

IACP Position

For months, the International Association of Chiefs of Police (IACP) has been engaged in extensive discussions with the Administration in good faith to develop the *Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*. During our discussions, the IACP has remained focused on communicating the challenges facing the policing profession and making clear that our profession is composed of dedicated individuals who are committed to the preservation of human life, maintaining the highest ethical standards, and treating all individuals with dignity and respect, while holding themselves and others accountable for their actions.

Many state, local, tribal, and territorial police agencies across the country have already taken the lead in efforts to make our communities safer, modernize policing practices, and make our broader criminal justice system more effective and more equitable.

While this Executive Order's direct impact is limited to federal law enforcement agencies, the IACP sees many components of the order as a blueprint for future Congressional action.

Much work remains to be done, as this Executive Order only touches upon one element of the criminal justice system—policing. It represents, however, a good faith effort by all involved to reach accord without compromising any core values or issues. A broader approach to overall systemic issues needs to be a priority of all elected officials, and, just as the IACP has done from the start, we stand ready to work to make the entirety of our criminal justice system fairer and more equitable for all.

Executive Order on Policing

IACP Policy Fact Sheet

Key Points / Background

- The *Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety* applies almost exclusively to federal law enforcement agencies, but it does offer guidelines and best practices for state, local, tribal, and territorial law enforcement.
- The Executive Order maintains the use of force standard set forth in *Graham v. Connor* (490 U.S. 386) and promotes the policies set forth in the *National Consensus Use of Force Policy*, which was developed by the IACP and 10 other law enforcement associations.
- The Executive Order does not impact or modify the doctrine of qualified immunity and does not expand the application of 18 U.S.C 242.
- To address recruitment and retention challenges, the Executive Order directs the U.S. Department of Justice (DOJ) to consult with state, local, tribal, and territorial law enforcement to develop guidance and leading practices on recruitment and retention to address the shortage of officers nationwide.
- The Executive Order supports officer wellness and takes affirmative steps to prevent suicides among law enforcement officers.
- The Executive Order urges the development of standards for law enforcement accrediting bodies and encourages state, local, tribal, and territorial law enforcement agencies to become accredited.
- The Executive Order promotes the development of an accurate officer accountability database that preserves and protects the due process rights of officers.
- The Executive Order preserves state, local, tribal, and territorial law enforcement access to needed equipment for mission-based public safety objectives from the 1033 and other surplus equipment programs and improves oversight and accountability.
- To support improvement of policing practices at all levels of government, the Executive Order promotes broad data collection efforts.
- The Executive Order directs federal departments and their components to use their grant-making authority to support and promote state, local, tribal, and territorial law enforcement's improved policing practices, to gain access to better equipment and technology, to enhance accountability and transparency, and to make communities safer.

Executive Order on Policing

IACP Policy Fact Sheet

Policy Implications

Outlined below are the policy provisions in key sections of the Executive Order:

Section 2: *Sharing of Federal Best Practices with State, Local, Tribal, and Territorial Law Enforcement to Enhance Accountability*

- The U.S. Attorney General will issue guidance to and share leading practices with state, local, tribal, and territorial law enforcement relative to the investigation of civil rights violations and investigating in-custody deaths.

Key Takeaway: This section is narrowly focused on the development of guidance materials for state, local, tribal, and territorial agencies. There are no mandates or changes in authority for state, local, tribal, and territorial agencies.

Section 3: *Strengthening Officer Recruitment, Hiring, Promotion, and Retention*

- The U.S. Office of Personnel Management (OPM) will convene a federal interagency working group to strengthen federal recruitment, hiring, promotion, and retention focused on advancing the goal of building an inclusive, diverse, and expert policing workforce. This working group will assess and develop best practices for recruitment, hiring, promotion, retention, and conducting background investigations and screening processes.
- The heads of federal law enforcement agencies will be directed to implement protocols and screening mechanisms, consistent with best practices, for state, local, tribal, and territorial law enforcement participating in joint task forces.
- The U.S. Attorney General, in consultation with state, local, tribal, and territorial law enforcement, shall develop guidance on recruitment, hiring, promotion, and retention.

Key Takeaway: For years, the policing profession has been facing a recruitment, hiring, and retention problem. The Executive Order acknowledges this and empowers the federal government to develop best practices and guidance that can be adopted by state, local, tribal, and territorial law enforcement agencies, where appropriate.

Executive Order on Policing

IACP Policy Fact Sheet

Section 4: *Supporting Officer Wellness*

- The U.S. Attorney General and the Secretary of the U.S. Department of Health and Human Services (HHS) will develop and publish a report on best practices to address officer wellness, including support for officers who are experiencing substance use disorders, mental health issues, and trauma associated with duties.
- The U.S. Attorney General and the Secretary of HHS will consult with stakeholders and experts (including the National Consortium on Preventing Law Enforcement Officer Suicide) and provide a report to the President within 180 days with recommendations for preventing officer suicide.

Key Takeaway: The Executive Order further highlights the need for the development and dissemination of best practices regarding officer safety and wellness and properly makes the challenge of preventing officer suicide a presidential priority.

Section 5: *Establishing a National Law Enforcement Officer Accountability Database*

- Directs the U.S. Attorney General to establish a National Law Enforcement Officer Accountability Database for all federal law enforcement officers.
- Federal law enforcement agencies will be required to use the database to screen employees and state, local, tribal, and territorial law enforcement officers who participate on joint task forces.
- The U.S. Attorney General will publish an annual public report—with anonymized data—on the information contained in the database.
- The U.S. Attorney General will encourage state, local, tribal, and territorial law enforcement agencies to utilize the database.

Key Takeaway: The database preserves and protects the due process rights of officers. It will only include sustained complaints or records of disciplinary action based on findings of serious misconduct and resignations/retirements while under investigation for serious misconduct. Officers will be able to petition to amend or remove information about themselves if inappropriate or based on a proceeding that lacked due process protections. Database information will only be available to federal, state, local, tribal, and territorial law enforcement agencies in order to screen employees or potential employees. The database will not be publicly accessible, and the annual report issued by the U.S. Attorney General will only contain anonymized data.

Executive Order on Policing

IACP Policy Fact Sheet

Section 6: *Improving Use of Force Data Collection*

- Federal law enforcement agencies must submit data on a monthly basis to the Federal Bureau of Investigation (FBI) National Use of Force Database.
- The U.S. Attorney General and the U.S. Chief Technology Officer will consult with state, local, tribal, and territorial law enforcement to identify obstacles to participation in the FBI National Use of Force Database, including reducing the administrative burden of reporting.
- The U.S. Attorney General shall publish quarterly data from the FBI National Use of Force Database.
- The U.S. Attorney General shall provide training and technical assistance to state, local, tribal, and territorial law enforcement agencies to encourage submission of data to the Law Enforcement Officers Killed and Assaulted (LEOKA) database.

Key Takeaway: The Executive Order recognizes the need to ensure federal participation in the FBI National Use of Force Database and commits to identifying barriers and providing resources to enhance state, local, tribal, and territorial agency participation.

Section 7: *Banning Chokeholds and Carotid Restraints*

- Requires all federal law enforcement agencies to adopt the DOJ policy, which generally prohibits use of chokeholds/carotid restraints, except where use of deadly force is authorized by law.

Key Takeaway: This is consistent with the guidance contained in the National Consensus Use of Force Policy, which was developed by the IACP and 10 other law enforcement associations.

Section 8: *Providing Federal Law Enforcement Officers with Clear Guidance on Use of Force Standards*

- All federal law enforcement agencies will be required to adopt the use of force policies that are equivalent to, or exceed, the use of force policy issued by the DOJ.
- Federal law enforcement agencies shall incorporate annual training on DOJ's use of force policy and develop early warning systems.

Key Takeaway: The use of force policy being issued by the DOJ is consistent with the National Consensus Use of Force Policy, which was developed by the IACP and 10 other law enforcement associations.

Executive Order on Policing

IACP Policy Fact Sheet

Section 9: *Providing Anti-Bias Training and Guidance*

- The U.S. Attorney General and the Director of OPM shall develop evidence-informed training on implicit bias and avoidance of improper profiling.
- Heads of federal law enforcement agencies will ensure that their officers complete training annually.
- Federal agencies that sponsor joint task forces with state, local, tribal, and territorial agencies will ensure that implicit bias/profiling training is included in any training program required by the federal agency for officers participating in task forces.

Key Takeaway: This is narrowly focused training for federal law enforcement agencies and state, local, tribal, and territorial officers who participate in joint task forces or training programs with federal agencies.

Section 10: *Restricting No-Knock Entries*

- Federal law enforcement agencies are required to implement policies that are equivalent to the DOJ policy, which establishes limits on unannounced entries and provides guidance for safe execution of announced entries.

Key Takeaway: The provisions of the DOJ policy largely reflect policy modifications/adjustments that have already been implemented by many state, local, tribal, and territorial law enforcement agencies across the United States.

Section 11: *Assessing and Addressing the Effect on Communities of Use of Force by Law Enforcement*

- Directs the Secretary of HHS to conduct a nationwide study on community effects of use of force.
- The U.S. Attorney General is to issue guidance to state, local, tribal, and territorial law enforcement agencies on best practices for planning and conducting police-community dialogues to enhance relations.
- The U.S. Attorney General is to issue guidance to state, local, tribal, and territorial law enforcement agencies on leading practices to provide timely notifications of deaths in custody.

Key Takeaway: The Executive Order enhances federal government support to state, local, tribal, and territorial law enforcement agencies to promote police-community dialogues.

Executive Order on Policing

IACP Policy Fact Sheet

Section 12: *Limiting Transfer or Purchase of Certain Military Equipment by Law Enforcement*

- Prohibits the transfer or use of federal grant funds to buy certain equipment.
- Federal agencies are directed to review and implement recommendations from the Law Enforcement Equipment Working Group.
- Before property on the controlled equipment list is transferred, state, local, tribal, and territorial law enforcement agencies are required to describe how the equipment will be used and tracked; certify that if the equipment is no longer needed, it will be returned; certify that the community be notified of its request for the property; and agree to return property if DOJ or the court determines the law enforcement agency engaged in a pattern or practice of civil rights violations.

Key Takeaway: Law enforcement agencies are not prohibited from the purchase and use of any equipment purchased with non-federal funds, so agencies can still acquire necessary equipment with state and local funds.

Additionally, this section closely mirrors the Executive Order put in place by President Obama, with a few negotiated adjustments to streamline the process—for example, acquisition of controlled equipment no longer requires approval or concurrence by the jurisdiction's governing body (e.g., governing council, mayor, etc.) for the acquisition of the requested controlled equipment. Going forward, law enforcement agencies just need to post public notice, which could mean at a town hall, online, or through social media.

Also of note, the IACP worked to ensure that tracked and armored vehicles could be transferred, if the law enforcement agencies are able to certify that the vehicle would be used exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, prevention, response, recovery, or relief.

Executive Order on Policing

IACP Policy Fact Sheet

Section 13: *Ensuring Appropriate Use of Body-Worn Camera (BWC) and Advanced Law Enforcement Technologies*

- All federal law enforcement agencies must adopt BWC policies that are equivalent to the policy issued by the DOJ in June 2021.
- The U.S. Attorney General, Secretary of HHS, and Director of the Office of Science and Technology Policy Council will conduct a study that assesses the advantages and disadvantages of officer review of BWC footage prior to the completion of initial reports or interviews involving incidents of use of force.
- The U.S. Attorney General shall ask the National Academy of Sciences to conduct a study of facial recognition technology and its use by law enforcement.

Key Takeaway: Many state, local, tribal, and territorial law enforcement agencies have already adopted policies equivalent to the DOJ policy issued in 2021. Additionally, IACP made clear that it was premature to make a determination or policy statement on officer review of BWC footage prior to an evidence-based assessment, which is why a study will be completed.

Section 14: *Promoting Comprehensive and Collaborative Response to Persons in Behavioral or Mental Health Crisis*

- The U.S. Attorney General and Secretary of HHS will assess and issue guidance on best practices for responding and interacting with persons in behavioral and mental health crisis/other disabilities.
- The assessment will include consideration of co-responder models and other alternative responder models and will also assess issues related to use of sedatives to subdue individuals outside hospital settings.

Key Takeaway: Federal focus will further enhance efforts of state, local, tribal, and territorial law enforcement agencies to identify and implement innovative approaches to responding to individuals in crisis.

Executive Order on Policing

IACP Policy Fact Sheet

Section 18: *Collecting Comprehensive Criminal Justice Statistics*

- A review is to be conducted of state, local, tribal, and territorial law enforcement's transition to the National Incident-Based Reporting System (NIBRS), and a report is to be submitted to the President of the United States.
- The Director of the Bureau of Justice Assistance (BJA) and Chief Statistician is to provide recommendations on
 - whether and how to improve current data collection, including National Crime Victimization Survey and Police-Public Contact Survey
 - whether and how to improve the Law Enforcement Management and Administrative Statistics (LEMAS)

Key Takeaway: This implements a long-overdue review of the extensive data collection requirements placed on state, local, tribal, and territorial law enforcement agencies. Also, it highlights the need for more timely review, analysis, and release of law enforcement-related data. This was also a key recommendation of the President's Commission on Law Enforcement and Administration of Justice.

Section 19: *Enhancing Accreditation Standards*

- Directs the U.S. Attorney General to develop and implement methods to promote state, local, tribal, and territorial law enforcement agencies seeking accreditation from an authorized credentialing agency—including by determining what discretionary grants shall require an agency to be accredited or in the process of obtaining accreditation.
- Directs the U.S. Attorney General to develop standards for determining whether an entity is an authorized, independent credentialing body. These standards will include that the accrediting entity requires policies that further the policies set forth in:
 - Section 3 (Officer Recruitment/Hiring),
 - Section 4 (Officer Wellness),
 - Section 7 (Banning Chokeholds/CNR),
 - Section 8 (Use of Force Standards),
 - Section 10 (No-Knock Warrants),
 - And encourages the collection of data on officer misconduct and use of force, as well as participation in databases like those outlined in Section 5 (Law Enforcement Accountability) and Section 6 (Use of Force).

Key Takeaway: This section promotes accreditation of state, local, tribal, and territorial law enforcement agencies and links accreditation standards to the priorities outlined in the Executive Order. Significantly, these sections promote existing IACP policies or positions, including the National Consensus Policy on the Use of Force.

Executive Order on Policing

IACP Policy Fact Sheet

Section 20: *Supporting Safe and Effective Policing Through Grantmaking*

- The U.S. Attorney General, Secretary of Department of Homeland Security (DHS), and Secretary of HHS will review and exercise their authority to award federal discretionary grants for law enforcement in a manner that supports and promotes the adoption of the policies of this order by state, local, tribal, and territorial law enforcement.
- The U.S. Attorney General, Secretary of DHS, and Secretary of HHS shall also use other incentives outside of grantmaking, including training and technical assistance to promote state, local, tribal, and territorial law enforcement's adoption of the policies of the order.

Key Takeaway: This section directs federal agency heads to award grants and provide incentives to state, local, tribal, and territorial law enforcement to promote, but not mandate, the adoption of the policies outlined in the Executive Order.