

Law Enforcement Transparency

A Libertas Institute Policy Analysis



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Case Study

In 2008, police in Prince George's County, Maryland, forcibly entered the home of Cheye Calvo looking for drugs. They shot and killed the two dogs and detained Calvo and his mother-in-law. Not knowing it was the police, Calvo stated, "I thought it was a home invasion. I was fearful that I was about to be executed."

The drugs being sought for were accidentally delivered to the home, when they were supposed to be intercepted by a FedEx driver involved in drug smuggling. One week later, officers arrested the driver and an accomplice. Worse, the police *knew* that the scheme was going on and that packages had been delivered to residences unbeknownst to the people who lived in them, but still proceeded to forcibly enter the home, harass those inside, and kill their dogs. Cheye Calvo was innocent.

Calvo was also the mayor.

As a public official, he had a platform he could use to push for reform. Through sharing his own story, others came forward and shared theirs. Their desire for change culminated in a simple transparency bill—a mandate to provide data on how many times police officers were being dispatched for risky situations. No restraint, just data. And it was opposed by every police organization in the state.

"I was disappointed that state law enforcement groups decided to oppose this measure," Calvo told the media, "rather than embrace it as an opportunity to restore the public trust. I remain especially concerned with the argument put forward that only law enforcement should police itself and that it is somehow inappropriate for elected leaders to legislate oversight and accountability. I cannot disagree with this argument more. As elected officials, we must take full responsibility for the law enforcement departments that we fund and authorize, and we must hold our law enforcement officials to the highest standards and ideals."

The bill passed Maryland's House 126-9, and unanimously in the Senate. It is currently the only such transparency law in the nation.

Introduction

Governor Herbert has stated, “Taxpayers and citizens have a right to know where every tax dollar goes and how it is spent, and state government has a responsibility to be accountable and open to constituents.” He continued: “On balance, we have made great strides toward more openness and transparency in government. That's evident by enhanced web reporting and the installation of a government records ombudsman. But we will not back off our commitment to do better.”

We believe that the government can do better.

Serving as the people’s representatives, Utah lawmakers can only respond to any problems that may exist to the extent that they understand these problems. This understanding requires information—how the process currently works, how it’s being abused, how it’s falling short, etc. If this information is not available, then legislators cannot realize and respond to problematic areas in public policy.

This bill proposal does not seek to restrain officers in their work. Instead, we believe it is necessary to better inform lawmakers, and the public at large, regarding how police officers are using their authority to enforce the law. We agree with Governor Herbert that the government, including law enforcement, must “be accountable and open.” This bill proposal facilitates that objective.

We sincerely hope that such transparency will reveal no problems. Of course, whether problems exist or not is a secondary concern—transparency in the enforcement of the law is a needed step to help ensure the public can have an informed trust of the police.

Bill Proposal

NEW SECTION

- (1) As used in this section:
 - (a) “Reportable incident” means:
 - (i) the deployment of a tactical group; or
 - (ii) law enforcement officers who serve a search or arrest warrant after using forcible entry, as provided by Section 77-7-8.
 - (b) “Tactical group” means a special unit within a law enforcement agency specifically trained and equipped to respond to critical, high-risk situations.
- (2) On and after January 1, 2015, every state, county, municipal, or other local law enforcement agency shall annually on or before April 30 report to the Commission on Criminal and Juvenile Justice the following information for the previous calendar year:
 - (a) whether or not the law enforcement entity had a reportable incident and, if so, the following information for each reportable incident:
 - (i) whether the officers involved were identified by any organizational title;
 - (ii) the city, county, and zip code of the location where the reportable incident occurred;
 - (iii) the reason for the deployment;
 - (iv) the type of warrant obtained, if any;
 - (v) if a threat assessment was completed;
 - (vi) if a warrant was obtained, the name of the judge or magistrate that authorized the warrant; and
 - (vii) the number of arrests made, if any;
 - (viii) if any evidence was seized;
 - (ix) if any property was seized, other than property that was seized as evidence;
 - (x) if a forcible entry was made;

- (xi) if a firearm was discharged by a law enforcement officer, and if so, how many shots fired by each officer;
 - (xii) if a weapon was brandished by a person other than the law enforcement officers;
 - (xiii) if a weapon was used by a person against the law enforcement officers and the number or approximate number of shots fired by the person if a firearm was used;
 - (xiv) the identity of any law enforcement agencies that were notified of the deployment prior to the deployment;
 - (xv) if a person or domestic animal was injured or killed by a law enforcement officer; and
 - (xvi) if a law enforcement officer was injured or killed.
- (3) If a warrant is served by a multi-jurisdictional team of law enforcement officers, the reporting requirement in this section shall be the responsibility of the commanding agency or governing authority of the multi-jurisdictional team.
- (4) The Commission on Criminal and Juvenile Justice shall develop a standardized format that each law enforcement agency shall use in reporting the data required in Subsection (2).
- (5) A law enforcement agency shall:
- (a) compile the data described in Subsection (2) for each year as a report in the format required under Subsection (4); and
 - (b) submit the report to:
 - (i) the Commission on Criminal and Juvenile Justice; and
 - (ii) the local governing body of the jurisdiction served by the law enforcement agency.
- (6)
- (a) The Commission on Criminal and Juvenile Justice shall summarize the yearly reports of law enforcement agencies submitted under Subsection (2).
 - (b) Before August 1 of each year, the Commission on Criminal and Juvenile Justice shall submit a report of the summaries described in Subsection (6) to:
 - (i) the attorney general;

- (ii) the speaker of the House of Representatives, for referral to any House standing or interim committees with oversight over law enforcement and criminal justice;
 - (iii) the president of the Senate, for referral to any Senate standing or interim committees with oversight over law enforcement and criminal justice; and
 - (iv) each law enforcement agency.
- (c) The report described in Subsection (6)(b) shall be published on the Utah Open Government website, open.utah.gov, before August 15 of each year.

(7)

- (a) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2), the Commission on Criminal and Juvenile Justice shall contact the law enforcement agency and request that the agency comply with the required reporting provisions.
- (b) If a law enforcement agency fails to comply with the reporting requirements listed in Subsection (2) within 30 days after being contacted by the Commission on Criminal and Juvenile Justice with a request to comply, the Commission on Criminal and Juvenile Justice shall report the noncompliance to the Attorney General, speaker of the House of Representatives, and president the Senate.

Another option: have CCJJ also report data regarding charges filed for each warrant served (directly or indirectly), any adjudication that followed, etc.

if necessary, we're okay having this be a pilot program — sunset after a few years to reassess then how it's going, whether it's too burdensome, whatever.

Conclusion

This transparency bill is superficial in nature. It does not seek to publicize actual warrants (which may be sealed), identities of officers or suspects, interview transcripts, or other details of executed warrants.

Instead, our proposal seeks to collect metadata regarding the activities of law enforcement officials to help inform the people's representatives in the legislature. This information may be used to observe trends and discern any possible issues.

West Valley City made national news this year for its problems with its narcotics unit, including the fatal shooting of Danielle Willard. In the saga that followed, one of the outcomes was the recognition of a need for greater transparency. Mayor Winder “strongly encourage[d]” City Manager Wayne Pyle to look for ways to make the police review board more transparent, and the City Council agreed. Pyle and then-police chief Anita Shwimmer also expressed a desire to see the police department be more transparent, “as long as legal concerns, the rights of victims and the ability to protect the integrity of an investigation are balanced with the public's right to know.”

This state-wide transparency bill side-steps concerns over legal issues, victim's identity and rights, and investigations. By mandating the collection only of metadata, the work of police officers may continue unimpeded while lawmakers and the people they represent can have a finger on the pulse of police warrant services around Utah.