



LAW ENFORCEMENT IN MAINE IN 2020

We will thoroughly review our policies and procedures, and we will continue to attract, hire, and retain only the best police candidates to serve our communities. We commit to remaining transparent and eliminating police cultures that condone any social injustices. We will continue to enhance our training to include important topics, such as implicit bias, to ensure that we support a system that guarantees equal justice under the law to every Maine resident. We must continue to build trust and follow best practices. We recognize that change starts with us. We embrace and honor this responsibility.

We published and spoke these words with commitment and sincerity on June 3, 2020. While we remain loyal to our promises, we also believe it is essential to take an inventory of where we are in Maine with critical law enforcement practices so that we have the appropriate foundation upon which to build and improve. In that regard, this initiative addresses the current state of Maine law enforcement practices in relation to the several topical issues that have surfaced.

Overview of Hiring

State laws mandate certain requirements for the hiring and certification of law enforcement officers in Maine. No person may work as a law enforcement officer until successful completion of a pre-service training program consisting of 300 hours. Full-time officers must thereafter, within the first year of their employment, complete the 18-week basic training program at the Maine Criminal Justice Academy. Qualifications for admission to this training include successfully completing a psychological examination to determine job suitability, a polygraph examination, the successful completion of physical fitness testing, and an intensive background investigation. Precluded from attending academy training and, thus, from becoming a practicing law enforcement officer, are candidates who have engaged in certain disqualifying conduct in their past, which includes certain criminal convictions. As described below, officers who become certified but later engage in disqualifying conduct are subject to revocation of their certificates.

Overview of Law Enforcement Policies & Procedures

Maine law governs many policies and procedures that guide law enforcement in Maine, especially those regarding critical areas of policing. These laws, initially enacted in 1994, require all Maine law enforcement agencies to have written

policies and procedures that comply with standards promulgated by the Board of Trustees of the Maine Criminal Justice Academy. The standards provide uniformity statewide as to how police deal with a variety of situations. Presently, these mandated standards and policies govern law enforcement practices related to (1) the use of force (including deadly force and non-deadly force and the use of electronic weapons and less-than-lethal munitions), (2) barricaded persons and hostage situations, (3) domestic violence, (4) hate or bias crimes, (5) pursuits, (6) citizen complaints, (7) criminal conduct by law enforcement officers, (8) death investigations, (9) public notification of sex offenders residing in a community, (10) recording of interviews of suspects, (11) mental illness, and (12) public access to law enforcement records. Each agency in Maine must annually certify that the agency has adopted written policies consistent with the standards established by the Board of Trustees, and that all officers have received orientation and training with respect to the policies and any subsequent policy changes. Moreover, the Board must annually review the standards for each policy to determine whether changes are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new practices demonstrated to reduce crime or increase public or officer safety. In addition to the mandated policies, agencies maintain written policies in many other areas of policing, including active threats to public safety, law enforcement role and authority, required and prohibited conduct, firearms, and missing persons.

Overview of Training

In addition to a 720-hour basic training regimen, all law enforcement officers in Maine must complete 40 hours of continuing education or in-service training every two years. This training typically includes 8-10 hours per year in topics mandated by the Board of Trustees, and elective topics at the discretion of an agency's chief law enforcement officer. In recent years, in addition to training in new statutory and case law, mandated topics have included training in implicit bias, civil rights and bias-based profiling, eyewitness identification, critical thinking in law enforcement, situational use of force, handling critical incidents, substance use disorders, policing the teen brain, responding to mental health crisis situations, sexual assaults, and human trafficking. Many agencies offer much more continuing education than that mandated by the Board of Trustees. Officers who fail to complete mandated training are subject to losing their certification to work as a law enforcement officer.

Certification of Law Enforcement Officers and Revocation for Misconduct

Maine law empowers the Board of Trustees of the Maine Criminal Justice Academy to establish training and certification standards for all state, county, and municipal law enforcement officers. No person may act as a law enforcement

officer in Maine without a certificate of eligibility (or license) issued by the Board of Trustees. (Federal law enforcement officers are exempt from the state requirements.) Current law also provides authority for the Board to sanction an officer found to have committed misconduct through a variety of measures ranging from a written warning to the revocation of the officer's certificate. Prior to 1992, a law enforcement officer only faced revocation for a felony conviction. However, for the past 28 years, the Board has exercised broader powers against an officer's certificate for a range of misconduct including the failure to complete required training, conviction for a crime, engaging in criminal conduct (regardless of whether there is a conviction), or violating the standards established by the Board for the legislatively-mandated policies.

Chokeholds, Strangleholds, Carotid Holds

Chokeholds, strangleholds, carotid holds, and any other form of neck restraint constitute deadly force in that their use creates a substantial risk of causing death or serious body injury. Accordingly, such methods are not an acceptable or approved means of arrest, restraint, or control. There is no sanctioned training for officers in the use of neck restraints, and law enforcement policies prohibit the use of such methods, unless circumstances justify the use of deadly force.

De-escalation

De-escalation is communicating verbally or non-verbally during a potential force encounter to stabilize the situation and reduce the immediacy of a threat so that more time, options, and resources may be called upon to resolve the situation without the use of force or with a diminution in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning. Training in de-escalation equips officers with tactics and strategies to effectively communicate with a person in crisis to minimize the likelihood of a physical confrontation and to resolve interactions peacefully. In addition to a variety of classes and scenario-based training, de-escalation is a key component in the Mental Health First Aid training (MHFA) that has been part of the basic training for cadets at the Maine Criminal Justice Academy since 2015. De-escalation is also the principal component of the more comprehensive Crisis Intervention Team (CIT) training, provided to officers by the Maine chapter of the National Alliance on Mental Illness (NAMI Maine). State law requires training for at least 20% of officers in each Maine law enforcement agency in MHFA or CIT. Most agencies far exceed this requirement. Within the standards promulgated by the Board of Trustees of the Maine Criminal Justice Academy for the Use of Force policy is a requirement for de-escalation when an officer can do so without exposing the officer or a third party to unnecessary risk. Maine's model of

“situational use of force” includes de-escalation, and officers typically use all reasonable efforts to verbally de-escalate a situation before using physical force.

Use-of-force Continuum

About 15 years ago, Maine adopted a “situational use of force” model. Use-of-force continuums, “stair-stepping” methodologies, are outdated; they do not accurately reflect the dynamic nature of potentially violent situations in which there is a constant and continuing assessment of the entire range of officer, subject, and force options throughout the course of the interaction. As defined in Maine law enforcement policy, “situational use of force” is a dynamic process by which an officer assesses, plans, and responds to situations that threaten public and officer safety and requires the use of force and control. The process includes an assessment of the situation and circumstances immediately confronting the officer, including but not limited to the severity of the crime or suspected offense, the level and imminence of any threat to the officer(s) or public, the level of resistance, the risk or apparent attempt to flee or escape, the suspect’s behavior and individual actions (cooperative, passive or active resistance, assaultive, or life-threatening), and the officer’s perceptions and tactical considerations. Based on this assessment, the officer selects from the available officer response options while continuing to evaluate the evolving situation, adapting a plan and actions that are appropriate and effective in bringing the situation under control. This model, and others like them, are much more flexible than use-of-force continuums because they teach officers how to think in a structured, organized way about what they are facing and the best approach to handling a situation.

Warning Before Shooting

While only recently an issue of whether constitutional law requires a warning in situations of self-defense, present training and practice in Maine in fact requires a warning, if feasible, before shooting at a suspect. The mandated standards of the Maine Criminal Justice Academy and the model use of force policy of the Maine Chiefs of Police Association reflect this requirement.

Duty to Intervene

While the “duty to intervene” in any situation of officers acting outside the law or policy has always been a staple of training at the Maine Criminal Justice Academy, the obligation to intervene is now one of the required provisions of any use-of-force policy for law enforcement agencies in Maine. Specifically, an officer who believes another officer is using excessive force has an affirmative duty to not only intervene to protect the safety and the rights of an individual, but an affirmative duty to report the behavior to superiors.

Shooting at Moving Vehicles

Present law in Maine reflects the belief that shooting in the direction of a person or shooting at a moving vehicle creates a substantial risk of causing death or serious bodily injury. Thus, doing so constitutes an unlawful application of deadly force, unless the circumstances justify deadly force.

Comprehensive Reporting of Use of Force

Maine is one of few states that voluntarily participates in the National Use of Force Data Collection Program launched by the FBI on January 1, 2019. Maine reports all uses of deadly force by law enforcement to the national database, which tracks 28 elements of information for every deadly force incident. A recent review of the database disclosed that only 40% of police departments nationwide participate in the program. In addition to participating in this national data collection program, Maine requires an officer to submit a standardized use-of-force report to the officer's agency anytime the officer uses physical force. While there is no statewide central repository for individual agency use of force reports, every law enforcement agency in the state annually submits information to the Board of Trustees of the Maine Criminal Justice Academy reflecting the total number of complaints of excessive use of force, the disposition of the complaints, and a description of any corrective, remedial, disciplinary, or legal action.

Pattern and Practice Investigations

Currently, "pattern and practice investigations" are primarily in the domain of the Civil Rights Division of the U.S. Department of Justice. Such investigations assess whether there are systemic deficiencies that contribute to police misconduct or enable it to exist in such areas of excessive force, biased policing, or other unconstitutional practices. While USDOJ has conducted about 17,000 such investigations since the congressional grant of authority, the incidence of such investigations under the current Administration has been negligible. Recently, several state attorneys general, including Maine's, called on congressional leadership to expand sections of the Violent Crime Control and Law Enforcement Act of 1994 to give state attorneys general clear statutory authority to investigate and resolve patterns or practices of unconstitutional policing by police agencies in their respective states.

Independent Investigations of Use-of-force

Prior to 1995, the Maine Office of the Attorney General conducted an independent investigation of any use of force by law enforcement that resulted in the death of an individual. This was in keeping with a 1967 legislative mandate that granted exclusive jurisdiction to the Attorney General for any investigation or prosecution of a homicide in Maine. Since 1995, because of an additional legislative mandate, the Office of the Attorney General has conducted

independent criminal investigations of all uses of deadly force by law enforcement regardless of the outcome. The detectives who conduct these investigations are independent of any other law enforcement agency. The purpose of the criminal investigation is to determine legal justification under Maine law. Thus, the investigation does not include an analysis of whether any personnel action is warranted, whether the use of deadly force could have been averted, or whether there may be civil liability. The Maine Legislature in late 2019 created [an independent Deadly Force Review Panel](#) whose charge is to examine deaths or serious injuries resulting from the use of deadly force by a law enforcement officer. These reviews will occur after the Attorney General's completion of the criminal investigation. The purpose of the review by the Deadly Force Review Panel is to identify whether there was compliance with accepted and best practices and whether the practices require adjustment or improvement. The panel is responsible for recommending methods of improving standards, including changes in statutes, rules, training, policies, and procedures that demonstrate increased public and officer safety.

Establishment of a National Police Misconduct Registry

The Maine Criminal Justice Academy currently participates in the National Decertification Index (NDI) by providing the names of officers (both law enforcement and corrections) whose certificates of eligibility have been revoked for misconduct. The Academy also queries the system to check the status of individuals who apply to work in law enforcement in Maine. While not all states participate in this system, it does serve as a national registry of licensing actions against officers who engage in misconduct. The NDI system is accessed through [the International Associations of Directors of Law Enforcement Standards and Training \(IADLEST\)](#).

Training on Bias-based Profiling

Bias-based profiling is targeting an individual based on a trait common to a group for enforcement action to include, but not limited to race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin, or ancestry. Basic training for law enforcement officers at the Maine Criminal Justice Academy includes a variety of topics related to bias-based profiling. These include sessions in civil rights, cultural diversity, and implicit human bias within the 18-week training curricula. In 2016, the Academy's Board of Trustees required all 3,500 law enforcement officers (both full-time and part-time) in Maine to receive in-service training on implicit bias. Implicit bias training reflects that Maine law enforcement officers live and work in multicultural communities and must be able to effectively interact with a variety of people. Officers are taught to become aware of cultural differences in their communities to support positive communication and effective policing, and

to examine their own personal biases and prejudices to avoid discriminatory behaviors. Law enforcement ethics, professionalism, and laws bind officers to carrying out their duties in a fair and impartial manner. Recently, the Attorney General, recognizing that the lack of data on such a critical issue is unacceptable, adopted a procedure for addressing bias-based complaints that formalizes an informal protocol that has been in place since 1993. Specifically, the protocol provides that members of the public may file complaints of bias-based profiling with the Office of the Attorney General. In addition, consistent with a recent amendment to the policy standards of the Academy's Board of Trustees, law enforcement agencies must report any complaint of bias-based profiling to the Office of the Attorney General. The ability to maintain a central statewide repository of bias-based profiling complaints is an important first step in understanding the scope of the issue in Maine.

No-knock Warrants in Drug Cases

"No Knock" warrants are court orders directing law enforcement to search a specific location for specific evidence of a crime or for people subject to arrest. These court orders are issued only upon a sworn affidavit that is previously reviewed by a prosecutor, and a precise description of special circumstances that justify an unannounced entry by law enforcement. Such circumstances are primarily limited to facts supporting the likelihood of evidence destruction, imminent escape, or, most importantly, the imminence of suspects using force to repel entry by law enforcement. While "no knock" warrants were commonly issued in drug investigations in the 1980's and 1990's, Maine law enforcement has steadily moved away from seeking such warrants. For example, specially trained warrant service teams in Maine rarely undertake the service of "no knock" warrants for drug or other crimes, absent a substantiated threat to the safety of third parties, such as hostage situations, active shooters, or armed suspects.

Body Worn Cameras

There is currently no legislative or other mandate in Maine that law enforcement agencies equip their officers with body worn cameras. Nevertheless, many agencies use body worn cameras either in lieu of or in addition to cruiser-mounted cameras. A recent legislative proposal to mandate the use of body worn cameras was tabled in the wake of many unanswered questions in favor of a task force to study the many issues associated with the use of body worn cameras, not the least of which involve significant privacy issues of persons who interact with law enforcement, including victims of crimes. More work is needed to appropriately assess these and other issues, including retention of and public access to video footage. Cost is also a significant factor, especially for the many communities in Maine that maintain small law enforcement agencies. The task

force continues its deliberations, which includes a recent study commissioned by the Attorney General and undertaken by the Muskie Institute at the University of Southern Maine.

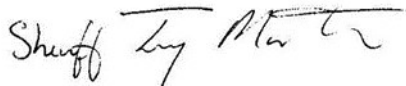
In Summation

Maine law enforcement stands as a national model for professional and progressive policing in many areas. The law enforcement community is engaged in a continuous cycle of analysis and change with a goal to always seeking to improve our delivery of services. This commitment to growth and progress requires a self-critical eye and an open mind. We look forward to continued engagement with our communities and with citizens who rightfully expect the best from their protectors.

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Chief Jack Peck, President
Maine Chiefs of Police Association
jpeck@farmingtonpd.org



Sheriff Troy Morton, President
Maine Sheriffs Association
tmorton@penobscot-sheriff.net



Michael Sauschuck, Commissioner
Maine Department of Public Safety
michael.sauschuck@maine.gov