

Executive Actions to Advance Reforms in Policing

Reforms to counter racial discrimination, excessive violence, and lack of accountability within policing are long overdue. Though much of policing is carried out at the state and local level, there are a number of steps the Biden-Harris Administration can take to advance policing reforms across the country, even in the absence of Congressional action.

The Department of Justice's [recent amendments](#) to the use of force policies for federal law enforcement agencies are an important first step to memorializing best practices, but there is still much more to be done. The following recommendations offer avenues to promote accountability and transparency, address police misconduct, and advance racial justice and fairness through executive action. These recommendations seek to identify potential levers and actions across all federal agencies, including opportunities to (1) employ executive directives that govern federal law enforcement departments, agencies, and other federal entities, and (2) create incentives, through federal funding and technical assistance, for states and local jurisdictions to advance reform.

For more information on recommendations for federal, state, and local jurisdictions to promote long overdue changes in policing, see Fair and Just Prosecution's (FJP) [Blueprint for Police Accountability and Reform](#). In addition, for recommendations on critical changes to the criminal legal system more broadly, see our [white paper](#) and accompanying [letter](#) proposing the creation of a *Presidential Task Force on 21st Century Prosecution*.

Promoting Accountability

Enhancing oversight and investigations

- The Department of Justice (DOJ) should reinvigorate and proactively pursue **pattern and practice investigations**, technical assistance letters, consent decrees, and other mechanisms that advance oversight of law enforcement agencies. The DOJ should also encourage referrals from state and local prosecutors and civil rights agencies for potential investigations, and the Administration should advocate for sufficient funding to adequately support this work at *both* the federal and local levels.
- Create dedicated and enhanced funding and resources for **state and local prosecutors** to provide training, **build capacity to enhance police accountability work**, and independently investigate police misconduct. The DOJ can also serve as an invaluable **technical assistance provider** and resource hub for this work.
- Incentivize local jurisdictions to establish **strong and independent mechanisms** for **external oversight**, including by giving preference for grant awards to agencies with strong oversight processes in place. External oversight mechanisms include an Inspector General's Office and Civilian Review Board and should operate pursuant to best practices (see FJP's issue brief on [Promoting Independent Police Accountability Mechanisms](#) for further discussion of these key principles of civilian oversight).

Community trust in law enforcement increases public safety, and meaningful independent oversight increases community trust.

- Provide funding and incentivize efforts by state and local law enforcement agencies to **reinforce and fortify *internal accountability*** including:
 - Robust and effective internal affairs, constitutional policing, and audit and inspection functions that enhance accountability and ensure fidelity to best practices and policies;
 - Processes to identify officers displaying problematic behavior, including tracking allegations of misconduct and complaints by members of the public and early warning systems to proactively identify officers who display problematic behavior and facilitate appropriate early intervention;
 - Mechanisms that enhance the ability to identify and track problematic law enforcement personnel who move from one department to another – including statewide registries, more robust licensing and decertification processes and unique identifiers for members of law enforcement; and
 - Thorough and timely critical incident review procedures that align with best practices.
- Refrain from intervening in federal law enforcement **claims of immunity**, where appropriate, including qualified and sovereign immunity. While officers may still pursue such claims as private litigants, the DOJ’s refusal to defend or intervene in such claims – especially in cases where officers violate policy or protocol – can underscore the importance of, and commitment to, Department policy and training.
- Provide funding and incentives to make the use of **body-worn cameras** the norm in policing nationwide, with accompanying policies that (a) ensure footage is made publicly available absent a compelling reason for nondisclosure, (b) provide necessary privacy protections for the people police are interacting with, and (c) prohibit officers from viewing footage before filing reports (see FJP’s [Blueprint for Police Accountability and Reform](#)). Additionally, such funding should provide resources for law enforcement agencies to store and review camera footage.

Improving hiring, training, culture and standards

- Implement federal training and guidelines on **de-escalation, peer intervention, and an affirmative duty to intervene in the face of misconduct** for all federal law enforcement agencies. And encourage state and local jurisdictions to adopt de-escalation and peer intervention training by disseminating best practices and providing funding for training and technical assistance.
- Encourage local law enforcement agencies to develop and adopt policies that codify **zero tolerance for dishonesty** and encourage local prosecutorial entities to adopt policies that ensure the creation of comprehensive and public “Do Not Call” or “*Brady*” lists.
- Encourage local law enforcement agencies to **report officer misconduct** to statewide databases and the National Decertification Index to better inform hiring decisions. Make it a requirement for federal grants that departments provide applicable records to these databases to ensure compliance and incentivize reporting.
- Reinvigorate a broad mandate for, and proactive engagement of, the **COPS Office** in efforts, including **collaborative reform**, which advance the principles set forth in

President Obama's Task Force on 21st Century Policing. Select a strong leader to head this Office and prioritize the confirmation of this vitally important leadership position.

- **Build trust** between local law enforcement agencies and their communities through in-depth technical assistance designed to model meaningful community co-ownership of public safety and other strategies that improve the management and culture of local law enforcement agencies.
- Disseminate **model use-of-force standards** and highlight local jurisdictions that have adopted best practices and evidence-based standards. Such policies should be predicated (at a minimum) on de-escalation; the use of force no greater than what is objectively necessary and proportionate to the threat posed; the use of deadly force only as a last resort and in response to an immediate threat of serious physical harm or death; and include a ban on chokeholds, strangleholds, and shooting at moving vehicles, among other best practices.

Key principles for joint federal-state-local task forces

- Federal law enforcement agencies should encourage state and local law enforcement agencies to **use body-worn cameras** when participating in joint task force operations if not already required by state and local policies. And the DOJ should encourage federal law enforcement officers to adhere to the relevant state and local policies that require the use of body-worn cameras, in circumstances beyond what the [DOJ requires](#).
- Direct DOJ law enforcement components to limit collaboration with, and resources for, local law enforcement agencies that lack meaningful oversight or civilian oversight mechanisms (as discussed above). The DOJ can encourage local agencies to take action and establish meaningful civilian oversight by emphasizing that federal law enforcement agencies will prioritize work with local agencies that have effective and meaningful oversight mechanisms.

Reducing Police Violence and Harm

Reducing militarization

- End the Department of Defense's 1033 program. Through this program federal agencies may transfer armored vehicles, explosives, assault rifles and other armaments to local law enforcement agencies. Upon termination of the program, require law enforcement agencies to also return equipment received as conditional loans.

Tracking and addressing racial disparities

- Direct federal law enforcement components, in collaboration with federal and public research institutions, to develop plans to **collect, analyze, and make public data on racial disparities** in policing, as well as concrete recommendations on how to eliminate racial disparities. Such data should include information on the nature, type, and trends in use of force, as well as data on traffic stops, searches, and arrests for low-level offenses – disaggregated by race, ethnicity, neighborhood, gender, and disability. Additionally, data on officer and law enforcement department **personnel diversity** should be collected and published.
- Encourage, and incentivize through federal grant programs, state and local law enforcement agencies, in collaboration with state and public research institutions, to

develop plans to collect, analyze, and publish data on racial disparities in policing, and develop plans to address research findings.

Immigration enforcement

- **End 287(g) agreements.** Through the Section 287(g) program under the Immigration and Nationality Act, state and local law enforcement officers collaborate with the federal government to enforce federal immigration laws. Currently ICE has agreements with 146 law enforcement agencies in 25 states; these programs have eroded bonds of trust with communities and fueled racial profiling.

Forfeiture reform

- Direct federal law enforcement components to curtail the use of equitable sharing forfeiture between federal and local law enforcement agencies and encourage limitations on asset forfeiture at state and local levels.

Incentivizing and Propelling Change

Grantmaking for transformation

- Revise grantee **reporting and assessment metrics** to recognize program successes outside of arrests, convictions, and incarceration. Develop and refine assessment frameworks that measure program impact in areas such as fortifying community trust in law enforcement and promoting harm reduction, constitutional policing, and neighborhood engagement.
- Require strategic planning and **community stakeholder input** for DOJ and other public safety grants (i.e., similar to strategic planning requirements under Byrne JAG).
- Review and update guidance for grant programs to ensure that their stated purposes as well as the funded activities align with promising practices, promote community-based interventions and approaches to public safety, and both value and track these objectives.
- Convene an **interagency working group**, including agencies that fund state and local police and law enforcement entities, to align funding priorities and coordinate grant funding. Such efforts should engage and include community groups, locally elected prosecutors, and other state and local entities, and facilitate a whole of government and community-based approach for grantees.
- Direct federal agencies (i.e., the DOJ, Department of Homeland Security, Department of Health and Human Services, and others) to develop and implement a plan to create federal incentives and resources that encourage the development of **alternative responder models** that remove law enforcement as the default first responders when individuals are experiencing mental health or substance use crises and instead divert these cases to trained health professionals who can help avoid entry into the justice system.

Tapping the potential and discretion of elected local prosecutors to fuel change

- **Establish a Presidential Task Force on 21st Century Prosecution** comprised of a broad range of stakeholders and experts who bring diverse backgrounds and varied experiences with, and insights into, the criminal legal system. (For a detailed description of the recommended structure, focus and work of such a task force members see the recently released FJP [white paper](#)). The task force can identify successful prosecutorial

reforms and innovations and develop a strategic roadmap to incentivize, support, and fund change and innovation, and create a concrete implementation plan for ongoing mechanisms to propel needed changes in policing, as well as the broader criminal legal system.

- Utilize the Presidential Task Force to identify opportunities to support law enforcement reforms, including but not limited to identifying and addressing the drivers of police violence, barriers to accountability, best practices for ensuring prosecutorial responses to these incidents, and needed systemic changes in policing.