

The Need for Comprehensive Legislation on Police Use of Force

Police officers are the only government employees tasked with carrying guns and sanctioned to use force against people in the community. This is by far the most consequential power given to any government official. Yet despite the seriousness of this responsibility and the grave consequences that accompany it, the state provides very little direction governing when a police officer can -- or cannot -- use force. In fact, most state statutes simply say force can be used any time it is "reasonable."

This lack of clarity results in a widespread pattern of excessive force by police. This includes both the tragic killings of unarmed people, as well as countless instances of more routine police violence. The burden of legislative inaction has fallen most heavily on Black and Brown communities, who experience a disproportionate amount of police violence.

When police use excessive force, they undermine the very goals of public safety they are charged with promoting. Police violence undermines legitimacy, diminishes community trust, and undermines the cooperation that is necessary to address serious crime.

The status quo hurts officers as well. Training officers to de-escalate potentially violent situations, and to pursue all available alternatives to force, reduces the overall risk of injury to officers themselves. It also reduces the toll that violent interactions have on officer mental health and wellbeing.

The window for change is open now. In response to the death of George Floyd, 17 states have enacted policies banning chokeholds. However, deaths from neck restraints account for less than 1% of all estimated police killings.

A more comprehensive approach is necessary.

The Solution

The Policing Project at NYU School of Law, which partners with communities, lawmakers and the police to enhance safety, accountability and transparency in policing, has drafted model legislation that provides clear standards that will save lives by changing how and when police can use force. It clarifies the use of less-lethal weapons, police dogs and force at protests, and mandates clear and specific training for all officers. It also includes reporting, investigation, and enforcement provisions to ensure the law is followed and that communities and lawmakers have tools for accountability.

The law imposes strict limits on officer use of force and deadly force

The draft statute makes clear that force may only be used when it is (1) necessary, (2) to a degree no greater than necessary; and (3) objectively reasonable. If officers have an opportunity to de-escalate, the statute requires that they do so. The statute also requires officers to intervene if they see another officer using excessive force.

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Provides specific guidance for certain weapons and circumstances

The draft statute provides specific guidance on the use of less-lethal weapons (such as Tasers or batons), the deployment of police dogs, and the use of force at protests and demonstrations. All three are areas where state-level regulation is almost uniformly lacking, and where stricter rules will keep communities safe.

Ensures officers receive proper training

The draft statute ensures minimum requirements for training, including training on use of force law, de-escalation tactics, and use of less lethal weapons.

Ensures that officers are held accountable through robust reporting, investigation, and enforcement

The draft statute ensures that every instance of force is reported and investigated, and officers are held accountable for excessive force. It requires officers to report every instance in which they use physical force or point a gun at a person, and it establishes minimum standards for what each report must include.

It also requires agencies to make use of force data available to the public. It ensures that every use of force incident is investigated, and provides for independent investigation whenever an officer kills someone in the line of duty. And finally, the statute provides for robust external enforcement by empowering investigations by the state attorney general and allows victims to sue.

The Policing Project is here to help; contact us for more information:

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