



MODEL

STATUTES

PROJECT

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MODEL STATUTES PROJECT

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**ARREST AUTHORITY
WITHOUT A WARRANT**

PURPOSE:

Arrests made without a warrant in existence are commonplace. Clearly defined authority to conduct such arrests is needed to guide officers and define their authority.

KEY ELEMENTS:

1. At a minimum, statutes should permit arrests without a warrant for
 - (a) any felony;
 - (b) misdemeanors committed in the officer's presence; and
 - (c) other enumerated misdemeanor crimes.

2. Statutes should specify the procedural protections that the officer is obligated to follow in making a warrantless arrest.

EXAMPLES:

HAWAII REVISED STATUTES,

SECTION 803-5

"§803-5 By police officer without warrant.

(a) A police officer or other officer of justice, may, without warrant, arrest and detain for examination any person when the officer has probable cause to believe that such person has committed any offense, whether in the officer's presence or otherwise.

(b) For purposes of this section, a police officer has probable cause to make an arrest when the facts and circumstances within the officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed."

ARIZONA REVISED STATUTES,

SECTION 13-3883

“13-3883. Arrest by officer without warrant

A. A peace officer may, without a warrant, arrest a person if he has probable cause to believe:

1. A felony has been committed and probable cause to believe the person to be arrested has committed the felony.
2. A misdemeanor has been committed in his presence and probable cause to believe the person to be arrested has committed the offense.
3. The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that such violation occurred prior to or immediately following such traffic accident..."

NORTH CAROLINA GENERAL STATUTES,

CHAPTER 15A, SECTION 15A-401

“§15A-401. Arrest by law enforcement officer...

(b) Arrest by Officer Without a Warrant. –

- (1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
- (2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:
 - a. Has committed a felony; or
 - b. Has committed a misdemeanor, and
 1. Will not be apprehended unless immediately arrested, or
 2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

3. Has committed a misdemeanor under [specified North Carolina statutes]; or

4. Has committed a misdemeanor under [specified North Carolina statutes] when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

(c) How Arrest Made. –

(1) An arrest is complete when:

a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or

b. The arresting officer, with the intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,

b. Inform the arrested person that he is under arrest, and

c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident."

**ARREST AUTHORITY
WITH A WARRANT**

PURPOSE:

Statutes should define the specific procedures for officers executing arrest warrants.

KEY ELEMENTS:

1. Execution of warrants should not be limited to daytime hours.
2. Physical possession of the warrant by the arresting officer should not be required.
3. Time limits for presentment to a judicial official should not be unreasonably restrictive.

EXAMPLES:

MONTANA CODE ANNOTATED,

SECTION 46-6-216

"46-6-216. Manner of arrest with warrant.

(1) When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person, the cause of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

(a) when the person flees or forcibly resists before the peace officer has an opportunity to inform the person; or

(b) when the giving of the information will imperil the arrest.

(2) The peace officer need not have possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if the person requests."

NEVADA REVISED STATUTES,

SECTION 171.22

"Manner in which execution of warrant and service of summons are made...

1. [T]he warrant must be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he must show the warrant to the defendant as soon as possible. If the officer does not have a warrant in his possession at the time of the arrest, he shall then inform the defendant of his intention to arrest him, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued...."

UTAH CODE,

SECTION 77-7-6

"77-7-6. Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape."

TELEPHONIC WARRANTS

PURPOSE:

Statutes should allow police officers to apply for and obtain warrants telephonically or electronically.

KEY ELEMENTS:

1. Statutes should allow for the telephonic or electronic filing of probable cause affidavits to support the issuance of warrants.
2. Statutes should specify procedural requirements for the acquisition and execution of warrants.

EXAMPLE:

UTAH CODE ANNOTATED,

TITLE 77, SECTION 7-10

“Telegraph or telephone authorization of execution of arrest warrant. Any magistrate may, by an endorsement on a warrant of arrest, authorize by telegraph, telephone or other reasonable means, its execution. A copy of the warrant or notice of its issuance and terms may be sent to one or more peace officers. The copy or notice communicated authorizes the officer to proceed in the same manner under it as if he had an original warrant.”

FEDERAL RULE OF CRIMINAL PROCEDURE 41(c)(2)

"(2) Warrant upon oral testimony.

(A) General rule. If the circumstances make it reasonable to dispense, in whole or in part, with a written affidavit, a Federal magistrate judge may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means including facsimile transmission.

(B) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate judge. The Federal magistrate judge shall enter, verbatim, what is so read to such magistrate judge on a document to be known as the original warrant. The Federal magistrate judge may direct that the warrant be modified.

(C) Issuance. If the Federal magistrate judge is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate judge's name on the duplicate original warrant. The Federal magistrate judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) Recording and certification of testimony. When a caller informs the Federal magistrate judge that the purpose of the call is to request a warrant, the Federal magistrate judge shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the Federal magistrate judge shall record by means of such device all of the call after the caller informs the Federal magistrate judge that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate judge shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate judge shall file a signed copy with the court.

(E) Contents. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) Additional rules for execution. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) Motion to suppress precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit."

ARREST AUTHORITY

EXTRA-JURISDICTIONAL AUTHORITY

PURPOSE:

To clearly set forth the authority and ability of an officer to make arrests and exercise law enforcement power outside the jurisdiction in which the officer is employed.

KEY ELEMENTS:

1. The statute should enumerate the crimes in response to which an officer is authorized to exercise police power outside his employing jurisdiction.
2. The statute should specify geographic limitations, if any, which are imposed on the areas into which a police officer may exercise arrest authority.

EXAMPLES:

TEXAS CODE,

ARTICLE 14.03(d)

"(d) A peace officer who is outside his jurisdiction may arrest without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, a violation of [a specific Texas statute], a breach of peace, or an offense under [a specific Texas statute]. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate...."

ILLINOIS COMPILED STATUTES,

SECTION 107-4

"(a-3) Any peace officer employed by a law enforcement agency of this State may conduct temporary questioning...and may make arrests in any jurisdiction within this State if: (1) the officer is engaged in the investigation of an offense that occurred in the officer's primary jurisdiction and the temporary questioning is conducted or the arrest is made pursuant to that investigation; or (2) the officer, while on duty as a peace officer becomes personally aware of the immediate commission of a felony or misdemeanor violation of the laws of this State. While

acting pursuant to this subsection, an officer has the same authority as within his or her own jurisdiction.

(a-7) The law enforcement agency of the county or municipality in which any arrest is made under this Section shall be immediately notified of the arrest."

VIRGINIA CODE,

SECTION 19.2-236

"Where process of arrest may be executed

When process of arrest in a criminal prosecution issued from a court, either against a party or a witness, the officer to whom it is directed or delivered may execute it in any part of the Commonwealth."

DELAWARE CODE, TITLE 11

SECTION 1911(b) - (f)

" (b) A police officer may arrest without a warrant at any location within the State any person the officer has reasonable grounds to believe is committing or attempting to commit a felony in the officer's presence.

(c) An on duty police officer may arrest upon view and without a warrant at any location within the State any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or serious physical injury to another person or which constitutes a violation of [a specific Delaware statute].

(d) An "on duty" police officer may arrest at any location in the State any person for any offense committed within the jurisdiction of the officer's employing agency and for whose arrest a warrant has been issued. The "on duty" police officer shall, where acting outside of the officer's jurisdiction, take reasonable measures to notify the primary jurisdictional police agency of the intended time and place of the execution of the arrest warrant.

(e) A police officer may render assistance to another police officer at any location within the State when the officer reasonably believes that the police officer to be assisted is lawfully performing that officer's duty and that death or injury will occur to that police officer if assistance is not provided.

(f) A police officer acting under the authority of this section shall be considered to be acting within the scope of employment."

NOTES: Expanding the jurisdictional authority of police officers also carries significant policy decisions for individual departments. For example, training levels or the circumstances under which deadly force is permitted, vary among police agencies. Departments should carefully consider the implications of differing policies before advocating legislative expansion of jurisdictional authority. Careful consideration should also be given to the extension of such authority to off-duty as well as on-duty officers.

ARREST AUTHORITY
PRIVATE CITIZEN ASSISTANCE

PURPOSE:

To allow police officers to demand the assistance of private citizens to apprehend and arrest a suspect.

KEY ELEMENTS:

1. Statutes should make it obligatory for a private citizen to render assistance when commanded by a police officer.
2. Statutes should immunize the private citizen from civil liability for actions taken under the command of the police officer.

EXAMPLES:

MISSISSIPPI CODE,

SECTION 99-3-5

"Sec. 99-3-5. All persons must aid arresting officer when commanded. Every person when commanded to do so by an officer seeking to arrest an offender, must aid and assist in making the arrest, and must obey the commands of the officer in respect thereto."

MONTANA CODE ANNOTATED,

SECTION 46-6-402

"46-6-402. Assisting a peace officer.

- (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.
- (2) A person commanded to aid a peace officer in making an arrest:
 - (a) has the same authority to arrest as that officer; and
 - (b) is not civilly liable for any reasonable conduct in aid of the officer."

ARREST AUTHORITY

RELEASE FROM CUSTODY FOLLOWING ARREST WITHOUT JUDICIAL PRESENTATION

PURPOSE:

Provides police officers with the authority to release a suspect from custody where probable cause dissipates before the suspect has had a judicial hearing.

KEY ELEMENTS:

1. Should allow officer to release an arrestee when probable cause no longer exists.

EXAMPLES:

KANSAS CODE,

SECTION 22-2406

"22-2406. Release by officer of person arrested. A law enforcement officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested."

ILLINOIS COMPILED STATUTES,

SECTION 107-6

"Sec. 107-6. Release by officer of person arrested.
A peace officer who arrests a person without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested."

NOTES: These statutes apply only to warrantless arrests. Arrest warrants are orders of the court and may have different procedural requirements.

CITIZEN’S ARREST

PURPOSE:

Officers acting outside their statutory jurisdiction have only the authority any other citizen has to make an arrest. Broad citizen arrest authority enhances officers’ ability to protect citizens outside their jurisdiction while reducing their liability exposure.

KEY ELEMENTS:

1. Should authorize any citizen to arrest an individual upon probably cause that the individual has committed a felony;
2. Should authorize any citizen to arrest an individual who commits a misdemeanor crime in the citizen’s presence.

EXAMPLE:

MONTANA CODE ANNOTATED,

SECTION 46-6-502 (1)

“A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person’s immediate arrest.”

NOTE:

1. Some states do not have specific statutes, but courts therein follow the common law rule which permits citizen arrests upon probable cause to believe an individual has committed a felony, provided the felony has actually been committed, or when a misdemeanor involving a breach of the peace is committed in the presence of the citizen. Other states have simply codified the common law. The Montana statute extends the arrest authority to any crime on probable cause, but adds a requirement of exigent circumstances.
2. In states, such as Hawaii, where officers have statewide arrest authority, citizens’ arrest authority would be unnecessary.

EMERGENCY VEHICLE OPERATIONS

PURPOSE:

These statutes establish conditions under which law enforcement officers may operate their vehicles without compliance with enumerated traffic statutes or regulations.

KEY ELEMENTS:

1. Should authorize a police officer in responding to a reported emergency or in pursuit of actual or suspected violators of the law to take extraordinary measures while operating the vehicle.
2. Should address the traffic laws or regulations that are inapplicable during the officer's operation of the vehicle.
3. Should generally require the use of sirens and lights whenever traffic laws are being violated in emergency operations.
4. Should establish exceptions under which the officer is excused from the use of lights and/or sirens. Included in these exceptions should be:
 - a) to obtain evidence of a speeding violation;
 - b) to respond to a suspected crime in progress when the use of an audible or visual signal or both could result in the destruction of evidence, escape of a suspect or injury to a person; or
 - c) to surveil another vehicle or its occupants who are suspected of involvement in a crime.
5. Should provide some measure of immunity to the officer and the employing entity from liability to third persons. At a minimum, this immunity should protect (a) from any liability to the person or passengers of the person being pursued, (b) from injury and or damages caused by the person being pursued and (c) from any injuries or damages to any person unless arising from willful misconduct or gross negligence of the officer.
6. If uniform regulations or guidelines for agency policy, training and/or emergency operation of vehicles are established pursuant to state statute, such requirements should include immunity provisions.
7. In addition, the duty of citizens, upon becoming aware of the officer's emergency operation of a police vehicle, to yield the right of way should be addressed by statute.

EXAMPLES:

SOUTH CAROLINA CODE ANNOTATED,

SECTION 56-5-760

“(A) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions of this section.

(B) The driver of an authorized emergency vehicle may:

(1) park or stand, notwithstanding any other provision of this chapter;

(2) proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation;

(3) exceed the maximum speed limit if he does not endanger life or property;

(4) disregard regulations governing direction of movement or turning in specified directions.

(C) The exemptions in this section granted to an authorized emergency vehicle apply only when the vehicle is making use of an audible signal meeting the requirements of Section 56-5-4970 and visual signals meeting the requirements of Section 56-5-4700 of this chapter, except that an authorized emergency vehicle operated as a police vehicle need not use an audible signal nor display a visual signal when the vehicle is being used to:

(1) obtain evidence of a speeding violation;

(2) respond to a suspected crime in progress when use of an audible or visual signal, or both, could reasonably result in the destruction of evidence or escape of a suspect; or

(3) surveil another vehicle or its occupants who are suspected of involvement in a crime.

(D) The provisions of this section do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.”

TENNESSEE CODE ANNOTATED,

SECTION 58-8-108

“(e) Notwithstanding the requirement of this section that drivers of authorized emergency vehicles exercise due regard for the safety of all persons, no municipality or county nor the state or any of its political subdivisions, nor their officers or employees, shall be liable for any injury proximately or indirectly caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from such pursuit shall not render the law enforcement personnel, or the employers of such personnel, liable for injuries to a third party proximately caused by the fleeing party unless the conduct of the law enforcement personnel was negligent and such negligence was a proximate cause of the injuries to the third party.”

GEORGIA CODE ANNOTATED,

SECTION 40-6-6((d)(2)

“When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect damages any property or injures or kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury, or death caused by the fleeing suspect unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit. Where such reckless disregard exists, the pursuit may be found to constitute a proximate cause of the damage, injury, or death caused by the fleeing suspect, but the existence of such reckless disregard shall not in and of itself establish causation.”

CALIFORNIA VEHICLE CODE,

SECTION 17004.7

“(a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a policy by a public agency pursuant to this section is discretionary.

(b) A public agency employing peace officers which adopts a written policy on vehicular pursuits complying with subdivision (c) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued by a peace officer employed by the public entity in a motor vehicle.

(c) If the public entity has adopted a policy for the safe conduct of vehicular pursuits by peace officers, it shall meet all of the following minimum standards:

- (1) It provides that, if available, there be supervisory control of the pursuit.
- (2) It provides procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit.
- (3) It provides procedures for coordinating operations with other jurisdictions.
- (4) It provides guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

(d) A determination of whether a policy adopted pursuant to subdivision (c) complies with that subdivision is a question of law for the court.”

NOTES:

1. Preferably, such emergency operations exceptions for law enforcement should apply to all traffic laws, rather than certain enumerated traffic laws.

2. The standards for police emergency equipment should preferably not be tied to the authorization for emergency operation of the police vehicle.

DUTY TO YIELD TO POLICE VEHICLES

PURPOSE:

These statutes require other vehicles, when signaled to do so, to pull to the curb and provide clear passage to police emergency vehicles.

KEY ELEMENTS:

1. Should apply upon the approach of any police vehicle displaying a recognizable signal.
2. Should apply to both unmarked and marked vehicles displaying a recognizable signal.
3. Should apply whether the signal is audible or visual or both.

4. Should apply whenever the signal is recognizable and not require strict adherence to any statutory minimum standards for decibel level or intensity of light.
5. Should specify the other vehicles obligations.

EXAMPLES:

INDIANA CODE,

SECTION 9-21-8-35

“(a) Upon the immediate approach of an authorized emergency vehicle, when the person who drives the authorized emergency vehicle is giving audible signal by siren or displaying alternately flashing red, red and white, or red and blue lights, a person who drives another vehicle shall do the following unless otherwise directed by a law enforcement officer:

(1) Yield the right-of-way.

(2) Immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection.

(3) Stop and remain in the position until the authorized emergency vehicle has passed.

(b) Upon approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, or red and blue lights, a person who drives an approaching vehicle shall:

(1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(2) proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(c) Upon approaching a stationary recovery vehicle or a stationary highway maintenance vehicle, when the vehicle is giving a signal by displaying alternately flashing amber lights, a person who drives an approaching vehicle shall:

(1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(2) proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(d) This section does not operate to relieve the person who drives an authorized emergency vehicle, a recovery vehicle, or a highway maintenance vehicle from the

duty to operate the vehicle with due regard for the safety of all persons using the highway.”

UTAH STATUTES,

SECTION 41-6-76

(1) Upon the immediate approach of an authorized emergency vehicle using audible or visual signals under Section 41-6-14, 41-6-132, or 41-6-146 or of a peace officer vehicle lawfully using an audible or visual signal, the operator of every other vehicle shall yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection and shall stop and remain there until the authorized emergency vehicle has passed, except when otherwise directed by a peace officer.

(2) This section does not relieve the operator of an authorized emergency vehicle from the duty to drive with regard for the safety of all persons using the highway.

FLEEING OR ELUDING A POLICE OFFICER

PURPOSE:

These statutes require vehicle drivers to stop when signaled to do so by a police officer.

KEY ELEMENTS:

1. Should require the vehicle driver to stop when signaled to do so by a person identifiable as a police officer.
2. The duty to stop should apply regardless of the type of signal used (visual or audible).
3. The duty to stop should not be dependent on whether the signal met any particular statutory standard (such as distance of visibility, decibel level, or equipment specifications).

EXAMPLES:

MINNESOTA STATUTES,

SECTION 609.487

“Subd. 3. Whoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony....”

DELAWARE CODE,

TITLE 21, SECTION 4103

“(b) Any driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver’s vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or extinguishes the vehicle’s lights and attempts to flee or elude the police office shall be fined for the first offense not less than \$575 nor more than \$2,000, or imprisoned for not less than 60 days nor more than 6 months or both.”

IDAHO STATUTES,

SECTION 49-1404

“(1) Any driver of a motor vehicle who wilfully flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by a peace officer may be by emergency lights or siren. The signal given by a peace officer by emergency lights or siren need not conform to the standards for decibel ratings or light visibility specified in section 49-623(3), Idaho Code. It is sufficient proof that a reasonable person knew or should have known that the visual or audible signal given by a peace officer was intended to bring the pursued vehicle to a stop.”

IMMUNITY IN CHILD PROTECTION INVESTIGATIONS

A. Reporting or Investigating

PURPOSE:

These statutes provide immunity from civil and criminal liability for police officers who receive information of a child(ren) allegedly abused or in peril, or who are involved in investigations of such cases.

KEY ELEMENTS:

1. Should provide immunity from civil and criminal liability for a police officer's actions, including reporting, investigating and testifying, related to child protection.
2. Should provide immunity for good faith actions taken within the scope of the police officer's duties.
3. Should establish a presumption of good faith in favor of the police officer.

EXAMPLES:

MAINE REVISED STATUTES,

TITLE 22, SECTION 4014

"1. Reporting and proceedings. A person...participating in good faith in a related child protection investigation or proceeding...is immune from any criminal or civil liability for the act of reporting or participating in the investigation or proceeding.

* * *

3. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith."

CODE OF VIRGINIA,

SECTION 63.1-248.5

"Any person making a report...a complaint...or who takes a child into custody...or who participates in a judicial proceeding resulting therefrom shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent."

Note: Many states also provide immunity to citizens reporting alleged child abuse. See, for example, Idaho Code, Section 16-1620. Such statutes could be interpreted to provide

immunity to police officers who report alleged child abuse to relevant authorities. The Maine statute cited above provides the greatest protection against civil liability because it provides immunity for investigative actions, not just reporting.

B. Protective Custody of Children

PURPOSE:

These statutes provide immunity from civil and criminal liability for police officers who take abused, abandoned or neglected children into protective custody.

KEY ELEMENTS:

1. Should provide immunity from civil and criminal liability for a police officer's good faith decision to take a child into protective custody.
2. Should establish a presumption of good faith in favor of the police officer.
3. Should provide immunity when a child is taken into protective custody without a court order in emergency circumstances.

EXAMPLES:

IOWA STATUTES,

SECTION 232.79

"1. A peace officer...may take a child into custody...without a court order...and without consent of a parent, guardian, or custodian provided that both of the following apply:

- a. The child is in a circumstance or condition that presents an imminent danger to the child's life or health.
- b. There is not enough time to apply for an order under section 232.78.

* * *

3. Any person...acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or a person under the direction of such a

person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping."

NEW JERSEY STATUTES,

SECTION 9:6-8.29

"a. A police officer...may remove a child from the place where he is residing, or...may keep a child in his custody without an order pursuant to section 8 of P.L. 1974, c. 119...and without the consent of the parent or guardian regardless of whether the parent or guardian is absent, if the child is in such condition that his continuance in said place or residence or in the care and custody of the parent or guardian presents an imminent danger to the child's life, safety or health, and there is insufficient time to apply for a court order....

* * *

c. Any person or institution acting in good faith in the removal or keeping of a child pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of such removal or keeping."

Note: The Iowa statute also extends the immunity to the peace officer's employer. This provides an added level of protection against civil liability.

IMMUNITY IN INVESTIGATIONS INVOLVING ELDER ABUSE AND ABUSE OF PERSONS WITH DISABILITIES

PURPOSE:

These statutes provide immunity from civil and criminal liability for police officers who report or investigate cases involving suspected abuse or neglect of the elderly or persons with disabilities.

KEY ELEMENTS:

1. Should provide immunity from civil and criminal liability for a police officer's actions, including reporting, investigating and testifying, related to the abuse of the elderly or persons with disabilities.
2. Should provide immunity for good faith actions taken within the scope of the police officer's duties.
3. Should establish a presumption of good faith in favor of the police officer.

EXAMPLES:

RHODE ISLAND GENERAL LAWS,

SECTION 42-66.7-11

"Immunity from liability. -- Any person, institution, or official who in good faith participates in the registering of a complaint, or who in good faith investigates that complaint or provides access to those persons carrying out the investigation, or who participates in a judicial proceeding resulting from that complaint, is immune from any civil or criminal liability that might otherwise be a result of these actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this chapter did so in good faith."

ILLINOIS CODE,

SECTION 320 ILCS 15/4

"Any person, institution or agency making a report in good faith of the abuse of an elderly individual and believing the facts reported to be correct, or investigating such a report, or taking photographs and x-rays shall have immunity for any civil liability."

FLORIDA CODE,

SECTION 415.1036

"(1) Any person who participates in making a report...or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a disabled adult or an elderly person."

IDAHO CODE,

SECTION 39-5303(5)

"Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the provision of services, in the presence of gross negligence under the existing circumstances."

Note: The Rhode Island and Illinois statutes provide the greatest protection against civil liability because they clearly cover investigative actions by police, as well as immunity for persons reporting alleged abuse of the elderly or disabled. The Idaho statute provides broad coverage by its reference to persons "authorized to provide supportive or emergency services." The Florida statute allows immunity to be defeated only if the lack of good faith is established by "clear and convincing evidence."

IMMUNITY WHEN TRANSPORTING OR EFFECTING CUSTODY OF MENTALLY IMPAIRED SUBJECTS

PURPOSE:

These statutes provide immunity from civil or criminal liability for officers who transport or take custody of mentally impaired subjects.

KEY ELEMENTS:

1. Should apply to all reasonable acts taken by a law enforcement officer in order to gain control or take custody or transport a mentally impaired person.
2. Should provide civil and criminal liability protection for any act no amounting to gross negligence or wilful or wanton misconduct.

EXAMPLE:

NORTH CAROLINA GENERAL STATUTES,

Section 122C-251(e)

“(e) In providing the transportation required by this section the law enforcement officer may use reasonable force to restrain the respondent if it appears necessary to protect himself, the respondent, or others. No law enforcement officer may be held criminally or civilly liable for assault, false imprisonment, or other tort or crimes on account of reasonable measures taken under this article.”

NOTE: Some states provide immunity only when the officer acts in compliance with the act, See Michigan 14.800(427b). Such language is unduly restrictive and might limit the protection given to an officer who fails to comply with a merely technical aspect of the statute.

IMMUNITY WHEN RENDERING EMERGENCY ASSISTANCE

A. General “Good Samaritan” Laws

PURPOSE:

These statutes provide immunity from civil liability for police officers who render emergency first aid assistance.

KEY ELEMENTS:

1. Should specifically provide immunity for law enforcement or police officers.
2. Should not limit the application of immunity to services rendered “gratuitously,” since that language may exclude on-duty, paid officers.
3. Should cover as broad a range of emergency circumstances as possible, and not, for example, be limited to “accidents.”
4. Should cover actions ancillary to the rendition of medical assistance, such as forced entry or other reasonably necessary property damage.
5. Should, at a minimum, immunize any act of “simple negligence”.

EXAMPLES:

CONNECTICUT GENERAL STATUTES,

SECTION 52-557b(b)

“A paid or volunteer fireman or policeman...who has completed a course in first aid offered by the American Red Cross, the America Heart Association, the National Ski Patrol, the Department of Public Health or any director of health, as certified by the agency or director of health offering the course, and who renders emergency first aid to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence. No paid or volunteer fireman, policeman or ambulance personnel who forcibly enters the residence of any person in order to render emergency first aid to a person whom he reasonably believes to be in need thereof shall be liable to such person for civil damages incurred as a result of such entry. The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence.”

IDAHO STATUTES,

SECTION 5-330

“That no action shall lie or be maintained for civil damages in any court of this state against any person or persons, or group of persons, who in good faith, being at, or stopping at the scene of an accident, offers and administers first aid or medical attention to any person or persons injured in such accident unless it can be shown that the person or persons offering or administering first aid, is guilty of gross negligence in the care or treatment of said injured person or persons or has treated them in a grossly negligent manner.”

NOTE: The Idaho statute is limited to accident scenes. The broader application of the Connecticut statute protects officers in any situation in which emergency aid is offered, which is preferable.

A. Use of Defibrillators

PURPOSE:

These statutes provide immunity from civil liability for the use of defibrillators in rendering emergency assistance.

KEY ELEMENTS:

1. Should specifically provide immunity for law enforcement or police officers.
2. Should not limit the application of immunity to services rendered gratuitously, since that language may exclude on-duty, paid officers.
3. Should cover as broad a range of emergency circumstances as possible, and not, for example, be limited to “accidents.”
4. Should, at a minimum, immunize any act of “simple negligence”.

EXAMPLES:

IDAHO STATUTES,

SECTION 5-337(3)

“No cause of action shall be maintained which arises from the good faith use of a defibrillator in an emergency setting. This immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.”

ALABAMA STATUTES,

SECTION 6-5-332(e)

“A person or entity, who in good faith and without compensation renders emergency care or treatment to a person suffering or appearing to suffer from cardiac arrest, which may include the use of an automated external defibrillator, shall be immune from civil liability for any personal injury as a result of care of treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary prudent person would have acted under the same or similar circumstances, except damages that may result for the gross negligence of the person rendering emergency care.”

NOTE: The Alabama statute offers more extensive immunity, but is limited to persons who act “without compensation.” Without judicial interpretation clarifying the issue, this may exclude on-duty law enforcement personnel from coverage. The broader language of the Idaho statute would therefore be preferable.

IMMUNITY FOR ACTIONS TAKEN IN HANDLING DOMESTIC VIOLENCE INCIDENTS

PURPOSE:

These statutes provide immunity from civil liability for actions taken in handling domestic violence incidents.

KEY ELEMENTS:

1. Should provide for immunity for all officers, supervisors and employers.
2. Should provide immunity for both acts and omissions.
3. Should set a high threshold for liability, preferably immunizing any act that does not constitute gross negligence or willful or wanton misconduct.

EXAMPLES:

ILLINOIS COMPILED STATUTES,

750 ILCS 60 SECTION 305

“Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.”

CODE OF LAWS OF SOUTH CAROLINA,

SECTION 16-25-70(I)

“In addition to the protections granted to the law enforcement officer and law enforcement agency under the South Carolina Tort Claims Act, a law enforcement officer is not liable for an act, omission, or exercise of discretion under this section [Criminal Domestic Violence, Warrantless Arrest or Search] unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, willfulness, or wantonness.”

NOTES:

1. The Illinois and South Carolina statutes set forth above provide immunity for a broad range of actions taken in a domestic violence situation.

2. Many states provide immunity only when officers act “reasonably,” “in good faith,” while exercising “due care,” “in compliance with statewide policy or rules,” or when taking “reasonable measures.” These provisions offer little or no practical protection against liability claims. Even in the absence of the immunity provision, officers who act “reasonably,” “in good faith,” etc., are not likely to be found liable.

3. Finally, some statutes limit the parties who are protected. Some protect only the acting officer, while others, such as Illinois, add the assisting officer or supervisors. Other states are too narrow, limiting immunity protections to specific types of claims (false arrest, false imprisonment or malicious prosecution).

BACKGROUND INVESTIGATIONS

PURPOSE:

These statutes require the release of employment information to law enforcement agencies conducting background investigations of applicants for law enforcement employment and provide immunity from civil liability to employers providing such information.

KEY ELEMENTS:

1. Should provide for mandatory release of specified employment information, including attendance records, disciplinary records, reasons for termination, and eligibility for rehire.
2. Should provide a mechanism for enforcement should employers refuse to provide the requested information.
3. Should provide for immunity from civil liability to those employers releasing information in accordance with this law.

EXAMPLES:

FLORIDA STATUTES,

SECTION 943.134

“ (1) As used in this section, the term:

* * *

(b) "Employment information" includes, but is not limited to, written information relating to job applications, performance evaluations, attendance records, disciplinary matters, reasons for termination, eligibility for rehire, and other information relevant to an officer's performance, except information that any other state or federal law prohibits disclosing or information that is subject to a legally recognized privilege the employer is otherwise entitled to invoke.

(2)(a) When a law enforcement officer, correctional officer, or correctional probation officer, or an agent thereof, is conducting a background investigation of an applicant for temporary or permanent employment or appointment as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer with an employing agency, the applicant's current or former employer, or the employer's agent, shall provide to the officer or his or her agent

conducting the background investigation employment information concerning the applicant. The investigating officer or his or her agent must present to the employer from whom the information is being sought credentials demonstrating the investigating officer's employment with the employing agency and an authorization form for release of information which is designed and approved by the Criminal Justice Standards and Training Commission.

(b) The authorization form for release of information must:

1. Be either the original authorization or a copy or facsimile of the original authorization;
2. Have been executed by the applicant no more than 1 year before the request;
3. Contain a statement that the authorization has been specifically furnished to the employing agency presenting the authorization; and
4. Bear the authorized signature of the applicant.

(3) This section does not require an employer to maintain employment information other than that kept in the ordinary course of business.

(4) If an employer refuses to disclose information to an employing agency in accordance with this section, the employing agency has grounds for a civil action for injunctive relief requiring disclosure by the employer.

(5) An employer who discloses employment information under this section is immune from civil liability for such disclosure or its consequences....

(6) An employer may charge a reasonable fee to cover the actual costs incurred by the employer in copying and furnishing documents to an employing agency as required by this section.”

CONFIDENTIALITY OF PERSONNEL RECORDS

PURPOSE:

To regulate access to, inspection of and release of personnel records maintained on law enforcement officers.

KEY ELEMENTS:

1. To provide confidentiality of certain personnel records.
2. To define personnel records as information maintained on past and current employees and applicants.
3. To specify under which circumstances personnel records may be released and to whom.

EXAMPLES:

NORTH CAROLINA GENERAL STATUTES,

SECTION 160A-168

“(a)...personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee’s personnel file consists of any information in any form gathered by the city with respect to that employee and , by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section “employee” includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record: name, age, date of original employment or appointment to the service, current position title, current salary, date and amount of the most recent increase or decrease in salary, date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification and the office to which the employee is currently assigned. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection,

examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following circumstances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order if a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have the right to inspect such materials.

(c2) the city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(d) the city council of a city that maintains personnel files containing information other than the information mentioned in subsection (B) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.”

NOTES: North Carolina makes unauthorized release of personnel information a misdemeanor.

RELEASE OF PERSONNEL INFORMATION

PURPOSE:

To protect from civil liability a law enforcement employer who provides information about current or former employees to prospective employers.

ELEMENTS:

1. Provide sufficient protection to law enforcement employers to allow for free and open exchange with prospective employers of information regarding present or former employees.
2. Establish a presumption of good faith for the employer providing information.
3. Establish that the presumption of good faith can only be overcome by clear and convincing proof that the information released was both false and known to be false.

EXAMPLES:

NORTH CAROLINA GENERAL STATUTES,

SECTION 1-539.12

Any employer who discloses information about a current or former employee's job history or job performance...to a prospective employer of the current or former employee upon request of the prospective employer or the employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure unless the claimant shows by a preponderance of the evidence both:

1. the information was false and
2. the employer knew or reasonably should have known the information was false.

FLORIDA STATUTES,

SECTION 768.095

An employer who discloses information about a former or current employee to a prospective employer of the former or current employee upon request of the prospective employer or of the former or current employee is immune from civil liability for such disclosure or its consequences unless it is shown by clear and convincing evidence that the information disclosed by the former or current employer was knowingly false or violated any civil right of the former or current employee protected under chapter 760.”

VIRGINIA CODE ANNOTATED,

SECTION 15.2-1709

Any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers as defined §9-169, or jail officers as defined in §53.1-1, and the Director of the Department of Criminal Justice Services or his designee who discloses information about a former deputy sheriff's or law-enforcement officer's or jail officer's job performance to a prospective law-enforcement or jail employer of the former appointee or employee is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the former employer was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil right of the former employee or appointee.

NOTES: Virginia and Florida both provide for a preferable standard of evidence required to overcome the presumption of good faith, adopting a standard of “clear and convincing” evidence rather than the lower standard of mere preponderance.

EXECUTION OF SEARCH WARRANTS

GOOD FAITH MISTAKE/TECHNICAL VIOLATION

PURPOSE:

These statutes prevent the exclusion of evidence in a criminal case based solely on a good faith mistake made by a police officer or a technical violation in the search warrant procedure.

KEY ELEMENTS:

1. Should provide that evidence will not be suppressed on the basis of a good faith mistake, which includes any reasonable error of judgment concerning the existence of facts constituting probable cause.
2. Should provide that evidence will not be suppressed on the basis of a technical violation, which includes reliance on statutes later ruled unconstitutional, a warrant later invalidated or on court decisions later overruled.

EXAMPLES:

ARIZONA REVISED STATUTES,

SECTION 13-3925

“ Any evidence that is seized pursuant to a search warrant shall not be suppressed as a result of a violation of this chapter except as required by the United States Constitution and the constitution of this state.

B. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

C. The trial court shall not suppress evidence that is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

D. This section does not limit the enforcement of any appropriate civil remedy or criminal penalty in actions pursuant to other provisions of law against any individual or government entity found to have conducted an unreasonable search or seizure.

E. This section does not apply to unlawful electronic eavesdropping or wiretapping.

F. For the purposes of this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause.

2. "Technical violation" means a reasonable good faith reliance on:

(a) A statute that is subsequently ruled unconstitutional.

(b) A warrant that is later invalidated due to a good faith mistake.

(c) A controlling court precedent that is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.”

COLORADO REVISED STATUTES,

SECTION 16-3-308

“(1) Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer, as defined in section [18-1-901](#) (3) (1), C.R.S., as a result of a good faith mistake or of a technical violation.

(2) As used in subsection (1) of this section:

(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts or law which if true would be sufficient to constitute probable cause.

(b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

(3) Evidence which is otherwise admissible in a criminal proceeding and which is obtained as a result of a confession voluntarily made in a noncustodial setting shall not be suppressed by the trial court.

(4) (a) It is hereby declared to be the public policy of the state of Colorado that, when evidence is sought to be excluded from the trier of fact in a criminal proceeding because of the conduct of a peace officer leading to its discovery, it will be open to the proponent of the evidence to urge that the conduct in question was taken in a reasonable, good faith belief that it was proper, and in such instances the evidence so discovered should not be kept from the trier of fact if otherwise admissible. This section is necessary to identify the characteristics of evidence which will be admissible in a court of law. This section does not address or attempt to prescribe court procedure.

(b) It shall be prima facie evidence that the conduct of the peace officer was performed in the reasonable good faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.”

UTAH CODE,

SECTION 77-23-212

“(1) Property or evidence seized pursuant to a search warrant may not be suppressed at a motion, trial, or other proceeding, unless the unlawful conduct of the peace officer is shown to be substantial.

(2) Any unlawful search or seizure shall be considered substantial and in

bad faith if the warrant was obtained with malicious purpose and without probable cause or was executed maliciously and willfully beyond the authority of the warrant or with unnecessary severity.”

NOTES:

3. Although the Utah statute does not use the terms “good faith” or “technical violation,” its language would necessarily incorporate the reasonableness standards cited in the key elements.

2. Several states have more limited provisions that apply only to technical irregularities, providing essentially that “no search warrant shall be quashed or evidence suppressed because of technical irregularities not affecting the substantial rights of the accused.” See, Section 17-5-31, Georgia Code; Section 22-2511, Kansas Statutes; Section 968.22, Wisconsin Statutes.

EXECUTION OF SEARCH WARRANTS

ELECTRONIC COMMUNICATION OF WARRANTS

PURPOSE:

These statutes specifically allow affidavits and/or testimony supporting the issuance of a search warrant to be communicated by telephone or other electronic communication.

KEY ELEMENTS:

4. Should allow for submission of the supporting affidavit telephonically or by other electronic means.
5. Should provide for the preservation of the sworn testimony.
6. Should not require any predicate criteria for the issuance of a warrant in this fashion (for example, should not require any showing that delay will otherwise result in the destruction of evidence).

EXAMPLES:

WISCONSIN STATUTES,

SECTION 968.12(3)

“(a) *General rule.* A search warrant may be based upon sworn oral testimony communicated to the judge by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection.

(b) *Application.* The person who is requesting the warrant shall prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified.

(c) *Issuance.* If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(d) *Recording and certification of testimony.* When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall arrange for all sworn testimony to be recorded either by a stenographic reporter or by means of a voice recording device. The judge shall have the record transcribed. The transcript, certified as accurate by the judge or reporter, as appropriate, shall be filed with the court. If the testimony was recorded by means of a voice recording device, the judge shall also file the original recording with the court.”

SOUTH DAKOTA CODIFIED LAWS,

SECTION 23A-35-5

“Oral testimony as basis for warrant -- Transcription, certification and filing with court. When circumstances make it reasonable to do so in the absence of a written affidavit, a search warrant may be issued upon sworn oral testimony of a person who is not in the physical presence of a committing magistrate if the committing magistrate is satisfied that probable cause exists for the issuance of the warrant. The sworn oral testimony may be communicated to the magistrate by telephone or other appropriate means and shall be recorded and transcribed. After transcription the statement must be certified by the magistrate and filed with the court. This statement shall be deemed to be an affidavit for purposes of § 23A-35-4.”

NOTES:

1. The South Dakota statute conditions the issuance of this type of warrant only when “circumstances make it reasonable to do so.” It would be preferable not to have to show any predicate condition in order to obtain such warrant.

2. The Federal Rules of Criminal Procedure, section 41(c)(2), located in the “Telephonic Warrants” section of the Model Statutes compilation under the heading “Arrests”, also provides language providing for electronic issuance of any type of warrant.

EXECUTION OF SEARCH WARRANTS

SEARCH OF PERSONS PRESENT BUT NOT NAMED IN THE WARRANT

PURPOSE:

An officer executing a search warrant for contraband which can be concealed on or about a person is authorized to search persons present though not named in the warrant.

KEY ELEMENTS:

1. Statute should authorize officers to search the garments of a person present though not named in the warrant.
2. Statute should require the officer to have probable cause to believe the property is concealed on person.
3. The search of person authorized by the statute would be limited to a search for the items described in the warrant.

EXAMPLE:

CONNECTICUT GENERAL STATUTES,

SECTION 54-33b

“The officer serving a search warrant may, if he has reason to believe that any of the property described in the warrant is concealed in the garments of any person in or upon the place or thing to be searched, search the person for the purpose of seizing the same.”

NOTE:

The Connecticut courts have interpreted the phrase “reason to believe” to mean probable cause.

EXECUTION OF SEARCH WARRANTS FORCED ENTRY

PURPOSE:

These statutes define the prerequisites to forced entry during the execution of search warrants and the conditions under which officers may dispense with knock and announce requirements.

KEY ELEMENTS:

1. At minimum, statutes should address:
 - (a) pre-entry announcement requirements, and
 - (b) conditions under which forcible entry may be made.
2. The statute should permit a judge or magistrate issuing the warrant, under appropriate circumstances, to authorize an unannounced entry.
3. The statute should permit an officer to make an unannounced forced entry determination at the time of the warrant's execution.

EXAMPLES:

ARIZONA REVISED STATUTES,

SECTIONS 13-3915 and 13-3916

“13-3915. Issuance; form of warrant; duplicate original warrant, telefacsimile

* * *

B. On a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the magistrate shall authorize an unannounced entry.”

“13-3916. Service of warrant; breaking and entering to execute

* *

B. An officer may break into a building, premises or vehicle or any part of a building, premises, or vehicle, to execute the warrant when:

1. After notice of the officer's authority and purpose, the officer receives no response within a reasonable time.
2. After notice of the officer's authority and purpose, the officer is refused admittance.
3. A magistrate has authorized an unannounced entry pursuant to 13-3915.
4. The particular circumstances and objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose would endanger the safety of any person or result in the destruction of evidence."

EXECUTION OF SEARCH WARRANTS

TIME AND MANNER

PURPOSE:

These statutes provide appropriate latitude to officers regarding the time and manner of executing warrants.

KEY ELEMENTS:

1. Should not limit the search to any particular time of day.
2. Should authorize reasonable force.

EXAMPLES:

COLORADO REVISED STATUTES,

SECTION 16-3-304

“3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(a) To execute and serve the warrant at any time; and

(b) To use and employ such force as is reasonably necessary in the performance of the duties commanded by the warrant.”

CODE OF VIRGINIA,

SECTION 19.2-56

...”The warrant shall command that the place be forthwith searched, either in day or night, and that the objects or persons described in the warrant, if found there, be seized....”

STOP AND FRISK

PURPOSE:

These statutes provide complete constitutional authority for police officers to deal with situations in which suspects exhibit suspicious behavior, but for whom there is not sufficient probable cause to support an arrest.

KEY ELEMENTS:

1. The standard required for a police officer to stop or detain an individual should be “reasonable suspicion.”
2. The definition of reasonable suspicion contained in Terry v. Ohio, 392 U.S. 1 (1968), is sufficient and need not be repeated in statutory form.
3. A police officer's authority to frisk a suspect for weapons should be linked only to reasonable suspicion to believe the suspect is armed, and not to other criteria.
4. Authority to initiate a stop and frisk should not be limited by time of day or location.

EXAMPLES:

OREGON REVISED STATUES,

SECTIONS 131.615 and 131.625

"131.615 Stopping of persons.

(1) A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the peace officer is a peace officer, make a reasonable inquiry.

(2) The detention and inquiry shall be conducted in the vicinity of the stop and for no longer than a reasonable time.

(3) The inquiry shall be considered reasonable if it is limited to:

- (a) The immediate circumstances that aroused the officer's suspicion;

(b) Other circumstances arising during the course of the detention and inquiry that give rise to a reasonable suspicion of criminal activity; and

(c) Ensuring the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.

(4) The inquiry may include a request for consent to search in relation to the circumstances in subsection (3) of this section or to search for items of evidence otherwise subject to search or seizure...

(5) A peace officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons who are present.

"131.625 Frisk of stopped persons.

(1) A peace officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects that the person is armed and dangerous to the officer or other persons present.

(2) If, in the course of the frisk, the peace officer feels an object which the peace officer reasonably suspects is a dangerous or deadly weapon, the peace officer may take such action as is reasonably necessary to take possession of the weapon.

DELAWARE CODE,

TITLE 11, SECTIONS 1902 and 1903

"§1902 (a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

"§1903. Searching questioned person for weapon.

A peace officer may search for a dangerous weapon any person whom the officer has stopped or detained to question as provided in §1902 of this title, whenever the officer has a reasonable ground to believe the officer is in danger if the person possesses an dangerous weapon. If the officer finds a weapon, the officer may take and keep it until the completion of the questioning, when the officer shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon."

NOTES: The Delaware statute contains a two-hour limitation on the duration of the stop. A similar rule was found by the Supreme Court to be more restrictive than required by the Fourth Amendment in U.S. v. Sharpe, 470 U.S. 675 (1985). The Oregon statute, which requires only that the stop be for a reasonable period of time is preferred.

DEFINITION OF DEADLY FORCE

PURPOSE:

To provide a clear and practical definition of what actions constitute deadly force and eliminate unintentional restrictions on police use of force.

KEY ELEMENTS:

- 1) Should define deadly force to be that force which is reasonably likely to cause death or serious physical injury.
- 2) The standard should be objective.

EXAMPLE:

CONNECTICUT GENERAL STATUTES,

SECTION 53a-3(5)

“‘Deadly physical force’ means physical force which can be reasonably expected to cause death or serious physical injury.”

NOTES: Statutes defining the use of deadly force sometimes include “any use of a ‘firearm’.” Many new technologies employ “firearms” (for example, those expelling rubber bullets or foil rings) as non-lethal weapons. In order to ensure that officers are not unnecessarily restricted in using such weapons and to avoid the conflict between the use of these weapons and the standards under which “deadly force” may be used, statutory definitions may have to be modified. Examples of such modifications include:

FLORIDA STATUTES,

SECTION 776.06

“(2)(a) The term ‘deadly force’ does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection the term ‘less-lethal munition’ means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person’s body.

(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.”

ILLINOIS REVISED STATUTES,

CHAPTER 38, SECTION 5/7-8

“(b) A peace officer's discharge of a firearm using ammunition designed to disable or control an individual without creating the likelihood of death or great bodily harm shall not be considered force likely to cause death or great bodily harm within the meaning of Sections 7-5 and 7-6.”

LAW ENFORCEMENT USE OF DEADLY FORCE

PURPOSE:

These statutes set standards for officers' use of deadly force and should clearly state the constitutional limits on when officers may use deadly force.

KEY ELEMENTS:

1. The standard should be "reasonable belief" that the elements justifying use of force are met.
2. Deadly force should be authorized:
 - (a) for protection of self or others from the imminent threat of death or serious bodily harm; or
 - (b) to prevent the escape of a person who has committed a felony involving the infliction or threatened infliction of serious bodily injury or death.
3. The statute should require a verbal warning be given, if feasible, prior to the use of deadly force.

EXAMPLES:

MAINE REVISED STATUTES ANNOTATED,

TITLE 17A, SECTION 107-2

"(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(b) Effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury;

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or others if apprehension is delayed;

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force.

NOTES: Similar provisions are found in the Oregon Revised Statutes, Section 161.239; Tennessee Code Annotated, Section 39-11-620; and the Utah Code Annotated, Section 76-2-404.

LAW ENFORCEMENT USE OF NON-DEADLY FORCE

PURPOSE:

These statutes should realistically address circumstances in which it may be necessary for officers to use non-deadly force to fulfill their duties and should provide the authority necessary therefor.

KEY ELEMENTS:

1. The statutes should allow the use of non-deadly force under the following circumstances:
 - (a) when reasonably necessary to make an arrest or prevent escape;
 - (b) when reasonably necessary to protect themselves or others;
 - (c) when reasonably necessary to conduct lawful searches;
 - (d) when reasonably necessary to effect the lawful detention of individuals;
 - (e) when reasonably necessary in the performance of other lawful duties.
2. The standard should be “reasonable belief” that the use of such force is necessary.

EXAMPLES:

OREGON REVISED STATUTES,

SECTION 161.235

“A peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes it necessary to make arrest or prevent the escape from custody of an arrested person unless the peace officer knows the arrest is unlawful.”

[A peace officer is justified in using physical force] “for self defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force.” (similar language is found in the Maine Revised Statutes Annotated, Title 17A, Section 107A; and in the Connecticut General Statutes, Section 53a-22b).

SECTION 131.615(5)

“A peace officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons who are present.”

TEXAS PENAL CODE ANNOTATED,

SECTION 9.51

“(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if: (1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.”

MINNESOTA STATUTES,

SECTION 609.06

“Reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

(1) When used by a public officer of one assisting a public officer under the public officer's direction:

- (a) In effecting a lawful arrest; or
- (b) In the execution of legal process; or
- (c) In enforcing an order of the court; or
- (d) In executing any other duty imposed upon the public officer by law.”

NOTES:

1. An officer's ability to use force will also include any use of force authorized to be used by other citizens under those specific statutes.

2. The Texas statute requires that the force be "immediately" necessary, a standard that is more restrictive than is constitutionally required. The standard should be simply "necessary."

USE OF FORCE TO PREVENT ESCAPE FROM INCARCERATION

PURPOSE:

These statutes provide that the use of force is justified when used by a law enforcement official to prevent an escape from a penal institution, correctional facility or other place of incarceration.

KEY ELEMENTS:

1. Should apply to all police officers as well as correctional officers.
2. Should specifically allow force, including deadly force.
3. Should allow such force when the officer “reasonably believes” it to be necessary to prevent escape.
4. Should not require the officer to make distinctions between misdemeanants and felons (often difficult to determine at the point the escape is occurring).

EXAMPLES:

INDIANA CODE,

SECTION 35-41-3-3(e)

“A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.”

TEXAS PENAL CODE ANNOTATED,

SECTION 9.52

“...a guard employed by a correctional facility or a peace officer is justified in using any force, including deadly force, that he reasonably believes to be immediately necessary to prevent the escape of a person from the correctional facility.”

FLORIDA STATUTES,

SECTION 776.07(2)

“A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.”

NOTES:

1. Texas adds that the use of force must be “immediately necessary,” rather than simply “necessary.” This may prove problematic to an officer using this section as a defense in a civil or criminal proceeding. Force that is reasonably believed to be necessary is a preferable standard from a law enforcement perspective.

2. Florida adds the element that the officer must “reasonably believe the person to be lawfully detained.” Although the officer’s testimony in this regard will usually be sufficient to meet this element, it does add an additional avenue of attack for anyone challenging the use of force. The simple language of the Indiana statute is preferable from a law enforcement perspective.

THREAT OF FORCE DOES NOT CONSTITUTE DEADLY FORCE

PURPOSE:

These statutes provide that the threat to use force (such as the drawing of a weapon) does not constitute the use of deadly force, so long as the actor intends only the threat. This provision would provide a defense to law enforcement officers in civil or criminal actions alleging unlawful force, if the officer's "force" was limited, for example, to the drawing of his or her weapon.

KEY ELEMENTS:

1. Should provide generally that the threat of force by production of a weapon or otherwise, does not by itself constitute the use of force.

EXAMPLES:

HAWAII REVISED STATUTES,

SECTION 703-300

"A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force."

TEXAS PENAL CODE ANNOTATED,

SECTION 9.04

"...a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force."

NOTES:

1. Both Hawaii and Texas include these sections as part of the justifiable use of force statutes. Application should be limited to law enforcement officers.

2. Both Hawaii and Texas statutes provide that the threat does not constitute "deadly force". It would be preferable to broaden this language to provide that it does not constitute the use of, simply, "force".

EFFECT ON LEGALITY OF ARREST/ADMISSIBILITY OF EVIDENCE

PURPOSE:

These statutes provide that unlawful use of force by a law enforcement officer does not compromise the legality of the arrest or the admissibility of any evidence seized as an incident of the arrest. This effectively eliminates an attack on the appropriateness of the officer's use of force from becoming an issue in the criminal trial of the original offense.

KEY ELEMENTS:

1. Should specify that illegal or unjustified use of force is not a defense to the legality of the original offense.
2. Should specify that illegal or unjustified use of force is not a grounds for the suppression of any evidence seized during the arrest.

EXAMPLES:

NEW HAMPSHIRE REVISED STATUTES ANNOTATED,

SECTION 627.5 (VII)

“Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.”
See similarly, Maine Revised Statutes Annotated, Title 17A, Sec. 107(5).

NOTES: In many states, this may be a rule established by case law.

USE OF FORCE IN RESISTING ARREST

PURPOSE:

These statutes provide that the arrestee is not justified in the use of force in resisting any arrest, whether or not such arrest is lawful.

KEY ELEMENTS:

1. Should eliminate the defense of “unlawful arrest” from those available to a person charged with resisting an arrest by using physical force or a battery charge associated with the arrest.
2. Should contain language making the use of such force “unjustified” or “unauthorized” regardless of the lawfulness of the arrest.
3. Should apply whenever the arrestee should reasonably know that the person making the arrest is a law enforcement officer, and should be an objective standard (not requiring proof of the arrestee’s state of mind).
4. Should apply as well to anyone assisting a police officer in making an arrest.

EXAMPLES:

CONNECTICUT GENERAL STATUTES,

SECTION 53A-23

“A person is not justified in using physical force to resist an arrest by a reasonably identifiable peace officer, whether such arrest is legal or illegal.”

FLORIDA STATUTES,

SECTION 776.051(1)

“A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.”

KANSAS STATUTES ANNOTATED,

SECTION 21-3217

“A person is not authorized to use force to resist an arrest which he knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.”

NOTES:

1. The Connecticut provision contains only an objective standard and would apply whenever a reasonable person would have known the person making the arrest is a police officer. The Florida statute is somewhat broader, applying whenever a reasonable person would have known the person making the arrest is a police officer as well as to circumstances when it can be proven that the arrestee knew it was a police officer. The Kansas statute has only a subjective standard, requiring arrestee’s knowledge of the officer’s position as a law enforcement official. This could cause evidentiary problems at trial.

2. The Kansas statute has good language expanding the application of this section to include force against persons acting at the direction of a law enforcement officer, but has the weakness identified in note #1 above.

MISCELLANEOUS IMMUNITY STATUTES

A. *ARREST ON WARRANT IN CRIMINAL RECORDS SYSTEM*

MASSACHUSETTS

CHAPTER 276: SECTION 23A.

"No law enforcement officer, who in the performance of his duties relies in good faith on the warrant appearing in the warrant managements system and, in turn, the criminal justice information system, shall be liable in any criminal prosecution or civil action alleging false arrest, false imprisonment, or malicious prosecution or arrest by false pretense."

B. *ASSISTANCE TO FAMILIES AND CHILDREN*

CONNECTICUT

SECTION 46b-149b.

"Any police officer or any official of a municipal or community agency, who in the course of his employment under subsection (d) of section 17a-15 or section 46b-120, 46b-121, 46b-149 or 46b-149a provides assistance to a child or a family in need thereof, shall not be liable to such child or such family for civil damages for any personal injuries which result from the voluntary termination of service by the child or the family."

C. *CARRYING A CONCEALED WEAPON*

FLORIDA

SECTION 790.052

"(1) The appointing or employing agency or department of an officer carrying a concealed firearm as a private citizen under s. 790.06 shall not be liable for the use of the firearm in such capacity. Nothing herein limits the authority of the appointing or employing agency or department from establishing policies limiting law enforcement officers or correctional officers from carrying concealed firearms during off-duty hours in their capacity as appointees or employees of the agency or department."

MONTANA

SECTION 45-8-326

"A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant of, renewal of, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence."

D. CRIME REPORTING

NORTH CAROLINA

SECTION 90-21.20

"(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

Any person making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report."

E. CRIME SCENE

LOUISIANA

SECTION 2793.1

"A. No person shall have a cause of action against a public entity or the officers and employees thereof for damage to property at the site of a crime, accident, or fire, including without limitation the destruction or deterioration of property, caused while the officer or employees was acting within the course and scope of his office or employment and while taking reasonable remedial action which is necessary to abate a public emergency, unless such damage was caused by willful or wanton misconduct or gross negligence.

B. (1) As used in this Section, "public entity" means the state, or a political subdivision thereof which maintains a department responsible for fire protection, and its fire department, or a law enforcement agency, office, or department responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state, and its law enforcement agency, office, or department.

(2) For purposes of this Section, the term "public emergency" includes any emergency in which there is a potential threat to life or property requiring immediate or remedial action, in order to insure the safety and health of persons and property, including an emergency created by apparent violation of the criminal laws of this state or an emergency created by fires."

F. CRIME VICTIM RIGHTS

CONNECTICUT

SECTION 54-224

"Except as provided in subsection (d) of section 46b-38b, the state or any agent, employee or officer thereof shall not be liable for (1) the failure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes or (2) the failure to provide the victim of a crime with any notice pursuant to any provision of the general statutes."

G. CUSTODY OF VEHICLES FOLLOWING DUI ARREST

KANSAS

SECTION 8-1011

"A law enforcement officer, and the state or any political subdivision of the state that employs a law enforcement officer, arresting or taking custody of a person for any offense involving the operation of or attempt to operate a vehicle while under the influence of alcohol or drugs, or both, shall have immunity from any civil or criminal liability for the care and custody of the vehicle that was being operated by or was in the physical control of the person arrested or in custody if the law enforcement officer acts in good faith and exercises due care."

SECTION 32-1136

"A law enforcement officer, and the state or any political subdivision of the state that employs a law enforcement officer, arresting or taking custody of a person for any offense involving the operation of or attempt to operate a vessel while under the influence of alcohol or drugs, or both, shall have immunity from any civil or criminal liability for the care and custody of the vessel that was being operated by or was in the physical control of the person arrested or in custody if the law enforcement officer acts in good faith and exercises due care."

H. DISCOVERY OF PERSONNEL RECORDS

NEW HAMPSHIRE

SECTION 105:13-b

"No personnel file on a police officer who is serving as a witness or prosecutor in a criminal case shall be opened for the purposes of that criminal case, unless the sitting judge makes a specific ruling that probable cause exists to believe that the file contains evidence relevant to that criminal case. If the judge rules that probable cause exists, the judge shall order the police department employing the officer to deliver the file to the judge. The judge shall examine the file in camera and make a determination whether it contains evidence relevant to the criminal case. Only those portions of the file which the judge determines to be relevant in the case shall be released to be used as evidence in accordance with all applicable rules regarding evidence in criminal cases. The remainder of the file shall be

treated as confidential and shall be returned to the police department employing the officer."

I. DUTY TO PROTECT

ILLINOIS

745 ILCS 10/4-102, Sec. 4-102.

"Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee."

NEVADA

SECTION 41.0336

"A fire department or law enforcement agency is not liable for the negligent acts or omissions of its firemen or officers or any other persons called to assist it, nor are the individual officers, employees or volunteers thereof, unless:

- (1) The fireman, officer or other person made a specific promise or representation to a natural person who relied upon the promise or representation to his detriment; or
- (2) The conduct of the fireman, officer or other person affirmatively caused the harm.

The provisions of this section are not intended to abrogate the principle of common law that the duty of governmental entities to provide services is a duty owed to the public, not to individual persons."

J. EMERGENCY ENTRY TO PROVIDE FIRST AID

CONNECTICUT

SECTION 52-557b

"(b) A paid or volunteer fireman or policeman, a teacher or other school personnel on the school grounds or in the school building or at a school function, a member of a ski patrol, a lifeguard, a conservation officer, patrolman or special policeman of the Department of Environmental Protection, or ambulance personnel, who has completed a course in first aid offered by the American Red Cross, the American Heart Association, the National Ski Patrol, the Department of Public Health or any director of health, as certified by the agency or director of health offering the course, and who renders emergency first aid to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence. No paid or volunteer fireman, policeman or ambulance personnel who forcibly enters the residence of any person in order to render emergency first aid to a person whom he reasonably believes to be in need thereof shall be liable to such person for civil damages

incurred as a result of such entry. The immunity provided in this subsection does not apply to acts or omissions constituting gross, wilful or wanton negligence."

K. ENFORCEMENT OF OUT-OF-STATE ORDERS

ARKANSAS

§9-15-303. Immunity from Liability.

"Law enforcement officers shall be entitled to the same immunity as when enforcing in-state orders if acting in good faith on out-of-state orders."

L. EVIDENCE COLLECTION

NEW JERSEY

SECTION 2A:62A-10

"When acting in response to a request of a law enforcement officer, any physician, nurse or medical technician who withdraws or otherwise obtains, in a medically accepted manner, a specimen of breath, blood, urine or other bodily substance and delivers it to a law enforcement officer, shall be immune from civil or criminal liability for so acting, provided the skill and care exercised is that ordinarily required and exercised by others in the profession."

M. GENERAL IMMUNITY

ARIZONA

SECTION 12-820.02

"A. Unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for:

1. The failure to make an arrest or the failure to retain an arrested person in custody.
2. An injury caused by an escaping or escaped prisoner or a youth committed to the department of juvenile corrections.
3. An injury resulting from the probation, community supervision or discharge of a prisoner or a youth committed to the department of juvenile corrections, from the terms and conditions of the prisoner's or youth's probation or community supervision or from the revocation of the

prisoner's or youth's probation, community supervision or conditional release under the psychiatric security review board.
4. An injury caused by a prisoner to any other prisoner or an injury caused by a youth committed to the department of juvenile corrections to any other committed youth.
5. The issuance of or failure to revoke or suspend any permit, license, certificate, approval, order or similar authorization for which absolute immunity is not provided pursuant to section 12-820.01.
6. The failure to discover violations of any provision of law when inspections are done of property other than property owned by the public entity in question.
7. An injury to the driver of a motor vehicle that is attributable to the violation by the driver of section 28-693, 28-1381 or 28-1382.
8. The failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under any federal law or any law of this state.

9. Preventing the sale or transfer of a handgun to a person who may lawfully receive or possess a handgun.
10. The failure to detain a juvenile taken into temporary custody or arrested for a criminal offense or delinquent or incorrigible act in the appropriate detention facility, jail or lockup described in section 8-305."

NEW MEXICO

SECTION 31-23-1

"No person shall be liable to a plaintiff in any civil action for damages if by a preponderance of the evidence the damages were incurred as a consequence of:

A. the commission, attempted commission or flight subsequent to the commission of a crime by the plaintiff; and

B. the use of force or deadly force by the defendant which is justified pursuant to common law or the law of the state. "

N. HAZARDOUS MATERIAL RESPONSE

MONTANA

SECTION 10-3-1217

"The state or a political subdivision of the state, the commission, local emergency response authority, and the state hazardous material incident response team or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team is not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location."

O. INJURY CAUSED BY CRIME -- CIVIL LIABILITY

NEVADA

SECTION 41.133

"If an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for injury."

P. INTOXICATED CITIZENS

MISSOURI

SECTION 67.315

"1. A person who appears to be incapacitated or intoxicated may be taken by a peace officer to the person's residence, to any available treatment service, or to any other appropriate local facility, which may if necessary include a jail, for custody not to exceed twelve hours.

2. Any officer detaining such person shall be immune from prosecution for false arrest and shall not be responsible in damages for taking action pursuant to subsection 1 above if the officer has reasonable grounds to believe the person is incapacitated or intoxicated by alcohol and he does not use unreasonable excessive force to detain such person.

3. Such immunity from prosecution includes the taking of reasonable action to protect himself or herself from harm by the intoxicated or incapacitated person."

Q. PUBLIC UNREST

VIRGINIA

SECTION 18.2-412

"No liability, criminal or civil, shall be imposed upon any person authorized to disperse or assist in dispersing a riot or unlawful assembly for any action of such person which was taken after those rioting or unlawfully assembled had been commanded to disperse, and which action was reasonably necessary under all the circumstances to disperse such riot or unlawful assembly or to arrest those who failed or refused to disperse."

R. USE OF FORCE/SELF DEFENSE

VIRGINIA

SECTION 18.2-282

"A. It shall be unlawful for any person to point, hold or brandish any firearm, as hereinafter described, or any object similar in appearance to a firearm, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another or hold a firearm in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured. However, this section shall not apply to any person engaged in excusable or justifiable self-defense. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor or, if the violation occurs upon any public, private or parochial elementary, middle or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, he shall be guilty of a Class 6 felony.

B. Any police officer in the performance of his duty, in making an arrest under the provisions of this section, shall not be civilly liable in damages for injuries or death resulting to the person being arrested if he had reason to believe that the person being arrested was pointing, holding, or brandishing such firearm, or object which was similar in appearance to a firearm, with intent to induce fear in the mind of another.

C. For purposes of this section, the word "firearm" shall mean any weapon in which ammunition may be used or discharged by explosion or pneumatic pressure. The word "ammunition," as used herein, shall mean a cartridge, pellet, ball, missile or projectile adapted for use in a firearm."

NEW JERSEY

SECTION 2A:62A-20

"(1) Notwithstanding any provisions of law to the contrary, a person who possesses a chemical substance for the purpose of personal self-defense in accordance with subsection i. of N.J.S.2C:39-6 and who releases or discharges that chemical substance upon or toward another person shall not be liable in any civil action for damages resulting from that release or discharge when the actor reasonably believes that the releasing or discharging of that chemical substance is immediately necessary for the purpose of personal self-defense. Nothing in this section shall be deemed to grant immunity to any person causing any damage by his willful, wanton or grossly negligent unlawful releasing or discharging of such a chemical substance upon or toward another person."

S. 911 SERVICE

MONTANA

SECTION 27-1-735

"(1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers and subscribers' names and physical addresses.

(2) A local exchange telephone company registered as a Montana telecommunications service provider, as provided in 69-3-805, or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d)(1), that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct.

This subsection does not provide immunity from liability in a products liability action. (3) For the purposes of this section, "subscribers" means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider."

NEBRASKA

SECTION 86-1009

"In contracting for such service and in providing such service, except for failure to use reasonable care or for intentional acts, each governing body, public safety agency, and service supplier and their employees and agents shall be immune from liability or the payment for any damages in the performance of installing, maintaining, or providing 911 service."

RACE PROFILING

Allegations of race profiling by police officers are frequently found in the press and in the courts. In response, several state legislatures have enacted legislation and many others are considering legislation, aimed at this alleged police practice. The Model Statutes Project of the International Association of Chiefs of Police reviewed the existing state legislation to identify elements of the statutes and their impact on law enforcement agencies.

The chart that follows describes the requirements of each state's statute. **It is neither an endorsement of any state statutory scheme nor is it meant to advocate in favor of legislation to address the issue of alleged race profiling.** Rather, it is meant to provide law enforcement administrators with relevant information about existing state statutes should they face the issue in their own jurisdictions or legislatures.

The Model Statutes Project made the following observations that should be considered if new legislation is being considered:

1. A statute should define "race profiling" as conduct by police motivated **solely** by an individual's race or ethnicity, but should not preclude consideration of race or ethnicity when it is part of a suspect's description or is otherwise validly related to an officer's investigation of criminal activity. A clear definition provides guidance to police officers and serves as a statement of legislative intent.
2. The Constitution already guarantees all individuals equal protection under law and other federal and state laws provide a prohibition and remedy for discriminatory practices. Thus, statutes predicated on prohibitions are unnecessary.
3. When data collection is required, it should have a specified and limited duration and be confined to determining the existence or extent of race profiling. This allows the collection and analysis of data over a finite period, without imposing an unending administrative burden on the law enforcement agencies of a state.
4. Race profiling allegations most frequently arise from traffic stops instituted by police officers. The categories of police action covered by the data collection requirement should be limited to the scope of the alleged problem. Thus, data collection should be confined to individual traffic stops, and exclude other police activities, including traffic roadblocks and checkpoints.

5. The manner of collection should be designed to minimize the intrusiveness of the data collection on the citizen involved and reduce the administrative burden on police. For example, several states require that the data collected be based solely on the officer's observations. In addition, one state requires that the demographic information be reported only if a Uniform Traffic Citation is issued. These methodologies result in minimal burdens to both citizens and police.

6. The amount of information collected should be carefully tailored to reduce the intrusiveness of the inquiry on citizens, yet sufficient for a complete and valid analysis. The data must permit an analysis that correlates the demographic data with causal predicates and other relevant factors, such as location and citizen complaints.

7. Training is an important component of legislation. Training requirements will sensitize police officers to the need to treat all persons equally and fairly, and will ensure the proper administration of the statute's requirements. Specific training requirements, including the number of hours or topics to be covered, should be the responsibility of law enforcement administrators, who should design training programs appropriate to their agencies.

8. Statutes requiring the adoption of departmental policy prohibiting racial profiling are not favored. Discriminatory practices by police officers are already prohibited by existing policies and by law. Requiring policy statements would be of marginal value.

9. Because aggrieved citizens already have the ability to file complaints with police departments, the establishment of citizen complaint processes for allegations of race profiling is not needed.

10. Criminal penalties for proven instances of race profiling are not necessary. Such discrimination is already prohibited under federal civil rights statutes and is civilly actionable under 42 U.S.C. §1983 and various state statutes.

RACE PROFILING STATUTES COMPARISON

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	Pro De
California (Penal Code, Section 13519.4)	No	All	None	Every law enforcement officer in the state shall participate in expanded training as prescribed and certified by POST. Curriculum to include and examine the patterns, practices and protocols that make up and prevent racial profiling. Refresher training required at least every 5 years.	No	Legislature will conduct a study of data being collected voluntarily by certain departments to “ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed...”	Report to be submitted to legislature by 7/1/02.	Training program is mandatory.	“R pr the de sus on of wh sus en pe an inc sus pa pe sto

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	Profiling Defined
Connecticut (Public Act 99-198)	Two years	Traffic violations	Number of persons stopped; race/ color/ ethnicity/age/gender; nature of alleged violation; enforcement action(s) taken; searches conducted and property or contraband seized	None	“[E]ach municipal police department and the Department of Public Safety shall adopt a written policy that prohibits the stopping, detention or search of any person when such action is solely motivated by considerations of race, color, ethnicity, age, gender or sexual orientation, and the action would constitute a violation of the civil rights of the person	To review prevalence and disposition of traffic stops and complaints	Annual reports to Chief State’s Attorney and report by Chief State’s Attorney to Governor and legislature by 1/1/2002	Data collection mandatory. Adoption of policy is also mandatory. Departments must report citizen complaints to the Chief State’s Attorney	“The detentions, interdictions or other disparate treatments of an individual based on any noncriminal factors or combination of noncriminal factors.

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandate/Permissible Elements
Florida Florida Statutes, Sections 943.1758, 30.15, and 166.0493 Effective 6/19/2001	No	“[H]igh risk and critical tasks which include, but are not limited to, stops, use of force and domination, and other areas of interaction between officers and members of diverse populations.”	None required expressly by the statute	The statute requires training for new and incumbent officers on how to deal with members of diverse populations.	Yes. All sheriffs and municipal agencies are required to “incorporate antiracial or other nondiscriminatory profiling policies.”	None defined	None defined	Policy adoption mandate Training newly hired officers as incumbent officers mandate

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissible Element
<p>Kansas (House Bill No. Sub 2683)</p>	<p>Statute requires state to solicit proposals for a system to collect and report statistics relating to the race, ethnicity, gender, age and residency by county and state of those who come in contact with law enforcement activities</p>	<p>Stop of a motor vehicle; persons arrested; pedestrians stopped by police</p>	<p>Ethnicity, race, gender, age, residency by state and county' legal basis for stop</p>	<p>Proposals must include plan of implementation, to include proposed training</p>	<p>Study to include a survey of departmental policies relating to the investigation of complaints based on bias</p>		<p>No individual identifying data to be disclosed</p>	<p>Data collection to be predicated on statistically significant sampling only</p>

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
<p>Kentucky</p> <p>Kentucky Revised Statutes, Section 15A.195</p> <p>Effective 6/21/2001</p>	No	<p>Stops, detention and searches of any person when such action is solely motivated by consideration of race, color, or ethnicity, and the action would constitute a violation of the civil rights of the person.</p>	None specified by statute	None	<p>Yes. Model policy to be designed for dissemination to all law enforcement agencies. "All local law enforcement agencies and sheriffs' departments are urged to implement a written policy against racial profiling or adopt the model policy..."</p>	None defined	None defined	<p>Adoption of policy is mandatory for agencies receiving Kentucky Law Enforcement Foundation Program funds.</p>

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
Massachusetts (Chapter 228)	No	Only action involving the use of Massachusetts Uniform Citations. Data to be collected only from the Uniform Citation.	Whether search conducted of a vehicle at the time the Citation was issued; race and gender of person stopped	If model policies approved by Secretary for Public Safety, they will be included in “new recruit basic training...any in-service training for veteran officers... supervisory training for all superior officers... and dispatcher and communication officer training.”	State Police and Mass. Chiefs of Police Association “shall develop policies and procedures on how to identify and prevent racial and gender profiling by police officers...”	Individual data acquired shall be used only for statistical purposes and may not contain information that may reveal the citizen’s or officer’s identity.	Registry of motor vehicles to cull information from the Uniform Citations, maintain statistical information on the data, and report monthly to the Secretary of Public Safety. Not later than 1 year after implementation of the act, data to be transmitted to an experienced state university for analysis and report	Use of Massachusetts Uniform Citation mandatory. Collation of data by DMV mandatory. Report by selected university also mandatory. If the analyzed data “suggest that a state police barracks or municipal police department appears to have engaged in racial or gender profiling, [that department may be] required...for a period of one year to collect information on all traffic stops, including those not resulting in a warning, citation or arrest.”

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
Missouri Section 304.670	No	Traffic law enforcement, except roadblocks, vehicle checks and checkpoints unless they lead to a warning, search, seizure or arrest	Number of drivers stopped; citations/warnings issued; alleged violation; age/race/ethnicity/gender; whether search conducted and property/contraband seized and person(s) searched; legal and factual bases for search; resistance encountered whether force was used; whether follow-up investigation was conducted	None	None	Highway patrol to analyze data to determine whether law enforcement officers are using profiles in law enforcement activities		“The highway patrol and any local law enforcement agency may collect, correlate and maintain... information regarding traffic enforcement.”

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
Nebraska Nebraska Statutes (Not yet codified)	No	Motor vehicle stops and detention of individuals.	Number of motor vehicle stops; race/ethnicity of the person stopped; nature of the law violation prompting the stop; whether a warning or citation was issued, an arrest made, or search conducted (except searches incident to arrest and inventory searches).	None	Yes. Each agency to prohibit “the detention of any person or a motor vehicle stop when such action is motivated by racial profiling and the action would constitute a violation of the civil rights of the person.”	“Racial profiling is a practice that presents a danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.”	Annual report by each agency to the Nebraska Commission on Law Enforcement and Criminal Justice. Beginning 1/1/02 until 1/1/04, Commission to make review of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations of racial profiling. The results of those reviews are to be reported to the Governor and legislature on or before 4/1/04	Adoption of policy mandatory by 1/1/02. Data collection mandatory on or after 1/1/02.

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
North Carolina (General Statutes, Section 114-10)	No	“[T]raffic law enforcement by law enforcement officers” except DUI checkpoints, other roadblocks, vehicle checks, or checkpoints consistent with state and federal law, unless the check results in a warning, search, seizure, arrest.	Number of drivers stopped and whether citations or warning issued; race/ethnicity, age/gender of driver; nature of alleged violation; whether search conducted and property seized and the race/ethnicity/age/gender of all persons searched; the legal and factual bases for any search; whether contraband or other property was seized; whether arrest made; resistance encountered; any use of force; whether injuries resulted; whether the circumstances surrounding the stop were the subject of any investigation and the results of that investigation; the geographic location of the	None	None	Collect and correlate information that will “assist in the performance of duties required in the administration of criminal justice throughout the State” and to make scientific study, analysis and comparison of data so collected and correlated.	Data to be collected, correlated and maintained by the Division of Criminal Statistics in the North Carolina Department of Justice and reported to the Governor and legislature at least biennially	Mandatory data collection as administered by the Attorney General. Only the smallest law enforcement agencies in the state are exempt. The Attorney General has the authority to determine and publish a list of the covered law enforcement agencies .

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	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	Profiling Definition
Oklahoma (Title 22, Section 34.3 et. seq.)	No	Investigative detentions, investigatory stops of vehicles, arrests. The statute provides: “The race or ethnicity of an individual shall not be the sole factor in determining the existence of probable cause to take into custody or to arrest an individual or in constituting a reasonable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a motor vehicle.”	None	None	“Every municipal, county, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency’s policy shall prohibit racial profiling based solely on an individual’s race or ethnicity.”		Policy to be available for public inspection during normal business hours. Annual report required on citizen complaints .	Adoption of policy mandatory. Prohibition of racial profiling in agency policy mandatory.	“The deten... inter... or oth... dispa... treatm... an... indiv... solely... the ba... the ra... ethnic... of suc... indiv...

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	Profiling Defined
Rhode Island (Section 31-21.1-1 et. seq.)	Two years	Routine traffic stops	Date/time/location of stop; race/ethnicity/gender/ age; alleged traffic infraction; whether search conducted and scope of search; factual and legal bases for search; property found/seized; whether warning/citation issued or arrest made; duration of stop; state of registration of the stopped vehicle	None	[E]ach police department and the State Police shall adopt written policies” pertaining to data collection and prohibiting the use of racial profiling as the sole reason for stopping or searching motorists for routine traffic stops.	Study to determine whether racial profiling is occurring and to develop policies and practices; use for statistical purposes only to include a multivariate analysis	Monthly dissemination of data to Rhode Island Attorney General, including all citizen complaints. Data shall not be used in any legal or administrative proceeding to establish an inference of discrimination, except by court order. Data shall be public for those stops where a citation was issued or an arrest made. Not later than 28 months following start of data collection, report to be made to Governor and legislature.	Data collection mandatory. Policy adoption also mandatory	“The detentions, interdictions, other disparate treatments of an individual solely on the basis of racial or ethnic status of such individual

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	Program Description
Tennessee	One year data collection	Traffic violations	Number of persons stopped; race/ color/ ethnicity/age/gender; nature of alleged violation; enforcement action(s) taken; searches conducted and property or contraband seized	None	None	To review prevalence and disposition of traffic stops	Comptroller of the Treasury to report to the Governor and legislature not later than 4/1/02.	“The provisions of this act shall serve as a permissive pilot project and as such shall apply to the Tennessee Highway Patrol and any municipal police department and sheriff’s department” that volunteers to participate	No

	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements
<p>Texas</p> <p>(Code of Criminal Procedure, Chapter 2, Articles 2.131-2.138)</p> <p>Effective 09/01/2001</p>	No	<p>Traffic stops in which a citation is issued, arrests resulting from traffic stops, and pedestrian stops for the purpose of criminal investigations</p>	<p>Race/ethnicity of individual detained; whether search conducted; whether consent to search given; physical description of person detained including gender, race/ethnicity; suspected offense committed; whether and what type of contraband was discovered; whether an arrest was made; the street address or approximate location of the stop; whether a warning or citation was issued</p>	<p>Training on racial profiling must be included in the “initial training and continuing education for police chiefs,” as well as for licensed police officers in the state, not later than the officer’s second year of service.</p>	<p>“Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling” that contains specified elements. Agencies must also consider installation of video cameras and transmitters in cars and motorcycles used to make traffic stops and if used, standards for review must be included in policy.</p>	<p>The prevention of racial profiling by police officers.</p>	<p>Annual report to agency’s governing body, but not to include officers’ names or names of detained individuals. Report to include an analysis of whether racial profiling exists. Agencies with video cameras in cars/motorcycles are exempt from some reporting requirements. Exemption also permitted for agencies whose governing body certifies the need for state</p>	<p>Data collection and policy adoption are mandatory for “[e]ach law enforcement agency in this state” not later than January 1, 2002. Training is also mandatory for chiefs and all licensed officers.</p>

							funding for recording equipment	
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	Limited Duration	Police Action Covered	Data to be Collected	Training Requirements	Policy Adoption Required	Use/Purpose	Disclosure of Data	Mandatory or Permissive Elements	P.D.
Washington (Sections 43.43.480 and 43.43.490, RCW)	No	Routine traffic enforcement	Number of individuals stopped; citation/warning issued; race/ethnicity/age/ gender; alleged violation; arrests made	Washington State Patrol to work with criminal justice training commission and Chiefs and Sheriffs Association to develop training materials for use by the state patrol and local law enforcement agencies on the issue of racial profiling	None		Criminal justice training commission and State Patrol to compile information and report to legislature by 12/1/2000	State Patrol required to collect data. All other agencies shall be encouraged to do so.	N