



Law Enforcement Direction

From the Department of Justice

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Introduction

Law enforcement pattern and practice investigations by the Department of Justice (DOJ) continue to take place because of the high profile incidents of a few departments. As our culture changes, so do the demands and needs of law enforcement and the community. The origins of many DOJ investigations are from claims of improper use of force, unlawful stops and searches, as well as biased policing. Monitoring the various DOJ investigations is a good tool for your command staff to keep current with the expectations of the justice system including your management systems, policies, and actions on the street.

The following paragraphs are a compilation of some of the most prevalent trends found in the DOJ's investigations of law enforcement departments.

Policies

The DOJ has identified portions of policies that are unconstitutional because it impacts civil rights in some way. Often these policies in question have been passed down from prior administrations without questions.

Start with good quality policies and emulate the model policies from an industry recognized source such as the IACP, NSA, CALEA, Police/Sheriff's state associations or various law enforcement consulting firms.

These recognized source documents generally are a good beginning point for customizing to your specific operations. All policy changes and development should be reviewed by your legal adviser, regardless of the source.

Your policies should be reviewed annually (with documentation) to identify any items that need updating (or not) due to: changes in legislation, paths of litigation, changes in operations, or for better understanding by the officer. One critical point is that the policy language used should match the reading level of the officers.

Make sure your department can live up to and follow each policy. Policies on matters that do not apply to your department, or "I know what the policies say but that's not the way we do it," make the department appear unprofessional and should be changed.

Community Policing

Often recommended by the DOJ because the investigated law enforcement department has become part of the problem instead of being part of the solution to reducing conflict and crime in a community.

Community policing emphasizes a proactive approach rather than only responding to crime after it occurs. The key word in the term is community, not policing; the community should and must take an active role in controlling crime.

One of Sir Robert Peele's nine principles of policing is that the greater the level of public cooperation, the less the need for physical force. This emphasizes another principle, that the police are the public and the public are the police. Earning back the respect and cooperation of the public is key to all community policing.

The [IACP Communities of Color Toolkit](#) can help to start or reshape your efforts in policy development. The IACP convened three focus groups of community stakeholders, frontline officers, and law enforcement executives to discuss building community trust. They discussed strategies that have been used successfully to develop communities of trust and identified challenges facing law enforcement and the community. This toolkit collects some of the most successful strategies and tools for engaging communities of color, defined in the United States as people of African, Latino or Hispanic, Native American, Asian, or Pacific Island descent.

The [IACP Policy Framework for Improved Community-Police Engagement](#) is also a good resource for visualizing the direction and scope that is needed.

Hiring

Hiring qualified individuals is essential to establishing a quality law enforcement department.

In order to attract good candidates one must start with identifying the department's core values and developing an employer brand. The core values are not merely to reduce crime, but rather a set of guiding principles developed to reflect what the community values in its police force. Candidates that most fit this value make better employees. Likewise the brand sets the tone for the department. A department known for a poor relationship between command and patrol is not likely to attract a high quality candidate. A department known for maintaining high performance standards will attract better candidates.

Use the probationary period to your advantage. Set the bar for retention high. Often issues with behavior will manifest themselves at some point during the probationary period. While there is a tendency to keep marginal employees due to the amount of time and resources put into their development, this should be resisted as most of these employees turn out to be a drain on time and resources in the long run. ([IACP – Recruitment Retention and Turnover](#))

Document your hiring, due diligence background checks, and orientation training to show you did a reasonable job in the evaluation of talent, skills, and culture-fit.

Training

Initially, all new officer candidates should graduate from academy prior to being assigned any field duty where patrol/emergency/pursuit driving, or carrying weapons is involved. Where possible, additional department-specific training on policies and operations should take place before any field duty is assigned. Uncertified and untrained officers are an extreme liability, and can create significant reputational risk.

Set a requirement for training above the state minimum standard.

Immediately this gives your department a boost of credibility by showing you meet and exceed basic expectations, as well as helps establish a culture of training. Leadership should attend and be seen training alongside patrol officers. Training should not be limited to classroom-only instruction, but incorporate hands-on training where possible. Include actual scenarios that are encountered by officers. There is no harm in reviewing an incident to determine if there was a better way to handle it. Even incidents in which the outcome turned out favorable can be good fodder for review.

Consider reinstating roll call training and use this time to review and/or train on “critical policies” such as use of force, taser, chemical/pepper spray, pursuit, domestic calls, emergency driving, etc. Legal updates and items arising recently are good points to hit here. Even 5-10 minute blocks can be considered “training” when focusing on policies and soft skills for interacting with the public.

Qualifying on the gun range is the baseline. However, simply hitting a target a few times a year should not be the extent of your training. Incorporate your use of force policies, de-escalation tactics/expectations, and real life scenarios to show officer proficiency.

Good communication and decision-making skills remain the hallmark of a good officer. Training can help new officers achieve these soft skills or help maintain them in existing officers. Programs such as verbal judo have been around for years and should be a prerequisite for any de-escalation training. The trend here is that these soft skills are becoming more advantageous to any officer, therefore more are being taught in the academy and should be taught at the department level too.

Report writing, especially use of force reports, is a critical skill needed by officers and supervisors. Basic how to write a good use of force report is time well spent. According to many defense lawyers and insurance claim representatives, more cases would be dismissed if the officer had only included the basic information suggested in [Graham v Connor](#). Doing the right thing is only half the battle; being able to articulate and write down why you took the action you did helps focus on the decision-making process. Describing what you experienced (all your senses) helps a jury identify with your thought process. Use of force report writing is in need of improvement in almost all departments.

Reserve officers should ideally have academy training and undergo a level of orientation on policies and procedures that affect those officers. If this level of training is not possible, reserve duty should be constructed so it is limited in scope to assignments less likely to require arrest and force powers.

Take advantage of online training resources offered by your insurance company and outside law enforcement support organizations.

Supervision

Supervisors should be familiar with key community stakeholders in their areas of service, such as local school officials, faith leaders, and other non-governmental service providers.

Supervision is an essential part of the formula in order to obtain a reasonable and policy-compliant department. To that end, supervisor training is necessary to carry out the daily implementation of the tactical skills portion of the policies as well as the basic human resources supervision of the officers.

First-line supervisors should demonstrate leadership skills to motivate, direct, counsel, and develop subordinates and effectively hold them accountable. The DOJ has described the supervision needs as “close and effective,” meaning that supervision should be hands-on and personal, as opposed to remote and impersonal.

Specific attention to report quality and ride-alongs will help identify areas of needed strengthening for officers.

As mentioned previously in the hiring section, be sure to try and identify any of the poor performers while in their probationary period. Once outside the probationary time period, work closely with human resources to develop a performance improvement program that is fair and legal. You will either strengthen the skills of the poor performer to an acceptable level or prepare an exit path.

Misconduct Complaints

Policy direction should be made for documenting the intake of complaints, fair investigations, follow-up with complainant, and discipline options. Complaint handling is one of the hallmarks of good community cooperation. It is important for the pillars of the community to know they can reach out to law enforcement with routine complaints so that when a media issue occurs they can vouch that the system works which can help control the narrative on the street.

An Early Intervention (EI) system is a management process used in law enforcement agencies to monitor employee performance or behavior via administrative data. An EI program is meant to be a non-disciplinary system that identifies employees in need of assistance early on, enabling a law enforcement agency to intervene with the appropriate support to prevent a future incident that would harm employees, their careers, or the public ([PERF Civil Rights Investigations of Local Police](#)). There are many different software companies providing this data or record management service.

Prevent and Protect

A [Human Resources Portal](#) provides Intact policyholders with various HR products and services designed to help manage a workforce. Included is access to the Jackson Lewis legal helpline for person-to-person dialog on sticky HR matters.

Use of Force

The [National Consensus Policy on Use of Force](#) is a good place to start on developing or updating your policy and utilizes the current view of the courts. The language used helps make clear it is the policy of the agency to “value and preserve human life,” focuses on de-escalation, and the application of force only when necessary. Reporting specifics for use of force incidents should be included.

Acceptability of the quality of the reports and frequency of use of force report reviews should be addressed in supervisor training. We, however, recommend all use of force reports be reviewed by management timely, in order to provide appropriate feedback, corrective actions, and another data point for community interactions.

High profile use of force civil rights scenarios that are difficult to defend:

- Shooting at fleeing suspects who present no immediate threat
- Shooting at fleeing vehicles, except in exigent circumstances
- Using less-lethal force, including tasers, against people who pose no threat; same for arrestees in handcuffs
- Using force to retaliate against and punish individuals
- Currently, law enforcement and legal are considering adding the use of using choke holds on suspects who would not qualify for utilization of deadly force

Our biggest issues in use of force litigation is not usually about the content of the policy but that the policy was not adhered to. Of course this would invite intensive questions of training adequacy, officer proficiency in this area, and supervision.

Each officer should be able to adequately articulate the use of force policy at all times.

Body Worn Cameras

The DOJ recommends body worn cameras if you don't already have them. This topic is debated with intensity as it can complement your community policing and use of force policies but it can cause problems if you are not well prepared.

Our recommendation is that if you are interested, jump in all the way and completely embrace all the policy and training needs. However, if you are not completely committed then take a pass until you have complete support from staff, department administration, trainers, entity administration and finance.

Otherwise, your ill-prepared employees will appear regularly on camera in poorly defensible scenarios. A hurdle for most departments is not the initial hardware funding but the ongoing cost of data storage that never goes away. Explore the [Body Worn Camera Toolkit](#) for many quality resources.

Resources

PERF

- [Civil Rights Investigations of Local Police: Lessons Learned](#)

COPS

- [Best Practices In Law Enforcement](#)

IACP

- [National Consensus Policy on Use of Force](#)
- [Communities of Color Toolkit](#)
- [Policy Framework for Improved Community-Police Engagement](#)
- [Recording Police Activity](#)

Bureau of Justice Assistance

- [Body Worn Camera Toolkit](#)

American Bar Foundation

- [21st Century Policing](#)

Intact

- [Human Resources Portal](#) (invitation code: OBEPL)

Online Training for Intact Policyholders

[OSS Law Enforcement Advisors](#)

- Law Enforcement Liability
- Field Supervisor Package (part 1 & 2)

[LocalGovU](#)

- Sexual Harassment for Managers
- Discipline & Termination
- Dealing with Angry Employees
- Drone Use for First Responders
- Anti-harassment in the Workforce
- School Resource Officers



Visit intactspecialty.com/public-entities for more information or contact **Kenny Smith** at 303.531.3843 or kwsmith@intactinsurance.com.