

## Deliberative and Pre-Decisional

### Chapter 7: Respect for Law Enforcement and the Rule of Law

#### Introduction

#### PULL QUOTE

**“Americans know the truth: Without police, there is chaos; without law, there is anarchy; and without safety, there is catastrophe. We need leaders at every level of government who have the moral clarity to state these obvious facts.**

**Americans believe we must support the brave men and women in blue who police our streets and keep us safe. Americans also believe we must improve accountability, increase transparency, and invest more resources in police training, recruiting, and community engagement. Reducing crime and raising standards are not opposite goals, they are not mutually exclusive; they work together. They all work together.”**

#### President Donald J. Trump<sup>1</sup>

Being a law enforcement officer is harder today than ever. Attorney General William Barr states,

There is no tougher job in America than serving as a law enforcement officer. This was true in the past, and it is even truer today. . . . [T]he trials our country’s law enforcement officers encounter on a daily basis are complex, difficult, and wide-ranging. One reason is the emergence of a deeply troubling attitude towards police in some parts of society. Far from respecting the men and women who put their lives on the line to protect us, it has become common in some quarters to scapegoat and disrespect police officers and disparage the vital role [they] play in society.<sup>2</sup>

Former Attorney General Michael B Mukasey says that it is not just respect for law enforcement, but respect for the rule of law that is critical to a civil society: “We draw our identity not only from adherence to a system embodied in a law that we call the Constitution, but also from consensus in general terms about what that means. Once that is up for grabs, the whole point of having a country at all, as opposed to just being citizens of the world at large, is up for grabs as well.”<sup>3</sup>

These remarks highlight the challenges facing law enforcement agencies across the country. While the majority of Americans realize and appreciate the important role of law enforcement in our society, significant work is needed to counter the negative messages that persist. The stability of a free and civilized society hinges on a justice system that not only is fair, but is also perceived as fair. There are a number of ways law enforcement agencies and the community at large can ensure support, respect, and appreciation for the individuals who put their lives on the line to ensure the safety and well-being of the American people.

Kentucky Attorney General Daniel Cameron says the consequences of *not* respecting law enforcement and the rule of law are very simple: “Our society cannot function if the law is not enforced, and it will suffer if we lose respect for the men and women in uniform who are responsible for enforcement in every community across this country. We, as a nation, have chosen to be governed, and law enforcement is part of that process.”<sup>4</sup>

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<sup>1</sup> President Donald J. Trump, Remarks in the White House Rose Garden, July 16, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-executive-order-safe-policing-safe-communities/>.

<sup>2</sup> William P. Barr, U.S. Attorney General, “Remarks as Prepared for Delivery,” presented at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 27, 2020, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-international-association-chiefs-police>.

<sup>3</sup> President’s Commission on Law Enforcement and the Administration of Justice Hearing on Respect for Law Enforcement and the Rule of Law, [Michael B. Mukasey], [July 21, 2020], ADD WEBSITE

<sup>4</sup> *President’s Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law*, [July 21, 2020], [Daniel Cameron], ADD WEBSITE

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### 7.1 Respect for Law Enforcement and the Rule of Law by the Executive Branch

#### Background

Respect for law enforcement and the rule of law must permeate all levels of society. State, local, tribal, and territorial executives should recognize that they set the tone. Governors, mayors, city managers, county executives, U.S. attorneys, prosecutors, and all elected officials should demonstrate respect for the rule of law and the men and women responsible for enforcing the law.

Arkansas Attorney General Leslie Rutledge agrees that respect for law enforcement must start at the top:

We cannot expect parents to teach their children the importance of respecting those in authority, while elected leaders are demonizing their law enforcement agencies to gain political favor in times of crisis. We must implore methods of reconciliation to help restore the faith of the community that those officers responding to situations are there to help them, not hurt them. Similarly, our community leaders must sit down with local law enforcement to further develop that relationship. The safety of our citizens and our officers does not have to be diametrically opposed.<sup>5</sup>

#### Current State of the Issue

Anti-police protests over the summer of 2020 have galvanized the many law enforcement supporters across the country to show their respect for law enforcement. In a speech to a Back the Blue Rally in Philadelphia, Vice President Mike Pence told the crowd:

[B]urning churches is not protest. Tearing down statues is not free speech. And we're going to continue to stand with the freedom of speech and the freedom to peaceably assemble of every American. But we will join with you to stand against the rioters and the looters and the anarchists who would pull down our statues and try and destroy our communities. We're going to support law enforcement as you keep the peace. And we're going to prosecute those who vandalize our cities to the fullest extent of the law. The truth is, the American people know that public safety is vital. It's vital to the prosperity of our communities. It's vital to the health and well-being of our families. I mean, to back the blue is to back all Americans.<sup>6</sup>

Deputy Attorney General Jeffrey Rosen told the same gathering, "When it comes to violent crime, we can't afford to repeat mistakes from the past, and enable an increasing rate of violent crime. We can't accept violent crime. That doesn't mean accepting abuses, either. But we must not diminish respect for the law enforcement professionals who protect our communities."<sup>7</sup>

Certain recent trends in criminal justice have imposed new challenges on law enforcement. For example, the Peace Officers and Research Association of California (PORAC) reports,

California's experiments in criminal justice reform have had a decidedly negative impact on public safety in California, and made it harder and more dangerous for peace officers to do their jobs and

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<sup>5</sup> *Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law*, [July 22, 2020], [Statement of Arkansas Attorney General Leslie Rutledge], ADD WEBSITE

<sup>6</sup> <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-back-blue-rally-philadelphia-pa/>, July 9, 2020

<sup>7</sup> <https://www.justice.gov/opa/speech/deputy-attorney-general-jeffrey-rosen-delivers-remarks-fraternal-order-police-lodge-5>, July 9, 2020

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serve their communities. . . . Not only did the early release or reduced sentences offered to many offenders allow them to restart their criminal careers ahead of schedule, the new influx of former inmates in California communities has tied up already meager law enforcement resources, allowing other criminals space to escape justice. With all of the responsibilities being imposed on modern law enforcement—from the use of expensive and time-consuming technology, to dealing with the impacts of illegal immigration and drug trafficking, to serving as first responders, to a seemingly growing population impaired by mental illness—our resources are already over-stretched.<sup>8</sup>

In addition, the “progressive prosecutors” phenomenon, which is happening in several cities across the nation, has concerned law enforcement and others in the criminal justice system with what they view as selective enforcement of the law.<sup>9</sup> These prosecutors typically decide unilaterally not to prosecute certain crimes they deem to be “low-level,” such as trespassing, petty theft, or marijuana cases.<sup>10</sup> In doing so, they forget that there are no victimless crimes. It is also not the role of the prosecutor to arbitrarily decide not to prosecute an entire class of crimes.

In a speech to the Fraternal Order of Police annual conference in New Orleans in August 2019, Attorney General Barr denounced prosecutors who do not aggressively enforce the law. He said that having such prosecutors is “demoralizing to law enforcement and dangerous to public safety” and that they “spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law.”<sup>11</sup>

Barr referred to these prosecutors as “anti-law enforcement DAs” and said, “Some are refusing to prosecute various theft cases or drug cases, even where the suspect is involved in distribution. And when they do deign to charge a criminal suspect, they are frequently seeking sentences that are pathetically lenient. So these cities are headed back to the days of revolving door justice. The results will be predictable. More crime; more victims.”<sup>12</sup>

United States Attorney William McSwain (Eastern District, Pennsylvania) says it is important to push back against the progressive prosecutor phenomenon: “The progressive prosecutor reform movement has garnered significant media attention across the country. The best way to counter disrespect for law enforcement and the rule of law is to publicly challenge those who promote an anti-law enforcement culture. It is important for federal prosecutors to speak out when public safety is at risk and to support our federal, state, and local law enforcement officers whenever possible.”<sup>13</sup>

U.S. Attorney Macgregor Scott (Eastern District, California) agrees, saying progressive prosecution has four fundamental flaws: “1) it usurps the constitutional role of the legislative branch; 2) miscasts who the prosecutor represents in a criminal case; 3) causes violent crime rates to go up, especially in minority communities; and 4) and forgets crime victims.”<sup>14</sup>

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<sup>8</sup> Brian Marvel, President, Peace Officers Research Association of California, email communication with President’s Commission on Law Enforcement and the Administration of Justice, February 27, 2020.

<sup>9</sup> Mark Berman, “America’s New ‘Progressive Prosecutors’ Are Getting Pushback,” Washington Post, November 12, 2019, <https://www.washingtonpost.com/podcasts/post-reports/americas-new-crop-of-progressive-prosecutors-are-getting-pushback/>.

<sup>10</sup> Ibid

<sup>11</sup> William P. Barr, U.S. Attorney General, “Remarks as Prepared for Delivery,” presented at the Grand Lodge Fraternal of Police’s 64<sup>th</sup> National Biennial Conference, New Orleans, LA, August 12, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th>.

<sup>12</sup> Barr, “Remarks as Prepared,” August 12, 2019.

<sup>13</sup> President’s Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law, [July 22, 2020], [statement of U.S. Attorney William McSwain], ADD WEBSITE

<sup>14</sup> President’s Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law, [July 22, 2020], [statement of U.S. Attorney Macgregor Scott, ADD WEBSITE

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### **7.1.1 Prosecutor's offices should train incoming prosecutors on the importance of enforcing the law.**

#### **[CROSS REFERENCE INTERSECTION OF CRIMINAL JUSTICE PERSONNEL]**

Principled adherence to the rule of law should be instilled in new generations of prosecutors. They should hear about the detrimental impact that failing to prosecute duly enacted laws can have on both the community and on officer morale.

Training should improve prosecutors' understanding of the effort and resources that officers put into each arrest and the risks that officers encounter in the line of duty. Training should also highlight the importance of the prosecutor's role of working alongside law enforcement officers to secure justice within a community. This training can include ride-alongs or periodic roundtables with police departments to help a new prosecutor understand the perspective of law enforcement officers.

New prosecutors should be trained on the importance of enforcing duly enacted laws, the impact of dismissing cases absent merited diversion, and the impact that categorically refusing to enforce the law has on community and police morale.

Training novice prosecutors on the importance of the rule of law can empower and boost the morale of both prosecutors and law enforcement officers. The new prosecutors will be better equipped to enforce duly enacted laws, as they will have the data and information on the importance of their role and cases. This training will also improve prosecutors' respect for law enforcement officers and officers' relationship with the prosecuting agency. New prosecutors will be more motivated to enforce the law and the cases that officers have charged because they will have a better understanding of the effort officers have put into each case.

Training opportunities are critical in the effective and competent investigation, review, and prosecution of criminal offenses. To that end, elected prosecutors should provide critical tools to fairly and competently prosecute all criminal offenses to other prosecutors under their charge. In particular, new prosecutors benefit from multiple, varied trainings, which inspire confidence and guidance for better job performance. The leadership necessary to provide these training opportunities should start at the top.

### **7.1.2 Prosecutorial authorities should have publicly available written guidelines that include enforcement priorities that correspond with community crime data and proven strategies for reducing crime.**

Prosecutors should have discretion in prosecuting cases to account for case strengths and weaknesses and to accommodate the pursuit of successful criminal justice objectives. However, a system of accountability should be in place to determine if a prosecutor abuses that discretion. In jurisdictions where the prosecutor refuses to enforce a law, the executive branch takes over the role of the legislative branch by autonomously choosing which laws to implement. This practice erodes respect for law enforcement, the rule of law, and the principle of the separation of powers, while also diminishing the importance of justice for victims.

To promote accountability while preserving a prosecutor's discretion, prosecution offices should publicly share written guidelines for enforcement priorities that correspond with community crime data and proven strategies for reducing crime.

### **7.1.3 Each state should create state-level oversight committees that would review cases that a prosecutor decides not to prosecute when the decision results from a blanket policy not to prosecute certain categories of crimes.**

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Professional prosecutors exercise discretion in meaningful and thoughtful ways, yet some prosecutors exceed their role by ignoring statutory mandates. Prosecutors in several cities and jurisdictions have stated that they will not prosecute certain cases, such as those involving shoplifting or thefts of personal items under a certain dollar amount, low-level drug offenses, certain marijuana cases, or driving with an invalid license. When a prosecutor unilaterally decides to not prosecute an entire category of crimes (i.e., deems it a low-level offense that does not warrant prosecution or otherwise fails to prosecute a case where probable cause for an arrest is present), that prosecutor is usurping legislative authority. These laws have been duly enacted by an elected legislative body, and the public has a reasonable expectation that breaking these laws will result in prosecution.

As an alternative, prosecutors should consider diversionary programs. According to the DOJ, pretrial diversion (PTD) is an alternative to prosecution, which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the U.S. Probation Service. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, they will have the charges against them dismissed; unsuccessful participants are returned for prosecution.

“The major objectives of pretrial diversion are:

- To prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services.
- To save prosecutor and judicial resources for concentration on major cases.
- To provide, where appropriate, a vehicle for restitution to communities and victims of crime.
- The period of supervision that does not exceed 18 months, but may be reduced.”<sup>15</sup>

### [BEGIN TEXT BOX – DIRECT QUOTE]

James Pasco, executive director of the National Fraternal Order of Police in Washington, D.C., condemns the “cherry-picking approach where prosecutors pick what laws are important to police” and says ultimately police pay the price

“Police officers sense their lives are in danger if they feel the prosecutor doesn’t have their back,” Pasco says. “You arrest people who are breaking the law, but sometimes they’re then not even held. That has a chilling effect on the enthusiasm of officers.”

Ultimately, Pasco says, the result of progressive prosecutorial policies is “chaos and anarchy,” and he predicts the end result will be a pendulum swing back to tough-on-crime policies.<sup>16</sup>

### [END TEXT BOX]

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<sup>15</sup> “9-22.000 - Pretrial Diversion Program,” in *Justice Manual* (Washington, DC: U.S. Department of Justice, 2011), <https://www.justice.gov/im/im-9-22000-pretrial-diversion-program>.

<sup>16</sup> Marco della Cava, “New, More Progressive Prosecutors are Angering Police, Who Warn Approach Will Lead to Chaos,” *USA TODAY*, February 8, 2020, <https://www.usatoday.com/story/news/nation/2020/02/08/criminal-justice-police-progressive-prosecutors-battle-over-reform/4660796002/>.

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### **7.1.4 State legislatures should enact stronger financial penalties (including adequate monetary awards or restitution), to compensate victims of crime, as well as other non-financial remedies, in an effort to make victims whole and allow them to feel that justice has been served.**

Too often, victims are becoming invisible in the criminal justice system. When a prosecutor decides not to prosecute certain crimes, it often results in collateral damage to communities and further harms the victim. For example, business owners suffer economic losses from shoplifting. Individuals have to endure the loss of personal property when a prosecutor deems the loss is at a financial level lower than the threshold to prosecute.

Essex County, Massachusetts, District Attorney Jonathan Blodgett says that, all too often, the discussion around criminal justice reform ignores the victims of crime. Blodgett says, "The crime victim is the only one in the courtroom who didn't ask to be there, who has suffered an incalculable loss that cannot be restored. Most importantly, the only voice for the victim, in every courtroom in this country, is that of the prosecutor. Their voices must be heard and respected."<sup>17</sup>

Relieving defendants of accountability and personal responsibility by not charging someone of a crime results in no mechanism to provide financial restitution to victims and does little to deter criminals. This also causes further distress to those they have victimized.

### **7.1.5 The Department of Justice should continue to regularly reaffirm its support of qualified immunity for law enforcement officers.**

Qualified Immunity is a critically important legal doctrine that must be protected. Qualified immunity is a legal defense doctrine in United States federal law. It allows a government official who is sued in a federal lawsuit for deprivation of civil rights to assert immunity if the alleged constitutional violation was not clearly established at the time the conduct occurred.<sup>18</sup> When a federal judge grants qualified immunity, it may result in the early dismissal of a lawsuit for money damages and prevent a law enforcement official from having to go through the stresses and financial pressures of a long judicial process that can include discovery, depositions, and a trial.<sup>19</sup>

The U.S. Supreme Court first introduced the qualified immunity doctrine in 1967 to protect law enforcement officials from frivolous lawsuits and financial liability in cases where they acted in good faith in an unclear legal situation.<sup>20</sup> Much like the constitutional prohibition of ex post facto laws, which prohibit criminal statutes that punish actions retroactively, the doctrine of qualified immunity seeks to protect government officials, including law enforcement officers, from civil liability for actions deemed unconstitutional by a court after they have occurred.

In recent years, there have been continued attempts to chip away at qualified immunity. Eliminating or drastically limiting qualified immunity would negatively affect law enforcement. Citizens seeking careers in law enforcement may opt for a different career choice if they know that they could be financially bankrupted if a judge or jury declared that conduct which had already occurred and which was not previously recognized

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<sup>17</sup> Jonathan Blodgett, District Attorney, Essex, MA, email communication with Respect for Law Enforcement and the Rule of Law Working Group, June 15, 2020.

<sup>18</sup> Robert Fagin, Attorney, San Diego County, CA, sheriff's department, email communication with Respect for Law Enforcement and the Rule of Law Working Group, June 24, 2020.

<sup>19</sup> Fagin, email communication with Respect for Law Enforcement, June 24, 2020.

<sup>20</sup> Fagin, email communication with Respect for Law Enforcement, June 24, 2020.

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as unconstitutional was now suddenly unconstitutional. Additionally, current law enforcement officers may seek to limit their enforcement activity to avoid future unknown liability.

In *Malley v. Briggs*, 475 U.S. 335, 341 (1986) the Supreme Court said, “As a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law.”<sup>21</sup> Law enforcement officers are often forced to make split second decisions, sometimes involving life and death situations, and they should be afforded protections from errors likely to occur as a result of being human.

In speaking against the idea of limiting qualified immunity, Attorney General William Barr said: “I don't think you need to reduce immunity to go after the bad cops, because that would result certainly in police pulling back. Policing is the toughest job in the country. . . . The vast, overwhelming majority of police are good people. They're civic-minded people who believe in serving the public. They do so bravely. They do so righteously.”<sup>22</sup>

**7.1.6 Each state’s department of corrections should produce an annual report on statewide incarceration rates and the characteristics of those incarcerated. Each state’s department of corrections should share these reports with the media and the public while ensuring that the reports comply with that state’s public record guidelines.**

To provide the public with a more accurate picture of who is being incarcerated and why, this information should include the

- offenses resulting in incarceration
- number of prior offenses and criminal histories of those incarcerated
- number of probation offenses of those incarcerated
- number of individuals incarcerated while on probation
- total number of arraignments of those incarcerated

### [CROSS REFERENCE DATA AND REPORTING]

Sometimes, the prevailing narrative concerning incarcerated individuals is at odds with the data. When that is the case, public opinion can be based on inaccurate information and a misunderstanding of the criminal justice system. Accurate statistics may correct this misunderstanding. Uniform information may help compare the relative success of states’ criminal justice policies.

## 7.2 Building Relationships

### Background

**PULL QUOTE:** “While policing is demanding, it is also uniquely rewarding. It is one of our country’s highest callings, and we are blessed that there are men and women of character willing to serve selflessly so that

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<sup>21</sup> *Malley v. Briggs*, 475 U.S. 335, 341 (1986), <https://caselaw.findlaw.com/us-supreme-court/475/335.html>.

<sup>22</sup> <https://www.cbsnews.com/news/bill-barr-george-floyd-protests-blm-face-the-nation-transcript/>.

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their fellow citizens can live securely. We owe our officers the support and services they need to work their way through problems.”<sup>23</sup> – Attorney General William Barr

Respect for law enforcement increases when partnerships are forged between agencies and their communities; each benefits realizing the other’s perspective. When they can work through stereotypes and misunderstandings, years of false narratives can be dissolved, and new relationships can be cultivated.<sup>24</sup> These new lines of open communication increases public safety as well as respect for law enforcement.

Over the years, programs that embrace a proactive and consistent outreach approach have effectively developed and sustained relationships between law enforcement and the community. Too often, law enforcement agencies overlook these programs and consider them only if time and staff are available. However, such a casual approach is ill advised, and law enforcement agencies that do not engage in these programs do so at their own peril. Respect for law enforcement grows only through nurturing and sustaining these relationships.

Strong community-based partnerships can lead to greater trust between police and the public they serve. In turn, this trust should evolve and encourage a greater willingness for community members to assist in crime-reduction efforts. Another benefit of these relationships can be realized at the investigations level, as increased cooperation can strengthen investigations and help police solve cases.

### [BEGIN TEXT BOX]

Michael “Mick” McHale, President of the National Association of Police Officers (NAPO), says that one way to build relationships between law enforcement and the community is to ensure citizens that any complaint against an officer will be heard and thoroughly investigated. NAPO supports the idea of “Comply, Then Complain.” Individuals, including youth, who are approached by a police officer should first “comply.” Then, if the individual feels they were treated unfairly or unlawfully, they can submit a formal complaint with guided assistance throughout the process. McHale says this process helps “rebuild trust with the community.”<sup>25</sup>

In North Carolina, several agencies worked together to develop Public Service Announcements to explain “Listen, Explain, Comply, Complain.” Chief John Letteney, with the Apex Police Department says that through the leadership of the North Carolina Association of Chiefs of Police, Regional Directors worked with local agencies and local media partners to develop the PSA’s, which featured local chiefs

The PSAs allow the chiefs to be out front on this important topic, while also providing a guideline to help ensure safe police/citizen encounters and letting the community know that each agency has a process to investigate community concerns and are willing to do so in a professional and responsive manner.<sup>26</sup>

The department trains their officers to listen to individuals, then explain what they are doing and why. The officers ask individuals to comply, then to complain afterward if they feel they were treated unfairly.<sup>27</sup>

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<sup>23</sup> Barr, “Remarks as Prepared,” February 27, 2019.

<sup>24</sup> Seth Stoughton, “8 Things We Still Get Wrong About Policing,” *Time*, May 15, 2015, <https://time.com/3859400/policing-misconceptions/>.

<sup>25</sup> Michael McHale, President, National Association of Police Officers, in discussion with Respect for Law Enforcement and the Rule of Law Working Group, virtual meeting, April 27, 2020.

<sup>26</sup> John Letteney, Chief, Apex, NC, police department, email communication with Respect for Law Enforcement and the Rule of Law Working Group, June 15, 2020.

<sup>27</sup> Wilmington Police, “Listen, Explain. Comply, Complain,” YouTube, November 9, 2015, <https://www.youtube.com/watch?v=SXTDQ-Y63go>.



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Lieutenant Mark Young, President of the Detroit Police Lieutenants and Sergeants Association, thinks the idea of “comply, then complain” will help with law enforcement-community relations: “When departments engage the community by utilizing the services of community leaders to educate their constituencies and congregations, confrontation and obstruction will trend downward because citizens will trust that their complaints and concerns will be addressed promptly, treated seriously, and evaluated fairly without bias or discrimination.”<sup>28</sup>

### Current State of the Issue

[BEGIN TEXT BOX]



### Source: Baltimore Police Department

Baltimore Police Commissioner Michael Harrison took over the department in March 2019. Harrison had to strike a balance between support for officers who were on the front lines and support for a community that did not feel respected by these officers. Commissioner Harrison implemented numerous changes, including hosting a series of community-based listening sessions and conversations with his officers. He learned the importance of not just making changes in the department, but also communicating those changes to the community. He states, “It’s not how well you do it, but how many people know you do it well.”<sup>29</sup> Although change takes time and building trust is a process, the foundation has now been laid.

Commissioner Harrison advises that chiefs who are new to a department should rely on a change management strategist who communicates what the agency is doing to address these matters, which helps establish a smooth transition process as an agency works to achieve better police-community relations.<sup>30</sup>

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Tru Pettigrew is the Founder of Tru Access, an organization that helps individuals and organizations build bridges across issues that divide them most. Much of his work focuses on building bridges between law enforcement and the community, with programs like “Barbershop Rap Sessions.” Pettigrew says getting together and talking is the key. He states, “We can’t allow our primary source of information to come from people who like us.”<sup>31</sup>

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<sup>28</sup> Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law, [July 22, 2020], [statement of Lieutenant Mark Young, Detroit Police Department], ADD WEBSITE

<sup>29</sup> Michael Harrison, Commissioner, Baltimore, MD, police department, in discussion with Respect for Law Enforcement and the Rule of Law Working Group, virtual meeting, April 24, 2020.

<sup>30</sup> Harrison, in discussion with Respect for Law Enforcement, April 24, 2020.

<sup>31</sup> Tru Pettigrew, Founder, Tru Access, in discussion with Respect for Law Enforcement and the Rule of Law Working Group, virtual meeting, April 27, 2020.

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Source: Tru Access

[END TEXT BOX]

**7.2.1 Law enforcement agencies should continue to prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing a knowledge of and appreciation for the daily responsibilities of law enforcement.**

[CROSS REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT]

Implementing strategies to accomplish stronger police-community relations can be daunting. Agencies looking to make these positive changes should look to other successful programs that already exist, such as citizen and youth police academies, clergy-police partnerships, youth mentoring, and business community partnerships.

Houston Police Chief Art Acevedo, who is President of the Major Cities Chiefs Association (MCAA) says the importance of building these relationships can't be stressed enough: "Overwhelmingly, MCCA members have heard from their communities—we don't want less police, we want better policing. It is imperative that law enforcement work tirelessly—in both good times and bad—to build strong relationships with the communities they serve. It is much easier to navigate a crisis when the public trusts law enforcement and knows their concerns will be taken seriously."<sup>32</sup>

In North Carolina, the Fayetteville Police Department prioritized community outreach by focusing on a variety of community-based engagement opportunities. The department identified and understood their audiences and recognized the need to use a diverse approach that covered a variety of interests, including community empowerment response teams, community watch groups, Citizens on Patrol, Coffee with a Cop, police activities leagues, and a Police Explorer program.<sup>33</sup>

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<sup>32</sup> Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law, [July 22 2020], [statement of Houston Police Chief Art Acevedo], ADD WEBSITE

<sup>33</sup> "Community Policing," City of Fayetteville, NC, March 23, 2020, <https://www.fayettevillenc.gov/city-services/police/community-policing>.

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**Source: Fayetteville Police Department**

An informed community can help improve relationships between law enforcement and the communities they serve. When community members understand the daily responsibilities of an officer, the decisions they face, and the breadth of assistance they are expected to provide every day, they can become law enforcement's strongest advocates and supporters. From Citizens Police Academies to after-school programs, efforts that give citizens a greater awareness of the work of law enforcement can go a long way toward increasing respect for law enforcement.

Nicholas A. Trutanich, U.S. Attorney for Nevada, says that building those relationships is critical: "Community leaders and law enforcement should consider forming partnerships, involving regular meetings attended by executive-level officers, to build and maintain trust. Among other things, such meetings would allow law enforcement to solicit feedback from community leaders, and continually reinforce that the safety of the community (not arrests or convictions) is law enforcement's highest priority."<sup>34</sup>

**[BEGIN TEXT BOX]**



**Source: Pinellas County Sheriff's Office**

The Sheriff's Citizens Academy (SCA) is an 11-week program in Pinellas County, Florida, that offers residents an exclusive, behind-the-scenes look at the sheriff's office. Classes are held midweek in the evenings, and the program is free of charge and includes a meal each class night.<sup>35</sup>

**[END TEXT BOX]**

**7.2.2 Law enforcement agencies must ensure that their relationships with the clergy, community groups, businesses, and all other groups are not limited to the law enforcement executive. These relationships**

<sup>34</sup> *President's Commission on Law Enforcement and the Administration of Justice, Hearing on Respect for Law Enforcement and the Rule of Law*, July 22, 2020, Statement of U.S. Attorney Nicholas A. Trutanich, ADD WEBSITE

<sup>35</sup> "Sheriff's Citizens Academy," Pinellas County Sheriff's Office, April 21, 2020, <https://www.pcsoweb.com/program-services/citizens-academy>.

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**should filter throughout the organization and be built from the bottom up, and officers should be the linchpins for establishing those relationships.**

While strong relationships between law enforcement executives and community stakeholders are essential, those relationships should not only exist at that level. Many others throughout the organization, particularly line-level personnel, can benefit from those relationships.

According to Reverend Markel Hutchins, founder of One Congregation One Precinct (OneCOP), “When a law enforcement executive leaves a department, their relationships go with them.”<sup>36</sup> The goals of OneCOP include engaging community members to assist in improving public safety and strengthening opportunities for engagement between patrol officers and their communities. Reverend Hutchins stresses that these relationships must permeate the department and not simply exist at the leadership level.

### [CROSS-REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT]



**Source: Movement Forward, One Congregation One Precinct (OneCOP) initiative**

### [BEGIN TEXT BOX]

The International Association of Chiefs of Police’s One Mind Campaign “seeks to ensure successful interactions between police officers and persons affected by mental illness. The initiative focuses on uniting local communities, public safety organizations, and mental health organizations so that the three become ‘of one mind’.”<sup>37</sup>

The principles of the program include

- establishing a clearly defined and sustainable partnership with a community mental health organization
- developing a model policy to implement police response to persons affected by mental illness
- training and certifying sworn officers and selected non-sworn staff in mental health first aid training or other equivalent mental health awareness courses
- providing crisis intervention team training<sup>38</sup>

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<sup>36</sup> Rev. Markel Hutchins, Founder, One Congregation One Precinct, in discussion with Respect for Law Enforcement and the Rule of Law Working Group, virtual meeting, April 3, 2020.

<sup>37</sup> “One Mind Campaign,” International Association of Chiefs of Police, May 8, 2020, <https://www.theiacp.org/projects/one-mind-campaign>.

<sup>38</sup> International Association of Chiefs of Police, “One Mind Campaign.”

## Deliberative and Pre-Decisional



Source: International Association of Chiefs of Police

[END TEXT BOX]

### 7.3 Messaging and Branding

#### Background

With the omnipresence of social media and the 24/7 news cycle, the public demands information almost immediately. The narrative is set within the first few hours of an event occurring or even sooner; if this narrative is negative, it is often difficult to overcome. Law enforcement professionals should share the facts of an incident, to the extent possible, before the truth becomes irrelevant and lost in the noise of other social media posts.

For years, that police agencies have relied primarily on mass media to ensure communities receive public safety messages and alerts; however, that is no longer the sole method to accomplish those tasks today. Mainstream media cannot be the only platform law enforcement uses to connect with the public. Multiple online tools, including an endless array of social media platforms and blogs, enable community members to learn more about the reality of policing and the lives of law enforcement officers.<sup>39</sup>

Additionally, public celebrations like parades, notable civic or historic events, and community festivals are ideal places to both recognize the commitment and dedication of law enforcement personnel and encourage community members to show their support. Annual events such as National Night Out (a celebration of police-community partnerships) and National Police Week (the week when the nation commemorates the sacrifice of America's fallen law enforcement officers) have also contributed to a positive image.<sup>40</sup>

#### *Current State of the Issue*

Each law enforcement agency must make a concerted effort to tell its own story. The agency's brand is an important part of its overall image. Ensuring that brand confidence is high takes additional work, but will eventually pay great dividends. Law enforcement agencies realize the value in such efforts, particularly because if they do not tell their own stories, in their own words and with their own voice, someone else will.

**PULL QUOTE:** "Now, more than ever, our communities and our country need to hear the messaging and talking points you already deliver at community events, academy graduations, and internally to your staff; only now, with social media you're able to magnify this message to a broader community of residents and businesses you serve. Our collective absence on social media as law enforcement leaders has allowed the narrative to be told by others. This has to change."<sup>41</sup> – Captain Chris Hsiung, Mountain View, California, police department

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<sup>39</sup> Gary Corder and Elizabeth Beall Perkins, *E-COP: Using the Web to Enhance Community Oriented Policing* (Washington, DC: Office of Community Oriented Policing Services, 2013), <https://cops.usdoj.gov/RIC/Publications/cops-w0706-pub.pdf>.

<sup>40</sup> "National Night Out," May 7, 2020, <https://natw.org/>; "National Police Week," National Law Enforcement Memorial Fund, accessed July 9, 2020, <https://nleomf.org/programs-events/national-police-week>.

<sup>41</sup> Chris Hsiung, "The Case for Law Enforcement Leaders to Be Present On-Line: Best Practices for Chiefs and Executive Managers with Social Media Profiles," *California Police Chief Magazine*, Spring 2019, 28, <https://view.joomag.com/california-police-chief-fall-2013-cpca-2019-spring-magazine-final/0056827001557855111?short&>.

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### **7.3.1 Law enforcement agencies should develop and maintain a strong social media presence and a comprehensive public outreach plan to consistently deliver reliable messaging to the public.**

When local law enforcement agencies lack a social media presence, it allows a counter-narrative to develop and direct perceptions and attitudes. Law enforcement agencies should use social media to build a narrative that reinforces the work accomplished by the people in law enforcement, including stories that highlight the bravery, compassion, and dedication of their officers and show the people behind the badge. Agencies with limited resources or experience should look for partnership opportunities to share in these efforts (e.g., local government, neighboring agencies, or local labor or representative organization).

**PULL QUOTE:** “Perception matters. The landing page of your website or social media can have a significant impact on the perception of your agency from outsiders. If citizens are already apprehensive of the police, it is best not to feature a SWAT truck on your website’s landing page.”<sup>42</sup> – Lieutenant W. Mike Phibbs, Richmond, Virginia, police department

Police leadership should look through a public lens to consider how well the public understands their agency’s mission and priorities, and they should ensure the agency’s core values reflect the community’s priorities. According to Chief Doug Shoemaker of the Grand Junction, Colorado, police department, agencies should consider using an all-levels approach for their marketing strategy. Chief Shoemaker explains, “While it is certainly the chief’s job to provide vision and direction, one person cannot reasonably be expected to think of every best possible way to market the agency to the public. Why not gather ideas from others within the organization who may have insights that would be useful in this endeavor?”<sup>43</sup>

### **7.3.2 Law enforcement agencies should dedicate the appropriate personnel to regularly share positive stories via social media, print and broadcast media, community websites, and other digital avenues.**

Throughout the COVID-19 pandemic, law enforcement officers have stayed on the job, protected our communities, and offered assistance and guidance to anxious citizens. As they have performed these duties, they have put their health, well-being—and that of their families—in jeopardy. Law enforcement does not offer a work-from-home option.

By March 31, 2020, just a short time after the outbreak of the pandemic, NYPD reported 5,600 officers (15 percent of its force) were out sick with the virus, with five officers dead.<sup>44</sup> Pointing to these numbers, Rafael Mangual, with the Manhattan Institute, says, “What these numbers show is a deep commitment to the rule of law, which we know—from this pandemic, 9/11-related illness, and line-of-duty deaths and injuries—often comes at great personal cost. That commitment should be painting the public image of law enforcement. That nearly a million men and women across our nation have taken oaths to risk their lives in service to the rule of law should place that ideal among those most revered in our society.”<sup>45</sup>

Agencies should disseminate appropriate messaging to highlight these and numerous other sacrifices regularly made by officers to remind the public of their tireless efforts and dedication.

To expand messaging efforts, law enforcement agencies should reach out to their national partners, community and business leaders, and labor and representative organizations to serve as third-party advocates. These advocates can routinely share examples of the positive work conducted by law enforcement agencies across the nation.

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<sup>42</sup> W. Michael Phibbs, “Why Your Police Department Needs a Brand,” *PoliceOne* (blog), September 7, 2017, <https://www.policeone.com/chiefs-sheriffs/articles/why-your-police-department-needs-a-brand-siy1LBFGy8tUKUJ6/>.

<sup>43</sup> Doug Shoemaker, “Finding Your Agency’s Identity: The ‘All-Levels’ Marketing Approach,” *Police Chief Magazine*, August 2019, <https://www.policechiefmagazine.org/finding-your-agencys-id/>.

<sup>44</sup> “Coronavirus News: NYPD has 5,600 officers out sick, 5 deaths,” WABC NY, March 31, 2020, <https://abc7ny.com/nypd-coronavirus-deaths-nyc-news/6065991/>.

<sup>45</sup> Rafael Mangual, Deputy Director of Legal Policy, Manhattan Institute, email communication with Respect for Law Enforcement and the Rule of Law Working Group, May 6, 2020.

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In addition, agencies should create local or regional partnerships to meet this purpose. Agencies should also partner with their state police chiefs associations to assist in this effort. When practical, appropriate, and applicable, these efforts could be coordinated with the agency's labor or representative organization, which may opt to conduct this type of outreach. Finally, positive demonstrations of support, appreciation, and recognition from local government executives, as well as Chiefs and Sheriffs, for law enforcement personnel are essential to convey a positive message, driving the police narrative to highlight community-based policing images and messages.

### [BEGIN TEXT BOX]

In April 2020, as communities struggled with the new reality of COVID-19, the Apex, North Carolina, police department creatively used its resources and took to social media to share announcements, messages, and resources available to the community. . A community member asked if police cars could ride through the



Source: Apex Police Department



neighborhood and show off their lights and sirens to the children who were sheltering at home. The department thought it would be a great opportunity for Chase from Paw Patrol to tag along. More requests were received after the department posted it on social media, and the department happily obliged. Officers dropped off a police backpack of goodies to the children celebrating birthdays, snapped a few quick photographs (while practicing social distancing), and continued with the parade.<sup>46</sup>

### [END TEXT BOX]

**7.3.3 Law enforcement agencies should ensure that their social media technology and strategies are current and constantly updated to ensure responsiveness to their community.**

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<sup>46</sup> John Letteney, Chief, Apex, NC, police department, email communication with Katherine McQuay, Federal Program Manager, Respect for Law Enforcement and the Rule of Law Working Group, April 23, 2020.

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People have become accustomed to prompt and efficient responses when communicating electronically, and law enforcement agencies are not exempt. Agencies have a variety of opportunities to engage using various social media platforms. In many ways, social media platforms have become the primary method in which law enforcement interacts with their communities. Social media can be used to quickly and directly disseminate information to the public. As cell phones take the place of home computers, police agencies should tailor social media messaging to mobile platforms. Additionally, agencies should maintain a traditional website to ensure optimum accessibility, outreach, and engagement opportunities.

[CROSS REFERENCE TECHNOLOGY]

### **7.3.4 Law enforcement agencies should cultivate a positive relationship with local media outlets through proactive outreach efforts and regular meetings to provide timely information.**

Law enforcement agencies should cultivate relationships with their local media to both enhance cooperation and develop positive stories about their work. These crucial relationships help ensure the accuracy of the story and allow agencies to correct or expand the narrative when needed. Kevin Sylvester, Chief of Police of the Ossining, New York, police department, believes that strong police and media relationships “have resulted in accurate reporting on crime, as well as credit being given to individual staff members for their good work and dedication to service.”<sup>47</sup>

[END TEXT BOX]

### **7.3.5 Law enforcement agencies should create and maintain guidelines or policies regarding the use of personal media accounts.**

While employees of a law enforcement agency have the right to express themselves on social media, they should be aware how their posts may affect the image of their agency and the department’s ability to effectively maintain the trust of the community it serves. It is paramount to achieve the proper balance between the department’s interests and the First Amendment rights of their staff. Ideally, these policies should be vetted through both the agency’s legal department and the appropriate representative or bargaining organization that represents the affected employees, if applicable. Such an understanding provides for “buy-in” at all levels within the agency and may reduce the chance of potential negative behaviors.



**Source: Mountain View (CA) Police Department**

#### **Mountain View (CA) Police Department’s Policy on Social Media**

Department personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of this department for which loyalty and confidentiality are important, impede the performance of duties, impair discipline and harmony among coworkers, or negatively affect the public perception of the department.

As public employees, department personnel are cautioned that speech on- or off-duty, made pursuant to their official duties (i.e., owing its existence to the employee’s professional duties and responsibilities), is not protected speech under the First Amendment and may form the basis for discipline if deemed detrimental to

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<sup>47</sup> Kevin Sylvester, “Perspectives: Benefits to Relationships with the Media,” *Police Chief Magazine*, September 2019, <https://www.policechiefmagazine.org/perspectives-benefits-to-relationships-with-the-media/>.



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the department. Department personnel should assume that their speech and related activity in person or on social media sites would reflect upon their position and this department.

[END TEXT BOX]

### **7.3.6 At the direction of the Attorney General, Department of Justice grant-making and public affairs departments should regularly collect and disseminate information about the positive work performed by law enforcement officers.**

The Department of Justice (DOJ) should maintain a public website with stories about the work accomplished by law enforcement across the nation. Additionally, DOJ executives and staff should highlight this positive work in presentations, blogs, op-eds, and other tools within public forums.

Agencies should also recognize the value of highlighting the work they do when they interact off-duty within their communities. Law enforcement officers' work "off the field" creates relationships with residents who otherwise would not have a chance to interact with law enforcement and reflects the character of the members of that agency. These community-oriented activities range from officers volunteering as baseball and football coaches to working with Big Brothers and Big Sisters and their Bigs in Blue program.<sup>48</sup>

[CROSS-REFERENCE JUVENILE JUSTICE]

## 7.4 Use of Force Issues

### Background

BJS estimates that law enforcement officers interact with members of the public on 50 million or more occasions per year.<sup>49</sup> Incidents involving use of force are rare in this context. Citizen surveys indicate that force is used in 0.6 percent of interactions.<sup>50</sup> When an officer uses force, it is typically during an arrest, is at the low end of the use-of-force spectrum, and is the result of suspect resistance or aggression.<sup>51</sup> At the extreme end of the spectrum, the suspect is usually armed when an officer uses deadly force.<sup>52</sup>

Infrequent as these incidents may be, incidents involving police use of force garner widespread public attention, which is often driven by social media, 24/7 news cycles, and social divisions within the nation. This environment is challenging for law enforcement, as they have the additional burden of combatting negative perceptions that are based on a small—but magnified—sample of incidents. These incidents have spurred a national conversation over police practices, including the types of accountability mechanisms in place to investigate and adjudicate allegations of misconduct and excessive use of force. Trust in a process is important for building and maintaining legitimacy.<sup>53</sup> Therefore, an agency's accountability process may have a substantial impact on public trust and respect for law enforcement.

These mechanisms vary widely in their form and function in agencies nationwide. Professional associations, accreditation organizations, and government offices such as the DOJ have developed guidelines regarding law enforcement investigative practices, early intervention systems, and civilian oversight. However, there is no one solution. Law enforcement agencies are constrained by their operational environment, which includes

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<sup>48</sup> "Bigs in Blue," Big Brothers, Big Sisters of America, accessed July 9, 2020, <https://www.bbbs.org/bigs-in-blue/>.

<sup>49</sup> <https://www.bjs.gov/content/pub/pdf/punf0211.pdf>

<sup>50</sup> <https://www.bjs.gov/content/pub/pdf/punf0211.pdf>

<sup>51</sup> Adams, 1999; Bazley, Lersch, and Mieczkowski, 2007; Lee, Jang, Yun, Lim, and Tushaus, 2010; Terrill and Mastrofski, 2002; Garner, Maxwell, and Heraux, 2002

<sup>52</sup> Klinger, Rosenfeld, Isom, and Deckard, 2016; Shane, Lawton, & Swenson, 2017; White, 2002; Fachner and Carter, 2015

<sup>53</sup> Tyler, 2004 <https://journals.sagepub.com/doi/10.1177/0002716203262627>

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available resources, civic participation, the political landscape, and local laws and regulations. Even so, agencies continue to strive towards general principles for accountability processes, such as fairness, independence, transparency, timeliness, and excellence.

### Current State of the Issue

When an officer engages in use of force, more than one investigation may take place. State and local law enforcement agencies may conduct an administrative investigation to determine if the use of force was within department policy and/or a criminal investigation to determine if the use of force was compliant with the law.<sup>54</sup> According to IACP, “While an administrative investigation may lead to disciplinary charges based on breaches of [law enforcement agency] policies, it does not intend to delve into potential criminal behavior. Questions in an administrative investigation are specifically addressed to an officer’s actions or inactions based on the agency’s administrative rules and regulations.”<sup>55</sup> Findings from an administrative investigation can help identify patterns in these incidents and also guide policy and training efforts.

Rights for officers involved in administrative investigations vary depending on state and local law. In 2015, 14 states had Law Enforcement Officers’ Bill of Rights (LEOBR), which define and protect the due process rights of officers who are subject to such investigations. During the same period, 11 states were in the process of developing legislation. The FOP has been working to pass legislation to define and protect due process at the federal level.<sup>56</sup> These rights may extend to the access of video evidence; officers may have direct access to video footage before giving their statements. In 2016, about 60 percent of agencies with body-worn cameras allowed the officers who made the recording direct access to the video.<sup>57</sup>

Criminal investigations can be conducted by the involved law enforcement agency or independently by another agency, task force, or prosecutor. Larger agencies tend to conduct their own investigations, and smaller agencies often ask another agency to conduct their investigations because of limited resources.<sup>58</sup> In 2016, 83 percent of local police departments required external investigations on use-of-force incidents resulting in death, 60 percent for use-of-force incidents resulting in serious bodily injury, and 59 percent for discharge of a firearm at or in the direction of a person. Departments serving 250,000 or more persons were less likely than those serving smaller populations to use external investigation; 50 percent of these larger departments required an external investigation for force involving death, 21 percent for force resulting in severe bodily injury, and 20 percent for discharge of a firearm.<sup>59</sup> There is a growing demand for independent criminal investigations on deadly force. The President’s Task Force on 21<sup>st</sup> Century Policing recommended “external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths” to build community trust and legitimacy.<sup>60</sup> While independent criminal investigations have their benefits, there are some consequences of

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<sup>54</sup> International Association of Chiefs of Police, *Officer-Involved Shootings: A Guide for Law Enforcement Leaders* (Washington, DC: Office of Community Oriented Policing, 2016), [https://www.theiacp.org/sites/default/files/2018-08/e051602754\\_Officer\\_Involved\\_v8.pdf](https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf); and Beau Thurnauer, *Best Practices Guide for Internal Affairs: A Strategy for Smaller Departments* (Washington, DC: International Association of Chiefs of Police, n.d.), <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

<sup>55</sup> International Association of Chiefs of Police, *Officer-Involved Shootings*, 16.

<sup>56</sup> Eli Hager, “Blue Shield: Did You Know Police Have Their Own Bill of Rights?,” The Marshall Project, <https://www.themarshallproject.org/2015/04/27/blue-shield#.Etqk3UTYF>; and “Due Process Rights for Law Enforcement Officers,” Fraternal Order of Police, accessed July 22, 2020, <https://fop.net/CmsPage.aspx?id=97>.

<sup>57</sup> Shelley S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies, 2016* (Washington, DC: Bureau of Justice Statistics, 2018), 7, <https://www.bjs.gov/content/pub/pdf/bwclea16.pdf>.

<sup>58</sup> Joseph Kuhns et al., *Independent Investigations of Officer-Involved Shootings: Current Practices and Recommendations from Law Enforcement Leaders in the United States and Canada* (Washington, DC: Major Cities Chiefs Association, 2018), [https://www.majorcitieschiefs.com/pdf/news/ois\\_final\\_report\\_9\\_27\\_18.pdf](https://www.majorcitieschiefs.com/pdf/news/ois_final_report_9_27_18.pdf).

<sup>59</sup> Bureau of Justice Statistics, *Local Police Departments: Policies and Procedures, 2016* (Washington, DC: Bureau of Justice Statistics, 2020), 6, For Internal Use Only.

<sup>60</sup> President’s Task Force on 21<sup>st</sup> Century Policing, *Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), 21, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

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using an external agency. An external agency may lack investigation expertise and organizational knowledge, require additional crime scene response time, and involve a longer investigation period.<sup>61</sup>

In addition to conducting investigations, some law enforcement agencies implement programs to help increase officer accountability, such as civilian oversight and early intervention systems.<sup>62</sup> The National Association of Civilian Oversight of Law Enforcement (NACOLE) defines civilian oversight as “one or more individuals outside the sworn chain of command of a police department who take up the task of holding the department and its members accountable for their actions.”<sup>63</sup> These individuals are usually members of the community and often do not have knowledge about policing practices.<sup>64</sup> In 2016, 11 percent of local police departments had a civilian complaint review board (CCRB), and 5 percent of these CCRBs had independent investigative authority for all or certain complaints. Fifty-one percent of local police departments serving 250,000 or more population had a CCRB, and 18 percent reported that the CCRB had independent investigative authority for all or certain complaints.<sup>65</sup>

There are five systems of civilian oversight: investigatory, review, monitoring or auditing, policy and process advisory, and hybrid.<sup>66</sup> According to NACOLE, “Each jurisdiction will have to carefully assess the needs of the community and the cost-benefits of the oversight program they adopt. The key question is whether the oversight system is sufficiently independent—in terms of political, professional, and financial independence and authority—to do what is needed and what is asked of it.”<sup>67</sup>

Some law enforcement agencies may employ an early intervention (or warning) system (EIS). Samuel Walker defines an EIS as “a computerized data base of police officer performance indicators . . . designed to identify officers with patterns of problematic performance and then subject each officer to an intervention designed to correct his or her performance.”<sup>68</sup> In 2016, 13 percent of local police departments reported having an EIS, and 84 percent of local police departments serving 250,000 or more population reported having one.<sup>69</sup> EIS can examine trends to identify areas that should be addressed across geographic areas, officers, or units. These trends can identify where to improve supervision and accountability, training opportunities, and necessary policy changes.<sup>70</sup>

The recommendations offer practical ways to address issues on use of force.

### **7.4.1 Law enforcement agencies should have well-documented protocols for conducting administrative investigations of alleged officer misconduct and any uses of force.**

The large variation of law enforcement agencies nationwide means there is not one solution for conducting administrative investigations. An agency will need to consider factors such as agency size, community expectations, rule of law, and collective bargaining agreements to provide agency accountability. When

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<sup>61</sup> Kuhns et al., *Independent Investigations of Officer-Involved*.

<sup>62</sup> *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Research Perspectives in Criminal Justice* (June 19, 2020) (written statement of Geoffrey Alpert, Professor, University of South Carolina), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

<sup>63</sup> Brian Buchner et al., *Guidebook for the Implementation of New or Revitalized Police Oversight* (Tucson, AZ: National Association of Civilian Oversight of Law Enforcement, 2016), 15, [https://www.nacole.org/training\\_materials](https://www.nacole.org/training_materials).

<sup>64</sup> Peter Finn, *Citizen Review of Police: Approaches and Implementation* (Washington, DC: National Institute of Justice, 2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.

<sup>65</sup> Bureau of Justice Statistics, *Local Police Departments: Policies and Procedures, 2016* (Washington, DC: Bureau of Justice Statistics, 2020), 6, For Internal Use Only.

<sup>66</sup> Buchner et al., *Guidebook for the Implementation*.

<sup>67</sup> “FAQs,” National Association of Civilian Oversight of Law Enforcement, access July 22, 2020, <https://www.nacole.org/faqs>.

<sup>68</sup> “Early Intervention Systems,” Samuel Walker, accessed July 23, 2020, <https://samuelwalker.net/issues/early-intervention-systems/>.

<sup>69</sup> Shelley S. Hyland, Statistician, Bureau of Justice Statistics, email communication with Katherine McQuay, Federal Program Manager, Respect for Law Enforcement and the Rule of Law Working Group, July 23, 2020. For Internal Use Only.

<sup>70</sup> Christi L. Gullion and William R. King, “Early Intervention Systems for Police: A State-of-the-Art Review,” *Policing: An International Journal*, ahead-of-print (2020), <https://doi.org/10.1108/PIJPSM-02-2020-0027>.

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investigating alleged misconduct, all responsible agencies should thoroughly document and adhere to best practices to help ensure quality, consistency, rule of law, and impartiality in such investigations.

Law enforcement agencies have an obligation to maintain protocols for administrative and criminal investigations of misconduct, use of force, and integrity failures. These protocols should be based on best practices and reviewed by a competent legal authority to establish the legal foundation for all investigations. These protocols should consider the following:

- thresholds that trigger an investigation
- the unit responsible for conducting the investigation
- notifications of all appropriate parties
- investigative practices, including
  - evidence collection
  - interview procedures
  - incident analysis
  - investigative steps
  - target timeframes
  - adjudication considerations
  - dispositions and required notifications to license or certifying entities
  - due process rights of officers, including in some instances, the right to representation

Agencies should routinely review protocols for potential updates; how to apply research or legal decisions; and best practices to improve the efficiency, effectiveness, and fairness of investigations. Routine and systematic audits and inspections of investigative files can help agencies determine refinements in training, policy, and practice in investigations.<sup>71</sup> Such audits can be conducted by qualified agency personnel. Alternatively, agencies can seek outside assistance. Agencies should account for cost, quality, timeliness, and capacity in determining the best approach.

### **7.4.2 Law enforcement agencies should publicly disseminate and educate the community on all use-of-force policies and procedures, including protocols for criminal and administrative investigations.**

By making the investigative process more transparent, law enforcement agencies have an opportunity to educate the public, establish expectations, and engender trust. BJA's guide, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations*, states that the written protocol for criminal investigations of use of force incidents may be shared with the public to instill confidence in the fairness of the process.<sup>72</sup> Likewise, an administrative investigation may demonstrate to the public that the agency is working to address a potential violation of policy and holds officers accountable when necessary. Public confidence and trust cannot exist without its full knowledge of the agency's accountability process.

### **7.4.3 Law enforcement agencies should leverage administrative investigations to evaluate potential policy violations and training and tactical decision-making.**

This should include violations that do not rise to a level requiring disciplinary action. Agencies should also generate data from administrative investigations and analyze patterns and trends in critical incidents, including cases of officer misconduct, to identify issues requiring remediation through agency-wide training or policy updates. Administrative investigations into use of force should provide a comprehensive examination of the incident, including the objective reasonableness standard, the lens of the officer and their situational awareness, the precursor circumstances leading up to the incident, and the tactics and decision-

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<sup>71</sup> <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>

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[https://www.nationalpublicsafetypartnership.org/clearinghouse/Content/ResourceDocuments/Considerations%20and%20Recommendations%20Regarding%20State%20and%20Local%20Officer%20Involved%20Use%20of%20Force%20Investigations\\_Report%2008170.pdf](https://www.nationalpublicsafetypartnership.org/clearinghouse/Content/ResourceDocuments/Considerations%20and%20Recommendations%20Regarding%20State%20and%20Local%20Officer%20Involved%20Use%20of%20Force%20Investigations_Report%2008170.pdf)

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making of involved officers and supervisors. These investigations should also account for human factors and the timeframe in which officers make the decision to use force. In doing so, the agency maximizes the investigative resources that are committed to the incident and has the ability to collect data required to identify potential root causes and contributing factors of incidents of misconduct, including judgment and decision-making, supervisory issues, training, or policy at the agency level. Some law enforcement agencies have adopted this practice through critical incident review processes or boards.<sup>73</sup> Examples of such boards can be found in the Los Angeles Police Department (LAPD) and Tucson Police Department (TPD).<sup>74</sup> These processes should be designed in a way that systematically generate data, which can then be analyzed to identify patterns and trends.

Administrative investigations and incident review processes or boards can serve as vessels for such data collection, while tacticians, trainers, and analysts work together to examine the data and identify meaningful patterns and trends for the leadership within an organization. Importantly, such efforts are done with an eye towards organization-wide learning and improvement, rather than examining individual performance. Such an approach can be scaled according to agency size and need, the frequency of such incidents, and internal capacity. Agencies may also consider partnering with external research organizations or universities to assist in the data collection and analysis.

### **7.4.4 States should enact legislation that requires law enforcement agencies to have an independent, external agency that has met minimum training and accreditation standards conduct the criminal investigation of use-of-force incidents that result in death or serious bodily injury.**

To gain community trust, law enforcement agencies should establish policy that promotes transparency and fairness, and follows the rule of law. As BJA notes in *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations*, “Particularly when law enforcement officers use force resulting in death or serious bodily injury, there must be a complete, thorough, and transparent investigation conducted in a timely manner. The public has a right to expect that all involved parties be held legally accountable—including criminally accountable when appropriate—for their actions under applicable law.”<sup>75</sup>

One method to increase transparency and public trust is to require independent criminal investigations. This means that a law enforcement agency not involved in the use of force conducts the criminal investigation. At a minimum, a use-of-force incident involving death or serious bodily injury should require an independent, external investigation.<sup>76</sup> State and local agencies may refer other use-of-force cases for independent criminal investigation when they deem appropriate.

### **[CROSS REFERENCE INTERSECTION OF CRIMINAL JUSTICE RECOMMENDATION X.X.X]**

State legislation should outline the appropriate method for independent criminal investigation for their state and local law enforcement agencies. A variety of different models employ law enforcement agencies as the independent investigator. A state law enforcement agency is required to act as the investigator for critical

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<sup>73</sup> International Association of Chiefs of Police, *Investigation of Officer-Involved Shootings and Other Serious Incidents*, 2019 [https://www.theiacp.org/sites/default/files/2019-04/Officer-Involved%20Shootings%20Paper%20-%202019\\_0.pdf](https://www.theiacp.org/sites/default/files/2019-04/Officer-Involved%20Shootings%20Paper%20-%202019_0.pdf); Samuel Walker and Carol Archbold, *The New World of Police Accountability* (Los Angeles: Sage Publications, 2014); [http://www.lapdonline.org/categorical\\_use\\_of\\_force/content\\_basic\\_view/47397](http://www.lapdonline.org/categorical_use_of_force/content_basic_view/47397)

<sup>74</sup> <https://www.tucsonaz.gov/police/critical-incident-review-board-cirb-0>;  
[http://www.lapdonline.org/categorical\\_use\\_of\\_force/content\\_basic\\_view/47397](http://www.lapdonline.org/categorical_use_of_force/content_basic_view/47397)

<sup>75</sup> Bureau of Justice Assistance, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations* (Washington, DC: Bureau of Justice Assistance, 2017), 1, <https://it.ojp.gov/GIST/1202/Considerations-and-Recommendations-Regarding-State-and-Local-Officer-Involved-Use-of-Force-Investigations>.

<sup>76</sup> For this report, serious bodily injury is bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

## Deliberative and Pre-Decisional

use of force incidents in Georgia, Tennessee, New York, and South Dakota.<sup>77</sup> In Alabama, regional task forces consisting of law enforcement agencies serve the region. If an agency involved in the task force has a use-of-force incident, they are excluded from the investigation.<sup>78</sup> In other states such as Utah, Illinois, and Wisconsin, another state or local law enforcement agency—which can be chosen by the agency involved in the use of force—conducts the independent investigation.<sup>79</sup>

Regardless of the model employed, state and local law enforcement agencies “should develop written protocols such as MOUs or standard operating procedures (SOPs) to identify and determine each jurisdiction’s investigative response to a use-of-force incident, including which agency will serve as the primary investigative entity, the role of the prosecutor, and contact protocols. Agencies taking on the investigative responsibility should develop a uniform standard agreement to promote consistency and uniformity of approach.”<sup>80</sup>

### **7.4.5 Officers should be allowed to view body-worn camera footage prior to making a verbal or written statement to investigators or providing a written report.**

Many law enforcement executives believe that it is important to allow officers to review body-worn camera footage prior to making a statement. The primary goal of the investigation is to find out what really happened, and viewing the footage provides the officer an opportunity to recall events more clearly.<sup>81</sup> Law enforcement organizations, including FOP and the National Association of Police Officers, also support allowing officers to view footage before making a statement.

Chris Burbank, former Police Chief of Salt Lake City, Utah, said, “Some of the most accurate reports are generated by officers who take a moment to go back and review the circumstances. For example, I was once involved in a pursuit that lasted 30 minutes. I went back and re-drove the route and documented every turn before filing my report. Otherwise, it would have been impossible to remember everything that happened.”

Chief Gina Hawkins of Fayetteville, North Carolina, says, “You are not going to change the facts of the case looking at it or what the situation is. So I do allow my officers to review their body-worn and in-car camera for their statement, because ultimately it's a fact-finder situation; all I want are the facts.”<sup>82</sup>

This recommendation should not apply to public safety statements made by officers in the wake of a critical incident to address any emergency circumstances, such as the scope of a crime scene, location of suspects, evidence, and potential witnesses.

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<sup>77</sup> Bureau of Justice Assistance, *Considerations and Recommendations*; Craig Price, Cabinet Secretary, South Dakota Department of Public Safety, and David B. Rausch, Director, Tennessee Bureau of Investigation, in discussion with President’s Commission on Law Enforcement and the Administration of Justice, July 7, 2020; Karen Chung, *Investigation Models* (Seattle, WA: Community Police Commission, 2017), <https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/SDFITInvestigationModels.pdf>.

<sup>78</sup> John Samaniego, Sheriff, Shelby County, AL, sheriff’s office, in discussion with President’s Commission on Law Enforcement and the Administration of Justice, July 7, 2020.

<sup>79</sup> Chung, *Investigation Models*.

<sup>80</sup> Bureau of Justice Assistance, *Considerations and Recommendations*, 7-8.

<sup>81</sup> Implementing a Body-Worn Camera Program Recommendations and Lessons Learned. COPS/PERF. 2014. P. 41

<sup>82</sup> Executive Session of the President’s Commission on Law Enforcement and the Rule of Law, July 7, 2020

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### **7.4.6 Congress should enact legislation that creates a uniform minimal level of procedural due process for police officers. Congress should also codify the core holdings of the U.S. Supreme Court in *Garrity v. New Jersey* (1967) and *Gardner v. Broderick* (1968).**

In a number of jurisdictions, law enforcement officers are not afforded the standard procedural or administrative protections that are afforded to other citizens, and these officers can be dismissed from their jobs without explanation.

*Garrity v. New Jersey* stated that law enforcement officers and other public employees have the right to be free from compulsory self-incrimination.<sup>83</sup> *Gardner v. Broderick* ruled that a policeman who refuses to waive his constitutional protections cannot be dismissed from office because of that refusal.<sup>84</sup><sup>85</sup>

There is a clear “need for a minimal level of procedural protections for police officers accused of administrative wrongdoing, the gravity of the potential harm to officers created by the lack of uniform safeguards, and the patently unfair disparity in rights afforded criminal suspects but not police officers are compelling reasons to enact this legislation.”<sup>86</sup>

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<sup>83</sup> <http://www.utahfop14.com/know-your-rights/garrity-vs-new-jersey/>. Accessed July 16, 2020

<sup>84</sup> 392 U.S. 273 (1968)

<sup>85</sup> <http://www.garrityrights.org/gardner-v-broderick.html>. Accessed July 16, 2020.

<sup>86</sup> Email correspondence from Tm Richardson/FOP to Respect for Law Enforcement and the Rule of Law Working Group, July 16, 2020