



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**CAN NATIONAL TRACKING OF SUSTAINED POLICE
MISCONDUCT INCREASE PROFESSIONALISM?**

by

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September 2023

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**CAN NATIONAL TRACKING OF SUSTAINED POLICE MISCONDUCT
INCREASE PROFESSIONALISM?**

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Submitted in partial fulfillment of the
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ABSTRACT

With the recent push at the national level to transform policing in the United States, this research sought to determine how other professions track the misconduct of their members and how those efforts might be implemented in policy to improve law enforcement professionalism. This project found that the issuance and tracking of law-enforcement officer certification are fragmented or nonexistent in parts of the country. This lack of standardization is problematic for agencies needing to understand the work history of seasoned officers they wish to bring into their ranks. Research was conducted on the licensing structures and tracking of misconduct in the teaching and medical professions. Examining the National Association of State Directors of Teacher Education and Certification database and the National Practitioners Databank for licensing teachers and medical professionals, respectively, this project found that how these professions track misconduct within their ranks could be implemented at the national level by law enforcement. Ideally, law enforcement would create a hybrid approach by taking aspects of each system researched—self-sustaining funding through subscription fees for queries, self-query capabilities, inclusion of lawsuits associated with officers, and defined misconduct categories that span different jurisdictions—with the goal of standardizing the tracking of officers’ sustained misconduct.

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LIST OF ACRONYMS AND ABBREVIATIONS

CALEA	Commission on Accreditation for Law Enforcement Agencies
DOJ	Department of Justice
DOPL	Department of Occupational and Professional Licenses
FBI	Federal Bureau of Investigation
FTO	field training officer
HHS	(Department of) Health and Human Services
IACP	International Association of Chiefs of Police
IADLEST	International Association of Directors of Law Enforcement Standards and Training
NASDTEC	National Association of State Directors of Teacher Education and Certification
NDI	National Decertification Index
NPDB	National Practitioners Databank
OPS	Office of Professional Standards
POST	Peace Officer Standards and Training
PTC	Police Training Commission
SDE	(Idaho) State Department of Education

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EXECUTIVE SUMMARY

With the recent push at the national level to transform policing in the United States, this research sought to determine how other professions track the misconduct of their members and how those efforts might be implemented in policy to improve law enforcement professionalism. This project, which involved reviewing how law enforcement currently tracks officers' certification, found the issuance and tracking of law enforcement officer certification are fragmented or nonexistent in parts of the country. This lack of standardization in tracking is problematic for agencies needing to understand the work history of seasoned officers they wish to bring into their ranks. Research was conducted on the licensing structures of the teaching and medical professions and how each tracks misconduct to expel bad actors from among their ranks.

Collecting officer misconduct information could be challenging for individual agencies. For example, an agency may lack one or all of the following components: a system for tracking such information, a policy that would require documenting disciplinary actions associated with misconduct, and state oversight from a Police Officer Standards and Training (POST)-type entity. Thus, each state needs a certification-issuing agency like POST and a policy that requires it to report sustained officer misconduct, and the agency must be able to revoke an officer's certification based on sustained misconduct.

Specifically, this thesis examined the National Association of State Directors of Teacher Education and Certification database, used for licensing teachers, and the National Practitioners Databank, used for licensing medical professionals, to glean how each of these professions tracks and shares misconduct information about its membership. Ultimately, this project found that how these professions track misconduct within their ranks could be implemented at the national level by law enforcement. Ideally, law enforcement leaders would work together to create a hybrid approach by taking aspects of each system researched—self-sustaining funding through subscription fees for queries, self-query capabilities, inclusion of lawsuits associated with officers, defined misconduct categories that span different jurisdictions, and consolidated misconduct data—with the goal of standardizing the tracking of officers' sustained misconduct.

Currently, states may contribute law enforcement decertification information to a nationally accessible database, but the federal government, through executive order, intends to expand the scope of what is tracked. The National Decertification Index (NDI) tracks decertification information from POST agencies, and law enforcement agencies can query it for hiring purposes. The NDI houses decertification records from POST agencies representing 44 states that voluntarily contribute this information.¹ Meanwhile, President Joe Biden has signed an executive order directing the attorney general of the United States “to establish a National Law Enforcement Accountability database.”² This database will house misconduct events, including “convictions, terminations, decertifications, civil judgments, resignations, and retirements while under investigation for serious misconduct.”³ While President Biden’s executive order allows local law enforcement agencies to use this database, it stops short of mandating its use for agencies outside the federal government. Although this executive order advances transparency, local, not federal, law enforcement incurs most of the criticism or scrutiny for misconduct during routine police calls.

Discussing police misconduct and the corresponding disciplinary actions of agencies can be uncomfortable for those in law enforcement. However, it is well documented that law enforcement can do better in policing its members. The profession of policing either can decide how to optimize transparency or may find that another entity, such as Congress, tells it how it will change. There is a saying that no one hates a bad cop more than a good cop. The good cops must find ways to eliminate problem officers from the ranks. Change is definitely upon the profession of law enforcement, and it is time for law enforcement to find ways to track and make sustained police misconduct information

¹ “About NDI,” International Association of Directors of Law Enforcement Standards and Training, accessed February 28, 2023, <https://www.iadlest.org/our-services/ndi/about-ndi>.

² “Fact Sheet: President Biden to Sign Historic Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety,” White House, May 25, 2022, para. 4, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/25/fact-sheet-president-biden-to-sign-historic-executive-order-to-advance-effective-accountable-policing-and-strengthen-public-safety/>.

³ White House. “Fact Sheet: President Biden to Sign Historic Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety.” May 25, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/25/fact-sheet-president-biden-to-sign-historic-executive-order-to-advance-effective-accountable-policing-and-strengthen-public-safety/>.

accessible to other agencies as widely as possible to keep bad cops from simply leaving one jurisdiction to work for another.

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* * *

And the men who hold high places must be the ones to start to mold a new reality.

—Rush

I. INTRODUCTION

Law enforcement officers with disciplinary records serious enough to get them fired can switch jurisdictions to continue working. Officers in most states may lose their law enforcement certifications for misconduct, but some agencies merely terminate them without a formal decertification process. A new agency cannot access these records for its purposes because no central database for officers' disciplinary information exists. The record retention schedule of the original agency would determine whether such details were still accessible.

Recycling officers with a history of police misconduct inflicts enduring damage on public trust. Law enforcement earns such trust when the public views its actions as legitimate, consistent, and fair. President Biden has called for greater accountability for police officers through greater transparency of police disciplinary records. A key recommendation from President Obama's Task Force on 21st Century Policing was to create a national register of decertified police officers.¹ Federal grant requirements could enforce these mandates for law enforcement nationally.

This proposal will likely meet resistance and challenges. Media accounts report that police unions fight to keep officers with extensive disciplinary records. Allowing access to police officers' disciplinary records could violate contract terms between police unions and state and local governments. In jurisdictions without unions, police agencies are often perceived as a "good ole boys" club that conceals officer misconduct. To achieve buy-in from agencies about reporting police disciplinary information, agencies need to help define which disciplinary infractions must be reported and who would have access to this information.

But collecting officer disciplinary information could be challenging for individual agencies. For example, an agency may lack one or all of the following components: a

¹ Office of Community Oriented Policing Services, *The President's Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action* (Washington, DC: Office of Community Oriented Policing Services, 2015).

system for tracking such information, a policy that would require documenting disciplinary actions, and oversight from a state Police Officer Standards and Training (POST) entity. Even if the reporting of specific police misconduct were required, building such a system to collate this information would pose challenges. Questions such as who would fund the creation of the system, who would maintain the system, and who would audit and enforce its use require consideration.

The potential gains in public trust with such a system could be significant. Despite a relatively low percentage of law enforcement officers with troubling disciplinary records, even a tiny contingent of such officers harms public trust. Law enforcement in the United States must find ways to increase legitimacy with the public. To this end, creating a mechanism to make police disciplinary records for sustained misconduct more transparent could prevent unworthy officers from leaving one law enforcement agency only to resurface at another.

A. RESEARCH QUESTION

How can the national tracking of sustained police misconduct increase police professionalism?

B. LITERATURE REVIEW

This literature review examines the concept of self-policing within law enforcement to increase police professionalism and how promoting the transparency of police misconduct records at the national level might prevent officers with sustained misconduct from leaving one agency to work for another. The first section addresses research that defines professionalism in law enforcement and explores views of law enforcement agencies as professional. The second section discusses police misconduct and its effect on law enforcement's ability to do its job. The last section focuses on self-regulation or self-policing and the steps needed to reach the status of a profession.

Professionalism in policing can mean many things. The public may perceive law enforcement agencies as professional based on their hiring standards, standards for officers to retain employment, organizational culture, the services provided, and competence in

delivering those services. For example, highlighting technological advancements in law enforcement, Walker and Archbold suggest the public may view law enforcement agencies with a forensic laboratory as more professional, based on their using science to solve crimes.² The community may judge individual officers' professionalism on their education, training, and service records (e.g., awards received). Walker and Archbold mention that the increased federal relationship with law enforcement over time has created exposure to challenging national standards, which have improved the public's confidence in policing.³ Along these lines, Wilensky argues the professionalization process requires "standardized training [as] a requisite to entering the occupation."⁴ According to Stone and Travis, "the new professionalism in policing" means that commissioned police officers throughout the ranks operate with standardized training, policies, and procedures because they work as intended (i.e., best practices) or statute or case law prescribes them.⁵ Across the country, POST academies generally provide standardized training for officers of an individual state; however, these academies do not provide consistent training from one state to the next.⁶ Law enforcement agencies strive to be professional, but without a better framework, this subjective concept gives the profession the appearance of a trade rather than a career.⁷ These sources all appear to agree that training is an essential component of professionalization of an occupation and that the training of law enforcement officers is no exception.

Sustained misconduct by a law enforcement officer can damage an officer's professional image and agency. Law Insider defines unprofessional conduct as "one or

² Samuel E. Walker and Carol A. Archbold, *A Critical History of Police Reform: The Emergence of Professionalism*, 2nd ed. (Lexington, MA: Lexington Books, 1978), 157.

³ Walker and Archbold, 77.

⁴ Harold L. Wilensky, "The Professionalization of Everyone?," *American Journal of Sociology* 70, no. 2 (September 1964): 144, <https://www.jstor.org/stable/2775206>.

⁵ Christopher Stone and Jeremy Travis, *Toward a New Professionalism in Policing* (Washington, DC: National Institute of Justice, 2011), 3, <https://www.ojp.gov/pdffiles1/nij/232359.pdf>.

⁶ Department of Justice, "New Standards Improve the Quality and Accessibility of Law Enforcement Training," *Community Policing Dispatch* 13, no. 4 (April 2020): 1, https://cops.usdoj.gov/html/dispatch/04-2020/new_standards.html.

⁷ Dean Isabella, "Is Policing a Profession," *Law Enforcement Today*, August 24, 2017, <https://www.lawenforcementtoday.com/policing-profession/>.

more acts of misconduct.”⁸ Walker and Archbold argue that “officer misconduct . . . undermines effective police crime control,” and “if people do not trust the police because of their misconduct, they will be less willing to report crimes.”⁹ Steve Yanda outlines the role of such trust, saying that “trust affects whether people will cooperate with the police on crime reduction measures.”¹⁰ Walker and Archbold concur, pointing out that “police misconduct undermines respect and the belief that the police are legitimate” and that “changing a police organization requires the systematic collection and analysis of data on officer performance.”¹¹ Law enforcement agencies must hold employees accountable for a pattern of disciplinary offenses because it undermines professionalism, and these events should be documented and tracked.

Another critical pillar of professionalism is its self-regulation. As examined by Linn, “three phases of self-regulation—defining its ethics and proficiencies, credentialing its members, and policing and removing those who failed to uphold those standards—[are] essential to determining whether an occupation qualifies as a profession.”¹² Although Linn’s work documents subpar military officers, not police officers guilty of misconduct, the failure to remove personnel who do not uphold organizational standards diminishes the professionalism of any organization. Linn further indicates that professions require “self-policing.”¹³ Walker and Archbold maintain that law enforcement agencies must take meaningful action (i.e., self-police) when misconduct occurs, or “the accountability system begins to collapse.”¹⁴ The prevalence of civilian oversight boards may suggest that the

⁸ Law Insider, s.v. “unprofessional conduct,” accessed January 31, 2022, <https://www.lawinsider.com/dictionary/unprofessional-conduct>.

⁹ Samuel E. Walker and Carol A. Archbold, *The New World of Police Accountability*, 2nd ed. (Los Angeles: SAGE Publications, 2014), 8.

¹⁰ Steve Yanda, “Opening Session at PERF Annual Meeting: How Police Can Build Public Trust,” *Subject to Debate: A Newsletter of the Police Executive Research Forum* 27, no. 3 (June 2013): 1.

¹¹ Walker and Archbold, *The New World of Police Accountability*, 11, 22.

¹² Brian McAllister Linn, “Samuel Huntington, Professionalism, and Self-Policing in the U.S. Army Officer Corps,” *Parameters* 51, no. 3 (Fall 2021): 91, <https://press.armywarcollege.edu/parameters/vol51/iss3/9>.

¹³ Linn, 91.

¹⁴ Walker and Archbold, *The New World of Police Accountability*, 20.

public questions the police's ability to self-regulate or self-police. In its *Implementation Guide*, the President's Task Force on 21st Century Policing lists oversight, including such civilian boards, as the second of six pillars.¹⁵ Although most police departments subscribe to Linn's three phases of self-regulation today, each state formulates and applies the three phases at its discretion.

These sources conclude that misconduct hurts professionalism and that self-policing is required to eliminate those who cannot maintain the strict standards of law enforcement. Without better transparency on police misconduct, bad officers can feasibly leave one jurisdiction only to be hired by another.

C. RESEARCH DESIGN

Police misconduct is often the first allegation raised against police officers when a use-of-force situation seriously injures or kills a suspect. Policies exist to track police misconduct, but each agency is responsible. Suppose misconduct rises to the level that an officer separates from an agency—resigning, quitting, or being terminated. A state-level organization like POST may require changes in response to such instances. Outside this mechanism, the profession has no further reporting or tracking requirements of police misconduct information.

This thesis is a policy options piece. The first step was to define the problem of deficient tracking of police misconduct outside individual agencies. Next, I documented the current tracking of police discipline, researching the use of the National Decertification Index by U.S. law enforcement agencies to track decertified officers. Then, I researched the methods used to track disciplinary actions for teachers and medical professionals in the United States. Teachers use the National Association of State Directors of Teacher Education and Certification (NASDTEC), and medical professionals use the National Practitioners Databank (NPDB). As described by NASDTEC's website, "Educator Identification Clearinghouse is the national collection point for professional educator

¹⁵ Office of Community Oriented Policing Services, *The President's Task Force*, 25.

discipline action taken by the fifty states.”¹⁶ NASDTEC’s and the NPDB’s websites have searchable national databases that contain actions against educators’ and medical professionals’ licenses or certificates. Interviews were conducted with staff members from the Idaho State Department of Education (SDE) and the Idaho Division of Occupational and Professional Licenses (DOPL) who interact with the respective profession’s misconduct database.¹⁷ These interviews allowed me to understand and compare how other professions track similar negative personnel information.

In the succeeding chapters, I discuss the types of misconduct information that would go into a national database for police misconduct. Initially, I recommend the inclusion of sustained incidents of excessive use of force and dishonesty. Law enforcement should readily accept these infractions for incorporation in a national database. Officers’ excessive force and lying have severe consequences for law enforcement agencies and officers with the court system and the communities they serve.¹⁸

Ultimately, this project finds that elements of the teaching and medical systems for tracking misconduct could be implemented at a national level by law enforcement. Ideally, law enforcement would create a hybrid approach by taking aspects of each system researched—self-sustaining funding through subscription fees for queries, self-query capabilities, inclusion of lawsuits associated with officers, defined misconduct categories that span different jurisdictions, and consolidated misconduct data—with the goal of standardizing the tracking of officers’ sustained misconduct.

¹⁶ “NASDTEC Clearinghouse,” National Association of State Directors of Teacher Education and Certification, accessed February 20, 2022, https://www.nasdtdec.net/page/Clearinghouse_FAQ.

¹⁷ This author submitted two requests to IRB under NPS case number 4241, which was approved on April 22, 2022, and again on November 18, 2022.

¹⁸ *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

II. POLICE CERTIFICATION

Several occupations in the United States, including doctors, lawyers, and teachers, require professional certification, but police officers lack such a uniform standard. An occupational license or certification indicates that a professional has passed a *standardized* set of criteria to obtain one's license or certification. Police certification is a professional license awarded to police officers once they have met jurisdictional criteria. Maintaining occupational licensing requires that professionals follow established standards, attend continuing education seminars, and pay licensing fees.¹⁹ In most states, police officers must fulfill other requirements to maintain their certification.²⁰ This chapter discusses what police certification involves, how police certifications are obtained and maintained, how police certifications are tracked across the United States, and what role misconduct and discipline play in police certification. The police certification process fails to vet officers because, nationally, only certain states have such standards, and they differ from one state to another.

A. CERTIFICATION

Scholars have studied state certification and decertification for police officers and the rules associated with these processes. For example, Matthew Hickman's 2015 survey of all 50 states for the International Association of Directors of Law Enforcement Standards and Training (IADLEST) documents which states have authorities for certification and decertification.²¹ As of 2015, in 42 states, a law enforcement agency must notify a POST agency when an officer leaves the department for any reason.²² In 22 states, departments must report to their POST agencies any police misconduct that could result in

¹⁹ "Licensing & MCLE," Idaho State Bar, accessed October 5, 2022, <https://isb.idaho.gov/licensing-mcle/>.

²⁰ See Idaho Admin. Code r. 11.11.01 (2022), <https://adminrules.idaho.gov/rules/current/11/111101.pdf>.

²¹ Matthew J. Hickman, *POST Agency Certification Practices, 2015* (Seattle: Seattle University, Department of Criminal Justice, 2016), 1–2.

²² Hickman, 5.

decertification.²³ These data provide good information on what individual states can do regarding police certification.

The number of states that can certify and decertify officers has grown recently. In 2008, Hickman found that five states—California, Hawaii, Massachusetts, Rhode Island, and West Virginia—could not certify police officers.²⁴ By 2015, his follow-on survey indicated that only Hawaii lacked the ability to certify officers. As of 2021, only Hawaii and New Jersey could not decertify police officers.²⁵ As of 2015, the District of Columbia, though not a state, had no mechanism to certify nor decertify approximately 3,900 police officers.²⁶

1. Issuance

Police certification verifies professionalism and confers the authority to operate within a given jurisdiction. Police certification indicates that a police officer has passed a series of standardized training and testing and met other criteria, such as being 21 years old.²⁷ Obtaining police certification allows an officer to carry out one’s statutory responsibilities. However, police certification is valid only in the state of issuance. The United States has decentralized policing, so without a memorandum of understanding or some special deputization, state, county, or municipal officers cannot enforce laws outside

²³ Hickman, 5.

²⁴ Matthew J. Hickman, “Peace Officer Certification and the National Decertification Index” (Seattle: Seattle University, August 2010), 1.

²⁵ Blaze Lovell, “Hawaii May Not Set Minimum Qualifications for Police until 2024,” Honolulu Civil Beat, October 26, 2021, <https://www.civilbeat.org/2021/10/hawaii-may-not-set-minimum-qualifications-for-police-until-2024/>; Mark Rosman, ed., “New Law Requires Police Officers to Be Licensed to Work in New Jersey,” Examiner News, July 28, 2022, <https://centraljersey.com/2022/07/28/governor-murphy-signs-police-licensing-program-bill-into-law/>.

²⁶ Hickman, *POST Agency Certification Practices*, 1; “Welcome to the Metropolitan Police Department,” Metropolitan Police Department of the District of Columbia, accessed October 9, 2022, <https://mpdc.dc.gov/page/welcome-metropolitan-police-department>.

²⁷ “Law Enforcement Officer Certification Database,” National Conference of State Legislatures, January 12, 2021, <https://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement-certification.aspx>.

specific jurisdictions.²⁸ In this way, certification ensures that police officers meet professional standards that protect officers, their agencies, and the public.

Policing requires that candidates attend training to learn laws, processes, and skills for them to receive certification. Skill elements of police training include meeting physical fitness standards, shooting firearms, driving safely at high speeds, writing police reports, and learning arrest techniques.²⁹ Typically, basic law enforcement training is delivered through a police academy or university or college law enforcement program.³⁰ Brian Reaves indicates that basic police training lasts approximately 840 hours or 21 weeks.³¹ This initial training allows police candidates to be evaluated and tested in a controlled environment as they work toward certification.

After completing initial training, officers must often fulfill additional steps for their certification. A common requirement to obtain a basic police certificate is the successful completion of an agency field training officer (FTO) program and a probationary period.³² No national standard specifies the number of recommended field training hours; however, in Idaho, an officer must complete a 40-hour program to receive certification.³³ After completing basic academy training, testing, and the FTO program, most police recruits across the United States receive some basic police certification. Every certification is awarded through an entity representing the state in which the officer works. Once awarded, a basic certification indicates that police trainees have met the established standards and that they can operate independently.

²⁸ Larry E. Sullivan et al., eds., “Police Structure: Centralized/Decentralized,” in *Encyclopedia of Law Enforcement*, vol. 3 (Thousand Oaks, CA: SAGE Publications, 2005), 1253.

²⁹ “What to Expect from Police Academy Training,” Police1, November 2, 2021, <https://www.police1.com/how-to-become-a-police-officer/articles/what-to-expect-from-police-academy-training-TphD8qpkqgg68nYc/>.

³⁰ Brian A. Reaves, *State and Local Law Enforcement Training Academies, 2013* (Washington, DC: Bureau of Justice Statistics, 2016), 2.

³¹ Reaves, 1.

³² See Idaho Admin. Code r. 11.11.01.057.08.a.

³³ See Idaho Admin. Code r. 11.11.01.057.08.a.

By signing a code of conduct or a code of ethics, officers are bound to the terms of the document and acknowledge the certifying body will hold them accountable if they violate its terms. As officers across the country receive their basic police certification, they take an oath swearing to support and uphold the constitutional rights of the public.³⁴ Police officers also generally swear to maintain high ethical standards and to keep their private lives “unsullied.”³⁵ An officer may be required to make this commitment to ethical standards, for example, in a code of conduct or a code of ethics, while attending basic police academy.³⁶ Therefore, officers’ certification may be revoked if they fail to adhere to these codes, oaths, rules, or laws.

2. Maintenance

After securing police certification, police officers must meet requirements to retain it. Some states require that they complete a set number of continuing education training hours within an annual or semiannual cycle.³⁷ These standards fluctuate from state to state, with a low of zero hours in Hawaii and New Jersey and a high of 48 hours in Minnesota.³⁸ These continuing education requirements provide officers with updated training to keep themselves relevant and apprised of legal changes and allow them to maintain their certification.

³⁴ Idaho Admin. Code r. 11.11.01.147.01.b; “Law Enforcement Oath of Honor,” Virginia Association of Chiefs of Police and Foundation, accessed September 12, 2022, https://www.vachiefs.org/oath_of_honor.

³⁵ “Law Enforcement Code of Ethics,” International Association of Chiefs of Police, accessed April 30, 2022, <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>.

³⁶ Cal. Code Regs. tit. 11, § 1013 (2020); “Criminal Justice Code of Ethics,” Oregon Department of Public Safety Standards and Training, September 12, 2012, <https://www.oregon.gov/dpsst/CJ/CJForms/F11-CodeOfEthicsLE.pdf>; Idaho Peace Officer Standards and Training, “Peace Officer Standards and Training (POST) Code of Ethics, Decertification, Code of Conduct and Other Legislation” (Meridian, ID: Idaho Peace Officer Standards and Training, August 2022), <https://post.idaho.gov/wp-content/uploads/sites/19/documents/forms/C//Code%20of%20Ethics%20Decert%20Conduct%20Other%20Leg.pdf>.

³⁷ See Idaho Admin. Code r. 11.11.01.131.01.

³⁸ “State Law Enforcement Training Requirements: Data Set,” Institute for Criminal Justice Training Reform, accessed October 11, 2022, <https://www.trainingreform.org/state-police-training-requirements>. See Column F, Continued Education/In-Service Training, for continuing education data.

3. Transference

Law enforcement officers regularly relocate from one jurisdiction to another seeking employment. These officers are commonly referred to as “lateral transfers,” indicating they have previous police experience and certification. Depending on where an officer relocates, he can undergo one of two processes. In-state transfers have different standards from out-of-state transfers.

a. *In-State Transfers*

Officers can seek employment with another jurisdiction in the same state. Agencies that hire officers from another department in the state simply notify POST when the officer starts at the department. If a law enforcement officer leaves one agency for another in the same state, in all cases but one, Rhode Island, he maintains his certification. If an officer’s POST certification is intact, hiring agencies would likely complete a background check to ensure that no misconduct occurred at the previous agency. This in-state transfer is usually simple and does not require an officer to reapply for certification.

Rhode Island has a unique system for recertifying its officers when they transfer between agencies. If an officer in Rhode Island leaves an agency for any reason, he immediately loses certification.³⁹ If another agency in Rhode Island hires that officer, she must reapply for certification.⁴⁰ This reapplication process requires an officer to have a “letter of good standing” from the previous agency to reapply for certification.⁴¹ Rhode Island’s POST then reviews the completed application to decide whether to reissue the officer’s certification.⁴² Rhode Island instituted this recertification process to “stop troubled officers from resigning from one department to avoid being fired and restart their

³⁹ Katie Mulvaney, “‘To Ensure Good Police’: Rule Requires Review of Officers before Joining Other Agencies,” *Providence Journal*, December 27, 2021, <https://www.providencejournal.com/story/news/courts/2021/12/27/ri-policy-requires-review-of-police-officers-before-joining-other-agencies-prevent-wandering-cops/8999920002/>.

⁴⁰ Mulvaney.

⁴¹ Mulvaney.

⁴² Mulvaney.

careers with clean hands a few towns over.”⁴³ Rhode Island’s POST also queries the National Decertification Index (NDI), which houses most nationwide decertification data, to confirm no additional records might raise questions about an officer.⁴⁴ Rhode Island is the only state known to require officers to reapply for certification when transferring to another department in the same state.⁴⁵ This unique system appears to be a best practice for proactively reevaluating an officer’s certification.

b. Interstate Transfers

All certified police officers transferring from one state to another must obtain certification from the new state. However, some states do not issue police certification, as discussed previously. States that certify police officers have established processes for these lateral transfers. Idaho’s POST recognizes police training completed in another state, but lateral transfers must pass standardized testing to receive Idaho’s police officer certification.⁴⁶ Before agencies send lateral transfers to POST for testing, they must perform a background check on these officers. Idaho’s POST requires a “comprehensive” background investigation for which it provides some guidance on the scope.⁴⁷ Ultimately, Idaho’s POST and other certifying agencies depend on the thoroughness of a hiring agency’s background check.⁴⁸ States’ processes for lateral transfers allow them to verify that officers meet a minimum set of standards before certification.

Police departments seek applicants with prior law enforcement experience and certification, provided they are officers in good standing. As with all applicants, agencies must understand who they are hiring and put forth an effort to uncover any derogatory information. An agency could hire a police officer from another jurisdiction who has

⁴³ Mulvaney.

⁴⁴ Mulvaney.

⁴⁵ Mulvaney.

⁴⁶ Idaho Admin. Code r. 11.11.01.59.

⁴⁷ Idaho Admin. Code r. 11.11.01.57.02.

⁴⁸ Roger L. Goldman and Steven Purro, “Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?,” *Saint Louis University Law Journal* 45 (2001): 548.

sustained misconduct incidents either with or without the former agency's knowledge.⁴⁹ An agency could discover sustained misconduct information about a lateral candidate through either the applicant's disclosure or a thorough background check that reviews the previous personnel file with information about misconduct.⁵⁰ Even the review of a personnel file might not reveal sustained misconduct data, depending on how an agency maintains this type of information. When making hiring decisions, agencies should possess vital information, such as sustained misconduct in an officer's past that could harm the agency.

Some POST agencies have mandatory reporting of actions that could violate certification upon separation. In his study, Hickman found 22 states require agencies to report conduct that could jeopardize one's police certification.⁵¹ In other words, fewer than half of all states require the reporting of potential misconduct to certifying bodies.⁵² The notification of potential misconduct allows a state's POST or other certifying body to decide independently whether to investigate potential violations of the terms of certification.⁵³ If an applicant does not disclose information about prior law enforcement service to conceal past indiscretions, an agency with a minimal or nonexistent background process may never discover prior misconduct. Therefore, having a state notification process could be essential to reviewing or revoking certifications and possibly preventing problem officers from leaving one state to work in another.

Agencies completing thorough background checks can miss misconduct information because previous agencies have chosen not to disclose it. Such a scenario reinforces the best practice of mandatory reporting of potential misconduct to POST.⁵⁴ Goldman shares a story about two lateral officers who were hired by the West Palm Beach Police Department in Florida. The officers' former agencies had failed to disclose prior

⁴⁹ Goldman and Purro, 548.

⁵⁰ Goldman and Purro, 548.

⁵¹ Hickman, *POST Agency Certification Practices*, 5.

⁵² Hickman, 5.

⁵³ Hickman, 5.

⁵⁴ Hickman, 5.

misconduct. One of the officers had beaten and blinded a person in one eye, which was resolved with an \$80,000 settlement.⁵⁵ The City of West Palm Beach learned of these problematic events after the officers were hired, and the mayor of West Palm Beach stated the city would not have hired them had it known.⁵⁶ There are major costs associated with hiring officers with previous misconduct. It was estimated in 2022 that 25 of the largest law enforcement agencies paid out “more than \$3.2 billion to settle claims with officers with repeat conduct issues accounting for \$1.5 billion of these payments.”⁵⁷ Mandatory reporting of sustained misconduct information to POST acts as a check for agencies that choose not to reveal it to other agencies.

Agencies store disciplinary information in various ways, so an officer’s misconduct may surface when another agency researches prior certification. An officer with sustained misconduct incidents may not disclose them to a prospective employer.⁵⁸ The perspective of some law enforcement agencies is to rid their ranks of bad officers and not worry where they might resurface.⁵⁹ Conversely, if a smaller agency within the same state with little funding reviews a certified officer, it could overlook such misconduct to bring a fully trained officer into its ranks.⁶⁰ Based on misconduct reporting requirements in several states, POST could offer helpful information for hiring agencies. Agencies hiring lateral officers need access to derogatory information through the background check, and POST agencies would be a valuable repository of information if states followed uniform standards.

This lack of standardization in police certification will soon change for police officers in New Jersey. In May 2022, New Jersey Governor Phil Murphy announced

⁵⁵ Goldman and Purro, “Revocation of Police Officer Certification,” 549.

⁵⁶ Goldman and Purro, 549.

⁵⁷ Keith L. Alexander, Steven Rich, and Hannah Thacker, “The Hidden Billion-Dollar Cost of Repeated Police Misconduct,” *Washington Post*, March 13, 2022, ProQuest.

⁵⁸ Goldman and Purro, “Revocation of Police Officer Certification,” 548.

⁵⁹ Goldman and Purro, 548–49.

⁶⁰ Goldman and Purro, 548.

legislation that would create a statewide police licensing program.⁶¹ This legislation would require all law enforcement officers in New Jersey to obtain a license to work in the profession. On July 21, 2022, Governor Murphy signed the bill.⁶² To issue police officer licenses in New Jersey, the Police Training Commission (PTC) must establish baselines for the training required to obtain a police license, a process that will take approximately 18 months.⁶³ New Jersey's licensing program will also allow the revocation of an officer's license for acts of misconduct such as "behavior in the officer's personal or professional life."⁶⁴ Issuing a police certification in New Jersey is an important step toward professionalization by requiring standard training and holding officers accountable if they violate the terms of the certification.

4. Loss of Certification

Police officers may lose their certification for several reasons. The most prevalent way is by leaving the profession through retirement or simply leaving the profession under good terms and not coming back. Police certifications in most states are valid for a period of years after one leaves an agency on good terms. For example, in Idaho and California, a police certification is valid for three years after leaving the profession, or four years in Florida.⁶⁵ Additionally, an officer can lose his or her certification through a disciplinary process, which is generally attributed to sustained misconduct.

⁶¹ "Governor Murphy and Acting Attorney General Platkin Announce Proposed Legislation Establishing Statewide Police Licensing Program," Insider NJ, May 18, 2022, <https://www.insidernj.com/press-release/governor-murphy-and-acting-attorney-general-platkin-announce-proposed-legislation-establishing-statewide-police-licensing-program/>.

⁶² "New Jersey Police Officers Will Now Have to Be Licensed under New Law," News 12 Bronx, July 21, 2022, <https://bronx.news12.com/new-jersey-police-officers-will-now-have-to-be-licensed-under-new-law>.

⁶³ Rosman, "New Law Requires Police Officers to Be Licensed."

⁶⁴ Rosman.

⁶⁵ Idaho Admin. Code r. 11.11.01.100.01; "POST Requalification Course," California Commission on Peace Officer Standards and Training, March 22, 2022, <https://post.ca.gov/post-requalification-course>; "Officer Requirements: Frequently Asked Questions," Florida Department of Law Enforcement, accessed October 12, 2022, <https://www.fdle.state.fl.us/CJSTC/Officer-Requirements/OR-FAQs.aspx>.

5. Decertification

Like police certification processes across the United States, certifying agencies' authority to remove certifications, or decertify officers, varies greatly. As of this writing, three states in the United States cannot revoke law enforcement certifications: Hawaii, New Jersey, and Rhode Island.⁶⁶ (California was previously on this list, but when the state legislature passed Senate Bill 2 in September 2021, it allowed for the removal or suspension of an individual's police certification.⁶⁷) The other 47 states in the United States can revoke or suspend the certification of police officers.⁶⁸ Building toward national consistency would depend on states' ability to scrutinize officers' certifications as needed.

One database tracks decertification information from POST agencies, and law enforcement agencies can query it for hiring purposes. The NDI houses decertification records from POST agencies that voluntarily contribute this information.⁶⁹ Currently, 44 states report officer decertification information to NDI, as depicted in Figure 1.⁷⁰ The NDI does not house detailed information in its database but, as a pointer system, notifies those who perform queries where information may reside.⁷¹ The NDI appears to be a best practice for POST agencies to track police decertification information.

⁶⁶ Mulvaney, "To Ensure Good Police."

⁶⁷ Peace Officers: Certification: Civil Rights, Cal. S.B. 2 (2021).

⁶⁸ Hickman, *POST Agency Certification Practices*, 2; Peace Officers: Certification: Civil Rights.

⁶⁹ "About NDI," International Association of Directors of Law Enforcement Standards and Training, accessed November 7, 2021, <https://www.iadlest.org/our-services/ndi/about-ndi>.

⁷⁰ Michael N. Becar, email message to author, May 10, 2022.

⁷¹ Hickman, "Peace Officer Certification and the National Decertification Index," 2.

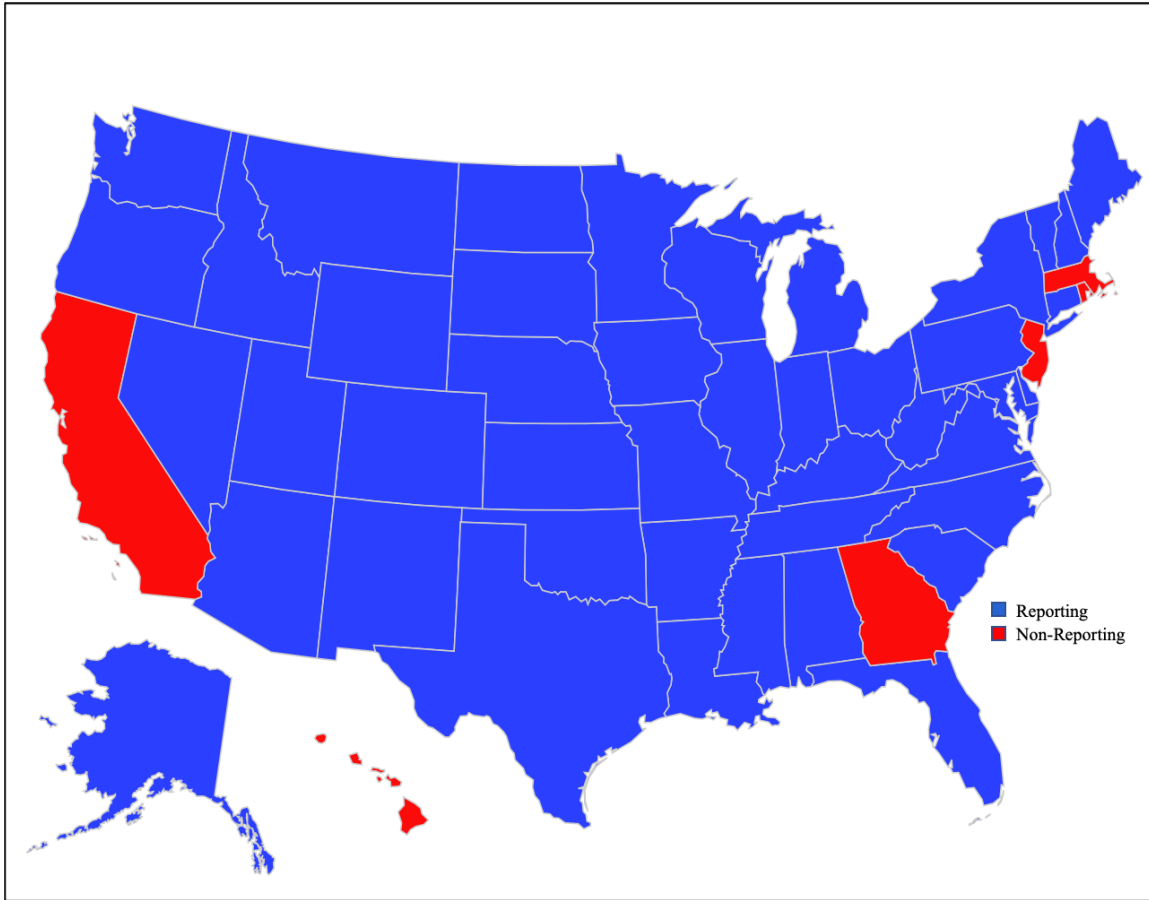


Figure 1. State Reporting Status to NDI, October 2022.⁷²

Collating the certification status of state, county, and local law enforcement officers in the United States would be a massive undertaking. The National Sources of Law Enforcement Employment Data estimates that approximately 18,500 state, county, and local law enforcement agencies employ approximately 860,000 officers in the United States.⁷³ Local, county, and state police officers around the country receive basic and advanced certification from an entity in the state where they work.⁷⁴ According to

⁷² Adapted from Becar, email message to author.

⁷³ Duren Banks et al., *National Sources of Law Enforcement Employment Data* (Washington, DC: Bureau of Justice Statistics, 2016), 2; Tom Jackman, “FBI May Shut Down Police Use-of-Force Database Due to Lack of Police Participation,” *Washington Post*, December 9, 2021, para. 16, <https://www.washingtonpost.com/crime-law/2021/12/09/fbi-police-shooting-data/>.

⁷⁴ Hickman, “Peace Officer Certification and the National Decertification Index,” 1.

IADLEST, 48 states have POST agencies or an equivalent.⁷⁵ The exceptions are Hawaii, which does not have a certifying body for its police officers, and New Jersey, which does not have a POST, per se.⁷⁶ In the attorney general's office, New Jersey does have a certifying equivalent to POST—the PTC—that develops curricula for the certification of local and county police officers.⁷⁷ The State of New Jersey certifies police troopers through the Office of Law Enforcement Professional Standards, which also resides within the attorney general's office.⁷⁸ Essentially, police officers in New Jersey receive a certification at the beginning of their career, but the state cannot revoke this certification.⁷⁹ Therefore, tracking these certifications across states is incredibly challenging.

All certifying states allow police officers to forfeit their certification rather than face criminal charges. As Hickman revealed, in 2015, 14 percent of officer decertifications reported were in lieu of criminal prosecution.⁸⁰ In such cases, an agency and a prosecutor's office agree to drop charges if an officer voluntarily surrenders one's certification.⁸¹ Goldman argues that having an officer give up certification in lieu of criminal charges allows the officer to remain in the profession.⁸² However, some agencies allow officers with serious misconduct allegations to resign so that the jurisdictions eliminate them from their ranks.⁸³ Having a problem officer surrender his certification is a good first step

⁷⁵ "POST Directors," International Association of Directors of Law Enforcement Standards and Training, accessed November 7, 2021, <https://www.iadlest.org/about-us/post-directors>.

⁷⁶ International Association of Directors of Law Enforcement Standards and Training.

⁷⁷ New Jersey Department of Law and Public Safety, "Police Training Commission," New Jersey Office of the Attorney General, accessed April 30, 2022, [https://www.njoag.gov/about/divisions-and-offices/division-of-criminal-justice-home/police-training-commission/#:~:text=The%20Police%20Training%20Commission%20\(PTC,corrections%20officers%2C%20juvenile%20detention%20officers%2C](https://www.njoag.gov/about/divisions-and-offices/division-of-criminal-justice-home/police-training-commission/#:~:text=The%20Police%20Training%20Commission%20(PTC,corrections%20officers%2C%20juvenile%20detention%20officers%2C).

⁷⁸ New Jersey Office of Law Enforcement Professional Standards, "About OLEPS," New Jersey Office of the Attorney General, accessed August 5, 2022, <https://www.nj.gov/oag/oleps/about.html>.

⁷⁹ Hickman, *POST Agency Certification Practices*, 1.

⁸⁰ Hickman, 5.

⁸¹ Goldman and Purro, "Revocation of Police Officer Certification," 557.

⁸² Goldman and Purro, 548.

⁸³ Goldman and Purro, 548–49.

toward removal, but unless the agency reports it to POST, the NDI has no record of it, thus allowing other jurisdictions to unknowingly hire this person.

An officer can choose to retire or resign at any point of a disciplinary process. For example, an officer could retire in lieu of termination. In allowing an officer to retire untarnished in the face of a misconduct allegation, the agency might permit the officer to return to the profession with little to no scrutiny. A hiring agency reviewing a candidate who lists retirement as one's reason for leaving an agency sees it differently from a retirement while under investigation. Therefore, agencies must ensure POST knows the separation reason for proper tracking.

When officers leave the profession for extended periods, certification lapses. In Idaho, after three years of not working, officers must fulfill additional requirements to reactivate their certification.⁸⁴ In Florida, police certifications expire when an officer has not worked for four years.⁸⁵ Again, each state has its own rules for how long a certification is valid after an officer leaves an agency.

B. DISCIPLINE

Police departments use discipline as a corrective measure or teaching tool for officers. Discipline is defined as “the practice of training people to obey rules and orders and punishing them if they do not.”⁸⁶ When police officers violate department policies and procedures, they must take steps to correct any unwanted behavior. Corrective measures used to change behavior may include, in order of severity, coaching or verbal counseling, written counseling, letters of reprimand, unpaid days off or leave without pay, demotion, or termination. This thesis defines disciplinary actions as those that take something away from the officer such as pay, rank through a demotion, or one's job through termination. Other non-disciplinary actions intended to instruct include coaching, verbal counseling, or written counseling or letters of reprimand, or sanctions (see Figure 2).

⁸⁴ Idaho Admin. Code r. 11.11.01.100.03–05 (2013).

⁸⁵ Florida Department of Law Enforcement, “Officer Requirements: Frequently Asked Questions.”

⁸⁶ *Oxford Advanced Learner's Dictionary*, s.v. “discipline,” accessed August 5, 2022, https://www.oxfordlearnersdictionaries.com/us/definition/english/discipline_1.

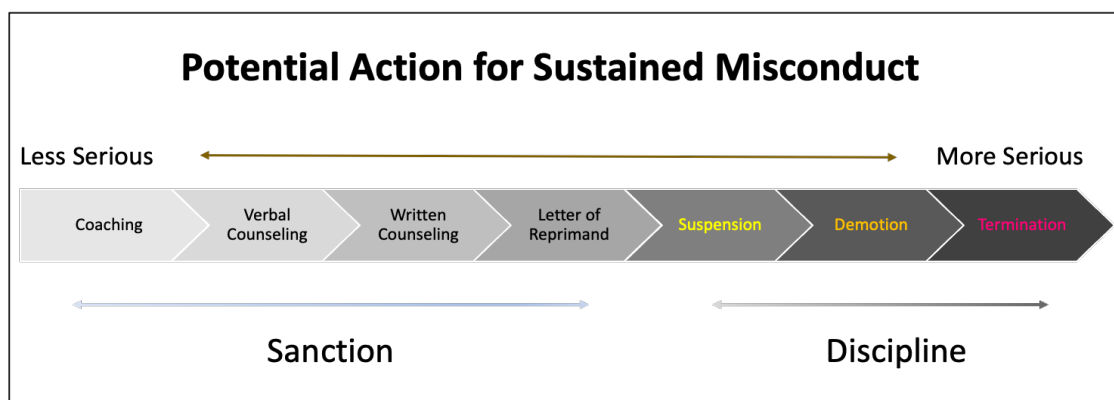


Figure 2. Sanction/Discipline Spectrum.⁸⁷

This system of gradually increasing harshness called *progressive discipline* tailors the sanctions or discipline to the infraction.⁸⁸ The goal of progressive discipline is for employees to learn from their mistakes with the least severe corrective action necessary.⁸⁹ Agencies institute progressive discipline for similar successive policy violations within a short time, but serious violations often lead to harsher disciplinary recommendations.⁹⁰

Because discipline may deprive an officer of pay through demotion or unpaid time off—or one’s job in the case of a termination—disciplinary procedures should have due process built into them. The procedural processes associated with officer discipline vary across U.S. police departments; however, Barker and Carter point out that due process rights have become more widely institutionalized in police disciplinary matters over the last few decades.⁹¹ Besides a department’s working toward correcting unwanted behavior, a serious violation of a department’s policy could lead to scrutinizing an officer’s certification by the issuing authority because the actions may violate its terms.⁹²

⁸⁷ Figure 2 is this author’s creation from professional experience.

⁸⁸ “Progressive Discipline,” University of Indiana Human Resources, March 2021, <https://hr.iu.edu/relations/ca/progressive.html>.

⁸⁹ University of Indiana Human Resources.

⁹⁰ University of Indiana Human Resources.

⁹¹ Thomas Barker and David L. Carter, *Police Deviance*, 3rd ed. (Cincinnati: Anderson Publishing, 1994), 373.

⁹² Idaho Peace Officer Standards and Training, “POST Code of Ethics,” 1–2.

Ultimately, a certifying body may revoke police certification and decertify an officer in many states across the country for actions contrary to certification standards.⁹³ Any disciplinary procedures must respect due process since serious misconduct can lead to the loss of police certification.

In Idaho, the initiation of decertification may happen in different ways. In the first scenario, a citizen complains to the agency, or the agency sees an officer's troubling actions during a review of his reports or in a video review of a traffic stop. Based on this complaint or discovery, the agency would investigate the officer to determine whether the allegations or perceived conduct merit sanctions.⁹⁴ If the officer violates a department's policy, the agency could take disciplinary action against the employee.⁹⁵ Having due process for any disciplinary action is a best practice. If a violation of department policy results in a termination, the agency must notify POST.⁹⁶ Based on such notification, Idaho's POST can conduct its own investigation and work through the decertification process if it finds sustained violations of the Code of Conduct.⁹⁷ In this scenario, the agency would notify POST of potential misconduct. By notifying POST of a termination, the agency ensures the information is made available for future hiring inquiries.

In the second scenario, Idaho's POST would generate its own investigation based on information received independently. Depending on the information, POST's internal investigators would follow up on the behaviors of certified police officers. If an independent POST investigation shows an officer has violated the Code of Conduct, the POST Council can recommend decertification. Idaho's POST Council is a 15-member board comprising law enforcement agency heads such as chiefs, sheriffs, and the colonel of the Idaho State Police. Additionally, an elected prosecutor, a state deputy attorney

⁹³ Hickman, *POST Agency Certification Practices*, 1.

⁹⁴ Barker and Carter, *Police Deviance*, 361.

⁹⁵ Thomas Mrozla, "Complaints of Police Misconduct: Examining the Timeliness and Outcomes of Internal Affairs Investigations," *Social Science Journal* 58, no. 3 (2021): 3, <https://doi.org/10.1016/j.soscij.2019.04.007>.

⁹⁶ Idaho Admin. Code r. 11.11.01.03.03.

⁹⁷ Idaho Peace Officer Standards and Training, "POST Code of Ethics," 1–2.

general, a Federal Bureau of Investigation (FBI) supervisory special resident agent, and the executive directors of both the Association of Idaho Counties and Association of Idaho Cities make up the rest of the board.⁹⁸ The council consists of law enforcement officers and non-law enforcement personnel who provide varying perspectives. The makeup of the Idaho POST Council reflects the “independent non-police actors” that De Angelis and Kupchik recommend for police oversight entities.⁹⁹ Having diverse perspectives among the POST Council may help officers feel they are receiving due process and reenforce transparency with the public.¹⁰⁰ This process allows POST to conduct its own investigation and guarantees due process to ensure its fairness.

States’ ability to track police officer misconduct seems vital to accountability as communities and society demand greater transparency. Recent high-profile events such as the murder of George Floyd and other police shootings across the country have resulted in calls for defunding or reimagining police forces.¹⁰¹ An extreme example of the defunding movement was New York City’s removing \$1 billion from its police department budget.¹⁰² Tracking police misconduct at the national level for continued or severe wrongdoing would show that law enforcement is also serious about combating officer misconduct. This transparency could also increase the overall trust and perceived professionalism of police officers with the public.

⁹⁸ “Idaho POST Council,” Idaho Peace Officer Standards and Training, accessed April 30, 2022, <https://post.idaho.gov/council/>.

⁹⁹ Joseph De Angelis and Aaron Kupchik, “Citizen Oversight, Procedural Justice, and Officer Perceptions of the Complaint Investigation Process,” *Policing: An International Journal of Police Strategies & Management* 30, no. 4 (2007): 653, <https://doi.org/10.1108/13639510710833929>.

¹⁰⁰ De Angelis and Kupchik, 653.

¹⁰¹ Rashawn Ray, “What Does ‘Defund the Police’ Mean and Does It Have Merit?,” Brookings Institution, June 19, 2020, <https://www.brookings.edu/articles/what-does-defund-the-police-mean-and-does-it-have-merit/>.

¹⁰² Dana Rubinstein and Jeffery C. Mays, “Nearly \$1 Billion Is Shifted from Police in Budget That Pleases No One,” *New York Times*, June 30, 2020, <https://www.nytimes.com/2020/06/30/nyregion/nypd-budget.html>.

C. KEEPING TRACK

President's Obama's Task Force on 21st Century Policing validated the creation of the NDI by IADLEST. Based on a stretch of "serious incidents between law enforcement and the communities they serve and protect," President Obama's task force proposed recommendations for improving relations between the police and the public.¹⁰³ The information collected by this task force fell under six pillars (see Figure 3).¹⁰⁴



Figure 3. Pillars of the President's Task Force on 21st Century Policing.¹⁰⁵

Notably, under Pillar 2—Policy and Oversight—the task force recommended the creation of a National Register of Decertified Officers, the last item listed:

- Community input and involvement
- Use of force
- Nonpunitive peer review of critical incidents
- Scientifically supported identification procedures
- Demographic data on all detentions
- Mass demonstration policies

¹⁰³ Office of Community Oriented Policing Services, *The President's Task Force*, 1.

¹⁰⁴ Office of Community Oriented Policing Services, 1.

¹⁰⁵ Source: Ronald L. Davis, "Law Enforcement Leads the Change," *White House of President Barack Obama* (blog), December 18, 2015, <https://obamawhitehouse.archives.gov/blog/2015/12/18/law-enforcement-leads-change>.

- Local civilian oversight
- Not quotas for tickets for revenue
- Consent and informed search and seizure
- Officer identification and reason for stops
- Prohibit profiling and discrimination, in particular as it relates to LGBT and gender nonconforming populations
- Encourage shared services between jurisdictions
- National Register of Decertified Officers.¹⁰⁶

IADLEST created the NDI in 2000 through a Department of Justice (DOJ) grant, and it naturally fits the task force’s recommendation.¹⁰⁷ According to a report by Seattle University’s Matthew Hickman, in 2015, states revoked approximately 1,850 law enforcement certifications, and POSTs have decertified more than 19,000 officers since the 1960s.¹⁰⁸ Although, the NDI provides a mechanism to track decertified police officers, no mandate requires the use of this database. Thus, individual certifying bodies decide whether they report the decertification of police officers to the NDI. Although more states use NDI than do not—thanks to IADLEST’s efforts—the consolidation of decertification information will remain fragmented until all POSTs report.

Law enforcement agencies track misconduct differently, even if they do so. Agencies track police misconduct but not decertification. Only 22 states require reporting of misconduct to POSTs.¹⁰⁹ However, 44 states report decertification information to the NDI.¹¹⁰ Although POST agencies cover nearly all the states, and the NDI provides a reporting mechanism, inconsistencies in tracking such information make the overall law enforcement misconduct picture incomplete.

Agencies, prosecutors, and the public all need to know whether police officers have sustained misconduct in their past, but in most cases, only individual agencies hold such

¹⁰⁶ Office of Community Oriented Policing Services, *The President’s Task Force*, 25.

¹⁰⁷ Becar, email message to author.

¹⁰⁸ Hickman, *POST Agency Certification Practices*, 2; Matthew J. Hickman and Loren T. Atherley, *POST Agency Certification Practices, 2011* (Seattle: Seattle University, Department of Criminal Justice, 2011), 2.

¹⁰⁹ Hickman, *POST Agency Certification Practices*, 5.

¹¹⁰ Becar, email message to author.

information. Agencies need to consider misconduct information when contemplating whether to hire a lateral applicant.¹¹¹ Prosecutors need police misconduct information to make determinations about officers' suitability to testify in court.¹¹² The public needs reassurance that police misconduct is not widespread, so it can trust the institution of policing.¹¹³ Without a way to collate information on sustained police officer misconduct, agencies, prosecutors, and the public will continue to be uninformed.

The use of excessive force is one type of police misconduct. One law enforcement project is trying to leverage the existing NDI system to capture information on excessive force by police. IADLEST released a request for information in August 2021 on an expansion of the NDI project to facilitate the tracking of excessive use-of-force events.¹¹⁴ Gathering such information, which constitutes misconduct, could determine how many of these events involve excessive force.

A hypothetical database will track information, including misconduct, on federal law enforcement officers. On May 25, 2022, President Joe Biden signed a presidential executive order directing the attorney general of the United States "to establish a National Law Enforcement Accountability database" to house misconduct events including "convictions, terminations, decertifications, civil judgments, resignations, and retirements while under investigation for serious misconduct."¹¹⁵ Although this executive order advances transparency, local, not federal, law enforcement incurs most of the criticism or scrutiny for misconduct during routine police calls. While President Biden's executive order allows local law enforcement agencies to use this database, it stops short of

¹¹¹ Goldman and Purro, "Revocation of Police Officer Certification," 548.

¹¹² See *Brady*, 373 U.S. at 83.

¹¹³ Patrick A. Walsh, "A Practitioner's Guide to Trust and Legitimacy" (master's thesis, Naval Postgraduate School, 2013), 16, <http://hdl.handle.net/10945/37737>.

¹¹⁴ Victor McCraw, *NDI Request for Information: NDI Expansion Project* (Eagle, ID: International Association of Directors of Law Enforcement Standards and Training, 2021), 1–15, https://www.iadlest.org/Portals/0/Files/Documents/tdocs/NDI_RFI_IADLEST_posted_072021.pdf?ver=WNR3ZQl2rQX4k3GzGhx4jQ%3d%3d.

¹¹⁵ "Fact Sheet: President Biden to Sign Historic Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety," White House, May 25, 2022, para. 4, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/25/fact-sheet-president-biden-to-sign-historic-executive-order-to-advance-effective-accountable-policing-and-strengthen-public-safety/>.

mandating its use for agencies outside the federal government. Nevertheless, having a database to track federal police officers' misconduct will be helpful for all agencies that need it.

The federal government's database for capturing police data at the national level has seen inconsistent participation. In 2019, the FBI initiated its National Use-of-Force Data Collection program, aimed at urging all law enforcement agencies across the country to capture use-of-force incidents for reporting purposes.¹¹⁶ The effort to encourage state and local agencies to participate involved entities like the International Association of Chiefs of Police (IACP).¹¹⁷ The Use-of-Force Database does not house information on specific officers—it tracks only use-of-force incidents.¹¹⁸ Moreover, placing data into the National Use-of-Force Database is voluntary, which poses problems.¹¹⁹ At the inception of the program, the Office of Management and Budget established that by 2022, 60 percent of U.S. law enforcement officers would be required to report use-of-force data or the database would be dissolved.¹²⁰ By December 2021, approximately 57 percent of law enforcement agencies were reporting use-of-force data to the FBI, according to a report by the *Washington Post*.¹²¹ On May 31, 2022, the FBI released statistics from the Use-of-Force Database, showing that approximately 63 percent of law enforcement agencies in 2022 reported their use-of-force information.¹²² Ultimately, collecting national

¹¹⁶ “National Use-of-Force Data Collection,” Federal Bureau of Investigation, accessed May 15, 2022, <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

¹¹⁷ Martin Kaste, “The FBI Wants Data on Police Use of Force. Police Departments Aren’t Cooperating,” National Public Radio, March 2, 2022, <https://www.npr.org/2022/03/02/1084033882/the-fbi-wants-data-on-police-use-of-force-police-departments-arent-cooperating>.

¹¹⁸ Federal Bureau of Investigation, “National Use-of-Force Data Collection.”

¹¹⁹ Federal Bureau of Investigation, “National Use-of-Force Data Collection”; Kaste, “The FBI Wants Data on Police Use of Force.”

¹²⁰ Jackman, “FBI May Shut Down Police Use-of-Force Database.”

¹²¹ Jackman.

¹²² “FBI Releases 2021 and First Quarter 2022 Statistics from the National Use-of-Force Data Collection,” Federal Bureau of Investigation, May 31, 2022, <https://www.fbi.gov/news/press-releases/press-releases/fbi-releases-2021-and-first-quarter-2022-statistics-from-the-national-use-of-force-data-collection>.

information on police use-of-force incidents in one place is vital, but voluntary participation presents immense challenges.

D. CONCLUSION

In the United States, not all states have certification or decertification standards, and not every state contributes data to the decertification database at the national level. Given the variation in decertification tracking, the existing databases cannot be used exclusively as confirmation that an officer has no documented misconduct. The lack of collated misconduct data makes it difficult for agencies to verify with background information that they are not bringing on problem officers. The West Palm Beach example is one that law enforcement cannot afford to repeat as it hurts the profession's credibility with communities and has the potential to cost states and municipalities millions in lawsuit settlements. Several ongoing projects are gathering various law enforcement data to help policymakers understand the actual picture of police use-of-force incidents and police decertification. The voluntary aspect of reporting is a problem, however. Although some states notify some POST agencies around the country about officer misconduct, no mechanism tracks such data at the national level. Therefore, researchers seeking data to inform recommendations for improving policing practices must gather information from each state. Even if a researcher were to approach each state to collect use-of-force and misconduct data, he would likely find inconsistencies from one state to another.

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III. TEACHER AND MEDICAL PROFESSIONAL MISCONDUCT DATABASES

This chapter examines two national misconduct tracking systems, for teachers and medical professionals, respectively, and considers the benefits and liabilities of each. This chapter argues that law enforcement should consider setting up its own misconduct database like teachers have rather than be mandated to maintain a database like that for medical professionals. Setting up its own database would allow law enforcement leaders to establish the specifics of how a database would function rather than have Congress dictate how to set one up. However, each database has functionality that could enhance a law enforcement misconduct database. For example, including lost or settled lawsuits attributed to officers, much like information tracked in the medical profession database for malpractice, would help decisionmakers.

A. TWO NATIONAL PROFESSIONAL LICENSING EXAMPLES

NASDTEC and the NPDB track teacher and medical licensing and such derogatory information as misconduct and malpractice nationwide. However, the development and maintenance of these systems are different. NASDTEC maintains a clearinghouse of teaching certificates and teacher discipline from all 50 U.S. states. Additionally, the NPDB tracks medical professionals' licenses and misconduct information nationwide. NASDTEC is a private organization that houses multiple teacher certification databases that states voluntarily opt into using. NASDTEC maintains a teacher certification database and a teacher discipline database. Each state pays annual fees to use the various data sets that NASDTEC maintains.¹²³ Members may access the NASDTEC database through a secure website that requires a username and password for login. Certification authorities enter teacher misconduct into NASDTEC based on each member's criteria for revocation or suspension of a teacher's certificate. Information entered in the clearinghouse is made available to all NASDTEC participants "to protect the interests of children served by the

¹²³ Annette Schwab, personal communication, June 23, 2022.

professional education community within the United States.”¹²⁴ In contrast, the NPDB is a government-owned database funded by per-query user fees for its operation and upkeep. This section analyzes how state certification authorities interface with the NASDTEC and NPDB databases, how information qualifies for entry and maintenance in these systems, and how each exemplifies best practices.

1. Teacher Database

The NASDTEC clearinghouse is a national database that houses information used for issuing professional licensing across the country for teachers. This database, which stores information on sustained teacher misconduct and discipline, has existed in one form or another since 1961 and has resulted in more states contributing data.¹²⁵ The initial iteration of the NASDTEC concept—the Educator Identification Clearinghouse—contained approximately 36 states’ teacher certification and discipline information.¹²⁶ By 1992, all 50 states were using the clearinghouse.¹²⁷ In addition, all U.S. states continue to contribute teacher misconduct information to NASDTEC’s clearinghouse.¹²⁸ In this way, this database is a single authoritative source on teacher discipline, so issues cannot disappear between states.

The NASDTEC misconduct database is accessible online and has self-sustaining funding. NASDTEC generates funding through user fees paid by the agencies that access the clearinghouse, creating a steady funding source for desired improvements.¹²⁹ States contribute information voluntarily, but the ability to query data in the system costs each

¹²⁴ National Association of State Directors of Teacher Education and Certification, “NASDTEC Clearinghouse,” para. 1.

¹²⁵ Annette Schwab and Phillip Rogers, personal communication, June 24, 2022.

¹²⁶ Schwab and Rogers.

¹²⁷ Schwab and Rogers.

¹²⁸ National Association of State Directors of Teacher Education and Certification, “NASDTEC Clearinghouse.”

¹²⁹ Schwab, personal communication.

licensing entity \$4,500 annually.¹³⁰ Stable funding from user fees supports NASDTEC's efforts to keep the systems relevant as technology advances.

Indeed, the NASDTEC system has matured over its 60 years of existence. Before 1997, states shared teacher certification and misconduct information by mailing diskettes to each other. In 1997, internet technology allowed states to submit and view records from across the country without sending computer disks.¹³¹ Additionally, in 2017, NASDTEC was rebuilt to improve security and usability for user groups.¹³² Thus, the system is reliable and will be accessible into the future.

The NASDTEC clearinghouse allows states to determine which misconduct information is tracked, enabling states to set standards based on state laws and rules for their teachers. The criteria set by NASDTEC for entering data into the clearinghouse involve actions that would result in a teacher's certifications being revoked, suspended, or surrendered.¹³³ Each state or jurisdiction determines the specific criteria for activities that can result in the revocation or suspension of a teaching certificate.¹³⁴ For example, in Idaho, the revocation or suspension of a teaching certificate may result from ethical or serious criminal violations.¹³⁵ By comparison, in Michigan, the revocation or suspension of a teaching certificate can only result from criminal activity.¹³⁶ States also have jurisdiction-specific requirements, which allow for "independence and control over education" in each state.¹³⁷ Each state has rules and statutes that define which allegations would merit the scrutiny of a teacher's certificate that could lead to revocation or

¹³⁰ Annette Schwab, personal communication, January 17, 2023.

¹³¹ Schwab and Rogers, personal communication.

¹³² Schwab and Rogers.

¹³³ Schwab, personal communication.

¹³⁴ Schwab.

¹³⁵ Schwab.

¹³⁶ Schwab.

¹³⁷ Emily Woods, "Interview with National Association of State Directors of Teacher Education and Certification (NASDTEC)" (Boulder, CO: State Authorization Network, May 2020), 3, <https://wcetsan.wiche.edu/sites/default/files/files/2020-05/NASDTEC%20Agreement%20Interview%20Rev%204.27.2020.pdf>.

suspension.¹³⁸ Documented sanctions—for example, letters of reprimand—can also be uploaded into a teacher’s profile in NASDTEC’s clearinghouse.¹³⁹ States establish the standards for the information they allow in the NASDTEC system. In this way, the database stores information centrally, but states maintain local control.

The staff employed by state licensing authorities can initiate investigations into reported teacher misconduct. For example, Idaho’s SDE has statutory authority to conduct investigations into teacher conduct, as needed, through the Office of Professional Standards (OPS).¹⁴⁰ The OPS can initiate an investigation based on complaints or other information such as media reporting.¹⁴¹ These initial notifications or complaints received by OPS are obtained through various channels.¹⁴² First, OPS can receive complaints from individual school districts or school administrators, for example, principals who report activity based on state statutes.¹⁴³ When a teacher leaves the employment of a school district based on an event that could “constitute grounds for revocation, suspension or denial of a certificate,” there is a reporting mandate.¹⁴⁴ Under Idaho Code § 33–1208A, a board of trustees of a school district must notify the “chief officer of teacher certification within ten days.”¹⁴⁵ Idaho’s chief officer of certification is the director of teacher certification at the SDE.¹⁴⁶ Such a notification could result in an investigation. Information through media coverage of a local event could also generate an OPS investigation. In sum, complaints from various sources may spur investigations by licensing authorities.

¹³⁸ Schwab, personal communication.

¹³⁹ Schwab.

¹⁴⁰ Idaho Code § 33–1208(3) (2020), <https://legislature.idaho.gov/statutesrules/idstat/title33/t33ch12/sect33-1208/>; Schwab, personal communication.

¹⁴¹ Schwab, personal communication.

¹⁴² Schwab.

¹⁴³ Idaho Code § 33–1208A (2020), <https://legislature.idaho.gov/statutesrules/idstat/title33/t33ch12/sect33-1208a/>.

¹⁴⁴ Idaho Code § 33–1208A.

¹⁴⁵ Idaho Code § 33–1208A.

¹⁴⁶ Annette Schwab, personal communication, December 27, 2022.

When a teacher's actions violate conduct expectations associated with holding a license or a teacher is suspected of breaking certain laws, certification authorities can sanction a teacher's license; however, due process rights protect teachers from complaints when sufficient evidence does not exist. If a complaint or other information—for instance, a criminal conviction—indicates a teacher did something wrong, OPS reviews the information to decide whether a teacher's certification should be revoked or suspended based on the conduct.¹⁴⁷ Conduct that may lead to denial, revocation, or suspension of a teacher's license includes gross neglect of duty, incompetence, the breach of a teaching contract, or the loss of a license in another state.¹⁴⁸ Conduct that would trigger a teaching certificate's being permanently revoked under Idaho Code § 33–1208 includes aggravated assault, aggravated battery, injury or death to a child, sexual abuse of a child, and rape.¹⁴⁹ If a teaching certification is revoked or suspended for other misconduct, it is not permanent, and a teacher may reapply once a sanction becomes final. Contested sanctions against a teacher's certification in Idaho are handled through administrative hearings using civil legal standards. Fortunately, teachers whose certification is in jeopardy have due process in the form of a hearing, as detailed in Idaho Code § 33–1208.¹⁵⁰ In addition, the Idaho SDE has procedures to review teaching certificates for suspension or revocation when a teacher violates the terms of certification. The due process afforded by the Idaho Code and Idaho Administrative Procedures Act are in effect before any adverse information is attached to a teacher's record. Thus, review complaint processes protect the public, and due process protects the teacher's right of review.

Teachers do not have the ability to self-query NASDTEC but must work through a licensing authority for information. A subscription is required to query NASDTEC's clearinghouse. However, teachers should be aware of information added to their NASDTEC records based on interactions with their licensing authorities.¹⁵¹ The licensing

¹⁴⁷ Schwab.

¹⁴⁸ Idaho Code § 33–1208(1).

¹⁴⁹ Idaho Code § 33–1208.

¹⁵⁰ Idaho Code § 33–1208(4).

¹⁵¹ Schwab, personal communication, February 14, 2023.

authorities make every effort to notify a teacher of a pending action.¹⁵² However, individual teachers have due process rights, and it is up to each individual to exercise these rights before derogatory information goes into their profiles.¹⁵³ Teachers wanting information about their NASDTEC records must request it through their licensing authority, as there is no self-query option.

NASDTEC houses information relevant to those with a valid need to know but limits access to protect individuals' data. The public may access NASDTEC's website on the internet, but the website has secured areas for certification purposes. Only those with a username and password can access these locked-down areas, which contain sensitive and potentially embarrassing information. Being granted access to NASDTEC is a multi-step process that starts at the state level to determine who needs access and permissions to add or modify information.¹⁵⁴ An entity requesting access to NASDTEC completes an application, first submitted to the state coordinator for approval. If approved, the state coordinator sends the application to NASDTEC for review. NASDTEC then denies or grants access and issues a username and password.¹⁵⁵ This protocol allows NASDTEC's secured areas to keep collated certification information safe.

Deliberate protections of access to these systems ensure only those with an absolute need to know can access combined information from all 50 states and some Canadian provinces. In Idaho, only two employees have privileges to read and write within NASDTEC's systems.¹⁵⁶ These two people within the OPS are the only ones who can modify the status of teaching certificates and augment the records of individual teachers in Idaho.¹⁵⁷ Further, information is added to a teacher's record only after going through the available due process.¹⁵⁸ For example, additions to a teacher's profile might include

¹⁵² Schwab.

¹⁵³ Schwab.

¹⁵⁴ Schwab.

¹⁵⁵ Schwab.

¹⁵⁶ Schwab.

¹⁵⁷ Schwab.

¹⁵⁸ Schwab.

uploading documents associated with a hearing officer's decision or a finalized letter of reprimand.¹⁵⁹ Once a disciplinary record is entered into NASDTEC, a court order is required for removal.¹⁶⁰ Limiting read-and-write authority makes it easier to determine who entered the information and feasibly assists with consistency in how records look.¹⁶¹ Protecting information by limiting access allows those interacting with the database to be confident of its validity.

Certifying authorities can remove records from the NASDTEC database only with a court order, so it would be hard for an individual to misuse the system.¹⁶² Those who manage database information can add clarifying or mitigating documentation concerning a disciplinary record.¹⁶³ An employee from the SDE explained that in her 14 years working there, she had never seen a court order requiring the removal of information from a teacher's NASDTEC record. However, she has seen clarifying information added to the records.¹⁶⁴ Information in NASDTEC is in the public record, so it would be difficult to abuse this information. The system's user agreement does state "that failure to abide by these terms and conditions may limit or impact continued participation in the Clearinghouse."¹⁶⁵ Although the information in NASDTEC is public, a strength of the system is the ability to query across all states in one search. Strict guidelines on removing data from the system allow licensing authorities to trust its reliability and completeness.

A teaching certificate's revocation, suspension, or surrender requires OPS staff to respond to several questions within the NASDTEC system:

- Will the subject of the report retain their license/certification in your state/jurisdiction?
- Is the reported action based on a criminal conviction?

¹⁵⁹ Schwab.

¹⁶⁰ Schwab.

¹⁶¹ Schwab.

¹⁶² Schwab.

¹⁶³ Schwab.

¹⁶⁴ Schwab.

¹⁶⁵ Jimmy Adams, personal communication, February 11, 2023.

- Is the action based upon sexual misconduct that did not result in a criminal conviction?
- Is the action based upon non–sex related acts or crimes committed against a child?
- Is the action based upon a drug or alcohol related misconduct?
- Is the action based upon any manner of test or document fraud?
- Is the action based upon the misuse of school computers or other equipment?
- Is the action based upon fiscal impropriety?
- Is the action based upon educator employment contract violation?
- Is the action based upon the failure to repay a debt owed covered by state statute?
- Is the action based upon an action taken in another jurisdiction?¹⁶⁶

The responses are saved in a teacher’s record and are then searchable by other state licensing authorities. These NASDTEC questions broadly capture conduct that could lead to the suspension, revocation, or denial of a teaching certificate anywhere and store information the teaching profession agrees is essential to know for handling certification.

The NASDTEC database covers a massive scale. Before the 2021–2022 school year, the National Center for Education Statistics reported approximately 3.2 million teachers in public schools and 500,000 teachers in private schools, totaling 3.7 million teachers in the United States.¹⁶⁷ NASDTEC estimates that “6,000 educators each year have adverse actions taken against their certificate or license.”¹⁶⁸ As of June 2022, the NASDTEC clearinghouse contains approximately 115,396 misconduct records.¹⁶⁹ Teachers are in every community across the nation, and tracking their misconduct is a huge undertaking.

Even though NASDTEC serves as a national database for tracking teaching misconduct, NASDTEC officials refer to it as an interstate database. The federal government does not mandate the sharing of misconduct information between states, nor

¹⁶⁶ Schwab, personal communication.

¹⁶⁷ “Fast Facts: Back-to-School Statistics,” National Center for Education Statistics, accessed July 15, 2022, <https://nces.ed.gov/fastfacts/display.asp?id=372>.

¹⁶⁸ “ED ID Clearinghouse,” National Association of State Directors of Teacher Education and Certification, accessed January 21, 2023, https://www.nasdtc.net/page/ASSOC_CH_REG.

¹⁶⁹ Schwab and Rogers, personal communication.

does it dictate background checks on teaching candidates; however, all 50 states require background checks for teachers.¹⁷⁰ In an interview in 2019, NASDTEC’s executive director, Phillip S. Rogers, stated, “I very loosely refer to our clearinghouse as a national database, but I would never say that in front of my members. It [NASDTEC] is an interstate database.”¹⁷¹ Rogers also indicates that national education policy sometimes creates problems for NASDTEC because “when the Feds get involved in education policy, it usually does not end well.”¹⁷² NASDTEC is hoping that by creating an interstate compact, the federal government will “recognize [it] and leave [it] alone.”¹⁷³ Even though NASDTEC tracks teachers nationally and internationally, NASDTEC’s leadership is sensitive to the perspective that its members opt in and are not forced by the government to be part of this organization, so there is nuance in not calling the NASDTEC clearinghouse a national database.

Despite the maturity of the NASDTEC clearinghouse, some misconduct records have not been uploaded into the system. In 2016, an investigative report found that approximately 1,400 teachers who had their teaching licenses permanently revoked by states did not have records in NASDTEC. Due to staff turnover at the Texas Education Agency, Texas did not report hundreds of serious misconduct records to NASDTEC.¹⁷⁴ Even with the best intentions for misconduct reporting, 100 percent reporting is not a realistic threshold for an enterprise-wide data set. A database like NASDTEC needs the pertinent information included to offer the maximum value to those who query it for the issuance of teaching licenses.

¹⁷⁰ Department of Education, *Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools* (Washington, DC: Department of Education, 2022), viii, <https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/>.

¹⁷¹ Woods, “Interview with National Association of State Directors,” 4.

¹⁷² Woods, 4.

¹⁷³ Woods, 4.

¹⁷⁴ Steve Reilly, “Broken Discipline Tracking Systems Let Teachers Flee Troubled Pasts,” *USA Today*, February 14, 2016, <https://www.usatoday.com/story/news/2016/02/14/broken-discipline-tracking-system-lets-teachers-with-misconduct-records-back-in-classroom/79999634/>.

2. Medical Professional Database

Another system that stores professional licensing and misconduct information in a national database is the NPDB, which tracks discipline and malpractice information for medical professionals. Unlike the teaching database that launched and has been maintained voluntarily by all 50 states, the NPDB grew out of federal mandate related to state licensing. While NASDTEC is an interstate database that eschews federal authority, the NPDB is part of a federal regulation of healthcare. The NPDB has housed medical professional discipline and malpractice information since 1987, when Congress passed Section 5 of the Medicare and Medicaid Patient and Program Protection Act, codified under Section 1921 of the Social Security Act, which authorized the collection of information on sanctions taken against healthcare professionals by individual states.¹⁷⁵ In 1990, Congress modified Section 1921 to include “any negative action or finding by a state licensing authority, peer review organization, or private accreditation entities.”¹⁷⁶ This law requires all 50 states and more than 24,000 hospitals and other healthcare entities to use the NPDB.¹⁷⁷ The U.S. Department of Health and Human Services (HHS) states on its website that the NPDB “is a web-based repository of reports used as a workforce tool to enhance professional review efforts, and prevent health care fraud and abuse, with the ultimate goal of protecting the public.”¹⁷⁸ This section analyzes how licensing authorities in states use the NPDB and how information is determined to be eligible for entry into the system.

The creation of the NPDB introduced some policy challenges. In 1986, President Ronald Regan signed the Health Care Quality Improvement Act, designed to protect employers and boards from liability for “disclosure . . . of previous damaging or

¹⁷⁵ Department of Health and Human Services, Health Resources and Services Administration, *NPDB Guidebook* (Rockville, MD: Department of Health and Human Services, 2018), A-3.

¹⁷⁶ Department of Health and Human Services, 18.

¹⁷⁷ Department of Health and Human Services, “What Is the NPDB?,” National Practitioner Data Bank, December 2022, <https://www.npdb.hrsa.gov/resources/whatIsTheNPDB.jsp>.

¹⁷⁸ Department of Health and Human Services.

incompetent performance.”¹⁷⁹ By 1988, HHS began working through the logistics of creating the NPDB, which included “qualified immunity from antitrust laws” for hospitals when making decisions about hiring medical professionals.¹⁸⁰ By 1990, the NPDB was collecting malpractice payments and other “adverse” actions taken against medical professionals.¹⁸¹ As the NPDB has matured, it has required policy to dictate needed changes.

Like the NASDTEC clearinghouse, funding for the NPDB comes through user fees collected from those who query the system, and no public money funds this system. The NPDB reports in its latest guidebook that it does not “receive any federal appropriations from Congress.”¹⁸² The NPDB user fees come in two forms: self-queries by individuals and queries by employers such as hospitals.¹⁸³ Both pay \$2.50 per query in the system.¹⁸⁴ There is also a digitally certified self-query option, which costs \$3.00 per query.¹⁸⁵ In 2022, there were approximately 1.07 million physicians, 312,000 pharmacists, and 5.3 million nurses in the United States.¹⁸⁶ Totaling these three numbers, the NPDB may store 6.5 million records, but only medical professionals with “medical malpractice payments and certain adverse action” have records within the NPDB.¹⁸⁷ The NPDB requires healthcare organizations to report disciplinary actions against physicians and dentists;

¹⁷⁹ Department of Health and Human Services, “NPDB History,” National Practitioner Data Bank, accessed November 25, 2022, <https://www.npdb.hrsa.gov/topNavigation/timeline.jsp>.

¹⁸⁰ Department of Health and Human Services.

¹⁸¹ Department of Health and Human Services.

¹⁸² Department of Health and Human Services, *NPDB Guidebook*, G-1.

¹⁸³ Department of Health and Human Services, G-1.

¹⁸⁴ Department of Health and Human Services, “How Much Does It Cost to Query the NPDB?,” National Practitioner Data Bank, accessed January 28, 2023, <https://www.npdb.hrsa.gov/faqs/q2.jsp>.

¹⁸⁵ Department of Health and Human Services, “How Much Does a Self-Query Cost?,” National Practitioner Data Bank, accessed January 28, 2023, <https://www.npdb.hrsa.gov/faqs/sq2.jsp>.

¹⁸⁶ Frederic Michas, “U.S. Physicians: Statistics and Facts,” Statista, October 19, 2021, <https://www.statista.com/topics/1244/physicians/>; Matej Mikulic, “Pharmacists Number United States 2001–2021,” Statista, May 2022, <https://www.statista.com/statistics/185723/number-of-pharmacists-in-the-us-since-2001/>; Kasee Wiesen, “How Many Nurses Are There in the U.S.—2022 State Wise Data,” NursingProcess.org, accessed November 25, 2022, <https://www.nursingprocess.org/how-many-nurses-are-there-in-the-us.html>.

¹⁸⁷ Department of Health and Human Services, “Querying the NPDB,” National Practitioner Data Bank, accessed January 28, 2023, <https://www.npdb.hrsa.gov/hcorg/aboutQuerying.jsp>.

however, healthcare organizations can report disciplinary actions against other healthcare professionals.¹⁸⁸ Nurses are the most reported profession to the NPDB.¹⁸⁹ HHS reported answering 10.6 million query responses in 2021.¹⁹⁰ The volume of queries to the NPDB, paid for by end users, appears to create an appropriate funding stream to maintain the system.

A government authority issues professional medical licenses within each state. For example, the DOPL processes and adjudicates professional medical licensing in Idaho. Only specific DOPL staff have access to the NPDB.¹⁹¹ States require the renewal of medical licensing every one to two years.¹⁹² Licensing is crucial for medical professionals as it is illegal in all states to practice medicine without a license, and it is a felony to practice medicine in Idaho without one.¹⁹³ Recurring licensing requirements allow authorities to evaluate any new information available to adjudicate licensing applications. Most states require licensing renewal either annually or every other year.¹⁹⁴ The frequency of licensing renewal is different for teacher certifications as the interval for renewal is longer. For example, in Idaho, renewal for a teaching license is required every five years, and in Utah, renewal is every three to seven years based on the level of teaching certificate one holds.¹⁹⁵

¹⁸⁸ Relias Media, “NPDB Reporting Protected by Law in Some Cases, Gray Areas Problematic,” *Hospital Peer Review*, July 1, 2021, <https://www.reliasmedia.com/articles/148166-npdb-reporting-protected-by-law-in-some-cases-gray-areas-problematic>.

¹⁸⁹ Relias Media.

¹⁹⁰ Department of Health and Human Services, “What Is the NPDB?”

¹⁹¹ Stephanie Lotridge, personal communication, December 7, 2022.

¹⁹² “About Physician Licensure,” Federation of State Medical Boards, accessed November 22, 2022, <https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/guide-to-medical-regulation-in-the-united-states/about-physician-licensure/>.

¹⁹³ Idaho Code § 54–1804(3) (2019), <https://legislature.idaho.gov/statutesrules/idstat/title54/t54ch18/sect54-1804/>; Virginia Rowthorn et al., “Not above the Law: A Legal and Ethical Analysis of Short-Term Experiences in Global Health,” *Annals of Global Health* 85, no. 1 (June 2019): 3, <https://doi.org/10.5334/aogh.2451>.

¹⁹⁴ Federation of State Medical Boards, “About Physician Licensure.”

¹⁹⁵ “Renewal of an Idaho Certificate,” Idaho State Department of Education, accessed February 21, 2023, <https://www.sde.idaho.gov/cert-psc/cert/apply/renewal.html>; Utah State Board of Education, “Renewal Categories” (Salt Lake City: Utah State Board of Education, 2018), 1.

Every state in the United States has an established mechanism for medical professionals to obtain and renew licensing.

The Idaho DOPL has a unit that completes investigations into complaints it receives regarding medical professionals to determine their legitimacy. A team of investigators with specific knowledge of the relevant rules and statutes investigates such complaints.¹⁹⁶ In Idaho, these investigators must possess licensing from the Board of Medicine to conduct investigations.¹⁹⁷ The other board investigators in Idaho are not required to have medical licensing and rely on advisory committees or professional reviewers for technical questions.¹⁹⁸ If the investigation determines the complaint violates the administrative or licensing regulations, investigators forward the case to the responsible board (e.g., board of medicine or board of pharmacy).¹⁹⁹ In addition to administrative investigations that can lead to licensing sanctions, Idaho Code § 54–1814—Grounds for Medical Discipline—lists any felony convictions and the use of false statements, documents, or credentials in obtaining licensing, along with 27 other criteria for potential physician discipline.²⁰⁰ The responsible oversight board considers the investigation’s findings and makes final determinations, which may include revocations, suspensions, and license denials.²⁰¹ If a board hands down sanctions, a document called a board order communicates this result.²⁰² A board order is a document issued by a specific board (e.g., medicine, nursing, or pharmacist) to finalize the process when an investigation confirms wrongdoing and the board issues sanctions.²⁰³ All board orders are uploaded into the NPDB.²⁰⁴ Board orders cannot be removed from the system; however, licensees may file responses clarifying the

¹⁹⁶ Berk Fraser, personal communication, November 4, 2022.

¹⁹⁷ Berk Fraser, personal communication, January 17, 2023.

¹⁹⁸ Fraser.

¹⁹⁹ Fraser.

²⁰⁰ Idaho Code § 54–1804.

²⁰¹ Fraser, personal communication.

²⁰² Fraser.

²⁰³ Fraser.

²⁰⁴ Fraser.

record from their perspective.²⁰⁵ Therefore, investigations by DOPL staff can lead to a board's handing down serious sanctions against a medical professional's license.

Each state dictates its criteria for entering most information into the NPDB, and the standard can differ significantly depending on where a medical professional lives. DOPL may only upload board orders and license denials in an NPDB record.²⁰⁶ The act of entering a board order into the NPDB notifies other states of a new record and allows them to act should the person be licensed in multiple states. Any additional action taken by another state against a medical professional's license is governed by its rules and laws. Because each state creates regulations and laws that govern medical certification, not all violations translate from one state to another. If another state's action requires revoking a medical professional's license in Idaho, DOPL investigative staff could prepare a report for the appropriate board's consideration.²⁰⁷ Based on the *NPDB Guidebook*, malpractice settlements must be uploaded into the database, and failure to do so can result in civil monetary penalties.²⁰⁸ Additionally, organizations must report the following to the NPDB: when restrictions affect a medical practitioner's privileges for more than 30 days or "a physician surrenders his privileges to avoid an investigation or the consequences of it."²⁰⁹ Because medical professionals can be licensed in multiple states simultaneously, it is vital that each state enter and review the information in the system, as it could affect licensing elsewhere.

Criminal activity committed by a medical professional can lead to a police investigation, which may affect licensing if this information is discovered or reported and included in the NPDB. Any police agency receiving information related to illegal activity can complete investigations within its jurisdiction. Suppose a criminal investigation leads to charges for a medical professional. In that case, the licensing body may eventually learn about these charges, as most states require fingerprint-based background checks as part of

²⁰⁵ Lotridge, personal communication.

²⁰⁶ Fraser, personal communication; Lotridge, personal communication.

²⁰⁷ Stephanie Lotridge, personal communication, February 11, 2023.

²⁰⁸ Department of Health and Human Services, *NPDB Guidebook*, A-8.

²⁰⁹ Relias Media, "NPDB Reporting Protected by Law in Some Cases."

the license application process.²¹⁰ Criminal charges are reported through the National Crime Information Center, which is queried as part of a fingerprint-based background check. The discovery of criminal charges by the licensing authority could come from a tip from the investigating agency or in a background check during the initial or renewal application for a medical license.²¹¹ A criminal conviction could violate licensing provisions, resulting in discipline and a corresponding board order. Although criminal charges are not directly reported to the NPDB, a licensing authority would conceivably discover any unknown or concealed information from a criminal conviction during the next renewal period for the licensee.

Hospitals and surgery centers must report certain actions taken against medical professionals, and an incident report in the NPDB may cause long-term challenges for a medical professional. A report to the NPDB gives doctors limited recourse as good faith reporting is required, and fines can be levied against hospitals by the Office of Inspector General.²¹² All medical professionals in the United States can have information submitted to the NPDB for “malpractice payments, federal and state licensure and certification actions, adverse clinical privileges actions, and adverse professional society membership actions.”²¹³ The NPDB is described in one article as being viewed as “a hammer by many physicians, a potential threat to their careers.”²¹⁴ However, Sarah Coyne explains, “NPBD is supposed to be about protecting patients, not targeting physicians.”²¹⁵ Although reporting to the NPDB can create challenges for a medical professional, by design, the databank exists to protect medical patients, not medical professionals.

²¹⁰ David, “How to Get a Washington Physician License in 6 ‘Simple’ Steps!,” Medical License Pro, June 4, 2021, <https://www.medicallicensepro.com/6-steps-to-a-washington-state-physicians-license/>; Federation of State Medical Boards, “Criminal Background Checks” (Washington, DC: Federation of State Medical Boards, 2023), <https://www.fsmb.org/siteassets/advocacy/key-issues/criminal-background-checks-by-state2.pdf>.

²¹¹ Fraser, personal communication.

²¹² Relias Media, “NPDB Reporting Protected by Law in Some Cases.”

²¹³ Relias Media.

²¹⁴ Relias Media.

²¹⁵ Relias Media.

Even with the existence of the NPDB and a massive guidebook on who and what to report, medical professionals have sometimes been allowed to “move on” and continue practicing without any reporting to the NPDB. An example is Christopher Duntsch, dubbed “Dr. Death” in the news media, who is currently serving life in prison in Texas for injury to an elderly person based on a botched surgery.²¹⁶ Over Duntsch’s career, hospitals could have reported conduct that would have flagged Duntsch in the NPDB, alerting future employers and potentially protecting some of the patients who suffered injury or death from his surgeries.²¹⁷ However, plenty of other examples show hospitals allowing medical providers to leave without a report to the NPDB because they fear litigation.²¹⁸ In some cases, the fear of tarnishing a medical professional’s reputation and the threat of litigation seem to outweigh the immunity such service providers as hospitals have for reporting in good faith to the NPDB.²¹⁹ Even with strict regulations on reporting to the NPDB, which comes with good faith immunity, some hospitals bypass reporting by finding nuance in the reporting requirements.

Although the NPDB amasses information in a nationwide clearinghouse, only specific entities can view records. For example, prospective employers, hospitals, licensing authorities, and fraud investigators can query the database.²²⁰ By prohibiting the public and other third parties, for example, attorneys, from querying the database, the NPDB protects medical professionals’ reputations and enables them to learn from their mistakes. However, tracking misconduct and malpractice information allows licensing authorities to monitor for those who make too many mistakes. In addition, stored data are memorialized and available for any potential litigation. Having the ability to keep track of misconduct in the medical field but not having it widely accessible seems to be a balance that works for medical professionals.

²¹⁶ Credentialing Resource Center, “Reflecting on the Christopher Duntsch Case, Three Years Later,” *Medical Staff Briefing* 29, no. 3 (March 2019): 1.

²¹⁷ Credentialing Resource Center, 1, 4.

²¹⁸ Credentialing Resource Center, 4.

²¹⁹ Relias Media, “NPDB Reporting Protected by Law in Some Cases.”

²²⁰ Department of Health and Human Services, “Check Your Report: FAQs,” National Practitioner Data Bank, accessed November 22, 2022, <https://www.npdb.hrsa.gov/faqs/d8.jsp>.

B. CONCLUSION

The teacher's NASDTEC clearinghouse and the medical profession's NPDB have different functions that track misconduct information for each group. For instance, the NPDB requires that malpractice lawsuits be entered into the system once damages are awarded or a case is settled. NASDTEC has questions that must be answered to broadly define why an entry is warranted on a teacher's record. The NASDTEC system and the NPDB offer secure databases that are accessible through the internet with the use of a username and password by a vetted user. Additionally, all 50 states use both databases, so a complete profile for teachers and medical professionals might well exist. Each system has differing oversight, as NASDTEC is a membership organization for teacher licensing authorities, but HHS governs the NPDB. These nationwide databases require a funding source, and both examples demonstrate how user fees can sustain a national system. Such funding is vital, but the reviewed systems do not need government funding. Medical professionals can self-query in the NPDB, but teachers cannot do the same in NASDTEC. In sum, self-query appears to be a best practice as it allows those who want to know whether they have information on their record the ability to check (see Table 1). The functionalities identified in the two systems appear to serve the needs of each profession's licensing apparatus and assist in keeping disqualified persons in these professions from leaving one jurisdiction only to work in another.

Table 1. NASDTEC/NPDB Comparison

	NASDTEC Teachers	NPDB Medical Professionals
Nationwide	✓	✓
Stable Funding Source	✓	✓
Self-Query Function		✓
Government Run		✓
Web Based	✓	✓
Canada Included	✓	

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IV. ANALYSIS AND CONCLUSIONS

Historically, law enforcement actions and case law have caused agencies to pivot from tactics deemed no longer relevant. Recently, the killing of George Floyd and repeated excessive use-of-force incidents nationally have influenced law enforcement practices. Some people perceive that the law enforcement profession retains officers with patterns of misconduct. The research reviewed for this thesis demonstrates vast differences in how states track law enforcement officers' misconduct. Politicians proclaim the need for tracking misconduct in light of public events. Although no national-level legislation mandates the tracking of police misconduct, the George Floyd Justice in Policing Act of 2021, introduced by Representative Bass, did propose it.²²¹ Additionally, President Biden's 2022 executive order mandates that federal agencies track federal law enforcement misconduct and encourages state and local law enforcement to enter records into this national tracking database.²²² State and local law enforcement leaders across the country need to decide whether to design a system for tracking officer misconduct on their terms, voluntarily participate in the federal government's forthcoming system, or potentially be forced into using the federal system at some point in the future.

This thesis examined other professions that have set up national databases to track misconduct among their members. It reviewed NASDTEC, the database for teachers, and the NPDB, the medical professional database, to assess their applicable functionality to a law enforcement version. Teachers' member-created misconduct database is shared nationally. Congress created a system for tracking medical professionals' misconduct through legislation. Teachers and medical professionals are required to adhere to established standards to maintain their licenses. Ultimately, these licensing systems protect the public from teachers and medical professionals who violate the standards set by their professions. Although this review did not analyze quantitative data, arguably, these

²²¹ George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1280>.

²²² White House, "President Biden to Sign Historic Executive Order."

databases lead to a more professional workforce because they facilitate the removal of members who violate established standards and track them.

Some agencies and states already track police officer misconduct. Entities that track information related to officers include individual agencies, state POST or equivalent certification bodies, prosecutors' offices, and IADLEST—they all house an ever-growing number of decertified police officers.²²³ Some state POST agencies have had the authority to issue, track, and revoke certification since the 1960s, but a few states do not have POST agencies at all.²²⁴ The current challenge is the inconsistency in collecting this information, contributing to it, storing it, and sharing it.

Having agencies track police misconduct and report it based on each state's requirements does not improve overall tracking, and there have been few serious attempts to require broader tracking. The current system has worked with mixed results since the creation of state POST academies in the 1960s. However, agencies in most places are not required to notify POST of sustained misconduct. So how does a POST agency determine whether an officer's conduct violates the terms of one's police certification? Additionally, tracking police misconduct at the individual agency level makes it very difficult for other agencies to discover negative information when making hiring decisions related to certified officers, specifically those from other states. This lack of tracking finds agencies at the mercy of disclosures made by out-of-state applicants or discovery based on a thorough background check. Additionally, tracking misconduct only at the agency level makes it nearly impossible for prosecutors to uncover negative officer conduct for discovery purposes.²²⁵ Tracking police misconduct only at the agency level potentially allows agencies to conceal negative information.

²²³ Institute for Innovation in Prosecution, *Tracking Police Misconduct: How Prosecutors Can Fulfill Their Ethical Obligations and Hold the Police Accountable* (New York: John Jay College, 2021), 2, <https://static1.squarespace.com/static/5c4fbee5697a9849dae88a23/t/60ddf2955e591d1e4f2e2132/1625158294057/FINAL+Tracking+Police+Misconduct+Guide.pdf>.

²²⁴ Hickman, "Peace Officer Certification and the National Decertification Index," 2.

²²⁵ Institute for Innovation in Prosecution, *Tracking Police Misconduct*, 4.

A. POLICY RECOMMENDATIONS

Teachers and medical professionals receive licenses subject to periodic review. Law enforcement agencies should examine an officer's record related to certification not only at issuance and upon termination but throughout his or her career. Reviews ought to be a fluid process because violations of a code of conduct may happen at any time during the life of the certification. POST agencies requiring sustained misconduct reporting, or discovery through other means, may make decisions to act against a licensee based on the state's established certification requirements. Law enforcement across the nation should consider issuing licenses to officers that must be renewed periodically, as done in Texas, North Dakota, and Rhode Island.²²⁶ POST agencies can scrutinize an officer's certification anytime; however, they generally do not receive important information about sustained misconduct to trigger an inquiry.

All states should have a certification body to issue and maintain certification standards for police officers. This organization would facilitate reporting *all* decertified officers to the NDI. The expansion of the NDI could provide the mechanism for states to then collate sustained officer misconduct data on a national level in the same database. Based on the infrastructure of IADLEST and state POST directors who form it, the NDI could be a good place to house sustained misconduct data for law enforcement officers. With its standing and reputation within the law enforcement community, the Commission on Accreditation for Law Enforcement Agencies (CALEA) could provide auditing for agencies if the tracking of misconduct information became a requirement.

The following policy recommendations offer potential starting points to create a database to track police misconduct across the country. The urgency of implementing such a database will drive how much input law enforcement has in its design and setup.

²²⁶ Goldman and Purro, "Revocation of Police Officer Certification," 542n4; Mulvaney, "To Ensure Good Police."

1. Do Nothing

As of this writing, the push to reform policing appears to be slowing, and in some jurisdictions, the push to defund the police that gathered support seems to be reversing itself. The calls to defund the police that dominated the media throughout the COVID-19 pandemic are dwindling from the headlines, and some funding that had been withdrawn is being reinstituted.

The first option in recommending how law enforcement should move forward with tracking police misconduct is to change nothing. This situation leaves law enforcement with inconsistencies in tracking police misconduct within individual agencies if tracked at all.

POST is responsible for awarding one's certification, but it generally relies on other sources for the information that could trigger the revocation of that certification. In 2011, Hickman found that law enforcement agencies in 43 states were responsible for notifying POST of an officer leaving their agencies; however, only 13 states required agencies to report disqualifying conduct.²²⁷ By 2015, the number of states requiring that disqualifying misconduct be reported to POST increased to 22 states, but one state fell off the list for the basic reporting of separation to POST (see Table 2).²²⁸

Table 2. States Requiring Reporting of Disqualifying Conduct to a Certifying Body, 2015.²²⁹

Alaska	Maine	South Carolina
Arizona	Mississippi	Texas
Arkansas	Nevada	Utah
Delaware	New Hampshire	Virginia
Georgia	New Mexico	Washington
Idaho	North Carolina	Wyoming
Kansas	Oklahoma	

²²⁷ Hickman and Atherley, *POST Agency Certification Practices*, 7.

²²⁸ Hickman, *POST Agency Certification Practices*, 5.

²²⁹ Source: Hickman, personal communication, May 11, 2023.

This variance means in almost half the states (20 of 42) where officer separation must be reported to POST, agencies can choose, intentionally or otherwise, to suppress why an officer leaves an agency.

Additionally, eight states do not even require agencies to notify POST of officers who leave an agency.²³⁰ As noted, agencies may allow an employee to resign or retire even though the reason for leaving the agency could have led to termination and would support reviewing an officer's certification for potential revocation. Without the proper information, POST agencies will continue to struggle to make decisions on officers' certification, and this continued practice makes it easier for bad officers to remain in the law enforcement profession.

Most POST agencies across the United States require agencies to notify them when an officer separates, and POST has a role in determining whether candidates are certifiable once hired by a law enforcement agency. As previously stated, 42 out of 50 POST agencies require the reporting of officer separations, but the information reported to POST varies widely.²³¹ This gap leaves the certification body guessing whether conduct that would violate the terms of an issued certification prompted the separation and whether an officer should maintain his or her issued certification for future employment. This lack of transparency can lead to officers remaining in law enforcement when they should be decertified, and a prospective employer cannot know the background of potential hires.²³² Adopting a questionnaire similar to NASDTEC's could give POST agencies an in-depth glimpse into why an officer leaves an agency. Patterning a law enforcement database after NASDTEC's system would make this information viewable by all POST agencies in the country. Additionally, this access gives agencies hiring lateral officers a place to determine whether an applicant has previous misconduct issues. Having all 50 states report officer separations to POST similarly would help POST make certification decisions and agencies make hiring decisions.

²³⁰ Hickman, *POST Agency Certification Practices*, 5.

²³¹ Hickman, 5.

²³² Hickman and Atherley, *POST Agency Certification Practices*, 8.

A history of sustained misconduct should not automatically disqualify an applicant. Rather, knowing previous misconduct information would allow an agency to make hiring decisions with full knowledge. Law enforcement officers can make mistakes and maintain their employment, but sustained misconduct needs to be known. Agencies are not looking to hire perfect people, but they do need to know the conduct history of those they are considering employing as officers, deputies, or troopers. Law enforcement agencies need access to as much information as possible about potential police candidates, including misconduct information, when making hiring decisions.

The research conducted for this thesis shows an affirmative effort to track misconduct within federal law enforcement, but requiring state and local law enforcement to do the same faces serious challenges. At the end of the day, whether law enforcement agencies like it or not, POSTs issue law enforcement certifications, and they must have access to all information about individuals when making certification decisions.

2. Pattern after NASDTEC for Teachers

If law enforcement tracked officer misconduct in a system like NASDTEC, it would require some work. To start, the states that do not already have a POST agency need to establish one. This establishment would provide a foundation for all states to certify officers and, therefore, create the mechanism to decertify officers for cause. Only a handful of states need laws in place to create such an entity to certify and decertify officers. Once all 50 states have this entity in place, the tracking of officer decertification information should remain within IADLEST's NDI, accessible to law enforcement agencies for hiring purposes. With a little effort from a few states, all 50 states could share certification status information.

The adoption of a questionnaire similar to NASDTEC's would give POST agencies insight into why an officer leaves a previous agency. Because no national standard guides who becomes or remains a police officer, law enforcement leaders would need to collaborate on what broad information would be desired in a questionnaire for entries into such a database. A few grievous violations that seem relevant would include a sustained lack of candor, excessive use-of-force incidents, domestic violence, and any felony

convictions. Law enforcement leaders might include more issues in an initial version of this questionnaire. The NASDTEC questionnaire has enough initial information for a licensing authority in another state to quickly determine a need for follow-up, and this determination would be the hope for a law enforcement version. Agencies should complete this questionnaire as its notification to a POST agency of an officer separation and not be something POST fills out based on the information provided by an agency. The inclusion of qualified immunity for agencies reporting sustained misconduct in good faith is an absolute element of this policy recommendation, or the agency would become subject to litigation.²³³ Designing a questionnaire similar to NASDTEC's would allow POST agencies across the country to view all sustained officer misconduct information when an officer applies for certification in another state.

The NASDTEC database is voluntary for states, and participation from across the country may be surprising. If law enforcement decides to start an officer misconduct database, the effort could be doomed from the start without significant motivation for agencies to contribute. Making participation in a misconduct database voluntary may entice some to participate, but this freedom could also lead to many agencies not contributing data for various reasons. The FBI's National Use-of-Force Database was nearly scrapped due to the lack of participation.²³⁴ Nationally, law enforcement agencies have not voluntarily contributed the requested data.

The teaching profession is very heavily unionized; however, this has not kept those issuing teaching certifications from tracking misconduct information for educators. Law enforcement also has large areas of the country represented by unions. Unions negotiate contracts with individual agencies and the governance that oversees them. Expansion to all 50 states, with POST agencies responsible for issuing certifications and the oversight of such certifications, potentially removes the ability of unions to negotiate out of the certification requirements. POSTs represent the whole of policing in a state, not of individual agencies.

²³³ Goldman and Purro, "Revocation of Police Officer Certification," 576.

²³⁴ Jackman, "FBI May Shut Down Police Use-of-Force Database."

3. Pattern after the NPDB for Medical Professionals

When Congress formed the NPDB, it also recommended a similar system for law enforcement. The Law Enforcement and Correctional Officers Employment Registration Act of 1996 “would have established a [national] registry at the DOJ that would have listed all criminal justice agencies for which an officer had worked,” and it would have also tracked the revocation of an officer’s certification/license.²³⁵ This legislation did not get out of committee, and U.S. Representative Schumer objected to tracking all officers by asking, “Why not just [track] the few bad officers?”²³⁶ The Law Enforcement and Correctional Officers Employment Registration Act of 1996 did not garner enough support from Congress to create such a system for law enforcement, but after the George Floyd murder in 2020, Congress had an interest in changing law enforcement practices.

One function of the NPDB that could translate well into a law enforcement version is the inclusion of lawsuits filed against license holders. Law enforcement agencies regularly learn of officer misconduct through tort claims, which they receive against their personnel. Some tort claims are valid and result in full-blown lawsuits. However, many tort claims are invalid and not pursued. Nevertheless, the inclusion of tort claims, lawsuits, and judgments in a law enforcement misconduct database could be helpful to agencies in discovering undesirable patterns or appalling officer actions.

4. Hybrid Approach

Using a hybrid approach that borrows from NASDTEC and the NPDB would be law enforcement’s best choice, as functionality within each system could be beneficial in a law enforcement version. Voluntary participation, sustained funding through user fees, user control (e.g., not controlled federally), the questionnaire used by NASDTEC, and the inclusion of tort claims and lawsuits from the NPDB would lead to a comprehensive data set for law enforcement professionals. The first step needs to be the establishment of a

²³⁵ Roger L. Goldman, “State Revocation of Law Enforcement Officers’ Licenses and Federal Criminal Prosecution: An Opportunity for Cooperative Federalism,” *Saint Louis University Public Law Review* 22 (2003): 125n19, <https://scholarship.law.slu.edu/plr/vol22/iss1/9>.

²³⁶ Goldman, 125n19.

POST agency or an equivalent in every state that can issue and revoke police certification. Based on Hickman's research, it appears this mechanism is almost complete, with 44 states able to certify officers in 2015 and most of the remaining six obtaining this ability or working toward it as of this writing.²³⁷ Law enforcement leaders across the country should work together to create a database to track sustained officer misconduct rather than wait for a federal mandate. However, with the recent interest from the federal government in the creation of an accountability database, the federal government could provide a funding mechanism to create and maintain such a database through grant programs. This database should be used by all state and local law enforcement to make it maximally useful. Law enforcement leaders would need to come to a consensus on the types of misconduct to track across state lines. This misconduct list could shape a questionnaire for use when adding officer misconduct to the database.

B. RECOMMENDATIONS FOR FUTURE RESEARCH

Can requirements within grants help reinforce agencies' participation in reporting sustained officer misconduct? A couple of areas for future research were identified during this project. For example, could the federal government leverage grant programs, e.g., policy by mandate, to get law enforcement agencies to report sustained officer misconduct? This model has recently been used by the federal government in response to the killing of George Floyd and other high-profile law enforcement use-of-force events. Executive Order 13929, Safe Policing for Safe Communities, issued by President Donald Trump in June 2020, aimed, among other things, to eliminate the use of chokeholds by law enforcement.²³⁸ As additional motivation for agencies to change their use-of-force policies to eliminate chokeholds, discretionary DOJ grant funding was tied to these policy changes, with approximately \$33 billion in state and local discretionary spending allotted for FY23. This author believes that most police departments receive grant funding. Research could

²³⁷ Hickman, *POST Agency Certification Practices*.

²³⁸ Exec. Order No. 13929, 85 Fed. Reg. 37325 (June 16, 2020), 2, <https://www.federalregister.gov/documents/2020/06/19/2020-13449/safe-policing-for-safe-communities>. In 2022, President Biden revoked Executive Order 13929 with Executive Order 14074, which retained the same spirit of police accountability.

be conducted to evaluate how many agencies have changed their use-of-force policies based on Safe Policing for Safe Communities to gauge how well such a policy by mandate worked recently. Further, research could explore whether a similar policy assists in spurring agencies to report other things like sustained officer misconduct should this condition exist in the future.

Could requiring law enforcement agencies to obtain standardized accreditation improve law enforcement professionalism? Forensic laboratories around the world go through periodic accreditation assessments to ensure they comply with their own policies and meet established international standards. With the lack of standards in police training across the country, would it make sense for law enforcement agencies to go through an accreditation process to ensure they meet established best practices and comply with what they have committed to in their own policies and procedures? Looking at the effects of lab accreditation on forensic labs could provide insight into how such a process might improve policing.

C. CONCLUSION

As shown in the Briana Taylor, George Floyd, and other recent use-of-force cases, the decisions of a few police officers can significantly affect law enforcement practices (and funding) across the country. This situation creates challenges for law enforcement because of the lack of uniform national law enforcement standards. This gap associated with police training and police conduct makes it difficult to know how misconduct in one jurisdiction might translate to another. Additionally, no good mechanism nationally ensures adherence to training and conduct standards. This deficiency leads smaller segments of government (state and local) to develop their own systems of tracking police misconduct. Inconsistent standards can lead to questions about the behavior tracked and the justification for such differences. State and local law enforcement leaders should move away from maintaining local control of tracking sustained misconduct toward having a certification body such as POST be notified of and track all sustained officer misconduct. This centralization would allow certification authorities in each state to determine whether sustained misconduct violates the requirements to be a certified police officer.

CALEA offers accreditation programs for law enforcement agencies. If the reporting of sustained officer misconduct is adopted or forced on law enforcement agencies, it is recommended that the services and expertise of an entity such as CALEA be used to audit officer misconduct reporting. This arrangement would provide a third-party evaluation of the agency's reporting and maximize transparency. Utilizing a recognized entity such as CALEA to audit agencies' sensitive misconduct information would make law enforcement leaders feel more comfortable with the process.

These policy recommendations could be discussed and formalized by national law enforcement organizations such as the IACP, the Major City Chiefs of Police, the National Sheriff's Association, the Major County Sheriffs of America, the Association of State Criminal Investigation Agencies, the National Alliance of State Drug Enforcement Agencies, the National Association of Black Law Enforcement Officers, and IADLEST.

The current atmosphere in parts of the country working to defund the police provides an opportunity for law enforcement to calculate how to make the profession more transparent to regain the public trust that has eroded recently. The last 30 years of Gallup poll data on confidence in institutions show a recent decline in the public's having a "great deal" or "quite a lot" of confidence in the police (see Table 3).²³⁹ Law enforcement leaders must continue to work together to find ways to make their profession as transparent as possible to begin to recapture trust and confidence with citizens.

²³⁹ "Confidence in Institutions," Gallup, accessed July 15, 2022, <https://news.gallup.com/poll/1597/Confidence-Institutions.aspx>.

Table 3. Confidence in U.S. Institutions by Year.²⁴⁰

Confidence in US Institutions - The Police			
	Great deal %	Quite a lot %	Great deal/Quite a lot%
2022	19	26	45
2021	26	25	51
2020	23	25	48
2019	29	24	53
2018	29	25	54
2017	31	26	57
2016	25	31	56
2015	25	27	52
2014	25	28	53
2013	26	31	57
2012	26	30	56
2011	25	31	56
2010	26	33	59
2009	28	31	59
2008	28	30	58
2007	23	31	54
2006	25	33	58
2005	28	35	63
2004	24	40	64
2003	29	32	61
2002	28	31	59
2001	26	31	57
2000	18	36	54
1999	24	33	57
1998	26	32	58
1997	27	32	59
1996	22	38	60
1995	26	32	58
1994	22	32	54
1993	22	30	52

D. FINAL THOUGHTS

To quote one of the greatest American rock bands of all time, “Things in this life change very slowly if they ever change at all,” but law enforcement must choose to make reforms or have them thrust upon the profession.²⁴¹ Discussing police misconduct and the

²⁴⁰ Source: Gallup.

²⁴¹ “The Sad Café,” *Eagles Wikia* (blog), accessed May 5, 2023, https://eagles.fandom.com/wiki/The_Sad_Caf%C3%A9.

corresponding disciplinary actions of agencies with members of law enforcement can be uncomfortable, but such discussions can spur the necessary improvements presented in this thesis. The profession of policing either can decide how to optimize transparency or may find that another entity, such as Congress, tells it how it will change. There is a saying that no one hates a bad cop more than a good cop. The good cops must find ways to eliminate problem officers from the ranks. The recommendations put forward here are a good place to start.

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