



February 15, 2022

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

**Re: California Law Enforcement Recommendations on Pending Police Reform Executive Order**

Dear President Biden,

I hope that you, your family, and all those in your administration are safe and healthy. I thank you and Vice President Kamala Harris for your service to our country and for your leadership in the past year, including your commitment to addressing the nation's rising crime crisis that has resulted from, among other causes, defund polices and rhetoric that have impeded efforts to maintain adequate police staffing levels and increase training.

I write to you today on behalf of the Peace Officers Research Association of California (PORAC), representing 77,000 public safety members and 930 public safety associations. PORAC was founded in 1953 as a professional federation of state, local, and federal law enforcement associations, and is now the largest such statewide organization in the United States.

I write to you today as a follow up to our January 25, 2022, letter on the same subject – where upon being made aware of reports citing a police reform Executive Order, PORAC affirmed our strong belief that the best way to approach reforms to policing is on a bipartisan basis, through congressional action. PORAC worked closely and collaboratively both Congressman Tim Scott's and Congresswoman Karen Bass' offices to advance the George Floyd Justice in Policing Act. While we were disappointed to see the bill fail, we know from our 69 years of experience advocating and passing bi-partisan police reform measures here in California that enacting legislation to modernize law enforcement is achievable, but it requires patience, genuine listening, collaboration, and last but arguably most important, politically opportune timing.

After years of anti-police rhetoric have been normalized by politicians adopting defund messaging and policies, which have made it significantly more difficult to hire qualified officers, leading directly to the increasing national crime rate and further damaging police-community trust, PORAC respectfully offers the enclosed edits and comments on the January 5, 2022, draft of the Executive Order.

Upon reviewing the abovementioned draft of the Executive Order, PORAC was concerned to see in the document so many of the same actions included in the George Floyd Justice in Policing Act. Affecting change requires buy-in from all parties, and PORAC fears that by issuing the proposed Executive Order as written, it would be perceived nationally by the law enforcement profession as a partisan executive fiat that avoided the democratic process thereby compromising its integrity and complicating implementation. While PORAC maintains that bi-partisan congressional action on police reform stands a much higher chance of success in terms of positively influencing law enforcement policies, resources and behavior, should you decide to proceed with the Executive Order, PORAC has provided our edits and comments which we believe will improve the Order's reception by America's law enforcement profession and increase positive public safety outcomes in our communities.

To that end, I would like to draw your attention to the policy priorities that PORAC has been advocating for years, and which reflect well the need to balance considerations of safety and wellness for both our communities as well as the officers that serve them:

1. It is vital that state and local law enforcement officers are able to receive adequate federal funding, without onerous preconditions, in order to implement wide-reaching change. Our nation's law enforcement needs to be well supported in order to carry out the core responsibility of protecting our communities.
2. Federal standards for use of force, training, and recruitment should be implemented. However, the enactment of eliminating qualified immunity will remove long-standing officer protections. Law enforcement officers remain at risk daily and their safety and rights should be safeguarded.
3. The establishment and/or increased funding for programs that partner law enforcement officers with mental health and social work professionals is critical to reducing the likelihood of an encounter escalating to violence.
4. First responders, who may have come from military or other positions, will face fully-earned Social Security from previous jobs being cut back when they retire. Repealing the GPO/WEP would have an immense impact on preserving their retirement security.
5. Law enforcement officers exhaust themselves protecting our communities and they should have access to affordable and reliable health care when their service ends. Lowering the Medicare enrollment age will increase eligibility to first responders who are forced to retire early.
6. Synthetic opioids, such as fentanyl, have become the most common cause of overdose deaths in the United States. State and local law enforcement need the resources, such as more advanced screening equipment, to identify and fight the harmful dispersion of these drugs.

We encourage you to review the enclosed edits and comments to the January 5, 2022, draft of the police reform Executive Order. For further detail on PORAC's work and priorities, please refer to our attached policy platform which outlines our vision for police reform in California and nationwide.

As your Administration continues to engage on police reform issues, we encourage continued collaboration with Vice President Harris, who worked alongside PORAC for years as California's former Attorney General. We strongly believe that our organization can be a valuable resource to you and Vice President Harris moving forward. Should you have any questions, please do not hesitate to call the PORAC Headquarters (916) 928-3777 or contact our legislative advocates at Steptoe & Johnson LLP (202) 429-6457.

Very Truly Yours,  
BOARD OF DIRECTORS  
Peace Officers Research Association of California



Brian R. Marvel  
President

*Brian R. Marvel*  
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Secretary



January 25, 2022

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Biden,

I hope that you, your family, and all those in your administration are safe and healthy. I thank you and Vice President Kamala Harris for your service to our country and for your leadership in the past year, and look forward to what's to come in the new year.

I write to you today on behalf of the Peace Officers Research Association of California (PORAC), representing 75,000 public safety members and 930 public safety associations. PORAC was founded in 1953 as a professional federation of state, local, and federal law enforcement associations, and is now the largest such statewide organization in the United States. We have been a longtime leader in collaborative community policing and on the subject of police conduct and reform since its inception. In 1959, just six years after its founding, PORAC became the first association to develop a "peace officers standard setting agency," now known as Peace Officers Standards and Testing (POST). The rest of the nation soon followed, and POST is now a foundational part of law enforcement in the United States. As our nation continues the necessary conversation on law enforcement policies and practices today, PORAC has remained dedicated with our nation-leading advocacy.

I write because our organization has recently been made aware of reports citing a pending police reform Executive Order. While we are pleased to hear that valuable reforms are being considered, we believe the best way to approach reforms to policing is on a bipartisan basis, through congressional action. While we understand the Executive Order has yet to be released, we strongly maintain that any action on this issue should not jeopardize federal funding for state and local law enforcement agencies. This funding is critical to agencies' ability to provide adequate training, support, and resources to protect our communities while also cultivating a more positive and collaborative relationship with our community members. We, at PORAC, value the safety and wellness of both our communities and law enforcement officers, and have shared our policy priorities below:

1. As stated above, it is vital that state and local law enforcement officers are able to receive adequate federal funding, without onerous preconditions, in order to implement wide-reaching change. Our nation's law enforcement needs to be well supported in order to carry out the core responsibility of protecting our communities.
2. Federal standards for use of force, training, and recruitment should be implemented. However, the enactment of eliminating qualified immunity will remove long-standing officer protections. Law enforcement officers remain at risk daily and their safety and rights should be safeguarded.

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## Draft Police Reform Executive Order (1/5/22)

### PORAC Recommendations

As the largest statewide law enforcement association in the country committed to charting a new path forward for police in America that will help to bridge the divide between law enforcement and the public while keeping our families and communities safe, the Peace Officer's Research Association of California (PORAC) respectfully offers the following edits and recommendations to the January 5, 2022, draft police reform Executive Order.

#### SEC. 1 – Policy Statement

#### SEC. 2 – Sharing Federal Best Practices with State, Local and Tribal Law Enforcement to Enhance Accountability

- ~~Independent~~ Investigations of In-Custody Deaths
- Improving Training for Investigations into Deprivation of Rights Under Color of Law
  - U.S. Attorney General (AG) shall (1) enhance DOJ's capacity to investigate and prosecute such cases, and (2) provide guidance to State, local and tribal investigators and prosecutors for investigating **and prosecuting** similar cases
- Pattern-and-Practice Investigations
- Ensuring Timely Internal Investigations

**PORAC Comments on SEC. 2:** We are concerned that the word “independent” could be construed as requiring an outside agency, i.e. not the employing agency, to conduct the investigation. This would represent a fundamental shift away from law enforcement's involvement in the investigation process, which would be a detriment if not an impediment to the investigation itself. All in custody deaths must be investigated, but it is our opinion that the states should have the latitude of action to determine exactly which agency should conduct the investigation, and therefore recommend simply removing the word “independent”.

#### SEC. 3 – Officer Recruitment, Hiring, Promotions and Retention

- Federal agencies shall develop and implement protocols in consultation with State, local and tribal law enforcement for background investigations and screening mechanisms for State, local and tribal law enforcement officers that participate in programs or activities conducted or sponsored by the Federal agency (i.e., joint task forces, international training and technical assistance programs)
- AG shall develop in consultation with State, local and tribal law enforcement, best practice for State, local and tribal law enforcement based on Federal best practices developed as part of this Executive Order
- Establishment of a Special Recruitment, Hiring, and Retention Grant Program to assist local agencies in restoring force levels.

**PORAC Comments on SEC. 3:** Law enforcement agencies and departments across the country are struggling to maintain the staffing levels necessary to combat the increase in violent crime that has resulted both from an historic under-investment in police departments that began in the 2008 recession and has never quite recovered, as well as in response to the intense anti-police rhetoric adopted by employing agencies and local elected officials in response to the defund-the-police movement. It is

therefore paramount that any new protocols or best practices regarding recruitment, hiring, promotions and retention be developed in consultation with – as opposed to separate and isolated from – State, local and tribal law enforcement agencies. Law enforcement is not a monolith, each agency operates in a unique environment and will know best how to improve staffing levels, but too often lack the resources to do so. That is why we are also recommending the establishment of a grant program that that can assist these agencies in restoring staffing levels.

#### SEC. 4 – Officer Wellness (Federal LEOs)

- Includes language requiring the AG to present recommendations to the President regarding the prevention of suicide by law enforcement officers.

#### SEC. 5 – National Law Enforcement Accountability Database

- AG shall establish a National Law Enforcement Accountability Database to provide a centralized database of official records documenting officer misconduct. All Federal law enforcement agencies required to submit data monthly. DOJ will develop technical assistance and guidance to encourage State, local and tribal law enforcement agencies to contribute to the database and to use it as part of their hiring decision process.
  - Data to be included: ~~records of criminal convictions, sustained complaints, civil judgements, settlements and amounts (if publicly available) related to official duties, records of disciplinary action based on findings of misconduct,~~ de-certifications based on serious misconduct, terminations, and resignations or retirements while under active investigation.
  - AG shall establish procedures to allow officers to have an opportunity to petition to remove factually inaccurate information about themselves from the database. Please note: This is NOT a Due Process requirement for the actual investigation/disciplinary process itself.
  - Database law enforcement sensitive, but the AG shall provide annual reports to the public containing aggregated and anonymized data from the database.

**PORAC Comments on SEC. 5:** All but three states in the nation have their own internal decertification processes for reviewing an officer's actions and determining whether that officer is fit to continue their service. We believe it is in the best interest of the nation that each state be afforded the opportunity to make those determinations on their own. Even a mere allegation of misconduct can do irreparable harm to an officer's reputation and career. We therefore believe that if a state chooses not to decertify an officer, the federal government should have no interest in tracking information that the officer's state has already reviewed, considered and determined not to disqualify that officer from service. Conversely, where an officer has been decertified by their state for sustained findings of proven misconduct, the federal government has a vested interest in tracking that information to prevent that officer from applying for future employment as an officer in another state.

#### SEC. 6 – Use of Force Database

- Requires all Federal law enforcement agencies to submit data to the FBI's Use of Force Database.
- Work with State, local and tribal law enforcement agencies to identify obstacles to their participation in the database and provide training and technical assistance to those agencies to facilitate their regular submission of information to the database.

- Work with State, local and tribal law enforcement agencies to create uniformity in reporting requirements to streamline the process.

**PORAC Comments on SEC. 6:** The challenge with reporting requirements as it relates to use of force is twofold:

1. The lack of uniformity in the way different agencies report use of force data and varying definitions of “force”. For example, one state or agency may determine that an officer’s application of slight pressure on the top of an individual’s head to prevent injury as an officer guides that individual into the back of a police vehicle qualifies as a use of force, whereas other states and agencies apply a narrower definition limited to more serious applications of force officers may employ to gain compliance, including but not limited to deadly force. PORAC believes strongly that a single federal definition for what qualifies as a use of force for the purpose of developing this database will be necessary to mitigate the potential for misunderstanding and/or misinformation that may otherwise result from what is currently an overly broad and somewhat subjective definition of the term. This definition should remain intact and without substantive changes for the duration of the reporting to avoid misrepresentation of the data by individuals, elected officials or otherwise, who may seek to isolate and draw attention to specific datapoints, pulling them out of context to support personal legislative or political agendas.
2. Smaller more rural police departments lack the resources, staffing and/or technical expertise to facilitate an increased reporting requirement. More than 95% of the nation's local police departments have 200 officers or fewer. While we appreciate the willingness to work collaboratively with State, local and tribal law enforcement to identify these and other obstacles to reporting, increased funding for smaller departments will likely be needed and we would call your attention to the bipartisan “Invest to Protect Act” led by Congressman Josh Gottheimer (NJ-5) as the next best opportunity to secure that increased funding.

**SEC. 7 – Banning Chokeholds and Carotid Restraints**

- Bans the use of chokeholds and carotid restraints for all Federal law enforcement unless deadly force is authorized or an officer reasonably believes his or her ~~their~~ life, or the life of others, is in danger.

**PORAC Comments on SEC. 7:** Narrowing the use of chokeholds and carotid restraints to only when deadly force is authorized would place federal law enforcement officers at increased risk of death, serious bodily injury or other harm. The decision to use deadly force is, more often than not, made in a split-second as the officer considers the danger posed to themselves or others in the course of enforcing the law, based on their training. California recently passed Assembly Bill 1196 which banned the use of chokeholds and carotid restraints while allowing for their use in the event an officer reasonably believes his or her life, or the life of others, is in danger. We respectfully request that the same exception be included in SEC. 7.

**SEC. 8 – Use of Force Standards**

- Requires every Federal law enforcement agency to review its use of force policy to ensure it includes: de-escalation, duty to intervene to stop excessive force and render medical aid after use of force, and the use of deadly force ~~as a last resort “when there is no reasonable alternative, in other words only~~ when necessary to prevent imminent and serious bodily injury or death”.

**PORAC Comments on SEC. 8:** Upon review, it would seem this section has two incompatible definitions:

1. “No reasonable alternative”
2. “Necessary to prevent imminent and serious bodily injury or death.”

If the goal is to ensure that force is used only as a last resort, force cannot be defined as both. California recently passed Assembly Bill 392, which according to the ACLU, “will raise the state's use of force standard to require that officers use deadly force only when ‘necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person,’ thus establishing one of the strongest use of force laws in the country.” As such, we respectfully request that the last resort language be stricken from SEC. 8, or otherwise clearly defined to avoid confusion.

The last resort language could be more clearly defined in the following way: “The use of deadly force as a last resort, which means when necessary to prevent imminent and serious bodily injury or death.”

#### SEC. 9 – Anti-Bias Training and Guidance

- Every Federal law enforcement agency shall require agents and officers to undergo annual training on implicit bias and profiling based on perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, or disability of individuals and ensure effective procedures for investigating complaints of improper profiling by agents and officers.

#### SEC. 10 – No-Knock Warrants

- Greatly restricts the use of no-knock warrants by Federal agencies to only those situations where an officer’s safety would be compromised, amongst other restrictions. Cannot be used to prevent the destruction of evidence.

#### SEC. 11 – Assessing and Addressing the Impact of Use of Force by Law Enforcement on Communities

- Mandates a nationwide study [to be developed in consultation with State, local and tribal law enforcement](#) on the behavioral, mental, and public health impacts of use of force by law enforcement officers on communities, including any disparate impacts on communities of color, and what services or resources can be provided to impacted individuals and communities.

#### ~~SEC. 12 – Preventing the Militarization of Law Enforcement Agencies~~

- ~~Repeals President Trump’s Executive Order allowing full access to State and local law enforcement to surplus military equipment and re-enacts President Obama’s Executive Order banning most equipment and seriously restricting other gear.~~

**PORAC Comments on SEC. 12:** PORAC respectfully requests that this section be eliminated entirely. As long as the American public has access to AR-15 type rifles and other military style weaponry, the sad reality is that officers’ lives depend on their access to the right protective equipment and vehicles, including surplus military equipment. Such equipment is not used on everyday patrol. However, if officers are expected to use time, space, and distance as de-escalation, they need protective cover. We have seen incidents where California officers have survived being shot at for hours with an AR-15 by using an armored vehicle and Bearcat as cover – equipment they would not have had access to under President Obama’s Executive Order.

## SEC. 13 – Body-Worn Cameras and Advanced Law Enforcement Technologies

- Requires all Federal law enforcement to use body-worn cameras and ~~prohibits Federal law enforcement officers from reviewing or receiving an accounting of any of their own BWC video until all required reports, statements or interviews regarding the recording are completed.~~
- Requires a study of facial recognition technology, its efficacy, and use of such technology by Federal law enforcement.
- Increase grant funding for local agencies to use to offset storage, administrative and acquisition costs.

**PORAC Comments on SEC.13:** PORAC believes strongly that prohibitions on an officer's ability to review their own body-worn camera (BWC) footage immediately following an arrest or other interactions with the public would have a negative procedural impact on an officer's ability to make an accurate statement. The accuracy of these incident reports and other statements is a crucial part to the fact-finding process that precedes legal action. An officer's memory and/or perception of the interaction is often influenced by the adrenaline officers experience in the split-second decision making that is inherent to the job, and it is in the best interest of both the officer and the suspect that these incident reports be as accurate as possible to inform the legal process. The need for an officer to refresh their recollection after experiencing a traumatic incident to facilitate a truthful and accurate statement is much greater than the routine circumstances it is allowed, particularly given the public's vested interest in a thorough and complete critical incident investigation.

It is wholly appropriate for officers to review BWC video footage to refresh their recollection to ensure accurate reporting and statements. As written, this would bar an officer from reviewing video footage before drafting a routine report and would inevitably result in unintentionally inaccurate reporting. For example, as a matter of best practice, officers on stakeouts routinely review surveillance footage before writing their arrest report. The proposed ban would likewise prevent officers from reviewing footage before testifying, even months later. Statements and reports are not a memory test. Witnesses in every court in the country are allowed to review evidence that refreshes their recollection prior to testifying and it does not taint their testimony.

California failed to pass a similar measure in 2016 (Assembly Bill 66), however PORAC believes that the language included in the bill as it pertains to an officer's right to review the footage before the initial report or interview could inform this section: "A peace officer may review his or her body-worn camera video before making his or her initial statement and report, except where the formal policy of a law-enforcement agency, adopted before January 1, 2016, provides otherwise for situations where a peace officer is involved in an incident involving a serious use of force."

Additionally, the increased cost associated with file storage, administration and the acquisition of the camera's themselves presents an obstacle to the proliferation of BWCs as an accountability tool. Grant funding would support the increased use of BWCs.

## SEC. 14 – Comprehensive and Collaborative Responses to Persons in Behavioral or Mental Health Crisis

- The AG and Secretary of the Department of Health and Human Services (HHS) shall issue guidance on best practices for responding to calls to aid persons in behavioral or mental health crisis.

## SEC. 15 – Supporting Alternatives to Arrest and Incarceration and Enhancing Reentry

- Establishes a Federal Interagency Alternatives and Reentry Committee to help fully implement the FIRST STEP Act and identify ways to reduce racial, ethnic, and other disparities in the criminal justice system, and to study the impact of the FIRST STEP Act on public safety.

**PORAC Comments on SEC. 15:** As crime increases across the country, due to, amongst other factors, increased state laws and policies to streamline reentry for incarcerated persons who go on to continue their criminal activity following their release, PORAC respectfully requests that the federal government study the impact the First Step Act may have on public safety before proceeding with efforts to fully implement the law.

## SEC. 16 – Improvement of Conditions of Confinement

- Improve COVID protocols within the Bureau of Prisons
- Address other conditions of confinement within BOP and U.S. Marshal Service custody to improve quality of life, medical and mental health care and environmental conditions
- Allows for BOP to designate individuals to facilities in accordance with *their gender identity*

## SEC. 17 – FIRST STEP Act Implementation

- Directs the AG to do everything in his or her power to fully implement the FIRST STEP Act

**PORAC Comments on SEC. 17:** See comments on SEC. 15.

## SEC. 18 – Criminal Justice Statistics

- AG will study the status of State and local law enforcement agencies transitioning from the Summary Reporting System to the National Incident-Based Reporting System (NIBRS) in the Uniform Crime Reporting (UCR) program.
- AG to establish formal definitions and uniform reporting requirements not be changed for a period of 10 years to provide...
- Calls for an assessment of current data collection use and transparency practices with regards to law enforcement practices, including, but not limited to, searches, stops, frisks, seizures, arrests and civil asset forfeitures.
- Establish uniformity in reporting requirements to streamline the process.

**PORAC Comments on SEC. 18:** Similar to the comments provided above in SEC. 6 as it relates to the reporting requirements for establishing a national use of force database, uniformity in both the definitions and reporting requirements is a necessary first step before data collection can begin in any meaningful way. Without such uniformity, the data collected will provide an inaccurate picture of criminal justice statistics that states and local governments may use to base their decisions on when it comes to the way peace officers operate under their respective authorities.

## SEC. 19 – Accreditation Standards

- Provide greater clarity on the category of agencies included as to whether it is state or federal agencies.
- AG-Congress shall determine what grant programs shall require agency accreditation by an authorized, independent credentialing body, consistent with SEC. 20 of this Order.

- AG shall develop evidence-based accreditation standards, consistent with policies in SEC 3-4 and 7-10 of this Order, and the final recommendations of the President's Task Force on 21<sup>st</sup> Century Policing (May 2015), and encourages participation in the FBI's Use of Force Database and the National Law Enforcement Accountability Database

**PORAC Comments on SEC. 19:** It is unclear to us whether these accreditation standards apply to all law enforcement or only federal law enforcement. Without any mention that this specifically applies to federal agencies only, it seems that this would apply to state and local law enforcement as well.

Additionally, PORAC believes strongly that any condition on the administration of grants should be determined by congress and is concerned that this language may allow for the unilateral revocation of grant funding for state and local agencies.

#### SEC. 20 – Grant Making Authority

- Federal discretionary grants [i.e., COPS and Byrne JAG grants] are to be awarded without onerous conditions. Only conditions other than those established by statute or regulation, to those agencies that have policies in place that reflect those of SEC. 2-10, 13, 15, and 18 of this Order

**PORAC Comments on SEC. 20:** Similar to the comments provided above in SEC. 19, PORAC is concerned that the overly prescriptive language included in this section will create an impediment for state and local law enforcement agencies to apply for and maintain the grant funding they need to fulfill their missions based on prior grants and opportunities for federal funding. Furthermore, we believe strongly that federal grants should not be made conditional as a matter of public policy.

Additionally, we think the way this section is currently worded could open the DOJ up to lawsuits from local and state agencies that feel it present an unlawful impediment to receiving their continued federal grant funding and in the application for future federal grant funding.

#### ~~SEC. 21 – Superseding Prior Orders~~

~~Repeals Executive Order 13809 (August 2017), which repealed President Obama's Executive Order restricting State and local law enforcement's access to surplus military equipment through such programs as the Department of Defense's 1033 Program.~~

~~Repeals Executive Order 13929 (June 2020), *Safe Policing for Safer Communities*. Please note, this Executive Order, which would be repealed, and which NAPO supported, does call for Due Process in investigations of officers.~~

**PORAC Comments on SEC. 21:** See comments on Sec. 6 – Use of Force Database.