



**NACDL Comment to the White House Science
and Technology Policy Office Criminal Justice
Statistics Request for Information**

March 30, 2023

Introductory Statement

The National Association of Criminal Defense Lawyers (NACDL), a professional society, offers the following comments for the White House's consideration.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's more than 10,000 direct members in 28 countries – and 90 state, provincial, and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. Critical to this mission is NACDL's efforts to identify and reform flaws and inequities in the criminal justice system, redress systemic racism, and ensure that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level. Towards this goal, NACDL is committed to promoting law enforcement transparency and accountability.

NACDL has particular expertise in the collection of law enforcement data. Since 2020, NACDL's Full Disclosure Project has managed an open-source web application to track, aggregate, and analyze law enforcement misconduct data. The application hosts data from a wide range of public and legally privileged sources, including personnel records, judicial decisions, lawsuits, community complaints, and body cam videos. NACDL has implemented databases in seven states tracking over 100,000 law enforcement officers. NACDL also collaborates with advanced computing and data science partners to develop tools and processes that automate collecting and digesting police data.

These comments are organized according to the questions listed in the RFI. If you have any questions, please feel free to contact us.

Sincerely,

National Association of Criminal Defense Lawyers
1660 L Street NW, 12th Floor, Washington, DC 20036

Primary Point of Contact:
Julie Ciccolini
Director of Law Enforcement Accountability
National Association of Criminal Defense Lawyers
Jciccolini@nacdl.org
+1 202 465-7622

Question 1

NACDL recommends the government review the following reports to better understand and assess the status of data collection, use, and transparency in STLT law enforcement agencies.

Obtaining, Organizing, and Opening Police Misconduct Data, February 2023, available at <https://invisible.institute/data-convening>

Conti-Cook, Cynthia. “Digging Out From Under Section 50-a: The Initial Impact of Public Access to Police Misconduct Records in New York State.” *18 U. ST. THOMAS L.J.* 43 (2022), available at <https://ir.stthomas.edu/ustlj/vol18/iss1/2>

Advancing Transparency and Accountability: A Framework for a Law Enforcement Officer Accountability Database, November 2022, CEO Action for Racial Equity, available at <https://ceoactionracialequity.com/law-enforcement-accountability-database/>

Scheck, Barry. “The Integrity of Our Convictions: Holding Stakeholders Accountable in an Era of Criminal Justice Reform.” *48 Ann. Rev. Crim. Proc.* iii (2019), available at <https://articleworks.cadmus.com/geolaw/zt200119.html>

Abel, Jonathan. “Brady’s Blind Spot.” *Stanford Law Review* 67, no. 4 (April 9, 2015), available at <https://www.stanfordlawreview.org/print/article/bradys-blind-spot-impeachment-evidence-in-police-personnel-files-and-the-battle-splitting-the-prosecution-team/>.

National Association of Criminal Defense Lawyers. “Garbage In, Gospel Out: How Data-Driven Policing Technologies Entrench Historic Racism and Tech-Wash Bias in the Criminal Legal System,” September 21, 2021, available at <https://www.nacdl.org/Document/GarbageInGospelOutDataDrivenPolicingTechnologies>.

Question 3

Collecting comprehensive and disaggregated datasets is crucial for law enforcement agencies to ensure more equitable outcomes in their practices. Some critical datasets that should be collected include:

- **Operational Data:** This includes data on the deployment of resources, staffing levels, and other operational factors that can impact policing practice. This information can help identify disparities in resource allocation and staffing, which can in turn impact the level of service and surveillance of different communities. Officers who work more overtime also tend to engage in more misconduct, so monitoring excessive overtime is a key indicator.
- **Use of Force Data:** This includes data on incidents where law enforcement officers use force, including the type of force used, the individuals involved, and the circumstances of the incident. Collecting disaggregated use-of-force data can help identify disparities and inform policy and training decisions aimed at reducing the use of force and promoting de-escalation.

- **Stop and Search Data:** This includes data on stops and searches conducted by law enforcement officers, broken down by demographic variables such as race, ethnicity, gender, and age. Collecting this data can help identify disparities in stop and search practices. For example, in 2013, a federal judge ruled that the New York City Police Department's stop-and-frisk program was unconstitutional and ordered changes to the policy. The ruling was based, in part, on an analysis of data on the race and ethnicity of individuals who were stopped and frisked by police officers.¹ The data showed that a disproportionate number of individuals stopped and frisked were Black or Hispanic, suggesting that the policy was being applied in a racially discriminatory manner.
- **Internal affairs complaints, investigations, and adjudications;** This includes data on all complaints and investigations, not just those substantiated, to be able to audit their current accountability system. Studies have found racism even within the internal police disciplinary systems. For example, a study that looked at departments in Chicago, Philadelphia, and Los Angeles found Black officers received more and harsher punishments for misconduct than white officers, even with there being no difference in the number of allegations against them.²
- **Civilian complaints:** This includes complaints made directly to the department, to a review board/watchdog agency, or a third-party system. Civilians may choose to complain to a third party, such as a civilian review board, a community organization, or a lawyer for fear of retaliation, lack of trust, unawareness of the complaint process, perceived bias, and/or desire for anonymity. Law enforcement agencies must collect all complaints alleging police misconduct to identify problematic officers, units, policies, and ineffective accountability systems.
- **Declined Prosecutions:** Data on declined prosecutions can inform law enforcement about patterns and trends in cases that are not being pursued, identify patterns of officer behavior inconsistent with department policies and procedures, and highlight areas where additional training is needed.
- **Brady lists:** This includes lists of officers who have been found to have engaged in misconduct or dishonesty. By tracking this data, law enforcement agencies can ensure that the Brady v. Maryland requirement of disclosing evidence that could be favorable to the defendant's case is met. This helps to protect due process and ensure that defendants receive a fair trial. By identifying officers with credibility issues, law enforcement agencies can avoid wasting resources on cases that may not result in a conviction.
- **Claims and lawsuits:** This includes data on any claims and lawsuits involving law enforcement officers and/or agencies which can help identify patterns of misconduct or other issues within the department or with individual officers.

¹ *Floyd v. City of N.Y.*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

² Walter, Sheryl L., Erik Gonzalez-Mulé, Cristiano L. Guarana, Ernest H. O'Boyle, Christopher M. Berry, and Timothy T. Baldwin. "The Race Discipline Gap: A Cautionary Note on Archival Measures of Behavioral Misconduct." *Organizational Behavior and Human Decision Processes*, Behavioral Field Evidence on Ethics and Misconduct, 166 (September 1, 2021): 166–78. <https://doi.org/10.1016/j.obhdp.2020.03.010>.

- **Judicial findings of fourth amendment violations:** Collecting data on judicial findings of Fourth Amendment violations can help identify issues with search and seizure practices, and areas that require additional training, and can be an early warning sign for officers violating civilians' constitutional rights.
- **Judicial findings of perjury or lack of credibility:** Collecting this data can identify officers with credibility issues or other concerns and inform decisions on hiring, promotions, or other assignments.
- **Arrests of Law Enforcement Officers:** Collecting data on officer arrests or infractions can prevent wandering officers from transferring jurisdictions to hide or escape their prior misconduct.
- **Exonerations:** Reporting to and using data from The National Registry of Exonerations can identify and address flaws in the system that contribute to these wrongful convictions, such as faulty eyewitness identifications, coerced confessions, and misconduct by law enforcement officials.

Collecting these datasets can provide valuable insights into policing practices and help identify and address disparities in policing. By using this data to inform policies, procedures, and training, law enforcement agencies can work towards more equitable outcomes for all communities they serve, and other stakeholders can participate in holding agencies transparent and accountable.

Question 7

To ensure that law enforcement agencies can collect, use, and share quality and disaggregated data to improve accountability and equity, the government may consider creating a software solution specifically designed for law enforcement agencies to collect comprehensive data. The government could support an open-source application, or Software As A Service, that agencies can adopt to track officer certification and actions. The application could be outfitted with built-in data-sharing capabilities, like an API, that automatically reports the actions that fall into the applicable categories for reporting. This would open the door for participation by agencies with few IT resources or expertise. Additionally, it would ensure accurate and timely reporting of information without the need for agencies to expend extra labor performing data entry. The software must include features that directly benefit agencies, incentivizing them to use it, such as the ability to check for officers' previous records at prior agencies. Likewise, it should be compatible with other systems used by law enforcement agencies, and customizable to fit their specific needs and priorities. Any rollout of the software must include training resources and ongoing support to help agencies effectively use it and maximize the value of the collected data.

NACDL's own experience has proven this to be a beneficial approach. NACDL has been working with under-resourced groups, like public defenders, on data collection projects and has seen the power of providing a flexible solution that can be implemented easily by agencies across the country. Agencies that would not have the resources to design or stand up a system on their own have been able to do so with ease because of the software solution NACDL provided them, alongside comprehensive training. This provided significant cost-savings for each institution, as their minimal resources went to supporting a

single, robust solution rather than various custom-build, and non-integrable solutions. Additionally, data processing, sharing, and analysis are significantly easier because all the participating organization's systems are structured the same way. This could be a huge draw to law enforcement agencies and incentivize them to participate.

By creating a software solution for law enforcement agencies, the government can help to reduce barriers to data collection and sharing, ultimately leading to more equitable outcomes and improved accountability in law enforcement.

Question 11

Data collection from sources other than law enforcement agencies is essential in understanding the impact of policing on communities and arriving at solutions that address the root causes of police violence. Community-based data collection, for instance, allows community members to document police activities such as frisks, bias, and harassment that might otherwise go unreported. This provides an additional window into the interactions between law enforcement and communities and helps identify patterns of misconduct. It also encourages the public and government to look beyond singular high-profile incidents of violence such as police killings to the often less visible everyday violence of policing. Independent data collection also captures the experiences of particular communities often left out of data and discourse about policing (such as women, queer and trans people, migrants, sex workers, and disabled people), documents how they experience policing, and creates narratives rooted in communities.

Independent data collection can also expand the scope of available data. Partnerships with communities, journalists, lawyers, and grassroots organizations can track data that the government or law enforcement is not tracking, such as the names of officers whose testimony has been deemed untrustworthy.

Independent projects can compile a broader universe of information from federal and state lawsuits, news articles, notices of claims, criminal court decisions, etc. Independent databases, such as those created by defenders or prosecutors, have the potential to track incidents in the courtroom like judicial determinations of Fourth Amendment violations or lack of credibility.

Independent projects also have the potential to track civilian complaints from members of the public in places where there is no mechanism to document a complaint or when they might fear submitting a complaint to a law enforcement agency. Many people do not trust law enforcement to police law enforcement, and they seek redress through other options, for example, going to the media, to a lawyer, or a community-based organization. These data points should also be examined and investigated.

Additionally, independent databases must be used to challenge the veracity of departments' data, transparency claims, and their internal accountability systems. This was evident after the repeal of Civil Rights Law 50-A in New York when the New York City Police Department was required to release a public database of officers' training and disciplinary histories.³ NACDL's Director of Law Enforcement Accountability, Julie Ciccolini, compared the new NYPD database to the information known in the Legal Aid Society's Database, CAPstat.org. Ciccolini found that officers with long histories of misconduct had

³ Available at <https://nypdonline.org/>

no “applicable” discipline in the NYPD database and appeared to have a clean record.⁴ For example, NYPD Detective James R. Rivera has been sued for civil rights violations 31 times, already resulting in \$1.46 million in civil settlements. In one case in 2012, Det. Rivera and another detective approached James Young, a 49-year-old father of three, and choked him to the point of unconsciousness while he was sitting on a park bench in Brooklyn. Mr. Young fell into a coma and died four months later. A lawsuit from Mr. Young’s widow settled for \$832,500. However, according to the NYPD Database, Det. Rivera has no misconduct history, and his profile lists eight Department Awards and Recognitions. According to another independent database in New York City, 50-a.org, Det. Rivera now works at the NYPD Internal Affairs Bureau, which investigates other officers for misconduct.⁵ This counter-narrative is only known because of independent databases.

Neither the government nor law enforcement agencies should have an exclusive monopoly on creating or collecting misconduct data, and official databases should not be viewed as containing the universe of police misconduct information worth capturing to inform policy change. Police data collection and dissemination is most effective when it is connected and accountable to larger organizing efforts and movements, is strategically focused on preventing and reducing police violence, and is led, informed by, and deeply connected and accountable to communities directly impacted by policing.

Question 17

The extent to which law enforcement agencies currently make data publicly available about their efforts to reduce disparities in policing outcomes varies widely across jurisdictions.⁶ Some agencies have made efforts to increase transparency due to new legislation, but most efforts have significantly fallen short.

For example, there have been multiple cases where law enforcement agencies have been caught deleting records as a result of new transparency laws. In New York City, after the repeal of Section 50-a, which had previously shielded police disciplinary records from public view, it was reported that the NYPD had deleted records from officers' disciplinary files that were now subject to public disclosure.⁷ In another case, the Chicago Police Department was found to have deleted more than 1 million dashcam videos that were required to be retained under the department's own policies, raising concerns about transparency and accountability.⁸ In 2019, the Los Angeles County Sheriff's Department was found to have deleted thousands of disciplinary records of deputies, some of which dated back years, just as a new state law was

⁴ Julie Ciccolini (@ciccolinijulie), TWITTER (Mar. 10, 2021, 9:40 AM), <https://twitter.com/ciccolinijulie/status/1369674551051902978>.

⁵ <https://www.50-a.org/officer/54519>.

⁶ Kallie Cox and William Freivogel, *Police misconduct records: Secret, difficult access*. Pulitzer Center. January 24, 2022, from <https://pulitzercenter.org/stories/police-misconduct-records-secret-difficult-access>.

⁷ J. David Goodman, *Record Purge by New York Police Raises Fears of Cover-Up*, *The New York Times*, Nov. 7, 2020, available at <https://www.nytimes.com/2020/11/07/nyregion/nypd-disciplinary-records-purge.html>.

⁸ Jonah Newman, *Chicago Police Department routinely destroyed misconduct records dating back years, city watchdog says*, *Chicago Tribune*, March 1, 2018. Available at: <https://www.chicagotribune.com/news/criminal-justice/ct-met-chicago-police-misconduct-records-destroyed-20180301-story.html>

about to take effect requiring the disclosure of such records.⁹ The Sheriff's Department claimed that the deletions were accidental and the result of a software error, but critics raised concerns about the timing of the deletions and the department's lack of transparency and accountability.

These cases highlight the importance of oversight and enforcement mechanisms to ensure that law enforcement agencies are complying with transparency laws and are not selectively deleting records to avoid public scrutiny. It also underscores the need for robust data retention policies and systems to ensure that records are preserved and accessible to the public.

Question 21

The Federal government could take several steps to better share criminal justice data and assist STLT government officials, researchers, and civil society in making use of such data.

First, there needs to be a canonical list of law enforcement officers in the country. Unfortunately, in almost every state, there is no public list of officers and no consistent unique identifying information for officers. This makes it difficult to track them and easy for officers to evade accountability, conceal misconduct, and wander across state lines even after being decertified. In the same way that each state ensures that attorneys are licensed and have bar numbers, so should each state credential and license police officers. This will ensure that the public knows who is policing them and will substantially improve the quality and integrity of any data collection efforts.

Secondly, the Federal government should establish a centralized database that aggregates criminal justice data from multiple sources, including police misconduct records. However, the strength of this database depends entirely on the active participation of STLT. This database should automate that aggregation by providing STLT with a standard software solution that tracks records as discussed in response to Question 7. This data should be made available to STLT government officials, researchers, and civil society through an accessible platform that offers downloadable data in a structured format, such as csv files. An accessible dashboard should also be provided where those who are less technical can explore and understand the data. By providing easy access to police misconduct records and other data, stakeholders can better understand patterns and trends of misconduct and other issues in the criminal justice system.

Lastly, the Federal government could establish partnerships with STLT governments, researchers, and civil society organizations to facilitate the sharing of data and promote collaboration on criminal justice issues. For example, the Community Law Enforcement Accountability Network is a network of academic, journalist, and legal stakeholders working together to collect police data in California as a result of new transparency laws making more data available. Each stakeholder brings their unique expertise to ensure law enforcement agencies are complying with the law and that data can be collected, processed, and shared efficiently. By working together on joint research projects, data-sharing initiatives, and local

⁹ Kevin Rector, *Judge orders L.A. County Sheriff's Department to release misconduct, use-of-force records after L.A. Times lawsuit*, *Los Angeles Times*, June 25, 2021, available at <https://www.latimes.com/california/story/2021-06-25/judge-orders-l-a-sheriffs-department-to-release-misconduct-use-of-force-records-after-l-a-times-lawsuit>

initiatives that address criminal justice issues, stakeholders can gain a better understanding of the issues and develop more effective solutions.