

REGIONAL IMPACTS TO LAW ENFORCEMENT

SB20-217

“USE OF FORCE BILL”



COLORADO
Department of Local Affairs



SAFERTOGETHER



“WHILE CACP SUPPORTS THE
INTENDED PHILOSOPHY OF SB20-217,
**MANY AGENCIES ARE LOOKING FOR
CLARIFICATION TO SECTIONS OF THIS
BILL** SO WE MAY CONTINUE TO DELIVER
PROFESSIONAL LAW ENFORCEMENT
SERVICES TO OUR RESPECTIVE
COMMUNITIES IN AN EQUITABLE
AND HONEST MANNER, WHILE
ENSURING PROTECTIONS FOR OFFICERS
WHO CONSISTENTLY MAINTAIN
PROFESSIONAL STANDARDS.”

—EAGLE CHIEF JOEY STAUFER



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FOREWORD

As the events of 2020 unfolded and Senate Bill 20-217 was passed in June, many managers and elected officials within our membership were asking questions of their law enforcement leadership that had not occurred to them to ask previously.

What is our “use of force” policy? Do we have plans for managing large protests? And is that approach consistent with our community? What kind of training do we provide our officers or deputies? Don’t we already have body-worn cameras? Don’t we already ban chokeholds? What are the cost implications of this new law? That last question is not an idle one in the context of public safety budgets that seem to take a larger share of many small-town general funds each year, and in a year where many municipalities’ revenues have been adversely impacted by COVID-19.

The very asking of such questions and the dialogue that follows between civic leaders and law enforcement is healthy. In over 20 years in elected local offices or as a town manager, I often felt like I didn’t really understand the law enforcement agencies within my jurisdiction. Other than when they reported on liquor license recommendations or we had an incident that triggered an investigation or insurance claim, the police were kind of a black box to me as I think they are to many non-law enforcement leaders in the public sector. Perhaps this moment will offer a chance for that to change. This report is intended to encourage a dialogue between law enforcement and other civic leaders.

In June, the Colorado legislature acted swiftly with SB20-217. For this report, we wanted to address some of these questions and to better understand how law enforcement was adapting. Was the bill an affirmation of all the good work they had done in this area for years? It sure didn’t land that way locally.

This report is an attempt at furthering that understanding and prompting important discussions at the local and state level about how SB20-217 could be modified and clarified. If that is your primary focus, you may want to start with the Recommendations section of this report.

Most local jurisdictions in the resort and rural communities that we serve through Northwest Colorado Council of Governments (NWCCOG) are pleased with their law enforcement agencies and have made strides to align policing models with their organizational culture and with their community values. In many of our resort communities, police and sheriff’s departments are high-performing departments, trained far beyond the baseline. They are often recognized for a very strong customer service component, and very proactive engagement with citizens. Such a law enforcement culture is not a given. It requires purposeful leadership and vision sustained over time. Though many of the bad behaviors, the injustices and the resulting protests may seem far from the Colorado high country, and many agency leaders attest to not being guilty of any of the abuses, in fact having policies, cultures and training that would prevent them; local law enforcement is far from immune from the resulting impacts. The most acute impact to them so far has been SB20-217.

Many local law enforcement officers are concerned that attitudes towards police are affecting morale among their peers. Some fear for their safety. Others are concerned with the many gray areas created by SB20-217 and how it shifted greater liability on to individual officers. This report is intended to bring some clarity to how SB20-217 impacted local law enforcement and how they are responding to it.

I recall interviewing for new Chiefs of Police (happened twice) in 10 years while I was on the Eagle Town Board and having a Sheriff from a neighboring county help out who noted that you have to be careful when hiring police who have a more urban, “law and order” mindset who seek physical contact and see policing as mostly dealing with bad guys. He also warned of how being a police officer can be an isolating experience in a small town, and how easy it is for an officer to shift into bad mindsets on the job. We now would say, as with many professions, policing is a challenge to one’s mental health.

It is also true that the morale in a small department can shift and sometimes an entire department needs to be rebuilt.

Hiring and retaining good employees is a common challenge, and some departments are constantly understaffed. Training is expensive and time-consuming, but it needs to be prioritized. This is a challenge for smaller departments who already are confronted with covering calls for service. Law enforcement peers are aware of pay, benefits and cultures that are supportive or not. It is also common for a young officer that an agency has just trained to move within the first year or two to another agency for better pay or to a place where they feel their talents will be respected. Our communities rely on many services including a well-managed law enforcement agency to remain safe and healthy. There is a growing understanding that we may rely too heavily on law enforcement to solve issues such as mental health, homelessness and the impacts of social and economic inequalities.

Events in Colorado leading up to the enactment of SB 20-217 (and, indeed, the unrest that occurred in this time around the country) reflect a divided view of race and racism in our country. The unprecedented challenges facing law enforcement require a new and careful look at organizational practices, policies, and culture.

Most agencies in the region have been actively moving in that direction for some time. They realize they are on the front line of public engagement for their communities. Respect for life and for justice runs deep. Most law enforcement work is problem-solving, customer relations, and addressing implicit bias, racial or otherwise. What happened to George Floyd was an abuse of power. Despite the obvious power imbalance between a police officer and anyone they “pull over,” no one interviewed for this report believes that an abuse of that power is justified, especially “good cops” who understand how this undermines the public trust they have built.

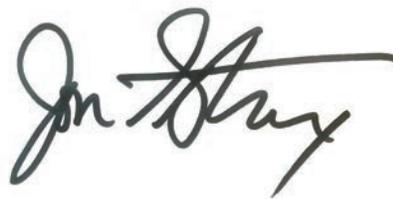
It is also important to remember that this is not an easy time to be a police officer. Actions by their peers in Minneapolis, Ferguson, Vallejo, and around the country have damaged perceptions about police everywhere, prompting a wave of heated

rhetoric--defunding or defending police--and a wave of reforms in places where they are badly needed, but also in places like rural Colorado where their need was less evident. A lot of people suddenly seem to be making assumptions about officers or agencies' intent which puts them out of step. I've done enough ride-a-longs into the wee hours to sort of “get it” enough to demystify how “cool” it might be to be an officer who can turn on the lights and speed. It's not much like that. There is a lot of traffic control and paperwork, and with body-worn cameras—data management. SB20-217 requires additional data collection requirements.

Local police do need support. If you are in leadership in local government right now, that can best be done by better understanding their challenges and engaging with law enforcement and other community leaders in the discussions that this teachable moment demands.

This is not a time for policy conversations to happen without input from law enforcement professionals who have been focused on many of today's hot topics for their entire careers. Listen through the frustration and tap into that wisdom. Our communities can be made stronger for the discussion.

NWCCOG exists to support its members who are local governments, municipalities, and counties in a unique and varied region, as they face challenges in governance and policy. To that end, we hope this report is right on point.



Jon Stavney

Executive Director, NWCCOG

REGIONAL IMPACTS TO LAW ENFORCEMENT AGENCIES FROM SB20-217

EXECUTIVE SUMMARY

NWCCOG embarked on this project on behalf of the membership to provide a regional perspective to local policy decisions being made in response to SB20-217. Through the research it became apparent there are improvements which should be made by the legislature and state oversight agencies that would benefit local implementation of SB20-217. Funding for this project was provided by member dues, and through a grant from the Colorado Department of Local Affairs. CIRSA, the Colorado Intergovernmental Risk Sharing Agency, participated in editing and formatting the report and shared in the funding. Other than portions of the report which have a byline, the report was produced by Retired Chief of Police, Heather Araceli Coogan.

1. **Terminology:** There is a lack of clarity in the definitions and the addition of terms in SB20-2017 creating some conflicts in the language with existing statutes, such as “legal basis,” “contact”

and “unholstered a weapon” and the use of force section. These terms are being interpreted differently from agency to agency. The language used in the bill does not exactly align with key terms already in use in other state statutes. These should be defined and aligned with current definitions to prevent unintended adverse consequences to community policing models and the many non-enforcement roles that law enforcement plays. The report provides context for local law enforcement activities, how they may be different in the region, and lists various interpretations and applications.

2. **Data Collection:** That lack of clarity in what and how to collect the information impacts the quality of data to be submitted to the Division of Criminal Justice (DCJ) for publication on July 1, 2023. If left to differing interpretations, the data will lose value and context. Data collection was to begin immediately upon passage of the bill, but DCJ has not been able to develop guidance and a method necessary to collect the data.



EAGLE COUNTY SHERIFF JAMES VAN BEEK GIVES CHILDREN A TOUR OF POLICE CAR

The report lists questions to be answered regarding data collection, use of the National Incident-Based Reporting System (NIBRS) portal, demographical information collection and when the data should be collected, without impacting community policing and the hard-won relationships.

3. **Body-Worn Cameras:** Agencies that did not already operate body-worn camera programs expressed frustration with the unfunded mandate aspect of the body-worn camera directive, and with the apparent inconsistency of exempting state agencies from the mandate. Some agencies are waiting on funding from the state. Especially for smaller agencies, the cost of a body-worn camera program and additional staff hours necessary to manage the data is cost prohibitive. Each body-worn camera system is different, and agencies are paying widely different costs for equivalent systems. Choosing a right-type system for an agency is complicated. The report provides perspective on these challenges. The state may work with vendors to negotiate a bid for agencies with limited budgets to establish a minimum standard for the devices in consideration of the many challenges around the state, such as call outs, the effect of weather on batteries, the life of batteries and data storage requirements.

4. **Qualified Immunity:** Law enforcement and their citizen leadership struggle with the impacts of changes to immunity in the bill. This has significant impacts on morale due to the individual financial exposure, and on the ability to retain talent. They expressed concern to exposing individuals, as well as their public employers to the vagaries of applying criteria for acting in good faith as well as to uncapped costs which could easily bankrupt smaller municipalities. There were other concerns about how increased liability exposure would impact and perhaps unwind mutual aid, suicide intervention, substance abuse response, and the co-responder mental health model practices. These other duties performed by police above and beyond basic law enforcement are often the bulk of what they respond on. The bill's focus on the use of force aspects of policing appears to have many unintended consequences, impacting the other roles police play in their communities.

EXECUTIVE SUMMARY

CONCLUSION

SB20-217 and the context of the national conversations occurring around law enforcement provide a ripe opportunity for local law enforcement and their community leaders to communicate and identify needed changes in policy and perception.

From the legislative standpoint, the unilateral uncertainty between law enforcement agencies across the region dictates further legal and legislative review at an elevated level that should be immediately undertaken to provide the answers each agency needs so that law enforcement as a collective can provide a standard approach in the application of the bill's requirements. We think this was the intent of SB20-217, which could be met by clarifying legislation and guidance from the State of Colorado.

By the Fall of 2020, local law enforcement agencies had the time to absorb the impacts of SB20-217 legislation and to confer with their peers and legal counsel regarding how to adapt their policies, practices and procedures. Every law enforcement officer in the state attended the updated training developed by Colorado Police Officers Standards and Training (P.O.S.T.) as well. Law enforcement leadership interpreted for their officers how it does or does not alter conduct in the field from previous practice. They were also in the process of translating the requirements of the legislation into their 2021 budgets. Each agency had questions which could be answered through additional clarifying legislation and/or guidance from the state, rather than having many differing interpretations clarified through litigation in the court. NWCCOG hired a contractor to interview local law enforcement leadership from across a five county region. Each agency is translating SB20-217 at the ground level to better understand their challenges and to inform the possibility of state level action which would assist them in that endeavor. **Addressing the recommendations in this report would go a long way towards clarifying the bill so that it can be translated for local agencies who must implement it. It would be better for that to happen through state guidelines and legislatively rather than through the courts.**

THE REGION

The Northwest Colorado Council of Governments (NWCCOG) with funding through the Department of Local Affairs (DOLA) and a partnership with the Colorado Intergovernmental Risk Sharing Agency (CIRSA) was contracted to conduct the survey of the law enforcement entities in the NWCCOG region to determine the challenges faced by the agencies and municipal governments in response to SB20-217. Those interviews by a law enforcement veteran with local law enforcement leadership provide the core of this report. The objective of this survey is to understand the legal, financial, and operational impacts of the bill on law enforcement in the Northwest region; help local policy makers and managers gain perspective on challenges their agencies face; and identify additional areas that need clarification or further consideration in the bill to assist law enforcement in complying with both the letter and intent of the bill.

The Northwest Region of the State of Colorado is unique in the population it serves and the economic conditions. NWCCOG is a voluntary association of five county and 22 municipal governments in the mountain resort region of Colorado. The two largest member towns in the Region, the City of Glenwood Springs and the City of Steamboat Springs, both with approximately 13,000 residents, are in neighboring counties. The dynamics of each of the mountain worksheds in the Region are similar, with well-known resort destinations including, Aspen, Vail, Breckenridge and Winter Park, and important “working” communities down valley that supply the workforce. The dynamics of policing are similar but change whether moving upstream or downstream in the Vail Valley. There are some very small towns with their own police like Hayden, Blue River, and Kremmling, and others which are too small to support a police department. A number of communities rely on the Sheriff to provide law enforcement. The Sheriff Departments cover many square miles.

RESEARCHING THE REPORT

This report summarizes interviews with law enforcement professionals from the membership in the NWCCOG region about the financial, legal and operational changes they currently face. Interviews were conducted by Heather Araceli Coogan of True to Course LLC, who NWCCOG contracted to review SB20-217, conduct interviews, and draft this report on behalf of the membership. The report seeks to highlight various common challenges and ambiguities identified by law enforcement as they begin to incorporate both the letter and what they interpret to be the spirit of the new law into their work. The report provides information describing how law enforcement in the NWCCOG region are incorporating the reforms required under the law. In addition, this report is meant to summarize specific areas where clarifications are needed, bring to light the concerns by law enforcement, and finally, the report seeks to step back and assess the direction SB20-217 is taking law enforcement in the State of Colorado.

This report does not seek to overturn SB20-217 or disparage it, but rather to use discussions of SB20-217 as a means to understanding the challenges law enforcement face on the ground in a changing environment, and perhaps to inform and direct some needed clarifications which would strengthen and clarify SB20-217.

CONTRIBUTING AGENCIES

The following agencies participated in the survey and offered their insight, knowledge and support for the changes required by SB20-217. The participants included a large sheriff's department, and police departments ranging in size from as few as seven members to as many as 49. Throughout the report, this group is referred to as the Chiefs and Sheriff or the Leadership. A special thank you for their assistance and participation, in alphabetical order by agency:

Chief Richard Pryor - Aspen Police Department

Sheriff James Van Beek - Eagle County Sheriff's Office

Chief Joey Stauffer - Eagle Police Department

Chief Glen Trainor - Fraser/Winter Park Police Department

Chief Joseph Deras - Glenwood Springs Police Department

Chief John Minor - Silverthorne Police Department

Chief Brian Olson - Snowmass Village Police Department

Chief Cory Christensen - Steamboat Springs Police Department

Chief Dwight Henninger - Vail Police Department.

Also special thanks to the following CIRSA staff who provided insights, edits, and design to early drafts of the report.

Tami Tanoue, Executive Director

Sam Light, General Counsel

Courtney Fagan, Strategy & Engagement Manager

Bo Inman, Graphic Designer



CHALLENGES FACING LAW ENFORCEMENT

Law enforcement leaders were interviewed about the challenges they face in serving their communities, along with their understanding of the impact of SB20-217 on their daily operations and budgets.

Law enforcement agencies fill the void when other services do not exist or are inadequate to respond to the needs in the community of a civil or social nature. Law enforcement is often the only option communities have, either by default or through a pattern of accepted norms. When in doubt, citizens call 911. Public Safety Dispatch Centers often have no other option than to dispatch law enforcement, even when the call has no indication of a criminal matter. Callers know law enforcement will respond and handle all types of situations.

Law enforcement consistently responds to calls for service where immediate help is needed, or no other resource exists. Issues involving intervention have fallen onto the shoulders of law enforcement that are not or were not previously police matters. Law enforcement is also called on for issues that are a nuisance or not criminal in nature: truancy, runaways, code violations, civil matters, and homelessness to name a few. While there has been a trend to move services to civilian staff or personnel, the responsibility is not abdicated at the moment when it is needed, or when law enforcement is called. When called upon in an emergency, law enforcement cannot and does not refuse to respond to incidents. Law enforcement responds to calls for service even when they are not law enforcement matters.



VAIL PATROL & CODE ENFORCEMENT TEAM

Photographer - Dominique Taylor

Law enforcement agencies are the de facto problem solvers for many communities. Some aspects of SB20-217 appear to add additional reporting to these other matters which bear little relation to use of force issues which drove the legislation. That reporting unnecessarily complicates this day-to-day problem-solving role.

In the NWCCOG region, the intent and philosophy of the agencies is to continue to respond to both criminal and community interests to maintain the relationships that have built community trust. The Chiefs and Sheriff interviewed each expressed the importance of their relationships with the community.

“I AM CONCERNED THAT OFFICERS WILL BE SECOND GUESSING THEMSELVES ON THEIR CONTACTS AND THE USE OF FORCE.”

—SILVERTHORNE CHIEF JOHN MINOR

Their belief is handling a matter when it is benign often prevents it from becoming a crime or a large drain on resources. This approach is often referred to as community policing. They offered many examples of calls for service that were not a “crime.” For instance, a complaint about a rancher firing his guns on his property, or a man walking down the street with a rifle in his hands; neither of which is a crime but may require explanation to citizens why not. Participating in event planning and management is another example.

Community policing often involves many things that are service oriented: medical calls, fire alarms, civil matters like car sales, a neighbor’s trash, calls on HOA violations, personal property accidents, substance abuse, transport to Detox, homelessness, fraudulent credit card off-shore schemes, enforcing fire bans, and investigating “suspicious behavior.” Often, these result in nothing but an innocuous opportunity to connect with citizens and show that the agency is responsive. None of those “incidents” are criminal in nature, but they are regularly handled by local law enforcement as a service to the public. Law enforcement officers respond

and explain options and the law. By helping and providing direction or just listening to the citizen, they build valuable community relationships. Agencies may utilize employee civilian staff where they are able and if such positions are funded.

The Northwest Region is unique in its composition and challenges and consists primarily of small resort towns with small local resident populations which swell greatly based on seasonal tourism. Interacting with visitors can require different strategies and mindsets from standard community policing. It can involve a great deal of customer service. This year, because of COVID-19, resort towns have seen a new phenomenon: second home owners have come to reside permanently in the resort towns. These people are opting to live in the area and register their children in the local schools. Many of these owners are from quite different socio-economic backgrounds than the local population and have different expectations.

Another unique situation is “enforcement” of mask mandates which consists primarily of making contact to educate the “offender.” Tourists come from all areas of Colorado as well as from around the world. Service workers primarily drive into the tourist towns daily to work, living on the outskirts where there is affordable or attainable housing. There is a daily, weekly and seasonal influx and outflow of workers, visitors and residents to many of these places served by local law enforcement. The diversity of people brings with them a spectrum of cultural and legal norms and expectations. No small part of the role of a law enforcement officer is to communicate, guide and educate citizens, often in informal circumstances that bear little resemblance to what most citizens think of when they think of policing.

At 55,000, Eagle County has the largest population of the counties in the region. According to 2019 census data, 23% of the county is Hispanic, many who are service workers. Few local governments have coherent strategies for outreach to this community beyond perhaps some Spanish speaking staff and translated documents. Both local governments and law enforcement recognize the need for a change at the organizational and community level, though it may begin with law

enforcement out of necessity. The Eagle County Sheriff's Office offers a Citizen Academy in Spanish as well as in English. The academy has been very well received.

The very concept of who community law enforcement agencies in the NWCCOG region are serving is quite dynamic from season to season, day to day and call to call. The circumstances and context of who and where local law enforcement responds to can vary widely.

Law enforcement are often called upon to be problem solvers for an assortment of community issues. Due to the weather and a general lack of services, the homeless population in the region is generally low, though increasing in size. Pitkin County set up a designated homeless camp at the entrance road to Snowmass Village in response to COVID-19. Glenwood Springs has

community resources for the homeless, but most of the communities have few local resources to assist. These are other examples of roles that law enforcement play which do not seem to be recognized as distinct by SB20-217.

Perhaps because law enforcement in the high country does not confront some of what their urban counterparts do, but they have more of an opportunity to focus on building relationships through community policing strategies. Those interviewed reported their relationships between police, sheriffs and the communities they serve as positive and supportive. They reported there were some protests in various areas to the George Floyd killing, but the participants went out of their way to tell their local law enforcement how very happy they are with them and the delivery of their services.



VAIL OFFICER BRIAN FLYNN AT RED SANDSTONE ELEMENTARY

Photographer - Dominique Taylor

SENATE BILL 20-217

[Senate Bill 20-217](#) covered a number of issues involving law enforcement including: revocation requirements of peace officer’s certification, the use of force and deadly force, demographic data collection, qualified immunity, peace officer training, duties to report and to intervene, body-worn cameras, and prohibited law enforcement action in response to protests.

INTERVIEW SUMMARY RESULTS

LIMITS ON THE USES OF FORCE

In response to the bill, P.O.S.T. released training videos. All the officers in the surveyed agencies viewed the training given by P.O.S.T. on the Use of Force as required and also received internal training and direction from command under the guidance of their legal counsel. There was much discussion in the agencies internally about the ambiguous language in the “Use of Force” section.

The agencies surveyed use either a Lexipol manual or one written internally.¹ Lexipol released an update to its manual to address SB20-217. The agencies with internally written manuals adjusted their policies to match the wording in the statute under the guidance of legal counsel.

No one disagreed with the need to eliminate any unnecessary use of force like what led to George Floyd’s death, but they shared that their policies already reflect limits in the use of force and chokeholds. All the agencies surveyed already banned or limited the use of the carotid holds prior to the bill’s passage. Limits on the use of force outlined in the bill, such as chokeholds, created questions about the difference between the bill’s intent and the bill’s wording. SB20-217 was changed to specifically prohibit officers from using a “chokehold” upon another person.² It includes applying pressure to a person’s neck on either side of the windpipe to stop the flow of blood to the brain via the carotid arteries. The restriction likely does not apply to the use of deadly force when it is justified, but the bill does not specify

this. As Sheriff Van Beek pointed out, it may be the only choice in some situations when deadly force is justified. The bill also added a justification for using deadly physical force when all other means of apprehension are “unreasonable” given the circumstances, i.e. allowing chokeholds.³ This has been interpreted as never allowed or only allowed when justified. This clearly needs to be clarified.

Leadership often expressed concern that the courts would hold them to the letter of the bill and not the intent, which is the subject of interpretation. They opined the courts would be defining the meaning of the wording of the bill for years to come. They expressed hope that the bill’s ambiguous sections would be clarified so no officer or agency would be left to a lengthy court proceeding pertaining to areas which could be clarified by legislative action.

The Chiefs and Sheriff voiced their support for improving law enforcement practices and policy, but they generally felt they were already doing much of what was outlined in the bill and received little credit for their work with the community. This may be a moot point to those who felt the need for swift action regarding law enforcement reform, or those who have the ability to modify the law, but it does have impacts on morale at both the leadership and rank-and-file levels. This may be one area where other leadership within the jurisdiction outside of law enforcement (town managers, elected officials) should provide support and appreciation for how “progressive or ahead-of-the-curve” their agencies were from a policy level

1 Lexipol is a national company that sells policy manuals customized for individual departments, providing state-specific policies and training. They are typically purchased by small departments that lack the staff or expertise to maintain an up to date policy manual.

2 CRS 18-1-707(2.5) – Prohibiting use of chokehold. In effect June 19, 2019.

3 CRS 18-1-707(4.5) –in effect on September 1, 2020.

prior to the incidents of 2020. It is also a reason that law enforcement agencies, who may be reluctant to “get into the weeds” of policy and practice with their civic management or governing bodies, not to mention the general public, may be well served to lean-in and better orient them to what they do. Doing that before a local incident happens will also provide those leaders with a more informed perspective when and if the general public may call upon those leaders to take action related to law enforcement “reform.” Several of the leaders interviewed for this report provided information about the changes concerning SB20-217 to their governing boards in order to re-orient them to what they do. This is not a widespread common practice, though it should be.

AMBIGUOUS OR UNDEFINED LANGUAGE IN THE BILL

A number of questions arose amongst the Leadership, local legal counsel and officers regarding SB20-217 terms. The questions were resolved, and guidance was provided which differed in interpretation across the various agencies and legal counsels. That in itself is a matter of some concern.

Below are examples of those varied interpretations:

- Does the reporting of “unholstered a weapon” mean only a firearm or any type of weapon?
- Officers have a variety of tools from non-lethal to lethal when it comes to the use of force. Why does the bill state “unholstering a weapon” and “discharging a firearm” in the same section?
- Would “discharging a weapon” include a Taser? If a baton is “unholstered” could that be interpreted as a “discharge”?
- Was the intent to address the use of a firearm or less lethal methods?

Some of the agencies surveyed require a Use of Force Report whenever there is any lethal or non-lethal weapon removed from its holster. Other agencies only require a report when a weapon is used or fired. One of the chiefs wondered if it was meant to include the removal of their rifle from the rack in a vehicle?

The information for the data collection regarding “unholstering a weapon” is being collected with three different sets of requirements in the different agencies:

1. When any lethal or non-lethal weapon such as a baton or Taser is unholstered, *whether it is used or not*, it is being recorded.
2. When *any weapon* such as a baton or Taser is used and a Use of Force Report is required by the department policy, it is being recorded.
3. *Only when a firearm* is being unholstered, it is being recorded.



Photographer - Dominique Taylor

VAIL OFFICER MICHAEL CHON
ENGAGING CITIZENS AT PICNIC

All of this data is being recorded based on the agencies' own local interpretation of the meaning of the section because there is no guidance in the bill about the requirements for the data collection and language is not consistent with other state statutes. This means the data being collected will vary, and the dataset as a whole will be more ambiguous than useful.

Due to the lack of clarification, the data will not be consistent in the reporting on “unholstering a weapon”.

Weapon was not defined. There was no consensus on the meaning of the requirement, some agencies record every instance of the unholstering of any type of weapon and others are only reporting the unholstering of a firearm.

The confusion in the requirements will lead to disparate reporting by agencies across the state. It will also have the unfortunate effect of making agencies with greater requirements look heavy-handed.

Data often becomes a metric which guides policy and behavior as well as perceptions. It is possible, for instance, an agency that uses the third criteria above could appear to be less aggressive through the data than another that utilizes the first criteria above. In actuality, the agency using the first criteria may be using non-lethal means to de-escalate situations which would not even be reported in the records of the agency using the third criteria.

Although law enforcement was required to begin collecting the data immediately upon passage of the bill, no direction, definitions, or means were given for the submission of the data to the Division of Criminal Justice. The DCJ was tasked with collecting the data and publishing it beginning July 1, 2023, without time or direction to provide guidance or the means. The data collected will not be consistent, bringing its credibility into question. Other reporting requirements in the CRS outlines all requirements and the means for reporting.



**“THE CO-RESPONDER MODEL
HAS SAVED MANY LIVES.”**

- VAIL CHIEF DWIGHT HENNINGER

BODY-WORN CAMERAS

Body-worn cameras are required for all local officers and State Patrol by 2023. Some of the agencies have cameras already. Albeit the cameras vary from a cell phone type to high-tech systems with unlimited storage. Other departments have only car camera systems. Although the state is mandating the use of body-worn cameras, there are currently no monies available to purchase them. Some agencies are waiting for the state to supply the funds to do so, because they are under the impression that the legislature cannot or should not create policy as an un-funded mandate. There was consternation of the inconsistency of the state excluding its own law enforcement from this mandate. While the size of agencies varies widely across the region, so do the local municipal and county budgets. Some agencies do not have the resources to purchase body-worn cameras without state monies.

Questions came up about the body camera requirement as well:

- Will the unequal expectation of body-worn cameras leave some law enforcement working without cameras next to officers with cameras when the requirement goes into force? Not all State employed law enforcement are required to wear them such as Colorado Parks and Wildlife. Federal law enforcement is also not required to wear them. The Bureau of Land Management, (BLM) works with local law enforcement.
- Without any minimum standards, will the many types of cameras and varying quality raise issues when footage from multiple systems are required for an investigation?
- Will the local jurisdictions receive any assistance with the costs of storage and redaction? Small departments have less staff to handle the possible demands of the systems. At least one agency interviewed had only one citizen administrator on staff. Does the management of data fall on officers who may be the only coverage for their town during a shift, taking them off the streets? The mandate may require more staff.



- Will DA's offices be able to handle the greatly increased volumes from the different body camera systems when they are struggling with the weight of a large case load already? Many commented that the DAs do not like the body camera footage they receive because it is so time consuming to watch when preparing for cases.
- Will the body-worn camera requirement obligate those that respond from home to respond to the department first to pick up the camera and then respond? This is a very common practice in smaller agencies which do not have many officers on duty at a time. Will the state finance double sets of body-worn camera equipment? Some agencies will need grant money and state bids to receive the best price for the minimum equipment. Body-worn camera batteries are reported affected by cold, often not lasting for an entire shift.

While the ostensible purpose of the body-worn camera is to provide accountability for law enforcement and provide unfiltered evidence in court, agencies with them have come to appreciate other positive outcomes. The video record can be used to provide feedback for improvement. It also provides accountability in the other direction. Many of the departments that already had body-worn cameras advised that they have found them extremely useful in reducing the complaints they receive against officers. When the complainants are advised the incidents are all on tape and they are welcome to view the incident, the complainants often will decline and decide not to pursue it. Some agencies have found the video recordings useful in internal investigations and in officer disciplinary actions, including providing evidence for imposing discipline or termination.



BODY CAMERA SYSTEMS

Body-worn camera systems vary in costs, capabilities and reliability. Equipment from several companies including Conan, Axon, and Digital Ally, are in use by the agencies interviewed.

Body-worn cameras range in price and capabilities, depending on the make and model of the camera. They include very basic cell phone type models to sophisticated cameras with a two minute pre-record option. The departments surveyed reported costs for the cameras ranging from a low of \$300 to a high of \$1,450 per camera. The costs include the camera and ancillary equipment such as backup batteries, training, data storage, and extra staff to manage the video and maintenance costs. Many of the camera systems are negotiated on five-year cycles.

The mandate will be an expense outside the budgets of very small agencies. Additional administrative staff will be required as requests expand. All the agencies are evaluating the costs and capabilities against the requirements of SB20-217 and the needs and expectations of their communities.

In some agencies cameras are already in use, in others they have only car cameras or no system at all. The mandate to purchase cameras could be aided by establishing a state bid, with the minimum standards defined for agencies lacking in the capability to negotiate on their own. Sharing this bidding process would aid in establishing the requirements and expectations with vendors.

BODY CAMERA SYSTEMS COSTS

- **The Eagle County Sheriff Department** currently has only in-car camera systems and interview room recording capabilities. Prior to the passage of SB20-217 the County was moving to purchase a body-worn camera system for approximately 57 operation and jail deputies at a cost of \$370,000 with unlimited storage over five years. That purchase was put on hold when the state mandated the equipment.
- **The Town of Vail Police Department** is moving to a new system at an approximate cost of \$140,00 for 32 body-worn cameras and 14 in-car systems with unlimited storage capacity, batteries lasting an entire shift, and video redaction capabilities.
- **The Town of Snowmass Village Police Department** is evaluating body-worn camera systems with an expected cost of \$29,000 annually for five years, beginning in 2021. The initial cost to outfit nine sworn and two code enforcement officers will be approximately \$42,000.
- **The Town of Silverthorne Police Department** has a maintenance cost in 2020 of \$12,790 for 19 body-worn cameras and administrative staff time. Staff time is expected to be 60% of the annual salary budget initially, rising to a full-time position.
- **The Town of Aspen Police Department** has an annual cost of \$45,423 for 34 body-worn cameras and \$10,836 for seven in-car cameras over the next four years. They anticipate the addition of one additional position.

Without minimum standards for body-worn camera equipment the disparity may result in differing quality of video and audio captured at critical moments.

LOSS OF QUALIFIED IMMUNITY

Colorado Revised Statutes 13-21-131 –
Creating civil action for deprivation of rights.

This statute created a new civil cause of action where a peace officer may be held liable for subjecting any person or causing any person to be subject to the deprivation of any individual right secured under Article II of the state constitution. All of state law enforcement and the State Patrol were purposefully excluded from this section due to the fiscal note.

Sheriff Van Beek pointed out, “CSP was involved in two of the five shootings in or around Eagle County since my coming on board in ‘89,” when dismissing the belief that only local law enforcement become involved in using force. That makes the unequal protection of qualified immunity and accountability a point of contention for fellow law enforcement and raised several issues.

Fellow law enforcement officers expressed their concern:

- The presumed intent of SB20-217 was to set expectations for interactions with law enforcement and hold law enforcement accountable. They found the unequal expectations of law enforcement to be hypocritical and not in keeping with the intent of the bill, asking, “Isn’t the bill’s intent to hold all of law enforcement to the same standard?”
- Another issue was raised about qualified immunity and questioned if the state officers with qualified immunity would be subject to the same requirements and penalties under P.O.S.T. because there would be no judgment against

them? Would they be reported to P.O.S.T. for any unnamed violation as the bill directs now?

- Would this also put the state patrol at an unfair advantage in recruiting officers or hiring them away from local agencies?
- Will the removal of qualified immunity affect enforcement of the “red flag law?”⁴ This being a mental health role with a high risk potential for lethal force, and not necessarily a threat to the general public, if an agency has a choice to respond, why would they accept it?
- Will the insurance costs at CIRSA rise as the litigation becomes more expensive?
- Will the Colorado Fraternal Order of Police (FOP) lawyers advise officers not to agree to an interview after lethal force is used?

Several questions regarding mutual aid arose:

- Law enforcement in the Northwest region responds and depends on mutual aid to handle situations in their jurisdictions that are greater than their staff can handle. The bill’s elimination of qualified immunity for the new state action raised two questions: If state law enforcement becomes involved, will one officer be liable and the other have immunity?
- Just as important, will agencies choose to forgo mutual aid because their towns do not want to risk the liability costs for another jurisdiction or increase their risk? Such a reaction would heavily impact the quality and level of services that this kind of inter-agency cooperation allows. If that becomes a reaction to this change, and liability risk concerns outweigh mutual aid, this will disproportionately impact smaller and mid-size jurisdictions who rely on such agreements for officer safety, shadow capacity and getting by with smaller staffs that they can afford.
- Will all officers be held to the same standard at the same incident under P.O.S.T.?

⁴ CRS 13-14.5-101 et seq. If a family or household member or a law enforcement officer establishes by clear and convincing evidence that a person poses a significant risk to self or others by having a firearm in his or her custody or control or by possessing, purchasing, or receiving a firearm, the court may issue a continuing Emergency Risk Protection Order (ERPO).

- Will mutual aid at state colleges by local law enforcement cause new liability for the local agencies, making it unwise to respond or assist with major events, sporting events, etc.?
- Will the requirement in the bill that the local county or municipality is liable and the lack of a cap on damages have the potential to bankrupt municipalities?

Colorado’s largest police union, the Colorado Fraternal Order of Police, is currently offering new coverage that will protect its members from paying from their personal pocketbooks for any judgement against them. They have already voted in some of the lodges to increase dues to cover the cost.

The Leadership pointed out that without a cap on damages they believed they would receive more complaints and would have to spend more to defend their officers so they would not lose their P.O.S.T. certification. The Chiefs and Sheriff are concerned that municipalities will be forced to settle at higher amounts to avoid nuisance suits or spend large sums to defend an officer in court so the officer does not lose their P.O.S.T. resulting in termination over a minor infraction. Hiring, training and retaining experienced officers is always a challenge.

Leadership believes SB20-217 will change the legal calculus, inviting potentially frivolous claims and discouraging small settlements for damaged property or other small complaints that were common in the past. They expect that attorneys may advise clients not to settle. Peace officers around the state are working together to create or obtain insurance to protect them and their property, how will the municipalities be protected from these costs?

- Will local law enforcement agencies be driven out of existence by the extreme costs of liability causing them to lose the direct connection, power, and accountability the local community enjoys with their local law enforcement? Is this a move to county-level or state police department?
- Will there be an increase in complaints due to SB20-217? It is probable. Many officers are already hearing complaints during contacts, are being accused of racial profiling, and advised by contacts that they are aware of their rights under SB20-217.

All of these questions make the issue of qualified immunity a great concern to not only the officers, but also to the municipalities and the agencies. Everyone interviewed was concerned about the unintended consequences on their respective agencies relating to this section of the bill.



**GLENWOOD SPRINGS CHIEF
JOSEPH DERAS AND
COMMUNITY MEMBERS**

DATA COLLECTION REPORTING REQUIREMENTS

The interpretation of the section regarding collection of the data was varied across the board. Some suggestions for collecting data include home-written apps on a smart phone, adding it to the Records Management System (RMS) on mobile computers, or using an Excel spreadsheet to submit to the state. SB20-217 does not give any guidance or requirements on how the data should be reported to the Division of Criminal Justice or define the terms, only that it should be collected and reported. Unlike other statutes that stipulate what and how the data will be submitted; this bill did not address these points.

“WE BELIEVE PEOPLE WILL OBJECT, “ASKING THE OFFICER, WHY DOES IT MATTER?” AND THEY WOULD BE RIGHT.”

—EAGLE COUNTY SHERIFF JAMES VAN BEEK

The interpretation of the meaning of the data points and how information is to be collected on demographics varied by agency.

- Some agencies directed their officers to ask the person how they self- identified,
- Other agencies directed their officers never to ask, and
- Some agencies directed their officers to use any identification they present first and then note their “perception.”

How will the information collected be verified? Leadership believes without context it will not be an accurate reflection of their contacts. Areas with higher minority populations will have different statistics from non-minority communities.

The Chiefs and Sheriff also agree that while the data collection will be cumbersome, it will demonstrate that officers act in a fair and unbiased way. One concern is that data collection may have unintended consequences, especially if policy directs officers to ask questions regarding ethnicity.

Chief Dwight Henninger stated, “Officers have always been expected to be colorblind. Now we are requiring them not to be.”

The directive has the effect of inserting race into a situation where it has no purpose. It could have the effect of creating a barrier of defense and misperception between an officer and the community member they serve. Imagine a foreign visitor to a resort town in a rental car who commits a minor traffic infraction trying to navigate a new town being asked, “Are you Chinese or Mexican? Well then, what country are you from?” This is not productive and turns what could be a positive interaction into a troubling one. Given the currently inflamed matter of immigration policy, white nationalism, and xenophobia, if a local officer asks a Hispanic person in an otherwise routine interaction to confirm their race, it is likely to be perceived as leading to a question about their legal status or citizenship which local law enforcement usually takes great pains to steer clear of in their work.

Sheriff James Van Beek has instructed his officers to tell the individual it is required by state law if they ask.

CONTACTS AND PROFILING

C.R.S.24-31-309. Profiling – officer identification – training (3.5) states, “a peace officer shall have a legal basis for making a contact whether consensual or non consensual, for the purpose of enforcing the law or investigating possible violations of the law.” There is no definition for legal basis.

This wording and the lack of definition left a range of questions and interpretations of the meaning. The Chiefs and Sheriff said they advised their officers to depend on reasonable suspicion and probable cause in their training but were struggling with the demographic reporting when there was a contact that potentially or theoretically could be a crime but was not enforced. All wanted “legal basis” defined in a way that allowed them to continue to employ the community policing model in their jurisdictions, the backbone of their relationship with the community.

This section of the bill is again being interpreted

and data is recorded and defined differently by each agency. Some agencies define and record a “contact” as a call for service, or when a written report or a traffic stop is conducted. Others are defining and requiring the reporting on every self-initiated contact with the public that could potentially be a crime but was not a call for service.

There is a question about responding to anonymous reports. Without verification of the alleged crime, officers are being advised to not “contact” individuals. This left them with questions about child abuse or domestic violence. Without verifiable information they may not act immediately. Public safety may suffer as a result. Welfare checks probably fit in this category; they are a courtesy. They are not a crime but a public service. Law enforcement are responding in rural areas to medical calls dealing with drug overdoses and administering Narcan if needed. The medical response team may be critical minutes away. According to the bill, medical calls are not a legal basis for a contact but a very important part of a safer community. Without a swift response from law enforcement, people are more likely to die.



VAIL CODE ENFORCEMENT SUPERVISOR **MIGUEL JAUREGUI**

Photographer - Dominique Taylor

The Chiefs and Sheriff expressed their fear that requiring reporting on all contacts could discourage officers from making casual contacts due to the added paperwork or implications of racism. Others said they had defined a contact as an event when the officer writes a report. Sheriff Van Beek gave an example. “Do they stop when a black couple is on the side of the highway? Or drive on by fearing the contact will look racist? In the past, they would stop and ask if they needed help. Will it skew the statistics?”

Chief Richard Pryor offered an example >>>

There is no definitive answer regarding the age of the contact impacting the collection of data. The leadership was divided if the violations at the schools handled by the School Resource Officer are violations and contacts. The intent of this section was unclear.

Years of work to implement community policing in the jurisdictions of the leadership will be lost because the requirements that may fit in an urban area are not the same when applied in a rural area with many tourist and visitors, such as in the Northwest region.

P.O.S.T. ISSUES RAISED

The bill requires revocation of a peace officer certification after conviction or a finding of civil liability with no reinstatement except if the officer is exonerated by a court. This leaves no possibility of rehabilitation. The Chiefs and Sheriff advised that the Attorney General and P.O.S.T. are reportedly working to address the processes and rules to offer guidance, as well as addressing the section to permanently decertify an officer upon the receipt of notice of any discipline, and the lack of due process for officers should there be a violation. The statute only defined untruthfulness and a failure to complete training. This section is being addressed.

All the agencies interviewed already have requirements in their policies for an officer to report any wrongdoing.

ASPEN CHIEF RICHARD PRYOR

“In Aspen they have had 6,000 contacts with the public since COVID 19 started, asking people to wear a mask. He said, “Technically it is a violation. Should they have included each of these contacts?” In his jurisdiction they “would normally ask someone to walk their bike, not ride it on the pedestrian mall. Is that a contact?” By the letter of the bill these contacts require reporting because there is the potential violation. They use these contacts as a friendly way to inform the public and enhance relationships. If they can no longer do this without collecting data, it will impact both the officers and the community negatively.”

OTHER DISCUSSION ITEMS

In response to the incidents across the county, there have been many calls for non-law enforcement issues to be handled by other agencies and entities other than peace officers. The call for law enforcement reform does open a conversation that is welcomed in law enforcement regarding what portions of their work ought to be performed or addressed by others. In many smaller communities there is no “other” agency, department, or non-profit partner to take on these roles. Many of these roles support the relationships law enforcement has built with the community.

COMMUNITY POLICING

For many years law enforcement departments have worked to incorporate community policing and interactions with the public into their philosophy. They use a suggestive, interactive style to encourage compliance and improve relationships with their communities. Community policing is defined as a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. In practice, it is a hands-on approach to issues in a non-confrontational manner to resolve them at the root cause before they develop into a matter that impacts the community negatively or results in crime.

As Steamboat Springs Chief Christensen said, they use “nudge policing” to correct a small problem, i.e. skateboarding or an illegally parked car in the roadway. He asked, “Is a simple rolling down

of the window to remind a kid not to skateboard in the road a contact requiring the collection of demographics? Is a question to the driver of an illegally parked car if they are lost, a contact that requires data collection?”

Over and over the Chiefs and Sheriff voiced a concern that officers may eventually stop making those types of courtesy contacts that improve the relationships with police and the community, and avoid taking action, lest they have to fill out a lot of paperwork on the contact.



**EAGLE COUNTY DEPUTY O'HARA
ESCORTS LOST HORSE HOME**

MENTAL HEALTH ISSUES

While officers are trained in crisis intervention and mental health first aid known as Crisis Response Teams (CRT) training, it does not take the place of proper mental health treatment. The need for social services, education and mental health services requires additional resources and community partnerships. This issue became part of the discussion with the George Floyd killing. Many communities do not have the resources to address this issue, either separately, or in cooperation with local law enforcement.

“AN INCREASE IN THE CO-RESPONDER MODEL WOULD BE A GREAT ASSIST TO LAW ENFORCEMENT. MENTAL HEALTH IS VERY RESOURCE INTENSIVE. THE SYSTEM IS VERY BROKEN.”

—FRASER/WINTER PARK CHIEF GLEN TRAINOR

Across the Northwest region, agencies have implemented innovative programs using a co-responder model to address mental health issues. The police and sheriffs are collaborating with Project Hope in the Vail Valley and Roaring Fork and MindSpring in Summit County when responding to mental health calls using a mobile crisis intervention group. The co-responder model that Eagle County Agencies copied from a previous partnership in Pitkin County is a success.⁵ While committing suicide is not a crime, they felt a moral obligation to try to intervene but were concerned about recent court ruling regarding their intervention.

While many recognize that law enforcement is not the proper tool for addressing mental health or substance abuse issues, the immediate intervention tactic of performing a psychological evaluation using trained officers has saved many officer out of service hours and kept community members safer.

All the departments that have School Resource Officers (SRO) said they have received calls of support from teachers and principals. SROs are police officers who work in elementary, middle and high schools. They are responsible for working with school administrators, security staff and faculty on developing comprehensive safety plans to ensure schools are safe places for students to learn. Parents shared that they want SROs to remain in the schools. None of the Chiefs have had any discussions or requests for the SROs to be removed. Some departments use part-time or full-time non-sworn code enforcement officers to handle calls for service; others choose not to respond because code enforcement is not a criminal matter.

MORALE/ HIRING

The Denver Post reported on August 18, 2020, that more than 200 law enforcement officers across Colorado resigned or retired in the weeks after Governor Jared Polis enacted [sweeping police reforms](#) by signing Senate Bill 217 into law on June 19, 2020, according to state data. Though it is unclear how many of the separations can be attributed to the new law and its striking implications that include officers' personal financial liability for their actions; interviews with police chiefs and union officials suggest a number of them are correlated. The state's largest police organization has launched a survey to find out.

The Chiefs and Sheriff interviewed said there was a lot of “chatter” in the halls about the impact and meaning of the immunity clause changes and other parts of the bill, but they had not seen many retirements as a direct result of the bill in their agencies. Only one department reported two resignations as a direct result of the bill. The officers advised that their wives felt it was better to leave the state so they could continue to work in law enforcement without the threat of increased personal liability. Officers are waiting to see what the bill means to them, their families, and their jobs. Many are pursuing insurance to protect themselves despite any reassurances from command. Other agencies are expressing concern over the lack of interest in careers in law enforcement.

As the events involving law enforcement have continued to unfold throughout this year, including deaths of suspects and officers and the threat of more changes and less community support for law enforcement, there is likely to be more movement in the police departments and sheriff offices across the state. Already there are recruitment efforts directed at the big departments for a quieter community that offers support and a welcoming environment to raise a family. Grand Junction Police Department has a very impressive recruitment [video](#) pushing for a more receptive community.

Losing good, experienced officers is always regrettable. They are hard to replace, and the time and money invested in them is lost. The question remains how to improve community confidence and support the exceptionally good peace officers who serve them.

FOLLOW UP TRAINING

The Chiefs and Sheriff all attended the training put on by CIRSA and CML. They said they would like to have the same training available to their officers on video so everyone could view it.

As one Chief noted, “We need more decision-making training for the officers.”

They are looking for support in being heard on these issues and lobbying to provide a well-rounded perspective of the impact of SB20-217, especially if there will be a second round of related legislation as they have “heard” is going to happen.

Already in process is the co-responder model, recognizing that mental health is one of the biggest challenges facing our communities. The desire to have all the officers CIT trained was a common goal across the northwest region.



VAIL OFFICER BEN KULLMAN AND VAIL SCHOOL RESOURCE OFFICER MELISSA METCALFE WITH SKI PATROL AND MCGRUFF

Photographer - Dominique Taylor

RECOMMENDATIONS RELATED TO SB20-217

A brief survey of the Chiefs and Sheriff in the Northwest region highlighted several concerns as they directed their officers and deputies to comply with SB20-217. The questions raised by the leadership surrounding the meaning and intent of the language in the bill are an excellent basis for discussions pertaining to law enforcement in their communities.

MY RECOMMENDATIONS BELOW ARE BASED ON THE FOLLOWING CONCERNS RAISED BY THE LEADERSHIP:

- A desire for clear definitions of terms.
- Direction on data definitions and collection, as well as data submission.
- Clarification on the deadly use of force section.
- Resolution on the disparate treatment between local and state employees on qualified immunity.
- An evaluation of how qualified immunity will impact mutual aid agreements among municipalities, counties, and state and federal agencies.
- Guidance on how to obtain funding for body-worn cameras.
- Direction on how the qualified immunity clause impacts implementation of the Red Flag law.
- Clarification on how the qualified immunity clause will negatively affect municipal budgets and the complaints received.

Leadership is concerned that the relationships they have spent years building with their communities by implementing a community policing philosophy could be discouraged by the loss of friendly contact to correct behavior before enforcement. Policing in the Northwest region is different in many aspects from policing in urban areas. They believe this was not taken into consideration when drafting SB20-217.

DEFINITION OF TERMS

I recommend clarifying the definitions and the addition of terms in SB20-2017. There are some conflicts in the language with existing statutes, and confusion around the use of force section and terms such as “legal basis,” “contact” and “unholstered a weapon.” These terms are being interpreted differently from agency to agency. The language used in the bill does not exactly align with key terms already in use in other state statutes. These should be defined and aligned with current definitions to prevent unintended adverse consequences to community policing models and the many non-enforcement roles that law enforcement plays.

I recommend the following:

- Clarify the undefined term of “legal basis.” While it is believed this means consensual, reasonable suspicion and probable cause, it is not clear.
- Clarify the meaning and intent of the term “contact.”
- Clarify if dispatched calls are contacts.
- Clarify if community policing activities are contacts.
- Clarify if contacts at schools for violations are considered contacts or if SRO activities in the schools are excluded.
- Clarify if the intent is for contacts with only adults or if it includes contacts with minors.
- Clarify the meaning of “weapon” in the phrase “unholstered a weapon.”
- Clarify the use of force section terms to align with other statutes.

DATA COLLECTION

Data Collection:

I recommend clarifying what and how to collect the information submitted to the Division of Criminal Justice (DCJ) for publication on July 1, 2023. Without clarification of the differing interpretations, there will be a loss of data and context. Data collection was to begin immediately upon passage of the bill, but the DCJ has not been able to develop

guidance and a method necessary to collect the data. Give the DCJ time to design the definitions, systems and means for the data collection. Once the definitions in the bill are clarified, then start the collection of data to be submitted.

I recommend the bill is amended to allow time for the DCJ to develop the systems, create definitions for the fields, implement the systems, and train law enforcement. The systems should be in place by January of 2022 with data reporting to the legislature by January of 2023.

I recommend that the many concerns and questions surrounding data collection are clarified:

- Although the bill states there must be a legal basis for the contact and the data that needs to be collected; it does not require that the legal basis for the contact is provided with the data to the DCJ. Clarification is needed.
- Clarify if each officer participating in a call should submit demographic data or just the primary officer.

“THE BILL WAS AUTHORED WITH GOOD INTENTIONS BUT MAY RESULT IN UNFORESEEN CONSEQUENCES. THE STAKEHOLDERS SHOULD BE AFFORDED AN OPPORTUNITY TO PROVIDE CONTEXT AND OUTLINE THE IMPACTS AND LIMITATIONS OF THE LEGISLATION.”
—GLENWOOD SPRINGS CHIEF JOSEPH DERAS

- Clarify if data should be collected on the contacts by SROs in schools.
- Clarify if contact information is intended to be limited to adults.
- Clarify if the data submitted will be in aggregate numbers or linked to an event number or incident.
- Clarify if the data will be verified and/or evaluated against the demographics of the community.

Portal for data collection:

I recommend the National Incident-Based Reporting System (NIBRS) is used as the portal, albeit development to the system will be required to collect the data that will be pushed to the DCJ. Without a required means, system and standardized definitions, the state will receive the data in many forms without any consistency in data or reporting. Excel spreadsheets, paper reporting, or electronic reporting from many different systems will be collected and submitted.

I believe that waiting to address this issue until 2023 will require agencies to go back to June of 2020 to correct the data which could affect the accuracy of the data.

Demographical information collection:

I recommend officers use any documentation presented to them first and then fill in the data based on only their perception. I do not recommend officers ask how people identify because doing so will raise the question of why officers are asking or conflict with how people are perceived. Address the many contacts peace officers make that do not result in enforcement but are community policing in nature. Technically, community policing contacts would require data collection but would skew the numbers greatly, i.e. the Aspen example of asking 6,000 people to wear masks over the course of only two months.

I recommend the following:

- Clarify the language in the bill regarding how the demographical information is to be collected.
- Clarify if the demographical information is to rely solely the officer's perception. Clarify if officers should use only the documentation presented.
- Clarify if officers should ask how the person identifies and include that information along with their perception.
- Provide guidance on perceived demographic information for contacts with transgendered individuals.

QUALIFIED IMMUNITY

Disparate Treatment:

I recommend the disparity issue regarding qualified immunity between state employed peace officers and local law enforcement is addressed and all peace officers are held to the same standard. The public's perception of and confidence in law enforcement will be impacted if a state employed peace officer is involved in an event and not held to the same standard. With the number of contacts made daily by the State Patrol and the events at colleges and universities staffed by state campus police officers, law enforcement has the potential to be involved in many situations involving use of force.

I recommend addressing the many concerns around increased liability exposure and how it would impact and perhaps unwind mutual aid, suicide intervention, substance abuse response, and the co-responder mental health model practices. The bill's focus on the use of force aspects of policing appears to have many unintended consequences impacting the other roles police play in their communities.

Caps on Damages:

I recommend setting a cap on damages to avoid bankrupting municipalities and to discourage complainants who threaten to sue just to receive larger settlements. Without a cap, settlements will climb higher and higher as municipalities attempt to protect their officers. The current language in the bill requires a peace officer's employer to indemnify the officer for "any liability" incurred and for any judgment or settlement entered against the officer for claims under this statute subject to the 5% or \$25,000 (whichever is less) rule and criminal acts exceptions.

Questions raised by the bill regarding its application:

I recommend the following:

- Establish criteria applicable to the employer's decision regarding whether the officer acted on a good faith reasonable belief.

- Clarify who will make the determination that a judgment is not collectible.
- Clarify if the employer’s decision that the officer acted in good faith can be challenged in court.
- Clarify how mutual aid liability applies under the Qualified Immunity Clause and explain the impact on other municipal, county, state and federal agency contracts.
- Clarify if the restriction on chokeholds applies to the use of deadly force when a peace officer is justified in using deadly force and there is a reasonable belief that a lesser degree of force is inadequate.

BODY-WORN CAMERAS

Body-worn cameras:

I recommend that the state establish a minimum standard of operation so the collection of video has consistency for prosecution. I recommend the state negotiate pricing with one or more vendors on behalf of agencies who do not wish to research and negotiate body camera programs. The state could have a specialist in data management at the Office of Information Technology (OIT). The Statewide Internet Portal Authority (SIPA) could also establish a grant program, or the state could create another agency to provide technical assistance to very small agencies in the transition. This unfunded mandate is outside the budgets of some smaller agencies and municipalities. Although it directs agencies to seek funding pursuant to C.R.S. 24-33.5-519, there are reportedly no monies available in the fund.

Agencies that did not already operate body-worn camera programs expressed frustration with the unfunded mandate aspect of the body-worn camera directive, and with the apparent inconsistency of exempting some state agencies from the mandate. Some agencies are waiting on funding from the state. Especially for smaller agencies, the cost of a body-worn camera program and the additional staff hours necessary to manage the data is cost prohibitive.

“ACROSS THE STATE EVERYONE IS HESITATING ABOUT THE USE OF FORCE ISSUE. NO ONE WANTS TO BE THE FIRST. IT IS A NATIONAL CONVERSATION.” “OFFICERS DO NOT FEEL VALUED BY THE STATE LAW MAKERS. NO ONE WANTS TO BE THE ONE TO MAKE CASE LAW.”
-STEAMBOAT SPRINGS CHIEF CORY CHRISTENSEN

CONCLUSION

This bill has been a catalyst for discussions around the state on how law enforcement can be improved. However, it will require many more discussions with stakeholders to bring clarity to the ambiguous or open sections of the bill. It has become evident in the Northwest region that there is great trepidation and disparity interpreting both the spirit and the letter of SB20-217. The unilateral uncertainty between law enforcement across the state dictates further legal and legislative review at an elevated level that should be immediately undertaken to provide the answers each agency needs as well as law enforcement as a collective entity to provide a standard approach in the application of the bill’s requirements.

ENDING NOTE:

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NWCCOG MISSION:

THE PURPOSE OF NWCCOG IS TO BE RESPONSIVE TO OUR MEMBERS' NEEDS AND INTERESTS BY PROVIDING GUIDANCE AND ASSISTANCE IN PROBLEM SOLVING, INFORMATION SHARING AND PARTNERSHIP BUILDING, ADVOCATING MEMBERS' INTERESTS AND NEEDS WITH LOCAL, STATE AND FEDERAL ENTITIES, AND PROVIDING QUALITY SERVICES TO OUR MEMBERSHIP THAT ARE RELEVANT, EFFECTIVE AND EFFICIENT."

