

Public Safety, Courts & Civil Service (PSCCS) Meeting

July 30, 2020

11:00 AM

WebEx Meeting

Access information provided to Internal Staff

Public Participant Dialing Instructions

Dial Access Number: 1-877-820-7831

Enter Participant Code: 254610#

Council Member Allison Hiltz, Chair

Council Member Curtis Gardner, Vice Chair

Council Member Angela Lawson, Member

Assure a safe community for people

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| 1. Approval of July 16, 2020 Draft Minutes | Council Member Hiltz |
| 2. Consent Items | |
| 3. Community Police Task Force Update | Deputy City Manager
Jason Batchelor |
| 4. Lobbying Position of Membership Organizations | Division Chief Lee Condrey |
| 5. 2 nd Quarter Crime Stats | Division Chief Darin Parker |
| 6. Fitzsimons Campus Response | Commander Allen Robnett |
| 7. Miscellaneous Matters for Consideration | |
| 8. Confirm Next Meeting | Council Member Hiltz |

Next Meeting: 8/13/2020 @ 11am

PUBLIC SAFETY, COURTS & CIVIL SERVICE MEETING
JULY 16, 2020

Members Present: Council Member Allison Hiltz, Chair
Council Member Curtis Gardner, Vice Chair
Council Member Angela Lawson, Member
Council Member Alison Coombs
Council Member Juan Marcano
Council Member Marsha Berzins

Others Present: J. Batchelor, A. Robnett, C. Hills, C. Andersen, D. Parker, D. Cooper, D. Giordano, D. Wilson, F. Gray, G. Begnaud, G. Koumantakis, H. Glidden, I. Evans, J. Bergeron, J. Twombly, J. Campbell, L. Condrey, M. Dudley, M. Longshore, M. Chapman, M. Fassio, M. Moore, S. Day, S. Wright, V. Wilson, W. Lippman, Z. DeBoyes

REVIEW/APPROVAL OF MINUTES

June minutes approved and signed.

ANNOUNCEMENTS

None.

CONSENT ITEMS

None.

INDEPENDENT INVESTIGATION UPDATE

Summary of Issue and Discussion

Council Member Hiltz advised that the committee has been in discussions with consultant, Jonathan Smith, about conducting a comprehensive and thorough investigation into the incident with Elijah McClain that occurred on August 24, 2019, and his subsequent death. Mr. Smith is the Executive Director of the Washington Lawyer's Committee for Civil Rights and Urban Affairs. Prior to his government services, Mr. Smith was the Executive Director of the Legal Aid Society of the District of Columbia, the Public Justice Center in Baltimore, Maryland, and the D.C. Prisoners' Legal Services Project.

CM Hiltz and City Manager Twombly are continuing to work together to establish the scope of the investigation and then move into discussions about recommendations. City Manager Twombly explained the scope they have been discussing includes investigating the actions of the police officers and fire fighter/paramedics on the scene August 24, 2019, that responded to a call about a suspicious person. The investigator will be asked to look at the actions of the police officers in response to the call, the subsequent investigation, and the internal force review of the incident; the actions of the Aurora Fire Rescue personnel on-scene; and the administration of ketamine with regard to all applicable laws, and best emergency medical protocols. The investigation should be conducted in light of the APD and AFR policies, directives, procedures, practices, and training. Evaluations will be conducted with respect to applicable laws, best practices, national policing, and emergency response standards. And recommendations provided with regard to APD and AFR policies, directives, procedures, practices, and training.

CM Lawson asked for clarification on the scope and if it is focused on just the incident involving Elijah McClain. CM Hiltz confirmed this investigation will be specifically looking into the incident involving

Elijah McClain but conversations around more holistic issues with the department are taking place. CM Lawson asked if a timeframe to complete the investigation is included. CM Hiltz noted that the request is to have the investigation and report done as quickly as possible. Part of the scope of work will be developed with the consultant hired to do the investigation. Coordination will also need to be done with the Attorney General's Office to make sure they are working in tandem. City Manager Twombly can provide CM Lawson with the scope of work.

CM Hiltz explained that she and CM Gardner had a conversation with Mr. Smith approximately two weeks ago and discussed the goals of the investigation, his experience, and got information in terms of what they would like to see with regard to working with the AG's office and potential obstacles they might face. They are still looking for someone with medical experience with regard to the ketamine aspect. They have found potential issues with conflict of interest and want to bring someone on that is not local. They hope to have a name by the end of the week to be brought forward to full council. CM Lawson supports moving this forward to full council but expressed concern that the other committee members were having conversations and had information that she did not have or was not included in. CM Hiltz explained she had requested that the full committee be included in the meeting that was held with Mr. Smith and will look into the circumstances of her not being invited.

Outcome

Move forward to full council.

Follow-up Action

None.

DISCIPLINARY PROCESS INCLUDING GRIEVANCE PROCESS

Summary of Issue and Discussion

Police Deputy Chief Harry Glidden presented this item to the committee. All full-time public employees have a recognized Constitutionally protected property interest in their continued employment. This includes police officers, whether or not there is a union. This is covered under the 14th Amendment of the US Constitution as well as City Charter, and numerous court cases. Because of this property interest, officers are required to have a due process for their continued employment. They cannot be disciplined or terminated without their proper due process. Generally, the process that is due a public employee is laid out in local ordinances and charters, case law, and, for some public employees, their collective bargaining agreement. The process due for APD officers is set forth in City Charter, applicable court case law, and certain policies. The Collective Bargaining Agreement (CBA) does not have a role in discipline. Per the City Charter, discipline is exclusively a management right. Therefore, discipline is not a topic for negotiation and is not a term covered by the CBA. An officer can be disciplined for a sustained violation of policy. Discipline is imposed by the Chief of Police.

Any misconduct that appears to warrant discipline greater than a Written Reprimand requires an investigation, either at the District level or in Internal Affairs. An officer is disciplined for any violation of department policy and the only discipline not subject to the appeal is a written reprimand. Written reprimand is the lowest form of discipline in APD. An officer can be terminated for a serious violation of Department policy, committing a felony, or violating a POST rule that would result in decertification. An officer would be put on automatic unpaid administrative leave when charged with a felony. There are two types of investigations. Administrative Investigations which can be conducted at the District level and are cases where the violation of policy would not result in discipline greater than 40 hours suspension. The District Commander will consult with the Internal Affairs Bureau (IAB) to ensure the comparable discipline is less than 40 hours and the officer doesn't have a history of misconduct that would result in progressive discipline

of more than 40 hours. The officer and the District Commander meet and come to an agreement on discipline. The officer must admit to the violation of policy. Internal Affair Bureau Investigations are cases where the Chief or designee has ordered the investigation. These cases are typically more serious, more complicated, implicates a public trust issue, or the officer does not acknowledge wrongdoing. The complaint is received and logged, the IAB investigation is initiated including interviews, gathering of evidence, and preparation of the file. Officers are allowed to have representatives with them and review the entire case prior to it being sent forward. The IAB Commander then reviews the file and makes recommended findings that are included in the file. The file is then given to the Chief's Office for review by the officers' chain of command. After review, the CRB is convened to determine recommended discipline. The CRB is given a presentation from the IAB Commander, they discuss the details of the case, and review the officer's history and comparable discipline. The CRB's recommendation and the file is then given to the Chief for review. The Chief can accept or reject the CRB recommendations. The Chief has a pre-disciplinary meeting with the officer as mandated by *Loudermill vs Cleveland Board of Education*. The officer can make a verbal statement to the Chief at that time or submit a written statement within three days, per Charter. The Chief can order an Independent Review Board (IRB) or the officer can request an IRB through the Chief. The IRB is comprised of citizens and officers, chosen at random, and the process is managed by Human Resources. The IRB reviews the case, meets to discuss the case, and provides recommended discipline to the Chief. It is the discretion of the Chief as to whether or not the IRB will be granted if requested by the officer. A Final Discipline meeting is then set where the Chief issues the Discipline Order.

Only the Chief can implement discipline within the organization. If discipline is over 1/3 the officers' monthly salary, up to and including termination, the Chief must get approval from the Deputy City Manager prior to the discipline being imposed. The officer can appeal the discipline to the Civil Service Commission (CSC). The CSC will hold a hearing regarding the case and the discipline imposed. They can uphold, overturn, or modify the discipline imposed. If the officer or the Chief are not satisfied with the CSC decision, they can appeal to the District Court. The District Court decision can be appealed to the Colorado Court of Appeals.

CM Gardner asked what the Department's philosophy around punishment versus behavioral change is. A lot of times it's better to try to change the behavior. Chief Wilson explained there are many times that discipline is given in conjunction with additional training to correct the mistake or behavior. The discipline is documented for tracking of progressive discipline. There are times when the violation is so egregious that corrective discipline may not be appropriate. The Chief reviews comparable discipline but there isn't a discipline matrix that must be adhered to. CM Gardner asked if tracking is being done for early warning signs to indicate there might be other problems going on that need to be addressed. Chief Wilson explained there is tracking in the PEIS system that assigns points for low sick leave balances, incidents of Use of Force, and complaints. Once the predetermined threshold of points is accumulated, a supervisor's review is conducted, and they meet with the employee to discuss. Deputy Chief Glidden added that there are a variety of things that go into the early warning system. Supervisors must meet with the employee and the documented conversation is reviewed by the next supervisor in the chain of command. If necessary, the Employee Support and Wellness Unit is contacted for assistance. CM Gardner noted that it was said earlier that the IRB is a function of HR and separate from the PD. He asked where the policy comes from that the Chief can deny an officer's request for IRB. HR Director Dianna Giordano explained it is an HR policy and part of the policy is that request is made to the Chief and he/she can choose to submit that request to HR. The intent of the IRB process is to make a recommendation to the Chief, but if there is a course of discipline that has already been defined it may not follow the IRB process. CM Gardner noted that he believes a report of discipline should be created to be shared with the community as an additional transparency measure. He asked what the Chief's thoughts were about developing a discipline matrix and would like to meet with her offline to discuss. Chief Wilson is open to the discussion and noted that she would want the matrix to have a range of discipline because each case is different. CM Gardner agreed and added that having discipline

entirely subjective can sometimes give the community the impression that different officers are given different discipline for reasons that the community may not know. Having the matrix can provide a bit of certainty.

CM Lawson asked if the PD keeps record of or tracks non-discipline, such as corrective actions and discipline actions. Deputy Chief Glidden explained there is a corrective action process for minor policy violations. If they have performance issues, they would be put on a performance plan and if they have behavior issues, they would be put on a behavior improvement plan. All of these are monitored and the officer would receive regular progress evaluations. Chief Wilson added that all of these are tracked in AIM and as the officers move assignments their supervisors can look at their past performances. CM Lawson asked if there is a corrective action grievance process and if continuous issues are referred to IAB for investigation. Chief Wilson explained that repeated mistakes or behavior could rise to the level of an IAB investigation. She added that there isn't an appeals process for corrective actions. The APD tried to start at the lowest threshold possible by the supervisors meeting with the employee to talk about and address the issues before handing out discipline. Deputy Chief Glidden added that the PD institutes progressive discipline starting with counseling/corrective actions, then written reprimands, if the issues continue, the discipline could be suspension or discipline up to and including termination.

CM Hiltz noted that the Committee will be requesting a presentation from the Civil Service Commission on hiring, firing, and the appeal process. She would like to know what the average length of time to go through the Civil Service Appeals Process is and why it takes so long. She noted that there is an argument to make that the length of time for appeals undermines public trust in the process and the department. Chief Wilson agreed that this question would be best addressed by the Civil Service Commission. She added that the hearings are much like a trial, where both sides can request extensions to prepare their cases. City Attorney Isabelle Evans confirmed both sides have the ability to request extensions. Typically, one or both sides makes an extension request from the initial setting because, per Charter, the initial setting is one day after the 15 to 30 days after the discipline is imposed. This is not usually enough time for case preparation and clearing calendars for all involved. Additionally, case hearings frequently take more than one day to be heard. Cases are set as they are received so a new case would be scheduled after all the others already in process. CM Hiltz asked for staff to expand on the Personnel Intervention System. Deputy Chief Glidden explained many incidents are automatically tracked through the CAD system to AIM and each incident is assigned points that are connected to the officers. Once they reach a threshold of points the system generates a report that is sent to the officers' supervisor. A conversation is mandated by policy with that officer and the supervisor. The supervisor is tasked with finding out what the issues is and if it can be addressed. CM Hiltz asked how often the early warning intervention is triggered. Looking at the last few years, she's curious if any of the terminated employees triggered that threshold or if the system isn't providing the intended results. Chief Wilson explained that staff could come back with those statistics and agreed that further review of the program could be done to make it more vibrant and make sure that there's more involvement and improvements to be made. CM Hiltz noted that there are challenges specifically related to alcohol and mental health and wants to make sure the point system is used to help people move in the right direction before it's too late. Chief Wilson agrees that this issue is extremely important and would like to include a presentation from Psychological Services at a future meeting.

Deputy Chief Glidden provided the Grievance Process to the committee. He explained it is defined in Article 14 of the CBA. This process is specifically related to complaints about violations of the CBA. The officers submit the complaint through the Collection Bargaining Unit to the Chief. There are timelines that must be adhered to. The officer can appeal a grievance decision to the City Manager or designee and arbitration after the City Manager responds. Grievances are not related to discipline. Examples of what a grievance complaint might be about are equal pay for equal jobs, overtime rule applications, assignments, or maintenance of standards.

CM Lawson asked which directive says that the Chief can refuse an IRB if requested by the officer. Deputy Chief Glidden responded that the IRB process is found under Directive 10.02.

Outcome

Information Only.

Follow-up Action

Staff will provide PEIS stats to the committee.

USE OF FORCE POLICY & TRAINING FOLLOW-UP

Summary of Issue and Discussion

The Committee submitted questions for staff's response and those were included in the backup for review prior to the meeting.

CM Hiltz asked about the tier zero use of force refence in the backup. She noted that it looks like guns are being drawn on more people than are being handcuffed. She would like to know why that is. Chief Wilson explained there are situations, such as felony stops, where officers are trained to have their guns drawn while giving orders. There are many reasons that an officer could draw their weapon. Former Chief Metz implemented the tracking of these cases some time ago. Handcuffing comes into effect where there is an actual arrest or when someone is combative and they need to be restrained while the call is being assessed. CM Hiltz noted that tracking is not done on use of force for medical, mental, or emotional incidents and she would like to know why not. There are few instances in the backup where data is missing or simply not collected. She would like to know if there is a technological limitation into why the data isn't being reported and collected. Chief Wilson clarified a tier zero is reported when an officer uncuffs someone and they contact a supervisor to let them know an arrest is not being made. This is to track that people aren't being handcuffed for no reason. Chief Wilson added that she believes any use of force, even on medical calls, is being documented. Division Chief Lee Condrey confirmed this is correct. They are documented just not separated for medical purposes. This can be done in the future if requested. CM Hiltz added that more frequent training on use of force policies, less-lethal deployment, ethics, and weaponless control techniques should be considered. CM Hiltz noted that the data on the 2019 Use of Force complaints is concerning and she has a hard time believing there were zero complaints of use of force or IAB investigations for that whole year. She asked if it's possible to go back and review the data for accuracy. Commander Marcus Dudley explained there are multiple policies that could pertain to lack of de-escalation. If each policy violation was reviewed, they might find something that pertains to IAB Investigations. But when looking specifically at the Police-Community Relations policy there were no investigations done in IA for 2019. CM Hiltz thanked him for the clarification.

CM Lawson referenced pages provided in the backup and use of force percentages by race. She would like someone to explain why use of force is used more on black people than any other race. She understands the use of force is per incident but noted it's still questionable that the percentages amongst black people are so high Chief Wilson confirmed the data was per incident. Even with some of the reforms and Senate Bills, this will help for incident reviews. The question is reasonable and improved tracking in general can be used to identify disparate treatment in the community. CM Lawson asked why the data is not currently tracked because what she is interested in is understanding the type of force used and how it is correlated to the race of the population. Looking at the data, she can see the concerns people are having, especially black people, due to the high numbers of use of force used upon them She doesn't understand why some data wasn't available for these reports because it should be in the officer's reports when written. She asked, is there any way to get additional data from Colorado Springs and Denver to see holistically of what use of force by race looks like in other jurisdictions. The numbers are very disturbing and there is a bigger picture that needs to

be looked at and examined. Chief Wilson confirmed major city comparisons in Colorado can be requested. She agrees that more review on this is needed. APD is looking at new programs to help filter the data and something to work towards. CM Lawson reiterated her concern about the percentages in the backup and noted there is much to work on. CM Hiltz asked staff to also include lawsuit payout from other agencies.

Outcome

Information Only.

Follow-up Action

Staff will provide use of force comparisons and payouts from other Colorado agencies to the Committee.

VETERANS COURT RESOLUTION

Summary of Issue and Discussion

Presiding Judge Shawn Day presented this resolution request to the Committee. He noted that discussions about the Veterans Treatment Court date back several years. After meeting with council members about this project it is now moving forward. The program is still in the very early stages of building out the program and there may be some thoughts and ideas from Council about using resolutions versus ordinance or vice versa, and he will defer to the City Attorney’s Office to answer those questions. This program will serve a very underserved population, the nation’s veterans. CM Hiltz noted that she has been working on this for over a year is excited to finally see this on the agenda and supports this moving forward as an alternative criminal justice program. Committee approves moving it forward to Study Session. Judge Day added that the implementation of the program include the Justice and Vets Organization on August 17, 18 and 19 and will rely on their expertise to build out the program and very excited to be accepted into their program.

Outcome

Approved to moved forward to the next Study Session.

Follow-up Action

None.

MISCELLANEOUS ITEMS FOR CONSIDERATION

None.

NEXT MEETING AGENDA ITEMS

The Committee will meet twice a month for July and August. The Committee does not have any conflicts for July 30, August 13, and August 27. Agenda items for July 30 will include Community Police Task Force Update, Lobbying Positions of Membership Organizations, Fitzsimons Campus Response, and Crime Stats from January through June 2020. August items include follow-up from items in this meeting, Fireworks, No-Knock Warrant Ordinance, a presentation of the Employee Support and Wellness Unit to include Psych services with Dr. Brower. CM Hiltz requested the Civil Service presentation related to recruiting and hiring process including questions asked and oral boards, and appeals process occur in late August or September. CM Gardner asked for DOJ findings related to CSC and would like that to be included in CSC presentation.

Meeting adjourned at 12:20pm

APPROVED: _____
Allison Hiltz, Chair



Public Safety, Courts and Civil Service Policy Committee Agenda Item Commentary

Item Title: Community Police Task Force Update
Item Initiator: Danelle Carrel
Staff Source: Deputy City Manager Jason Batchelor
Deputy City Manager Signature:
Outside Speaker:
Council Goal: 1.0: Assure a safe community for people--2012: 1.0--Assure a safe community for peopl

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

Update to the Committee on the Community Police Task Force

QUESTIONS FOR Committee

EXHIBITS ATTACHED:



Public Safety, Courts and Civil Service Policy Committee Agenda Item Commentary

Item Title: 2nd Quarter Crime Statistics
Item Initiator: Danelle Carrel
Staff Source: Division Chief Darin Parker
Deputy City Manager Signature:
Outside Speaker:
Council Goal: 1.0: Assure a safe community for people--2012: 1.0--Assure a safe community for peopl

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*
Presentation of the 2020 2nd Quarter Crime Statistics to the Committee.

QUESTIONS FOR Committee

EXHIBITS ATTACHED:
2020 2nd Qtr NIBRS Crime Data.pdf

The charts below illustrate the City of Aurora’s preliminary major index crime data for the current and prior year. Final crime statistics for the previous year are officially reported to the state and to the FBI in February of each year. So these crime statistics may differ slightly from current FBI reporting for the same years. This may be explained by new investigation results or new evidence that can change the case classification.

APD Citywide Mid-Year Crime Stats (1/1 - 6/30)	2019	2020	% Chg
Major Crimes			
Murder Victims	13	19	46.2%
Sex Assault Victims	170	125	26.5%
Aggravated Assault Victims	776	986	27.1%
Robbery	292	334	14.4%
Violent Crime Total	1,251	1,464	17.0%
Burglary	642	795	23.8%
Motor Vehicle Theft	1,164	1,407	20.9%
Larceny	3,423	3,667	7.1%
Property Crime Total	5,229	5,869	12.2%
7 Major Crime Totals	6,480	7,333	13.2%

District 1 approximate area is West of I-225 to Yosemite
and North of Hampden to 38th Ave

APD District 1 Mid-Year Crime Stats (1/1 - 6/30)	2019	2020	% Chg
Major Crimes			
Murder Victims (UCR Count)	5	14	180.0%
Sex Assault Victims (UCR Count)	75	55	26.7%
Agg Assault Victims (UCR Count)	404	487	20.5%
Robbery Incidents (UCR Count)	167	197	18.0%
Violent Crime Total	651	753	15.7%
Burglary (UCR Count)	246	378	53.7%
Motor Vehicle Theft (UCR Count)	507	634	25.0%
Larceny (UCR Count)	1,376	1,457	5.9%
Property Crime Total	2,129	2,469	16.0%
7 Major Crime Totals	2,780	3,222	15.9%

District 2 approximate area is East of I-225
and North of Jewell Avenue

APD District 2 Mid-Year Crime Stats (1/1 - 6/30)	2019	2020	% Chg
Major Crimes			
Murder Victims (UCR Count)	6	3	50.0%
Sex Assault Victims (UCR Count)	59	34	42.4%
Agg Assault Victims (UCR Count)	239	350	46.4%
Robbery Incidents (UCR Count)	70	86	22.9%
Violent Crime Total	374	473	26.5%
Burglary (UCR Count)	200	247	23.5%
Motor Vehicle Theft (UCR Count)	453	496	9.5%
Larceny (UCR Count)	1,118	1,212	8.4%
Property Crime Total	1,771	1,955	10.4%
7 Major Crime Totals	2,145	2,428	13.2%

District 3 approximate area is East of I-225
and South of East Jewell Ave

APD District 3 Mid-Year Crime Stats (1/1 - 6/30)	2019	2020	% Chg
Major Crimes			
Murder Victims (UCR Count)	2	2	0.0%
Sex Assault Victims (UCR Count)	34	34	0.0%
Agg Assault Victims (UCR Count)	130	148	13.8%
Robbery Incidents (UCR Count)	53	51	3.8%
Violent Crime Total	219	235	7.3%
Burglary (UCR Count)	190	166	12.6%
Motor Vehicle Theft (UCR Count)	200	273	36.5%
Larceny (UCR Count)	883	972	10.1%
Property Crime Total	1,273	1,411	10.8%
7 Major Crime Totals	1,492	1,646	10.3%



Public Safety, Courts and Civil Service Policy Committee Agenda Item Commentary

Item Title: Law Enforcement Organizations Policy Positions
Item Initiator: Danelle Carrel
Staff Source: Division Chief Lee Condreay
Deputy City Manager Signature:
Outside Speaker:
Council Goal: 1.0: Assure a safe community for people--2012: 1.0--Assure a safe community for peopl

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
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HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

This presentation is in response to Council's request for information on the positions of organizations the APD is associated with. The organizations include International Association of Chiefs of Police (IACP), Colorado Association of Chiefs of Police (CACP), Major City Chiefs Association (MCCA), and Police Executive Research Forum (PERF). This presentation will provide an overview on each organizations position on the following topics; Qualified Immunity, No-Knock Raids, Alternative for Incarceration, Mandatory Minimum Prison Sentences, Transfer of Military Equipment to Local Police Agencies, Civil Asset Forfeiture, Legalization of Marijuana and Other Drugs, Summons/Citations in Place of Arrest, Reform of Officer Disciplinary and Grievance Process, and Use of Technology such as Body-worn Cameras, facial recognition, etc.

QUESTIONS FOR Committee

EXHIBITS ATTACHED:

An Update From The CACP Lobbyist civil forfeiture.pdf
april-2-2015-do not support demilitarizing the DOR.pdf
Citation in Lieu of Arrest Literature Review.pdf
FINALLawEnforcementGroupLetteronDOJMarijuanaPolicy.pdf
IACP Statement on Qualified Immunity.pdf
IJIS_IACP WP_LEITTF_Facial Recognition UseCasesRpt_20190322.pdf
JointAFESletter_Leadership.pdf
Letter to AG Lynch.pdf

LetterofSupportforS2123.pdf
National_Consensus_Policy_On_Use_Of_Force.pdf
Police Lobbying Advocacy Organization positions table.docx
police-reform-policy-positions-bwc-truthfulness.pdf
PublicStatementonAssetForfeiture.pdf

	International Association of Chiefs of Police	Colorado Association of Chiefs of Police	Major City Chiefs of Police
Qualified Immunity (QI)	<p>Supports no reform Supports QI</p> <p>https://www.theiacp.org/sites/default/files/IACP%20Statement%20on%20Qualified%20Immunity.pdf</p>	Unable to determine a position	Support program/policy with no reform ¹
No-Knock Raids	Not able to locate	Unable to determine a position	Does not Support program/policy ²
Alternatives for Incarceration	<p>Support Citations over arrest when possible Support pre-trial diversion programs</p> <p>https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf</p> <p>https://www.theiacp.org/projects/iacp-safety-and-justice-challenge</p> <p>https://www.theiacp.org/projects/pretrial-justice-initiative</p>	Unable to determine a position	Support program/policy with no reform ³
Mandatory Minimum Prison Sentences	<p>https://www.policechiefmagazine.org/iacp-announces-support-for-sentencing-reform-and-corrections-act/?ref=758e949552f6daa17f7591d1804d8d89</p>	Unable to determine a position	Support program/policy with reforms ⁴
Transfer of Military Equipment to Local Police Agencies	<p>Appear to support this</p> <p>https://www.theiacp.org/resources/critical-issues-use-military-equipment</p>	Opposed “demilitarizing DOR ”-position paper	Support program/policy with reforms ⁵

<p>Civil Asset Forfeiture</p>	<p>Supports asset forfeiture</p> <p>https://www.theiacp.org/resources/document/asset-forfeiture-messaging-sheet</p>	<p>Support with reform CACP Lobbyist position</p>	<p>Support program/policy with no reform</p>
<p>Legalization of Marijuana and other drugs</p>	<p>Nothing found</p>	<p>Does not support MJ Position paper</p>	<p>Does not support program/policy</p>
<p>Summons/Citation in place of arrest</p>	<p>Same as above on incarceration – appear to support when possible</p> <p>https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf</p> <p>https://www.theiacp.org/projects/iacp-safety-and-justice-challenge</p> <p>https://www.theiacp.org/projects/pretrial-justice-initiative</p>	<p>Unable to determine a position</p>	<p>No Position</p>
<p>Reform of officer disciplinary and grievance process</p>	<p>Nothing found</p>	<p>Supports truthfulness Position paper</p>	<p>Support program/policy with reforms ⁶</p>
<p>Use of technology, such as BWC, facial recognition technology, etc</p>	<p>Supports BWC and properly used Facial Recognition</p> <p>https://www.theiacp.org/resources/policy-center-resource/body-worn-cameras</p> <p>https://www.theiacp.org/resources/document/law-enforcement-facial-recognition-use-case-catalog</p>	<p>Supports Body Cameras Position paper</p>	<p>Support program/policy with no reform ⁷</p>

No Position

Support program/policy with no reform

Support program/policy with reforms

Does not support program/policy

¹ MCCA does not support the complete elimination of qualified immunity. MCCA is actively examining thoughtful changes to the legal doctrine.

² MCCA supports a ban on the use of no-knock warrants for narcotics case. No-knock warrants should be restricted to situations such as hostage rescue and violent crimes.

³ MCCA supports alternatives to incarceration for certain non-violent offenses.

⁴ MCCA supports mandatory minimums to hold violent offenders accountable. Prior to any release, an offender must undergo an individual risk assessment that takes into consideration the entire criminal history, proclivity to re-offend and impact on public safety.

⁵ MCCA supports the 1033 Military Surplus Program with enhance accountability measures.

⁶ MCCA supports reform that examines misconduct investigations, executive-labor balance and the arbitration process.

⁷ MCCA supports the responsible use of technology that helps increase public safety while protecting the privacy, civil rights, and civil liberties of all Americans.

An Update From The CACP Lobbyist

March 16, 2017

The legislative committee is hard at work and is in the midst of perhaps some of the busiest moments of the session. A couple of areas we would like to highlight include the reintroduction of asset forfeiture legislation, mental health, and marijuana.

First of all, it should be noted that the first attempt at changing our states asset forfeiture system was defeated, with our opposition, in the Senate Judiciary Committee. Now, sponsors of the bill and Senate Judiciary Committee members have made it be known that new legislation will be introduced and that it will be sent to a committee which will push the legislation to the floor despite our objections. As a result of this ultimatum, we have been working with the DA's and other law enforcement to come up with a new proposal that might meet our needs.



April 1, 2015

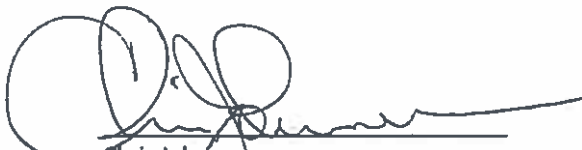
Reference: Senate Bill 15-231. Concerning the Limitation on the Use of Force by a Regulatory Agency, and in Connection Therewith, Enacting the "Regulatory Agency Demilitarization Act".


The Colorado Association of Chiefs of Police and the County Sheriffs of Colorado are strongly opposed to this bill. The bill would disarm the Department of Revenue Enforcement Division. To the best of our knowledge the (DOR) does not have a SWAT team, armored vehicles, riot gear, shotguns or rifles. We understand the intent is to "demilitarize" but we wonder what there is to demilitarize.

All of Colorado's local law enforcement agencies have excellent working relationships with the DOR Enforcement Division. Sheriff's Offices and Police Departments benefit greatly from the professionalism and expertise of the DOR officers who work with them on everything from illegal gaming to preventing the sale of spice and other synthetic cannabinoids. Their activities often include addressing criminal behavior.

If DOR officers are disarmed it would be unsafe to ask DOR officers to address criminal behavior without adequately preparing them to protect themselves. We are surprised that anyone would ask officers to do this. Additionally, if the DOR officers are not armed, the burden will fall on local police departments and sheriff's offices. We will not receive additional revenue for this additional work, our local agencies will have to ask for more help from Federal law enforcement agencies even when multi-state operations do not appear to be involved. Fully certified and experienced peace officers working for DOR may leave the employ of the State if SB 231 passes, resulting in needless costs to replace these positions. One thing that will not be able to be replaced is the experience and training that those officers who choose to leave may take with them. This bill may also strip other peace officers of the ability to carry firearms in the performance of their duties. The County Sheriffs of Colorado are proud to join with the Colorado Association of Chiefs of Police and the District Attorney's Council in asking you to vote no on S.B. 15-231.

Respectfully,


Chris Johnson
Executive Director County Sheriffs of Colorado


Chief John Jackson
President of Colorado Association of Chiefs of Police

Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States

Literature Review
2016



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1. EXECUTIVE SUMMARY & INTRODUCTION

Introduction

The criminal justice system in the United States is plagued with high incarceration rates, recidivism, increasing demands, and shrinking budgets. Over the last 50 years, federal, state, and municipal officials have continued to search for ways to ameliorate these issues in the complex system on which citizens rely to serve justice. Criminal justice reform, and pretrial reform in particular, continues to hold a priority position on the agenda of policy makers and stakeholders across the United States.

Many believe that as a practical solution to some of these issues, the use of citation in lieu of full custody arrest, particularly for non-violent misdemeanors, can improve criminal justice efficiency, cutting costs and leaving officers with more time for more pressing duties. Potential reduction in jail population also serves as incentive for use of citation. Additionally, in this time of increased community scrutiny of law enforcement practices, use of citation can show law enforcement's commitment to the preservation of individual rights, and interest in the well-being of the community. Existing literature on each of these advantages is explored in more depth in Chapter 3 of this report.

Citation in lieu of arrest is known by a number of terms in jurisdictions around the United States: citation in lieu of arrest, summons in lieu of arrest, violation citation, cite and release, citation release, field release, field citation, desk appearance tickets (DAT), and likely a number of others. The National Conference of State Legislatures (NCSL) provides this definition: "a citation is a written order, in lieu of a warrantless arrest, that is issued by a law enforcement officer or other authorized official, requiring a person to appear in a designated court or governmental office at a specified time and date."¹ Citations are a formal method of "on-the-spot justice" for police officers with formal legal consequences, giving officers the ability to choose a course of action between the extremes of doing nothing or making an arrest.² "Citations establish the recipient as a suspect in a criminal matter, and like a full custody arrest it involves charging someone with a crime."³ If found guilty, the defendant may be subjected to a fine and/or incarceration.⁴ A citation is considered a form of arrest.⁵

However, although citation in lieu of arrest has been in use for decades, what is not understood is how the nation's 18,000 law enforcement agencies use citation. Questions regarding how citation policy is implemented across the country; how often and in what circumstances it is used; and whether jurisdictions that use citation see the benefits, or challenges, discussed in the literature are just a few of the inquiries yet to be answered. Some research points to the fact that challenges and inconsistencies may have inhibited use of citation in some departments, stifling potential benefits of the policy.⁶ However, existing literature simply does not provide the broad, contemporary data and analysis necessary to paint a clear picture of citation use across the country, nor does it deliver the information necessary for law enforcement executives to make evidence-based decisions about citation use.

The International Association of Chiefs of Police (IACP), with support from the Laura and John Arnold Foundation (LJAF) researched law enforcement's perceptions, concerns, and opinions on the use of citation in lieu of arrest,

through *Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States Project*, in an effort to answer some of these questions. In addition to this literature review, the project conducted a national survey and statistical impact assessment on the use of citation in lieu of arrest, and held focus groups on the subject.⁷ This work compliments IACP's ongoing Pretrial Justice Reform Initiative.⁸ As a starting point for the *Citation* initiative, this literature review is intended to provide a snapshot of literature on the subject of citation in lieu of arrest as it stands today.

What the Literature Tells Us

Overall, the literature confirms that there is still a lot to learn about the use of citation in lieu of arrest. It provides, for the most part, prescriptive guidance and analysis on the need to implement citation policy; short-term impact analysis in specific jurisdictions (or police departments); and some national comparison that dates back 40 or more years. It provides a general historical context for the use of citation, and the current legal framework for citation use. Finally, the existing gaping holes in the literature also provide a roadmap for future research into understanding citation use by police agencies across the country.

Citation Utilization

Existing literature does provide a few key points regarding citation utilization rates.

- **Recent nationwide data does not exist in the literature** (with the exception of the national survey conducted by IACP on citation in lieu of arrest practices in police departments around the country).⁹
- **National data that does exist shows that many law enforcement agencies do use citation in lieu of arrest, but that data is 40 years old.** In a survey conducted by Floyd Feeney in 1975, 75% of responding police departments reported using citations for some non-traffic offenses – 81% for cities with populations over 100,000, and 62% for cities with a population under 100,000.¹⁰ A 1981 study estimated that as many as 800 cities (31 of them over 100,000) were not using citation release at all.¹¹ Until recently, Feeney's study was the most current data on national citation utilization rates available.
- **Existing localized (within specific jurisdictions or police departments) data does give some insight into citation utilization.** For example, after New Orleans, Louisiana, Municipal Code 1956, section 54-28 was changed to encourage the use of citation in lieu of arrest, analysis of New Orleans Police Department data by the Vera Institute of Justice (2011) showed that citations (summons) were issued in 68.2% of municipal cases not including domestic violence or public intoxication, up from 41% in 2009.¹²
- **However, localized data is not necessarily comparable.** While reviews of jurisdiction-specific data show that citation utilization rates increased after implementation of citation policy in a certain municipality or county, comparisons across jurisdictions are difficult because each reports data in a different way. According to Whitcomb and her colleagues,

“[V]ariations in citation utilization rates, both overall and for specific charges, and differences in the types of charges most frequently cited, are a function of several factors. These include

legislative provisions and policy guidelines pertaining to eligibility criteria; the level of screening and verification involved in the release decision-making process; the level of top management support for citation release; and the particular demographic and socio-economic characteristics of the defendant population.”¹³

Legal Framework

The most current and relevant literature on citation in lieu of arrest exists on the subject of the legal context in which it is used. State laws and statutes provide the primary legal framework for police use of citation, with some guidance from local ordinances, department policy and professional standards. A study completed by the National Conference of State Legislatures (NCSL), with support from the LIAF found that broad discretion is given, through state legislation, to law enforcement agencies to utilize citations.¹⁴ The NCSL study found that state laws most often apply citation in lieu of arrest to misdemeanor crimes, and that they are most commonly associated with traffic violations, local ordinances or infractions.¹⁵ In addition, seven states do not specify crimes for which an officer has discretion to issue a citation; two states (Louisiana and Oregon) permit them for some felonies; and laws in 10 states create a presumption that citations be issued for certain crimes and under certain circumstances. More details on the legal landscape for the use of citations can be found in Chapter 2 of this report.

Benefits and Challenges to Citation Use

The literature also provides definitions of the potential benefits (mentioned above) and challenges inherent in the use of citation in lieu of arrest policy. Increased failure to appear (FTA) rates (or the perception of such) is one of the most cited reasons that law enforcement agencies don't use citation more frequently. In addition, process challenges such as those inherent in implementation of citation policy; the impact of interagency collaboration; officer perception; and decreased community perception of justice are all deemed to be stumbling blocks for increased use of citation in lieu of arrest. Also, some explain that procedural challenges, such as the safety of officers when writing citations; and the lack of collection of complete and accurate criminal history data can serve as inhibitors to realizing expansive use of citation policy. Discussion of these concerns, while not necessarily supported with data, is pervasive throughout existing literature. They are more thoroughly explored in Chapter 4 of this report.

Another important challenge introduced in existing literature is the impact of officer discretion on the use of citation throughout the country. In today's environment of increased scrutiny of each and every police decision, the impact of officer discretion to utilize citation in lieu of arrest or not, holds deep interest. While the law enforcement community refocuses on procedural justice and community engagement, the question of how officers use discretion and judgment to solve community problems is key. Existing research on police officer discretion, although expansive, does not clearly define the impact of it on the use of citation in lieu of arrest. Rather, it

introduces yet another concept to be more fully defined and researched. Literature on this is also explored in more detail in Chapter 4 of this report.

Early Literature

Early literature provides a general historic view of the subject, and lays the groundwork for implementation. In 1978, Walter Busher released *Citation Release: An Alternative to Pretrial Detention, Concepts and Guidelines* under a grant from the Law Enforcement Assistance Agency (LEAA), U.S. Department of Justice (USDJ), giving the first overview of the new protocol of issuing a citation in lieu of arrest for non-traffic violations. In 1982, Floyd Feeney released *The Police and Pretrial Release*, an even more comprehensive look at ways in which police use citations. Whitcomb, Levin, and Levine were then commissioned by the National Institute of Justice (NIJ), USDJ to study citation release. Published in 1984, their report, *Citation Release*, reviewed use of citations to date and provided a contemporary overview and guidance on implementation. Other investigators during this time focused on use of citation in lieu of arrest (or components thereof) in specific state or local jurisdictions, giving a more detailed look into how specific jurisdictions implement and utilize citation policy. This body of literature, the most comprehensive and extensive on the subject of citation, lays a foundation from which to build continued analysis, but provides little relevant data to facilitate understanding of citation use today.

Limitations in the Literature

As mentioned previously, there are sizeable gaps in the contemporary citation in lieu of arrest literature. While jurisdiction-specific studies continue to be conducted today, recent, comparable, long-term implementation and impact data that provides a national picture of how citation is used today is markedly absent.¹⁶ Very few studies describe citation use in light of “new and innovative policing strategies, advances in technology, shifting public concerns, shifts in offending behaviors, and the historical impact of prevailing policies.”¹⁷ Identifying the number of law enforcement agencies using citation, to what extent and in what context, results (impact) and challenges will make sizeable strides in setting the benchmark for determining whether continued institutionalization of the policy is merited.

The need for more evidence on the use of citation in lieu of arrest is complicated by difficulty in obtaining accurate, comparable data. Even as early as 1984, researchers noted the difficulty in obtaining and comparing citation data for both process and impact evaluation. “Unfortunately, data on citation utilization rates are sparse and, when available, are often not comparable since definitions of utilization rates vary.”¹⁸ This seems to be true for almost every comparison relevant to evaluating use of the policy. In measuring FTA rates in Gwinnett County, Georgia, in 2005, for example, Davis found that operational differences made it difficult to accurately evaluate and compare data.¹⁹ Further, existing literature doesn’t isolate and examine issues associated with citation alone, but rather conflates them with other related topics, including FTA. Though there is an inextricable link between citation and its effects, isolation of specific issues would provide a better basis of comparison and analysis.

Collecting data from disparate criminal justice sources has also been noted as a process that inhibits better analysis of citation in lieu of arrest policy. Whitcomb and her colleagues identified and provided a breakdown of common impact goals of citation release data needed to study the impact and sources of data—all of which must be obtained from a diverse set of sources, including law enforcement, courts, and other criminal justice players.²⁰ A long-term, comprehensive, and interwoven look at use of citation in lieu of arrest, including how the policy affects each step in the justice process, could inform impact on the entire system, but will require a highly coordinated effort to achieve.

Questions regarding use of citation in lieu of arrest are ones that can be answered only by “data—and not mere implicit theory, plausible hypothesis, or hunch.”²¹ If law enforcement agencies are to make evidence-based decisions regarding use of citation, they will need reliable and current analysis of its impact. Existing research and resulting literature simply does not provide a sound evidence base. More well-planned and executed research is necessary to make quality policy decisions. A renewed, large-scale, national research effort into citation policy and use is critical to inform modern evidence-based implementation of the practice.

2. LAW, POLICY, AND STANDARDS

The most recent and relevant literature on citation in lieu of arrest exists in the laws, policy, and standards that govern its use. According to existing literature, the legality of citation in lieu of custodial arrest is regulated by a layering of constitutional law, statute, and municipal legislation. Police departments use departmental administrative rules to provide further policy and procedural guidance on when and how to issue citations. Relevant professional organizations also weigh in on the matter through recommended standards of use. This chapter will review the research in each of these areas in more depth.

Constitutional Law

Although volumes of court opinion exist on the constitutionality of arrest and search and seizure, there has been little litigation testing the validity of custodial arrest or citation release. Two U.S. Supreme Court cases touch on the constitutionality of the practice. First, in the case of *Knowles v. Iowa (1998)*, an officer stopped Knowles for speeding and issued a citation. The officer then conducted a full search of the vehicle and found marijuana and paraphernalia. He arrested Knowles for controlled substance violations. Presented with the question of the search’s constitutionality, the Court held that individuals must be fully arrested to conduct a search incident to arrest; issuance of a citation, without probable cause for a search or a search warrant, is not sufficient grounds for a search.²²

In a second case, *Atwater v. City of Lago Vista (2001)*, the Court ruled against Atwater who claimed her Fourth Amendment rights were violated by her custodial arrest for a simple traffic violation of not wearing her seat belt.²³ The Court upheld the officer’s right to use his discretion to cite or make a custodial arrest even in situations where

a citable offense has occurred, provided that he has valid probable cause that a misdemeanor offense in violation of state law had occurred.²⁴

Some literature predicts the potential for equal protection concerns. Under the Fourteenth Amendment, all persons are entitled to equal protection of the law.²⁵ Some literature provides equal protection questions that may arise with respect to use of citation.²⁶

Legislation Across the United States²⁷

Statutory law, although varying considerably from state to state, provides the most formidable guidance in the use of citation in lieu of arrest. In a separate, complementary effort funded by the LJAF, the NCSL compiled data on citation legislation in each state. According to the study, “state statutes guide the circumstances under which a citation can be issued, often determined by the class of the alleged crime and providing exceptions for certain crimes.”²⁸

Types of Citations

Early research by Whitcomb and her colleagues (1984) identified three types of citation release used in law enforcement agencies around the United States – field release; station house release; and post-detention (or jail) release.²⁹ According to a 1980 article reviewing Nebraska’s citation in lieu of arrest law, “it is apparent from the statutes that citations can be used not only as a substitute for an arrest, but also after an actual arrest as a substitute for the bail procedure.”³⁰ More recently, NCSL’s research found that nineteen states allow citations to be issued after arrest; nine states authorize citations to be issued prior to arrest; and ten states allow both.³¹

Offenses Addressed by Citation

Offenses addressed by citation are broadly defined by statute, and therefore differ from state to state. Most recently, the NCSL study published in 2013 found that state laws most often apply citation in lieu of arrest to misdemeanor crimes, and are most commonly associated with traffic violations, and local ordinances or infractions.³² However, according to the research, seven states do not provide specific guidance on crimes for which an officer has discretion to issue a citation leaving local ordinance or department policy to set standards³³; and laws in ten states create a presumption that citations are issued for certain crimes and under certain circumstances. It also identified two states – Louisiana and Oregon – that permit citations for some felonies.³⁴

While there are still places in the country where custodial arrest for some traffic violations (such as driving without a license) is permissible, some statutory law now requires law enforcement to issue citation in lieu of arrest for all traffic infractions.³⁵ State law authorizes police to issue field citations for a variety of criminal misdemeanors (specified by statute), and city ordinance or code governs the municipal infractions that can be addressed by citation (and further refines the use of citations for misdemeanors).³⁶ In most cases, however,

officers are not *required* to issue a citation in lieu of arrest, but are authorized to do so if the arrestee is eligible and suitable to be released. Because of this, significant variation in the application and use of citation exists across the country.

Early literature also provided insight into specific offenses addressed by citation. Whitcomb's 1982 study (the most recent comprehensive research on the subject) found that field citations were used most for shoplifting or petty larceny. Other offenses for which citations were frequently used included trespassing, harassment, certain assault incidents, property offenses, and possession of small amounts of marijuana.³⁷ Ordinance violations such as animal violations, open container laws, and housing or health code violations were also frequently cited,³⁸ though states and municipal jurisdictions reported any combination of citable offenses. Felony arrestees were almost universally ineligible for field release; even where the statute authorized the release of certain felony suspects, the study reported that the practice was seldom used.³⁹ Further research on the specific crimes most often cited in lieu of custodial arrest across the country is not available.

Municipal Ordinances & Police Department Policy

Municipal ordinances, in conjunction with police department policies, departmental orders, standard operating procedures, and general orders "go a step beyond the statutes by offering guidance and instruction on how to carry out the law's requirements."⁴⁰ According to one author, "perhaps the most explicit guidance provided in the general orders is in the acceptable reasons for denying release on citation."⁴¹ In states like Florida and Texas, for example, legislation authorizes officers to cite individuals for misdemeanors, but there are many local jurisdictions within those states that continue to choose to make full custodial arrests in some cases.⁴² Studies show that legal statutes and organizational policy, more than individual discretion, guide police decisions.⁴³

Professional Standards

A number of professional organizations weigh in on the use of citation in lieu of arrest by developing recommended standards. For example, the American Bar Association's (ABA) *Criminal Justice Standards, Pretrial Release* provides guidance favoring the use of citation in lieu of arrest in many circumstances.⁴⁴ Further, the National District Attorneys Association's (NDAA) *National Prosecution Standards* provide guidance on provisions for pretrial release conditions stating that pretrial release procedures, "recognize a respect for the presumption of innocence and, therefore, state a clear preference for release of defendants pending trial."

The standards also recognize the circumstances that make utilizing pretrial release risky.⁴⁵ The National Association of Pretrial Services Agencies (NAPSA) *Standards on Pretrial Release, Standard 1.2: Presumption of release under least restrictive conditions and other alternative release options* states, "in deciding pretrial release, a presumption in favor of pretrial release on a simple promise to appear (i.e., release on "personal recognizance") should apply to all persons arrested and charged with a crime."⁴⁶ Most recently, the 2011 National Symposium on

Pretrial Justice listed the use of citation releases as one of a number of steps toward pretrial justice reform, recommending, “using citation releases by law enforcement in lieu of custodial arrests for non-violent offenses when the individual’s identity is confirmed and no reasonable use exists to suggest the individual may be a risk to the community or to miss court appointments.”⁴⁷

Citation Eligibility

Statutes, municipal ordinances, and police department administrative policies define the criteria for defendants eligible to receive citations, as do professional organization standards. Organizations such as ABA, NDAA, NAPSA have weighed in on citation eligibility - recommending citation rather than custodial arrest whenever statute and municipal policy allow.⁴⁸

Most recently, the NCSL study defines circumstances under which many statutes require custodial arrest. According to this study, “[g]enerally, a custodial arrest must be made if one or more of these factors are present:

- There is reason to believe the person will not appear for court.
- There is reason to believe a person poses a danger to others, himself or herself, to property, the community, or that the person will not cease committing the alleged crime.
- There are outstanding warrants for the person.
- Detention upon arrest is deemed necessary to carry out legitimate investigation.
- If arrestee requires physical or mental health care, or is under the influence of drugs or alcohol.”⁴⁹

NCSL also found “common circumstances under which state laws generally prohibit a citation being issued:

- The arrestee refuses to sign a written promise to appear;
- The arrestee requests to be taken before a judge;
- Identification of the arrestee is unable to be verified; or
- The person is unwilling to provide fingerprints.”⁵⁰

Early literature on citation release by Busher (1978) spells out the difference between “eligibility” and “suitability” for citation in lieu of arrest.⁵¹ He described eligibility as those objective criteria spelled out in enabling citation legislation, court rules, and administrative operational orders. Suitability refers to subjective criteria that require officers to make determinations about arrestees, such as whether or not they will return to appear in court.⁵² These distinctions speak to the impact of police officer discretion in the use of citation in lieu of arrest.⁵³

Early literature also outlines the progression of legislation and policy from encouraging citation in lieu of arrest, often through legislation, to discouraging full custodial arrest in some instances. For example, the state of California adopted statutes authorizing the use of citation in lieu of arrest in 1957 and 1959.⁵⁴ In 1969, the state adopted a law that not only continued authorization of the practice, but strongly encouraged its use by requiring

the immediate investigation into misdemeanants' backgrounds as a way to secure pretrial release as soon as feasible.⁵⁵ In an effort to even further encourage the practice, jurisdictions like Oakland, California, require officers choosing arrest over citation to report the reasons for their refusal to cite.⁵⁶

3. POTENTIAL ADVANTAGES OF THE USE OF CITATIONS

Today, citation in lieu of arrest is a common practice used to address non-violent misdemeanors by many law enforcement agencies. However, at the time when the majority of foundational literature on the subject was produced (1970s and 1980s), many agencies were not using the practice, and proponents, it appears, utilized literature to advocate for increased use of the practice as a component of pretrial justice reform. For this reason, early citation literature is primarily prescriptive in nature, clearly outlining the use of citations to achieve potential advantages.

As part of that early work, in 1982 Floyd Feeney summed up the rationale for the use of the citation procedure in misdemeanor cases as, cost and time benefits for criminal justice agencies; harm to defendants' rights caused by pretrial detention (as opposed to citation use); and the conclusion that some people can be released safely.⁵⁷ This chapter outlines potential advantages, and supporting research where available, as described in the literature, to using citation in lieu of arrest.

Frees Officers to Return to Patrol

Many proponents of citation use point to its efficiency; writing a citation and sending the defendant on his or her way takes much less time than arresting, transporting, and booking. Therefore, officers are free to quickly return to their beat, respond to additional calls, and focus on other, more serious crime.⁵⁸

The literature on this benefit, however, is mixed. Some studies have shown considerable time savings, while others do not substantiate that the practice makes a significant impact on officers' more expedient return to patrol. In 1971-72 study of the Evanston, Illinois, Police Department citation program, investigators estimated that executing a citation in lieu of arrest involved approximately 15 minutes of an officer's time, while an arrest required a minimum of two hours, saving Evanston officers up to an hour and 45 minutes per incident.⁵⁹ In a more recent (2005) study in Gwinnet County, Georgia, researchers found that a patrol officer could issue a field citation and return to service in an average of 35 minutes, while an officer making a custodial arrest and obtaining an arrest warrant was out of service for 107 minutes (127 minutes if he or she needed to go all the way to the courthouse to obtain it).⁶⁰

On the other hand, Berger's 1970-71 investigation of the use of citation release by the New Haven, Connecticut, Police Department found that officer time savings is difficult to quantify and will vary from jurisdiction to jurisdiction due to arrest procedure and other variables. For example, while up to two hours of field patrol time

could be saved in a case, this significant savings occurred in only 10% of cases. Because of variation in arrest procedures, most cases saved considerably less time. While citation eliminated the time-consuming process of transporting a prisoner and filing paperwork at the jail, an officer making a custodial arrest could instead call for transport and file his or her report by phone in many cases. This eliminated the time necessary to follow the arrestee to the courthouse, thus closing the gap between the time a custodial arrest took and the time issuing a citation took, and reducing the time saved by using citation.⁶¹ Berger concluded that, "Based upon specific New Haven operating procedure, it thus appears that the citation program offered no real economies in field activities, but saved generally the equivalent of .59 man years for the department during the course of the project period."⁶²

Some practitioners support this, albeit without the support of rigorous scientific study. In a 2013 newspaper article, an Assistant Chief said that he believes writing citations saves only about 30 to 45 minutes during a 10 to 12 hour shift.⁶³

Efficiency and Cost Savings

Although studies on citation programs have consistently shown some cost savings and improvement in local criminal justice efficiency, the literature gives mixed reviews on the extent of the impact. As one author put it, "[t]he amount of savings a department might expect to accrue from the institution of a citation release program depends largely on arrest procedures already in place and the kind of citation program implemented."⁶⁴

Issuing a citation in lieu of arrest can eliminate time-consuming and costly involvement in the criminal justice system, claims some literature. For example, citation releases reduce the amount of time spent booking and releasing persons ultimately approved for pretrial release.⁶⁵ The procedure also reduces the number of low risk individuals requiring screening for pretrial services.⁶⁶ Finally, citation in lieu of arrest eliminates the need for court involvement prior to release, unlike release on recognizance, which requires the court to approve the release recommendation.⁶⁷

According to one early report, during the second full year of the Manhattan Summons Project (1969), the department released 22,685 persons saving \$1,587,950 ("the equivalent of saving the cost of more than 28,000 eight hour tours of duty").⁶⁸ In a 1995 study of FTA rates in Charlotte, North Carolina, Hirschel estimated a cost savings of \$100.96 (from \$120.96 for an arrest to \$20 to issue a citation) per citation in lieu of arrest.⁶⁹ Hirschel based the value on the cost of staff time for an arrest vs. a citation.⁷⁰ In 2011, an advocacy group, Florida TaxWatch, encouraged implementation of civil citation programs throughout the state based on an expected cost savings of between \$44 million and \$139 million annually for Florida taxpayers.⁷¹

Still, many questions regarding citation use affect on the efficiency of the criminal justice system remain. Additional studies with sophisticated cost/benefit analyses could benefit the field.

Reduction in Jail Population

Existing literature supports that utilizing citation in lieu of arrest is one strategy that may reduce the size of the pretrial jail population, and alleviate overcrowded jail.⁷² This is based, at least in part, on the assumption that pretrial detention of non-violent, misdemeanor offenders drives jail overcrowding. In a study in Mecklenburg County in 2005, the University of North Carolina at Charlotte found that 27% of the pretrial population was charged with misdemeanors only.⁷³ Nationally, a staggering 60% of inmates in jails today are awaiting trial.⁷⁴

While some studies did show that citation utilization rates increased during implementation of citation policy, which in turn reduced jail 'bed days,' the actual impact on jail populations did not appear to be studied in depth.⁷⁵ For example, one study on the use of summons in lieu of arrest in an undisclosed jurisdiction shows that cases originating during the study period (8 months at the end of 2002, immediately following implementation of summons policy), were more likely to be booked and released on the same day than those in the comparison period (the same 8 months during the previous year, prior to implementation of summons policy), reducing bed stays, from 49,796 prior to implementation of the policy to 40,168 after implementation of the policy.⁷⁶

According to one author, "the degree to which local jurisdictions choose to utilize these nonfinancial pretrial release alternatives will help determine whether jail overcrowding improves or worsens in the 1990s."⁷⁷ More thorough research on citation policy impact on jail populations is necessary to fully understand the impact.

Protection of Individual Rights of the Accused

Much of the literature reviewed cites protection of individual rights of the accused in cases of minor crimes as another benefit of using citation as an arrest alternative.⁷⁸ Literature suggests this as a benefit for a number of reasons:

1. Unnecessary arrest can cause undue hardship on the arrestee, forcing loss of work, damage to his or her reputation, and financial burdens.⁷⁹ One author writes, "to an individual under arrest, it generally means at least a temporary loss of freedom, a damaged reputation, and an arrest record which may not be expugnable even if the arrest was illegal."⁸⁰
2. Use of citation in lieu of arrest can keep first time offenders from becoming involved in the criminal justice system in the first place.⁸¹ Research suggests that diversion from the criminal justice process tends to reduce reoffending, particularly in the case of young and first-time offenders.⁸²
3. Cited offenders do not incur arrest records in some jurisdictions.
4. Cited individuals are free to prepare for their day in court because they are not incarcerated prior to trial.⁸³ Some studies have shown a correlation between pretrial detention and conviction rates, suggesting that those who are not free to prepare for trial may be at a disadvantage in court.⁸⁴

5. Use of citations in lieu of arrest avoids pre-trial release based solely on financial ability, which is often considered discriminatory.⁸⁵
6. Some law enforcement agencies have suggested that the availability of citation release for minor offenders has reduced the number of complaints about police “brutality and maltreatment in detention.”⁸⁶
7. Employment of citation in lieu of arrest procedures can reduce community disruption and ill will generated by hardship for minor offenses, according some literature.⁸⁷ One report states, “research suggests that the unnecessary removal of individuals from their communities has serious effects on the stability of families and neighborhoods, and may actually contribute to problems of crime and disorder.”⁸⁸

While literature claims that use of citation policy can help protect the individual rights of the accused and the communities in which they reside, the field would benefit from more rigorous studies on the subject, including the tradeoffs between benefits and risks to the community.

4. CONSIDERATIONS AND CHALLENGES FOR LAW ENFORCEMENT

Existing literature also identifies potential challenges and considerations for implementation of citation policy. This chapter reviews those issues.

Increases in Failure to Appear Rates

The most commonly cited risk of using citation in lieu of arrest is the increased probability of FTAs in court. For example, in response to a Texas law that allows officers to issue a citation in lieu of arrest on minor offenses, one County Sheriff expressed the concern that, “[i]f you write a thief a ticket, he’s not going to show up and you’re going to end up having to pick him up on a warrant and you’ll be right back where you started.”⁸⁹ Much of the research and news articles about citations touch on the actual or perceived threat of increased FTA in citation populations. There is some existing data and research on the issue of FTA rates for citations, but the field would benefit a great deal from more research on this topic, including how to weigh the costs of FTAs against the potential benefits of citations, and to what extent those tradeoffs may exist.

Although some studies exist on FTA rates for citations in specific jurisdictions, many of them suffer from significant limitations. First, it is hard to make comparisons across jurisdictions because studies use multiple operational definitions of FTA, and different units of analysis.⁹⁰ In addition, very few studies have isolated FTA rates on citations versus those of the entire defendant population.⁹¹ This is a significant shortcoming because without isolating FTA rates for citation recipients, it is impossible to determine if changes in FTA rates are directly related to citation policy, or another causal variable affecting the entire defendant population. Finally, the ways in which FTA data is collected and stored by criminal justice agencies varies from jurisdiction to jurisdiction, making accurate comparisons difficult.

A number of studies have attempted to investigate whether increased use of citation actually does increase the rate at which individuals fail to appear for court, or if this is simply a pervasive perception.

- In 1961 during the Manhattan Bail Project, researchers found that pretrial release based on verifiable information about a defendant’s stability and community ties (rather than financial criteria) could ensure that a defendant would return for court appearance.⁹²
- In 1969, researchers surveyed a number of California communities using early implementation of citation in lieu of arrest to determine impact on FTA rates. Although a relatively small sample was used, researchers found that FTA rates for jail citations ranged from 0% to 13%.⁹³
- In his 1972 article on the New Haven, Connecticut, Police Department’s implementation of citation in lieu of arrest, Berger found that 79.5% of all persons issued citations during the study period appeared in court as promised, leaving an FTA rate of 20.5%.⁹⁴
- In a 1995 study of Charlotte, North Carolina, FTA rates, Hirschel found that 23.2% of those issued citations failed to appear at their first scheduled court appearance versus 3.9% who had been arrested.⁹⁵ These numbers increased to 37.1% and 13.8% when researchers account for the number of court appearances missed.⁹⁶ The chart below shows this in detail.

TABLE 2
COMPARATIVE FAILURE TO APPEAR RATES FOR CITATION AND ARREST CASES

	Defendant Failed to Appear at First Scheduled Court Appearance ^a		Total Number of Times Defendant Failed to Appear for Scheduled Court Appearances ^b		
	Yes	No	0	1	2
Citation	39 (23.2%)	129 (76.8%)	105 (62.9%)	59 (35.3%)	3 (1.8%)
Arrest	9 (3.9%)	223 (96.1%)	200 (86.2%)	30 (12.9%)	2 (0.9%)

^a $\chi^2 = 34.50; p > 0.01; \text{Phi} = 0.29.$
^b $\chi^2 = 29.43; p > 0.01; \text{Cramers } V = 0.27.$

Table 1: From Hirschel & Dean. "The Relative Cost Effectiveness of Citation and Arrest"

Additionally, news reports in Austin, Texas claim that after a 2007 change in Texas state law allowing expanded use of citation for certain misdemeanors, an FTA rate as high as 40% was reported for these cases.⁹⁷

In order to address concerns about public safety, justice and cost associated with FTA rates, some jurisdictions have implemented strategies to attempt to reduce FTA for citations. For example, some agencies have seen success in the use of some form of court date notification or reminder system, such as postcards or live call reminders, to decrease FTA rates.⁹⁸ Others recommend a reduction in the time between arrest and court appearance. In New York City, the time between arrest and arraignment was one of the strongest predictors of FTA among 2011 DAT arrests.⁹⁹ In Gwinnet County, Georgia, if a defendant fails to appear for their first court date, the county generates a second court date at which time a notice is sent reminding him or her that he or she missed the scheduled court

date, informing him or her of the new date, and encouraging him or her attend the “second chance” to avoid issuance of a bench warrant.¹⁰⁰

Implementation

Some literature contends that implementation challenges in citation in lieu of arrest can contribute to underutilization of the policy in some jurisdictions. In their comprehensive work on citation release, Whitcomb and her colleagues (1984) cite faulty program planning and implementation as one reason. Her work offers steps for proper planning and implementation, including needs assessment, statutory review, prioritization of objectives, formulation of policy, design of citation form, and refinement of procedures.¹⁰¹ Other authors followed suit in offering additional prescriptive program implementation steps and guides.¹⁰² These same authors encourage detailed data collection and continual program evaluation as a means for improving citation processes.¹⁰³

It is difficult, however, to determine from the literature how many agencies proactively implemented citation in lieu of arrest policy as a formal program, or simply adapted to policy change as a response to address a budget, jail crowding, or other issue. Very few studies discuss the actual process of implementation of citation policy in a jurisdiction, other than those providing guidance on how it “should” be done. In his study of changes in arrest policy due to court imposed reductions in jail population, Welsh raises the question of how the lack of well-researched, well-choreographed, and well-accepted changes impact the sustainability of a pretrial release policy.¹⁰⁴ He warns against making reflexive changes to criminal justice environments without the benefit of a calculated approach. He believes that sustained change comes with evidence-based methodology.¹⁰⁵ The question of how citation policy is actually planned, implemented, and integrated into law enforcement agencies has yet to be answered in relevant and contemporary literature.

Interagency Collaboration

The interconnectivity of autonomous criminal justice agencies, the literature suggests, creates hurdles to implementing new or expanded citation policy. According to Whitcomb, “local government is not structured to nurture development and use of citation release procedures.”¹⁰⁶ She goes on to say “effective planning and operation of citation release programs require integrated action among a broad and disparate array of departments, agencies, and officials.”¹⁰⁷ Welsh adds that an agency’s release decisions tend to serve the interest of their own organization as opposed to common goals.¹⁰⁸ Unintended consequences to other agencies may occur once citation procedures get under way, causing each agency to adapt as they deem appropriate.

As part of a comprehensive review to reduce jail overcrowding in Los Angeles County in 2011, the Vera Institute of Justice recommended that, as a first step, stakeholders reach a consensus “on the most critical uses of the jail and find alternatives for the others.”¹⁰⁹ In New Orleans, a recent decision by the New Orleans City Council to change

four minor offenses into city ordinance violations in an effort to reduce custodial arrests in those cases is backed by all segments of the criminal justice system, including judges, prosecutors, and law enforcement.¹¹⁰

However, citation in lieu of arrest policy can also be met with resistance from criminal justice counterparts, positioning the practice in the center of a justice tug-o-war. In response to Texas legislation permitting citation for five misdemeanors (marijuana possession, theft by check or services, criminal mischief, graffiti, and driving with an invalid license), two Texas district attorneys said in an interview that they would not prosecute the offense if brought to their office by citation.¹¹¹ Conversely, county jailers in California responded to an overcrowding problem by refusing to take misdemeanants who could have been cited instead of arrested by law enforcement (conducting jail releases instead). “[B]etween January 1 and November 13, 1989, county jailers refused to take 24,447 misdemeanor suspects brought to them by the local police agencies.”¹¹²

Procedural Challenges

According to existing literature, procedural challenges stemming from implementation or increased use of citation can inhibit departments from utilizing the practice as frequently as they could. As one author puts it, “making an arrest, booking an offender, charging a crime, securing a plea, imposing a term of months or years, and revoking parole are all tasks that can become almost automated, particularly when performed day in and day out over the course of years.”¹¹³ When changes to processes are required, literature posits, difficulties are inevitable. While little data supporting these challenges was identified, specific procedural areas cited as being negatively impacted by citation in lieu of arrest policy are officer and community safety, and deficiencies in criminal history data.

Officer/Community Safety

Some contend that officer safety may be reduced by procedures used to issue citations in lieu of arrest at the scene. In a review of the Evanston, Illinois, Police Department in 1974, for example, officers expressed concern about the process of writing a citation at the scene of an incident while crowds gathered. In fact, 52% of officers interviewed feared their safety—and the safety of the arrestee—was compromised by interference from bystanders.¹¹⁴

However, one could argue that making a custodial arrest could be equally, or more dangerous than issuing a citation, with almost 50,000 law enforcement officers assaulted during performance of duty in 2013.¹¹⁵ Of those assaults, 31.2% occurred responding to disturbance calls, 16.3% occurred while attempting to make other arrests, and 12.8% occurred while handling, transporting or maintaining custody of prisoners.¹¹⁶ While further analysis on the danger inherent to officers making a full custodial arrest versus issuing a citation would be beneficial, no studies were found during the research conducted for this report.

Data

Lack of data is another prominent procedural concern noted throughout the literature for two reasons. First, because citation eligibility is based on the ability of the officer to verify the identity of a citation recipient, access to data to facilitate identification is important. In the study by Whitcomb and her colleagues in 1984, the most commonly cited risk in using field citations was the inability to secure positive identification on the arrestee (e.g., via fingerprints and photographs).¹¹⁷ According to Allen's study of California's implementation of Penal Code Section 853.6, "since a large proportion of the physical arrests for misdemeanor offenses are due to insufficient evidence of identity to qualify for a field citation, the results of the identification check become crucial."¹¹⁸ While much of the literature written on these concerns date back 30 or more years—prior to law enforcement's ability to access volumes of data through mobile data terminals and other technology—there is evidence that it is still a challenge today. During a 2011 review of Los Angeles County Jails, the Vera Institute of Justice recommended increasing law enforcement's capacity for field identification and expanding the County's Blue Check program to make identification technology available in all patrol cars so that law enforcement officers can cite and release more individuals in the field.¹¹⁹

The second procedural challenge with regard to data is that in cases where booking, fingerprinting, or photographing of cited individuals does not occur, no record of them or their infraction may exist. "The primary purpose for booking an arrested person is to obtain fingerprints and photographs for department files."¹²⁰ Because actual booking does not occur in the citation process, in many cases, fingerprints and other identifier information are not captured, and a criminal history record entry may not be created for the offense – sometimes not even after conviction on the charge.¹²¹ This may be due to lack of access to a database or other technology at the time of citation issuance, or other procedural challenge. To some, this is a benefit of utilizing citation policy.¹²² To others, it is a deficiency in the process, and a concern for law enforcement. According to a 2013 paper by Mark Perbix at SEARCH,¹²³ "one of the biggest unintended consequences of cite and release policies is the adverse impact on recording complete arrest information in state criminal history repositories." Perbix goes on to say that, "although the prosecution of the offender continues in most cases, the outcome cannot be accurately recorded in the criminal history because (a) no original arrest record exists in the criminal history, and (b) the court has no biometric identifier associated with the offender."¹²⁴

Police Officer Discretion

In many jurisdictions, subject to the statutory limitations discussed above, a considerable amount of latitude is given to law enforcement to determine when to issue citations. Citations give officers an option between the extremes of doing nothing or making an arrest, and can thus provide officers more flexibility when enforcing the law and protecting public safety.¹²⁵ However, it may also create opportunities for officer use of discretion that may be unfair or undermine public safety. Citations might be utilized "in a discriminatory or arbitrary fashion: some arrestees may be cited when they should have been detained or released with only a warning."¹²⁶ Law enforcement agencies have taken different approaches to the use of officer discretion in the issuance of citations.

Floyd Feeney described the three general approaches law enforcement agencies take to officer decision-making with respect to citation.

- The individual discretion approach provides the officer with the most latitude to decide whether to cite or arrest. It may work best in smaller departments where officers have more knowledge about individuals in the community.
- The departmental guidelines approach provides the officer with the most latitude to decide whether to cite or arrest. It may work best in smaller departments where officers have more knowledge about individuals in the community.
- The point system approach provides the officer with useful departmental guidance on when to cite or arrest, without adding the complexity of a point system. It standardizes the decision making and reduces officer discretion. However, this approach can be somewhat cumbersome.¹²⁷

Some jurisdictions place firm limits on officer discretion. For example, in Oakland, California, officers are required to document the reason arrest was selected in cases where citation is authorized. "Oakland requires that the officer report his reasons for any refusal to cite."¹²⁸ In other jurisdictions, departments use point systems as a tool to streamline decision making in issuing citations. Point system tools typically assist in assessing FTA risk when making citation versus arrest decisions.

Many studies have been conducted to better understand how officer discretion impacts arrest decisions. One study from 1972 showed that an organizational emphasis on ticket quotas increased the proportion of citations issued to certain demographics of the population.¹²⁹ Additionally, an observational study of police in Cincinnati, Ohio, in 1996-97 showed officers were more likely to issue citations as opposed to doing nothing, or to making a custodial arrest in non-traffic encounters.¹³⁰ However, another study (2002) found that non-arrest behavior, given a range of options, is much more prevalent than arrest regardless of evidence strength.¹³¹

The inability to accurately predict and explain how an officer will use discretion in determining which cases to issue citation makes its impact on utilizing citation policy unpredictable.¹³² Understanding the criteria that officers perceive to be effective in informing discretionary custodial decisions and effectiveness of those criteria should be studied. The field could benefit from new research, data and tools to assist officers in making the best possible decisions about when it is safest and most cost-effective to utilize citations.

Net Widening

Related to officer discretion in issuing citation in lieu of arrest is the theory of "net widening."¹³³ The theory, as explained in the literature, contends that, generally, as control becomes less punitive, it is extended to greater numbers of individuals.¹³⁴ Proponents of this theory predict net widening could be a challenge for implementation

of citation policy. They warn that citation release procedures could lead to increases in the total number of persons coming before the courts.¹³⁵ “The new arrest alternative, although intended to reduce the number of persons being subjected to full custody arrest, could also reduce the number of those to whom nothing is done.”¹³⁶ In other words, “some critics have suggested that officers will be prone to issue citations to persons who previously would have been released with a warning or reprimand, thereby bringing more people into the criminal justice system and ‘widening the net’ of social control.”¹³⁷ The majority of the literature discussing the net widening theory was published in the 1970s and 1980s, soon after the reform took root.¹³⁸ A study by Julie Horny of the Omaha, Nebraska, Police Department found the theory to have some merit, but only for the offenses of larceny and assault.¹³⁹ In the end, Horney concluded that, “it is also obvious that the citation policy did not result in a dramatic widening of the criminal justice net.”¹⁴⁰

Officer Perception

Lack of departmental internal support for citation in lieu of arrest has been noted as another hurdle to better understanding utilization of the policy. Because officers have such broad discretion in the use of citation, their attitudes about the practice are important to understand. A number of researchers have incorporated stakeholder perceptions into their studies. Many have conducted interviews or surveys to gauge officers’ opinions.¹⁴¹ They found that while many understand and support the benefits of using citation in lieu of arrest, some expressed concern about how the practice impacts policing and, in particular, their ability to protect communities.

Whitcomb and her colleagues surveyed 25 law enforcement agencies and visited six. They found that some line officers believed citations to be a “bankrupt policy,” leaving law enforcement without the sanctioning power to serve justice.¹⁴² Some officers become frustrated by the “revolving door” situation that is created when those who break the law are arrested but are immediately back out on the street, possibly committing the same crimes again.¹⁴³ In these cases, officer morale suffers.

In an interview during Welsh’s study of California’s use of cite and release policy published in 1993, one police official said, “(c)ops dislike it because it makes your job meaningless ... you’re banging your head against the wall; they tell me I’m out here to uphold the law, and I pick these people up who did all these bad things ... and now you let them go.”¹⁴⁴ Similarly, in a study in the 1970s of Evanston, Illinois, police use of citation in lieu of arrest, researchers found that officers “held a negative view” of the policy, fearing the potential for further violence, lack of legitimacy, offender FTA rates, and failure to convict.¹⁴⁵ They also cited other concerns associated with the procedure such as loss of overtime pay.¹⁴⁶ In Texas, the Jefferson County Sheriff expressed concern regarding recently changed legislation making a number of misdemeanor offenses citable, stating, “[p]hilosophically, I don’t like that it seems to be a step toward decriminalizing the offenses.”¹⁴⁷

More recent literature, however, shows that the approach of using citations may be becoming increasingly accepted in the law enforcement community. In a survey of Georgia law enforcement in 2005, 82% of surveyed sheriff's offices and 93% of surveyed police departments supported changes to criminal procedure laws allowing officer discretion to use field citations for misdemeanor shoplifting. While a few officers noted preference based on specific criteria¹⁴⁸ to make custodial arrests as reasons for reluctance to use the policy,¹⁴⁹ for the most part, those surveyed embraced the potential use of citations. Those officers who preferred custodial arrest over citation referenced uncertainty in appropriateness for citation, victim preference for arrest of offender, belief in arrest as a powerful deterrent, and personal preferences as reasons for the preferring to use custodial arrest. In a *Times-Picayune* article, the New Orleans, Louisiana, Police Superintendent called a recent change in municipal code that makes four types of offenses citable, "not being soft on crime but smart on crime."¹⁵⁰

Whitcomb and her colleagues noted that police departments seemed to lack training regarding citation policy. They suggested that training officers on the benefits and procedures for issuing citation in lieu of arrest might help to ameliorate officer concerns and generate support for its use.¹⁵¹ In more recent studies, little mention of officer training on citation is made.

Community Perception

Literature tends to support that community perception of citation in lieu of arrest can have an impact on its use. Officers have reported that they are sometimes reluctant to use citations when victims complain about seeing offenders simply given a citation and sent on their way, as opposed to being arrested and taken to jail.¹⁵² Utilization of citation represents apparent leniency of police response to the incident.¹⁵³ In 2013, the Humboldt County, California, Sheriff's Office faced criticism from citizens regarding cite and release incidents. A media report on the issue stated, "[r]epeat offenders are said to be arrested for crimes like car theft and burglary and only cited and released due to the jail's recently-infused population of non-violent felony offenders."¹⁵⁴ Special interest groups (e.g., business organizations, bail bondsman organizations) may also resist the use of citations for those offenses that threaten to impact their business. In San Francisco, for example, a local merchant group in a popular tourist area opposed the use of citation for prostitution.¹⁵⁵ Community opposition to cite and release policy could be a particular challenge for law enforcement officers who are often the first contact for victims, business owners, and residents affected by the policy. However, more information on the community's perception of the use of citation policy could help to inform a better understanding of how, when and why citation policy is used.

5. CONTEMPORARY ISSUES IN USE OF CITATION IN LIEU OF ARREST

Possession, Use, and Purchase of Marijuana

Recent changes in marijuana laws are controversial to say the least. Last year, Denver legalized the sale of recreational marijuana.¹⁵⁶ Cities in states like Maine (Portland) and Washington have made it legal for people 21 and over to possess marijuana, but not to buy or sell it. As part of those changes, the use of citation as a way to address marijuana violations without custodial arrest are becoming commonplace in many jurisdictions. In 2012, Chicago City Council approved a measure allowing police to cite those carrying small amounts of marijuana rather than making an arrest.¹⁵⁷ All indications are that many other jurisdictions are moving in the same direction. The evolving nature of marijuana citation policy can serve as a contemporary illustration of some of the general issues facing law enforcement executives in understanding whether to; how to; and when to implement citation policy.

Not only is marijuana legislation continually evolving, but enforcement of the laws may vary from jurisdiction to jurisdiction. Even within the same department, officers are often given latitude to arrest or cite an offender for possession of marijuana (or as statutorily defined), causing differences in officer response. In March 2014, the Rock Island, Illinois, City Council voted to allow officers to cite for possession of small amounts of marijuana (as well as failure to use a seat belt and unlawful use of communication devices). But, the Rock Island Police Chief enforced his department's right to use discretion during a newspaper interview, "Let me be clear, it is still illegal to possess cannabis in any amount. All we're doing is giving officers another option. There are situations when it's not appropriate to jail someone."¹⁵⁸ The Portland, Maine, Police Chief echoed this sentiment by defending his officers' right to continue to use discretion in cases involving marijuana even after a new law legalizing it went into effect.¹⁵⁹

Even in instances where the directive gives less latitude to officers, they may choose to arrest. For example, in 2011, the New York City Police Commissioner issued a memo to commanders reiterating that officers are not to arrest people who have small amounts of marijuana in their possession unless it is in public view.¹⁶⁰ In May of 2013, desk appearance tickets (DATs) become mandatory for all defendants charged with misdemeanor marijuana possession, with very few disqualifying factors (the only charge for which a DAT must be issued, according to the NYPD Patrol Guide).¹⁶¹

The evolving nature of marijuana laws, and the response of law enforcement's use of citation for those offenses are illustrative of some of the challenges described in the literature. First, the complexity of the constantly changing nature of and the layering effect of state and municipal laws coupled with department directives creates

inconsistencies in addressing marijuana offense. Second, the discretionary latitude given to law enforcement agencies creates inconsistencies in application of marijuana legislation. As one author writes, “the various alternatives to arrest and/or prosecution are underpinned by the notion of police discretion.”¹⁶² Other general considerations—increased FTA rates, lack of internal and community support, political impact, and the potential net-widening effect—on the use of citations for marijuana offenses could provide more insight into general citation policy use nationwide.

6. CONCLUSION

This report was intended to review the existing literature on the use of citation in lieu of arrest, with a focus on information that could inform an understanding of utilization of the practice. The dearth of long-term, contemporary, comparable implementation and impact data needs to be remedied. There is much to learn from those using citation in lieu of arrest, including the extent to which it is being utilized, and in what contexts; there is also a lot to learn from those agencies that *don't* use the practice.

As such, the IACP, in partnership with LJAF conducted a nationally representative survey of law enforcement agencies regarding their experiences, perceptions, policies, and data collection around citation. The intent of the survey was not only to elicit data regarding citation, but also lead to existing data sets, the combination of which will fill a current void. Going forward, this citation-specific data will be invaluable in informing the development of evidence-based citation in lieu of arrest policy.

GLOSSARY

Arrest - While the definition of **arrest** is complex and varied, it can basically be defined as “the decision by a police officer to take into physical custody, by virtue of the authority of the law, a person who is suspected of having violated a law.”¹⁶³ Officers use the power of arrest to maintain order and enforce the law.

Field release - a form of citation release characterized by an arresting officer, upon determining the eligibility and suitability of an arrestee for release, releases the arrestee on his or her written promise to appear, at or near the actual time and location of the arrest. Field releases rely on verification of identity in the field. Station house release is a form of citation release characterized by the deferral of the (1) determination of an arrestee's eligibility and suitability for release and (2) his actual release on his written promise to appear until after he has been removed from the scene of his arrest (if elsewhere than at the arresting department's facilities) and brought to the department's station house or headquarters.¹

Post-detention release (or jail release) - a form of citation release characterized by the deferral of the (1) determination of an arrestee's eligibility and suitability for release and (2) his actual release (on the authority of the arresting department) on his written promise to appear until after he has been diverted by the arresting department to an intake-service center, jail, or other pretrial detention facility for screening, booking, and/or admission.

Pretrial release - refers to “one of a number of procedures whereby an accused person who has been taken into custody is allowed to be free before and during his trial.”¹⁶⁴ Some forms of pretrial release include release on recognizance, conditional release, release to a third party, release on bail, and citation release.¹⁶⁵ “Release on bail is the release by a judicial officer of an accused person who has been taken into custody upon his promise to pay a certain sum of money or property if he fails to appear in court as required, which promise may or may not be secured by the deposit of an actual sum of money or property.”¹⁶⁶

Stationhouse release - a form of citation release characterized by the deferral of the (1) determination of an arrestee's eligibility and suitability for release and (2) his actual release on his written promise to appear until after he has been removed from the scene of his arrest (if elsewhere than at the arresting department's facilities) and brought to the department's station house or headquarters.¹⁶⁷

ENDNOTES

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- ²⁴ Minerva, "Preventing 'Senseless' Arrests"; Davis, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations?"
- ²⁵ Anonymous, "An Analysis of the Citation System in Evanston, Illinois," 80.
- ²⁶ "First, does the delegation of extensive discretion to individual officers create the probability that the system will be applied discriminatorily? Second, can eligibility for citation be limited to those individuals who possess adequate community roots? Third, can felons [when there is no additional risk of violence] be excluded from the operation of the system?" The argument here is that in some instances the difference between a misdemeanor and felony version of a charge is small. In the case of theft for example, the difference between a felony and a misdemeanor charge could be \$1 in value of merchandise stolen. Ibid.
- ²⁷ State legislation on citation in lieu of arrest for all 50 states can be found at <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.
- ²⁸ The issuing authority is almost always required to consider one or more factors in determining whether or not to issue a citation. (A list of common exclusions to eligibility for receipt of citation in lieu of arrest can be found in Section 2 of this report.) Even under circumstances in which there is presumption of citation, enumerated factors must first be considered. National Conference of State Legislatures, "Citation in Lieu of Arrest."
- ²⁹ Busher, *Citation Release*, viii.
- ³⁰ Alan G. Gless, "Arrest and Citation: Definition and Analysis." *Neb. L. Rev.* 59 (1980): 319.
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- ³³ This is not to imply that officers have the broad discretion to cite an offender for any offense (i.e. homicide), but that within the context of existing law and policy, officers may use their discretion in issuing citations.
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- "The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger, or interference."
 - "The law favors the release of defendants pending adjudication of charges."
 - "Release by Law Enforcement Officer Acting Without An Arrest Warrant. This part of the standard gives guidance to LEOs regarding citations, including policy favoring issuance of citations (10-2.1), mandatory issuance of citation for minor offenses (10-2.2), permissive authority to issue citations in all cases (10-2.3), and lawful searches (10-2.4)."
 - "It should be the policy of every law enforcement agency to issue citation in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. This policy should be implemented by statutes of statewide applicability."
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APPENDIX A

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[EE8U_qxFoamsATViYHgBw&usg=AFQjCNGMX2YKJ0rnhgG_BAs-dBYnLY3WQA&sig2=6vEBY6J15mihJ8jIYRLOg&bvm=bv.63934634,d.cWc](http://www2.cohpa.ucf.edu/crim.jus/documents/PaolineNonarrestdecisionmaking.pdf) (accessed March 31, 2014).

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APPENDIX B

Citation in Lieu of Arrest State Legislation Chart (National Conference of State Legislatures)¹

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
Alabama §11-45-9.1	Class C Misdemeanors	Offenses involving violence, threat of violence, alcohol or drugs.	No	After arrest	Law enforcement officers
Alaska §12.25.180	Misdemeanors	Offenses involving violence to property or person; when there is probable cause that domestic abuse was involved.	No	Prior to arrest	Peace officers
Arizona §13-3903	Misdemeanors	Not specified	No	After arrest	Peace officers
Arkansas No statute located					
California Penal Code §853.6	Misdemeanors	Offenses involving domestic violence or abuse (unless the officer determines there is not a reasonable likelihood that the offense will continue). Offenses that require a bail hearing rather than release according to a bail schedule.	Yes	Either	Law enforcement officers or their superiors.
Colorado §16-3-105	Misdemeanors	Domestic violence offenses	No	After arrest	Law enforcement officers; responsible command officers.
Connecticut §54-1h	Misdemeanors; offenses punishable by a maximum of one year imprisonment or a maximum fine of \$1000.	Not specified	No	After arrest	Arresting officer
Delaware 11 Del. C. §1907	Misdemeanors	Not specified	No	Not specified	Peace officers
District of Columbia No statute located					
Florida §901.28 superseded by R. Cr. P. 3.125	1 st or 2 nd degree misdemeanors.	Not specified	No	After arrest	Law enforcement officers

¹ National Conference of State Legislatures, "Citation in Lieu of Arrest," <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
Georgia No statute located					
Hawaii § 803-6	Misdemeanors and petty misdemeanors.	Not specified	No	Prior to arrest	Police officers
Idaho §19-3901	Misdemeanors	Not specified	No	Not specified	Law enforcement officers
Illinois 725, ILCS 5/107-12	When there are reasonable grounds to believe that a person is committing or has committed a crime.	Not specified	No	Not specified	Peace officers
	Class C misdemeanors	Not specified	No	After arrest	Sheriff
Indiana §35-33-4-1(f)	Misdemeanors	Traffic misdemeanors	No	Not specified	Law enforcement officers
Iowa § 805.1	When a crime has been committed in the presence of the police officer or there is reasonable grounds to believe that a crime has been committed.	Offenses not eligible for pretrial release; stalking; domestic violence offenses resulting in injury, where there was intent to inflict injury, involving use of dangerous weapon, or where there was pressure applied to throat or neck or obstructing nose or mouth.	No	Either	Peace officers
Kansas § 22-2408	Misdemeanors	Traffic violations	No	After arrest	Law enforcement officers
Kentucky § 431.015	Misdemeanors	Violation of a protective order	Yes	Prior to arrest	Peace officers
	Misdemeanor offenses of driving under the influence; assault; sexual crimes; crimes involving firearms or weapons; 4 th degree assault in a hospital room; 3 rd degree criminal trespass; harassment; and aggravated driving under the influence.	Violation of protective order	No	Prior to arrest	Peace officers
Louisiana C. Cr. P. Art 211	Misdemeanors; felony theft or illegal possession of stolen things if the value is between \$500 and \$1000; writing worthless checks.	Not specified	No	Prior to arrest	Peace officers
Maine 17-A § 15-A	When there is probable cause to believe a crime has been or is being committed.	Not specified	No	Prior to arrest	Law enforcement officers

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
Mississippi § 99-3-18	Misdemeanors	Not specified	No	After arrest	Police officers; booking officers; superiors.
Missouri No statute located					
Montana § 46-6-310; §46-6-311	When the officer has probable cause to believe a person has committed a crime.	Partner or family member assault involving injury to the victim, use of a weapon, violation of restraining order.	No	Not specified	Peace officers
Nebraska § 29-422	Misdemeanors	Violations of protection order for domestic violence	No	Either	Peace officers
Nevada § 171.1771; §171.177	Misdemeanors	Misdemeanors that require a bail hearing	No	After arrest	Peace officers
New Hampshire §594:14	Misdemeanors	Not specified	No	After arrest	Peace officers
New Jersey § 2B:12-21 authorizes R. Crim. P. Rule 3:4-1	Crimes committed in an officer's presence.	Not specified	Yes	After arrest	Law enforcement officers
New Mexico § 31-1-6	Petty misdemeanors	Not specified	No	After arrest	Law enforcement officers
New York Cr. P. Law §150.20; §140.10	Any offense	Class A, B, C, D felonies; 3 rd degree rape; 3 rd degree criminal sex act; 2 nd degree escape; 1 st degree absconding from a temporary release; absconding from a community treatment facility, 2 nd degree bail jumping; violation of a protection order.	No	After arrest	Police officers; authorized public servants.
Cr. P. Law §150.75	Possession of marijuana.	Not specified	Yes	After arrest	Police officers
North Carolina § 15A-302	Misdemeanors	Not specified	No	Not specified	Law enforcement officers; other authorized persons.
North Dakota §29-05-31 superseded by R. Cr. P. 5(e)	Crimes committed in an officer's presence.	Not specified	No	Either	Law enforcement officers; prosecuting attorney must duly issue for felony offenses.

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
Ohio § 2935.26	Minor misdemeanors	Not specified	Yes	Prior to arrest	Law enforcement officers
Oklahoma 22 § 209	Misdemeanors	Not specified	No	After arrest	Law enforcement officers
Oregon § 133.055	Misdemeanors; felonies authorized by law to be reduced to a misdemeanor.	Domestic disturbance when the officer has probable cause to believe that an assault has occurred between family or household members or believes that an assault has occurred which has placed a person in fear of imminent danger.	No	Not specified	Peace officers
Pennsylvania R. Cr. P. 519 & 441	2 nd degree misdemeanors; 1 st degree driving under the influence; crimes punishable by a maximum of 90 days.	Not specified	Yes	After arrest	Law enforcement officers
Rhode Island § 12-7-11; §12-7-12	Misdemeanors	Not specified	No	Either	Peace officers; officer in charge of a police station.
South Carolina §56-7-10; §56-7-15; §22-3-540	Offenses enumerated in §56-7-10; offenses under the jurisdiction of a magistrate (maximum penalty of 30 days jail and \$500 fine) that are committed in the presence of a law enforcement officer.	Not specified	No	Not specified	Law enforcement officers
South Dakota No statute located					
Tennessee § 40-7-118; §40-7-120	Misdemeanors	Driving under the influence unless the offender was admitted to a hospital or detained for medical treatment for at least three hours; misdemeanor traffic offenses.	Yes	After arrest	Peace officers

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
	Shoplifting; writing bad checks; assault or battery if the officer believes there is a reasonable likelihood of a danger to another person; prostitution if the officer has knowledge of past conduct of the defendant in prostitution or has reasonable cause to believe the prostitution will continue.	Not specified	No	After arrest	Peace officers
	Misdemeanors	Not specified	No	After arrest	Sheriff or designee.
Texas C. Cr. P. Art. 14.06.	Class C misdemeanor; Class A or B misdemeanor of driving while license invalid, contraband in correctional facility, theft of service, theft, graffiti, criminal mischief, possession of substance penalty group 2-A, or possession of marijuana.	Public intoxication	No	After arrest	Peace officers
Utah § 77-7-18	Misdemeanors	Not specified	No	Either	Peace officers; public officials charged with enforcement of law; port of entry agents; authorized volunteers.
Vermont R. Cr. P. 3	Misdemeanors committed outside the presence of a officer.	Assault against a family member; operating a vehicle under the influence; hate-motivated crimes, stalking; simple assault; reckless endangerment; cruelty to children; failure to comply with sex offender registration; abuse of a vulnerable adult; violation of a protection order.	No	Prior to arrest	Law enforcement officers

State & Statute	For What Offenses Can a Citation Be Issued?	Exceptions	Presumption of Citation	When Is Citation Issued?	Who Issues Citation?
Virginia § 19.2-74	Class 1 – 4 misdemeanors.	Driving while intoxicated; motor vehicle offenses; public drunkenness.	Yes	After arrest	Arresting officer
Washington CrRLJ 2.1	Misdemeanors or gross misdemeanors committed in the presence of an officer.	Offenses enumerated in §10.31.100	No	Either	Police officers
West Virginia § 62-1-5a	Misdemeanors; persons being detained for investigation of shoplifting.	Offenses involving injury to a person	No	Prior to arrest	Law enforcement officers
Wisconsin § 968.085; § 968.075; § 813.12; § 813.122; § 813.125	Misdemeanors	Domestic abuse offenses if believed abuse will continue, involves physical injury or the arrestee is the predominant aggressor; violation of protection order involving domestic abuse, child abuse or harassment.	No	Either	Law enforcement officers
Wyoming § 7-2-103	Misdemeanors	Not specified	No	After arrest	Peace officers; district or city attorney.

APPENDIX C

Individual Agency Policies Pertaining to Citation in Lieu of Arrest

The following information regarding individual department policies pertaining to citation in lieu of arrest was obtained from IACP Net, an online membership-based network and resource for law enforcement professionals. In addition to housing more than 20,000 policies from agencies across the country, IACP Net offers Quest Response, a secure peer-to-peer information exchange service that allows members to post questions for and share knowledge with other users. The policies included in the analysis were obtained through a query of the policy library for the terms “citation in lieu of arrest” and “alternatives to arrest” as well as a posting of the following to Quest Response:

“The IACP is conducting research on how police departments approach the use of citation in lieu of arrest. This research will provide the law enforcement community with baseline information about the use of citation across the country and serve as a foundation to develop resources to help law enforcement make data-driven decisions about which individuals pose a risk of committing a new crime or failing to come back to court and therefore should be arrested and booked rather than cited and released. Please get in touch with me if your agency is actively using citations in lieu of arrest and you are willing to discuss your agency’s experience.”

Overview

- In total, 132 total policies from 81 separate agencies across 33 states were identified.
- Of the more than 20,000 policies available in IACP Net, the search terms yielded only 132 results. Of the 132 results, 24 policies pertained to traffic violations, and 19 to juveniles, both of which fall outside the scope of this effort.
- Of the relevant policies, in the majority of cases information regarding citation and/or alternatives to arrest was limited to a couple of sentences.
- The action identified by the term ‘citation’ is variable. Several other terms are used to identify the same concept, including summons, notice to appear, and field appearance ticket.
- Discrepancies in naming may make it difficult to identify all relevant information on the subject. For example, some documents reference additional policies, not identified by the search terms, which appear to contain the information sought.
- Agency size, measured by number of sworn officers, ranged from 13 to 3,400 with a mean of 315 (sworn officer information was unavailable for seven agencies).

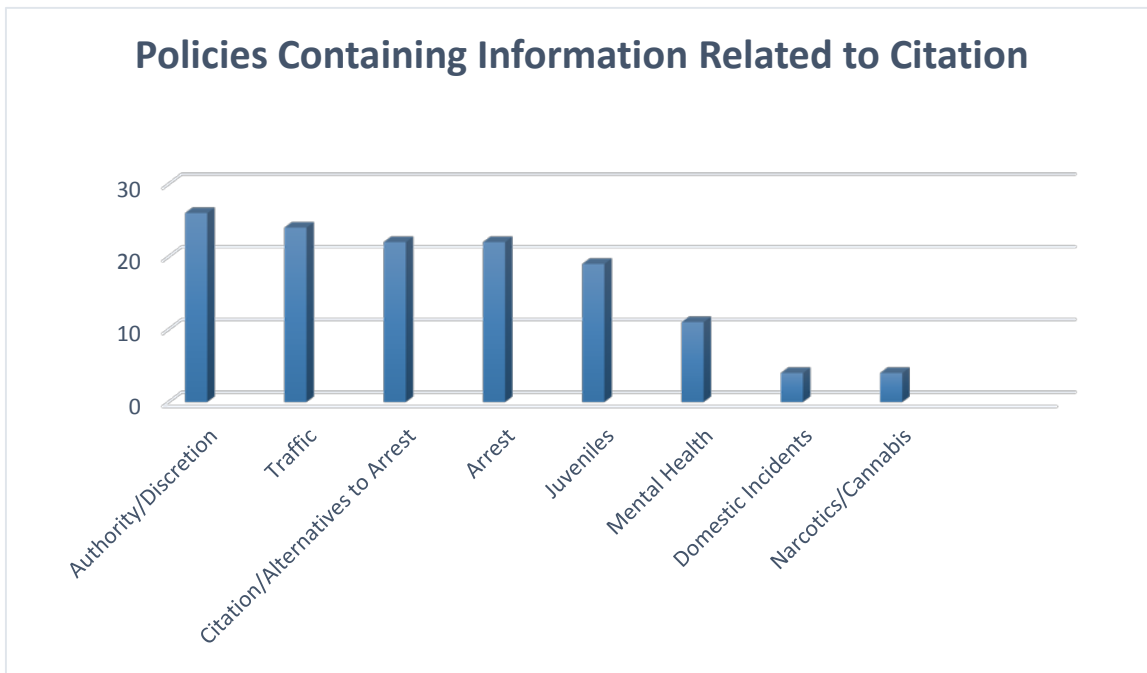
Policy Content

- 27% of agencies have a policy specific to citation in lieu of arrest or alternatives to arrest.
- In many instances, information regarding citation is contained in multiple policies.

- Policies were updated between 2004 and 2014. The distribution is as follows:

<i>Year</i>	<i>Number of Policies Updated</i>
2004	1
2005	0
2006	0
2007	2
2008	7
2009	14
2010	18
2011	12
2012	4
2013	12
2014	3

- Only one policy is no longer in use.
- Information relating to citation is most commonly found in the following policy subject areas:



- Regardless of whether or not an agency has a policy specific to citation in lieu of arrest or alternatives to arrest, policy content varies widely. The primary categories of information, along with the percentage of policies containing that information, is as follows:

<i>Policies</i>	<i>Content</i>
51%	Crimes for which a citation may be issued in lieu of custodial arrest
(54%)	(Additional policies that refer readers to a statute for detailed guidance)
29%	Offenses for which citations may not be issued
(35%)	(Additional policies that refer readers to an alternate source for exceptions)
38%	Procedure for officers to follow and/or required paperwork
54%	Factors for officers to consider when making the determination to cite or arrest, including: <ul style="list-style-type: none"> ▪ The person arrested is a danger to himself or others ▪ The individual's statements or behavior indicate likelihood that they may continue the offense or commit another offense if released immediately on a summons ▪ Location of defendant's residence ▪ Defendant's cooperative or uncooperative behavior
5%	Number of policies that contain all categories of information noted above
18%	Number of policies that recognize alternatives to arrest, but don't contain any of the information described above
1%	Citation in lieu of arrest requires supervisor approval
1%	In addition to completing the summons, one policy requires officers to "[a]dvice the subject that any person who willfully violates a written promise to appear in court, after having signed a release summons agreeing to do so, shall be guilty of a misdemeanor regardless of the disposition of, and in addition to, the charge upon which he/she was originally arrested."
47%	Number of policies that refer readers to specific statutes for additional guidance

- Agency size doesn't appear to be indicative of policy content:
 - The number of sworn officers for the agencies with policies providing all four categories of information are 30, 203, 490, and 1575.
 - A sampling of the 13 agencies whose policies don't include information from any of the four categories include agencies with 53, 200, and 1524 sworn officers.
- In 2013, the National Conference of State Legislatures conducted a survey on state statutes pertaining to citation in lieu of arrest². One component addressed in the research was whether a state's legislation presumes that citations will be issued rather than custodial arrests made for certain crimes and under certain circumstances. The findings follow:
 - In nine states there is a presumption of citation
 - In one state there is a presumption of citation for one offense only (possession of marijuana)
 - In 34 states there is no presumption of citation
 - No statute was identified for six states

Interestingly, the language of the policies analyzed here paints a slightly different picture.

 - Of 21 policies received from jurisdictions in which there is a presumption of citation, only 48% use language indicating that citation is required under certain circumstances.
 - An additional 14% of policies "encouraged" use of citation, but didn't indicate that citation is required under any circumstances.
 - 38% of policies received from presumption jurisdictions use neutral language. These policies recognize citation as an alternative, but neither require nor encourage its use.
 - Of the 34 states without a presumption of citation, four agency policies require citation in certain situations, four encourage but don't require citation, and two discourage citation.

² National Conference of State Legislatures, "Citation in Lieu of Arrest," <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

APPENDIX D

Table of Articles

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
Journal Articles							
Allen, Jeffrey	Pretrial Release Under California Penal Code Section 853.6: An Examination of Citation Release	1972	California	Citation release-misdemeanors	FTA rates, analysis of California's citation legislation	Comparison of citation with other pretrial release measures (jail, bail, release on own recognizance); case study of citation release in Oakland, California	Citation can be successful, but requires a well-planned process and significant cooperation between officers, DA, and courts
Anonymous	An Analysis of the Citation System in Evanston, Illinois: Its Value, Constitutionality, and Viability	1974	Evanston, Illinois	Alternatives to bail with emphasis on citation. Article addressed first year's operation of citation system in Evanston, IL. Constitutional concerns (Equal Protection)	Research, court docket sheets, arrest records, interviews with patrolmen	Law review article	Police held negative view of citation, but their concerns were not borne out by study findings; author suggests Constitutional concerns can be remedied through controls including citation formula (assigning weight to situational variables), review by commanding officers, and station house releases
Baumer, Terry, and Kenneth Adams	Controlling a Jail Population by Partially Closing the Front Door: An	2006	Not disclosed	Evaluation of strategy designed to reduce jail crowding by	Comparison of historical data from County records management system	Compares all cases booked during first eight months of issuing summons in lieu of	Use of summons in lieu of arrest was somewhat effective, but fell

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
	Evaluation of a 'Summons in Lieu of Arrest' Policy			ordering local police to issue a summons rather than arrest in seven misdemeanor offenses	Included info on all charges associated with case, date of booking, date of dispo, nature of dispo and characteristics of individual charged	arrest for seven misdemeanor offenses, with the first eight months of the previous (prior to using summons in lieu of arrest)	far short of expectations, possibly due to design and planning failures
Berger, Mark	Police Field Citations in New Haven	1972	New Haven, Connecticut	Citations	Research, statutes, citation issuance rate by offense, citation and arrest data, release conditions (over 12 month period)	Law review article Comparison of stationhouse release on recognizance and citation, FTA rates, survey, comparison of arrest activity, cost benefit analysis of New Haven's citation program	A citation program can be added to departmental procedure without negative side effects; it is an effective and workable alternative to arrest
Bornstein, Brian H., et al.	Reducing Courts' Failure-to-Appear Rate by Written Reminders	2013	Nebraska	Effectiveness of different kinds of written reminders to reduce misdemeanor defendants' failure to appear rates	State court data and Defendant surveys from 14 Nebraska counties	Controlled study, randomly assigned use of written reminders comparison with FTA rate; defendant surveys to measure procedural justice perception	Reminders reduced overall FTAs; more substantive reminders were more effective than simple; expectancy theory
Brown, R.A., and J. Frank	Police-Citizen Encounters and Field Citations: Do Encounter Characteristics Influence Ticketing?	2005	Cincinnati, Ohio	What influences police use of field citations in traffic and non-traffic encounters	Citation vs. doing nothing or making arrest with relation to situational, legal and individual characteristics	Systematic social observation of police citizen-encounters in one police agency. Data analyzed using regression models	Offices were more likely to issue citations than do nothing or make an arrest in non-traffic encounters

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
Chappell, Allison T., John M. MacDonald, and Patrick W. Manz	The Organizational Determinants of Police Arrest Decisions	2006	National	Impact of organizational characteristics on individual officers' arrest rates	Law Enforcement Management and Administrative Statistics (LEMAS); FBI Uniform Crime Reports (UCR)	Linked data from the LEMAS survey to arrest data taken from the 1997 Uniform Crime Reports and performed analysis	<ul style="list-style-type: none"> • Crime rate biggest predictor of police arrest activities • Organizational variables failed to reveal significant relationships
Davis, Warren	Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can an Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Non-traffic Misdemeanor Offenses?	2005	Gwinnett County, Georgia	Analysis of existing legislation and whether Georgia should change legislation that would allow officers to issue citations in lieu of arrest for misdemeanors	Georgia law; published literature; Gwinnett arrest and court data; survey data	Review of law and literature; analysis of effects of field citation process upon officer processing time; FTA in Gwinnett; of relevant law enforcement, court and jail staff	Legislature should modify Georgia law to authorize discretionary use of field citations for more misdemeanor offenders
Feeney, Floyd F.	Citation in Lieu of Arrest- The New California Law	1972	California	Citation in lieu of arrest	Summary of research and factors to consider regarding citation in lieu of arrest	Law review article	Citation in lieu of arrest could be adequate to address the needs of the criminal justice system
Gioia, Stephanie	Knowles v. Iowa: No 'Search Incident to Citation' Exception	1999	None	Knowles v. Iowa	Summary of decision	Law review article	Mere issuance of a citation without probable cause for search or search warrant, does not create a "search incident to citation" exception
Gless, Alan G.	Arrest and Citation: Definition and Analysis	1980	Nebraska (primarily)	Analysis of jurisdictional definitions of	Case law, Nebraska statutes	Law review article	<ul style="list-style-type: none"> • Author suggests that there is a need for a clear, principled

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
				"arrest"; citation in lieu of arrest			definition of arrest <ul style="list-style-type: none"> • Suggests law enforcement should be encouraged to use citation in lieu of arrest
Hirschel, JD, and C.W. Dean	Relative Cost-Effectiveness of Citation and Arrest	1995	Charlotte, North Carolina	Use of field citation as alternative to arrest. Citation utilization rates, Cost of citations vs. arrest and FTA of citation vs. arrest	Arrest vs. citation characteristics data; cost data; FTA data. Data obtained from police department and court	Experimental Design using 99 weeks starting in 1987 of misdemeanor spouse abuse cases that met criteria to use citations in lieu of arrest	<ul style="list-style-type: none"> • Individuals issued citations have significantly higher FTA rates than arrestees. • Cost savings of issuing citation in lieu of arrest is approximately \$100.96 per case
Horney, Julie	Citation Arrest: Extending the Reach of the Criminal Justice System?	1980	Omaha, Nebraska	Theory of net-widening in the use of citation in lieu of arrest	Number of citations issued in the first year of policy; monthly adult arrest totals (full custody before intervention and both after); analysis of total misdemeanor arrests and separate offenses	Interrupted time series design	Predicted net-widening only occurred for the offense of assault
Johnson, Bruce, et al.	An Analysis of Alternatives to New York City's Current Marijuana Arrest and Detention Policy	2008	New York, New York	Alternatives to NYC's arrest and detention policy	Option 1: Arrest and detain Option 2: DAT Option 3: Violation Option 4: Warn Option 5: No action	Rational, political, and organizational analysis of policy alternatives to arrest for marijuana	Authors suggest use of DATs for marijuana violations in New York City
Minerva, Matthew	Preventing 'Senseless' Arrests: Searching for a Constitutional Resolution	2002	Lago Vista, California	Atwater v. City of Lago Vista	Historical and legal research	Law review article	Supreme Court said that warrantless arrest for a fine

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
	of Atwater v. City of Lago Vista						only traffic offense is permissible in light of the Fourth Amendment
Novak, K.J., J. Frank, B.W. Smith, and R.S. Engel	Revisiting the Decision to Arrest: Comparing Beat and Community Officers	2002	Cincinnati, Ohio	Community policing and police arrest practices	Social observations of police officers and U.S. Census data	Systematic social observations of beat officers and community-oriented policing officers	<ul style="list-style-type: none"> The relationship between officer assignment and decisions to arrest is insignificant Several situational-level variables are significant predictors of decisions to arrest
Schnacke, T., Michael R. Jones, and Dorian M. Wilderman	Increasing Court Appearance Rates and Other Benefits of Live Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program	2012	Jefferson County, Colorado	Live caller court notification systems' effect on decreasing FTA	Court data and data collected during experiment	Randomly selected misdemeanor and traffic defendants received pre-trial and post-trial live calls using various scripts to determine which increased appearance rate the most	Telephone reminders using live callers increased court appearance rates to 88% (a 43% reduction in FTA)
Terrill, William, and Eugene A. Paoline	Nonarrest Decision Making in Police-Citizen Encounters	2007	Indianapolis, Indiana, and St. Petersburg, Florida	Non-arrest decision making	Observational data set which examined police patrol practices	Analysis of 729 encounters with people whom police or other citizens present placed in the role of suspect (wrongdoers, peace disturbers, or persons for whom complaints were received)	<ul style="list-style-type: none"> Nonarrest behavior is much more prevalent than arrest, irrespective of evidence strength Several situational factors are statistically related to

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
							<p>nonarrest decisions</p> <ul style="list-style-type: none"> Alternative arrest actions are not demonstrably different than those noted by descriptive studies 40 years ago, although the reasons for nonarrest behavior are substantially more varied
Tobolowsky, P.M., and J.F. Quinn	Pretrial Release in the 1990s: Texas Takes Another Look at Nonfinancial Release Conditions	1993	Review of US pretrial system; Denton County, Texas	History of pretrial release; pretrial release on personal bonds (with post-release supervision) compared with release on jail bonds	Failure to appear rates and court dispositions	Law review article Comparison of failure to appear rates and court dispositions of pretrial program participants to non-program participants	<ul style="list-style-type: none"> Program participants appeared at a rate higher than non-participants Participants' pretrial arrest performance was at least as good as non-participants Participants had better disposition outcomes than non-participants
Tomkins, Alan J., et al.	An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court	2012	Nebraska (14 counties)	Postcard notices to reduce failure to appear	Court data, and Surveys of defendants regarding procedural justice	Random assignment of defendants to receive one of three different postcard reminders; analysis of court data	Reminder postcards reduced failure to appear rates
Welsh, Wayne	Changes in Arrest Policies as a Result of Court Orders Against County Jails	1993	California	Effects of court-ordered jail reductions on	<ul style="list-style-type: none"> Cross sectional: Annual citation rates (78-88) for 	Analysis of cross sectional, time series and interview data	Although some police agencies have adjusted their

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
				implementation and use of citation policy	counties under court order and not under court order <ul style="list-style-type: none"> • Time series: Monthly police citations (78-88) in 3 counties under court order • Interviews with law enforcement officials in same 3 counties 		arrest policies in response to jail release procedures, the data supported neither large-scale nor long-term changes in arrest policies
Reports Commissioned by Consulting Firms or Other Groups							
Busher, Walter	Citation Release: An Alternative to Pretrial Detention, Concepts, and Guidelines	1978	None	Overall review of potential use of citation in lieu of arrest	Early literature	Discussion	Discussion of the evolutionary history of citation release, a rationale for its use, a context for planning, and information extracted from operational experience which can prove useful in designing, implementing, operating, and monitoring formal citation release programs.
Friday, Paul C., and Joseph Bernard Kuhns	Mecklenburg County Jail Pretrial Study	2003	Mecklenburg County, North Carolina	Mecklenburg County Pretrial study	Mecklenburg County criminal justice data	Data analysis	Recommendations for pretrial reform
Monaghan, Geoffrey and	Practical implications of policing alternatives to	2013	International	Alternatives to arrest for cannabis offenses	Review of literature and discussion	Comparison of the ways in which various	Recommendations for policy change to implement

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
Dave Bewley-Taylor	arrest and prosecution for minor cannabis offences					countries respond to and enforce use of cannabis.	alternatives to arrest for cannabis offenses.
Phillips, Mary	The Past, Present, and Possible Future of Desk Appearance Tickets in New York City	2014	New York, New York	Desk Appearance Tickets	NYPD desk appearance ticket data	History, review and data analysis of use of desk appearance tickets in New York City	Variety of environmental circumstances impact desk appearance ticket use in NYC.
Pretrial Justice Institute	Implementing the Recommendations of the National Symposium on Pretrial Justice: The 2013 Progress Report	2014	National	Recommendations of National Symposium on Pretrial Justice	Status review of 2011 recommendations	Review and discussion	Continued work is necessary
Steadman, Weller, Edelstein, and Policy Studies, Inc.	Mesa County Work Release and Jail Detention Programming Study	2005	Mesa County, Arizona	Mesa County Study of work release and jail detention	Mesa County criminal justice data	Data analysis	Recommendations for reform
Vera Institute of Justice	Los Angeles County Jail Overcrowding Reduction Project	2011	Los Angeles County, California	Los Angeles County Study to reduce jail overcrowding	Los Angeles County criminal justice data	Data analysis and discussion	Recommendations for reform
Whitcomb, Deborah, Bonnie Lewin, and Margaret Levine	Citation Release	1984	National	Citation in lieu of arrest	<ul style="list-style-type: none"> Literature review on citation release Telephone survey of 25 law enforcement agencies Site visits to Boulder County, Colorado, SD; Nassau County, Long Island, PD; Minneapolis, Minnesota, PD; Oakland, California, PD; and San Francisco, 	Literature review; review of implementation and use of citation release procedures	Discussion of history of citation release, rationale for its use, context for planning, and information extracted from operational experience which can prove useful in designing, implementing, operating, and monitoring formal citation release programs

Author	Title	Year Published	Location of Population Studied	Subject Matter	Data Type	Methodology	Results
					California, PD and SD		

APPENDIX E

International Association of Chiefs of Police Staff and Consultants

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August 30, 2013

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
Washington, DC 20530

Dear Attorney General Holder,

On behalf of the undersigned national law enforcement organizations, we write to express our extreme disappointment that the U.S. Department of Justice does not intend to challenge policies in Colorado or Washington that legalize the sale and recreational use of marijuana in contravention of Federal law. Further, the Department reiterated its intent to enforce the Federal Controlled Substances Act (CSA) in eight priority areas, however, these will be extremely difficult for Federal, state, local and tribal law enforcement agencies to enforce in practice given the recently approved referendums. As law enforcement officials, we are charged with enforcing the law and keeping our neighborhoods and communities safe—a task that becomes infinitely harder for our front-line men and women given the Department’s position.

The decision by the Department ignores the connections between marijuana use and violent crime, the potential trafficking problems that could be created across state and local boundaries as a result of legalization, and the potential economic and social costs that could be incurred. Communities have been crippled by drug abuse and addiction, stifling economic productivity. Specifically, marijuana’s harmful effects can include episodes of depression, suicidal thoughts, attention deficit issues, and marijuana has also been documented as a gateway to other drugs of abuse.

Marijuana use has had devastating effects in our communities with over 8,000 drugged driving deaths a year, many of which involved marijuana use. Data from Colorado demonstrate the consequences of relaxed marijuana policies that lead to increased use: fatalities involving drivers testing positive for marijuana increased 114 percent between 2006 and 2011. Youth admissions into emergency rooms for marijuana-related incidents have also increased in Colorado. From 2005-2008, the national average for ER admissions for marijuana-related incidents was 18 percent, while in Colorado it was 25 percent. From 2009-2011, the national

average increased to 19.6 percent, while in Colorado it rose to 28 percent. Additionally, the Department of Health and Human Services issued a report showing that for drug-related emergency room visits among youth aged 12-17 the leading drug involved in the incident was marijuana. In addition, officials have documented major increases in exports of marijuana from Colorado to other states between 2010 and 2012.

As with many other drugs, marijuana can also be directly tied to violent crime. As recently as May of 2013, the Office of National Drug Control Policy (ONDCP) released a report showing that marijuana is the most common drug found in the systems of individuals arrested for criminal activity. The ONDCP study found that eighty percent of the adult males arrested for crimes in Sacramento, California, last year tested positive for at least one illegal drug. Marijuana was the most commonly detected drug, found in fifty-four percent of those arrested. Similar results were found in other major cities such as Chicago, Atlanta and New York.

The conclusion that can be drawn from these facts is that relaxed marijuana policies lead to clear and foreseeable negative consequences for communities and families.

Furthermore, it is unacceptable that the Department of Justice did not consult our organizations – whose members will be directly impacted – for meaningful input ahead of this important decision. Our organizations were given notice just thirty minutes before the official announcement was made public and were not given the adequate forum ahead of time to express our concerns with the Department’s conclusion on this matter. Simply “checking the box” by alerting law enforcement officials right before a decision is announced is not enough and certainly does not show an understanding of the value the Federal, state, local and tribal law enforcement partnerships bring to the Department of Justice and the public safety discussion.

Marijuana is illegal under Federal law and should remain that way. While we certainly understand that discretion plays a role in decisions to prosecute individual cases, the failure of the Department of Justice to challenge state policies that clearly contradict Federal law is both unacceptable and unprecedented. **The failure of the Federal government to act in this matter is an open invitation to other states to legalize marijuana in defiance of federal law.**

We strongly encourage you to consider all the potential implications of the Department’s decision not to enforce Federal law on marijuana sale and use in Colorado and Washington. The decision will undoubtedly have grave unintended consequences, including a reversal of the declining crime rates that we as law enforcement practitioners have spent more than a decade maintaining. Our number one goal is to protect the public and ensure its safety. The Department’s decision undermines law enforcement’s efforts to carry out this responsibility and will not aid in maintaining public safety.

Sincerely,



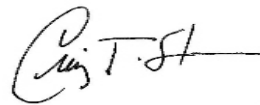
Richard W. Stanek
President, Major County Sheriffs' Association
Sheriff, Hennepin County (MN)



Michael H. Leidholt
President, National Sheriffs' Association
Sheriff, Hughes County (SD)



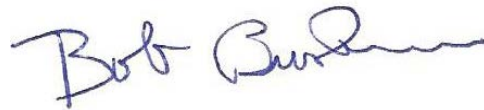
Robert McConnell
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Chiefs of Police



Charles H. Ramsey
President, Major Cities Chiefs Police Association



Bob Bushman
President, National Narcotic Officers
Associations' Coalition

Chuck Wexler
President, Police Executive Research Forum

Cc: Deputy Attorney General James Cole

IACP Statement on Qualified Immunity

As police executives, community members, and elected officials seek to transform the policing profession, there are several areas of agreement where the International Association of Chiefs of Police (IACP) believes we can and should work in unison to recommend and develop meaningful solutions. This includes, but is not limited to, use-of-force policies, training and education standards, early warning systems, disciplinary procedures, and hiring practices,

However, the IACP is gravely concerned by and fervently opposed to efforts to change the qualified immunity protections for police officers. Qualified immunity is a foundational protection for the policing profession and any modification to this legal standard will have a devastating impact on the police's ability to fulfill its public safety mission.

What is qualified immunity? Qualified immunity provides police officers with protection from civil lawsuits so long as their conduct does not violate clearly established law or constitutional rights of which a reasonable officer would have known. Further, qualified immunity **does not** prevent individuals from recovering damages from police officers who **knowingly** violate an individual's constitutional rights.

Qualified immunity is an essential part of policing and American jurisprudence. It allows police officers to respond to incidents without pause, make split-second decisions, and rely on the current state of the law in making those decisions. This protection is essential because it ensures officers that good faith actions, based on their understanding of the law at the time of the action, will not later be found to be unconstitutional. The loss of this protection would have a profoundly chilling effect on police officers and limit their ability and willingness to respond to critical incidents without hesitation.

Calls to limit, reduce, or eliminate qualified immunity do not represent a constructive path forward. In fact, these efforts would most certainly have a far-reaching, deleterious effect on the policing profession's ability to serve and protect communities.



IJIS Institute

**LAW ENFORCEMENT
FACIAL RECOGNITION USE CASE CATALOG**



**Law Enforcement Imaging
Technology Task Force**

*A joint effort of the IJIS Institute and
the International Association of
Chiefs of Police*

March 2019

ACKNOWLEDGEMENTS

The IJIS Institute and the International Association of Chiefs of Police (IACP) would like to thank the following contributors for supporting the creation of this document:

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EXECUTIVE SUMMARY

This Law Enforcement Facial Recognition Use Case Catalog is a joint effort by a Task Force comprised of IJIS Institute and International Association of Chiefs of Police. The document includes a brief description of how facial recognition works, followed by a short explanation of typical system use parameters. The main body of the catalog contains descriptions and examples of known law enforcement facial recognition use cases. A conclusion section completes this catalog, including four recommended actions for law enforcement leaders.

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FOREWARD

Police work is constantly adapting to an ever-changing environment, yet it has always been grounded in one simple, founding principle – to make the world a safer place.

To that end, law enforcement agencies, and other public safety entities must not only stay abreast of the latest tactics and technologies used by criminals, but also deploy every available method to maintain order, thwart wrongdoing, and ensure that those who threaten the peace are held accountable for their actions – all while respecting the rights of those involved.

However, new police technologies and procedures do not automatically coincide with new laws, rules, or policies governing their use. Their initial deployment can sometimes be misunderstood, and, in some cases, technological capabilities in the hands of law enforcement can exceed the public’s comfort level. It can take some time before both citizens and the courts widely accept high-tech police tools. Such a learning curve and adjustment period has occurred with everything from issuance of police firearms to traffic radar speed monitoring devices.

What is unknown is often feared – or at least misunderstood – sometimes leading to overreactions and overreaching by policy makers. This response can limit the extraordinary new ways these advances can help ensure public safety.

Today, law enforcement is wrestling with similar issues in the case of facial recognition, which is sometimes referred to as facial analysis or face matching. Facial recognition is a remarkable development that helps law enforcement exonerate the innocent, narrow searches for the guilty, and otherwise maximize limited resources. Simply put, it greatly expedites certain police functions through the rapid comparison of one facial image to many others.

While the term *facial recognition* has become somewhat synonymous in the media and among other stakeholder groups to describe all uses of this technology, such systems used by law enforcement provide recognition of *potential* candidates, not recognition of *exact* matches as the name might insinuate. Law enforcement best practices for all known use cases still requires a human examiner to confirm that one of the computer-provided candidates matches the submitted image. The computer or software system does not make the final decision regarding an exact match when proper police procedures are being followed – a trained person does.

Public safety professionals use facial recognition in various ways to help them discover or find individuals, and to assist with the identification of people. But, because facial recognition uses the very personal and particular attributes within an image of the human face, it has a very private and individual connotation to it. The fact that it can help sort through great volumes of images, and that citizens aren’t necessarily aware their own faces are in such comparative databases, only heighten the potential anxiety over the use of facial recognition technologies. These issues, , have created an environment where something as promising as facial recognition has the potential to be viewed as a problem itself, rather than an answer to one.

What appears to be immediately needed is a balanced and well-informed approach to facial recognition by law enforcement, which will help ensure public understanding of the way in which the technology is used by law enforcement, and to what end.

PURPOSE OF THIS CATALOG

The IJIS Institute and the International Association of Chiefs of Police (IACP) are both research entities and policy development bodies, but each has different core memberships. The combination of these two groups into a task force provides a multi-faceted perspective to technology issues. IJIS is a nonprofit alliance of industry representatives, technology developers, practitioners, national associations, and academic organizations, while IACP is comprised largely of justice leaders and law enforcement practitioners, the blend of experience and competencies between these organizations is a desired benefit in this catalog.

With a combined global membership of more than 31,000, IJIS and IACP together have deep knowledge, academic prowess, and practical experience to investigate emerging issues and technologies. The organizations have created a joint research effort known as the Law Enforcement Imaging Technology Task Force (LEITTF) to review emerging trends and technologies such as facial recognition.

The LEITTF has created this document as a catalog of facial recognition use cases for criminal justice agencies, which includes uses by police officers, sheriff's deputies, investigators, and supporting personnel wherever they exist. This examination of uses covers typical settings wherever law enforcement interacts with persons such as large venues, transportation hubs, correctional facilities, motor vehicle stops, crime scenes, and other everyday situations.

The intention of this effort is to briefly describe facial recognition systems and their parameters, determine the ways in which facial recognition is being used, and, most importantly, to document cases which demonstrate the technology's ability to protect the public. The objective is to empower public safety practitioners and industry innovators to communicate the ability of facial recognition to policy makers and the public, while reducing misunderstanding and minimizing the potential for misuse.

The LEITTF has chosen to catalog and explain facial recognition use cases (as opposed to creating model policy, conducting a scientific analysis, or examining other elements of facial recognition) in order to fulfill an immediate need to improve visibility into how these systems are used. Providing real examples from the field further strengthens the context of facial recognition usage so that those outside of law enforcement can appreciate its necessity. It is hoped such details will help encourage outreach from police to concerned citizen groups and, in general, establish a better understanding of facial recognition. Describing the way in which facial recognition is successfully deployed should increase awareness and alleviate at least some of the public's concerns, and perhaps spur healthy discussion into the benefits of using this technology. As has been proven with every successful deployment of technology and law enforcement effort to combat crime, "you cannot police a community without effectively working with that community."¹

HOW DOES FACIAL RECOGNITION WORK?

Facial recognition has been in limited use for many years. Recent improvements in system accuracy combined with higher demands for biometric identification capabilities have led to more widespread use in private industry such as corporate settings, with public and law enforcement use lagging slightly behind but certainly on the rise.

A typical facial recognition system uses the layout of a subject's facial features, and their relative distance from one another, for identification comparison against a separate image, or perhaps even against thousands or even millions of separate images in a database or gallery of faces. The subject's facial image attributes are derived from either a still or video image – physical presence is not always required.



Computer algorithms then measure the differences between the face being searched and the enrolled faces in a chosen gallery, such as a government database of images. The smaller the differences between the faces considered, the more likely those faces will be recognized and presented as potential matches. Through statistical analysis of the differences, a facial recognition system can provide a list of candidates from the gallery and rate the most likely matches to the image of the subject's face. Using suggested law enforcement best practices (see Summary Recommendation # 4), a trained face examiner would then make the final selection, potentially determining one of the candidates is very likely a match to the original submission. Of course, some facial recognition searches result in no high-probability match candidates. Even if the computer algorithm does return potential match candidates, it is possible, and, in fact, common, that the trained human examiner does not agree, nor does he or she select any candidate as a likely match.

Perhaps the most important element regarding the use of facial recognition by law enforcement is not within the technology itself, but what follows once the computer has suggested candidates and the human examiner determines a likely match exists in a particular case. It is at this point that the police have a strong clue, and nothing more, which must then be corroborated against other facts and investigative findings before a person can be determined to be the subject whose identity is being sought. Therefore, a candidate match, even after confirmation by a trained user, is, in most jurisdictions, not enough evidence for police to detain or arrest a person. All facts, and the totality of circumstances regarding the investigation or search, should be considered before any action is taken.

¹ William Bratton, former NYPD and Boston Police Commissioner, and LAPD Chief.

Facial Recognition Use Types

Facial recognition technology is broadly used in two different sorts of law enforcement situations:

Identify	<p>It can help identify a subject face against a known image. For example, this would help confirm that a person’s face matches to the digital image of a face embedded in a document presented to law enforcement, such as a passport. This is sometimes known as one-to-one analysis, since facial recognition is being asked to provide guidance on whether one submitted sample image is likely the same person as in another image.</p>	
Discovery	<p>Facial recognition technology can also help compare the image of a face to numerous known faces within an array or database. For example, this helps police use technology to suggest if a criminal or terrorist in a surveillance video or still image may match any mug shot photos of people previously arrested or convicted. This function is typically called discovery and is sometimes referred to as a one-to-many analysis since it seeks to compare one image to multiple other images to find candidates for potential matching.</p>	

Facial Recognition System Parameters

There are several elements of a facial recognition system which are somewhat similar to other database-reliant technologies. For instance, digital fingerprint systems retain a repository of collected prints, and in many cases, newly submitted prints are often compared to those in the database to see if there are potential prints which may match the sample. It is also possible to compare one set of collected prints to another collected set or print, such as from a crime scene. Facial recognition is often used in similar ways – comparing one-to-one, or comparing-one-to-many. However, there are several distinct differences. For instance, facial recognition is currently somewhat unregulated by laws, policies, and practices regarding image capture, usage, retention, accuracy, and human oversight.

Also, face images can be collected much more easily than fingerprints, sometimes without the person knowing an image of their face has been captured. Most people that are fingerprinted have either consented to prints being taken or have been arrested and have no choice. Face images are sometimes collected with consent, such as with a driver’s license photo, but an extended or implied consent over its future use in a repository is not usually given. In some cases, governments prohibit implied consent or do not allow the agency capturing the original photo to even ask for it.

However, in some regions, consent to capture the photo for one purpose does not always expressly prohibit its use by law enforcement. Therefore, some police agencies may use captured images without a person's implied consent.

These types of image captures, uses, and retentions, and the lack of consistent laws or rules throughout many states, provinces, territories, and countries, have helped cause misunderstandings and some resistance to facial recognition systems.

Facial recognition accuracy is also an unsettled discussion in many regions. This technology is without question much more efficient at scanning through large numbers of photos to find potential candidates than could be scanned by manual human comparison, but there are questions about whether the faster, technological approach can ever be 100% accurate.

Some facial recognition research, such as the Georgetown Center for Privacy and Technology Report,² have widened the gap between supporters and detractors through suggestions that the systems are at least partially biased toward minorities, and because of such inherent risks, should only be used by police to find very serious criminals. Other recent studies, such as the latest reports by Massachusetts Institute of Technology's (MIT) Computer Science and Artificial Intelligence Lab³ and IBM,⁴ each suggest facial recognition bias can be mitigated through improvements in algorithmic structure, more racially inclusive data sets, and broader facial data point collection. Greater overall independent study is needed, and transparency regarding the results will be essential to maintain public confidence in the technology as the science is refined and fear is mitigated.

There are also media and watchdog group assertions that the technology is in some cases being used to single out a person based *only* upon a computer-driven algorithm's decision, without any significant amount of human oversight to the process. Many of these anecdotal complaints involve alleged use cases where denial of entry or services is the result, such as admission to a sports stadium, *not* detention, arrest or formal criminal prosecution. However, any alleged decision by law enforcement personnel reportedly made solely by facial recognition software, no matter how inconsequential the decision may seem, is alarming to some stakeholder groups. Media reports of this alleged facial recognition usage certainly have stirred criticism, which is also to some degree fueled by reported accuracy improvements made by technology providers. Some media reports allege law enforcement agencies are relying on greater system accuracy to select matching candidates, and less on trained facial recognition human examiners. However, police agencies can avoid such criticism by ensuring facial recognition systems are supported by strong policy, training standards, and human oversight, regardless of increasing accuracy, especially when criminal investigations are being conducted or other impactful actions may be taken which affect the public.

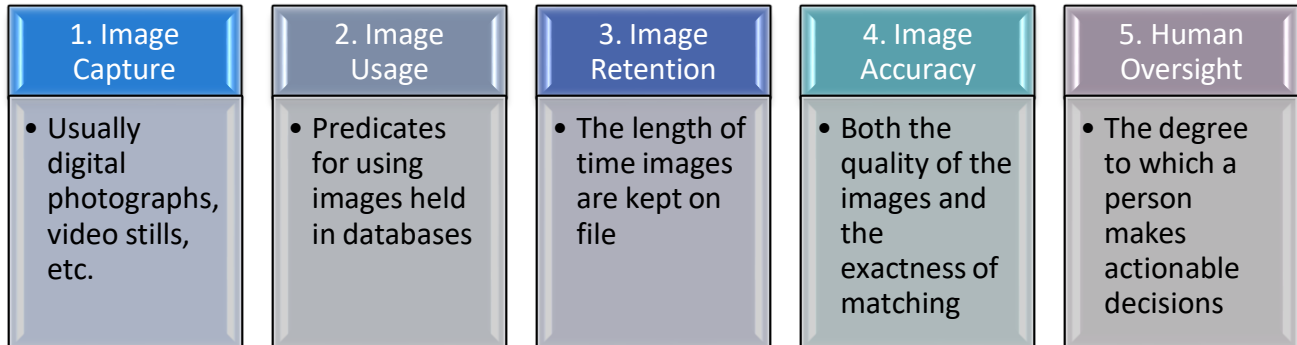
² Georgetown Law School Center for Privacy and Technology Report, *The Perpetual Line-Up*, October 2016 <https://www.perpetuallineup.org/>.

³ Massachusetts Institute of Technology Computer Science and Artificial Intelligence Laboratory Study, *Uncovering and Mitigating Algorithmic Bias Through Learned Latent Structure*, January 2019, http://www.aies-conference.com/wp-content/papers/main/AIES-19_paper_220.pdf.

⁴ IBM Corporation, *Diversity in Faces Study*, January 2019, <https://www.ibm.com/blogs/research/2019/01/diversity-in-faces/>.

Typical Elements of Facial Recognition System Deployments

Facial recognition systems generally involve five significant elements or activities:



These five aspects each have important variables, leading to potentially different best practices, policies, laws, limitations, and concerns depending on the exact use cases.

Here are the five system aspects listed again, with potential questions about usage parameters following each that law enforcement users may be asked and be prepared to answer:

Image Capture	Who captured the image? When was it captured? How was it captured? Why was it captured? Was consent given to capture it?
Image Usage	Who will use the image? When will it be used? How will it be used? Why will it be used? Will consent be given each time it is used?
Image Retention	Who has the right to retain the image? When do they have the right to retain it? How will it be retained? How long will it be retained?
Image Accuracy	Are image quality, capture, and comparison methods standardized? Are both sample and gallery images similarly standardized? Are accuracy errors random or patterned by sex, race, skin color, affliction, style choices, image accuracy, etc.?
Human Oversight	Are trained examiners the ultimate decision makers? Are examiners trained to certain standards? How often?

Some of these questions may each be answered differently, depending on how facial recognition is being used at the moment, and under what pretenses, and by which type of agency. That is why this catalog presents the following actual known law enforcement use cases of facial recognition systems. These use cases should provide context as to why the public's opinion of this technology may be quite different depending on the actual circumstances of its use and may further depend on the timing of such police use within the justice continuum. What is publicly acceptable for law enforcement to use when detaining known criminals or investigating crimes may not be tolerable for those situations where police are conducting broad surveillance, or routinely patrolling neighborhoods. Examination of law enforcement facial recognition uses cases may help both the police and the public come to terms with how this technology is, and should be, deployed.

USE CASES

Police officers are generally very adaptive and ingenious. The nature of protecting the public usually requires quick-thinking, and the use of things which may go beyond their original intended design is sometimes a necessity.

Such is the case with facial recognition, which was originally intended as a specific investigative tool to help narrow the field of suspects down to a manageable amount. However, law enforcement professionals quickly learned to deploy it as a means of exonerating the falsely accused, identifying the mentally ill, helping return children to their parents, and determining the identity of deceased persons, in addition to other innovative uses.

This Task Force found 19 known uses of facial recognition for law enforcement.

These uses involve both overt, and covert, facial image capture and observation techniques.

Law Enforcement Facial Recognition Use Case Categories

The different ways in which this technology is being used generally fit into three different groupings, based upon the activity or required tasks of the law enforcement professional using facial recognition:

1. Field Use
2. Investigative Use
3. Custodial and Supervisory Use

Many of the 19 uses can also be performed with two distinctly different intentions:

- **Discovery** – helping to find one person among many persons
(*One-to-Many Comparison*)
- **Identification** – helping to verify one person is in fact the person being helped or sought
(*One-to-One Comparison*)

The database of comparative photos use in each use case can also differ. For example, some law enforcement agencies may use images from public sources (such as department of corrections records) to compare with a recently captured image of a suspect. Other police departments may also use, with appropriate legal authority, a privately-owned gallery, such as one maintained by a sports venue security firm, which, for example, may have been created from video surveillance or ticket-use photo identification databases.

Therefore, each use case may have several variables, such as the intended outcome to either *discover* a person, or *identify* a person, plus be conducted using comparison to either public and private sources of photos, or both, and at different points in an investigation or inquiry into a matter brought to the attention of police, Figure 1.

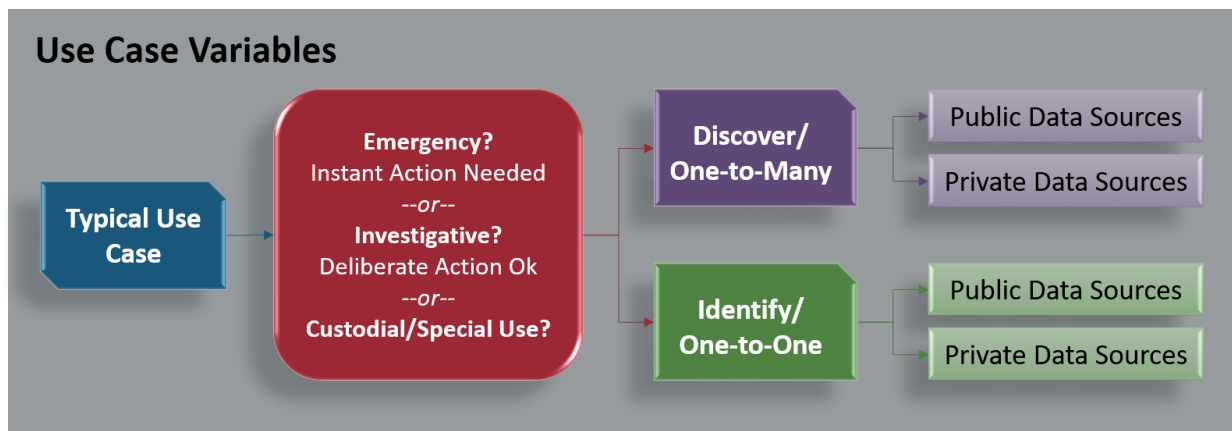


Figure 1

In the following use case descriptions, actual instances or example scenarios follow each use case to further clarify the ways in which facial recognition may be used by law enforcement.

Field Use

The following situations generally occur where an officer uses facial recognition to help positively identify an individual during a face-to-face interaction, or during some other active, uniformed-police response to an incident.

Random Field Interaction

An officer on patrol in the field may be alerted that an individual’s image actively captured on an operating in-car or body worn camera may be a possible candidate for a match to a subject in a wanted persons image database.

Example Scenario

Police officers assigned to foot patrol in a business district may be required to operate their body worn cameras during all substantive interactions with the public. During such patrol duties they are often interact with citizens at which time face images captured via activated body worn camera footage may be compared in near real time to a criminal warrants database of fugitive images.

Reasonable Suspicion Interaction

An officer may be alerted to unusual or furtive activity by a person, which presents reasonable suspicion to capture an image of the individual to protect the officer's safety, or to potentially explain the suspicious activity.

Actual Instance - Fugitive Apprehended

In January 2017, an officer assigned to a fugitive task force observed a transient male that matched the description of a known wanted subject. The male was uncooperative and refused to identify himself. The officer captured a photograph of the subject and used facial recognition as one tool to help identify him. The officer then queried NCIC and was informed that the subject had an active felony warrant. He was booked and the case was closed.⁵

Active Incident

During an active criminal situation, video or pictures obtained by officers could be used to potentially help identify individuals and guide active response efforts.

Example Scenario

A situation might occur where a field officer records video of a person's face, such as with an in-car or body worn camera system, and the person then flees the scene of the encounter. Facial recognition could be used to compare the recorded image of the person's face against a database to help determine who the person might be, or why they fled.

Deceased Identification

Deceased individuals can be more quickly identified in the field with facial recognition systems providing possible matched images to a captured image of the victim.

Actual Instance - Facial Recognition Used to ID murder victim

Police received a 9-1-1 call of a male subject lying in the street. Officers arrived and located an obviously deceased adult male victim in the roadway. There was evidence of trauma to the victim's body and it would eventually be learned that a homicide had occurred. The victim did not appear to possess any identification and responding detectives were initially unable to identify the subject. A photograph was taken at the crime scene and submitted through a facial recognition program. Within minutes, a candidate photograph was returned, helping to identify the victim as 21-year-old male. This identification was corroborated by other facts obtained in the early stages of the investigation. The speedy identification of the unknown victim in this case was a huge benefit, making it possible for timely notification to the family, and moving the investigation forward towards its eventual resolution through the arrest of two suspects.⁶

⁵Automated Regional Justice Information System, San Diego, California.

⁶Automated Regional Justice Information System, San Diego, California.

Lost & Missing

Lost children or missing adults could be located and identified when encountered by officers during interactions, whereby facial recognition is used to help provide clues to determine identity.

Example Scenario

A situation might occur where a field officer encounters a lost child or disoriented adult and captures an image of the person's face for comparison with a database of lost or missing persons to help identify them.

Interdiction

An individual of interest who is actively avoiding identification can potentially be located at a checkpoint, with facial recognition providing clues for officers to investigate.

Actual Instance - Illegal Alien Attempts Entry

In August 2018, a 26-year-old man traveling from Brazil entered Washington Dulles International Airport and presented agents with a French passport. Agents used facial recognition to compare his passport photo to a database of known images with identities and were alerted that the man's photo might not be a match to his stated identity. The man became nervous when agents referred him for a secondary search. The agents discovered the man's real identification card in his shoe, and it was revealed he hailed from the Republic of Congo. Charges are pending.⁷

Identify Fraud

Incidents often occur where a person presents identification documents to fraudulently obtain access or services, benefits, or credit privileges, and facial recognition can be used to alert officers to possible mismatches.

Actual Instance - Credit Card Fraud

An unknown female pictured in surveillance photos entered a costume store attempting to purchase multiple wigs with a credit card that was stolen from a vehicle earlier in the day. The transactions could not be completed as the cardholder had already canceled the stolen cards. At this time, it is unknown whether the pictured female was also involved in the vehicle trespass. The female was described as having a heavier-set build and dark, shoulder length hair. Checking the surveillance photos against a correctional mug shot database with the agency's facial recognition application revealed the identity of a high-probability candidate, who is now under investigation for use of the stolen credit card.⁸

Actual Instance - Retail Fraud

On March 5, 2018, investigators opened a case involving fraud and the use of counterfeit traveler's checks ranging from \$5,000 to \$20,000 in multiple jurisdictions. A male and female

⁷United States Customs and Border Protection.

⁸Arapahoe County, Colorado Sheriff's Department.

*suspect had opened a membership at a Costco and began using the checks as payment. The investigating agency submitted the new member photos to a facial recognition application and investigators were able to locate candidates in the system and eventually confirm the identities of both suspects. Charges are pending.*⁹

Actual Instance - Retail Fraud and Theft

*Around April 13, 2018, investigators received an Asset Protection Alert from a local Home Depot not in their jurisdiction. The suspects in these cases have stolen over \$5,000.00 in tools from Home Depot stores in nine separate cases and five different stores. The investigator used the agency facial recognition application to compare surveillance photos of the suspect with photos from a correctional mug shot database. The application returned a high-probability candidate now under investigation by Home Depot retail crime investigators and local authorities. Charges are pending.*¹⁰

Actual Instance - Retail Fraud

*On June 20, 2018, investigators received a bulletin advising that a suspect has committed two high-dollar thefts at The Home Depot. The suspect was targeting Milwaukee power tools. Total loss for the two cases \$1,097.00. Surveillance photographs were entered into the agency's facial recognition application used to search the correctional mug shot database. The application identified two high-probability candidates that additional investigation confirmed were the involved suspects and resulted in recovery of the stolen tools and pending charges.*¹¹

Investigative

The following use cases generally involve law enforcement using facial recognition technologies to assist in solving crimes, such as use to gather evidence or aid in investigations.

Active Incident

During an active criminal situation, surveillance video can be used to provide images of suspicious persons which may help to identify suspects or witnesses, thereby guiding active response efforts.

Example Scenario

A situation might occur where a terrorist attack is made, and surveillance video of the area prior to the event is obtained. Images of suspicious persons in the video can be entered into other monitoring systems, which can then search for potential matches among other video feeds.

⁹Arapahoe County, Colorado Sheriff's Department.

¹⁰Arapahoe County, Colorado Sheriff's Department.

¹¹Arapahoe County, Colorado Sheriff's Department.

Photo Array Construction

The creation of photo arrays can be automated using an existing suspect photo along with other biometrics information to find similar photos, thereby creating a photo array to be shown to a witness or victim for suspect identification.

Actual Instance - Armed Robbery Suspect Apprehended

An Indiana detective used facial recognition software to help identify a convicted serial robber as the alleged stickup man of a payday loan business. The business' cashiers told police the suspect ran around the counter and flashed a firearm before ordering them to empty two cash registers. Records show that the suspect ordered a cashier to open the store's safe but fled after he noticed a customer walking out of the business on her cellphone. The suspect's face was visible on the store's surveillance footage. Police released footage of the suspect the week after the robbery, but no leads were developed.

A detective then turned to the department's facial recognition software and put a photo of the suspect from the surveillance footage into the system which came up as a possible match. The detective showed the cashiers a photo array, which included the suspect's photo, and they identified him as the robber. The suspect had absconded from parole earlier in Illinois after serving part of a 12-year prison sentence for a string of armed robberies in the northwest Chicago suburbs, according to Illinois Department of Corrections records. He had committed nine robberies over the course of the prior 7 years.¹²

Actual Instance - Sexual Assault Suspect Apprehended

A 15-year old girl was sexually assaulted by an adult male she met online. The girl was only able to provide suspect personal information from his online profile but had also obviously met him in person, so she was familiar with what he looked like in real life and had access to online images of him. Police were able to use facial recognition on one of the digital images, which when compared to DMV photos, provided some candidates from which the girl was able to select a match. Authorities obtained a search warrant for the home of the identified suspect, who later admitted to the crime.¹³

Evidence Compilation

Photos of a known suspect can be used to search across existing traditional photo databases, or even situation-specific databases created from voluntary submissions, surveillance videos, or social media, yielding possible candidates which may match the suspect.

Actual Instance - Jewelry Thief Apprehended Via CrimeStoppers Comparison

On November 3, 2017, an unknown subject was caught on surveillance video at a Jeweler store, taking control over eight gold rings worth \$2,000. The Hamilton County Sheriff's Office was asked to assist with the investigation and was in the process of testing its new facial recognition system. Deputies decided to use the jewelry investigation request as a training exercise. They used to publicly-submit CrimeStoppers photos to learn how to analyze the jewelry suspect image

¹²Munster, Indiana Police Department.

¹³Scranton, Pennsylvania Police Department.

to a candidate pool of images and were surprised that after just a dozen or so photos were compared, a strong candidate for a match was found. Detectives took this legitimate lead and started working with investigators from the jurisdiction where the CrimeStoppers submission was made, piecing together the true identity of the suspect. The thief's identity was determined, and he was located and arrested for the jewelry theft, the CrimeStoppers Case and four other outstanding felony warrants.¹⁴

Actual Instance - Social Media Photo Helps Identify Suspect

A woman was victimized by a stranger whom she met on a dating website. The perpetrator's name and other personal information on his social network page were intentionally deceptive, but the photograph was genuine because his intent was to eventually meet the victim in person. Biometric search of the dating website profile photograph produced a possible match, which after further investigation, led to an arrest.¹⁵

Actual Instance - Suspect Misidentifies Sex to Avoid Arrest

A police officer used a facial recognition application to help identify a girl who was pretending to be a guy (Justin) instead of a female (Jamie), all to avoid being arrested on a warrant. No record came up on names and DOBs. Field officers used the available facial recognition application by snapping a photo of her in disguise and comparing it to the 4+ million booking photographs in the system. The suspect's FEMALE photograph returned as the #3 candidate. Immediate action on the returned information exposed the disguise and resulted in an arrest.¹⁶

Actual Instance - Shooting Suspect Identified

On October 17, 2018, a suspect identified by a witness as a tattoo artist and recently-released inmate, known only by the monikers Dough Boy or Dough Blow, shot and seriously injured another person. Using information developed through a bulletin and photos from social media posts made by the suspect, the agency facial recognition application returned a high-probability candidate from a mug shot database. Further investigation revealed a high-probability candidate that the continuing investigation confirmed as the suspect in the shooting. The investigation continues.¹⁷

Participant Party Identification

Facial recognition can be used to help confirm a witness, victim, or perpetrator was at a specific crime scene, or associates with a specific suspect or group.

Actual Instance – CCTV Helps Confirm Suspect was at Crime Scene

A crime occurred in view of a local CCTV camera system, and recorded video captured an image of a potential perpetrator's face. Facial recognition was used to compare the image to a photo database, which produced two potential suspects. Further investigation by detectives

¹⁴ Springfield Twp. Police and Hamilton County Sheriff's Office, Ohio.

¹⁵ Safran MorphoTrust Corporation.

¹⁶ Lakewood, Colorado Police Department/Colorado Information Sharing Consortium.

¹⁷ Denver, Colorado Police Department.

in the field helped confirm one of the suspects was at the scene, ultimately leading to his arrest for the crime.¹⁸

Victims Identification

Facial recognition can assist in potentially identifying victims of crimes, in situations where traditional methods of identification are not available.

Example Scenario

A situation might occur where a victim of a crime appears in a videotape or photograph, such as with a teenager being used in sexually explicit materials, but no report of crime is made to police by the victim or his/her guardians. The image of the victim can be used to search available databases for potential candidates to be identified.

Criminal Identification

During the monitoring of high risk transit locations, areas of persistent criminal activity or other high-risk locations, images of known wanted persons can be compared against images captured on surveillance video to help locate potential matches.

Example Scenario

A situation might occur where a defiant trespasser or registered sex offender is not allowed on certain public properties, such as playgrounds or schools, because of prior criminal convictions. Facial recognition could be used to monitor surveillance video for potential candidates who might match the identity of the prohibited person.

Suspect or Associate Identification

Facial recognition can be used to acquire images and potentially help identify existing or new subjects of investigations or assist in exoneration of suspects.

Actual Instance - Smart Phone Digital Photo Comparison Exonerates Suspect

A witness in a gang-related assault case provided smartphone photos of the suspects to the detective working the case. One of the photos of a suspect was able to be run using facial recognition software and an investigative lead was developed. Upon further investigation confirmation of the suspect's name was made and during the investigation it was found that the suspect was in jail in another location at the time of the crime. Verification of the suspect was made based on the photo of him and the tattoos on his arm. Apparently, the witness provided an incorrect photo of one of the suspects and the facial recognition system, along with further investigation, saved investigators time, and more importantly, saved the individual from being arrested for a case in which he was not involved.¹⁹

¹⁸ Safran MorphoTrust Corporation.

¹⁹ United States National Capital Region Facial Analysis Pilot Test Project.

Actual Instance - Homicide Suspect Identified

In April of 2018, Edgewater, Colorado, Police had a shooting death resulting from an attempted random street robbery and at the onset of the investigation had no suspect information or leads. From leads that were eventually put together, police were able to identify a suspect vehicle which was impounded. A receipt to a 7-Eleven was found in the vehicle and grainy footage from the store video system was obtained showing the suspects inside the store approximately one hour after the homicide. Three of the four parties seen in the video were identified by traditional means and subsequently arrested.

A fourth suspect/witness was seen but detectives were unable to identify her. With Wheat Ridge Police help, detectives used a facial recognition program to help identify and locate this female. This person ended up being in the car at the time of the homicide and was able to tell us exactly what happened the night of the homicide, who pulled the trigger and what other roles other people inside the vehicle played.

During subsequent follow up, the suspects made incriminating statements to multiple people on Facebook about the homicide. Detectives used the facial recognition program to help identify pictures of people found on their Facebook profiles since nobody uses their real name.²⁰

Actual Instance - Theft Case Solved

An investigator had a theft case where the victim met the suspect for a date. When she went to the restroom, he stole her wallet. The only thing she knew about him was his first name. She had downloaded a picture of him on her phone. The agency's facial recognition application and the statewide mug shot database, identified a high-probability candidate, returning both identity information and extensive arrest information. The detective used the application's photo lineup feature, showed it to the victim and she recognized the identified candidate immediately. Charges are pending.²¹

Actual Instance - Carjacking Suspects Found

Two men attempted a robbery of a woman in the parking lot of a liquor store. The woman bravely fought off attempts to have her wallet and car taken, and the men fled. The store owner provided surveillance video of one of the men, who had entered the store to make a small purchase while stalking the victim. The video provided an image of the suspect, which was compared to a correctional photo database, revealing potential suspect candidates. Further investigation led to the apprehension of both the man in the video and his accomplice brother.²²

Custodial & Supervisory

The following use cases use facial recognition technologies to potentially identify and track candidates as part of efficiently operating criminal justice system programs.

²⁰ Edgewater, Colorado Police Department.

²¹ Arapahoe County, Colorado Sheriff's Department.

²² Greenville County, South Carolina Sheriff's Department.

Admittance Identification

Facial recognition can be used to help authenticate the identity of arrested persons being booked into detention.

Example Scenario

A person arrested by a police officer for a crime might refuse to identify themselves. The suspect is often brought to a correctional facility. Booking officers usually obtain a photo upon processing, thereby comparing it to existing photos on file to potentially positively identify the suspect.

Access Control & Movement

Identity verification of inmates or other persons can be aided via facial recognition, helping to control access to certain areas of a detention facility, or assist in confirming identity before receiving medication, privileges, or access to items restricted to other inmates.

Example Scenario

A correctional facility controls access to certain privileged areas and needs to ensure inmates required to present themselves for certain actions are properly identified. Officers can use facial recognition to corroborate with other means of identification, such as ID bracelets, RFID devices, and other biometric indicators.

Identification for Release

Confirming an inmate's identity prior to approved temporary or permanent release can be aided by facial recognition.

Example Scenario

A correctional institution obviously needs to control egress from its facility. Facial recognition can be used to help ensure an inmate presenting him or herself for work furlough, or release at the end of their sentence, is in fact the prisoner which should be allowed to leave the facility.

Identification for Program Participation

Facial recognition can be used to help confirm identity for special program participation, such as parole, probation, or sex offender registry.

Example Scenario

A parole or probation officer may be required to positively identify a person presenting himself for a urine test or mandated parole check-in visit. Facial recognition may be used to help establish a positive identity in concert with other biometric systems or identification processes.

Court Appearances

Identification of a court defendant or witness can be further corroborated using facial recognition.

Example Scenario

A judge may order a defendant appearing before her positively identified, especially in cases of identity fraud, exact twins or undocumented aliens with no official government identification. Court officers could use facial recognition to assist in the positive identity of the person by comparing the person's face with available databases.

CONCLUSION

Technologies like facial recognition systems are essential to help police maintain order in the modern world. However, their success as an effective tool for law enforcement are dependent upon ensuring that they are properly deployed and used. Additionally, law enforcement agencies must work closely with the communities to explain their use, educate the public on the capabilities, and demonstrate how the use of facial recognition technology will benefit public safety.

Recommendation #1: Fully Inform the Public

Law enforcement should endeavor to completely engage in public dialogue regarding purpose-driven facial recognition use, including how it operates, when and how images are taken and retained, and the situations in which it is used.

With facial recognition systems, the most powerful aspect is its use to compare as many images as possible in a short amount of time. It helps automate a laborious manual process to aid in many public safety efforts. Therefore, maximizing lawful and accepted use of images should be paramount, and providing the public with confidence that such capture and comparison are done fairly will ultimately ensure the most successful use of facial recognition.

²³ This idiom is widely attributed to an unknown contributing author of the National Convention Decrees during the French Revolution, May 8, 1793

²⁴ Sir Robert Peel, British Statesman and founder of the London Metropolitan Police in 1829.

Recommendation #2: Establish Use Parameters

Appropriate system use conditions, even preliminary ones, must be established as soon as possible to engender public confidence in its use and avoid any further proliferation of mistrust.

The use cases within this document demonstrate the varied ways in which this one technology can be deployed into many aspects of public safety. No doubt more uses will arise over time, bringing facial recognition systems to bear against all manner of crime, and on behalf of many victims, just as fingerprinting and DNA matching have done in the past.

The real cases presented are but a small sampling of the numerous success stories, many exonerating the wrongly accused as well as bringing the correct criminal to justice. It is hoped that more cases will be brought to light through enlightening discussions such as those this document attempts to create.

Recommendation #3: Publicize its Effectiveness

All public safety agencies should widely publish facial recognition success stories to heighten overall awareness of its usefulness, especially those cases in which suspects are exonerated, or where facial recognition is used to protect vulnerable persons.

This description of facial recognition systems and the ways in which it is being used by police is a starting point. While it is most often used to apprehend criminals, it is also used to find missing children, identify deceased persons and help prevent the innocent from being accused. Through consideration of the identified issues and these use cases, human reference points will be created so that the technology's interactions with citizens will be less mysterious and more appreciated for the service it provides. It is also hoped that by outlining how it is used throughout law enforcement, it will help stimulate needed conversation, policy creation and baseline training standards that can be tailored to each use within accepted community tolerances.

Recommendation #4: Create Best Practice Principles and Policies

Model law enforcement facial recognition guidance and regulation documents should be immediately established and broadly adopted, to include training benchmarks, privacy standards, human examiner requirements, and anti-bias safeguards.

Initial training and periodic re-training certifications are required as a part of most law enforcement technologies, and facial recognition seems to need such best practice standards to ensure both the courts and the public have a confidence in its consistent, fair use. Only after a broader public and judicial acceptance of facial recognition is created and stabilized can it then realize its full potential in becoming one of the most efficient and amazing law enforcement tools every deployed.

None of this catalog’s representations, nor its recommendations will be constants – things change at a record pace these days, and so too must the ways in which we view and regulate ourselves as well as our machines. However, the use cases presented, and the suggestions within this report to improve the standing of facial recognition, should be immediately useful to help get this technology back on a positive trajectory.

The LEITTF believes strongly in facial recognition abilities and reasonable use conditions, and highly recommends enlisting the public more directly to generate wide support for our collective mission – to make the world a safer place.

RESOURCES

For more information about facial recognition technologies and opposition to it:

❖ IACP Technology Policy Framework	https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Technology%20Policy%20Framework%20January%202014%20Final.pdf
❖ City of Palo Alto Surveillance Technology Ordinance	https://www.cityofpaloalto.org/civicax/filebank/documents/66597
❖ U.S. Bureau of Justice Assistance Policy Development Template	https://www.bja.gov/Publications/Face-Recognition-Policy-Development-Template-508-compliant.pdf
❖ Georgetown Center for Privacy & Technology Face Recognition Use Policy	https://www.perpetuallineup.org/appendix/model-police-use-policy
❖ Electronic Frontier Foundation Police Uses of Facial Recognition	https://www.eff.org/wp/law-enforcement-use-face-recognition

❖ Cardiff University Evaluation of Police Facial Recognition Use Cases	https://crimeandsecurity.org/feed/afr
❖ ACLU Report on Test Use of Facial Recognition at U.S. Capitol	https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28
❖ Michigan State University Case Study of Facial Recognition Use in Boston Bombing Investigation	http://biometrics.cse.msu.edu/Publications/Face/KlontzJain_CaseStudyUnconstrainedFacialRecognition_BostonMarathonBombingSuspects.pdf
❖ Draft Facial Recognition Policy (James Medford, USAF Lt. Col. (Ret.))	https://drive.google.com/open?id=1BzKrSo-kLUV8uI88gwUm_1Du3ewePwVZ

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The IJIS Institute provides a trusted forum within and across our areas of focus where resources are developed, collaboration is encouraged, and public-sector stakeholders can realize the benefits of technology and the power of information to keep our communities safe, healthy, and thriving.

Founded in 2001 as a 501(c) (3) nonprofit corporation with a national headquarters in Ashburn, Virginia, the IJIS Institute has grown to nearly 400 member companies and individual associates from government, nonprofit, and educational institutions from across the United States.

The IJIS Institute thanks the Law Enforcement Imaging Technology Task Force for their work on this document. The IJIS Institute also thanks the many companies who have joined as Members that contribute to the work of the Institute and share in our mission to drive public-sector technology innovation and empower information sharing to promote safer and healthier communities. For more information on the IJIS Institute, visit our website at <http://www.ijis.org/>.

ABOUT THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

The International Association of Chiefs of Police (IACP) is the world's largest and most influential professional association for police leaders. With more than 30,000 members in over 150 countries, the IACP is a recognized leader in global policing. Since 1893, the association has been speaking out on behalf of law enforcement and advancing leadership and professionalism in policing worldwide.

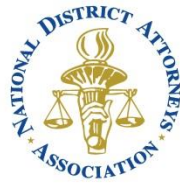


The IACP is known for its commitment to shaping the future of the police profession. Through timely research, programming, and unparalleled training opportunities, the IACP is preparing current and emerging police leaders—and the agencies and communities they serve—to succeed in addressing the most pressing issues, threats, and challenges of the day.

The IACP is a not-for-profit 501c(3) organization headquartered in Alexandria, Virginia. The IACP is the publisher of *The Police Chief* magazine, the leading periodical for law enforcement executives, and the host of the IACP Annual Conference, the largest police educational and technology exposition in the world. IACP membership is open to law enforcement professionals of all ranks, as well as non-sworn leaders across the criminal justice system. Learn more about the IACP at www.theIACP.org.

About the Law Enforcement Imaging Technology Task Force

The Law Enforcement Imaging Technology Task Force was formed in 2015 as a joint project of the IJIS Institute and the International Association of Chiefs of Police (IACP). This Task Force was created to study new imaging software, devices, and methods as a means of ensuring successful, principled, and sustainable use which is both supported by citizen and aligned with the ultimate mission – to improve public safety.



December 23, 2015

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Leader McConnell, Leader Reid, Speaker Ryan, and Leader Pelosi,

On behalf of the undersigned organizations, we are writing to express our profound concern over the decision to suspend the equitable sharing payments under the Department of Justice Asset Forfeiture program as a result of provisions contained in both the Bipartisan Budget Act of 2015 (P.L. 114-74) and the Consolidated Appropriations Act of 2016 (P.L. 114-113). This shortsighted decision by Congress will have a significant and immediate impact on the ability of law enforcement agencies throughout the nation to protect their communities and provide their citizens with the services they expect and deserve.

For over 30 years, the Asset Forfeiture program has allowed law enforcement to deprive criminals of both the proceeds and tools of crime. The resources provided by the equitable sharing program have allowed agencies to participate in joint task forces to thwart and deter serious criminal activity and terrorism, purchase equipment, provide training, upgrade technology, engage their communities, and better protect their officers. Given the remarkable success of this program, the provisions approved by Congress and the Administration are both baffling and disappointing. The suspension of equitable sharing payments may cause some agencies across the country to reconsider their ability to participate in joint task forces with the federal government. The effects of this decision are far reaching and not only a disservice to law enforcement, but also to the public they are sworn to protect.

We are also extremely disappointed over the failure of Congress and the Department of Justice to consult with its state and local partners before taking this drastic step on a program of such critical importance to the law enforcement community. Given the immense impact that this decision will have on agencies throughout the country, it is simply unconscionable that such a decision could be made without their input.

It is imperative that these provisions and the decision to suspend the equitable sharing program be immediately reconsidered. Their impact on the ability of law enforcement agencies to protect their communities is simply unacceptable.

Sincerely,



Terrence M. Cunningham
President, International Association of Chiefs of Police



Donny Youngblood
President, Major County Sheriffs' Association



William Fitzpatrick
President, National District Attorneys Association



William J. Johnson
Executive Director, National Association of Police Organizations



Jonathan Thompson
Executive Director and CEO, National Sheriffs Association



Thomas Manger
President, Major Cities Chiefs Association



International Association of
Chiefs of Police

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Richard M. Beary
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University of Central Florida
Orlando, FL

First Vice President
Donald De Lucca
Chief of Police
Doral Police Department
Doral, FL

Second Vice President
Louis M. Dekmar
Chief of Police
LaGrange Police Department
LaGrange, GA

Third Vice President
Paul M. Cell
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Police Department
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Wakefield, MA

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Chief Commissioner
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Apex Police Department
Apex, NC

**General Chair Division of State and
Provincial Police**
Colonel W. Steven Flaherty
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Virginia State Police
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Peter L. Carnes
Chief of Police
Stonehill College Campus Police & Safety
Easton, MA

**Executive Director / Chief Executive
Officer**
Vincent Talucci
Alexandria, VA

Deputy Executive Director
Gwen Boniface
Alexandria, VA

March 17, 2016

The Honorable Loretta Lynch
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Lynch:

On behalf of the International Association of Chiefs of Police (IACP), I am writing to express our profound concern and disappointment over the apparent lack of action in resolving the suspension of the Department of Justice Equitable Sharing Program payments.

As we cautioned in a joint law enforcement letter on December 23, 2015, this decision has had a significant and immediate impact on the ability of law enforcement agencies throughout the nation to protect their communities and provide their citizens with the services they expect and deserve.

Yet, despite repeated assurances that this situation would be resolved quickly and that the equitable sharing payments would resume, no apparent resolution is in sight and little information has been made available to the state and local law enforcement community.

In addition, despite the suspension in equitable sharing payments, the IACP urged state and local law enforcement agencies to continue to both support and participate in federal task forces regardless of the costs and other difficulties this would cause their agencies. We undertook this effort in good faith because of the value and importance of these task forces and because of our belief that the Department of Justice would work diligently to resolve this situation and resume equitable sharing payments as soon as possible. Unfortunately, the lack of action to date has caused both our organization and the agencies we represent to question the wisdom of this approach.

At this point, the IACP believes it is imperative that the state and local law enforcement community be provided with the following information:

- The current status of the equitable sharing fund

- A target date for the resumption of equitable sharing payments to state and local law enforcement agencies
- The Department of Justice's plan for the future of the equitable sharing program

I look forward to hearing from you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "T. M. Cunningham". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Terrence M. Cunningham
President



**International Association of
Chiefs of Police**

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Deputy Executive Director
Gwen Boniface
Alexandria, VA

May 11, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Harry Reid
Democratic Leader
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader McConnell and Democratic Leader Reid,

On behalf of the International Association of Chiefs of Police (IACP), the world's largest organization of law enforcement executives, we write in support of the Sentencing Reform and Corrections Act of 2015, S. 2123. We applaud the efforts of the sponsors of S. 2123 for working with the law enforcement community and other stakeholders throughout the process. We believe the revised legislation achieves a proper balance of preserving and expanding mandatory minimums for violent offenders and career criminals, while reducing recidivism, and addressing the burgeoning prison population through thoughtful and careful measures. In addition, the bill does not just stop at sentencing reform and corrections, but also takes a significant step to examine the entire criminal justice system, through the addition of the National Criminal Justice Commission Act.

For more than two decades, the IACP has advocated for the creation of a commission that would allow for a comprehensive examination and report on the state of law enforcement and criminal justice in the United States, and we are extremely appreciative that this bill includes that provision. The proposed National Criminal Justice Commission would follow in the footsteps of the 1965 Presidential Commission on Law Enforcement and the Administration of Justice. The work of that commission and the 200 recommendations it produced marked the beginning of a sea change in our methods for dealing with crime and built the framework for many highly effective law enforcement and public safety initiatives that have been in place for the last forty years.

The commission that will be established by this bill embraces the same mission as the 1965 Commission. In conducting a critical review of the criminal justice system, the commission will have the opportunity to examine and develop recommendations addressing the broad range of new and emerging challenges that confront law enforcement and the criminal justice community, from cybercrime to non-traditional organized crime, from violent street gangs to homeland security. This is absolutely essential so we can develop a strategic plan that will guide an integrated public safety and homeland security effort in the years ahead.

The safety of our communities is the paramount priority for law enforcement, and that includes keeping violent offenders off the streets and working with prior offenders on rehabilitation efforts so that when they are released they return as productive and upstanding citizens. To that end, we believe that this legislation strikes a proper balance between ensuring that those convicted of violent felonies off the streets while modifying the current three strikes rule. Under the proposed legislation, the three strikes rule for drug felonies is modified with a third strike now carrying a 25-year penalty as opposed to life, and second strike carrying a 15-year sentence instead of 20 years. Most importantly, the revised legislation now excludes offenders convicted of any serious violent felony from retroactive early release, ensuring that truly violent offenders cannot benefit from any reduced sentence opportunity established by the bill, while still allowing low-level offenders a possible chance for rehabilitation.

In addition, the IACP is also pleased that the revised bill also establishes a mandatory sentencing enhancement for offenses involving fentanyl, a dangerous opioid and a growing problem in our communities that has led to thousands of drug overdoses and deaths.

Of course, as offenders return to their communities, adequate support must be provided in order to break the cycle of recidivism. This legislation takes that into account through programs to reduce recidivism including job training, educational opportunities, and mentoring services. In addition, this legislation develops a risk assessment tool that will categorize inmates based on their risk of recidivism and make a determination on the kind and amount of recidivism reduction programming or productive activities appropriate for each prisoner's needs and risks.

Finally, S. 2123 also includes an important provision that requires an annual report by the Attorney General outlining how the reduced expenditures and cost savings resulting from modifications to federal sentencing will be reinvested into efforts that will benefit law enforcement, such as investment in law enforcement and crime prevention to combat gangs of national significance and high-level drug traffickers; to hire, train, and equip law enforcement officers and prosecutors; and to promote programs using evidence-based practices and strategic planning to help reduce crime and criminal recidivism.

On behalf of our more than 26,000 members, we applaud the senators and their staff who worked hard on this legislation. Again, we thank you for working with the law enforcement community throughout this process, and we look forward to continuing to work together to move this bipartisan legislation forward.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Cunningham".

Terrence Cunningham
President
International Association of Chiefs of Police



NATIONAL
CONSENSUS
POLICY AND
DISCUSSION
PAPER ON USE OF
FORCE

October 2017

POLICY

This National Consensus Policy on Use of Force is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States (see back panel for list). The policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.

I. PURPOSE

The purpose of this policy is to provide law enforcement officers with guidelines for the use of less-lethal and deadly force.

II. POLICY

It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”¹

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

III. DEFINITIONS

DEADLY FORCE: Any use of force that creates a substantial risk of causing death or serious bodily injury.

LESS-LETHAL FORCE: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the officer’s evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

SERIOUS BODILY INJURY: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical

1 *Graham v. Connor*, 490 U.S. 386 (1989).

2 Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.²

CHOKER HOLD: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. PROCEDURES

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment

1. to protect the officer or others from immediate physical harm,
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
 - a. to protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
 - b. to prevent the escape of a fleeing subject when the officer has probable

cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended

2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.³

3. Deadly Force Restrictions

a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.

b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless

(1) the use of deadly force is justified;

(2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and

(3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.

c. Firearms shall not be discharged at a moving vehicle unless

(1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or

(2) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

e. Choke holds are prohibited unless deadly force is authorized.⁴

E. Training

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.

2. In addition, training shall be provided on a regular and periodic basis and designed to

a. provide techniques for the use of and reinforce the importance of de-escalation;

b. simulate actual shooting situations and conditions; and

c. enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.

3. All use-of-force training shall be documented.

³ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁴ Note this prohibition does not include the use of vascular neck restraints.

Every effort has been made to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "sample" policy can meet all the needs of any given law enforcement agency.

Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy.

DISCUSSION PAPER

This *Discussion Paper on the National Consensus Use of Force Policy* is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States. The paper reflects the best thinking of all Consensus organizations and is intended to provide background information for law enforcement agencies to consider when implementing the *National Consensus Policy on Use of Force* in their own agencies.

I. INTRODUCTION

Managing uses of force by officers is one of the most difficult challenges facing law enforcement agencies. The ability of law enforcement officers to enforce the law, protect the public, and guard their own safety and that of innocent bystanders is very challenging. Interactions with uncooperative subjects who are physically resistant present extraordinary situations that may quickly escalate. Ideally, an officer is able to gain cooperation in such situations through the use of verbal persuasion and other de-escalation skills. However, if physical force is necessary, an officer's use of force to gain control and compliance of subjects in these and other circumstances must be objectively reasonable.

While the public generally associates law enforcement use of force with the discharge of a firearm, use of force includes a much wider range of compliance techniques and equipment. These less intrusive, but more common uses of force may range from hand control procedures to electronic control weapons, pepper aerosol spray, or various other equipment and tactics.

A. National Consensus Policy on Use of Force

In recognition of the increased focus on law enforcement use of force, in April 2016, the International Association of Chiefs of Police and the Fraternal Order of Police convened a symposium to discuss the current state of policing, in general, and use of force, in particular, inviting several of the leading law enforcement leadership and labor organizations to attend. The United States Supreme Court has provided clear parameters regarding the use of force. However, how this guidance is

operationalized in the policies of individual law enforcement agencies varies greatly. This creates a landscape where each agency, even neighboring jurisdictions, are potentially operating under differing, inconsistent, or varied policies when it comes to the most critical of topics.

Symposium members decided to address these disparities by creating a policy document on use of force that can be used by all law enforcement agencies across the country. The goal of this undertaking was to synthesize the views of the participating organizations into one consensus document that agencies could then use to draft or enhance their existing policies. The final product, the *National Consensus Policy on Use of Force (Consensus Policy)*, was published in January 2017.

The *Consensus Policy* incorporates the most current information and contemporary professional judgment and is designed to provide a framework of critical issues and suggested practices from which agencies can develop their own use-of-force policies. *It is not intended to be a national standard by which all agencies are held accountable, and agencies are not required to institute the Consensus Policy.*

Rather, chief executives should use the document as a guideline, while taking into account the specific needs of their agencies, to include relevant court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements. Many chief executives might wish to make their own policies more restrictive than the *Consensus Policy*. As with any policy, before implementing these suggested guidelines, agencies should consult their legal advisors.

This paper is designed to accompany the *Consensus Policy* and provide essential background material and supporting documentation to promote greater understanding of the developmental philosophy and implementation guidelines for the *Consensus Policy*. Chief executives should use the information contained herein to better inform their decisions on whether to implement the various directives found in the *Consensus Policy* in their own agencies.

B. Scope of Policy

Law enforcement agencies must provide officers with clear and concise policies that establish well-defined guidelines on the use of force. It is essential that officers have a complete understanding of agency policy on this critical issue, regularly reinforced through training. Therefore, a use-of-force policy should be concise and reflect clear constitutional guidance to adequately guide officer decision making. Policies that are overly detailed and complex are difficult for officers to remember and implement and, as such, they create a paradox. While they give officers more detailed guidance, they can also complicate the ability of officers to make decisions in critical situations when quick action and discretion are imperative to successful resolutions. The *Consensus Policy* is purposefully short and provides the necessary overarching guidelines in a succinct manner, while restricting force in certain situations.

Some agencies may choose to develop separate policies on less-lethal versus deadly force. However, law enforcement use of both deadly and less-lethal force is governed by the same legal principles and, therefore, the *Consensus Policy* elects to address the entire spectrum of force in one document. While the development of individual policies on the use of specialized force equipment is a prudent approach, the legal grounds for selection and application of any force option applied against a subject should be based on the same legal principles cited in the *Consensus Policy*.

It is also not the intended scope of either the *Consensus Policy*, or this discussion document, to

address issues relating to reporting use-of-force incidents; training of officers in the handling, maintenance, and use of weapons; investigation of officer-involved shooting incidents; officer post-shooting trauma response; and early warning systems to identify potential personnel problems. Instead, agencies are urged to develop separate policies addressing each of these topics.

II. Legal Considerations

Use of force may have potential civil and criminal consequences in state or federal courts or both. As scores of these actions have demonstrated, the scope and the wording of agency policy can be crucial to the final resolution of such cases. It should be emphasized that liability can arise for an involved officer; the law enforcement agency; agency administrator(s); and the governing jurisdiction.

At a minimum, agency policy must meet state and federal court requirements and limitations on the use of force, with the U.S. Constitution forming the baseline for the establishment of rights. While states cannot take away or diminish rights under the U.S. Constitution, they can, and often do, expand upon those rights. In such cases, law enforcement administrators must establish an agency policy that meets the more stringent use-of-force guidelines of their state constitution and statutory or case law interpreting those provisions. It is strongly recommended that this and other policies undergo informed, professional legal review before they are sanctioned by the agency.

A. Use of Policy in Court

Courts vary as to whether agency policy can be introduced and carry the same weight as statutory law. However, in some cases, it may be permissible to introduce at trial the issue of officer noncompliance for whatever weight and significance a jury feels appropriate. Law enforcement administrators should develop strong and definitive policies and procedures without fear that they might prove prejudicial to a future court assessment of an officer's conduct. In fact, by adopting a use-

of-force policy in clear and unequivocal terms, agencies can prevent more serious consequences for themselves, their officers, and their jurisdiction.

B. Federal Guidelines for Use of Force

There are two landmark decisions by the United States Supreme Court that guide law enforcement use of force: *Tennessee v. Garner* and *Graham v. Connor*.¹ Following is a brief review of each case.

Tennessee v. Garner. In *Garner*, a Memphis, Tennessee, police officer, acting in conformance with state law, shot and killed an unarmed youth fleeing over a fence at night in the backyard of a house he was suspected of burglarizing. The court held that the officer's action was unconstitutional under 42 U.S.C. 1983, stating that "such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."²

The court ruled that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. Thus, even where an officer has probable cause to arrest someone, it may be unreasonable to do so through the use of deadly force.

Graham v. Connor. In *Graham*, a diabetic man seeking to counter the effects of an insulin reaction entered a convenience store with the intent of purchasing some orange juice. After seeing the line of people ahead of him, Graham quickly left the store and decided instead to go to a friend's house. An officer at the store, Connor, determined Graham's behavior to be suspicious and proceeded to follow and then stop the car in which Graham was a passenger. Graham was subsequently handcuffed and received multiple injuries, despite attempts to inform Connor and the other responding officers of his medical condition. Graham was released once Connor confirmed that

no crime had been committed in the store, but later filed suit alleging excessive use of force.

The court ruled that claims of law enforcement excessive use of force must be analyzed using an "objective reasonableness" standard. Specifically, the court stated "[t]he Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."³

C. Defining a Reasonable Use of Force

The potential of civil or criminal litigation involving deadly force incidents also necessitates close scrutiny of the language employed in a use-of-force policy by legal authorities. Law enforcement administrators should work closely with knowledgeable attorneys in determining the suitability of the use-of-force policy to their local requirements, needs, and perspectives. Deliberation over phrasing or word usage might seem inconsequential or excessive, but such terms can, and do, have significant consequences in a litigation context.

The use of commonly employed terms and phrases, even though well intentioned, can cause unexpected and unnecessary consequences for the officer and the agency. For example, phrases like "officers shall exhaust all means before resorting to the use of deadly force" present obstacles to effective defense of legitimate and justifiable uses of force. Such language in a policy can unintentionally impose burdens on officers above those required by law.

1 *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989).

2 *Garner*, 471 U.S. 1.

3 *Graham*, 490 U.S. at 396–397.

The foregoing discussion is not meant to suggest that law enforcement agency policy must be established only with potential litigation in mind. On the contrary, law enforcement administrators should use language that properly guides officers' decision-making consistent with agency goals and values while also protecting the officer, the agency, and the community from unnecessary litigation. There is value in using verbiage from statutes, case law, and regulations in policy as a means of providing officers with clearer guidance.

Training should effectively translate the general guiding principles of agency policy and operational procedures into real-world scenarios through understanding and practice. Training shares an equal importance in agency efforts to control and manage the use of force and, as such, can have a significant impact on an agency's efforts to defend the use of force in court or other contexts.

III. Overview

A. Guiding Principles

It should be the foremost policy of all law enforcement agencies to value and preserve human life. As guardians of their communities, officers must make it their top priority to protect both themselves and the people they serve from danger, while enforcing the laws of the jurisdiction. However, there are situations where the use of force is unavoidable. In these instances, officers must "use only the amount of force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others."⁴ Introduced in *Graham*, the "objectively reasonable" standard establishes the necessity for the use and level of force to be based on the individual officer's evaluation of the situation considering the totality of the circumstances.⁵ This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information

others communicated to the officer, *at the time the force was used* and "upon what a reasonably prudent officer would use under the same or similar circumstances." This standard is not intended to be an analysis after the incident has ended of circumstances not known to the officer at the time the force was utilized.

The totality of the circumstances can include, but is not limited to, the immediate threat to the safety of the officer or others; whether the subject is actively resisting; the time available for the officer to make decisions in circumstances that are tense, uncertain, and rapidly evolving; the seriousness of the crime(s) involved; and whether the subject is attempting to evade or escape and the danger the subject poses to the community. Other factors may include prior law enforcement contacts with the subject or location; the number of officers versus the number of subjects; age, size, and relative strength of the subject versus the officer; specialized knowledge skill or abilities of the officer; injury or level of exhaustion of the officer; whether the subject appears to be affected by mental illness or under the influence of alcohol or other drugs; environmental factors such as lighting, terrain, radio communications, and crowd-related issues; and the subject's proximity to potential weapons.

The decision to employ any force, including the use of firearms, may be considered excessive by law and agency policy or both, if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation. It is important to note that in *Graham*, the U.S. Supreme Court recognized that law enforcement officers do not need to use the minimum amount of force in any given situation; rather, the officer must use a force option that is reasonable based upon the totality of the circumstances known to the officer at the time the force was used. Use-of-force decisions are made under exceedingly varied scenarios and often on a split-second basis. Based on this fact,

4 ASCIA, CALEA, FOP, FLEOA, IACP, HAPCOA, IADLEST, NAPO, NAWLEE, NOBLE, and NTOA, *National Consensus Policy on Use of Force*, January 2017, 2, http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf.

5 *Graham*, 490 U.S. at 396.

state and federal courts have recognized that law enforcement officers must be provided with the necessary knowledge and training to make such decisions, in addition to attaining proficiency with firearms and other less-lethal force equipment and force techniques that may be used in the line of duty.

B. De-Escalation

De-escalation is defined as “taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary.”⁶ The term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal. In most instances, the goal of de-escalation is to slow down the situation so that the subject can be guided toward a course of action that will not necessitate the use of force, reduce the level of force necessary, allow time for additional personnel or resources to arrive, or all three.

De-escalation is not a new concept and has been part of officer training for decades. Historically, de-escalation has been employed when officers respond to calls involving a person affected by mental illness or under the influence of alcohol or other drugs. In these situations, an officer is instructed to approach the individual in a calm manner and remain composed while trying to establish trust and rapport. Responders are taught to speak in low, or nonthreatening tones, and use positive statements such as “I want to help you” intended to aid in the process of calming the subject. Awareness of body language is also significant. For example, standing too close to an angry or agitated person might cause them to feel threatened.

Another de-escalation technique is tactical repositioning. In many cases, officers can move to another location that lessens the level of danger. An example is an incident involving an individual with a knife. By increasing the distance from the individual, officers greatly reduce the risk to their safety and can explore additional options before resorting to a use of force, notwithstanding the need to control the threat to others.

Many of these steps—speaking calmly, positioning oneself in a nonthreatening manner, and establishing rapport through the acknowledgment of what the person is feeling—are easily transferred from Crisis Intervention Training for persons affected by mental illness to de-escalation encounters with people in general. While these tactics are recommended steps, officers must continually reassess each situation with the understanding that force may be necessary if de-escalation techniques are not effective.

One concern with de-escalation is that it can place officers in unnecessary danger. By overemphasizing the importance of de-escalation, officers might hesitate to use physical force when appropriate, thereby potentially resulting in an increase in line-of-duty deaths and injuries. Consequently, it should be stressed that de-escalation is not appropriate in every situation and officers are not required to use these techniques in every instance. If the individual poses a threat of injury or death to the officer or another, the officer must be permitted to use the level of force necessary to reasonably resolve the situation.

Agencies should strive to encourage officers to consider how time, distance, positioning, and especially communication skills may be used to their advantage as de-escalation techniques and as potential alternatives to force and to provide training on identifying when these techniques will be most useful to mitigate the need for force.

6 *National Consensus Policy on Use of Force*, 2.

C. Force Models

The variety of compliance options available to law enforcement officers in a confrontational setting can be referred to as a force model. Using the variety of different options found in this model, officers are expected to employ only a degree of force that is objectively reasonable to gain control and compliance of subjects. Some agencies may refer to this as the use-of-force continuum. However, the use of the term “continuum” is often interpreted to mean that an officer must begin at one end of a range of use-of-force options and then systematically work his or her way through the types of force that follow on the continuum, such as less-lethal force options, before finally resorting to deadly force. In reality, to maintain the safety of both the officer and others, an officer might need to transition from one point on the continuum to another, without considering the options in between in a linear order. For instance, when faced with a deadly threat, it is not prudent to expect an officer to first employ compliance techniques, followed by an electronic control weapon, and only then use his or her firearm. For this reason, the use of a continuum is strongly discouraged. Instead, force models are preferred that allow officers to choose a level of force that is based on legal principles, to include the option of immediately resorting to deadly force where reasonable and necessary.

As noted previously, many law enforcement agencies prefer to develop separate less-lethal and deadly force policies. In addition to the comments previously made on this topic, there are several other reasons why the *Consensus Policy* combines these into a single use of force policy. But perhaps most importantly, integrating both deadly and less-lethal force guidelines into one policy serves to illustrate and reinforce for the officer the concept of the use of force as an integrated, or response, model. By placing both sets of guidelines under one heading, an officer consulting the policy is

encouraged to view force on a broader, more integrated conceptual basis.

Effective guidance for law enforcement officers on use of force, whether with firearms or by other means or tactics, must recognize and deal with force in all its forms and applications and with the officer’s ability to adjust his or her response as the subject’s behavior changes.

Whether an agency chooses to adopt a force model or continuum, the various levels of force must be defined and the guidelines for their use must be clearly outlined in agency policy and reinforced by training. Policies must also enumerate and address all force options permitted by the agency. Per the *Consensus Policy*, these levels should include less-lethal force and deadly force.

D. Defining Deadly and Less-Lethal Force

The *Consensus Policy* employs the terms deadly force and less-lethal force. Deadly force is defined as “any use of force that creates a substantial risk of causing death or serious bodily injury.”⁷ The most common example of deadly force is the use of a handgun or other firearm.

Less-lethal force is “any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.”⁸ This includes, but is not limited to, an officer’s use of come-along holds and manual restraint, as well as force options such as electronic control weapons, pepper aerosol spray, and impact projectiles. It does not include verbal commands or other nonphysical de-escalation techniques.

The difference between deadly and less-lethal force is not determined simply by the nature of the force technique or instrument that is employed by an officer. Many force options have the potential to result in the death or serious bodily injury of a

7 *National Consensus Policy on Use of Force*, 2.

8 *Ibid.*

subject under certain circumstances. For example, a police baton, if used properly in accordance with professionally accepted training guidelines, is not likely to cause death. But it can result in the death of subjects when used inappropriately by an officer who lacks training, or in situations where blows are accidentally struck to the head or other vulnerable area of the body. The same could be said for a variety of other equipment used by law enforcement officers. Therefore, a key to understanding what separates deadly force from less-lethal force has to do with the likelihood that a given use of force will result in death, whether it involves a handgun or other weapon or even an object that may be close at hand.

Use of force that is likely to cause death or serious bodily injury is properly judged using a reasonable officer standard—how would a reasonably prudent law enforcement officer act under the same or similar circumstances?⁹ This standard is an objective test. That is, it is not based on the intent or motivation of the officer or other subjective factors at the time of the incident. It is based solely on the objective circumstances of the event and the conclusion that would be drawn by a “reasonable officer on the scene.”¹⁰

In determining the proper degree of force to use, officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be a threat of death or serious bodily harm. Officers have the option of using less-lethal force options where deadly force is not authorized, but may use only that level of force that is objectively reasonable to bring the incident under control.

E. Additional Definitions

Understanding of additional terms is helpful for the following discussion.

Exigent circumstances are “those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”¹¹

An *immediate, or imminent, threat* can be described as danger from an individual whose apparent intent is to inflict serious bodily injury or death and the individual has the ability and opportunity to realize this intention.

IV. PROCEDURES

A. General Provisions

The *Consensus Policy* begins by providing general guidance that holds true for all situations involving the use of force. First, officers must continually reassess the situation, where possible, and ensure that the level of force being used meets the objective reasonableness standard. In situations where the subject either ceases to resist or the incident has been effectively brought under control, the use of physical force should be reduced accordingly. If the level of force exceeds what is necessary to control a subject, then the officer can be subject to allegations of excessive force.

Physical force should not be used against individuals in restraints unless failure to do so would result in the individual fleeing the scene or causing imminent bodily injury to himself or herself, the officer, or another person. Damage to property should not be considered a valid reason to use force against an individual in restraints. There might also be instances where handcuffed individuals are able to run from officers in an attempt to escape. In these situations, physical force may be allowable per policy, but only the minimal amount of force

⁹ Serious bodily injury is defined as “injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.”

¹⁰ *Connor*, 490 U.S. at 396.

¹¹ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

necessary to control the situation should be used—deadly force will almost always be prohibited in these cases.

As previously stated, the ultimate goal of law enforcement officers is to value and preserve human life. Therefore, the *Consensus Policy* requires officers to provide medical care to anyone who is visibly injured, complains of injury, or requests medical attention.¹² This should be undertaken after the officers have ensured that the scene is safe and it is practical to do so. In addition, officers should only provide care consistent with their training, to include providing first aid. Additional appropriate responses include requesting emergency medical services and arranging for transportation to an emergency medical facility.

When verbal commands are issued, the individual should be provided with a reasonable amount of time and opportunity to respond before force is used, with the understanding that such a pause should not “compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime.”¹³ This is to prevent instances where officers use force immediately following a verbal command without providing the subject with an opportunity to comply and might also apply in such situations where an electronic control weapon is used and the individual is physically incapable of responding due to the effects of the weapon.

While the *Consensus Policy* strives to prohibit excessive force, the reality is that excessive force can occur no matter how well-crafted the policy or extensive the training. In these situations, it is crucial that other officers at the scene intervene to prevent or stop the use of excessive force. By requiring a pro-active approach to these situations and encouraging accountability for all officers on the scene, agencies can work toward preventing excessive uses of force.

¹² Note that “providing medical care” does not necessarily require that the officer administer the care himself or herself. In some situations, this requirement may be satisfied by securing the skills and services of a colleague, emergency medical personnel, etc.

¹³ *National Consensus Policy on Use of Force*, 3.

Finally, while it is not the scope of the *Consensus Policy* or this document to provide specific guidelines on these topics, agencies must develop comprehensive policies for documenting, investigating, and reviewing all uses of force. Agency transparency to the public regarding these policies will help to foster public trust and assure the community that agencies are aware of and properly responding to use of force by their officers. Moreover, force review will help to assure that agency policies are being followed and will give the agency the opportunity to proactively address deficiencies in officer performance or agency policy and training or both.

B. De-Escalation

Procedurally, whenever possible and appropriate, officers should utilize de-escalation techniques consistent with their training before resorting to using force or to reduce the need for force. In many instances, these steps will allow officers additional time to assess the situation, request additional resources, and better formulate an appropriate response to the resistant individual, to include the use of communication skills in an attempt to diffuse the situation. However, as previously stated, de-escalation will not always be appropriate and officers should not place themselves or others in danger by delaying the use of less-lethal or even deadly force where warranted.

C. Less-Lethal Force

In situations where de-escalation techniques are either ineffective or inappropriate, and there is a need to control a noncompliant or actively resistant individual, officers should consider the use of less-lethal force. In these cases, officers should utilize only those less-lethal techniques or weapons the agency has authorized and with which the officer has been trained. As with any force, officers may

use only that level of force that is objectively reasonable to bring the incident under control. Specifically, the *Consensus Policy* outlines three instances where less-lethal force is justified. These include “(1) to protect the officer or others from immediate physical harm, (2) to restrain or subdue an individual who is actively resisting or evading arrest, or (3) to bring an unlawful situation safely and effectively under control.”¹⁴

As noted in the prior discussion of the force model, use of force can range widely. Therefore, law enforcement officers should have at their disposal a variety of equipment and techniques that will allow them to respond appropriately to resistant or dangerous individuals. The *Consensus Policy* does not advocate the use of any specific less-lethal force weapons. Instead, the appropriateness of any such weapon depends on the goals and objectives of each law enforcement agency in the context of community expectations. Less-lethal weapons and techniques are being continuously introduced, refined, and updated, so law enforcement administrators must routinely assess current options and select equipment that is appropriate for their agency. A critical element of that decision-making process is an assessment of the limitations of each device or technique, and environmental factors that might impact its effectiveness. However, it is suggested that law enforcement agencies ban the use of several types of less-lethal impact weapons that are designed to inflict pain rather than affect control. These include slapjacks, blackjacks, brass knuckles, nunchucks, and other martial arts weapons.

D. Deadly Force

Authorized Uses of Deadly Force. As with all uses of force, when using deadly force, the overarching guideline that applies to *all* situations is that the force must be “objectively reasonable under the totality of the circumstances.” The *Consensus Policy* identifies two general circumstances in which the use of deadly force may be warranted. The first instance is to “protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury.”¹⁵ Second, law enforcement officers may use deadly force “to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.”¹⁶ In such cases, a threat of further violence, serious bodily injury, or death must impose clear justification to use deadly force.

For example, use of deadly force would be justified in instances where an officer attempts to stop the escape of a fleeing violent felon whom the officer has identified as one who has just committed a homicide, and who is armed or is likely to be armed in light of the crime. However, the potential escape of nonviolent subjects does not pose the same degree of risk to the public or the officer, and use of deadly force to prevent his or her escape would not be justifiable under the *Consensus Policy*.

If a decision has been made to employ deadly force, a law enforcement officer must, whenever feasible, identify himself or herself, warn the subject of his or her intent to use deadly force, and demand that the subject stop. This requirement was made clear

¹⁴ *National Consensus Policy on Use of Force*, 3.

¹⁵ *National Consensus Policy on Use of Force*.

¹⁶ *Ibid.*

in the Garner decision. If issuing a verbal warning presents a heightened risk to the safety of the officer or another person, the officer may employ deadly force without delay.

Deadly Force Restrictions. Deadly force is prohibited when the threat is only to property. In addition, officers should avoid using deadly force to stop individuals who are only a threat to themselves, unless the individual is using a deadly weapon such as a firearm or explosive device that may pose an imminent risk to the officer or others in close proximity. If the individual is attempting to inflict self-harm with means other than a deadly weapon, the officer should consider less-lethal options and de-escalation techniques, if practical.

Warning Shots. Perhaps the most debated inclusion in the *Consensus Policy* is the allowance for warning shots. Their inclusion in the *Consensus Policy* should not prevent an agency from establishing a more restrictive policy on the topic. Defined as “discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury,” warning shots are inherently dangerous.¹⁷ However, the *Consensus Policy* outlines very strict guidelines for their use in an effort to address this threat, while still providing latitude for officers to use this technique as a viable alternative to direct deadly force in extreme and exigent circumstances. The *Consensus Policy* states that warning shots must have a defined target, with the goal of prohibiting shots fired straight up in the air. In addition, warning shots should only be considered if deadly force is justified, so in response to an immediate threat of death or serious bodily injury, and when “the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.”¹⁸ Finally, the warning shot must not “pose a substantial risk of injury or death to the officer or others.”¹⁹

Essentially, the intent of the *Consensus Policy* is to provide officers with an alternative to deadly force in the very limited situations where these conditions are met.

Shots Discharged at Moving Vehicles.²⁰ The use of firearms under such conditions often presents an unacceptable risk to innocent bystanders. Even if successfully disabled, the vehicle might continue under its own power or momentum for some distance thus creating another hazard. Moreover, should the driver be wounded or killed by shots fired, the vehicle might proceed out of control and could become a serious threat to officers and others in the area. Notwithstanding, there are circumstances where shooting at a moving vehicle is the most appropriate and effective use of force.

Officers should consider this use of deadly force only when “a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle,” or when the vehicle is intentionally being used as a deadly weapon and “all other reasonable means of defense have been exhausted (or are not present or practical).”²¹ Examples of circumstances where officers are justified in shooting at a moving vehicle include when an occupant of the vehicle is shooting at the officer or others in the vicinity or, as has happened recently, the vehicle itself is being used as a deliberate means to kill others, such as a truck being driven through a crowd of innocent bystanders. Even under these circumstances, such actions should be taken only if the action does not present an unreasonable risk to officers or others, when reasonable alternatives are not practical, when failure to take such action would probably result in death or serious bodily injury, and then only when due consideration has been given to the safety of others in the vicinity. In cases where officers believe that the driver is intentionally attempting

17 *National Consensus Policy on Use of Force*, 3.

18 *National Consensus Policy on Use of Force*, 4.

19 *Ibid.*

20 For information regarding United States Supreme Court cases addressing firing at a moving vehicle, see *Plumhoff v. Rickard*, 134 S. Ct. 2012 and *Mullenix v. Luna*, 577 U.S. ____ (2015) and the accompanying *amicus curiae* brief.

21 *National Consensus Policy on Use of Force*, 4.

to run them down, primary consideration must be given to moving out of the path of the vehicle. The *Consensus Policy* recognizes that there are times when getting out of the way of the vehicle is not possible and the use of a firearm by the officer may be warranted.

Shots Discharged from a Moving Vehicle.

When discussing whether or not officers should be permitted to fire shots from a moving vehicle, many of the same arguments can be made as firing at a moving vehicle. Most notably, accuracy of shot placement is significantly and negatively affected in such situations, thereby substantially increasing the risk to innocent bystanders from errant shots. Therefore, the *Consensus Policy* prohibits officers from discharging their weapons from moving vehicles unless exigent circumstances exist. In these situations, as with all instances where exigent circumstances are present, the officer must have an articulable reason for this use of deadly force.

Choke Holds. For the purposes of this document, a choke hold is defined as “a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation.”²² In the most common choke hold, referred to as an arm-bar hold, an officer places his or her forearm across the front of the individual’s neck and then applies pressure for the purpose of cutting off air flow. These are extremely dangerous maneuvers that can easily result in serious bodily injury or death. Therefore, the *Consensus Policy* allows their use only when deadly force is authorized.²³

E. Training

While it is crucial that law enforcement agencies develop a clear, concise policy regarding the use of force, it is equally important that officers are completely familiar with and fully understand the policy and any applicable laws. Therefore, officers

should receive training on their agency’s use-of-force policy and any accompanying legal updates on at least an annual basis. Training should also be provided on all approved force options and techniques permitted by agency policy, along with regular refresher training that includes a review of the policy and hands-on, practical training. In addition, officers should also receive regular and periodic training related to de-escalation techniques and the importance of de-escalation as a tactic, as well as training designed to “enhance officers’ discretion and judgment in using less-lethal and deadly force.”²⁴

Firearms training should simulate actual shooting situations and conditions. This includes night or reduced light shooting, shooting at moving targets, primary- or secondary-hand firing, and combat simulation shooting. Firearms training should attempt to simulate the actual environment and circumstances of foreseeable encounters in the community setting, whether urban, suburban, or rural. A variety of computer-simulation training is available together with established and recognized tactical, exertion, and stress courses.

Law enforcement administrators, agencies, and parent jurisdictions may be held liable for the actions of their officers should they be unable to verify that appropriate and adequate training has been received and that officers have successfully passed any testing or certification requirements. Accordingly, agencies must provide responsive training, and all records of training received by officers must be accurately maintained for later verification.

²² *National Consensus Policy on Use of Force*, 2.

²³ A note regarding choke holds—the vascular neck restraint is not included in the definition of “choke hold” and thus its use is not restricted to deadly force situations.

²⁴ *National Consensus Policy on Use of Force*, 4.

CONTRIBUTING ORGANIZATIONS

This document is the result of a collaborative effort among the following organizations.





Policy Positions “Police Reform” Legislation

Police Training Reform

The CACP and CSOC would be in favor of limited additional at-large citizen positions on the Peace Officer Standards and Training (POST) Board. Such positions should be appointed by the Governor, in the same manner that all current positions are appointed, and in the case of at-large citizen positions they should be reflective of the cultural, professional, and geographic diversity of our State.

That said, individuals appointed to such positions should be knowledgeable about police issues, requirements, and limitations, and should ideally have attended a Citizens Police Academy or other such familiarization course.

The CACP and CSOC are supportive of reasonable and periodic community policing and anti-bias training presented to incumbent police officers, and we would note that such training is already a requirement of the current basic academy curriculum. The CACP and CSOC, however, are not in favor of mandating citizen positions on Subject Matter Expert (SME) committees (Firearms, Arrest Control, Curriculum, and Emergency Driving) of POST.

Body Cameras

The Colorado Association of Chiefs of Police and the County Sheriffs of Colorado support the implementation of body-worn cameras by those agencies that have prepared themselves for the budgetary and technical challenges associated with this technology. Furthermore, we generally support a grant program that would help agencies without the financial capacity to implement body cam systems. CACP and CSOC believe that if the legislature deems body cameras to be an issue of statewide concern, funding should be continuous and we would support the legislature providing alternatives to grant funding for agencies that use Body Cameras. However, agencies should be given the autonomy to adopt policies and practices that reflect their community needs and policies that are supported by best practices.

Evidence gathered by body-worn cameras has been highly effective in numerous court cases. Furthermore, body-worn cameras serve as an independent unbiased account of an interaction capturing what an officer sees and hears from his or her point of view often containing a more thorough understanding of the encounter and, not just an edited clip showing only a portion of the activity.

Citizens Right to Record

As codified in case law, it is the opinion of the Colorado Association of Chiefs of Police and the County Sheriffs of Colorado that, recording law enforcement actions in any location generally regarded as accessible to the public is within the legal rights of an individual so long as making the recording does not negatively impact the safety of officers or citizens, or infringe upon an officer's ability to conduct an investigation, control a crime scene, or generally restrict their ability to conduct official police business. Finally, in certain exigent circumstances, in any case where video taken by a citizen may be evidence in a criminal investigation, law enforcement reserves the right to seize said evidence subject to judicial review of the legality of the seizure.

Choke Holds

CACP and CSOC support limits on chokeholds with exceptions. A law enforcement officer's actions regarding use of force are guided by Colorado Revised Statutes and U.S. Constitutional law in determining the reasonableness and appropriateness of the force used. An officer's actions or tactics should be examined in the context of the urgency of the situation, the totality of the circumstances, and the presence or absence of other acceptable alternatives to take a person into custody. Further, many police agencies in Colorado have written use of force policies only allowing the use of certain choke hold as a last resort in situations that would justify deadly force.

Finally, CACP and CSOC cannot support any legislation that would provide for criminalization, or an absolute prohibition, of a tactic that could potentially be an officer's 'last resort' in the case that he or she may become overpowered by a criminal suspect. In a deadly force encounter such as that, we expect our officers to avail themselves of any lawful tactic that will save their life.

Mandated collection and analysis of police-citizen contact data

The Colorado Association of Chiefs of Police have previously written that we have and "will continue to support fully funded and well-researched legislation that truly serves to enhance the effectiveness and professionalism of policing and our responsiveness to the needs of our citizens and our communities." CACP and CSOC apply this philosophy to its position on bills that require additional police-citizen contact data collection and analysis of that data. We can support certain funded efforts to conduct research that could improve policing policies so long as the research questions are clearly defined, the analysis used can actually answer the research questions using acceptable social science standards, and the data collection required of police is directly tied to a research plan.

Truthfulness

CACP and CSOC support efforts to allow us to continually improve the quality of our officers. Thus, we support the general concept of a bill that would require that any sustained finding of untruthfulness in the performance of official duties follow an officer throughout their career across agencies. We believe it is important to give law enforcement leaders the tools they need to improve their departments and ensure that hiring of officers is done with full knowledge of previous performance.

Officer Involved Shootings

We believe it is important for the public to understand that law enforcement should be held to all appropriate legal standards for use of force. Therefore, we support efforts to create critical response teams to provide an impartial mechanism for investigation all officer involved shootings. These teams will be from agencies separate from that which first responded to the incident. We believe these teams will give the public the more confidence that all such incidents are appropriately and objectively investigated. Additionally, we support efforts to create a reporting and data gathering vehicle officer involved shootings so that trends and systemic problems will be identified.



Proposed Reforms for Federal Asset Forfeiture

We believe the reforms already implemented by the United States Department of Justice address the concerns that have been raised regarding asset forfeiture and that any further steps to reform the program should only be taken after careful consideration as to not further weaken this valuable tool that aids law enforcement in protecting our communities. We strongly urge Congress to proceed with caution when considering measures that indirectly benefit criminal organizations. Careful consideration must be taken in order to avoid any unintended consequences, which may give safe harbor to the cartels and professional criminals who engage in drug trafficking, human trafficking and child pornography.

Civil asset forfeiture and the Equitable Sharing Program also provide funding for State and local agencies that could not otherwise afford to participate in Federal task forces. While Congress examines this program and potential reforms, we call on them to maintain a method for reimbursement of State and local agencies that have committed resources to this effort, while also establishing appropriate requirements that safeguard individual rights and remove financial incentives for potential misconduct.

Our organizations look forward to being active participants in this conversation as Congress considers potential reforms. We pledge our support to find a way forward that restores public trust, reinforces ethical conduct and preserves financial reimbursement for law enforcement agencies.

- Major Cities Chiefs Association
- Major County Sheriffs' Association
- International Association of Chiefs of Police
- National Sheriffs' Association
- National District Attorneys Association
- Association of State Criminal Investigative Agencies



Public Safety, Courts and Civil Service Policy Committee Agenda Item Commentary

Item Title: Fitzsimons campus response updates, highlighting challenges, and response plan adjustments for 2020.
Item Initiator: Danelle Carrel
Staff Source: Commander Allen Robnett
Deputy City Manager Signature:
Outside Speaker:
Council Goal: 1.0: Assure a safe community for people--2012: 1.0--Assure a safe community for peopl

ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

AFR presented an analysis of the response challenges on the Fitzsimons campus 4th quarter of 2019. This presentation updates the data and highlights the response adjustments' effectiveness and the impact of the Community Health Officer.

ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

QUESTIONS FOR Committee

Information only

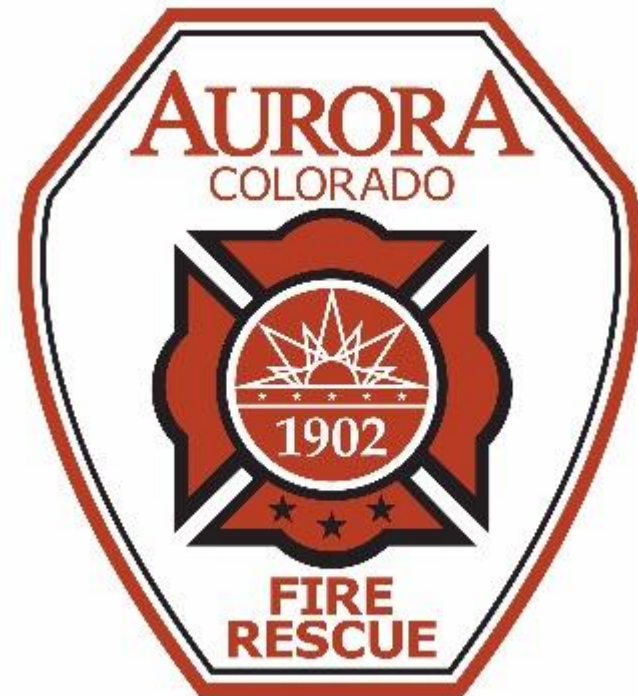
EXHIBITS ATTACHED:

PSCC Fitz Presentation_2020.pptx

Aurora Fire Rescue

Public Safety, Courts
and Civil Service
July 2020

Commander
Allen Robnett



TODAYS DISCUSSION

- Concentration of high volume locations on the Fitzsimons Campus
- How AFR is planning on addressing the response load in the area



Fitzsimons/Anschutz Medical Campus



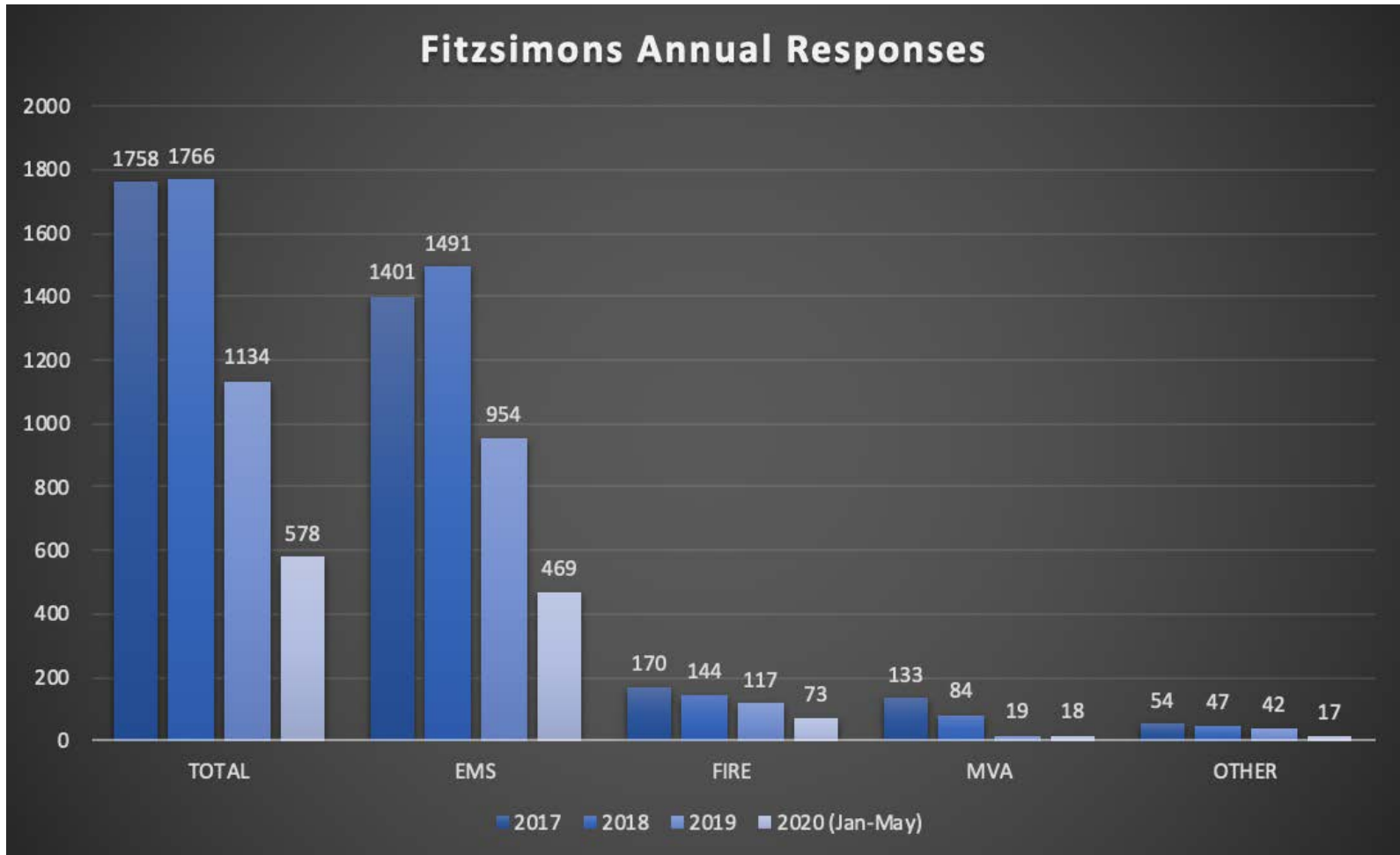
Current buildings



Planned Growth



Annual Responses



Top responses for 2019

Based on all calls for 2019

#1 Aurora Day Resource Center, 13387 E 19th Pl.

- 284 Responses
- Also top location for Jan-May 2020 with 123 responses

#2 Comitis Crisis Center, 2178 N. Victor St.

- 276 Responses
- Jan-May 2020 fourth with 92 responses



Recent Changes

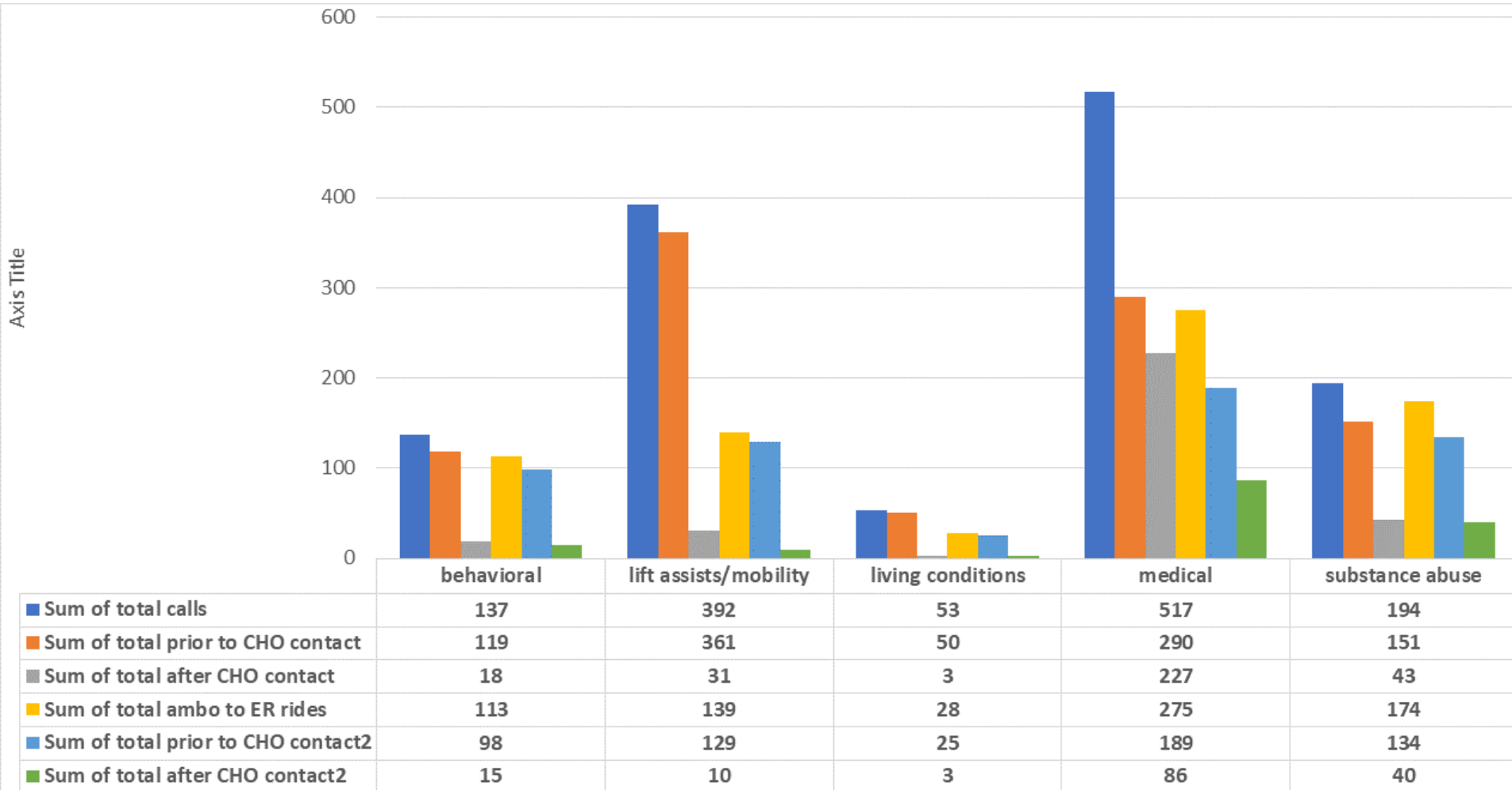
Comitis Service Delivery

UCH Hospital Response Team

Community Health Officer



Impact of the Community Health Officer



Impact of the Community Health Officer

Though not limited to the campus, in cases where Community Health Officer was able to intervene:

- 85% Reduction in 911 Calls
- 87% Reduction in Transports to Hospital



SOLUTIONS

- Add Medical Service Unit (MSU) to Station 2
Started service July 1, 2020
- AFR will continue to work with businesses and care sites on the campus to reduce the dependence on EMS system for routine needs
- UC Health storefront at the Day Resource Center
- Potential for traffic preemption technology



QUESTIONS

