



# Final Report of the MCCA Police Reform Working Group

January 2021

*The Major Cities Chiefs Association (MCCA) is a professional organization of police executives representing the largest cities in the United States and Canada. The MCCA provides a unique forum for urban chiefs, sheriffs and other law enforcement executives to share ideas, experiences and strategies. The MCCA provides a collaborative forum for the advancement of public safety through innovation, research, policy development, government engagement, community outreach, and leadership development.*

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## **Introduction**

In the aftermath of the tragic death of George Floyd in May 2020, a national discourse on police reform emerged. Legislative bodies and elected officials at every level of government have proposed a myriad of reforms to increase transparency and accountability among law enforcement. The Major Cities Chiefs Association (MCCA) acknowledges that change is needed within the law enforcement profession and has served as a leader in national policy debates on police reform. This report outlines the MCCA's recommendations to enact meaningful reform, hold law enforcement accountable, and build trust with the community.

## **Methodology**

The MCCA has consistently called for an approach to reform that is evidence-based, informed, comprehensive, and thoughtful. In line with this call, at the MCCA's annual meeting in October 2020, the membership voted to establish a Police Reform Working Group. The Working Group was tasked with analyzing and updating the MCCA's Law Enforcement Reform Policy Statement, which was originally issued in June 2020. Throughout its work, the Working Group also identified several additional topics that should be incorporated into ongoing police reform discussions.

The Working Group met virtually on a weekly basis from October 2020 until January 2021 for in-depth policy discussions. The recommendations contained throughout this document were developed during these meetings and represent the consensus position of the MCCA. While the MCCA strongly encourages all law enforcement agencies to implement these recommendations, please note that individual MCCA member positions may vary from what is included in this report.

## **Summary of Recommendations**

The recommendations are broken down by topic. Additional details on each recommendation can be found throughout the remainder of this document.

### **Use of Force**

- Use of force policies must emphasize the sanctity of life above all else
- Law enforcement should only use force when it is reasonable and necessary based on the totality of the circumstances
- Policies should establish clear guidelines for both less than lethal and deadly force
- Deadly force should only be used to protect the officers or others from an imminent threat of death or serious bodily injury or to prevent a violent felon from fleeing
  - When feasible, officers should exhaust all reasonable alternatives and issue a warning prior to using deadly force
- All use of force and other related policies should:
  - Establish a duty to intervene
  - Require officers to provide immediate medical attention after using force that results in an injury
  - Require the use of de-escalation techniques when safe and feasible
  - Require that officers consistently reassess the situation and immediately terminate any use of force once it is no longer needed to control the situation

- All use of force policies should prohibit:
  - All manipulations of the neck, such as chokeholds and carotid holds, unless an officer is in a fight for his or her life
  - Shooting at or from moving vehicles unless deadly force (other than the vehicle itself) is being used against the officer or a third party or the vehicle is being used as a weapon in a mass casualty or terrorist attack
- All uses of force, including any time a firearm is brandished, must be reported

### Misconduct Registry

- The MCCA supports the development of a national misconduct registry
- Any misconduct registry should only include sustained complaints of serious misconduct that resulted in an officer being terminated, de-certified, or convicted of a crime (including pleading guilty or no contest)
  - This should include officers who resigned or retired while under investigation for a terminable offense
- Officers should be placed in a national misconduct registry once discipline for serious misconduct is imposed
- If an officer in a national misconduct registry has his or her discipline overturned via appeal or grievance, it should be noted in the registry
  - Placement in a national misconduct registry must not infringe on an officer's due process rights
- Any national misconduct registry should be "law enforcement sensitive"

### Training

- All police departments should be required to conduct training on the use of force, de-escalation, the duty to intervene, implicit bias, procedural justice, and racial, religious, and cultural sensitivity
- Law enforcement officers should undergo basic customer service training
- To the greatest extent practicable, law enforcement agencies should utilize interactive, scenario-based training
- Law enforcement officers should undergo robust training annually, at minimum, and more often if possible
- Police departments should be provided with additional funding to help offset the cost of developing and implementing new training requirements

### Data Collection and Reporting

- Any demographic information that law enforcement is required to collect from members of the public should be limited to information that can be easily discerned from a government-issued identification
- Law enforcement must be provided with financial assistance to help offset the costs associated with any new data collection and reporting requirements
- Additional funding should be dedicated to researching and developing proper metrics for analyzing law enforcement data

### The 1033 Program

- The 1033 Program should neither be eliminated nor should the type of equipment transferred to local law enforcement agencies be significantly restricted
- Any law enforcement agency that participates in the 1033 Program should be required to have written policies detailing the proper use, training, and supervision of any equipment it receives

### Officer Health and Wellness

- DOJ should establish a Law Enforcement Officer Wellness Center within the COPS Office to develop national standards for law enforcement agency wellness programs
- Congress and the FBI must fully fund and support national data collection efforts focused on officer suicides and attempted suicides

### Integrated Co-Responder Models

- The MCCA supports the use of integrated co-responder models to respond to certain calls for service where a law enforcement response may not be the most appropriate course of action
- Integrated co-responder models must be developed in conjunction with, not instead of, law enforcement
- Follow up services should be included in all integrated co-responder models
- The federal government must provide state and local governments with additional assistance to help develop and implement integrated co-responder models

### Independent Investigations

- Independent investigations should not be required by law or used to determine a police department's eligibility for grant funding
- The role independent entities and/or civilian oversight bodies have in misconduct investigations should be based on the specific needs of the community in the police department's jurisdiction
- There should be clear requirements for serving on a civilian body that oversees a law enforcement agency
- Individuals who serve on civilian oversight bodies should undergo specialized training on law enforcement policies and procedures
- If civilian oversight bodies have disciplinary responsibilities, they should be limited to recommending, not imposing, discipline
- Pattern and practice investigations should begin as a collaborative effort, and consent decrees should only be used as a last resort
- Proper metrics for determining compliance with consent decrees need to be developed, and to the greatest extent practicable, consent decrees should contain objective standards to determine when a police department should be released
- Consent decree monitors should be professional government employees

### National Accreditation Standards

- National accreditation standards should focus exclusively on establishing minimum policy requirements for law enforcement agencies

- The following topics should be included in national accreditation standards: use of force; in-custody deaths; training; early warning systems; civilian review; data collection and reporting; body worn cameras; and hiring requirements
- Law enforcement agencies should be provided with the requisite funding needed to help gain compliance with national accreditation standards

### Body Worn Cameras

- All uniformed patrol officers should be required to utilize body worn cameras
  - Other law enforcement personnel should wear body cameras whenever they engage in activity that should be recorded under their department's policy
- Law enforcement agencies must, in consultation with the public, develop robust policies governing the use of body worn cameras, data management, and the release of recordings
- The federal government should provide additional funding to help local law enforcement obtain body worn cameras and cover associated costs

### No-Knock Warrants

- Law enforcement agencies should ban the use of no-knock warrants in narcotics cases or exclusively for the purpose of securing and preserving evidence
- No-knock warrants should only be used in situations where an unannounced entry is required to ensure the safety of the officers, the people inside the building, or the surrounding community
- Police department policies related to no-knock warrants should require that:
  - No-knock warrants are executed by specialized units
  - A risk assessment be conducted before a no-knock warrant is executed
  - All no-knock warrant requests are approved by the department's executive or his or her designee
  - An after-action review be conducted for every no-knock warrant

## **Use of Force**

### Introduction

The MCCA has long supported the requirement that police departments across our nation have use of force/response to resistance policies in place that are regularly reviewed and readily available to the public. The MCCA encourages law enforcement agencies to strive to implement policies that go beyond the minimum requirements in state and local law or the minimum criteria used to determine federal grant eligibility.

### Guidelines for the Use of Force

Above all else, use of force policies must emphasize the sanctity of life. As such, the MCCA believes that force should only be used when it is reasonable and necessary based on the totality of the circumstances. While policies should clearly define what constitutes reasonable and necessary, it is also important that use of force policies do not deal in absolutes. No two calls for service are the same and officers need sufficient flexibility to take the necessary action to resolve situations as peacefully and safely as possible for all parties involved.

Use of force policies should establish clear guidelines for both less than lethal and deadly force. This can be accomplished via a use of force continuum or matrix, which outlines appropriate responses to different levels of resistance. The guidelines should specify the tools and techniques available to an officer, the training requirements for using them, and the parameters surrounding their use, including any circumstances where a specific tactic may not be used. While a use of force continuum or matrix is a valuable tool and can aid in officer decision making, it must provide officers with enough latitude to account for unique situations they may encounter. Furthermore, officers must not be required to work through the outlined options sequentially. For example, when facing certain threats, such as an active shooter or when there is significant risk of death or serious injury, officers may need to immediately resort to a higher level of force on the continuum/matrix.

### Use of Deadly Force

Over the course of an officer's career, he or she may encounter a situation that requires the use of deadly force. The decision to use deadly force is one of the most serious decisions an officer will ever make. Deadly force includes all tactics that have the intent or are known to cause death or serious bodily injury. This includes the use of firearms and could also include batons or other objects, as well as unarmed tactics or techniques, depending on how they are deployed. Use of force policies should specify that deadly force is only to be used to protect the officer or others from an imminent threat of death or serious bodily injury. It may also be used to prevent a violent fleeing felon from escaping. Deadly force should be a last resort. Therefore, the MCCA recommends that use of force policies require officers to exhaust all available and reasonable alternatives prior to using deadly force, unless it is unsafe, there is not time to do so, or doing so would not be practical under the totality of the circumstances.

### Recommended Components

There are several components the MCCA supports incorporating into all use of force and other related policies:

- Use of force policies must establish a duty to intervene to ensure officers hold each other accountable for preventing excessive uses of force.
- Officers should be required to immediately provide medical attention after a use of force that results in an injury.
- The use of de-escalation techniques can provide additional time, options, or resources that may help resolve a situation peacefully. When it is safe and feasible to do so, their use should be required. Prior to using any kind of force, when safe and feasible to do so, officers should also give a warning and allow the individual(s) time to comply.
- Use of force policies should require officers consistently reassess the situation to determine if the force being used is still appropriate. This practice will also help ensure that once force is no longer needed to control a situation, it stops immediately.

### Restricted Tactics

Some use of force tactics involve a significant amount of risk and the MCCA believes those tactics should only be utilized in extraordinary circumstances. For example, the MCCA supports banning all manipulations of the neck, such as chokeholds and carotid holds, as well as arm maneuvers, leg maneuvers, and other movements designed to restrict respiration capacity, unless an officer is in a fight for his or her life. The MCCA also encourages departments to prohibit shooting at or from moving vehicles unless there is another form of deadly force (i.e., one of the vehicle occupants is discharging a firearm) being used against the officer or a third party. Additional exceptions to these policies should include situations where the moving vehicle is being used as a weapon during a mass casualty or terrorist attack. Officers should also be prohibited from placing themselves in the path of a moving vehicle and be required to attempt to move out of the path of an oncoming vehicle instead of discharging a firearm at it or its occupants.

### Use of Force Reporting

Reporting use of force incidents is an important aspect of enhancing accountability and transparency. The MCCA supports requiring that all use of force incidents be reported. This includes deadly force, less than lethal force, and other physical contact, no matter how light or brief. The only exceptions should be physical contact that is made pursuant to an agency's standard arrest procedures (i.e., handcuffing or searching an individual) or escorting an individual after they have been taken into custody. Officers must also report any time they draw their service weapon, even if the firearm is never discharged.

### Recent Reform Efforts

Any conversation on the use of force would not be complete without discussing the recent actions of many state and local elected officials to legislate the use of force. Some of these efforts have taken away, or seek to take away, many of the techniques that law enforcement uses to resolve situations as peacefully as possible. For example, many jurisdictions have sought to prohibit law enforcement from using less than lethal tools like tear gas and kinetic projectiles. Instead, the focus should be on ensuring law enforcement officers receive proper training on less than lethal tools.

The use of these tools ultimately saves lives and protects property by preventing a chaotic situation from becoming a threat to public safety.

Some efforts to legislate specific use of force tactics have essentially criminalized policy violations. In situations involving the use of force, officers are frequently forced to make split-second decisions under very difficult circumstances. When gross misconduct or an excessive use of force occurs, mechanisms exist to hold officers accountable for their actions. Criminalizing policy violations may make officers hesitant to take action in certain situations or make certain arrests, thereby negatively impacting public safety.

## **Misconduct Registry**

### Introduction

The MCCA has consistently called for law enforcement agencies to foster a culture of information sharing and be forthcoming during reference checks on current or former officers. A national misconduct registry is one possible tool to help accomplish that goal. Such a registry will provide agencies with additional information on potential hires and serve as a mechanism to help prevent law enforcement officers with histories of misconduct from moving between departments. It can also assist with navigating the patchwork of state and local sunshine laws that can complicate vetting new recruits.

### Criteria for Inclusion in the Registry

It's important to remember that the intent of any misconduct registry is to ensure the individuals being entrusted with policing our communities meet the highest ethical standards. The goal is not to "name and shame" any specific individual or agency. As such, while the MCCA does support the development of a national misconduct registry, it must strike the proper balance between identifying potential problem officers and protecting privacy, civil rights, and civil liberties.

A national misconduct registry should only include officers who were terminated by their agency, de-certified, or convicted (including pleading guilty or no contest) for serious misconduct. The MCCA recommends defining serious misconduct as violations of department policy or procedure, or state and/or federal law, related to excessive uses of force that result in serious injury or death, felony offenses, civil rights violations, sexual misconduct, domestic violence, and other crimes of moral turpitude.

Most importantly, any national registry must only include sustained complaints. If other types of complaints, such as pending or exonerated complaints, are included, the effectiveness of the registry will be undermined because it will likely include officers who are doing their jobs properly. A registry should also include law enforcement officers who have resigned or retired while under investigation for a terminable offense.

An officer should be placed in the registry once discipline is imposed for serious misconduct. The point in the disciplinary process at which an officer is placed in the misconduct registry is in no way intended to infringe on the appeals and grievance rights afforded to him or her as part of labor agreements. The MCCA fully respects these rights. However, even when a terminated officer is reinstated due to an appeal or grievance, an investigation still would have presented evidence of

serious misconduct. This is underscored by the fact that in most departments, terminating an officer is not a quick or simple process, and therefore, the decision to do so is not taken lightly. To ensure the full situation is accurately captured, a national misconduct registry should also note when an officer in the registry had his or her discipline overturned.

### Privacy Protections

The MCCA recommends making any national misconduct registry “law enforcement sensitive.” Restricting access to law enforcement agencies will help protect officers and ensure privacy rights in collective bargaining and other labor agreements are being upheld. Given recent efforts in many state legislatures to change laws related to law enforcement records, it must be acknowledged that information in the registry may one day be made public. As such, the MCCA strongly encourages policymakers to carefully consider what personal information is included in a registry and make sure that personal identifiable information is protected. During the civil unrest that occurred throughout the summer of 2020, many law enforcement agencies struggled with having officers and their loved ones “doxed” and harassed. Any misconduct registry cannot make it easier for malicious actors to engage in such behavior.

## **Training**

### Introduction

The need for additional training is often cited during policy discussions on police reform. The MCCA agrees this is valuable and many members have already implemented new robust and on-going training on a variety of critical topics. Improvements can also be made to current law enforcement training to help address some of the systemic issues the profession is currently grappling with, such as outdated training curriculums, insufficient training opportunities, or ineffective training methods.

### Types of Training

The MCCA recommends requiring all law enforcement agencies to conduct training on the use of force, de-escalation, the duty to intervene, implicit bias, procedural justice, and racial, religious, and cultural sensitivity. This training should be evidence-based and incorporate minimum standards that are developed with input from the community and other relevant stakeholders. These standards, however, must provide police departments with sufficient flexibility to shape their specific training curriculums to address the unique needs of their community.

The MCCA also recommends that all law enforcement officers undergo basic customer service training. Adopting an attitude of service makes it easier for law enforcement to build the mutual trust and respect with the community that is critical to good policing. Customer service training will help provide officers with additional tools to navigate their dealings with the public. Law enforcement encounters people who are having both good and bad days, and when an officer can respond with compassion and empathy, no matter the situation, it can help prevent interactions from turning negative. This training may also improve officers’ self-awareness and understanding of community perception.

Beyond the baseline topics described above, the additional training an officer undergoes will vary between departments. It will be shaped by a variety of factors such as state and local laws, specific public safety threats in a jurisdiction, and demands from the community.

### Training Format and Frequency

Law enforcement agencies use a wide variety of formats to train their workforces. Instruction style can range from interactive, scenario-based training, to large auditorium lectures and e-learning. The training format a department decides to use can be influenced by a number of factors, such as cost and staffing models. For example, conducting scenario-based training is more costly than other formats and requires officers to be taken off the beat, which can present staffing challenges for some departments.

The MCCA strongly encourages law enforcement agencies to utilize interactive, scenario-based training as much as possible. Studies have shown that this format is very effective for training law enforcement officers.<sup>1</sup> Agencies should also consider implementing “dual approach” training. Under this format, initial instruction, executed via e-learning or lecture, is followed up by interactive, scenario-based training. While scenario-based and “dual approach” training can be expensive, the costs associated with a negative incident that could have been avoided via effective training are just as high. Police departments should weigh both the financial costs and potential impacts of ineffective training when deciding how to allocate resources.

In order for training to be as effective as possible, it should be ongoing and recurrent. The MCCA recommends law enforcement officers undergo robust training on an annual basis, at minimum. Annual training not only serves as a refresher but also gives departments an opportunity to share new best practices and other critical information with the workforce. The MCCA also supports efforts by departments to implement more frequent training, especially on important topics like the use of force.

### Cost

While there is broad consensus that additional training for law enforcement would be beneficial, it must be acknowledged that this is an extremely expensive undertaking. MCCA members routinely spend millions of dollars a year on training. These costs would only increase if law enforcement is required to develop and implement new training courses and modules. Therefore, if additional training requirements are going to be established by law and/or used to determine grant eligibility, they cannot be unfunded mandates. The MCCA recommends that additional funding be provided to help police departments offset the cost of developing and implementing the training that would be necessary to meet any new requirements.

## **Data Collection and Reporting**

### Introduction

The MCCA supports comprehensive data collection and reporting. This is an important mechanism to help promote transparency and accountability throughout the law enforcement profession. Although all law enforcement activity should be captured in some form or fashion, careful

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<sup>1</sup> Bryce Jenkins, Tori Semple, and Craig Bennell, “An evidence-based approach to critical incident scenario development,” *Policing: An International Journal*, November 11, 2020.

consideration must be given to the specific details that are recorded and how that data is analyzed. Furthermore, it will be nearly impossible for law enforcement agencies to enhance their data collection and reporting capabilities without additional financial assistance.

#### Collecting Appropriate Information

It is vitally important to ensure any data law enforcement is required to collect and report is necessary, appropriate, and does not infringe on civil rights or civil liberties. Some of the reforms that have been proposed would require law enforcement officers to collect sensitive demographic data, such as ethnicity, gender, and religion, from the members of the public they interact with. It's inappropriate to have officers record this information solely off of their perception. In addition, requiring the officer to ask questions that could be interpreted as invasive may exacerbate the situation and turn otherwise standard interactions with the public into negative ones.

To ameliorate the challenges described above, the MCCA recommends that any demographic data that law enforcement is required to collect be limited to information that can be easily discerned from a government-issued identification. Since asking questions about basic demographic information, such as race, sex, and age, can sometimes inadvertently lead to troubling situations, the MCCA also recommends providing law enforcement officers with additional training and guidance on how to ask questions and use language that is appropriate and non-offensive.

#### Associated Costs and Need for Funding

Current law enforcement data collection and reporting efforts are largely driven by legislative requirements and operational needs. Due in part to these differences, police departments use a variety of different record management systems. It is important to remember that some of these systems may not have the capability to meet new data collection and reporting requirements. As such, the MCCA recommends that, to the greatest extent practicable, any new requirements utilize existing databases and systems.

In order to implement any national data collection effort similar to what has been proposed as part of the current police reform debate, significant financial assistance will be needed. Law enforcement agencies will likely need to procure new systems or modify existing systems to collect, store, and report the required data. They will also need to develop new data collection forms and train officers on new systems, policies, and procedures. Finally, making changes to law enforcement record management systems may impact other agencies' systems, such as the DMV or Department of Corrections, which could result in additional costs. The MCCA recommends that funding be provided to assist police departments with new data collection and reporting requirements. The MCCA also encourages policymakers to consider implementing new requirements on a rolling basis to help offset the associated costs.

#### Data Analysis

Modern law enforcement agencies should be data driven entities. Comprehensive data analysis can help inform decision making and identify problem areas that need to be addressed. It is important to note that some of the current analysis of law enforcement data, especially when done by outside advocacy groups or the media, may not present an accurate picture of police operations. For example, a department's stop data will often be compared with local demographic data to determine if any particular group is being disproportionately impacted by law enforcement operations.

This is not always an accurate comparison because it typically does not account for the demographics of other factors (i.e., offenders, lookouts, etc.) that help drive enforcement actions. The demographic data that is used is also oftentimes outdated. Additional research should be conducted to help determine the best metrics for analyzing law enforcement data. The MCCA encourages policymakers to include funding for this type of research as part of any new data collection and reporting requirements.

## The 1033 Program

### Introduction

Managed by the Defense Logistics Agency, the 1033 Program allows the Department of Defense to transfer surplus equipment to local law enforcement agencies. While not all MCCA members utilize the program, it is extremely valuable to those that do. It provides access to critical equipment that may otherwise be cost prohibitive. This equipment has been used to respond to a range of public safety threats including natural disasters, terrorist attacks, active shooters, and other emergencies. The 1033 Program will continue to be an important resource, especially considering the current budget constraints facing many law enforcement agencies. Smaller departments that are not MCCA members also benefit from the program for similar reasons. The 1033 Program can be improved, however, by incorporating additional oversight and accountability measures.

### Transferred Equipment

The MCCA opposes significantly restricting the type of equipment transferred to local law enforcement under the 1033 Program. There is a common misconception that the program is used to “militarize the police.” While some weaponized equipment may be transferred, the 1033 Program provides a wide variety of equipment, much of which has no offensive capability. For example, MCCA members have received everything from vehicles to clothing to office supplies to emergency tents and generators.

### Oversight and Accountability Measures

The MCCA understands the concerns that some have raised about the 1033 Program. The best way to address these concerns is by injecting additional oversight and accountability mechanisms, not restricting or eliminating the program. Communities certainly have a right to know what equipment is being provided to their local police department and what it is being used for. The MCCA recommends requiring any law enforcement agency that participates in the 1033 Program to have written policies detailing the proper use, training, and supervision of any equipment it receives.

## Officer Health and Wellness

### Introduction

Ensuring officer health and wellness is a top priority for the MCCA. The Association has continually advocated for a comprehensive approach that addresses physical, mental, and emotional health. If police reform efforts are going to be successful, they must be holistic and address the needs of both officers and the community. Officers frequently encounter stressful and traumatic situations throughout their careers. They must have access to resources to help them

properly process these incidents in a healthy way. A critical aspect of policing well is being well yourself. As it is often said, “hurt people hurt people.”

### Law Enforcement Officer Wellness Center

The stigma of mental wellness is a difficult obstacle for many in the law enforcement profession to overcome. Officers fear they will lose their jobs if they seek help since many states and local governments still have policies in place that are not aligned with post-traumatic growth wellness and recovery. For example, there may be job standards that deem a person unfit for duty if he or she is diagnosed with a mental or behavioral health issue.

The MCCA recommends that DOJ establish a Law Enforcement Officer Wellness Center within the COPS Office. The Center should inventory wellness program best practices and policies and use these to develop national standards for law enforcement agency wellness programs. The Center should also design educational programs for law enforcement executives and practitioners to help sustain wellness programs and reduce the stigma in the law enforcement profession.

### Mandatory Suicide Data Collection

Officer suicide is a challenge currently plaguing the entire law enforcement profession. According to an October 2019 report from the Police Executive Research Forum, “the risk of suicide among police officers is 54 percent greater than among American workers in general.”<sup>2</sup> In the last five years alone, 882 officer suicides have been reported to a national data collection project.<sup>3</sup>

There undoubtedly is a need for a government sanctioned data collection program on officer suicide. To date, much of the data collection has been carried out by non-profit organizations that rely on voluntary participation from law enforcement agencies to collect and validate the data. There is also a need for additional data collection and analysis on attempted suicides. Without this key piece of information, it is impossible to understand the full scope of the problem.

Fortunately, a law was enacted earlier this year to establish such a program and the FBI recently announced it will launch in July 2021. The MCCA strongly encourages all law enforcement agencies to participate in this effort and calls on Congress and the FBI to ensure the effort is fully funded and given any additional resources it may need to be successful. To help facilitate agency participation, the MCCA also recommends that the Law Enforcement Wellness Center described above assist with developing data collection methodologies for officer suicides that parallel the methods currently used for line of duty deaths.

## **Integrated Co-Responder Models**

### Introduction

Over the years, law enforcement agencies have experienced “mission creep,” subsequently forcing officers to respond to complex social problems—such as mental health crises, substance abuse, and homelessness—in addition to core public safety priorities. In some of these cases, a law

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<sup>2</sup> Police Executive Research Forum, “An Occupational Risk: What Every Police Agency Should Do To Prevent Suicide Among Its Officers,” *Critical Issues in Policing Series*, October 2019.

<https://www.policeforum.org/assets/PreventOfficerSuicide.pdf>

<sup>3</sup> Statistics from Blue H.E.L.P. are available here: <https://bluehelp.org>

enforcement response may not be the most appropriate course of action, which has presented some challenges for police departments. To best tackle this growing mission set, the MCCA supports the use of integrated co-responder models, where law enforcement officers respond to certain calls for service jointly with mental or behavioral health specialists or other social service providers. Integrated co-responder models require significant investment and requisite funding must accompany any effort to build or enhance this capability.

#### Diversion from Law Enforcement

Part of the ongoing police reform debate has focused on shifting non-public safety related responsibilities away from law enforcement. While the intent of this idea is good, there are significant challenges that would accompany such a shift. For example, many municipalities are unable to afford 24/7 staffing for crisis counselors to respond to calls for service. Several MCCA members have also indicated that these professionals feel unsafe and are uncomfortable responding to incidents without a police presence. Finally, there will always be situations that require a law enforcement response, such as violent crime, irrespective of if an individual is in crisis.

These challenges further underscore the importance of integrated co-responder models. MCCA members who currently utilize these models have indicated that strong relationships and mutual trust between law enforcement and mental health, behavioral health, and other social service providers is critical to their success. Accordingly, any integrated co-responder model, or other alternative response, must be developed, funded, and executed in conjunction with, not instead of, law enforcement.

#### Co-Response Follow Up

Integrated co-response models are designed in part to help divert people away from the criminal justice system. To help achieve this goal, the MCCA strongly recommends incorporating a follow up component into any integrated co-response model. This could include, for example, case managers who work with individuals after an incident to ensure they're receiving the help they need. A non-law enforcement follow up can also help prevent future calls for service and lead to better outcomes for the individuals involved. Reducing calls for service will allow police departments to realize significant cost savings associated with call response, emergency room transports, and other related expenses.

#### Need for Funding

According to MCCA members, a lack of funding is one of the biggest roadblocks to further deployment of integrated co-responder models. In addition to establishing the actual teams that respond to calls for service, funding is needed for other components that are critical to the model's success. Given the budget constraints facing state and local governments, the MCCA calls on the federal government to help provide this assistance.

Additional funding will be needed for training. Cross training allows law enforcement officers to gain better insight on how to interact with individuals in crisis and provides mental health, behavioral health, and other social service providers with an understanding of law enforcement procedures. It also helps build the key relationships and mutual trust that underpins successful co-response teams. 911 call center personnel will also need to be trained on how to triage calls to ensure co-response teams are deployed to the appropriate calls for service.

As part of their integrated co-response models, some MCCA member cities have established additional response teams that do not contain a law enforcement officer. These teams are tasked with responding to situations that do require an immediate law enforcement response, such as an individual who is experiencing a mental health crisis but does not represent a threat to themselves or others. When people encounter these situations, however, it is still their first instinct to call 911, even if other response options are available. There must be funding to help offset the cost of educating the public on these additional resources and how and when it's appropriate to use them.

## **Independent Investigations**

### Introduction

It will be difficult for police departments to build trust with the community unless all allegations of law enforcement misconduct are thoroughly and fairly investigated. Independent investigations have been proposed as one method of ensuring misconduct investigations are free from bias. While the MCCA supports the intent of independent investigations and believes they are appropriate in some circumstances, their use should not be required. In order to truly build a culture of accountability, law enforcement executives must have the ability to investigate and hold their officers accountable.

### Challenges with Independent Investigations

There are a number of challenges associated with independent investigations that are often overlooked during police reform policy discussions. Due to resource and other constraints, it is not always feasible for law enforcement agencies to establish independent investigatory bodies. Many MCCA members also believe that their departments are better equipped to investigate misconduct than an outside entity, such as another law enforcement agency or special prosecutor, and are uncomfortable with the effectiveness and quality of these investigations. For example, these outside entities often do not have the resources or bandwidth to conduct a thorough and timely investigation. More importantly, many of these entities have less stringent policies and/or allow tactics that have been banned by the local law enforcement agency that they are supposed to be investigating. Due to these challenges, the use of independent investigations should not be mandated by law or used to determine a department's eligibility for grant funding.

### Civilian Oversight

Civilian oversight bodies play a critical role in promoting transparency and accountability within law enforcement. While these bodies do very important work, their responsibilities must be balanced with those of the law enforcement executive.

While it may not be appropriate for the civilian oversight body to conduct the actual misconduct investigation, the MCCA strongly supports incorporating a level of civilian review, based on the needs of the community in the law enforcement agency's jurisdiction, into the process. In order to ensure this review is as robust and effective as possible, the MCCA recommends that states and municipalities establish clear requirements for serving on a civilian oversight body. The MCCA also supports requiring those who serve on these bodies to undergo specialized training on law enforcement policies and procedures. Finally, the MCCA strongly believes that nothing should infringe on a police chief or sheriff's ability to manage his or her own department or impose

discipline when misconduct occurs. The authority of civilian oversight bodies should be limited to recommending discipline.

#### Pattern and Practice Investigations

When a law enforcement agency repeatedly fails to meet the high standards of the profession, pattern and practice investigations can be a useful change agent. There are several improvements that can be made to increase the efficiency and effectiveness of these investigations. The MCCA believes that pattern and practice investigations should begin as a collaborative effort, where the government and police department work hand in hand to address the deficiencies that have been identified. Consent decrees should only be used as a last resort.

While consent decrees are governed by judges and therefore inherently somewhat subjective, if one is required, the MCCA believes it should contain, to the greatest extent practical, objective standards that help determine when a police department should be released. As such, the MCCA recommends developing proper metrics for evaluating compliance, including but not limited to, clear timelines for enacting reforms and annual reviews to measure the progress an agency has made. The MCCA also strongly recommends that the monitoring of any consent decree be carried out by professional government employees. Under the current system, many monitors are employed by private companies and have a financial incentive to keep departments under consent decrees for as long as possible.

### **National Accreditation Standards**

#### Introduction

The development and implementation of national accreditation standards can help ensure law enforcement agencies across the country adopt best practices. The MCCA supports DOJ's recent efforts to develop and implement safe policing standards. However, the Association does not believe these standards go far enough and encourages police departments to implement policies that go beyond these minimum requirements. Current standards for law enforcement agencies are set by the state where the agency is located. Therefore, the MCCA also recommends that the relevant state regulatory agencies conduct their own reviews to ensure the standards in their jurisdiction are up to date and meet the needs of their communities.

#### Minimum Policy Standards

Any national accreditation standards should focus exclusively on establishing minimum policy requirements for law enforcement agencies. Current accreditation processes oftentimes take into account other factors, such as facility requirements, which can make pursuing accreditation cost prohibitive. Furthermore, these non-policy requirements are outside the scope of improving law enforcement transparency and accountability, which should be the main goal of national accreditation standards.

The MCCA recommends the following topics be included in national accreditation standards. A brief description of each topic is included below. The MCCA also strongly encourages policymakers to incorporate the other relevant recommendations included throughout this document into any future standards.

- *Use of Force*: Law enforcement agencies should be required to have use of force/response to resistance policies in place that are regularly reviewed and readily available to the public. These standards should include clear guidelines for the use of force as well as prohibited tactics and techniques.
- *In-Custody Deaths*: Standards concerning identifying, reporting, and investigating in-custody deaths should be included. Post-incident training should also be addressed.
- *Training*: These standards should outline the types of training law enforcement officers should undergo as well as minimum standards the training must meet.
- *Early Warning Systems*: These systems can assist with preventing misconduct from occurring in the first place. These standards could address the vetting of new recruits.
- *Civilian Review*: These standards should provide general guidance on the role of civilian oversight in misconduct investigations. They should not require that civilian bodies have the authority to impose discipline.
- *Data Collection and Reporting*: These standards should specify the minimum data that law enforcement is required to collect and report. Any demographic data that needs to be collected should be limited to what can be easily discerned from a government-issued ID.
- *Body Worn Cameras*: These standards should require law enforcement officers to utilize body worn cameras and highlight the topics a department's body worn camera policies need to address.
- *Hiring Requirements*: Law enforcement officers should be required to meet the minimum requirements established by their state's POST Commission or the equivalent entity.<sup>4</sup>

### Funding for Implementation

While meeting some of these standards won't have a fiscal component attached, police departments will need assistance to implement others, such as those related to body worn cameras. As such, the MCCA calls on policymakers to ensure law enforcement agencies are provided with the requisite funding to make the policy changes, procure the necessary equipment, and cover any other costs associated with meeting national accreditation standards.

## **Body Worn Cameras**

### Introduction

Body worn cameras help promote transparency and accountability during law enforcement's interactions with the public. The MCCA strongly encourages all law enforcement agencies, including federal agencies, to utilize body worn cameras and implement policies related to their use that meet the needs of both the agency and the community. Like many other reforms, body worn camera programs have been hamstrung by a lack of funding. Policymakers must provide financial assistance as a part of any law or regulation that mandates the use of body worn cameras.

### Body Worn Camera Deployment

The MCCA supports requiring, at a minimum, that all uniformed patrol officers wear body cameras. Beyond that, departments must have enough flexibility to deploy additional body worn cameras in a manner that accounts for their unique policy and legal requirements and resource

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<sup>4</sup> If a state does not have a POST Commission or other equivalent entity in their state, officers must meet requirements established by the local jurisdiction.

constraints. For example, some MCCA members do not have their detectives use body worn cameras due to the amount of time they spend with victims and witnesses. For other members, it is simply too costly for them to provide their detectives with body worn cameras. Despite these differences, the MCCA believes that departments must ensure all activity that is required to be recorded under department policy is recorded, even if it is carried out by officers who do not utilize body worn cameras as part of their everyday duty gear.

### Body Worn Camera Policies

A law enforcement agency's body worn camera policies are a critical part of its body worn camera program. These policies can significantly impact the program's effectiveness. Therefore, the MCCA strongly encourages all law enforcement agencies to develop robust policies governing the use of body worn cameras, data management, and the release of recordings. To help foster trust between law enforcement and the community, the MCCA also recommends these policies be developed in consultation with the public.

The specifics of each department's policies will vary based on state and local law, labor agreements, and other such factors. There are several key components, however, that the MCCA believes must be addressed in comprehensive body worn camera policies. First, these policies should clearly outline when body worn cameras are expected to be activated and deactivated. If an officer fails to comply with these guidelines, a written justification should be included in the officer's report. Agency policies should also indicate the types of situations that should not be recorded. This may include, but is not limited to, undercover personnel or confidential informants, sensitive investigative techniques or equipment, operations occurring in sensitive areas, and activities related to national security.

The management of body worn camera recordings should also be covered. An agency's policies should specify how long data should be retained as well as the circumstances under which it may be kept longer. They should also indicate who is authorized to access body worn camera footage and for what purposes it can be reviewed. Examples may include to support misconduct and other investigations or for training purposes.

The public release of body camera footage is an effective way for law enforcement agencies to operate transparently. Policies should indicate when recordings should be released publicly and establish a detailed timeline for doing so. They must also account for situations where a public release may not be appropriate, or for when the release timeline needs to be extended. Such exceptions could include situations where the suspect or victim's family does not want the footage to be released or instances when doing so would jeopardize an ongoing investigation. Finally, an agency's policies must address how and when footage can be redacted or otherwise altered (i.e., blurring faces) to protect the privacy of victims and other relevant parties involved in the incident.

### Funding

Robust body worn camera programs are extremely expensive. In the current fiscal environment, where law enforcement budgets are strained, several MCCA members have had to cancel or delay investments in body worn camera programs. It's important to note that the costs associated with these programs go well beyond simply procuring the cameras themselves. In fact, the costliest part of a program is typically storing and processing the recorded data. Developing and implementing

new policies and training officers on proper body worn camera use also requires significant resources. To help overcome these challenges, the MCCA calls on the federal government to provide local law enforcement with additional funding to help obtain body worn cameras and cover other costs.

### Federal Task Forces

MCCA members enjoy a close working relationship with their federal partners and many have officers serving on federal task forces. Current DOJ rules do not allow federal agents to wear body cameras and until recently, this ban extended to deputized local law enforcement officers participating in task force operations. The MCCA supports DOJ's recent decision to implement new policies that allow local law enforcement officers to wear body cameras during certain task force activities. The MCCA also encourages DOJ to continue to work with local police departments to address any remaining discrepancies between the two organizations' body worn camera policies.

## **No-Knock Warrants**

### Introduction

Even before no-knock warrants became a central topic in the police reform debate, numerous law enforcement agencies limited their use. As part of the recent calls for reform, officials at every level of government have sought to prohibit the use of no-knock warrants altogether. While many MCCA members seldom use them, a wholesale ban is not the best course of action. The MCCA does, however, support additional restrictions on the use of no-knock warrants as well as stricter oversight and approval processes.

### Definition

Due to discrepancies in state and local law as well as differences between agency policies, there are various definitions for no-knock warrants. As a result, what constitutes serving a no-knock warrant may vary between departments. In order to advance policy conversations on this topic, there is a need for a commonly agreed upon definition. The MCCA recommends defining a no-knock warrant as a warrant that allows law enforcement to enter a property without notifying the occupants immediately prior to entering.

### Appropriate Situations for the Use of No-Knock Warrants

In most circumstances, the risks associated with a no-knock warrant outweigh the potential benefits. The MCCA recommends that they only be used in situations where an unannounced entry is necessary to ensure the safety of the officers, people inside the building, and the surrounding community. Examples may include hostage rescues or other life-threatening situations. Barring exigent circumstances related to life or safety, the MCCA also recommends prohibiting the use of no-knock warrants in narcotics cases. Nor should no-knock warrants be used exclusively for the purpose of securing or preserving evidence.

Even in situations where a no-knock warrant may be appropriate, policies governing their execution should be tightened. For example, the MCCA strongly encourages law enforcement agencies to adopt policies that require no-knock warrants to be served by specialized units, such

as SWAT teams. The MCCA also recommends that these policies require a risk assessment be conducted before any operation involving a no-knock warrant is launched.

#### Oversight and Approval

Given the risks associated with their use, no-knock warrants should be subject to strict oversight and approval processes. The MCCA believes all no-knock warrant requests should be approved by the chief or sheriff, or his or her designee, prior to being submitted to a judge. Any request should also include a thorough justification explaining why the no-knock warrant is necessary. Requiring sign off from the department's leadership will help promote accountability and ensure no-knock warrants are only being requested when appropriate.

After-action reviews of no-knock warrants can serve as an important oversight mechanism. The MCCA recommends law enforcement agencies conduct a review after the execution of every no-knock warrant. The after-action process will help police departments understand what transpired and identify areas for improvement. This knowledge can then be applied to future no-knock warrants to ensure they are carried out as effectively and safely as possible.

#### **Conclusion**

Law enforcement's legitimacy is highly dependent on having mutual trust and respect with the communities it has sworn to serve and protect. Reforms must be vetted to ensure they are sustainable and will accomplish what the community is calling for. Knee jerk reactions and absolutes will not have a significant impact and are detrimental to public safety overall. To meet the current moment, law enforcement must conduct the needed critical self-analysis to evolve and develop policies that build trust with and provide the best possible police service to all communities. Members of the MCCA remain steadfast in their commitment to work hand in hand with the Administration and Congress, the public, elected officials, and other stakeholders to implement professional law enforcement practices that are fair, equitable, transparent, and procedurally just to all members of the community.

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