



Impact of the Law Enforcement Officers' Bill of Rights on Police Transparency & Accountability

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IMPACT OF THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS ON POLICE TRANSPARENCY & ACCOUNTABILITY

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Abstract

The United States, home to 5% of the world's population & 25% of the world's incarcerated population, is the largest hotspot of mass incarceration in human history. Many factors have contributed to rising incarceration rates over the past 50 years, including the War on Drugs and the 1994 crime bill. One piece of legislation with impact on policing in the United States is the *Law Enforcement Officer's Bill of Rights* (LEOBOR)¹, which serves to minimize accountability and transparency within police departments by granting rights to police officers that aren't granted to other public or private employees, such as interdepartmental investigations and classified personnel files. LEOBOR is state policy in the states where Freddie Gray (Maryland), Sandra Bland (Texas), Breonna Taylor (Kentucky), & George Floyd (Minnesota) were murdered by police and where Rodney King (California) was beaten on tape, and this legislation has a substantial impact on police investigations and discipline. There has been very little academic study on this legislation and its impact.

In this study, I seek to examine the difference in rates of incarceration, police spending, police salaries, on-duty shooting of civilians, the number of officers who have been charged for an on-duty shooting, and the number of decertified officers between states with and without LEOBOR in effect.

¹ This legislation also exists under multiple names, including *Peace Officers Bill of Rights* (POBR). Only those provisions enacted in Delaware, Maryland, Rhode Island, and Wisconsin have the precise title "*Law Enforcement Officers Bill of Rights*;" Florida adds "*and Correctional Officers*" Illinois' law is called the "*Uniform Peace Officers Disciplinary Act*." New Mexico's is the "*Peace Officer's Employer-Employee Relations Act*." West Virginia's law is entitled "*Rights and Duties of Police and Fire Fighters*." Despite these variations in nomenclature, all the LEOBORs referred to as such in this Article have features in common, and some have provisions that are worded identically. The legislation is henceforth referred to as LEOBOR for simplicity. CITED FROM: KEVIN M. KEENAN & SAMUEL WALKER. AN IMPEDIMENT TO POLICE ACCOUNTABILITY? AN ANALYSIS OF STATUTORY LAW ENFORCEMENT OFFICERS' BILLS OF RIGHTS. *Public Interest Law Journal*, Volume 14.

These statistics will give a detailed comparison of accountability and transparency in states that do and do not have LEOBOR in effect.

Keywords: police accountability and transparency, police misconduct, police brutality, Joe Biden

History of the Law Enforcement Officer's Bill of Rights & Police Reforms

Police reforms during the late 19th/early 20th century often took the form of police commissions. These programs were generally ineffective as they were filled by political appointees and deferential to police leadership². Precursors to the modern *civilian review boards (CRBs)* were created in major cities such as Washington D.C. and New York City from the 1920s to the 1960s, but all were ultimately dismantled due to resistance by police unions & local politicians and limited funding³. During the 1960's Civil Rights Movement, CRBs were a frequent demand among Black activists as many of the largest riots were sparked by incidents of police misconduct and police brutality. By the end of the decade, the CRBs in New York and Philadelphia had been dismantled. Through the 1970s and into the 1980's, the push for CRBs continued and investigative agencies with more resources and greater responsibility such as the *Public Review Commission* in Berkeley, CA & the *Office of Citizen Complaints* in San Francisco, CA were created⁴. By the mid-80's, national associations such as the *International Association for Civilian Oversight of Law Enforcement (IACOLE)* and later the *National Association for Citizen Oversight of Law Enforcement (NACOLE)* were founded⁵. By 2001, there were over 100 civilian review agencies and 144 by 2016⁶.

² Police Assessment Resource Center. 2005. "Review of National Police Oversight Models for the Eugene Police Commission." *Police Assessment Resource Center*. <http://www.parc.info/eugene>

³ Bayley, David. 1991. "Preface." In *Complaints Against the Police: The Trend to External Review*, edited by Andrew Goldsmith, v–vii. Oxford: Clarendon.

⁴ Ferdik, Frank V., Jeff Rojek and Geoffrey P. Alpert. "Citizen Oversight in the United States and Canada: An Overview." 2013.

Police Practice and Research 14 (2): 104–16. doi:10.1080/15614263.2013.767089.

⁵ KEVIN M. KEENAN & SAMUEL WALKER. AN IMPEDIMENT TO POLICE ACCOUNTABILITY? AN ANALYSIS OF STATUTORY LAW ENFORCEMENT OFFICERS' BILLS OF RIGHTS. *Public Interest Law Journal*, Volume 14.

⁶ CIVILIAN OVERSIGHT OF LAW ENFORCEMENT: ASSESSING THE EVIDENCE. Joseph De Angelis | Richard Rosenthal | Brian Buchner. September 2016.

During this time period, police unions became a powerful political force. Dissatisfaction with internal police management practices was a central organizing focus for these unions⁷, and LEOBOR has often been their policy vehicle to represent the interests of rank and file police officers. Police unions have also pursued legislation to reduce access to personnel records and currently, only 12 states have public personnel records for police officers while 23 have confidential records and 15 have limited accessibility⁸. A 2018 study of police disciplinary appeals argues that these serve as an underappreciated barrier to officer accountability and organizational reform, leading departments to rehire and significantly reduce disciplinary measures against officers that have engaged in serious misconduct⁹. In Rushin’s analysis of 656 departments, his data shows that the vast majority of these departments give police officers the ability to appeal disciplinary sanctions through multiple levels of appellate review, creating a “*formidable barrier to officer accountability*”. According to an informal tally by attorney Will Aitchison, arbitrators in the U.S. have eased or reversed discipline in favor of police officers in about 60 percent of cases since the 1980s¹⁰. LEOBOR, as described by the Grand Lodge of the Fraternal Order of Police, contains the components listed in Table 1¹¹.

Table 1: Grand Lodge Fraternal Order of Police, LEOBOR Policy Components

<u>Component Number</u>	<u>Policy Component Description</u>
<u>1</u> <i>Political Activity</i>	<i>Law enforcement officers, except when on duty or acting in an official capacity, have the right to engage in political activity or run for elective office.</i>
<u>2</u> <i>Advance Notice</i>	<i>Law enforcement officers shall, if disciplinary action is expected, be notified of the investigation, the nature of the alleged violation, and be notified of the outcome of the investigation and the recommendations made to superiors by the investigators.</i>

⁷ JURIS & FEUILLE, supra note 10, at 20-21.

⁸ WNYC. Disciplinary Records.

⁹ Stephen Rushin. Police Disciplinary Appeals. UNIVERSITY OF PENNSYLVANIA LAW REVIEW. 2018.

¹⁰ Alan Neuhauser. Arbitration and the Revolving Door of Bad Cops. *U.S. News & World Report*. October 19, 2016.

¹¹ Due Process Rights for Law Enforcement Officers. Archived 2007-07-07 at the Wayback Machine, Fraternal Order of Police.

<p style="text-align: center;"><u>3</u> <i>Reasonable Length</i></p>	<p><i>Questioning of a law enforcement officer should be conducted for a reasonable length of time and preferably while the officer is on duty unless exigent circumstances apply.</i></p>
<p style="text-align: center;"><u>4</u> <i>In-Office Questions</i></p>	<p><i>Questioning of the law enforcement officer should take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.</i></p>
<p style="text-align: center;"><u>5</u> <i>Single Investigator</i></p>	<p><i>Law enforcement officers will be questioned by a single investigator, and he or she shall be informed of the name, rank, and command of the officer conducting the investigation.</i></p>
<p style="text-align: center;"><u>6</u> <i>Right to Counsel</i></p>	<p><i>Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation.</i></p>
<p style="text-align: center;"><u>7</u> <i>Ban on Inducement</i></p>	<p><i>Law enforcement officers cannot be threatened, harassed, or promised rewards to induce the answering of any question.</i></p>
<p style="text-align: center;"><u>8</u> <i>Right to a Hearing & Access to Transcripts</i></p>	<p><i>Law enforcement officers are entitled to a hearing, with notification in advance of the date, access to transcripts, and other relevant documents and evidence generated by the hearing and to representation by counsel or another non-attorney representative at the hearing.</i></p>
<p style="text-align: center;"><u>9</u> <i>Comment on Personnel File</i></p>	<p><i>Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.</i></p>
<p style="text-align: center;"><u>10</u> <i>Unalienable Right to Exercise</i></p>	<p><i>Law enforcement officers cannot be subject to retaliation for the exercise of these or any other rights under Federal, or State.</i></p>

LEOBOR has been introduced at both the state and federal level, and components have also been packaged into union contracts. The *Federal Police Officers Bill of Rights* was first introduced in the House of Representatives in 1971 by New York Congressman Mario Biaggi, with 120 co-sponsors. A

former New York City police officer who was wounded 11 times on duty, Biaggi also founded the *National Law Enforcement Officers Memorial Fund (NLEOMF)* and served as Acting President of the *Patrolmen's Benevolent Association (PBA)*. He introduced this bill several times on behalf of the PBA¹², but the bill was not introduced in the Senate until the 1990s. Biaggi's bill included a requirement for a Law Enforcement Officers Bill of Rights in every state to receive federal policing grants, alongside components 1, 2, 3, 4, 5, 6, 7, 8, & 10 of the Grand Lodge's LEOBOR.

Vice President Joe Biden, the 2020 Democratic presidential nominee, introduced the *Police Officers Bill of Rights Act of 1991* as Chair of the Senate Judiciary Committee, several weeks after an uprising in Los Angeles followed the police beating of Rodney King¹³. This bill passed 55-43¹⁴, but was not brought up for a vote in the House of Representatives. This bill was not introduced in both houses of Congress until 1995. The Biden bill, if passed, would have federally implemented components 1, 2, 3, 4, 6, 8, 9, and 10 and parts of component 5. Former New York City Police Commissioner Lee P. Brown argued that Biden's bill would "*erode advances that have been made in holding police officers and their supervisors accountable for the use of excessive force and other forms of misconduct.*"¹⁵.

The Chair of the Legislative Committee of the International Association of Chiefs of Police appointed an Internal Affairs Legislation Subcommittee to draft a version of POBR law that management would find more acceptable, following the passage of LEOBOR at the state level in several states. Although there was no immediate intention to have the IACP version introduced in Congress, it would be available as a reference document in those states where POBR legislation might be pending. It should be noted that the final document, though unanimously approved by the subcommittee, was never adopted by the IACP Legislative Committee itself. Divided by a single vote difference, a majority of the full

¹² Congressman Mario Biaggi. US Congress HR 2443. 1979.

¹³ Senator Joseph Biden. *S.1043 - Police Officers' Bill of Rights Act of 1991*. Congress.gov.

¹⁴ Mark Schmidt. Peace Officers Bill of Rights Guarantees: Responding to Union Demands with a Management Sanctioned Version. *Law Enforcement Executive Forum*. 2005.

¹⁵ Leandra Bernstein. Police 'Bill of Rights' grants special protection for officers accused of misconduct. *ABC7*. July 14th 2020.

committee was so opposed to any POBR legislation that it rejected the adoption of a management version, even if it was labeled a “specimen” document¹⁶.

LEOBOR was first implemented in Maryland in 1974 and as of 2015, exists in 17 states¹⁷. The legislation is not uniform: some states cover sheriffs, firefighters, police chiefs, corrections officers and parttime employees while others do not. Similar legislation passed in Alabama in 2001, but this legislation lacked provisions on investigations¹⁸. Colorado amended its Professional Standards for police in 1990 with revisions and additions on internal investigations¹⁹. Neither of these are counted as LEOBOR states in the findings. The Canadian Province of Alberta also passed LEOBOR in 1990²⁰. Rhode Island and Maryland are considered to be the state’s with the most police-friendly LEOBORs, holding provisions that officers convicted of a felony in Rhode Island or a misdemeanor in Maryland are not automatically fired²¹.

1. Maryland (1974, currently has components 1, 2, 3, 4, 5, 6, 7, 8, 9, 10²²)
2. Florida (1974, currently has components 2, 3, 4, 5, 6, 7, 8, 10²³)
3. California (1976, currently has components 1, 2, 3, 5, 6, 7, 8, 9, 10²⁴)
4. Rhode Island (1976, currently has components 2, 3, 4, 5, 6, 7, 8, 9, 10²⁵),
5. Virginia (1978, currently has components 2, 3, 5, 6, 8, 10²⁶),
6. Wisconsin (1979, currently has components 1, 2, 6, 10²⁷),
7. Illinois (1985, currently has components 2, 3, 4, 5, 6, 7, 8, 10²⁸),

¹⁶ Mark Schmidt. Law Enforcement Executive Forum. Peace Officers Bill of Rights Guarantees: Responding to Union Demands with a Management Sanctioned Version. 2005.

¹⁷ Hager, Eli (27 April 2015). "Blue Shield – Did you know police have their own Bill of Rights?". *The Marshall Project*. Retrieved 7/21/2020.

¹⁸ Ala. Stats. §§ 11-43-230-232 (2003)

¹⁹ (Ord. No. 598-04, § 1, 8-30-04; Ord. No. 730-04, § 3, 10-4-04)

²⁰ Police Act/Police Service Regulation 356/90 (1990)

²¹ Blue Shield: Did you know police have their own Bill of Rights?. ELI HAGER. *Marshall Project*. April 27, 2015.

²² LAW ENFORCEMENT OFFICERS BILL OF RIGHTS (LEOBR). DIRECTIVE 5 – 104. Date of Revision: April, 2017.

²³ 2015 Florida Statutes > Title X > Chapter 112 > Section 532. Florida Senate.

²⁴ GOVERNMENT CODE - GOV TITLE 1. GENERAL [100 - 7914] (Title 1 enacted by Stats. 1943, Ch. 134.) DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599]. (Division 4 enacted by Stats. 1943, Ch. 134.). CHAPTER 9.7. Public Safety Officers [3300 - 3313] (Chapter 9.7 added by Stats. 1976, Ch. 465.)

²⁵ TITLE 42. State Affairs and Government. CHAPTER 42-28.6. Law Enforcement Officers' Bill of Rights. SECTION 42-28.6-2.

²⁶ Code of Virginia. Law-Enforcement Officers Procedural Guarantee Act.

²⁷ Wisconsin State Legislature. CHAPTER 164. LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

²⁸ Illinois General Assembly. LOCAL GOVERNMENT. (50 ILCS 725/) Uniform Peace Officers' Disciplinary Act.

8. Louisiana (1985, currently has components 2, 3, 6, 8²⁹),
9. Nevada (1985, currently has components 2, 3, 5, 6, 8, 9³⁰),
10. Delaware (1986, currently has components 2, 3, 4, 5, 6, 7, 8, 9³¹),
11. Tennessee (1989, currently has components 2, 3, 5, 6, 8, 10³²),
12. West Virginia (1990, currently has components 2, 3, 6, 7, 8³³),
13. New Mexico (1991, currently has components 2, 3, 4, 5, 6, 7, 8, 9, 10³⁴),
14. Minnesota (1991, currently has components 2, 3, 4, 6, 8, 10³⁵),
15. Kentucky (1994, currently has components 2, 3, 6, 7, 8, 10³⁶),
16. Texas (1999, currently has components 1, 2, 3, 4, 5, 6, 7, 9³⁷),
17. Alabama (2001, currently has components 2, 6, 8³⁸)
18. Arizona (2003, currently has components 2, 3, 5, 6, 8³⁹)

At least 10 other states have had police unions attempt to enact LEOBOR in the past 30 years.

1. Hawaii, S.B. 2986 (21st Leg. 2002);
2. Kansas, S.B. 214 (77th Leg. 1997);
3. Massachusetts, H.B. 368 (182nd Leg. 1998);
4. Michigan, S.B. 25 (2001);
5. Montana, S.B. 44 (1993);
6. North Dakota, S.B. 2368 (57th Leg. 2001);
7. Pennsylvania, H.B. 376 (S. Res. 1073, 185th Leg. 2001);
8. South Carolina, H.B. 4498 (112th Leg., 1997 Sess.);
9. Utah, H.J.R. 9 §143 (54th Sess. 1999);
10. Washington, H.B. 1850 (54th Sess. 1995).

²⁹ 2006 Louisiana Laws - RS 40:2531 — Rights of law enforcement officers. CHAPTER 25. RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION

³⁰ CHAPTER 289 - PEACE OFFICERS AND OTHER LAW ENFORCEMENT PERSONNEL. GENERAL PROVISIONS.

³¹ TITLE 11. Crimes and Criminal Procedure. Victims of Crimes. CHAPTER 92. Law-Enforcement Officers' Bill of Rights

³² PUBLIC CHAPTER NO. 398. HOUSE BILL NO. 467. By Rhinehart

³³ West Virginia Legislature. ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN; PROCEDURE FOR INVESTIGATION.

³⁴ HOUSE BILL 169. 50th legislature - STATE OF NEW MEXICO - second session, 2012. INTRODUCED BY Al Park.

³⁵ Minnesota Legislature. 2019 Minnesota Statutes. 626.89 PEACE OFFICER DISCIPLINE PROCEDURES ACT.

³⁶ 15.520 Complaints against police officers -- Manner of investigation and hearing.

³⁷ LOCAL GOVERNMENT CODE. TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES. SUBTITLE A. MUNICIPAL OFFICERS AND EMPLOYEES. CHAPTER 143. MUNICIPAL CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS

³⁸ Alabama Code Title 11. Counties and Municipal Corporations § 11-43-230.

³⁹ Article 1 - Law Enforcement Officers.

This legislation has been expanded in recent decades and written into union contracts to include corrections officers covered under a *Corrections Officers Bill of Rights (COBR)*, such as officers at New York's Attica Prison⁴⁰ who have a union stipulation that they are only obligated to answer questions from their employers and at Baltimore City Detention Center⁴¹, where officers who were accused of smuggling contraband and sexual relationships with inmates were transferred to other facilities.

Recent incidents of police misconduct throughout the United States have sparked policy discussions around reforming/repealing LEOBOR. This year, over 60 organizations in Maryland have signed onto the *American Civil Liberties Union (ACLU)* of Maryland's call for meaningful policing reforms, including a repeal of LEOBOR⁴², and former Baltimore Mayor Stephanie Rawlings-Blake blamed Maryland's LEOBOR for delays in investigating the police murder of Freddie Gray in 2015⁴³. Officer Richard Pinheiro Jr. was convicted of fabricating evidence and misconduct, a misdemeanor, and was able to remain with the *Baltimore Police Department (BPD)*⁴⁴. BPD officials said that under Maryland law, the process for handling police misconduct was outside their control. Under Maryland's LEOBOR, officers are not required to be automatically fired if they are convicted of a misdemeanor. The Delaware NAACP State Conference of Branches has called for the repeal of Delaware's LEOBOR⁴⁵, and the Rhode Island NAACP is currently on a commission to reform Rhode Island's LEOBOR⁴⁶.

Literature Review

⁴⁰ A Brutal Beating Wakes Attica's Ghosts. Tom Robbins. *New York Times*. Feb. 28, 2015.

⁴¹ Walter Olson. Correctional officers' "bill of rights" and the Baltimore jail scandal. *Overlawyered*. May 6, 2013.

⁴² OVER 60 ORGANIZATIONS ACROSS STATE CALL ON MARYLAND LEGISLATORS TO COMMIT SUPPORT FOR SPECIFIC MEANINGFUL POLICE REFORMS. *ACLU of Maryland*. 2020.

⁴³ JUSTIN FENTON and JUSTIN GEORGE. Five officers in Freddie Gray case gave accounts of incident. *Baltimore Sun*. APR 23, 2015

⁴⁴ KEVIN RECTOR. Caught fabricating evidence, convicted Baltimore police officer remains on force 2½ years later. *BALTIMORE SUN*. MAR 09, 2020

⁴⁵ Craig Anderson. NAACP calls for abolishing some Delaware use-of-force laws. *Delaware State News*. June 1st, 2020.

⁴⁶ DANIELLE KENNEDY. Commission to review Rhode Island Officers' Bill of Rights. *NBC 10 NEWS*. June 11th 2020.

AN IMPEDIMENT TO POLICE ACCOUNTABILITY? AN ANALYSIS OF STATUTORY LAW ENFORCEMENT OFFICERS' BILLS OF RIGHTS provides a thorough analysis of the history of LEOBOR in the various states in which it has passed, the policy components, and the implications LEOBOR has for police accountability⁴⁷ and was the primary source of information for this study.

According to Keenan & Walker, few scholarly studies on the impact of LEOBOR have been conducted, and a 1998 study by Human Rights Watch included that “*Police officers accused of human rights violations or other misconduct are often protected by special law enforcement officers’ ‘bill of rights,’ providing for specific protections for officers accused of misconduct.*”⁴⁸, but included no research on the bill of rights nor its impact on accountability. In their conclusion, Keenan & Walker list the following as potential impediments to police accountability:

1. language that sets the scope of the LEOBORs too broadly, such that it might apply to routine supervisory activities;
2. formal waiting periods that delay investigations;
3. prohibitions on the use of non-sworn investigators in misconduct investigations;
4. pre-disciplinary hearings that include rank-and-file officers on the hearing board;
5. statutes of limitations on the retention and use of data on officer misconduct.
6. the failure to allow for reasonable exceptions to provisions regulating the time, place, and manner of investigative interviews;
7. excessive limitations on how many officers can participate, how many can speak at one time, and the use of “foul” language;
8. requiring the disclosure of the names of complainant(s) in every case;
9. overly broad definitions of “personnel files,” to which officers have access and/or to which they can contribute;
10. very short statutes of limitations on prosecutions;
11. lack of emergency suspension provisions; &
12. the lack of protections for whistleblowers.

One of the few scholarly studies of LEOBOR was written for the 2005 Law Enforcement Executive Forum by Wayne Schmidt, Chair of *Americans for Effective Law Enforcement* Legal Center,

⁴⁷ KEVIN M. KEENAN & SAMUEL WALKER. AN IMPEDIMENT TO POLICE ACCOUNTABILITY? AN ANALYSIS OF STATUTORY LAW ENFORCEMENT OFFICERS’ BILLS OF RIGHTS. *Public Interest Law Journal*, Volume 14.

⁴⁸ HUMAN RIGHTS WATCH, *SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES* 5 (1998).

and includes the International Association of Chiefs of Police version of LEOBOR⁴⁹. This report details the differences between this law in different states and includes policy to create a uniform, national LEOBOR with all 10 components of the Grand Lodge FOP's model legislation.

Another scholarly study on this topic is by University of Baltimore School of Law professor emeritus Byron L. Warnken, detailing his support for a national LEOBOR in 1997⁵⁰. Warnken argues:

“A national law enforcement officers’ bill of rights, like the one currently before Congress, would replace the ad hoc nature of many internal police investigations by encouraging states to provide minimum procedural standards to guide such investigations”. Warnken argues in support of components 1, 2, 3, 4, 5, 6, 7, & 8, stating:

“The bill of rights contained in these bills are exactly what law enforcement officers throughout the country deserve and desperately need. As evidenced by the examination of the current rights afforded to law enforcement officers during internal investigations, it is time for Congress to step in and ensure police officers there (sic) due process protections guaranteed to them under the Fourteenth Amendment.”

An April 2016 study conducted with the assistance of the United States Department of Justice studied existing records of all criminal arrests of police officers in the United States, a novel area of study⁵¹. The researchers, using Google News, found 6,724 cases of police officers arrested between 2005 and 2011, a rate of 0.72 officers arrested per 1,000 officers and a rate of 1.7 officers arrested per 100,000 population nationwide, and that many of these crimes were occupationally-derived; ie crimes that police officers had direct contact with such as narcotics officers who were caught selling drugs. According to their findings, nearly 40% of police crimes were committed while on-duty and over 67% of the arrests were made by an agency other than the employing agency, labeled a failure of internal control. Only 54% of officers lost their jobs as a result of conviction. According to the authors:

⁴⁹ Peace Officers Bill of Rights Guarantees: Responding to Union Demands with a Management Sanctioned Version. Wayne W. Schmidt. *Law Enforcement Executive Forum*. 2005.

⁵⁰ Warnken, Byron L., Due Process in Police Disciplinary Hearings: The Need for a National Law Enforcement Officers Bill of Rights (1997). Available at SSRN: <https://ssrn.com/abstract=1635429> or <http://dx.doi.org/10.2139/ssrn.1635429>.

⁵¹ Philip Matthew Stinson, Sr., J.D, Ph.D., John Liederbach, Ph.D., Steven P. Lab, Ph.D., Steven L. Brewer, Jr., Ph.D. Police Integrity Lost: A Study of Law Enforcement Officers Arrested.. April 2016.

“The sheer number of police crimes directly contradicts the presumption that they are perpetrated by a small cadre of problem-prone officers; and, the fact that roughly two-thirds of all the cases originated from an arrest made by an agency other than the employing agency reveals that in at least some cases agencies are not aware of the crimes perpetrated by their own officers.”

Findings

In this study, I have gathered data on each state’s:

- 2020 incarceration rate per 100,000⁵²
- 2017 state and local police budget per capita⁵³
- Average police salary⁵⁴
- Median salary⁵⁵
- Civilians shot by on-duty officers since 2015⁵⁶
- Black civilians shot by on-duty officers since 2015⁵⁷
- Latino civilians shot by on-duty officers since 2015⁵⁸
- Officers Charged for On-Duty Shootings since 2005⁵⁹
- Decertified police officers⁶⁰

I have found the average among the LEOBOR states along with across all 50 states. Washington D.C.’s data is included. These statistics are included in Table 2.

Table 2. Policing Statistics in the United States, State by State

State	2020 Incarceration Rate per 100,000	2017 Per Capita State & Local Police Budget	Average Police Salary	Median Income	Civilians Shot by On Duty Police Officers Since 2015	Black Civilians Shot by On Duty Police Officers Since 2015	Latino Civilians Shot by On Duty Police Officers Since 2015	Police Officers charged for On-duty Shootings since 2005	Decertified Police Officers
U.S. Average	698	\$352	\$67,600	\$48,672	5,475 total	1,302 total	910 total	106 total	30,338 total
LEOBOR Average	724.88	\$353	\$63,009	\$40,371	2,973 total	665 total	727 total	46 total	13,393 total
AL	946	\$261	\$46,510	\$36,444	104	31	1	3	328

⁵² Peter Wagner and Wendy Sawyer. States of Incarceration: The Global Context 2018. *Prison Policy Initiative*. June 2018.

⁵³ State and Local General Expenditures, Per Capita. *Tax Policy Center*. 2017.

⁵⁴ Andrew DePietro. Here’s How Much Money Police Officers Earn In Every State. *Forbes*. Apr 23, 2020.

⁵⁵ Average Income by State plus Median, Top 1%, and All Income Percentiles in 2019.

⁵⁶ Police Shootings Database. *Washington Post*.

⁵⁷ Police Shootings Database. *Washington Post*.

⁵⁸ Police Shootings Database. *Washington Post*.

⁵⁹ State By State | Number of officers charged with murder or manslaughter in an on-duty shooting. *Police Integrity Research Group*.

⁶⁰ Search the list of more than 30,000 police officers banned by 44 states. *USA Today*.

AK	691	\$494	\$87,870	\$41,601	39	3	0	4	142
AZ*	877	\$355	\$66,979	\$40,000	256	17	84	2	1,112
AR	900	\$224	\$40,570	\$35,050	83	25	0	0	270
CA*	581	\$487	\$105,220	\$40,501	808	123	318	6	N/A
CO	635	\$330	\$75,720	\$46,000	201	18	49	3	365
CT	468	\$330	\$73,270	\$49,051	21	3	6	1	73
DE*	756	\$396	\$73,740	\$39,025	13	5	0	0	N/A
DC	1,153	\$910	\$67,760	\$65,011	13	12	0	0	N/A
FL*	833	\$406	\$60,720	\$37,002	356	111	52	4	8,348
GA	970	\$262	\$44,720	\$36,000	186	71	10	7	10,474
HI	487	\$338	\$78,720	\$45,001	30	1	1	0	N/A
ID	734	\$264	\$54,120	\$35,010	42	1	5	0	402
IL*	564	\$413	\$78,350	\$43,010	104	58	13	1	234
IN	723	\$200	\$56,780	\$38,001	97	30	4	1	38
IO	568	\$259	\$59,730	\$38,600	31	7	0	0	150
KS	698	\$296	\$49,910	\$39,000	50	6	8	1	295
KY*	869	\$186	\$46,720	\$38,561	97	15	3	1	76
LA*	1,052	\$352	\$42,470	\$38,110	110	60	1	10	87
ME	363	\$232	\$53,170	\$40,135	22	1	1	0	157
MD*	585	\$443	\$71,170	\$50,000	79	47	3	1	4
MA	324	\$377	\$72,400	\$50,100	35	8	7	0	N/A
MI	641	\$255	\$58,770	\$40,001	80	25	2	2	150
MN*	364	\$356	\$71,840	\$45,301	61	10	3	3	48
MS	1,039	\$257	\$36,290	\$33,501	65	23	1	3	31
MO	859	\$296	\$51,860	\$41,000	143	49	3	4	860
MT	726	\$299	\$56,710	\$36,350	33	0	0	0	142
NE	577	\$260	\$58,860	\$40,533	24	5	2	0	87
NV*	763	\$427	\$73,660	\$37,590	98	15	28	0	50
NH	373	\$311	\$58,820	\$45,010	13	0	0	0	44
NJ	407	\$401	\$86,840	\$50,000	69	30	8	2	N/A
NM*	829	\$337	\$53,750	\$33,085	106	1	64	2	156
NY	443	\$530	\$77,490	\$44,160	102	46	8	5	74
NC	639	\$313	\$47,340	\$36,325	154	50	8	3	1,074

ND	596	\$307	\$58,770	\$40,200	11	0	0	0	33
OH	679	\$327	\$62,880	\$40,100	157	56	1	6	391
OK	1,079	\$266	\$48,060	\$36,000	165	32	9	5	229
OR	582	\$331	\$73,300	\$42,000	87	7	6	0	107
PA	725	\$302	\$68,940	\$40,014	1111	42	6	4	165
RI*	361	\$430	\$63,690	\$42,910	4	2	1	0	N/A
SC	754	\$261	\$43,520	\$40,001	89	27	2	4	15
SD	855	\$241	\$49,690	\$40,000	17	0	0	0	96
TN*	853	\$295	\$45,370	\$39,150	144	31	4	2	460
TX*	891	\$289	\$63,690	\$39,001	486	100	143	9	2,682
UT	439	\$239	\$43,520	\$39,002	61	7	12	1	372
VT	328	\$350	\$49,690	\$42,051	9	0	0	0	13
VA*	779	\$298	\$45,370	\$47,065	95	40	4	4	33
WA	480	\$277	\$80,200	\$45,711	153	21	21	1	192
WV*	690	\$217	\$44,450	\$36,000	54	8	0	0	51
WI*	676	\$322	\$63,970	\$40,000	93	22	6	1	52
WY	842	\$387	\$56,120	\$40,012	14	0	2	0	176

* States with LEOBOR in place

States in **bold** have confidential police records

Conclusion

The findings clearly indicate that there are substantially greater hurdles to police accountability and transparency in states with LEOBOR in effect. 3 of the 7 states that do not report their decertified officers are LEOBOR states (*California, Delaware, and Rhode Island*). States with LEOBOR, on average, have significantly higher incarceration rates and slightly higher police budgets. Only 17 states have LEOBOR in effect (*33% of states, including D.C.*) and these 17 states account for:

- 54% of police shootings of civilians
- 51% of police shootings of Black civilians
- 80% of police shootings of Latino civilians
- 44% of police decertifications
- 43% of police officers charged for on-duty shootings

Based on these statistics, it is apparent that LEOBOR is a detriment to police accountability and transparency to the general public, and allows police officers to avoid scrutiny for misconduct up to and including murder of civilians while on duty. This research could be further by investigating the personnel files of the officers who have been decertified to see if they continued policing and where they transferred/moved to.

As Keenan & Walker suggest the removal or update of several LEOBOR components, I suggest a repeal of LEOBOR in all states and an end to special treatment and extra rights for police officers who are being investigated for misconduct. In particular, protections for whistleblowers, hearings conducted by CRBs and other civilian accountability organizations, and public access to personnel files are absolutely paramount to police accountability and transparency.

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