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Proposals for Systems of Records on "Wandering Officers"

Two major policing reform bills before Congress would attempt to reform law enforcement practices, especially practices that are considered to be biased against people of color. The two bills, H.R. 7120 and S. 3985, would, among other things, require state and local governments to report data on the use of force, promote the use of body-worn cameras, expand de-escalation training, and reduce racial profiling. Both pieces of legislation would also attempt to curb so-called "wandering officers" (i.e., law enforcement officers who are fired or resign under threat of termination but are later hired by another law enforcement agency, often in another state).

There are a litany of stories about law enforcement officers who are alleged or found to have engaged in misconduct, including the use of excessive force, being hired at law other enforcement agencies, and it is only discovered later that the officers had similar records at previous agencies. There is disagreement over how common the wandering officer phenomenon is and to what extent these officers may be a threat to the public. A 2020 study of law enforcement officers in Florida found the following:

- There are almost 1,100 wandering officers in any given year in Florida, and they constitute about 3% of all officers in the state.
- Fired officers tend to take longer to find new work than officers who separate from their agency voluntarily. Fired officers also tend to move to smaller agencies with fewer resources in communities with slightly higher proportions of residents of color.
- Wandering officers are more likely to be fired from their next job or to receive a complaint for a "moral character violation" than both officers hired as rookies and those hired as veterans who have never been fired.

Recommendation of the 21st Century Policing Task Force

In 2015, President Obama's Task Force on 21st Century Policing recommended expanding the National Decertification Index (NDI) so it could serve as a national registry of decertified officers. The Task Force noted, "currently the criteria for reporting an action on an officer is determined by each POST [Peace Officer Standards and Training Commission] independently, as is the granting of read-only access to hiring departments to use as part of their pre-hire screening process. Expanding this system to ensure national and standardized reporting would assist in ensuring that officers who have lost their certification for misconduct are not easily hired in other jurisdictions."

National Decertification Index

NDI, a database operated by the International Association of Directors of Law Enforcement Standards and Training (IADLEST), contains information on police officers who have had their certifications revoked. Forty-six states have laws that allow for a law enforcement officer's license or certification to be revoked if he or she engaged in serious misconduct. In these states, a decertified officer is no longer allowed to work as law enforcement officer in the state where his or her license or certification was revoked.

NDI data are submitted by a state's POST Commission or a similar body. NDI is a "pointer system" and does not contain information about a specific officer or the actions leading to decertification. NDI only refers the querying agency to the agency holding the appropriate record. POST Commissions can query NDI, as may law enforcement agencies that have been granted access by the state's POST Commission. Some 375 law enforcement agencies have been granted direct access. All other agencies must rely on the state's POST Commission, and these commissions do not always query NDI.

Officer decertification standards vary by state. In some states, officers can only be decertified if they are convicted of a felony, whereas in others, officers can be decertified for misconduct that does not constitute a crime (e.g., using alcohol while on duty). Five states (California, Hawaii, Massachusetts, New Jersey, and Rhode Island) and the District of Columbia have not established the authority to decertify officers; for states that do have this authority, reporting data to NDI is voluntary in most cases.

Legislative Proposals

Both H.R. 7120 and S. 3985 would expand law enforcement's access to records related to officer misconduct so potential hires could be better screened, but neither bill would accomplish this by expanding NDI.

H.R. 7120, the George Floyd Justice in Policing Act, would require the Department of Justice (DOJ) to establish a public National Police Misconduct Registry. The registry would contain records of substantiated, pending, and unfounded complaints filed against law enforcement officers, disciplinary records, and termination records. Records would have to indicate whether the complaint involved the use of force or racial profiling. The registry would include records of lawsuits and settlements against law enforcement officers. Law enforcement agencies would also be required to submit records demonstrating that their officers have completed all certification requirements for law enforcement officers in that state. Federal law enforcement agencies would be required to submit records to the registry as well. For state and local governments,

submitting records to the registry would be a condition for receiving funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program. To receive this funding, they must also establish that they have a certification and decertification program in place for the purpose of law enforcement officer employment.

S. 3985, the JUSTICE Act, would require each state and local government that receives JAG funding to maintain a system for sharing disciplinary records of law enforcement officers. Each state and local government would be required to maintain in its system, records on disciplinary actions, internal investigations, and commendations prepared by a law enforcement agency of that government. These records would have to be available for 30 years and would be available to other law enforcement agencies for the purpose of conducting pre-employment screenings. State and local governments would be required to query the record systems of all law enforcement agencies that have employed a job candidate in the past. State and local governments not meeting the records requirements would be ineligible for JAG funding.

Both bills would address some limitations of NDI. Currently, NDI only contains information on officers who have been decertified; state laws vary on when officers can be decertified, if at all; states exercise this authority to varying degrees; and states might not submit decertification records to NDI. These two bills would make a wider variety of disciplinary records available to hiring agencies and would provide incentives for law enforcement agencies to submit specified records. H.R. 7120 would establish a centralized system; S. 3985 would incentivize the establishment of independent state and local systems.

Wandering Officers Find New Jobs

A 2020 article in the *Yale Law Journal* on wandering officers discussed how law enforcement officers who are fired from their jobs are able to find work in other agencies. The issues highlighted suggest that making more information available about officers' disciplinary histories might not prevent wandering officers from finding new policing jobs.

In some cases, law enforcement agencies do not complete thorough background checks for new hires; and even if they do, past employers might not be forthcoming with the reason for an officer's separation. In addition, law enforcement agencies might not report terminations or officer misconduct to their POST Commission because reporting to it is voluntary in most states and there are different standards for what conduct is considered to be reportable to a POST Commission.

In addition, state-by-state certification of officers can create problems for hiring agencies because an officer can be fired in one state, get certified in another, and then find employment with a new agency. Small law enforcement agencies that are understaffed and have limited budgets might not have the resources to conduct thorough background investigations and might be more likely to hire a wandering officer. Wandering officers might also be more appealing hires for these agencies because they may be willing to settle for more modest salaries, limited opportunities for advancement, or assignments other officers do not want. These officers may also be able to start right away, compared to new recruits who must complete the training academy (and the agency might have to cover this cost) and must spend some time being trained in the field by other officers. Some law enforcement agencies might also be willing to hire officers who were fired from their last job because they assume these officers may be more conscientious when offered a second chance.

Legislative Issues

Policymakers may debate a number of questions about databases or systems of law enforcement officer disciplinary information.

- **Access.** Congress may debate who should have access to information on such systems. Would these data be available to the public or would access would be limited to a particular subset, such as members of the law enforcement community?

- **Database changes.** Congress may debate whether officers with information contained in such databases or systems should be able to access them or submit additional information on their own behalf. In addition, they may question how or under what circumstances information is updated or removed.

- **Privacy risks.** Congress may question the utility of having certain personal information about law enforcement officers in databases that may be available in whole or in part to the public. Policymakers may look to other national databases, such as the National Sex Offenders Registry, for examples of federal involvement in the collection of sensitive data. They may also question whether there should be technology requirements to help keep the systems safe from cyber intrusion and data breach.

In addition to questions about the content of systems of disciplinary information, if policymakers want to address issues about wandering officers they might face the question of providing incentives to change the way officers are hired. Providing access to disciplinary records and requiring law enforcement agencies to search these records could address the issue of a lack of information about an officer's past misconduct. Yet, this requirement does not address the issue of law enforcement agencies hiring fired officers anyway, either out of a sense of brotherhood or to give the officers a chance to redeem themselves. It also does not address the issue of agencies that hire wandering officers because they have no better options (e.g., they have problems recruiting because they cannot offer competitive salaries or they are in an undesirable location). Congress might consider whether there is a need to provide incentives for states to enact laws that prevent agencies from hiring previously fired officers, or if it should provide assistance to agencies with limited resources so they can cover expenses related to hiring new recruits or expand the hiring pool by offering higher salaries.

Nathan James, Analyst in Crime Policy

Kristin Finklea, Specialist in Domestic Security

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