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Public Trust and Law Enforcement—A Brief Discussion for Policy Makers

Nathan James, Coordinator
Analyst in Crime Policy

Jerome P. Bjelopera
Specialist in Organized Crime and Terrorism

Kristin Finklea
Specialist in Domestic Security

Natalie Keegan
Analyst in American Federalism and Emergency Management Policy

Sarah A. Lister
Specialist in Public Health and Epidemiology

Lisa N. Sacco
Analyst in Illicit Drugs and Crime Policy

Richard M. Thompson II
Legislative Attorney

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Summary

Recent events involving conflict between the police and citizens have generated interest in what role Congress could play in facilitating efforts to build trust between law enforcement and the people they serve while promoting effective crime reduction. This report provides a brief overview of police-community relations and how the federal government might be able to promote more accountability and better relationships between citizens and law enforcement.

Gallup poll data show that, overall, Americans are confident in the police; but, confidence in the police varies according to race, place of residence, and other factors. In 2014, less than 50% of Americans favorably rated the honesty and ethics of police, the lowest percentage since 1998.

If they conclude that low public ratings of the police are at least partially attributable to police policies, Congress may decide to address state and local law enforcement policies and practices they believe erode public trust in law enforcement. Federalism limits the amount of influence Congress can have over state and local law enforcement policy. Regardless, the federal government might choose to promote better law enforcement-community relations and accountability through (1) federal efforts to collect and disseminate data on the use of force by law enforcement, (2) statutes that allow the federal government to investigate instances of alleged police misconduct, and (3) the influence the Department of Justice (DOJ) has on state and local policing through its role as an enforcer, policy leader, convener, and funder of law enforcement.

There are several options policy makers might examine should they choose to play a role in facilitating better police-community relations:

- Congress could consider placing conditions on federal funding to encourage law enforcement to adopt policy changes to promote better community relations.
- Policy makers could consider expanding efforts to collect more comprehensive data on the use of force by law enforcement officers.
- Congress could consider providing grants to law enforcement agencies so they could purchase body-worn cameras for their officers.
- Policy makers could take steps to facilitate investigations and prosecutions of excessive force by amending 18 U.S.C. §242 to reduce the *mens rea* standard in federal prosecutions, or place conditions on federal funds to promote the use of special prosecutors at the state level.
- Congress could fund Community Oriented Policing Services (COPS) hiring grants so law enforcement agencies could hire more officers to engage in community policing activities.
- Policy makers might consider using the influence of congressional authority to affect the direction of national criminal justice policy.

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Recently, there have been several high-profile incidents where police officers have been involved in the deaths of citizens in Ferguson, MO; Staten Island, NY; and Cleveland, OH. The deaths of Michael Brown, Eric Garner, and Tamir Rice touched off a series of demonstrations around the country protesting the treatment of people of color at the hands of law enforcement. In December, two New York City police officers, Officers Rafael Ramos and Wenjian Liu, were ambushed and killed by a man who said he wanted retaliation for the deaths of Michael Brown and Eric Garner. This recent spate of violence has highlighted the long-simmering tensions between police officers¹ and minority communities. It has also generated interest in how to repair the apparently decreasing amount of trust between law enforcement and the public.

In the aftermath of the police response to August 2014 protests in Ferguson, MO, President Obama ordered a review of federal programs that provide equipment to state and local law enforcement. The Administration released a report on its review on December 1, 2014.² In addition to conducting the review, the Administration also announced additional steps to “strengthen community policing and fortify the trust that must exist between law enforcement officers and the communities they serve.”³

Those steps included announcing the formation of a task force on “21st Century Policing,” chaired by Philadelphia Police Commissioner Charles H. Ramsey and Laurie Robinson, a former Assistant Attorney General for the Office of Justice Programs. According to the Administration, the task force “will build on the extensive research currently being conducted by [the Community Oriented Policing Services Office]; will examine, among other issues, how to promote effective crime reduction while building public trust; and will be directed to prepare a report and recommendations within 90 days of its creation.”⁴

In addition, as a part of its FY2016 budget request, the Administration proposed a \$30 million program under the Office of Justice Programs to help local law enforcement purchase and deploy body-worn cameras.⁵ The Administration requested another \$10 million to study the effectiveness of body-worn cameras.

Policy makers might have an interest in what role Congress could play in facilitating efforts to reestablish trust between police and the people they serve and increasing law enforcement’s accountability for any excessive use of force.

This report provides a brief overview of police-community relations and how policy makers might be able to play a role in repairing what appears to be fraying trust between police and

¹ Police departments and police officers are a subset of “law enforcement,” which includes sheriff’s offices, state law enforcement agencies (e.g., state troopers), and special jurisdiction law enforcement agencies (e.g., transit police or university police departments). However, “police” and “law enforcement” will be used interchangeably in this report.

² Executive Office of the President, *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, December 2014, http://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf.

³ The White House, Office of the Press Secretary, *Fact Sheet: Strengthening Community Policing*, December 1st, 2014, <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (hereinafter, “*Strengthening Community Policing*”).

⁴ *Ibid.*

⁵ Body-worn cameras are mobile cameras that allow law enforcement officers to record what they see and hear. They can be attached to a helmet, a pair of glasses, or an officer’s shirt or badge.

citizens. The report focuses solely on the relationship between the police and the communities they serve. It does not include a discussion of the lack of trust in or perceived discrimination by other parts of the criminal justice system (i.e., the grand jury system, prosecutions, or corrections). While there may be many factors that influence how different groups of people feel they are treated by the criminal justice system, a discussion of those factors is beyond the scope of this report.

The report starts with an overview of data on public opinion of law enforcement. It then provides a brief discussion of federalism and why Congress does not have the authority to directly change state and local law enforcement practices. Next, the report reviews federal efforts to collect data on law enforcement’s use of force and federal authority to investigate instances of police misconduct. This is followed by a review of what role DOJ might be able to play in facilitating improvements in police-community relations or making changes in state and local law enforcement policies. The report concludes with policy options for Congress to consider should policy makers decide to try to influence state and local law enforcement policy.

Public Perception of Law Enforcement

Recent events in the United States have called attention to public opinion regarding police and their relationship with the people they serve. Overall, Americans express confidence in the police. In a 2014 Gallup poll, 53% of respondents reported having a “great deal” or “quite a lot” of confidence in the police, 31% reported having “some” confidence, and 14% reported having “very little” confidence.⁶ If poll data are broken down demographically, however, confidence in the police varies according to race, place of residence, and other categories (**Table 1**).⁷

**Table 1. Confidence in Police by Race and Place of Residence
(from 2006 through 2014, aggregated)**

Percentage reporting they have a “great deal” or “quite a lot” of confidence in the police

	All Americans	Non-Hispanic Whites	Non-Hispanic Blacks	Hispanics
Total	57%	61%	34%	57%
Live in Urban Area	54%	62%	26%	54%
Live in Non-urban Area	58%	60%	38%	59%

Source: Gallup, *Urban Blacks in U.S. Have Little Confidence in Police*, December 8, 2014, <http://www.gallup.com/poll/179909/urban-blacks-little-confidence-police.aspx>.

Notes: Data from Gallup are based on aggregated telephone interviews conducted from 2006 to 2014 using a random sample of 9,442 U.S. adults aged 18 and older. CRS requested full demographics from Gallup for the 2014 poll but did not receive these data. For a complete demographic breakdown of the 2006-2012 poll data, see the *Sourcebook of Criminal Justice Statistics*, http://www.albany.edu/sourcebook/tost_2.html#2_ay.

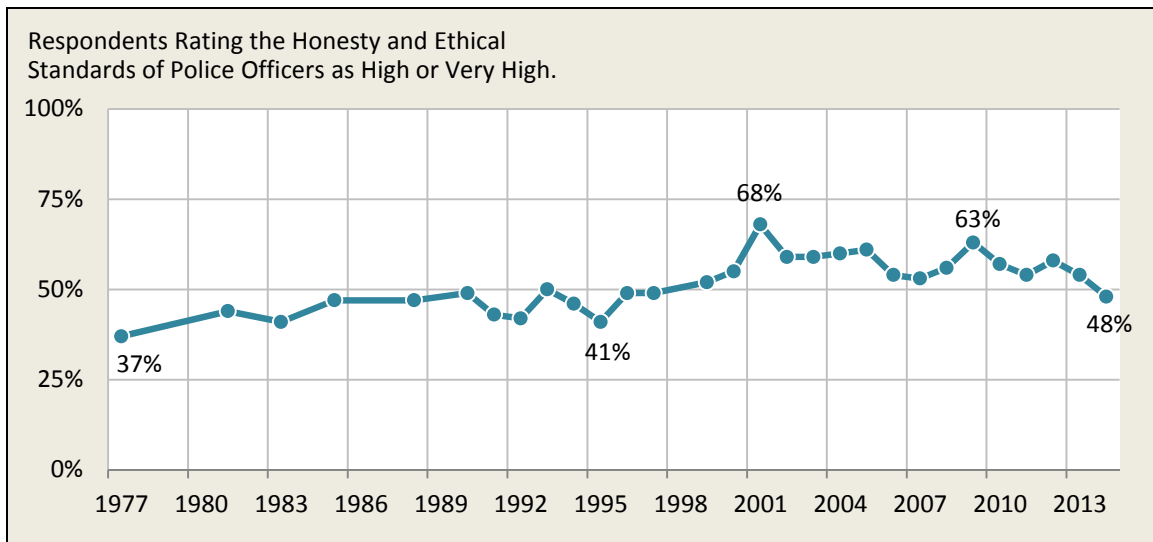
⁶ The text of the question is “I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one—a great deal, quite a lot, some, or very little ... the police?” Two % of respondents volunteered the response, “none.” Gallup, *Confidence in Institutions*, June 2014, <http://www.gallup.com/poll/1597/Confidence-Institutions.aspx>.

⁷ Gallup, *Urban Blacks in U.S. Have Little Confidence in Police*, December 8, 2014, <http://www.gallup.com/poll/179909/urban-blacks-little-confidence-police.aspx>.

Some of the larger contrasts in views of the police are influenced by race and income. As shown in **Table 1**, 34% of blacks in the United States have a great deal or quite a lot of confidence in the police while 61% of whites and 57% of Hispanics have these levels of confidence. Confidence in the police also varies directly by income. For example, in 2012, 36% of Gallup poll respondents earning less than \$20,000 reported having a great deal or quite a lot of confidence in the police while 66% of respondents earning \$75,000 and over reported this level of confidence.⁸

In recent years, Americans have rated the honesty and ethics of police favorably, but over the last two years, favorable ratings have declined (**Figure 1**). In 2013, 54% of Gallup poll respondents rated the honesty and ethical standards of police as “very high” or “high,” but in 2014 this figure declined to 48%. Gallup attributes this decline to a 22-point drop in nonwhites’ favorable ratings of police.⁹ Favorability ratings have generally improved since 1977 when just 37% of respondents rated the honesty and ethical standards of police as very high or high,¹⁰ but they have declined since reaching a peak of 68% in 2001.¹¹

Figure 1. U.S. Perceptions of Honesty and Ethical Standards of Police



Source: CRS presentation of data from the *Sourcebook of Criminal Justice Statistics*, Table 2.12.2012, <http://www.albany.edu/sourcebook/pdf/t2202012.pdf>; and Jeffrey M. Jones, “Drop Among Nonwhites Drives U.S. Police Honesty Ratings Down,” Gallup, <http://www.gallup.com/poll/180230/drop-among-nonwhites-drives-police-honesty-ratings-down.aspx>.

⁸ For a full demographic breakdown of the 2012 poll, see the *Sourcebook of Criminal Justice Statistics*, Table 2.12.2012, <http://www.albany.edu/sourcebook/pdf/t2122012.pdf>. CRS requested full demographics from Gallup for the 2014, poll but did not receive the data.

⁹ Jeffrey M. Jones, “Drop Among Nonwhites Drives U.S. Police Honesty Ratings Down,” Gallup, December 18, 2014.

¹⁰ Gallup first asked this poll question in 1977.

¹¹ Jeffrey M. Jones, “Drop Among Nonwhites Drives U.S. Police Honesty Ratings Down,” Gallup, December 18, 2014. For full demographic breakdowns of earlier polls, see the *Sourcebook of Criminal Justice Statistics*, http://www.albany.edu/sourcebook/tost_2.html#2_av.

Federalism and Congressional Control over State and Local Law Enforcement Policy

Policy makers may have an interest in trying to help increase trust between law enforcement and certain communities, particularly in some urban areas. Policy makers may wish to increase law enforcement's accountability for any excessive use of force and address state and local law enforcement policies they believe contribute to the lack of public trust in police. However, the United States' federalized system of government places limits on the influence Congress can have over state and local law enforcement policies.

Overview of Federalism

Federalism describes the intergovernmental relationships between and among federal, state, and local governments, with the federal government having primary authority in some areas and the other governments having primary authority in other areas.¹² Scholars have variously described these relationships as being primarily “dual,” “cooperative,” “creative,” “coercive,” or, more recently, “fragmented” federalism. Early characterizations of the American system described a dual federalism in which the federal and state governments were equal partners with relatively separate and distinct areas of authority. Scholars argue that American federalism is presently “more chaotic, complex, and contentious than ever before.”¹³ This has led to a fragmented federalism in which states and the federal government simultaneously pursue their own policy priorities, and policy implementation often occurs in a piecemeal, disjointed fashion.¹⁴

Federalism and Local Law Enforcement

Under the authority of the Spending Clause of the U.S. Constitution, Congress may choose to impose conditions on federal grant awards to state and local governments as a way to influence state and local policy.¹⁵ As one scholar noted, congressional conditioning of federal grants related to state and local policing under the authority of the Spending Clause has been questioned:

Law enforcement historically has been considered one of these attributes of state sovereignty upon which the federal government cannot easily infringe. Thus, Congress is greatly restricted in the degree to which it can regulate a state's administration of its local law enforcement agencies. Because of this limited power over the states, particularly in areas such as law enforcement, Congress cannot “commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.

¹² James Q. Wilson and John J. Dilulio, Jr, *American Government Institutions and Policies* (Lexington, D.C.: Heath and Company, 1995), p. A-49.

¹³ Cynthia J. Bowling and J. Mitchell Pickerill, “Fragmented Federalism: The State of American Federalism 2012-2013,” *Publius: The Journal of Federalism*, vol. 43, no. 3 (June 2013), p. 315.

¹⁴ *Ibid.*, p. 317.

¹⁵ Article I, Section 8, U.S. Constitution, known as the “Spending Clause,” states that “Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.”

Furthermore, even if Congress has the authority to regulate or prohibit certain acts if it chooses to do so, it cannot force the states “to require or prohibit those acts.”¹⁶

In comparison, another scholar has suggested that federal grants to law enforcement agencies are a way to encourage police accountability and argued that “federal funds issued to states ... should be conditioned upon the enactment and implementation of police accountability measures aimed at institutional reform.”¹⁷

That same scholar also suggested that the use of federal grants to state and local law enforcement agencies can encourage a cooperative federalism relationship that entails federal-state collaboration and allows states some flexibility in implementing federal standards while reserving state and local abilities to enhance police accountability.¹⁸ Another federalism scholar noted that cooperative federalism was “a pragmatic middle ground between reform and reaction that would not destroy the states but would still lower their salience from constitutionally coordinate polities to more congenial laboratories of democracy and administrators of national policy.”¹⁹

While there is limited research on the evolving nature of federalism within law enforcement policy, the congressional use of federal grants to state and local law enforcement, and the cooperative federalism that generally exists through their use, suggest that the federalism relationship in this area may be less fragmented than in other policy areas. It is unclear how changes in federal interaction with state and local law enforcement might affect the nature of federalism outside this specific policy area.

Even though there are limits on how much influence Congress and the federal government can have on state and local law enforcement policy, the federal government does currently have some tools that might be used to promote better law enforcement-community relations and accountability. These include (1) federal efforts to collect and disseminate data on the use of force by law enforcement, (2) statutes that allow the federal government to investigate instances of police misconduct, and (3) the influence DOJ has on state and local law enforcement policies through its role as an enforcer, policy leader, convener, and funder of law enforcement.

Federal Efforts to Collect Data on Law Enforcement’s Use of Force

The Michael Brown shooting in Ferguson, MO, has generated questions about why the federal government does not collect and publish data on the use of force by law enforcement. Philadelphia Police Chief Ramsey has indicated that establishing a national database of civilian

¹⁶ W. Paul Koenig, “Does Congress Abuse Its Spending Clause Power by Attaching Conditions on the Receipt of Federal Law Enforcement Funds to a State’s Compliance with ‘Megan’s Law’?”, *The Journal of Criminal Law and Criminology*, vol. 88, no. 2 (Winter, 1998), p. 740-741.

¹⁷ Kami Chavis Simmons, “Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability,” *Alabama Law Review*, vol. 62, no. 2 (2011), p. 351. Police accountability may include appropriate oversight by state and local officials to reduce police misconduct and ensure measures are in place to prevent waste, fraud, and abuse of federal grant funds.

¹⁸ *Ibid.*, p. 357.

¹⁹ John Kincaid, “From Cooperative to Coercive Federalism,” *Annals of the American Academy of Political and Social Science*, vol. 509 (May, 1990), p. 141.

deaths at the hands of law enforcement officers will be one of the things discussed as he heads the task force on 21st Century Policing.²⁰ According to Chief Ramsey, “Personally, I think [how data on civilian and law enforcement officers’ deaths are collected] ought to be pretty much the same. If you don’t have the data, people think you are hiding something.... This is something that comes under the header of establishing trust.”²¹ It may be that the lack of reliable data on how often police use force and who they target fuels the public’s mistrust of law enforcement. Without more comprehensive data to provide context in this area, the public is left to rely on media accounts of excessive force cases for information.

The federal government currently has several different programs that collect some data on law enforcement-involved shootings and the use of force. However, none of these programs collects data on every use of force incident in the United States.

Uniform Crime Reports

Currently, the Federal Bureau of Investigation (FBI), through the Uniform Crime Report (UCR), collects data on justifiable homicides by law enforcement officers.²² However, the UCR only captures data on police-involved shootings where a law enforcement officer killed someone while that person was committing a felony. It does not collect data on shootings that do not result in a death, nor does it capture data in instances where an officer shoots at a suspect but does not hit him or her. Also, law enforcement agencies participate in the UCR program voluntarily, which means that justifiable homicides by law enforcement agencies are most likely undercounted.²³ One DOJ statistician has stated that “[t]he FBI’s justifiable homicides [data] ... [has] significant limitations in terms of coverage and reliability that [are] primarily due to agency participation and measurement issues.”²⁴

Contacts between the Police and the Public

Section 210402 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) requires the Attorney General to “acquire data about the use of excessive force by law enforcement officers” and to publish an annual summary of the data. DOJ has struggled to fulfill this mandate. In April 1996, the Bureau of Justice Statistics (BJS) and the National Institute of Justice (NIJ) published a status report on their efforts to fulfill the requirements of the act.²⁵ This report summarized the results of studies that examined the issue of police use of force. The report also highlighted difficulties in collecting use of force data, including defining terms such as “use of force,” “use of excessive force,” and “excessive use of force”; reluctance by police agencies to

²⁰ Kevin Johnson, “Panel to Consider Tracking of Civilians Killed by Police,” *USA Today*, December 12, 2014, <http://www.usatoday.com/story/news/nation/2014/12/11/tracking-cop-deaths/20104193/>.

²¹ Ibid.

²² A “justifiable homicide by a law enforcement officer” is when a law enforcement officer kills someone while that person is committing a felony.

²³ Wesley Lowery, “How Many Police Shootings a Year? No One Knows,” *Washington Post*, September 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>.

²⁴ Ibid.

²⁵ Tom McEwen, *National Data Collection on Police Use of Force*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 160113, Washington, DC, April 1996, <http://www.bjs.gov/content/pub/pdf/ndcopuof.pdf>.

provide reliable data; concerns about the misapplication of reported data; the lack of attention to provocation in the incident leading to the use of force; and the degree of detail needed to adequately describe individual incidents.

In November 1997, BJS released a second report about its efforts: *Police Use of Force: Collection of National Data*.²⁶ This report described a pilot project, a survey of approximately 6,400 people who in the past year had an interaction with a law enforcement officer at their own initiative. The survey asked respondents about the types of interactions they had with law enforcement, both positive and negative. The pilot project eventually led to BJS's Police Public Contact Survey (PPCS). The report also noted that both BJS and NIJ had funded a National Police Use-of-Force Database Project. The project was administered by the International Association of Chiefs of Police (IACP), and it was developed as a pilot effort to collect incident-based use-of-force information from local law enforcement agencies. According to the Human Rights Watch, because data for the project were submitted voluntarily, the data were partial and inconclusive.²⁷ BJS reported that it had requested funding in FY1995, FY1996, and FY1997 to support its efforts to collect data pursuant to Section 210402, but it did not receive any.²⁸ The IACP published a report in 2001 using the data it collected through its National Police Use-of-Force Database Project.²⁹

Even though DOJ does not publish annual data on the use of excessive force by law enforcement officers, it has attempted to implement the requirements of Section 210402 by collecting data on citizens' interactions with police—including whether the police threatened to use or has used force, and whether the respondent thought the force was excessive—every three years starting in 1996 through its PPCS.³⁰ One limitation of the PPCS is that it is a survey, so while it might be able to generate a reliable estimate of when citizens report law enforcement using force against them, it is not a census of all such incidents.

Death in Custody Reporting Program

DOJ also collected data on arrest-related deaths pursuant to the Death in Custody Reporting Act of 2000 (P.L. 106-297). The act required recipients of Violent Offender Incarceration/Truth-in-Sentencing Incentive grants³¹ to submit data to DOJ on the death of any person who is in the process of arrest, en route to be incarcerated, or incarcerated at a municipal or county jail, state prison, or other local or state correctional facility (including juvenile facilities). The provisions of

²⁶ Lawrence A. Greenfield, Patrick A. Langan, and Steven K. Smith, *Police Use of Force: Collection of National Data*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 156040, Washington, DC, November 1997, <http://www.bjs.gov/content/pub/pdf/puof.pdf>.

²⁷ Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States of America*, <http://www.hrw.org/legacy/reports98/police/toc.htm>.

²⁸ *Ibid.*, p. 3.

²⁹ The International Association of Chiefs of Police, *Police Use of Force in America, 2001*, <http://www.theiacp.org/Portals/0/pdfs/Publications/2001useofforce.pdf>.

³⁰ The most recent data collected through the Police Public Contact Survey was from 2011.

³¹ The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) authorized funding for grants to states for building or expanding correctional facilities. To be eligible for funding under the program a state had to demonstrate it had increased the number of violent offenders who were arrested and sentenced to incarceration along with increasing the average length of violent offenders' sentences or that the state had implemented truth-in-sentencing laws which would require violent offenders to serve at least 85% of their sentences.

the act expired in 2006.³² Congress reauthorized the act by passing the Death in Custody Reporting Act of 2013 (P.L. 113-242). The 2013 act requires states to submit data to DOJ regarding the death of any person who is detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities). States face up to a 10% reduction in their funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program if they do not provide the data.³³ The 2013 act also extends the reporting requirement to federal agencies.

BJS established the Death in Custody Reporting Program (DCRP) as a way to collect the data required by the Death in Custody Reporting Act of 2000, and it continued to collect data even though the initial authorization expired in 2006. According to BJS, the data “represent a unique national resource for understanding mortality in the criminal justice system.”³⁴ BJS published a report on arrest-related deaths for 2003-2009. In the report, BJS notes that “[a]rrest-related deaths are under-reported” and that the data are “more representative of the nature of arrest-related deaths than the volume at which they occur.”³⁵ It was reported that BJS stopped publishing the arrest-related deaths data in 2009 because they were unreliable.³⁶

Data from the Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC) receives and publishes death certificate data voluntarily provided by all 50 states, the District of Columbia, and the territories.³⁷ For violent deaths, CDC codes the intent or *manner of death*, such as homicide, suicide, unintentional (accidental) firearm, or legal intervention (among others). *Legal intervention* is defined as “injuries inflicted by the police or other law-enforcing agents, including military on duty [excluding operations of war], in the course of arresting or attempting to arrest lawbreakers, suppressing disturbances, maintaining order, and other legal action.”³⁸

In 2002, CDC launched the National Violent Death Reporting System (NVDRS), which currently operates in 32 states.³⁹ Personnel in these states gather and link records from law enforcement, coroners and medical examiners, vital statistics, and crime laboratories, providing better

³² H.Rept. 113-285.

³³ For more information on the JAG program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

³⁴ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Deaths in Custody Reporting Program*, <http://www.bjs.gov/index.cfm?ty=tp&tid=19>.

³⁵ Andrea M. Burch, *Arrest-Related Deaths, 2003-2009—Statistical Tables*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 235385, Washington, DC, November 2011, p. 1, <http://www.bjs.gov/content/pub/pdf/ard0309st.pdf>.

³⁶ Wesley Lowery, “How Many Police Shootings a Year? No One Knows,” *Washington Post*, September 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>.

³⁷ Centers for Disease Control and Prevention (CDC), National Vital Statistics System, Mortality Data, <http://www.cdc.gov/nchs/deaths.htm>.

³⁸ World Health Organization (WHO), International Classification of Diseases, 10th Revision (ICD-10), Y35(.0-.4), Y35(.6-.7), and Y89.0, <http://www.who.int/classifications/en/>. CDC excludes legal executions from this definition. Of note, some deaths initially classified as legal intervention are reclassified as homicides following investigation.

³⁹ CDC, National Violent Death Reporting System (NVDRS), <http://www.cdc.gov/violenceprevention/nvdrs/>.

information about the causes of and means to prevent violent deaths than is available from death certificates alone. NVDRS data have illuminated efforts to prevent suicide, intimate partner violence, and drug overdose, among other types of violent deaths. CDC has published analyses of NVDRS data on deaths due to legal intervention infrequently.⁴⁰

President Obama sought an additional \$20 million (in addition to the prior level of about \$3 million) to expand NVDRS to all 50 states following the school shooting in Newtown, CT, in 2012.⁴¹ Congress provided almost half of the requested increase for FY2014, supporting expansion of the system from 17 to 32 states, and sustained this funding level for FY2015.⁴²

Authority for DOJ to Investigate Law Enforcement Misconduct

The federal government has several legal tools at its disposal to ensure that state and local law enforcement practices and procedures adhere to constitutional norms.⁴³ The first is *criminal* enforcement brought directly against an offending officer under several federal civil rights statutes. Section 242 of Title 18 makes it a federal crime to willfully deprive a person of their constitutional rights while acting under color of law.⁴⁴ Similarly, Section 241 of Title 18 outlaws conspiracies to deprive someone of their constitutional rights.⁴⁵ These statutes, enacted during the Reconstruction Era following the Civil War, were primarily intended to safeguard rights newly bestowed on African Americans under the Fourteenth and Fifteenth Amendments.⁴⁶ In more recent years, these statutes have formed the basis of police excessive force criminal cases,⁴⁷ and form the legal justification for DOJ investigations into several recent police killings across the country.⁴⁸

⁴⁰ For example, in its report on violent deaths for 2009 CDC reported on certain characteristics of the decedent, such as location of death and toxicology tests results. However, in its report on violent deaths for 2010 CDC grouped legal intervention deaths with homicides for analysis. CDC, “Surveillance for Violent Deaths—National Violent Death Reporting System, 16 States,” reports for 2009 and 2010, <http://www.cdc.gov/violenceprevention/nvdrs/publications.html>.

⁴¹ See for example The White House, “Now Is the Time: The President’s Plan to Protect our Children and our Communities by Reducing Gun Violence,” January 2013, pp. 8-9, <http://www.whitehouse.gov/issues/preventing-gun-violence>.

⁴² CDC, “Justification of Estimates for Appropriations Committees, FY2015,” pp. 254-255, <http://www.cdc.gov/fmo/topic/Budget%20Information/index.html>; and explanatory materials accompanying omnibus appropriations for FY2015 (P.L. 113-235), Division G, Departments of Labor, Health and Human Services, and Education, and Related Agencies, *Congressional Record*, vol. 160 (December 11, 2014), p. H9831.

⁴³ In addition to legal enforcement by government actors, 42 U.S.C. §1983 provides a cause of action for private actors to vindicate violations of constitutional rights such as police use of unreasonable force. See *Graham v. Connor*, 490 U.S. 386 (1989).

⁴⁴ *Ibid.* “‘Color of law’ simply means that the person doing the act is using power given to him or her by a governmental agency (local, State, or Federal).” Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*.

⁴⁵ 18 U.S.C. §241.

⁴⁶ See Edward F. Malone, *Legacy of Reconstruction: The Vagueness of the Criminal Civil Rights Statutes*, 38 UCLA L. Rev. 163, 164 (1990).

⁴⁷ See, e.g., *United States v. Bradley*, 196 F.3d 762 (7th Cir. 1999); *United States v. Reese*, 2 F.3d 870 (9th Cir. 1993).

⁴⁸ See Paul Lewis, *Federal Officials May Use Little-Known Civil Rights Statute in Police Shooting Cases*, *The Guardian* (Dec. 24, 2014), [http://www.theguardian.com/us-news/2014/dec/24/federal-review-michael-brown-eric-\(continued...\)](http://www.theguardian.com/us-news/2014/dec/24/federal-review-michael-brown-eric-(continued...))

Arguably, the most contentious issue surrounding Section 242 has been its *mens rea*, or mental state, element. In the 1945 case *Screws v. United States*, the Supreme Court interpreted the predecessor of Section 242 to require that the officer have the *specific intent* of depriving the person of their civil rights.⁴⁹ Not a model of clarity, the lower courts have parsed *Screws* to require varying *mens rea* thresholds, with some instructing that the officer must act with “a bad purpose or evil motive,”⁵⁰ while others require a less stringent “reckless disregard” standard.⁵¹ Some view the intent threshold as blocking too many meritorious cases and argue that it should be lowered to adequately protect civil rights.⁵²

The second major legal tool is a federal statute that focuses on *civil* liability of law enforcement agencies as a whole, rather than on the wrongdoing of individual officers. Enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and codified at 42 U.S.C. §14141, this statute prohibits government authorities or agents acting on its behalf from engaging in a “pattern or practice of conduct by law enforcement officers ... that deprives persons of rights ... secured or protected by the Constitution of laws of the United States.”⁵³ It authorizes the Attorney General to sue for equitable or declaratory relief when he or she has “reasonable cause to believe” that such a pattern of constitutional violation has occurred.

The scope of investigations under Section 14141, primarily conducted by the Special Litigation Section of DOJ’s Civil Rights Division, has ranged from police use of force and unlawful stops and searches to racial and ethnic biases.⁵⁴ Many of these investigations are resolved by consent decree—a judicially enforceable settlement between DOJ and the local police department that outlines the various measures the local agency must take to remedy its unconstitutional police practices. For instance, after two years of extensive investigation into the New Orleans Police Department’s policies and practices in which DOJ found numerous instances of unconstitutional conduct, DOJ entered into a consent decree with the City of New Orleans requiring the city to implement new policies and training to remedy these constitutional violations.⁵⁵ The content of each consent decree can differ, but many include provisions concerning use-of-force reporting systems, citizen complaint systems, and early warning systems to identify problem officers.⁵⁶

(...continued)

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⁴⁹ *Screws v. United States*, 325 U.S. 91, 101 (1945).

⁵⁰ See *United States v. Kerley*, 643 F.2d 299 (5th Cir. 1981).

⁵¹ See *Bradley*, 196 F.3d at 769.

⁵² See Michael J. Pastor, *A Tragedy and a Crime?: Amadou Diallo, Specific Intent, and the Federal Prosecution of Civil Rights Violations*, 6 N.Y.U. J. LEGIS. & PUB. POL’Y 171 (2002).

⁵³ 42 U.S.C. §14141.

⁵⁴ See generally Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned*, (2013), http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

⁵⁵ *United States v. City of New Orleans*, No. 12-1924 (E.D. La. July 24, 2012) (consent decree regarding the New Orleans Police Department), available at <http://www.nola.gov/getattachment/NOPD/About-Us/NOPD-Consent-Decree/NOPD-Consent-Decree-7-24-12.pdf>.

⁵⁶ See Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits In Context*, 22 ST. LOUIS U PUB. L. REV. 6 (2003).

What Role Might the Department of Justice Play in Improving Police-Community Relations?

DOJ and its component agencies such as the FBI can help shape policing in the United States. Such influence can be seen in at least four roles that DOJ and its components fill on this stage:

- *Enforcer*—investigating and prosecuting federal laws related to police abuse of power.
- *Policy leader*—setting standards on criminal justice issues.
- *Convener*—bringing together key parties on sensitive, relevant, and important issues.
- *Funder*—awarding grants to state and local police as well as researchers probing important policing questions.⁵⁷

DOJ as Enforcer

As noted elsewhere in this report, DOJ has a hand in shaping the way state and local police operate by enforcing federal laws covering the conduct of such agencies.⁵⁸ Success in these efforts could enhance public confidence in the oversight of law enforcement. To this end, DOJ’s Civil Rights Division and the FBI rely on their authority to pursue officials or agencies depriving persons of their constitutionally protected rights. Such actions can be broken down into “color of law”⁵⁹ cases and “pattern or practice”⁶⁰ investigations (discussed above).

The FBI is the lead federal agency for investigating color of law abuses and can initiate cases involving official misconduct, which DOJ can prosecute.⁶¹ Such cases involve excessive force, discriminatory harassment, sexual assault, false arrests, or unlawful stops, searches, or arrests.⁶² In 2012, the FBI opened 380 color of law cases, representing 42% of its civil rights investigations.⁶³ In 2014, the FBI investigated the shooting of Michael Brown by police in Ferguson, MO.⁶⁴

⁵⁷ The mission statement of the Department of Justice (DOJ) is “to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.” The statement suggests at least two of the prominent roles that influence state and local policing efforts. DOJ. See U.S. Department of Justice, <http://www.justice.gov/about>.

⁵⁸ Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*.

⁵⁹ *Ibid.*

⁶⁰ These are not investigations of isolated incidents, but rather recurring activities by agencies. *Ibid.*

⁶¹ See 18 U.S.C. §241, 242.

⁶² Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*.

⁶³ See http://www.fbi.gov/about-us/investigate/civilrights/color_of_law.

⁶⁴ Department of Justice, Press Release, “Attorney General Statement on Latest Developments in Federal Civil Rights Investigation in Ferguson, Missouri,” August 18, 2014.

Additionally, DOJ’s Civil Rights Division can review the patterns or practices “of law enforcement agencies that may be violating people’s federal rights”⁶⁵ and seek civil remedies when “law enforcement agencies have policies or practices that foster a pattern of misconduct by employees.” Such remedies target agencies, not individual officers. DOJ reviews can be initiated when agencies are suspected of

- lack of supervision/monitoring of officers’ actions;
- lack of justification or reporting by officers on incidents involving the use of force;
- lack of, or improper training of, officers; and
- citizen complaint processes that treat complainants as adversaries.⁶⁶

Despite DOJ’s authority to prosecute police misconduct, experts have highlighted a number of challenges. Some have suggested, for instance, that the burden of proof is on DOJ to “prove a defendant’s specific intent to deprive a victim of constitutional rights,”⁶⁷ and this may make it difficult to convict someone of misconduct. In addition, even with a prosecution some are skeptical as to whether such an outcome may incentivize sweeping institutional changes to prevent future misconduct.⁶⁸ Regardless, “[t]he Civil Rights Division is not the most direct mechanism of police oversight in the nation, nor is it the primary mechanism on which the people of any single jurisdiction rely; but ... [it] has been the most steady and longest lasting instrument of police accountability in the United States.”⁶⁹

DOJ as Policy Leader

DOJ can serve as a model for state and local law enforcement. For example, it issues guidance for U.S. police work; sets policies for its own agencies that resonate broadly in federal, state, and local law enforcement; sponsors studies that examine policing practices; and provides training.

- *Issuing guidance.* One relevant illustration of DOJ’s dissemination of guidance is a December 2014 product offering direction on the use of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity in police work. This guidance is directed at federal policing agencies as well as state and local police active on federal task forces.⁷⁰ In issuing this guidance, DOJ noted its belief that “[l]aw enforcement practices free from inappropriate considerations ...

⁶⁵ Under 42 U.S.C. §14141 and “[i]f a law enforcement agency receives federal funding, [DOJ] can also use the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, and Title VI of the Civil Rights Act of 1964, which forbid discrimination on the basis of race, color, sex or national origin by agencies receiving federal funds. [DOJ] may act if [it] find[s] a pattern or practice by the law enforcement agency that systemically violates people’s rights. Harm to a single person, or isolated action, is usually not enough to show a pattern or practice that violates these laws.” See <http://www.justice.gov/crt/about/spl/police.php>.

⁶⁶ See http://www.fbi.gov/about-us/investigate/civilrights/color_of_law.

⁶⁷ Christopher E. Stone, Introduction to *Prosecuting Police Misconduct: Reflections on the Role of the U.S. Civil Rights Division*, Vera Institute of Justice, p. 10.

⁶⁸ *Ibid.*, p. 9.

⁶⁹ *Ibid.*, p. 3.

⁷⁰ Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, December 2014.

strengthen trust in law enforcement agencies and foster collaborative efforts between law enforcement and communities to fight crime and keep the Nation safe.”⁷¹ The 2014 document expanded on guidance issued by DOJ in 2003.

- *Setting policies for DOJ agencies.* DOJ also sets policies for its own agencies. For example, domestic investigations at the FBI are governed by principles articulated by DOJ.⁷² These purportedly “make the FBI’s operations in the United States more effective by providing simpler, clearer, and more uniform standards and procedures.” Such principles set the investigative standards for task forces that the FBI leads. These task forces often include state and local officers and follow DOJ standards in their task force casework.
- *Sponsoring studies on policing practices.* Elements within DOJ sponsor studies that are intended to help state and local law enforcement address policing challenges. (These studies do not necessarily represent the official position or policies of DOJ.) One such product, a report focused on the use of body-worn cameras by police, was published in 2014.⁷³ DOJ also supported the production and 2013 release of a planning guide for managing large-scale security events.⁷⁴
- *Providing training.* In 2014, responding to circumstances in Ferguson, MO, DOJ developed a national initiative to enhance trust between the police and public. According to DOJ, among other things the initiative will involve a “substantial investment in training.”⁷⁵ More routine examples of training are sponsored by DOJ’s National Institute of Justice, which offers training to state and local law enforcement on a wide variety of topics.⁷⁶

Notably, DOJ sets policies for its own agencies that can be binding, but guidance issued by the DOJ to police forces around the country may be just that—guidance. As such, some may be skeptical as to the true impact of DOJ as a policy setter for nationwide policing.

DOJ as Convener

DOJ brings together representatives from law enforcement agencies and local communities to discuss policing issues. Its Community Relations Service (Service) plays a pivotal role in this and

⁷¹ Ibid., p. 1.

⁷² Available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>. See also U.S. Department of Justice, “Memorandum for the Heads of Department Components: The Attorney General’s Guidelines for Domestic FBI Operations,” press release, September 29, 2008. For a broader discussion see Emily Berman, *Domestic Intelligence: New Powers, New Risks*, Brennan Center for Justice at New York University School of Law, 2011, pp. 8-9, 11.

⁷³ The report was supported by cooperative agreement number 2012-CK-WX-K028 awarded by the Office of Community Oriented Policing Services, U.S. Department of Justice. See Lindsay Miller, Jessica Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, (2014) Washington, DC: Office of Community Oriented Policing Services.

⁷⁴ The guide was supported by Grant No. 2012-ZC-BX-K001 awarded by the Bureau of Justice Assistance. See CNA Corporation, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies*, (2013) Washington, DC: Bureau of Justice Assistance.

⁷⁵ Department of Justice, Press Release, “Justice Department Announces National Effort to Build Trust Between Law Enforcement and the Communities They Serve,” September 18, 2014.

⁷⁶ See <http://www.nij.gov/training/pages/welcome.aspx>.

was sent to Ferguson, MO, after the shooting of Michael Brown.⁷⁷ The Service describes itself as a “[p]eacemaker” for community conflicts and tensions arising from differences of race, color, national origin, gender, gender identity, sexual orientation, religion and disability.⁷⁸ Geared toward conflict resolution strategies, it *does not* investigate or prosecute crimes, but rather opens discussions among elements within a community such as police, government officials, residents, and a wide variety of community groups (i.e., faith-based groups, businesses, and advocacy organizations). Additionally, the Service notes that it *does not* take sides in a dispute, impose solutions, assign blame, or assess fault.⁷⁹ Rather, it offers services geared toward the following:

- *Mediation.* Relying on structured in-person negotiations led by conflict resolution specialists, this process “is not used to determine who is right or who is wrong.” Mediation can result in “Memorand[ums] of Understanding, Mediation Agreement[s], Resolution[s], Proclamation[s], Collaborative Agreement[s], Community Pact[s], or Ordinance[s].”⁸⁰
- *Facilitation.* Conflict resolution specialists facilitate discussion among elements within particular communities. Such discussions can cover topics such as “race, police-community relations, perceived hate crimes, tribal conflicts, protests and demonstrations, and other issues that may be important for a community.”⁸¹
- *Training.* The Service provides nine programs that address racial and ethnic conflict and prevent and respond to violent hate crimes.⁸²
- *Consulting.* The Service offers “technical assistance, information on best practices, referrals, coaching, advice, and insight. For example, [the Service] might provide technical insight on the structure and function needed in order to establish a Human Relations Commission. Consulting services can help communities address police, community, or school conflicts.”⁸³

At the national level, DOJ can also convene law enforcement, policy, and academic experts to discuss issues of local importance. For example, DOJ’s Community Oriented Policing Office (COPS), cooperating with the Police Executive Research Forum (PERF), brought together a meeting of “police executives, DOJ officials, academics and other experts to discuss constitutional policing as a cornerstone of community policing” in December 2014.⁸⁴ COPS and PERF plan to publish the proceedings of the one day session as a resource for law enforcement. Also, as discussed above, DOJ has convened a task force on 21st Century Policing.

⁷⁷ Department of Justice, Press Release, “Statement by Attorney General Holder on the Ongoing Situation in Ferguson, Missouri,” November 25, 2014.

⁷⁸ See <http://www.justice.gov/crs>.

⁷⁹ *Ibid.*

⁸⁰ <http://www.justice.gov/crs/what-we-do/mediation>.

⁸¹ <http://www.justice.gov/crs/what-we-do/facilitation>.

⁸² <http://www.justice.gov/crs/what-we-do/training>.

⁸³ <http://www.justice.gov/crs/what-we-do/consulting>.

⁸⁴ Department of Justice, Press Release, “U.S. Department of Justice Convenes Constitutional Policing Session With Law Enforcement Leaders,” December 11, 2014.

DOJ as Funder

DOJ operates grant programs to assist state and local law enforcement in their efforts to control domestic crime. Two of the most prominent examples are

- *COPS grants*. The mission of the COPS program is to advance community policing in all jurisdictions across the United States. The COPS program awards grants to state, local, and tribal law enforcement agencies to advance the practice of community policing.⁸⁵
- *The Edward Byrne Memorial Justice Assistance Grant (JAG) program*. JAG provides funding to state, local, and tribal governments for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems in one or more of seven program purpose areas. The program purpose areas are (1) law enforcement programs; (2) prosecution and court programs; (3) prevention and education programs; (4) corrections and community corrections programs; (5) drug treatment and enforcement programs; (6) planning, evaluation, and technology improvement programs; and (7) crime victim and witness programs (other than compensation).⁸⁶

Policy Options for Congress

Policy makers might consider the pros and cons of several options if they want to help promote better police-community relations or increase law enforcement's accountability while promoting effective crime reduction. These options include (1) placing conditions on federal funding to encourage state and local governments to adopt policy changes; (2) expanding efforts to collect data on the use of force by law enforcement officers; (3) promoting the use of body-worn cameras; (4) taking steps to facilitate more investigations and prosecutions of deaths that result from excessive force; (5) promoting community policing activities through COPS grants; and (6) using the influence of congressional authority to affect the direction of national criminal justice policy.

Conditions on Federal Funding

As previously discussed, Congress does not have direct control over state and local law enforcement policies. However, Congress can attempt to influence these polices by placing conditions on grant programs that provide assistance to law enforcement. Policy makers commonly try to attach conditions to the JAG program in an attempt to influence state and local criminal justice policies.⁸⁷ JAG is a frequent target for such conditions because it is a formula

⁸⁵ U.S. Department of Justice, Community Oriented Policing Services Office, *About Community Oriented Policing Services Office*, <http://www.cops.usdoj.gov/Default.asp?Item=35>.

⁸⁶ For more information, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

⁸⁷ See for example (all bills are from the 113th Congress), H.R. 2644, the Reasonable Policies on Automated License Plate Readers Act; S. 597, the Gideon's Promise Act; H.R. 906 and S. 413, the Human Trafficking Reporting Act; H.R. 1447 and S. 2807, the Death in Custody Reporting Act of 2013; S. 1038 and H.R. 2851, the End Racial Profiling Act of 2013; and H.R. 3014, the Fresh Start Act of 2013.

grant program that provides funding to state and local governments for law enforcement purposes.⁸⁸ Congress might consider reducing a state and local law enforcement agency's allocation under the JAG program unless it adopts a certain policy change. While the majority of JAG funding for FY2009 to FY2012 was used for law enforcement programs, state and local governments also used their funding for other programs, such as “prosecution, court, and indigent defense”; “planning, evaluation, and technology improvement”; “prevention and education”; and “drug treatment and enforcement.”⁸⁹

The broad nature of the JAG program means that if Congress were to reduce a state or local government's allocation under it for not adopting a certain policy change, it could reduce funding for non-law enforcement related purposes. On the one hand, it could be argued that this would provide a strong inducement for states and local governments to adopt the policy change (e.g., state and local governments would comply with the requirement because they would not want to lose funding for other important programs). On the other hand, it could penalize agencies (e.g., the correctional department or prosecutors and public defenders offices) that have no control over whether law enforcement agencies adopt the policy change. Also, some allocations (e.g., for law enforcement agencies serving small jurisdictions) might not be large enough to convince law enforcement agencies to comply with the requirement, especially if the cost of complying exceeded the agency's allocation.

Policy makers might also consider making state and local law enforcement agencies ineligible to apply for funding under competitive grant programs that provide funding for law enforcement unless they adopt a certain policy. This option might be effective for bringing about changes in state and local law enforcement policy because law enforcement agencies might lose access to significant sources of federal funding unless they comply with the condition(s). Also, unlike a formula grant program where each law enforcement agency can only apply for its allocated amount, law enforcement agencies can apply for an amount of funding equal to its needs. For example, a small law enforcement agency might only be eligible to receive \$15,000 under the JAG program, but under the Community Oriented Policing Services (COPS) hiring program, it could apply for up to \$125,000 to hire a new officer. However, making some law enforcement agencies ineligible to apply for funding would not provide an incentive to change for those agencies that do not wish to apply for a grant under the program.

Expanding Efforts to Collect Data on Police Use of Force

As previously discussed, there is a lack of comprehensive and reliable data on law enforcement's use of force. Policy makers may have an interest in collecting more comprehensive data to help them understand when and against whom law enforcement is using force, which could help

⁸⁸ For more information on how allocations are calculated under the JAG program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

⁸⁹ The Bureau of Justice Assistance reported that 64% of JAG funding was used for law enforcement programs between FY2009 and FY2012. The remaining funds were used for prosecution, court, and indigent defense (9%); planning, evaluation, and technology improvement (9%); prevention and education (6%); drug treatment and enforcement (5%); corrections and community corrections (5%); and crime victim and witness protection (2%). Laura Wyatt, *Grant Activity Report: Justice Assistance Grant (JAG) Program, April 2012-March 2013*, U.S. Department of Justice, Office of Justice Program, Bureau of Justice Assistance, Washington, DC, p. 2, https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf.

formulate policy. More complete data could also help law enforcement agencies develop best practices about when to use force and how much force to use.

There are several issues for policy makers to consider if Congress wants the federal government to expand use of force data collection efforts. The first question might be how much data should the federal government collect? Should it only collect data in cases where a law enforcement officer kills someone, or should it collect data on all use of force incidents? In the latter option, how would “use of force” be defined? BJS noted the difficulty with defining “use of force,” “excessive force,” and “excessive use of force” the last time Congress required DOJ to collect these data. Limiting data collection efforts to instances where a law enforcement officer engages in an action that results in someone’s death might be easier to define, thereby making it easier to collect reliable data, but it omits data on many other use of force incidents. As one expert has noted, “[e]very study that I’m aware of shows that most of the people who are shot by the cops survive and most of the time when cops shoot the bullets don’t hit. If your statistics look just at dead bodies you’d be under-counting it by 85 percent. If the cops are shooting, we need to [know] when they are shooting, not just when they kill somebody with the bullets.”⁹⁰

Another issue is how the federal government would collect police-involved shootings or use of force data. Congress could consider requiring the FBI to collect the data on use of force incidents through the UCR. However, participation in the UCR is voluntary, and if law enforcement agencies under-report justifiable homicides to the UCR, they might also under-report use of force incidents.

Congress could consider making data submission on use of force incidents a condition of receiving federal funding. Congress recently reauthorized the Death in Custody Reporting program (P.L. 113-242). States are required to submit data on certain *deaths*, or face losing up to 10% of their JAG funding. Because states are only required to submit data on deaths, data on all use of force incidents are not captured.

Even if Congress were to make submitting use of force data a requirement to receive federal funding, there still might be questions about the reliability of the data. There is no guarantee that law enforcement agencies would submit reliable data, especially if they are reluctant to report it in the first place. Even if Congress put in place a requirement for agencies to submit *reliable* data, how would it be verified? Would the FBI have the resources to verify that all law enforcement agencies reported all of the incidents where their police officers used force? Also, some law enforcement agencies might forgo federal funding rather than report the data.

Congress might consider getting states more involved in the process of collecting data on the use of force. Policy makers could consider making a state and all jurisdictions in it ineligible for federal law enforcement funding if it does not pass a law requiring all law enforcement agencies in the state to report use of force data and establish a program to collect the data and report it to DOJ. States would have to oversee fewer law enforcement agencies than DOJ would if it were solely responsible for collecting the data. State government agencies might have more knowledge of police-involved shootings in the state, so it is possible that police-involved shooting data would be more complete if it were collected by the state. It seems improbable that state agencies would be aware of all, or even most, of the instances where law enforcement officers used force,

⁹⁰ Wesley Lowery, “How Many Police Shootings a Year? No One Knows,” *Washington Post*, September 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>.

so this option might still result in incomplete use of force data. Also, this option might be considered too coercive because some jurisdictions might not be eligible to receive federal funding if the state did not act.

A potentially less coercive option would be to require BJS to conduct an annual survey of law enforcement agencies to collect data on their use of force. However, since law enforcement agencies would not have to respond to the survey, it is possible that the results would underestimate the number of officer-involved shootings or use of force incidents.

Congress could also consider providing more funding to the CDC to expand the NVDRS to all 50 states. This program has the benefit of not trying to induce states to submit data to the federal government; the CDC collects the data on its own. However, it requires the federal government to provide funding to sustain the program—unlike the other options discussed above, which place no requirements on Congress to fund a program to collect data. Also, it only collects data on deaths, not on all use of force incidents.

Promoting the Use of Body-Worn Cameras

Body-worn cameras (BWCs) are mobile cameras that allow law enforcement officers to record what they see and hear. They can be attached to a helmet, a pair of glasses, or an officer's shirt or badge. The Administration requested \$30 million for FY2016 to help law enforcement agencies purchase BWCs.⁹¹

There are several perceived benefits to the use of BWCs by law enforcement officers. One of the primary perceived benefits is that they are expected to have a civilizing and deterrent effect on both officers and citizens, resulting in fewer citizen complaints, less use of force by officers, and fewer assaults on officers. What little research exists on the effects of BWCs suggests that they result in fewer citizen complaints and less use of force by officers.⁹² For instance, an oft-cited study on the use of BWCs by officers in the Rialto (California) Police Department found that following the implementation of the BWC program, citizen complaints against the police decreased 88% and use of force incidents decreased 60%.⁹³ However, it is not clear whether the decreases in citizen complaints and use of force were the result of improved citizen behavior, improved officer behavior, or other factors. Decreases in citizen complaints could be the result of citizens filing fewer frivolous complaints because they know their encounters with officers were recorded. In addition, in instances where citizens file complaints against officers, research suggests that BWCs may facilitate a quick resolution.

It has also been theorized that BWCs could increase transparency and the perception of police legitimacy. Another theory is that they could provide enhanced opportunities for police training. The research on BWCs, however, has not sufficiently studied these claims.

⁹¹ U.S. Department of Justice, Office of Justice Programs, *FY2016 Performance Budget*, p. 151.

⁹² For a review of the current research on BWCs, see Michael D. White, *Police Officer Body Worn Cameras: Assessing the Evidence*, U.S. Department of Justice, Office of Justice Programs, Washington, DC, 2014, <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

⁹³ Tony Farrar, *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*, Police Foundation, Washington, DC, March 2013, <http://www.policefoundation.org/content/body-worn-camera>.

Congress could consider authorizing a grant program that would provide funding for law enforcement agencies to purchase BWCs. One potential model for such a program would be the Matching Grant Program for Armor Vests. The program provides grants to state, local, and tribal governments to help purchase armor vests for use by law enforcement officers and court officers. Grants under the program cannot pay for more than 50% of the cost of purchasing a new armor vest. Before authorizing a BWCs funding program, policy makers may consider the following issues:

- How much would it cost to supply BWCs to all law enforcement agencies? There is no reliable count on how many law enforcement agencies are currently using BWCs, but the Police Executive Research Forum (PERF) surveyed 500 law enforcement agencies and found that 25% of responding agencies reported that they used BWCs.⁹⁴ BJS reports that there are approximately 18,000 law enforcement agencies in the United States.⁹⁵ This could mean that at least 13,500 law enforcement agencies would need to equip their officers with BWCs. However, it is not known how many officers are employed by law enforcement agencies that do not currently use them. A market survey conducted by the National Institute of Justice shows that BWCs can cost anywhere from \$120 to \$1,000.⁹⁶ The median price of a BWC included in the survey was \$499.
- Should all law enforcement officers be required to wear BWCs? For example, should officers in law enforcement agencies that serve small jurisdictions with relatively low crime rates be required to wear them? Would it be more effective to allocate funding to outfit officers in urban and suburban jurisdictions with BWCs?
- There are costs to law enforcement agencies beyond the cost of purchasing BWCs. For example, there would be maintenance and replacement costs for the BWCs and law enforcement agencies would have to pay to store and manage the data generated by BWCs. Would Congress provide grant funding to cover these costs? If not, would this discourage law enforcement agencies from purchasing BWCs for their officers?
- There may also be concerns about whether BWCs could invade citizens' privacy. BWCs could potentially record what officers see when they enter someone's home as well as their interactions with bystanders, suspects, and victims in sometimes stressful situations. The American Civil Liberties Union, which supports the use of BWCs, believes that it is necessary to establish strong policies regarding the use of BWCs so that they do not become another form of public surveillance.⁹⁷ Law enforcement agencies that outfit their officers with BWCs might also have to develop policies about, among other things, which interactions

⁹⁴ Only 50% of the law enforcement agencies that received the survey responded. The Police Executive Research Forum, *Guidelines to Help Formulate a Model Policy for an Evolving Technology: Body-Worn Cameras*, http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/presentation%20-%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf.

⁹⁵ Bureau of Justice Statistics, *Local Police*, <http://www.bjs.gov/index.cfm?ty=tp&tid=71>.

⁹⁶ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Body-Worn Cameras for Criminal Justice: Market Survey*, version 1.0, March 2014, <https://www.hsd.org/?view&did=754782>.

⁹⁷ Jay Stanley, *Police Body-Mounted Cameras: With the Right Policies in Place, A Win for All*, American Civil Liberties Union, October 2013, p. 1, https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf.

with the public will be recorded, how long the video will be stored, who would have access to it, and whether videos would be distributed to the public.

Facilitating the Investigation and Prosecution of Excessive Force

The decisions of grand juries in Missouri and New York not to indict the police officers responsible for the deaths of Michael Brown and Eric Garner have raised questions about whether the grand jury system favors police and if the system can hold officers accountable for civilian deaths.⁹⁸ There are concerns that local prosecutors work too closely with police officers, which can affect their ability to objectively evaluate cases of police-involved shootings.⁹⁹ Part of the problem stems from the fact that prosecutors must maintain a working relationship with the very officers they are expected to prosecute.¹⁰⁰ Policy makers might want to consider ways to use federal authority to promote more accountability for deaths resulting from police officers' actions.

One option Congress could consider is amending 18 U.S.C. §242 to remove the requirement that federal prosecutors must show that an officer had the specific intent to deprive someone of his or her civil rights. This could be done by amending §242 to employ a “reckless disregard” standard. This would allow DOJ to prosecute not only officers who intentionally violated an individual’s constitutional rights, but also those who use force in a reckless manner, thereby likely increasing the number of prosecutions of deadly force cases. This option might help promote a sense of greater police accountability because police-involved shootings could be investigated and prosecuted by DOJ. This may help counteract the perception that police officers are being investigated by their friends and colleagues. However, this option may also raise concerns about state sovereignty. To wit, does Congress want to shift more responsibility for maintaining police accountability from state and local agencies to the federal government?

Another option might be to promote the use of special or independent prosecutors to investigate cases of police-related fatalities. Congress could make it a condition of receiving federal funding that states have a procedure in place whereby the state or local government can appoint a special or independent prosecutor in instances of police-involved shootings. If Congress chooses to pursue this option, it may consider several policy questions:

- What event would trigger the appointment of a special prosecutor? Because many excessive force cases are initially investigated internally by the local police department, there should be a clear mechanism in place to determine when a special prosecutor would be appointed.
- Should such a policy require states to appoint a special prosecutor in all police-involved shooting cases or should the appointing authority have the discretion to decide when to appoint a special prosecutor? Requiring states to appoint a special prosecutor in all cases might reassure the public that an impartial investigation is being conducted; however, it might also be viewed as an undue financial burden on the states.

⁹⁸ James C. McKinley, Jr. and Al Baker, “Grand Jury System, With Exceptions, Favors the Police in Fatalities,” *The New York Times*, December 7, 2014, http://www.nytimes.com/2014/12/08/nyregion/grand-juries-seldom-charge-police-officers-in-fatal-actions.html?_r=0.

⁹⁹ *Ibid.*

¹⁰⁰ John V. Jacobi, *Prosecuting Police Misconduct*, 2000 WIS. L. REV. 789, 803-04 (2000).

- How would special prosecutors be chosen: by the governor, the state attorney general, the presiding judge?
- From which office would special prosecutors be chosen? They might be appointed from a different locality in the state, from the state attorney general's office, or from the private sector.

Congress may grapple with these and other questions when attempting to alter states' criminal justice systems to promote increased police accountability.

Promoting Community Policing

Community policing is viewed as one potential avenue to repairing relationships between law enforcement agencies and the communities they serve. Unlike providing grants for expanding the use of BWCs, Congress has already established a grant program to promote community policing: the Community Oriented Policing Services (COPS) program. Under the COPS program, Congress can appropriate funding for grants to state, local, and tribal law enforcement agencies to “hire and train new, additional career law enforcement officers for deployment in community-oriented policing.”¹⁰¹

One issue with using the COPS program to promote community policing is that there is no single definition of “community policing.” It is notable that the authorizing legislation for the COPS program does not contain a definition of “community policing.” Two scholars, in their review of trends in policing, note that community policing is “a catchphrase that has been used to describe a potpourri of different strategies” and that “one complication in determining the extent to which [community policing] has transformed policing is determining exactly what it is.”¹⁰² The COPS Office states that community policing is a “law enforcement philosophy that focuses on community partnerships, problem-solving and organizational transformation.”¹⁰³ However, some critics argue that if community policing is only a philosophy, it is nothing more than an “empty shell.”¹⁰⁴ All of this is to say that if policy makers want to promote “community policing,” it is not clear what that entails, and before providing grants to law enforcement agencies to promote community policing, policy makers may need to decide what they want “community policing” to be.

There may be some questions about whether COPS grants convince law enforcement agencies to give up aggressive policing tactics and move toward community policing. During the mid- to late 1990s, the COPS Office awarded billions of dollars in grants for law enforcement agencies to hire officers to engage in community policing.¹⁰⁵ However, over this same period of time there was continued growth in use of Special Weapons and Tactics (SWAT) teams by law enforcement

¹⁰¹ 42 U.S.C. §3796dd(b)(2).

¹⁰² Edward R. Maguire and William R. King, “Trends in the Policing Industry,” *Annals of the American Academy of Political and Social Science*, vol. 593 (May 2004), p. 23.

¹⁰³ U.S. Department of Justice, Community Oriented Policing Services Office, *About the Community Oriented Policing Services Office*, <http://www.cops.usdoj.gov/Default.asp?Item=35>.

¹⁰⁴ Gary W. Cordner, “Community Policing: Elements and Effects,” in *Critical Issues in Policing*, ed. Roger G. Dunham and Geoffrey P. Alpert, 6th ed. (Long Grove, ILL: Waveland Press, 2010), p. 433.

¹⁰⁵ Between FY1995 and FY1999, Congress appropriated approximately \$6 billion for the COPS hiring program. See CRS Report RL33308, *Community Oriented Policing Services (COPS): In Brief*, by Nathan James.

agencies nationwide.¹⁰⁶ Research on SWAT teams indicates that many law enforcement agencies believe they play an important role in community policing strategies.¹⁰⁷ In addition, scholars argue that “community policing” is just a way for law enforcement agencies to present their old ways in a new package. Two scholars note, “[law enforcement agencies] are managing to reconstitute their image away from the citizen-controller paradigm based in the autonomous legal order and towards a more comforting Normal Rockwell image—police as kind, community caretakers.”¹⁰⁸ They contend that community policing is more about police transforming their image rather than the substance of their work.

The COPS Office notes that the majority of police recruits receive their training in academies with a stress-based military organization (e.g., a “boot camp”) that prepares young recruits for “combat” and emphasizes the crime fighting and action-oriented aspects of policing.¹⁰⁹ A stress-based approach to training officers does not always “lend itself to the philosophical underpinnings of community policing, even when there is an effort to incorporate community policing and collaborative problem solving into the curriculum.”¹¹⁰ Research on training for law enforcement careers suggests that law enforcement agencies might not be recruiting candidates that would be well-suited for community policing activities. Recruits might be attracted to police work because they want to focus on honing their skills in shooting, driving, and defensive tactics rather than acquiring knowledge about crime causation, diversity, and the law.¹¹¹ Also, even if recruits are given formal training in the skills needed for community policing, the effect of those lessons might be minimized by the informal lessons the recruit learns at the academy or during their first years of service.¹¹² Scholars note, “[t]he informal messages may be so salient that they may counteract the formal curriculum. The new police training may not be fully effective until the [community policing] philosophy is fully integrated into the operating environments of police agencies, their organizational goals, and the larger police culture.”¹¹³

Congress could try to promote community policing by providing funding for COPS hiring grants. However, there appear to be some limitations to how much influence COPS grants can have on re-orienting law enforcement agencies toward community policing. Before allocating more funding for COPS hiring grants, policy makers might consider whether there need to be clearer expectations for how law enforcement agencies use the officers hired with the grants, or at least some limitations on COPS-funded officers’ activities.

¹⁰⁶ Peter B. Kraska, “Militarization and Policing—Its Relevance to 21st Century Police,” *Policing: A Journal of Policy and Practice*, vol. 1, no. 4 (December 2007), p. 6.

¹⁰⁷ Peter B. Kraska and Victor E. Kappeler, “Militarizing American Police: the Rise and Normalization of Paramilitary Units,” *Social Problems*, vol. 44, no. 1 (February 1997), p. 13.

¹⁰⁸ Victor E. Kappeler and Peter B. Kraska, “A Textual Critique of Community Policing: Police Adaption to High Modernity,” *Policing: An International Journal of Policing Strategies & Management*, vol. 21, no. 2 (1998), p. 306.

¹⁰⁹ Karl W. Bickel, “Recruit Training: Are We Preparing Officers for a Community Oriented Department,” *Community Policing Dispatch, the e-Newsletter of the COPS Office*, vol. 6, no. 6 (June 2013), http://cops.usdoj.gov/html/dispatch/06-2013/preparing_officers_for_a_community_oriented_department.asp.

¹¹⁰ *Ibid.*

¹¹¹ Allison T. Chappell, Lonn Lanza-Kaduce, and Daryl H. Johnston, “Law Enforcement Training: Changes and Challenges,” in *Critical Issues in Policing*, ed. Roger G. Dunham and Geoffrey P. Alpert, 6th ed. (Long Grove, IL: Waveland Press, 2010), p. 56.

¹¹² *Ibid.*, pp. 57-58.

¹¹³ *Ibid.*, p.63.

Part of the issue is changing the culture in law enforcement agencies, which is harder to influence. Congress cannot remove police chiefs or sheriffs that will not, or only half-heartedly, endorse a community policing orientation for their offices. Even if Congress were to increase appropriations for the COPS program and flood the ranks of local law enforcement agencies with COPS-funded officers who believe in the community policing paradigm, those officers might not stay with the agency long enough to affect any change if the organization's goals and culture do not align with their own views. Congress could also consider providing funding to the COPS Office to do more training and host seminars on the importance of using community policing practices to try to engender trust between law enforcement and citizens. Policy makers might also consider using non-legislative measures, such as the influence of their office (the proverbial "bully pulpit"), to work with law enforcement agencies in their states and districts to bring about changes in their approach to policing.

Non-legislative Measures

In addition to the legislative measures outlined above, policy makers may also consider ways to use Congress's "soft" power (i.e., non-legislative influence) to bring about changes in law enforcement-community relations. For example, Congress might continue to hold hearings on issues related to law enforcement-community relations, racial discrimination in the criminal justice system, DOJ's role in assisting law enforcement with adopting more effective policing strategies, or how law enforcement officers use force. Policy makers could continue to give speeches about the importance of improving trust in law enforcement and meet with local officials to discuss what they are doing to improve law enforcement services. Policy makers might also consider meeting with community groups to get their views on what, if any, reforms need to take place and to keep them engaged in promoting efforts to reform law enforcement practices.

Non-legislative congressional influence could serve to keep law enforcement-community relations in the national spotlight and keep pressure on state and local law enforcement agencies to improve their relationships with the public. To some extent, efforts to change the way that law enforcement officers interact with citizens must come from changes within police departments and sheriff's offices, and these changes might only be brought about through grassroots movements. Congress might be able to support these movements by keeping the issue of citizens' trust in law enforcement in the national consciousness.

Author Contact Information

Nathan James, Coordinator
Analyst in Crime Policy
njames@crs.loc.gov, 7-0264

Jerome P. Bjelopera
Specialist in Organized Crime and Terrorism
jbjelopera@crs.loc.gov, 7-0622

Kristin Finklea
Specialist in Domestic Security
kfinklea@crs.loc.gov, 7-6259

Natalie Keegan
Analyst in American Federalism and Emergency
Management Policy
nkeegan@crs.loc.gov, 7-9569

Sarah A. Lister
Specialist in Public Health and Epidemiology
slister@crs.loc.gov, 7-7320

Lisa N. Sacco
Analyst in Illicit Drugs and Crime Policy
lsacco@crs.loc.gov, 7-7359

Richard M. Thompson II
Legislative Attorney
rthompson@crs.loc.gov, 7-8449