of clients in crisis in the community resulting in their NOT going to the ER and tying up services when other options are available.



Community Outreach – Story Telling

- Chat with the Chief YouTube Channel
- Big Impact- Low Time Needs
- Community Feedback/Participation
- Engaging with the non-news watching generation



Chief Jack Peck

Farmington Police Department

- Small but major regional service center community,
- Serving University and Regional Hospital/2,000 students
- 7 Patrol officers- 2 Sgts
- 1 Shared SRO & Patrol officer

Residential population 7,415



Loss of Operation Hope

- Started in 2016 Ended in 2019
- Philanthropy Challenge – local capacity to continue when grant funding evaporates
- Need hasn't gone away
- Filling the void



Recruitment Challenges

- Good School Relationships
- Shift from Proactive to Reactive policing-when staffing is down
- Impact on officers- forced overtime, morale, managing new programs



Chief as Community Leader

- Serving on Boards- Safe Voices, Franklin Memorial Hospital, Healthy Community Coalition, Western Maine Homeless Shelter, Evergreen Behavioral Services
- Key to building community relationships
- Requires a lot of personal time - Impact on personal life
- How to support/recognize this



Chief Jason Warlick

Damariscotta Police Department

- Working Chief- 5 Full Time Officers, – 2 Seasonal Staff-2 Part-Time
 - Small Service Center Community
 - Expands significantly in summer/major festivals draw thousands
 - Chief is community officer lead

Local Hospital is only ER in the County
Residential population 2,232



Hospital Challenges

- Only ER in county
- Multiple agencies drop off individuals in crisis-No Revenue
- Individuals in crisis- Lack of placement-leads to staff assaults-placing police in awkward position of arrest vs. treatment-entirely preventable
- 33 hours spent in ER last month
- Arrest as a tool to elevate some individuals to getting case management



Recruitment and Retention

- Impacts on Officers and Family
- Exhaustion –possible impacts on performance
- Prioritizing public engagement – proactive vs. reactive challenge
- Shift in officers wanting to be members of a community department



Public Outreach on limited staffing & time

- Working with Community Organizers
- Local YMCA & Library as afterschool contact points for youth
- Facebook “Dogs of Damariscotta”
- Community Based Treatment options and outcomes
- Shift from working Chief to administrative Chief & increased staffing should help
- Staffing challenge for investing in officer learning-making it happen
- Providing support for other municipal agencies-training cooperation



Gratuitous shot of Rebecca's dog

Chief Thomas Connolly

Sanford Police

- 42 Officers, 5 Sgts, 3 Cpls, 4 Detectives
 - 3 School Resource Officers
 - 1 Court officer
 - 19 Communications officers
 - Special Response Team
Membership- Multi Agency
Tactical Team

Residential population 21,000



Sanford Community Opioid Program (SCOP)

- 4/17-12/17 Average 8.75 Overdose Calls a month-3 deaths
- 1/18-6/18 Average 4.66 Overdose Calls a month -4 deaths
- 75 clients interviewed for SCOP- 63 Accepted
- 42 Clients Referred to IOP-66 %
- 6 discharged for non-compliance
- 1 died overdose
- 1 died car accident
- 3 moved from area-compliant
- 3 left in good standing
- 21 left reasons unknown (probably not compliant)
- May 2018 28 active clients- 44% retention rate



In Community Treatment vs. In Patient Treatment

- Inpatient \$20k a month
- Incarceration, rehab or inpatient return to community without support
- Go back to using –High level of post incarceration deaths
- 10% success rate
- MAT in community for \$1,200 a month
- Costs decrease as patient remains requires fewer sessions
- Long term maintenance \$600 a month
- 44% success rate

Topics from registration

- **Lack of resources for people coping with mental health issues and substance use disorder**
 - Situations create a high call volume, staff time and resources- training is mandatory and unfunded
 - Additional police duties and training mandates cause burnout-band-aid approach-not solving issues-failure to prosecute after extensive time on cases
 - Dealing with emotionally disturbed people-shared trauma
 - Any State level standardization? Support?
- **Are sign on bonuses helping or hurting?**
 - To poach or not to poach
- **Unfunded mandates**
 - asking communities to more with less –largest generator of fine revenue is municipal law enforcement
 - pulling revenue away from vital programs
 - “getting it done” our own worst enemy?
 - Impacts on rural communities with hospitals
 - Recruitment and retention-Wage & benefits
 - Low court reimbursement costs
 - Jail funding –property taxpayers paying twice?
- **Collaboration Efforts**
 - Regional Responses to emerging threats-county, state, federal
 - Decentralization of police basic law enforcement training
 - Partnering with community colleges for police academy? Replace current model with MCJA regulated Community based?
 - Drug issues, shared information, non-compete for limited funding
 - Neighboring department cooperation-cost sharing
- **Homelessness**
 - How is this being addressed outside communities with no shelters?
 - Is it time for the state to build regional crisis housing
 - Increase in family housing needed
 - Homeless youth major challenge

NEW YORK STATE **POLICE REFORM** **AND REINVENTION** **COLLABORATIVE**

RESOURCES & GUIDE FOR
PUBLIC OFFICIALS AND CITIZENS

AUGUST 2020

New York State Police Reform and Reinvention Collaborative

Resources & Guide for Public Officials and Citizens

August 2020

Contents

A Message from Governor Cuomo	1
Part 1: Key Questions and Insights for Consideration.....	5
I. What Functions Should the Police Perform?	9
1. Determining the Role of the Police.....	11
2. Staffing, Budgeting, and Equipping Your Police Department	19
II. Employing Smart and Effective Policing Standards and Strategies.....	22
1. Procedural Justice and Community Policing.....	22
2. Law Enforcement Strategies to Reduce Racial Disparities and Build Trust.....	35
3. Community Engagement	42
III. Fostering Community-Oriented Leadership, Culture and Accountability.....	51
1. Leadership and Culture.....	52
2. Tracking and Reviewing Use of Force and Identifying Misconduct.....	57
3. Internal Accountability for Misconduct	60
4. Citizen Oversight and Other External Accountability	64
5. Data, Technology and Transparency	71
IV. Recruiting and Supporting Excellent Personnel	82
1. Recruiting a Diverse Workforce	82
2. Training and Continuing Education.....	89
3. Support Officer Wellness and Well-being	103
Part 2: Developing Your Collaborative Plan	109
Part 3: Appendices	117

A Message from Governor Cuomo

Many communities all across the country are dealing with issues concerning their police departments. The millions of people who gathered in protest, even in the midst of a public health crisis, made that clear. The situation is unsustainable for all.

Maintaining public safety is imperative; it is one of the essential roles of government. In order to achieve that goal, there must be mutual trust and respect between police and the communities they serve. The success and safety of our society depends on restoring and strengthening mutual trust. With crime growing in many cities, we must seize this moment of crisis and turn it into an opportunity for transformation.

While the conflict is real and the issues are complicated, we know in New York that denial or avoidance is not a successful strategy. To that end, on June 12, 2020, I signed an Executive Order requiring each local government in the State to adopt a policing reform plan by April 1, 2021. The Order authorizes the Director of the Division of the Budget to condition State aid to localities on the adoption of such a plan.

To ensure these plans are developed through an inclusive process, I called for the New York State Police Reform and Reinvention Collaborative. With more than 500 law enforcement agencies in our large and

diverse state, there is no “one size fits all” solution. To rebuild the police-community relationship, each local government must convene stakeholders for a fact-based and honest dialogue about the public safety needs of their community. Each community must envision for itself the appropriate role of the police. Policies must be developed to allow the police to do their jobs to protect the public and these policies must meet with the local communities’ acceptance.

“Collaborative” is the key word. It would be a mistake to frame these discussions as an adversarial process or an effort to impose top-down solutions. Issues must be aired but solutions must be crafted. The collaborative process should:

- Review the needs of the community served by its police agency, and evaluate the department’s current policies and practices;
- Establish policies that allow police to effectively and safely perform their duties;
- Involve the entire community in the discussion;
- Develop policy recommendations resulting from this review;
- Offer a plan for public comment;
- Present the plan to the local legislative body to ratify or adopt it, and;
- Certify adoption of the plan to the State Budget Director on or before April 1, 2021.

I urge everyone to begin these discussions immediately. Restoring the relationship between the community and the police is in everyone's best interest, and conversation may be required to enable each stakeholder to understand others’ points of view. Time is short.

Local elected officials are the natural position to convene the process. If the local electeds are unable or unwilling to manage the collaborative, the state can select an appropriate convener for that jurisdiction.

Change is hard. But change is necessary if we are to grow. The tension must be resolved. Order and public safety must be ensured. I am excited by the possibilities and I am hopeful that this time of crisis will evolve into a moment of creativity and progress. It is normal to make adjustments to fit changing values and circumstances.

We are addressing the COVID crisis by acknowledging the problem, having productive dialogue and by working together. Let's do the same here.

This is an opportunity to reinvent law enforcement for the 21st century.

Governor Andrew M. Cuomo

August 2020

Note: The guidebook presented here is not intended to be the plan for any given community. Rather, it includes critical questions, information, and resources to frame and guide each community's dialogue. There are references provided to give participants access to a range of ideas and research on every topic to delve deeper into the issues.

Part 1: Key Questions and Insights for Consideration

The purpose of the New York State Police Reform and Reinvention Collaborative is “to foster trust, fairness and legitimacy” within communities throughout our State and “to address any racial bias and disproportionate policing of communities of color.” The United States Department of Justice has emphasized the need for “trust between citizens and their peace officers so that all components of a community are treating one another fairly and justly and are invested in maintaining public safety in an atmosphere of mutual respect.”¹

All public officials and community leaders understand the critical importance of police departments’ core mission. Government must ensure residents’ sense of personal security in order for communities to thrive and prosper. Police-community relationships must facilitate, rather than impede, law enforcement’s success in protecting the public against violence and other criminal behavior.

The work of this Collaborative will be particularly valuable in communities that through bitter experience have come to mistrust law enforcement. A recent study found that in neighborhoods with a high incidence of gun violence, only 35% of young people aged 16-24 said they believe that police officers “try to protect the public from violent crime.” At the same time, 81% of these young people reported having themselves been shot or shot at,

¹ U.S. Department of Justice, Office of Community Oriented Policing Services. *Final Report of the President’s Task Force on 21st Century Policing*. May 2015.
https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

and 88% reported that a family member or friend had been shot.² These staggering numbers underscore that mutual trust and respect is essential both for the legitimacy of police forces and for their effectiveness.

The Collaborative is not the first step in New York State's journey of criminal justice reform. Over the past decade, we have enacted meaningful changes to reform our criminal justice system and end mass incarceration, including:

- The **“Say Their Name” Reform Package**: These landmark reforms include:
 - **Repealed 50-a**: Section 50-a of Civil Rights Law previously prohibited disclosure, except under very limited circumstances, of personnel records for police officers, corrections officers, firefighters, and paramedics employed by the State or political subdivisions. This privilege, not granted to other public employees, shielded records from being disclosed that involved serious misconduct or disciplinary actions to the detriment of transparency and accountability for law enforcement officers. The repeal of 50-a will increase transparency by allowing the disclosure of personnel records involving serious misconduct or criminality and building trust between law enforcement and the communities they serve.
 - **Banned Chokeholds**: This law bans the practice of using chokeholds by law enforcement, by making use of a chokehold a criminal offense if it causes serious physical injury or death.

² Center for Court Innovation. “‘Gotta You’re your Own Heaven’ Guns, Safety, and the Edge of Adulthood in New York City.” Pg. 13
https://www.courtinnovation.org/sites/default/files/media/document/2020/Report_GunControlStudy_08052020.pdf

- **Prohibited Race-Based 911 Calls:** In recent years, there has been an increase in the number of frivolous or false calls to 911 due solely to the caller's bias toward certain individuals rather than any particular threat to public safety. This law makes it a civil rights violation to call 911 to report a non-emergency incident involving a member of a protected class without reason to suspect a crime or imminent threat.
- **Appointed the Attorney General as Independent Prosecutor for Police Involved Deaths:** In 2015, Executive Order 147 designated the Attorney General as a special prosecutor for cases where police officers are involved in deaths of unarmed civilians. This year, legislation created a permanent Office of Special Investigation within the Office of the Attorney General, empowered to investigate and, where appropriate, prosecute cases where the death of a person follows an encounter with a law enforcement officer.
- **Reduced the Prison Population and Lowered Crime Rates:** Since Governor Cuomo took office, New York State has closed 26 adult and juvenile detention facilities – more than any other administration in state history. These prison closures eliminated approximately 6,600 beds. We have also decreased the prison population by nearly 19,000 people – a 33% reduction – from 56,419 to 38,312 people, as of July 5, 2020. At the same time, New York State has remained the safest large state in the country with the lowest index crime rate among the most populous states.
- **Bail Reform:** New York overhauled our bail and pre-trial detention system. The previous bail system failed to recognize that freedom before trial should be the rule, not the exception, and by tying freedom from incarceration to money, it created a two-tiered system that puts an unfair burden on the economically disadvantaged. Among other reforms, the law eliminated cash bail for misdemeanors and non-violent felonies.

- **Discovery Reform:** New York was previously one of only 10 states that enabled prosecutors to withhold basic evidence until the actual day a trial begins. Under the previous system, people accused of a crime could be denied access to information that makes it possible for them to make decisions about their case and build an adequate defense. We reformed the discovery process, requiring the sharing of information well before a trial takes place, restoring fairness and equality before the law.
- **Speedy Trial Reform:** Defendants are too often held in custody for excessive periods of time before their day in court while the court system remains overburdened with an overwhelming number of cases. These delays have a disparate impact on low-income and minority communities. Governor Cuomo signed into law a guarantee that criminal cases proceed to trial without undue delay.
- **Raised the Age and Juvenile Justice Reform:** New York raised the age of criminal responsibility to 18-years-old, ensuring that young people in New York who commit non-violent crimes receive the intervention and evidence-based treatment they need. We have also invested millions to support this reform through a continuum of effective prevention, diversion, treatment, re-entry and supervision services for youth at the state and local level.
- **Required Videotaping of Interrogations and Permitted Photo Identifications into Evidence:** We now require law enforcement to video-record custodial interrogations for serious offenses and set out a procedure to allow properly-conducted witness identification of suspects using photo arrays into evidence at trial.

This Collaborative will continue New York's progress on criminal justice reform.

I. What Functions Should the Police Perform?

A relationship of trust and respect between law enforcement and the community must be based on a shared understanding of the functions each community wants its police force to perform.

The protests following the death of George Floyd have raised important questions about the appropriate role of the police, size of police departments and resources devoted to policing. Some protesters have called for “defunding the police.”^{3,4} In Minneapolis – where the death of Mr. Floyd occurred – a majority of City Council members pledged to dismantle their police department and create a new public safety system for the city. Stakeholders in other communities have suggested adjusting the scope of responsibilities assigned to the police department and adjusting its budget correspondingly, shifting resources to social services, community programs, housing, and education to focus on crime reduction.

All communities should be asking what goals they want their police department to accomplish. Meaningful reform will require honest and thoughtful discussion about these goals among local government leaders, law enforcement officials and community members. All participants should recognize that funds are limited, that personnel must be trained and managed for the tasks they are given, and that organizational change is rarely swift.

³ Scottie Andrew. CNN. *There's a growing call to defund the police. Here's what it means.* June 17, 2020. <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html>.

⁴ Dionne Searcey and John Eligon. The New York Times. *Minneapolis Will Dismantle Its Police Force, Council Members Pledge.* June 7, 2020. <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html>.

How should the police and the community engage with one another?

Even before considering the specific functions your community expects its police force to perform, you should consider broader questions about the relationship between the police and the community. The concept of procedural justice is useful to guide this process. Procedural justice focuses on the manner in which law enforcement interacts with the public, and how these interactions shape the public's trust of the police. The premise, according to the Leadership Conference on Civil and Human Rights, is that citizens judge the police "based on *how they are treated* rather than on the outcomes of interactions,"⁵ and the mandate is to retool the rules of engagement for police officers from that of "warrior" against segments of the population to that of "guardian" to protect the entire population.⁶ President Obama's Task Force on 21st Century Policing adopted procedural justice as the principle that should guide law enforcement interactions both internally with their colleagues and externally with the citizens they serve.⁷

The Task Force on 21st Century Policing outlined the four pillars of procedural justice: treating individuals with dignity and respect; giving individuals a voice during law enforcement interactions; being neutral and transparent in decision making; and conveying trustworthy motives.⁸ Implementing procedural justice principles helps the community trust that officers are honest and acting with just and lawful intentions. The community,

⁵ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 17. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁶ *Id.* at 36 and 262-63

⁷ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. pp. 9-12. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁸ *Id.* at 10.

in turn, is more likely to follow the law because it has trust in the criminal justice process and feels that it shares common values with law enforcement.⁹

1. Determining the Role of the Police

Stakeholders critical of the current scope of police responsibilities have largely proposed two types of reforms. First, some argue that the police should not be involved in responding to non-criminal conduct. Second, some propose curtailing police activities that pose a risk of overreaction to minor offenses.

What role do the police currently play in your community?

To ensure a fact-based dialogue, all participants should understand the current role of the police department in your community, as well as the level of satisfaction or dissatisfaction with policing felt by residents. Different parts of the community may feel differently about the police's role within the community, and it is important to take all perspectives into account.

- What are the primary activities of police officers in your community?
- Why are people calling 911?
- In what situations do police self-initiate interventions in the community?

⁹ *Id.* at 9-12; Leadership Conference on Civil and Human Rights. (2019). New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing, pp. 94-96.; Johnston, R., Gripp, C., O'Brien, T., Sarnoff, C. and Cox, A. A Study of Procedural Justice & Criminal Justice System Legitimacy. NYC Mayor's Office of Criminal Justice and The Justice Collaborative, Yale Law School, pp. 73-75.
https://law.yale.edu/sites/default/files/area/center/justice/document/justice_collaboratory_mocj_report_0701_2.pdfhttps://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Johnston, R., Gripp, C., O'Brien, T., Sarnoff, C. and Cox, A. A Study of Procedural Justice & Criminal Justice System Legitimacy. NYC Mayor's Office of Criminal Justice and The Justice Collaborative, Yale Law School, pp. 73-75.
https://law.yale.edu/sites/default/files/area/center/justice/document/justice_collaboratory_mocj_report_0701_2.pdf.

Consider what grievances your community has had with its police force in the past and what you can learn from those instances.

- How often are complaints made about the police?
- Do particular units or assignments draw an outsized share of complaints?
- Do complaints come from a particular portion or portions of the community?
- What conduct is commonly complained about?

Should you deploy social service personnel instead of or in addition to police officers in some situations?

Some jurisdictions are utilizing agencies other than the police to address situations that fall more squarely within the expertise of other professionals. Your community may be relying on police to respond to calls involving individuals with mental illnesses or substance abuse issues, for instance. Officials in Stockholm, Sweden created a program for mental health professionals to respond to mental health calls instead of police.¹⁰ Under this model, teams of two trained nurses and a driver respond to these calls in an emergency vehicle without police officers. This not only frees up police resources to focus on criminal activity, but also is more effective at de-escalating scenarios involving a person with mental illness. An analysis of this

¹⁰ Lindström V, Stureson L, Carlborg A. (2020) Patients' experiences of the caring encounter with the psychiatric emergency response team in the emergency medical service-A qualitative interview study. Health Expectations: An International Journal of Public Participation in Health Care and Health Policy. <https://europepmc.org/article/med/31967699>

program found that it provided patients with a “safe environment” and an “open and safe place for dialogue.”¹¹

In Eugene and Springfield, Oregon, local police and social service providers collaborate to reroute calls that do not involve a legal issue or extreme threat of violence or risk to the individual or others.¹² In these instances, officials send a team comprised of a medic and a crisis worker to respond to these calls. The responders assess the situation, assist the individual, and connect that individual with a higher level of care or services as needed. City officials estimate that this program, named CAHOOTS, has saved Eugene more than \$15 million a year.¹³ The program is also safe, as police backup was called 150 times out of a total of about 24,000 calls, only 0.6% of calls.¹⁴

Other cities – such as Denver and Austin – utilize social workers and health professionals to divert 911 calls relating to non-violent situations. Denver recently launched a six-month pilot program named Support Team Assisted Response (STAR) which deploys teams of these professionals to respond to 911 calls for people experiencing mental health crises, homelessness, or drug addiction.¹⁵ Since 2013, Austin's Expanded Mobile Crisis Outreach Team (EMCOT) has similarly handled crisis calls and behavioral health situations directly instead of the police. The city recently added funding

¹¹ Karla Adam and Rick Noack. The Washington Post. *Defund the Police? Other countries have narrowed their role and boosted other services.* June 14, 2020. https://www.washingtonpost.com/world/europe/police-protests-countries-reforms/2020/06/13/596eab16-abf2-11ea-a43b-be9f6494a87d_story.html;

¹² Crisis Assistance Helping Out On the Streets at <https://whitebirdclinic.org/services/cahoots/>

¹³ For more information on CAHOOTS, please visit: <https://whitebirdclinic.org/services/cahoots/>

¹⁴ National Public Radio. ‘CAHOOTS’: How Social Workers and Police Share Responsibilities in Eugene, Oregon. June 10, 2020. <https://www.npr.org/2020/06/10/874339977/cahoots-how-social-workers-and-police-share-responsibilities-in-eugene-oregon>.

¹⁵ For more information on the STAR program, please visit: <https://caring4denver.org/>

for mental health professionals to work at its 911 call center to ensure the EMCOT team is able to divert and respond to these calls immediately.¹⁶

You should consider whether your community should follow these or similar examples:

- Do you want police to respond to mental health calls?
- Do you want police to respond to substance abuse/overdose calls?
- Do you want police to respond to calls regarding the homeless?
- Are there other matters for which the community currently turns to its police for assistance that might be better addressed by others with different skills and expertise?

In each of these situations, consider:

- Does a law enforcement response or response from another agency better promote public safety?
- Which does more to further another governmental objective?
- Would it be useful for social service providers to work alongside the police in these circumstances, or separately?

Can Your Community Reduce Violence More Effectively by Redeploying Resources from Policing to Other Programs?

Some stakeholders have suggested that investment in social services may yield better results for enhancing public safety and reducing patterns of violence than investment in policing. Proposals include:

¹⁶ For more information on the EMCOT program, please visit:
<https://www.austintexas.gov/edims/document.cfm?id=302634>

- **Community Based Outreach and Violence Interruption:** Community based outreach and violence interruption programs are derived from public health models of gun violence, that treat gun violence like a disease by identifying its causes and interrupting its transmission. The NYS Division of Criminal Justice Services (DCJS) administers a Street Outreach Program, called SNUG, that uses an evidence-based model to identify individuals at a high risk of engaging in gun violence. SNUG addresses the issues that may prompt those individuals to use a gun, and aims to change community norms and attitudes that accept violence as a part of life. The program employs street outreach workers who live in the communities where they work, many of whom had previously been engaged in street-level crime and served terms of incarceration. These credible messengers have legitimacy within the community and can be a positive force for change and crime reduction in neighborhoods with historically high levels of crime. SNUG programs are active in Albany, Bronx, Buffalo, Hempstead, Mount Vernon, Poughkeepsie, Rochester, Syracuse, Troy, Wyandanch, and Yonkers. DCJS recently implemented the SNUG Social Work and Case Management program at all of its SNUG sites. This program employs social workers to work with program staff, youth in the community, and crime victims to address long-term trauma and connect individuals with social and victim service agencies.¹⁷ You should engage with SNUG and other violence prevention programs active in your community and consider implementing programs of your own to improve public safety.
- **Parent Support:** There are times when parents or caregivers who are unable to control or guide a wayward child, reach a point of desperation and call the police. Support programs run by social workers help to mediate family conflict and may prevent the need for law enforcement. For example, Justice Community Plus is a job-readiness program within the Staten Island Justice Center undertaken in collaboration with the New

¹⁷ For more information on SNUG and the Social Work and Case Management program, please visit: <https://www.youtube.com/watch?v=eHFdAG5JEtA&feature=youtu.be>.

York City Council and the Department of Probation that focuses on life skills and educational advancement.¹⁸

- **Youth Development:** Programs relying on mentors from the community to teach young people skills such as photography, computer programming and entrepreneurship may help young people find a stable career path. For example, the Brownsville Learning Lab located at the Brownsville Community Justice Center offers young people additional assistance with their educational work and provides peer mentors and resume guidance.¹⁹
- **Addressing Trauma and Preventing Violence at Home:** Family counseling may help children avoid foster care and manage trauma caused by violence at home, giving the child better prospects for successful development. There are programs that create a collaborative approach to help families manage trauma. For example, Strong Starts Court Initiative is an example of a program that creates a network of community based services required for family stability.²⁰
- **Design of Public Spaces:** Some localities have sought to reduce crime by identifying features of the built environment that create opportunities for crime, such as lighting, landscaping or the design of public spaces, and modifying those features.

In a 2020 Center for Court Innovation survey, New York City youth at high risk of gun violence reported that violent victimization is a pervasive experience in their lives.²¹ Eighty-one percent had been shot or shot at, and

¹⁸ For more information on the Staten Island Justice Center, please visit:

<https://www.courtinnovation.org/programs/staten-island-justice-center>

¹⁹ For more information on the Brownsville Community Justice Center, please visit:

<https://www.courtinnovation.org/programs/brownsville-community-justice-center>.

²⁰ For more information on the Strong Starts Court Initiative, please visit:

<https://www.courtinnovation.org/programs/strong-starts-court-initiative>

²¹ Center for Court Innovation. “‘Gotta You’re your Own Heaven’ Guns, Safety, and the Edge of Adulthood in New York City.” Pg. 13

“88% had had someone close to them shot, most commonly a close friend, cousin, or sibling.” These young people, who almost universally have experienced violence in their lives, do not feel served or protected by the status quo. Reforming and reinventing policing should address not just the relationship between police and these communities, but how best to provide protection for these communities.

What function should 911 call centers play in your community?

It is important for communities to evaluate the functions of their 911 call centers as well as the roles and responsibilities of the individuals who serve as call-takers. Since 911 largely serves as the catalyst to police involvement in most instances, communities should consider how those calls are received, evaluated, and triaged for resolution to determine if any changes could be made to more effectively improve public safety. Consider the following:

- Who currently staffs your 911 call centers?
- Are all calls routed to law enforcement, fire, or EMS?
- Are there other social services that should be more fully integrated into 911 call centers and the triage process?
- Would call-takers need new training if your community wanted to shift response functions toward social services?
- Should 911 call centers be operated by law enforcement, other social service agencies, or a combination of agencies?

Should Law Enforcement Have a Presence in Schools?

Schools districts often have agreements in place with their police department to station uniformed School Resource Officers (SROs) in their schools. School districts may employ SROs for a number of reasons, but most SRO programs are intended to increase the safety of schools and their students and teachers. Organizations like Fair and Just Prosecution argue that the presence of police in the schools results in student arrests and unnecessary contact between youth and the criminal justice system for what otherwise would be considered truancy or teenage misbehavior.²² Particularly for students of color, these early interactions with the criminal justice system for disciplinary issues has led some to coin this phenomena the “school to prison pipeline.”²³

If applicable, you should examine your community’s use of SROs and determine if their deployment in schools best serves the needs of the students and reflects the needs and values of the community. Consider how police officers are deployed in your schools and any policies or agreements you have in place with respect to student discipline; e.g. are they acting in a manner that supports safety or are they used in disciplinary matters that are better handled through engagement with parents, conflict resolution strategies, or other disciplinary measures? Examine whether your community can meet its goals of

²² Fair and Just Prosecution. Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>; Nelson, L. and Lind, D., The School to Prison Pipeline, Explained. <http://www.justicepolicy.org/news/8775>.

²³ Nelson, L. and Lind, D., The School to Prison Pipeline, Explained. *Justice Policy Institute*. <http://www.justicepolicy.org/news/8775>; Fair and Just Prosecution. Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

keeping students and teachers safe through a more moderated police presence or through alternatives to law enforcement altogether.

If you have SROs in your schools, consider the creation of a memorandum of understanding or agreement between the police department and the school district so as to clearly establish their roles and responsibilities. For example, these provisions could limit or eliminate altogether police involvement in student discipline matters, or require special training for SROs in conflict resolution and alternatives to arrest when dealing with youth truancy in a school setting.²⁴

2. Staffing, Budgeting, and Equipping Your Police Department

Once you have identified the role of the police in your community and the functions you want them to perform, those factors should inform the review, development, and implementation of the staffing levels, budget, and equipment you want your police department to have.

What are the Staffing Needs of the Police Department the Community Wants? Should Components of the Police Department Be Civilianized?

Some stakeholders have suggested that functions currently performed by uniformed officers could instead be assigned to civilian employees in the police or other departments, particularly functions that involve interactions with citizens and that do not call for an arrest or potential use of force. These stakeholders contend that civilianization would lead to improved police-

²⁴ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. p. 48. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

community relations. You should consider whether your current police department staffing should be adjusted to include fewer uniformed officers and more civilians.

How Should the Police Engage in Crowd Control? Should the Police be “Demilitarized”?

Police departments have acquired surplus military equipment from the federal government, including body armor, armored vehicles, grenade launchers, and bayonets. The rationale for these acquisitions is that the equipment will assist local law enforcement in combatting terrorism and drug trafficking.

This military equipment, however, has also been used for crowd control, along with other tactics such as the use of water cannons, rubber pellets, acoustic weapons, and tear gas to subdue or move a crowd. Civil rights advocates, among others, have criticized the militarization of crowd control arguing that not only has it failed to increase public safety but it actually results in escalation and increases the risk that excessive force will be used.²⁵ Consider the following:

- How should your police force conduct crowd control activities?

²⁵ Fair and Just Prosecution. Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System, p. 8. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>; Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 185. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Congressional Research Service. (June 25, 2020). Congress and Police Reform: Current Law and Recent Proposals, p. 5. <https://crsreports.congress.gov/product/pdf/LSB/LSB10486>.

- Does your community want to limit the use of military equipment and other tactics such as use of water cannons, rubber pellets, acoustic weapons and tear gas for crowd control purposes?
- Does your community want to limit the acquisition of military equipment altogether?
- Does your community want to have its police officers trained in de-escalation techniques specifically designed to engage with protesters and large crowds?

The policies and procedures police agencies employ for crowd control should minimize the appearance of a military operation and use of force, prioritize citizens' First Amendment rights and effective communication with demonstrators, avoid the use of provocative tactics and equipment that undermine civilian trust, utilize "soft look" uniforms and open postures instead of riot gear and military formation when it is safe to do so, and employ a layered response that prioritizes de-escalation.²⁶

²⁶ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. p. 25. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

II. Employing Smart and Effective Policing Standards and Strategies

Effective policing requires standards and strategies that advance the goals of protecting the community, engaging with the citizenry in a meaningful and multi-faceted way and demonstrating respect for individuals during law enforcement interactions. Policing is a partnership with the community, requiring a foundation of positive, trust-based relationships with all segments of the population. It is critical that the strategies employed and the manner by which law enforcement interacts with the population are in line with the community's expectations for its police force.

1. Procedural Justice and Community Policing

Section I described the concept of procedural justice and how to examine whether your police department uses those principles to inform its interactions with the public. As discussed above, those principles encourage you to always consider how the police will interact with the public – the process – instead of focusing solely on the law enforcement outcomes of your decision making.

Moreover, the concept of community policing provides another set of organizing principles for establishing a successful policing model. The premise of community policing is that community participation and assistance are crucial for maintaining public safety and building a police force responsive to the public. It focuses on “strong relationships and collaboration between police and the communities they serve; the application of modern management practices and organizational structures to create a culture of community

partnership; transparency and accountability to communities and democratic government; and decentralized, proactive, community-based solutions to community public safety priorities.”²⁷

Community policing also emphasizes cultural change within law enforcement agencies. The success of this culture change requires the support and leadership of the local government chief executive and the head of the police department. The goal is to establish a culture of community service and problem solving throughout the organization.

For your consideration, the U.S. Department of Justice’s Office of Community Oriented Policing Services recommends the following best community policing practices:²⁸

1. Create a comprehensive community policing strategic plan.
2. Train all personnel on community policing – including overcoming distrust.
3. Foster an atmosphere of openness and transparency.
4. Adopt procedural justice as a guiding principle.
5. Prioritize law enforcement personnel safety and wellness.
6. Engage the community in a true partnership to address crime and disorder issues.
7. Treat every contact as an opportunity to engage positively with a community member.
8. Measure social cohesion and work to develop relationships.
9. Reevaluate metrics of community policing success.
10. Incorporate community policing measures into the performance evaluation process.

²⁷ U.S. Department of Justice Civil Rights Division. (January 2017). *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*. <https://www.justice.gov/crt/file/922421/download>.

²⁸ U.S. Department of Justice Office of Community Oriented Policing Services. Law Enforcement Best Practices: Lessons Learned from the Field. 2019. <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>.

These best practices offer a promising framework for local governments to begin planning, but you should form your community policing plan around the individual circumstances and desired outcomes of your community. A successful community policing model must be locally-driven and requires buy-in and support from community members and local stakeholders.

Specific policing strategies that have raised concerns among the public.

Advocates, experts and some in the law enforcement community have drawn attention to a number of specific policing strategies that they believe pose an undue risk of harm to the public.

Your police department may use some or all of these strategies. As discussed here, some strategies that are currently in use may have a record of causing harm to individuals in your community.

You should examine the practices of your police department to determine which, if any, of these strategies are in use, and you should consider whether any of them need to be reformed, curtailed or discontinued.

“Broken Windows” and “Stop and Frisk”

“Broken Windows” policing rests on the theory that minor offenses committed in public, such as turnstile jumping or disorderly conduct, contribute to a degradation of society that, in turn, incubates more serious crimes. Under this theory, where these minor crimes and the individuals who

commit them are stopped at the outset, then the conditions that create more serious crimes can be avoided.²⁹

“Stop and Frisk” was an offshoot of the “Broken Windows” policing theory. Under “Stop and Frisk,” police departments adopted a policy of temporarily detaining individuals on the street based upon a “reasonable suspicion” of minor crimes and performed a pat-down search of these individuals looking for more serious criminal conduct, such as possession of contraband or weapons.³⁰ A 2019 report by the Leadership Conference on Civil Rights found that Stop and Frisk contributes to racial disparities in policing due to the wide latitude officers have in stopping for “reasonable suspicion” and its use as a primary enforcement tactic in communities with higher rates of crime.³¹

Indeed, the NYPD’s use of Stop and Frisk was determined to be unconstitutional by a federal judge in 2013.³² The court found that the practice had a vastly disproportionate impact on minorities. A total of 83% of stops based on “reasonable suspicion” were of African Americans and Latinos. Further, the empirical data presented at trial showed that a relatively low percentage of NYPD searches of African Americans and Latinos resulted in the recovery of contraband. Moreover, the “hit rate,” as measured by the recovery

²⁹ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 20-22. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

³⁰ *Id.* at 79-86.

³¹ *Id.* at 81.

³² *Floyd et al. v. City of New York*, 959 F. Supp.2d 540 (S.D.N.Y. 2013).

of weapons and contraband, arrests made or summonses issued, from African Americans and Latinos was actually 8% lower than that for Whites.³³

As Professors David Rudovsky and David Harris noted in a 2018 legal analysis, “Blacks and Latinos were more likely to be frisked than Whites, even though Whites were more likely to be found in possession of weapons.”³⁴ Indeed, 88% of all stops resulted in no law enforcement action at all. The court also cited the role of Stop and Frisk in deteriorating the relationship between the NYPD and communities of color.³⁵

Discriminatory or Bias-Based Stops, Searches and Arrests

Racial and ethnic profiling erodes trust in the police and unfairly targets minority communities. Bias based upon race, sex, national origin, gender identity and expression and sexual orientation, among other factors, is fundamentally unjust, and damages the targeted individuals, their communities, and the relationship with law enforcement that is necessary to build trust and effective policing.³⁶

You should consider analyzing the demographics of the individuals stopped and ticketed in your community to determine if there is any evidence

³³ *Floyd et al. v. City of New York*, 959 F. Supp.2d 540 (S.D.N.Y. 2013); Rudovsky, D. and Harris, D. Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data, pp. 33-35. *Ohio State Law J.* <https://www.law.upenn.edu/live/files/7898-rudovskyoslj>; Goldstein, J. (August 12, 2013). Judge Rejects New York’s Stop and Frisk Policy. *The New York Times*. <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

³⁴ Rudovsky, D. and Harris, D. Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data, p. 35. *Ohio State Law J.* <https://www.law.upenn.edu/live/files/7898-rudovskyoslj>.

³⁵ *Floyd et al. v. City of New York*, 959 F. Supp.2d 540 (S.D.N.Y. 2013); Rudovsky, D. and Harris, D., Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data, pp. 33-35. *Ohio State Law J.* <https://www.law.upenn.edu/live/files/7898-rudovskyoslj>.

³⁶ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 96. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

that law enforcement has engaged in biased-based stops, searches and arrests, even if unintentionally. If there is such evidence, determine what steps should be taken to eliminate or address such practices.

Chokeholds and Other Restrictions on Breathing

New York State has criminalized the use of chokeholds by police in the immediate aftermath of George Floyd's shocking death by asphyxiation. In that case, the arresting officer applied continual pressure to his neck while Mr. Floyd was handcuffed on the ground. Governor Cuomo signed this measure into law on June 12, 2020 in the presence of Gwen Carr - the mother of Eric Garner, another individual killed after use of a chokehold in 2014 by a New York City police officer. The legislation creates the crime of aggravated strangulation where a police officer uses a chokehold and causes serious physical injury or death.³⁷

Other forms of force that may not currently be banned can also restrict breathing. For example, positioning someone on their stomach while in restraints restricts breathing. So too does the application of pressure on someone's back while restrained face down. Use of force against individuals who are already handcuffed increases risk of injury.³⁸

³⁷ Eric Garner Anti-Chokehold Act, NY Senate Bill S6670B. (June 12, 2020). <https://www.nysenate.gov/legislation/bills/2019/s6670>.

³⁸ U.S. Department of Justice Civil Rights Division. (January 2017). *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*. p. 28. <https://www.justice.gov/crt/file/922421/download>; Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 125. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Campaign Zero. #8CantWait. 

Use of Force for Punitive or Retaliatory Reasons

The potential for abuse of the use of force for retaliatory or punitive reasons exists. The U.S. Department of Justice has found that such situations have arisen generally where an individual is fleeing, resisting arrest or showing disrespect for the officer.³⁹ In several instances, DOJ has required police departments to adopt formal policies prohibiting the use of force for retaliatory or punitive reasons.⁴⁰

Pretextual Stops

Pretextual stops are those where the officer uses a minor violation as a pretext to stop, question, or search someone suspected of involvement in, or having knowledge of, a more serious crime. Pretextual stops have been used in a targeted fashion to question individuals relevant to an ongoing investigation in a setting that may facilitate disclosure of information valuable to that investigation, and in a broader fashion by officers on patrol to question or search individuals based on the officer's observations at that time.

Pretextual stops are distinct from Stop and Frisk policing as the former involves stopping an individual purportedly on one stated basis, when the real purpose is to investigate the individual for an entirely different and usually more serious crime. The latter, namely Stop and Frisk, when conducted legally, is based on the suspicion of a minor crime without a secondary motive by law enforcement.

³⁹ U.S. Department of Justice Civil Rights Division. (January 2017). *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*. p. 28. <https://www.justice.gov/crt/file/922421/download>.

⁴⁰ *Ibid*.

As noted by the Leadership Conference on Civil Rights, the wide latitude officers have to conduct a pretextual stop can contribute to the distrust between the community and officers.⁴¹

Informal Quotas for Summonses, Tickets or Arrests

New York State has banned formal quotas for issuance of tickets or summonses, stops of individuals suspected of criminal activity, and arrests.⁴² Quotas erode community-police relations as they encourage officers to make arrests in situations that otherwise would be unnecessary or unwise so as to meet a mandated numeric threshold. Historically, minority communities are often targeted to meet such quotas.⁴³ Moreover, “the knowledge that quotas exist, and therefore that illegitimate arrests exist, casts an untrusting shadow onto all police activity.”⁴⁴

Unlike formal quotas, informal quotas are more difficult to ferret out, but are just as damaging to the individual and the community. For example, a civil rights investigation by the US Department of Justice in Ferguson, Missouri found that the city’s police department had informal quotas for tickets and summonses and that African Americans were targeted at a disproportionate

⁴¹ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 80-81. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁴² N.Y. Labor Law 215-a(1); Bronstein, N. (2015). Police Management and Quotas: Governance in the CompStat Era, pp. 545, 557-558. *Columbia J. of Law and Social Probs.* <http://jlsp.law.columbia.edu/wp-content/uploads/sites/8/2017/03/48-Bronstein.pdf>.

⁴³ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 82, 105. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Bronstein, N. (2015). Police Management and Quotas: Governance in the CompStat Era, pp. 545-55. *Columbia J. of Law and Social Probs.* <http://jlsp.law.columbia.edu/wp-content/uploads/sites/8/2017/03/48-Bronstein.pdf>.

⁴⁴ Bronstein, N. (2015). Police Management and Quotas: Governance in the CompStat Era, p. 555. *Columbia J. of Law and Social Probs.* <http://jlsp.law.columbia.edu/wp-content/uploads/sites/8/2017/03/48-Bronstein.pdf>.

rate. Specifically, African Americans comprised 67% of the population but received 90% of the tickets. In fact, in 2013, Ferguson – with a population of approximately 21,135 people – had issued 32,975 warrants for nonviolent offenses – more warrants than it had actual residents. Most of these were for driving violations. The collection of high court fines and fees⁴⁵

The resulting fees and fines can have a crippling effect on citizens who cannot afford to pay them. In Ferguson, where an individual was not able to pay the fine, an arrest warrant was issued, effectively creating a debtors' prison and prioritizing revenue-generation measures at the expense of civil rights and the minority communities disproportionately targeted and affected. In addition to jail time, the direct and indirect consequences that flowed from failure to pay included loss of driver's licenses, housing and employment.⁴⁶

The use of "police officers as municipal debt collection agents," as described by DOJ, has a corrosive effect on the relationship between officers and communities of color.⁴⁷

While New Yorkers do not face the prospect of arrest for delinquency in paying a traffic violation fine, any discriminatory practice of issuing

⁴⁵ Shapiro, J. (August 25, 2014). In Ferguson, Court fines and Fees Fuel Anger. *NPR*. <https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger>; Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 88-89. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; U.S. Dept. of Justice. (January 2017). *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*. pp. 7, 13, 33-34, 46. <https://www.justice.gov/crt/file/922421/download>.

⁴⁶ Shapiro, J. (August 25, 2014). In Ferguson, Court fines and Fees Fuel Anger. *NPR*. <https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger>; Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 88-89 (2019). https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; U.S. Dept. of Justice. (January 2017). *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*. pp. 7, 13, 33-34, 46. <https://www.justice.gov/crt/file/922421/download>.

⁴⁷ U.S. Dept. of Justice. (January 2017). *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*. p. 13. <https://www.justice.gov/crt/file/922421/download>.

summonses should still be cause for great concern. Failure to pay the fine for a traffic violation can result in suspension of a driver's license or motor vehicle registration, causing a cascade of additional harm that is disproportionate to the underlying offense. The harm is particularly severe for individuals who either drive to work or have driving as a job requirement, as they can be arrested and prosecuted if they drive with a suspended license. As part of the Say Their Name agenda, New York enacted the STAT Act, which requires the collection of demographic information on violations. This should shed light on any disparities in the imposition of such lower level violations, which can then be properly addressed. As part of this exercise, local governments should inform themselves to better address this issue at the outset. Local governments should further examine whether any informal quotas exist for tickets, summons, stops or arrests, and if so, eliminate such quotas.

Shooting at Moving Vehicles and High Speed Pursuits

Shooting at a moving vehicle risks injury to unintended targets, including to innocent bystanders. Hitting the driver can turn a moving car into a high-speed, out of control weapon.⁴⁸

Many experts also believe that shooting at a moving vehicle has low utility as a tactic for neutralizing threats, as shooting at a car rarely stops it. Moreover, one study found that 91% of police pursuits were the result of

⁴⁸ Herman, P. (May 1, 2018). Police in D.C., New York Revise Shooting Policies in Response to Vehicle Ramming Attacks. *The Washington Post*. https://www.washingtonpost.com/local/public-safety/police-in-dc-new-york-revise-shooting-policies-in-response-to-vehicle-ramming-attacks/2018/05/01/9561d1ee-418b-11e8-ad8f-27a8c409298b_story.html; Gross, J. (2016). Unguided Missiles: Why the Supreme Court Should Prohibit Police Officers From Shooting at Moving Vehicles, pp. 135, 139-141. *U. Pa. Law Rev. Online*. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=penn_law_review_online.

nonviolent offenses.⁴⁹ Experts have proposed either prohibiting shooting at a moving vehicle or permitting the tactic only when the driver or a passenger poses an imminent risk of lethal force against an officer or another individual.⁵⁰ Whether to engage in a high speed pursuit in the first instance is also a decision point for this collaboration. It may be prudent to only engage in such activities for certain offenses, or at certain times of day or locations where harm to bystanders can be minimized.

Use of SWAT Teams and No-Knock Warrants

Historically, SWAT teams were designed to handle high risk situations, such as hostage rescues and terrorist attacks. Today, SWAT teams are increasingly used to execute even routine search warrants. Although some search warrants are inherently high risk to the executing officers, others may not be, and use of a SWAT team may not be necessary or advisable.⁵¹

The use of no-knock warrants has also been criticized. Consider if such a tactic should only be used when there is a specific threat to officer or civilian life.⁵² Recently, Breonna Taylor, a Louisville, Kentucky resident and EMT worker, was killed by officer gunfire when three plain-clothed officers executed a no-knock warrant at her home in the middle of the night. Her boyfriend,

⁴⁹ Gross, J. (2016). Unguided Missiles: Why the Supreme Court Should Prohibit Police Officers From Shooting at Moving Vehicles, pp. 135, 142. *U. Pa. Law Rev. Online*.

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=penn_law_review_online.

⁵⁰ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 125. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Campaign Zero. #8CantWait. <https://8cantwait.org>.

⁵¹ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 132. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁵² *Ibid.*; Fair and Just Prosecution. Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System, p.11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

believing intruders were in the apartment, called 911, and fired his lawfully permitted weapon at the officers.⁵³ The officers returned fire, hitting Ms. Taylor, who was unarmed, eight times. The officers were executing a search warrant for drugs. No drugs were found. Law enforcement knew prior to entering her home that the main suspect who was the center of the investigation had already been taken into police custody.⁵⁴

Less-Than-Lethal Weaponry such as Tasers and Pepper Spray

Increasingly, tasers are being used by law enforcement as an alternative to firearms. The electric shock in tasers induces muscle contraction which can sometimes result in serious injury or even death.⁵⁵ In 2008, the NYPD was called to an apartment building in Brooklyn after a mentally disturbed man, Iman Morales, did not answer his apartment door and his mother asked someone to call 911. After police arrived Mr. Morales, who was naked, left his third-floor apartment through the fire escape descended to the second floor landing and ultimately jabbed at another officer with a fluorescent light tube. An officer on the street then fired his taser at Mr. Morales, who fell head first to the ground and died from his head injuries.⁵⁶

⁵³ Burke, M. (June 13, 2020). Breonna Taylor's Death Ignites Debate on No-Knock Warrants as Louisville Becomes Latest City to Ban Them. *NBC News*. <https://www.nbcnews.com/news/us-news/breonna-taylor-s-death-ignites-debate-no-knock-warrants-louisville-n1208156>. Oppel, R. and Taylor, D. (June 28, 2020). Here's What You Need to Know About Breonna Taylor's Death. *New York Times*. <https://www.nytimes.com/article/breonna-taylor-police.html>.

⁵⁴ Burke, M. (June 13, 2020). Breonna Taylor's Death Ignites Debate on No-Knock Warrants as Louisville Becomes Latest City to Ban Them. *NBC News*. <https://www.nbcnews.com/news/us-news/breonna-taylor-s-death-ignites-debate-no-knock-warrants-louisville-n1208156>; Waldrop, T., Sanchez, R. and Joseph, E. (June 23, 2020). Officer Fired in Shooting Death of Breonna Taylor, Louisville Police Say. *CNN.com*. <https://www.cnn.com/2020/06/23/us/breonna-taylor-shooting-officer-fired/index.html>.

⁵⁵ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 135-36. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁵⁶ Fahim, K. and Hauser, C. (Sept. 25, 2008). Taser Use in Man's Death Broke Rules, Police Say. *The New York Times*. <https://www.nytimes.com/2008/09/26/nyregion/26taser.html>; Neil, M. (Oct. 25, 2008). Police Taser

Chemical agents, including pepper spray, are another less-than-lethal method used by some law enforcement. But, while less lethal, it can still cause serious harm and has minimal accuracy, especially when used from a distance or under windy conditions.⁵⁷ Consider additional training of such less-than-lethal weapons by your law enforcement officers.

Facial Recognition Technology

Some law enforcement agencies have used facial recognition systems to assist with investigations. Civil libertarians have raised privacy concerns pertaining to the collection of images. Further, users of facial recognition technology have reported accuracy problems as these systems have a more challenging time recognizing the faces of certain segments of the population, such as African Americans and women.⁵⁸ A recent study looked at three commercial facial recognition systems and found they exhibit higher error rates for darker-skinned women than any other group, with the lowest error rates for light skinned men.⁵⁹

As you consider the use of facial recognition technology, you should take into account whether checks and balances can minimize false positive hits, how

Naked New York City Man, Who Falls and Dies. *ABA Journal*.

https://www.abajournal.com/news/article/police_taser_naked_new_york_city_man_who_falls_and_dies.

⁵⁷ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 139. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁵⁸ Goodwin, G. (June 4, 2019). Testimony Before the Committee on Oversight and Reform, *U.S. House of Representatives. Face Recognition Technology: DOJ and FBI Have Taken Some Actions in Response to GAO Recommendations to Ensure Privacy and Accuracy, But Additional Work Remains*. <https://www.gao.gov/assets/700/699489.pdf>.

⁵⁹ Buolamwini, J. and Gebru, T. (2018). *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*. *Proceedings of Machine Learning Research, Conference on Fairness, Accountability and Transparency*, pp. 8, 12. <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.

error rates attributable to race and gender can be factored into the application of such technology, and what safeguards can be applied to protect privacy interests.

2. Law Enforcement Strategies to Reduce Racial Disparities and Build Trust

Law enforcement experts have also suggested that various policing and criminal justice strategies can reduce racial disparities and build trust between police departments and the community. You should consider which, if any, of these strategies would help your department achieve these important goals.

Using Summonses Rather than Warrantless Arrests for Specified Offenses

Police officers have broad discretion to choose between treating certain incidents as misdemeanor crimes and making warrantless arrests, or treating such incidents as a civil infractions or violations and issuing appearance tickets or summonses. Advocates for policing reform contend that this latitude has often resulted in people of color disproportionately entering the criminal justice system, harming these individuals and contributing to distrust of the police.⁶⁰

For example, in 2015, Sandra Bland, a 28-year old African American woman, was pulled over in Texas pursuant to a traffic stop for failure to signal a change of lanes, a minor traffic violation that typically results in either a

⁶⁰ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 82, 105. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Fair and Just Prosecution. *Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System*, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

warning or issuance of a ticket and a fine.⁶¹ The conversation became increasingly contentious between the officer and Ms. Bland when she refused to extinguish her cigarette. Ms. Bland was arrested and charged with a Class C misdemeanor, the lowest level of crime in Texas, and for which the punishment carried a fine but no jail term. She was unable to meet a \$5,000 bond for her release. Ms. Bland was found dead in her cell three days later. Her death was ruled a suicide.⁶²

You should consider whether your police department should encourage the issuance of summonses rather than conducting warrantless arrests for specified offenses or under specified circumstances.

Diversion Programs

Diversion programs may occur at various stages in the criminal justice process. Diversion programs recognize that incarceration or establishment of a criminal record may not be the most appropriate mechanism to address certain conduct, and that education, drug or mental health treatment may provide a better alternative for the individual and the community.

⁶¹ Connelly, C. (May 9, 2019). At Texas Capitol, Sandra Bland's Legacy Looms. *Kera News*. <https://www.keranews.org/post/texas-capitol-sandra-blands-legacy-looms>; Montgomery, D. (May 17, 2019). Sandra Bland, It Turns Out, Filmed Traffic Stop Confrontation Herself. *The New York Times*. <https://www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html>; Wickham, D. (July 27, 2015). Wickham: Sandra Bland's Fate Sealed By Bad Policing, *USAToday*. <https://www.usatoday.com/story/opinion/2015/07/27/sarah-bland-suicide-death-texas-trooper/30705659/>.

⁶² Connelly, C. (May 9, 2019). At Texas Capitol, Sandra Bland's Legacy Looms. *Kera News*. <https://www.keranews.org/post/texas-capitol-sandra-blands-legacy-looms>; Montgomery, D. (May 17, 2019). Sandra Bland, It Turns Out, Filmed Traffic Stop Confrontation Herself. *The New York Times*. <https://www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html>; Wickham, D. (July 27, 2015). Wickham: Sandra Bland's Fate Sealed By Bad Policing, *USA Today*. <https://www.usatoday.com/story/opinion/2015/07/27/sarah-bland-suicide-death-texas-trooper/30705659/>.

For youthful or first time offenders, or those with mental health issues or problems with substance abuse, incarceration is either unnecessary or counterproductive and will not address the underlying behavior. Even apart from unnecessary incarceration, saddling an individual with a criminal record in these circumstances can have broad-ranging, unwarranted consequences. Strategies for diversion programs include warn-and-release, programs requiring violence prevention or aggression management, substance abuse treatment and testing, and court check-ins.⁶³

Restorative Justice Programs

Restorative justice programs offer people a meaningful chance to respond to a conflict outside of the traditional courtroom process. Restorative justice brings the affected parties together, mediated by a trained community member, allowing the aggrieved parties to vocalize hurt and encouraging accountability. The aim is healing rather than punishment, and it requires cooperation between all sides of a conflict, such as between a perpetrator and a victim, to achieve an understanding of what occurred and arrive at a mutually acceptable resolution.⁶⁴

⁶³ See: Law Enforcement Assisted Diversion (LEAD) Program. <https://www.leadbureau.org>; Office of Juvenile Justice and Disciplinary Prevention, Diversion Programs. <https://www.ojjdp.gov/mpg-iguide/topics/diversion-programs/>; Corrective Solutions. <http://correctivesolutions.org/diversion-programs>.

⁶⁴ See: Common Justice. https://www.commonjustice.org/common_justice_model; Center for Court Innovation. <https://www.courtinnovation.org/areas-of-focus/restorative> National Network for Safe Communities at John Jay College. Reconciliation Between Police and Communities: Case Studies and Lessons Learned. https://nnscommunities.org/wp-content/uploads/2017/10/Reconciliation_Full_Report.pdf.

Community-Based Outreach and Violence Interruption Programs

Community based outreach and violence interruption programs aim to curb violence by working with high-risk individuals and connecting them with services, programs, and other community engagement initiatives, so as to interrupt the cycle of crime. For example, the NYS Street Outreach Program (SNUG) discussed earlier employs street outreach workers who live in the communities where they work to reach at-risk youth.

Adopting a strategy where you work with trusted messengers with existing credibility within a community can facilitate better community relationship with law enforcement and be a positive force for change.

Hot-Spot Policing and Focused Deterrence

Some departments have used data analysis to identify crime spikes or “hot spots” in specific neighborhoods or even particular street blocks and increased the visible police presence in these areas, with the purpose of deterring crime. Relatedly, some departments have implemented a strategy of “focused deterrence,” in which officers engage directly with offenders or groups of offenders based on their prior history, sometimes in partnership with community members.⁶⁵

⁶⁵ Center for Problem-Oriented Policing. <https://popcenter.asu.edu>; National Institute of Justice. Hot Spot Policing Can Reduce Crime. <https://nij.ojp.gov/topics/articles/hot-spot-policing-can-reduce-crime>; National Institute of Justice. Gun Violence Prevention Strategy: Focused Deterrence. <https://nij.ojp.gov/topics/articles/gun-violence-prevention-strategy-focused-deterrence>.

Hot spot and deterrence policing may have both public safety and community benefits; reducing crime and targeting crime drivers. Indeed, focused deterrence policing has been found to have some beneficial impact on reduction in crime, particularly those programs that target gangs or groups.⁶⁶ However, a locality employing these techniques must ensure that they are supported by the community, that the police department can and will implement them in a race-neutral and transparent fashion, and that the local government itself will vigilantly monitor their use.

Analysts have criticized the “hot spot” and “focused deterrence” techniques on the ground that they are used disproportionately in minority communities. According to a 2018 report on proactive policing by the National Academies of Science, Engineering and Medicine,⁶⁷ the high rate at which individuals of color are stopped, cited, arrested or injured by the police is associated with police deployment based on intensive presence in particular areas. For example, if residents of areas with higher levels of reported crime are disproportionately people of color or disadvantage, placing greater police resources in these areas will increase the probability of law enforcement contacts with minorities and loss of liberty through stops, searches and arrests.⁶⁸

⁶⁶ Campbell Collaboration. American Institutes for Research (2019). https://campbellcollaboration.org/media/k2/attachments/0110_Braga_Focused_deterrence_PLS_EN.pdf.

⁶⁷ National Academies of Science, Engineering, and Medicine. (2018). *Proactive Policing: Effects on Crime and Communities*. The National Academies Press. p. 251. <https://www.nap.edu/read/24928/chapter/9>.

⁶⁸ Weisburd, David. Does Hot Spots Policing Inevitably Lead to Unfair and Abusive Police Practices, or Can We Maximize Both Fairness and Effectiveness in the New Proactive Policing? University of Chicago Legal Forum (2016), pp. 671-672. <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1578&context=uclf>

In the same 2018 report, the National Academies of Science, Engineering and Medicine also found that focused deterrence policing is more likely to target minority offenders. Since non-White individuals are more likely to live in areas with more police per capita, they will have higher rates of prior contact with police in their lifetime. This increases the probability of a prior arrest record, and thus makes them a target for focused deterrence policing practices.

De-Escalation Strategies

De-escalation has proven effective in certain circumstances to diffuse what would otherwise be a dangerous encounter. Body position and stance, tone of voice and word choice, can either calm a situation or inflame an already tense situation. De-escalation tactics, including both verbal and non-verbal communication strategies, can slow down an evolving situation and reduce the risk that a situation will become violent. De-escalation is tied to the principle that an officer should exhaust all available methods of resolving a situation before using force.⁶⁹

The former longtime Chief of Police of Madison, Wisconsin developed a de-escalation policy beginning in the 1970's in what is now referred to as the "Madison Model." Under this model, police officers operate under the theory that they are "social workers in blue."⁷⁰ When this was introduced in Madison, officers wore shorts and blazers and marched with Vietnam War protesters.

⁶⁹ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. pp. 10, 121, 143. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

⁷⁰ The Marshall Project. *The Madison Model: A Shooting Death Spotlights Wisconsin's Legacy of Police Reform*. <https://www.themarshallproject.org/2015/05/14/the-madison-model>.

They got out of their cars and walked the streets in high-crime areas. Rookies were taught to avoid deadly confrontations if at all possible, even with armed individuals. The Madison Model remains a de-escalation model that departments and law enforcement consultants still reference when formulating a de-escalation policy of their own.⁷¹

Although de-escalation training is increasingly used in police departments, there is limited knowledge regarding its actual effectiveness in successfully decreasing volatile situations. One group of researchers examined sixty-four de-escalation training programs across all professions over a forty year period and found some early promising results and few adverse consequences, but noted the weaknesses in methodological controls of such studies.⁷² Regardless, de-escalation training has become one of the most frequently requested types of police trainings as proponents advocate it reduces violence across the board and protects both civilians and officers.⁷³

Can Your Community Effectively Identify, Investigate and Prosecute Hate Crimes?

Hate crimes against individuals in protected classes are an attack not only on the individual, but also on the whole community.⁷⁴ On March 11, 2020, in response to a physical assault on the basis of race against a woman of Asian-

⁷¹ *Ibid.*

⁷² Engel, R., McManus, H. and Herold, T. (January 31, 2020). Does De-Escalation Training Work? *Criminology & Public Policy*. <https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9133.12467>.

⁷³ McKenna, S. (June 17, 2020). Police Violence Calls for Measures Beyond De-Escalation Training. *Behavior & Society*. <https://www.scientificamerican.com/article/police-violence-calls-for-measures-beyond-de-escalation-training1/>.

⁷⁴ Fair and Just Prosecution. Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

decent in Manhattan, Governor Cuomo directed the New York State Police to investigate the incident and stated: “No one in this state should ever feel intimidated or threatened because of who they are or how they look. Diversity is our greatest strength – it's one of the things that makes New York great – and in difficult times we need to band together even tighter.”⁷⁵ Local law enforcement agencies are required to submit Hate Crime Incident Report forms to the Division of Criminal Justice Services each month.⁷⁶ You should ensure your police department is complying with these reporting requirements and has the capacity to effectively identify and investigate hate crime and bias incidents.

Evaluate your practices concerning the identification and investigation of hate crimes. Are members of your department trained to investigate hate crimes and interview members of minority communities and groups? What additional training and community resources can you draw on to enhance hate crime prevention and response?

3. Community Engagement

Community engagement is imperative to forming trust between officers and the citizens in the neighborhoods they police. The concept of community policing can, however, often be misunderstood and misapplied. Many applications of this concept do not capture the deeper, sustained role a

⁷⁵ Governor Andrew M. Cuomo. (March 11, 2020). Governor Cuomo Directs State Police Hate Crimes Task Force to Assist in Investigation of Assault Against Asian Woman. <https://www.governor.ny.gov/news/governor-cuomo-directs-state-police-hate-crimes-task-force-assist-investigation-assault-against>.

⁷⁶ For more information on reporting Hate Crimes to the Division of Criminal Justice Services, please visit: <https://www.criminaljustice.ny.gov/crimnet/ojsa/crimereporting/forms/hatecrime.pdf>.

community can play in policing.⁷⁷ Community-oriented policing seeks to address the causes of crime and to reduce fear of social disorder through problem-solving strategies and police-community partnerships.⁷⁸

Consider whether any of the following tools would help you to achieve these goals.

Community outreach plans

A number of law enforcement agencies have developed plans for institutionalizing community engagement.⁷⁹ For example, in 2018 the Seattle Police Department released a report outlining their Community Engagement Program, what was done, and where the program saw success.⁸⁰ Seattle developed and articulated specific ways in which it engages with communities, including but not limited to: appointing community liaison officers, fostering police community partnerships, holding regular community meetings, and tracking and rewarding positive interactions between officers and community groups.

By deepening their contact and collaboration with the community, agency efforts in engaging with citizens are more likely to be successful.

⁷⁷ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁷⁸ Community Policing. (n.d.). <https://www.bjs.gov/index.cfm?ty=tp&tid=81>

⁷⁹ For examples please see: The Ohio Collaborative Community-Police Advisory Board's suggestions at <https://www.ocjs.ohio.gov/ohiocollaborative/links/Examples-Community-Police%20Engagement.pdf> Or the New Orleans Police Department's Community Engagement Manual at [https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Community-Engagement-Manual-\(3\).pdf/](https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Community-Engagement-Manual-(3).pdf/)

⁸⁰ For example please view report at <http://www.seattle.gov/documents/departments/police/reports/communityengagementreport2018.pdf>

Citizen advisory boards and committees

Community engagement emphasizes working with residents to promote public safety. Law enforcement agencies can work with community residents to identify problems and collaborate on implementing solutions that produce meaningful results for the community.⁸¹ A community advisory board/committee is a group that meets regularly to provide advice and perspectives to executive staff in law enforcement agencies. Membership should reflect and represent the different voices and needs in the community, meaning a board should be as diverse as the community in which it functions.⁸²

The goal should be the creation of an inclusive space designed to accommodate the community's diverse needs. An advisory board can play a continuing and meaningful role in the decision-making process and keep the community informed of developments and achievements made by law enforcement. This provides a sustained communication structure between the community and law enforcement leadership.

For example, the Albany Police Department (APD) has had a positive experience using such a mechanism for continued community policing and engagement. The department sought assistance from the city's Common Council to ensure all 15 wards of the city were equally represented on the Community Policing Advisory Committee. This committee was charged with

⁸¹ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. pp. 48. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁸² IACP. (2019, May 6). Promoting Community Involvement in Law Enforcement: Community Advisory Boards. Retrieved from <https://www.theiacp.org/news/blog-post/promoting-community-involvement-in-law-enforcement-community-advisory-boards>

reviewing and addressing items to reinvigorate the relationship between community members and APD.⁸³

Partnership with community organizations and faith communities

It is important to work within the community in order to build trust and nurture legitimacy. Law enforcement agencies can proactively increase public trust by initiating positive non-enforcement activities to engage communities that typically have high rates of investigative and enforcement involvement with government agencies.⁸⁴

Can your law enforcement agency develop programs that create opportunities for patrol officers to interact regularly with neighborhood residents, faith leaders, and business leaders? Some communities have developed Police Athletic Leagues (PALs) which provide an opportunity for the police to engage with youth in the community and build enduring beneficial relationships. Communities are often more willing to assist law enforcement when they have forged positive relationships through non-law enforcement-related community engagement.⁸⁵

Partnering with students and schools

Adopt-a-school programs seek to build a rapport between a school, its students and a local police department. In such programs, police officers visit the school at regularly scheduled intervals, have lunch with the students and

⁸³ Albany, C. O. (n.d.). Retrieved from <https://www.albanyny.gov/Government/Departments/PoliceDepartment/AlbanyCommunityPoliceAdvisoryCommittee.aspx>

⁸⁴ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. pp. 14. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁸⁵ *Id.* at 15

spend time with them at recess. Students are encouraged to engage with and ask questions of the officers. The goal is to cultivate a mentoring relationship from these interactions, with the officers serving as community role models.⁸⁶ Unlike School Resource Officers (discussed above in Part I), officers in adopt-a-school programs are *not* intended to enforce student discipline or address truancy issues, nor should they be used for such purposes. Rather, adopt-a-school programs are designed to have students engage with officers in a relaxed, non-adversarial fashion, fostering positive connections that carry through the students' academic and personal lives, into adulthood.⁸⁷

Police-community reconciliation

The police-community reconciliation process seeks to improve strained relationships between police and communities of color. The goal is to strengthen and build a community perception that law enforcement is a trustworthy partner with which it can collaborate in achieving public safety.

In many communities of color, a history both of violence unaddressed by law enforcement and police misconduct has left a legacy of grievance and distrust between these communities and the law enforcement agencies that serve them. A 2020 Center for Court Innovation survey of New York City youth at high risk of gun violence found a deep distrust of law enforcement, with only 19% believing that the police want to understand their community needs.⁸⁸ The

⁸⁶ See e.g., Valparaiso Police Department. <https://www.ci.valparaiso.in.us/366/Adopt-a-School>;

⁸⁷ See e.g., Rancho Cordova Police Department. <https://www.ranhocordovapd.com/programs/adopt-a-school>.

⁸⁸ Center for Court Innovation. "'Gotta You're your Own Heaven' Guns, Safety, and the Edge of Adulthood in New York City." Pg. 13

study found that “this lack of trust stemmed from three primary concerns: being stopped for low-level offenses, feeling the police were not addressing serious crime and violence, and sensing a lack of care for people in the community.⁸⁹” When these issues are addressed openly, new and different understandings can emerge, and a profound transformation in community-police relations becomes possible.⁹⁰ While engaging in discussion with communities of color on how historical and current police practices affect their communities, consider:

- Discussing how policies, culture, engagement, and other mechanisms can change to create a more transparent system built on trust.
- Communicating a willingness to improve as well as acknowledge past and continuing harm.
- Following through on changes to demonstrate commitment to the reconciliation process.
- Acknowledging that the intention is to create new practices in recognition of historical harm (in tandem with the announcement and implementations of new initiatives adopted by the collaborative). Not only will this reinforce the message of reconciliation in the department, it will help in educating the general population.⁹¹

https://www.courtinnovation.org/sites/default/files/media/document/2020/Report_GunControlStudy_08052020.pdf

⁸⁹ *Id.*

⁹⁰ Mentel, Z. (2012). *Racial reconciliation, truth telling, and police legitimacy*. Retrieved from https://s3.trustandjustice.org/misc/Racial-Reconciliation_Truth-Telling_and-Legitimacy.pdf

⁹¹ Kuhn, S., and Lurie, S. (2018). *Reconciliation between Police and Communities: Case Studies and Lessons Learned*. New York: John Jay College.

Attention to Marginalized Communities

Your department may need to devote special training and management attention to interaction with marginalized communities.

- **Limited English Proficiency (LEP) Citizens:** For citizens who have Limited English Proficiency, communication with law enforcement is more difficult and could result in law enforcement perceiving these citizens as noncompliant. Law enforcement agencies must ensure reasonable and equitable language access for all persons who have encounters with police or who enter the criminal justice system. Statewide language access requirements discussed in New York State Executive Order No. 26 (E.O. 26), require New York State executive agencies to provide interpretation services in any language and translation services in the top six most commonly spoken non-English languages in the state. Consider adopting elements of E.O. 26 as part of your plan, and requiring law enforcement agencies to provide appropriate resources to community members.
- **Citizens with communication disabilities.** Similarly, citizens who are deaf, hard-of-hearing or have sensory and stimulation sensitivities can be perceived by officers as noncompliant. It is important that officers are able to recognize when a community member may have a disability that could affect the way they communicate. Consider working with experts and members of the disability community to create training programs to educate officers to identify and work with disabled community members.
- **The LGBTQIA+ Community:** Law enforcement agencies must take steps to eradicate discriminatory policing based on a community member's perceived gender identity or sexual orientation. For example, a 2014 report on a national survey of LGBT people and people living with HIV found that 73% of respondents had face-to-face contact with the police in the past five years. Of those respondents, 21% reported encountering hostile attitudes from officers, 14% reported verbal assault by the police,

3% reported sexual harassment, and 2% reported physical assault at the hands of law enforcement officers. Police abuse, neglect, and misconduct were consistently reported at higher frequencies by respondents of color and transgender and gender-nonconforming respondents.⁹² One example of a positive policy change is the LAPD's 2012 policy requiring officers to refer to transgender individuals by the name and gender they prefer and precluding officers from searching transgender individuals solely for the purpose of determining their biological sex.⁹³ For more examples and guidance please review *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQIA+ Community*.⁹⁴

- **Immigrant Communities:** To begin to bridge the gap between immigrant communities and law enforcement, in 2017 Governor Cuomo signed Executive Order 170 which prohibits New York State agencies and officials from asking a person's immigration status. This rule also prohibits officials from disclosing a person's immigration status to federal authorities, except in certain situations such as a law enforcement investigation.⁹⁵ You should look for opportunities to integrate members of immigrant communities into community discussions on policing. Engaging with communities is the best way to continue to get feedback that can shift police culture and values, and foster community trust.

Involving youth in discussions on the role of law enforcement agencies

Creating avenues to reach youth, such as youth leadership councils, can assist law enforcement in building trust and forming relationships with the

⁹² Mallory, C., Hasenbush, A., & Sears, B. (2015, March). Discrimination and Harassment by Law Enforcement Officers in the LGBT Community. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/lgbt-discrim-law-enforcement/>

⁹³ Copple, James E., & Dunn, P. (2017). *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community*. Washington, DC: Office of Community Oriented Policing Services Retrieved from <https://www.iadlest.org/Portals/0/cops%20LGBTQ.pdf>

⁹⁴ *Ibid.*

⁹⁵ Governor Cuomo Signs Executive Order Prohibiting State Agencies from Inquiring About Immigration Status. (2017, September 20). Retrieved from <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-prohibiting-state-agencies-inquiring-about-immigration>

greater community. Such groups can provide early positive encounters with law enforcement that benefit both the police and the community at large. Similar to the creation of citizen advisory boards, it is important that youth councils in communities be diverse and inclusive and reflect the makeup of the community.

III. Fostering Community-Oriented Leadership, Culture and Accountability

Reforms cannot succeed or be sustained without commitment from strong and effective leadership – in other words – without a supportive institutional culture. Culture determines behavior much more powerfully than policies and rules. The ultimate goal of reform is to ensure an institutional culture consistent with your goals for community-police relations.

Accountability is essential for a strong institutional culture and for mutual trust between the community and the police. Your department must engage in meaningful review of officer conduct, including use of force, to give the community confidence that misconduct is identified and the conduct is appropriately addressed. Much of the current unrest across the country is rooted in a belief that some police departments tolerate abuse of authority, including excessive force and other misconduct or adhere to practices that are inconsistent with community values. In the long run, this belief will harm police officers as well as degrade public safety.

In developing your plan, consider whether improvements are needed in your leadership selection process, community oversight structures, accountability mechanisms or other efforts to shape and maintain a healthy and productive institutional culture.

1. Leadership and Culture

Is your leadership selection process designed to produce the police-community relationship you want?

The process of selecting your chief of police, as well as other department leaders, should be based upon the characteristics and needs of your jurisdiction and should be structured in a manner that is legitimate and fair. Recruitment of a law enforcement leaders, whether by internal promotion or hiring an external candidate, needs to begin with an analysis of the needs of the local community.⁹⁶

The process for conducting a search and identifying candidates can incorporate input from a variety of community groups and stakeholders, even if the ultimate appointment authority resides with the chief executive of the jurisdiction. This will produce more meaningful results and candidates better able to uphold specific community values than if the search is conducted solely through the office of the chief executive.

Does your selection process ensure consideration of a diverse group of candidates? Does it take into account applicants' views on and experience with police-community relations?

In some jurisdictions, citizen committees are established to conduct an applicant search and provide advice and recommendations regarding the

⁹⁶ *Selecting a police chief*. (1999). Retrieved from https://icma.org/sites/default/files/308762_E-42370.pdf

selection process.⁹⁷ In Tallahassee, Florida for example, a panel comprised of law enforcement, non-profit groups, and religious leaders was formed to participate in the process of selecting a new chief of police for the city.⁹⁸ Your community should consider whether a similar approach that includes a well-balanced and representative search committee, might yield a broader array of candidates.

Does your officer evaluation structure help advance your policing goals?

CompStat has been an enormously valuable tool for many communities to enhance their level of public safety. However, in many instances localities still rely on mechanisms for promotions based on “the annual reports that chiefs of police submit to city councils and mayors emphasizing the number of arrests they’ve made, even if the crime rate continues to climb.”⁹⁹ Such cases can be a powerful indicator that arrest is being misused as a tool and is not helping to achieve public safety.

Jurisdictions may need to modify their CompStat implementations and other incentive and promotion structures to ensure their officer evaluation metrics reduce crime and promote public safety while promoting larger reform goals including improved community relationships and police legitimacy.¹⁰⁰

⁹⁷ *Selecting a police chief*. (1999). Retrieved from https://icma.org/sites/default/files/308762_E-42370.pdf page 5.

⁹⁸ Etters, K. (2019, July 01). Meet the individuals who will help pick the new Tallahassee police chief. Retrieved from <https://www.tallahassee.com/story/news/2019/07/01/meet-people-who-help-pick-new-tallahassee-police-chief/1618663001/>

⁹⁹ Mentel, Z. (2012). *Racial reconciliation, truth telling, and police legitimacy*. Retrieved from https://s3.truandjustice.org/misc/Racial-Reconciliation_Truth-Telling_and-Legitimacy.pdf

¹⁰⁰ *Ibid*.

What incentives does your department offer officers to advance policing goals?

Departments may want to consider offering awards, prizes, or other recognition to officers who advance reform goals. Such incentives can change officer behavior and department culture. Some departments invite community members to nominate officers for community policing awards.¹⁰¹ This incentivizes officers to establish a positive relationship with community members and engages the community.

Does your hiring and promotion process help build an effective and diverse leadership team?

Diversity in leadership is a persistent problem for law enforcement agencies. For example, 80 percent of the NYPD's chiefs, deputy inspectors, and inspectors who hold a rank above captain are classified as "non-Hispanic white."¹⁰² In addition to hiring diversity, promoting leaders within the department who reflect a broad range of diversity, including race, gender, sexual orientation, gender identity, language, life experiences, and cultural background, will improve understanding and effectiveness in policing and community relations.

Consider how your police agency uses cognitive, written and physical performance tests for promotion and hiring into leadership roles. Are there

¹⁰¹ U.S. Department of Justice, Bureau of Justice Assistance, Understanding Community Police: A Framework for Action, <https://www.ncjrs.gov/pdffiles/commmp.pdf>.

¹⁰² Despite diversity gains, top NYPD ranks fall short of reflecting communities. (2019, September 03). Retrieved from <https://brooklyneagle.com/articles/2019/09/03/nypd-diversity-top-ranks/>

qualifications other than exam scores that can be woven into criteria for leadership positions?¹⁰³ Other questions to consider include: Do applicants have specialized training or additional education? What are the culture, values and mission the applicant envisions for the agency? Has this person shown clear commitment to community engagement?

What is your strategy to ensure that your department's cultural-norms and informal processes reflect your formal rules and policies?

Policy makers and law enforcement organizations can create policies and set rules and guidelines, but if policies conflict with institutional culture these policies will not become part of the institutional fabric and may not effectively guide individual behavior.¹⁰⁴ Leadership must take an active role in demonstrating commitment to the values important to the department and the community. It is not sufficient for chiefs and department leaders to talk the talk without walking the walk.

On April, 2014, the Office of Community Oriented Policing Services (COPS Office) hosted a conference with law enforcement officials, civil rights activists, academic experts, community leaders and policymakers. At this meeting Chief Chris Magnus, of the Richmond California Police Department, led a discussion on engaging communities of color. He described using a multipronged approach to change policies in his own department. These policies included: engaging all officers, not just a subset; using up-to-date evaluation tools capable

¹⁰³The Leadership Conference Education Fund. (2019). New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing. Retrieved from https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

¹⁰⁴ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. pp. 12. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

of evaluating new hires' community policing skills; providing developmental training in progressive policies; and keeping officers in their positions long enough that they could understand how to deal with challenges in the community. Chief Magnus also shifted the department's focus to issues other than crime to help show that crime is not the police's only priority. For example, Richmond's police helped reduce the number of abandoned cars, in part by moving code enforcers into the department.¹⁰⁵

It is possible that more comprehensive changes may be required where police/community relations have deteriorated beyond the point where then can be repaired through policy reform. For example, in 2013 Camden, New Jersey "eliminated its city police department and established a new one under county control."¹⁰⁶ Previously the community-police relationship was undermined by lack of trust, high crime rates and corruption within the police department. Supporters say that the Camden restructuring made police officers a more regular presence in the community, and rebooted the culture of policing in the city. Since the reforms, violent crime rates have fallen, including a sharp decrease in the homicide rate, and excessive use of force has also decreased.¹⁰⁷

¹⁰⁵ Palladian Partners, Inc. (2014). Strengthening the Relationships between Law Enforcement and Communities of Color: Developing an Agenda for Action. Washington, DC: Office of Community Oriented Policing Services. Received from https://www.nnscommunities.org/wp-content/uploads/2017/10/StrengtheningtheRelationshipBetweenLE_CommunitiesofColor-DevelopinganAgendaforAction.pdf

¹⁰⁶ Landergan, K. (2020, June 12). The City that Really Did Abolish the Police. Retrieved from <https://www.politico.com/news/magazine/2020/06/12/camden-policing-reforms-313750>

¹⁰⁷ Landergan, K. (2020, June 12). The City that Really Did Abolish the Police. Retrieved from <https://www.politico.com/news/magazine/2020/06/12/camden-policing-reforms-313750>

2. Tracking and Reviewing Use of Force and Identifying Misconduct

When should officers be required to report use of force to their supervisor?

Building on prior use-of-force reporting reforms, Governor Cuomo recently signed legislation requiring that law enforcement officers report all firearm discharges in circumstances where a person could have been injured, whether or not any injury occurred.¹⁰⁸ Beyond this requirement, police departments should have clear policies regarding documenting the use of force.¹⁰⁹ Consider what other incidents, including other uses of force, your department should require be reported.

What internal review is required after a use of force?

The authors of the 2019 report “New Era of Public Safety” recommended reviewing all uses of force.¹¹⁰ These incidents can be reviewed by a supervisor, other individuals in the officer’s chain of command, a dedicated review board within the department, or an outside entity. Multiple levels of supervisory review can ensure that all supervisors carefully review use of force reports because they will receive scrutiny from their own supervisors.¹¹¹

¹⁰⁸ Governor Andrew M. Cuomo, Governor Cuomo Signs Policing Reform Legislation, <https://www.governor.ny.gov/news/governor-cuomo-signs-policing-reform-legislation#:~:text=This%20new%20law%20requires%20that,a%20written%20report%20within%2048.>

¹⁰⁹ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 144. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

¹¹⁰ *Id.* at 146.

¹¹¹ Samuel E. Walker & Carol A. Archbold, *The New World of Police Accountability*, Chapter 3, https://us.sagepub.com/sites/default/files/upm-assets/99450_book_item_99450.pdf

As one example, the NYPD reviews all use-of-force incidents, with varying levels of scrutiny, ranging from review by an individual supervisor to review by an independent review board, depending on the severity of the incident.¹¹²

Does your department review officers' use of force and/or misconduct during performance reviews?

Regular attention by supervisors to officers' use of force may promote adherence to departmental policy. Does department policy direct them to review the officer's history of use of force and other forms of misconduct, including under prior supervisors? Other flags such as sexual misconduct or a high number of complaints or lawsuits may signal potential for future misconduct.¹¹³

Does your department use external, independent reviewers to examine uses of force or misconduct?

Impartiality is one of the four pillars of procedural justice and could help instill confidence in determinations regarding potential abuse of force or other misconduct.

¹¹² Use of Force Report 2017, New York City Police Department, <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2017.pdf>

¹¹³ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 204. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

Does your department leverage Early Intervention Systems (EIS) to prevent problematic behavior?

An EIS is a system that electronically tracks officer performance in an attempt to identify abnormal patterns indicative of problematic behavior.¹¹⁴ EIS's are used across many disciplines, to identify potential issues before they fully manifest.

In the law enforcement context, these systems can help departments identify officers that may need intervention before a major problem occurs. Behavior that can suggest the need for corrective action includes a high number of use-of-force incidents or citizen complaints, or misuse of sick leave. An EIS can help prevent future misconduct, which in turn results in a more just law enforcement system, reduced complaints, and reduced litigation risk.¹¹⁵

Does your department review “sentinel” or “near-miss” events? Does the department respond to questionable uses of force with non-punitive measures designed to improve officer performance?

The Final Report of the President’s Task Force on 21st Century Policing recommends that law enforcement entities review “sentinel” or “near miss” events.¹¹⁶ Sentinel review consists of non-punitive peer review of critical incidents that resulted in or came close to undesirable outcomes.

¹¹⁴ *Id.* At 198.

¹¹⁵ Early Warning Systems: Responding to the Problem Police Officer, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>.

¹¹⁶ United States Department of Justice. (2015). Final Report of the President’s Task Force on 21st Century Policing. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Understanding what went wrong in these events can help prevent the same issue from recurring.

The National Institute of Justice (NIJ) recently studied the use by three large departments of peer review of sentinel incidents.¹¹⁷ The NIJ study found that a practice of regular peer review, intended to create an opportunity for learning rather than punishment, can promote a culture of excellence.¹¹⁸

3. Internal Accountability for Misconduct

What does your department expect of officers who know of misconduct by another officer?

Some law enforcement agencies, such as the LAPD, have imposed on their officers a duty to report misconduct by other officers. Within the New York State Police, there is an obligation to report the misconduct of another trooper.¹¹⁹ Similarly, some law enforcement agencies have imposed on their supervisors a duty to respond to reports of possible misconduct. Should your department adopt such policies?

Does your police department have clear procedures for reporting misconduct to the department and/or to outside agencies such as the Attorney

¹¹⁷ National Institute of Justice, Mending Justice: Sentinel Event Reviews, <https://www.ncjrs.gov/pdffiles1/nij/247141.pdf>.

¹¹⁸ Similarly, many hospitals conduct regular peer review of surgeries with poor outcomes.

¹¹⁹ New York State Police Members Manual, Article 9B1(C) "Even if no allegation or complaint is received, Division Members must report to the Troop/Detail Commander any incident that, in their judgment, indicates that an official Complaint Against Personnel Investigation is necessary."

General, the District Attorney, a civilian oversight agency or the EEOC? Are these procedures well understood by department personnel?

Does the department have robust anti-retaliation policies to ensure that officers are willing to report misconduct by others? Does and should the department accept anonymous internal complaints?

Does your department have a clear and transparent process for investigating reports of misconduct?

Misconduct investigations must ensure both community trust in the department and fairness to officers. Do the department's procedures achieve these goals? Does the department have an appropriate timetable in which to complete misconduct investigations in light of these goals?

In a 2019 report by The Leadership Conference on Civil and Human Rights, the authors recommend that all misconduct reports be investigated, even if they occur when disciplinary actions can no longer be imposed.¹²⁰ Should your department adopt this practice?

Does your department respond to officer misconduct with appropriate disciplinary measures?

Do officers in your department believe that misconduct will result in appropriate discipline, or do they believe that it will be overlooked?

¹²⁰ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 255. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

Does your department have a continuum of responses to misconduct? Supervisors and department leadership should not be in the position of having to either ignore misconduct or impose harsh penalties that may be disproportionate.

What procedures are in place to ensure that substantiated complaints of misconduct and settlements or adverse verdicts in lawsuits are used to reduce the risk of future misconduct?

Review of misconduct and adverse legal actions can be helpful in evaluating a department's policing activities. In particular, the discovery and trial processes can provide evidence that is more comprehensive than what is typically available to departments.¹²¹

What controls are in place to ensure impartiality when reviewing potential misconduct or complaints? When appropriate, are cases referred to either the District Attorney or another prosecutor?

In 2015, Governor Cuomo issued Executive Order 147 requiring a special prosecutor's office within the Office of the Attorney General to investigate killings of unarmed citizens and prosecute when appropriate. The Executive Order also permitted the special prosecutor's office to investigate and prosecute killings of citizens where there was a significant question as to whether a citizen was armed and dangerous at the time of his or her death.

In 2020 the Executive Order was codified into state law, creating a permanent Office of Special Investigation within the Office of the Attorney

¹²¹ Schwartz, Joanna C., What Police Learn from Lawsuits (December 2, 2010). Cardozo Law Review, Vol. 33, p. 841, 2012, Available at SSRN: <https://ssrn.com/abstract=1640855>.

General. This new legislation provides an independent review in situations where local relationships and pressures can hamper thorough review and impede necessary corrective action. This law also expands the permissible scope of the Attorney General's oversight to cases where an individual was known to be armed at the time of death.

The community must have confidence that such cases are handled fairly and without partiality either for or against the officers involved. In light of the permanent working relationship between a police department and the District Attorney, maintaining public confidence requires an independent review. Beyond cases that are currently referred to the Office of the Attorney General, consider how best to establish a disciplinary review process that gives the whole community confidence that misconduct will be fairly and impartially reviewed.

Does your department expect leaders and officers to uphold the department's values and culture when off-duty?

Behavior of officers when they are off-duty can reinforce a lack of trust in police officers and the justice system as a whole. While you cannot control the behavior of officers while they are off-duty, it is important to acknowledge the impact their off-duty conduct may have on the community members' faith in your department, and consider measures you can implement to ensure off-duty conduct does not undermine the community relationship-building work of the department.

Many police departments hold officers to certain standards of conduct even when they are out of uniform, including imposition of sanctions ranging

from termination and suspension to administrative duty. For example, an off-duty police officer in Missouri was removed from his official duties and placed on administrative duty after he was seen verbally abusing a man following a car accident. The incident was caught on video and quickly went viral. In the video the officer, who was not in uniform, threatened and cursed at the citizen, all while a uniformed officer was also at the scene.¹²² In another example, an officer in Savannah, Georgia, was fired as the result of a social media post. This post violated one of the department's conduct policies, which reads in part, "Employees shall not engage in offensive or harassing conduct, verbal or physical, towards fellow employees, supervisors or the public during work hours or off-duty hours."¹²³

4. Citizen Oversight and Other External Accountability

Does or should your department have some form of civilian oversight over misconduct investigations or policy reform?

Many larger law enforcement entities have some form of civilian oversight entity.¹²⁴ Unlike citizen advisory boards discussed in Section II - which are broad committees to encourage dialogue and community connection - civilian oversight entities have formal duties and authorities. For example,

¹²² Gstalter, M. (2020, June 24). Off-duty officer in Trump hat relieved of official duties for threatening man in viral video. Retrieved from <https://thehill.com/blogs/blog-briefing-room/news/504335-off-duty-officer-in-trump-hat-placed-on-leave-for-threatening>

¹²³ Staff, W. (2020, June 26). Savannah officer fired after making controversial Facebook post about privilege. Retrieved from <https://www.wtoc.com/2020/06/26/savannah-officer-fired-after-making-facebook-post-about-privilege/>

¹²⁴ "Police Oversight by Jurisdiction (USA)." National Association for Civilian Oversight of Law Enforcement. https://www.nacole.org/police_oversight_by_jurisdiction_usa.

these entities may have the power to review investigative findings of Internal Affairs bureaus, to conduct their own investigations, to leverage various investigative tools, including subpoenas, and/or to impose discipline.¹²⁵ Some entities also have the power to weigh in on key policy decisions.¹²⁶

Police and reform groups often advocate different approaches to civilian oversight. For example, the Equal Justice Initiative recommends that civilian oversight entities reflect the entire community, observing that “[s]tudies show that white Americans are far more likely than Black Americans to believe that the police use an appropriate amount of force.”¹²⁷ The New Era of Public Safety also recommends empowering such review boards by giving them the necessary resources to fully evaluate complaints.¹²⁸ This includes giving oversight entities the power to weigh in on pertinent policy, the requisite financial resources, and access to investigative information.¹²⁹ Effective oversight requires full cooperation of subject and witness officers in investigations.

By contrast, the National Association for Civilian Oversight of Law Enforcement (NACOLE) recommends that police departments select the least intrusive civilian oversight entity that is able to accomplish its desired goal.¹³⁰

¹²⁵ “Oversight Models: Is one model better than another?” National Association for Civilian Oversight of Law Enforcement. https://www.nacole.org/oversight_models.

¹²⁶ *Ibid.*

¹²⁷ Equal Justice Initiative, *Reforming Policing in America* 2020, <https://eji.org/issues/policing-in-america/>

¹²⁸ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 222. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

¹²⁹ *Ibid.*

¹³⁰ National Association for Civilian Oversight of Law Enforcement, *Civilian Oversight of Law Enforcement, A Review of the Strength and Weaknesses of Various Models* (https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE_short_doc_FINAL.pdf?1481727977).

If you consider establishing an entity outside the police department to review citizen complaints of excessive force or other police misconduct, here are some relevant questions:

- What level of review should it conduct? Should it review the findings of an Internal Affairs Bureau or conduct its own investigation?
- What power should it have to interview officers or other witnesses, to compel officers or other witnesses to be interviewed, and to review documents, recordings, interviews conducted by Internal Affairs or other evidence?
- Should it be empowered to impose disciplinary action, recommend disciplinary action, or simply to substantiate complaints?
- Should it be authorized to formally refer cases to the Attorney General or District Attorney?
- What mechanisms are in place to ensure subject and witness officers fully cooperate with civilian oversight investigations?

There are a number of existing oversight entities to look to as models.¹³¹

- The New York City board is composed of 13 members: five appointed by the Mayor, five appointed by the City Council, and three appointed by the Police Commissioner. The board has power to investigate complaints, including subpoena power, and can recommend discipline. However, the Police Commissioner has final authority over the imposition of discipline.¹³²

¹³¹ U Ofer, Udi (2016) "Getting It Right: Building Effective Civilian Review Boards to Oversee Police," Seton Hall Law Review: Vol. 46 : Iss. 4 , Article 2, p.1053. Available at: <https://scholarship.shu.edu/shlr/vol46/iss4/2>.

¹³² For more information on the NYC Civilian Complaint Review Board please visit its website at <https://www1.nyc.gov/site/ccrb/index.page>.

- The Chicago board is composed of nine members appointed by the Mayor with the consent of the City Council. The board has investigative and subpoena power, and power to impose disciplinary measures.¹³³
- The Baltimore board is composed of nine voting members nominated by the Mayor and confirmed by the City Council, along with five non-voting members from community stakeholders. The board does not have power to investigate or impose discipline. It may simply review complaints.¹³⁴

Is there an easy, accessible and well-publicized process for members of the public to report complaints about police misconduct?

To encourage citizen feedback, the 2019 report “New Era of Public Safety” recommends that departments make claim filing processes easy and, accessible. Some considerations include language and disability accessibility, formats supported for filing (email, phone, in-person, Internet, etc.) and length of intake process.¹³⁵ Law enforcement agencies should also seek feedback on these processes from the public through many of the outreach avenues discussed in this report. Listening to feedback regarding the complaint process and incorporating that feedback into process reform will improve the complaint review process, improving confidence in the system and encouraging citizen complaints.

¹³³ For more information on the Chicago Civilian Office of Police Accountability please visit its website <https://www.chicagocopa.org/>.

¹³⁴ For more information on the Baltimore Civilian Review Board please visit its website at <https://civilrights.baltimorecity.gov/civilian-review-board>.

¹³⁵ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

Newly enacted legislation authorizes the New York State Attorney General to investigate allegations of misconduct against local police agencies.¹³⁶

Are investigation outcomes reported to the complainant? Are they reported to the public? Should the department or the citizen complaint review entity, if any, accept anonymous complaints?

Disclosing the outcome of investigations to complainants and the public increases transparency and can increase confidence in law enforcement. Some departments choose to disclose this information in aggregate reports instead of sharing individualized data.

Accepting anonymous complaints may assuage citizen fears of police retaliation. However, anonymous complaints can be less reliable and are difficult to investigate because the investigator cannot ask follow-up questions or interview the complainant, and they can be retaliatory. New Era of Public Safety recommends that departments review anonymous complaints fully, but disclose during intake that anonymity can hinder the review process.¹³⁷

¹³⁶ Governor Cuomo Signs Legislation Requiring New York State Police Officers to Wear Body Cameras and Creating the Law Enforcement Misconduct Investigative Office, <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-requiring-new-york-state-police-officers-wear-body-cameras-and>.

¹³⁷ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. Retrieved from: civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

Does your local legislature engage in formal oversight of the police department? Should any changes be made in the legislature's oversight powers or responsibilities?

While uncommon, legislative oversight of police departments can be a helpful tool.¹³⁸ Legislatures often have the power to conduct investigations and learn about local policing practices through hearings and other means. This investigative authority allows legislatures to access more information regarding policing practices than the general public. Further, if legislatures identify practices that pose concerns, they have the power to address those concerns through legislation.

Some experts believe legislative oversight is critical to ensuring democratic accountability in policing because it provides clear authority for policy and makes the legislature accountable to the public for police functions at the “front-end” instead of relying on uncertain “back-end” procedures, such as Constitutional analyses by courts.¹³⁹

Is your police department accredited by any external entity?

Accreditation is a useful tool that enables external review of agency policies, procedures, and practices to improve the standards of your police department and quality of your policing services. The Division of Criminal Justice Services administers the New York State Law Enforcement Agency

¹³⁸ Mary M. Cheh, Legislative Oversight of Police: Lessons Learned from an Investigation of Police Handling of Demonstrations in Washington, D.C., 32 J. Legis. 1 (2005). Retrieved from: scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1467&context=faculty_publications

¹³⁹ Friedman, Barry and Ponomarenko, Maria, Democratic Policing (November 23, 2015). New York University Law Review, Vol. 90, 2015; NYU School of Law, Public Law Research Paper No. 15-53. Available at SSRN: <https://ssrn.com/abstract=2694564>

Accreditation Program, which provides structure and guidance for police agencies to evaluate and improve overall performance in areas such as administration, training, and operational standards. The program encompasses four principal goals:

1. To increase the effectiveness and efficiency of law enforcement agencies utilizing existing personnel, equipment and facilities to the extent possible;
2. To promote increased cooperation and coordination among law enforcement agencies and other agencies that provide criminal justice services;
3. To ensure the appropriate training of law enforcement personnel; and
4. To promote public confidence in law enforcement agencies.

Accredited agencies must meet minimum standards, considered “best practices” in the field, which promote a high degree of professionalism and public confidence. The standards of the NYS Law Enforcement Agency Accreditation Program can be found in the Standards and Compliance Verification Manual.¹⁴⁰ Please refer to the “Becoming an Accredited Law Enforcement Agency” section of the Manual for information on how to apply. For any questions regarding the application process or for general Accreditation related inquiries, please contact NYS Law Enforcement Accreditation Program staff at ops.accreditation@dcjs.ny.gov. This program is available at no cost to localities and participation should be considered as part of your community policing plan.

¹⁴⁰ NYS Division of Criminal Justice Services Law Enforcement Agency Accreditation Council. *Standards and Compliance Verification Manual*. September 5, 2019.
https://www.criminaljustice.ny.gov/ops/docs/accred/standards_compliance_verification_manual.pdf.

Does Your Police Department Do an Annual Community Survey to Track Level of Trust?

An annual survey that measures the community's level of trust in the police department, the community's view on the effectiveness of certain policing strategies, as well as one that collects any negative feedback may be a helpful tool in gaging the community's satisfaction with the police department. The 21st Century Policing Report recommends such an annual community survey, advising that it should be conducted by zip code, so as to delineate the responses from each neighborhood.¹⁴¹

5. Data, Technology and Transparency

Transparency is one of the four pillars of procedural justice and is critical to ensuring accountability. Without a full picture of law enforcement policies, procedures, and activity, the public cannot meaningfully evaluate the performance of law enforcement. Even a well-functioning department risks losing public confidence when it does not engage in meaningful transparency. Departments should consider various ways to make law enforcement practices more transparent to the public.

Data is an important tool for improving accountability because it provides the public with insight into police activity and can be leveraged to inform data-driven policies.

What police incident and complaint data should be collected? What data should be available to the public?

¹⁴¹ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, pp. 16. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Local law enforcement data increases transparency by providing a snapshot of police conduct. Collection of police activity data can be useful to evaluate if policing practices are effective, ensure compliance with the law, and identify potential biases and disparities. Data reporting and analysis are key components of many DOJ consent decrees with law enforcement agencies.¹⁴² Data analysis has been critical in identifying disparate and biased policing of minorities. Reports also suggest that transparent use-of-force data builds community trust and increases accountability within law enforcement departments.¹⁴³

Governor Cuomo recently signed legislation (Police Statistics and Transparency Act) requiring courts to compile and publish racial and other demographic data for low-level offenses.¹⁴⁴ This legislation also requires departments to report arrest-related deaths to DCJS. Many law enforcement agencies collect and publish other types of data regarding policing activity. For example, the NYPD publishes an annual report with use-of-force statistics.¹⁴⁵

Other legislatures are adopting laws requiring departments to collect “stop data” regarding traffic and pedestrian stops.¹⁴⁶ Stop data typically includes information regarding the stop (rationale, outcome, etc.) and the

¹⁴² The Civil Rights Division’s Pattern and Practice Police Reform Work 1994-Present, Civil Rights Division, U.S. Department of Justice. <https://www.justice.gov/crt/file/922421/download>.

¹⁴³ *Ibid.*

¹⁴⁴ The Laws of New York, Article 7-A: Judicial Administration, Section 212, <https://www.nysenate.gov/legislation/laws/JUD/212>; Press Release: Governor Cuomo Signs Policing Reform Legislation, <https://www.governor.ny.gov/news/governor-cuomo-signs-policing-reform-legislation>.

¹⁴⁵ Use of Force Report 2017, New York City Police Department, <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2017.pdf>.

¹⁴⁶ Passage of 'Traffic Stop Data Collection Act' in Illinois is Key "First Step" to End of Racial Profiling, ACLU Says, <https://www.aclu.org/press-releases/passage-traffic-stop-data-collection-act-illinois-key-first-step-end-racial-profiling>.

target (race, gender, age, etc.). Analysis of stop data can inform the effectiveness of policing and identify potential biases or disparate impact.

In determining how your agency should collect and use data, consider the following questions:

- What policing activity data should be collected by your department? This could include data regarding shootings by officers, firearm discharges, civilian injuries, use of force incidents, and officer stops, searches, and/or arrests.
- Should this data include demographic data, which can be used to detect racial disparities and biases?
- Beyond disclosures required under state and federal law, what other policing data should be disclosed? Made public? Should this data be aggregate data or individualized data? Should individualized data be anonymized or redacted? How frequently should data be disclosed?
- Should the department make available to the public aggregate data on its review of use of force incidents, such as number of incidents reviewed, number found to be inconsistent with department policy or number referred for prosecution?
- Should the department make available to the public aggregate data about the number and disposition of citizen complaints, including the nature of any discipline imposed?

How should your law enforcement agency leverage data to drive policing strategies?

Data can be useful for informing policing strategies. For example, data can be used to shape decisions on resource allocation, personnel deployment, and

policy. Data collection and utilization can be enhanced by employing crime analysts to inform decision-making and support policing operations.

It is important that departments are aware that data-driven findings can be unreliable if the underlying data is of poor quality or is biased.¹⁴⁷ For example, law enforcement agencies may be inclined to deploy more resources to an area because it has a high number of arrests. However, the high number of arrests may be related to over-policing in the area.

Agencies should consider formally partnering with their regional NYS Crime Analysis Center which can assist with data-driven and intelligence-led policing efforts, as well as provide specific investigatory support. DCJS partners with local law enforcement agencies to support a network of 10 regional Crime Analysis Centers (CACs) that provide investigative support and information to help police and prosecutors more effectively solve, reduce and prevent crime. Using data-driven processes, the CACs coordinate, expand, and enhance investigative services and provide real-time investigative support to law enforcement agencies.¹⁴⁸

How can your police department demonstrate a commitment to transparency in its interactions with the public?

Police Departments can consider policies that require officers to state explicitly their name, badge number, and purpose before interacting with a

¹⁴⁷ Andrew Guthrie Ferguson, Policing Predictive Policing, 94 Wash. U.L. Rev. 1109 (2017).
https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6306&context=law_lawreview.

¹⁴⁸ For more information on the DCJS Crime Analysis Center network, please visit:
<https://www.criminaljustice.ny.gov/crimnet/ojsa/impact/CACCI.pdf>.

member of the public. Departments can also require that officers provide a business card following an interaction. To instill confidence in the public following substantial criticism of its “stop-and-frisk” program, in 2018 the NYPD began offering business cards to individuals who were subject to a “stop-and-frisk,” but were not arrested.¹⁴⁹ The business cards include officer information and information on how to obtain body camera footage.

Law enforcement agencies can also consider requiring officers to inform individuals of their rights in certain scenarios even when not legally required. For example, an officer seeking to conduct a consent search could be required as a matter of policy to advise the subject that he or she has the right to refuse to consent to the search.

As a general matter, policies aimed to enhance transparency will be most effective if they include enforcement mechanisms to ensure compliance with these policies and procedures.

How can your police department make its policies and procedures more transparent?

Does your department have comprehensive policies and procedures in place to address common and controversial forms of police activity? The Municipal Police Training Council (MPTC) – created under Executive Law §837 to establish training standards and guidelines – is comprised of law enforcement officials and academics appointed by the Governor. The MPTC has

¹⁴⁹ New York City Civilian Complaint Review Board. “What is the Right to Know Act?”, Available at: <https://www1.nyc.gov/site/ccrb/complaints/right-to-know-act.page>

developed model policy guidance for law enforcement agencies to use as an initial framework in their own policy development.

Topic areas include but are not limited to: Body Worn Cameras, Identification Procedures, Investigation of Hate Crimes, Recording of Custodial Interrogations, and Use of Force. All MPTC model policy guidance issued by the Council is available to law enforcement and may be requested by contacting DCJS at OPS.GeneralPolicing@dcjs.ny.gov.

- Does your department have a process for developing or revising its policies and procedures? Does this process include the solicitation of community and/or stakeholder input?
- How can your department make its policies and procedures accessible (format, language, ADA-compliant) and understandable to the public?
- Are your policies and procedures evidence-based? Do they reflect current peer-reviewed research?
- Do your policies consider disparate impact and potential biases?

How can your police department ensure adequate transparency in its use of automated systems and “high-risk” technologies?

New technologies including biometric technologies, surveillance systems, unmanned aerial systems, data mining tools, geofencing tools, and resource allocation tools may provide significant value to police departments. However, reports suggest that these technologies may rely on obscured

systems with unstudied effectiveness and pose a risk of bias or interfering with civil liberties.¹⁵⁰

For example, as discussed earlier in Section II on policing strategies, researchers from MIT and Stanford have found that facial recognition technology can be ineffective, especially for certain skin colors and genders.¹⁵¹ In the previous section, we discussed assessing if a new technology is an effective policing tool. Before employing a new technology, experts recommend that departments carefully consider the potential risks posed by the technology, pursue mechanisms to audit the performance of the technology prior to use, and properly train all users of the technology so that it is appropriately used.¹⁵²

Unlike other policing resources, new technologies have not had decades of established practice to refine attendant policies and procedures.¹⁵³ For this reason, many experts suggest departments take a special approach to establishing policies and procedures, and solicit community input prior to deploying a new technology.¹⁵⁴ Law enforcement may want to review resources from or consult with civil liberties and privacy experts, non-profit

¹⁵⁰ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹⁵¹ Hardesty, L., MIT News Office. *Study Finds Gender and Skin-Type Bias in Commercial Artificial-Intelligence Systems*. MIT News, 11 Feb. 2018, news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212.

¹⁵² United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; Algorithmic Accountability Policy Toolkit, AI Now, October 2018, <https://ainowinstitute.org/aap-toolkit.pdf>; First Report of the Axon AI & Policing Technology Ethics Board, June 2019, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d13d7e1990c4f00014c0aeb/1561581540954/Axon_Ethics_Board_First_Report.pdf.

¹⁵³ United States Department of Justice. (2015). *Final Report of the President's Task Force on 21st Century Policing*. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. ("We live in a time when technology and its many uses are advancing far more quickly than are policies and laws.")

¹⁵⁴ New York City, Automated Decision Systems Task Force Report, November 2019, <https://www1.nyc.gov/assets/adstaskforce/downloads/pdf/ADS-Report-11192019.pdf>.

research organizations, public technologists, and researchers when evaluating new technologies to ensure selection of low-risk, effective technologies. Law enforcement may also want to consider any racial-equity impact assessments--systematic examinations of how different racial and ethnic groups will be affected by the proposed technology usage--in an effort to identify interventions that will minimize adverse consequences. This approach should also apply to technologies leveraged by third parties to assist law enforcement investigations. Below are some questions your department may want to consider:

- What process does your department have in place for the adoption of new technologies? Does the process include the solicitation of stakeholder and researcher input? Is there a process for community input? Does the process include the creation and publication of clear policies that articulate how the technology works, how it can be audited, and how, where, when, and why it is used?
- Does your department perform a cost-benefit analysis when adopting new technologies?¹⁵⁵ Does your department consider the risks of using a novel technology (unstudied effectiveness, potential biases and intrusion on civil liberties), as well as the ability of the technology to solve an existing problem?
- What is your department's process for procuring or using a new technology? Does your department study the effectiveness of the technology and analyze potential biases?¹⁵⁶

¹⁵⁵ First Report of the Axon AI & Policing Technology Ethics Board, June 2019, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d13d7e1990c4f00014c0aeb/1561581540954/Axon_Ethics_Board_First_Report.pdf.

¹⁵⁶ New York City, Automated Decision Systems Task Force Report, November 2019, <https://www1.nyc.gov/assets/adstaskforce/downloads/pdf/ADS-Report-11192019.pdf>.

- Does your department have policies or procedures for training officers on how properly to use new technologies? New technologies can be difficult to understand and there are documented instances of technologies being used improperly or in contexts for which they have not been validated. This is a particular risk for technologies that allow users wide discretion in deployment and allow users to select acceptable tool accuracy.
- Does your department have policies in place to ensure that vendor contracts do not interfere with transparency? Many new technologies are considered proprietary and have audit and/or disclosure restrictions.¹⁵⁷ Some experts recommend that departments implement policies to refrain from signing vendor contracts that restrict auditing of technologies or that prevent the public disclosure of basic information regarding how each technology system works, including any agreements that restrict defense attorneys from understanding how a technology system was used in a criminal investigation or prevent compliance with oversight legislation or public-records requests. These restrictions significantly reduce transparency, making law enforcement less accountable, and interfering with procedural justice.
- Does your department have a process through which residents can register feedback on a certain technology or request information on any personal data it has collected about them without their knowledge?
- Does your department have a policy for maintaining sensitive data or information? Many new technologies involve handling sensitive data. Experts recommend that privacy and security safeguards are included in departmental policies to ensure proper handling of data.
- Is your department required to disclose the technologies its uses to the public? If so, does this disclosure requirement extend to technologies that were given to the police department (i.e., not procured)? Several cities,

¹⁵⁷ Rashida Richardson, ed., “Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force,” AI Now Institute, December 4, 2019, <https://ainowinstitute.org/ads-shadowreport-2019.html>.

including San Francisco and Seattle, require departments to disclose which technologies it is using. New York City recently passed similar legislation called the Public Oversight of Surveillance Technology (POST) Act.

Should your police department leverage video cameras to ensure law enforcement accountability and increase transparency?

In-car and body-worn cameras (BWCs) are frequently recommended, and are mandated for some police forces, as monitoring mechanisms to ensure accountability.¹⁵⁸ In particular, BWC usage has increased significantly in the past few years in response to controversial policing incidents. According to one study, over one-third of law enforcement agencies in the U.S. use BWCs in some capacity.¹⁵⁹

Governor Cuomo recently signed legislation requiring New York State Police patrol officers to use BWCs while on patrol.¹⁶⁰ Officers are required to record immediately before exiting a patrol vehicle to interact with a person or situation, all uses of force; all arrests and summonses; all interactions with individuals suspected of criminal activity; all searches of persons and property, any call to a crime in progress; investigative actions involving interactions with members of the public; any interaction with an emotionally disturbed person; and any instances where an officer feels any imminent danger or the need to

¹⁵⁸ United States Department of Justice. *The Civil Rights Division's Pattern and Practice Police Reform Work 1994-Present*. ("Policing experts and empirical studies strongly support the positive effects of in-car cameras on accountability and officer safety.") (<https://www.justice.gov/crt/file/922421/download>)

¹⁵⁹ Reaves, R. U.S. Department of Justice, Bureau of Justice Statistics, Local Police Departments, 2013: Equipment and Technology, <https://www.bjs.gov/content/pub/pdf/lpd13et.pdf>.

¹⁶⁰ New York State Press Release. "Governor Cuomo Signs Legislation Requiring New York State Police Officers to Wear Body Cameras and Creating the Law Enforcement Misconduct Investigative Office." June 2020. Available at: <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-requiring-new-york-state-police-officers-wear-body-cameras-and>

document their time on duty. This legislation also requires law enforcement to retain footage of these interactions. Some law enforcement entities are hesitant to adopt BWCs because they are costly; one estimate suggests BWCs cost approximately \$1,000 per user per year.

In 2017, the National Criminal Justice Reference Service (NCJRS) funded a cost-benefit analysis of BWC usage at the Las Vegas Metropolitan Police Department.¹⁶¹ The cost-benefit analysis estimated that BWCs saved over \$6,200 in office time spent investigating an average complaint against an officer and decreased the overall number of complaints. Ultimately, the study found that BWCs generate a net annual savings between \$2,909 and \$3,178 per year per user. The results of a cost-benefit analysis may be different depending on how a department uses BWCs and how common complaints or controversial interactions are. If a department decides to implement BWCs, it should consider what policies govern the use of BWCs. Below is a list of considerations for discussion.

- When should officers be required to turn on their BWCs? When interacting with members of the public? When conducting a law enforcement investigation?
- When should officers be required to notify members of the public that BWCs are on? In private settings? In public settings?
- What should the penalties be for non-compliance?
- How long should the department maintain footage?
- Under what conditions should footage be accessible to officers, the public, or investigators?

¹⁶¹ National Criminal Justice Reference Service. "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department" 2017, <https://www.ncjrs.gov/pdffiles1/nij/grants/251416.pdf>.

IV. Recruiting and Supporting Excellent Personnel

Staffing and personnel management is one of the most critical responsibilities of law enforcement leaders and the communities which they protect and serve.¹⁶² Each of the State's more-than 500 county and local law enforcement agencies must therefore have robust strategies for recruitment, hiring, and retention of officers whose diversity reflects the communities they serve. Law enforcement agencies should also design and oversee training and wellness programs that aim to ensure the safety of officers and the public while reinforcing relationships of trust between police departments and their communities.

1. Recruiting a Diverse Workforce

In setting out to address these issues, it may be helpful to first assess your current law enforcement workforce:

- What are the demographics of your agency?
- What are the demographics of your community?
- Are those demographics aligned?
- What steps, if any, has your agency taken to increase diversity in the workforce?
- Can my officers and my community relate in terms of socio-economic background? Life experiences? Any other metrics?

¹⁶² United States Department of Justice. (2015). Final Report of the President's Task Force on 21st Century Policing. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Does your agency reflect the diversity of the community it serves?

It is essential that local law enforcement agencies reflect and represent the diversity of the communities they serve. President Obama's Task Force on 21st Century Policing recognized that diverse law enforcement agencies foster trust in the community.¹⁶³ This trust, in turn, aids in easing community tensions, reducing and solving crime, and creating a system where residents have positive views of law enforcement as fair and just.

The recent protests and civil unrest that swept the nation following several law-enforcement involved civilian deaths, has brought to light the stark imbalance between the demographics of many law enforcement agencies and the communities they serve. A report by the Washington Post found that "many major police forces are still much whiter than the communities where they work."¹⁶⁴ This holds true for communities throughout New York State. In Syracuse, New York, for example, 89% of the police are white, compared with about 55% of the population.¹⁶⁵ New York City has been more successful than most police agencies in its minority recruitment efforts where 67% of New York City residents self-identify as members of a racial or ethnic minority (Black, Hispanic or Asian) and 47% of the police force is white.

Increasing diversity of your workforce can have tangible benefits for both your agency and the communities you serve. For example, research shows that

¹⁶³ *Ibid.*

¹⁶⁴ Keating, D., Uhrmacher, K. (2020) "In urban areas, police are consistently much whiter than the people they serve." *The Washington Post*. <https://www.washingtonpost.com/nation/2020/06/04/urban-areas-police-are-consistently-much-whiter-than-people-they-serve/?arc404=true>

¹⁶⁵ United States Census Bureau. *Quick Facts: Syracuse, NY – New York, NY*. (2019). <https://www.census.gov/quickfacts/fact/table/syracusecitynewyork,newyorkcitynewyork/PST045219> AND New York State Division of Criminal Justice Services, data

female officers are just as capable as their male colleagues in carrying out law enforcement functions, but they are more likely to both rely on an interpersonal style of policing, and to use less physical force.

What are ways in which your agency recruits diverse candidates that better represent the demographics of the communities you serve?

Many law enforcement agencies may find difficulties in recruiting and retaining appropriate numbers of applicants that represent the diversity of the communities they serve. These challenges may stem from multiple factors such as individuals from underrepresented communities (1) lacking trust in law enforcement; (2) being dissuaded by law enforcement's reputation or operational practices; or (3) being unaware of employment opportunities in law enforcement.¹⁶⁶

In assessing how to attract a more diverse workforce, law enforcement agencies should consider their current recruitment strategies and assess what role they play in advancing or hindering the process.

Additionally, law enforcement agencies should consider how to both leverage existing community ties and create new ones that will support their efforts to expand their applicant pools.

- To encourage diverse populations to apply to your agency, consider proactive and targeted community outreach efforts. Studies show success in recruiting people of color, women, and other members of underrepresented populations where police departments have worked

¹⁶⁶ United States Department of Justice, (2016) "Advancing Diversity in Law Enforcement Report" - <https://www.justice.gov/crt/case-document/file/900761/download>

with community organizations and religious institutions to showcase the human face of law enforcement.¹⁶⁷

- The Sacramento, California Police Department, for example, routinely holds free hiring workshops where they explain their recruitment and testing process. You might consider holding community workshops to educate the public on the process and answer questions about how to become an officer. Consider whether you should create an internship or community mentorship program through partnerships with educational institutions. This provides young people a way to experience law enforcement as a profession first-hand and creates a pipeline of future potential applicants.
- “Behind the scenes” looks at policing, can help improve the historically negative experiences that many minority communities have with law enforcement.
- Be active on social media, and use these tools as a form of communication to connect with all members of the community. Your online presence can be both a great recruitment strategy, and a way to directly communicate with underrepresented populations.
- Examine the number of female officers in your workforce. Research shows that increasing the number of women officers has tangible, positive benefits for both agencies and the communities they serve. Women are more likely to use community-oriented policing techniques focusing on cooperation and de-escalation. Also, when handling domestic violence calls, female officers have been shown to be more effective, and are often the main contact for women and youth victims of domestic violence.¹⁶⁸

¹⁶⁷ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 274. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

¹⁶⁸ United States Department of Justice, (2016) “Advancing Diversity in Law Enforcement Report.” p 19. <https://www.justice.gov/crt/case-document/file/900761/download>

What are ways in which you can re-evaluate hiring practices and testing to remove barriers in hiring underrepresented communities?

Most law enforcement agencies use very similar processes to select, screen, and hire potential employees, relying heavily on some combination of medical and psychological exams, background investigations, and criminal and driver records checks, fitness tests, written aptitude tests, and credit history checks.¹⁶⁹ However, agencies in New York State have wide discretion in their hiring criteria, so long as they comply with the minimum qualification standards set by the Municipal Police Training Council (MPTC).

Research has consistently shown that traditional hiring practices too often leave underrepresented populations at a disadvantage. These practices frequently exclude those who come from communities without a history of members working in law enforcement. Screening tools, such as fitness and cognitive tests, and background checks also have been found to have disparate impacts on underrepresented communities.¹⁷⁰

The Department of Justice recommends that agency leadership be prepared to “re-evaluate employment criteria, standards, and benchmarks to ensure that they are tailored to the skills needed to perform job functions, and consequently attract, select, and retain the most qualified and desirable sworn officers.”¹⁷¹

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*; Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 274. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

¹⁷¹ *Ibid.*

Consider eliminating selection criteria and written or physical tests that do not relate directly to actual job-duties, and which often disproportionately eliminate underrepresented individuals from the process.

Consider whether you should offer assistance or preparation materials to help prospective officers prepare for the application testing and process. Even short of affirmative research shows that mere transparency in the hiring process can be helpful to applicants from diverse backgrounds who may not be familiar with the, often, complex law enforcement hiring process. Creating a short but comprehensive tool describing the process can lead to higher passage rates for these individuals. Creating test preparation materials and offering coaching or other assistance will be even more helpful in increasing minority recruitment.

How can you encourage youth in your community to pursue careers in law enforcement?

Police Cadet programs offer law enforcement apprenticeships to young people, typically between the ages of 18 and 20 years old.¹⁷² They provide the opportunity for a young person to explore a career in law enforcement and obtain relevant training and skills.¹⁷³ Many programs offer a salary or tuition benefit, have work requirements, and are targeted towards college students. These benefits can help departments recruit students who otherwise would not have considered a career in law enforcement. Some programs allow high

¹⁷² Leland R. Devore, The Purpose and Function of Police Cadet Programs in Medium Sized Police Agencies by the Year 2000, <https://www.ncjrs.gov/pdffiles1/Digitization/124727NCJRS.pdf>.

¹⁷³ See NYPD, Cadet Corps Requirements & Benefits, <https://www1.nyc.gov/site/nypd/careers/cadets/police-cadets-program.page>; San Francisco Police Cadet, <https://www.sanfranciscopolice.org/your-sfpd/careers/civilian-job-openings/san-francisco-police-cadet-program>.

school students to participate, but are typically less comprehensive.¹⁷⁴ Upon completion of a Police Cadet program, participants are often eligible to become police officers, subject to testing and other requirements.¹⁷⁵ These programs are useful recruiting tools because they engage young community members who have not yet settled on a specific vocation.¹⁷⁶

What actions can your agency take to foster the continued development and retention of diverse officers?

Beyond recruitment and hiring, law enforcement agencies – like other employers – must focus on retention. Retaining all employees, but especially diverse officers, comes with its own set of challenges. Research has shown that many members of underrepresented demographics in law enforcement may struggle with adjusting to the organizational and culture of law enforcement¹⁷⁷. Additionally, officers belonging to historically under-represented groups often face obstacles to promotion, ranging from outright bias and discrimination to less insidious but no less harmful factors such as a lack of transparency about the promotion process, or inadequate mentoring relationships and professional development opportunities.¹⁷⁸

- Consider supporting your new officers, especially those from underrepresented populations, by establishing mentoring programs and

¹⁷⁴ See, for example, Seattle Police Explorers, <https://www.seattle.gov/police/community-policing/police-explorers>.

¹⁷⁵ *Id.*

¹⁷⁶ Leland R. Devore, The Purpose and Function of Police Cadet Programs in Medium Sized Police Agencies by the Year 2000, <https://www.ncjrs.gov/pdffiles1/Digitization/124727NCJRS.pdf>.

¹⁷⁷ *Id.* at 30, See also: Rand Center On Quality Policing, Identifying Barriers To Diversity In Law Enforcement 3 (2012), http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP370.pdf

¹⁷⁸ Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*. p. 274. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

leadership training for new recruits. For example, DCJS' Municipal Police Training Council (MPTC) holds frequent trainings and seminars appropriate for officer development.

- The same community partnerships that your agency uses during recruitment and hiring, can remain helpful in the context of retention. Stakeholders can aid in retention of officers of color and women by addressing and understanding the unique challenges these groups face in the law enforcement profession. These partnerships allow agencies to diagnose the barriers in their practices, policies, or systems that often prevent or discourage officers from staying on the job.

2. Training and Continuing Education

Smart and effective policing starts with smart and effective training. Training should not end at recruitment; officers should be encouraged to continue to grow and learn throughout their career. Training should incorporate and reinforce best practices while emphasizing values such as accountability, transparency, and fairness in all aspects of policing.

There is no universal standard of police training, and individual jurisdictions must make important decisions around the types of training and education that should be required of the police officers who will serve and protect their communities. Your approach to police officer training and education can have a significant impact on the way those officers engage in real world policing. Your agency should consider research relating to effective adult learning techniques and law enforcement training environments as you decide how to achieve your police officer training objectives.

This section will pose questions that you should consider in developing a training program that advances your community's policing goals.

How can you develop officer training programs that reflect your community values and build trust between police officers and the communities they serve?

It is important to engage both internal and external stakeholders in the development and implementation of your police department's training materials and curricula.¹⁷⁹ Incorporating members of the community in this process can strengthen the overall quality of your training program while reinforcing public trust and ensuring that your training and education programs reflect the values of your community.¹⁸⁰

- A number of subject matter experts have found that police training academies are sometimes modeled after military boot camps.¹⁸¹ This environment, they argue, contributes to the development of a “warrior” mentality among police officers that can translate to hostile and fear-

¹⁷⁹ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 301-304. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Gokey, C. & Shah, S. (Eds.). (2016). *How to Support Trust Building in Your Agency*. Police Perspectives: Building Trust in a Diverse Nation, no. 3. Office of Community Oriented Policing Services, 41. https://www.vera.org/downloads/publications/police-perspectives-guide-series-building-trust-diverse-nation-diverse-communities-building-trust_1.pdf.

¹⁸⁰ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 301. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; U.S. Department of Justice. (2019). *Law Enforcement Best Practices: Lessons Learned from the Field*, pp. 11-12, 15. <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>.

¹⁸¹ See Rahr, S. & Rice, S.K. (2015.) From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals. *U.S. Department of Justice, National Institute of Justice*. <https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>; Stoughton, S. (2015). Law Enforcement's “Warrior” Problem, *Harvard Law Review* 128(6), pp. 225-234. <https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>.

based interactions with the communities they serve.¹⁸² Police departments should assess whether their training models and environments may foster a potentially adversarial relationship with their communities, and should consider redesigning training models as necessary to ensure they align with community policing goals. Agencies may consider developing training models aimed instead at establishing a “guardian” mindset among police officers.¹⁸³

- Reports issued by groups including the President’s Task Force on 21st Century Policing, the Leadership Conference for Civil and Human Rights, and the Justice Collaboratory at Yale Law School suggest that police departments should consider how to build principles of procedural justice into all police officer training programs.¹⁸⁴ This can involve engaging community members in the process of developing training programs and ensuring that trainers actively discuss the importance of procedural justice and integrate these principles into all aspects of their instruction. A recent study published by the Proceedings of the National Academy of Sciences found that procedural justice training can build community trust in police and decrease incidents involving police use of force.¹⁸⁵

¹⁸² See Rahr, S. & Rice, S.K. (2015.) From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals. *U.S. Department of Justice, National Institute of Justice*.

<https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>; Stoughton, S. (2015). Law Enforcement’s “Warrior” Problem. *Harvard Law Review*, 128(6), pp. 225-234. <https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>

¹⁸³ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 262-263. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf

¹⁸⁴ United States Department of Justice. (2015.) *Final Report of the President’s Task Force on 21st Century Policing*, pp. 51-52. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 17. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; Van Craen, M. & Hennessy, C.L. (2014). Training Police for Procedural Justice. *Journal of Experimental Criminology*, 11, pp. 319-334. https://www.researchgate.net/publication/269723704_Training_police_for_procedural_justice; Quattlebaum, M., Meares, T., & Tyler, T. (2018). Principles of Procedurally Just Policing. *The Justice Collaboratory at Yale Law School*. https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.

¹⁸⁵ Wood, G., Tyler, T.R., & Papachristos, A.V. (2020). Procedural justice training reduces police use of force and complaints against officers. *Proceedings of the National Academy of Sciences*, 117(18), pp. 9815-9821. <https://www.pnas.org/content/117/18/9815>.

- You can partner with academic institutions, community organizations, and other relevant experts to create rigorous, evidence-based police officer training programs.
- Police practices around issues like arrests, searches, and public demonstrations continue to be the focus of significant attention from advocates and members of the public. Groups from the Electronic Frontier Foundation to the International Association of Chiefs of Police, for example, have discussed the public's First Amendment right to record police officers in public,¹⁸⁶ and lawsuits have resulted in police departments implementing training programs on this issue.¹⁸⁷ Policies like “stop and frisk” have also led to widespread condemnation and lengthy litigation, and the New York Civil Liberties Union found that the policy in New York City disproportionately impacted communities of color.¹⁸⁸ Your community should review police policies and practices concerning stops, searches, arrests, and public protests/demonstrations and should consider implementing training programs aimed at eliminating bias and unconstitutional conduct in these types of interactions.¹⁸⁹
- If you are preparing training modules that focus on police relationships with specific community groups, you should consider soliciting input from advocacy groups and community members who represent the viewpoint of the community on which the policing is focused. For example, police departments in New York, Los Angeles, Atlanta, Washington, D.C., and elsewhere have established working groups that

¹⁸⁶ Cope, S. & Schwartz, A. (2020, June 8). You Have a First Amendment Right to Record the Police. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2020/06/you-have-first-amendment-right-record-police>; International Association of Chiefs of Police. (n.d.). *Public Recording of Police*. <https://www.theiacp.org/prop>.

¹⁸⁷ American Civil Liberties Union. (2018, Jan. 19). *First Amendment Training for Lafayette PD Included in Settlement with ACLU of Louisiana*. <https://www.aclu.org/press-releases/first-amendment-training-lafayette-pd-included-settlement-aclu-louisiana>.

¹⁸⁸ New York Civil Liberties Union. (n.d.). *Stop-and-Frisk Data*. <https://www.nyclu.org/en/Stop-and-Frisk-data>.

¹⁸⁹ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 59, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 101, 174. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

engage with the LGBTQIA+ community around training and other policing issues that impact LGBTQIA+ individuals.¹⁹⁰

- When soliciting input from community members around issues relating to training or agency policies, police departments may tend to partner with community groups and individuals with whom they have existing relationships. However, when developing and implementing officer training programs, your agency should seek to engage segments of the community that typically have not had strong and trusting relationships with the police in the past.¹⁹¹ By bringing these perspectives into the conversation, you can show your commitment to procedural justice and to building up relationships of trust.

What training policies can you adopt to ensure that police officers continuously receive high-quality, relevant in-service training sessions?

Continuing education or in-service training requirements help ensure that officers can refresh skills learned in the past, develop new skills, and remain abreast of new information on emerging topics and best practices. Police departments should carefully consider how to identify and select staff who should conduct these and other training sessions.¹⁹²

- Your community should consider your current in-service officer training standards and determine whether more rigorous requirements should be established, including requirements around the number of annual in-service training hours officers must receive.¹⁹³ The New York State Law

¹⁹⁰ Copple, J.E. & Dunn, P.M. (2017). Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community. *Office of Community Oriented Policing Services*, pp. 22-23. <https://www.iadlest.org/Portals/0/cops%20LGBTQ.pdf>.

¹⁹¹ Office of Community Oriented Policing Services. (2019). *Law Enforcement Best Practices: Lessons Learned from the Field.*, p. 32. <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>.

¹⁹² The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 304. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

¹⁹³ *Id.* at 301.

Enforcement Accreditation Program, for example, establishes a standard of at least 21 hours of in-service training per year.¹⁹⁴

- Your community can develop specific goals for police officer in-service training programs and may identify certain topics that are critical to your community and around which all officers must receive recurring in-service training (e.g. implicit bias, de-escalation, and use of force training).
- Education experts advise that adults learn most effectively when they utilize and build on real-world experiences, rather than through the passive consumption of information.¹⁹⁵ As a result, law enforcement trainers have been encouraged to adopt models focused on experiential learning.¹⁹⁶ Your agency should consider developing realistic, scenario-based training programs that reflect circumstances your officers may encounter in their community. For example, this may involve role-playing scenarios or reviewing body camera footage.
- Consider establishing performance-based criteria for selecting personnel who will conduct agency training programs. For example, you may require that training instructors be veteran officers who have demonstrated mentorship skills and who are up-to-date on their in-service training requirements. Your agency may choose to prevent officers with histories of misconduct from serving as training instructors.¹⁹⁷

¹⁹⁴ New York State Law Enforcement Accreditation Program. Standard 33.1: Length and Content.

<https://drive.google.com/file/d/1FvS2MxJJBoCOA3c5h4RYhd3-LGIsOoT/view>.

¹⁹⁵ See, e.g., Knowles, M.S. (1988). *The Modern Practice of Adult Education: From Pedagogy to Andragogy: Revised and Updated*, pp. 43-45, 48-51. Cambridge.

<https://pdfs.semanticscholar.org/8948/296248bbf58415cbd21b36a3e4b37b9c08b1.pdf>; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 304. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

¹⁹⁶ See, e.g., Birzer, M.L. (2003). The theory of andragogy applied to police training. *Policing: An International Journal of Police Strategies and Management*, 26(1), pp. 29-42.

<https://www.researchgate.net/publication/242020962> The theory of andragogy applied to police training

¹⁹⁷ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 304-305. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

How can leadership training improve community policing and strengthen relationships between your police department and members of the public?

Ongoing leadership training can foster leadership skills, reinforce positive conduct, and strengthen officers' commitment to community standards and procedural justice.¹⁹⁸ Leadership training can also promote diversity at the executive level of law enforcement agencies.¹⁹⁹

- Police departments should consider providing ongoing leadership training to all officers throughout their careers.²⁰⁰ Different standards, programs, and learning goals may be established at each level of leadership within a department.
- Agencies may also consider encouraging officers to engage in cross-discipline leadership training programs.²⁰¹ This can help expose officers to new and valuable knowledge and skills that can complement their own.
- You should consider developing leadership training standards in partnership with academics, non-profit groups, and other community members. These standards should be evidence-based and reflect community values.

How can your police department use its training programs to avoid incidents involving unnecessary use of lethal or nonlethal force?

¹⁹⁸ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 267-268. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

¹⁹⁹ *Ibid.*

²⁰⁰ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 54. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

²⁰¹ *Id.* at 55.

Police department training programs focused on elements of de-escalation can lead to actual outcomes that achieve police objectives while resolving potentially dangerous scenarios safely and peacefully.²⁰² There is no universal standard model for de-escalation, though the term generally refers to a variety of practices or actions used “during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary.”²⁰³ De-escalation training can include instruction focused on decision-making, effective verbal and non-verbal communication and social interaction skills, ethics and professionalization, use of force, defensive tactics, and crisis intervention skills.

- Reports issued by the Leadership Conference on Civil and Human Rights and the U.S. Commission on Civil Rights have noted that police departments often devote substantially more time to firearms and defensive tactics training than they do to trainings around de-escalation and nonlethal use of force.²⁰⁴ Your agency should consider requiring officers to undergo use of force and de-escalation training at regular intervals throughout their career. Experts recommend that such

²⁰² Abanonu, R. (2018). De-Escalating Police-Citizen Encounters. *Review of Law and Social Justice*, 27(3), pp. 249-251.

<https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/volume27/Summer2018/3.Abanonu.pdf>

²⁰³ Engel, R.S., McManus, H.D. & Herold, T.D. (2017). *The Deafening Demand for De-Escalation Training: A Systematic Review and Call for Evidence in Police Use of Force Reform*. International Association of Chiefs of Police, p. 6. https://www.theiacp.org/sites/default/files/IACP_UC_De-escalation%20Systematic%20Review.pdf.

²⁰⁴ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p.143. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; U.S. Commission on Civil Rights. (2018). *Police Use of Force: An Examination of Modern Policing Practices*, pp. 101, 114. <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

trainings utilize scenario-based training practices in interactive training environments.²⁰⁵

- Police departments should consider requiring specialized training programs focused on the use of force against vulnerable groups, including children, individuals with disabilities, people experiencing mental health emergencies, people under the influence of substances, and people who are pregnant.²⁰⁶
- Agencies should consider developing use of force training simulations that include scenarios in which police officers are expected not to resort to using force.²⁰⁷ Leadership within the Oakland, CA police department has attributed a reduction in the agency's use of force incidents to a shift in the design of their training programs to include such circumstances.²⁰⁸
- Agencies should consider developing a training schedule in which use of force training is conducted immediately following de-escalation training so that de-escalation training concepts can be most effectively incorporated into use of force training.²⁰⁹
- Law enforcement agencies should also consider training officers on the effects of violence not only on communities and individual victims but

²⁰⁵ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 143. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²⁰⁶ Fair and Just Prosecution. (2020). *Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System*, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

²⁰⁷ The Justice Collaboratory at Yale Law School. (2018). *Principles of Procedurally Just Policing*, p. 43. https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.

²⁰⁸ Quattlebaum, M., Meares, T., & Tyler, T. (2018). *Principles of Procedurally Just Policing. The Justice Collaboratory at Yale Law School*, Endnote 148. https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf. See also Apuzzo, M. (2015, May 4). Police Rethink Long Tradition on Using Force. *New York Times*. <https://www.nytimes.com/2015/05/05/us/police-start-to-reconsider-longstanding-rules-on-using-force.html>.

²⁰⁹ The Justice Collaboratory at Yale Law School. (2018). *Principles of Procedurally Just Policing*, p. 43. https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.

also on police officers themselves.

How can your police department use its training programs to avoid potential bias incidents and build stronger connections with communities of color and vulnerable populations?

Awareness of and appreciation for cultural diversity are integral components of a professional police force.²¹⁰ Police forces must understand and appreciate the cultural diversity within the communities they serve. This understanding can help officers to de-escalate specific situations, and also to build ongoing, effective dialogue with community members.

Research suggests that biases, including implicit biases, can affect interactions between communities of color and law enforcement.²¹¹ Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. Law enforcement agencies across the country have begun to train police officers in implicit bias.²¹² Implicit bias

²¹⁰ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 58. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. Gokey, C. & Shah, S. (Eds.). (2016). *How to Support Trust Building in Your Agency. Police Perspectives: Building Trust in a Diverse Nation*, no. 3. Office of Community Oriented Policing Services, 42. https://www.vera.org/downloads/publications/police-perspectives-guide-series-building-trust-diverse-nation-diverse-communities-building-trust_1.pdf.

²¹¹ Clark, A. (2017, Aug. 24.) The Harmful Effects of Implicit Racial Bias in the Police. *Race, Politics, Justice*. <https://www.ssc.wisc.edu/soc/racepoliticsjustice/2017/08/24/the-harmful-effects-of-implicit-racial-bias-in-the-police/>; National Institute of Justice. (2013, Jan. 9). Race, Trust and Police Legitimacy. <https://nij.ojp.gov/topics/articles/race-trust-and-police-legitimacy>; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 39-40. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf; U.S. Commission on Civil Rights. (2018). *Police Use of Force: An Examination of Modern Policing Practices*, pp. 101, 103-105. <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

²¹² CBS News. (2019, Aug. 7). We asked 155 police departments about their racial bias training. Here's what they told us. <https://www.cbsnews.com/news/racial-bias-training-de-escalation-training-policing-in-america/>.

awareness allows officers to recognize their own human biases and how implicit biases can affect their perceptions of others and their behavior. This awareness improves policing and has a positive effect on the relationship between police and the community. Finally, implicit bias awareness training develops skills and tactics to reduce the influence of bias on police practice and allows officers to be safe, effective, and just police professionals.²¹³

- Many entities, including the International Association of Police Chiefs and the National Training Institute on Race and Equality, offer implicit bias and cultural competency trainings designed for police departments.²¹⁴ You may consider also partnering with advocacy and community groups that can enhance these trainings by sharing the experience of the community.²¹⁵
- Community-specific implicit bias and cultural competency training programs might focus on groups such as Black communities; Orthodox Jewish, Muslim, Arab, and South Asian communities; individuals with limited English proficiency; LGBTQIA+ individuals; individuals with disabilities; and individuals experiencing homelessness.²¹⁶

²¹³ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 59-60. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²¹⁴ See, e.g., Kirwan Institute for the Study of Race and Ethnicity. *Implicit Bias Module Series*. <http://kirwaninstitute.osu.edu/implicit-bias-training/>; International Association of Chiefs of Police. (2020). Bias-Free Policing. <https://www.theiacp.org/sites/default/files/2020-06/Bias-Free%20Policing%20January%202020.pdf>; The Perception Institute. Services and Solutions. <https://perception.org/services-and-solutions/>; Fair and Impartial Policing. FIP Training Courses. <https://fipolicing.com/fip-training-courses/>; The National Training Institute on Race and Equity. Implicit Bias Training. <https://www.ntire.training/book-a>.

²¹⁵ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 58. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

²¹⁶ Fair and Just Prosecution. (2020). *Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System*, p. 11. <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>; United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 58. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

- Community-focused trainings can include instruction about the type of language or behavior that may be viewed as offensive by a given community and direct officers to avoid such conduct.
- Training programs focused on communities that have historically viewed police with distrust may benefit from the inclusion of training materials that provide officers with the appropriate historical perspective and context to understand how past policing practices may have contributed to these negative perceptions.
- You may also consider implementing basic training and in-service training requirements that establish a set period of time that officers must spend interacting with individuals and groups within their communities and engaging in meaningful, non-enforcement related conversations. As explained by Professor Seth Stoughton in the Harvard Law Review, this type of “non-enforcement contact” can build trust, reinforce officers’ commitment to community policing, and build communication skills that will be valuable throughout an officer’s career.²¹⁷

How can your training program help officers effectively and safely respond to individuals experiencing mental health crises or struggling with substance abuse?

Responding to circumstances involving people who are under the influence of a substance and/or are experiencing a mental health crisis can be extremely difficult. Initially, this guidebook suggests that the collaborative consider whether and to what extent the police should respond to such calls. If the collaborative has determined that police should be a part of such response, it must recognize that responding officers need to make a series of difficult

²¹⁷ Stoughton, S. (2015). Law Enforcement’s “Warrior” Problem. *Harvard Law Review*, 128(6), pp. 225-234. <https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>

judgments and decisions about how to safely resolve such situations,²¹⁸ which too often turn violent. Indeed, the Treatment Advocacy Center has found that individuals with untreated mental health conditions are significantly more likely than members of the general population to be killed during interactions with police.²¹⁹ Appropriate training programs can help prepare police officers to respond to these types of situations safely, effectively, and humanely. Police responding to situations involving a member of the public experiencing a mental health crisis should consider the following best practices:

- Police departments should consider making Crisis Intervention Team (CIT) training a standard component of their training program.²²⁰ CIT has been shown to enhance officers' ability to recognize and respond to mental health emergencies, increase likelihood of jail diversion and treatment for individuals experiencing mental illness, reduce officer injury rates, and reduce police officer use of force in encounters with people experiencing mental health emergencies.²²¹
- Police departments can also ensure that their training programs equip officers to recognize the signs of substance abuse and respond appropriately when interacting with individuals who may be impaired as a result of substance abuse.²²² This may include training and equipping officers with overdose-reversal drugs like Naloxone.²²³

²¹⁸ International Association of Chiefs of Police. (2018). *Responding to Persons Experiencing a Mental Health Crisis*. <https://www.theiacp.org/resources/policy-center-resource/mental-illness>.

²¹⁹ Fuller, D.A., Lamb, H.R., Biasotti, M., & Snook, J. (2015). *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*. Treatment Advocacy Center, p. 12. <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

²²⁰ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 163. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²²¹ United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 56. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 157. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²²² United States Department of Justice. (2015.) *Final Report of the President's Task Force on 21st Century Policing*, p. 57. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

²²³ National Institute on Drug Abuse. (2020). *Opioid Overdose Reversal with Naloxone (Narcan, Evzio)*. <https://www.drugabuse.gov/drug-topics/opioids/opioid-overdose-reversal-naloxone-narcan-evzio>.

- Police departments should consider training dispatchers to recognize these types of crises, ask the rights questions, and dispatch the appropriately trained personnel to respond to the scene.²²⁴
- Law enforcement agencies should consider establishing a network of mental health and disability professionals to support and inform the work of officers trained in crisis response.²²⁵

What practices and procedures can you put in place to measure the quality and efficacy of your police department's training programs?

It is important to review periodically your police department's training programs to determine whether they remain up-to-date and whether they are yielding the desired results.²²⁶

- Agencies should consider establishing a periodic review, audit, and assessment of training programs to ensure that they are not teaching outdated practices and/or basing their trainings on outdated understandings of community needs.
- Your community should consider implementing a process through which training outcomes can be measured by assessing post-training officer performance.

²²⁴ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 163. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²²⁵ Civil Rights Coalition On Police Reform. (2014, Aug. 14). *A Unified Statement of Action to Promote Reform and Stop Abuse*. <https://lawyerscommittee.org/wp-content/uploads/2015/08/Civil-Rights-Coalition-on-Police-Reform-Resource-Packet.pdf>.

²²⁶ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, pp. 307-309. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

- The critical self-analysis approach used by law enforcement agencies to evaluate incidents involving use of force, searches and seizures, crisis response encounters, and other similar circumstances can also be used to inform the agency's training goals and priorities. For example, agencies that have recently experienced high rates of use-of-force incidents may want to emphasize training courses focused on de-escalation.²²⁷
- Agencies should consider adopting a policy requiring the maintenance of complete, accurate, and up-to-date records of training curricula, materials, and attendance. This will help ensure that officers complete their ongoing training requirements, and will provide communities with an added opportunity to hold departments accountable for insufficient or outdated training.

3. Support Officer Wellness and Well-being

Law enforcement is inherently a physically and emotionally dangerous career. Studies show that people working in law enforcement are at an elevated risk of physical and mental health issues when compared to the general population.²²⁸

Consider how your police department can include in its plan an effective and proactive approach to preparing officers to handle the stress of the occupation and to ongoing support for and promotion of officer wellness.

²²⁷ *Id.* at 301.

²²⁸ *The Canadian Journal of Psychiatry*, "Mental Disorder Symptoms among Public Safety Personnel in Canada.", Carleton, R. Nicholas, et al. vol. 63, no. 1, 2017, pp. 54–64., <https://journals.sagepub.com/doi/pdf/10.1177/0706743717723825>

What steps can you take to promote wellness and well-being within your department?

The members of your department may face different risks and stressors depending on their daily assignments. Well-being, self-care, counseling, and intervention programs are important resources that should be made available to officers starting at the training academy and then continuously thereafter.

In order to understand the issues affecting your officers, seek their input. Surveys, confidential meetings, and assistance programs all provide a means for leadership to understand the concerns of their individual officers.

Law enforcement leadership should consider how officer wellness is incorporated into your department. You should take steps to ensure that support for officer wellness and safety is integrated into all aspects of your department's work, and commitment to officer wellness and safety should be reflected in your policies, practices, attitudes, and behaviors. Department leadership should endeavor to lead by example, as rank and file personnel are likely to model the behavior and attitudes they see in their leaders.

Your department can engage professional organizations (such as Blue H.E.L.P., Valor for Blue, and Blue Wall Institute), that provide mental health and wellness training to police officers and first responders.²²⁹

²²⁹ Blue H.E.L.P., Training and Resources <https://bluehelp.org/resources/training-and-resources/>; Valor for Blue. <https://www.valorforblue.org/>; Blue Wall Institute. <https://www.bw-institute.com/>.

Are there ways to address officer wellness and well-being through smarter scheduling?

Your department should consider how to incorporate concern for wellness and wellbeing into everyday operations, including how shifts are arranged.

Research shows that shift lengths frequently are correlated with officer stress levels.²³⁰ As such, managers may consider limiting maximum shift lengths along with overall limits on an officer's work hours by, for example, limiting back-to-back shifts and overtime that could be staffed by other officers.

Consider staffing patterns and whether tasks can be performed effectively by sworn or civilian staff.

How can you effectively and proactively address the mental health challenges experienced by many police officers throughout their careers?

Rates of death by suicide among law enforcement officers appear to be higher than those within the general U.S. population,²³¹ and deaths by suicide among officers may have outnumbered those caused by fatal line-of-duty incidents in recent years.²³² Your agency should consider providing training to

²³⁰ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 320. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

²³¹ Police Executive Research Forum. (2019). *An Occupational Risk: What Every Police Agency Should Do To Prevent Suicide Among Its Officers*, pp. 11-14. <https://www.policeforum.org/assets/PreventOfficerSuicide.pdf>; National Officer Safety Initiatives. (2020). *Preventing Suicide Among Law Enforcement Officers: An Issue Brief*, pp. 4-5.

²³² Police Executive Research Forum. (2019). *An Occupational Risk: What Every Policy Agency Should Do To Prevent Suicide Among Its Officers*, p.11. <https://www.policeforum.org/assets/PreventOfficerSuicide.pdf>.

recognize early warning signs of mental health problems and/or suicidal behavior. This could include specialized training for supervisors on how effectively to intervene with at-risk personnel.²³³

Officers often feel more comfortable speaking to fellow officers. As such, your agency should also consider creating internal peer support and mentoring programs that can aid officers in expressing their thoughts and concerns about the job with more seasoned officers that “have been where they are.”

Employee Assistance Programs (EAP) are another tool that can provide law enforcement personnel with confidential support in many areas of their personal and professional lives. For example, the New York State Police manages an EAP that can either provide direct assistance to individual employees at local agencies or assist an agency in establishing its own EAPs.

How can you address the well-being of an officer after a traumatic event?

Traumatic events are unavoidable for members of law enforcement. The aftermath of such events can deeply affect those involved and jeopardize their physical and mental well-being.

Following a crisis event, you should consider making sure the personnel involved have the option to access crisis counseling.

Supervisors and peers should monitor employees involved in potentially traumatic incidents for changes in their demeanor and behavior, prepared with

²³³ International Association of Chiefs of Police. (2014). *IACP National Symposium on Law Enforcement Officer Suicide and Mental Health: Breaking the Silence on Law Enforcement Suicides* p.18.
https://www.theiacp.org/sites/default/files/Officer_Suicide_Report.pdf.

formal and informal intervention systems to provide meaningful assistance to those officers in need.²³⁴

²³⁴ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 322. https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf.

Part 2: Developing Your Collaborative Plan

There are over 500 law enforcement agencies across the state. The New York State Police Reform and Reinvention Collaborative (the Collaborative) was designed to bring each community together with its local police agency to chart its individual course forward. Your most important task in this Collaborative is to ensure a healthy, productive engagement and fostering a relationship of mutual trust between the police and the community – including all segments of the community. In some localities, that relationship is already strong. In others, it is frayed or broken. Each community will have to approach this task in a way tailored to its unique experiences and needs, and will come to its own shared vision of the role of law enforcement.

The rest of this guidebook includes information and resources on the best ideas available on developing a modern police force, which will inform your community's discussions and decision making.

While some localities have already started to develop a plan, this Part provides organizing principles that may be helpful in designing your process, along with a suggested 4-phase timeline for bringing stakeholders to the table, facilitating productive conversations, and successfully developing and ratifying a redesigned police force by April 1, 2021, as required by Executive Order No. 203 (reprinted as Appendix A).

Key Organizing Principles

Bring Your Community to the Table

The Governor's Executive Order specifically requires an inclusive, open and transparent process. The Executive Order identifies some of the key stakeholders who must be involved:

- Membership and leadership of the local police force;
- Members of the community, with emphasis on areas with high numbers of police and community interactions;
- Interested non-profit and faith-based community groups;
- The local office of the district attorney;
- The local public defender; and
- Local elected officials.

Beyond this group, you should ensure that participants bring to your process a broad range of the perspectives, experiences, knowledge and values of your community.

Specifically, you should consider engaging:

- Residents who have had interactions with the police;
- Residents who have been incarcerated;
- Any local police unions;
- Local education officials and educators;
- Local neighborhood, homeless, and housing advocates;
- LGBTQIA+ leaders and advocates;
- The Local Health Department and healthcare leaders and advocates;
- Mental health professionals;
- Business leaders;
- Transportation and transit officials; and
- Legal and academic experts.

Run an Open and Transparent Process

In addition to incorporating a diverse group of community members, you should keep the public informed throughout the process. The Police Reform and Reinvention Collaborative was designed to enable all members of the community to participate in reimagining the role of law enforcement. Your process will not be successful if it simply restates the current functions, strategies and operations of the police department, without deep and probing consideration of the perspectives of those who seek reform.

The Collaborative emphasizes transparency. All draft plans must be posted for public comment before finalization. Further, the chief executive must certify that the community was engaged in this process and the local legislative body ratified the plan. Transparency is essential to ensure that the plan reflects a shared vision for the future of law enforcement. Transparency entails:

- Making planning and deliberation meetings public.
- Polling and surveying the public for their views on specific issues, if feasible.
- Providing periodic updates as the planning process moves forward.
- Engaging local media.
- Making all research materials public.
- Having a plan to incorporate public comment feedback in the final plan.

Suggested Workplan



Phase 1: Planning (August-September 2020)

Create an operations plan: Create a work plan for your process and identify staff to manage the information gathering and plan development. Many localities have already begun this process. If appropriate, hire any external consultants or facilitators. You can also develop a preliminary list of the critical issues that need to be addressed through the plan development process, based on the material provided in Part 1 of this guidebook.

Coordinate with neighboring localities: Consider whether aspects of this process can be done in conjunction with neighboring localities. In some areas a countywide process may be useful during parts of this process, bearing in mind that each locality will need to solicit meaningful input from its own community and develop an individual plan tailored to its own needs.

Convene key stakeholders: Identify local leaders who can work closely with you to facilitate conversations with key constituencies in the community.

Assess where you are now: Gather information on how your police department currently operates including data, policies, procedures, prior

complaint history, budget, contracts, equipment, etc. Share this information with the public. This self-assessment will help focus the conversation on what you and your community want to change.

Phase 2: Listening and Learning (September-October 2020)

Listening Sessions: Conduct listening sessions with the public. You may want to organize these sessions thematically or focus on meeting with individual stakeholders separately.

Engage Experts: This guidebook provides you with a starting point. Engaging with the experts and resources referenced in this guide may help you consider difficult issues more fully. It may be efficient for neighboring jurisdictions to coordinate in finding research useful for the region.

Request Comments and Information: All localities will release their draft plans for public comment before completing this process. However, you may want to collect public feedback early in your plan development, especially from people unable to or uncomfortable with joining public meetings. Consider posting questions or prompts asking for written comments or suggestions.

Phase 3: Draft a Plan (November-December 2020)

Identify areas of focus: After evaluating the current state of your law enforcement agency and getting feedback, identify what issues or areas are in need of change. Breaking down and organizing issues to be addressed allows decisions to be made in a more manageable way.

Identify measurable goals: In the areas identified as needing reform, identify what success will look like in the short- and long-term. Articulating measurable goals will help focus your policy development, allow you and all stakeholders to assess outcomes, and identify needed adjustments in the future.

Draft a reform and reinvention plan: Decide what format your final product will take. You may choose to solicit suggested language from stakeholders to help facilitate drafting and to see different stakeholders' positions in writing. Consider articulating not just the policy changes but your vision for what these changes will accomplish. Make sure to include how you will measure success.

Keep the public engaged: If the public has the opportunity to share proposals and hear deliberations, the public comment period will be more productive.

Phase 4: Public Comment and Ratification (January-March 2021)

Release your draft plan for public comment: Executive Order No. 203 requires that these plans be posted for public comment. Consider diversifying the ways the public can share feedback, in writing and at events.

Educate the public: When releasing your draft, think about how you and other key stakeholders involved in the development can explain the proposals to the public. Consider holding events, engaging the media, or publishing an op-ed in the local newspaper.

Revise the plan to Incorporate public comment: Ensure the public comment is addressed in a meaningful way in your final plan. Consider how you will address those comments which are not adopted and those that highlight areas of tension and disagreement among members of the community or between community members and the police.

Ratify the plan: After public comment and finalization of a plan, the Executive Order requires that the local legislature adopt or ratify the proposal. Build in sufficient notice and time for this to occur before the April 1, 2021 deadline.

Certify with New York State: Submit your certification (included here in Appendix B) that your locality has met the requirements of Executive Order No. 203 to the Division of the Budget by April 1, 2021.

Going Forward

After the plan is adopted, there will still be important work to do. You will need to implement the plan and communicate progress reports and metrics to the public. You will need continuously to monitor and respond to community concerns with the police. Public engagement should not end on April 1, 2021. The Collaborative is an important step in your continual process of building,

maintaining and strengthening the relationship between your police department and your community.

Part 3: Appendices

Appendix A: Executive Order No. 203

Appendix B: Plan Certification Form

Appendix C: New York State Police Agencies

APPENDIX A

No. 203

E X E C U T I V E O R D E R

NEW YORK STATE POLICE REFORM AND REINVENTION COLLABORATIVE

WHEREAS, the Constitution of the State of New York obliges the Governor to take care that the laws of New York are faithfully executed; and

WHEREAS, I have solemnly sworn, pursuant to Article 13, Section 1 of the Constitution, to support the Constitution and faithfully discharge the duties of the Office of Governor; and

WHEREAS, beginning on May 25, 2020, following the police-involved death of George Floyd in Minnesota, protests have taken place daily throughout the nation and in communities across New York State in response to police-involved deaths and racially-biased law enforcement to demand change, action, and accountability; and

WHEREAS, there is a long and painful history in New York State of discrimination and mistreatment of black and African-American citizens dating back to the arrival of the first enslaved Africans in America; and

WHEREAS, this recent history includes a number of incidents involving the police that have resulted in the deaths of unarmed civilians, predominantly black and African-American men, that have undermined the public's confidence and trust in our system of law enforcement and criminal justice, and such condition is ongoing and urgently needs to be rectified; and

WHEREAS, these deaths in New York State include those of Anthony Baez, Amadou Diallo, Ousmane Zango, Sean Bell, Ramarley Graham, Patrick Dorismond, Akai Gurley, and Eric Garner, amongst others, and, in other states, include Oscar Grant,

Trayvon Martin, Michael Brown, Tamir Rice, Laquan McDonald, Walter Scott, Freddie Gray, Philando Castile, Antwon Rose Jr., Ahmaud Arbery, Breonna Taylor, and George Floyd, amongst others,

WHEREAS, these needless deaths have led me to sign into law the Say Their Name Agenda which reforms aspects of policing in New York State; and

WHEREAS, government has a responsibility to ensure that all of its citizens are treated equally, fairly, and justly before the law; and

WHEREAS, recent outpouring of protests and demonstrations which have been manifested in every area of the state have illustrated the depth and breadth of the concern; and

WHEREAS, black lives matter; and

WHEREAS, the foregoing compels me to conclude that urgent and immediate action is needed to eliminate racial inequities in policing, to modify and modernize policing strategies, policies, procedures, and practices, and to develop practices to better address the particular needs of communities of color to promote public safety, improve community engagement, and foster trust; and

WHEREAS, the Division of the Budget is empowered to determine the appropriate use of funds in furtherance of the state laws and New York State Constitution; and

WHEREAS, in coordination with the resources of the Division of Criminal Justice Services, the Division of the Budget can increase the effectiveness of the criminal justice system by ensuring that the local police agencies within the state have been actively engaged with stakeholders in the local community and have locally-approved plans for the strategies, policies and procedures of local police agencies; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of

New York, in particular Article IV, section one, I do hereby order and direct as follows:

The director of the Division of the Budget, in consultation with the Division of Criminal Justice Services, shall promulgate guidance to be sent to all local governments directing that:

Each local government entity which has a police agency operating with police officers as defined under 1.20 of the criminal procedure law must perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices, and develop a plan to improve such deployments, strategies, policies, procedures, and practices, for the purposes of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.

Each chief executive of such local government shall convene the head of the local police agency, and stakeholders in the community to develop such plan, which shall consider evidence-based policing strategies, including but not limited to, use of force policies, procedural justice; any studies addressing systemic racial bias or racial justice in policing; implicit bias awareness training; de-escalation training and practices; law enforcement assisted diversion programs; restorative justice practices; community-based outreach and conflict resolution; problem-oriented policing; hot spots policing; focused deterrence; crime prevention through environmental design; violence prevention and reduction interventions; model policies and guidelines promulgated by the New York State Municipal Police Training Council; and standards promulgated by the New York State Law Enforcement Accreditation Program.

The political subdivision, in coordination with its police agency, must consult with stakeholders, including but not limited to membership and leadership of the local police force; members of the community, with emphasis in areas with high numbers of police and community interactions; interested non-profit and faith-based community groups; the local office of the district attorney; the local public defender; and local elected

officials, and create a plan to adopt and implement the recommendations resulting from its review and consultation, including any modifications, modernizations, and innovations to its policing deployments, strategies, policies, procedures, and practices, tailored to the specific needs of the community and general promotion of improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing.

Such plan shall be offered for public comment to all citizens in the locality, and after consideration of such comments, shall be presented to the local legislative body in such political subdivision, which shall ratify or adopt such plan by local law or resolution, as appropriate, no later than April 1, 2021; and

Such local government shall transmit a certification to the Director of the Division of the Budget to affirm that such process has been complied with and such local law or resolution has been adopted; and

The Director of the Division of the Budget shall be authorized to condition receipt of future appropriated state or federal funds upon filing of such certification for which such local government would otherwise be eligible; and

The Director is authorized to seek the support and assistance of any state agency in order to effectuate these purposes.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this twelfth day of June in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

APPENDIX B

NEW YORK STATE POLICE REFORM AND REINVENTION COLLABORATIVE PLAN CERTIFICATION FORM

Instructions: The Chief Executive of each local government must complete and submit this certification and a copy of their Plan to the Director of the New York State Division of the Budget on or before April 1, 2021 at EO203Certification@budget.ny.gov.

I, _____, as the Chief Executive of _____
(the “Local Government”), hereby certify the following pursuant to Executive Order No. 203 issued by Governor Andrew M. Cuomo on June 12, 2020:

- ☐ The Local Government has performed a comprehensive review of current police force deployments, strategies, policies, procedures, and practices;
- ☐ The Local Government has developed a plan, attached hereto, to improve such deployments, strategies, policies, procedures, and practices (the “Plan”);
- ☐ The Local Government has consulted with stakeholders (including but not limited to: membership and leadership of the local police force; members of the community, with emphasis in areas with high numbers of police and community interactions; interested non-profit and faith-based community groups; the local office of the district attorney; the local public defender; and local elected officials) regarding the Plan;
- ☐ The Local Government has offered the Plan in draft form for public comment to all citizens in the locality and, prior to adoption of the Plan by the local legislative body, has considered the comments submitted; and
- ☐ The legislative body of the Local Government has ratified or adopted the Plan by local law or resolution.

Name

Signature

Title

Date

APPENDIX C

New York State Police Agencies

County	Agency
Albany	Albany City Police Department
	Albany County Sheriff's Office
	Altamont Village Police Department
	Bethlehem Town Police Department
	Coeymans Town Police Department
	Cohoes City Police Department
	Colonie Town Police Department
	Green Island Village Police Department
	Guilderland Town Police Department
	Menands Village Police Department
	Watervliet City Police Department
Allegany	Alfred Village Police Department
	Allegany County Sheriff's Office
	Andover Village Police Department
	Angelica Village Police Department
	Belmont Village Police Department
	Bolivar Village Police Department
	Cuba Town Police Department
	Friendship Town Police Department
	Independence Town Police Department
	Wellsville Village Police Department
	Willing Town Police Department
Broome	Binghamton City Police Department
	Broome County Sheriff's Office
	Deposit Village Police Department
	Endicott Village Police Department
	Johnson City Village Police Department
	Port Dickinson Village Police Department
	Vestal Town Police Department
Cattaraugus	Allegany Village Police Department
	Cattaraugus County Sheriff's Office
	Cattaraugus Village Police Department
	Ellicottville Town Police Department
	Franklinville Village Police Department
	Olean City Police Department
	Portville Village Police Department
	Salamanca City Police Department
Cayuga	Auburn City Police Department

Chautauqua	Cayuga County Sheriff's Office
	Moravia Village Police Department
	Port Byron Village Police Department
	Weedsport Village Police Department
	Carroll Town Police Department
	Chautauqua County Sheriff's Office
	Dunkirk City Police Department
	Ellicott Town Police Department
	Fredonia Village Police Department
	Jamestown City Police Department
	Lakewood Busti Police Department
	Westfield Village Police Department
Chemung	Chemung County Sheriff's Office
	Elmira City Police Department
	Elmira Heights Village Police Department
	Elmira Town Traffic District # 1
Chenango	Horseheads Village Police Department
	Afton Village Police Department
	Bainbridge Village Police Department
	Chenango County Sheriff's Office
	Greene Village Police Department
	New Berlin Town Police Department
	Norwich City Police Department
	Oxford Village Police Department
Clinton	Sherburne Village Police Department
	Clinton County Sheriff's Office
Columbia	Plattsburgh City Police Department
	Chatham Village Police Department
	Columbia County Sheriff's Office
	Germantown Town Police Department
	Greenport Town Police Department
	Hudson City Police Department
	Philmont Village Police Department
	Stockport Town Police Department
Cortland	Cortland City Police Department
	Cortland County Sheriff's Office
Delaware	Homer Village Police Department
	Colchester Town Police Department
	Delaware County Sheriff's Office
	Delhi Village Police Department
	Hancock Village Police Department
	Sidney Village Police Department
Dutchess	Walton Village Police Department
	Beacon City Police Department
	Dutchess County Sheriff's Office

Erie	East Fishkill Town Police Department
	Fishkill Town Police Department
	Fishkill Village Police Department
	Hyde Park Town Police Department
	Millbrook Village Police Department
	Millerton Village Police Department
	Pine Plains Town Police Department
	Poughkeepsie City Police Department
	Poughkeepsie Town Police Department
	Red Hook Village Police Department
	Rhinebeck Village Police Department
	Wappingers Falls Village Police Department
	Akron Village Police Department
	Amherst Town Police Department
	Blasdell Village Police Department
	Brant Town Police Department
	Buffalo City Police Department
	Cheektowaga Town Police Department
	Depew Village Police Department
	East Aurora/Aurora Town Police Department
	Eden Town Police Department
	Erie County Sheriff's Office
	Evans Town Police Department
	Gowanda Village Police Department
	Grand Island Town Police Department
	Hamburg Town Police Department
	Hamburg Village Police Department
	Kenmore Village Police Department
	Lackawanna City Police Department
	Lancaster Town Police Department
	North Collins Village Police Department
	Orchard Park Town Police Department
	Springville Village Police Department
	Tonawanda City Police Department
Essex	Tonawanda Town Police Department
	West Seneca Town Police Department
	Essex County Sheriff's Office
Franklin	Lake Placid Village Police Department
	Moriah Town Police Department
	Ticonderoga Town Police Department
	Franklin County Sheriff's Office
Fulton	Malone Village Police Department
	Saranac Lake Village Police Department
	Tupper Lake Village Police Department
	Broadalbin Village Police Department

Genesee	Fulton County Sheriff's Office
	Gloversville City Police Department
	Johnstown City Police Department
	Northville Village Police Department
	Batavia City Police Department
	Corfu Village Police Department
Greene	Genesee County Sheriff's Office
	LeRoy Village Police Department
	Athens Village Police Department
	Cairo Town Police Department
	Catskill Village Police Department
	Coxsackie Village Police Department
Hamilton	Durham Town Police Department
	Greene County Sheriff's Office
	Hunter Town Police Department
	Windham Town Police Department
Herkimer	Hamilton County Sheriff's Office
	Inlet Town Police Department
	Dolgeville Village Police Department
	Frankfort Town Police Department
	Frankfort Village Police Department
	Herkimer County Sheriff's Office
Jefferson	Herkimer Village Police Department
	Ilion Village Police Department
	Little Falls City Police Department
	Mohawk Village Police Department
	Webb Town Police Department
	Adams Village Police Department
	Alexandria Bay Village Police Department
	Antwerp Village Police Department
	Black River Village Police Department
	Brownville Village Police Department
	Cape Vincent Village Police Department
	Carthage Village Police Department
	Clayton Village Police Department
	Dexter Village Police Department
	Glen Park Village Police Department
	Jefferson County Sheriff's Office
	Philadelphia Village Police Department
	Sackets Harbor Village Police Department
Lewis	Theresa Village Police Department
	Watertown City Police Department
	West Carthage Village Police Department
	Lewis County Sheriff's Office
	Lowville Village Police Department

Livingston	Avon Village Police Department
	Caledonia Village Police Department
	Dansville Village Police Department
	Geneseo Village Police Department
	Livingston County Sheriff's Office
	Mount Morris Village Police Department
	Nunda Town & Village Police Department
Madison	Canastota Village Police Department
	Cazenovia Village Police Department
	Chittenango Village Police Department
	Hamilton Village Police Department
	Madison County Sheriff's Office
Monroe	Oneida City Police Department
	Brighton Town Police Department
	Brockport Village Police Department
	East Rochester Village Police Department
	Fairport Village Police Department
	Gates Town Police Department
	Greece Town Police Department
	Irondequoit Town Police Department
	Monroe County Sheriff's Office
	Ogden Town Police Department
	Rochester City Police Department
	Webster Town Police Department
Montgomery	Amsterdam City Police Department
	Canajoharie Village Police Department
	Fort Plain Village Police Department
	Montgomery County Sheriff's Office
	St. Johnsville Village Police Department
Nassau	Centre Island Village Police Department
	Floral Park Village Police Department
	Freeport Village Police Department
	Garden City Village Police Department
	Glen Cove City Police Department
	Great Neck Estates Village Police Department
	Hempstead Village Police Department
	Kensington Village Police Department
	Kings Point Village Police Department
	Lake Success Village Police Department
	Long Beach City Police Department
	Lynbrook Village Police Department
	Malverne Village Police Department
	Muttontown Village Police Department
	Nassau County Police Department
	Nassau County Sheriff's Office

New York City	Old Brookville Village Police Department
	Old Westbury Village Police Department
	Oyster Bay Cove Village Police Department
	Port Washington Police District
	Rockville Centre Police Department
	Sands Point Village Police Department
	New York City Police Department
	New York City Sheriff's Office
	Barker Village Police Department
	Lewiston Town Police Department
Niagara	Lockport City Police Department
	Middleport Village Police Department
	Niagara County Sheriff's Office
	Niagara Falls City Police Department
	Niagara Town Police Department
	North Tonawanda City Police Department
	Somerset Town Police Department
	Youngstown Village Police Department
	Boonville Village Police Department
	Camden Village Police Department
Oneida	Kirkland Town Police Department
	New Hartford Town Police Department
	New York Mills Village Police Department
	Oneida County Sheriff's Office
	Oriskany Village Police Department
	Rome City Police Department
	Sherrill City Police Department
	Utica City Police Department
	Vernon Village Police Department
	Whitesboro Village Police Department
Onondaga	Whitestown Town Police Department
	Yorkville Village Police Department
	Baldwinsville Village Police Department
	Camillus Town & Village Police Department
	Cicero Town Police Department
	DeWitt Town Police Department
	Geddes Town Police Department
	Jordan Village Police Department
	Liverpool Village Police Department
	Manlius Town Police Department
	Marcellus Village Police Department
	North Syracuse Village Police Department
	Onondaga County Sheriff's Office
	Skaneateles Village Police Department
	Solvay Village Police Department

Ontario	Syracuse City Police Department
	Canandaigua City Police Department
	Clifton Springs Village Police Department
	Geneva City Police Department
	Manchester Village Police Department
	Ontario County Sheriff's Office
Orange	Phelps Village Police Department
	Shortsville Village Police Department
	Blooming Grove Town Police Department
	Chester Town Police Department
	Chester Village Police Department
	Cornwall Town Police Department
	Cornwall on Hudson Village Police Department
	Crawford Town Police Department
	Deerpark Town Police Department
	Florida Village Police Department
	Goshen Town Police Department
	Goshen Village Police Department
	Greenwood Lake Village Police Department
	Harriman Village Police Department
	Highland Falls Village Police Department
	Highlands Town Police Department
	Maybrook Village Police Department
	Middletown City Police Department
	Monroe Village Police Department
	Montgomery Town Police Department
	Montgomery Village Police Department
	Mount Hope Town Police Department
	New Windsor Town Police Department
	Newburgh City Police Department
	Newburgh Town Police Department
	Orange County Sheriff's Office
	Port Jervis City Police Department
	Tuxedo Park Village Police Department
	Tuxedo Town Police Department
	Walden Village Police Department
	Wallkill Town Police Department
	Warwick Town Police Department
	Washingtonville Village Police Department
Orleans	Woodbury Town Police Department
	Albion Village Police Department
	Holley Village Police Department
	Lyndonville Village Police Department
	Medina Village Police Department
	Orleans County Sheriff's Office

Oswego	Central Square Village Police Department
	Fulton City Police Department
	Oswego City Police Department
	Oswego County Sheriff's Office
	Phoenix Village Police Department
	Pulaski Village Police Department
Otsego	Cooperstown Village Police Department
	Oneonta City Police Department
	Otsego County Sheriff's Office
Putnam	Brewster Village Police Department
	Carmel Town Police Department
	Cold Spring Village Police Department
	Kent Town Police Department
	Putnam County Sheriff's Office
Rensselaer	East Greenbush Town Police Department
	Hoosick Falls Village Police Department
	Nassau Village Police Department
	North Greenbush Town Police Department
	Rensselaer City Police Department
	Rensselaer County Sheriff's Office
	Schodack Town Police Department
	Troy City Police Department
Rockland	Clarkstown Town Police Department
	Haverstraw Town Police Department
	Orangetown Town Police Department
	Piermont Village Police Department
	Ramapo Town Police Department
	Rockland County Sheriff's Office
	South Nyack-Grand View Village Police Department
	Spring Valley Village Police Department
	Stony Point Town Police Department
	Suffern Village Police Department
Saratoga	Ballston Spa Village Police Department
	Galway Village Police Department
	Mechanicville City Police Department
	Saratoga County Sheriff's Office
	Saratoga Springs City Police Department
	South Glens Falls Village Police Department
	Stillwater Town Police Department
	Waterford Town & Village Police Department
Schenectady	Glenville Town Police Department
	Niskayuna Town Police Department
	Rotterdam Town Police Department
	Schenectady City Police Department

Schoharie	Schenectady County Sheriff's Office
	Scotia Village Police Department
	Cobleskill Village Police Department
Schuyler	Schoharie County Sheriff's Office
	Schoharie Village Police Department
	Schuyler County Sheriff's Office
Seneca	Watkins Glen Village Police Department
	Interlaken Village Police Department
	Seneca County Sheriff's Office
St. Lawrence	Seneca Falls Town Police Department
	Waterloo Village Police Department
	Canton Village Police Department
Steuben	Gouverneur Village Police Department
	Massena Village Police Department
	Norfolk Town Police Department
Suffolk	Norwood Village Police Department
	Ogdensburg City Police Department
	Potsdam Village Police Department
Suffolk	St. Lawrence County Sheriff's Office
	Addison Village Police Department
	Bath Village Police Department
Suffolk	Canisteo Village Police Department
	Cohocton Town Police Department
	Corning City Police Department
Suffolk	Hammondsport Village Police Department
	Hornell City Police Department
	North Hornell Village Police Department
Suffolk	Painted Post Village Police Department
	Steuben County Sheriff's Office
	Wayland Village Police Department
Suffolk	Amityville Village Police Department
	Asharoken Village Police Department
	East Hampton Town Police Department
Suffolk	East Hampton Village Police Department
	Head of the Harbor Village Police Department
	Huntington Bay Village Police Department
Suffolk	Lloyd Harbor Village Police Department
	Nissequogue Village Police Department
	Northport Village Police Department
Suffolk	Ocean Beach Village Police Department
	Quogue Village Police Department
	Riverhead Town Police Department
Suffolk	Sag Harbor Village Police Department
	Shelter Island Town Police Department
	Southampton Town Police Department

Sullivan	Southampton Village Police Department
	Southold Town Police Department
	Suffolk County Police Department
	Suffolk County Sheriff's Office
	Westhampton Beach Village Police Department
	Fallsburg Town Police Department
	Liberty Village Police Department
	Monticello Village Police Department
	Sullivan County Sheriff's Office
Tioga	Woodridge Village Police Department
	Candor Village Police Department
	Owego Village Police Department
	Spencer Village Police Department
	Tioga County Sheriff's Office
Tompkins	Waverly Village Police Department
	Cayuga Heights Village Police Department
	Dryden Village Police Department
	Groton Village Police Department
	Ithaca City Police Department
	Tompkins County Sheriff's Office
Ulster	Trumansburg Village Police Department
	Ellenville Village Police Department
	Kingston City Police Department
	Lloyd Town Police Department
	Marlborough Town Police Department
	New Paltz Town & Village Police Department
	Olive Town Police Department
	Plattekill Town Police Department
	Rosendale Town Police Department
	Saugerties Town Police Department
	Shandaken Town Police Department
	Shawangunk Town Police Department
	Ulster County Sheriff's Office
	Ulster Town Police Department
Warren	Woodstock Town Police Department
	Bolton Town Police Department
	Glens Falls City Police Department
	Warren County Sheriff's Office
Washington	Warrensburg Town Police Department
	Cambridge Village Police Department
	Fort Edward Village Police Department
	Granville Village Police Department
	Greenwich Village Police Department
	Hudson Falls Village Police Department
	Washington County Sheriff's Office

Wayne	Whitehall Village Police Department
	Clyde Village Police Department
	Macedon Town Police Department
	Newark Village Police Department
	Palmyra Village Police Department
	Sodus Village Police Department
	Wayne County Sheriff's Office
Westchester	Wolcott Village Police Department
	Ardsley Village Police Department
	Bedford Town Police Department
	Briarcliff Manor Village Police Department
	Bronxville Village Police Department
	Buchanan Village Police Department
	Croton on Hudson Village Police Department
	Dobbs Ferry Village Police Department
	Eastchester Town Police Department
	Elmsford Village Police Department
	Greenburgh Town Police Department
	Harrison Town Police Department
	Hastings-on-Hudson Village Police Department
	Irvington Village Police Department
	Larchmont Village Police Department
	Lewisboro Town Police Department
	Mamaroneck Town Police Department
	Mamaroneck Village Police Department
	Mount Pleasant Town Police Department
	Mount Vernon City Police Department
	New Castle Town Police Department
	New Rochelle City Police Department
	North Castle Town Police Department
	North Salem Town Police Department
	Ossining Village Police Department
	Peekskill City Police Department
	Pelham Manor Village Police Department
	Pelham Village Police Department
	Pleasantville Village Police Department
	Port Chester Village Police Department
	Pound Ridge Town Police Department
	Rye Brook Village Police Department
	Rye City Police Department
	Scarsdale Village Police Department
	Sleepy Hollow Village Police Department
	Somers Town Police Department
	Tarrytown Village Police Department
	Tuckahoe Village Police Department

Wyoming	Westchester County Department of Public Safety
	White Plains Department of Public Safety
	Yonkers City Police Department
	Yorktown Town Police Department
	Arcade Village Police Department
	Attica Village Police Department
	Perry Village Police Department
	Warsaw Village Police Department
	Wyoming County Sheriff's Office
Yates	Penn Yan Village Police Department
	Yates County Sheriff's Office





Published on *Vermont League of Cities and Towns* (<https://www.vlct.org>)

[Home](#) > Perspectives on Police Reform

Perspectives on Police Reform

Vermont League of Cities and Towns
Board of Directors

Perspectives on Police Reform

August 2020

As our state and country grapple with the future of police work, it is imperative that our municipal police departments conduct themselves in a manner that reflects the values of diversity, equity, and inclusion and that inspire public confidence.

On behalf of the Vermont League of Cities and Towns, which comprises all 246 cities and towns in Vermont, the Board of Directors offers the following perspectives on police reform:

Support 21st Century Policing

VLCT encourages all members to adopt the principles and practices of 21st Century Policing. The founding principles can be found here https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf^[1] and are endorsed by the Vermont League of Cities and Towns.

1. Hire the right person for the community.

One of the more important affirmations of the “21st Century Policing” findings was the critical step of selecting the right person for the role of police officer. VLCT encourages implementing national best practices in the selection process. Recruitment materials should reflect community values, interview committees should involve civilians and citizens as well as command staff, and background investigations should be rigorous. Investigations should include:

- medical examination and verification of all qualifying credentials
- criminal records check in all cities of residence, employment, and education
- computer inquiries of motor vehicle records and licensing records
- FBI check and under all known identities
- Interstate Identification Index (Triple I) records check
- interviews of three personal references and two investigator developed references, such as neighbors, ex-spouses, landlords, members of social organizations, etc.
- psychological and emotional fitness assessments using valid job-related criteria and a

psychological screen for psychopathology such as the MMPI.

- in depth interview by the investigator
- polygraph examination by a professionally trained examiner that probes alcohol and drug use, marital status, sexual activity, physical and mental health, and other areas designed to evaluate the character of the applicant.

Many departments will lack the internal capacity and expertise for this effort and the League encourages entities to contract with qualified external investigators. We acknowledge the added expense to the department, but we have also seen the impact of hiring the wrong officer.

2. Resident Involvement.

Local elected officials such as selectboards and city councils should continue to provide the primary citizen oversight function of police departments. Typically, this occurs through a city or town manager or another chief administrative officer.

However, some communities may choose to create a police advisory board, particularly where the board's mission is to help the department connect with vulnerable communities and those who are in regular contact with their services. The inclusionary values of 21st Century Policing emphasize relationships over force with the acknowledgement that relationships will not be developed overnight. The onus is on us as civic leaders to create these opportunities. One of the best opportunities for citizen involvement – particularly citizens that represent vulnerable communities – is the hiring process. Engaging citizens at this critical juncture demonstrates to the department why they exist and offers insight into the traits and suitability of the candidates for the community they will be serving.

However, the League does not support direct resident oversight of police departments; that is a fundamental responsibility of the selectboard or city council. It is not a place to involve volunteers or dilute the lines of authority and accountability.

3. Transform training and certification requirements and opportunities for police officers.

It is time for a thorough review of the content and process used to train police officers at the Vermont Police Academy. Too many of our departments are struggling with issues of excessive force, use of de-escalation strategies, and understanding the perspective of marginalized communities when interacting with police. We also need to expand the pathways one can travel to become a police officer in Vermont. The difficulty in getting training for aspiring officers creates the wrong incentives for hiring the right personnel and holding wayward officers accountable.

The League calls for the following enhancements to the police officer training program:

- a. There should be a required number of training hours that officers receive in diversity, equity, unconscious bias, and inclusion, as well as annual continuing education hours. Training should be conducted by qualified individuals, preferably those with lived experience. The League supports continuing education requirements in diversity, equity, and inclusion as well.
- b. Create an alternative non-residential training program. A non-residential program can attract officers who may have a family, may be transitioning from another career, or may be transitioning from another state. This diversity is essential as we seek to develop police officers who are community- and guardian-centric.

c. Enhance the curriculum to cultivate guardians, not warriors. It is clear that police officers need a more widely diverse skill set than they did ten years ago. Today's police officers spend more time confronting social challenges such as mental illness, addiction, de-escalating situations, and deploying alternatives to force rather than wrestling drunks in a bar. While defensive tactics remain critically important, the curriculum and the instructors need to reflect a shift in community desires and values.

d. Seek opportunities to partner with higher education. In most other professions, – from teachers to doctors, from lawyers to engineers, we allow qualified higher education resources to offer training and expertise. The policing profession can benefit greatly by diverse training opportunities and be better prepared to respond to the needs of the community. There is an opportunity to confront the dual crises facing higher education and municipal police departments by enabling a more academic path to law enforcement. Many municipalities would be willing to invest financial resources towards this effort if they could have more access to training and the training focused on diversity, equity, and inclusion.

4. Create a Vermont-based law enforcement accreditation process and encourage voluntary accreditation of law enforcement agencies.

5. Increase reporting, data sharing, and experience sharing.

Many police departments instinctively adopt insular practices. That is understandable given the nature of their operations. Yet now is the time when we need more information sharing, not less. The League calls on municipal police departments to make data sharing and public reporting a regular practice. A monthly presentation at a selectboard meeting, monthly publication of incident data, analysis of trends in the type and frequency of incidents, and regular sharing of department anecdotes with the community can build trust and reduce barriers. Police data such as recreation and housing violations can also be used to guide the work of other departments. From body cameras to after-incident reports, the large amounts of information that police departments have access to can be used to enrich the public conversation about what it means to be a police officer. Some of this information will be part of ongoing investigations or require redactions or blurring for privacy reasons, but we encourage departments to adopt an outward facing transparent posture with the community as a whole.

6. Invest in Transparency and Accountability.

The League encourages all members to adopt policies that reflect national best practices regarding the investigation of complaints against officers as well as the department. All complaints, even anonymous ones, must be investigated. Serious complaints, such as excessive force or civil rights violations, often need to be investigated independently or by outside qualified personnel. The findings of any investigation should generally be publicly released, including the name of the complainant, the nature of the allegation, and the name of the officer(s), unless there are statutory exemptions that apply, such as victim's rights or protection of minors.

Many departments will lack the internal capacity and expertise for this effort and the League encourages them to utilize qualified external investigators as needed. This is another area where we acknowledge the added expense to the department, but it is important to have the ability to independently investigate significant complaints, otherwise the department loses credibility. This should be approached as an opportunity to increase confidence in the department through the professional handling of a difficult situation.

Thorough and accurate investigations often require the ability to remain private, and a police officer's personnel file should always remain confidential unless a release has been signed. While as humans we all make mistakes, we need police officers with a sense of empathy and humility and who have the capacity to learn and constantly improve.

7. Hold Officers Accountable, but Preserve Qualified Immunity,

The public is justifiably concerned when they view excessive force videos and incidents of police brutality. Most police officers are as well. As employers, it is our responsibility to provide the training officers need, ensure that training reflects our values and best practices, and accept responsibility when harm is done. Accepting responsibility and offering restitution for any harm done to individuals and the community as a whole is an institutional or organizational obligation, not an individual obligation. Police officers are not contractors; they are employees.

Vermont cities and towns are well positioned to hold officers accountable for excessive force incidents and poor performance through independent investigations of complaints and the regular disclosure of the results. In addition, Act 56 of 2017 requires substantial disclosures of performance issues by police officers to the Vermont Criminal Justice Training Council. Eliminating qualified immunity would do little to improve accountability of police officers or recovery options in litigation. But it could have some very real unintended consequences.

All public officials – from school board members to selectboard members, from police officers to fire fighters – have qualified immunity. Qualified immunity protects all state and local officials from individual liability unless the official violated a “clearly established” constitutional right. That is an important foundation for a state like ours that champions civic involvement and public service. If one's personal assets were at risk, nobody would serve.

Police officers already are subject to much greater risk than other public servants by the nature of the profession and the additional transparency and accountability provisions discussed above. Ending qualified immunity for police officers would immediately require cities and towns to indemnify them via contract, placing us back in the same situation. Removing qualified immunity would do little to accomplish the goals of 21st Century Policing and racial and economic justice. But it may make it even more difficult to attract the type of officer who has the skills, temperament, and character to accomplish these goals.

In conclusion, this is a watershed moment for Vermont law enforcement, and substantive enhancements are poised to be implemented. Police officers ultimately work for the elected representatives of the community. It is imperative that elected officials engage in the transformative process to ensure Vermont's police professionals reflect community values, that they receive the necessary training needed to implement those values, and that we develop processes for handling complaints that inspire confidence from both the public and the law enforcement profession.

Documents:

 [VLCT_Perspectives_on_Police_Reform.pdf](#) [2]

Board or Committee:

VLCT Board of Directors

Resource Category:

- Minutes
-

Links

[1] https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

[2] https://www.vlct.org/sites/default/files/documents/Resource/VLCT_Perspectives_on_Police_Reform_0.pdf