

License & Registration: Addressing New York's Police Misconduct

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In the wake of the police killing of George Floyd, protesters flooded the streets demanding reform. States across the country responded with legislative action. Within weeks, New York State repealed Civil Rights Law § 50-a, which shielded disclosures of police misconduct records. The subsequent release of records showed the profound lack of accountability of police officers in the state. This Note argues that New York should enact a police licensing requirement to curb misconduct through uniform behavioral standards for all law enforcement officers, which would pull disciplinary power away from local departments, and prevent fired officers from regaining employment at other departments—problems that the existing remedies like internal affairs actions, civil suits, and criminal prosecutions fail to address.

Licensing creates stronger accountability because an independent state licensing commission would have the power to suspend or revoke licenses for violating professional standards. Currently, all states certify that officers meet certain standards prior to employment, and 46 states allow for revocation of these certifications. Certification boards vary state-to-state, however, in their scope of authority and permitted grounds for decertification. New York State only permits decertification of officers who are first fired from their departments. This process suffers from reliance on local department action. Examining the NYPD demonstrates how even the most well-resourced departments fail to adequately address officer misconduct when disciplinary decisions are made at the local level. Police licensing shifts authority to the state, following many other professions that already require licensing (lawyers, doctors, barbers, taxi drivers, etc.).

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INTRODUCTION

In the summer of 2020, protestors filled the country's streets in response to lethal police violence.¹ Although communities have protested police violence many times in the past,² the response to George Floyd's murder was unique in its duration and global reach.³ After tragedies of this kind, the public typically demands reform to the policing system.⁴ Recommendations come with a range of proposed fixes. In recent years, the rallying cry to “defund the police” sparked international coverage.⁵ Despite continuous

1. Dionne Searcey & David Zuchino, *Protests Swell Across America as George Floyd Is Mourned Near His Birthplace*, N.Y. TIMES (June 6, 2020), <https://www.nytimes.com/2020/06/06/us/george-floyd-memorial-protests.html> [<https://perma.cc/6BZX-KCBT>].

2. These protests occur in the midst of rampant police violence. In 2020 alone, police shot and killed over one thousand people in the United States. *Police Shootings Database 2015–2021*, WASH. POST (last visited Sept. 5, 2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/X936-CKR3>]. Public response varies to these instances, but protests are frequent. As examples of some of the more significant protests, see, e.g., Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer Is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html> [<https://perma.cc/R73L-EUFM>] (protesting in Ferguson, Missouri, in response to a grand jury not indicting Officer Darren Wilson for killing Michael Brown); J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html> [<https://perma.cc/SWF2-QJPA>] (protesting in cities across the United States in response to a grand jury not indicting Officer Daniel Pantaleo for killing Eric Garner).

3. Damien Cave et al., *Huge Crowds Around the Globe March in Solidarity Against Police Brutality*, N.Y. TIMES (June 6, 2020), <https://www.nytimes.com/2020/06/06/world/george-floyd-global-protests.html> [<https://perma.cc/C8GC-CQYP>] (reporting on protests in countries around the globe, including Australia, Britain, France, and Germany).

4. See, e.g., Conor Friedersdorf, *The Case for Police Reform Is Much Bigger Than Michael Brown*, ATLANTIC (Nov. 26, 2014), <https://www.theatlantic.com/politics/archive/2014/11/the-case-for-police-reforms-is-much-bigger-than-michael-brown/383210/> [<https://perma.cc/8G6B-A44A>] (arguing for, inter alia, body and dashboard cameras, the end militarization of police forces, and independent decision making on prosecutions); Paul Lewis, *Obama Resists Demands to Curtail Police Militarisation Calling Instead for Improved Officer Training*, GUARDIAN (Dec. 1, 2014), <https://www.theguardian.com/us-news/2014/dec/01/obama-white-house-summit-ferguson> [<https://perma.cc/92GL-WNAV>] (citing demands for the end of transfers of military equipment to police); Mara Gay et al., *Thousands Protest in Staten Island Over Eric Garner's Death*, WALL ST. J. (Aug. 23, 2014), <https://www.wsj.com/articles/protesters-head-to-staten-island-for-al-sharptons-eric-garner-rally-1408807227> [<https://perma.cc/4CTV-NZVH>] (citing demands for a change in the NYPD's “broken windows” strategy of policing); Phil Helsel, *Protests Erupt After Cop in Eric Garner Chokehold Death Not Indicted*, NBC NEWS (Dec. 3, 2014) <https://www.nbcnews.com/news/us-news/protests-erupt-after-cop-eric-garner-chokehold-death-not-indicted-n261136> [<https://perma.cc/DXA3-DNYQ>] (noting calls to provide officers with better training in conflict resolution).

5. Sam Levin, *What Does “Defund the Police” Mean? The Rallying Cry Sweeping the US—Explained*, GUARDIAN (June 6, 2020), <https://www.theguardian.com/us-news/2020/jun/>

calls for reform, police departments largely avoid accountability measures typical of government agencies.⁶ As the authors of *Democratic Policing* articulate:

Each time policing breaks into the public consciousness, some new approach or measure is adopted, some adjustment made. Most often the change is either philosophical—policing should be more “professional” or the police should engage in “community policing”—or it involves some form of ex post “oversight,” such as court-ordered monitors, inspectors general, or civilian complaint review boards. What we have *not* done as a nation is insist that those who police us be treated as the executive officials they are, subject to the same basic requisites of democracy—namely, transparent, publicly accountable, ex ante regulation.⁷

Police misconduct is traditionally handled at the local level, yet departments fail to keep misconduct in check. Although police department leadership is ultimately accountable to local officials, such as the mayor or city council, this oversight structure alone inadequately governs the daily activities of officers. Furthermore, politicians are not incentivized to exercise oversight of police departments as long as crime is low, due to the strong lobbying power of police officers and their unions.⁸ And while police departments have internal rules, such as policy and methods handbooks, these rules often leave out crucial activities susceptible to police misconduct, such as guidance for use of tasers, consent searches, informants, and other investigative strategies.⁹ Disciplinary decisions for infractions of these guidelines are also largely left to local police department leadership. By contrast, a state oversight board would operate independent of police departments while also supervising “policing practices in ways that the department itself does not.”¹⁰

05/defunding-the-police-us-what-does-it-mean [https://perma.cc/3S4X-BVXX] (describing “defund the police” as an effort to redirect spending from police departments into other social services).

6. Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1831 (2015).

7. *Id.* at 1833 (footnotes omitted).

8. *Id.* at 1831, 1879.

9. *Id.* at 1845.

10. Maria Ponomarenko, *Rethinking Police Rulemaking*, 114 NW. U. L. REV. 1, 51 (2019).

One often overlooked regulatory measure for addressing police misconduct is licensing.¹¹ New York currently licenses all types of professions, from doctors to barbers.¹² Practicing lawyers require admission to the New York State Bar Association, which establishes its own code of conduct.¹³ A waxing professional can lose a state license for “untrustworthiness,”¹⁴ and a coin processor may lose a license for “incompetence.”¹⁵ Yet, police officers can wrongfully shoot someone without losing a professional license because no such license exists. A police licensing regime would create an independent entity to oversee police departments and hold their officers to a unified standard of conduct. This type of regime is critical at a time when public trust in the police is dwindling, and repeated acts of misconduct go unaddressed.

Although New York currently requires police officer certification, and allows for decertification, the system is not a robust check on police misconduct because the current law only allows for decertification if a police officer is first removed for cause.¹⁶ A licensing framework with statutorily defined misconduct provisions and an independent board with the power to revoke licenses is essential for remedying police misconduct in New York State.

This Note proceeds in four parts: Part I discusses the inadequacies of New York’s existing remedies to police misconduct through the lens of the New York City Police Department (NYPD). Part II explains what police licensing entails and how it works. Part III outlines a recommended licensing framework, and Part IV discusses the path and barriers to enacting this framework.

11. Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 ST. LOUIS U. L.J. 541, 542 (2001).

12. N.Y. EDUC. LAW § 6524 (McKinney 2021) (doctors); N.Y. GEN. BUS. LAW § 432 (McKinney 2021) (barbers).

13. N.Y. STATE BAR ASS’N, NEW YORK LAWYER’S CODE OF PROFESSIONAL RESPONSIBILITY (Dec. 28, 2007), <https://nysba.org/app/uploads/2020/01/LawyersCodeDec2807.pdf> [<https://perma.cc/5EHU-29VE>].

14. N.Y. GEN. BUS. LAW § 410(1)(c) (McKinney 2021).

15. N.Y. GEN. BUS. LAW § 424(1)(d) (McKinney 2021).

16. N.Y. COMP. CODES R. & REGS. tit. 9, § 6056.4(d) (2021) (stating that the required certificates for service as a police officer shall be immediately invalidated when an officer is removed for cause).

I. THE INADEQUACY OF NEW YORK'S POLICE MISCONDUCT REMEDIES

Current remedies for police misconduct may occur through (A) state regulatory processes, (B) local department or oversight board discipline, and (C) court actions. Each of these processes is addressed in the following sections. Despite the variety of remedies, the grim reality is that misbehaving officers often escape accountability.

In the summer of 2020, the New York State legislature responded to public demand and passed a package of bills reforming the state's police.¹⁷ Among other measures, the legislature repealed Civil Rights Law § 50-a, which permitted local departments to refuse disclosure of law enforcement officers' disciplinary records.¹⁸ The law originally came amidst police union lobbying during the 1970s at a time of high crime rates.¹⁹ Although intended to protect reputable officers from being smeared, the law became a shield for officers committing misconduct.²⁰ In recent years, the NYPD began interpreting the law broadly, in order to avoid disclosing the results of disciplinary hearings against officers.²¹ Police unions have recently fought efforts to repeal the law as well, as in the wake of Eric Garner's death, by arguing that repealing the law would be reckless and could cause reputational harm to the department.²² In June 2020, however, the state responded to public demand and repealed the law.

The newly accessible records painted a clear picture of unchecked misconduct within the nation's largest police department. Of the NYPD's 36,000 officers, nearly 4,000 officers had at least one substantiated complaint.²³ The data also showed that the NYPD still employed seven officers with substantiated

17. Luis Ferré-Sadurní & Jesse McKinley, *N.Y. Bans Chokeholds and Approves Other Measures to Restrict Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/nyregion/50a-repeal-police-floyd.html> [<https://perma.cc/LYK4-3CGE>].

18. S. 8496, 2019–2020 Leg. Sess. (N.Y. 2020), <https://legislation.nysenate.gov/pdf/bills/2019/S8496> [<https://perma.cc/V589-8D6J>]; see also Ginia Bellafante, *Why Secrecy Laws Protecting Bad Officers Are Falling*, N.Y. TIMES (June 5, 2020), <https://www.nytimes.com/2020/06/05/nyregion/police-records-50a.html> [<https://perma.cc/H4MB-2WBW>].

19. Bellafante, *supra* note 18.

20. *Id.*

21. Ferré-Sadurní & McKinley, *supra* note 17.

22. *Id.*

23. Eric Umansky, *We're Publishing Thousands of Police Discipline Records That New York Kept Secret for Decades*, PROPUBLICA (July 26, 2020), <https://www.propublica.org/article/nypd-civilian-complaint-review-board-editors-note> [<https://perma.cc/J4UP-PBLM>].

allegations of misconduct stemming from at least six different complaints.²⁴ In each instance, the officers continued to be promoted within the department and received pay increases.²⁵ Against one officer, the Civilian Complaint Review Board (CCRB) substantiated fourteen allegations from eight separate complaints, which mainly involved abuse during traffic stops.²⁶ Despite the CCRB recommending charges, the officer received either no penalty or simply remedial instruction.²⁷ This officer was also named in three civil suits, one of which resulted in a settlement of \$64,000.²⁸ Another officer, who remains on the force despite his involvement in three civil suits for which the department paid \$875,000, received over \$188,000 in pay from the NYPD in 2018.²⁹

These disciplinary records tell the story of a department fully aware of the misconduct in its ranks but willing to turn a blind eye. Unfortunately, this information is not entirely new. In 2018, BuzzFeed News revealed that between 2011 and 2015, at least 319 NYPD employees committed offenses serious enough to warrant firing, but they all kept their jobs.³⁰ Misdeeds included lying, cheating, stealing, and assaulting residents.³¹ At a minimum, the NYPD is aware of serious misconduct within its ranks and has the power to take action, but frequently refuses to discipline misbehaving officers. Existing processes fail to remedy police misconduct.

24. George Joseph et al., *Here Are the Current NYPD Officers with the Most Substantiated Misconduct Complaints*, GOTHAMIST (July 28, 2020), <https://gothamist.com/news/here-are-current-nypd-officers-most-substantiated-misconduct-complaints> [<https://perma.cc/26TU-RUQR>].

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. CAPstat, *Information on Joseph R. Tallarine*, <https://www.capstat.nyc/officer/p99510/> [<https://perma.cc/KP3Q-R3Q8>] (last visited Sept. 5, 2021).

30. Kendall Taggart & Mike Hayes, *Secret NYPD Files: Officers Who Lie and Brutally Beat People Can Keep Their Jobs*, BUZZFEED NEWS (Mar. 5, 2018), <https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious> [<https://perma.cc/K5R7-T9TJ>] (referencing interviews with former NYPD officials with experience in police discipline who believed that the described misconduct typically justifies termination).

31. *Id.*

A. REGULATORY OVERSIGHT OF POLICE IN NEW YORK

In New York, the Department of Criminal Justice Services (DCJS) regulates law enforcement through a certification process. The DCJS was created to develop “policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system.”³² The Governor appoints a commissioner to oversee the division, with the advice and consent of the State Senate.³³ The division provides a range of services including maintaining criminal and identification records, witness protection programs, and fingerprinting services.³⁴ The Municipal Police Training Council (MPTC) also exists within DCJS, and is composed of ten members.³⁵ The MPTC includes seven members from various law enforcement agencies or organizations, one academic faculty member, and two community representatives.³⁶ The MPTC establishes the standards and training requirements for municipal police officers in New York state.³⁷ In addition to the in baseline training requirements, the state also established medical and physical standards for prospective officers.³⁸ The DCJS certifies the officer candidates after successful completion of the necessary training and a demonstration that the candidate can physically perform the functions of the job.³⁹ This certification process covers both “police officers” and “peace officers.”⁴⁰ Peace officers include personnel such as probation officers, investigators, parole officers, and correctional officers.⁴¹

32. N.Y. EXEC. LAW § 837(1) (McKinney 2021).

33. N.Y. EXEC. LAW § 836(2) (McKinney 2021).

34. N.Y. EXEC. LAW § 837(4), (7), (17) (McKinney 2021).

35. N.Y. EXEC. LAW § 839(1) (McKinney 2021).

36. *Id.* Specifically, the MTPC is composed of one member nominated by the state sheriff’s association, one nominee from the state association of chiefs of police, the NYPD commissioner or designee, the superintendent of the state police, one incumbent police chief from within the state, one incumbent sheriff from within the state, one incumbent executive from a peace officer employing agency, one full-time university or college faculty to member, one representative of “victims of crime,” and one representative from a “community with high numbers of police and community interactions.” *Id.*

37. N.Y. EXEC. LAW § 841(1) (McKinney 2021).

38. N.Y. COMP. CODES R. & REGS. tit. 9, § 6000.7 (2021).

39. Notably, the DCJS is required to grant training certificates upon successful completion of training. *See, e.g.*, N.Y. CRIM. PROC. LAW § 2.30(2) (McKinney 2021) (training and certification requirements for peace officers); N.Y. EXEC. LAW § 841(3) (McKinney 2021) (requiring the DCJS commissioner certify officers that satisfactorily completed training requirements). For medical standards, however, the “examining physician or practitioner must determine, based upon his/her medical judgment, whether the existence of such condition renders the candidate unable to perform the essential functions of an entry-level police officer.” N.Y. COMP. CODES R. & REGS. Tit. 9, § 6007 (2021).

The DCJS is also required to maintain a registry of all certified officers within the state.⁴² Each law enforcement agency must report to the DCJS whenever an officer is “newly appointed or ha[s] ceased to serve.”⁴³ These certificates remain valid during “the holder’s continuous service as a police officer” and during specified durations of “interruption.”⁴⁴ An “interruption” is defined to mean “a period of separation from employment as a police officer . . . by reason of such officer’s leave of absence, resignation or removal, *other than removal for cause.*”⁴⁵ When an officer is removed for cause, their certificate “*may* be permanently invalidated,” and that officer “*may* be ineligible for any future certification.”⁴⁶

DCJS also has statutory authority to “[a]dopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the division.”⁴⁷ In 2016, DCJS promulgated regulations that defined “removal for cause.”⁴⁸ Per these regulations, “removal for cause” means “removal for incompetence or misconduct” pursuant to applicable law or “by an employee’s resignation or retirement while a disciplinary process has commenced.”⁴⁹

40. N.Y. EXEC. LAW § 845 (McKinney 2021).

41. N.Y. CRIM. PROC. LAW § 2.10 (McKinney 2021).

42. N.Y. EXEC. LAW § 845(1) (McKinney 2021).

43. N.Y. EXEC. LAW § 845(2) (McKinney 2021).

44. N.Y. GEN. MUN. LAW § 209-q(1)(b) (McKinney 2021).

45. N.Y. GEN. MUN. LAW § 209-q(1)(c) (McKinney 2021) (emphasis added).

46. N.Y. GEN. MUN. LAW § 209-q(1)(b-1) (McKinney 2021) (emphasis added).

47. N.Y. EXEC. LAW § 837(13) (McKinney 2021).

48. N.Y. COMP. CODES R. & REGS. tit. 9, § 6056.2(g) (2021).

49. *Id.* In full, the subsection states:

(g) Removal for cause of a full-time or part-time employee means removal for incompetence or misconduct:

(1) pursuant to:

(i) a hearing held under section 75 of the Civil Service Law;

(ii) a collective bargaining agreement, or any general, special or local law, or charter provision in accordance with section 76 of the Civil Service Law; or

(iii) any other applicable law;

(2) by an employee’s resignation or retirement while a disciplinary process has commenced pursuant to paragraph (1) of this subdivision which may result in removal; or

(3) after an employee’s waiver of any rights available pursuant to one of the processes described in paragraph (1) of this subdivision which may result in removal.

Id.

Between 2016 and 2020, the DCJS decertified 340 police officers across the state.⁵⁰ To date, these regulations have survived a challenge in court by decertified officers.⁵¹ There, officers challenged the validity of the regulation.⁵² While not ruling on the merits, the court held the challenges to the regulations were time-barred.⁵³

The New York State process for decertifying officers is notably weak for two foundational reasons. First, revocation of a certification is only permitted after “removal for cause,” which is fully dependent on local department action and typically only occurs in the narrowest of circumstances.⁵⁴ Accordingly, the state does not retain any independent authority to discipline misbehaving officers except for when the officer was already fired from their local department. Second, while an officer’s certification “may be permanently invalidated” after being removed for cause, neither the law nor regulations provide standards for when such invalidation should or must occur. The implications of these limitations are clear when considering the local disciplinary processes within the NYPD.

B. DISCIPLINARY PROCESSES AND OVERSIGHT OF THE NYPD

To best understand local disciplinary and oversight processes, one must inspect the details of a specific department. Due to the department’s considerable size and unique oversight resources, the NYPD is an ideal case study for evaluating the workings of local police discipline and oversight. As the country’s largest police department, the NYPD possesses all of the resources necessary to provide oversight.⁵⁵ In addition to its \$6 billion annual budget, the

50. New York State Div. of Crim. Just. Servs., Freedom of Information Law Response (Jan. 29, 2021) (on file with Columbia Journal of Law and Social Problems). The division decertified 12 officers in 2016, 80 officers in 2017, 88 officers in 2018, 109 officers in 2019, and 50 officers in 2020.

51. *Aufiero v. New York State Div. of Crim. Just. Servs.*, 103 N.Y.S.3d 610 (App. Div. 2019).

52. *Id.* at 612.

53. *Id.* at 612–13 (finding the statute of limitations already passed).

54. N.Y. GEN. MUN. LAW § 209-q(1) (McKinney 2021).

55. Eric Umansky & Mollie Simon, *The NYPD is Withholding Evidence from Investigations into Police Abuse*, PROPUBLICA (Aug. 17, 2020), <https://www.propublica.org/article/the-nypd-is-withholding-evidence-from-investigations-into-police-abuse> [<https://perma.cc/B486-5JWK>]. See also NYPD, ABOUT NYPD, <https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page> [<https://perma.cc/L5B4-CAV9>] (last visited Sept. 13, 2021).

City also boasts significant external police oversight authorities.⁵⁶ Unlike most cities, New York City staffs an Inspector General dedicated to overseeing the police.⁵⁷ The CCRB, moreover, is the largest civilian oversight agency in the country.⁵⁸ In addition, the City also created a Commission to Combat Police Corruption to investigate and report on corruption within the Department.⁵⁹ Finally, the NYPD maintains a large Internal Affairs Bureau (IAB) to internally review police misconduct.⁶⁰ With its vast resources and large internal affairs bureau, the NYPD is ahead of many smaller police departments in its ability to address misconduct.⁶¹ Owing in part to the resources dedicated to oversight of the NYPD, a trove of information exists detailing the process for police discipline. And due to the size of the Department, more officers go through disciplinary proceedings each year than in smaller localities.⁶²

Despite these vast resources, the NYPD nonetheless continues to inadequately address misconduct within its ranks. Over a four-year period alone, hundreds of officers committed offenses serious enough to be removed for cause, yet retained their positions.⁶³ The victims of police misconduct are not the only individuals bearing the burden of unchecked misconduct. Between 2016 and 2020, the NYPD paid out over \$962 million in settlements and judgments.⁶⁴

56. *Id.*

57. *Id.* The role of the Office of the Inspector General for the NYPD is to evaluate systemic issues within the Department and make recommendations for improvements. N.Y.C. DEPT OF INVESTIGATION, INSPECTOR GENERAL FOR THE NYPD, <https://www1.nyc.gov/site/doi/offices/oignypd.page> [https://perma.cc/YBX7-LVAA] (last visited Sept. 6, 2021).

58. Umansky & Simon, *supra* note 55.

59. N.Y.C. COMM'N TO COMBAT POLICE CORRUPTION, COMMISSION MANDATE, <https://www1.nyc.gov/site/ccpc/about/mandate.page> [https://perma.cc/F5FG-VTK8] (last visited Sept. 6, 2021).

60. NYPD, INTERNAL AFFAIRS, <https://www1.nyc.gov/site/nypd/bureaus/investigative/internal-affairs.page> [https://perma.cc/TV9X-NXJ3] (last visited Sept. 6, 2021).

61. See Ben Grunwald & John Rappaport, *The Wandering Officer*, 129 YALE L.J. 1676, 1748–49 (2020) (“What little has been written on the topic suggests that smaller agencies are less likely than their larger counterparts to have the resources and organizational apparatus to closely monitor and remediate particular officers.”).

62. NYPD, REFORMS TO THE NYPD DISCIPLINARY SYSTEM, <https://www1.nyc.gov/site/nypd/about/about-nypd/policy/nypd-disciplinary-system-reforms.page> [https://perma.cc/36QB-SSR2] (last visited Sept. 13, 2021) (noting that in 2019 alone, disciplinary cases against 339 NYPD members were closed).

63. Taggart & Hayes, *supra* note 30.

64. NYPD, NYPD ALLEGED MISCONDUCT MATTERS COMMENCED IN FY 2016–2020 (July 31, 2020), <https://www1.nyc.gov/assets/law/downloads/excel/NYPD%20Alleged%20Misconduct%20%20Matters%20Commenced%20in%20FY%202016-2020.xls> [https://perma.cc/72CS-9DZZ].

Clearly, designated oversight agencies and significant financial support are not enough to address police misconduct.

For an NYPD officer, disciplinary actions are initiated by either the IAB or CCRB. The processes by which each entity initiates, investigates, and determines penalties are reviewed in turn below.

1. *The Internal Affairs Bureau*

Local police departments handle most misconduct through their own internal review and disciplinary processes, which are fraught with bias, inadequate investigative procedures, and lack meaningful oversight. Within the NYPD, the IAB investigates any matters of wrongdoing by officers, criminal or otherwise.⁶⁵ The IAB uses a range of techniques “including pattern analysis, surveillance, integrity tests, drug testing, confidential informants, and undercover officers” to identify and corroborate allegations of misconduct.⁶⁶ If a misconduct claim is substantiated, the punishment ranges in severity. Less severe discipline may include “instruction,” “reprimand,” or “command discipline,” which are all handled at the local precinct level and are not considered formal.⁶⁷ The most significant punishment available at this level is revocation of up to 10 days of vacation time.⁶⁸

Serious instances of misconduct must go through the NYPD’s Department Advocate’s Office (DAO).⁶⁹ Civilian attorneys staff the DAO and recommend penalties, file charges against officers, and prosecute disciplinary cases at administrative court trials.⁷⁰ When the DAO files disciplinary charges, the accused officer may opt to enter a settlement agreement with the Department or proceed to a trial.⁷¹ Settlement agreements are negotiated between the NYPD and the officer’s lawyer, and are subject to approval by the NYPD Commissioner. Trials are overseen by the Office of the Deputy Commissioner of Trials, who reports to the

65. NYPD, DISCIPLINARY SYSTEM PENALTY GUIDELINES 5 (2021), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compet-.pdf [https://perma.cc/XFD5-N7F6] [hereinafter NYPD DISCIPLINARY SYSTEM].

66. *Id.*

67. *Id.* at 3.

68. *Id.*

69. *Id.*

70. *Id.* at 3–4.

71. NYPD DISCIPLINARY SYSTEM, *supra* note 65, at 6.

NYPD Commissioner.⁷² At trial, the DAO has the burden of proving the charges by a preponderance of the evidence.⁷³ Although results of these trials used to be made public, the NYPD stopped publicizing these results after a lawsuit from the Legal Aid Society in 2016.⁷⁴ And while the trials are open to the public, the schedule and location are not announced.⁷⁵ As with settlements, trial outcomes are reviewed by the NYPD Commissioner and the ultimate penalty is determined at the Commissioner's discretion.⁷⁶

In August 2020, the NYPD published a draft disciplinary matrix for public comment on its website in an effort to bring greater clarity to their disciplinary process.⁷⁷ The matrix came from a multi-year review by an independent panel of the NYPD's disciplinary process.⁷⁸ The result is a fifty-four page document of recommended disciplinary measures for a range of specified conduct, organized into eleven categories.⁷⁹ Additionally, the matrix spells out a slew of both mitigating and aggravating factors. Notably, however, the Police Commissioner retains power to ultimately determine discipline for any officer.⁸⁰ Police unions immediately opposed the new matrix, slamming the "mandatory minimums" for officers and claiming the matrix was simply a public relations play in response to the public outcry.⁸¹ At the same time, nonprofits criticized the new guidance for not going far

72. *Id.* See also Taggart & Hayes, *supra* note 30.

73. NYPD DISCIPLINARY SYSTEM, *supra* note 65, at 6.

74. Rick Rojas, *Suit Challenges Secrecy on New York Police Disciplinary Records*, N.Y. TIMES (Dec. 6, 2016), <https://www.nytimes.com/2016/12/06/nyregion/nypd-disciplinary-records.html> [<https://perma.cc/NE5J-8LPH>].

75. Taggart & Hayes, *supra* note 30.

76. NYPD DISCIPLINARY SYSTEM, *supra* note 66, at 7.

77. Michael R. Sisak, *NYPD to Adopt Guidelines for Disciplining Officer Misconduct*, WASH. POST (Aug. 31, 2020), https://www.washingtonpost.com/national/nypd-to-adopt-guidelines-for-disciplining-officer-misconduct/2020/08/31/b613e6a4-eb8c-11ea-bd08-1b10132b458f_story.html [<https://perma.cc/4NEG-KH3T>].

78. NYPD, PROCESS OF DEVELOPING THE NYPD DISCIPLINARY SYSTEM PENALTY GUIDELINES AND RESPONSE TO PUBLIC COMMENTS, <https://www1.nyc.gov/site/nypd/about/about-nypd/policy/response-to-public-comments.page> [<https://perma.cc/NY96-RB5D>] (last visited Sept. 16, 2021).

79. NYPD, DISCIPLINARY SYSTEM PENALTY GUIDELINES 8 (effective Jan. 15, 2021), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-compet-.pdf [<https://perma.cc/6WBL-NR4M>] [hereinafter NYPD DISCIPLINARY MATRIX].

80. *Id.* at 6.

81. Sisak, *supra* note 77.

enough.⁸² The Legal Aid Society applauded greater transparency, while emphasizing that control ultimately remains within the hands of the NYPD.⁸³

The NYPD's IAB suffers from a host of problems that scuttle its purpose of ensuring accountability for police misconduct. Foundationally, internal reviews come with inherent bias that affects all levels of the process.⁸⁴ Beginning at the top, local department leaders often resist disciplining their officers, even in instances of glaring misconduct.⁸⁵ Compounding this issue, internal affairs complaints often originate with a fellow officer. Officers are rarely willing to report misbehavior of their peers even in instances of serious misconduct. This unwritten rule is so well established to now be dubbed the "thin blue line."⁸⁶ And even when investigations are conducted, officers are often cast in the "best light possible."⁸⁷ The Commission to Combat Police Corruption reviewed the NYPD's internal affairs process in 2019 and found inadequate interviewing, "failures to adhere to best interview practices," "different interviewing skill levels among IAB's investigators," and a decrease in the quality of witness interviews.⁸⁸

Beyond investigations, the entire process suffers from bias or stonewalling. The combination of bias and self-protectionism leads to police departments rarely enforcing their own misconduct policies, even if the policies are excellent.⁸⁹ The prosecutors at DAO are employed by the NYPD, the judges are employed by the NYPD, and the NYPD Commissioner has ultimate say. In this environment, a more detailed disciplinary matrix will do little to remedy misconduct as long as disciplinary decisions remain subject to the approval by the Police Commissioner and open for

82. Angi Gonzalez, *Criticism Mounts Over the NYPD's New Disciplinary Matrix*, SPECTRUM NEWS (Sept. 1, 2020), <https://www.ny1.com/nyc/all-boroughs/news/2020/09/01/criticism-mounts-over-the-nypd-s-new-disciplinary-matrix> [https://perma.cc/9WK9-4VF6].

83. *Id.*

84. Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837, 844 (2016).

85. *Id.* at 866.

86. Katherine J. Bies, *Let the Sunshine in: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL'Y REV. 109, 115–16 (2017).

87. Moran, *supra* note 84, at 859.

88. N.Y.C. COMM'N TO COMBAT POLICE VIOLENCE, NINETEENTH ANNUAL REPORT OF THE COMMISSION 33–34 (Dec. 2019), <https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf> [https://perma.cc/J5YB-2GQV].

89. Seth W. Stoughton et al., *How to Actually Fix America's Police*, ATLANTIC (June 3, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/> [https://perma.cc/HUS5-KSJ9].

settlement agreements.⁹⁰ As one author succinctly stated, “Saying internal affairs units are the best means of protecting citizens from police misconduct is like saying foxes are the best guards for the henhouse.”⁹¹

Structural limitations also play a role in limiting IAB discipline. For example, union contracts significantly restrict departments’ options for discipline.⁹² Simply put, “leaving the decision to hire and fire officers up to local sheriffs and chiefs . . . often leads to situations where unfit officers are able to continue to work for a department that is unable or unwilling to terminate them.”⁹³ According to data from the New York Civil Liberties Union, for example, the NYPD has only fired twelve officers for misconduct since the mid-1980s.⁹⁴ This state of affairs results in officers committing serious abuses while remaining on the force, being promoted, and continuing to receive raises. In this system, effective discipline is wanting, and removing officers for cause is exceedingly rare.

2. *Civilian Complaint Review Board*

Despite being the “largest civilian oversight agency in the country,” the CCRB also suffers from structural issues that hamper its investigations and subvert its disciplinary recommendations.⁹⁵ New York City established the CCRB to independently investigate complaints by civilians against the NYPD.⁹⁶ The CCRB’s charter restricts the specific scope of the board to only cover “FADO” complaints, which are instances of excessive force, abuse of authority, discourtesy, and offensive language.⁹⁷ As with the IAB process, the CCRB’s first step is to substantiate complaints. If substantiated, the CCRB recommends either “instruction,” “discipline,” or “charges.”⁹⁸ Recommendations

90. NYPD DISCIPLINARY MATRIX, *supra* note 79, at 6.

91. Moran, *supra* note 84, at 844.

92. Stoughton et al., *supra* note 89 (citing a labyrinth of procedural protections that hinders the process of investigation, discipline, and termination).

93. Goldman & Puro, *supra* note 11, at 545.

94. Sisak, *supra* note 77 (also noting that the NYPD disputed the figure and stated a higher number have been “dismissed” or “forced to separate” during the same time period).

95. N.Y.C. CIVILIAN COMPLAINT REV. BD., HISTORY, <https://www1.nyc.gov/site/ccrb/about/history.page> [<https://perma.cc/V3ZP-DJMJ>] (last visited Sept. 8, 2021).

96. N.Y.C. CHARTER ch. 18-A § 440 (2021).

97. NYPD DISCIPLINARY SYSTEM, *supra* note 65, at 4.

98. CIVILIAN COMPLAINT REV. BD., POLICE DISCIPLINE, <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page> [<https://perma.cc/MS9C-XP82>] (last visited Sept. 8, 2021).

for “instruction” or “discipline” go to the DAO at the NYPD, which then determines whether to accept or adjust the penalties. Ultimately, these penalties are also subject to the NYPD Commissioner’s discretion. In the most serious instances of misconduct, the CCRB recommends charges against an officer.⁹⁹

Once substantiated, the CCRB’s Administrative Prosecution Unit (APU) determines the appropriate charges.¹⁰⁰ The APU, rather than lawyers from DAO, prosecutes the charges against officers directly with the administrative court. Originally, the APU was meant to conduct trials at New York City’s Office of Administrative Trials and Hearings (OATH), which is outside of the NYPD.¹⁰¹ After a suit by police unions, however, the New York Intermediate Court of Appeals ruled that these trials must take place within the NYPD.¹⁰² As with trials resulting from IAB investigations, the NYPD Commissioner retains discretion regarding the ultimate penalties resulting from APU prosecutions.¹⁰³ This discretion includes the ability to change the outcomes of both trials and plea agreements.¹⁰⁴ Finally, the NYPD Commissioner may intervene in any APU action where the process would be “detrimental to the [NYPD] disciplinary process.”¹⁰⁵

The CCRB was established to provide an outside check on the conduct of the NYPD. As independent investigators, the CCRB avoids the inherent bias of the NYPD investigating its own conduct. Reporting to the CCRB is also less daunting for victims of police abuse than sitting across from a police officer to describe an incident. As outside prosecutors, the APU improves the NYPD disciplinary process by presenting the case against officers that

99. *Id.*

100. CIVILIAN COMPLAINT REV. BD., MEMORANDUM OF UNDERSTANDING BETWEEN THE CIVILIAN COMPLAINT REVIEW BOARD (CCRB) AND THE POLICE DEPARTMENT (NYPD) OF THE CITY OF NEW YORK CONCERNING THE PROCESSING OF SUBSTANTIATED COMPLAINTS 1 (Apr. 2, 2012), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf [<https://perma.cc/2Q53-BHVG>] [hereinafter CCRB MOU]. The CCRB and NYPD established the unit through a memorandum of understanding following the recommendation by Mayor Giuliani in 2001. CIVILIAN COMPLAINT REV. BD., HISTORY OF APU LITIGATION 1, https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu-litigation-history.pdf [<https://perma.cc/4HU5-23BX>] (last visited Sept. 8, 2021) [hereinafter CCRB APU HISTORY].

101. CCRB APU HISTORY, *supra* note 100, at 1.

102. *Lynch v. Giuliani*, 755 N.Y.S.2d 6, 8 (App. Div. 2003) (finding that N.Y. UNCONSOL. LAW § 891 (McKinney 2021) required a hearing for removal of a police officer be held by the body with power to remove the officer).

103. CCRB MOU, *supra* note 100, at 2.

104. *Id.*

105. *Id.* at 1.

committed serious misconduct. In a 2019 report, the CCRB noted that in the 18 months prior to the APU's creation, the NYPD held no department trials for CCRB cases.¹⁰⁶ Since then, however, the APU prosecuted almost 400 officers, including the prosecution of Officer Daniel Pantaleo for the death of Eric Garner.¹⁰⁷ Perhaps most significantly, the CCRB frequently reports on the number and types of complaints, and provides much needed transparency on NYPD's own oversight actions. After the repeal of § 50-a, the CCRB's complaint data on specific officers and precincts provided the clearest picture of the unchecked misconduct to-date.

Despite these benefits, the CCRB is hamstrung by its limited scope of authority and its dependence on NYPD for evidence, adjudication, and ultimate determination of police discipline. The CCRB's authority, moreover, is limited to FADO issues. A 2019 report by the NYC Department of Investigations found that of the 2,495 complaints of bias policing, none were substantiated.¹⁰⁸ Accordingly, the report recommended expanding the purview of the CCRB to cover bias policing.¹⁰⁹ Even when a complaint is within the CCRB's purview, however, the NYPD blocks the CCRB from effectively investigating its more high-profile cases.¹¹⁰

CCRB investigators often do not even clear the first hurdle of substantiating allegations.¹¹¹ For example, in 2018 the CCRB investigated 3,000 complaints of inappropriate use of force; the Board was only able to substantiate seventy-three of those claims.¹¹² Part of the difficulty for the CCRB in substantiating claims is a lack of evidence, and much of this evidence comes from the police officers' own records. Although the NYPD has a legal

106. CIVILIAN COMPLAINT REV. BD., SEMI-ANNUAL REPORT 7 (2019), https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019_semi-annual.pdf [<https://perma.cc/PUN4-T23C>] [hereinafter CCRB SEMI-ANNUAL].

107. *Id.*

108. N.Y.C. DEP'T OF INVESTIGATION, OFF. OF THE INSPECTOR GEN. FOR THE NYPD, COMPLAINTS OF BIASED POLICING IN NEW YORK CITY 2 (June 2019), https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf [<https://perma.cc/A9QX-A9QQ>].

109. *Id.* at 56.

110. Umansky & Simon, *supra* note 55.

111. Civilian Complaint Rev. Bd., Case Outcomes, <https://www1.nyc.gov/site/ccrb/investigations/case-outcomes.page> [<https://perma.cc/6QFN-R9QZ>] (explaining that substantiated "means there is sufficient credible evidence to believe that the subject officer committed the alleged act without legal justification").

112. Eric Umansky, *My Family Saw a Police Car Hit a Kid on Halloween. Then I Learned How NYPD Impunity Works*, PROPUBLICA (June 23, 2020), <https://www.propublica.org/article/my-family-saw-a-police-car-hit-a-kid-on-halloween-then-i-learned-how-nypd-impunity-works> [<https://perma.cc/KL2W-QYDZ>].

obligation to provide information to the CCRB, the Department often stonewalls investigations.¹¹³ In one instance, the CCRB requested bodycam footage of an incident that left a Brooklyn teenager hospitalized with injuries.¹¹⁴ Despite possessing recordings from seven different bodycams, the NYPD only shared one.¹¹⁵ The NYPD at times informs the CCRB that a video does not exist, only for the CCRB to later discover from officer interviews that bodycam footage does exist.¹¹⁶ In other cases, the NYPD withheld paper records and warrants, redacted witness names, and NYPD officers refused to participate in interviews.¹¹⁷ The NYPD also frequently delays providing information. At one point, forty percent of requests for bodycam footage were pending at least three months.¹¹⁸ This evidence is critical for the CCRB to make determinations about claims. One CCRB report found that bodycam footage allows the board to make clear determinations of fact, either to substantiate claims or clear officers of wrongdoing, in nearly twice as many cases as those without these recordings.¹¹⁹ And although the CCRB possesses subpoena power, this action is rarely taken.¹²⁰ Explanations for the infrequency of subpoenas range from lack of mayoral support for the agency to the fact that the CCRB and NYPD share lawyers.¹²¹ Ultimately, without the necessary information to corroborate complaints, the CCRB's efforts are significantly curtailed.

The NYPD also disregards much of the CCRB's recommendations when punishing its officers. Over the past 5 years, the CCRB found that the NYPD disciplined its officers in

113. Umansky & Simon, *supra* note 55.

114. *Id.*

115. *Id.*

116. OLAS CARAYANNIS, CIVILIAN COMPLAINT REV. BD., RE: BWC AND DOCUMENT REQUEST ISSUES WITH THE NYPD 2 (July 5, 2019), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20190710_boardmtg_BWC_memo.pdf [<https://perma.cc/H4U7-3VF4>] (citing eighteen instances in which the NYPD wrongly claimed bodycam footage did not exist).

117. Umansky & Simon, *supra* note 55.

118. Umansky, *supra* note 112.

119. N.Y.C. CIVILIAN COMPLAINT REV. BD., STRENGTHENING ACCOUNTABILITY: THE IMPACT OF THE NYPD'S BODY-WORN CAMERA PROGRAM ON CCRB INVESTIGATIONS 6 (2020), https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWC_Report.pdf [<https://perma.cc/AU42-V3TZ>] (stating that the CCRB closed seventy-six percent of complaints "on the merits" where there was bodycam footage compared to thirty-nine percent where no footage was available).

120. Umansky & Simon, *supra* note 55.

121. *Id.* (noting that both the CCRB and the NYPD are represented by the New York City Law Department).

alignment with the CCRB's recommendations only 57% of the time for less serious misconduct, and 29% of the time for more serious behavior.¹²² As these reports demonstrate, the NYPD is more likely to disregard the CCRB when the misconduct is serious. For the most significant instances of abuse, the NYPD rejected the CCRB's recommended punishment two-thirds of the time.¹²³ The prevalence of disregarding CCRB recommendation incentivizes impunity for officers. Further, as police departments undercut disciplinary recommendations of similar review boards, the literature demonstrates that the boards often begin recommending lower penalties.¹²⁴

At bottom, the NYPD maintains significant authority over the discipline of its officers. Even when an independent agency recommends charges, the hearing process and ultimate punishment is determined by the NYPD Commissioner. The internal affairs process suffers from bias, internal protectionism, and inadequate investigative techniques. The civilian board process suffers from a lack of authority and stonewalling by the NYPD. Accordingly, it is exceedingly rare for officers to be fired even in instances of substantiated misconduct. Thus, even if an officer negotiates to retire or leave the Department, they retain their certification. These issues are emblematic of the lack of effective accountability for police officers across the state.

C. REMEDIES THROUGH THE COURTS

One of the main remedies available to victims of police misconduct is civil litigation for damages. Unfortunately, these suits pose a host of difficulties for victims, including long delays between violation and trial, high litigation costs, proof problems, and even retaliatory actions by the city against victims.¹²⁵ What's more, juries more frequently find in favor of police, foreclosing damage awards to victims of misconduct.¹²⁶

122. CIVILIAN COMPLAINT REV. BD., ANNUAL REPORT 47–48 (2020), https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_Annual.pdf [<https://perma.cc/K4Y2-SXJ3>].

123. See *e.g.*, *id.* at 48; Umansky, *supra* note 112.

124. Moran, *supra* note 84, at 902.

125. Roger Goldman & Steven Puro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 HASTINGS CONST. L. Q. 45, 56–57 (1987).

126. Goldman & Puro, *supra* note 11, at 547.

A variety of judicial doctrines that “limit the efficaciousness of damages actions” also stack the deck in favor of police and render litigation ineffective in ensuring police accountability.¹²⁷ Notably, the doctrine of qualified immunity immunizes an officer from liability unless the officer violated a “clearly established” statutory or constitutional right.¹²⁸ Courts apply this standard very narrowly, often only finding a clear constitutional violation when a previous court in the jurisdiction also found the same action to be a violation.¹²⁹ Finally, even when damages are imposed against an officer, most are indemnified and the city is ultimately the one who pays.¹³⁰

An officer may be prosecuted in instances where their misconduct is criminal. However, convictions of police officers are rare.¹³¹ One study found that law enforcement officers are convicted at half the rate of the general public.¹³² First, criminal trials suffer from similar biases to those in civil actions, whereby juries are unlikely to convict officers.¹³³ In criminal cases, moreover, juries are not the only players. Convicting an officer also requires the buy-in from a prosecutor, and the indictment of a grand jury.¹³⁴ With these factors in play, criminal prosecutions against officers are “largely ineffectual” at remedying misconduct.¹³⁵

Although the importance of addressing misconduct is clear, current remedies are insufficient. Some remedies focus on providing *ex post* relief, which is difficult to attain and does little in the way of limiting future misconduct. Others are designed to punish bad actors but are limited due to inherent bias or lack of incentives in holding officers accountable. Still others fail due to a

127. Friedman & Ponomarenko, *supra* note 6, at 1868.

128. *See, e.g.*, Mullenix v. Luna, 577 U.S. 7, 11–12 (2015).

129. *Id.*

130. Friedman & Ponomarenko, *supra* note 6, at 1869.

131. Goldman & Puro, *supra* note 11, at 547.

132. German Lopez, *Cops are Almost Never Prosecuted and Convicted for Use of Force*, VOX (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938234/police-shootings-killings-prosecutions-court> [<https://perma.cc/87BR-BG6X>].

133. Goldman & Puro, *supra* note 11, at 547.

134. Bies, *supra* note 86, at 111; *see also* James C. McKinley Jr. & Al Baker, *Grand Jury System, With Exceptions, Favors the Police in Fatalities*, N.Y. TIMES (Dec. 7, 2014), <https://www.nytimes.com/2014/12/08/nyregion/grand-juries-seldom-charge-police-officers-in-fatal-actions.html> [<https://perma.cc/URQ3-AS39>] (describing the special grand juries used in police fatalities cases that frequently lead to favorable outcomes for police officers).

135. Goldman & Puro, *supra* note 125, at 59.

lack of authority in carrying out discipline against known transgressors.

Without a process to ensure professional behavior, unchecked police misconduct fosters an “us vs. them” subculture. When officers misbehave, the public rightly reacts critically; in the face of this criticism, the police community becomes increasingly insular and develops a mentality of “Policeman as Other.”¹³⁶ This police culture creates a scenario in which “good apples” become complicit in protecting “bad apples.”¹³⁷ Police officers act in line with the expectations of their co-workers, as in any work environment.¹³⁸ Along with nurturing a “breeding ground for . . . abuses,” unaddressed misconduct also “alienates the very people the police are intended to serve,” which only further encourages lawless behavior.¹³⁹ In fact, the NYPD Discipline Guide echoes this sentiment, stating that discipline is necessary to “[c]orrect employee misconduct,” “[m]aintain the orderly functioning of the department,” “[e]nsure compliance to high standards,” and “[a]ssure the public that the department will hold employees accountable for misconduct.”¹⁴⁰ Despite the clear necessity of rooting out bad behavior, however, police misconduct continues. A new process is needed that is both independent and retains the authority to carry out appropriate remedies for police misconduct.

II. THE POLICE LICENSING LANDSCAPE

By establishing a licensing regime, states can determine the specific standards officers must meet to retain licenses, how violations are investigated, and the process for suspending or revoking licenses. A police license is a grant of authority from the state to an individual, one that permits them to work as a law enforcement officer. By licensing officers, the state creates an independent oversight entity with the power to effectively govern the standards and behavior of police.

136. Bies, *supra* note 86, at 123.

137. William Finnegan, *How Police Unions Fight Reform*, NEW YORKER (July 27, 2020), <https://www.newyorker.com/magazine/2020/08/03/how-police-unions-fight-reform> [https://perma.cc/8PBM-CJJB].

138. Stoughton et al., *supra* note 89.

139. Moran, *supra* note 84, at 843–44.

140. NYPD, DISCIPLINE IN THE NYPD 1 (2018), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2018.pdf [https://perma.cc/52VA-FNKT].

States vary in their use of terms to describe these regulations, and there is some debate regarding whether “certification” or “licensing” are different processes, or merely differences in terminology.¹⁴¹ For example, Missouri “licenses” their law enforcement, while Florida “certifies.”¹⁴² Both states, however, established a standard of conduct for their law enforcement and provide for independent review and revocation of licenses or certification. In Illinois, the Attorney General pushed for police licensing, despite the state already possessing decertification power.¹⁴³ Similarly, in this Note, the term licensure is used for the proposed regime as it connotes an on-going granting of power to an individual, rather than simply a one-time completion of training.¹⁴⁴ When discussing existing state policies, however, the term certification is used, as it is the term used by most states.

A state licensing framework builds off of the existing state regulations that require police certifications. At present, all states “certify” that officer candidates meet certain baseline standards and training requirements required to become a police officer.¹⁴⁵ Typically, state commissions grant police certifications, often referred to as a Police Officer Standards and Training Commission

141. Goldman & Puro, *supra* note 11, at 542 n.4.

142. Compare MO. DEP’T OF PUB. SAFETY, *Peace Officer Standards and Training*, <https://dps.mo.gov/dir/programs/post/> [https://perma.cc/BQC8-BQ4C] (last visited Sept. 11, 2021), with FLA. DEP’T OF L. ENF’T, *Officer Requirements*, <http://www.fdle.state.fl.us/CJSTC/Officer-Requirements/How-to-Become-an-Officer.aspx> [https://perma.cc/399J-LLDC] (last visited Sept. 11, 2021). Part III refers to specific provisions of both Missouri’s and Florida’s laws in greater detail.

143. Fran Spielman, *Illinois Attorney General Makes the Case for Licensing Police Officers*, CHI. SUN TIMES (June 18, 2020), <https://chicago.suntimes.com/politics/2020/6/18/21296089/illinois-attorney-general-licensing-police-officers-kwame-raoul> [https://perma.cc/9YXB-K3CY] (seeking greater authority to discipline police misconduct). A decade earlier, Kwame Raoul, then an Illinois State Senator, sponsored a Senate bill explicitly calling for law enforcement licensing to replace certification. S.B. 3294, 96th Gen. Assembly, Reg. Sess. (Ill. 2011) (requiring “police officers to be licensed rather than certified” in its synopsis as introduced).

144. See Goldman & Puro, *supra* note 11, at 542 n.4.

145. See Matthew J. Hickman, *POST Agency Certification Practices, 2015* 1 (Apr. 5, 2016) (on file with the *Columbia Journal of Law & Social Problems*) (finding in 2015 that all states except Hawaii had a POST agency to certify). In 2018, Hawaii passed a law establishing a Law Enforcement Standards Board, but the board is yet to establish standards or begin certifying officers. Editorial, *Legislature Must Give the Police Standards Board the Money It Needs to Do Its Job*, CIV. BEAT (Oct. 23, 2020), <https://www.civilbeat.org/2020/10/legislature-must-give-the-police-standards-board-the-money-it-needs-to-do-its-job/> [https://perma.cc/RLH8-ZWT4] (stating the new board originally aimed to establish standards for police officers by July 2019, but is now unlikely to meet this goal by even the end of 2021 without funding).

(POST).¹⁴⁶ In addition to certifying, most states also grant the power to remove certifications.¹⁴⁷ Through revocation, or decertification, the state board removes an officer's certification to practice as a law enforcement officer in the state. Only California, New Jersey, and Rhode Island do not allow for decertification of officers.¹⁴⁸ In 2020, legislatures in both California and Massachusetts passed bills to allow for police decertification.¹⁴⁹ While Massachusetts passed a decertification law at the end of 2020, California has yet to enact such a statute.¹⁵⁰ For those states that decertify, their authority and processes varies.¹⁵¹ In 2015, 100% of decertifying states revoked certificates for felony convictions, 61% for failure to meet qualification requirements, 57% for specific misconduct, 39% for termination for cause, and 11% for any misdemeanor conviction.¹⁵²

Reporting requirements also vary by the state and national level. Presently, only 22 states require reporting of conduct that could lead to decertification.¹⁵³ Without this requirement, states may only be alerted to police misconduct through the news or other indirect methods.¹⁵⁴ The states also do not uniformly report decertifications to a singular national registry. Although there is

146. Roger L. Goldman, *A Model Decertification Law*, 32 ST. LOUIS U. PUB. L. REV. 147, 147 (2012).

147. Alex Ebert & Adrienne Appel, *To Keep Bad Cops Off Streets, States Consider Police Licensing*, *Daily Labor Report*, BLOOMBERG L. (July 7, 2020), <https://news.bloomberglaw.com/daily-labor-report/to-keep-bad-cops-off-streets-states-consider-police-licensing> [<https://perma.cc/6JTQ-E6NC>] (noting that California, Massachusetts, New Jersey, and Rhode Island are the only states that do not permit decertifying law enforcement).

148. *See id.* Massachusetts passed a law establishing police decertification in the state at the end of 2020. Nick Sibilla, *New Massachusetts Law Will Decertify Rogue Cops, Revoke Their Immunity*, FORBES (Jan. 9, 2021), <https://www.forbes.com/sites/nicksibilla/2021/01/09/new-massachusetts-law-will-decertify-rogue-cops-revoke-their-immunity/?sh=f8155e55297f> [<https://perma.cc/9588-C2SX>].

149. *See, e.g.*, Anita Chabria, *Stall Tactics. Distractions. Lobbying. How Police Reform Was Derailed in California*, L.A. TIMES (Sept. 2, 2020), <https://www.latimes.com/california/story/2020-09-02/california-police-reform-bills-derailed> (on file with the *Columbia Journal of Law & Social Problems*); Matt Stout & Dasia Moore, *Why Hasn't the Mass. Legislature Sent a Police Accountability Bill to the Governor?*, BOS. GLOBE (Aug. 26, 2020), <https://www.bostonglobe.com/2020/08/26/metro/why-hasnt-mass-legislature-sent-police-accountability-bill-governor/> (on file with the *Columbia Journal of Law & Social Problems*).

150. *See* Sibilla, *supra* note 148.

151. Goldman & Puro, *supra* note 11, at 551–62.

152. Hickman, *supra* note 145, at 2.

153. *Id.* at 5.

154. Loren T. Atherley & Matthew J. Hickman, *Officer Decertification and the National Decertification Index*, POLICE Q. 9 (2013) (on file with the *Columbia Journal of Law & Social Problems*).

no federal registry of police certifications, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) created a National Decertification Index (NDI).¹⁵⁵ Currently, forty-four states report into the national database.¹⁵⁶ As of 2015, however, only 28 states reported “always” or “frequently” querying this database regarding past decertification when hiring new officers.¹⁵⁷ As such, a previously decertified officer could gain reemployment in another state, even if that state reports on decertification to a national registry. Ultimately, the effectiveness of revoking officer certifications as a remedy to misconduct depends greatly on the standards that permit revocation, reporting requirements, and authority granted to the certification board.

The differences between a certification process and a licensing regime exist on a continuum. Some states refer to their program as a “certification” process but operate in practice as a licensing regime. Ultimately, the effectiveness of licensing at remedying police misconduct will depend greatly on the authority granted to the governing board. And while New York State currently decertifies officers, the existing process does little to remedy misconduct, as it requires an officer first be fired for cause. The licensing law proposed in this Note will provide a significantly more robust regulation of officers.

A. BENEFITS OF LICENSING

As a regulatory structure, police licensing offers a number of benefits compared to other methods.

(1) Licensing can cover all types of law enforcement. Licensing regimes can govern not only the misconduct of police officers, but also the misconduct of sheriffs, state troopers, correctional officers, campus police, and security guards.¹⁵⁸ This feature is essential, as

155. INT’L ASS’N OF DIRS. OF LAW ENF’T STANDARDS AND TRAINING, ABOUT NDI, <https://www.iadlest.org/our-services/ndi/about-ndi> [<https://perma.cc/B2HD-AD4F>] (last visited Sept. 11, 2021).

156. Amir Vera, *There’s A Database Whose Mission Is to Stop Problematic Police Officers from Hopping Between Departments. But Many Agencies Don’t Know It Exists*, CNN (May 16, 2021), <https://www.cnn.com/2021/05/16/us/police-national-decertification-index-database/index.html> [<https://perma.cc/F5ES-JVUG>].

157. Hickman, *supra* note 145, at 7.

158. Goldman, *supra* note 146, at 150.

officers fired for misconduct may quickly regain employment in a similar line of work absent some control.¹⁵⁹

(2) Licensing can prevent fired officers from being rehired in the same position elsewhere. Known as “wandering officers,” fired police officers often simply move to another department either within the state or in a different state.¹⁶⁰ Unfortunately, cash-strapped departments frequently rehire previously fired officers to save money.¹⁶¹ The consequences, however, can be devastating as previously fired officers are more likely than others to engage in future misconduct.¹⁶² Under a licensing regime, removing an officer’s license is more powerful than termination as it removes a misbehaving individual from the profession in that state altogether.¹⁶³ Further, nationwide databases of certified officers can be shared between states to prevent rehiring across state lines.¹⁶⁴

(3) Licensing regimes aid smaller, under-resourced departments in maintaining a professional force. While larger departments, such as the NYPD, can afford to investigate, discipline, and retrain misbehaving officers, smaller agencies are often unable to engage in the same efforts.¹⁶⁵ Licensing regimes vest investigative and disciplinary power within a state agency, which does not burden smaller departments. Moreover, by requiring a heightened standard of conduct, licensing helps reduce the possibility of municipal liability for damages in civil suits against their officers.¹⁶⁶

(4) Licensing enables a more uniform quality of policing across the state. Rather than leaving disciplinary decisions to localities, licensing establishes standards of conduct based on statutorily enumerated requirements.¹⁶⁷ Accordingly, less discretion is vested in local police chiefs for determining discipline.

159. *Id.*

160. Grunwald & Rappaport, *supra* note 61, at 1687.

161. Goldman, *supra* note 146, at 149–50 (noting that departments may hire former officers with a history of misconduct at a discounted pay rate and avoid costs associated with training new recruits).

162. *See* Grunwald & Rappaport, *supra* note 61, at 1749; *see also* Stoughton et al., *supra* note 89.

163. Goldman & Puro, *supra* note 11, at 542; Goldman & Puro, *supra* note 125, at 49.

164. *See* Goldman & Puro, *supra* note 11, at 577.

165. *See* Grunwald & Rappaport, *supra* note 61, at 1748–49.

166. *Id.* at 1767–68.

167. *See* Goldman & Puro, *supra* note 125, at 55.

(5) Licensing lessens the burden on victims to report misconduct. Under a licensing regime, victims of police misconduct can file complaints with the state commission and trust an investigation and disciplinary proceeding will be conducted. Unlike with civil suits, the complainant does not risk counterclaims against them, does not bear the burden of litigation costs, and does not bear the burden of proving misconduct in court.¹⁶⁸

(6) Licensing lowers the burden of proof. Discipline under a licensing regime is an administrative process regarding a professional license. Accordingly, licensing statutes can define the required burden for the commission to find for license revocation.¹⁶⁹ Often these burdens are much lower than those of criminal prosecutions, which enables stronger policing of misconduct.

(7) By establishing an independent decision maker, licensing processes reduce the bias in determining discipline for misconduct.¹⁷⁰ Instead of relying on local chiefs to make decisions about their colleagues, an independent board is just that: independent. The independent board is incentivized to minimize misconduct in the state, while local politicians and department leaders are often balancing conflicting incentives regarding staffing their police and appeasing public demands. Accordingly, licensing processes are less prone to partiality in both decisions and investigative processes.¹⁷¹

In short, these benefits establish police licensing as a superior remedy to typical ways of addressing misconduct through local departments or court proceedings. Instead of depending on potentially under-resourced and biased local departments or requiring high-costs and often ineffectual judicial actions, licensing provides a regulatory framework that fulfills “a critical oversight role in . . . a loose conglomeration of authorities, policies, and procedures.”¹⁷²

168. *Id.* at 58.

169. *Id.* at 60. State decertification proceedings, like a license revocation proceeding, may also proceed under a lower burden of proof, such as a preponderance of the evidence. As the law currently stands in New York, however, a decertification first requires that the officer be fired, which is itself a high hurdle. *See supra* Part I.B.

170. *Id.* at 60–63.

171. *Id.*

172. Atherley & Hickman, *supra* note 154, at 3.

B. ADDRESSING SOME LIMITATIONS OF LICENSING

While licensing presents distinct benefits, limitations remain. First, disciplinary proceedings still require an investigation, hearing, and presentation of evidence. Consequently, existing issues with police department stonewalling, pro-police bias, and proof problems may still persist. The best evidence of misconduct in many cases is police bodycam footage, or a police report. Police departments may withhold these materials for long periods or provide heavily redacted versions.¹⁷³ Although these realities may continue, independent agencies can overcome them through injunctive relief, subpoena power, or civil fines.¹⁷⁴ And, under a licensing regime, investigatory power also exists with the state commission. This process avoids the delays and bias prevalent in internal affairs investigations.¹⁷⁵

Another criticism of licensing boards is that current or former law enforcement personnel may staff the operations.¹⁷⁶ Unlike local police departments, however, these boards also include members of the public and civilians, which can counterbalance pro-law enforcement bias.¹⁷⁷ Together, boards can balance the professional expertise of former law enforcement officers with the expertise of academics, and lived experience of individuals in the community who may have experienced police misconduct. And while some bias may remain, a licensing board better addresses these concerns than other disciplinary bodies. Ultimately, a licensing framework is not a perfect solution, but does resolve some of the most serious and longstanding issues preventing police misconduct from being remedied.

173. See Umansky & Simon, *supra* note 55.

174. See, e.g., IDAHO CODE ANN. § 19-5113 (West 2021); MO. ANN. STAT. § 590.110(1) (West 2021); FLA. STAT. ANN. § 943.12(14) (West 2021).

175. See discussion *supra* Part I.B.1 on inadequacies with internal affairs disciplinary processes.

176. Such personnel include sheriffs, chiefs of police, and correctional department leadership in the state certification board. See, e.g., ARIZ. REV. STAT. ANN. § 41-1821 (2021); FLA. STAT. ANN. § 943.11(1)(a) (West 2021); IDAHO CODE ANN. § 19-5102(a) (West 2021); MO. ANN. STAT. § 590.120(1) (West 2021).

177. See, e.g., ARIZ. REV. STAT. ANN. § 41-1821(A)(9) (2021) ; FLA. STAT. ANN. § 943.11(1)(a) (West 2021); MO. ANN. STAT. § 590.120(1) (West 2021).

III. RECOMMENDED LICENSING FRAMEWORK

New York state should move from their current certification regime to a statewide licensing regime to effectively remedy police misconduct. This Note proposes that an effective licensing framework requires (A) an independent board appointed by the governor that includes a broad range of representation, (B) statutory authority to enforce reporting of misconduct, conduct investigations, and revoke licenses, (C) a statutorily enumerated standard of conduct, (D) an independent administrative hearing and appeals process, (E) national reporting of licensing and revocations, and (F) public visibility and input into processes and rulemaking of the organization.

Multiple sources inform the foregoing proposal for a licensing framework in New York. First, other states' statutes provide a plethora of methods for modeling a licensing framework in New York.¹⁷⁸ Along with these statutes, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) created a set of model standards for states, which aids in determining an ideal baseline from the perspective of state POST leaders.¹⁷⁹ Finally, academic scholarship provides another guide in determining the fundamental features of a police licensing regime.

A. THE LICENSING BOARD STRUCTURE

The licensing board's structure impacts how effectively police misconduct will be addressed within the state. The board must be independent to avoid being coopted by the department itself.¹⁸⁰ The board must also consist of an odd number of individuals to

178. This Note refers to specific features of the laws in Arizona, Florida, Idaho, and Missouri. These states were selected based on recommendations from IADLEST, and as they provide a range of methods. Additionally, recent bills from California and Massachusetts are referenced to include elements of more recent discourse and proposals on the topic.

179. INT'L ASS'N OF DIRS. OF LAW ENF'T STANDARDS AND TRAINING, MODEL MINIMUM STANDARDS i (revised Feb. 2020), https://www.iadlest.org/Portals/0/IADLEST_Model_Standards.pdf?ver=2020-02-26-124919-253 [<https://perma.cc/7APW-NDS4>] [hereinafter IADLEST STANDARDS].

180. *Id.* at 2; *see also* Ponomarenko, *supra* note 10, at 54.

avoid gridlock on contentious issues.¹⁸¹ Finally, the Governor should appoint the board members.¹⁸²

A critical question when establishing an oversight agency is who determines the leadership. On one extreme, the agency can be a part of the department it is policing (i.e., Internal Affairs), and leaders are simply hired by department heads. On the other, the agency may require that leadership be a fully elected position to an independent agency. The best method is a combination of democratic responsiveness to the community, while implementing guardrails to ensure the agency is not captured either by the department or interest groups. Appointment by the Governor balances the democratic responsiveness with avoiding capture of the agency. Although not as direct, a governor that selects candidates who do not operate in the public's interest can be held accountable. Conversely, while elections may be more responsive to the public, there are drawbacks. These low-profile positions may attract under-qualified candidates using the position as a stepping stone, and due to low turnout for down-ballot elections, union reach can often garner support to put a loyalist into the position.¹⁸³

Additionally, the board must be made up of a variety of representatives as defined by statute. POST agencies often consist heavily, if not primarily, of law enforcement leaders.¹⁸⁴ The IADLEST also recommends that a majority of the representatives be law enforcement officials.¹⁸⁵ As this Note demonstrates, trusting the law enforcement community to oversee itself is

181. See, e.g., ARIZ. REV. STAT. ANN. § 41-1821 (2021) (requiring a board with thirteen members); FLA. STAT. ANN. § 943.11(1)(a) (West 2021) (requiring a board with nineteen members); IDAHO CODE ANN. § 19-5102 (West 2021) (requiring a board with thirteen members); MO. ANN. STAT. § 590.120(1) (West 2021) (requiring a board with eleven members).

182. See, e.g., ARIZ. REV. STAT. ANN. § 41-1821(A) (2021); FLA. STAT. ANN. § 943.11(1)(a) (West 2021); IDAHO CODE ANN. § 19-5102 (West 2021); MO. ANN. STAT. § 590.120(1) (West 2021).

183. Ponomarenko, *supra* note 10, at 55–56.

184. Including sheriffs, police chiefs, prosecutors, correctional officers, law enforcement officers, and FBI agents. See, e.g., N.Y. EXEC. LAW § 839(1) (McKinney 2021) (designating seven of the ten council positions to law enforcement representatives); ARIZ. REV. STAT. ANN. § 41-1821 (2021) (designating eight of the thirteen board positions to law enforcement representatives); FLA. STAT. ANN. § 943.11(1)(a) (West 2021) (designating eighteen of the nineteen commission positions to law enforcement representatives); IDAHO CODE ANN. § 19-5102 (West 2021) (designating twelve of the thirteen council positions to law enforcement representatives); MO. ANN. STAT. § 590.120(1) (West 2021) (designating ten of the eleven commission positions to law enforcement representatives).

185. IADLEST STANDARDS, *supra* note 179, at 2.

fraught with conflicts of interest and is often ineffective.¹⁸⁶ Rather, an effective licensing board must designate specific seats for individuals outside of law enforcement, even those who were victimized by police abuse.¹⁸⁷ While states typically include at least one civilian on their boards, the civilian is often in the minority.¹⁸⁸ More recently, the newly-enacted Massachusetts law included specific seats for women and people of color, nominations from the civil rights and social justice section council of the Massachusetts Bar Association, and nominations from the Massachusetts Commission Against Discrimination.¹⁸⁹ Rather than only allowing voices of those in law enforcement, an effective board will contain voices from the community being policed, including broad representation of race, gender, and leaders from critical community groups. This representation adds the perspective of those actually impacted by police misconduct, garners greater buy-in from the community in the success of the police force, and increases the legitimacy of reform efforts.¹⁹⁰ By forcing the police and community to work together, this structure also helps overcome the “us versus them” mentality that is prevalent in the police community.¹⁹¹ Civil rights leaders and academics can, moreover, add expertise on the impacts of policing and recommend improvements in practices.

Finally, the licensing board should be created within the existing Department of Criminal Justice Services (DCJS). Rather than create an entirely new office, the DCJS can retool existing efforts that align with many of the same functions of a licensing framework. Similar to how the Municipal Police Training Committee (MTPC) operates within DCJS to oversee the training and certification of police candidates, so too a licensing board can

186. See Moran, *supra* note 84, at 884; see also discussion *supra* Part I.B.

187. See N.Y. EXEC. LAW § 839(1) (McKinney 2021) (requiring a “representative of victims of crime” on the Municipal Police Training Council); see also Moran, *supra* note 84, at 885; S. 2820, 191st Sess. 15 1.293–94 (Mass. 2020) (as filed July 14, 2020), <https://malegislature.gov/Bills/191/S2820> [<https://perma.cc/785H-WDCG>] (including an individual personally involved or impacted by the criminal justice system); S.B. 731, 2019–2020 Leg. Sess. 26 1.32–37 (Cal. 2020) (as amended Aug. 25, 2020), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB731 [<https://perma.cc/8V-EV-FPZ4>] (including an individual who was subject to or is related to someone who was subject to wrongful use of force by police).

188. See, e.g., ARIZ. REV. STAT. ANN. § 41-1821(9) (2021); FLA. STAT. ANN. § 943.11(1)(a) (West 2021); MO. ANN. STAT. § 590.120(1) (West 2021).

189. MASS. GEN. LAWS ANN. ch. 6E § 2(a)–(b) (West 2021).

190. See Moran, *supra* note 84, at 885.

191. *Id.* at 890.

operate within DCJS to oversee the licensing standards, hearings, and revocation processes. Within DCJS, the board can build from the resources that exist for training, accreditation, and reporting to carry out the new functions of the licensing regime.

B. THE LICENSING BOARD POWERS

Oversight agencies require independent authority to be effective. For a licensing board, effectiveness requires the power to enforce reporting of misconduct by departments, investigate instances of wrongdoing, and revoke licenses.

1. *Reporting Enforcement*

A majority of POST agencies rely on reporting from local departments regarding officer misconduct.¹⁹² Many departments, however, are either not required to report misconduct to state POSTs, or neglect to do so in the face of legal obligations.¹⁹³ As such, the licensing regime must include both incentives for local departments to report, and enforcement mechanisms for the licensing board ensure reporting. To incentivize disclosure of misconduct the law should allow for “good faith reporting,” which grants qualified immunity to departments.¹⁹⁴ Qualified immunity for reporting would eliminate the department’s potential exposure to civil liability in a defamation suit by an officer. At the same time, the board must also possess the power to investigate whether local departments are following reporting requirements, and the power to enforce compliance by seeking injunctive relief or imposing civil fines.¹⁹⁵ Additionally, departments will be more likely to report knowing that the board can enforce compliance. This approach keeps the onus on departments while ensuring that reporting will occur.

192. See Goldman, *supra* note 146, at 153.

193. See Grunwald & Rappaport, *supra* note 61, at 1695.

194. See IADLEST STANDARDS, *supra* note 179, at 20; see also Goldman, *supra* note 146, at 153–54.

195. Arizona grants the state POST power to investigate whether agencies are following standards. ARIZ. REV. STAT. ANN. § 41-1822(A)(6) (2021). Florida law provides the power to enforce provisions. FLA. STAT. ANN. § 943.12(14) (West 2021). Florida is also one of the most active state in decertifying officers in the nation. See Grunwald & Rappaport, *supra* note 61, at 1694.

2. Investigative Power

The board must possess power to both request that local departments investigate officer misconduct and to independently investigate misconduct. In Arizona, for example, the POST may request that the department investigate,¹⁹⁶ can receive complaints about any issues regarding the department's investigation,¹⁹⁷ and can choose to simply investigate complaints itself.¹⁹⁸ An ideal licensing regime should include a similar set of options. Using its discretion, the board may determine times when leveraging findings of a department's investigation is most appropriate. Additionally, resources may not allow the state board to conduct every investigation into every instance of misconduct, and as such, the board will need to rely on departments at times. The board should also possess subpoena power to ensure they receive information from departments, even if they are conducting their own investigations.¹⁹⁹ Through subpoenas, the board can avoid the stonewalling currently prevalent between the NYPD and CCRB. With these options, the board can ensure effective investigations occur, whether through their own process or by relying on the local departments.

Staffing a new office to investigate police licensing violations may overlap at times with another recently created investigative arm in New York called the Law Enforcement Misconduct Investigative Office (LEMIO). The LEMIO was established to “handle misconduct complaints statewide about any local law enforcement agencies.”²⁰⁰ Created in June 2020, the office became effective in April 2021.²⁰¹ A deputy attorney general will lead the office, and will receive complaints from “any source, or upon his or her own initiative” and can investigate any “allegations of corruption, fraud, use of excessive force, criminal activity, conflicts

196. ARIZ. REV. STAT. ANN. § 41-1822(C)(1) (2021).

197. ARIZ. REV. STAT. ANN. § 41-1822(C)(2) (2021).

198. ARIZ. REV. STAT. ANN. § 41-1822(C)(1) (2021).

199. *See, e.g.*, IDAHO CODE ANN. § 19-5113 (West 2021); MO. ANN. STAT. § 590.110(1) (West 2021).

200. Press Release, Gov. Andrew M. Cuomo, Governor, State of New York, Governor Cuomo Signs Legislation Requiring New York State Police Officers to Wear Body Cameras and Creating the Law Enforcement Misconduct Investigative Office (June 16, 2020), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-requiring-new-york-state-police-officers-wear-body-cameras-and> [<https://perma.cc/LP2G-33J4?type=image>] (last available Aug. 10, 2021).

201. *See* N.Y. EXEC. LAW § 75 (McKinney 2021).

of interest or abuse.”²⁰² At the completion of an investigation, the office will determine whether an allegation warrants any discipline, prosecutions, or further investigations.²⁰³ The law also grants the office subpoena power, the authority to monitor the implementation of recommendations, and ability to release public reports of investigations.²⁰⁴ Although it is unclear how active this new office will be, its creation is an important step. Operating at a state level, and staffed by prosecutors, the office is positioned for greater success in obtaining evidence than the CCRB. This office could serve as an indispensable partner to a state licensing board in substantiating misconduct claims that might lead to license revocation or suspension. That said, the investigations of this office may overlap with investigations done in reviewing police licensing. Coordination between these offices will be necessary to avoid replication of efforts. Rather than operating in conflict, the combined authorities of these offices can complement each other to address individual instances of police misconduct. The LEMIO remains in its infancy, and it is yet unclear the focus of the office. While the licensing board’s sole focus will be on misconduct of individual officers, the LEMIO may often focus more on systemic issues or department-wide behavior.²⁰⁵

3. *Revocation Power*

An effective licensing regime must provide, by statute, for the revocation or suspension of licenses. The IADLEST recommends that any board should possess the ability to revoke licenses or decertify, and a majority of states have that power.²⁰⁶ Although courts have generally upheld the implicit authority of a certification board to revoke, the better course is to specifically grant power by statute.²⁰⁷ The primary reason to grant revocation

202. N.Y. EXEC. LAW § 75(3)(a) (McKinney 2021).

203. See N.Y. EXEC. LAW § 75(3)(c) (McKinney 2021).

204. See N.Y. EXEC. LAW § 75(3)–(4) (McKinney 2021).

205. N.Y. EXEC. LAW § 75(2)(d) (McKinney 2021) (“The mission of the [LEMIO] shall be to review, study, audit and make recommendations relating to the operations, policies, programs and practices . . . of state and local law enforcement agencies.”).

206. IADLEST STANDARDS, *supra* note 179, at 2. For reference of statutory language, see, e.g., ARIZ. REV. STAT. ANN. § 41-1822(D)(1) (2021); FLA. STAT. ANN. § 943.1395(7) (West 2021); FLA. STAT. ANN. § 943.12(3) (West 2021); IDAHO CODE ANN. § 19-5109(3) (West 2021); MO. ANN. STAT. § 590.080(3) (West 2021).

207. See Goldman & Puro, *supra* note 11, at 551.

authority by statute, rather than regulation or implicit power, is to ensure more lasting and stable oversight.

In the enacting statute, the legislature should clearly define a few key features as it relates to revocation authority to ensure the licensing board can effectively address police misconduct. First, the enacting statute of the licensing regime must clearly vest final authority regarding who receives and maintains licenses with the licensing board.²⁰⁸ Revocation by the licensing board must not be subject to approval by a police chief or be required to be arbitrated.²⁰⁹ The legislature's clear intent to vest revocation power in the licensing board can protect the board from challenges based on collective bargaining rights. Under New York law, public employees are granted broad rights to collectively bargain over all conditions of their employment.²¹⁰ The New York Court of Appeals, however, held that police discipline is not subject to such collective bargaining where "the Legislature has expressly committed disciplinary authority over a police department to local officials."²¹¹ New York courts have not yet decided on collective bargaining related to decertification, as the regulation only provides for decertification when an officer is removed for cause. To avoid conflict, the law should explicitly grant sole authority over these determinations to the board and define an exception to collective bargaining for licensing standards.

Second, officers should be permitted to voluntarily give up their licenses as part of a bargaining process to resolve misconduct reviews.²¹² This would incentivize greater bargaining between the state and law enforcement officers. In states that allow for these types of settlements, the voluntary surrender of officer licenses is most often permanent.²¹³ Although misbehaving officers may receive concessions, such as lowered criminal penalties, the offending officer can be removed from the force. By allowing this type of bargaining, the state board can streamline the resolution

208. For reference, the Arizona board is the final arbiter of revocation of certifications. ARIZ. ADMIN. CODE R13-4-109(F) (2021) ("Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.").

209. See Moran, *supra* note 84, at 901.

210. See N.Y. CIV. SERV. LAW § 204(2) (McKinney 2021).

211. Patrolmen's Benevolent Ass'n of the City of New York, Inc. v. New York State Pub. Emp. Rels. Bd., 848 N.E.2d 448, 449 (N.Y. 2006).

212. See Goldman & Puro, *supra* note 11, at 557.

213. *Id.*

of misconduct investigations and avoid the possibility that a misbehaving officer regains their license on appeal.

Finally, the state must explicitly bar departments from hiring officers without valid licenses. Even when misbehaving officers are fired, many simply regain employment at other departments.²¹⁴ Without specifically preventing the rehire of former officers with revoked or suspended licenses, the state may be shuffling misbehaving officers around rather than improving the quality of conduct.

C. DETAILED CODE OF CONDUCT

The most powerful feature of a licensing regime is the professional code of conduct for law enforcement. Rather than operating as an *ex ante* checklist, licensing statutes establish ongoing behavioral requirements for law enforcement officers to maintain their licenses. Officers that fail to meet defined standards risk losing their license, which prevents them from remaining employed as a law enforcement officer. This feature is exactly the opposite of current New York law, which only provides for revocation if an officer loses her job. Accordingly, certification is a one-time stamp of approval for hiring, rather than an ongoing professional standard.

When considering specific conduct requirements, the leading scholar on police licensing, Roger Goldman, explains that the largest variation among states is between general versus specific language.²¹⁵ There is a tradeoff between these approaches. Specific language provides clearer notice to officers, while more general language covers abuses that do not clearly fit into exacting language.²¹⁶ Another variation is between statutorily-specified misconduct and misconduct detailed in regulations.²¹⁷ Considering these approaches, an ideal licensing framework will include both general statutory language and specific regulatory language on required law enforcement conduct. As Goldman

214. See Grunwald & Rappaport, *supra* note 61, at 1680–84.

215. Goldman, *supra* note 146, at 151.

216. *Id.* at 152.

217. For example, Florida statutes require an officer maintain “moral character” to retain certification. FLA. STAT. ANN. § 943.1395(7) (West 2021). State regulations then enumerate the meaning of “moral character” to prohibit actions such as excessive use of force, sexual misconduct, felony convictions, and false statements. FLA. ADMIN. CODE ANN. r. 11B-27.0011 (West 2021).

notes, a hybrid model including both specific and general language is the best approach.²¹⁸ Including broader categories of conduct within the statute provides the board with expansive authority to engage in effective oversight, and rulemaking authority to articulate specific regulations provides clearer expectations for police officers.

Most state statutes include two sections for required conduct: baseline qualifications and revocable misconduct. Baseline qualifications for initial attainment of a license generally include requirements regarding citizenship, age, education, health, criminal background, drug use, and prior decertification or license revocation.²¹⁹ State statutes typically require officers to maintain compliance with the baseline requirements to retain certifications or licenses.²²⁰ In addition to these requirements, states specify a range of potential causes for suspension or revocation of licenses. These causes range in specificity, but generally cover a number of offenses: physical or mental disabilities,²²¹ illegal drug possession,²²² on-duty alcohol consumption,²²³ felony convictions,²²⁴ misdemeanors,²²⁵ excessive use of force,²²⁶ sexual misconduct,²²⁷ discrimination,²²⁸ false or misleading statements,²²⁹ failure to provide information to the board in a

218. Goldman, *supra* note 146, at 152.

219. See, e.g., ARIZ. REV. STAT. ANN. § 41-1822(A)(3) (2021); ARIZ. ADMIN. CODE R13-4-105(A) (2021); FLA. STAT. ANN. § 943.13 (West 2021); IDAHO ADMIN. CODE r. 11.11.01.055 (2021); MO. CODE REGS. ANN. tit. 11, § 75-13.020 (2021).

220. See, e.g., ARIZ. REV. STAT. ANN. § 41-1822(A)(3) (2021); FLA. STAT. ANN. § 943.1395(6) (West 2021); MO. ANN. STAT. § 590.080(1)(6) (West 2021).

221. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(3) (2021); MO. ANN. STAT. § 590.080(1)(1) (West 2021).

222. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(5) (2021); FLA. ADMIN. CODE ANN. r. 11B-27.0011(2) (2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(B) (2021).

223. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(6) (2021); IDAHO ADMIN. CODE r. 11.11.01.110(02)(d) (2021).

224. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(7) (2021); FLA. ADMIN. CODE ANN. r. 11B-27.0011(4)(a) (2021); MO. ANN. STAT. § 590.080(1)(2) (West 2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(A) (2021).

225. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(7) (2021); FLA. ADMIN. CODE ANN. r. 11B-27.0011(4)(b) (2021); IDAHO CODE ANN. § 19-5109(4)(a) (West 2021); MO. ANN. STAT. § 590.080(1)(2) (West 2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(A) (2021).

226. See FLA. ADMIN. CODE ANN. r. 11B-27.0011(4)(c)(1) (2021).

227. See, e.g., FLA. ADMIN. CODE ANN. R. 11B-27.0011(4)(c)(3)–(5) (2021); IDAHO ADMIN. CODE r. 11.11.01.110(02)(g) (2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(B) (2021).

228. FLA. ADMIN. CODE ANN. r. 11B-27.0011(4)(c)(15) (2021).

229. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(10) (2021); FLA. ADMIN. CODE ANN. r. 11B-27.0011(4)(c)(6) (2021); IDAHO ADMIN. CODE r. 11.11.01.110(02)(f) (2021); MO. ANN. STAT. § 590.080(1)(4) (West 2021).

timely manner,²³⁰ general malfeasance,²³¹ lack of good moral character,²³² conduct that jeopardizes public trust in law enforcement,²³³ and failure to follow a code of ethics.²³⁴ These categories provide a strong basis for a new licensing regime. In addition, the licensing board may pull from sources such as the NYPD's disciplinary matrix to consider additional standards for a statewide code of conduct.²³⁵

D. INDEPENDENT ADMINISTRATIVE HEARING PROCESS

Any license revocation or suspension must allow for a hearing before an administrative judge prior to final enactment. This administrative process should provide officers with a notification of proceedings, the opportunity to be heard by a judge, and a process to appeal decisions.²³⁶ States differ regarding whether hearings are automatic or only available upon request.²³⁷ In either instance, however, the officer is provided an opportunity to be heard. Similarly, overseers of the hearing also vary by state. In Florida, POST commissioners oversee hearings, while in Missouri hearings are conducted by the administrative hearing commission.²³⁸ Independent administrative judges are the ideal arbiters. License revocation is a significant action for any police officer, and an independent judge provides the best opportunity for an unbiased process. Additionally, appeals for a rehearing must be available to both the licensing board and the officer. Arizona regulations generally permit rehearings for officers in six

230. ARIZ. ADMIN. CODE R13-4-109(A)(11) (2021).

231. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(8) (2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(C) (2021).

232. See, e.g., FLA. STAT. ANN. § 943.1395(7) (West 2021); MO. ANN. STAT. § 590.080(1)(3) (West 2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(B) (2021).

233. See, e.g., ARIZ. ADMIN. CODE R13-4-109(A)(12) (2021); MO. CODE REGS. ANN. tit. 11, § 75-13.090(2)(C) (2021).

234. See, e.g., ARIZ. ADMIN. CODE R13-4-105 (E) (2021); IDAHO CODE ANN. § 19-5109(4)(c) (West 2021); IDAHO ADMIN. CODE r. 11.11.01.110(02)(b) (2021). Examples of codes of ethics are included in Appendix A.

235. NYPD DISCIPLINARY MATRIX, *supra* note 79.

236. See IADLEST STANDARDS, *supra* note 179, at 21.

237. Compare FLA. STAT. ANN. § 943.1395(8)(c) (West 2021), and FLA. ADMIN. CODE ANN. R. 11B-27.004 (2021), and MO. ANN. STAT. § 590.080(2) (West 2021), and MO. ANN. STAT. § 590.501 (West 2021), with ARIZ. ADMIN. CODE R13-4-109(E) (2021), and IDAHO ADMIN. CODE r. 11.11.01.112(2) (2021).

238. See, e.g., FLA. STAT. ANN. § 943.1395(8)(c) (West 2021); FLA. ADMIN. CODE ANN. r. 11B-27.004 (2021); MO. ANN. STAT. § 590.080(2) (West 2021); MO. ANN. STAT. § 590.501 (West 2021).

instances, which are when irregularities exist in the proceedings, a judge abused their discretion, misconduct occurred by a party, a mistake occurred, new evidence exists, or an error occurred in application of the law.²³⁹

Under New York law, agencies with disciplinary power must oversee the disciplinary hearings.²⁴⁰ By contrast, as state administrative actions—rather than as disciplinary actions—licensing hearings avoid restrictions that require police disciplinary hearings occur within the local department.²⁴¹ With a licensing standard, the licensing board is the decision maker regarding standards of conduct and revocation. The framework differs from current police disciplinary decisions that vest power in the local police chiefs to conduct discipline.²⁴²

For administrative hearings, the licensing board should bear the burden of proof by a preponderance of the evidence standard. Law enforcement professionals are granted enormous power in our society, and in line with this authority, holding officers to a professional code of conduct should be expected. This standard makes sense for three main reasons. First, this standard is recommended by IADLEST,²⁴³ and is also the standard for other professional licenses, including attorneys.²⁴⁴ A preponderance of the evidence standard is also used in other police decertification laws.²⁴⁵ Finally, this standard is no more burdensome than for other administrative hearings within the state, as New York administrative law places the burden of proof on the party bringing the action.²⁴⁶

239. See ARIZ. ADMIN. CODE R13-4-118(G).

240. See N.Y. UNCONSOL. LAW § 891 (McKinney 2021).

241. Lynch v. Giuliani, 755 N.Y.S.2d 6, 12 (App. Div. 2003) (finding that a memorandum of understanding between the NYPD and CCRB violated state law by holding disciplinary hearings in front of administrative judges outside of the NYPD).

242. For example, NYC law vests power to discipline NYPD officers in the Commissioner. N.Y.C. ADMIN. CODE § 14-115(a) (2020).

243. IADLEST STANDARDS, *supra* note 179, at 21.

244. See Matter of Friedman, 609 N.Y.S.2d 578, 586 (App. Div. 1994) (“That Court has conclusively determined that the standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence.”).

245. Compare ARIZ. ADMIN. CODE R2-19-119(A) (2021), with Fla. Dep’t of Children & Families v. Davis Family Day Care Home, 160 So.3d 854, 856 (Fla. 2015) (citing a “clear and convincing” standard of evidence for decertification in Florida). A Massachusetts Senate bill also proposes a clear and convincing evidence standard. S. 2820, 191st Sess. 24 1.500–01 (Mass. 2020) (as filed July 14, 2020).

246. N.Y. A.P.A. § 306 (McKinney) (“[T]he burden of proof shall be on the party who initiated the proceeding.”).

E. NATIONWIDE DATABASE

For maximum effectiveness, licensing statutes should mandate reporting to a national database regarding police licensure, suspensions, and revocations. Without national sharing of information, a decertified officer may simply move across state lines to regain employment.²⁴⁷ Currently, the NDI, hosted by IADLEST, is the most well-known database of law enforcement certification information in the country. Although reporting and querying this database is voluntary, sharing information aids any states intent on curbing police misconduct. Unfortunately, absent a federal mandate, local departments in other states may continue to hire decertified officers to preserve their resources.²⁴⁸ In New York, any licensing statute should prevent law enforcement agencies from hiring officers with revoked licenses either within New York or other states.

F. DEMOCRATIC PROCESSES

In addition to receiving public complaints, a licensing board should follow notice-and-comment rulemaking proceedings and transparency measures in line with the state's Administrative Procedure Act.²⁴⁹ Public trust is critical to effective law enforcement. A state licensing board should engage the public in each step of its oversight process.²⁵⁰ First, the licensing board should make submitting complaints regarding police misconduct easy to the public, including intake through online forms, mail, email, in-person, or by phone.²⁵¹ Additionally, the board should welcome public input in the rulemaking process.²⁵² Rather than determining police conduct standards behind closed doors, prospective regulation should open to the public for comments and input. Finally, the board should report regularly on complaints

247. Grunwald & Rappaport, *supra* note 61, at 1696.

248. *Id.* at 1689. Failed attempts at a federal register include a failed 1996 bill and two early 2000's initiatives by the Department of Justice. Atherley & Hickman, *supra* note 154, at 16. The 2015 President's Task Force on 21st Century Policing also recommended establishing a nationwide register. Grunwald & Rappaport, *supra* note 61, at 1688. To date, no federal register exists.

249. See N.Y. A.P.A. § 202 (McKinney 2021).

250. Ponomarenko, *supra* note 10, at 56 (noting the importance of a regulatory body to hear from stakeholders on a regular basis).

251. Moran, *supra* note 84, at 893–94.

252. Friedman & Ponomarenko, *supra* note 6, at 1879–80.

and disciplinary actions.²⁵³ By engaging the public throughout the process, the board can maintain greater legitimacy for their police oversight and breath new trust into law enforcement at a time when it is desperately needed.

In sum, successful police licensing requires an independent board with wide-ranging representation, enforcement mechanisms for reporting of misconduct, the power to conduct investigations, revocation authority, a clearly articulated standard of conduct, an independent administrative hearing process, reporting of licensed officers to a national database, and public input and transparency into the administration of the program. With these features, licensing can provide a powerful check on law enforcement misconduct throughout the state.

IV. ENACTING POLICE LICENSING IN NEW YORK

On February 16, 2021, Assembly member Daniel O'Donnell introduced the "Police and Peace Officer Licensing Act" to the New York State Assembly.²⁵⁴ The first of its kind in New York, the bill would establish a statewide licensing program for police and peace officers.²⁵⁵ As part of the licensing program, the bill also creates an "[i]ndependent police and peace officer licensing review board" within the Department of Criminal Justice Services.²⁵⁶ The proposed board is composed of seven members, with three members appointed by the Governor, one by the temporary president of the Senate, one by the Speaker of the Assembly, and two by the Attorney General.

The bill also grants the licensing board the power to create rules and regulations defining "professional misconduct," which must include excessive force and abuse of power. The board, moreover, can issue "licensing penalties" for professional misconduct, revoke or suspend licenses, issue fines, or require an officer receive retraining or treatment.²⁵⁷ Finally, the board has the power to conduct investigations, including subpoena power.

253. Moran, *supra* note 84, at 896.

254. Assemb. B. A5417A, 2021–2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/a5417/amendment/a> [<https://perma.cc/3K3T-9WJT>] (last visited Sept. 11, 2021).

255. *Id.* at 1.

256. *Id.* at 2.

257. *Id.*

Passage of the Licensing Act would significantly improve the state's oversight capabilities over police misconduct. The bill's most important features are the revocation authority and the investigative powers. By granting an independent state board power to revoke officer licenses, the state wrests power away from local departments, which have demonstrated an inability to effectively correct police misconduct. By establishing independent investigative power, the bill also ensures the board is not beholden to local departments for fact finding.

Despite the clear benefits, however, the bill still lacks some crucial features. First, the bill should require specific representation to ensure oversight includes similar demographics to the population being policed. Second, the bill should enumerate specific instances of police misconduct to ensure a consistent code of conduct that cannot be too easily adjusted through regulation amendments. Third, the bill should create a hearing process by which disciplinary licensing decisions can be afforded adequate due process. Finally, democratic processes should be built into the licensing program, through features such as notice-and-comment rulemaking. Ultimately, passage of the Licensing Act would provide significant improvements; however, critical features are missing that would ensure maximal effectiveness at remedying misconduct while also providing police officers due process. The bill is cosponsored in the Senate by James Sanders Jr. and is currently pending in committee.²⁵⁸ The 2021 legislative session ended in June, however, and the future prospects of the bill remain unclear.²⁵⁹

Police unions represent the highest hurdle for enacting the Licensing Act, or similar legislation, in New York. Union opposition can be expected, as licensing laws would strengthen accountability for police misconduct through independent oversight.²⁶⁰ These types of measures are typically opposed by

258. S. B. S6219A, 2021–2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S6219> [<https://perma.cc/3CKH-RTQB>] (last visited Sept. 11, 2021).

259. Luis Ferré-Sadurní, *With Cuomo Weakened, New York Lawmakers End Session with Flex of Power*, N.Y. TIMES (June 14, 2021), <https://www.nytimes.com/2021/06/14/nyregion/legislature-albany.html> [<https://perma.cc/APD2-R8GN>].

260. In the past year, legislatures in both California and Massachusetts proposed bills to decertify officers for misconduct, and the unions vigorously opposed the legislation. See, e.g., Theresa Waldrop, *California Failed to Pass a Major Police Reform Bill. Here's What Experts Say That Could Mean for the Rest of the Nation*, CNN (Sept. 11, 2020), <https://www.cnn.com/2020/09/11/us/police-reform-legislation-national-california/> [<https://perma.cc/97DW-DWG5>] (noting unions' claims that the current bill went too far and

unions.²⁶¹ In New York, police unions have fought to limit the CCRB²⁶² and also fought the repeal of § 50-a.²⁶³

Compared with other labor groups, police unions exercise unique power over reform efforts. By framing opposition to their demands as endangering public safety, police unions place legislatures in difficult political positions.²⁶⁴ And by threatening strikes, which leave communities unprotected, unions leverage public fear to further pressure political leaders.²⁶⁵ Beyond political messaging, police unions also are incredibly well-financed and wield political power over all branches of government.²⁶⁶ This clout is exercised through a range of efforts, including litigation, media attacks, and threats to withhold funding or endorsements to politicians in future campaigns.²⁶⁷ As one professor of criminology and veteran police officer put it, “The number one impediment to reforming policing in the United States are police unions.”²⁶⁸

Although a significant force, police union opposition is not impossible to overcome. On a fundamental level, some scholars recommend a complete abolition of police unions.²⁶⁹ Others recommend more tempered structural changes, including limiting collective bargaining on disciplinary matters or creating multiple unions to increase diversity of opinions.²⁷⁰ By diversifying the union representation, new unions may support reform efforts and be a positive force, rather than opposition.²⁷¹ Union reforms are outside the scope of this Note, but other strategies are available that are designed to leverage greater public support for reform. First, legislatures should engage with a broad coalition of

had potential to penalize good officers); Milton J. Valencia, *As Police Overhaul Bill Lingers, Unions Flex Their Political Muscles*, BOS. GLOBE (Aug. 19, 2020), <https://www.bostonglobe.com/2020/08/19/metro/police-overhaul-bill-lingers-unions-flex-their-political-muscles/> (on file with the *Columbia Journal of Law & Social Problems*) (citing unions hosting rallies and engaging in campaigns to undercut the legislation).

261. See Bies, *supra* note 86, at 109.

262. See Umansky & Simon, *supra* note 55.

263. See Ferré-Sadurní & McKinley, *supra* note 17.

264. See Bies, *supra* note 86, at 141.

265. See Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1358 (2020).

266. See Bies, *supra* note 86, at 140.

267. Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 744 (2017) (quoting Tom Nolan, a veteran of the Boston Police Department and professor of criminology).

268. *Id.* at 748.

269. See Finnegan, *supra* note 137.

270. See *id.*

271. Fisk & Richardson, *supra* note 267, at 797–98.

interested parties from communities most affected by police abuse. From national and local police reform organizations to religious and community groups, broad coalitions exist that often lack clear paths to voice their support in the same way as police unions.²⁷² Unfortunately, these voices are often too diffuse to create strong political pressure.²⁷³ After the swell of support seen in the summer of 2020, now is a perfect opportunity to consolidate these groups for a reform push.

Another source of support may be found within the rank-and-file members of police departments themselves. Officers themselves are best positioned to articulate the need for greater professionalization in law enforcement.²⁷⁴ One method to mobilizing this support is through the creation of police groups outside of the department or unions.²⁷⁵ These groups may appeal to the bond officers share, while also encouraging efforts overlooked by unions. Finally, use of ballot initiatives is a way to avoid union pressure on legislators' decisions.²⁷⁶ Ballot initiatives allow for the public to decide the issue, rather than just the politicians who are dependent on police union support in campaigning. These initiatives, however, will require a large public campaign to raise awareness of the issue and gather support. Ultimately, police unions are a serious force to contend with for in any reform legislation. That said, union opposition can be defeated, as is seen in the recent repeal of § 50-a. Following the successful reforms of 2020, the Licensing Act may face fairer waters on its path to passage than other efforts. As observed in other states, however, any police licensing law will see opposition. And despite representing a significant step forward, the Licensing Act in its current form misses crucial features for effectively remedying police misconduct in New York.

272. See Friedman & Ponomarenko, *supra* note 6, at 1879–80.

273. See *id.* at 1863.

274. See Goldman & Puro, *supra* note 11, at 578.

275. Bies, *supra* note 86, at 146 (referencing a group of officers in San Francisco focused on increasing diversity in police departments).

276. See *id.* at 109.

CONCLUSION

Police officers are “given maximum power, [but bear] minimum responsibility.”²⁷⁷ Law enforcement is entrusted with using a range of authority and discretion, including use of force, to protect the public. Yet, existing solutions are inadequate. Misbehaving officers often avoid responsibility, and remain employed, receiving promotions and pay raises. A new solution is needed to hold police officers to a standard commensurate to the critical role they serve. A statewide licensing requirement for law enforcement provides an answer. By establishing a clear code of conduct and holding officers to that standard through an independent review and disciplinary process, the public may begin to regain trust again.

277. Moran, *supra* note 84, at 853 (quoting TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 80 (2015)).

APPENDIX A

Arizona Code of Ethics. ARIZ. ADMIN. CODE R13-4-105 (E) (2021).

Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona.

Idaho Code of Ethics. IDAHO ADMIN. CODE r. 11.11.01.057 (2021).

07. Code of Ethics/Standards of Conduct. Each applicant shall attest that he will abide by the following Law Enforcement Code of Ethics, and that he understands violations thereof constitute grounds for decertification:

As a member of the law enforcement profession, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the

peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge or position of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement/public service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other law enforcement or emergency communications officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God or have a sincere and unfaltering commitment to my chosen profession law enforcement.