



Law Enforcement Use of Force

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National Conference of State Legislatures



- Non-profit, bi-partisan organization.
- Members are all 7,383 legislators and 30,000 legislative staff in 50 states, D.C. and U.S. territories.
- Offices in Denver and D.C.
- Among our goals - To provide legislatures with information and research about policy issues, both state and federal.
- NCSL tracks state policy developments in all public policy areas.

State and Local Law Enforcement Agencies

- The structure of policing in the United States has been described as the most fragmented in the world with around 18,000 agencies nationally.
- Democratic accountability and oversight for the use of force and related policies is largely a function of local government and law enforcement agencies themselves.



12,261 Local
Police
Departments



3,012 Sheriffs'
Offices



49 Primary State
Agencies



Presentation Overview: Use of Force

1. Brief History of Regulation

2. The State of State Laws

3. Recent Trends:

- State Standards
- Neck Restraints
- Duty to Intervene
- Duty to Report
- Duty to Provide Care
- Data Collection
- Investigations
- Discipline and Certification
- Training

Use of Force: U.S. Supreme Court Case Law

Tennessee v. Garner (1985)

- Deadly force may not be used unless it is “necessary to prevent the escape **AND** the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”
- Looked to changes in state law.

Graham v. Connor (1989)

- Court adopted objective reasonableness standard.
- Enumerated factors to review: severity of the crime at issue, whether there is an immediate threat to safety and whether the subject is actively resisting arrest or attempting to evade arrest.

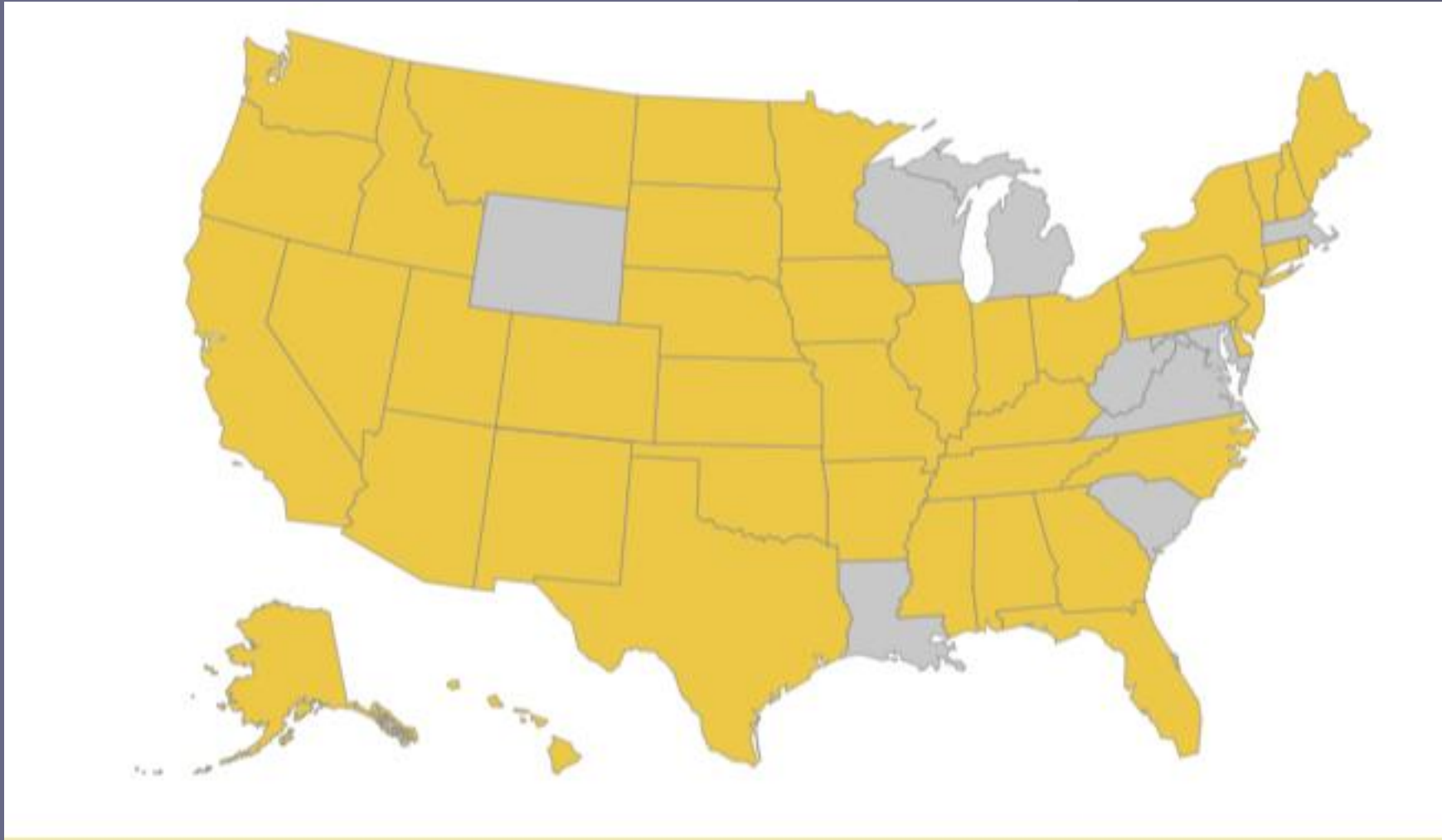
Other Notable Cases

- *Scott v. Harris* (2007) – Law enforcement may attempt to stop a fleeing motorist from continuing public-endangering flight by ramming their car. Culpability is examined by the court.
- *Plumhoff v. Rickard* (2014) – Similar decision to *Scott v. Harris* – firing 15 shots into a vehicle/the presence of a passenger did not amount to excessive force.
- Circuit court decisions further interpret U.S. Supreme Court decisions:
 - 7th Circuit – *Plakas v. Drinski* (1994) – Decided that there is no constitutional duty to use lesser force when deadly force is authorized under *Tennessee v. Garner* & *Graham v. Connor*.

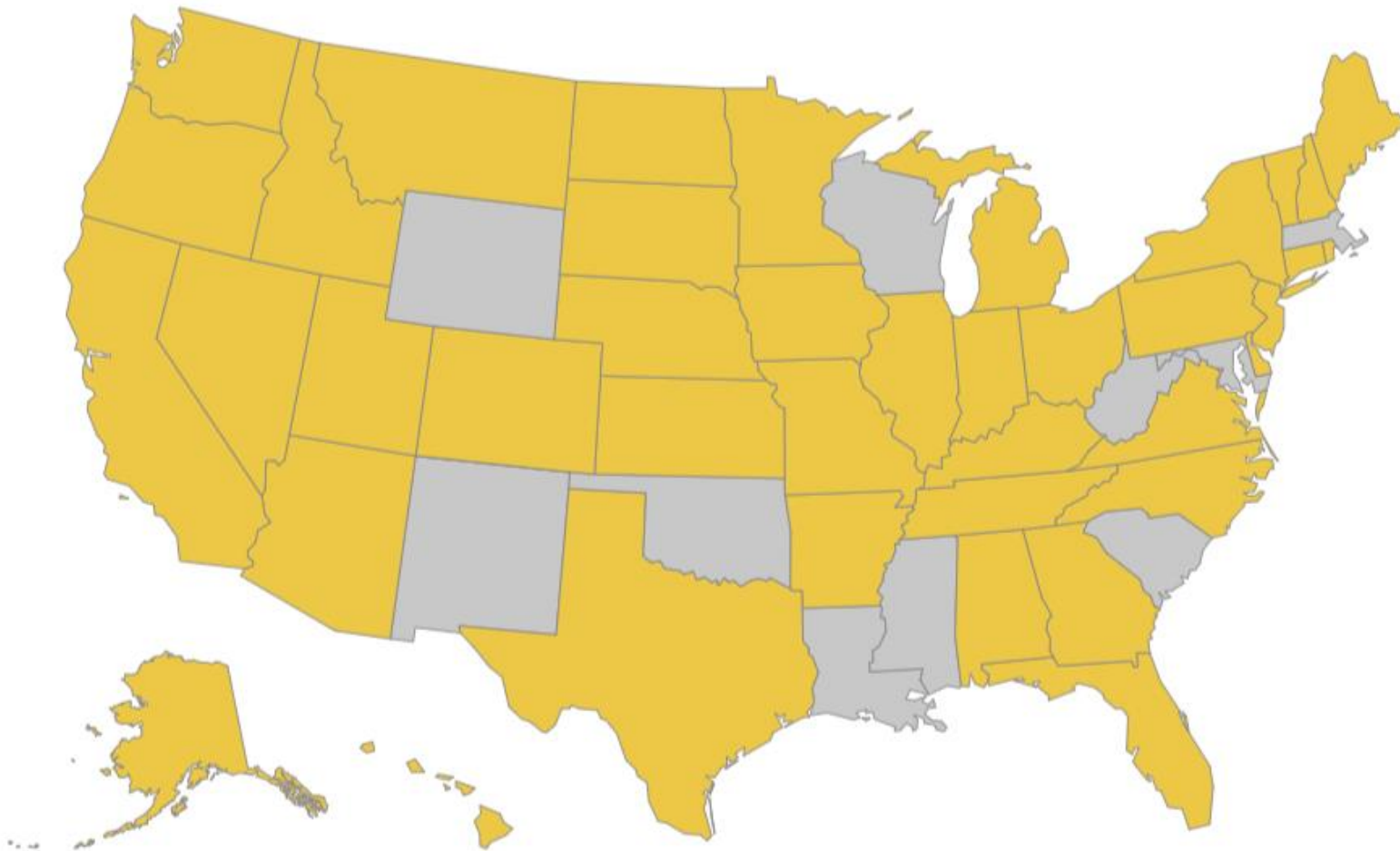
State Laws & Use of Force

- State constitutional law, as interpreted by courts, can also set a baseline similar to the federal Fourth Amendment.
- 43 states have statutory standards for use-of-force as well.





**41 states have
statutory deadly
force standards.**

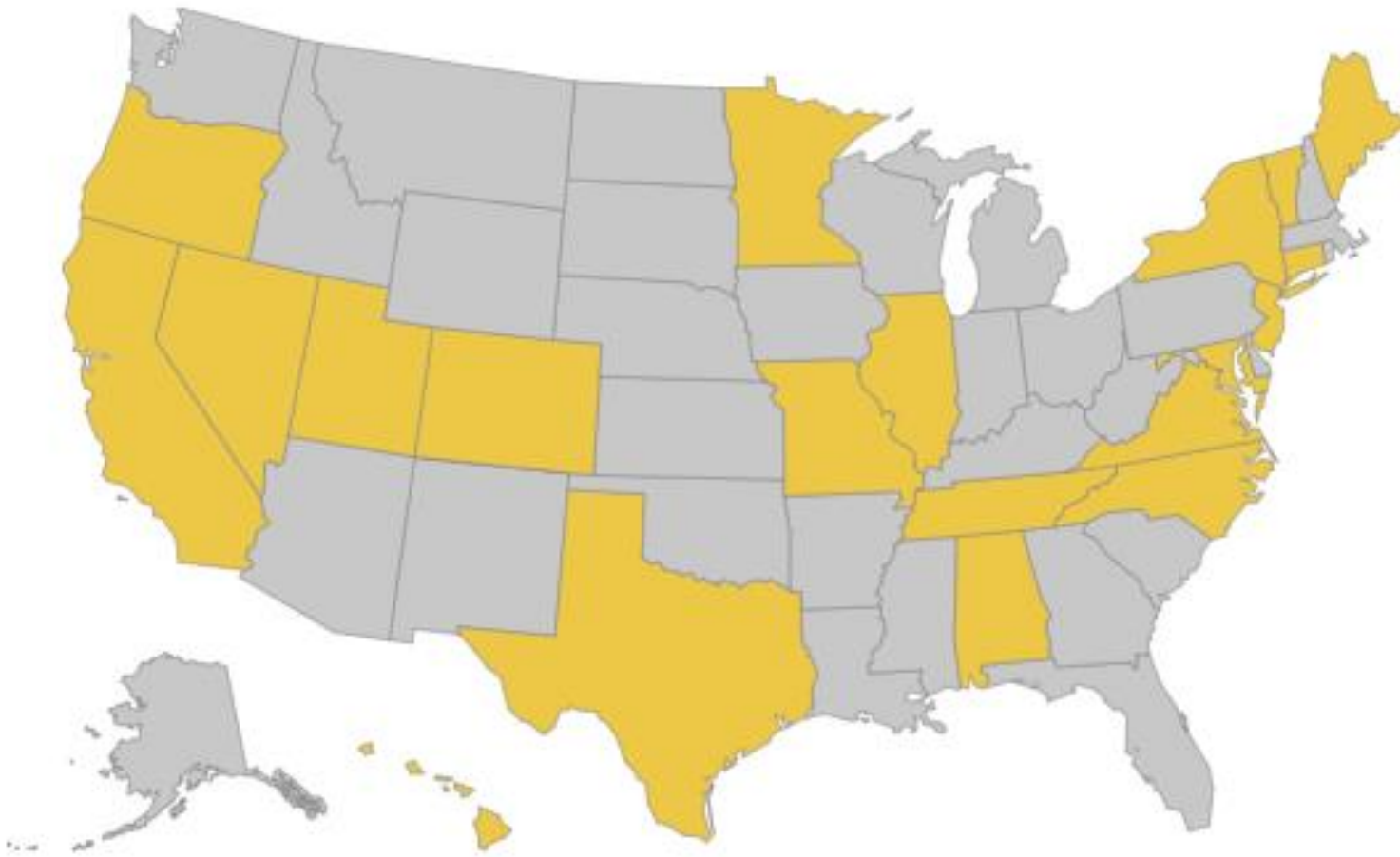


40 states have statutory guidance on the broader use-of-force continuum, including less lethal force.

Use of Force: Data Collection & Transparency

- Prior to 2015, at least two states—North Carolina and Oregon—required the collection of data for all cases where deadly force was used.
- By May 2020, at least 21 states were collecting use of force data.

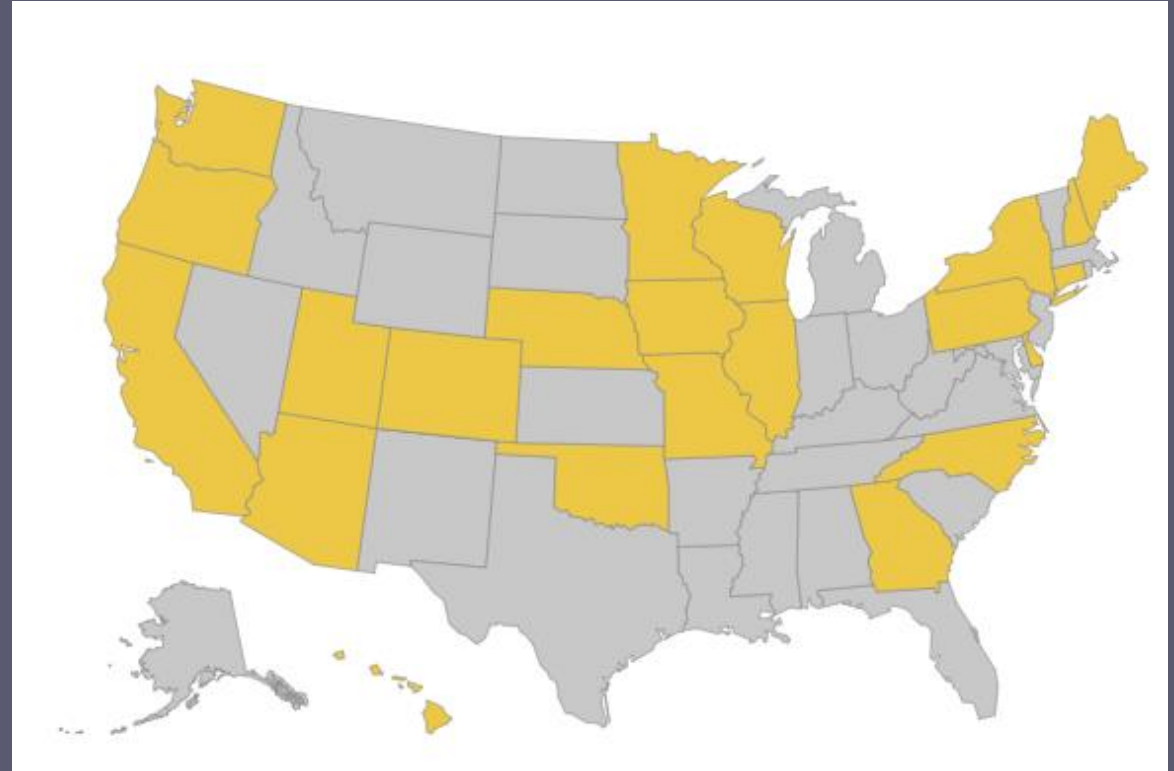




By May 2020, at least 21 states required use-of-force data collection.

Use of Force: Investigations

- At least 21 states and the District of Columbia have laws relating to the investigation or prosecution of use of force by law enforcement.
- Statutes addressing investigations and prosecution generally fall into two categories: 1) empowering an entity to conduct investigations and prosecute, or 2) outlining procedurally how an investigation must be conducted.





Use of Force: Training

- Police Officer Standards and Training (POST) boards are generally responsible for the specifics of training requirements.
- Statute can mandate or provide guidance for POST board training requirements – both for academies and reoccurring training.
- At least 15 states require use-of-force training.

Recent Legislative Trends

- Use of force has been one of the central areas of focus in state legislatures since May 2020.
- New enactments in 2020 special sessions and 2021 sessions.



Use of Force: New Standards Legislation

- At least 24 states enacted legislation prohibiting or limiting the use of neck restraints including choke holds.
- At least 15 states addressed state level standards for use of force.





Use of Force: New Statutory Duties

- At least 15 states created a duty to intervene in situations involving excessive force.
- At least 14 states created a duty to report incidents involving use of force or excessive force.
- At least 7 states created new duties for officers to provide medical assistance.

Use of Force: New Data Collection

- Since May 2020, 11 states have enacted 13 bills related to data collection and transparency in policing.
- Arizona, Colorado, Connecticut, Minnesota and Washington created public facing databases containing use-of-force data.

Use of Force: New Investigation Laws

- Colorado, Illinois, Massachusetts, Nevada and Virginia empowered their attorneys general to pursue pattern and practice lawsuits.
 - Traditionally pursued by the federal Department of Justice and can result in consent decrees.
- At least 11 states authorized or required state officials or agencies to investigate, audit or prosecute following incidents or misconduct.

Use of Force: Officer Discipline and Decertification

- Colorado, Connecticut, Illinois, Iowa, New Mexico and Oregon addressed revocation of certification.
- Colorado, Illinois, Massachusetts, Nebraska, Oregon and Washington require the creation of a public means of sharing decertification or disciplinary information.
- Other states required interdepartmental sharing of information or removed confidentiality provisions.



Use of Force: New Training Requirements

- At least 36 states have enacted 70 pieces of legislation related to training since May 2020.
- Training has covered:
 - Training on duty to intervene
 - Training on new use-of-force standards
 - De-escalation training
- Some states prohibited training on neck restraints and warrior-style training.

Other Notable Legislation

- State creation of civil causes of action similar to the New Mexico Civil Rights Act.
- Maryland's repeal of their Law Enforcement Officer Bill of Rights and protections for officers under investigation.
- 12 states restricting or prohibiting the use of no-knock warrants

NCSL Resources

- The pending legislation database – tracks all law enforcement legislation from May 2020 to present, including use of force.
- The state law database – a baseline snapshot of state law in 2020 including a number of use-of-force topics.

The screenshot shows a search interface for pending legislation. It features two columns of filters: 'TOPICS' and 'STATES'. The 'TOPICS' column includes checkboxes for 'All Topics', 'Executive Orders', 'Other Issues', 'Oversight and Data', 'Policing Alternatives and Collaboration', 'Technology', 'Training, Standards and Certification', and 'Use of Force'. The 'STATES' column includes checkboxes for 'All States' and individual states from Alabama to Delaware. Below the filters are search criteria fields for 'KEYWORD', 'STATUS' (set to 'All'), 'BILL NUMBER', 'YEAR' (set to '2020'), and 'AUTHOR'. There are 'Search' and 'Reset All' buttons. At the bottom right, it says 'Powered by LexisNexis® State Net®' and 'LexisNexis General Terms and Conditions'.

Use-of-Force Standards 	Legal Duties and Liabilities 	Certification 	Oversight Coming soon
Use-of-Force Investigation 	Qualified Immunity 	Decertification 	Collective Bargaining Coming soon
Training 	Use-of-Force Data 	Traffic Stop Data 	Bill of Rights Coming soon

Questions?

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