

# Montana LWV Criminal Justice Study

## Summary: Review of National Best Practices on Policing

Enacted by the states in 1791, the Bill of Rights promised substantive due process. Federal laws had to be just, consistent with the Constitution and Bill of Rights. Congress, for example, could not levy taxes to support a state religion. The Bill of Rights and Amendment 14 also promised procedural due process. Residents of the United States could expect specific protections such as lawyers or speedy trials when engaged with state or federal legal systems.

Procedural justice, argued the **President's Task Force on 21st Century Policing**, must become the central guiding principle for U.S. law enforcement. To further that goal, the Police Executive Research Forum (PERF) developed **Guiding Principles on Use of Force**, describing how law enforcement agencies can protect human rights by adopting specific policies in critical situations.

In 2017 the Los Angeles Police Department Inspector General summarized these two oft-cited reports, offering the League of Women Voters excellent points of reference for its study of Montana's criminal justice system.

Within any criminal justice system, argued the **President's Task Force**, officials must adopt a "guardian" mindset. Law enforcement personnel view themselves as protectors of their communities rather than "warriors" who rule and control communities.

A "guardian" philosophy requires that in the treatment of all whom they encounter, law enforcement must adhere to four major principles.

Principle 1. People must be treated with dignity and respect.

To further this goal, policy should be developed with both law enforcement and public engagement such as community advisory bodies, including those who may have had adversarial relationships with law enforcement.

To support the dignified, respectful treatment of all persons, law enforcement must end biased policing. Racial profiling must end. Law enforcement agencies must receive training to counteract both intended explicit bias and unconscious implicit bias. They require carefully structured, ongoing training by highly qualified instructors. Sometimes the training must strive to undo the negative effects of previous bad training.

Supervisors, additionally, must learn to identify and respond to implicit bias among subordinates.

Principle 2: Individuals, encountered by law enforcement, must have opportunity to explain their perspective during police encounters.

Training must provide skills for officers who may need to slow down their reactions to allow more communicative, creative responses in situations that do not immediately threaten human life.

Principle 3. Officers of the law must act with neutrality and transparency, enforcing rules consistently and fairly.

Law enforcement agencies must quickly and neutrally report serious incidents to the media, maintaining necessary confidentiality and avoiding efforts to color public opinion by releasing background information on complainants in use-of-force situations. Body cameras worn by police may deliver needed feedback about incident behavior.

Principle 4. Officers of the law must convey clearly that they are trustworthy and well intentioned.

When making stops, officers should identify themselves by “full name rank, and command,” providing that information in writing, perhaps with a card. Officers should state the reason for any stop or search.

To build legitimacy, law enforcement must build community policing. On the street and in the schools, community policing requires collaboration and partnerships between community members and policing agencies. It provides paid workday opportunities for law enforcement officials, in unofficial capacities, to interact with local residents. It creates ways for officers to participate in regular community forums. It includes practices “such as advisory boards, citizen academies, programs for youth, and ride-alongs.”

Both the **President’s Task Force on 21st Century Policing** and **Guiding Principles on Use of Force** urge law enforcement agencies to reform traditional practices, but fears for officer safety stand in the way of change. Each year, around 55 officers die in the line of duty. Yet too many civilians, about one third of them with mental health concerns, are dying in police confrontations. In 2015, law enforcement officers killed 990 civilians, for example.

Reform is critical and must be built on the firm foundational value of the sanctity of the lives of members of the public and the police. Each of **Guiding Principles on Use of Force** thirty recommendations for change rests on that core value of the sanctity of human life.

PERF says that law enforcement agencies must hold themselves to a higher standard than the Supreme Court’s “reasonable use of force” guidelines, training officers in proportionality of response and adopting de-escalation as formal policy. Officers should learn and practice a critical decision-making model that allows for reflection in most

situations. Officers must intervene to prevent other officers from employing excessive force and should never shoot at or from moving vehicles. When needed, officers should be able to administer first aid. All cases of police force should be subject to scrupulous investigation and transparent reporting.

Improved training for officers would improve both public and police safety. When officers rely on use of violent force, they face painful disciplinary procedures, ongoing litigation, and psychological challenges. Law enforcement officers deserve not just better training, but stronger internal support structures that reinforce self-care and resiliency.

To guide communities and the police agencies they create, the Final Report of the **President's Task Force on 21st Century Policing** and PERF's **Guiding Principles on Use of Force** insist upon sound data collection and information sharing. Communities, they say, should be scientifically surveyed to assess effectiveness of police departments in serving their communities. Data collected should include "stops, summonses, arrests, reported crimes" and aggregate demographics. It must be publicly available. Use of force data should also be collected and reported to the federal government. Data must guide future improvements in procedural justice.

Should the United States implement reforms outlined in **President's Task Force on 21st Century Policing** and **Guiding Principles on Use of Force**, our nation would move closer to honoring the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly in 1979.

"Article 1: Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2: In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3: Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4: Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5: No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6: Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7: Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8: Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.”