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A Force for Change: Effective Police Reform through State-Level Initiatives

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Cover Page Footnote

It was an honor to be able to research and write about police reform, a topic I have long been passionate about. I would like to thank my family and friends for their support as well as the many professional contacts who assisted with the completion of this Comment.

A FORCE FOR CHANGE: EFFECTIVE POLICE REFORM THROUGH STATE-LEVEL INITIATIVES

Ashley Caldwell*

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I. INTRODUCTION

“Ex-cop sentenced to 43 years in prison for raping women while on duty.”¹ Reading a headline like this, it is easy to wonder how the officer’s criminal activity went unnoticed or how he made it through the pre-employment screening process. Unfortunately, similar stories of police misconduct are not uncommon. In September 2018, a Miami-Dade police officer was arrested and “charged with conspiracy to commit an offense against the United States and theft of government money charges.”² In October 2018, a Piqua, Ohio police officer was arrested for operating a police cruiser while intoxicated and improper handling of a firearm in a motor vehicle.³ In January 2019, a Tucson, Arizona police officer was arrested for sexual misconduct with a woman he was investigating.⁴ A quick internet search yields numerous instances of police misconduct all over the country, making it apparent that there is a wide-ranging problem that needs a solution.

Police misconduct affects society as a whole, and when it remains unchecked, it creates a breakdown in the relationship between the public and the police.⁵ Nearly forty percent of Americans reported being stopped by the police within the last five years.⁶ Although the majority of people stopped described having positive interactions with the police, a significant number reported negative interactions as well.⁷ Because the possibility of police contact is so high, it is important to have methods in place to maintain police accountability.⁸ The need for accountability is evidenced by a strong public interest in reform resulting from a series of high-profile use-of-force incidents and corresponding violence directed at the police.⁹ The most recent of these incidents occurred in May 2020 when a Minneapolis, Minnesota police officer kneeled on the neck of arrest suspect George Floyd for more than eight minutes as he gasped for air and exclaimed several times that he could not

¹ Mark Gokavi, *Ex-cop Sentenced to 43 Years in Prison for Raping Women While on Duty*, DAYTON DAILY NEWS (Sept. 12, 2018, 10:09 AM), <https://www.daytondailynews.com/news/crime-law/cop-called-predator-sentenced-today-for-raping-women-while-duty/c1PcL3aaSu0Hg83UFAzI4N/>.

² *Miami-Dade Police Officer Indicted on Conspiracy, Theft of Government Money*, CBS MIAMI (Sept. 5, 2018, 5:20 PM), <https://miami.cbslocal.com/2018/09/05/miami-dade-police-officer-indicted-on-conspiracy-theft-of-government-money/>.

³ Christina Schaefer, *Former Piqua Police Officer Arrested for OVI Pleads ‘Not Guilty’ to Additional Charge*, DAYTON 24/7 NOW (Nov. 7, 2018), <https://abc22now.com/news/local/former-piqua-police-officer-arrested-for-ovi-pleads-not-guilty-to-additional-charge>.

⁴ Natalie Tarangioli, *Tucson Police Officer Arrested for Sexual Misconduct with Woman He Was Investigating*, ABC 15 ARIZONA (Jan. 20, 2019, 9:41 PM), <https://www.abc15.com/news/local-news/tpd-officer-allegedly-had-sex-with-woman-he-was-investigating>.

⁵ See Andrew Goldsmith, *Police Reform and the Problem of Trust*, THEORETICAL CRIMINOLOGY (Nov. 1, 2005), <https://journals.sagepub.com/doi/abs/10.1177/1362480605057727>.

⁶ *Personal Contact with the Police and Justice System*, CATO INSTITUTE (2016), <https://www.cato.org/policing-in-america/chapter-3/personal-contact-police-and-justice-system> (last visited Mar. 15, 2020).

⁷ *Id.*

⁸ See *id.*

⁹ Debo P. Adegbile, *Policing Through an American Prism*, 126 YALE L.J. 2222, 2224–26 (May 2017).

breathe.¹⁰ Floyd died as a result of the incident, and nationwide outrage spawned a series of violent protests and demands for change.¹¹ There are two federal statutes in place that are traditionally used to promote police accountability.¹²

Title 42 Section 14141 of the United States Code (now codified as 34 U.S.C. § 12601) provides that the United States Attorney General may institute a civil action against government authorities or those acting on the government's behalf who are engaged in "a pattern or practice of conduct . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."¹³ Title 42 Section 1983 of the United States Code provides a civil remedy for plaintiffs whose constitutional rights have been violated by employees acting under color of state law.¹⁴ Although these statutes have some effect on encouraging police reform, they have been ineffective at producing large-scale change.¹⁵ There have been very few suits brought by the Department of Justice under 42 U.S.C. § 14141, and suits brought under 42 U.S.C. § 1983 can be costly and challenging for the plaintiff.¹⁶

In an attempt to further reform American policing, the Department of Justice Office of Community Oriented Policing Services established the Collaborative Reform Initiative for Technical Assistance.¹⁷ The program invited voluntary participation from law enforcement in which individual agencies would receive assistance through problem identification and recommendations for change.¹⁸ Although many agencies participated in the program, the Department of Justice ("DOJ") announced in September 2017 that it would be largely scaled back "to ensure that resources go to agencies that require assistance rather than expensive wide-ranging investigative assessments that go beyond the scope of technical assistance and support."¹⁹

State and local governments also provide avenues for police reform that can reach a large number of departments. One drawback to attempting

¹⁰ Richard A. Oppel Jr. & Kim Barker, *New Transcripts Detail Last Moments for George Floyd*, N.Y. TIMES (July 8, 2020), <https://www.nytimes.com/2020/07/08/us/george-floyd-body-camera-transcripts.html>.

¹¹ Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/article/george-floyd-protests-timeline.html>.

¹² Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3191, 3200–01 (May 2014).

¹³ 42 U.S.C. § 14141 (2012); 34 U.S.C. § 12601 (2012).

¹⁴ 42 U.S.C. § 1983 (2012).

¹⁵ Rachel Harmon, *Limited Leverage, Federal Remedies and Policing Reform*, 32 ST. LOUIS U. PUB. L. REV. 33, 33–34 (2012).

¹⁶ Rushin, *supra* note 12, at 3193, 3202.

¹⁷ COMMUNITY ORIENTED POLICING SERVICES U.S. DEP'T OF JUST., COLLABORATIVE REFORM INITIATIVE FOR TECHNICAL ASSISTANCE (June 2016), https://cops.usdoj.gov/pdf/technical_assistance.pdf.

¹⁸ *Id.*

¹⁹ Press Release, Department of Justice Announces Changes to the Collaborative Reform Initiative, U.S. Dep't of Just. Off. of Pub. Aff. (Sept. 15, 2017), <https://www.justice.gov/opa/pr/departments-justice-announces-changes-collaborative-reform-initiative>.

police reform at the local level is the possibility for patterns of localized corruption.²⁰ Because of local political and departmental culture, it may be impossible for some departments to institute their own reform measures.²¹ Political influence is not as much of a risk at the state level because policies will be developed for the state as a whole rather than focusing on one small, politically-driven locality.²²

Attempts at police reform have been largely unsuccessful at both the local and federal levels. State governments, however, have the ability to produce large-scale change because they can reach more departments than the Federal government, and they are not as susceptible to regional interference and customs as local governments.²³ This Comment explores state-level reform as the most effective means of instituting positive change in policing and proposes ways that reform can be implemented. First, the Comment will examine the reasons law enforcement reform has failed at the federal and local levels. Second, it will explain why conducting reform measures at the state level will be more successful than the federal and local attempts. Third, it will contain a proposal for increased state-level reforms intended to maximize police accountability and foster public trust. The proposed reform measures include: requiring increased training for law enforcement officers, requiring all departments to utilize civilian review boards, requiring increased monitoring of police behavior including low-level misconduct, requiring mandatory reporting of all police disciplinary action and citizen complaints to the state, and encouraging the use of body-worn cameras.

II. BACKGROUND

Interest in American police reform is not a new concept. In 1991, California Highway Patrol officers attempted to stop a vehicle driven by Rodney King.²⁴ The vehicle initially slowed, but failed to stop.²⁵ The Los Angeles Police Department ("LAPD") joined the pursuit to assist, and by the time the pursuit concluded, twenty-one officers arrived on scene.²⁶ Officers with the LAPD believed that King was under the influence of the illegal hallucinogenic drug, PCP, because his behavior appeared disoriented and threatening.²⁷ They ordered him to the ground, but he failed to comply.²⁸ He

²⁰ See *Northwestern Journal of Law and Social Policy Ninth Annual Symposium: Litigating Police Misconduct: Does the Litigation Process Matter? Does it Work?*, 11 NW. J.L. & SOC. POL'Y 366, 368 (2017).

²¹ See *id.*

²² See Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 GEO. MASON U. CIV. RTS. L.J. 479, 485 (2009).

²³ See *id.* at 485, 551–52.

²⁴ Rushin, *supra* note 12, at 3210.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

was then hit twice with a stun gun and struck in the head with a baton.²⁹ Officers were then ordered to use “power strokes” by a sergeant on scene.³⁰ By the end of the altercation, King had been struck fifty-six times by batons and had been kicked six times.³¹ As a result, he suffered two broken bones during the beating and then received twenty stitches.³² The beating was captured on video and caused a national debate on police brutality.³³

A. 42 U.S.C. § 14141

By the mid 1990s and largely in response to the backlash from the Rodney King incident, Congress passed 42 U.S.C. § 14141 (now codified as 34 U.S.C. § 12601) to foster police reform.³⁴ The statute authorizes lawsuits against police departments that engage in a pattern of corruption.³⁵ Initially, it was hailed as a significant step in combating police misconduct.³⁶ However, in the time since it was enacted, the statute has not had the success that Congress hoped for.³⁷

To understand the reason 42 U.S.C. § 14141 has been unsuccessful at promoting large-scale police reform, it is important to understand how the statute is implemented. There are three stages to the process: “(1) case selection, (2) preliminary inquiry, and (3) formal investigation.”³⁸ During the case selection phase, the DOJ identifies “problematic police agencies.”³⁹ There are several ways that problematic police departments may come to the attention of the DOJ including: existing civil litigation, media reports of police misconduct, data from research studies, reports from whistleblowers within police departments, or reports from individual citizens.⁴⁰ Once a “problematic police department” has been identified, the DOJ moves to the preliminary inquiry stage.⁴¹ During the preliminary inquiry, the DOJ relies on available data such as citizen complaints and media reports and occasionally conducts interviews with citizens to determine whether a formal investigation needs to be opened.⁴²

If the DOJ determines that a police department has engaged in a pattern of persistent misconduct, it may decide to open a formal

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 3209.

³⁴ Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 3, 12–13 (2009).

³⁵ 34 U.S.C. § 12601 (2012).

³⁶ Harmon, *supra* note 34, at 3.

³⁷ *Id.*

³⁸ Rushin, *supra* note 12, at 3219.

³⁹ *Id.*

⁴⁰ *Id.* at 3219–24.

⁴¹ *Id.* at 3225.

⁴² *Id.*

investigation.⁴³ Once an investigation begins, the process can take years.⁴⁴ The process requires the investigator to look through records and personnel files as well as evaluate departmental policies and procedures in various areas such as discipline, training, and use-of-force incidents.⁴⁵ If the DOJ identifies a pattern of misconduct, it may make assistance recommendations to the department involved.⁴⁶ In many cases, the problematic police department is willing to cooperate, and the investigation ends, provided that the department implements and complies with the recommendations from the DOJ.⁴⁷ In cases where a department is unwilling to cooperate or the pattern of misconduct is too extensive to be cured by recommendations, the DOJ may file suit under 42 U.S.C. § 14141.⁴⁸

The biggest barrier to the success of 42 U.S.C. § 14141 is that the lengthy investigative process is expensive.⁴⁹ Litigators from the DOJ often have to hire outside police experts and professionals.⁵⁰ In the year 2000, the DOJ requested an increase of \$100 million in funding for the purpose of hiring sixteen additional investigators per year.⁵¹ This large funding request for an already limited number of investigators provides further evidence of the costly nature of the process.⁵²

Because the cost of opening an investigation is so high, very few formal investigations have been initiated by the DOJ.⁵³ A study conducted in 2014 found that since the enactment of Section 14141 in 1994, the DOJ has opened an average of three investigations per year.⁵⁴ Additionally, the DOJ has only sought “full-scale structural police reform against an average of less than one department per year.”⁵⁵ There are approximately 18,000 police agencies in the United States.⁵⁶ Considering the expense involved, and the limited use of Section 14141 by the DOJ, it is unlikely that the statute will ever be an effective tool for fostering police reform.⁵⁷

B. 42 U.S.C. § 1983

Another federal statute often used to promote police reform is 42

⁴³ *Id.* at 3226.

⁴⁴ *Id.*

⁴⁵ *Id.* at 3226–27.

⁴⁶ *Id.* at 3227–28.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Harmon, *supra* note 15, at 44.

⁵⁰ Rushin, *supra* note 12, at 3227.

⁵¹ See *id.* at 3226.

⁵² *Id.*

⁵³ *Id.* at 3193.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS & BUREAU OF JUST. STAT., NATIONAL SOURCES OF LAW ENFORCEMENT EMPLOYMENT DATA (Oct. 4, 2016), <https://www.bjs.gov/content/pub/pdf/nsleed.pdf>.

⁵⁷ See generally Rushin, *supra* note 12.

U.S.C. § 1983.⁵⁸ Under Section 1983, plaintiffs may file suit when their constitutional rights have been violated by employees acting under color of state law.⁵⁹ While it appears that the statute would promote police reform, it has done little to promote large-scale change.⁶⁰ There are several reasons why Section 1983 has failed to promote law enforcement reform. First, lawsuits can be costly and time-consuming for the plaintiff.⁶¹ Second, cities that have more funding than individual officers are largely “indemnified” from Section 1983 actions because plaintiffs must show that their “rights were violated as the result of the city’s unconstitutional policy, practice, or custom” to recover.⁶² For an individual officer to be held liable under Section 1983, it must only be shown that the governing law was clear, and the officer disregarded it.⁶³ In consequence, cities have little incentive to reform their departments because it is more difficult to sue the municipality than to hold an individual officer responsible.⁶⁴ Third, officers are rarely required to contribute personally to settlements obtained as a result of Section 1983 actions.⁶⁵ The lack of financial accountability also provides little incentive for police reform because officers rarely suffer monetary penalties for their misconduct.⁶⁶ These listed factors combined create a barrier preventing 42 U.S.C. § 1983 from being an effective tool for police reform.⁶⁷

C. Failure of Police Reform at the Federal Level

The limitations associated with 42 U.S.C. § 14141 and 42 U.S.C. § 1983 show a pattern of failed statutory attempts at police reform at the federal level. Federal programs aimed at promoting reform have also failed at achieving their goal. In 2011, the Department of Justice Office of Community Oriented Policing Services initiated the Collaborative Reform Initiative for Technical Assistance (“CRI-TA”).⁶⁸ “The purpose of CRI-TA [was] to improve trust between agencies and the communities they serve by providing a means to organizational transformation around specific issues.”⁶⁹ The agency attempted to achieve this by seeking voluntary participation from agencies seeking reform assistance.⁷⁰ CRI-TA would evaluate and assess the

⁵⁸ See generally Harmon, *supra* note 15.

⁵⁹ 42 U.S.C. § 1983 (2012).

⁶⁰ See generally Harmon, *supra* note 15.

⁶¹ Rushin, *supra* note 12, at 3202.

⁶² Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 888 (2014).

⁶³ RONALD JAY ALLEN ET AL., CRIMINAL PROCEDURE INVESTIGATION AND RIGHT TO COUNSEL 338 (Wolters Kluwer 3d ed. 2016).

⁶⁴ See *id.*; Edward C. Dawson, *Replacing Monell Liability with Qualified Immunity for Municipal Defendants in 42 U.S.C. § 1983 Litigation*, 86 U. CIN. L. REV. 483, 489–90 (2018).

⁶⁵ Schwartz, *supra* note 62, at 939.

⁶⁶ See generally *id.*

⁶⁷ *Id.*

⁶⁸ U.S. DEP’T OF JUST., OFF. OF COMMUNITY ORIENTED POLICING SERV., COLLABORATIVE REFORM INITIATIVE FOR TECHNICAL ASSISTANCE (June 2016), https://cops.usdoj.gov/pdf/technical_assistance.pdf.

⁶⁹ *Id.*

⁷⁰ *Id.*

interested departments and make recommendations.⁷¹ The recommendations would then be made public to promote public accountability.⁷² Although there was enthusiasm for the program, it was announced in 2017 that the program would be scaled back to provide targeted assistance to selected agencies rather than conducting wide-ranging investigative assessments.⁷³ Similar to the statutes mentioned, the program failed to create meaningful police reform at the federal level.

D. Failure of Police Reform at the Local Level

Attempting to control police misconduct at the local level would prove even more problematic than controlling the problem at the federal level. This premise is evidenced by the many high-profile incidents of police misconduct reported at the local level. For example, in Chicago alone, over \$50 million was paid out in police misconduct lawsuits in 2018.⁷⁴ The city has a long history of misconduct complaints and pays out millions to victims annually.⁷⁵ Additionally, in 2017, detectives from the Baltimore, Maryland Police Department Gun Trace Task Force were indicted for multiple crimes.⁷⁶ The alleged crimes included selling seized guns and drugs, orchestrating the robbery of drug dealers, sending innocent citizens to jail, and using GPS devices to track and rob citizens.⁷⁷ One officer stated that he had stolen up to \$100,000 from people during his career and admitted that he once gave a gun he took during a home invasion to a drug dealer.⁷⁸

Further showing that it is difficult to regulate police at the local level, in 2017, six Detroit, Michigan officers were charged with extortion for receiving bribes from owners of automobile collision shops.⁷⁹ Additionally, in November 2018, an off-duty Dayton, Ohio police officer was arrested on burglary charges after kicking in the door of a home.⁸⁰ Through these examples, it is consistently shown that local governments are unable to prevent police misconduct on their own. Many of the scandals play out in the

⁷¹ *Id.*

⁷² *Id.*

⁷³ Press Release, U.S. Dep't of Just., Off. of Public Affairs, Department of Justice Announces Changes to the Collaborative Reform Initiative (Sept. 15, 2017), <https://www.justice.gov/opa/pr/departments-justice-announces-changes-collaborative-reform-initiative>.

⁷⁴ *Payouts for Chicago Police Misconduct: \$50 million This Year*, FOX 32 (Aug. 14, 2018, 9:07 PM), <http://www.fox32chicago.com/news/local/payouts-for-chicago-police-misconduct-50-million-this-year>.

⁷⁵ *Id.*

⁷⁶ Timothy Williams, *In Baltimore, Brazen Officers Took Every Chance to Rob and Cheat*, N.Y. TIMES (Feb. 6, 2018), <https://www.nytimes.com/2018/02/06/us/baltimore-police-corruption.html>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Robert Snell & George Hunter, *6 Detroit Cops Charged in Extortion Scheme*, DETROIT NEWS (Dec. 13, 2017, 9:08 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2017/12/13/detroit-police-officers-extortion-plea-deals/108572174/>.

⁸⁰ Mark Gokavi, *Off-Duty Dayton Cop Attends Police Ball Before Arrest, Tells Officers: 'I'm Going to Throw Up in the Back Seat of Your Car'*, DAYTON DAILY NEWS (Dec. 11, 2018), <https://www.daytondailynews.com/news/crime-law/off-duty-dayton-cop-attended-police-ball-before-burglary-arrest/h1NTyBJQ7nybRYYR6cCcyJ/>.

media, and it leads to a breakdown in the relationship between the police and the public.⁸¹

In addition to the reported scandals plaguing local police departments, it is common for local departments to be susceptible to local political pressures such as police unions.⁸² Often, departments are blocked from making meaningful changes due to the pressure of powerful unions or local politicians—parties that would likely not have as much of an effect on state-level police reform.⁸³ Because efforts at law enforcement reform have been largely ineffective at the local and federal levels, it is important to maintain increased control at the state level, where the governing body has more control over the general population and is less susceptible to local politics.

E. Widespread Reform Efforts at the State Level

The majority of states have recognized the need for change in policing, and they are taking measures to ensure more legitimate and professional police departments.⁸⁴ In December 2014, former Ohio Attorney General Mike DeWine formed an advisory group on law enforcement training to evaluate the way Ohio trains law enforcement officers and make suggestions for improvement.⁸⁵ The committee consisted of sixteen members with “diverse personal and professional backgrounds.”⁸⁶ Three subcommittees were formed within the group: Use of Force, Mental Health, and Community Relations.⁸⁷ Based on the research conducted by the advisory group, the findings and subsequent recommendations were divided into four groups: “1) Pre-certification—Any time before a cadet’s first day at a basic training academy; 2) Certification—The time spent at a basic training academy including certification; 3) Post-certification—Any time after an officer is certified; 4) Innovations—Ideas for the betterment of the profession.”⁸⁸ In total, the committee came up with a list of thirty-three recommendations for improvement in the selection and training of law enforcement officers in Ohio.⁸⁹ The report was then submitted to the Governor and members of the Ohio General Assembly to encourage

⁸¹ See generally Andrew Goldsmith, *Police Reform and the Problem of Trust*, THEORETICAL CRIMINOLOGY (Nov. 1, 2005), <https://journals.sagepub.com/doi/abs/10.1177/1362480605057727>.

⁸² See *Litigating Police Misconduct*, *supra* note 20, at 368.

⁸³ *Id.*

⁸⁴ Press Release, Thirty-Four States Enacted 79 Laws Affecting Policing from 2015-2016 (Apr. 5, 2017), <https://www.vera.org/newsroom/press-releases/analysis-thirty-four-states-enacted-79-laws-affecting-policing-from-2015-2016>.

⁸⁵ OHIO ATT’Y GEN., OHIO ATTORNEY GENERAL’S ADVISORY GROUP ON LAW ENFORCEMENT TRAINING I (Apr. 2015), <https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/LE-Advisory-Report-WEB>.

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 7.

⁸⁹ *Id.* at 7–14.

implementation.⁹⁰

In a similar effort to promote police reform, the Massachusetts State Police contacted former state Public Safety Secretary and Boston Police Commissioner, Kathleen M. O'Toole, to act as a management consultant after the agency was implicated in a number of scandals.⁹¹ O'Toole was to act as a "strategic resource" due to her extensive knowledge and experience in bringing change to large police agencies.⁹² In reference to the agency's goals, Colonel Kerry Gilpin stated, "[r]ecruitment of qualified and diverse candidates and more leadership training for existing staff are among the top priorities."⁹³

In addition to forming committees and hiring outside consultants, several states have already enacted legislation aimed at promoting police reform.⁹⁴ During the time period from 2015 to 2016, over two-thirds of states enacted laws aimed at promoting police reform and accountability.⁹⁵ For example, a law in Texas requires data collection on all officer-involved shootings that result in death or injury as well as a report on shooting deaths or injuries to officers.⁹⁶ Under the statute, the data report must be made public.⁹⁷ A law in Washington requires crisis intervention training for all new full-time law enforcement officers so that they may respond better to crisis situations, with a goal of improving the safety of citizens as well as officers.⁹⁸ Illinois law bans the use of chokeholds and requires increased training in areas such as implicit bias, procedural justice, human rights, arrest and control tactics, and proper use of authority.⁹⁹ Finally, Nebraska law requires that at least two agencies not associated with the police department review every fatal police encounter.¹⁰⁰

States have the ability to implement police reform without the intrusion of the federal government, and they are already taking the initiative to do so. Although there have been attempts by the federal government to promote reform, they have been inconsistent and ineffective.¹⁰¹ The multitude of new statutes being passed by the states and the implementation of advisory

⁹⁰ *Id.* at 1.

⁹¹ Kathleen McKiernan, *Former Commish O'Toole Joins State Police Reform Effort*, BOSTON HERALD (July 18, 2018), <https://www.bostonherald.com/2018/07/18/former-commish-otoole-joins-state-police-reform-effort/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Press Release, Thirty-Four States, *supra* note 84.

⁹⁵ *Id.*

⁹⁶ See generally TEX. CODE CRIM. PROC. ANN. art. 2.139, 2.1395 (West 2015).

⁹⁷ See *id.* art. 2.139(d).

⁹⁸ Douglas M. Ostling Act, ch. 87, 2015 Wash. Sess. Laws 390, <http://leg.wa.gov/CodeReviser/documents/sessionlaw/2015spam1.pdf>.

⁹⁹ Police and Community Relations Improvement Act, S.B. 1304, 99th Gen. Assemb. (Ill. 2015), <http://www.ilga.gov/legislation/publicacts/99/099-0352.htm>.

¹⁰⁰ NEB. REV. STAT. ANN. § 29-1401(b) (2016).

¹⁰¹ See *supra* Part II, Section C.

committees shows a commitment to promoting accountability and professionalism among the police. The regulation of police should be done at the state level because the states are already taking steps toward the change that the federal government has been unable to implement.

III. ANALYSIS

A. Oversight at the State Level is the Most Effective Way to Produce Wide-Spread and Lasting Police Reform

States are in the best position to remedy the professionalism and accountability problems in policing. One of the reasons that the states are in the best position is because they typically regulate and provide the model of police training within their borders.¹⁰² Historically, training and oversight for the majority of police agencies has been conducted at the state level.¹⁰³ As such, the states are in a better position to evaluate their training programs and increase training where needed. Additionally, the federal government lacks the resources to monitor the nearly 18,000 departments in the United States.¹⁰⁴ The inability of the federal government to monitor local police departments is not necessarily a negative, as most states have taken affirmative steps toward correcting their own police forces.¹⁰⁵ Research shows that states can, and already are, implementing reform measures to decrease misconduct.¹⁰⁶ Recently, there has been a significant increase in state action aimed at police reform.¹⁰⁷ From the period of 2015-2016, thirty-four states made seventy-nine changes or more to their policing laws.¹⁰⁸ Common trends in state action include “limiting use of force,” “integrating body-worn cameras,” “training on vulnerable populations,” “improved data collection and reporting,” and “increasing accountability for police misconduct.”¹⁰⁹ Because the states are already taking the necessary steps to foster police accountability and legitimacy, it is not fatal to the goal of police reform that the federal programs have been unsuccessful.

In addition to explaining the reasons police regulation would be ineffective at the federal level, it is important to explain why regulation would be ineffective at the local level as well. As previously noted, there have been numerous instances of misconduct at local agencies all across the country.¹¹⁰ The number of local corruption cases alone is evidence that local governments

¹⁰² See Walker & Macdonald, *supra* note 22, at 485.

¹⁰³ See *id.*

¹⁰⁴ NATIONAL SOURCES OF LAW ENFORCEMENT EMPLOYMENT DATA, *supra* note 56.

¹⁰⁵ Press Release, Thirty-Four States, *supra* note 84.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See *supra* Part I, II.

cannot regulate themselves without oversight.¹¹¹ Furthermore, states are less susceptible to political pressure than local police departments, and they are in a strong position to promote accountability and maintain centralized reporting.¹¹² Because of the advantages state governments have over local and federal governments, it is necessary to focus police reform measures at the state level.

B. Proposed Uniform State Law for Accountability of Police Officers

The best way to combat police misconduct at the state level is through new legislation. The implementation of new measures will help foster public trust and improve police accountability and professionalism. The legislation proposed by this Comment would require: increased training for police officers, increased utilization of civilian review boards by police departments, increased monitoring of police behavior (including low-level misconduct), mandatory reporting of all police disciplinary action and citizen complaints to the state, and increased use of body-worn cameras by police departments.

1. States should require increased training for all police officers.

The most important step states can take to promote police reform is to require increased training hours and better instruction for all officers. Nearly every forum dedicated to making changes in policing lists increased training as a goal. For example, in late 2014, President Barack Obama signed an executive order establishing the Task Force on 21st Century Policing.¹¹³ The goal of the task force was to identify best practices and offer recommendations for promoting crime reduction and building public trust.¹¹⁴ The task force created a set of recommendations based on six “pillars:” Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness.¹¹⁵ Discussing training and education, the task force found that the need for better and expanded training is critical.¹¹⁶

In 2016, approximately 200 police chiefs, Justice Department personnel, and White House officials convened in Washington for a forum titled “Taking Policing to a Higher Standard.”¹¹⁷ The attendees discussed

¹¹¹ See *supra* Part I.

¹¹² See *Litigating Police Misconduct*, *supra* note 20, at 368.

¹¹³ U.S. DEP’T OF JUST., OFF. OF CMTY. ORIENTED POLICING SERV., FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 1 (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 3.

¹¹⁷ Wesley Lowery, *Police Chiefs Consider Dramatic Reforms to Officer Tactics, Training to Prevent so Many Shootings*, WASH. POST (Jan. 29, 2016), <https://www.washingtonpost.com/news/post-nation/wp/>

training standards at length and the role increased training could have in decreasing police shootings.¹¹⁸ Additionally, former Ohio Attorney General and current Governor Mike DeWine has repeatedly expressed support for increased police training.¹¹⁹ In the Ohio Attorney General's Group on Law Enforcement Training, DeWine and task force chair, Reginald Wilkinson, advised that although increased training can be costly, there is potentially a greater cost from not upgrading training—such as human tragedies and litigation.¹²⁰

The limited amount of training provided to law enforcement officers is shocking. On average, states require 623 hours of training to obtain police officer certification.¹²¹ The states with the lowest number of required training hours are Louisiana, at 360 hours, and Utah, at 367 hours.¹²² The states with the highest required training hours are Kentucky, at 928 hours, and Hawaii, at 1068 hours.¹²³ In contrast, every state requires cosmetologists to have at least 1000 hours of training to cut hair, and many states far exceed that number.¹²⁴

The pre-employment requirements for law enforcement officers are equally unsettling. Nearly all states only require that police recruits have a high school diploma or GED to be eligible for certification.¹²⁵ It is extremely rare for any type of college education to be required.¹²⁶ There is also a problem of a lack of uniform standards at the various police academies within the states, which could be helped by implementing specific training requirements.¹²⁷

With the limited qualifications required to enter the police academy and the low number of training hours required once an officer is accepted, it is easy to see how tragedies occur. A basic police officer certification should require a minimum of 1200 hours of training because it would increase the academy training time to approximately one year in contrast to the six months or less that most states require.¹²⁸ Over the course of those training hours,

2016/01/29/police-chiefs-consider-dramatic-reforms-to-officer-tactics-training-to-prevent-so-many-shootings/?utm_term=.25ab0fb91d74.

¹¹⁸ *Id.*

¹¹⁹ Laura A. Bischoff, *Ohio Police Officers Need More Training Hours, Task Force Report Says*, DAYTON DAILY NEWS, (Apr. 24, 2015), <https://www.daytondailynews.com/news/state--regional/ohio-police-officers-need-more-training-hours-task-force-report-says/flw15paPRmJnV1e2x2FFAJ/>.

¹²⁰ *Id.*

¹²¹ Yuri R. Linetski, *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 N.M. L. REV. 1, 17 (2018).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 18.

¹²⁵ *Id.* at 21–22.

¹²⁶ *Id.* at 22.

¹²⁷ Sharahn D. Boykin, *Some Police Academies Cool to Proposed Uniform Police Standards*, DAYTON DAILY NEWS, (Dec. 20, 2015), <https://www.daytondailynews.com/news/local/some-police-academies-cool-to-proposed-uniform-police-standards/toi3jZ4qftmzOq55KHnFuK/>.

¹²⁸ Linetski, *supra* note 121, at 17.

officers should receive increased instruction in areas such as scenario-based training, mental health awareness, crisis intervention, bias awareness, cultural awareness, and communication skills.¹²⁹ Increased education and training are crucial to preventing police misconduct and maintaining police legitimacy.¹³⁰ Police need more scenario-based training to prepare for challenging real life situations and to know how to respond to them appropriately.¹³¹ They need mental health awareness training to be able to distinguish mental health problems from aggression or resistance and to know how to respond to people with mental illness in a professional and respectful manner.¹³² Crisis intervention training is necessary to be able to respond to people in unique and stressful situations with the least amount of force possible.¹³³ Training in the areas of bias awareness, cultural awareness, and communication skills is necessary so that officers may treat all members of the community equally and so that they will know how to interact and communicate with people of different cultures.¹³⁴

In addition to requiring more training to obtain a basic police officer certification, states should require increased in-service training once police officers have become certified. Historically, some states have required as little as four hours of in-service training per year.¹³⁵ The low amount of post-certification training required leaves room for officers to develop deficiencies in legal knowledge and best practices. As with certification training, it is crucial for states to maintain an effective post-certification program to ensure the most professional police forces possible.¹³⁶ By implementing legislation requiring increased training for all police officers, states can reduce police misconduct and create an atmosphere of accountability and legitimacy.

2. States should require that all police departments utilize civilian review boards to foster public trust for the police.

To further the goal of creating effective police oversight, states should require that all police departments utilize some type of civilian review board. The idea of civilian review boards is based on the fact that police departments need an external check.¹³⁷ According to a poll conducted in

¹²⁹ FINAL REPORT OF THE PRESIDENT'S TASK FORCE, *supra* note 113, at 4.

¹³⁰ *See id.* at 3-4.

¹³¹ *See id.* at 3.

¹³² *See id.*

¹³³ *See id.*

¹³⁴ *See id.*

¹³⁵ In-service training is training that officers receive while on the job after they have received their basic police officer certification. Brian L. DeLeonardo, *Inadequate Training in the Use of Non-Deadly Force as the Next Frontier in Federal Civil Liability: Analysis of the Baltimore City Baton Program*, 26 U. BALT. L.F. 23 (1996). *See also* OHIO ATTORNEY GENERAL'S ADVISORY GROUP ON LAW ENFORCEMENT TRAINING, *supra* note 85, at 12.

¹³⁶ *Id.*

¹³⁷ Udi Ofer, *Getting it Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1034 (2016).

August 2014, sixty-five percent of Americans reported that they believe police departments do only a fair to poor job of holding police officers accountable.¹³⁸ The reported distrust could be linked to what is known as the “Thin Blue Line” mentality.¹³⁹

The “Thin Blue Line” is a code of silence often adhered to by police.¹⁴⁰ In some departments, there is a culture that discourages any type of internal reporting.¹⁴¹ The use of civilian review boards to monitor allegations of police misconduct is designed to eliminate the risk of internal bias in assigning officer discipline.¹⁴² When review boards are utilized appropriately, they increase police accountability, create public trust, and provide an avenue for effective police reform.¹⁴³

An effective civilian review board will have the following components: a majority of the board nominated by local civic organizations; a broad scope in reviewing complaints; independent investigatory authority; ability to ensure discipline sticks; audit policies and practices; secure funding; due process protections for police officers; and public access/reporting.¹⁴⁴ The purpose of having a board nominated by civic organizations is to ensure the independence and legitimacy of the board.¹⁴⁵ The scope of review must be broad to make sure that all citizen concerns can be addressed.¹⁴⁶ Independent investigatory authority relates to the authority to issue subpoenas for officers to testify.¹⁴⁷ The board would have difficulty conducting a thorough investigation if it could not order witnesses to testify.¹⁴⁸ The concept of ensuring that discipline sticks comes from the fact that police departments sometimes maintain control over officer discipline even with the use of a civilian review board.¹⁴⁹ If the department maintains control, it makes it much more difficult for a review board to ensure that officers engaged in misconduct get the consequences they deserve.¹⁵⁰

The review board should also have the ability to audit the policies and practices of the police department to ensure that department policies are not contributing to officer misconduct.¹⁵¹ Having a secure funding source is important as well so that the review board is not susceptible to political

¹³⁸ *Id.*

¹³⁹ Ann C. Hodges & Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle*, 52 U.C. DAVIS L. REV. ONLINE 1 (2018).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Ofcr, supra* note 137, at 1039.

¹⁴³ *See id.*

¹⁴⁴ *Id.* at 1044–52.

¹⁴⁵ *Id.* at 1044.

¹⁴⁶ *Id.* at 1045.

¹⁴⁷ *Id.* at 1046.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 1047.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 1048.

pressures.¹⁵² The requirement of due process protections for police officers is essential to creating effective civilian review boards so that officers are shielded from false allegations.¹⁵³ Finally, the public should have access to the board to file complaints and have access to reports summarizing the board's activity.¹⁵⁴ It is crucial for the board to work with the public to maintain public confidence in the process and maintain a feeling in the community that the police are being held accountable for their actions.¹⁵⁵

There are many steps that need to be taken to implement an effective civilian review board, but review boards can have a strong impact on police reform if they are implemented properly.¹⁵⁶ Review boards provide an independent review process of police action that is shielded from the "Thin Blue Line" mentality present in many departments as well as the political pressures and biases that are sometimes observed in police disciplinary proceedings.¹⁵⁷ To further the goal of promoting police reform, states should pass legislation requiring all departments to utilize citizen review boards.

3. States should require increased monitoring of police officers including focusing on low-level misconduct as well as use-of-force incidents.

As a component of facilitating lasting police reform, legislation should require local agencies to increase the monitoring of their officers. The required monitoring should include not only examining use-of-force incidents, but also cases of low-level misconduct. Police officers are in a unique position because they work with little supervision and have a great amount of discretion.¹⁵⁸ In positions where there is a large amount of freedom and discretion, there is a greater possibility for misconduct.¹⁵⁹ For this reason, agencies must closely monitor their officers to make sure that misconduct is not going unnoticed in the course of discretionary policing.

Many states have already taken the initiative to monitor police in areas such as use-of-force.¹⁶⁰ However, there is significant room for improvement, and states should place emphasis on low-level police misconduct in addition to use-of-force reporting because it is the cases of low-

¹⁵² *Id.* at 1050.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 1051.

¹⁵⁵ *Id.*

¹⁵⁶ *See generally id.*

¹⁵⁷ Hodges & Pugh, *supra* note 139, at 8; Ofer, *supra* note 137, at 1046.

¹⁵⁸ *See* Nirej S. Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1171 (2011).

¹⁵⁹ *Id.*

¹⁶⁰ Chris M. Smith & Matthew J. Thompson, *How California is Leading the Way in Gathering and Publicizing Data on the Use of Force by Police*, SCHOLARS STRATEGY NETWORK (Mar. 14, 2019), <https://scholars.org/contribution/how-california-leading-way-gathering-and-publicizing-data-use-force-police>; *New Resource Makes it Easier to Report Use-of-Force Incidents*, DAVE YOST OHIO ATTORNEY GENERAL (July 18, 2018), <https://www.ohioattorneygeneral.gov/Media/Newsletters/Criminal-Justice-Update/July-2018/New-resource-makes-it-easier-to-report-use-of-force>; Press Release, *supra* note 84.

level misconduct that often go unnoticed and underreported.¹⁶¹ Police misconduct rarely begins on a large scale.¹⁶² Officers begin slowly and gradually form a pattern through a process called “incrementalism.”¹⁶³ For many officers, the first time they engage in improper behavior, the act is relatively minor.¹⁶⁴ It may be something as simple as a small policy violation.¹⁶⁵ When that policy violation goes unnoticed and the officer goes unpunished, the officer will be more likely to commit additional violations in the future.¹⁶⁶ The likelihood that misconduct will increase in severity if left unchecked makes it crucial for states to require the monitoring and record-keeping of low-level misconduct in addition to use-of-force numbers. If departments placed an increased emphasis on deterring low-level misconduct, making officers aware that their most minor violations were being monitored, many officers would be deterred from committing more serious acts in the future.¹⁶⁷

4. States should require that all officer disciplinary actions and citizen complaints are reported to a centralized agency maintained by the state.

As an additional safeguard to ensure that police accountability is maintained, states should require that all officer disciplinary actions and citizen complaints be reported to the state. Although civilian review boards help maintain police accountability and fairness, they still serve a primarily local function.¹⁶⁸ Their duties are focused on the activities of one or a select few departments.¹⁶⁹ Maintaining a centralized reporting system through the state could serve many functions. First, by keeping the data in a centralized location, the state could flag problem officers. It is not uncommon for local departments to keep disciplinary records of minor infractions for two years or less.¹⁷⁰ In theory, that means that an officer could commit several infractions and not be terminated unless he or she committed the infractions in close temporal proximity.¹⁷¹ Maintaining a centralized state reporting system

¹⁶¹ Trymaine Lee & Safia Samee Ali, *Most States Spotty on Reporting Police Use of Force Data*, NBC (Nov. 15, 2016, 4:23 AM), <https://www.nbcnews.com/news/us-news/most-states-spotty-reporting-police-use-force-data-n682711>; see generally Sekhon, *supra* note 158.

¹⁶² Lieutenant Robert H. Garratt, *Police Misconduct and Corruption*, CRIMINAL JUST. INST. SLES SESSION SLV 1, 7 (Nov. 13, 2015), <https://www.cji.edu/site/assets/files/1921/policemisconductandcorruption.pdf>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See generally *id.*

¹⁶⁷ See Darrel W. Stephens, *Police Discipline: A Case for Change*, NAT'L INST. OF JUST. EXECUTIVE SESSION ON POLICING AND PUB. SAFETY 1, 20 (June 2011), <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>.

¹⁶⁸ See generally Ofer, *supra* note 137.

¹⁶⁹ *Id.* at 1037.

¹⁷⁰ Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1196–98 (2017).

¹⁷¹ This assertion is based on the author's professional experiences and observations during her years in law enforcement.

would allow the state to flag problem officers who engage in patterns of corruption. The increased monitoring will place the state in a strong position to make sure misconduct is handled appropriately.¹⁷²

Second, requiring increased reporting to the state would help protect departments from hiring problem officers who once worked somewhere else. Often, officers leave a department on bad terms or in lieu of termination and are able to obtain employment at a different department because their misconduct or disciplinary action was never reported to the state.¹⁷³ Former employers may be reluctant to notify other departments of past disciplinary problems for fear of lawsuits from the former employee.¹⁷⁴ Forcing state-level reporting would make the information accessible so that problem officers do not continue to obtain employment with other departments.

Third, similar to the problems with officer disciplinary procedures, most citizen complaints never go further than the department they were reported to.¹⁷⁵ Requiring that citizen complaints be sent to a centralized agency would also help to prevent problem officers from migrating to unsuspecting departments after leaving another department on bad terms.¹⁷⁶ Like many of the other proposals discussed, increasing reporting requirements to the state will improve public trust in the police and provide another layer of protection ensuring that officers and departments with systematic patterns of misconduct are being flagged.¹⁷⁷ Legislation requiring that all officer disciplinary actions and citizen complaints are reported to the state could greatly increase police accountability and reduce the number of cases where officers engage in repeated acts of misconduct.

5. States should encourage the use of body-worn cameras by all law enforcement agencies.

In the effort to achieve police reform, states should encourage the use of body-worn cameras by all departments. Although obtaining new technology comes at a cost, the benefits gained from using these cameras far outweigh the initial expense.¹⁷⁸ Additionally, states could incentivize camera use by providing funding to departments whose incidents of misconduct decrease after the initial purchase of the cameras. Encouraging individual departments to make the initial purchase of body-worn cameras with the

¹⁷² See U.S. DEP'T OF JUST., FEDERAL REPORTS ON POLICE KILLINGS 582 (2017).

¹⁷³ Katelyn Tye-Sko, *In Michigan, When Officers Resign Because of Misconduct, Police Departments Across State Will Know*, COUNCIL OF STATE GOV'TS (Jan. 25, 2017, 11:47 AM), <http://knowledgecenter.csg.org/kc/content/michigan-when-officers-resign-because-misconduct-police-departments-across-state-will-know>.

¹⁷⁴ *Id.*

¹⁷⁵ See generally Ofer, *supra* note 137.

¹⁷⁶ See generally Tye-Sko, *supra* note 173.

¹⁷⁷ See FEDERAL REPORTS ON POLICE KILLINGS, *supra* note 172, at 582.

¹⁷⁸ See generally *Cost and Benefits of Body-Worn Camera Deployments*, POLICE EXEC. RES. F. 4-15, 56-58 (Apr. 2018), <https://www.policeforum.org/assets/BWCCostBenefit.pdf>.

promises of subsidies for improvement could help to avoid the heavy handedness of mandating their use.

Body-worn cameras have received tremendous support in recent years by both citizens and police officers.¹⁷⁹ This support is largely attributable to the significant changes the cameras are capable of making.¹⁸⁰ The positive effects of body cameras can be separated into three categories: symbolic benefits, behavioral benefits, and informational benefits.¹⁸¹

Symbolic benefits can be defined as the way the public perceives the police.¹⁸² One word that is often talked about in policing circles is *legitimacy*.¹⁸³ People want to believe the police are legitimate.¹⁸⁴ In communities where the police are viewed as legitimate, people are more likely to obey the law and cooperate with officers.¹⁸⁵ On the contrary, distrust towards the police can create a perception of illegitimacy, which makes the public less likely to trust the police and, in turn, less cooperative.¹⁸⁶ By increasing transparency through the use of body-worn cameras, law enforcement agencies can improve the perception of police legitimacy as well as build a more positive relationship between the police and the public.¹⁸⁷

Studies have documented that the majority of the public feels that body-worn cameras would be beneficial to their communities.¹⁸⁸ According to a survey conducted by research firm YouGov, sixty percent of Americans believe that police-community relations would be improved if officers wore body cameras, and twenty-eight percent believe relations would be improved significantly.¹⁸⁹ A similar survey conducted by Pew Research Center found that ninety-three percent of the public and sixty-six percent of police officers favor the use of body cameras.¹⁹⁰ With such overwhelming support for body cameras, it is likely that their uniform implementation would be met with little resistance. Therefore, departments should be incentivized to obtain them because of their role in reducing tension in communities and the symbolic benefits they confer including: showing that the agency is open to requests for transparency and accountability; showing that the agency is committed to

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. Rev. 1363, 1378 (2018).

¹⁸² *Id.* at 1379–81.

¹⁸³ *Id.* at 1379. The word legitimacy is defined as lawfulness. *Legitimacy*, BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁸⁴ See Stoughton, *supra* note 181, at 1379–80.

¹⁸⁵ *Id.* at 1379.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 1380; see Mary D. Fan, *Democratizing Proof: Pooling Public and Police Body-Camera Videos*, 96 N.C. L. REV. 1639, 1680 (2018); Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, NAT'L INST. OF JUST. J. (Nov. 14, 2018), <https://nij.ojp.gov/topics/articles/body-worn-cameras-what-evidence-tells-us>.

¹⁸⁸ Stoughton, *supra* note 181, at 1381.

¹⁸⁹ *Id.*

¹⁹⁰ Rich Morin, Kim Parker, et al., *Behind the Badge: Police Views, Public Views*, PEW RES. CTR. (Jan. 11, 2017), <https://www.pewsocialtrends.org/2017/01/11/police-views-public-views/>.

promoting professional policing; and showing that the agency is attempting to safeguard the well-being of community members.¹⁹¹

The next type of benefit that can be achieved by the implementation of body cameras can be categorized as a behavioral benefit.¹⁹² Because officers will be aware that they are on camera during their encounters, the use of body cameras could decrease constitutional violations.¹⁹³ Additionally, the knowledge by both parties that they are being recorded could promote better behavior on both sides of the interaction, increasing both officer and citizen safety.¹⁹⁴

Several studies have been conducted to test whether the use of body cameras actually affects police and citizen behavior, but the results to date have been mixed.¹⁹⁵ One study in Rialto, California found that the use of body cameras over a twelve-month evaluation period reduced the number of citizen complaints by ninety percent and reduced the number of use-of-force incidents by fifty percent.¹⁹⁶ An additional study conducted in Oakland, California noted a seventy percent decline in use-of-force instances from 2008 to 2015 following the implementation of a body-worn camera program.¹⁹⁷ The Oakland study noted a significant decrease in civilian complaints as well.¹⁹⁸ Similarly, a study released by the Las Vegas Metropolitan Police Department found that cameras reduced officer misconduct as well as the use of force.¹⁹⁹ In contrast, a study conducted in Washington, D.C. showed no significant effect on officer use of force or citizen complaints once body cameras were introduced.²⁰⁰ A study conducted at the Phoenix, Arizona Police Department yielded similar results with respect to civilian behavior and use of force.²⁰¹ The study noted, however, that there was both a reduction in citizen complaints and an increase in discretionary arrests.²⁰²

Some researchers have attempted to explain the discrepancy in behavioral studies by looking at other factors that may affect the utility of body-worn cameras.²⁰³ For example, one study conducted on the effectiveness of body cameras found a correlation between use of force and whether officers recorded at their discretion or were required to follow

¹⁹¹ Stoughton, *supra* note 181, at 1381–82.

¹⁹² *Id.* at 1382–83.

¹⁹³ *Id.* at 1383.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 1384–85.

¹⁹⁶ *Id.* at 1384.

¹⁹⁷ *Id.* at 1384–85.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 1385.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 1385–86.

²⁰³ *Id.* at 1386; Fan, *supra* note 187, at 1657; Amanda Ripley & Timothy Williams, *Body Cameras Have Little Effect on Police Behavior, Study Says*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/police-body-camera-study.html>.

recording rules.²⁰⁴ An additional multi-site study found that the timing of when officers start recording and when they announce their recording may be more significant than the presence of the body camera alone.²⁰⁵ Another theory that has been raised is that departments observing little behavioral change after implementing a camera program may have a higher level of training and supervision, thus making significant changes in officer behavior less likely.²⁰⁶ In terms of the effect camera use has on citizen behavior, criminologists have suggested that awareness of the device may have an impact on whether it changes the citizen's behavior during and after the encounter.²⁰⁷ In a recent study led by Professor Michael White of Arizona State University, citizens who were aware of the body camera perceived their police encounter as more just than those who were unaware.²⁰⁸ Despite the fact that studies on behavioral benefits of body-worn cameras have yielded mixed results, there is still compelling evidence that implementing their use may have a positive impact on police and civilian behavior. Discrepancies in research make it impossible to measure exactly how much of an effect body cameras currently have on police and citizen behavior. However, it is this author's opinion that the strong support and demand for cameras, combined with their increased use and awareness, will yield more noticeable behavioral changes in the future.

An additional benefit that may be obtained by encouraging the use of body cameras comes in the form of informational benefits.²⁰⁹ What is meant by the term informational benefit is that, when body cameras are in use, law enforcement officers and the public have access to more information than they would have without the camera.²¹⁰ Video helps eliminate ambiguities and provides more accurate evidence in situations that can often be brief and stressful.²¹¹ The ability of body cameras to capture exactly what happens in the moment can serve many purposes beyond simply increasing officer accountability and providing video footage for investigative purposes.²¹² For example, the video can be used for training purposes after a high-stress encounter.²¹³ When live video is examined in hindsight, it may assist officers in responding properly to similar situations in the future.²¹⁴ Additionally, body camera video can assist with the flow of information to the public by providing the media with an accurate version of the event in question.²¹⁵

²⁰⁴ Fan, *supra* note 187, at 1657.

²⁰⁵ Stoughton, *supra* note 181, at 1381–82.

²⁰⁶ Ripley & Williams, *supra* note 203.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Stoughton, *supra* note 181, at 1391–92.

²¹⁰ *Id.* at 1392.

²¹¹ *Id.* at 1393.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *See id.*

²¹⁵ *Id.* at 1394.

Because of the informational benefits body cameras provide, they are one of the most useful pieces of police technology.

Lastly, an additional and often overlooked benefit yielded from body-worn cameras is their ability to protect police officers from frivolous complaints.²¹⁶ Last year, the Detroit, Michigan Police Department began outfitting officers with body cameras.²¹⁷ Following the implementation, the Detroit news began looking into data from the first six months of camera use.²¹⁸ The study found that the cameras helped prove thirty complaints against police officers and determined that 200 allegations against the police were unfounded.²¹⁹ The shocking number of exonerations shows that body cameras are as beneficial to the police as they are to the public.²²⁰ Because body cameras have been shown to produce large-scale change and confer benefits on both civilians and police officers, they should be encouraged in all states as a component of police reform.

While it is clear that there are many benefits to using body-worn cameras, there are counterarguments to whether these benefits will consistently be found in the real world.²²¹ One counterargument questions whether body cameras will be able to alter police and citizen behavior on a large-scale.²²² As discussed previously, the efficacy of the cameras may depend on numerous external factors.²²³ For example, not all body cameras activate automatically, which could leave open the possibility for officers to choose when to turn the camera on.²²⁴ Additionally, one study conducted found that only a small number of people who interacted with a police officer wearing a body camera were aware that they were being recorded during the encounter, making it unlikely that it would change the citizen's behavior.²²⁵ Critics of body cameras may use this type of data to suggest that body cameras are not worth the cost of implementation. However, the criticism can be countered by the positive studies noted in this Comment as well as the additional benefits attributable to body-worn cameras such as increased legitimacy and information.²²⁶ The criticism can also be countered by the availability of introducing legislation and community awareness initiatives that will make it more likely that cameras alter police and citizen behavior. For example, a requirement could be implemented so that cameras are to be

²¹⁶ Devin Culham, *Detroit Police Body Cameras Support 30 Percent of Claims Against Officers*, DETROIT METRO TIMES (Aug. 22, 2018, 2:21 PM), <https://www.metrotimes.com/news-hits/archives/2018/08/22/detroit-police-body-cameras-support-30-percent-of-claims-against-officers>.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *See id.*

²²¹ Stoughton, *supra* note 181, at 1384–92.

²²² *Id.* at 1392.

²²³ *See supra* notes 195–08 and accompanying text.

²²⁴ Stoughton, *supra* note 181, at 1388.

²²⁵ *Id.*

²²⁶ *See supra* notes 195–15 and accompanying text.

activated during every police-citizen interaction. The regulation could be safeguarded by the state requiring individual agencies to monitor body camera videos and compare them with incident reports to make sure officers are activating the cameras during all citizen encounters. Additionally, body cameras can be programmed to turn on automatically when patrol vehicle lights are activated, which would make it more likely that all serious calls are recorded.²²⁷

Another often-cited criticism of body-worn cameras is the privacy concern they produce.²²⁸ Citizens have expressed reluctance over being filmed in some of their most vulnerable moments.²²⁹ This argument can be countered however, by the fact that regulations can be put into place to protect sensitive victims. For example, legislation can be enacted that prohibits videotaping victims of sexual assault without their consent. In the end, it comes down to a balancing test. Legislators have to balance the increased safety the cameras provide against the privacy interests of the public. A strong argument can be made that the increased protection of human life and the reduction of police misconduct far outweighs the privacy concerns that are implemented by the use of body cameras. Therefore, states should encourage their use by all police departments.

IV. CONCLUSION

Attempts at police reform have been largely unsuccessful at both the federal and local levels, and the state is in the best position to produce large-scale change. The failure at the federal level comes largely from a lack of resources to monitor the thousands of police agencies in the United States, and the failure at the local level comes from a lack of uniform standards and local community pressures. Because attempts at reform have been unsuccessful on the federal and local fronts, it is important to pursue the needed change through new state legislation. States can institute a successful reform policy by taking the following measures: requiring all departments or regions to utilize civilian review boards, requiring increased monitoring of police behavior including low-level misconduct, requiring mandatory reporting of all police disciplinary action and citizen complaints to the state, and encouraging the use of body-worn cameras. Through the implementation of the proposed legislation, states will be able to produce effective police reform and restore public trust in the police.

²²⁷ Tom Jackman, *Axon Rolls Out the Next Level of Police Technology: Live-Streaming Body Cameras*, WASH. POST (Feb. 19, 2020, 8:45 AM), <https://www.washingtonpost.com/crime-law/2020/02/19/axon-rolls-out-next-level-police-technology-live-streaming-body-cameras/>.

²²⁸ Matt Pearce, *Growing Use of Police Body Cameras Raises Privacy Concerns*, L.A. TIMES (Sept. 27, 2014), <https://www.latimes.com/nation/la-na-body-cameras-20140927-story.html>.

²²⁹ See *id.*



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