

The United States Conference of Mayors

# Report on Police Reform and Racial Justice

August 2020



THE UNITED STATES  
CONFERENCE OF MAYORS



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**Greg Fischer**

Mayor of Louisville  
President

**Nan Whaley**

Mayor of Dayton  
Vice President

**Francis X. Suarez**

Mayor of Miami  
Second Vice President

**Tom Cochran**

CEO and Executive Director

The United States Conference of Mayors is the official non-partisan organization of cities with each city represented in the Conference by its chief elected official, the mayor.

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# Contents

<b>Introduction</b>	<b>4</b>
<b>Executive Summary</b>	<b>5</b>
<b>Our Recommendations</b>	<b>11</b>
<b>Trust and Legitimacy</b>	<b>13</b>
<b>Redefining the Role of Local Police and Public Safety</b>	<b>14</b>
Don't Defund, Reassess Needs, and Strategically Deploy Resources	15
Funding Social Services	15
Assessment of Calls for Service	15
Adopting Co-Responder Models	16
<b>Sanctity of Life</b>	<b>17</b>
Emphasizing the Sanctity of Life	18
De-Escalation	18
Crisis Intervention	19
<b>Equality and Due Process</b>	<b>20</b>
Impartial Policing	21
Stops, Searches, and Arrests	22
Hiring, Promotion, and Retention	22
<b>Community</b>	<b>23</b>
Community Policing	24
Protecting Both the Right to Protest and Community Safety	25
<b>Transparency and Accountability to Reinforce Constitutional Policing</b>	<b>27</b>
Department Policies	28
Collective Bargaining Agreements	29
State Law	31
Officer Certification and Decertification	33
<b>The Conference's Continuing Commitment</b>	<b>35</b>

# Introduction

The United States Conference of Mayors is the official non-partisan organization representing the 1,400 cities with a population of 30,000 or more. Acknowledging the urgent need to reset the relationship between our police and our residents, the Conference formed a Working Group on Police Reform and Racial Justice to focus on real, workable, sustainable recommendations for reforming policing. As leaders of a diverse array of the nation's cities, we want to seize the moment and bring about lasting change to improve public safety and foster a sense of security in our communities.

We mayors are—justifiably—held accountable for what happens in our cities. Our residents experience directly the pain of both violent crime and unconstitutional policing. In the wake of the recent killing of George Floyd and long-standing concerns about the nature and effects of policing involving Black Americans and other minority residents, we have heard the calls for reform.

Reform and public safety are not mutually exclusive. The two goals can and should complement each other, and we must take steps to further that alignment, achieving better public safety outcomes through cooperation and respect between the police and the community.

We must acknowledge the failures of our current system as well as our country's history of racism in policing and its impacts on communities of color. An important step is understanding that the challenges in policing we are experiencing now are borne of decades of our encouragement and support for a “law enforcement first and only” approach to public safety that devolved into a militarized and aggressive policing model. This, in turn, resulted in deepening historic divides, particularly between police and communities of color and other marginalized individuals and populations. By acknowledging this past, we can be effective in addressing inequalities in how we police and ensuring that police treat those they serve with fairness and respect.

Another important step in this journey is reckoning with our de facto public policy choices that have compelled police to take on some roles that are better played by community-based social services providers. This moment compels us to ask, “who should respond,” instead of reflexively sending the police when our residents are in need. These are serious questions that require thoughtful engagement.

We also need to both support our police through better training and supervision and hold accountable those who cross the line, delegitimizing policing. The job of a police officer is often dangerous and difficult, and the vast majority perform to the best of their ability and in good faith. But the improper use of force can affect the perceptions of police everywhere. The wrongful actions of individual officers should not blight the entire profession. However, we cannot ignore that there are police departments with systemic problems and that reform, transparency, and accountability have too often been elusive.

We demand a great deal from the leadership of our police departments, but we do not give those leaders the authority to act commensurate with that responsibility. We have, through collective bargaining agreements and various state laws, divested our chiefs of the ability to enforce the policies they and we announce. If we want action, we need to empower the leadership of our police departments and hold those leaders accountable for delivering the results that our communities want and deserve.

We do not have the luxury of inaction, and we must act now. Our residents rightly demand concrete solutions. Working together, we—mayors, residents, police chiefs, officers, police unions, and community leaders—can meet this urgent challenge and make this agenda a reality.

# Executive Summary

## The Principles of Policing and Recommendations to Achieve Them

On June 30, 2020, we issued a Statement of Principles for reform. The Principles we adopted build upon the core modern policing principles first articulated in 1829 by Sir Robert Peel to address the concerns that the people of London had about standing up a police force in their community.<sup>1</sup> Peel's Principles stand for the ideas that the police exist to prevent crime and that the legitimacy of the police to keep the public safe derives from public consent and trust. We have refreshed Peel's Principles here and used them to frame our recommendations so that our American cities can meet this moment.

There is widespread consensus about what needs to be done to reform policing in America. In issuing this Report, we build on previous efforts to address police reform, including the May 2015 report of the President's Task Force on 21st Century Policing,<sup>2</sup> our own reports on police-community relations in 2015 and 2016,<sup>3</sup> and years of research and reports from the Police Executive Research Forum, including the *Guiding Principles on Use of Force*.<sup>4</sup>

What follows is a summary of our recommendations—organized around the Principles of policing that the Conference has already adopted—to give our cities a blueprint for the implementation of real and lasting change. These recommendations are discussed in greater detail in the sections that follow.

### Trust and Legitimacy

Animating all of our recommendations is the fundamental principle of Trust and Legitimacy: that the public must have a reason to trust the police, as public approval and acceptance are the basis of effective policing. The police serve the public interest and must earn public trust and legitimacy by acting as faithful guardians of the community who work to prevent crime and promote safety.

### Redefining the Role of Local Police and Public Safety

We ask police officers to protect our communities from crime and violence and to promote public safety. They play an essential role in our cities. But we are often asking police to be first responders on every scene. Although our police play a vital role, they are not always the best response. They should not be the only public response to every need in our communities. Mental health, homelessness, and domestic violence are just a few examples of challenges for which we need to rethink our response.

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1 Peel's Principles of Policing are available at <https://lawenforcementactionpartnership.org/peel-policing-principles/>.

2 President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

3 U.S. Conference of Mayors, *Strengthening Police-Community Relations in America's Cities* (2015); U.S. Conference of Mayors, *Community Conversations and Other Efforts to Strengthen Police-Community Relations in 49 Cities* (2016), <http://www.usmayors.org/wp-content/uploads/2017/02/0810-policecommunity-report.pdf>.

4 Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>.

We make the following recommendations:

1. We must continue to fund policing. But we must do so strategically, providing funding in the areas of core policing, and consider our allocations to other social services that complement the police's public safety mission.
2. Cities should analyze all of the available data, including their residents' requests for help, to determine what their needs are and which resources should be deployed to best respond.
3. Understanding the social services that communities need most, mayors should assess their city budgets, including those for the police department, and determine how to best allocate funding to build the requisite resources.
4. Cities should advocate at the state and national levels, as well, for adequate funding for personnel trained and equipped to handle social services that are currently police officers' responsibility.

## Sanctity of Life

At the core of a police officer's responsibilities is the duty to protect human life and physical safety. Department policies, training, operations, and priorities must start from that premise.

To ground that principle in our approach to policing, we recommend:

1. Departments should have a use-of-force policy that provides officers will:
  - Use only the minimal amount of force necessary to respond, if any force is necessary at all;
  - Continually reassess the situation to calibrate the appropriate response;
  - Not use chokeholds, strangleholds, or any other carotid restraints, unless deadly force is necessary;
  - Not shoot at or from moving vehicles, except when under extreme, life-threatening circumstances that are not avoidable; and
  - Not use deadly force against a fleeing individual, unless the individual poses an immediate threat of death or serious physical injury to another person.
2. Departments should have a clearly stated de-escalation policy.
3. Departments should establish a duty to intervene when a fellow officer is using excessive force or otherwise contravening law or department policy. Departments should train on peer intervention, recognize officers who do intervene, and protect them from retaliation.
4. Departments should offer first aid training to officers and require officers to provide first aid, commensurate with that training, following the use of force, as appropriate.
5. Departments should require officers to report all uses of force.
6. Departments should train officers on crisis intervention.

## Equality and Due Process

Every person is entitled to equal treatment, respect for his or her constitutional rights, and due process of law, regardless of race, religion, national origin, immigration status, age, sexual orientation, gender, gender identity, or other status. The Conference recognizes that this has not always been the case. The history of racism in America, in many places and especially our communities of color, has been a barrier to effective and long-lasting police-community relations. This has negatively affected public perceptions of the fairness and legitimacy of law enforcement and undermined the crime-fighting mission of police by sowing distrust and discouraging members of the community from engaging and cooperating with the police.



To address actual or potential bias in policing and ensure that all people are treated fairly and equally, we recommend:

1. Departments should have policies and training curricula for recruits, veteran officers, and supervisors that make clear that police interactions with individuals should be impartial and free from bias.
2. Departments should assess their records of stops, searches, and arrests to determine whether there are disparities in enforcement.
3. Departments should consider assigning liaison officers to communities to provide a dedicated channel for communications between police and residents.
4. Departments should have policies and infrastructure to investigate all allegations of bias; prohibit retaliation for filing a bias complaint; and hold officers and supervisors accountable, as appropriate.
5. Departments should consider whether, based on the size of the departments and makeup of their community, it would be beneficial to assign a chief diversity officer to focus on advancing the department's diversity and inclusion efforts.
6. Departments should have recruitment and outreach plans and goals so that departments have officers who are part of the community and reflect the diversity of the community they are sworn to protect.
7. Departments should consider leadership in promoting diversity as a factor in promotion decisions.

## **Community**

Respectful engagement with the community is critical both in everyday policing and in responding to mass gatherings.

### **Relationships Between Law Enforcement and Members of the Community**

Fostering community trust begins with the individual officer on the street. Police officers should create ties with residents in the communities they serve and treat them with respect. This relationship-building should begin as soon as officers are assigned to a new district with an orientation period allowing officers to introduce themselves to community members. Building positive relationships with residents helps build a community's trust which, in turn, helps to improve public safety.

With an eye toward building lasting, positive relationships between the police and the communities they serve, we recommend:

1. Departments should work with community leaders, including leaders of schools, unions, community centers, and religious groups, to identify common goals and the challenges their communities are facing.
2. Departments should consider Resident Officer Programs or other incentives for officers to live in the communities they serve.
3. Departments should have community policing programs, appropriate to the particular circumstances of the community, such as youth engagement, immigration and refugee outreach, and homelessness programs.
4. Departments should train officers on community-specific cultural literacy, the history of policing, and procedural justice.
5. Departments should consider requiring officers and supervisors to regularly participate in community service efforts.

## Addressing Protests

When members of a community exercise their right to be heard on important social and political issues, the police should protect their constitutional right to do so and ensure those exercising their rights remain safe from harm. It is imperative that officers understand, value, and defend our constitutional rights to freedom of speech and freedom of assembly, and that they are trained to recognize the difference between peaceful protest and civil unrest. Public and officer safety are important concerns that must also be addressed in these situations.

We make the following recommendations for protecting First Amendment rights and policing mass gatherings:

1. Departments should provide training on the First Amendment to officers and supervisors, explaining the broad parameters of protected speech and providing scenario-based training.
2. Departments should, ahead of any mass gatherings, emphasize the importance of de-escalation and open communication, including developing relationships with advocacy groups and protest leaders where possible.
3. Departments should have designated command staff and officers who are trained to respond to mass gatherings, including incident command training.
4. Departments should have policies to minimize the use of provocative and unnecessarily aggressive tactics and equipment, such as riot gear and armored vehicles.
5. Departments should plan for the possibility that peaceful protests may turn into unlawful assemblies, including by having crowd management plans for increasing the level of response if necessary; instructing officers to remove individuals who are committing wrongful acts, contemporaneously documenting their alleged conduct, and when possible, allowing others to continue to peacefully demonstrate; and planning for the possibility of mass arrests.
6. A department that enters into a mutual aid agreement to manage a particularly large or complex gathering should have guidelines for those assisting and should never relinquish primary control of an incident. A department should set the policies that will be followed, including as to incident response and when force may be used.

## Transparency and Accountability

Superb policies are of little use if they are not enforced. Public trust rests, in large part, on whether the public sees that their public servants are acting in accordance with those policies and are held accountable when they do not.

Through elections, the public holds mayors, and by extension police chiefs they select, accountable for the conduct of those who serve in police departments. But the chiefs' authority to hold officers accountable is frequently undermined by unnecessary procedural obstacles imposed by collective bargaining agreements and state statutes. We should not complain when a reform-minded chief is unable to produce the results that we want if we do not remove these obstacles and provide that chief with authority to carry out that mission. Cities and police departments must adopt policies that strengthen transparency and accountability to better achieve the appropriate balance between the public's interests and legitimate officer due process concerns.

Addressing these issues requires a comprehensive approach with attention to departmental policies, collective bargaining agreements, and state law.

## **Department Policies**

Police departments should have policies that increase transparency and standards of accountability. Departments should also put their policies online and make them available to the public. With regard to specific policies and procedures to help departments achieve robust transparency and accountability, we recommend the following:

1. Departments should assign final disciplinary authority to the police chief.
2. Departments should have public complaint processes that make filing a complaint open to all.
3. Departments should have policies on officer investigations that clearly define the procedures for carrying out the investigations and seeing them through to completion, even if an officer separates from the department.
4. Departments should regularly release to the public, in accordance with relevant state laws, data on disciplinary actions and decisions, including those made by arbitrators.
5. Departments should have policies that require supervisors to conduct ongoing reviews of stops, searches, arrests, and uses of force.
6. Departments should require body-worn cameras and develop policies for the review, release, and preservation of footage.
7. Departments should implement an early-intervention system to identify at-risk officers to help support their wellbeing.

## **Collective Bargaining and State Law**

Collective bargaining agreements (CBAs) with police unions often set the ground rules for officer investigations and disciplinary proceedings. Officers must have due process, but CBAs often contain provisions that go far beyond necessary protections and impede a department's ability to investigate misconduct allegations and, in a timely fashion, hold officers accountable. So too, some state law provisions hinder accountability by mandating procedures, similar to those in the CBAs, that impede investigations.

Cities should stop the practice of bargaining away management rights as a trade-off for raises sought by police unions. At the very least, CBAs must vest in the chiefs authority to hold officers accountable for following applicable law and policy.

To improve that alignment of responsibility and authority, we recommend:

1. Cities should negotiate CBAs that have fair and efficient procedures for officer investigation and discipline.
2. Cities should negotiate CBAs that require officer cooperation in investigations.
3. Cities should vest authority for final disciplinary decisions in the leadership of the department.
4. Cities should advocate for the reform of state laws that are inconsistent with these recommendations.

### State Certification Boards

State-level officer certification provides a mechanism for ensuring that police officers meet appropriate standards of background qualification and conduct. The sanction of decertification can complement departmental discipline. To ensure effective state-level certification systems, we recommend:

1. Establishing such systems in the few places where they do not exist;
2. Requiring officer background checks to include checks for prior decertification;
3. Authorizing decertification when an officer is terminated or receives serious discipline for acts that show a reckless disregard for public safety or involve dishonesty;
4. Establishing state decertification databases and requiring reporting to national officer decertification databases; and
5. Including civilians on certification boards.

### The Path Forward

The release of this Report is not the last step in this process. The Conference commits to providing ongoing support and resources to mayors across the country. It will maintain a resource center of sample policies and best practices and will offer continuing advice and counsel to our members so they can implement these Recommendations.

# **Our Recommendations**

- **Trust and Legitimacy**
- **Redefining the Role of Local Police and Public Safety**
- **Sanctity of Life**
- **Equality and Due Process**
- **Community**
- **Transparency and Accountability to Reinforce Constitutional Policing**



# Trust and Legitimacy

Public approval and acceptance are the basis of effective policing. The public and police must find common ground on which to trust each other. Police must earn their community's trust and cooperation, and, in turn, the public must respect officers as faithful guardians of the community who both follow and enforce the law.

This requires those who enforce the law to be accountable for adhering to it. Unintentional mistakes are not the same as intentional misconduct, but when police cross the line of established policy or legally permissible conduct, they must be held accountable in order to have legitimacy in the eyes of the public.

Effective policing requires the police and members of the community to develop constructive and respectful ways of interacting with each other. The principles of community policing are critical to this process. The well of good will must be built and filled daily and long before a crisis hits.

These principles of trust and legitimacy must also permeate the decisions about supervisor selection, especially the front-line supervisors who are in most frequent contact with officers on a daily basis. Thus, the criteria for supervisor selection, training, and accountability are essential elements of defining the culture of a department. Supervisors must be held accountable for reinforcing the core values of the department in the discharge of their daily responsibilities.

Our Principles and all of our recommendations flow from this concept.

# Redefining the Role of Local Police and Public Safety

The current moment calls into question, but also provides a unique opportunity to discuss, the first principles of policing and requires a community conversation on the proper role of police in addressing the needs of residents. Building healthy, safe, and vibrant communities requires many other tools than law enforcement alone. We must reset the compact between police and communities they are sworn to protect. This should begin with a hard but essential dialogue defining the proper role of the police.

We need to ask, “Who is best equipped to be the first responder in addressing a long list of calls for service?” The reflexive answer cannot be “the police.” When the government has no presence in communities in a healthy and supportive way, the primary governmental actor that people see and identify are the police. In the absence of appropriate levels of funding for things like mental health care; affordable, high quality health care; accessible housing; healthy food options; good paying jobs; quality and safe education options; and other social services, the police are consistently thrust into a role of addressing these various social issues—a role for which they were not created and for which they will never be properly equipped.

We must meet community needs with proper funding and investments and avoid inserting the police into roles in which they must be the primary or only public response. If we ask too much of the police, and not enough of ourselves, our residents will always get too little.



## Don't Defund, Reassess Needs, and Strategically Deploy Resources

We recognize and value the essential role of our police officers who faithfully fulfill their duty to keep us safe. We have asked these officers to protect our communities from crime and violence, and we rely on them to ensure public safety, as to which they are the only responders: we are asking them to be first and sometimes the only responder on every scene, even when others may be better trained to respond. Mental health, substance abuse, homelessness, and domestic violence are just a few examples of challenges as to which we, as city leaders, must ensure that we are responding to our residents' needs in the best way possible.

Our police are vital to crime fighting and public safety, and we need them. Many of our cities are challenged by spikes in criminal activity. We need to keep our communities safe, and we cannot do this if we defund or materially cut the budgets of police departments.

The phrase “defund the police” means different things to different people, but actual defunding is not the path to better public safety and enhanced public trust. But we should be thoughtful about whether to use the police, as opposed to other resources, in a given circumstance. We believe that these are good questions to ask: Are the police the right responders on certain types of calls? Should they be augmented with other responders? How can we reinvest in the social services our residents need?

In order to assess the community's needs, cities and police departments should regularly analyze calls for service to determine who should be the responder in different circumstances. Piloting co-responder models where, for example, the police are partnered with mental health providers on appropriate calls or other social service providers would be an important step.

Cities should assess community needs and allocate resources to the public safety ecosystem in proportion to the elements that are most effective in addressing particular needs. This discussion should not be about “funding” or “defunding” the police but more about what tools are necessary to build healthy, safe, and vibrant communities, and allocating scarce resources accordingly. Local police will always be an important part of the public safety ecosystem, but what this moment has shown is that there are other important elements as well. Thoughtful public safety policy recognizes this reality and provides sufficient funding for all of the elements to be successful in their respective missions.

These reforms should not come at the cost of smart investments in our police departments to provide the staffing, equipment, and training they need to keep our communities safe.

## Funding Social Services

We—our city, state, and federal governments—need to bring our spending back in line with our communities' needs, addressing mental health, housing, health care, education, workforce development, and more. This cannot be solved with city budgets alone, as they are already stretched and may be subject to mandatory balanced budget laws. Sustainable state and federal investment along with corporate and philanthropic support are required if we are to meet these needs.

## Assessment of Calls for Service

Allocation of policing resources is an important and continuous exercise. Depending on the size and nature of the city, resource allocation must be driven by many inputs, including historical crime patterns, emerging trends, and long-term investigations, among other factors. One significant driver of how police spend their time is the nature of resident-initiated calls for service. To decide on the appropriate allocation of funds, cities need to assess the facts on the ground. Policing is truly a local endeavor, and there is no one-size-fits-all approach to ensuring that our communities are effectively served.

An important part of the calculus should be an assessment of 911, 311, and other calls for service.<sup>5</sup> What percentage of calls are for police to respond to violent crimes? How often are police called for offenses against property? How often are police asked to assist those experiencing a mental health crisis or in a domestic dispute? According to a recent analysis of Baltimore, Cincinnati, and San Diego, the amount of time spent on calls for service (as opposed to police-initiated operational missions) for serious violent crime is very small—only about 1%.<sup>6</sup> Less serious incidents and traffic offenses account for a much larger share of resident-initiated calls for service. In Seattle, 15% of the calls this year have been for officers to respond to traffic accidents and enforcement.<sup>7</sup> While these numbers likely do not reflect with precision how police officers are spending their time, they are an important data source, and suggest the need for cities to start with a robust assessment of their calls for service along with other data inputs such as crime data to more strategically allocate their public safety resources.

<sup>5</sup> Jeff Asher and Ben Horowitz, “How Do the Police Actually Spend Their Time?” *N.Y. Times* (June 19, 2020), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

## Adopting Co-Responder Models

With all that information in hand, cities can then optimize how best to respond to calls for service. Are there circumstances where the police are not needed, or where they are better suited to be *co-responders* or *secondary responders*?

A prime example of how we may re-think the first responder model is found in calls for officers to help those experiencing a mental health crisis.<sup>8</sup> To be sure, these encounters may involve threats of or actual violence, and we may need police on the scene, but we also need mental health professionals to respond.<sup>9</sup> Police departments should train their officers in crisis intervention, but we should also consider pairing police with behavioral health professionals to act as co-responders on such calls, although that could cost more in the short term.<sup>10</sup>

Recognizing that domestic violence calls for service can be extremely volatile and sometimes violent, co-responder models may also be appropriate for those calls. In addition to considering whether resources can be allocated within the department to create domestic violence units, departments should consider whether there are other service providers that can provide a better integrated response, supporting victims both in the immediate on-scene response and following-up with victims to ensure that they have been removed from dangerous situations and are getting the support they need.<sup>11</sup> In some cities, the local YMCA provides advocates who follow up with victims of domestic violence and provide to them counseling and transitional housing.<sup>12</sup>

In addition, our call-takers and dispatchers must be trained to recognize the differences among calls—and what service is really needed. We should provide them with guidance to help identify who is best positioned to respond.<sup>13</sup> If possible, call-takers and dispatchers should be included in departmental trainings on crisis response.<sup>14</sup> Not only will these callers get the help they need, but our officers will then be available to respond to pressing law enforcement and public safety needs.

These issues are particularly salient when it comes to crisis intervention and ensuring sanctity of life is the top priority, and we discuss co-responder models in that particular context in the next section dedicated to that principle.

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8 See, e.g., Shayla Love, “Police Are the First to Respond to Mental Health Crises. They Shouldn’t Be,” *Vice News* (June 23, 2020), [https://www.vice.com/en\\_us/article/3azkeb/police-are-the-first-to-respond-to-mental-health-crises-they-shouldnt-be](https://www.vice.com/en_us/article/3azkeb/police-are-the-first-to-respond-to-mental-health-crises-they-shouldnt-be); Hannah Dreier, “The Worst-Case Scenario,” *Washington Post* (July 24, 2020), <https://www.washingtonpost.com/nation/2020/07/24/police-huntsville-alabama-mental-health-call/?arc404=true>.

9 Shayla Love, “Police Are the First to Respond to Mental Health Crises. They Shouldn’t Be,” *Vice News* (June 23, 2020), [https://www.vice.com/en\\_us/article/3azkeb/police-are-the-first-to-respond-to-mental-health-crises-they-shouldnt-be](https://www.vice.com/en_us/article/3azkeb/police-are-the-first-to-respond-to-mental-health-crises-they-shouldnt-be).

10 See, e.g., Colorado Department of Human Services, “Co-Responder Programs,” <https://www.colorado.gov/pacific/cdhs/co-responder-programs>. Avoiding injury or death in response to these calls will ultimately save cities from the burden of costly litigation that not only affects finances but also further erodes the legitimacy of the police.

11 Melissa Reuland et al., *Police-Community Partnerships to Address Domestic Violence*, Office of Community Oriented Policing Services, <https://cops.usdoj.gov/RIC/Publications/cops-p091-pub.pdf>.

12 *Id.*; YMCA Nashville & Middle Tennessee, “Domestic Violence Services,” <https://www.ywcanashville.com/what-we-do/dv-services/>.

13 Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>.

14 *Id.*

# Sanctity of Life

**At the core of a police officer's responsibilities is the duty to protect all human life and physical safety. To ingrain this fundamental principle, use of force policies must clearly state this requirement, with specificity, and require officers to intervene when a fellow officer is using disproportionate or unnecessary force.**

**As is often stated, just because one can use force, does not mean that it should be used. It is critical that we ensure that officers are properly trained to value the sanctity of life and only use the minimum amount of force necessary, if any, to accomplish lawful objectives.**

**Officers must have the tools and judgment to differentiate circumstances that do not warrant the use of force. Use of force policies and training must also include, but not be limited to: bans on chokeholds or any other carotid restraints; de-escalation and critical incident training; peer intervention to prevent misconduct; bans on shooting at moving vehicles except under extreme circumstances where a life is at risk; limitations on car pursuits to avoid death or great bodily harm; and defined parameters for foot pursuits, among other things.**

## Emphasizing the Sanctity of Life

Police departments' policies should consistently emphasize that the sanctity of life is a central principle of policing. A commitment to using the least force necessary to achieve lawful objectives is a fundamental use of force restraint principle which departments should embrace as a best practice. Policies, reinforced by training for officers and supervisors, should both guide officers on what to do—including using alternatives to force when possible, exerting the minimum amount of force when force is needed, and continually seeking to de-escalate—as well as set out specific prohibitions consistent with the duty to protect all human life.

Policies and training practices should also emphasize that officers should resolve conflicts in a safe and humane manner and, where possible, redirect people facing mental illness, intense personal distress, or substance abuse to appropriate mental and behavioral health services instead of pushing them into the criminal justice system.<sup>15</sup>

### Use of Force

Department policies and training programs should specify that officers use only the minimal amount of force necessary to safely resolve an incident and that they should exhaust all alternatives, including providing a verbal warning when possible, before using deadly force.<sup>16</sup> Officers should continually reassess the situation, recognizing that force may be appropriate at one moment but not seconds later due to changed dynamics.

Police departments should provide their officers with specific guidance as to the appropriate level of force based on the resistance encountered. Some departments have adopted a use of force continuum or matrix to help their training programs; these may be helpful, so long as they are used as training tools and instruct officers that these are critical decision-making guides, not rigid response requirements.<sup>17</sup> Departments should emphasize scenario-based training.

Using chokeholds, strangleholds, or any other carotid restraints should be banned, unless deadly force is necessary.<sup>18</sup> Certain other practices should be curtailed to ensure the sanctity of life.

For example, policies should instruct officers not to shoot at or from moving vehicles except under extreme, life-threatening circumstances that are not avoidable.<sup>19</sup> And unless a fleeing individual poses an immediate threat of death or serious physical injury to another person, deadly force should not be used.<sup>20</sup>

Departments should require officers to report all uses of force<sup>21</sup> and then analyze this information to determine whether there are patterns of excessive force or disparate uses of force against protected populations. Departments should incorporate that learning into their training programs and revise enforcement initiatives appropriately.

### Duties to Intervene and Provide First Aid

As part of their duty to protect civilians, police officers should be required to intervene when they see a fellow officer using excessive force and attempt to prevent it. Clear policies and good training are essential, but officers can also play a vital role in ensuring that their fellow officers adhere to policies and show appropriate restraint. Departments should actively encourage such intervention, train officers on peer intervention, recognize officers who do intervene, and protect them from retaliation.<sup>22</sup> Officers who intervene to stop misconduct are upholding the highest standards of policing.

Departments should also provide first aid training to their officers and require officers to provide first aid following uses of force, commensurate with their training and protecting the safety of the subject and their own safety. The duty to provide first aid should include requesting medical assistance without delay when there are visible injuries or complaints of injury.<sup>23</sup>

## De-Escalation

Police officers should avoid uses of force in the first instance wherever possible. Thus, they should be required to employ de-escalation techniques, such as using verbal persuasion and warnings, tactical repositioning, time, distance, and requesting additional personnel.<sup>24</sup> Departments should consider having policies on de-escalation, separate and apart from their use of force policies to further underscore that a use of force is not always necessary.

<sup>15</sup> See also Section III, *infra*.

<sup>16</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 1 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

<sup>17</sup> See, e.g., Seattle Police Department, Manual, Section 8.200: Use of Force (June 19, 2020), <https://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force>; *id.* Section 8.300: Use of Force Tools (June 19, 2020), <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools>; New Orleans Police Department, Operations Manual, Chapter 1.3, at 10.

<sup>18</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 2 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Chicago Police Department, General Order G03-02: Use of Force, at Section III.C.1.d (Feb. 29, 2020), <http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html>.

<sup>19</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 9 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Philadelphia Police Department, Directive 10.1: Use of Force – Involving the Discharge of a Firearm, at 6 (updated Jan. 30, 2017), <https://www.phillypolice.com/assets/directives/D10.1.pdf>.

<sup>20</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 8 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Philadelphia Police Department, Directive 10.1: Use of Force – Involving the Discharge of a Firearm, at 6 (updated Jan. 30, 2017), <https://www.phillypolice.com/assets/directives/D10.1.pdf>.

<sup>21</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 1 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Baltimore Police Department, Policy 725: Use of Force Reporting, Review, and Assessment (Nov. 24, 2019), <https://www.baltimorepolice.org/725-use-force-review-and-assessment>.

<sup>22</sup> Baltimore Police Department, Policy 1115: Use of Force, at 2 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Chicago Police Department, General Order G03-02: Use of Force, at Section V (Feb. 29, 2020), <http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html>; New Orleans Police Department, Operations Manual, Chapter 1.3: Use of Force, at 10.

<sup>23</sup> See, e.g., New Orleans Police Department, Operations Manual, Chapter 1.3: Use of Force, at 6; Baltimore Police Department, Policy 1115: Use of Force, at 2 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

<sup>24</sup> See, e.g., Baltimore Police Department, Policy 1115: Use of Force, at 2 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; Chicago Police Department, General Order G03-02: Use of Force (Feb. 29, 2020), <http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html>; Seattle Police Department, Manual, Section 8.100: De-Escalation (Sept. 15, 2019), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>; see also Baltimore Police Department, Policy 1107: De-Escalation (Nov. 24, 2019), <https://www.baltimorepolice.org/1107-de-escalation>.

To help officers learn de-escalation techniques, departments should provide realistic, scenario-based training on how to apply de-escalation techniques to real-life encounters. For example, the Baltimore Police Department uses the Police Executive Research Forum's *Integrating Communications, Assessment, and Tactics* training materials.<sup>25</sup> These techniques can be critical for responding successfully to calls involving people in mental distress.

We cannot emphasize enough how important it is for cities to invest in de-escalation training. Training is often the first thing to go when budgets are cut, but it can reduce costs, judgments, and settlements down the road when done correctly.

## Crisis Intervention

Law enforcement remains the *de facto* system for responding to crisis situations, placing police departments under immense pressure to address some of society's most daunting challenges,<sup>26</sup> including responding to persons suffering from mental illness, behavioral health issues, disabilities, substance abuse, domestic abuse, and intense personal distress.

As we identified in our discussion of Redefining the Role of the Police above, law enforcement officers are often not the best first responders for individuals in emotional distress. In cities that have mental health specialists or medics, emergency dispatchers should, where appropriate, call upon them to respond first—or to help police respond—to crisis situations.<sup>27</sup> Departments should also work collaboratively with community-based crisis intervention programs that do not involve police.<sup>28</sup>

Police training should include crisis intervention training both as part of basic training for new recruits and regular refresher courses for all officers. Importantly, such training should incorporate the input of mental health professionals and advocates as well as interactions with persons with mental illness and other disabilities, and active participation in mental health response scenarios. Crisis intervention training can help cultivate officers' knowledge, empathy, and practical

experience with respect to individuals facing mental health and other challenges.<sup>29</sup> By integrating techniques for crisis response with tactical training, departments can improve officer and citizen safety, ensuring that officer interactions with individuals in crisis are conducted humanely and consistent with best practices.<sup>30</sup>

Many police departments look to Memphis's nationally recognized Crisis Intervention Team (CIT) Model for best practices on crisis intervention training. Under the Memphis CIT Model, departments offer in-depth, 40 hour, CIT certification courses to officers on a voluntary basis.<sup>31</sup> Short of providing a full 40-hour training to all officers, departments should consider how to include key aspects of CIT training in the regular training curriculum for new recruits, veteran officers, and supervisors alike.

CIT courses should also be made available to 911 call-takers and dispatchers, ensuring that 911 personnel receive thorough, hands-on training to support the police response to crisis incidents. Where possible, dispatchers should direct calls for assistance to the CIT-trained officers, and other officers should be trained to defer to their colleagues on the scene with CIT training.

Mayors should ensure that there is coordination among police departments and other government and private sector organizations on assessments of the mental health systems in place to identify strengths and gaps in community resources or support. These assessments should include collecting and publishing data on the number and types of incidents involving individuals in crisis. Through substantive training, data collection, and partnerships with local organizations and mental health advocates, departments can help implement community-based responses to individuals in crisis that are both compassionate and safe and reduce the burden on departments that often, right now, are the first and only call in responding to crises in which others should be among the first responders.

25 Police Executive Research Forum, *Integrating Communications, Assessment, and Tactics: A Training Guide for Defusing Critical Incidents* (Oct. 2016), <https://www.policeforum.org/assets/icattrainingguide.pdf>.

26 See, e.g., National Association of Counties, "Blueprint for Success: The Bexar County Model," at 4 ("The American Jail Association estimates that more than 650,000 bookings each year involve persons with mental illness. This translates into at least 16-25% of the national jail population. A vast majority of these mentally ill inmates are arrested for simple bizarre behavior or non violent minor crimes, and yet they spend an average of 15 months longer in jail for the same charges as non mentally ill prisoners."), <https://www.naco.org/sites/default/files/documents/Bexar-County-Model-report.pdf>.

27 See, e.g., White Bird Clinic, "CAHOOTS," <https://whitebirdclinic.org/cahoots/>; Substance Abuse and Mental Health Services Administration, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit*, at 18-21 (2020) ("Community-based mobile crisis services use face-to-face professional and peer intervention, deployed in real time to the location of the person in crisis in order to achieve the needed and best outcomes for that individual."), <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>.

28 See, e.g., CIT International, *Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises*, at 3 (Aug. 2019) ("A CIT program should help people get connected to treatment and services and offer hope for recovery. That can only be accomplished when law enforcement agencies build relationships with mental health professionals and agencies and work with advocates to fight for a better mental health system."), [http://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019\\_08\\_16%20\(1\).pdf](http://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019_08_16%20(1).pdf).

29 See, e.g., *id.* at 121-150.

30 See, e.g., Police Executive Research Forum, *Guiding Principles on Use of Force*, at 9-10, 57-61 (2016), <https://www.policeforum.org/assets/guidingprinciples1.pdf>; *id.* at 9 ("Often, police academies begin with training officers on the mechanics of using firearms, and the legal issues governing use of force, de-escalation and crisis intervention strategies, and other related topics are not covered until weeks later, usually in separate sessions. PERF has called for integrated training that combines these related topics in scenario-based sessions. Officers should be trained to consider all of their options in realistic exercises that mirror the types of incidents they will encounter, such as persons with a mental illness behaving erratically or dangerously on the street.")

31 See, e.g., CIT International, *Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises*, at 163 (Aug. 2019) ("The train-all approach, while driven by an admiration for CIT, can be quite damaging to your CIT program. Here's why: research shows that officers who volunteer for the training learn and perform better. Researchers looked at officers' knowledge, skills, attitudes, self-confidence in dealing with crisis situations, use of de-escalation, and use of force—and found that volunteers performed better across the board."), [http://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019\\_08\\_16%20\(1\).pdf](http://www.citinternational.org/resources/Best%20Practice%20Guide/CIT%20guide%20desktop%20printing%202019_08_16%20(1).pdf).

# Equality and Due Process

Police conduct must not vary on account of race, religion, national origin, immigration status, age, sexual orientation, gender, gender identity, or other status. Every person is entitled to equal treatment, respect for his or her constitutional rights, and due process of law. Fairness, respect, and professionalism enhance public safety as they enhance public support and cooperation. We are mindful that the history of policing in many places has been interwoven with the nation's history of racial discrimination, including efforts to use police forces to ratify and maintain segregation and other forms of racism. To ensure equal and just treatment of all persons, departments must provide consistent training on impartial policing, anti-discrimination principles, and cultural literacy. Members of the community must be included as teachers in the training process and given an opportunity to assist in curriculum development so that a community perspective is part of the mandatory training for all recruits and veteran officers. Departments must also do more to ensure that in recruitment, promotion and retention decisions, diversity matters.



Police departments' policies and practices should emphasize equity and fairness in how officers relate to community members and each other. The Conference recognizes the well-documented role that discrimination has played in policing in America.<sup>32</sup> That history affects police-community relations and public perceptions of the fairness and legitimacy of law enforcement. It also undermines the crime-fighting mission of police by sowing distrust and discouraging members of the community from supporting and cooperating with the police. Bias-free policing and ensuring public safety go hand-in-hand.

## Impartial Policing

Eliminating bias from policing begins with the leadership of the police chiefs. What they say in their policies and what they emphasize in speaking with their officers can have a significant impact on their departments.

Policies and best practices should be taught in the academy and regularly reinforced through ongoing training on anti-discrimination, implicit bias, and cultural literacy (as discussed further in the section on Community). Trainings should be mandatory, adequate, and regular to teach officers and supervisors how to detect and protect against biased policing and to remind officers that those who act in a discriminatory way will be held accountable. In addition, departments should consider the role that encouraging peer interventions can have in advancing the culture and practice of impartial policing.

Departments should consider the diverse communities they serve in determining whether additional policies focused on certain groups of residents would help remove bias in policing and add to officers' understanding of the diverse populations that they serve. Asking for input on trainings is one way in which departments may foster relationships between officers and residents.

Larger departments may also consider hiring a chief diversity officer to monitor the department's ongoing commitment to diversity and inclusion within the department itself. The chief diversity officer should be charged with ensuring impartiality and equality in hiring and promotion decisions.

They should also consider hiring training liaison officers to work with particular communities (e.g., immigrant communities) to help ensure that police-community relationships are cultivated consistently and positively. Rather than waiting for a conflict to arise, these proactive

and ongoing conversations between police and various constituencies can help develop a rapport and understanding among the groups that promote public safety and forge better relations both before and after a crisis.

## Complaints

Departments should take seriously, document, and investigate all complaints of biased policing. As part of this effort, departments should make it easy and efficient for both members of the public and officers to make complaints, including by providing a channel for anonymous complaints.<sup>33</sup>

Any officer who has knowledge of or information about conduct that qualifies as biased policing must report that information to a supervisor.<sup>34</sup> Taking complaints seriously also means conducting a regular review and analysis of public and officer complaints to address any patterns that raise concerns.<sup>35</sup> In an effort to promote transparency, departments should also publicly report data related to biased policing.

No officer or member of the public should be discouraged or intimidated from, or coerced into, filing a complaint alleging a violation of a department's impartial policing policy.<sup>36</sup> And departments should forbid any retaliation against those who file complaints and address such action should it occur.

## Supervision, Review, and Accountability

Of course, training and systems for reinforcing bias-free policing are only the first steps in ensuring officers are fulfilling their duties to all whom they serve. Supervisors are responsible for monitoring law enforcement activities under their supervision to ensure that bias-free policing is practiced. And supervisors have an obligation to ensure the timely and complete review and documentation of all allegations of such violations.<sup>37</sup>

Police chiefs and other supervisors must be empowered to hold accountable any officers who are found to have violated any anti-discrimination or bias-free policing policies. Those policies should make clear how officers will be held accountable for policy violations, which may include counseling, training, suspension, and/or termination.<sup>38</sup>

32 President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, at 12 (2015) ("1.2 Recommendation: Law enforcement agencies should acknowledge the role of policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust."), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

33 See also Transparency and Accountability to Reinforce Constitutional Policing, Section I.A.1, *infra*.

34 See, e.g., Sacramento Police Department, General Order 210.05: Bias-Based Policing (June 5, 2017), <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO/Section-200/GO-21005-Bias-Based-Policing.pdf?la=en>; see also Seattle Police Department, Manual, Section 5.140: Bias-Free Policing (Aug. 1, 2019), <https://www.seattle.gov/police-manual/title-5--employee-conduct/5140---bias-free-policing>.

35 See, e.g., Newark Police Division, General Order 17-06: Bias-Free Policing (Sept. 19, 2017), [https://npd.newarkpublicsafety.org/assets/docs/consent\\_decree/approved\\_policies/bias-free-policing-1706.pdf](https://npd.newarkpublicsafety.org/assets/docs/consent_decree/approved_policies/bias-free-policing-1706.pdf).

36 See, e.g., New Orleans Police Department, Operations Manual, Chapter 41.13: Bias-Free Policing (July 10, 2016), <https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf/>.

37 See, e.g., Baltimore Police Department, Policy 317: Fair and Impartial Policing (Aug. 24, 2018), <https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing>.

38 See, e.g., Newark Police Division, General Order 17-06: Bias-Free Policing (Sept. 19, 2017), [https://npd.newarkpublicsafety.org/assets/docs/consent\\_decree/approved\\_policies/bias-free-policing-1706.pdf](https://npd.newarkpublicsafety.org/assets/docs/consent_decree/approved_policies/bias-free-policing-1706.pdf).

## Stops, Searches, and Arrests

Stops, searches, and arrests have been areas of continuing concern regarding unbiased policing. Assessing stop, search, and arrest practices can help departments ensure that their enforcement strategies are not producing unjustified disparities as to particular groups.

Departments should assess these practices as a whole to determine whether there are disparities in enforcement based on race, ethnicity, national origin, immigration status, gender, gender identity, sexual orientation, or other status. This assessment should also compare enforcement from precinct to precinct to ensure that police are treating all persons in the same manner within each police department. As part of this assessment, formal and informal quotas for stops, searches, and arrests should be eliminated. Policies and trainings on constitutional policing should include best practices on how to conduct interactions in a fair, transparent, and impartial manner.

## Hiring, Promotion, and Retention

To the extent possible, police officers should be a part of the community they are sworn to protect, in some way. Departments should develop recruitment and outreach plans and goals that reflect the mission of serving the public with a police force that encompasses the diversity of the residents it serves.<sup>39</sup> Departments' outreach strategies need to reach the target populations in order to achieve greater diversity.

Additionally, recruiting men and women of all backgrounds who show a facility for and a willingness to interact well with people from diverse backgrounds should be a priority, and community outreach and recruitment pipeline programs should be considered. Officers who demonstrate leadership in these areas should have their work acknowledged and factored into promotion assessments.

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<sup>39</sup> See, e.g., Kevin P. Morrison, *Hiring for the 21st Century Law Enforcement Officer*, Office of Community Oriented Policing Services (2017), <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>; see also U.S. Department of Justice, Equal Employment Opportunity Commission, *Advancing Diversity in Law Enforcement*, at Sec. VI.A (Recruitment) (2016), <https://www.justice.gov/crt/case-document/file/900761/download>.



# Community

Departments must strive for a sincere belief among officers that respectful, constitutional engagement with the community is the most powerful tool they possess, over and above a gun and a badge. Police officers must be regarded as guardians and part of the community they serve and work to support and engage with those communities to effectively discharge their public safety mission.

We should support police outreach initiatives and more broadly consider how to address the needs of youth, people with mental illness, people with disabilities, immigrants and refugees, people from various faith traditions, and others who come into contact with law enforcement.

Police departments' hiring, retention, and promotion practices should strive to be more representative of the populations they serve. Departments must also incentivize officers to live in the communities they serve and to otherwise spend time building real, authentic relationships with members of the community, especially youth.

## Community Policing

### Community Policing Plans and Programs

“Community policing” is a simple concept—the police must work to build community relationships and work collaboratively to solve problems. This starts at the individual level with every officer on the street. Fostering positive relationships with residents helps to reduce crime and maintain public safety.

Departments should work together with community leaders, including leaders of schools, unions, community centers, and religious groups, to identify common goals and challenges their communities are facing, all with the primary goal of ensuring public safety and decreasing crime.<sup>40</sup> This should include developing concrete plans for crime fighting in collaboration with residents, businesses, non-profits, and informal and formal community leaders.<sup>41</sup>

Larger agencies may opt to create dedicated units to focus solely on community policing initiatives, while smaller departments may assign a few officers to concentrate their efforts on such initiatives.<sup>42</sup> Departments could, for example, select officers who reflect the diversity of the community (e.g., multi-lingual, first-generation American and/or officers who are immigrants themselves), and consider whether they have grown up in those neighborhoods or are current residents.<sup>43</sup> Community policing should permeate the entire department, however, and not be solely the responsibility of the specialized community policing officers.

Departments should provide incentives to officers to live in the communities they serve, such as through Resident Officer Programs that provide free housing in public housing neighborhoods if the officers fulfill public service duties for those neighborhoods.<sup>44</sup> Even if officers do not live in their districts, they can still forge ties to the community.

As soon as officers are assigned to new districts, their orientation period should include meeting members of the community to understand any of their concerns. Service to the community can mean more than just patrolling in the community; some departments have found it helpful to have officers and supervisors perform community service alongside community members.<sup>45</sup>

Cities and police departments should consider their communities’ unique makeup and needs in developing community policing programs. What is necessary for one city may not be a priority in another. Examples of typical community policing programs that strengthen community relationships are:

- *Youth Programs:* By promoting positive interactions between police and youths outside of the criminal justice system, police agencies can build positive, trusting, and lasting relationships with youths and potentially reduce further criminal activity.<sup>46</sup> Departments should create opportunities for at-risk youth in schools and in the community for positive, non-law enforcement interactions with officers, such as joint police-youth training programs or police athletics or activities leagues, which can familiarize youth with the criminal justice system or promote mentorship and relationship building.<sup>47</sup> The Baltimore Police Department, for example, partners with Outward Bound to bring officers and youth together, and the program has strengthened their positive attitudes towards each other.<sup>48</sup>
- *Immigration and Refugee Outreach:* Police departments serving communities with significant immigrant or refugee populations should widely communicate their agency’s policies, providing department policies in multiple languages as appropriate.<sup>49</sup> Communications should make sure that immigrants know they are entitled to the

40 Police Executive Research Forum, *Advice from Police Chiefs and Community Leaders on Building Trust: “Ask for Help, Work Together, and Show Respect,”* at 72-73 (Mar. 2016), <https://www.policeforum.org/assets/policecommunitytrust.pdf>.

41 President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 2 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

42 Police Executive Research Forum, *Community Policing in Immigrant Neighborhoods: Stories of Success*, at 8 (2019), <https://www.policeforum.org/assets/CommunityPolicingImmigrantNeighborhoods.pdf>.

43 *Id.*

44 President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 15 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>. For example, the Saint Paul Police Department has participated in an Officer in Residence program in partnership with the Saint Paul Public Housing Agency, where department officers live in public housing locations and participate in the building security and community events within each location. The program enables officers to build positive and long-lasting relationships with residents. St. Paul Minnesota, *21st Century Policing Report: Report Recommendation 1.5*, ¶ 1.5.2 (2015), <https://www.stpaul.gov/departments/police/21st-century-policing-report/recommendation/report-rec-ommendation-15>.

45 See, e.g., Police Executive Research Forum, *Community Policing in Immigrant Neighborhoods: Stories of Success*, at 20-21 (2019), <https://www.policeforum.org/assets/CommunityPolicingImmigrantNeighborhoods.pdf>.

46 International Association of Chiefs of Police, *Practices in Modern Policing: Police-Youth Engagement*, at 1 (2018), [https://www.theiacp.org/sites/default/files/2018-11/IACP\\_PMP\\_PoliceYouth.pdf](https://www.theiacp.org/sites/default/files/2018-11/IACP_PMP_PoliceYouth.pdf).

47 *Id.* at 5-6. For example, the Arlington Police Department in Texas established an athletics mentorship program where more than 65 police officers participate in practices and games and serve as mentors to student athletes.

48 Chesapeake Bay Outward Bound School, *Police Youth Challenge: Impact Report 2019*, at 2, 5 (2020) <https://outwardboundchesapeake.org/wp-content/uploads/delightful-downloads/Impact-Report-Police-Youth-Challenge-2019.pdf>.

49 Police Executive Research Forum, *Community Policing in Immigrant Neighborhoods: Stories of Success*, at 8-9 (2019), <https://www.policeforum.org/assets/CommunityPolicingImmigrantNeighborhoods.pdf>.

same police services as any other resident and—depending on department policy—that the police will not ask their immigration status. As with other areas of the population, departments should consider appointing liaison officers to community leaders to help facilitate external communication and encourage officer participation in community meetings and events.<sup>50</sup>

- **Homelessness:** Police departments may consider partnering with homelessness services providers and street outreach workers to humanely address encampments and connect people experiencing homelessness with services and housing.<sup>51</sup>

### Cultural Literacy and Procedural Justice

Every city is different. It is therefore critical that cities and departments help their police officers and supervisors develop an understanding of their community's history and traditions so that their daily interactions with the public are based on a mutual understanding and respect. In addition to the history of the community, departments should provide training on the history of policing in the United States in an effort to help them understand the negative feelings some residents have for the police.

Additionally, departments should help their officers and supervisors by training them in procedural justice—the idea of fairness in how officers use their authority in a democratic society. In the words of the U.S. Department of Justice COPS Office, “procedural justice is concerned not exactly with what officers do, but also with the way they do it.”<sup>52</sup> Research shows that people are more likely to cooperate with the police if they think they have been treated fairly.

In developing these trainings, departments should seek the assistance of community representatives who can incorporate the viewpoints of communities that have traditionally had challenging relationships with law enforcement.<sup>53</sup>

## Protecting Both the Right to Protest and Community Safety

Police officers must understand, value, and defend our constitutional rights to freedom of speech and freedom of assembly. To skillfully do so, they need to understand the difference between peaceful protest and civil unrest. Police leadership should provide clear direction, policies, and training on how to handle mass gatherings and send a clear message that residents should have a safe place to exercise their First Amendment rights, but also provide clear instructions on how to respond with appropriate tactics when a protest turns violent. In this section, we offer some suggestions on how to achieve these objectives.

### Setting the Tone and Preventing Escalation

Police departments should emphasize the importance of de-escalation and open communication before and during protests. They should develop relationships with advocacy groups and leaders ahead of time to facilitate cooperation during mass gatherings.<sup>54</sup>

While demonstrators themselves set the tone and dynamic for their gatherings, officers should engage them in a way that demonstrates they are there to protect, not diminish, free expression. To ensure they are not unintentionally escalating tensions or undermining civilian trust,<sup>55</sup> law enforcement agencies should create policies and procedures for policing mass demonstrations that are designed to minimize the use of provocative tactics and the equipment that can create an appearance of the police as an opposition group.<sup>56</sup>

### Protecting Communities and Responding Appropriately to Escalation

The police must also, of course, keep the community, protesters, and themselves safe from violence. Without assuming that peaceful protests will turn into unlawful assemblies, departments should plan for the possibility and consistently train their officers to understand the difference.

50 Police Executive Research Forum, *Strengthening Relationship between Police and Immigrant Communities in a Complex Political Environment*, at 6 (2018), <https://www.policeforum.org/assets/PoliceImmigrantCommunities.pdf>; see also Police Executive Research Forum, *Building Police-Community Trust in the Latino Community of Southwood in Richmond, Virginia*, at 15 (2019), <https://www.policeforum.org/assets/PoliceCommunityTrustRichmond.pdf>.

51 U.S. Interagency Council on Homelessness and the Council of State Governments Justice Center, *Strengthening Partnerships Between Law Enforcement and Homelessness Service Systems*, at 8 (June 2019), [https://www.usich.gov/resources/uploads/asset\\_library/Law-Enforcement-and-Homelessness-Service-Partnership-2019.pdf](https://www.usich.gov/resources/uploads/asset_library/Law-Enforcement-and-Homelessness-Service-Partnership-2019.pdf). For example, in 2015, the Los Angeles Police Department, through a partnership with the Advancement Project and the Housing Authority of the City of Los Angeles, assigned 45 officers to serve for five years at three housing projects in Watts and at an additional housing project in East Los Angeles. Listening Session on Policy and Oversight: Civilian Oversight (oral testimony of Charlie Beck, Chief, Los Angeles Police Department, for the President's Task Force on 21st Century Policing, Cincinnati, OH, January 30, 2015).

52 Laura Kunard and Charlene Moe, *Procedural Justice for Law Enforcement: An Overview*, Office of Community Oriented Policing Services, at 3 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p333-pub.pdf>.

53 President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 58 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

54 See Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, at 116 (2015), <https://www.policefoundation.org/wp-content/uploads/2018/08/After-Action-Assessment-of-the-Police-Response-to-the-August-2014-Demonstrations-in-Ferguson-Missouri.pdf>.

55 Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 3 (2018), <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf>.

56 President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, at 25 (2015) (“Law enforcement agency policies should address procedures for implementing a layered response to mass demonstrations that prioritize de-escalation and a guardian mindset.”), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>; see also Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, at 60 (2015). For example, departments should consider whether ordinary officer transportation, from bicycles to cars, would be more appropriate, and whether, rather than using riot gear, police can wear regular uniforms, unless the situation truly calls for the former. See, e.g., Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at T1 (2018) (bicycles help police navigate crowds in a less threatening way).

To protect the safety of protesters and officers, police departments should have a plan for efficiently and quickly increasing their level of response in proportion to what is happening on the ground.<sup>57</sup> Such protests are not always planned or advertised in advance, and we must be able to respond to unanticipated events. To do so, departments should also have dedicated command staff and officers who are trained to respond to mass gatherings, especially those that are spontaneous.

Crowds are not usually homogenous. They might include protesters with constitutionally protected aims, as well as troublemakers intending to commit acts of violence.<sup>58</sup> As recommended by the President’s Task Force on 21st Century Policing, a department should be prepared with a “layered response” that focuses, in the first instance, on removing individuals who are committing wrongful acts rather than shutting down the entire gathering, if possible. Officers equipped with protective gear can be assembled nearby and ready for deployment as needed, but not deployed in the first instance, unless there is a clear need to do so.

Throughout the event, officers should wear body cameras if they are available. Before a protest, police departments should determine what the bar for making arrests will be and avoid mass arrests if possible. This should be communicated to all officers as well as demonstrators.<sup>59</sup> During protests, departments should avoid making arrests for low-level civil disobedience, such as blocking traffic, opting instead to issue citations.<sup>60</sup> If mass arrests become necessary, police departments should develop a logistical system for documenting the bases for individual arrests and efficiently processing large numbers of individuals, with a staging area with trained staff and procedures for processing arrests efficiently.<sup>61</sup> A complete record of each arrest should be made.<sup>62</sup> All of these procedures should involve coordination with local prosecutors so that there is an understanding of prosecution guidelines.

## Mutual Aid

Major events and demonstrations sometimes become too large and complex for a single agency to manage. As a result, police departments may choose to enter into mutual aid agreements or memoranda of understanding, creating a framework through which other agencies can provide personnel, equipment, or operational support as needed.<sup>63</sup>

Departments with mutual aid agreements should participate in joint training for responding to mass demonstrations.<sup>64</sup> This promotes coordination, builds trust among agencies, and creates an opportunity to address any issues, such as inconsistencies in terminology or the policies and tactics regarding use of force, in advance of the demonstration. Those providing mutual aid should be informed about the community in which the demonstration is taking place. The local law enforcement agency (*i.e.*, the agency requesting aid), which knows the community, must retain command as to all officers responding jointly to an event. The local agency should set the policies and practices that will be followed and should provide clear direction on standards, including incident response and when force may be used.<sup>65</sup> Ideally, table top exercises with parties to a mutual aid agreement should be conducted regularly.

<sup>57</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 3 (2018).

<sup>58</sup> *Id.* at 20.

<sup>59</sup> *Id.* at 72; see also Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, at 40 (2015).

<sup>60</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 18 (2018).

<sup>61</sup> *Id.* at 45, 51-52. If possible, police departments should provide protesters with verbal warnings and allow them to disperse before making any arrests and implement clear policies on who can authorize various levels of use of force, such as tear gas, pepper spray, or rubber bullets.

<sup>62</sup> Departments can use technologies such as apps for mobile phones and tablets. See, e.g., Corey Kilgannon, “Why the N.Y.P.D. Dropped One of Its Oldest Crime-Fighting Tools,” *N.Y. Times* (Feb. 5, 2020) (describing department’s policies for technological expansion and changes from handwritten memo books to digitized logs), <https://www.nytimes.com/2020/02/05/nyregion/nypd-memo-book.html>.

<sup>63</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>64</sup> Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, at 126 (2015).

<sup>65</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 41 (2018).

# Transparency and Accountability to Reinforce Constitutional Policing

True police reform will not come about through improved policies and training alone. We must ensure that police fulfill their commitments to protect the residents they serve and that police build trust and legitimacy through transparency, engagement, and accountability.

Police must play a role that reinforces democratic principles in our society. To ensure public awareness and reassure the public that officers are working to protect the community, departments should make their policies publicly available and, consistent with relevant laws and agreements, provide access to law enforcement data and findings of officer misconduct.

Technology that can enhance accountability—such as body cameras and early warning systems—should be utilized. Cities should adopt uniform policies for the prompt release of video, audio, and initial police reports on all matters of public interest, including specifically those arising from police-involved shootings, deaths in custody, or allegations of First Amendment violations.

The collective bargaining agreements between cities and their police departments should provide fair, sensible, and workable accountability mechanisms and eliminate any provisions that are roadblocks to addressing conduct that is inconsistent with the policies and laws that govern our officers.

Police unions must engage with good will as well and participate in these urgent reforms, work with cities as partners—not obstructionists—on accountability and transparency and other reforms so that we can create stronger police departments that are truly responsive to the needs of residents and establish better police-community relations that serve both communities and officers. Cities should also work to eliminate any state laws that impede the implementation of sensible accountability measures across police departments.

Transparency and more robust accountability mechanisms are necessary to improve police-community relations.

A strong relationship between police and the communities they serve depends on transparency and accountability. This section of our Report discusses a range of tools and issues that bear on those principles. It starts with department policies to bolster transparency and accountability, and also to provide appropriate support to the officers we ask to serve our cities. We also discuss the role that collective bargaining agreements with police unions should play in ensuring fair and efficient systems for officer accountability, and describe where those agreements, and some state laws, currently fall short. Finally, we discuss the role that state institutions that certify officers can play in building up a professional police force and ensuring officers are accountable to professional standards.

## Department Policies

We are committed to rebuilding and strengthening the trust between communities and law enforcement. By putting policies in place that insist on transparency and elevate standards of accountability, and by taking the basic step of making those policies publicly available online, we believe that trust can be won again. Communities need to believe that misconduct will be investigated in a fair, just, and timely manner. Officers need to have trust that their conduct will be reviewed impartially and that any discipline that may result will be fair and proportional to any misconduct.

### Policies to Ensure Transparency and Accountability

#### 1. Officer Accountability to the Public

The public must trust that officers who act inconsistently with law and policy will be held accountable. Departments should not erect unnecessary barriers to citizen complaints but should implement controls to weed out frivolous or unfounded complaints.

The process for submitting complaints should be simple, easy to understand, and available in all languages spoken in the area. The Metropolitan Police Department in Washington D.C., for example, provides complaint forms in nine languages and in an audio format.<sup>66</sup> Departments should also allow witnesses—not just victims—to submit complaints. They should permit anonymous complaints, and not require that complaints be submitted in-person at a police station.<sup>67</sup> Departments can assess the validity of such complaints but should not create barriers to receiving them in the first instance.

Investigations of complaints should follow clear, publicly posted procedures that dictate how the scope of an investigation is determined, who will conduct the investigation, and the rights of any involved parties. Investigation of some incidents—for example, those that involve a use of force resulting in death, an officer-involved shooting resulting in injury or death, or any in-custody death—may be best assigned to an independent third party.<sup>68</sup> Investigation of legitimate complaints should not be cut short because a complainant stops cooperating or an officer separates from the department.

Disciplinary policies must be fair. Departments should clearly and publicly state their expectations for officer conduct in an investigation. Disciplinary procedures should be clear and comprehensible. In general, police chiefs should be responsible for ultimately deciding whether to impose discipline.

Departments should engage regularly with the public to understand community needs and the community's assessment of law enforcement conduct and priorities. Data about disciplinary decisions—including the number of verifiable complaints, the number of investigations mounted against officers, and information about investigation outcomes—should be made readily available to the public.<sup>69</sup>

#### 2. Supervisor Responsibilities

Supervisors serve as the primary line of sight into officer conduct, so they play a key role in keeping the promise of accountability. Their selection and training must reflect the full range of responsibilities for the position, including their role in ensuring accountability. Supervisors should be set up for success in order to reinforce the department's priorities and high standards. Departments should clearly delineate their expectations of supervisors and hold accountable supervisors who fail to monitor their subordinates or take action when they do not live up to their commitments.

Supervisors should monitor officers through daily physical observations, review of officer-generated reports, and reference to broader, department data to detect and intervene in bias-based policing practices and/or inconsistency with department policies. As part of that effort, supervisors should be hands on with supervisees, and regularly review footage of stops, searches, arrests, and use-of-force incidents

<sup>66</sup> See, e.g., Mayor Muriel Bowser, Office of Police Complaints, "Complaint Forms and Brochures," <https://policecomplaints.dc.gov/node/161132>.

<sup>67</sup> See, e.g., Deputy Chief Beau Thurnauer, *Best Practices Guide*, International Association of Chiefs of Police, Smaller Police Departments Technical Assistance Program, <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

<sup>68</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 21 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>

<sup>69</sup> See, e.g., Deputy Chief Beau Thurnauer, *Best Practices Guide*, International Association of Chiefs of Police, Smaller Police Departments Technical Assistance Program, <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.



to ensure that officer accounts are consistent with the record, to detect any indication of bias, and to evaluate officer performance.<sup>70</sup> Supervisors should actively respond to the scene of incidents involving more than a minimal use of force by an officer.

After any critical event, supervisors should intervene to support officers whose behavior or conduct indicates they are experiencing high levels of stress or a potential mental health issue.

### 3. Body-Worn Cameras

Police departments should use body-worn cameras if not already doing so. Policies and trainings should provide clear, easy-to-understand directions for how to use body-worn cameras and when they must be activated.

Departments should create clear protocols for the use of body-worn camera footage in officer investigations, and for the review and release of that footage to the public, consistent with applicable public records retention and disclosure laws. The time period for disclosure should be set in advance, by policy. Ideally, disclosure is automatic in the case of officer-involved shootings (provided no privacy concerns are implicated). Policies should clearly prohibit any alteration of footage by department personnel.

Finally, departments should implement an audit function to monitor the use of body-worn cameras and ensure adherence to department policies. For instance, the Maplewood, Minnesota Police Department encourages supervisors to randomly review body-worn camera recordings at least two times per month to ensure that the equipment is operating properly and that officers are using the devices consistent with department policy.

### Policies to Enhance Officer Wellness

The officers who protect our communities must also be protected themselves against incapacitating physical, mental, and emotional health problems.<sup>71</sup> Police officers have an outside risk of adverse physical and mental health outcomes. Officer wellness directly affects quality of life, job performance, and interactions with community members.<sup>72</sup> Because officers are exposed to a wide range of stressors as part of their daily routines, mental and physical health check-ups should be conducted on an ongoing basis.<sup>73</sup>

Departments should aim to normalize wellness services and seek to remove any stigma from seeking mental health care by establishing wellness-related training that engages new officers early on in their careers; tailoring trainings to the unique needs of each department and staff by conducting surveys and regularly updating educational programming; making resources widely visible within the organization; and publicizing a clear confidentiality policy for wellness service providers.<sup>74</sup> A good example is what the San Diego Police Department has done in creating a free-standing Wellness Unit that is a resource for department members who are or may be in need.<sup>75</sup>

Supervisors should be trained to recognize warning signs, including changes in officer behavior. Departments should also implement an early-intervention system, with the input of the officers it will serve. Such systems are aimed at identifying at-risk officers based on risk indicators, such as use of force incidents, shooting incidents, resisting arrest cases, arrested subject injuries, and officer injury reports.

Departments should make clear that the role of such an early-warning system is not a disciplinary role but a helpful tool to protect officer wellness. With that in mind, officers who reach certain risk indicator thresholds should be addressed by the department's human resources function and provided access to available resources. Smaller departments, which may not have the resources to implement an early-warning database, should institute policies to track officer performance and spot red flags.

## Collective Bargaining Agreements

### Introduction

Over the years, police contracts—union CBAs—have evolved into much more than standard labor contracts. They cover the expected areas—hours, wages, benefits—but many have grown to include substantial barriers to basic accountability. We want to make sure that our officers have due process rights, but CBAs often contain provisions that go far beyond what is necessary to protect those rights.

Some provisions look innocuous on their face, but they can severely impair a department's legitimate need to investigate allegations of police officer misconduct and hold officers accountable. In negotiating and approving CBAs, it is important for cities to restore the balance so that police

<sup>70</sup> See, e.g., Consent Decree, *United States v. City of Baltimore*, No. 17-cv-00099, at ¶¶ 69-81 (D. Md. Jan. 12, 2017).

<sup>71</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 62 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

<sup>72</sup> Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department*, Office of Community Oriented Policing Services, at 6 (2018), <https://cops.usdoj.gov/RIC/Publications/cops-w0863-pub.pdf>.

<sup>73</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services, at 64 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf>.

<sup>74</sup> Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department*, Office of Community Oriented Policing Services, at 6 (2018), <https://cops.usdoj.gov/RIC/Publications/cops-w0863-pub.pdf>.

<sup>75</sup> *Id.*

chiefs and supervisors have the authority necessary to enforce department policies and remove wrongdoers when necessary.

The goal of this section of our Report is to help mayors and police chiefs assess whether certain CBA provisions in their jurisdictions are obstacles to achieving the right balance, and encourage cities not to bargain away management rights as a trade-off for raises sought by police unions. Below are some examples of the provisions that have proven to be problematic for many mayors and police chiefs.

### Arbitration Issues

Perhaps the greatest concern about CBAs and officer accountability involves the arbitration process that often follows a department's decision on how to resolve a review of an officer's conduct. There are two significant problems with the arbitration process.

*First*, CBAs typically contain mandatory arbitration provisions that place disciplinary decisions in the hands of non-democratically selected arbitration panels. These panels have the power to overturn and dilute decisions by police department leadership on accountability. They make it difficult if not impossible for a police chief to uphold high standards and department policy. Private sector employers have both the responsibility and the authority to maintain good order and discipline. Police chiefs need to have the same alignment of responsibility and authority.

*Second*, and most importantly, an arbitrator can be put out of business if he takes a position that the police union does not like. Arbitrators (or, in the case of three-person panels, the "neutral arbitrator") must be approved by both the department and the union, but arbitrators in police discipline cases frequently handle only those cases, so their livelihood depends on being acceptable to the union.<sup>76</sup> It is the experience of many chiefs that arbitration panels frequently return serious and repeat offenders to duty. This is a key reason that it is so hard to discipline and remove errant officers.

### Barriers to Misconduct Investigations

CBAs can inhibit the ability to detect potential wrongdoing in the first instance. Examples of provisions that create unnecessary obstacles to filing complaints include:

1. Prohibitions on initiating investigations into alleged misconduct because the initial complaint is anonymous (e.g., information or a video from a bystander);
2. Requiring complainants to be the alleged victim—as opposed to a third-party witness—and to provide sworn statements under penalty of perjury; and
3. Severely limiting the amount of time in which a complaint can be filed.

While frivolous complaints are a concern, these contract provisions may allow a police officer to escape even the initiation of an investigation of alleged serious misconduct simply because a complainant is unwilling to be identified. Indeed, it may be surmised that the more serious the misconduct, the more reluctant a witness may be to step forward because of fears of retaliation. And, by prohibiting complaints initiated by a third-party witness, these provisions would even eliminate the use of videos that bystanders take of events, like those in the George Floyd killing.

While it is always best to obtain evidence when witnesses' recollections are fresh, departments must be allowed to collect and review all complaints in order to recognize and correct patterns of problematic behavior.

### Delaying Investigations

Some CBA provisions delay investigations by including lengthy "recovery" and "cooling off" periods before an officer can be questioned. While "recovery" or "cooling off" periods for officers after an incident may be warranted before interrogating officers, the length of time allowed should not be so long as to diminish fresh memories or otherwise detract from a timely and thorough review.

### Ending Investigations Prematurely

Certain CBAs require investigations to end after as little as 90 days if they are not resolved, but the goal of thoroughly and fairly reviewing allegations should not be hindered by arbitrary deadlines that do not account for potentially complex investigations or other departmental priorities.

<sup>76</sup> Stephen Rushin, *Police Disciplinary Appeals*, 167 U. Penn. L. Rev. 545, 574-76 (2019) (allowing officers say in selecting the arbitrator "may incentivize arbitrators to consistently compromise on punishment to increase their probability of being selected in future cases").



## Giving Officers Special Access to Information

CBA's often require investigators to disclose to officers written documents, witness statements, photos, and other evidence *before* the officer is questioned or provides a written statement. This is an advantage not afforded civilians in routine police investigations. It allows officers to tailor their testimony to what is known instead of just giving their best recollection.

## Purging Records of Misconduct

Some CBA's require disciplinary records to be destroyed after a certain period of time, even if the investigations resulted in a suspension or more serious discipline. In some cases, records are purged after as little as six months, although the allegations were substantiated. In some instances, CBA record destruction mandates conflict with local or state laws that call for mandatory record retention.

There is a balance to be struck on the maintenance and use of officers' records. We support maintaining officer records as a matter of retention and documentation. In some cases, it may also be appropriate to review an officer's records for prior misconduct allegations and disciplinary actions to determine whether there is a pattern or practice bearing on the incident at issue. This is not the same as saying that all prior complaints and findings of policy violations including those from the distant past deserve equal or any weight at all in evaluating an officer's recent conduct, especially where his or her record is otherwise unblemished. But they should not be purged as if they never existed.

## Expeditious Review

No one's interests—not a complainant's, an involved officer's, the department's, or the municipality's—are served when allegations of misconduct linger over a period of years without resolution. To expedite resolution, departments should be permitted to conduct their investigations concurrently with any other external reviews, including those conducted by civilian review boards or criminal prosecutors.

Finally, if the authority to discipline in serious cases rests with an outside, perhaps civilian, authority, every effort should be made by that body to render a final determination as expeditiously as possible.

## Duty to Cooperate

Last, while much of what we discuss here suggests removing certain provisions from CBA's or other agreements, we offer a suggested addition. All CBA's should *include* a duty to cooperate with misconduct investigations. Any failure to cooperate with reviews by the department or external investigative agencies should result in an officer's immediate termination.

## State Law

The collective bargaining process described above is conducted under authority of and subject to state law. State law determines whether police officers may collectively bargain with their departments and what the scope of those negotiations will be, including whether and to what extent officer investigation and discipline procedures are included in negotiations.

Some states also have statutes that preordain certain procedures that departments must follow, removing those provisions from the bargaining table and, in some cases, codifying in state law the types of restrictions on efficient and responsible officer accountability seen in some CBA's.

This section analyzes the impact of (a) these so-called "Law Enforcement Officers' Bills of Rights" and (b) state efforts to return to management some degree of authority to craft those disciplinary procedures. We believe that departments, at the very least, must be able to establish investigation and discipline procedures through collective bargaining and so recommend that state law provisions that undermine that alignment of responsibility and authority be repealed.

## State Laws Impact Collective Bargaining

A significant majority of states grant police officers a right to bargain collectively through their unions.<sup>77</sup> State statutes regulating collective bargaining typically allow public employees, including police officers, to negotiate on any "matters of wages, hours, and other conditions of employment."<sup>78</sup> The phrase "conditions of employment" often serves as a catchall, and most states with collective bargaining allow negotiations over the procedures that will govern investigations of officers and the procedures that will be used in disciplinary proceedings.

<sup>77</sup> Stephen Rushin, *Police Union Contracts*, 66 Duke L.J. 1191, 1204 (2017).

<sup>78</sup> *Id.* at 1205.

## State Laws That May Undermine Accountability

Beyond laws establishing the scope of collective bargaining for police officers, some states have specific statutes that mandate certain procedural protections for officers under investigation and subject to discipline. In some cases, those provisions are reasonable, common sense requirements that do not unduly interfere with a department's interest in holding officers to account, such as requirements for where and at what time of day officers under investigation may be interrogated.<sup>79</sup>

Other state law provisions, however, impose on departments the same types of restrictive officer investigation and discipline procedures that may otherwise result from the collective bargaining process (as discussed above).<sup>80</sup> But they also strip departments of the ability to bargain to retain the rights *they need to enforce their policies*. Such provisions undermine the ability of departments to hold officers accountable and to be appropriately transparent with the public about such actions. And as long as they are in place, there is no way around them—unlike CBA provisions that may be revisited during subsequent negotiations. Disciplinary provisions mandated by state law tie a department's hands by eliminating the possibility that the collective bargaining process could lead to a better outcome.

## State Laws May Limit or Eliminate Discipline from Negotiation

In addition to the handful of states where collective bargaining is not allowed, and despite the general framework laid out above, some states limit the extent to which departments and unions may negotiate procedures for officer investigation and discipline. There are three paths that have been taken.

### 1. Laws removing discipline as a bargaining subject

Washington D.C. has recently pursued the most straightforward reform by eliminating discipline altogether as a subject of collective bargaining. The Washington D.C. Council passed a temporary ordinance that would remove “[a]ll matters” relating to discipline from the negotiation process by requiring that they “be retained by management and not be negotiable.”<sup>81</sup> Hawaii already takes a similar approach.<sup>82</sup> Advocates for this approach argue that matters related to law enforcement structural reform,

particularly as it pertains to discipline, should not be subject to collective bargaining as a matter of public policy and managerial prerogatives.<sup>83</sup>

### 2. Laws limiting the scope of discipline-related bargaining

A statute in Nebraska (which applies to the State Patrol but not to other law enforcement agencies in the state) retains investigation and discipline within the scope of collective bargaining but sets a baseline, or “floor,” for certain elements of the investigation and discipline process, allowing negotiation only above that “floor” and on other matters.<sup>84</sup>

For example, the Nebraska statute expressly prohibits collective bargaining provisions that limit the discretion of the Patrol to use records of prior misconduct for the past ten years in determining appropriate disciplinary action. Police unions may negotiate limits on the use of prior disciplinary records that are older than ten years.

Likewise, the Nebraska statute prohibits collective bargaining provisions that limit the time during which a disciplinary investigation may be initiated or discipline may be imposed to less than two years after the occurrence of the alleged misconduct. But unions may negotiate a statute of limitations for disciplinary actions that is not less than two years. And any discipline-related matters not explicitly addressed in the statute remain subject to collective bargaining, without restraint.

### 3. Laws limiting mechanisms to reverse appropriate discipline

A recent Oregon law represents a third approach. The Oregon state legislature recently enacted a statute that expands management's authority over officer accountability by providing that departmentally imposed discipline may only be reversed in arbitration if (1) the arbitrator's findings are inconsistent with management's findings of misconduct, or (2) the punishment imposed does not fall within the bounds of the “discipline guide” or “discipline matrix” that was negotiated during the collective bargaining process.<sup>85</sup> The collective bargaining process, including over disciplinary procedures, is otherwise undisturbed.

<sup>79</sup> See, e.g., Del. Code Ann. tit. 11, § 9200(c)(1)-(2).

<sup>80</sup> See, e.g., Ariz. Rev. Stat. § 38-1110(B) (investigation should be complete within 180 days of receipt of allegation); Fla. Stat. Ann. § 112.532(1)(d) (accused officer to be provided all evidence including witness statements prior to investigative interview); 50 Ill. Comp. Stat. Ann. § 725/3.8(b) (complaints must be supported by sworn affidavit); Md. Pub. Safety Code § 3-104(c)(2) (complaints alleging brutality must be filed with 366 days of incident).

<sup>81</sup> Washington D.C. Ordinance B23-0826 (“All matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable.”).

<sup>82</sup> Haw. Rev. Stat. § 89-9(d)(4) (“The employer and the exclusive representative shall not agree to any proposal that would . . . interfere with the rights and obligations of a public employer to . . . [s]uspend, demote, discharge, or take other disciplinary action against employees for proper cause.”).

<sup>83</sup> See Ayesha Hardaway, *Time is Not on Our Side: Why Specious Claims of Collective Bargaining Rights Should Not Be Allowed to Delay Police Reform Efforts*, 15 Stanford J. Civ. Rights & Civ. Liberties 137, 144 (2019).

<sup>84</sup> See Neb. Rev. Stat. § 81-1377(3).

<sup>85</sup> Ore. Rev. Stat. § 243.706.

Supporters of this measure suggest that a disciplinary matrix removes some of the subjectivity in the disciplinary process while the limitation on arbitration further increases consistency and accountability. Critics of the statute express concern that the use of a discipline matrix will incentivize law enforcement agencies and police unions to reduce through bargaining the severity of punishments within the discipline matrix.<sup>86</sup>

### States Should Reform Laws That Restrict Investigation Procedures

We believe that state laws should be designed to permit municipalities to negotiate CBAs that allow our departments to hold officers accountable and, where necessary, to impose discipline or remedial measures in a timely and responsible way. We can, through that process, establish frameworks for officer investigation and discipline that are appropriately efficient, fair to the officers under investigation, and transparent to the general public. But if state law imposes restrictive procedures and removes them from negotiations, it is a roadblock to a fair and efficient system.

For this reason, we believe that states should reassess such laws. Some state law provisions are sensible and less likely than others to impede the process of holding officers appropriately accountable. A state wishing to retain those elements could identify where the statute codifies provisions that truly do restrict the ability of departments to hold officers accountable in a reasonable manner—such as provisions limiting the length of investigations, establishing a short statute of limitations for complaints, requiring investigators to turn over evidence to accused officers prior to interviews, prohibiting or limiting the investigation of anonymous or third-party complaints, or mandating who may serve on a hearing or appeals board—and seek to carve out just those provisions.

## Officer Certification and Decertification

We recommend that all states have in place a system for the certification of law enforcement officers that sets appropriate standards of conduct and competency. All but four states have such systems today. Certification can—as it does with other professions—ensure that the corps of professional law enforcement officers meet the standards and abide by the policies established for them.

We also recommend that states have in place a system for suspending or revoking an officer's certification upon the recommendation of his or her department's chief after an investigation by the department showing that the officer has breached those standards and engaged in serious misconduct. That authority fosters accountability and provides a mechanism for the removal of officers from service if they fail to meet the prescribed professional standards.

We recommend that systems for the retention and sharing of decertification data, particularly across state lines, be improved. Officers who are terminated by one department for misconduct that bears on their fitness for duty should not be hired by another department.

### Certification Requirements Help Establish and Maintain a Professional Police Force

Serving as a law enforcement officer is a profession, just as serving as a lawyer, a doctor, a hair stylist, or an electrician is. Those professions, and many more, are the subject of state certification standards for competency and ethical behavior. In many states, there are agencies that certify officers. They are commonly called a Peace Officer Standards and Training (POST) board or commission, and they set qualification standards for who may become an officer and ensure that officers remain up-to-date on both developments in policing and the applicable standards of conduct. As an initial matter, we recommend that the four states (California, Hawaii, Massachusetts, and New Jersey) that do not already require that law enforcement officers be certified should establish such systems.

The International Association of Directors of Law Enforcement Standards and Training (IADLEST) provides guidance at a high level on the appropriate topics for certification standards.<sup>87</sup> But states appropriately retain the responsibility for filling in the details and the flexibility to tailor certification standards to their needs.

Beyond IADLEST, there are many sources of best practices in policing, including this Report, but also publications by the Police Executive Research Forum, the Task Force on 21st Century Policing, and others. The views of those organizations on what makes for a professional police force should inform POST standards. Most systems establish minimum certification standards on matters like age, education, and physical capacity, and set requirements for training and state certification examinations. POSTs should add substantive certification requirements and standards, which may be derived from these recognized authorities on police best practices cited above, as appropriate.

<sup>86</sup> Nigel Jaquiss, "Skeptics Say Oregon's Police Arbitration Bill Doesn't Do Enough, While Cops Play Defense," *Willamette Week* (June 25, 2020), <https://www.wweek.com/news/2020/06/25/skeptics-say-oregons-police-arbitration-bill-doesnt-do-enough-while-cops-play-defense/>.

<sup>87</sup> International Association of Directors of Law Enforcement Standards and Training, "Model Minimum Standards," <https://www.iadlest.org/our-services/model-standards>.

For example, a background check to ensure an officer candidate's moral fitness is a component of the IADLEST model and a part of most existing state certification processes. A background check should, of course, inquire into a candidate's prior employment as a law enforcement officer, including whether the candidate has previously been decertified, terminated, or disciplined. Officers decertified in one state should not be able to obtain certification in another.

But POSTs should also establish additional standards of conduct and appropriate policies for officers, such as against witness intimidation or giving false testimony.

### Expanding Grounds for Decertification

The statutory grounds for decertification vary greatly across the states. Some states allow decertification only in narrow, defined cases while other states give POSTs significant discretion to decertify officers. In the most restrictive examples, POSTs may only decertify an officer if the officer has been convicted of a crime bearing on his or her fitness. Others have the authority to decertify an officer for conduct that, for example, shows a "reckless disregard" for public safety.

At a minimum, we recommend that POSTs have authority to decertify officers if that officer's department has terminated him or her for conduct that violates the professional standards of policing by showing a reckless disregard for public safety or involving acts of dishonesty—for example, an illegal use of force or falsifying evidence.

POSTs should also have authority to address a pattern of discipline, short of termination, that indicates that the officer is unfit to serve. And if an officer resigns to avoid potential discipline, departments should be authorized to complete investigations and, if appropriate, POSTs should be able to revoke that former officer's certification.

We do not recommend that POSTs replicate the investigations done by police departments. Departments should have the responsibility and the authority to investigate alleged misconduct and to ensure accountability of officers. But POSTs should have authority to decertify based upon the investigations undertaken by departments.

### Improving Information Retention and Sharing Systems

Currently, states may report decertifications to the National Decertification Index maintained by IADLEST, but such reporting is not uniform and, thus, the database is not comprehensive. For this reason, even diligent POSTs (and police departments) may be unable to determine whether a prospective officer has been previously decertified.

State legislatures should consider laws, like one pending in the Massachusetts legislature, that require POSTs to report decertifications to the National Decertification Index. States should also consider establishing public databases of their own to track decertifications and make information available to the public and other states.<sup>88</sup> Regardless of statutory requirements, POSTs should report to the National Decertification Index. More complete information will make the background check process described above more likely to screen out unqualified candidates.

### POSTs Should Include Citizens

Some POSTs are made up primarily or exclusively of current or former law enforcement officers and police chiefs. Their experience and perspective are important. But other perspectives would be productive to include as well in POST deliberations about the appropriate certification standards and appropriate exercise of decertification authority. Just as many of the boards that discipline lawyers include non-lawyers, POSTs would benefit from citizen participation. Members should not all be drawn from current or former law enforcement and they should represent a diverse range of backgrounds and professions.

### The Role of Departments in Supporting Officer Certification Systems

Police departments play a vital role here. POSTs in many states rely on reports from the departments within the state to learn about officer conduct that could merit decertification. And, as noted, we recommend that POSTs rely upon the investigations undertaken by departments. Some states, such as South Carolina, require departments to report conduct meriting decertification,<sup>89</sup> but many others do not. We recommend that departments adopt a requirement that serious misconduct be reported to the POST.

Obviously, departments should consider prior decertification when contemplating the hiring of an officer. Some states, such as Oregon, require departments to consult, to the extent possible, a candidate officer's personnel records from other departments in which he or she has served, both within the state and elsewhere.<sup>90</sup> Even where not required, department's should follow this practice, and should check in- and out-of-state decertification databases, where available, along with the National Decertification Index.

Departments will be able to do their jobs better if they are able to determine whether a candidate for employment has been decertified elsewhere.

<sup>88</sup> Massachusetts Senate Bill 2820, Sec. 6 (passed Senate July 14, 2020) (creating Mass. Gen. Laws ch. 6, §§ 223(c), 225(h)).

<sup>89</sup> S.C. Code § 23-23-150(B).

<sup>90</sup> Oregon House Bill 4207, Sec. 4 (enacted June 30, 2020).

The background of the slide features a large, faint, circular seal of the National Conference of Mayors. The seal contains a map of the United States with stars, and the text "THE NATIONAL CONFERENCE OF MAYORS" is visible around the perimeter.

# The Conference's Continuing Commitment

# The Path Forward

The release of this Report is only one step in the ongoing process of reforming the policing practices in our cities. The Conference will remain engaged to support our members and give them the resources they need to implement our recommendations. As part of that commitment, the Conference will:

1. Establish and maintain a database of sample policies and best practices that align with the recommendations in this Report.
2. Provide advice and counsel on how to implement these recommendations, including through workshops and panels.
3. Revisit our recommendations to ensure we keep pace with continued developments in policing and public safety.

The mayors and cities represented by the Conference are varied but united. We face, on a daily basis, the issues born of the challenge of reforming our policing practices. We are committed to bringing about real, lasting change. The recommendations in this Report will serve as a guide as we do so.





THE UNITED STATES  
CONFERENCE OF MAYORS

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