

Below is a draft of our police transparency statute. We welcome any feedback. As we update the statute, we will post updated versions on the Policing Project website; you also may contact us to obtain the most recent version.

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AN ACT TO PROMOTE LAW ENFORCEMENT RECORDKEEPING AND TRANSPARENCY

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I. Definitions

For the purposes of this statute:

1. “Law enforcement agency” means any police department, sheriff’s department, transit agency police department, school district police department, the police department of any campus of [list public college systems], and [list state law enforcement agencies, such as the state highway patrol].
2. “Political subdivision” means any county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law, that has a police department or a sheriff’s department.
3. Information required under this statute is “publicly available” if:
 - a. it is posted conspicuously on the reporting entity’s website, or

- b. if the entity does not maintain a website, and employs fewer than [10] full-time sworn officers, if the document is made available upon request, within 5 days of when a request is made, and at no cost to the requesting party.

II. Department Policies

Note: Subsections 1, 2, and 3 are designed to work together. Subsection 1 adopts a broad definition of the categories of agency policies and guidance that must be made public, and piggybacks off the state's public records law in drawing the line between information that must be made public and that which may be withheld to protect various interests. Subsections 2 and 3, however, makes clear that even in states that have construed their public records provisions quite narrowly in the law enforcement context, certain categories of policies must be made public largely without redaction.

1. Each law enforcement agency shall, no later than [X date], make publicly available in a text-searchable format all current standards, policies, procedures, general orders, special orders, or agency guidance that otherwise would be available to the public if a request were made pursuant to the [State Public Records Law].
2. Notwithstanding the exceptions to disclosure permitted under the [State Public Records Law], each law enforcement agency shall, at a minimum, make publicly available its standards, policies, procedures, general orders, special orders, or agency guidance related to:
 - a. use of force;
 - b. stops, searches, and arrests;
 - c. use of policing technologies, as defined in subsection 6;
 - d. social media investigations;
 - e. response to protests and demonstrations;
 - f. questioning of suspects and witnesses;
 - g. eyewitness identifications, including lineups, show-ups, and photo arrays;
 - h. accepting and resolving complaints of officer misconduct;
 - i. officer disciplinary procedures.
3. The standards, policies, procedures, general orders, special orders, or agency guidance required under Subsection 2 are presumed to be public record and must be made public without redaction. Redaction shall be permitted only if the redacted material, if made public, would substantially and materially undermine ongoing investigations or endanger the life or safety of officers or members of the public.
4. Each individual standard, policy, procedure, general order, special order, or agency guidance document shall include the month and year it last was updated.

5. If an agency adopts a new standard, policy, procedure, general order, special order, or guidance document, or amends an existing one, it must be made publicly available within 30 days of the change or adoption.
6. For the purposes of this Section, “policing technology” shall mean any system used as part of a policing function, including software or electronic devices, that is capable of collecting, retaining, or analyzing information associated with or capable of being associated with any specific individual or group, including but not limited to audio, video, images, text, meta-data, location, spectral imaging, or biometric information.
 - a. “Policing technology” includes, but is not limited to: cell site simulators; automated license plate readers (ALPRs); gunshot detectors; facial recognition software; drones; thermal imaging systems; predictive policing software; body-worn cameras; social media analytics software; and audio or video recorders that are capable of transmitting or can be accessed remotely.
 - b. “Policing technology” does not include: routine office technology, such as televisions, computers, email systems and printers, that is in widespread public use; manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; and internal police department computer aided dispatch or record management systems, unless the systems are equipped with predictive analytics capabilities.

III. Collective Bargaining Agreements

1. For the purposes of this Section, a “law enforcement collective bargaining agreement” means any agreement between a political subdivision and a labor organization that is designated as an exclusive bargaining representative, concerning the wages, hours, and terms and conditions of employment of law enforcement officers.
2. No later than [x date], each political subdivision shall make publicly available any law enforcement collective bargaining agreement, including any agreement negotiated prior to the adoption of this statute that is currently in effect.
3. After [x date], each political subdivision shall, prior to entering into a collective bargaining agreement, make a draft of the proposed agreement publicly available for at least [30 days], and give notice to the public in a manner prescribed by the [State Open Meetings Act] indicating the manner in which members of the public can provide comment.

IV. Lawsuit Settlements and Judgments

1. For the purposes of this Section, “law enforcement misconduct” means any unlawful or otherwise inappropriate conduct on the part of a law enforcement officer against another officer or a member of the public.

2. On or before [x date] of each year, each political subdivision shall make publicly available in a machine-readable format:
 - a. the total amount spent in the prior year, either by the political subdivision or by any entity on behalf of the political subdivision, on settlements and judgments involving an allegation of law enforcement misconduct, including settlements reached before any lawsuit has been filed. The report shall be broken down by individual settlement or judgment, and shall include at a minimum:
 - i. the portion of the settlement or judgment paid directly by the political subdivision;
 - ii. the portion, if any, paid by insurance, or by a central risk management fund or pool; and
 - iii. if any portion of the settlement or judgment is paid with bonds, the amount of the bond, as well as the total future cost of the bond, including any interest and fees.
 - b. the total amount, if any, spent on any insurance premiums paid by the political subdivision for insurance against law enforcement misconduct.
 - c. the total amount, if any, that the political subdivision contributed to any central risk management fund or risk pool toward the settlement of law enforcement misconduct claims.
3. On or before [x date] of each year, the [State Reporting Agency] shall make publicly available the total amount spent in the prior year, either by the state or by any entity on behalf of the state, on settlements and judgments involving law enforcement misconduct, including any settlements reached before any lawsuit has been filed, broken down by individual settlement or judgment.

[Note: Depending on the funding mechanisms available to state government agencies, portions of Subsection 2 may need to be included here as well.]

4. *Optional: On or before [x date] of each year, each municipality shall transmit all of the information required under Subsection 2 to the [State Reporting Agency], which shall make this information public on the agency website, classified by municipality, in a manner that is clear, understandable, analyzable, and accessible to the public.*
[Note: We marked this provision as “optional” because this is the only category of information that would be submitted by the political subdivision, as opposed to the law enforcement agency, and would therefore create an entirely new batch of reporting entities with which the AG’s office must deal.]

5. A settlement agreement by a political subdivision or state law enforcement agency to settle a complaint of law enforcement officer misconduct shall not include a non-disclosure, non-disparagement or other similar clause unless the complainant requests such a provision in writing. Any such agreement shall not be construed to prohibit the political subdivision or state law enforcement agency from complying with the reporting requirements in this Section.

V. Stop and Arrest Data

This section is intended to capture data on all stops and arrests. A number of states have stop data statutes that capture most but not all arrests (California’s statute, for example, excludes arrests conducted pursuant to a warrant, except if the warrant was discovered in the course of a stop). We believe it is essential for the public to have a complete picture of an agency’s stop and arrest practices.

1. For the purposes of this Section:
 - a. “Stop” includes any encounter between a law enforcement officer or a member of the public, whether initiated by the officer or conducted in response to a call for service, that:
 - i. Culminates in a frisk, search, seizure of property, or arrest of a person, including an arrest pursuant to an outstanding warrant; or
 - ii. Based on a totality of circumstances, would make a reasonable person feel that they are not free to leave or otherwise terminate the encounter.

[Note: The goal of this statute is to build a comprehensive record of all stops and arrests—not just those arrests that follow from a traffic or pedestrian stop.]

- b. A detention or search of a vehicle or pedestrian at a roadblock or checkpoint, which is conducted based on a neutral formula that does not include any personal characteristics or attributes, does not constitute a stop. *[Optional: If a vehicle or pedestrian is singled out for more thorough screening or inspection based on individualized suspicion or personal characteristics, then that additional screening or inspection would constitute a stop for the purposes of this statute.]*
2. No later than [x date], each law enforcement agency shall collect incident-level data on all stops conducted by officers employed by the agency.

[Notes: States may wish to stagger the rollout, requiring larger agencies to report first, in order to work out potential wrinkles before expanding to smaller agencies.]

3. No later than [x date], each law enforcement agency shall furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all stops conducted in the prior year by officers employed by the agency.

4. Each report required under subsection 3 shall include, at a minimum, the following information for each stop or arrest:
 - a. Whether the individual was in a motor vehicle at the time of the stop;
 - b. The time, date, duration, and location of the stop, provided that if a stop is made at or near a specific address, officers include either the nearest cross street or block number in order to avoid revealing the identity of the person stopped;
 - c. The reason for the stop;
 - d. The result of the stop, such as no action, warning, citation, or arrest;
 - e. The race or ethnicity, gender, and age of the person stopped, as provided in subsection 5. In the case of a vehicle stop, this information need only be provided for the driver, unless a passenger is searched, cited, arrested, or has physical force used against them;
 - f. Whether the person stopped appeared to be experiencing a mental or other behavioral crisis;
 - g. Actions taken by the officer during the stop, including, but not limited to, the following:
 - i. Whether the officer searched the person or any property, and, if so, the type of search (e.g., pat-down), the basis for the search, and the type of contraband or evidence discovered, if any;
 - ii. Whether the officer asked for consent to search the person or any property, and, if so, whether consent was provided;
 - iii. Whether the officer seized any property and, if so, the type and amount of property that was seized and the basis for the seizure;
 - iv. Whether the officer used physical force against any person, and if so, the type of force used;
 - v. Whether the officer pointed a firearm or a conducted energy device at any person;
 - vi. Whether a police dog performed a sniff; and if so, whether or not the dog alerted to the presence of contraband.
 - vii. *Optional: For vehicle stops, whether the officer ordered any person to exit the vehicle;*
 - viii. *Optional: Whether the officer handcuffed or otherwise physically restrained any person during the stop, such as by placing a person in a police vehicle;*
 - ix. *Optional: Whether the officer checked, or asked dispatch to check, for any outstanding warrants for the person.*
 - h. If a citation was issued, the violation(s) cited;

- i. If an arrest was made, the offense charged.
 - j. The following information about the officer conducting the stop:
 - i. Officer's unique identification number;
 - ii. Type of assignment;
 - iii. *Optional: Years of experience*
 - iv. *Optional: Officer's race*
5. The race or ethnicity, gender, and age of the person stopped may be based on a person's official documents, provided that an officer shall not ask for a person's official documents for the purpose of obtaining this information, and shall not request this information from the person directly. In the absence of official documentation, the race or ethnicity, gender, and age of the person stopped shall be based on the perceptions of the officer making the stop.

Note: We have gone back and forth over this. There is an argument for just basing this off an officer's perceptions, but this can lead to confusion in circumstances in which an officer's initial perceptions conflict with the information listed on an individual's documentation (e.g. an officer perceives someone to be white, but they identify as Hispanic). There is also reason to think that officers will always rely on documentation when they have it, regardless of how a statute is framed.

6. The [State Reporting Agency] shall make the information obtained from law enforcement agencies, other than the unique identification number of the officer making the stop, publicly available on the State Reporting Agency website, classified by law enforcement agency, in a manner that is clear, understandable, analyzable, and accessible to the public.
7. State and local agencies subject to this section shall not report or make publicly available the name, address, social security number, or other unique personal identifying information of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped is not transmitted to the [state agency] or otherwise released to the public.
8. Each agency covered by this section shall develop and make publicly available a policy governing review and auditing of stop data collected to ensure officer compliance with the requirements of this statute.

VI. Use of Force

The reporting requirements included here mirror those that we have previously circulated as part of our draft use of force statute. We are in the process of refining the language in response to the various comments received, so this section may evolve slightly.

1. For the purposes of this Section:
 - a. “Physical force” means the use of physical effort or the application of a tool, technique, or weapon intended to induce a person’s compliance or overcome a person’s resistance. “Physical force” does not include physical contact used solely for facilitating custody of a fully compliant person, such as the application of handcuffs on a cooperative arrestee.
 - b. “Deadly force” means physical force that, under the circumstances as they reasonably appear, is substantially likely to result in serious bodily harm or death to the person against whom it is used.
 - c. “Serious bodily injury” means bodily injury that results in a permanent disfigurement, extreme physical pain, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.
2. Each law enforcement agency shall annually furnish to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all instances when a law enforcement officer employed by that agency:
 - a. Uses physical force against a person that results in death, serious bodily injury, or any other injury requiring medical treatment or evaluation;
 - b. Discharges a firearm at or in the direction of another person, whether or not injury occurs;
 - c. Uses a weapon against a person;
 - d. Is injured as a result of an incident involving the use of force against the officer.

[Note: States may wish to broaden these categories further by including either all use of force incidents, or any incidents involving any bodily injury (as opposed to serious bodily injury).]

3. For each incident described in Subsection 2, the agency shall provide:
 - a. The date, time, and location of the incident;
 - b. The number of law enforcement officers involved in the incident;
 - c. The number of non-law enforcement persons involved in the incident;
 - d. The type and severity of the injuries sustained, if any;
 - e. The perceived gender, race or ethnicity, and age of each person at whom force was directed;

- f. Whether the officer perceived the person against whom force was directed to be armed, and if so, the type of weapon, as well as whether the person was in fact armed, and if so, the type of weapon.
4. The [State Reporting Agency] shall make this information public on the agency website, in an analyzable, machine-readable format, classified by law enforcement jurisdiction.
5. *[The statute will require that any records related to an investigation of a use of force incident that results in death or serious bodily injury be made available for public inspection at the conclusion of the investigation. The language will mirror analogous language in the draft use of force statute, which we are refining in response to feedback.]*

VII. Complaints

1. For the purposes of this Section:
 - a. “Complaint” means any allegation of unlawful, unauthorized, or otherwise inappropriate conduct by a law enforcement officer against a member of the public.
 - b. “Police oversight agency” means any agency, board, or commission created by a political subdivision to accept and review complaints against law enforcement officers employed by the political subdivision.
 - c. A complaint is “received” by a law enforcement agency or police oversight agency if it is submitted to the agency in accordance with the agency’s publicly-available procedures for filing a complaint. A complaint that otherwise complies with the agency’s procedures but is either submitted anonymously or is not signed by the complainant is considered “received” for the purposes of this statute, and is subject to the reporting requirements outlined in this Section.
2. Each law enforcement agency shall annually furnish to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all complaints received by that agency or by the police oversight agency in that jurisdiction. For each complaint, the agency shall provide:
 - a. The date on which the complaint was received, as well as the date on which the incident at issue is alleged to have occurred;
 - b. The race, age, and gender of the complainant, if known;
 - c. The nature of the alleged misconduct;
 - d. Whether the complaint was or is being investigated, and if so, the status or conclusion of the investigation (e.g. pending, unfounded, sustained);

- e. The unique identification number of each officer alleged to have engaged in misconduct, if known;
 - f. The type of assignment
3. The [State Reporting Agency] shall make this information public on the agency website, in an analyzable, machine-readable format, classified by law enforcement jurisdiction.

[Complaint records: We also are planning to address disclosure of complaints themselves but could use some input here. One challenge is that complaints against law enforcement officers are treated as personnel records and in most states are subject to the same disclosure provisions that apply to personnel records more broadly. In some states this means they generally are available to the public at the conclusion of the investigation (or sooner), but in other states this means that they are largely shielded from disclosure. This also is likely to be a particularly contentious area, as compared with some of the other provisions included here. Our instinct is to require that complaints against officers, as well as investigatory materials, should be available for public inspection through the ordinary FOIA process at the conclusion of the investigation, with certain categories of personally-identifiable or otherwise confidential/ sensitive information omitted. We have also discussed a narrower statute limited to certain kinds of allegations that are more specific to law enforcement officers, e.g. excessive force, unlawful searches and seizures, etc.]

VIII. Body-Worn Video

1. For purposes of this section:
- a. “Critical incident” means:
 - i. any incident involving the discharge of a firearm in the direction of a person;
 - ii. any incident involving the use of force by a law enforcement officer that results in death or serious bodily injury;
 - iii. any in-custody death.
 - b. “Body-worn camera” means a recording device worn by an officer or attached to an officer’s clothing that is capable of recording audio or video.
 - c. “Audio or video recording” means any recording created by equipment that is owned or operated by the law enforcement agency, including but not limited to a body-worn camera, a dashboard camera, an in-vehicle video recording system, or a closed-circuit television camera.
 - d. A person is the “subject” of a recording if the recording depicts:
 - i. A stop, arrest, frisk, or search of the person by a law enforcement officer;
 - ii. A search of the person’s residence, vehicle, or other personal effects by a law enforcement officer;

- iii. An incident involving the use of physical force against the person by a law enforcement officer;
- iv. *Optional: Any other interaction between the person and a law enforcement officer that the person has cause to believe involves unlawful or otherwise inappropriate conduct.*

Note: We would welcome input on how/whether to expand these categories, particularly category iv. As you'll see below the draft gives the subject of the recording a right to inspect at no cost. We are trying to strike a balance between ensuring all those who should have access to do—and minimizing the risk that agencies would be overwhelmed by requests.

- e. A recording is “released publicly” if it is made available on the agency website, or is provided upon request and at no cost to any requesting party.
 - f. A recording is “made available for inspection” if the person making the request is provided, at no cost, with a reasonable opportunity to review the recording in person, or, if the person consents, is provided with an opportunity to access the recording via the internet.
2. Each law enforcement agency shall release publicly any audio or video recording related to a critical incident no later than [21 / 30 / 45 / 60] days after the agency knew or reasonably should have known about the incident.

Optional: A law enforcement agency may delay disclosure for up to an additional [21 / 30 / 45] days if the agency reasonably concludes that disclosure would interfere with an ongoing criminal or administrative investigation. The agency must make publicly available a written explanation of the specific basis for its conclusion, along with an estimate of when the recording will be released.

Note: States vary in terms of the time limits they set for public release of footage. California, for example, requires that footage be released within 45 days. In Pennsylvania it is 30 days, and in Colorado it is 21. Some states, however, permit an agency to delay release if it would interfere with an ongoing investigation.

We would recommend either setting a shorter time frame for release, but permitting delay, or setting a somewhat longer timeframe but without a tolling provision. The latter approach reduces uncertainty over when a recording will be made public—but may mean that overall videos are released somewhat later than they otherwise would be.

3. At least 48 hours prior to releasing publicly an audio or video recording related to a critical incident, the law enforcement agency shall permit the subject of the recording—or if the

person is deceased or incapacitated, the subject's spouse, parent, legal guardian, child, or other lawful representative—to view the recording.

4. For any recording other than an audio or video recording that depicts a critical incident, each law enforcement agency shall make the recording available for inspection to the following persons upon request, no later than [30 / 45] days after the recording is created, or [5] days after a request to inspect is received, whichever is later:
 - a. The subject of the recording or the subject's legal counsel;
 - b. A parent of a minor subject or the parent's legal counsel;
 - c. If the subject is incapacitated, the subject's spouse, parent, legal guardian, child, or other lawful representative.
5. Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in the recording, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, provided that the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the recording.
 - a. The holder of the privacy interest may waive in writing his or her privacy interest. Upon receipt of the written waiver of the applicable privacy interest, the law enforcement agency may not redact to protect that privacy interest.
 - b. Except for the rules for redaction set forth above, no other editing or alteration of video footage, including a reduction of the video's resolution, shall be permitted.
6. Nothing in this Section shall be construed to prohibit or limit disclosure of any audio or video recording beyond what is required under this Section.

IX. Implementing Regulations

1. No later than [x date], the [State Reporting Agency] shall issue regulations for the collection and reporting of data required under this statute, in a manner prescribed under [rulemaking provisions of the State APA].
2. The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies.
3. To the extent possible, and consistent with the requirements of this statute, such regulations should be compatible with any similar federal data collection or reporting programs.

X. Enforcement Mechanisms

1. In order to be eligible to receive any state law enforcement funding or any state-administered federal grant, a law enforcement agency or political subdivision must certify that it complied with all of the requirements set forth under this statute in the previous calendar year.
2. The [State Attorney General] may investigate, and if warranted, bring a civil action against any agency or political subdivision to obtain equitable or declaratory relief to enforce the provisions of this statute.
3. Any person who resides within the jurisdiction of a political subdivision or law enforcement agency that is subject to the requirements of this statute may bring a civil action against the political subdivision or its law enforcement agency to obtain equitable or declaratory relief to enforce the provisions of this statute. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs.
4. No action may be commenced against a law enforcement agency or political subdivision under this Section unless the plaintiff has provided written notice of the alleged violation to the agency or political subdivision at least 60 days prior to filing suit, in a manner that is reasonably calculated to enable the entity to cure the alleged violation.

[The notice provision mirrors analogous provisions in various state and federal statutes. The goal is to minimize the risk of opportunistic litigation—while at the same time creating a robust set of mechanisms to ensure compliance with the statute.]