

Senate Law Enforcement Reform Study Committee

**POLICE USE OF FORCE –
PENDING FEDERAL LEGISLATION AND
RECENTLY ENACTED STATE LEGISLATION**

I. Pending Federal Legislation regarding Police Use of Force

A. [The Just and Unifying Solutions to Invigorate Communities Everywhere \(“JUSTICE”\) Act of 2020 \(S.3985\)](#)

Sponsored by – Sen. Tim Scott (R-SC) (Introduced 6/17/2020)

Status – Pending in the Senate. A procedural vote [blocked debate on the bill](#) on 6/24/2020.

Brief overview – Presented by Senate Republicans, the JUSTICE Act of 2020 provides for various reforms related to law enforcement. Regarding the specific issue of police use of force, the bill would require state and local governments that are recipients of certain federal funding to develop policies to prohibit the use of chokeholds by law enforcement except when deadly force is authorized. The U.S. Attorney General would also be required to develop such a policy at the federal level. The bill also creates grant programs related to body-worn cameras by law enforcement officials.

The bill also provides for the Attorney General – in consultation with relevant state and local law enforcement agencies, labor organizations, professional law enforcement organizations, and mental health organizations – to develop training curricula in: (A) alternatives to use of force and de-escalation tactics; and (B) safely responding to a person experiencing a behavioral health crisis, including techniques and strategies that are designed to protect the safety of the person experiencing the behavioral health crisis, law enforcement officers, and the public. The Attorney General will establish a process to certify public and private entities that offer these courses and publish a list of state and local law enforcement agencies that employ officers who have successfully completed the course. The bill also provides for certain grants to be made available to state and local governments to pay for the costs associated with this training.

Similarly, the bill includes provisions related to training law enforcement officers on the duty to intervene when another officer is engaged in excessive use of force and provides for the Attorney General to make grants available to state and local law enforcement agencies to pay for the costs associated with such training. The Attorney General will also publish a list of state and local law enforcement agencies that employ officers who have successfully completed this course.

This bill also includes the “George Floyd and Walter Scott Notification Act,” which would require state and local governments that receive certain federal funds to report to the [National Use-of-Force Data Collection](#) on an annual basis, on incidents regarding use of force by a law enforcement officer.

B. [George Floyd Justice in Policing Act of 2020 \(H.R. 7120\)](#)

Sponsored by – Rep. Karen Bass (D-CA-37) (Introduced 6/08/2020)

Status – Pending in the Senate. 7/20/2020 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 490.

Brief overview – Presented by members of Congress with the Congressional Black Caucus in the lead (Rep. Bass is the Chair), this bill provides for a variety of reforms for federal, state, and local law enforcement. On the specific issue of police use of force, the bill provides for each federal, state, tribal,

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and local law enforcement agency to report data to the U.S. Attorney General regarding, among other things, instances where law enforcement officers used deadly force. States will not receive certain federal funding if the state has not ensured, to the satisfaction of the Attorney General, that the state and each local law enforcement agency of the state is in substantial compliance with these reporting requirements.

The bill also seeks to enhance investigations into law enforcement use of force and states that the Attorney General may award grants to eligible states and Indian tribes to assist in implementing an independent investigation of law enforcement statute. The term “independent investigation of law enforcement statute” means a statute requiring an independent investigation in a criminal matter in which: (A) one or more of the possible defendants is a law enforcement officer; (B) one or more of the alleged offenses involves the law enforcement officer’s use of deadly force in the course of carrying out that officer’s duty; and (C) the non-federal law enforcement officer’s use of deadly force resulted in a death or injury.

Section 364 of the bill also includes the “Police Exercising Absolute Care With Everyone Act of 2020” or the “PEACE Act of 2020,” which provides that federal law enforcement officer may not use deadly force against a person unless: (A) the form of deadly force used is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person; (B) the use of the form of deadly force creates no substantial risk of injury to a third person; and (C) reasonable alternatives to the use of the form of deadly force have been exhausted. A federal law enforcement officer may not use any “less lethal” force unless: (A) the form of less lethal force used is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense; and (B) reasonable alternatives to the use of the form of less lethal force have been exhausted. When feasible, prior to using force against a person, the bill provides that a federal law enforcement officer must identify himself or herself as a federal law enforcement officer, and issue a verbal warning to the person that the federal law enforcement officer seeks to apprehend, which must: (A) include a request that the person surrender to the law enforcement officer; and (B) notify the person that the law enforcement officer will use force against the person if the person resists arrest or flees. The PEACE Act also conditions funds to state and local law enforcement agencies under the Byrne Justice Assistance Grant Program on a law being put into effect that satisfies these requirements regarding the standards for use of force.

The Justice in Policing Act of 2020 also includes provisions regarding certain requirements for federal law enforcement officers to wear body cameras and adds requirements regarding the period of time for which body camera footage must be retained before it can be destroyed. The bill also provides for certain individuals to have the right to inspect the body camera footage. Recipients of certain grants will also be required to expand the use of body cameras.

C. [Police Accountability Act of 2020 \(H.R. 5777\)](#)

Sponsored by – Rep. Henry C. (“Hank”) Johnson, Jr. (D-GA-4) (Introduced 02/06/2020)

Status – Referred to the House Committee on the Judiciary on 2/6/2020

Brief overview – This bill would provide that a state or local law enforcement officer of a public agency that receives certain federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 who engages in any conduct in the line of duty that, were the conduct to occur in federal jurisdiction, would constitute an offense under 18 U.S.C. § 1111 (murder) or 18 U.S.C. § 1112 (manslaughter) will be punished as is provided for that offense under that section.

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D. [Law Enforcement Trust and Integrity Act of 2019 \(S. 3063\)](#)

Sponsored by – Sen. Benjamin L. Cardin (D-MD) (Introduced 12/17/2019)

Status – Pending in the Senate. 12/17/2019 Read twice and referred to the Committee on the Judiciary.

Brief overview – Among other things, this bill would provide for grants to state, local, and tribal governments and others entities for the study of management and operations standards for law enforcement agencies, including standards relating to administrative due process, residency requirements, compensation and benefits, use of force, racial profiling, early warning systems, juvenile justice, school safety, civilian review boards or analogous procedures, or research into the effectiveness of existing programs, projects, or other activities designed to address misconduct by law enforcement officers.

This bill would also require federal, state, and local law enforcement agencies to report data to the Attorney General on a number of law enforcement practices, including but not limited to instances where officers used deadly force. A state will not receive certain federal funding unless the state has ensured, to the satisfaction of the Attorney General, that each local law enforcement agency of the state is in substantial compliance with these reporting requirements.

E. [Eric Garner Excessive Use of Force Prevention Act of 2019 \(H.R. 4408\)](#)

Sponsored by – Rep. Hakeem S. Jeffries (D-NY-8) (Introduced 9/19/2019)

Status – Referred to the House Subcommittee on Crime, Terrorism, and Homeland Security on 10/28/2019

Brief overview – This bill would amend 18 U.S.C. § 242 (regarding the deprivation of rights under color of law) by adding at the end that section the following: “For the purposes of this section, the application of any pressure to the throat or windpipe which may prevent or hinder breathing or reduce intake of air is a punishment, pain, or penalty.” Under current law, 18 U.S.C. § 242 provides for the following criminal offense –

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

F. [Police Training and Independent Review Act of 2019 \(S. 1938\)](#)

Sponsored by – Sen. Tammy Duckworth (D-IL) (Introduced 06/20/2019)

Status – Pending in the Senate. 06/20/2019 Read twice and referred to the Committee on the Judiciary.

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Brief overview – This bill would provide for the U.S. Attorney General to make grants available for states to implement training requirements on fair and impartial policing and on de-escalation tactics, among other things. The bill also provides that, to be eligible for certain federal grant funds, a state must have enacted and have in effect an independent prosecution of law enforcement statute. An “independent prosecution of law enforcement statute” in this bill means a statute requiring an independent prosecution in a criminal matter in which: (A) one or more of the possible defendants is a law enforcement officer; (B) one or more of the alleged offenses involves the law enforcement officer’s use of deadly force in the course of carrying out that officer’s duty; and (C) the law enforcement officer’s use of deadly force resulted in a death or injury.

II. Recently Enacted State Legislation regarding Police Use of Force

A. California

1. [Carotid Restraints and Chokeholds Prohibited \(AB 1196\)](#)

Sponsored by – Assembly Member Mike Gipson (D)

Status – Approved by Gov. Gavin Newsom (D) on 9/30/2020

Brief overview – The bill prohibits law enforcement agencies from authorizing the use of a carotid restraint or chokehold by a peace officer employed by that agency. “Carotid restraint” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. “Choke hold” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

2. [Policy on Use of Force and Investigation of Incidents of Officer-Involved Shootings Resulting in Death of an Unarmed Civilian \(AB 1506\)](#)

Sponsored by – Assembly Member Kevin McCarty (D)

Status – Approved by Gov. Gavin Newsom (D) on 9/30/2020

Brief overview – The bill provides that, beginning on July 1, 2023, the state Attorney General will operate a Police Practices Division to, upon request of a local law enforcement agency, review the use of deadly force policies of that agency. The bill also provides that the state prosecutor will investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian and prepare and submit a written report that must include a detailed analysis and concision for each investigatory issue and a recommendation to modify the policies and practices of a law enforcement agency, if applicable. If criminal charges against the involved officers are warranted, the state prosecutor will initiate and prosecute the criminal action against the officer.

B. Colorado - [SB20-217 Enhance Law Enforcement Integrity](#)

Sponsored by – Sen. Leroy Garcia, Jr. (D) and Rep. Leslie Herod (D)

Status – Signed by Gov. Jared Polis (D) on 6/19/2020

Brief overview –

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Body Cameras

Requires all local law enforcement agencies and the Colorado state patrol to issue body cameras to their officers by July 2023. Creates inferences, presumptions, and sanctions for failing to activate or tampering with a body camera. All recordings of an incident must be released to the public within 21 days after an agency receives a complaint of misconduct.

Data Collection

Starting on July 1, 2023, the Division of Criminal Justice is required to issue an annual report of information that is reported to the Division by every law enforcement agency in the state. The required information to be reported to the Division includes:

- All use of force by its peace officers that results in death or serious bodily injury;
- All instances when a peace officer resigned while under investigation for violating department policy;
- All data relating to contacts conducted by its peace officers; and
- All data related to the use of an unannounced entry by a peace officer.

The Division must also maintain a statewide database with data collected in a searchable format and publish the database on its website. Any state or local law enforcement agency that fails to meet its reporting requirements is subject to suspension of its funding by its appropriating authority.

Protests and Demonstrations: Use of Force

In response to a protest or demonstration, law enforcement agencies and officers are prohibited from:

- Discharging kinetic impact projectiles and all other non- or less-lethal projectiles in a manner that targets the head, pelvis, or back;
- Discharging kinetic impact projectiles indiscriminately into a crowd; or
- Using chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse.

Civil Actions against LEOs

The bill allows a person who has a constitutional right secured by the bill of rights of the Colorado constitution that is infringed upon by a peace officer to bring a civil action for the violation. Qualified immunity is not a defense to the civil action. The bill requires a political subdivision of the state to indemnify its employees for such a claim. A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises.

Use of Force Standard

Requires peace officers, in carrying out their duties, to apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person. The bill also defines and prohibits chokeholds.

When physical force is used, a peace officer must:

- Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

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- Use only a degree of force consistent with the minimization of injury to others;
- Ensure that assistance and medical aid are rendered to any injured persons as soon as practicable; and
- Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

Officers are justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- The suspect poses an immediate threat to the peace officer or another person; and
- The force employed does not create a substantial risk of injury to other persons.

An officer is justified in using deadly force if the officer has an objectively reasonable belief that a lesser degree of force is inadequate and the officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

A peace officer must identify himself or herself as such and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

Peace Officer Duty to Intervene and Report

An officer is required to intervene when another officer is using unlawful physical force and is required to file a report regarding the incident. If a peace officer fails to intervene when required, POST may decertify the officer.

C. Connecticut – [HB 6004 Police Accountability](#)

Sponsored by - Aresimowicz (D); Stafstrom (D); Felipe (D)

Status – Signed by Gov. Ned Lamont (D) on 7/31/2020

Brief overview –

Police Decertification

Expands the reasons for which POST may cancel or revoke a police officer's certification to include conduct undermining public confidence in law enforcement or excessive force.

Crowd Management Policy

Requires POST, in consultation with specified entities, to adopt a uniform statewide policy for crowd managements by police officers. The policy must also establish guidelines for managing crowds in a manner that does the following:

- Protects individual rights and preserves the peace during demonstrations and civil disturbances;
- Addresses permissible and impermissible uses of force by a police officer and the type and amount of crowd management training that each officer must undergo, and
- Sets forth required documentation after any physical confrontation between a police officer and a civilian during a crowd management incident.

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Body Cameras and Dashcams

Expands the requirement to use body cameras to police officers in all state, city, and tribal law enforcement units; requires these officers to use dashboard cameras in police patrol vehicles; and authorizes \$4 million in GO bonds for a new grant program to fund related equipment and service purchases by cities.

Justified Use of Deadly Physical Force and Chokeholds

The bill narrows the circumstances under which an officer is justified in using deadly physical force and establishes specific conditions that must be met in those circumstances. Under current law, officers are justified in using deadly physical force when they reasonably believe it is necessary to:

- Defend themselves or a third person from the use or imminent use of deadly physical force; or
- Arrest a person they reasonably believe has committed or attempted to commit a felony that involved the infliction or threatened infliction of serious physical injury; or prevent the escape from custody of a person they reasonably believe has committed a felony that involved the infliction or threatened infliction of serious physical injury.

In these circumstances, the bill requires the officer's actions to be objectively reasonable given the circumstances. Further, in situations where an officer is making an arrest or preventing an escape, the bill places additional conditions on when deadly physical force may be used by requiring the officer to exhaust the reasonable alternatives to the use of deadly physical force; and reasonably believe that the force employed creates no substantial risk of injury to a third party.

The bill further narrows the circumstances under which deadly physical force may be used by eliminating the justification for using such force in a situation when the officer reasonably believes a person threatens infliction of serious physical injury, both when making an arrest or preventing an escape from custody.

The bill establishes factors to consider when evaluating whether an officer's use of deadly physical force was objectively reasonable, including whether:

- The person possessed or appeared to possess a deadly weapon;
- The officer engaged in reasonable de-escalation measures before using deadly physical force; and
- Any of the officer's conduct led to an increased risk of the situation that led up to the use of such force.

Limits on the Use of Chokeholds or Similar Restraints

The bill sets a specific standard by limiting when an officer may use a chokehold or similar method of restraint (i.e. those applied to the neck area, or that otherwise impedes the ability to breathe, or that restricts blood circulation to the brain of another person) to instances where the officer reasonably believes the use of these restraints is necessary to defend himself or herself from the use or imminent use of deadly physical force.

Officers' Duty to Intervene and Report Use of Excessive Force

The bill requires any officer, while in his or her law enforcement capacity, to intervene and attempt to stop another police officer from using force that the witnessing officer objectively knows is unreasonable, excessive, or illegal, unless the witnessing officer is operating in an undercover capacity at the time. Any police or correction officers who fails to intervene may be prosecuted and punished for the same acts as the officer who used unreasonable, excessive, or illegal force. The bill also requires

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any officer who witnesses, or is otherwise aware of, another police officer using illegal force, to report the incident to the law enforcement unit that employs the officer who used the force.

Office of the Inspector General

The bill establishes the Office of the Inspector General (OIG) as an independent office within the Division of Criminal Justice. The bill requires OIG to:

1. Investigate peace officers' use of force;
2. Prosecute any case in which the inspector general determines the use of force was not justified or when an officer fails to intervene in or report such an incident; and
3. Make recommendations to POST concerning censure and suspension, renewal, cancellation, or revocation of a peace officer's certification.

D. Delaware – [HB 350 Aggravated Strangulation Crime](#)

Sponsored by - Chukwuocha (D); Cooke (D); Williams K (D)

Status – Signed by Gov. John Carney (D) on 8/13/2020

Brief overview – This bill creates the crime of Aggravated Strangulation. A person is guilty of Aggravated Strangulation if the person is a law enforcement officer, and while acting within that capacity, knowingly or intentionally uses a chokehold on another person. A chokehold is only justifiable when the officer reasonably believes deadly force is warranted in order to protect the life of a civilian or officer. Aggravated Strangulation is a Class D felony punishable by up to 8 years in prison. If the officer using a chokehold causes serious physical injury or death to another person thereby elevating the crime to a Class C felony, punishable by up to 15 years in prison.

E. Hawaii – [Statewide Policies and Procedures regarding Use of Force \(HB 285\)](#)

Sponsored by – Rep. Scott Nishimoto (D)

Status – Approved by Gov. David Ige (D)

Brief overview – This bill authorizes the state's Law Enforcement Standards Board to review and recommend statewide policies and procedures relating to law enforcement, including the use of force. The bill also authorizes the Board to revoke certifications.

F. Iowa – [HB 2647 Use of Force](#)

Sponsored by – Rep. Matt Windschitl (R)

Status – Signed by Gov. Kim Reynolds (R) on 6/12/2020

Brief overview –

Prosecution by Attorney General

Authorizes the Attorney General to prosecute a criminal offense committed by a law enforcement officer arising from the actions of the officer resulting in the death of another, regardless of whether the county attorney requests the assistance of the Attorney General or decides to independently

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prosecute the criminal offense committed by the officer. If the Attorney General determines that criminal charges are not appropriate, the Attorney General is authorized to refer the matter to the Iowa Law Enforcement Academy Council to recommend revocation or suspension of the officer's certification.

Chokeholds

Provides that the use of a chokehold, as defined in the bill, by a peace officer while making an arrest is only justified when the person cannot be captured any other way and either of the following apply: the person has used or threatened to use deadly force in committing a felony; the peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

Training: De-escalation Techniques and Prevention of Bias

The bill requires a law enforcement agency to provide annual training to every officer on issues relating to de-escalation techniques and the prevention of bias. The Iowa Law Enforcement Academy is required to develop and disseminate training guidelines in consultation with certain parties including the Iowa Civil Rights Commission.

G. Nevada – [AB 2 Reasonable Use of Force](#)

Sponsored by - Assembly Committee of the Whole (28 Democrats/13 Republicans)

Status - Signed by Gov. Steve Sisolak (D) on 8/07/2020

Brief overview –

Reasonable Use of Force and Prohibits Chokeholds

Existing law provides that when a peace officer is arresting a person, the officer is prohibited from subjecting the person to more restraint than is necessary to arrest and detain the person. If the person flees or forcibly resists, the peace officer is authorized to use all means necessary to effect the arrest. Existing law also authorizes a peace officer to use a chokehold on another person only if: (1) the peace officer's agency authorizes the use of a chokehold; and (2) the officer completed training regarding the proper use of a chokehold and is certified for its use.

Section 2 of this bill provides that when a peace officer is arresting a person and the person flees or forcibly resists, the officer is generally authorized to use only the amount of reasonable force necessary to effect the arrest.

Section 4 of this bill prohibits an officer from: (1) using a chokehold on another person; or (2) placing a person who is in custody in any position that compresses his or her airway or restricts his or her ability to breathe. Section 4 also requires a peace officer to monitor any person who is in custody for any signs of distress and to take any actions necessary to place such a person in a recovery position if he or she appears to be in distress or indicates that he or she cannot breathe. Section 4 further requires an officer to ensure that medical aid is rendered to any person who is injured by the use of physical force by the peace officer.

Officers' Duty to Intervene and Report Use of Excessive Force

Section 5 of this bill requires every officer to: (1) intervene to prevent or stop another officer from using unjustified physical force if the officer observes or reasonably should have observed the use of such

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unjustified physical force and it is safe for the officer to intervene; and (2) if the officer who observes the use of unjustified physical force is a supervisor of the officer using the unjustified physical force, issue a direct order to stop the use of such physical force.

Section 5 also requires any officer who observes the use of unjustified physical force to report the observation to his or her immediate supervisor. Section 5 further requires each law enforcement agency to train its peace officers on the duty to intervene in the use of unjustified physical force and the reporting of any observation of the use of unjustified physical force.

H. New Hampshire – [Law Enforcement Officers Reporting Misconduct; Chokeholds Prohibited Unless Use of Deadly Force is Justified \(HB 1645 – Act 12\)](#)

Sponsored by – Rep. Daryl Abbas (R)

Status – Signed by Gov. Chris Sununu (R) on 7/16/2020

Brief overview – This bill provides that, effective January 1, 2021, it is the duty of any law enforcement officer who observes misconduct by another law enforcement officer to notify the chief law enforcement officer in his or her department in writing immediately or as soon as is practicable after observing such misconduct. “Misconduct” means assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code. Within 7 days of receiving such notification, the chief law enforcement officer shall notify the police standards and training council of such misconduct in writing. If the chief law enforcement officer is the subject of the misconduct report, the reporting officer shall report directly to the police standards and training council. No discriminatory, disciplinary, or retaliatory action shall be taken against any officer for any information given or disclosed by him or her in good faith in the course of making a report of misconduct. Any police department that receives a report of misconduct must timely conduct an investigation and reach a determination on the merits. After the investigatory entity determines that the evidence shows that the individual committed any acts of misconduct, the name of the individual and any act of misconduct must be disclosed to the Police Standards and Training Council.

The bill also prohibits the use of chokeholds by law enforcement officers, except in circumstances in which a law enforcement officer is justified in using deadly force when he reasonably believes such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force.

I. New Mexico – [SB 8 Body Cameras](#)

Sponsored by – Sen. Cervantes (D)

Status – Signed by Gov. Michelle Lujan Grisham (D) on 7/8/2020

Brief overview – This bill requires peace officers who routinely interact with the public to wear a body cameras while on duty. Law enforcement agencies are required to develop policies and procedures governing the use of these cameras, including requiring cameras be activated during calls for service or other law enforcement or investigative encounters between the officer and a member of the public, prohibiting deactivation of cameras until the end of the encounter, prohibiting the recording of general activity, requiring videos be retained by agencies for at least 120 days, and establishing disciplinary rules for officers who fail to operate their cameras in accordance with these policies or who manipulate

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or prematurely erase video recordings. The bill specifies that peace officers who fail to comply with these policies and procedures are liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence.

J. New York

1. [Creates the Office of Special Investigation \(S. 2574 - Act 95\)](#)

Sponsored by – Sen. Jamaal Bailey (D)

Status – Signed by Governor Andrew Cuomo (D) on 6/12/2020

Brief overview – This bill creates within the Office of the Attorney General an Office of Special Investigation, to investigate and, if warranted, to prosecute any alleged criminal offense or offenses committed (whether or not formally on duty) by a police officer or certain peace officers, concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of the police officer or peace officer or in which the Attorney General determines there is a question as to whether the death was in fact caused by an act or omission of such police officer or peace officer. If the Attorney General determines the incident does not meet the requirements for the Attorney General to have investigative authority and criminal jurisdiction pursuant to this law, the Attorney General must, as soon as practicable, provide written notice of that determination to the district attorney for the county in which the incident occurred.

The Office of Special Investigation must also issue a public report and post the report on its website when the Office initiates an investigation and: (A) the Office declines to present evidence to a grand jury or (B) the Office does present evidence to a grand jury, but the grand jury declines to return an indictment on any charges. The report will, to the extent that is possible and is lawful, provide the results of the investigation of the incident and include an explanation as to why the Office declined to present evidence to a grand jury and any recommendations for systemic or other reforms arising from the investigation.

The bill also includes annual reporting requirements for the Office of Special Investigation to provide information regarding matters investigated during that reporting period, including information on a number of topics, such as: the county and geographic location of each matter investigated; a description of the circumstances of each case; racial, ethnic, age, gender and other demographic information concerning the persons involved or alleged to be involved; information concerning whether a criminal charge or charges were filed against any person involved or alleged to be involved in such matter; the nature of such charges; and the status or, where applicable, outcome with respect to all such criminal charges.

2. [Creates the Law Enforcement Misconduct Investigative Office \(S. 3595 – Act 104\)](#)

Sponsored by – Sen. Kevin Parker (D)

Status – Signed by Governor Andrew Cuomo (D) on 6/16/2020

Brief overview – This law establishes the Law Enforcement Misconduct Investigative Office, under the Department of Law, with the mission of reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs and practices, including ongoing partnerships with other law enforcement agencies, of state and local law enforcement agencies with the goal of enhancing the effectiveness of law enforcement, increasing public safety, protecting civil

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liberties and civil rights, ensuring compliance with constitutional protections and local, state and federal laws, and increasing the public's confidence in law enforcement. The Deputy Attorney General appointed to head this office will receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse in any covered agency.

For state police agencies, the State Inspector General, the Metropolitan Transportation Authority Inspector General, and Port Authority Inspector General have their jurisdiction expanded to receive complaints of law enforcement misconduct related to use of excessive force, corruption, fraud, criminal activity, conflicts of interest, or abuse.

3. [Crime of Aggravated Strangulation \(A6144B – Act 94\)](#)

Sponsored by – Assemblyman Walter Mosley (D)

Status – Signed by Gov. Andrew Cuomo (D) on 6/12/2020

Brief overview – This bill provides that a person is guilty of aggravated strangulation when, being a police officer or a peace officer as defined by New York law, he or she commits the crime of criminal obstruction of breathing or blood circulation, or uses a chokehold or similar restraint, and causes serious physical injury or death to another person. Aggravated strangulation is a Class C felony, and the bill categories the offense as a Class C violent felony offense. Under New York law, Class C violent felony offenses are generally subject to a sentence of 3.5 years to 15 years.

4. [Immediate Reporting of the Discharge of Weapon When a Person Could be Struck by a Bullet \(A10608 – Act 101\)](#)

Sponsored by – Assemblyman N. Nick Perry (D); [Senate version S2575B](#) sponsored by Sen. Jamaal T. Bailey (D)

Status – Signed by Gov. Andrew Cuomo (D) on 6/15/2020

Brief overview – This bill provides that any law enforcement officer or peace officer who discharges his or her weapon while on duty or off duty under circumstances wherein a person could be struck by a bullet from the weapon, including situations wherein such officer discharges his or her weapon in the direction of a person, must verbally report the incident to his or her superiors within six hours of the occurrence of the incident and shall prepare and file a written report of the incident within forty-eight hours of the occurrence of the incident. The bill also states that nothing contained in this new section will prevent any officer from invoking his or her constitutional right to avoid self-incrimination.

5. [Reporting of Arrest-Related Deaths \(A10609 – Act 102\)](#)

Sponsored by – Assemblyman Joseph R. Lentol (D)

Status – Signed by Gov. Andrew Cuomo (D) on 6/15/2020

Brief overview – This bill requires the chief of every police department, each county sheriff, and the superintendent of state police to promptly report to the Division of Criminal Justice Services any arrest-related death, disaggregated by county, to be submitted within 6 months of the effective date and on an annual basis thereafter. The Division will make the information available to the public on its website. The Division must also submit to the Governor and the legislature an annual report of arrest-related deaths (i.e., a death that occurs while an individual is in law enforcement custody or during an attempt to establish custody including, but not limited to, deaths caused by any use of force). The Division's report must include: (A) the number of arrest-related deaths; (B) the race, ethnicity,

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age, and sex of the individual; (C) the zip code or location where the death occurred; and (D) a brief description of the circumstances surrounding the arrest-related death.

K. Oregon

1. Use of Force by Police Officers (HB 4203)

Sponsored by – House Speaker Tina Kotek (D) and Sen. Lew Frederick (D)

Status – Signed by Gov. Kate Brown (D) on 6/30/2020

Brief overview – This bill states that a peace officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person, unless the circumstance is one in which the peace officer may use deadly physical force as provided in O.R.S. §161.239. The bill also provides that it is not reasonable under any circumstance for a peace officer to knowingly use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person, unless the circumstance is one in which the peace officer may use deadly physical force.

The bill also requires the Board on Public Safety Standards and Training to adopt rules prohibiting the training of police officers and reserve officers to use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person, except as a defensive maneuver.

2. Duty of Police Officer regarding Prohibited Behavior (HB 4205)

Sponsored by – House Speaker Tina Kotek (D) and Senator Lew Frederick (D)

Status – Signed by Gov. Kate Brown (D) on 6/30/2020

Brief overview – This bill provides that, without regard to rank or assignment, a police officer or reserve officer must intervene to prevent or stop another police officer or reserve officer engaged in any act the intervening officer knows or reasonably should know is misconduct, unless the intervening officer cannot intervene safely. The bill defines “misconduct” to mean: (a) unjustified or excessive force that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement unit employing the offending officer; (b) sexual harassment or sexual misconduct; (c) discrimination against a person based on race, color, religion, sex, sexual orientation, national origin, disability or age; (d) a crime; or (e) a violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under O.R.S. § 181A.410.

A police officer or reserve officer who witnesses another police officer or reserve officer engaging in misconduct must report the misconduct to a supervisor as soon as practicable, but no later than 72 hours after witnessing the misconduct. Furthermore, the failure to intervene or report as required by this bill is grounds for disciplinary action against a police officer or reserve officer by the law enforcement unit employing the officer or for the Department of Public Safety Standards and Training to suspend or revoke the officer’s certification.

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The bill also provides that an employer may not discharge, demote, suspend or in any manner discriminate or retaliate against a police officer or reserve officer with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the officer intervened or reported as required by this bill, and an employer who violates this requirement commits an unlawful employment practice.

The bill also requires the Department of Public Safety Standards and Training to report at least annually to an appropriate committee of the Legislative Assembly on any rules adopted by the department implementing this new law.

3. [Use of Tear Gas by Law Enforcement \(HB 4208\)](#)

Sponsored by – House Speaker Tina Kotek (D) and Senator Lew Frederick (D)

Status – Signed by Gov. Kate Brown (D) on 6/30/2020

Brief overview – This bill provides that a law enforcement agency may not use tear gas for the purposes of crowd control except in circumstances constituting a riot, as described in O.R.S. § 166.015. Before using tear gas in circumstances constituting a riot, a law enforcement agency must, in the following order: (A) announce the agency’s intent to use tear gas; (B) allow sufficient time for individuals to evacuate the area; and (C) announce for a second time, immediately before using the tear gas, the agency’s intent to use tear gas.

4. [Use of Force and Impeding Normal Breathing or Circulation of Blood \(HB 4301\)](#)

Sponsored by – House Speaker Tina Kotek (D)

Status – Signed by Gov. Kate Brown (D) on 9/1/2020

Brief overview – This bill provides that a peace officer or corrections officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person[, unless the circumstance is one in which the peace officer may use deadly physical force as provided in ORS 161.239] except in circumstances in which physical force is justified under ORS 161.209 and 161.215.

This bill also provides statutory standards for the use of physical force and of deadly force.

L. Utah – [Peace Officer Amendments \(HB 5007\)](#)

Sponsored by – Rep. Sandra Hollins (D), Sen. Evan Vickers (R), and Sen. Luz Escamilla (D)

Status – Signed by Gov. Gary Herbert (R) on 6/25/2020

Brief overview – This bill prohibits the director of the Peace Officer Standards and Training Division from approving or recommending any curriculum or basic training which includes the use of chokeholds, carotid restraints, or any act that impedes the breathing or circulation of blood likely to produce a loss of consciousness, as a valid method of restraint.

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The bill also provides that a peace officer may not restrain a person by the application of a knee applying pressure to the neck or throat of a person. A peace officer who violates this law commits a third degree felony. If the violation results in serious bodily injury or loss of consciousness, it is a second degree felony, and if death results, it is a first degree felony. Such a violation will also be referred separately to the county or district attorney for review, and to the Peace Officer Standards and Training Council for investigation.

M. Vermont

1. [Racial Bias and Excessive Use of Force by Law Enforcement \(S. 219\)](#)

Sponsored by – Sen. Philip Baruth (Democrat/Progressive)

Status – Signed by Gov. Phil Scott (R) on 7/13/2020

Brief overview – Regarding police use of force, this bill requires that roadside stop data collected by law enforcement must also now include data regarding whether physical force was employed or threatened during the stop, and if so, the type of force employed and whether the force resulted in bodily injury or death. “Physical force” is defined for this section on data collection to mean the force employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions that constitutes a greater amount of force than handcuffing a compliant person.

The bill also amends the laws regarding unprofessional conduct parameters for law enforcement, to add to the categories of “Category B” misconduct, which means gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or if not defined by the agency’s policy, as defined by the policy of the Vermont Criminal Justice Training Council. This bill adds to the list of behaviors considered to be “Category B” misconduct the following: (1) placing a person in a prohibited restraint failing to intervene and (2) report to a supervisor when the officer observes another officer placing a person in a prohibited restraint or using excessive force. The term “prohibited restraint” for this section of the bill means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.

The bill also provides that a law enforcement officer acting in the officer’s capacity as law enforcement who employs a prohibited restraint (same definition as above) on a person that causes serious bodily injury to or death of the person shall be imprisoned for not more than 20 years or fined not more than \$50,000, or both.

The bill also requires the Department of Public Safety to equip all Department law enforcement officers who exercise law enforcement powers with a body camera or other video recording device on his or her person.

2. [Appropriate Use of Force, De-escalation Tactics, and Cross Cultural Awareness \(S. 119\)](#)

Sponsored by – Sen. Deborah Ingram (D)

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Status – Allowed to become law without signature of Gov. Phil Scott (R) on 10/7/2020

Brief overview – The bill provides that a law enforcement officer will only use the force objectively, reasonably, necessary, and proportional to effect an arrest, prevent an escape, or overcome resistance of a person that the officer has reasonable cause to believe has committed a crime or to achieve any other lawful law enforcement objective. The bill also provides standards for evaluating the reasonableness of use of force, including deadly force. The bill also requires the Department of Public Safety and the Executive Director of Racial Equality to report to the House and Senate Committees on Judiciary and Government Oversight regarding the development of a uniform, statewide model policy on the use of force.

N. Virginia

1. [Law Enforcement Misconduct \(SB 5024\)](#)

Sponsored by – Sen. L. Louise Lucas (D)

Status – Approved by Gov. Ralph Northam (D) on 10/21/2020

Brief overview – This bill authorizes the state Attorney General to bring a civil action for equitable and declaratory relief to end a pattern or practice by law enforcement officers that deprives persons of rights, privileges, or immunities secured under federal or state law. The bill also provides for the Division of Human Rights under the state’s Department of Law to receive complaints and inquire into incidents regarding what may be an unlawful pattern or practice by law enforcement.

On October 21, 2020, Gov. Northam [also approved HB 5072](#) (sponsored by Delegate Alfonso H. Lopez (D)), which contains the same provisions as SB 5024.

2. [Law Enforcement Officer and Failure to Intervene \(HB 5029\)](#)

Sponsored by – Delegate Dolores L. McQuinn (D)

Status – Approved by Gov. Ralph Northam (D) on 10/28/2020

Brief overview – This bill provides that any law enforcement officer who, while performing official duties, witnesses another officer engaging or attempting to engage in the use of excessive force against another person must intervene, when feasible, to end the use of excessive force or attempted use of excessive force, or to prevent further use of excessive force. The law enforcement officer must also render aid, as the circumstances permit, to any person injured as a result of the use of excessive force. A law enforcement officer who witnesses another officer engage in the use of excessive force must also report it according to the employing agency’s policies and procedures for reporting misconduct. An officer who violates these statutory requirements regarding intervention in and the reporting of incidents of excessive use of force will be subject to disciplinary action, including dismissal, detention, transfer, or decertification.

3. [Limiting Circumstances for Use of Neck Restraints \(HB 5069\)](#)

Sponsored by – Delegate Jennifer Carroll Foy (D)

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Status – Approved by Gov. Ralph Northam (D) on 10/28/2020

Brief overview – This bill provides that the use of a neck restraint by a law enforcement officer is prohibited unless the use of a neck restraint is immediately necessary to protect the officer or another person. In addition to any other penalty authorized by law, a law enforcement officer who knowingly violates this restriction on the use of neck restraints will be subject to disciplinary action, including dismissal, suspension, transfer, or decertification.

4. Civil Law Enforcement Review Boards (SB 5035)

Sponsored by – Sen. Ghazala F. Hashmi (D)

Status – Signed by Gov. Ralph Northam (D) on 10/28/2020

Brief overview – This bill authorizes the governing body of a locality to establish a law enforcement civilian oversight body to receive, investigate, and issue findings on complaints from civilians regarding conduct of law enforcement officers and civilian employees of the law enforcement agency serving that locality.

On October 28, 2020, Gov. Northam [also approved HB 5055](#), sponsored by Delegate Charniele L. Herring (D), which contains these same provision regarding law enforcement civilian oversight bodies.

5. Omnibus Police Reform Legislation (SB 5030)

Sponsored by – Sen. Mamie E. Locke (D)

Status – Approved by Gov. Ralph Northam (D) on 10/28/2020

Brief overview – This bill incorporates a number of reform measures, including banning the use of no-knock warrants. In regards to the topic of the use of force, the bill prohibits law enforcement from obtaining certain military property, including grenades and weaponized aircraft. The bill also incorporates the provisions of HB 5029, discussed above, regarding the requirement that law enforcement officers intervene in incidents of another officer engaging in excessive use of force. The bill also incorporates the restrictions on the use of neck restraints from HB 5069, also discussed a bove.