



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501
(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515
www.napo.org ~ Email: info@napo.org

EXECUTIVE OFFICERS

February 15, 2023

MICHAEL McHALE

President
Florida Police Benevolent
Association

Colonel Hugh Clements Jr.

Director

Office of Community Oriented Policing Services

United States Department of Justice

145 N Street, N.E.

Washington, D.C. 20530

JOHN A. FLYNN

Vice President
Police Benevolent
Association of New York City

CRAIG LALLY

Recording Secretary
Los Angeles Police
Protective League

RE: Executive Order 14074 Section 19 - National Accreditation Standards (Draft 2)

SCOTT HOVSEPIAN

Treasurer
Massachusetts Coalition
of Police

Dear Director Clements:

KEITH CURRY

Sergeant-at-Arms
New Jersey State Policemen's
Benevolent Association

On behalf of the National Association of Police Organizations (NAPO), representing over 241,000 sworn law enforcement officers from across the country, I am submitting comments on the National Accreditation Standards (Draft 2), pursuant to Section 19 of Executive Order, 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, as shared with us on January 10, 2023.

Our comments and recommendations are tied to specific standards or provisions within the Draft Standards, as indicated by their Section and numerical value.

I. Standards independent credentialing bodies must consider when accrediting law enforcement agencies

7(g). This provision under standard 7 requires an agency in screening candidates for officer positions to identify behavior that promotes unlawful violence or unlawful bias against persons based on race, ethnicity, national origin, religion, sex, or disability. Although this screening requirement states that it must be "consistent with the First Amendment and all applicable laws", we are concerned with the process for safeguarding candidates' First Amendment rights. We must ensure a candidate is not penalized for speech, such as religious or political opinions, when there is no indication that the officer's behavior promotes unlawful violence or bias.

Recommendation: Further guidance is needed to ensure that qualified officers are not eliminated from consideration simply based on protected speech that does not signify unlawful violence or bias against persons based on race, ethnicity, national origin, religion, sex, or disability.

JAMES PALMER

Parliamentarian
Wisconsin Professional Police
Association

WILLIAM J. JOHNSON, CAE

Executive Director and
General Counsel

9. We remain apprehensive about the prohibition of the use of chokeholds and carotid restraints unless deadly force is authorized and its impact on the safety of officers. Further, this standard states that not only does deadly force need to be authorized by law, the officer must also have had “in-service training on this directive”. When an officer reaches the point where deadly force is necessary and their life or the life of citizens are in danger, the officer is not considering whether they have had in-service training when they are in a fight for their life. We believe this would put an officer in a difficult position if they used a chokehold when deadly force was authorized and necessary for his or her safety or the safety of others but has not received in-service training on the directive.

Recommendation: Any agency policy regarding the use of chokeholds and carotid restraints must allow their use to protect the safety and lives of officers and citizens. Further, we recommend the deletion of “and sworn officers have had in-service training on this directive”. There is no need for this language as standard 14 requires all officers to receive in-service training on an agency’s use of force policies, under which the use of chokeholds or carotid restraints would be covered.

10. and 11. These standards around officer use of force are not consistent with the current legal standard of “objective reasonableness” for the use of force outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor*, which states “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”

Further, provision 11(f) states that an agency’s written directive on officer use of force must state that officers “will be trained in alternative methods and tactics for handling resisting subjects” but does not define what are the acceptable alternative methods.

Recommendation: The standard around whether an officer can or should use force must be in line with the definition of “objective reasonableness” as derived from *Graham v. Connor*. That is, the determination that the necessity for using force and the level of force used is based upon the officer’s evaluation of the situation considering the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

We also recommend that you refer to the [National Consensus Policy on Use of Force](#), which was drafted by NAPO and ten other national law enforcement organizations as guidance to the law enforcement profession on de-escalation techniques, less-lethal force, and deadly force. The issues in 11(a) – (g) are addressed in the *Consensus Policy* and reflect the best practices of the law enforcement profession.

Regarding 11(f), the Standards must provide further guidance on what are the acceptable “alternative methods and tactics” an officer must use when deadly force is not authorized.

13. NAPO supports the requirement that officers administer appropriate medical aid but believe this standard must clarify that the aid rendered should be consistent with the officers’ training and that officers are only required to do so once the scene is secure and safe.

Recommendation: Please refer to the [*National Consensus Policy on Use of Force*](#), IV. Procedures, A. General Provisions, subparagraph 3, which reads:

Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

15. When implementing a personnel early intervention system or similar risk management tools, the agency must ensure not to infringe upon an officer's First Amendment rights as well as any employee protections that have been collectively bargained.

Recommendation: Amend this standard to include language stating that any early intervention system shall be subject to collective bargaining and shall not infringe upon current collective bargaining agreements or memorandums of understanding.

16. Many agency disciplinary systems are subject to collective bargaining agreements and have been negotiated between the agency and the union representing the officers. If this standard would supersede any collectively bargained disciplinary systems, we would be creating substandard collective bargaining rights for law enforcement officers and setting them apart from their counterparts in public service, who can and do bargain over disciplinary issues.

Recommendation: The standard must state that any disciplinary system established or amended to meet the criteria of this standard shall be consistent with current collective bargaining agreement language and be subject to collective bargaining, where applicable.

18. We are concerned with the restrictions put in place on no-knock warrants in this standard. While there is an exception for circumstances where an officer's safety would be compromised, warrants are risky situations for officers whether the suspect is known to be armed and dangerous or not.

19(c). This requirement was written as part of Executive Order 14074, as referenced in the Draft Standards, and is directed at Federal Law Enforcement Agencies. Whereas Federal LEAs are large, with a significant number of agents and officers, this provision would be an issue for small or rural local law enforcement agencies. The personal information of officers involved would be more easily recognizable and accessible with this data for small agencies. If the injury were due to use of force by an officer involved in the no-knock, even if it was a justified use of force, that officer could face public repercussions that could negatively impact the officer and his or her family.

Recommendation: Eliminate (c) from the required reporting under standard 19 for local law enforcement agencies.

II. Standards independent credentialing bodies should consider when accrediting law enforcement agencies

After listing out the mandatory standards an independent credentialing body *must* consider, the Draft Standards states (p. 4) that the independent credentialing body is responsible for establishing any additional standards and procedures beyond the required minimum standards for a law enforcement agency to successfully obtain accreditation. The Draft Standards then lists out standards the credentialing body “should” consider when accrediting law enforcement agencies. We believe that all agencies that meet the required standards, as laid out in Section I, should be considered accredited, and those who go above and beyond can be publicly noted of their additional standards and policies.

NAPO does not want a situation where agencies that do not comply with any or only comply with some of the “should” standards are penalized or set apart in a negative manner from those who comply with all of the standards laid out in Sections I and II of the Draft Standards. There could be numerous reasons an agency cannot or will not comply with all the “should” standards, from state or local law to local agency need to lack of resources to implement, which do not necessarily make the agency inferior.

2. Given that the National Law Enforcement Accountability Database and related officer misconduct data policies have not been finalized, we are concerned that a credentialing body would accept written directives that do not proactively protect officer due process and privacy rights. Until the Accountability Database and all of its requirements are finalized and enacted, and we have concrete evidence that officer rights will be safeguarded, we cannot support the inclusion of this standard.

3. NAPO supports agencies’ participation in and the use of the FBI’s National Use of Force Data Collection. However, small agencies with few resources and even fewer staff may have difficulty submitting this data without the aid of federal resources. They would then be penalized for not submitting data if the credentialing body includes this standard as a mandatory policy that must be in place for accreditation.

Recommendation: This standard should state that agencies who do not have the means or resources to submit data to the National Use of Force Data Collection shall be excused from meeting this standard until resources or technical assistance is provided that allows them to meet the requirement.

6. See comments and recommendations above for standard 3.

8. NAPO supports open communication, education, and cooperation between law enforcement and the communities they serve as it establishes and improves trust and more effective policing. However, we do not believe that citizens, particularly those who have no law enforcement experience, should have the right to develop policies and procedures regarding policing practices. We would not allow members of the public to develop and evaluate medical policies for our hospitals, medical centers, or boards of certification as they do not have the training and expertise to do so. The same goes for the law enforcement profession.

Recommendation: Amend this standard to read that members of the public have the right to have access to policies and procedures around combating violent crime and employing technology, except where doing so would hinder public safety response operations, and they have the right to submit comments on these policies and procedures and have those comments considered.

9. This standard is onerous and costly, and unless tailored down, it will prohibit proactive policing. The inclusion of all stops in the data collection would certainly cause an officer to pause when deciding whether to approach an individual for questioning. Officers may well decide it is better to continue to drive by in their patrol car than to ask questions and then have to spend precious time writing a report on the stop. This can negatively impact public safety.

Additionally, demographic data should only be the data that an officer can obtain through a driver's license or other official identification document. We cannot have officers asking or guessing an individual's sex, race, ethnicity or national origin as one wrong question or presumption could lead to complaints of bias.

As we have commented previously regarding data collection, it is costly and agencies that do not have the resources should not be penalized for not collecting the data.

Recommendation: Remove "stops" from the data to be collected and limit the demographic data to only that found on an official identification document. This standard should also state that agencies who do not have the means or resources to collect and publish this data shall be excused from meeting this standard until resources or technical assistance is provided that allows them to meet the requirement.

10. While NAPO supports transparency and communication with the public after a serious incident, the standard must ensure that any communication from the agency to citizens and the media must not in any way bias the public or the investigation against an officer(s). Officers have the right to due process as all Americans do and we fear that swift communication with the public could lead to adverse actions against an officer(s) for political expediency.

Recommendation: The standard should require an agency to have a written directive that states it will be open and transparent with the public regarding serious incidents in a way that protects victim and officer rights and privacy and does not impede or bias an investigation.

12. NAPO is concerned that a credentialing body could interpret this to mean that agencies must have an independent prosecutor investigate officer use of deadly force. We fear that an independent prosecutor would be under a great deal of pressure to justify his or her work and that there is a risk that decisions to prosecute would be made based on politics and public pressure, not on the reasoned application of law and admissible evidence. This could lead to an officer being indicted, even in cases where the use of force was justified and broke no law or policy.

Recommendation: Eliminate this standard.

13. This standard could potential infringe upon an officer's right to privacy.

Recommendation: Further define “relevant” demographic data.

14(a). Agencies should have a written directive for policing mass demonstrations that allows for a range of responses but should not require officers to go through a “tiered response” or specified continuum of tactics. Some demonstrations are violent from the start and require officers to wear tactical gear for their own personal protection. Departments should have the right and ability to decide how best to respond to mass protests and demonstrations based on their officers’ needs and abilities and the needs of the communities they serve.

Recommendation: This standard should simply require agencies to have a written directive for policing mass demonstrations that meets local and departmental needs and includes provisions that will protect the safety of officers and the community.

18. The inclusion in this standard that agencies have “smart technology that is designed to prevent the tampering with or manipulating of evidence in violation of policy” is unnecessary, expensive and implies that officers cannot be trusted. If it is in violation of agency policy to tamper with evidence, then that should be enough.

Recommendation: Remove the phrase “which includes smart technology that is designed to prevent the tampering with or manipulating of evidence in violation of policy” from the standard.

21. NAPO questions how an agency will be able to enforce a written directive that prohibits officers’ use of obscene language. Will the agency have to hire additional analysts to review body worn camera footage simply to listen for obscene language? Further, officers sometimes find themselves in extreme situations where their first response is the use of obscene language. We have witnessed body worn camera video where officers making dangerous and heroic rescues often curse their way through it. They should not be penalized for violating agency policy simply for using obscene language.

Recommendation: Remove this standard. It can be replaced with a standard that requires a written directive that states that officers must treat all individuals with respect and dignity.

26. While NAPO believes that all officers should properly wear seat belts while operating an agency motor vehicle or any motor vehicle for their own personal safety, we are concerned that a written directive that requires it could impact an officer’s or their family’s ability to receive death or disability benefits through the Department of Justice’s Public Safety Officer’s Benefits (PSOB) Program. There are examples of cases in which an officer was in a terrible car accident, was not properly wearing a seat belt, and died in the line of duty but because there was an agency policy regarding the use of seat belts, the officer’s family was denied benefits.

An agency can promote proper seat belt use, but the written directive may just be the one thing that prevents a fallen officer’s family from receiving the PSOB benefits they deserve. NAPO has long fought the PSOB Program on this issue and while they state such a policy is not a deciding factor, it is our experience that it certainly plays a role in the Program’s decision whether to award benefits.

Further, the way the standard is written, it would apply to any departmental motor vehicle despite the fact that some vehicles, such as a departmental motorcycle, do not come with seat belts. We do not point this out simply to be finicky, but as an example of the poor policy in promulgating standards that on their face cannot be met, like “should” standard 21, as commented on above.

Lastly, without information on how the National Accreditation Standards will be implemented, we have questions as to what their impact will be on a law enforcement agency’s ability to receive Federal grant funding. While we understand this is just the first step in the process of establishing a national accreditation program, we are just as concerned with the next steps as we are with these draft standards.

We appreciate your consideration of our comments and recommendations on the National Accreditation Standards (Draft 2) and we look forward to continue working with you to improve policing practices in America. If NAPO can provide any additional information on our comments, please feel free to contact me at (703) 549-0775.

Sincerely,

A handwritten signature in black ink, appearing to read 'William J. Johnson', followed by a long horizontal flourish.

William J. Johnson, Esq.
Executive Director