

RMSA Law Enforcement Discussion Forum

August 26, 2021
1:30 – 3 pm



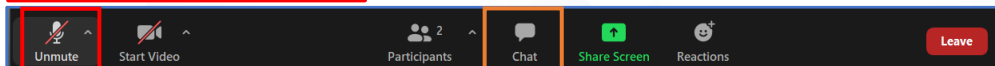
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Zoom meeting technical tips

- Plug your device into a power source
- Connect your device directly into your internet connection instead of using wireless to avoid audio and video quality issues and interruptions

Keep your microphone on **MUTE** unless speaking



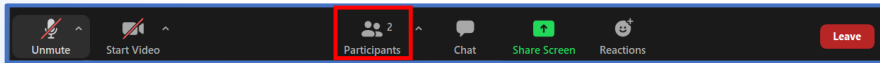
Select **Chat**, type your question or comment into chat pane, and select the **Enter** key to send.



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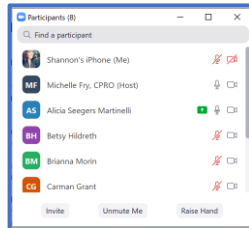
Change your Zoom display name

1. Select the **Participants** icon at the bottom center of the screen



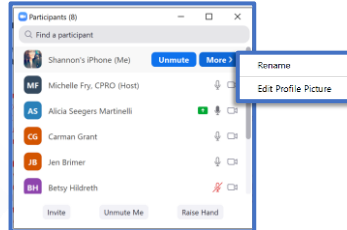
2. Find yourself in the list of Participants

Note: You should be at the top of the list

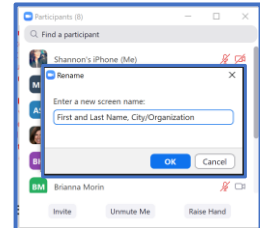


3. Hover over your name to see a blue **More** button

Select the **More** button, then select **Rename**

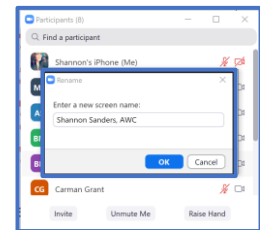


4. Enter your first and last name, followed by your city / organization / title



5. Click **OK**

The information you entered will now appear on the screen.



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Technical difficulties and disclaimer

Technical difficulties?

Please use the chat feature in Zoom for technical issues.

Disclaimer: The information contained in this presentation is for general educational purposes only and is not intended to be legal advice. Please consult legal counsel for advice about specific questions.

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Today's Presenters

Megan Coluccio
Attorney, Christie Law Group

Monica Alexander
Executive Director, Criminal Justice Training Commission

Jeff Wittenberger
Senior Director of Content, Law Enforcement, Lexipol

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Preparing for the New Frontier August 2021

MEGAN COLUCCIO & JOHN BARRY
CHRISTIE LAW GROUP, PLLC
SEATTLE, WA



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Disclaimer

- ▶ This presentation is informational in nature and does not constitute legal advice
- ▶ This presentation does not create nor should it be construed to create an attorney-client relationship
- ▶ We strongly recommend seeking advice from agency legal counsel regarding the application of these laws to your agencies

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Introduction

- ▶ Presentation Overview
 - ❖ House Bill 1140 – Juvenile Access to Attorneys
 - ❖ House Bill 1223 – Recorded Interrogations
 - ❖ A Deeper Dive into HB 1310 – New Use of Force Policies and UoF Standard relating to ITAs
 - ❖ Terry Stops
 - ❖ Community Caretaking
 - ❖ ITA Statute

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House Bill 1140

Juvenile Access to Attorney

NEW SECTION. Sec. 1. A new section is added to **chapter 13.40** RCW to read as follows:

(1) Except as provided in subsection (4) of this section, law enforcement **shall provide a juvenile with access to an attorney** for consultation, which may be provided in person, by telephone, or by video conference, **before the juvenile waives any constitutional rights** if a law enforcement officer:

- (a) Questions a juvenile during a custodial interrogation;
- (b) Detains a juvenile based on probable cause of involvement in criminal activity; or
- (c) Requests that the juvenile provide consent to an evidentiary search of the juvenile or the juvenile's property, dwellings, or vehicles under the juvenile's control.

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House Bill 1140

Juvenile Access to Attorney

- ▶ Consultation may not be waived
- ▶ Applies to:
 - ▶ Custodial interrogations
 - ▶ Waiver of rights during arrest
 - ▶ Evidentiary searches of juvenile's property
- ▶ Statements by or consent searches of juvenile inadmissible unless:
 - ▶ Provided access to attorney and the juvenile waives, knowingly, intelligently, and voluntarily after being informed of the rights being waived;
 - ▶ Testimony is for impeachment purposes only; or
 - ▶ Statement was made spontaneously



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House Bill 1140

Juvenile Access to an Attorney

- ▶ Custodial interrogation defined:

(9) "Custodial interrogation" means express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody;

- ▶ Similar to case-law based definition, two steps:
 - ▶ Will this question elicit an incriminating response?
 - ▶ Would a reasonable juvenile (of same age, experience, background) consider he or she was free to leave this interaction?

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House Bill 1140

Juvenile Access to an Attorney

Exceptions:

- ▶ Need not provide access to an attorney if:
 - ▶ Juvenile is a victim of trafficking, but cannot use info against the same juvenile; or
 - ▶ LEO believes info sought is necessary to protect a life against imminent threat; and
 - ▶ A delay would impede protecting life from imminent threat; and
 - ▶ Questions limited to those reasonably expected to be necessary to protect the life from imminent threat

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House Bill 1140

Juvenile Access to Attorney

- ▶ After consulting with counsel, juvenile may tell LEO that they choose to assert a constitutional right, or may assert through parent, guardian or counsel.
- ▶ Treated the same as if it came directly from juvenile.
- ▶ From what we understand, there will be on-call defense attorneys for juveniles through state Office of Public Defense

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House Bill 1140

Juvenile Access to Attorney

- ▶ Key Takeaways
 - ▶ When conducting a custodial interrogation, arresting a juvenile, or an evidentiary search involving a juvenile, must provide juvenile access to attorney
 - ▶ Unless (1) juvenile is victim of trafficking or (2) there is an imminent threat to life and delay in obtaining information would impede protecting life
 - ▶ Consent searches of a juvenile's home: unclear
 - ▶ Parents/guardians are usually the owners and can consent themselves, but unclear if this applies to juvenile

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House Bill 1223

Recorded Interrogations

- ▶ Effective Date: January 2, 2022
- ▶ Applies to all custodial interrogations of juveniles, or related to a felony
 - ▶ If in a holding cell, jail, police or sheriff's office, or detention facility, must be audio and video recorded
 - ▶ If completed at any other place, must at minimum be audio recorded
- ▶ Must record from beginning to end, or do a statement reflecting reasons why not, and summarizing interrogation
- ▶ If an interrogation occurs outside a jail, law enforcement office, etc., must complete a report stating reason for doing so and summarizing interrogation

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House Bill 1223

- ▶ Same definition of "custodial interrogation" as HB 1140. Means it does not apply to witnesses unless they start incriminating themselves
- ▶ Exceptions:
 - ▶ Confidential informants or undercover officers
 - ▶ Spontaneous statements in response to routine booking/processing questions
 - ▶ Exigent circumstances
 - ▶ If individual refuses to give a recorded statement, recording not required
 - ▶ Equipment failure
 - ▶ Recordings not required of interrogations by non-Washington agencies
- ▶ Burden of proving exceptions rests with prosecution, so document as best you can

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House Bill 1310: A Deeper Dive into Use of Force

NEW SECTION. **Sec. 3.** (1) (a) Except as otherwise provided under this section, a peace officer may use physical force against a person when necessary to: Protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape as defined under chapter 9A.76 RCW; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

(b) A peace officer may use deadly force against another person only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person. For

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House Bill 1310:

- ▶ Effective Date: July 25, 2021
- ▶ Force must be necessary, not just reasonable
 - ▶ "Physical Force" is not defined in the statute
- ▶ Three separate justifications for Force:
 - ▶ Make an arrest for a crime with probable cause (or effect an arrest); or
 - ▶ Prevent an escape; or
 - ▶ Protect against imminent threat of bodily injury to officer, another, or the arrestee
- ▶ Deadly force: Only when necessary to protect against serious injury or death to the officer or another person

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House Bill 1310:

▶ What is the “necessary” standard?

34 (ii) "Necessary" means that, under the totality of the
35 circumstances, a reasonably effective alternative to the use of
36 deadly force does not exist, and that the amount of force used was a
37 reasonable and proportional response to the threat posed to the
38 officer and others.

▶ Totality of Circumstances:

1 (iii) "Totality of the circumstances" means all facts known to
2 the peace officer leading up to and at the time of the use of force,
3 and includes the actions of the person against whom the peace officer
4 uses such force, and the actions of the peace officer.

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House Bill 1310:

- ▶ Necessary: No “reasonably effective alternative”
 - ▶ Interacts with another part of this bill: de-escalation
 - ▶ Amount of force must be “reasonable and proportional”
- ▶ Totality of the Circumstances: New language makes this different than the *Graham* standard:
 - ▶ Officer must consider Subject's conduct leading up to force
 - ▶ Must consider own conduct leading up to force: did they place themselves in a position where force would be required?
 - ▶ Again, focuses on the de-escalation section of the bill

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House Bill 1310

- ▶ De-escalation: When possible, must exhaust all available and appropriate de-escalation tactics prior to using physical force, giving examples:
 - ▶ Create distance
 - ▶ One officer to communicate
 - ▶ Call for crisis intervention team/mental health professional
 - ▶ Call for back-up when encountering resistance
 - ▶ "[L]eaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed"
- ▶ If de-escalation is not possible, available, or appropriate, must be able to articulate why
- ▶ However, bill does not prohibit force when de-escalation is not safe, possible, or appropriate

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House Bill 1310: Force during Terry Stops

- ▶ Officers may still order someone to stop under reasonable suspicion that a crime is being committed
 - ▶ Under *Terry v. Ohio*, may conduct a pat-down search for weapons
- ▶ However, if the person declines to stop, officer may not use force to keep them there unless there is PC to arrest, to prevent escape, or to prevent imminent harm
- ▶ Officers may also use force to "effect an arrest," but bill is silent to detentions
- ▶ Because "physical force" is not defined, any nonconsensual touching could constitute force
 - ▶ E.g. many agencies define touching or control holds without pain as "de minimis force"

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House Bill 1310: Community Caretaking and ITA

- ▶ Agency concerns that 1310 would prohibit them from responding to calls where no crime was being committed
- ▶ AG on August 2, 2021: No.

Bill 1310 Does Not Address a Peace Officer's Authority to Respond to Community Caretaking Calls

- ▶ AG: community caretaking exception is not related to addressing crimes, and force is still allowed to respond to imminent threats of harm regardless of whether there is PC for a crime
- ▶ *"Indeed, Section 3(1)(a) permitting physical force when necessary to 'protect against an imminent threat of bodily injury to' any person, including the person against whom force is being used, indicates the statute anticipated that officers may respond to calls that do not involve a crime."*

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House Bill 1310: Community Caretaking and ITA

- ▶ Standard for using force under 1310 is "necessary to [...] protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used."
- ▶ Standard for detaining under the ITA is similar:
 - ▶ Must meet the standard of "imminent likelihood of serious harm, or imminent risk of becoming gravely disabled" due to a behavioral health disorder. RCW 71.05.153(1); and
 - ▶ A peace officer believes there is "reasonable cause" to believe that serious harm or grave disability is imminent. RCW 71.05.153(2)(a)(ii).
- ▶ Takeaway: Pretty clear that this bill permits ITA detentions

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House Bill 1310

Policies

- ▶ The AG will release a model policy on July 1, 2022, which agencies may adopt as their own policy for Use of Force and De-Escalation
- ▶ By December 1, agencies may adopt the AG's language, or use their own and state why the local policy is consistent with this law
- ▶ Example of a (probably) consistent local force policy: Seattle Police Department Policy 8.200(1): Use of Force, When Authorized

1. Use of Force: When Authorized

An officer will use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons.

In other words, officers will only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective. The force used must comply with federal and state law and Seattle Police Department policies, and rules for specific weapons and tools. See [8.300 - Use of Force Weapons and Tools](#). Once it is safe to do so and the threat has ended, the force must stop.

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House Bill 1310

Key Takeaways

- ▶ Key takeaways:
- ▶ Good report writing matters
 - ▶ Officer should be prepared to articulate why no good alternative existed to the level of force he/she used
- ▶ Appears that force may not be used to conduct Terry stops
 - ▶ Use of force requires PC to arrest, or an imminent threat to officer safety
- ▶ Officers can respond to community caretaking calls, and use force if needed to protect self/others from imminent harm
- ▶ Detentions under Involuntary Treatment Act are permitted on same basis as before, with force allowed to prevent imminent harm

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Take-Aways

- ▶ New rules for juveniles:
 - ▶ Juveniles must be allowed to consult with an on-call attorney
 - ▶ If they do agree to give a statement after consultation, must be recorded
- ▶ All custodial interrogations of felony suspects must be recorded
- ▶ HB 1310 underscores importance of good report writing and clear justifications for necessity of force
 - ▶ Force to effect Terry stops: probably not okay
 - ▶ ITAs: Same basis as before, force permitted where imminent risk of harm exists

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Washington State Criminal Justice Commission Update



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LETCSA Library

Approximately 20 hours of LETCSA Training Topics

Alternatives to arrests, booking, and jail

•Dr. Harris is an experienced lead researcher and facilitator in alternatives to arrests, booking, and jail. She will provide data and information on how law enforcement officers can mitigate unnecessary system involved cases and incidences.

Bias Trainings

•The development goal for this course is to utilize current science and educational best-practices to create an implicit bias training that enhances learning, increases understanding, and ultimately changes behavior around implicit biases.

The Intersections of Race and Policing African American Community

•At the conclusion of this course, the student will learn about the historical intersection of race and policing through the experience of Black and African Americans in the United States to include slave patrols, Slave Codes, Civil Rights Act of 1964, Black Codes, Jim Crow laws, police in schools, the school-to-prison pipeline, and mass incarceration. This course will also examine the ongoing influence of race relations, strategies to reconcile past injustices, and the importance of fair and impartial policing as mandated by HB 1064.

LGBTQ2+

•In this training, Rainbow Center will equip participants with current and accurate information surrounding laws, the historical context around the relationship between the LGBTQ Community and Law Enforcement, terminology, and more so that they can feel confident in their knowledge and be an effective ally to the LGBTQ Community.

Holocaust and Law Enforcement

•The Holocaust for Humanity Center will equip participants with information surrounding impacts of policies/practices/procedures, the historical context around the relationship between the minoritized Communities and Law Enforcement. HHC will work with LE to help them identify a working toolkit through knowledge, to be an effective ally to the many Communities across Washington.

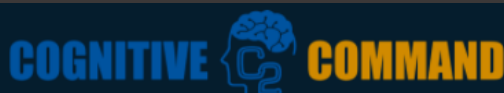
Cognitive Command (C2) Tool



The principles of C2 are designed to create electrical “superhighways” in the brain that improve use-of-force decisions, recognition of implicit bias, emotional intelligence, professional attitude, officer confidence, and resilience.



C2 works by creating automatic thoughts based on safety concepts that then drive tactical behaviors. If an officer is not required to devote cognitive effort towards finding cover, planning an escape route, or how to position themselves based on the information being received, that frees up the cognitive part of the brain to make decisions based on logic and reason instead of stereotypes and prejudices.



Cognitive Command (C2) at CJTC



Deliver training utilizing C2 as a delivery mechanism directly to 14,000 Peace Officer's and Correctional Officers statewide.



The CJTC can distribute LETCSA training content like Implicit Bias, History, Race and Policing, LGBTQ+, Holocaust for Humanity, and Use of Force to name a few.



The CJTC can also utilize this C2 as a delivery mechanism to disseminate important information on model policies (Use of Force, IIT, K-9 deployment), legal updates (LE Digest) or emergent communications by tailoring the distribution group.



Training can be tracked for compliance by officer, shift, agency, county, region and state.



Training can be delivered almost instantaneously to any handheld device, laptop or desk top computer with the C2 app installed, and with a subscription.



The CJTC will also utilize C2 as a delivery mechanism to deliver SB 5476 the Blake Bill (persons with substance use disorders) training to all BLEA, COA and incumbent personnel.

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Funding Needed

\$750,000

- Annually to provide subscriptions for every (14,000) Peace and Correction Officer

\$200,000

- Salary & benefits for a Program Manager and Administrative Assistant

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#SocialMedia



Hot Topic: What's happening to my social media?



Sec. 8 RCW (4)

As a condition of certification, a peace officer or corrections officer must, on a form devised or adopted by the commission, authorize the release to the employing agency and commission of the officer's personnel files, including disciplinary, termination, civic or criminal investigation, or other records or information that are directly related to a certification matter or decertification matter before the commission. The peace officer or corrections officer must also consent to and facilitate a review of the officer's social media accounts, however consistent with RCW 49.44.200, the officer is not required to provide login information. The release of information may not be delayed, limited, or precluded by any agreement or contract between the officer, or the officer's union, and the entity responsible for the records or information.

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Questions and Comments



Monica Alexander, Executive Director

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Law Enforcement Policy & Training Solutions

Policy Updates

Jeff Wittenberger Sr.
Dir LE Content

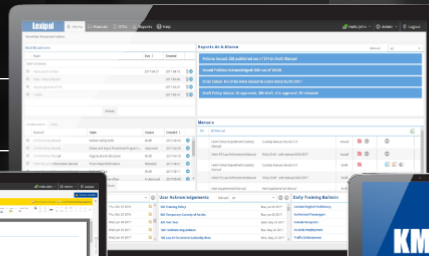


LEXIPOL
A Complete
Policy Solution



POLICY CONTENT

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SUPPORT SERVICES



Available Anytime, Anywhere

A Word from Our Co-Founder...



Gordon Graham
Lexipol Co-Founder

“ In every tragedy there is always a proximate cause – the event that immediately preceded the tragedy. But if you go back in time and look for the root cause, all too often it comes down to a **lack of good policy** and a **lack of good training**. ”

Risks & Impact

- **Physical** – *injuries*
- **Financial** – *damage, liability*
- **Political** – *legal and media scrutiny*



Ask Yourself

- When did you last update your policies?
- How much time did it take?
- Are they compliant with the latest legislation?
- How do you stay up to date on WASPC standards, and are your policies aligned?
- How do you staff your policy team, and how do you guarantee their success?



Policy Maintenance Challenges

- Changing law and regulations
- Public opinion swaying policy
- Accreditation
- Department resources
- Personnel expertise

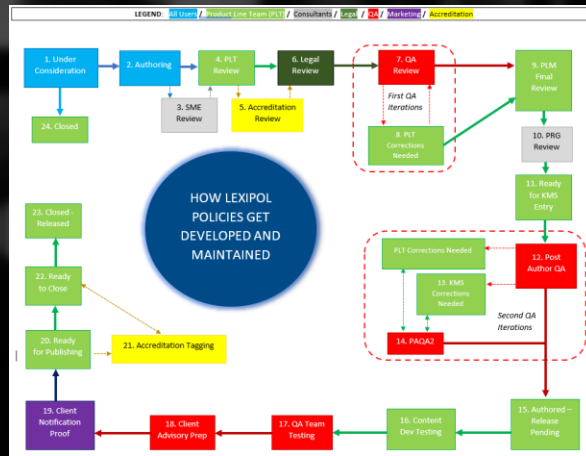
WA-Specific Policy Updates

	2019	2020	2021 (YTD)
Legislation Reviewed	999	287	567
Total Updates	39	49	25
Unique Policies Updated	31	42	22
Total Update Packages	5	8	7

Policies Updated 2019-2021

Accident Illness and Injury Prevention	Medical Aid and Response
Anti-Retaliation	Medical Marijuana
Asset Forfeiture	Missing Persons
Automated License Plate Readers	Officer-Involved Shootings and Deaths
Bias-Based Policing	Payroll Record Procedures
Bicycle Patrol Unit	Personal Appearance Standards
Biological Samples	Personnel Complaints
Brady Material Disclosure	Personnel Records
Canines	Promotions and Transfer (Special Assignments and Promotions)
Child Abuse	Property and Evidence
Civil Disputes	Protected Information
Community Relations	Public Safety Video Surveillance System
Concealed Pistol License	Rapid Response and Deployment
Conducted Energy Device	Records Maintenance and Release
Control Devices and Techniques	Recruitment and Selection
Crisis Intervention Incidents	Registered Offender Information
Crisis Response Unit	Reporting of Employee Convictions
Custodial Searches	Response to Bomb Calls
Discriminatory Harassment	Sexual Assault Investigations
Domestic Violence	Sick Leave
Emergency Detentions	Standards of Conduct
Emergent Detentions	Suspicious Activity Reporting
Evaluation of Employees	Temporary Custody of Adults
Extreme Risk Protection Orders	Temporary Custody of Juveniles
Firearms	Traffic Function and Responsibility
First Amendment Assemblies	Training
Foreign Diplomatic and Consular Representative	Training Policy
Grievance Procedure	Uniform Regulations
Handcuffing and Restraints	Unmanned Aerial System (UAS) Operations
Hate Crimes	Use of Force
Immigration Violations	Vehicle Pursuits
Investigation and Prosecution	Vehicle Towing and Release
Lactation Break Policy	Vehicle Use
Law Enforcement Authority	Victim Witness Assistance

Policy Update Process



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Communicating Updates

- Client Advisories
- Release Notes
- Guide Sheets

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Implementing Updates

- Redline updates in KMS
- Professional Services Assistance
- Customer Success Managers



www.lexipol.com

Questions?

Panel Q&A

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Thank you for attending

A follow-up email will be sent to all attendees, including the PowerPoint and additional materials mentioned.

Mark your calendars for the next Law Enforcement Discussion Forum:

September 20 (tentative)
1:30 – 3 pm

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