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IN FOCUS

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Police Accountability Measures

A series of high-profile deaths of people of color at the hands of law enforcement personnel have generated interest among policymakers about what steps could be taken to promote police accountability. In the wake of these high-profile deaths, policymakers have shown increased interest in considering legislation that would promote police accountability for the use of excessive force. The 21st Century Policing Task Force (Task Force), established by Executive Order 13684 in 2015 in response to a number of serious incidents between law enforcement and members of the communities they serve, recommended a series of actions that would help law enforcement agencies establish a culture of transparency and accountability in order to build public trust and legitimacy. This In Focus provides an overview of some frequently proposed measures, many of which were recommended by the Task Force, that policymakers could consider if they move forward with legislation to promote accountability in policing.

Data on Use of Force

Collecting and analyzing data on the use of force by police officers may enhance transparency, improve police-community relations, and promote accountability. The Department of Justice (DOJ) is currently collecting data on arrest-related deaths through implementation of the Death in Custody Reporting Act of 2013 (DCRA, P.L. 113-242). The act requires states to submit data to DOJ regarding the death of any person who is detained; under arrest; in the process of being arrested; en route to be incarcerated; or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities). States face up to a 10% reduction in their funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program if they do not participate in this effort.

The Federal Bureau of Investigation (FBI) is also collecting data on use of force incidents that result in the death or serious bodily injury of a person or when a police officer discharges a firearm at or in the direction of a person. The FBI launched the program on January 1, 2019, but has yet to release any data collected through it. While the FBI is working with other national law enforcement organizations to encourage law enforcement agencies to submit data, participation in the program is voluntary.

The Office of the Inspector General (OIG) for DOJ believes that data collected under these two programs are duplicative. The OIG has also raised concerns that the methodology used by DOJ to collect DCRA data might undercount arrest-related deaths because it relies on states to collect and report these data and they might not be aware of all applicable deaths that occur in the state.

Independent Investigations of the Use of Excessive Force

Concerns about whether law enforcement agencies and local prosecutors can properly investigate allegations of the use of excessive force by their own officers have generated calls for mechanisms for independent investigations of these cases. The Task Force recommended that law enforcement agencies have use of force policies that include a mandate for the independent investigation of allegations of use of force by police officers that result in death, police-involved shootings resulting in injury or death, and in-custody deaths. The Task Force recommended that jurisdictions either create a multi-agency investigatory body comprised of state and local investigators or establish laws or policies for referring investigations to neighboring jurisdictions or to the next highest levels of government as a means of promoting independent investigations of police use of force.

A former member of the Los Angeles Inspector General's Office, in a April 2015 commentary for the *Harvard Law Review*, argued for legislatures to establish independent agencies that would investigate allegations of the use of excessive force. He argues that for these agencies to be effective, they must have the ability to investigate potential criminal wrongdoing by police officers and to make recommendations that are then evaluated by special prosecutors. He says these agencies should be open and transparent, and independent of other law enforcement agencies, but have unrestricted access to police officers and agency records. He also argues that the agencies must be adequately funded, have the power to issue subpoenas and conduct search warrants, and a have well-defined jurisdictions and mandates.

Early Warning Systems

Early warning systems (EWSs) are management tools for identifying police officers with possible behavioral problems before they "slip through the cracks." EWSs have three key components: (1) identifying officers whose behavior appears problematic; (2) intervening, through counseling or training, to correct the problematic behavior; and (3) following up with the officer who is the subject of an intervention. EWSs are not meant to punish officers for misconduct, but rather to allow for proactive management and administrative interventions—such as training, counseling by supervisors, or referral to professional counselors—before serious problems arise. According to DOJ, EWSs are common features of consent decrees that the department enters into with law enforcement agencies to reform their policing practices.

Officers in need of possible intervention are identified using different criteria, including use of force reports, citizen complaints, high-speed pursuit reports, preventable damage to agency vehicles, and involvement in civil litigation. The numbers of events and time frames used to identify officers in need of intervention (e.g., three use of force reports in 12 months) vary from system to system.

In many cases, a performance review or counseling session serves as the first level of intervention. Officers can be required to attend specialized training courses. EWSs also indicate to supervisors that their actions are subject to scrutiny and that they have a responsibility to monitor their officers' behavior. However, some have argued that EWSs are only effective if agencies have a culture of accountability. Generating lists of potential problem officers and conducting interventions with them would arguably be for naught if officers are not held accountable for continued misconduct.

National Decertification Index

Media accounts of police officers who have been fired from a law enforcement position in one city due to misconduct only to find work as a police officer in another city have raised interest in what can be done to prevent what some call "wandering officers." Utilizing the National Decertification Index (NDI) might be one avenue to address this issue. NDI is a database operated by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) that contains information on police officers who have had their certifications to serve as a police officer revoked. NDI data are submitted by a state's Peace Officer Standards and Training (POST) Commission or a similar body. NDI is a "pointer system" and does not contain information about a specific officer or the actions leading to decertification. NDI only refers the querying agency to the holder of the appropriate record.

Officer decertification standards vary by state. In some states, officers can only be decertified if they are convicted of a felony, whereas in other states officers can be decertified for misconduct that does not constitute a crime (e.g., using alcohol while on duty). Also, participation in NDI is voluntary: federal law does not require POST commissions to submit data on decertified officers or hiring agencies to search it before making hiring decisions. The Task Force recommended expanding NDI so it could serve as a national registry of decertified officers. The Task Force noted, "currently the criteria for reporting an action on an officer is determined by each POST independently, as is the granting of read-only access to hiring departments to use as part of their pre-hire screening process. Expanding this system to ensure national and standardized reporting would assist in ensuring that officers who have lost their certification for misconduct are not easily hired in other jurisdictions."

Body-Worn Cameras

Body-worn cameras (BWCs) are mobile cameras that allow law enforcement officers to record what they see and hear. They can be attached to a helmet, a pair of glasses, or an officer's shirt or badge. BWCs are viewed as a potential remedy for resolving issues of community trust and as a way to increase police accountability. The Bureau of Justice Statistics reported that in 2016, nearly half (47.4%) of police departments and sheriffs' offices had acquired BWCs and a similar proportion (44.7%) had some BWCs in service.

A 2019 meta-analysis reviewed the findings of 70 studies of BWC programs. The researchers noted that while early studies suggested that BWCs decreased the use of force by police officers, more-recent studies have found mixed results, though this could be the result of differences in agencies' policies about when officers have to use their cameras (e.g., BWCs might have less effects on the use of force if officers have discretion about when they can turn off their cameras). Research suggests that BWCs reduce complaints against officers, but questions remain "as to whether and to what degree these changes reflect citizens' reporting behaviors or improvements in officers' behavior or their interactions with citizens."

From FY2016 to FY2020, Congress appropriated $112.5 million for a grant program under DOJ to help law enforcement agencies purchase BWCs. While Congress has provided funding to help law enforcement agencies purchase BWCs, there is not a formal authorization for this grant program.

Civilian Review Boards

Civilian Review Boards review complaints against officers and issue recommendations on disciplinary actions. The U.S. Commission on Civil Rights, in its 2018 report on the use of force by police, observes that "many policing experts advocate for these boards, believing that they can help foster police accountability through their independent authority to investigate and audit departments facing allegations of abuse, including unconstitutional use of force, unauthorized detentions or arrests, or racial profiling." Research generally indicates that effective civilian review boards have the following elements:

- the authority to investigate or review complaints from the public on unconstitutional actions by the police;
- the ability to conduct regular, independent investigations and audits of internal complaints against officers and a department's disciplinary process;
- the power to require witnesses to appear and compel cooperation from police departments and individual officers;
- the authority to require police agencies to provide information on action taken in individual cases, with reasons for inaction;
- the authority to review and make recommendations on policy and training; and
- the provision of detailed public reports on the board's investigations and actions.

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