



# Defining State and Local Authority

An Entry in the  
Policy Model Series

**THE JUSTICE  
COLLABORATORY**

YALE LAW SCHOOL

## **About the Justice Collaboratory**

The Justice Collaboratory at Yale Law School is a group of nationally recognized academics, researchers, and social scientists who have joined together to build a more just, effective, and democratic criminal legal system by advancing public policies that are scientifically proven to build strong and safe communities where all citizens can thrive.

## **About the Policy Model Series**

The Justice Collaboratory's Policy Model Series offers concrete proposals to those striving to achieve a community-centered criminal legal system, one focused on promoting vibrancy over mere criminal control. Entries in the series are concise, plainly worded, and reflect the latest thinking by leading experts. Our models are intended to serve as templates for state or local laws, though their substance may also be incorporated into agency policies, regulations, and guidance.

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## Preface

Policing in America, perhaps more than any other governmental function, occupies a unique place in the collective consciousness. Its triumphs and failings are the subject of daily media coverage, public demonstrations of unprecedented scale, and political debate at all levels of government, from town halls to the halls of Congress. However, despite the attention policing receives, the laws and policies governing policing leave much to be desired, with even bipartisan calls for policy changes too often failing to result in meaningful action by government officials.

### Three persistent trends contribute to this problem:

**First, the authority to enact policing policies is scattered.** Unbeknownst to many advocates, pushing for police reform is not as simple as petitioning your mayor, police commissioner, or local council member. Changing how policing is administered often requires a patchwork of both local and state action, depending on where you are and what you are trying to achieve. The process of navigating these legal and political channels can be daunting, if not prohibitive. The consequence is that many policy proposals never gain real traction since the authority to enact change may be diffuse among different political institutions across different levels of government.

**Second, state preemption hobbles local reform.** Recent history has shown that localized will to achieve policing reform is, by itself, insufficient. Even though the administration of policing has historically been a matter of local concern, states have increasingly interfered with local efforts to revisit policies on departmental budgets, officer headcounts and deployment, and community reinvestment, among other areas. They have done so largely by enacting laws that restrict or outright prevent local officials from acting and have even passed laws that severely punish local governments that fail to comply with these prohibitions. Protecting local authority over policing requires a recalibration of the relationship between state and local governments, with substantive and procedural checks against politicized state interference.

**Third, the policing mission itself is poorly defined.** American police forces are tasked with a wide range of functions that fall under an ill-defined and ever-growing public safety mandate. On top of their core responsibility to investigate crimes and apprehend offenders, officers conduct welfare checks, direct vehicular and pedestrian traffic, respond to noise complaints and motor vehicle accidents, issue parking tickets, police juvenile truancy, and administer first aid, among other tasks. As a result, the policing mission has become amorphous, with police officers filling multiple roles that serve different, sometimes competing, policy goals. The lack of a clear mission precludes the formation of a strong foundation for policing policy.

A state legislative plan for countering these trends is needed.

This model offers such a plan.

## The Need for Clear Roles

A primary aim of the police reform movement is to enshrine best practices within the operations and cultures of America’s police departments. However, the process of doing so is fraught.

In virtually all states, the power to regulate policing is held simultaneously and with nearly equal breadth by both state and local governments. However, there is little or no coordination of effort between the two levels of government and no common understanding of which issues are best regulated locally or statewide. The unbounded and undirected exercise of state and local governmental authority has fed uncertainty over how best to enact policing policy, and advocacy efforts have suffered as a result.

Promoting best practices policing broadly across all police departments requires complementary state and local action. In an ideal system, state and local governments would focus on doing what they are best equipped to do. In other words, state governments would work to enact policies that serve genuine statewide interests and local governments would administer local policing functions in service of their constituency’s priorities and needs. By explicitly defining the roles of both levels of government in regulating policing, achieving this ideal becomes possible.

## Defining State Authority

State-level action is critical for setting and enforcing best-practice standards across all areas of policing. Although some states have moved toward strengthening their oversight of policing, an increasing number of states have instead directed their attention to interfering with local efforts to regulate policing and public safety generally, particularly when local policies conflict with the platforms of state partisans. However, when wielded appropriately, state governmental authority can lead to transformative results that further the public safety interests of all.

The legislative model presented here envisions an important role for state governments: overseeing all in-state police departments to ensure the uniform adoption of best practices policing. Under the model, state oversight is accomplished by a robust regulatory regime responsible for enacting standards for sworn law enforcement officers, the agencies that employ them, and the providers that train them. The model borrows inspiration from the Police Officer Standards and Training (POST) commissions that exist in many states, but significantly increases the authority that such commissions wield.

Accordingly, those familiar with POST commissions will notice some similarities and many differences between what currently exists and what is presented here. Some existing POST commissions can certify and decertify individual police officers but lack any oversight function over police departments. Others can only set law enforcement training standards or guidelines. Others still are merely advisory in nature, with no regulatory authority at all. For states with an existing POST commission, the model offers a roadmap for expanding their authority to maximize their ability to promote policing’s best practices. For those with no POST commission, it provides a template for how one should look like from its inception.

Central to the authority of the model's POST commission are three key abilities: to set uniform standards, to enforce them, and to impose meaningful penalties for noncompliance. Coupling this substantive authority with a mandate to work to promote fair, equitable, and effective law enforcement in service of the public, as the model does, results in a commission whose strength derives from both its power and its purpose.

Included within the model are provisions regarding the membership composition of the commission and the data it must collect and publish. These provisions serve the related goals of ensuring that the commission is representative of, and transparent with, the statewide constituency in whose interest it is mandated to serve. This constituency includes not just the officers, departments, and training providers who are subject to certification, but also the communities who are impacted by how policing is conducted and managed.

Accordingly, the model moves beyond the antiquated notion that law enforcement standards should be set only by law enforcement practitioners. Specifically, it requires that persons with prior criminal and juvenile justice system involvement, social or educational services experience, and criminal defense or civil rights experience be appointed to the commission to serve alongside people with law enforcement experience. Additionally, it includes a provision that calls for equitable racial, gender, and geographic representation within the commission's membership, with such representation being an indispensable metric of accountability.

Although there is no one-size-fits-all approach to how policing should be regulated, the model here provides states with a clear regulatory infrastructure for identifying the profession's best practices, exporting them broadly, and enforcing their adoption by state and local law enforcement agencies.

## Defining Local Authority

In addition to establishing a mission-oriented statewide regulatory regime for policing, the model reasserts local authority over the day-to-day administration of local police departments and shields that authority from politicized state interference. In doing so, the model both defines and protects the role of local governments in regulating policing by instigating important changes to the balance of power between state and local governments.

First, it clearly and affirmatively vests local governments with the authority to direct the daily affairs of their own police departments. Second, it mandates that a democratic process be undertaken to define the scope of a local police department's function and, by extension, its mission. Third, it protects local autonomy by erecting safeguards against politically motivated interference from state governments.

At its core, the model aligns state law with the common expectation that police departments be managed closest to where their services are administered and where grievances against them are pursued: the local level. The memorialization of the police function in local law allows municipalities to precisely and publicly define what policing services are, while the preservation of

local authority solidifies who has final say over local police operations. This prescription gives local constituencies a clear understanding of where to direct their efforts when petitioning for reform, while protecting local authority to shape policing to serve local needs.

The model offers three options for protecting that authority, which can be used individually or combined for compounded effect.

The first protects against the politicized targeting of specific localities by permitting the state to enact preemptive laws that affect local police departments only when the laws would apply generally to all localities. This would prevent states from targeting localities with politically retributive legislation in response to local policing policies that are disfavored by state partisans.

The second raises the threshold for enacting preemptive state laws by requiring that such laws be narrowly tailored to serve a substantial state interest. This standard is borrowed from the intermediate scrutiny standard used by the U.S. Supreme Court to adjudicate certain constitutional claims and sets a higher threshold for legislative enactment than is typically required of states when passing new laws.

The third requires approval of any preemptive state law by a supermajority of the legislature, a safeguard with particular importance in states with historically narrow partisan majorities.

Although each approach has potential tradeoffs and limitations, they offer three different legislative options for improving local governmental defenses against politicized state interference. The goal of these approaches is not to exclude state officials from the business of overseeing policing, but to direct their efforts toward policymaking that serves a genuine statewide purpose rather than partisan agendas.

As envisioned here, the state would continue to occupy an important role in the regulation of policing, albeit one obligated to respect the role of local government in administering policing and situating it within broader local public safety strategies.

## A Note on Implementation

It is possible that some of the changes the model advocates will require amendments to state constitutions, which typically define how power is apportioned between state and local governments. However, the model defers to state legislatures to determine whether any such constitutional amendment is required.

# The Model

## Part 1 - Defining State Authority

### Section I Commission on Police Officer Standards and Training – Establishment and Authority

**a.) Establishment.** A commission on police officer standards and training is hereby created to fulfill the mandate and exercise the authority established by this law.

**b.) Mandate.** The commission shall work to promote fair, equitable, and effective law enforcement in service of the public. In furtherance of this mandate, the commission must:

(i) establish the minimum standards of operation for all state and local law enforcement agencies operating within the state;

(ii) establish the minimum standards of employment for all sworn law enforcement officers employed by state and local law enforcement agencies;

(iii) establish the minimum standards of qualification for all law enforcement training providers authorized to provide training services to state and local law enforcement agencies and sworn law enforcement officers;

(iv) certify the compliance of state and local law enforcement agencies, sworn law enforcement officers, and law enforcement training providers upon their satisfaction of all applicable minimum standards established by the commission; and

(v) receive and investigate complaints regarding alleged noncompliance by a state or law enforcement agency, sworn law enforcement officer, or law enforcement training provider with any applicable minimum standard.

**c.) Authority.** The commission has the authority to:

(i) impose penalties for any failure by a state or local law enforcement agency, sworn law enforcement officer, or law enforcement training provider to abide by any applicable minimum standard;

(ii) issue subpoenas for personal appearance or document production, administer oaths, examine witnesses, and take the statement of any person as needed to conduct the business of the commission; and

(iii) establish rules to govern the commission's proceedings and business, including the establishment of voting thresholds for commission action.

## Section II    Composition and membership

**a.) Membership.** The commission shall consist of [#] members, each of whom shall be appointed by the [governor / attorney general] [with the advice and/or consent of the state senate].

**b.) Term.** Commission members shall serve for a term of [#] years, with their term commencing immediately upon their appointment.

**c.) Composition.** One member of the commission will serve as chair [upon selection of the governor / attorney general / the commission membership]. For each of the following areas, at least one member of the commission must have prior or current personal or professional experience:

(i) law enforcement practice as a sworn law enforcement officer, provided that not more than half of the members of the commission shall either have such experience or be the spouse or child of a person with such experience;

(ii) practice as a criminal prosecutor;

(iii) practice as a criminal defense attorney or as a civil rights attorney on behalf of persons involved in the criminal legal system;

(iv) involvement in the criminal legal system as a person subjected to arrest or prosecution;

(v) involvement in the juvenile legal system as a person subjected to arrest or prosecution;

(vi) provision of social or educational services to persons who have been the subject of an arrest or prosecution in the criminal legal or juvenile legal system; and

(vii) advocacy on behalf of persons with mental health needs who have been involved in the criminal legal system.

**d.) Representation.** When appointing members to the commission, [the governor / attorney general] must strive for a membership that is representative of the racial, gender, and geographic diversity of the state.



### Section III Certification of State and Local Law Enforcement Agencies

**a.) Minimum standards.** The commission is empowered to establish, enforce, and certify compliance with standards for all state and local law enforcement agencies operating within the state, including standards relating to:

- (i) agency policies and protocols regarding field operations, including stops, arrests, uses of force, and law enforcement investigations;
- (ii) records management;
- (iii) data collection, maintenance, privacy, and transparency;
- (iv) discipline, including investigation, adjudication, and penalties;
- (v) use of existing and emerging technologies; and
- (vi) hiring, promotion, and dismissal of sworn law enforcement officers.

**b.) Compliance.** Each state and local law enforcement agency is required to abide by and maintain compliance with all applicable standards established by the commission and to promptly remediate any failures to do so.

**c.) Penalties for noncompliance.** The commission may impose penalties on any state or local law enforcement agency for failing to satisfy any applicable standard established by the commission. Such penalties include:

- (i) ineligibility for state-provided funding, including federal funding administered by the state, where permitted; and
- (ii) suspension of a law enforcement agency's ability to hire new sworn law enforcement officers until such time as the commission recertifies the agency as compliant..

## Section IV Certification of Sworn Law Enforcement Officers

**a.) Minimum standards.** The commission is empowered to establish, enforce, and certify compliance with standards of employment for all sworn law enforcement officers employed by a state or local law enforcement agency, including standards relating to:

- (i) the minimum course of study required for satisfactory completion of a certified law enforcement training academy, including the minimum number of hours of instruction for such course of study;
- (ii) the minimum level of supplemental training programs required for continued service as a sworn law enforcement officer;
- (iii) the minimum qualifications for employment as a sworn law enforcement officer aside from training received at a certified law enforcement academy, including educational requirements and professional licensure and certifications;
- (iv) credits, if any, toward certification as a sworn law enforcement officer for prior professional experience, licensure, or certification, including certification as a sworn law enforcement officer from another state or country; and

**b.) Compliance.** Every sworn law enforcement officer employed by a state or local law enforcement agency is required to abide by and maintain compliance with all applicable standards established by the commission and to promptly remediate any failures to do so. A person cannot serve as a sworn law enforcement officer at a state or local law enforcement agency unless the commission has certified that person's compliance with all applicable standards for employment, including satisfactory completion of any required law enforcement training program.

**c.) Penalties for noncompliance.** The commission may impose penalties on any sworn law enforcement officer employed by a state or local law enforcement agency for failure to satisfy any applicable standard established by the commission. Such penalties include:

- (i) imposition of additional conditions for certification, to be determined by the commission;
- (ii) ineligibility for graduation from a law enforcement training academy or program;
- (iii) limitation of a sworn law enforcement officer's permitted duties;
- (iv) suspension of a sworn law enforcement officer's certification for a period of time determined by the commission;
- (v) revocation of a sworn law enforcement officer's certification; and
- (vi) permanent ineligibility for certification as a sworn law enforcement officer at any state or local law enforcement agency.

## Section V Certification of Law Enforcement Training Providers

**a.) Minimum standards.** The commission is empowered to establish, enforce, and certify compliance with standards of operation for all individuals and organizations seeking to provide training for sworn law enforcement officers employed by state and local law enforcement agencies, including standards relating to:

- (i) the qualifications to serve as a law enforcement training provider for any state or local law enforcement agency;
- (ii) the curriculum used for any training program offered by a law enforcement training provider; and
- (iii) the minimum performance necessary by a prospective or current sworn law enforcement officer for satisfactory completion of any training program.

**b.) Compliance.** A law enforcement training provider cannot provide any training program to a state or local law enforcement agency or prospective or current sworn law enforcement officer or purport to offer any such program within the state unless the commission has certified the provider's compliance with all applicable standards established under this law.

**c.) Penalties for noncompliance.** The commission may impose penalties on any law enforcement training provider for failure to satisfy any applicable standard established by the commission. Such penalties include:

- (i) suspension of a law enforcement training provider's certification for a period of time determined by the commission;
- (ii) revocation of a law enforcement training provider's certification; and
- (iii) permanent ineligibility to serve as a law enforcement training provider for any state or local law enforcement agency or prospective or current sworn law enforcement officer.

## Section VI Data and Reporting

**a.) Certification database.** The commission is required to maintain a database that collects information on each person, agency, and training provider that is subject to certification by the commission, including their identity, current certification status, whether they have been deemed noncompliant with any required standard for certification, and what, if any, penalty has been imposed on them for any determination of noncompliance. The committee must also collect and maintain the name of any person who has been deemed permanently ineligible for certification as a sworn law enforcement officer and of any person or organization that has been deemed permanently ineligible for certification as a law enforcement training provider.

**b.) Public access.** The commission is required to publish on its website the information required to be collected under subdivision a and to update the information in real time.

**c.) Exclusion.** The commission is not required to publish on its website any information regarding ongoing investigations or adjudications of allegations of noncompliance against any person, agency, or organization for which no finding of noncompliance has been made but may do so at its own discretion. Where the commission has determined that an allegation of noncompliance is unfounded, the commission may withhold from public disclosure any information regarding the allegation but must maintain records relating to the allegation pursuant to any applicable records retention requirement established by law.

## Section VI Additional Standards

A state or local law enforcement agency, or the political subdivision of which the agency is a part, may establish agency standards that exceed the minimum standards established by the commission, provided that the commission may invalidate any such agency standard if it determines that the agency standard violates any minimum standard established by the commission.

# The Model

## Part 2 - Defining Local Authority

### Section I Vesting of authority in localities

Notwithstanding any other law regarding the scope of powers entrusted to localities, the authority to direct the affairs of a local law enforcement agency, including governance over departmental structure, management, oversight, and budget, shall be vested in the locality.

### Section II Obligation of localities to establish local law enforcement agencies by law

Each locality authorized by state law to establish and maintain a local law enforcement agency must define the responsibilities of the agency either by local law or, for localities established by charter, an amendment to its charter. The local law or charter amendment must clearly describe the services to be provided by the agency and the duties of sworn law enforcement officers employed by it.

### Section III Limits on preemption

The authority of a locality to direct the affairs of a local law enforcement agency may be preempted or overridden by state law only where the law [has general applicability,] [is narrowly tailored to serve a substantial state interest,] [and/or] [is approved by a two-thirds majority vote of the legislature].