



State Trends in Law Enforcement Legislation

2014-2017

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The way in which police interact with the communities they serve is changing. High-profile events, technology and evolution in the way the justice system is responding to people with behavioral health needs have all had an impact. State legislative decision-making can have tremendous bearing on the everyday practices of the nation's law enforcement. As the policing landscape evolves, so too does state legislation addressing this issue.

The volume of law enforcement legislation considered since 2014 is greater than what has been seen at any time in recent memory. In 2017 alone, over 1,500 bills were introduced in nearly every state and more than 260 were enacted into law. The overall theme of state legislative trends from 2014 to 2017 has been improving police-community relations in order to create safer communities and increase police effectiveness. This report explores the key trends and highlights examples of significant state legislation.

Arrest Alternatives

State and local governments are increasingly looking for ways to prevent and reduce the frequency of arrests of people for whom justice system involvement may not be the best response. One approach legislatures have taken to reach this goal is to provide law enforcement with alternatives to arrest. These include authorizing individuals to be deflected away from the justice system and into treatment, allowing citations to be issued for minor offenses, and decriminalizing minor offenses to make them civil violations or misdemeanors not subject to arrest.

In the past, when law enforcement encountered people with acute behavioral health needs, often the only option available was to arrest them and take them into custody. Increasingly, states are expanding the authority of law enforcement officers to deflect these individuals to treatment centers, where their needs can be addressed more appropriately than in a correctional setting. Deflection models are distinct from more traditional diversion programs because they connect people to community services and treatment prior to arrest and entry into the criminal justice system.

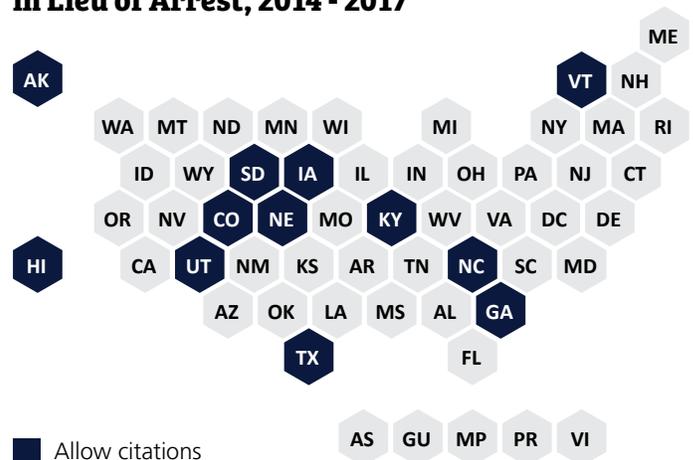
Law Enforcement Assisted Diversion (LEAD)—initially piloted in King County, Wash., in 2011¹—was one of the earliest deflection programs. Early evaluations of the program have shown that participants are more likely to obtain housing, employment and legitimate income, and are less likely to be rearrested.² Since the launch

of the King County program, several states have authorized or funded LEAD programs through legislation.³

Other deflection models have also been addressed through legislation. For example, a 2017 law in Kentucky authorized local law enforcement agencies to create “Angel Initiative” programs to refer individuals to treatment for substance use when they voluntarily seek assistance from law enforcement.⁴ Similar legislation in New Jersey authorized law enforcement to help get people into addiction and recovery programs.⁵

Another approach to lessening justice system involvement has been to increase officers’ ability to issue citations in lieu of arrest. Almost all states give law enforcement officers discretion to issue a citation instead of arresting or detaining an individual for certain misdemeanor crimes or petty offenses.⁶ The citation allows for an individual’s immediate release on the promise to appear in court at a specified date and time. Since 2014, 12 states have enacted laws that largely increase officers’ discretion or the criteria for issuing citations in lieu of arrest (Figure 1).⁷

Figure 1: Laws Allowing Citations in Lieu of Arrest, 2014 - 2017



Source: NCSL, 2018

Other recent changes indirectly expand the offenses eligible for citation in lieu of arrest. For example, laws lowering drug possession offenses from a felony to a misdemeanor automatically make those offenses eligible for a citation in states that broadly authorize issuing citations for misdemeanors.⁸



Similarly, state actions to decriminalize minor offenses and make them civil violations or no-arrest misdemeanors prevent involvement in the justice system. A 2012 national poll of registered voters found overwhelming support for policy changes that provide more effective and less expensive alternatives to prison.⁹ For example, states like Delaware, Illinois, Maryland, Missouri and New Hampshire have recently decriminalized marijuana possession.¹⁰ Generally, these laws have made certain small, personal-consumption amounts into a civil or local infraction, not a state crime and not subject to jail time.

Law Enforcement Tools

There are a great many tools available to law enforcement agencies. Legislative action has focused on regulating the use, and expanding the availability, of two types: training and technology.

Training

State legislators have been particularly involved in legislating the amount and kind of training required for police officers. New legislation addresses their responses to people who have behavioral health needs, interactions with civilians during traffic stops, and de-escalation tactics.

At least 27 states and the District of Columbia passed laws requiring officers to be trained on how best to respond when situations involve individuals with mental health, substance use or other behavioral health disorders.¹¹ New laws seek to better prepare officers to recognize, de-escalate and respond to such circumstances.¹² They also encourage the dissemination of information to first responders on how to prevent and minimize mental health crises.¹³ For example, a 2017 Alaska law requires that participants be educated about the Americans with Disabilities Act and community resources available to people with disabilities.¹⁴

States have placed particular emphasis on preparing law enforcement agencies to respond to situations where someone is experi-

encing an acute crisis. There are at least 12 states with legislative requirements and/or guidelines for establishing crisis intervention teams.¹⁵ States also support training for officers on crisis intervention. Alabama, California, Montana and South Carolina are among states that have recently enacted laws requiring or encouraging crisis intervention training.¹⁶

Following several high-profile news stories, an emerging trend is to require training for both drivers and officers on appropriate behavior during traffic stops. In 2016, Illinois became the first state to enact a law requiring driver education courses to include police procedures and appropriate actions for drivers during traffic stops.¹⁷ A handful of states enacted similar legislation in 2017.¹⁸

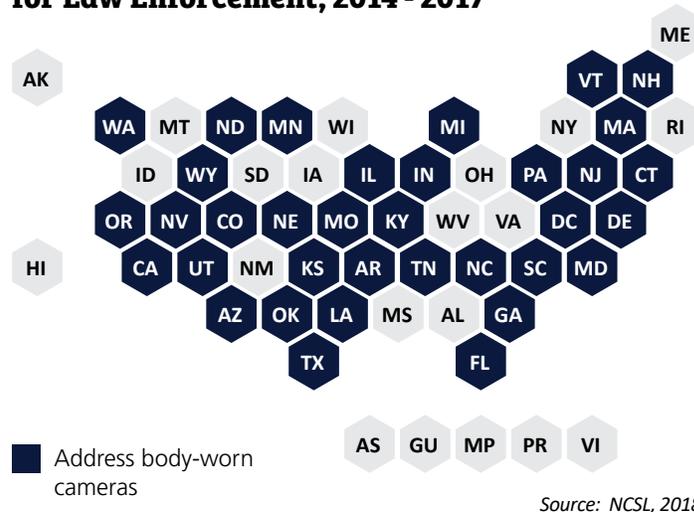
States are also looking at general law enforcement training standards and oversight. Connecticut and Oklahoma created task forces to review current law enforcement training.^{19,20} Louisiana now requires new police officers to complete a minimum of 400 hours of core curriculum and an additional 20 hours of in-service training annually.²¹

Technology

Law enforcement agencies are taking advantage of emerging technologies such as body-worn cameras and drones. Legislative support assists law enforcement agencies in obtaining these technologies and also regulates their use to promote best practices.

States first began considering legislation to require or encourage law enforcement to wear body cameras in 2015. Since then 34 states and the District of Columbia have created laws addressing the use of these cameras (Figure 2). Five states require at least some officers to wear and use cameras.²²

Figure 2: Laws Addressing Body-Worn Cameras for Law Enforcement, 2014 - 2017



State laws have also dealt with how recordings captured by body-worn cameras are treated under open record laws, defining the circumstances under which the information can or cannot be released to the public. A handful of states have enacted legislation specifying

that recordings made by body-worn cameras while police perform their duties do not constitute wiretapping or eavesdropping.²³ Nineteen states and the District of Columbia now require law enforcement agencies to have a written policy in order to use or receive funding for body-worn cameras.²⁴

At least 10 states—Alaska, Indiana, Iowa, Maine, Nevada, North Carolina, North Dakota, Utah, Virginia and Wisconsin—enacted legislation between 2014 and 2017 to regulate the use of drones.²⁵ These laws require search warrants to use unmanned aircraft systems (UAS or drones) for surveillance, prohibit using drones with weapons attached, and allow drones to be used during search and rescue operations and to photograph the scenes of motor vehicle crashes.

Reporting the use of drones by law enforcement is also required by states.²⁶ For instance, Maine and Vermont require their public safety departments to report annually to the legislature on the ways law enforcement agencies have used drones.²⁷

Officer and Citizen Safety

The safety of law enforcement officers and the citizens they are sworn to protect is of paramount importance to state lawmakers. For this reason, 17 states enacted 21 laws providing protections for officers, and 16 states enacted laws protecting civilians by regulating the use of force by officers.

Officer Safety

Nearly one in four police officers has had thoughts of suicide at some point. Law enforcement officers report “much higher rates of depression, post-traumatic stress disorder, burnout, and other anxiety-related mental health conditions” compared to the general population, according to the National Alliance on Mental Illness.²⁹

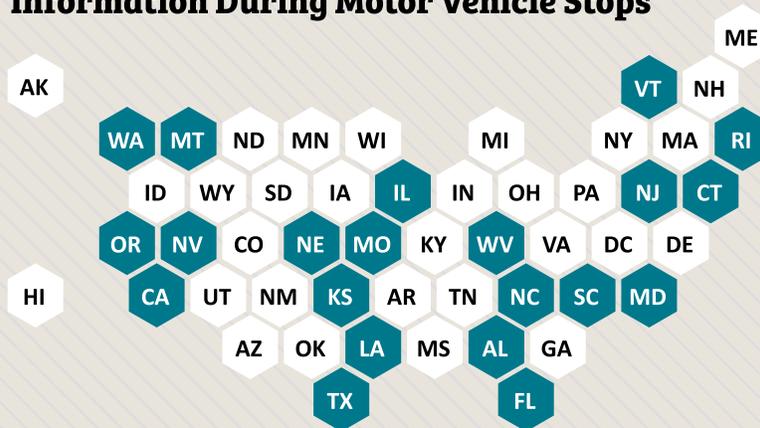
Collecting Data to Drive Policy

Legislatures increasingly rely on data to inform decisions on criminal justice policy. A hallmark of recent laws requires law enforcement to collect, report and analyze data on policing policy and practice.

Data collection also promotes agency and officer accountability. Shown on the map below, at least 21 states require the collection of demographic information for motor vehicle stops. Typical demographic information collected includes race, ethnicity, gender and age. Other commonly reported data include the reason for the stop and whether a search was conducted and an arrest was made.

Police Required to Collect Demographic Information During Motor Vehicle Stops

■ Oregon’s 2017 law has a three-year implementation period. Large agencies must begin reporting in year one, medium-size agencies in year two and small agencies in year three.



■ Rhode Island’s 2015 law ensures compliance with data collection by authorizing civil action for failure to collect or transmit data.

■ Require data collection

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■ In 2016, Missouri’s attorney general required police to start recording whether or not the individual stopped resides within the agency’s jurisdiction.

Source: NCSL, 2017²⁸

The Colorado General Assembly established a task force to examine the impact of PTSD on police officers.³⁰ Findings³¹ from the task force were subsequently enacted into law. The law encourages law enforcement agencies to allow mental health professionals to not only provide on-scene assistance to officers responding to people with mental health disorders, but also to provide ongoing counseling services for officers.³² A mental health support fund for peace officers was also created for law enforcement agencies to work with mental health professionals.

Recent high-profile killings and injuries of law enforcement officers have spurred other legislative action.³³ Arkansas, Arizona, California, Georgia, Kentucky, Mississippi, North Dakota, Tennessee and Utah³⁴ are among the states that increased criminal penalties for crimes committed against police officers. “Blue Alert” systems have been developed in at least 30 states to quickly broadcast information related to an attack on a law enforcement officer.

Citizen Safety

According to a Pew Research Center Survey, “Behind the Badge,”³⁵ only 14 percent of officers surveyed believe the public understands the risks they face, while 83 percent of the public surveyed believe they do understand the challenges in policing (Figure 3). Divided opinions and misunderstandings between police and the public can be daunting.

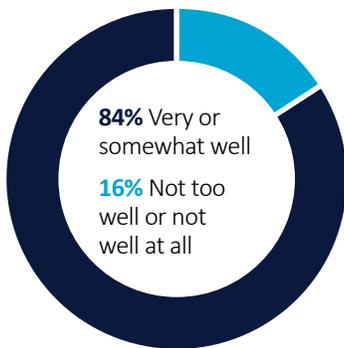
State lawmakers have taken steps to improve police-community relations. Between 2014 and 2017, at least 16 states enacted legislation regulating the use of force by law enforcement officers.

A number of states have limited the amount and kind of force that can be used. A 2014 Utah law restricts officers to “... use only that force which is reasonable and necessary to execute the warrant”³⁶ when forcibly entering a property. A 2016 law in Colorado speci-

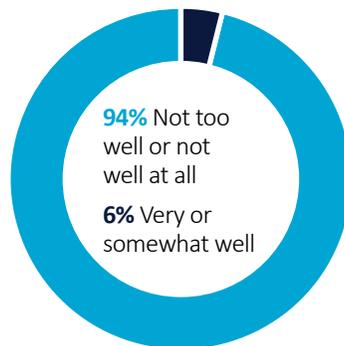
Figure 3. Varying Perspectives of Officers and Citizens

Do Americans understand the challenges police face?

Percent of public saying they understand the risks and challenges that police face on the job:

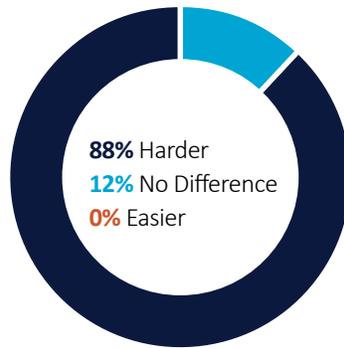


Percent of officers saying the public understands the risks and challenges that police face on the job:

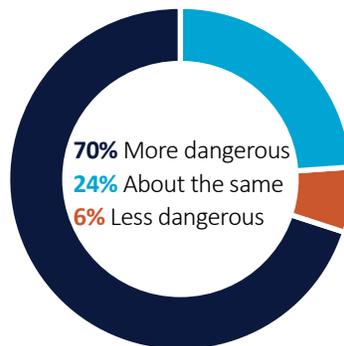


Officers say policing is harder now. Public views it as more dangerous.

Percent of officers saying high-profile incident involving police and blacks have made their job ____:

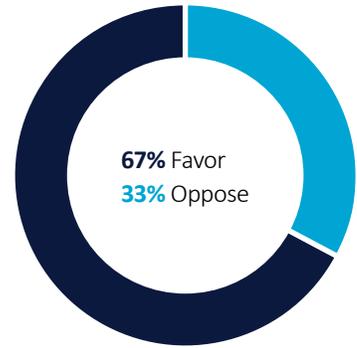


Percent of public saying policing is ____ compared with five years ago:

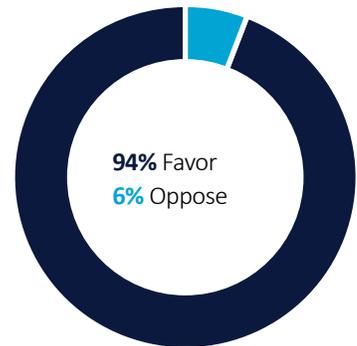


Majority of police and a larger share of the public favor body cameras.

Percent of officers saying they ____ the use of body cameras by police:



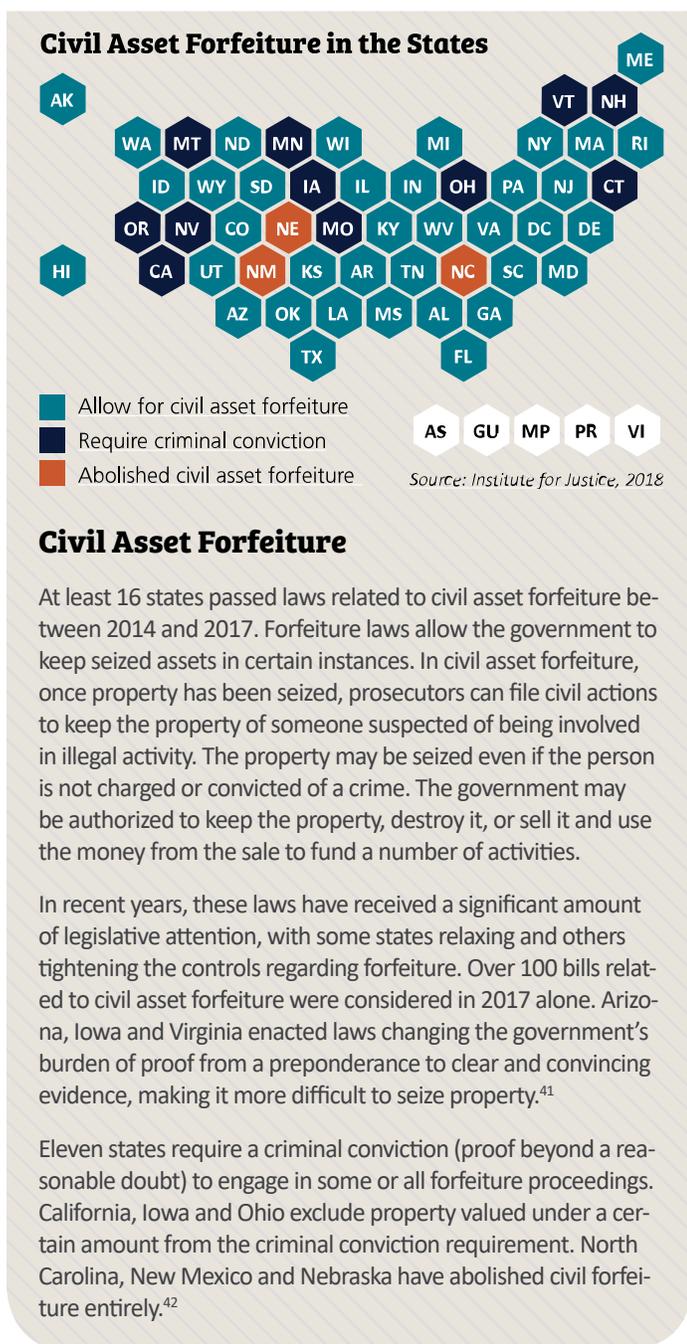
Percent of public saying they ____ the use of body cameras by police:



Source: Behind the Badge, Pew Research Center, 2017

cally prohibits the use of a chokehold by law enforcement except in very limited circumstances.³⁷

Most of the new laws require data collection or establish procedures for investigating allegations of use of force. In 2014, Mississippi started requiring local law enforcement agencies to provide information to an executive branch office regarding officer-involved deaths.³⁸ The following year, California enacted legislation requiring every law enforcement agency in the state to report annually on specific incidents when a police officer uses force.³⁹ In total, nine states have created procedures to promote transparency in investigations into officer-involved deaths or allegations of police abuse of force.⁴⁰



Civil Asset Forfeiture

At least 16 states passed laws related to civil asset forfeiture between 2014 and 2017. Forfeiture laws allow the government to keep seized assets in certain instances. In civil asset forfeiture, once property has been seized, prosecutors can file civil actions to keep the property of someone suspected of being involved in illegal activity. The property may be seized even if the person is not charged or convicted of a crime. The government may be authorized to keep the property, destroy it, or sell it and use the money from the sale to fund a number of activities.

In recent years, these laws have received a significant amount of legislative attention, with some states relaxing and others tightening the controls regarding forfeiture. Over 100 bills related to civil asset forfeiture were considered in 2017 alone. Arizona, Iowa and Virginia enacted laws changing the government’s burden of proof from a preponderance to clear and convincing evidence, making it more difficult to seize property.⁴¹

Eleven states require a criminal conviction (proof beyond a reasonable doubt) to engage in some or all forfeiture proceedings. California, Iowa and Ohio exclude property valued under a certain amount from the criminal conviction requirement. North Carolina, New Mexico and Nebraska have abolished civil forfeiture entirely.⁴²

Due Process Protections

The U.S. Constitution and state laws have enumerated certain protections intended to guarantee due process for people interacting with or being investigated by law enforcement. In recent years, legislatures have reaffirmed these protections by regulating issuance of warrants, interrogation procedures and eyewitness identifications.

At least eight states since 2014 have defined the circumstances under which law enforcement must obtain a warrant to access cell phone data.⁴³ Arizona’s 2017 law requires warrants for cell phone tracking and using cell phone simulator devices, which allow an officer to identify, locate or track a phone’s movements.⁴⁴ A 2017 New Hampshire law allows either consent or a warrant in order to use a simulator device.⁴⁵

Some states have taken steps to more clearly delineate interrogation and eyewitness identification procedures. California⁴⁶ and Texas⁴⁷ recently enacted laws mandating the recording of interrogations when an individual is in police custody if they are related to investigations of certain serious crimes. The laws also cover under which circumstances a statement that is not recorded can still be used as evidence in court. Florida has codified the process that law enforcement agencies must follow for eyewitness identification, including a requirement that the lineup be conducted by an independent administrator.⁴⁸

Looking Forward

Legislative decisions on policing policy and practice can have important, far-reaching and often long-lasting effects on criminal justice systems. Legislatures today can benefit from data collection, analysis and technology improvements that support and fulfill information needs. As the body of evidence and research grows, legislatures will be able to make more informed choices on law enforcement matters.

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