

## Assessing Your Police Department Against Constitutional Benchmarks



**Prepared by the Crime and Justice Institute, July 2019**

Police departments often operate with decades-old policies. Many police departments don't have the financial or legal resources for regular and comprehensive policy updates. Police departments are also not required to be accredited, which can serve as a mechanism for a routine review of the legality and currency of policies. Many additional reasons exist.

Since 1994, several dozen police departments in the U.S. have been scrutinized by the federal government after patterns or practices were alleged to be in violation of the U.S. Constitution, while other police departments have been sued by plaintiffs and activist groups for similar reasons. One result of federal intervention, a consent decree,<sup>1</sup> ensures a police agency complies with the Constitution and engages in constitutional policing. The guidance woven into consent decrees provides vetted, prescriptive, and detailed steps to ensure police actions do not violate the rights of community members. Ultimately, constitutional policing facilitates improved community support and increased legitimacy.

The Crime and Justice Institute (CJI) reviewed consent decrees spanning 20 years and 21 jurisdictions, identified the most common issues, and summarized the mandated requirements in a format that is accessible and useful to police leaders. Few agencies not under investigation use consent decree findings and remedies to review their own agencies; nor do they link the cost of civil lawsuits (often paid by insurance companies) to the need for changes in policy and practice. This checklist is intended to be a self-assessment for police executives or other interested parties to identify vulnerabilities and strengthen a department without the cost, scrutiny, and disruption of external oversight.

The checklist is organized around three of the most frequently addressed issues in consent decrees:

- Use of Force
- Stops, Searches, and Arrests
- Bias Free Policing

While the self-assessment can serve as a benchmark for constitutional policing, it is *not* intended to be a comprehensive examination. The items below can be complex and nuanced and presenting them as a yes or no question risks oversimplification. However, this high-level evaluation can identify areas in need of greater attention and review and we recommend using it as a way to gauge your department's strengths and vulnerabilities.

The full report by CJI is available at [crj.org/divisions/crime-justice-institute/](http://crj.org/divisions/crime-justice-institute/), under "publications."

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<sup>1</sup> The 1994 Violent Crime Control and Law Enforcement Act gave the federal government the power to sue police agencies if agencies exhibit a pattern and practice of violating people's civil rights. A consent decree is an agreement between a police department and the U.S. Department of Justice to change those practices.

## USE OF FORCE (UOF)

1. GENERAL POLICIES	YES	NO	PARTIALLY	COMMENTS
Our officers use necessary, reasonable, and proportional force in the line of duty.				
Our UOF policy is clear and comprehensive.				
Our UOF policy outlines prohibitions for UOF.				
UOF training is required of recruits, in-service, and supervisors.				
Our reporting, investigation, and review of UOF incidents are increasingly rigorous with severity of force.				
Our officers who use force in ways that are not objectively reasonable are held accountable.				
Our department utilizes regular reviews of UOF policies and training to ensure we are keeping up with the best thinking and latest state of practice.				

2. ALLOWABLE USES OF FORCE AND CLASSIFICATION	YES	NO	PARTIALLY	COMMENTS
Our policies are explicit about when the use of different levels of force is allowed.				
Our level of review is more rigorous as the level of force increases.				

Our UOF classification has implications for reporting, investigative, and review purposes.				
We clearly articulate the factors we consider in determining appropriate classification for UOF incidents.				
We classified at the highest level of force used when multiple uses of force are used.				

<b>3. DE-ESCALATION</b>	<b>YES</b>	<b>NO</b>	<b>PARTIALLY</b>	<b>COMMENTS</b>
We provide our officers with training, tools, and skills needed to resolve confrontations without force or the least amount of appropriate force.				
Our officers immediately reduce the level of force as the threat level or level of resistance diminishes.				
We recognize and support officers who achieve public safety goals while avoiding UOF.				

<b>4. OFFICER REPORTING</b>	<b>YES</b>	<b>NO</b>	<b>PARTIALLY</b>	<b>COMMENTS</b>
Our policy delineates which types of force incidents are required to be reported.				
We are explicit about what information is required in a UOF report.				
We not only require that officers personally involved in UOF incidents make a report, but also officers who observe UOF incidents.				

We require a supervisor or commanding officer be notified immediately after a UOF incident or as soon as is practical.				
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5. INVESTIGATION	YES	NO	PARTIALLY	COMMENTS
Upon notification, the supervisor of our involved officer(s) immediately reports to the UOF scene to initiate an investigation and ensure the incident is properly classified.				
Our policy outlines the responsibilities of supervisors upon arrival at the scene of a UOF incident.				
All supervisory reviews provide our commanding officers a complete understanding of the UOF incident.				
Our Force Investigation Team (FIT) conducts investigations of all serious or high-level UOF incidents.				
Our FIT makes recommendations of any potential changes to department-wide policies, training, or equipment.				
We have an established training curriculum and procedures manual specific to FIT roles and responsibilities.				
Our Force Review Board reviews UOF incidents for both adherence to law and to department policy and makes recommendations on policy and training revisions.				

6. DATA COLLECTION AND SHARING	YES	NO	PARTIALLY	COMMENTS
All information and documentation related to UOF incidents is compiled and maintained in a centralized location.				
We utilize a uniform electronic reporting system that serves as the foundation for aggregate examination of UOF data.				
We have regular reporting mechanisms on UOF data, such as an annual UOF report.				
We share UOF data, analysis, and findings publicly, where law permits.				

7. DEVICES AND ACTIONS	YES	NO	PARTIALLY	COMMENTS
Our policy prohibits exhibiting or pointing a firearm unless an officer reasonably believes that a situation may escalate to create imminent threat of serious injury or death to officers or other persons.				
Our policy articulates when the use of firearms is prohibited, such as firing warning shots, firing at a moving vehicle, using it as an impact weapon, and shooting through a door or window when a target is not clearly in view.				
All of our officers are trained and remain certified for each firearm they are authorized to carry on duty.				
We require our officers issue a verbal warning prior to deploying an Electronic Controlled Weapon (ECW) and that they defer application for a reasonable time to allow the subject to comply with the verbal warning.				

<p><b>We permit the use of an ECW only after less intrusive means have been attempted or determined ineffective.</b></p>				
<p><b>We are clear when ECW use is allowable and identify circumstances in which ECW use is specifically prohibited.</b></p>				
<p><b>Our policy prohibits UOF against handcuffed or otherwise restrained suspects, with certain limited exceptions.</b></p>				
<p><b>Our policy prohibits the use of chokeholds or neck holds, except when lethal force is authorized.</b></p>				
<p><b>Our officers immediately do an inspection and observe the subject for injury or complaints of pain resulting from UOF.</b></p>				

## STOPS, SEARCHES, AND ARRESTS

8. STOPS	YES	NO	PARTIALLY	COMMENTS
We encourage officers to engage in regular, voluntary, social contact with community members in a friendly and professional manner.				
We prohibit officers from conducting involuntary stops when there is no reasonable suspicion based on facts.				
Our stops are documented and include articulable reasonable suspicion for the stop, in addition to specific details about the stopped individual(s).				
When documenting a stop in a report, our officers are not permitted to use conclusory statements, boilerplate, or canned language.				

9. SEARCHES	YES	NO	PARTIALLY	COMMENTS
We prohibit certain actions related to searches such as the use of a demographic category as part of the reason for the stop, conducting warrantless searches with certain exceptions, and relying on information known to be incorrect to justify a warrantless search or to seek a search warrant, among other prohibitions.				
We provide clear guidance on civilians' rights and best practices for both consent and strip searches.				
Our supervisors review search and arrest reports within a specified timeframe and with an eye toward if the encounter was lawful and in compliance of our policy.				

10. ARRESTS	YES	NO	PARTIALLY	COMMENTS
We explicitly prohibit the use of informal and formal arrest quotas.				
Our officers do not rely on information known at the time received to be materially false or incorrect.				
Our officers do not consider race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity in effecting an arrest.				

11. REVIEW, DATA COLLECTIONS, AND SHARING	YES	NO	PARTIALLY	COMMENTS
We require our supervisors to review reports on stops, searches, and arrests for completion, accuracy, and compliance with both the law and our policy.				
Our policy establishes timelines for completed reviews by supervisors of stop, search, and arrest reports.				
We regularly publish reports that summarize findings of stop, search, and arrest data analysis, and share publicly.				



## BIAS FREE POLICING

12. BIAS FREE POLICING	YES	NO	PARTIALLY	COMMENTS
<p>We clearly affirm that we strive to deliver police services that are equitable, respectful, and free of unlawful bias in a manner that promotes broad community engagement and confidence in law enforcement.</p>				
<p>Our department integrates bias-free policing principles into all aspects of our work, including management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.</p>				
<p>We utilize a discrimination-free approach to all department-related activities including programs and initiatives, not just the provision of police services.</p>				
<p>Bias-free policing training (also referred to as fair and impartial policing) is required of all personnel including officers, supervisors, command staff, and leadership.</p>				