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# **ANNUAL SEMINAR ON MUNICIPAL LAW**

**2022**

# **Defense of Municipal Law Enforcement**

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and County of Denver**

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# Defense of Municipal Law Enforcement in Challenging Times

## A Brief Outline

- Preface on Police Misconduct
- General Trends in Law Enforcement Litigation
- Law Enforcement Integrity Act (“LEIA”), Codifying SB-217
- Litigating Protest Cases



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But First!  
A Quick  
Poll.....



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# National Conversation about Death at the Hands of Police



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# General Trends in Law Enforcement Cases

- **Case TRENDS**

- Lots of cases filed without physical injuries
  - Is a constitutional injury alone enough?
- Economic damages no longer the driving force for cases?
- Not as many cases under LEIA – but lots of protest cases!
  - Generally an uptick in litigation, but not specifically the state cause of action
  - Cause unclear
  - Is any major event going to generate litigation?

- **Attorney TRENDS**

- Lots of new attorneys getting in on the game



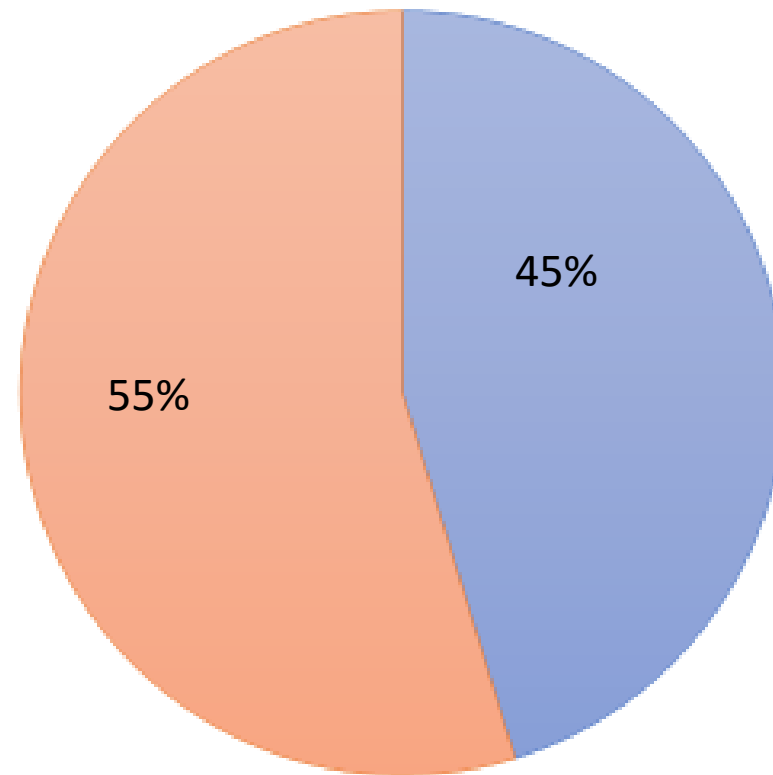
# General Trends in Law Enforcement Cases

- **Judges and Courts TRENDS**
  - Lots of new judges on the federal bench
  - Qualified immunity at risk?
  - New Supreme Court makeup
- **Jury TRENDS**
  - Higher verdicts from juries generally
  - But cases aren't a lost cause – several defense verdicts recently
  - Lots of press coverage of cases



# Recent Verdicts in Cases Involving Law Enforcement

Verdicts over the last 3 years, all Federal District Courts



■ Plaintiffs Verdicts ■ Defense Verdicts



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This data does not include the recent protest verdict from March, 2022 in Denver, which is not final

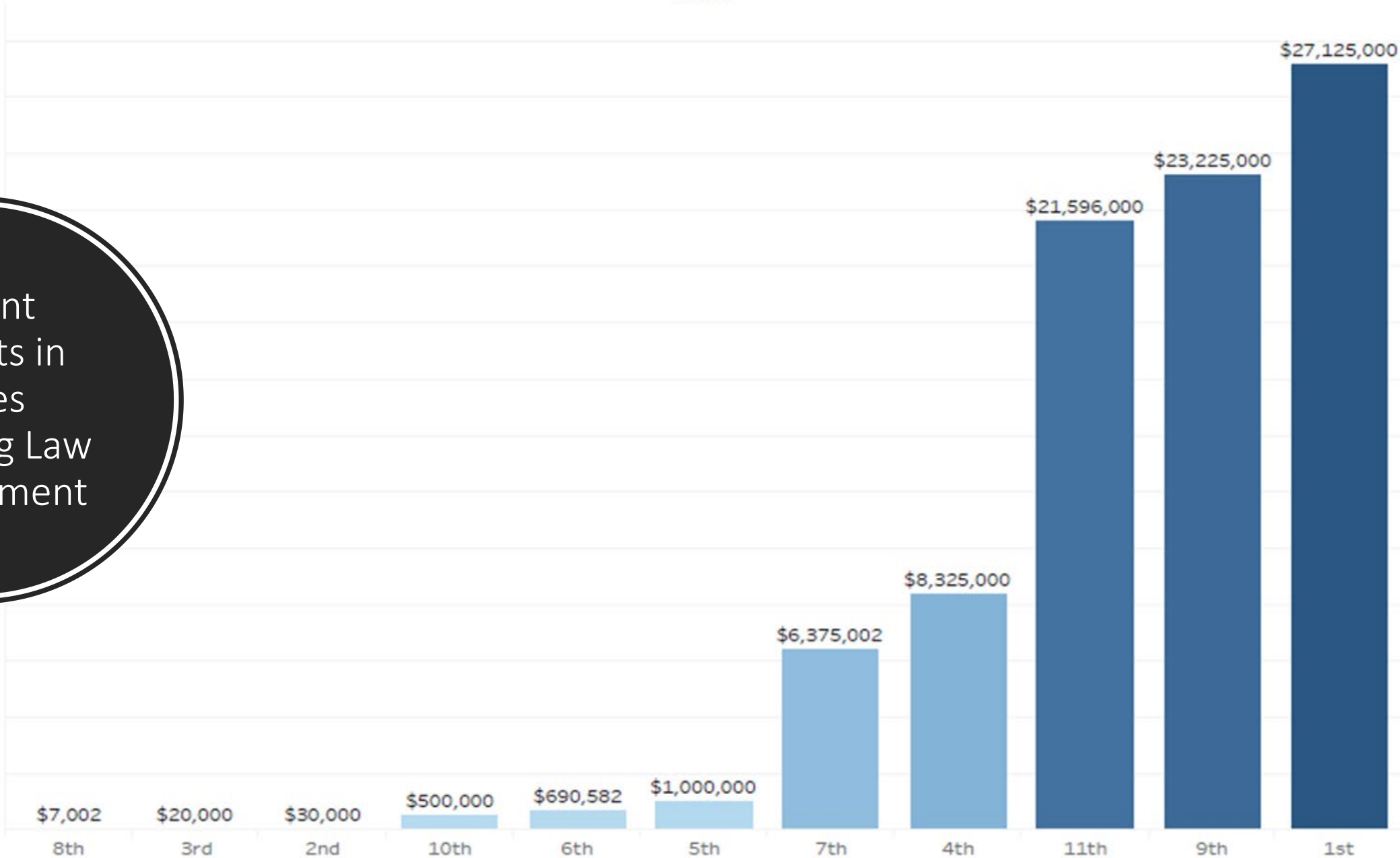
# Verdict Amount Per Circuit Court

Court

Recent Verdicts in Cases Involving Law Enforcement



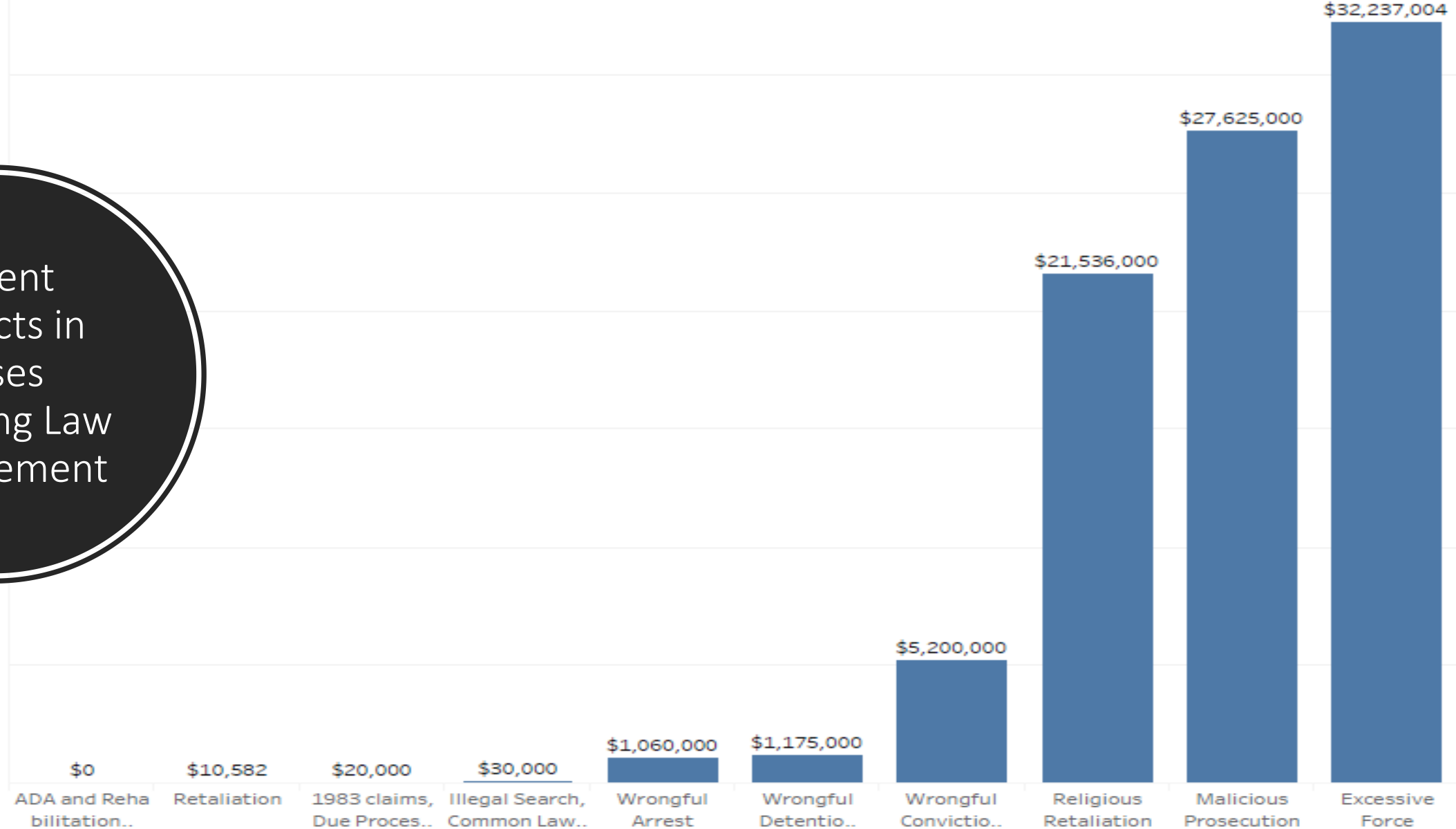
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## Verdicts by Claims Asserted

Recent  
Verdicts in  
Cases  
Involving Law  
Enforcement



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# Recent Settlements from George Floyd Protest Across the US (prior to March, 2022 verdict in Denver)

Location	Settlement Amount	Brief Description of claims	Medical Injuries/Expenses?
Eugene, OR	\$45,000	Reporter shot with pepper balls and tear gassed	Medical bills mentioned in unknown amount
Kansas City, MO	\$200,000	Man was 10 feet from demonstrations when tear gas cannister hit his leg	Compound fracture to leg
Chicago, IL	\$75,000	Protester clubbed, choked, kicked and stomped on without legal justification	Unknown
Chicago, IL	\$40,000	Freelance journalist was "assaulted by chemical agent"	Unknown
Jacksonville, FL	\$100,000	4 protesters each receiving \$10,000 (attorney fees designated as \$60,000)—each was taken into custody during protests but the charges were ultimately dropped. Also instituted policy changes related to crowd control methods, dispersal and use of less lethal.	No injuries.
Des Moines, IA	\$25,000 total--\$5,000 to each protester, \$45,000 in attorney fees	Five protesters arrested when a scuffle broke out in front of the capitol while protesting BLM; they were thereafter banned from the capitol grounds, some for 6 months, some for a year.	No injuries
Philadelphia, PA	\$87,000--\$75,000 to be divided by 2 groups of people and \$12,500 in attorney fees	Police deployed tear gas in neighborhoods to disperse protest crowds, family and four others on porch were gassed	No injuries stated
Philadelphia, PA	\$20,000 (for settlement and attorney fees)	Protester pelted with rubber bullets when he was trying to leave to go home	Unstated injuries requiring hospitalization.
Minneapolis, MN	\$57,900	Unknown officer fired a projectile at protester who was walking home from demonstration	Shot in eye, suffered fracture of left cheekbone, and required stitches. No issue with vision

# Recent Settlements from George Floyd Protest Across the US - California

Location	Settlement Amount	Brief Description of claims	Medical Injuries/Expenses?
<b>Santa Rosa, CA</b>	\$105,000	Protester shot in forehead with 40 mm foam round.	Caused profuse bleeding, large welt, dark bruise and small scar on forehead.
<b>Santa Rosa, CA</b>	\$200,000	Protester filming a demonstration with his cellphone on May 31, when crowds filled Santa Rosa's streets to protest systemic racism and police brutality. Shot in groin with 40 mm round while standing near people throwing water bottles and causing violence.	Ruptured testicle and emergency surgery to repair
<b>Santa Rosa, CA</b>	\$1.9 Million (division not outlined)	<p>5 protesters injured during GF protests:</p> <p>Martinez—sting ball grenade struck face, shattering face</p> <p>Staggs—struck over eye with large projectile</p> <p>Beckman—stuck by baton in back and legs, jailed for 11 hours without charges</p> <p>Soeiro – tear gassed when she joined the protest, deployed 7 cannisters before she made it to her car</p> <p>Burlison – tear gassed</p>	<p>Martinez: several reconstructive facial surgeries</p> <p>Staggs: Stitches</p> <p>Other 3 – unknown injuries or medical treatment</p>

# Recent Settlements from George Floyd Protest Across the US - Denver

Location	Settlement Amount	Brief Description of claims	Medical Injuries/Expenses?
Denver, CO	500,000	40 MM hit protester near eye	Hit eye socket, due to the gas mask – only an abrasion resulted for which he received stitches. Treatment bills totaled \$12,830.
Denver, CO	\$575,000	40 MM round hit eye	Protester was not exhibiting any aggressive action while shot near eye. Had two surgeries, past medicals totaled \$86,665.88. She also claimed to need a future surgery costing \$40,000 and has a permanent leaky tear duct
Denver, CO	\$250,000	10-15 pepper ball hits to face, chest and legs	Protester was shot with his arms up standing on the sidewalk refusing to retreat on officer command. He had no medical treatment, permanent impairment or wage loss.
Denver, CO	\$75,000	A 40 mm munition impacted groin area	Protester had one virtual health visit after being hit near the groin with a 40 mm. No permanent impairment or wage loss.

# Total amounts paid for police misconduct

- Across the US – Verdicts over the last three years for police misconduct in Federal Court only totaled approximately \$80,000,000.00
- Prior to the protest verdict in March, 2022 in Denver, settlements for cases we could locate that arose out of the George Floyd protests was over \$3,754,900.
- Amounts are Staggering. Colorado’s response—Enacting SB 217 (“LEIA”).



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# SB 217

## Law Enforcement Integrity Act “LEIA”

- Signed into law June 19, 2020
- One of the country’s earliest police reform bills
- Makes policy changes related to law enforcement practices and peace officers generally
- Applies to any person employed by a local government who is required to be POST certified, CSP officers, and noncertified deputy sheriffs



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# What does the LEIA Do?

- Created a new state court remedy for deprivation of rights by law enforcement officers
  - Not a cause of action against municipalities, just individual officers
    - *Ditirro v. Sando*, 2022COA94: no municipal cause of action
    - *Jacobs v. Leon*, 2021CV33187: Chief of Police Dismissed
    - *Gilliam v. City of Aurora, et al.*, 2021CV30146: Chief of Police Dismissed
  - Claim extends to officers who were present and aware, but failed to intervene
- Theme throughout: more personal responsibility for officers
- Creates mandatory employer disciplinary actions for failure to intervene



# What does the LEIA Do?

- Eliminated caps on damages, statutory immunities, and defense of qualified immunity for claims brought under the statute
  - Caps from CGIA and LPOA do not apply
  - Qualified immunity not a defense
  - Entity is required to indemnify in most circumstances (where might not have had to in the past)
- 2-year statute of limitations mirrors federal claims





# What does the LEIA Do?

- Not seeing as many cases brought under the cause of action as anticipated
- New method – filing both state and federal claims, but filing under federal jurisdiction
- Unclear reasons for this trend
- Bill just turned 2 years old, so only now seeing filings for incidents occurring within the SOL



# Effects on Municipalities

- Increase budgetary impacts
  - Increasing costs of litigation
  - Larger liability for settlements/verdicts
- Concerns regarding insurance coverage
  - Are municipalities becoming uninsurable?
  - Costs are skyrocketing, players are leaving the market



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# Effects on Municipalities

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- For those municipalities that are covered by insurance, have you seen differences in your coverage since LEIA has taken effect?
  - What have you seen?



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# Indemnification of Officers

- Municipality must indemnify for “any liability incurred by the peace officer and for any judgment or settlement entered against the peace officer for claims arising” from the law
  - Arguably includes punitive damages?
- Municipality can require officers to pay up to a maximum of \$25,000 when the officer acted in bad faith
  - Under CGIA and LPOA, municipality had no obligation to pay at all when the officer acted in bad faith
- No obligation to indemnify where there is a criminal violation, **except** where “the peace officer’s employer was a causal factor in the violation, through its action or inaction”
  - Creates a quasi-*Monell* element for municipal liability



# Examples

Example 1	Example 2
Sheriff's deputy kicks inmate who is down on ground in violation of policy	Officer alleged to have raped arrestee in violation of policy and was convicted of felony rape
<ul style="list-style-type: none"><li>• <b>Officer must pay \$25,000</b></li><li>• <b>City must indemnify for additional amounts</b></li></ul>	<ul style="list-style-type: none"><li>• <b>No obligation to indemnify unless City policies/practices were a causal factor in criminal behavior</b></li></ul>



# Notable Penalties: Loss of POST Certification

- **Mandatory and Permanent** loss of certification when:  
(1) when an officer is criminally convicted, enters a guilty plea or plea of nolo contendere, or is found civilly liable for using unlawful force; and (2) when an officer is criminally convicted, enters a guilty plea or a plea of nolo contendere, or is found civilly liable for failing to intervene in an unlawful use of force. C.R.S. § 24-31-904.
- Also applies when an officer is convicted or found civilly liable for failing to intervene in an unlawful use of force
- Hugely concerning for officers!



# Other Novel Provisions

- Authority for the Attorney General to bring a civil action against a municipality based on patterns and practices of conduct
- Aurora is the first entity in the state to enter into a consent decree under this provision
- Consent decree is a negotiated set of terms requiring modification of policies and practices
- Consent decree monitor observes progress toward these changes with goal of terminating decree upon completion



# Other Provisions Worth Noting

- Prohibition on chokeholds and carotid holds
- New requirements for situations involving fleeing felons
- Officers must have justification for “contacts.”
- Potential revocation of P.O.S.T- certification for failure to train
- Mandatory internal reporting
- Grand jury publications in peace officer-involved deaths.
- Narrows use of force
  - Physical force is permitted only when:
    - nonviolent means would be ineffective in effecting an arrest,
    - preventing an escape,
    - or preventing an imminent threat of serious bodily injury or death to the officer or another person.
  - Further, deadly force shall not be used, when:
    - apprehending someone on a minor offense or when investigating a non-violent offense.
  - Officers must also ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable and ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- New requirements for protests and demonstrations.
  - The bill restricts the circumstances in which “kinetic impact projectiles,” tear gas and pepper spray may be deployed by law enforcement agencies and individual officers. First an order must be issued to disperse, and the public has sufficiently and repeatedly heard the order and had time to comply.
- Database Created for Statistics







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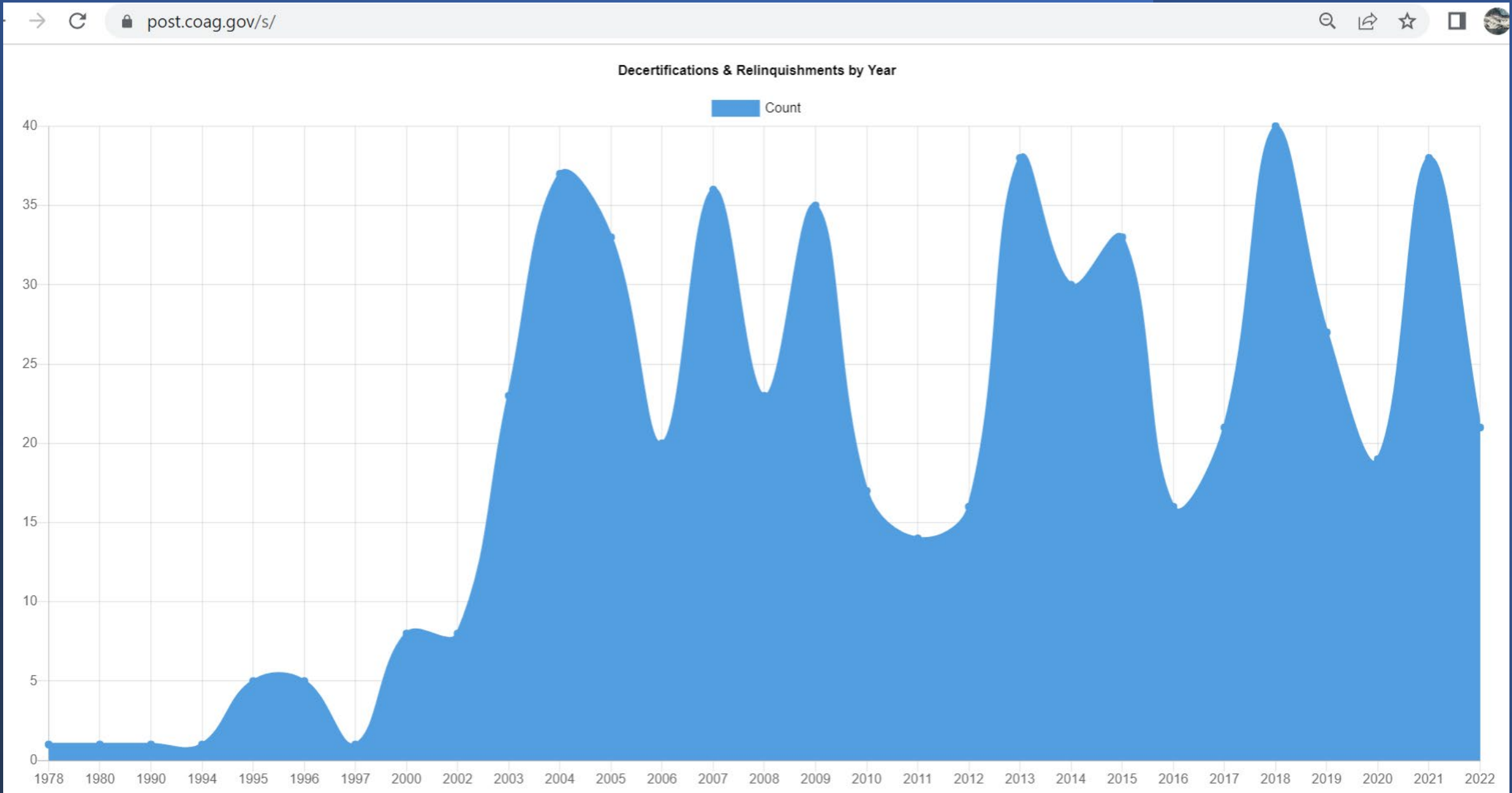
## Peace Officer Standards and Training

Department of Law

[DASHBOARD](#) [CHECK CERTIFICATION STATUS](#) [FIND ACTION INFORMATION](#)

Per §24-31-303(1)(r), C.R.S., POST will maintain a database that contains information related to any of the following actions by a peace officer:

- I. Untruthfulness;
- II. Three or more failures to follow POST Board training requirements within ten (10) consecutive years;
- III. Revocation of a POST certification, including the basis of the revocation;
- IV. Termination for cause, unless the termination is overturned or reversed by an appellate process. A notation must be placed next to the officer's name during the pendency of any appellate process;
- V. Resignation or retirement while under investigation by the peace officer's employing law enforcement agency, a district attorney, or the attorney general that could result in being entered into the database;
- VI. Resignation or retirement following an incident that leads to the opening of an investigation within six (6) months following the peace officer's resignation or retirement that could result in being entered into the database;
- VII. Being the subject of a criminal investigation for a crime that could result in revocation or suspension of certification pursuant to section 24-31-305 or 24-31-904 or the filing of criminal charges for such a crime; and
- VIII. Actions described by the applicable statutory provision identifying the basis for a credibility disclosure notification as set forth in section 16-2.5-502(2)(c)(i), C.R.S.



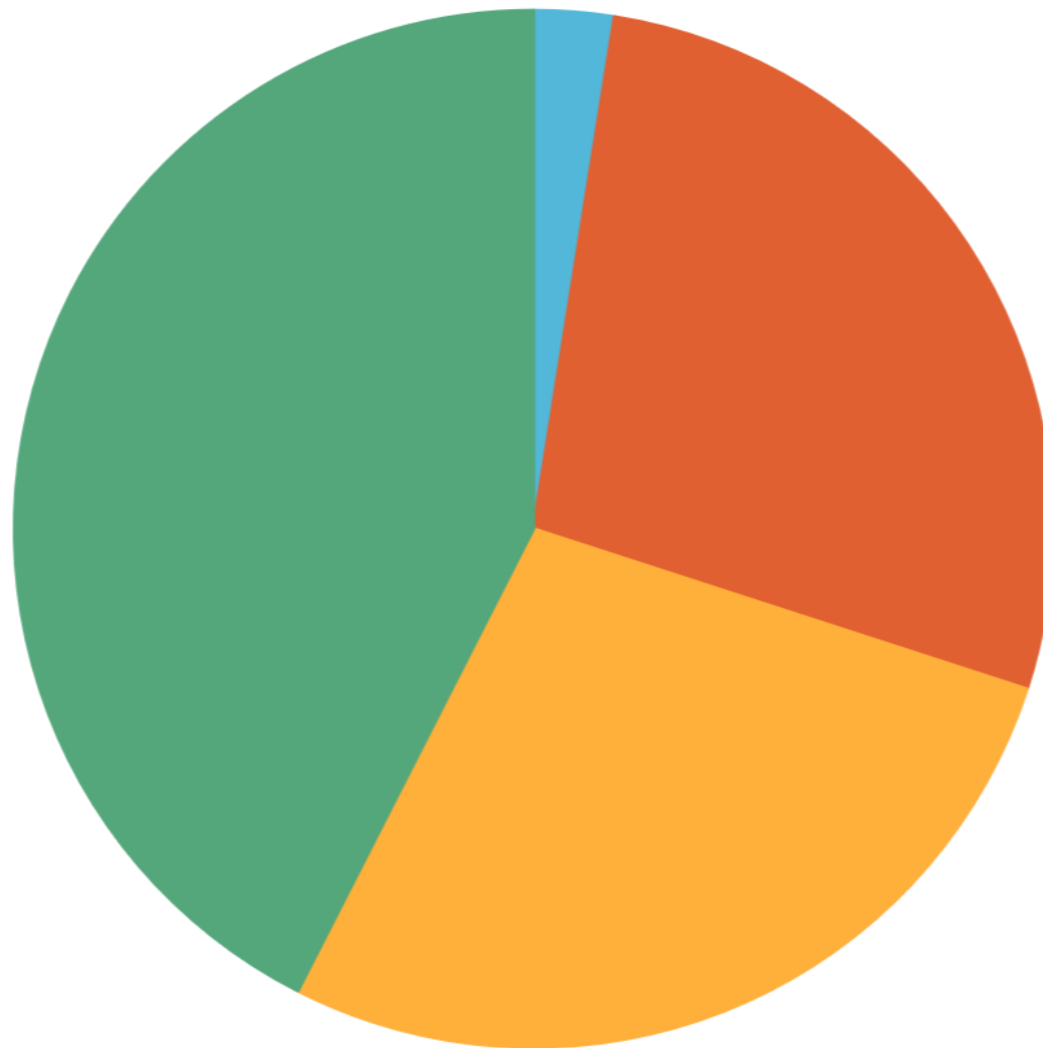


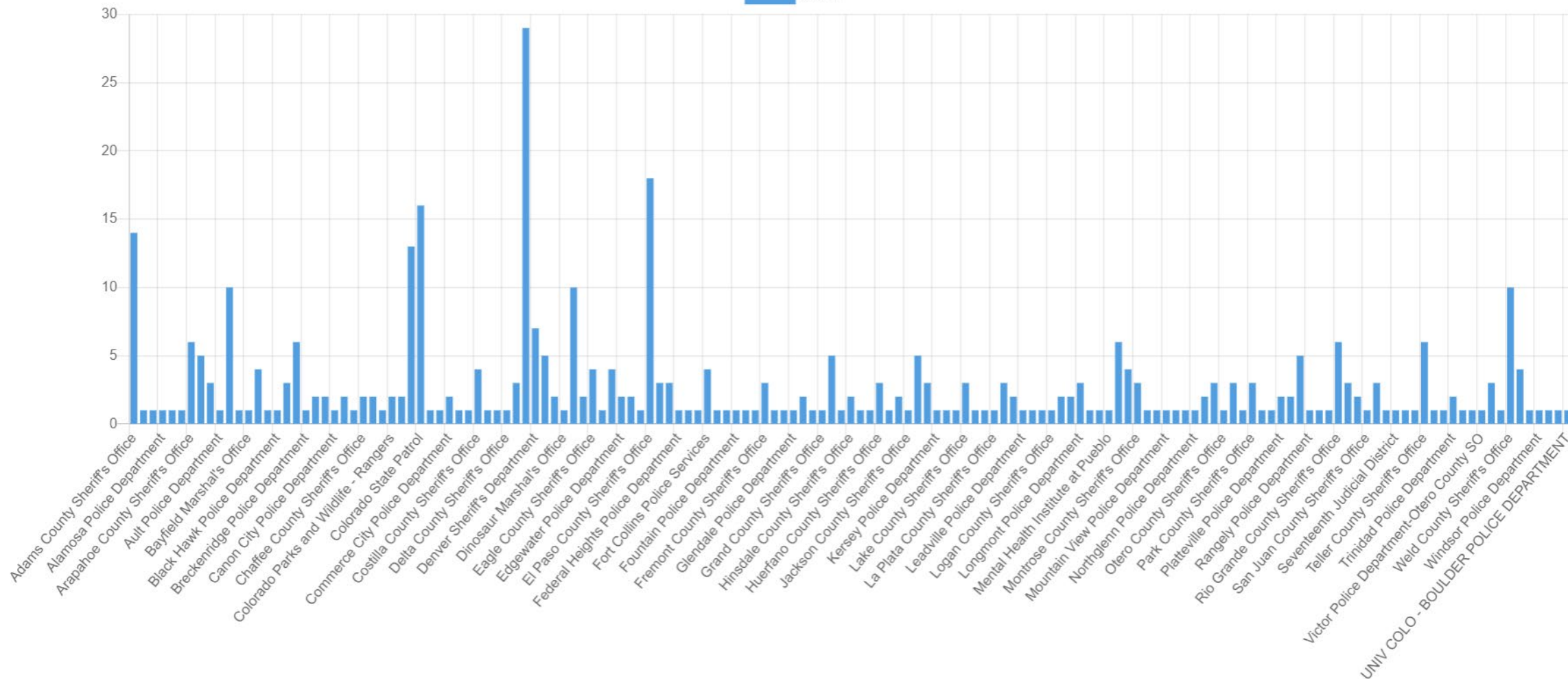
post.coag.gov/s/



Decertifications & Relinquishments by Type in Past Year

Excessive UOF and Failure to Intervene Felony Misdemeanor Untruthfulness





# Other Provisions Yet to Take Effect

## Effective Jan 1, 2023

- Documentation and Reporting--Law enforcement agencies must annually report the following to the Colorado Division of Criminal Justice:
  - Demographic and other information in all use of force cases involving death or serious bodily injury.
  - Any resignation occurring while officer was being investigate for any policy violation
  - Any instance of unannounced entry into a residence without a warrant, with demographic and other information about the entry.
  - Demographic and other information related to any officer-initiated contacts with a member of the public.

## Effective July 1, 2023

- Annual report by the Colorado Division of Criminal Justice
  - Duty to publish and make available a searchable data base of the statistical information provided to the Division by every law enforcement agency in the state, with the data broken down for each local agency. The report will include information reported by each agency on:
    - Demographic and other information in all use of force cases involving death or serious bodily injury.
    - Any resignation occurring while officer was being investigate for any policy violation
    - Any instance of unannounced entry into a residence without a warrant, with demographic and other information about the entry.
    - Demographic and other information
- Body-worn camera required for all officers interacting with the public
  - Must activate a body-worn camera or a dashboard camera, as applicable, when responding to a call for service or during any contact. Can turn off for transmission of personal information and in administrative, tactical, and management discussions.
  - Undercover peace officers are not required to wear body-worn cameras.
  - Local law enforcement agencies are required to establish a retention schedule for recordings in compliance with Colorado State Archives rules and direction.
  - Tampering with or failure to activate BWC or Dash Cam is inferred to be misconduct. Does not apply for malfunctions documented before shifts begin.
  - Where misconduct is alleged, unedited footage must be provided within 21 days of a request, active investigations excepted where a defendant objects, and other exceptions in cases involving a death.

# What has been the effect, two years later?

- In litigation, remedy not utilized in the majority of cases filed
- State cases move faster, turn around in about a year
  - Motion practice is limited—No MTD at outset asserting QI, so only motion is likely MSJ (which state court judges in our experience have shied away from granting)
- If you are able to file a MTD because of inadequate pleading, discovery does not begin until after ruling, so could delay discovery expenses where it can be done
- Cases challenging this Act:
  - Aurora challenged the constitutionality of this Act on Equal Protection grounds based upon the exclusion of state officers, but the court ruled that the 2021 amendments which include them remedied that.
  - Other challenges—exclude municipal based theories of liability, as discussed above.



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# Future Expectations and Takeaways from LEIA

- **We will likely see a due process challenge due to Post certification loss**
  - **A jury will be determining when an officer is liable, which translates to loss of POST certification, which translates to job loss.**
    - **But Departments have separate disciplinary rules, which establish property rights in their job**
- **POST rules – while not explicitly stated, POST interprets statute to be only forward looking – consistent with rules of statutory interpretation**



# Future Expectations and Takeaways from LEIA

- **Equal Protection Challenge?**

- **Unlikely to succeed on the face of the Act itself (due to the 2021 amendments)**
- **May arise situationally against Municipality – if an officer is a member of a protected class of persons alleges that there is disparity in treatment related to case handling or disparity in settlement recommendations where POST certification loss is at risk.**





# Future Expectations and Takeaways from LEIA

## ▪ Possibly a challenge to Punitive Damage Payments?

- *Lira v. Shelter Ins. Co.*, 913 P.2d 514, 516 (Colo. 1996) (citations omitted)
  - The public policy of Colorado prohibits an insurance carrier from providing insurance coverage for punitive damages. Punitive damages are not meant to reimburse an injured plaintiff for harm suffered by that individual, but rather are intended to punish the defendant for his wrongful acts and to deter similar conduct in the future. To allow [an insured] to recover compensatory damages which derive from his own wrongful conduct undercuts the public policy of this state against the insurability of punitive damages.
    - No trials on these claims yet, so no verdicts to tee up this issue.



# Future Expectations and Takeaways from LEIA

- **Possibly opens the door to a bad faith action for failure to settle?**
  - Like insurer's duty to act in good faith while dealing with an insured (quasi fiduciary relationship).
  - *See Whatley v. City of Dallas*, 758 S.W.2d 301, 304 (Tex. App. 1988) (in contemplating a bad faith claim against Dallas: "In this case the City, having assumed administration of its own liability protection plan, is cast in the role of an insurer . . . The City does not contest its role as equivalent to an insurer, nor does it contend that its self-administered plan should be viewed any differently than a liability insurance policy. Accordingly, we treat the City in this case as an insurer under an ordinary liability policy.")



# Future Expectations and Takeaways from LEIA

- **Possibly opens the door to a bad faith action for failure to settle? (Cont...)**

## Complications:

- Many cities are self insured and do not have policy limits.
- Further complicated because municipalities often have multiple decision makers

## Compare:

- Denver—settlement process works by obtaining amount of authority from Mayor and City Attorney, but settlement is dependent upon City Council approval.
- Aurora – City Attorney has settlement authority but seeks input and direction from Council; self-insured for certain amounts, but has excess carrier who may or may not have to weigh in



# Future Expectations and Takeaways from LEIA

## Affects on Representation

- Denver represents the municipality and individual officers—there will be no opportunity to continue doing that in excessive force and failure to intervene in force where both parties named in these actions due to ethical conflicts
  - Officer will be more inclined to settle to keep POST certification and keep job
  - City has duty to taxpayers to not overpay in settlements
  - Punitive damage liability question could also create conflicts
- Where no conflict exists to representation—STRONGLY consider a written advisal on the consequences of a civil liability finding and execute a waiver of conflicts surrounding potential settlement disagreements.



# Future Expectations and Takeaways from LEIA

## **Questions we have received from Officers re: direct impacts to them**

- Do departments have a place for non-certified officers where certification is a requirement to perform the job?
- Does de-certification by adverse verdict in a lawsuit have a disciplinary impact on the officer (i.e.. in violation of a directive requiring certification)?
- What effect on retirement does this have?
  - Does it reduce officer's years of service to be able to retire?



# **Future Expectations and Takeaways from LEIA**

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**Many unanswered  
questions.....**

**Likely more  
amendments in future  
legislative sessions?**

**Challenges with future  
appeals**



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## George Floyd protests

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From Wikipedia, the free encyclopedia

*For lists of protests, see [Lists of George Floyd protests](#).*

The **George Floyd protests** were a series of protests and [civil unrest](#) against [police brutality](#) and racism that began in [Minneapolis](#) on May 26, 2020, and largely took place during 2020.<sup>[7][8]</sup> The civil unrest and protests began as part of international [reactions](#) to [the murder of George Floyd](#), a 46-year-old African American man who was murdered during an arrest after [Derek Chauvin](#), a [Minneapolis Police Department](#) officer, knelt on Floyd's neck for 9 minutes and 29 seconds<sup>[9]</sup> as three other officers looked on and prevented passers-by from intervening.<sup>[16]</sup> Chauvin and the other three officers involved were later arrested.<sup>[17]</sup> In April 2021, Chauvin was found guilty of [second-degree unintentional murder](#), [third-degree murder](#), and [second-degree manslaughter](#).<sup>[18]</sup> Chauvin was sentenced to 22.5 years in prison with possibility of [supervised release](#) after 15 years for second-degree murder in June 2021.<sup>[19]</sup>

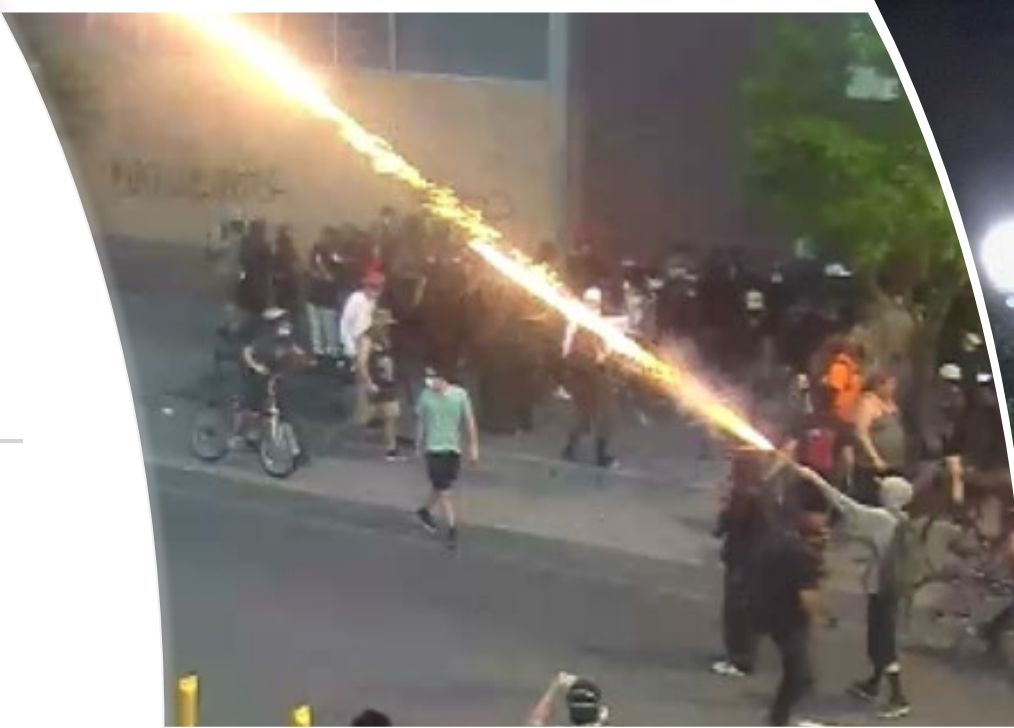


## Protest Litigation

Many violent protests erupted across the nation following the death of George Floyd on May 26, 2020

# Denver Metro Area—Unlike Prior Similar Events

- Differentiating Factors:
  - “Last straw” of many publicized incidents of force by police officers against black individuals, and probably all agree particularly egregious
  - Protests also perhaps intensified by COVID?
  - Unwillingness to communicate with Police
  - Violence was extreme



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# Police Response in Denver Metro

- Quickly learned—insufficient police presence to protect people and property.
- Crowd Control Tactics utilized were same as those use in prior situations (even friendly civil disturbances like CSU/CU FB game at Mile High)
- Called in Mutual Aid Jurisdictions to Help; Approximately 10 agencies assisted
- Mayor Enlisted Curfew



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Michael B. Hancock  
MAYOR



## City and County of Denver

OFFICE OF THE MAYOR  
CITY AND COUNTY BUILDING  
DENVER, COLORADO • 80202-5390  
TELEPHONE: 720-865-9000 • FAX: 720-865-8787  
TTY / TTD: 720-865-9010

### EMERGENCY CURFEW

Issued pursuant to DRMC Section 2-98

I, Michael B. Hancock, Mayor of the City and County of Denver, subject to the authority granted to me pursuant to the State Constitution, the Colorado Revised Statutes, the Charter of the City and County of Denver ("Charter"), and the Denver Revised Municipal Code ("DRMC"), do hereby proclaim the following Emergency Regulation:

**WHEREAS**, on May 25, 2020, George Perry Floyd died while in the custody of the Minneapolis Police Department; and

**WHEREAS**, in the aftermath of Mr. Floyd's death, a civil disturbance has occurred within the downtown and surrounding areas of the City and County of Denver, with resulting significant and extensive damage to people and/or property, including several public and private businesses and buildings that have been damaged, looted, or burned; and

**WHEREAS**, in the aftermath of Mr. Floyd's death and the resulting civil unrest and disorder, law enforcement personnel, residents, and visitors have been and remain at risk of significant injury and death, as well as significant destruction to public and private property and the potential for further civil unrest or disorder is to such an extent that extraordinary measures must be taken to preserve order necessary to protect the public health, safety, and welfare; and

**WHEREAS**, a majority of the destruction and violence has taken place under the cover of darkness; and

**WHEREAS**, as a result, on May 30, 2020, I declared a State of Local Disaster Emergency pursuant to the State Constitution, the Colorado Disaster Emergency Act (C.R.S. § 24-33.5-701, *et seq.*), the Charter and Ordinances of the City and County of Denver, and Chapter 16 of the Denver Revised Municipal Code; and

**WHEREAS**, pursuant to the Charter and Ordinances of the DRMC, the Mayor, as the chief executive officer of the city, is vested with all the executive and administrative powers granted to the City and County of Denver by Article XX of the Constitution of the State of Colorado, and all executive and administrative powers contained in the Charter of the City and County of Denver, and otherwise existing by operation of law, including the power to enforce all laws and ordinances; and

**WHEREAS**, pursuant to the Declaration of Local Disaster Emergency, the Mayor is authorized to exercise some or all of the powers allowed by the State Constitution, the Colorado Disaster Emergency Act, and the Charter and Ordinances of the City and County of Denver during the State of Local Disaster Emergency; and

**WHEREAS**, DRMC Section 2-98 vests the Mayor, as an officer of the city, with the express authority to adopt emergency rules if such action is deemed necessary to protect immediately the public health, safety or welfare; and

**NOW, THEREFORE**, I, Michael B. Hancock, Mayor of the City and County of Denver, do hereby declare pursuant to this emergency regulation that:

1. A nighttime curfew is imposed in all public places within the City and County of Denver, including streets and public right-of-ways, during the following times:
  - a) From 8:00 p.m. on Saturday, May 30, 2020, until 5:00 a.m. on Sunday, May 31, 2020; and
  - b) From 8:00 p.m. on Sunday, May 31, 2020, until 5:00 a.m. on Monday, June 1, 2020.
2. During the hours of curfew, all persons are prohibited from using, standing, sitting, traveling or being present on any public street or in any public place, including for the purpose of travel, with the following exceptions:
  - a. All law enforcement, fire, paramedics or other medical personnel, Colorado National Guard as well as any other emergency response personnel authorized by the City and County of Denver, and credentialed members of the news media.
  - b. Individuals traveling directly to and from work, traveling directly to and from the Denver International Airport, seeking exempt care, fleeing dangerous circumstances, or experiencing homelessness.
  - c. Any person to whom permission by authorized City and County of Denver officials is specifically granted.
3. The office of the Mayor of the City and County of Denver shall designate any additional personnel that are exempt from the curfew pursuant to Paragraph 2 above.
4. For purposes of this emergency regulation, "travel" includes, without limitation, travel on foot, bicycle, skateboard, scooter, motorcycle, automobile, or public transit, or any other mode of transporting a person from one location to another.
5. For purposes of this emergency regulation, "public place" means any place, whether on privately or publicly owned property, accessible to the general public, including but not limited to public streets and roads, alleys, highways, driveways, sidewalks, parks, vacant lots, and unsupervised property. For purposes of this emergency regulation, "public place" does not include the Denver International Airport.
6. For purposes of this emergency regulation, "exempt care" means necessary medical services for an individual's self or family member.
7. A violation of this emergency regulation is a criminal violation of the Denver Revised Municipal Code and is punishable by a fine not to exceed \$999.00 or imprisonment for not more than 300 days, pursuant to DRMC, Section 1-13.
- 8.

5/30/2020  
Date



Michael B. Hancock  
Mayor, City and County of Denver

ATTEST:

Denver Clerk and Recorder or agent

POSTED: May 30, 2020

## Result? A Tremendous Amount of Litigation

- In Denver, approximately 30 lawsuits filed related to the protests.
  - About a third of them have multiple plaintiffs, ranging from 8-30
- Aurora named as a defendant for its mutual aid response, assisting Denver, in approximately 5 lawsuits
  - Difficulties in identifying specific officers in specific incidents and difficulties distinguishing officers from different jurisdictions
- Aurora experienced separate protests regarding the death of Elijah McClain, which has resulted in separate litigation against Aurora and its mutual aid partners



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# Protest Verdict, March 2022

## Colo. Dist. Court

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### Large Verdict - Zero Actual Damages


- Jury awarded each protester (with zero medical expenses) on average \$1,000,000
  - Which is 1,000,000 x their actual damages
  - Note, this is not punitive damage award—it is compensatory
- Jury awarded protester with actual medical expenses approximately \$3,000,000
  - That award was only 17x his actual medical bills
  - This was not a punitive damage award, b/c no officer was identified with respect to him.



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### *Colorado Jury Awards \$14 Million to Demonstrators Injured in George Floyd Protests*

Jurors in the civil case found that the Denver Police used excessive force against the 12 plaintiffs.

 Give this article



# Challenges to Verdict

- Judgement not final—Motion for New Trial and Remittitur on file, pending ruling
- Also a class challenging the curfew—set early next year for trial
- Denver has already announced intention to appeal
- Plaintiffs often aren't even identifying involved officers or agencies with precision – is that enough, where elements of these theories require proof of intention?



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# Take Aways:

- People are interested in seeing police reform, based upon jury verdicts and LEIA
- Advising your departments on how to handle future situations?
  - Given such high risk of liability in the present climate—what police action is necessary?
  - Advise to avoid contact, especially hands on, unless absolutely not possible?
- Remind officers that with new BWC requirements, someone is always watching.
  - Even discourteous comments matter in these lawsuits, even when not a violation of law or policy - it demonstrates subjective intention and causes resentment in a likely already volatile environment.
- Impacts to operations go far beyond litigation – recruitment, retention, and morale



# Take Aways:

- Has anyone in this group experienced other situations in their municipalities they would like to share?
- Helpful hints?
- Particular challenges?
- Concerns from your law enforcement officers?



# Questions?



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# ANNUAL SEMINAR ON MUNICIPAL LAW

2022

# Thank You!

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