

Advocacy In Action: The State of the SAFE-T Act

Illinois Law Enforcement Agencies Unevenly Implemented New Use-of-Force Provisions

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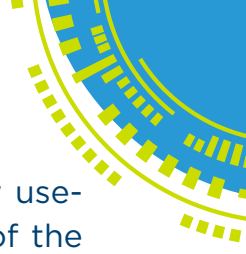
Illinois's Safety, Accountability, Fairness and Equity-Today Act (SAFE-T Act) is an omnibus piece of legislation passed in 2021 reforming multiple laws, including laws governing policing practices. Using research, analysis, and investigation, Impact for Equity is evaluating the impact of the SAFE-T Act's reforms related to policing behavior and public safety. Impact for Equity will report its findings in a series of issue briefs. This report is the second in the series and focuses on requirements governing the use of force by law enforcement.

Introduction

Throughout the history of policing in the United States, police officers have had the power to use physical force against individuals to carry out their duties. This immense power has been ambiguously defined and created opportunities for abuse, particularly against Black and other marginalized people.¹ The power granted to police to protect against a legitimate threat of violence must not be a license to inflict police brutality.

In the summer of 2020, a Minneapolis police officer abused his authority by using a deadly chokehold against George Floyd, sparking global public outrage. Tragedies like George Floyd's killing led Illinois to enact the Safety, Accountability, Fairness and Equity-Today Act (SAFE-T Act), which made sweeping criminal legal system changes. Passed in 2021, the SAFE-T Act established a "Statewide Use-of-Force Standardization Act" (the Act), including a more defined use-of-force policy, with affirmative duties to assist injured people and intervene against excessive force, and new requirements for reporting.² Evaluating the implementation of the Act is an important step to assessing whether the intended reforms have become reality.

Three years after the Act's passage, Impact for Equity found that among sampled ten Illinois law enforcement agencies (LEAs or agencies) implementation has been



been uneven. Of ten LEAs reviewed, only one completely adopted the new use-of-force policies. In other agencies' policies, we found that key provisions of the new standards were not included or contained additional exceptions or outdated requirements. And while public sources reveal that most agencies across Illinois report use-of-force and deaths-in-custody data to state authorities, the usefulness of that reporting is limited by missing data.

Law enforcement agencies, policymakers, and stakeholders all have a role to play in addressing these shortcomings. As a starting point, Impact for Equity urges LEAs to update their policies and reporting practices to align with the new use-of-force standards and calls for policymakers and stakeholders to hold LEAs accountable for robust implementation. With these steps, Illinois may still realize the promise of these new reforms.

New Statewide Use-of-Force Standard and Reporting Requirements

Prior to the enactment of the new Statewide Use-of-Force Standardization Act (the Act) in 2021, Illinois law provided that officers may use any force they *reasonably believe* is necessary when making an arrest. This justification was the basis for officers' defense in criminal cases involving accusations of excessive use of force. With no uniform guidance, agencies throughout the state had ample discretion to develop their own standards guiding officer use of force. The patchwork of use-of-force policies across the state did not offer clear guidance nor strong guardrails to hold officers accountable for instances of police brutality.

The Act sets out to clarify for officers and community members when officer force is legal. It builds upon the existing standard by narrowing the parameters for when police force is justified, when deadly force is justified, and when law enforcement like pepper spray and chokeholds.³ Furthermore, the statewide use-of-force standards mandate that on-duty officers must assist an injured person and intervene if another officer uses excessive force. The new Act enhances transparency, as well, by requiring Illinois LEAs to report for publication all incidents of officer use of force and incidents when someone dies in law enforcement custody. **Figure 1** provides a summary of the changes made by the Act.

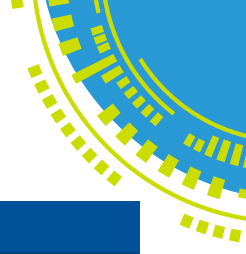


Figure 1: Use of Force Standard Summary of Changes

	Before SAFE-T Act	After SAFE-T Act
Statewide Use-of-Force Standard⁵	Officers are justified in using any force they reasonably believe is necessary to make an arrest. This was a legal justification for force that officers could use to defend against certain claims in a lawsuit.	<p>Officers must consider the “totality of circumstances”, not just their subjective beliefs.</p> <p>Officers can still argue “reasonableness” as a legal justification.</p> <p>Adds more guidelines around when uses of force are illegal (details following).</p>
Legal Justification for Deadly/Lethal Force⁶	Officers are justified to use lethal force if they reasonably believe it is necessary to prevent death or great bodily harm and to prevent escape or resistance when the person has committed or attempted a forcible felony.	<p>Officers must consider the totality of circumstances, including the amount of time that is passed since the forcible felony and the reasonable feasibility of arresting the person at a later date.</p> <p>Officers are not justified in using deadly force when there is no longer an imminent or immediate threat of great bodily harm.</p>
Deadly Force Warning Requirement⁷	None	When feasible officers must identify themselves as officers and provide a warning before using deadly force.
Prohibiting Uses of Force⁸	Officers cannot use an unreasonable amount of force.	<p>Officers cannot use an unreasonable amount of force.</p> <p>Officers cannot use lethal force against someone who only poses a danger to themselves.</p> <p>Unless lethal force is legally justified, officers cannot use such force against someone solely suspected of committing a property crime.</p> <p>Unless lethal force is legally justified, officers cannot use such force solely prevent escape.</p> <p>Officers cannot use force as punishment or retaliation.</p>
Prohibiting Chokeholds⁹	Officers cannot use a chokehold unless lethal force is legally justified.	In addition to chokeholds, offices cannot use any restraints above the shoulders with risk of asphyxiation (not including headlocks) unless lethal force is legally justified.



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	Before SAFE-T Act	After SAFE-T Act
Prohibiting Rubber Bullets (less-lethal projectiles)¹⁰	None	<p>Officers cannot discharge rubber bullets and other less-lethal projectiles in a manner that targets a person’s neck, groin, or anterior pelvis.</p> <p>Officers cannot discharge rubber bullets and other less-lethal projectiles indiscriminately into a crowd.</p>
Prohibiting Pepper Spray¹¹	None	With some exceptions, officers may only use pepper spray or tear gas after issuing a dispersal order.
Duty to Render Aid¹²	None	Officers must, as soon as reasonably practical, provide medical assistance to an injured person.
Duty to Intervene¹³	None	<p>Officers must intervene to prevent or stop another officer from using illegal force without regard for chain of command. In addition, under this requirement, officers are required to report their supervisors and vice versa.</p> <p>No discipline nor retaliation is permitted against the officer.</p>
Reporting Deaths in Custody¹⁴ and Officer Uses of Force¹⁵	None	<p>On a monthly basis, LEAs must report deaths in custody to the Illinois State Police (ISP).¹⁶</p> <p>LEAs must also record and report each time an officer uses force to the ISP.</p>

Assessing Implementation of the New Use-of-Force Standards and Reporting Requirements

Impact for Equity began efforts to discern the impact of the Act’s reforms in early 2024 by evaluating the progress made by law enforcement agencies on implementing the new use-of-force standards and reporting requirements. The following provides Impact for Equity’s evaluation methodology and findings.



Methodology

Impact for Equity reviewed the use-of-force policies and the reporting compliance on use-of-force and deaths-in-custody data of ten LEAs in Illinois.¹⁵ Unable to evaluate each of Illinois's 800+ LEAs, Impact for Equity aimed to capture a representation of law enforcement practices across the state. The ten selected agencies represent a sample of police departments and sheriffs' offices from different geographical regions of the state. They range in size from small, rural sheriff's offices serving small communities to large urban police departments with extensive resources serving diverse populations.¹⁶

Public sources and responses to Impact for Equity's Freedom of Information Act (FOIA) requests serve as the basis of this evaluation. The FOIA requests asked for all current and pending written documents, policies, guidelines, memoranda, administrative directives, and training materials outlining or describing each standardized use-of-force provision and documentation of all use-of-force and death-in-custody reporting since 2022.

To assess each agency's efforts to implement the use-of-force standards, Impact for Equity compared agency-specific policies on use-of-force with the new statutory requirements and determined that an agency implemented the latest use-of-force standards if it had a written policy that reflects the intention of the standards—meaning, the policy, even if worded differently, would have the same effect—and does not exclude any provisions nor include any language that would alter the impact of any provision.

To evaluate LEAs' compliance with the new use-of-force reporting requirements, this brief considers an agency to be properly reporting if a public record of the agency's use-of-force reporting exists and the Illinois Criminal Justice Information Authority (ICJIA) received deaths-in-custody reports from the agency in 2023.

Several Agencies' Use-of-Force Policies Do Not Incorporate Key Provisions of the SAFE-T Act

All ten LEAs examined have made some updates to their use-of-force policies following the passage of the SAFE-T Act. However, the use-of-force standards adopted in the SAFE-T Act contained components, and several LEAs did not incorporate key provisions of the Act into their use-of-force and other relevant policies.¹⁷ Only one of the ten agencies reviewed fully incorporated each component of the Act's new use-of-force standards into its written policy without excluding or modifying the standards in such a way that alters its intent.

“**The new statewide standards specify instances when officers are not permitted to use force, or certain types of force, and yet several LEAs did not include these in their updated policies.**”

Among the agencies that did not fully incorporate the new standards, many had policies that excluded important provisions prohibiting certain uses of force. The new statewide standards specify instances when officers are not permitted to use force, or certain types of force, and yet several LEAs did not include these in their updated policies. For example, multiple LEAs’ written policies failed to state that officers cannot use deadly force against a person who is only in danger of harming themselves. One agency did not include any of the prohibitions on using force in its use-of-force policy at all.

Furthermore, some agencies did not establish written policies that reflect the full scope of the new officer’s duty to intervene when witnessing another officer using excessive force. The duty-to-intervene provision contains three sections: the duty to intervene regardless of rank, the prohibition of department retaliation, and the duty to report.¹⁸ One agency excluded

the duty to intervene provision from its use-of-force policy entirely, and two others excluded a key element of the provision that protects officers from retaliation when they intervene or report excessive uses of force.

Some Agencies Added Exceptions or Qualifications to New Use-of-Force Standards

Even when LEAs did incorporate the new statewide use-of-force standards, or components of them, into their policies, several agencies included unique qualifications or exceptions to those standards. The differences between the Act’s standards and agencies’ policies varied, but several examples illustrate some challenges with deviating from the Act.

For example, at least one agency has a use-of-force policy that includes an outdated exception that the Illinois legislature removed in subsequent legislation. The first bill explained that officers must identify themselves as officers and warn a person that lethal force may be used unless the officer *reasonably believes* the person was aware of those facts.¹⁹ The final version of the standards, however, removes that exception and requires officers to warn a person that lethal force may be used regardless of whether they are aware that the person is an officer.²⁰

Some agencies have added additional qualifications to their policies that differ from the new standards. For example, the new use-of-force standards created a duty for Officers to medically assist an injured person “as soon as reasonably practical.”²¹



One agency directs its officers to offer aid “whenever practicable,” but not until after the officer has requested medical assistance. This change in language undermines the requirement to act with urgency to render aid. Agency-specific qualifications not articulated in the new use-of-force standards may result in a different application of what should be uniform statewide standards. Operating under different standards may mean that people experience different, potentially lifesaving, treatment depending on what city they are in.

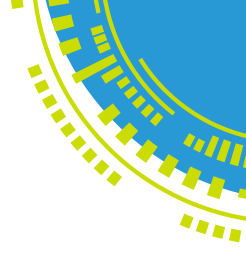
Agencies Routinely Report Uses of Force and Deaths in Custody but Data Deficiencies are Significant

Under the Act, all Illinois LEAs are required to create rules to regulate the monthly submission of use-of-force data to the Illinois State Police (ISP), which then reports that information to the Federal Bureau of Investigation (FBI) for national reporting on use of force.²² Agencies must also submit quarterly deaths-in-custody reports to ISP, which then forwards the information to the Illinois Criminal Justice Information Authority (ICJIA) for public reporting. The Act incentivizes compliance by incorporating potential funding repercussions for reporting failures.²³

The clear implementation structure and significant incentive for departments to comply may be reflected in the fact that all but one agency sampled had established an account with the FBI to facilitate data submission and had submitted use-of-force data for publication in 2023.²⁴ Statewide, nearly 70% of all LEAs submitted use-of-force data for public reporting in 2023.²⁵

Despite most Illinois LEAs regularly reporting, data deficiencies make it challenging for stakeholders like ICJIA to accurately assess trends across the state.²⁶ ICJIA’s 2023 Annual Report notes that a “high proportion” of 2023 death-in-custody incidents had missing data, including no description of the manner of death.²⁷ One of the agencies assessed here, for example, failed to include critical data like the race of the deceased and a description of the incident.²⁸ Furthermore, ICJIA reports that it identified two unreported deaths in custody by the end of 2023, attributing these discrepancies to agencies’ varied interpretations of the new reporting requirements and statewide use-of-force standards.²⁹ From the public reporting of this data, it is unclear whether each agency that failed to comply has been notified or faced any significant funding repercussions.

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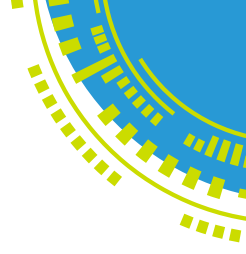
Conclusion and Recommendations

The passage of the SAFE-T Act was a victory for advocates and community members who have continuously fought for more police accountability in Illinois. However, implementation of the Act's use-of-force provisions across the sample LEAs evaluated has been uneven, with at least one agency incorporating each of the sample into policy, while others lag behind with policies that are outdated or diverge from the Act's requirements. Reporting deficiencies also highlight the necessity for consistency and improved accuracy in police data submission to state authorities.

To improve implementation and ensure community members know what they can expect from local police agencies, Impact for Equity recommends that:

- LEAs fully incorporate each of the Act's use-of-force requirements into departmental policies. Among other things, this will ensure officers are aware of the changes and provide greater guidance for officers in their decision-making about using force;
- LEAs submit complete and timely use-of-force and death-in-custody data;
- Policymakers and state and local stakeholders review local LEAs' policies to ensure they are aligned with the new standards and reporting requirements;
- Policymakers and statewide stakeholders provide additional implementation infrastructure (informed by community needs) to guide LEAs in aligning their policies with the new use-of-force standards and reporting requirements; and
- Policymakers and statewide stakeholders assess and fortify the current accountability framework for the new use-of-force standards and reporting requirements to ensure that it is robust enough to incentivize implementation.

The effectiveness of the new statewide use-of-force standards and reporting requirements hinges on their timely and effective implementation. Additional alignment of LEA policies and practices, along with guidance from policymakers and state and local leaders, may help Illinois move closer to holding police accountable in instances where they abuse their authority to protect against violence.



Notes

1. Peoples, L. (2020, June 19). What the data say about police brutality and racial bias—and which reforms might work. *Nature*, 583, 22-24. <https://doi.org/10.1038/d41586-020-01846-z> (“Although approximately 1,000 civilians in the U.S. are killed by police officers each year, Black men are 2.5 times more likely than their White counterparts to die at the hands of an officer.”)
2. Public Act 101-0652.’
3. 720 ILCS 5/7-5; 720 ILCS 5/7-5.5.
4. See 50 ILCS 705/6.3(f)(g) (requiring each law enforcement agency to adopt a written policy regarding the process and make that policy available for inspection and copy under the Freedom of Information Act).
5. 720 ILCS 5/7-5
6. 720 ILCS 5/7-5.
7. *Id.*
8. 720 ILCS 5/7-5, 720 ILCS 5/7-9.
9. 720 ILCS 5/7-5.
10. 720 ILCS 5/7-5.
11. *Id.*
12. *Id.*
13. 720 ILCS 5/7-15.
14. 720 ILCS 5/7-16.
15. 730 ILCS 210/3-5.
16. 50 ILCS 709/5-11, 5-12.
17. 730 ILCS 210/3-5.
18. The law enforcement agencies referenced here include the Chicago Police Department, Aurora Police Department, Carbondale Police Department, Cicero Police Department, Evanston Police Department, Normal Police Department, Rockford Police Department, Waukegan Police Department, Jefferson County Sheriff’s Office, and Lake County Sheriff’s Office.
19. This brief does not name individual LEAs and instead focuses on common pitfalls and best practices within this stage of implementation that all LEAs in Illinois can reference.
20. Public Act 101-652.
21. Public Act 102-0028.
22. 720 ILCS 5/7-15.
23. 50 ILCS 709/5-11.
24. 50 ILCS 709/5-20.
25. Federal Bureau of Investigation, Crime Data Explorer, National Use-of-Force Data Collection, Illinois, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/uof>.
26. See 730 ILCS 210/3-5.
27. Illinois Criminal Justice Information Authority, 2023 Illinois Annual Report of Deaths in Custody, p. 16 (2023).
28. Illinois Criminal Justice Information Authority, 2023 Illinois Annual Report of Deaths in Custody, pp. 16-17 (2023).
29. *Id.*