

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL LAW ENFORCEMENT EVENT DECONFLICTION ACT

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SECTION I. SHORT TITLE.

This Act may be referred to as the “Model Law Enforcement Event Deconfliction Act,” “the Act,” or “Model Act.”

SECTION II. LEGISLATIVE FINDINGS.

The [legislature]¹ finds that:

- (a) Law enforcement personnel face substantial risks while in the performance of their duties;
- (b) For the period from 2010 to 2019, law enforcement personnel suffered, on average, more than 50,000 assaults per year nationwide, including more than 14,000 assaults with injuries and an average of 163 officer fatalities per year;²
- (c) These statistics include all injuries and fatalities suffered by law enforcement officers in the performance of their duties, including injuries caused by fellow law enforcement officers. Unfortunately, when law enforcement officers are unaware of another officer’s presence in the area or of their status as a member of law enforcement, the risk of a negative interaction between officers is enhanced;
- (d) In addition to injuries and fatalities suffered by law enforcement personnel, the daily reality of unknowingly encountering a fellow law enforcement officer from either within his or her department or another state, local, or federal agency when conducting investigations into criminal activity adds to the stress experienced by law enforcement personnel. Some of these investigations are inherently high-risk, such as undercover operations, service of arrest or search warrants, or conducting surveillance;
- (e) By improving officer and public safety, event deconfliction systems can reduce potential negative interactions between law enforcement personnel and significantly enhance the efficiency of law enforcement investigations. Situational awareness of other law

¹ This Act contains certain bracketed words and phrases (*e.g.*, “[legislature]”). Brackets indicate instances where state lawmakers may need to insert state-specific terminology or facts.

² *Deaths, Assaults and Injuries*, NAT’L L. ENF’T OFF. MEM’L FUND, <https://nleomf.org/facts-figures/deaths-assaults-and-injuries> (last updated Sept. 29, 2020).

enforcement personnel operating in a particular jurisdictional area lowers the risk of compromising investigations from an unknown law enforcement presence.

Commentary

Legislative findings are, by their nature, state specific. However, the drafters have provided certain statistics in this section to outline the risks endemic to law enforcement and highlight the benefits of event deconfliction.

SECTION III. PURPOSE.

The [legislature's] purpose in enacting this Act is to:

- (a) Enhance the safety of federal, state, tribal, and local law enforcement officers operating within [state];
- (b) Minimize disruptions to law enforcement investigations;
- (c) Strengthen information sharing among law enforcement agencies; and
- (d) Protect members of the public.

Commentary

Many law enforcement agencies across the country use event deconfliction systems to protect their officers, the public, and investigative investments. Some agencies incorporate an event deconfliction system use mandate in their respective policies and procedures manual and note it on operational briefing plans prior to conducting any field operations. However, not all law enforcement agencies currently use these systems, and, as a result, preventable incidents between law enforcement officers do occur and investigative conflicts remain a concern. The purpose of this Act is to require the use of event deconfliction systems to avoid such incidents and improve collaboration among federal, state, and local law enforcement agencies.

SECTION IV. DEFINITIONS.

[States may already have definitions in place for some or all of the following terms. In such case, states are free to use the existing definitions in place of those listed below.]

For purposes of this Act, unless the context clearly indicates otherwise, the words and phrases listed below have the meanings given to them in this section:

- (a) Conflict.—A “conflict” occurs when data submitted to an event deconfliction system by one law enforcement party matches data submitted by one or more other law enforcement parties;³
- (b) Event.—“Event” means a law enforcement action, including, but not limited to, raids, undercover operations, surveillance, or the execution of arrest and/or search warrants;⁴
- (c) Event deconfliction.—“Event deconfliction” is the process of determining when law enforcement personnel are conducting an event in close proximity to one another at the same time;
- (d) Event deconfliction system.—“Event deconfliction system” means a system designed to perform event deconfliction and notify appropriate law enforcement personnel that a conflict may exist;
- (e) Law enforcement personnel.—“Law enforcement personnel” means:
 - (1) A part-time or full-time employee of a federal, state, tribal, or local law enforcement agency, police department, or sheriff’s office who is responsible for the prevention and detection of crime and the enforcement of federal, state, tribal, or local laws; or
 - (2) A civilian part-time or full-time employee of a federal, state, tribal, or local law enforcement agency, police department, or sheriff’s office who has been approved by his or her employer to access an event deconfliction system.

SECTION V. REQUIRED USE OF EVENT DECONFLICTION SYSTEM.

- (a) In general.— Law enforcement personnel shall, as soon as is practicable prior to the initiation of an event, submit the information identified in subsection (b) to an event deconfliction system.
- (b) Required information.— Information submitted to the event deconfliction system shall include all information required by such system, which may include, but not be limited to, the following:
 - (1) Case number;

³ NATIONWIDE DECONFLICTION COUNCIL, BYLAWS (2018).

⁴ NAT’L CRIM. INTEL. RES. CTR., FREQUENTLY ASKED QUESTIONS (Apr. 2016), https://www.ncirc.gov/Deconfliction/Documents/Event_Deconfliction_FAQs.pdf.

- (2) Type of event;
 - (3) Date and time of the planned event;
 - (4) Location of the event, including the exact street address and any staging areas;
 - (5) Lead agency name(s);
 - (6) Name and agency of the contact person for the event, including cellular telephone number and a secondary point of contact for the event;
 - (7) Search radius, if not preset by the event deconfliction system; and
 - (8) Any other information deemed applicable to the event or investigation.⁵
- (c) Events subject to the requirement.—Law enforcement personnel should submit the required information to the event deconfliction system about the following types of events:
- (1) The service of a search or arrest warrant;
 - (2) The planned arrest of a person immediately following an operation/action by law enforcement personnel;
 - (3) Taking delivery of contraband from an individual who is not intended to be arrested;
 - (4) Conducting an operation whereby law enforcement personnel approaches an individual at his or her residence and requests permission to search for any contraband;
 - (5) Predetermined surveillance operations, whether stationary or mobile;
 - (6) Covert activity by law enforcement personnel, or by confidential sources acting under the direction of law enforcement personnel, that could cause a response from citizens or local police who may reasonably believe a crime is in progress; or
 - (7) Any other high-risk or specialized law enforcement activities identified in state or local regulation or protocol that would benefit from event deconfliction.⁶
- (d) Resolution of conflict.—When law enforcement personnel receives an event conflict notification, such personnel shall take all steps necessary to resolve the conflict prior to

⁵ NAT'L CRIM. INTEL. RES. CTR., SAMPLE AGENCY RESOL. ON EVENT DECONFLICTION (updated Apr. 2016), <https://www.ncirc.gov/deconfliction/Resources.aspx>.

⁶ *Id.*

the date and time of the event, including, but not limited to, contacting the other party identified in the event notification.

- (e) Failure to mitigate risk.—Law enforcement personnel who receive an event conflict notification and fail to make a good faith effort to resolve such conflict may be subject to civil, administrative, or criminal sanctions.
- (f) Data retention.—The underlying information and files used by law enforcement personnel to submit information to an event deconfliction system are subject to the same data retention policy as all other similar information held by law enforcement personnel as set out in [cross-reference to state law / regulation regarding retention of law enforcement investigation records]. In addition, nothing in this Act shall be deemed to change or supersede any purge, validation, or records retention policy established by an event deconfliction system for information submitted to and held by such system.

Commentary

This section sets out the requirement that law enforcement personnel utilize an event deconfliction system prior to initiating an event. While the drafters do not recommend a minimum time period prior to an event within which information must be submitted to the event deconfliction system, the subject matter experts who helped draft this model suggest that law enforcement personnel submit the information no less than two hours prior to ensure that timely information is available to law enforcement personnel using the system before an event begins.

Case Explorer, RISSafe, and SAFETNet are the three event deconfliction systems currently used by law enforcement agencies across the country. Case Explorer is operated by the Washington/Baltimore High Intensity Drug Trafficking Areas (W/B HIDTA).⁷ RISSafe is operated by Regional Information Sharing Systems®.⁸ SAFETNet is the Secure Automated Fast Event Tracking Network and is supported by the Drug Enforcement Administration through the El Paso Intelligence Center (EPIC).⁹ Presently, all three event deconfliction systems are available to law enforcement personnel free of charge. Additionally, all three event deconfliction systems are interfaced through technology called the Partner Deconfliction Interface. This technology enables the three nationally recognized event deconfliction systems to work as one system so that a submission to one system causes a query of the other two systems.¹⁰

⁷ CASE EXPLORER, <http://www.caseexplorer.net> (last visited Jan. 21, 2021).

⁸ REG'L INFO. SHARING SYS.®, <https://www.riss.net/files/rissafe-brochure/> (last visited Jan. 21, 2021).

⁹ EL PASO INTELLIGENCE CENTER, DRUG ENFORCEMENT ADMINISTRATION, <https://www.dea.gov/el-paso-intelligence-center-epic> (last visited Feb. 18, 2021).

¹⁰ NAT'L CRIM. INTEL. RES. CTR., *supra* note 5.

Based on input from the subject matter experts who helped draft this Model Act, the drafters do not recommend that states mandate the use of any particular deconfliction system over another. As mentioned in the commentary to Section III, law enforcement agencies' voluntary use of deconfliction systems is widespread across the country. The subject matter experts stress that law enforcement agencies within a state should use the event deconfliction system most commonly used in their area, even if that means switching from one system to another.

The drafters took the elements for submission specified in subsections (b) and (c) from the Sample Agency Policy Regarding Event Deconfliction.¹¹ The deconfliction systems also delineate what steps should be taken by law enforcement personnel upon being notified of an event conflict. States may wish to expand upon those requirements through the promulgation of regulations.

Subject matter experts reviewing this Model Act agreed that law enforcement personnel submitting information to an event deconfliction system should include a minimum search radius. These experts noted, however, that a recommended search radius for event deconfliction differs greatly based on the proposed location of the event. For example, a proper search radius may be less than 10 feet for high-rise buildings in a city but may need to be several miles for certain rural events. One purpose of the search radius is to allow flexibility in cases where a "move the meet" situation arises. An example of a "move the meet" situation is when law enforcement schedules a meet with a confidential source at a specific location, such as 123 Main Street, but prior to the meeting, the source changes the meet to 250 Main Street, a half-mile away. If law enforcement sets the search radius at two miles, then the initial query of the event deconfliction system would notify law enforcement of all events occurring within a two-mile radius of 123 Main Street. Accordingly, law enforcement personnel in this hypothetical would immediately know if 250 Main Street returns a conflict needing resolution. Clearly, the local geography of a rural or heavily populated metropolitan area should be taken into consideration when establishing this geofence radius.

Finally, the subject matter experts discussed data retention in some detail without complete agreement on an appropriate data retention period. The information submitted to an event deconfliction system can be thought of in two separate pieces. First, there are the underlying investigative files used by law enforcement personnel to enter information into the event deconfliction system. These files are owned by and held by law enforcement throughout the process. Rather than suggest an arbitrary period of time, the drafters recommend that such information be subject to the same data retention period as all other investigative information held by that particular law enforcement entity or agency. The second piece of information is the data that gets submitted to the event deconfliction system. This information is housed in the servers of the deconfliction system. As this Act is not directed toward the event deconfliction

¹¹ NAT'L CRIM. INTEL. RES. CTR., *supra*, note 5.

systems themselves, the drafters believed it would be inappropriate to mandate that such systems be required to change their already existing data retention policies in light of this Act.

SECTION VI. CONFIDENTIALITY AND MISUSE OF INFORMATION.

- (a) Confidentiality.—Information submitted to an event deconfliction system is confidential and is not subject to the federal Freedom of Information Act, the [state FOIA equivalent], or [state open records act], nor is it subject to civil, criminal, or administrative subpoena.
- (b) Misuse of information by authorized law enforcement personnel.—Law enforcement personnel authorized to submit information to or access information held by an event deconfliction system shall not:
 - (1) Submit information regarding any individual or address for any purpose not related to a legitimate criminal investigation; or
 - (2) Access information regarding any individual or address for any purpose not related to a legitimate criminal investigation.
- (c) Misuse of information by unauthorized persons.—No person who is not authorized to submit information to or access information held by an event deconfliction system shall make such a submission or query such system for any purpose.
- (d) Penalties.—Individuals who violate subsection (b) or (c) of this section shall be subject to the following penalties:
 - (1) For a violation of subsection (b), [penalty determined by legislature]; and
 - (2) For a violation of subsection (c), [penalty determined by legislature].

Commentary

The subject matter experts who helped draft the Model Act recommended including language to curtail possible abuse of deconfliction systems by law enforcement personnel. As a hypothetical example, what happens if law enforcement personnel submits a friend or relative's address to an event deconfliction system for the purpose of determining whether the location is under law enforcement scrutiny? The existence of prohibitions for using these systems for an illegitimate purpose creates public confidence that any misuse will be addressed. With that in mind, the drafters added subsections (b) – (d) to address those concerns. Legislatures should determine the appropriate penalties for misuse of these systems based on the severity of the infraction.

SECTION VII. FUNDING.

- (a) Budget allocation.—In the future, should there be a fee to use any deconfliction system, the state legislature will appropriate [\$_____] for fiscal years [n] to the [state Department of Justice/Bureau of Investigation/Police] for the purpose of funding, in whole or in part, the ongoing activities required as part of this Act.
- (b) Federal funds.—The [state Department of Justice/Bureau of Investigation/Police] will pursue all federal funding, matching funds, and foundation funding for the initial start-up and ongoing activities required under this Act.
- (c) Receipt of funding.—The [state Department of Justice/Bureau of Investigation/Police] may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this Act and expend the same or any income derived from it according to the term of the gifts, grants, or endowments.

Commentary

The purpose of this section is to avoid the appearance of enacting an unfunded mandate. Importantly, however, as of the drafting of this Model Act, all three event deconfliction systems – Case Explorer, RISSafe, and SAFETNet – are free of charge for law enforcement agencies. Therefore, there should be little to no cost to law enforcement agencies or personnel within the state to comply with the requirements of this Model Act.

SECTION VIII. RULES AND REGULATIONS.

The [state Department of Justice/Bureau of Investigation/Police] may promulgate such rules and regulations as are necessary to effectuate this Act.

Commentary

The department or agency charged with overseeing law enforcement agencies within the state should be the agency charged with promulgating any rules or regulations needed to implement this Act.

SECTION IX. SEVERABILITY.

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provisions or applications, and to this end, the provisions of this Act are severable.

SECTION X. EFFECTIVE DATE.

This Act shall be effective on [specific date or reference to normal state method of determination of the effect].

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Based in Washington D.C., and led by and comprised of experienced attorneys, the Legislative Analysis and Public Policy Association is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces timely model laws and policies that can be used by national, state, and local public health, public safety, and substance use disorder practitioners who want the latest comprehensive information on law and policy as well as up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to fact sheets. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.



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