

Draft Police Reform Executive Order (1/5/22)

NAPO Overview

As we have been predicting, since the Booker Bill went down in flames, the Administration is now trying to accomplish almost all the same drastic changes to American policing by Executive Order. This Order would immediately make these changes for federal law enforcement agencies, and then use the “carrot and stick” of federal funding to get State, local and Tribal agencies to also adopt these changes, whether or not they make sense for any given locality.

SEC. 1 – Policy Statement

SEC. 2 – Sharing Federal Best Practices with State, Local and Tribal Law Enforcement to Enhance Accountability

- Independent Investigations of In-Custody Deaths
- Improving Training for Investigations into Deprivation of Rights Under Color of Law
 - U.S. Attorney General (AG) shall (1) enhance DOJ’s capacity to investigate and prosecute such cases, and (2) provide guidance to State, local and tribal investigators and prosecutors for investigating **and prosecuting** similar cases
- Pattern-and-Practice Investigations
- Ensuring Timely Internal Investigations

SEC. 3 – Officer Recruitment, Hiring, Promotions and Retention

- Federal agencies shall develop and implement protocols for background investigations and screening mechanisms for State, local and tribal law enforcement officer that participate in programs or activities conducted or sponsored by the Federal agency (i.e., joint task forces, international training and technical assistance programs)
- AG shall develop best practice for State, local and tribal law enforcement based on Federal best practices developed as part of this Executive Order

SEC. 4 – Officer Wellness (Federal LEOs)

- Includes languages requiring the AG to present recommendations to the President regarding the prevention of suicide by law enforcement officers

SEC. 5 – National Law Enforcement Accountability Database

- AG shall establish a National Law Enforcement Accountability Database to provide a centralized database of official records documenting officer misconduct. All Federal law enforcement agencies required to submit data monthly. DOJ will develop technical assistance and guidance to encourage State, local and tribal law enforcement agencies to contribute to the database and to use it as part of their hiring decision process.
 - Data to be included: records of criminal convictions, sustained complaints, civil judgements, settlements and amounts (if publicly available) related to official duties,

- records of disciplinary action based on findings of misconduct, de-certifications, terminations, and resignations or retirements while under active investigation.
- AG shall establish procedures to allow officers to have an opportunity to petition to remove factually inaccurate information about themselves from the database. Please note: This is NOT a Due Process requirement for the actual investigation/disciplinary process itself.
 - Database law enforcement sensitive, but the AG shall provide annual reports to the public containing aggregated and anonymized data from the database.

SEC. 6 – Use of Force Database

- Requires all Federal law enforcement agencies to submit data to the FBI’s Use of Force Database
- Work with State, local and tribal law enforcement agencies to identify obstacles to their participation in the database and provide training and technical assistance to those agencies to facilitate their regular submission of information to the database.

SEC. 7 – Banning Chokeholds and Carotid Restraints

- Bans the use of chokeholds and carotid restraints for all Federal law enforcement unless deadly force is authorized.

SEC. 8 – Use of Force Standards

- Requires every Federal law enforcement agency to review its use of force policy to ensure it includes: de-escalation, duty to intervene to stop excessive force and render medical aid after use of force, and the use of deadly force as a last resort “when there is no reasonable alternative, in other words only when necessary to prevent imminent and serious bodily injury or death”.

SEC. 9 – Anti-Bias Training and Guidance

- Every Federal law enforcement agency shall require agents and officers to undergo annual training on implicit bias and profiling based on perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, or disability of individuals and ensure effective procedures for investigating complaints of improper profiling by agents and officers.

SEC. 10 – No-Knock Warrants

- Greatly restricts the use of no-knock warrants by Federal agencies to only those situations where an officer’s safety would be compromised, amongst other restrictions. Cannot be used to prevent the destruction of evidence.

SEC. 11 – Assessing and Addressing the Impact of Use of Force by Law Enforcement on Communities

- Mandates a nationwide study on the behavioral, mental, and public health impacts of use of force by law enforcement officers on communities, including any disparate impacts on communities of color, and what services or resources can be provided to impacted individuals and communities.

SEC. 12 – Preventing the Militarization of Law Enforcement Agencies

- Repeals President Trump’s Executive Order allowing full access to State and local law enforcement to surplus military equipment and re-enacts President Obama’s Executive Order banning most equipment and seriously restricting other gear.

SEC. 13 – Body-Worn Cameras and Advanced Law Enforcement Technologies

- Requires all Federal law enforcement to use body-worn cameras and prohibits Federal law enforcement officers from reviewing or receiving an accounting of any of their own BWC video until all required reports, statements or interviews regarding the recording are completed.
- Requires a study of facial recognition technology, its efficacy, and use of such technology by Federal law enforcement

SEC. 14 – Comprehensive and Collaborative Responses to Persons in Behavioral or Mental Health Crisis

- The AG and Secretary of the Department of Health and Human Services (HHS) shall issue guidance on best practices for responding to calls to aid persons in behavioral or mental health crisis.

SEC. 15 – Supporting Alternatives to Arrest and Incarceration and Enhancing Reentry

- Establishes a Federal Interagency Alternatives and Reentry Committee to help fully implement the FIRST STEP Act and identify ways to reduce racial, ethnic, and other disparities in the criminal justice system.

SEC. 16 – Improvement of Conditions of Confinement

- Improve COVID protocols within the Bureau of Prisons
- Address other conditions of confinement within BOP and U.S. Marshal Service custody to improve quality of life, medical and mental health care and environmental conditions
- Allows for BOP to designate individuals to facilities in accordance with *their gender identity*

SEC. 17 – FIRST STEP Act Implementation

- Directs the AG to do everything in his or her power to fully implement the FIRST STEP Act

SEC. 18 – Criminal Justice Statistics

- AG will study the status of State and local law enforcement agencies transitioning from the Summary Reporting System to the National Incident-Based Reporting System (NIBRS) in the Uniform Crime Reporting (UCR) program
- Calls for an assessment of current data collection use and transparency practices with regards to law enforcement practices, including, but not limited to, searches, stops, frisks, seizures, arrests and civil asset forfeitures.

SEC. 19 – Accreditation Standards

- AG shall determine what grant programs shall require agency accreditation by an authorized, independent credentialing body, consistent with SEC. 20 of this Order.
- AG shall develop evidence-based accreditation standards, consistent with policies in SEC 3-4 and 7-10 of this Order, and the final recommendations of the President’s Task Force on 21st Century Policing (May 2015), and encourages participation in the FBI’s Use of Force Database and the National Law Enforcement Accountability Database

SEC. 20 – Grant Making Authority

- Federal discretionary grants [i.e., COPS and Byrne JAG grants] to be awarded only to those agencies that have policies in place that reflect those of SEC. 2-10, 13, 15, and 18 of this Order

SEC. 21 – Superseding Prior Orders

- Repeals Executive Order 13809 (August 2017), which repealed President Obama’s Executive Order restricting State and local law enforcement’s access to surplus military equipment through such programs as the Department of Defense’s 1033 Program.
- Repeals Executive Order 13929 (June 2020), *Safe Policing for Safer Communities*. Please note, this Executive Order, which would be repealed, and which NAPO supported, does call for Due Process in investigations of officers.