



## NCSL Law Enforcement Statutory Database Narratives

To view the online Statutory Database, please visit:

<https://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement-statutory-database.aspx>

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Legislative interest in policing and police accountability is currently at an unprecedented high. Deaths and other confrontations involving law enforcement continue to drive national conversations about policy and promote review of current state and local laws. From May 25, 2020 through October 2021, all 50 states and Washington D.C. introduced more than 3,000 bills addressing police accountability, nearly 400 of which were enacted.

NCSL, with support from Arnold Ventures, has produced a comprehensive, first-of-its kind database of law enforcement statutes covering topics detailed below.

State Legislatures consider and enact laws that address many aspects of law enforcement policy. State law can set the baseline for the standard of practice in states, creating a foundation for state regulatory agencies and local jurisdictions to expand upon. The database paints a picture of what this baseline looks like in the states, covering a number of policy areas that play a key role in law enforcement effectiveness and accountability.

Each of these sections describes the baseline created by state law as it existed in late 2020. Information on legislation that has since impacted these state laws can be found in NCSL’s policing legislation database here:

<https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx>

## Use-of-Force Standards

Law enforcement use of force has been regulated in the states by common law for many years. In 1985, the U.S. Supreme Court struck down a Tennessee statute that allowed police officers to “use all necessary means to effect the arrest” of a person fleeing or forcibly resisting arrest in *Tennessee v. Garner*. In a 6-3 decision, the court held that deadly 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.”

In striking down the Tennessee statute, the court rejected the common-law rule allowing the use of whatever force was necessary to effect the arrest of a fleeing felon. According to the court, at that time 19 states had codified the old common-law rule and an additional four states retained the rule without a relevant statutory provision. The court recognized that the varied rules adopted by the states indicated a long-term movement away from the common-law rule, with the policies imposed by police departments themselves being even more restrictive than most statutory standards.

State and local constitutions, as interpreted by the courts, also generally prohibit the use of excessive force. In addition to baseline constitutional guidance from the courts, at least 43 states have codified, at a minimum, some aspect of their use of force requirements.

At least 41 states have statutes relating to law enforcement use of deadly force. Most states require a violent felony to have been committed or a threat to human life to exist in order for law enforcement to legally use deadly force against a person.

For example, Arizona law justifies an officers’ use of deadly physical force if the officer reasonably believes that the force was necessary to “(1) effect an arrest or to prevent the escape from custody of an arrested person whom the law enforcement officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or (2) defend himself or herself or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of deadly physical force.”

*However, state statutory approaches vary considerably, with some states addressing lethal force under justifiable homicide laws, while others provide more affirmative guidance for officers. For example, Connecticut’s law authorizes deadly force only when an officer’s actions are objectively reasonable under the circumstances and:*

*“(A) He or she reasonably believes such use to be necessary to defend himself or herself or a third person from the use or imminent use of deadly physical force; or*

*(B) He or she (i) has exhausted the reasonable alternatives to the use of deadly physical force, (ii) reasonably believes that the force employed creates no substantial risk of injury to a third party, and (iii) reasonably believes such use of force to be necessary to (I) effect an arrest of a person whom he or she reasonably believes has committed or attempted to commit a felony which involved the infliction of serious physical injury, or (II) prevent the escape from custody of a person whom he or she reasonably believes has committed a felony which involved the*

*infliction of serious physical injury and if, where feasible under this subdivision, he or she has given warning of his or her intent to use deadly physical force.”*

Some states also regulate a broader use-of-force continuum. At least 40 states have statutory guidance and/or requirements for use of “less lethal” force. Less lethal force requirements vary widely from state to state and include such things as crowd control, specific situations when less lethal force may be used, requirements for using a degree of force consistent with minimizing injury, or a general requirement that the force be “reasonable” or “necessary.”

Restrictions or guidelines specific to the use of neck restraints exist in at least 15 states. Laws restricting or prohibiting this kind of maneuver increased significantly in 2020, with many states classifying neck restraints as deadly force, to follow their state’s deadly-force standards, or forbidding their use entirely.

## Use-of-Force Investigation

At least 21 states and the District of Columbia have passed laws relating to the investigation or prosecution of use of force by law enforcement. Statutes addressing investigations and prosecution generally fall into two categories, 1) empowering an entity to conduct investigations and prosecute or 2) outlining procedurally how an investigation must be conducted.

An example of the first category, Delaware law requires the Division of Civil Rights and Public Trust to “investigate all use of deadly force incidents by law enforcement for the purpose of determining whether such use of force was justified as a matter of law.” Maine law simply states the attorney general has “exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer” who used deadly force.

Alternatively, Colorado law falls into the second category, requiring agencies to develop protocols for use of force investigations that are carried out by multi-agency teams. The protocols are required to be posted online or at least publicly accessible. Following the conclusion of an investigation that does not result in criminal prosecution, the law also requires the district attorney to publicly report findings, including the basis for the decision not to bring charges.

Many states empower the attorney general or another state attorney to investigate and prosecute crimes while some designate other government entities or utilize a grand jury process. A handful of states also empower review boards or require their participation in the investigation process.

For example, the District of Columbia’s law requires the Police Complaints Board to review all use of force incidents, serious physical injury incidents and any in-custody deaths. The law enforcement officer independent review board created by Hawaii law is tasked with reviewing investigations and making recommendations to the prosecuting attorney in the county in which the incident occurred.

Missouri, on the other hand, empowers cities and counties to establish their own civilian review boards with the authority to conduct investigations into allegation of misconduct by local law enforcement towards members of the public. All three states authorize or require civilian membership on each review board.

Most of the empowered agencies have subpoena power and the power to prosecute. Some states stop short of the power to prosecute but allow the empowered entity to discipline or make recommendations.

Law enforcement use-of-force investigation laws are not always criminal in nature, though many are. New York, for example addresses criminal consequences for inappropriate use of force by law enforcement. While Arizona statute creates procedural rules for administrative investigations. Iowa has a provision allowing for recommendation of revocation or suspension of an officer's certification by the law enforcement academy council if the attorney general determines there is misconduct, but criminal charges are not appropriate.

The wide variety of statutory approaches to regulating the investigatory process after a use-of-force incident can be explored further in the database.

## Training

Statutory law enforcement training requirements are in place in at least 48 states and the District of Columbia. These laws require law enforcement personnel statewide to be trained on specific topics during their initial training and/or at recurring intervals described by statute as in-service training or continuing education.

In some states, statutory training requirements can be very detailed, with the law specifying how many hours are required, the subject of the training, required content to be addressed, whether the training must be received in person and who is approved to provide the training.

However, in most states the law very basically requires training on a subject, with a few details, leaving the rest to be determined by state training boards or other local authorities designated by law. For example, Tennessee requires law enforcement be trained annually on "proper procedures to respond to persons with mental illness" and New Mexico simply requires child abuse incident training be included in basic law enforcement training and as a component of in-service training annually.

Some of the training topics most commonly addressed in state statute are summarized below.

- At least 34 states require training or education on physical and mental health conditions.
- At least 42 states require offense specific training, with at least 9 states requiring training related to hate crimes and at least 17 states requiring training on human trafficking.
- At least 15 states mandate training on use-of-force and related topics.
- At least 26 states mandate some form of bias reduction training.
- At least 38 states require training on myriad other topics including first aid, high-speed pursuit, victims' rights, use of body worn cameras and other technology, criminal procedure matters, death investigations, interactions with juveniles and training on interactions with animals, animal cruelty and service animals.

## Legal Duties and Liabilities

Law enforcement officers have many legal duties imposed upon them by law. Officers can be held liable for failure to intervene and protect individuals from violations of constitutional rights, including those carried out by

other officers. Usually, failure-to-intervene lawsuits are pursued in federal court under 42 U.S.C. § 1983, which makes government employees and officials personally liable for money damages if they violate a person's federal constitutional rights.

The United States Court of Appeal for the Seventh Circuit in *Yang v. Hardin* described the standard for being liable for failure to intervene as:

*An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring.*

Recently, states have also created state statutory duties to intercede or intervene in situations of excessive force or when other violations of constitutional rights have been observed by an officer. Colorado, Connecticut, Minnesota, Nevada, Oregon and Vermont, created affirmative statutory duties to intervene. All but the Nevada law include disciplinary procedures or state criminal prosecution for failing to carry out the duty as described by law.

The New Mexico law does not create an explicit duty to intervene, but it does require decertification for officers convicted of a crime involving failure to intervene in the use of unlawful force. The revocation of certification is permanent unless the officer is exonerated or pardoned.

California and New York have laws that address adoption of duty to intervene policies, but do not create affirmative duties in state law. A few of the laws also provide protection against retaliation for officers who intervene.

Of the nine states mentioned above that have laws addressing duty to intervene, seven also require officers to report the conduct they witnessed. Additionally, New Hampshire does not address duty to intervene, but has created a statutory duty to report.

Colorado, the District of Columbia, Nevada and New York each created legal duties for officers to provide medical care to people in certain situations. The New York law is the broadest requiring medical attention to the medical and mental health needs of people under arrest or otherwise in an officer's custody. The Colorado, District of Columbia and Nevada laws require provision of care after use of force or use of a neck restraint.

In the same way that states have started to codify duties normally litigated under § 1983, they have also started to create state causes of action that are parallel to § 1983 litigation. Both Colorado and Connecticut have created state causes of action to address situations where officers are accused of depriving an individual of their rights. The exact language in each state is different, but both laws limit an officer and their agency's ability to raise immunity defenses.

These causes of action are separate from state tort claims acts and other state civil rights laws. Additionally, a number of states have laws that provide legal immunity for officers beyond generalized immunity that applies to

government actors and employees under state governmental immunity acts. Those laws in addition to other novel liability and immunity provisions that are specific to law enforcement officers can be compared using this section of the database.

## Qualified Immunity

The doctrine of qualified immunity protects state and local officials, including law enforcement officers, from individual liability unless the official violated a clearly established constitutional right.

The evolution of qualified immunity began in 1871 when Congress adopted 42 U.S.C. § 1983, which makes government employees and officials personally liable for money damages if they violate a person's federal constitutional rights. State and local police officers may be sued under § 1983. Until the 1960s, few § 1983 lawsuits were successfully brought. In 1967, the Supreme Court recognized qualified immunity as a defense to § 1983 claims. In 1982, the Supreme Court adopted the current test for the doctrine. Qualified immunity is generally available if the law a government official violated isn't "clearly established."

If qualified immunity applies, money damages aren't available even if a constitutional violation has occurred. If qualified immunity doesn't apply, while the government employee or official technically is responsible for money damages, the government entity virtually always pays. So qualified immunity protects states and local governments from having to pay money damages for actions not yet deemed unconstitutional by a court.

The qualified immunity doctrine is very favorable to states and local governments. "Clearly established" means that, at the time of the official's conduct, the law was sufficiently clear that every reasonable official would understand that what he or she is doing is unconstitutional. According to the Supreme Court, qualified immunity protects all except the plainly incompetent or those who knowingly violate the law.

The Supreme Court has offered multiple justifications for qualified immunity, including that it encourages government officials to "unflinchingly discharge . . . their duties" without worrying about being sued for actions a court has not yet held violate the constitution.

The Supreme Court has held that use of force by police and correctional officers violates the Fourth Amendment when it is "excessive." Police and correctional officers receive qualified immunity if it isn't clearly established that their use of force was excessive. According to the Supreme Court, while qualified immunity "do[es] not require a case directly on point," it does require that "existing precedent must have placed the statutory or constitutional question beyond debate."

For example, in 2014, the Supreme Court held in *Plumhoff v. Rickard* that police officers didn't use excessive force in violation of the Fourth Amendment when they shot and killed the driver of a fleeing vehicle to end a dangerous car chase. The court also held that even if the officers used excessive force, they were entitled to qualified immunity because it wasn't clearly established that shooting the driver in these circumstances amounted to excessive force.

Proposed federal legislation was put forward to modify or eliminate qualified immunity in 2020, but states also took action to address the legal liability of law enforcement officers for excessive force and other unlawful actions through state law.

## State Law

Colorado is the first state to statutorily limit the use of qualified immunity as a defense in law enforcement cases at the state level. SB 217 (2020) created a new civil action for deprivation of rights by law enforcement officers. The law specifically states that qualified immunity is not a defense and limits the applicability of the Colorado Governmental Immunity Act.

Successful plaintiffs are entitled to reasonable attorney fees and the jurisdiction employing the officer is required to indemnify its employee unless it determines the officer acted without a good faith and reasonable belief that his or her actions were lawful.

In that instance, the officer is personally liable for 5% of the judgment or \$25,000, whichever is less. In the event the officer is unable to pay, the jurisdiction is responsible for the entire judgment. Indemnification is not required if the officer is convicted of a crime arising from the same conduct.

Connecticut, via HB 6004, also created a new state civil cause of action for people to seek recourse when an officer deprives them or a class of individuals of the equal protection or privileges and immunities of state law. The law also eliminates governmental immunity as a defense but does not explicitly address qualified immunity in the same way the Colorado law does.

## Use-of-Force Data

At least 21 states require data collection on some aspect of law enforcement use-of-force incidents.

The amount and kind of data that is collected varies state by state, though reports of officer involved deaths are required by law in at least 16 states. Other common topics include use of force resulting in serious bodily injury, officer involved shootings, officer discipline, and citizen complaints surrounding use of force, among others.

Data is usually reported by individual law enforcement agencies and then collected and summarized or published by a state agency. For example, California's law requires law enforcement agencies to annually submit data to the state department of justice in a manner determined by the attorney general. The justice department is then required to summarize the information annually and post the summary to the department's OpenJustice data portal.

Most state laws resemble California's in terms of structure, with local requirements to report to the state level followed by state agency analysis of the data, but there are a handful of exceptions. In Hawaii, the chief of each county police department submits reports directly to the legislature. Missouri's law authorizes collection of some data at the local level but does not require collection or publication of data.

To whom the data is reported varies across states, but most laws require public disclosure or publication of the information. Nearly half of the states require that some portion of the data or summary information be available online. Other means of publication include publicly available reports or mandated reporting to legislatures, governors, or other governmental entities. In Maryland for example, data is reported to the Police Standards and Training Commission.

Often these reports on law enforcement use of force are required on a yearly basis, though sometimes more

frequently. Illinois, for example, requires data to be submitted on a monthly basis and Oregon requires information to be “periodically” compiled and published by local agencies.

In some states use-of-force reporting requirements exist as standalone laws, while others are tied to broader traffic stop data collection or the investigation process that follows a use-of-force incident. In a handful of states officers have an affirmative legal duty to report specific data to their supervisor or another identified party when they observe excessive force. For a full review of affirmative duties to report see the Legal Duties and Liabilities section of the database.

## Certification

Statutory law enforcement certification requirements are in place in 37 states and the District of Columbia. These laws set specific requirements for law enforcement to become certified by their state police officer standards and training (POST) board or other state certifying agency.

Certification functions similarly to a professional license. The certificate is issued by the state government as a requirement to legally work as a police officer in that state. Though most states that have certificate requirements authorize new officers to work for a year prior to requiring certification. Few states, however, have state-level statutory requirements for renewing certificates as is standard practice for all other professional licenses.

In some states, statutory certification requirements can be very detailed, with the law specifying education, age, training, examination, and disqualifying criminal records or general character requirements as well as requirements for physical and psychological examination. Georgia, Montana and North Dakota have some of the most detailed and comprehensive laws related to qualification requirements for certification.

However, in most states, the law sets very basic standards, with a few details, leaving the rest to be determined by state training boards or other local authorities designated by law.

## Decertification

Statutory law enforcement decertification requirements are in place in 11 states. These laws set standards and requirements that must be met for law enforcement to be decertified by their state police officer standards and training (POST) board or other state certifying agency.

Certification and decertification function similarly to professional licenses. The certificate is issued by the state government as a requirement to legally work as a police officer in that state. Police officers who are decertified are no longer legally allowed to work in the jurisdiction that certified them unless their certification is reinstated.

In some states, statutory decertification requirements can be very detailed, with the law specifying types of acts, criminal or otherwise, that would qualify an officer for decertification. These can include criminal convictions, acts of racial or other bias, corruption or other acts deemed worthy of decertification. The statutes also describe how investigations into possible cause for decertification can be handled and the state certifying agency’s role in acting on possible or proven cause for decertification.

Alabama, for example, says that an any officer convicted of a felony shall be decertified. Alabama statute also

sets out a police officer's right to a hearing and appeal of decertification decisions. Arkansas has detailed laws describing when and how the state Division of Law Enforcement Standards shall be notified of officer disciplinary actions or termination from employment that could lead to decertification.

However, in most states, the law sets very basic standards, with a few details, leaving the rest to be determined by state training boards or other local authorities designated by law.

## Traffic Stop Data

At least 23 states and the District of Columbia have laws related to or requiring collection of data when an individual is stopped by law enforcement. Some of these laws specifically prohibit racial profiling or require departments to adopt a policy to the same effect. Collection of demographic data can serve as a means of ensuring compliance with those provisions or informing officials on current practices so they can respond accordingly.

States have employed a number of reporting or other requirements for evaluation of the data that is collected under these laws. For example, Montana requires agencies to adopt a policy that provides for periodic reviews to "determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction..."

Maryland's law requires local agencies to report their data to the Maryland Statistical Analysis Center. The center is then tasked with analyzing the annual reports from local agencies and posting the data in an online display that is filterable by jurisdiction and by each data point collected by officers.

The amount and kind of data collected also varies state by state. Some states leave the specifics to local jurisdictions or require the creation of a form based on statutory guidance, but most require the collection of demographic data including race, ethnicity, color, age, gender, minority group, or state of residence. The Missouri law for example requires collection of the following 10 data points:

- (1) The age, gender and race or minority group of the individual stopped;*
- (2) The reasons for the stop;*
- (3) Whether a search was conducted as a result of the stop;*
- (4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;*
- (5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;*
- (6) Whether any warning or citation was issued as a result of the stop;*
- (7) If a warning or citation was issued, the violation charged or warning provided;*
- (8) Whether an arrest was made as a result of either the stop or the search;*
- (9) If an arrest was made, the crime charged; and*
- (10) The location of the stop."*

Laws in the 23 states and the District of Columbia can include pedestrian or traffic stops made by law enforcement. What kind of stop triggers a data reporting requirement varies widely by state. For example,

Florida's law applies to the stops where citations are issued for violations of the state's safety belt law.

Maryland on the other hand requires data reporting for each traffic stop made by an officer. The law specifically defines what constitutes a traffic stop as "any instance when a law enforcement officer stops the driver of a motor vehicle and detains the driver for any period of time for a violation of the Maryland Vehicle Law."

The law also specifies that a traffic stop does not include checkpoints, roadblocks, stops related to traffic accidents or emergency situations requiring the stopping of vehicles for public safety purposes, a stop based on radar, laser or vascar technology, or a stop based on license plate technology.

Virginia's law is broader requiring law enforcement to collect data pertaining to all investigatory motor vehicle stops, all stop-and-frisks of a person, and all other investigatory detentions that do not result in arrest or the issuance of a summons. Virginia also has statutes applicable to sheriff's deputies and state police.