



ISSN 1935-0007

*Cite as:* 2015 (6) AELE Mo. L. J. 501

Special Articles Section – June 2015

## **Mandatory Nationwide Use of Force Reporting by Police and Correctional Agencies – and Why This is an Important Issue**

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### *Contents*

- Introduction
- Historical perspective
- AELE's commitment to mandatory reporting
- Mandatory reporting by police and correctional agencies
- Defining use of force
- End notes
- References
- About the authors
- Article review panel

### **❖ Introduction**

The police and corrections professions have made enormous changes over the years to enhance their operations and accountability. Improved technology, adoption of best practices, revised training and procedures, and new programs have made a positive impact on how American policing has evolved over the years. These changes have protected police and correctional officers as well as citizens, while conducting operations in a complicated environment.

One important area that impacts not only the police and jail officers, but society as a whole, is the use of force by officers. Federal and state laws cover the legal aspect of police use of force and its intended use by police officers. The social implications of an agency's use of force are rarely, if ever, reviewed by the public.

Recent events in Maryland, Missouri, and South Carolina have exposed significant differences in the administrative accountability of police use of force practices. Societal expectation that the nation's police have consistent internal force review systems is simply not true. The very definition of force differs from state- to-state, and the justification of force often varies locally by agency policies.

For example, a police agency's definition of the use of force could be holding someone down on the ground when handcuffing an individual. In another agency a definition for the use of force is if someone has multiple stitches. Is pointing a firearm at a person a *use* of force or a *show* of force?

Some police agencies provide feedback on how they use force – how much force was used and against whom, which is released to their communities. Some police agencies are more open and transparent with use of force outcomes and embrace these discussions as part of an agency's community policing initiative. But again, there is no consistent reporting of data points, evaluation of force encounters, and the successes or failures are not known in our profession.

Police agencies are aware of force incidents in their agency, but they cannot compare and learn from agency-to-agency data across the United States. For several years, one can simply review the “flashpoints” of policing events that provide for headline news. Most notably, these flashpoints have occurred over many years and are not new.

- Most of the flashpoints center on the police use of force and predictably on deadly force. In order for the policing profession to have a legitimate relationship with the people it serves, will require a dramatic change in how we capture, document, investigate, review and hold ourselves accountable – to our superiors and to our communities.

The authors believe, and this article demonstrates, that every police agency and jail should be required to report *all* uses of force and follow consistent use of force practices. We, as a profession, need a universal definition of the use of force: the collection of exacting data points, and management review systems that allow for recognition across multiple policing agencies.

Mandatory reporting of all instances force will bring about a greater appreciation from those we serve about the difficult decisions our officers make in a split-second.

Alignment will occur across police agencies in identifying use of force policies and practices that work and those that do not, and the decisions and behavior of officers that work and those that do not – both of citizens that have force used on them and the officers who use force.

Ultimately, this paradigm shift will bring about a wealth of research data points that will allow our profession and researchers to examine use of force data and to learn intelligently from force encounters.

### ❖ **Historical perspective**

In 1994 Congress passed a law intended to assist the Justice Department in collecting better statistics about police officer-involved shootings. In February 2015, FBI Director James B. Comey reported discrepancies in police lethal force reporting.<sup>[1]</sup> An estimated 928 people were killed by police over an eight-year span, compared to 383 being reported to the FBI.

The data discrepancy has brought to light the U.S. Government's inability to track how many people police kill or injure. The law is not effective because reporting is optional. The data discrepancy is caused by optional reporting as opposed to mandatory reporting by police. There are approximately 18,000 police departments and other law enforcement agencies across the United States.

None of these agencies are required to report to the public or the Justice Department anything about police officer shootings, let alone their use of less lethal force. Similarly, police agencies are required to report hate crimes to the FBI, but a simple review of the reported data is troubling. The FBI lists the names of the police agencies and some agencies do not report hate crime data or simply do not report, confirm or deny hate crime incidents within their community.

The FBI is attempting to persuade police departments to utilize more sophisticated reporting data systems such as the National Incident Based Reporting System (NIBRS). NIBRS is utilized by approximately 30% of police agencies across the country and requires additional data, as compared to Uniform Crime Reporting (UCR). UCR requires basic crime information and lacks the suspect-victim relationship and other detailed data points about the crime, suspect and victim.

The use of NIBRS is a method for police agencies to capture valuable information from use of force encounters. For example, data collection and information sharing currently exists in some agencies in a few states – but is not uniform or universal. How many agencies would report that a suspect had died from delirium or heart congestion following the deployment of a Taser™ or a beanbag gun? If they report the death, would it be associated with a use of force?

- The use of enhanced police reporting systems could assist police agencies in better understanding uses of police force. Mandatory use of force reporting will supplement both UCR and NIBRS with additional and necessary data points to fulfill our profession's review and research purposes.

### ❖ **AELE’s commitment to mandatory reporting**

On Nov. 20, 2014, the AELE board of directors voted unanimously to publish a 2015 AELE [\*Monthly Law Journal\*](#) article supporting mandatory police reporting of the use of lethal force. Chief Charles A. Gruber (Ret.) agreed to serve as the lead author and this is the result. <sup>[2]</sup>

The article is not intended to detract from or to support specific weapons, confrontational procedures or field tactics. It urges mandatory use of force reporting policies, collected by the federal and state governments.

As long ago as 1991, AELE called for a national reporting system on use of force and to include police misconduct. <sup>[3]</sup>

“Reporting on subjects of public interest is a common practice in the business world. For example, members of the public can read the number of complaints filed against a named airline per 10,000 passengers, and even compare the on-time performance of one airline versus another.

“Sadly, a police chief or sheriff does not have a benchmark to judge the number of citizen complaints per 100 officers of his department (in comparison) to other agencies in the same state or nationwide.

“While assaults and line-of-duty deaths of police officers are meticulously reported, the frequency of police use of firearms and nonlethal force is not nationally known or readily available for comparison purposes.”

AELE repeated its initial proposal after the Rodney King incident in Los Angeles and once again we are calling for mandatory reporting on police use of force. Notably, while this article was being developed there were a series of significant social unrest in numerous cities across America. The flashpoint again, is police use of force.

### ❖ **Mandatory reporting by police and correctional agencies**

Mandatory reporting of use of force benefits both the agency and community. First, agencies can learn much from mandatory use of force reporting. Agencies can learn why use of force is being used by capturing important data points.

For example, the time of day, the day of week, the location in the community, officer demographics (such as time on the job and assignment) and additional information about the person upon whom force was used and the incident response – will assist the police agency.

The data captured from a use of force incident will enable an agency to learn why force was used. Patterns, trends, and reasons for the use of force will better assist the agency to develop training programs and to design alternative plans for the deployment of officers.

Secondly, agencies will begin to share with the public their action that at times cause mistrust – the use of force. A public review of force would allow communities to see how force is used. Force will begin a process of openness, which will build trust between the agency and the public. Transparency has a way of doing that.

What we have learned from police and correctional agencies across America from DoJ pattern and practice investigations is that an improper use of force incident and the reasons for the failure are often never communicated to the community. The lack of transparency on these failures results in organizational frustration in police and correctional agencies and distances of a community from the agency.

The time is right for mandatory use of force reporting. There is a movement in our profession as we have witnessed the recent work of the [President’s Task Force on 21<sup>st</sup> Century Policing](#).

Several action items and recommendations from the Task Force directly target mandatory use of force reporting. The following are two examples from the Task Force, which supports our position:

**2.2.4 ACTION ITEM:** Policies on use of force should also require agencies to collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or nonfatal, as well as any in-custody death.

**2.2 RECOMMENDATION:** Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection, and information sharing. These policies must be clear, concise, and openly available for public inspection.

Following the 1991 [Rodney King](#) incident, the Congress in 1994 passed legislation and gave the authority to the U.S. Attorney General to investigate any police agency or jail with reasonable suspicion that someone’s Constitutional rights were violated under [42 U.S. Code §14141](#).

Since 1995, the DoJ’s Special Litigation Section has investigated numerous police agencies and jails. Excessive use of force is one of the common findings in police agencies. A series of best practices has been learned over the past twenty years using information from those investigations and applying these templates to mandatory use of

force reporting. What can be learned from these investigations is a standard template for police agencies to use.

An agency can see what a use force report should contain, what data points should be included, and required elements from the force encounter. The documents exist to demonstrate to police agencies what supervisors should do at a police use of force event – data point gathering, collection of evidence, officer and witness interviews, and a detailed report of force. An internal management review process examines police conduct and whether internal police procedures were followed. It also reviews training and tactics.

All of these important policies and practices are available via the Special Litigation Section [website](#) to assist police agencies manage use of force. These policies and practices provide constitutional policing principles for agencies to serve their communities.

Mandatory police use of force reporting for all police agencies is reasonable, achievable, and sustainable within our profession. Failure of our profession to act this time in light of the current unrest will only forecast an uncertain future for our young peace officers.

Now is the time for police leaders to step forward and acknowledge that mandatory use of force reporting is good for the police and good for the community as well.

### ❖ **Defining use of force**

Use of force is defined in various [DoJ consent decrees](#), which are a good starting point for the discussion. For example, the April 2015 Los Angeles County [Settlement Agreement](#) states:

32. “Reportable use of force” means any use of force that is greater than that required for unresisted searching or handcuffing. Additionally, any use of force which results in injury or a complaint of pain must be reported.

### ❖ **End notes**

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#### ❖ **About the authors**

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❖ **Article review panel**

This article was reviewed by nine [independent panel members](#) and the AELE board of directors (some of whom also serve on the MLJ review panel).

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**AELE Monthly Law Journal**

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