

TRANSPARENCY BREEDS ACCOUNTABILITY, ACCOUNTABILITY BREEDS TRUST: WHERE IOWA LAW STANDS ON THE CONFIDENTIALITY OF POLICE MISCONDUCT RECORDS

ABSTRACT

Over the last decade, highly publicized and heartbreaking displays of law enforcement officers using force, abusing force, and exhibiting blatant misconduct have plagued the United States. The widespread news coverage of these tragedies has justifiably unleashed outrage. Importantly, however, the coverage has also served to bring necessary attention to the complex interplay of racial bias and the American criminal justice system.

The systemic racism born and bred in the United States has been active since the beginning of law enforcement. Displays of police brutality have historically targeted Black communities. In turn, there has been an ever-increasing lack of trust between the police and the public that erodes the effectiveness of law enforcement. To regenerate the public's trust, law enforcement officers must be held accountable for their misconduct. Therefore, this Note proposes the adoption of widespread transparency of police misconduct and disciplinary records, particularly in Iowa. Allowing the public access to such records will encourage law enforcement agencies to properly discipline officers for their misconduct, effectively train officers to prevent wrongdoing in the future, and ultimately, serve to begin rebuilding the public's trust.

This Note will explore how sister state justice systems have formed their laws regarding the confidentiality of police disciplinary records as well as how they are responding to the call for wider transparency of such records. Particularly, this Note will focus on how Iowa law compares with these states and their reform efforts.

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I. INTRODUCTION

“The whole thing about the bad apple? I hate when people say that. The bad apple rots the barrel. And until we do something about the rotten barrel, it doesn’t matter how many good fucking apples you put in.”¹

Evidence exhibited throughout recent years suggests that hostility toward Black communities is “anything but a recent phenomenon.”² Law enforcement’s role in displaying and fueling aggression toward Black individuals has been the focus of numerous news stories and political campaigns over the past years.³ In stark contrast to the experience of white individuals, young people in predominantly Black communities and families find it important, if not imperative, to learn the unwritten rules of how to safely interact with the police.⁴ Fatal and traumatic instances of violence by law enforcement officers are rarely experienced by white individuals.⁵ Instead, Black individuals are three times more likely to be killed by police officers than white individuals in the United States.⁶ It is the Black communities—the Black families, parents, siblings, and children—who are the victims of unjustified police brutality in the majority of cases.⁷

1. Zack Beauchamp, *What the Police Really Believe*, VOX (July 7, 2020, 8:10 AM) (quoting Arthur Rizer, former police officer and military policeman), <https://www.vox.com/policy-and-politics/2020/7/7/21293259/police-racism-violence-ideology-george-floyd> [<https://perma.cc/56KS-CFRE>].

2. Katie Nodjimbadem, *The Long, Painful History of Police Brutality in the U.S.*, SMITHSONIAN MAG., <https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/> [<https://perma.cc/H3MC-MU2F>] (May 29, 2020).

3. See Beauchamp, *supra* note 1.

4. See David W. Janey, *Black Parents Give Their Kids ‘The Talk.’ What If White Parents Did, Too?*, WBUR (April 12, 2021), <https://www.wbur.org/cognoscenti/2021/04/12/the-talk-racism-black-parents-children-david-w-janey> [<https://perma.cc/7ZLD-HU6G>].

5. See *id.*

6. See Campaign Zero, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/H2DG-XAAE>] (last visited Feb. 14, 2020).

7. See Deidre McPhillips, *Deaths from Police Harm Disproportionately Affect*

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To determine what can be done to address structural and systemic racism, it is essential to understand that the pattern of police brutality dates all the way back to the origin of law enforcement.⁸ The connection to race is a necessary topic that cannot be avoided when addressing police brutality.

A. *History of Police Brutality in the United States*

Before the creation of modern policing that governs communities today, a far less structured system was in place to oversee citizens.⁹ In fact, in the 1600s, *citizens themselves* were the authority maintaining order within their respective towns and cities.¹⁰ As the ownership of slaves became commonplace, volunteer slave patrols composed of white men organized to hunt slave runaways and prevent slave uprisings against owners.¹¹ The sole purpose of the first organized police force was to control and restrict the movement and freedom of Black individuals while defending the freedoms of white elites.¹² Eventually, slavery was abolished, the use of slave patrols ended, and modern policing began to rear its head.¹³ However, the transition was anything but polished, and Black communities continued to be the subject of police focus throughout the northern states where they sought refuge.¹⁴

In 1929, President Herbert Hoover established the National Commission on Law Observance and Enforcement (also known as the Wickersham Commission).¹⁵ In 1931, the Wickersham Commission

People of Color, U.S. NEWS (June 3, 2020, 4:07 PM), <https://www.usnews.com/news/articles/2020-06-03/data-show-deaths-from-police-violence-disproportionately-affect-people-of-color>; Beauchamp, *supra* note 1.

8. *See infra* Part I.A.

9. Wenei Philimon, *Not Just George Floyd: Police Departments Have 400-Year History of Racism*, USA TODAY, <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/> [<https://perma.cc/8V6X-ANAX>] (June 7, 2020, 2:44 PM).

10. *Id.*

11. *Id.*; Beauchamp, *supra* note 1.

12. Philimon, *supra* note 9.

13. *Id.*

14. Nodjimbadem, *supra* note 2.

15. Samuel Walker, *Introduction to RECORDS OF THE WICKERSHAM COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT: PART 1: RECORDS OF THE COMMITTEE ON OFFICIAL LAWLESSNESS*, at v (Samuel Walker ed., 1997), http://www.lexisnexis.com/documents/academic/upa_cis/1965_WickershamCommPt1.pdf [<https://perma.cc/D9QJ-GLX5>].

conducted the first national study on police misconduct, compiling their findings into the Report on Lawlessness in Law Enforcement.¹⁶ This report became a spark for widespread reform addressing police accountability.¹⁷ Motivated by a need to put formal legal controls in place to address police abuses of power, the authors of the report conducted a nationwide survey obtaining evidence from 15 cities throughout the United States.¹⁸ The results of the report documented what many individuals had been experiencing over the past century: police brutality through physical force and cruelty was widespread.¹⁹ Reforms slowly began to emerge as a result of the report's publishing.²⁰ Specifically, the U.S. Supreme Court endeavored to be more active in deciding cases that would inspect whether certain criminal justice practices violated the Constitution, and internal affairs units were created and designed to investigate reports of police misconduct.²¹

Throughout the progression of the Civil Rights Movement in the 1960s, police brutality towards protestors was ever-present through the use of fire hoses and police dogs,²² a foreshadowing to what lay ahead in the seeming resurgence of a modern Civil Rights Movement after George Floyd's death. Today, with increased technological advancements and the widespread use of cellphones and recording devices by citizens, incidents of police brutality can be instantaneously exposed in the media.²³ Conventional wisdom suggests that highly documented accounts of misconduct would lead to consistent reprimand for abuse of authority. However, evidence reveals an alternative phenomenon. Reality demonstrates that, in many cases, repeated wrongdoing comes with no meaningful accountability for officer conduct.²⁴

16. *Id.*

17. *Id.*

18. *Id.* at ix.

19. *Id.*

20. *Id.* at x.

21. *Id.* at x–xi.

22. Nodjimbadem, *supra* note 2.

23. See Nicol Turner Lee, *Where Would Racial Progress in Policing be Without Camera Phones?*, BROOKINGS (June 5, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/05/where-would-racial-progress-in-policing-be-without-camera-phones/> [<https://perma.cc/PWY7-FU27>].

24. See Associated Press, *Iowa Attorney General Hasn't Convicted a Police Officer for Improper Force Since at Least 2004*, GAZETTE (Dec. 28, 2020, 5:45 AM), <https://www.thegazette.com/subject/news/iowa-attorney-general-hasnt-convicted-a-police-officer-for-improper-force-since-at-least-2004-20201228> [<https://perma.cc/SP4Y-3C3L>]; Kimbriell Kelly, Wesley Lowery & Steven Rich, *Fired/Rehired: Police Chiefs Are Often Forced to Put Officers Fired for Misconduct Back on the Streets*, WASH. POST (Aug.

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B. *Why Is This Important Now?*

The lack of meaningful reprimand in response to incidents of police misconduct and brutality results in corrupt officers repeating their conduct and harming citizens. Many of the recent tragedies at the hands of police officers could have potentially been prevented with appropriate punishment and accountability for the perpetrating officers.²⁵ Police officers with a history of misconduct pose a threat to public safety and, therefore, impede the public trust in law enforcement necessary to preserve social order and legitimize their authority.²⁶ The public has an interest in accessing citizen complaints and evaluating the thoroughness of investigations.²⁷ When law enforcement agencies are required to release misconduct records to the public, they are incentivized to implement thorough training procedures, screen for warning signs of misconduct, and ensure the minimization of widespread transgression.²⁸

This Note calls for decision-makers and government leaders, specifically in Iowa, to take legislative action to mitigate and eliminate police misconduct. The benefit to the public of knowing the extent of police misconduct in their communities outweighs the need for police officer privacy.²⁹

II. IOWA'S OPEN RECORDS LAW

Iowa's laws pertaining to the confidentiality of public records, or "sunshine" laws, are codified in Iowa Code § 22.³⁰ Pursuant to Iowa Code § 22.2(1), "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record."³¹ Public records include "all

3, 2017), <https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/> [<https://perma.cc/87ZX-MYGF>].

25. See generally Jenny Rachel Macht, *Should Police Misconduct Files be Public Record? Why Internal Affairs Investigations and Citizen Complaints Should be Open to Public Scrutiny*, 45 CRIM. L. BULL. 1006 (2009).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Public Records: Chapter 22 Examination of Public Records (Open Records)*, IOWA PUB. INFO. BD., <https://ipib.iowa.gov/public-records> [<https://perma.cc/837G-EG68>].

31. IOWA CODE § 22.2(1) (2021).

documents, tape or other information stored or preserved in any medium of or belonging to a governmental body.”³²

While Iowa’s open records law seemingly permits wide facilitation of public record disclosure, section 22.7 lists various important public records that must be kept confidential absent a court order.³³ Among those listed, the most pertinent to this Note’s discussion is “[p]ersonal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies.”³⁴ The statute carves out further exceptions to the exception, stating that compensation for employment,³⁵ dates of employment,³⁶ positions held,³⁷ educational institutions attended,³⁸ and “[t]he fact that the individual resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion”³⁹ relating to such personnel records are not confidential.

In simpler terms, personnel records of law enforcement officers are kept confidential and are not subject to disclosure under Iowa’s open records law. But what does a “personnel record” contain? In *State v. Garrison*, the defendant argued his due process rights were violated because the State did not produce documents relating to a Division of Criminal Investigation (DCI) officer’s prior suspension.⁴⁰ The DCI agent interviewed various witnesses in the case and helped conduct a search of the defendant’s car, which resulted in the finding of key evidence.⁴¹ The Iowa Court of Appeals found that such documents relating to the suspension were public records; however, more specifically, they were personnel records containing personal information and therefore confidential under section 22.7.⁴² The suspension

32. *Sunshine Laws*, IOWA PUBLIC INFORMATION BOARD, <https://www.iowacounties.org/wp-content/uploads/2013/06/2017-ISAC-NCO-Open-Meetings-Margaret-Johnson.pdf> [<https://perma.cc/HTW3-YQLF>].

33. IOWA CODE § 22.7 (2021).

34. *Id.* § 22.7(11)(a).

35. *Id.* § 22.7(11)(a)(1).

36. *Id.* § 22.7(11)(a)(2).

37. *Id.* § 22.7(11)(a)(3).

38. *Id.* § 22.7(11)(a)(4).

39. *Id.* § 22.7(11)(a)(5).

40. No. 04-0141, 2006 WL 138280, at *17 (Iowa Ct. App. Jan. 19, 2006).

41. *Id.* at *16.

42. *Id.* at *18.

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documents sought “consist[ed] of a synopsis, the allegations of misconduct, correspondence, investigative reports and interviews, performance evaluations, photographs, and a notice of disciplinary action.”⁴³ The court concluded because they were essentially job performance documents, they were exempt from automatic disclosure.⁴⁴

While documents relating to an investigation into the conduct of an officer are presumed confidential in Iowa, a law enforcement officer discharged because of misconduct and the reasons for such discharge are not.⁴⁵ However, although the fact of an officer’s discharge or demotion is publicly accessible, section 22.7(11)(a) regarding police officer personnel records does not provide an exception allowing the disclosure of misconduct records that did *not* result in a resignation, discharge, or demotion.⁴⁶ As previously asserted in this Note, many police officers rack up complaints that suggest a tendency of noncompliance with policy and procedures, yet face no reprimand for such actions.⁴⁷ The structure of Iowa’s open records law creates a significant blind spot in an area that is of substantial interest to the public. By failing to allow public access to the complete history of misconduct complaints and subsequent investigations of those complaints filed against officers who are still employed, suspicion over patterns of leniency inhibit the public’s ability to trust law enforcement.⁴⁸ Allowing public access to only those acts of misconduct that resulted in reprimand creates a misleading appearance that results in the public generally assuming acts of misconduct are being punished. However, there is no way to know how many legitimate complaints of actual harm to members of the public are filed against officers wherein no accountability, reprimand, or punishment to the officer is imposed. Are only the most serious of complaint

43. *Id.* at *19.

44. *Id.* (citing *Des Moines Indep. Cmty. Sch. Dist. Pub. Recs. v. Des Moines Reg. & Trib. Co.*, 487 N.W.2d 666, 670 (Iowa 1992)).

45. IOWA CODE § 22.7(11)(a)(5) (2021).

46. *See id.* § 22.7(11)(a).

47. *See supra* Part I.A; Jason Clayworth & Andrea May Sahouri, *Cedar Rapids Fired a Police Officer for Lying. Two Years and Two Police Jobs Later, Iowa Decertified Him.*, DES MOINES REG. (Jan. 10, 2021, 7:00 AM), <https://www.desmoinesregister.com/in-depth/news/investigations/2021/01/10/iowa-police-officer-misconduct-process-background-checks/6427761002/> [hereinafter *Cedar Rapids Fired a Police Officer*].

48. *See Macht, supra* note 25; Jason Clayworth & Andrea May Sahouri, *Wall of Protection: How Hundreds of Iowa Police Complaints Stay Secret*, DES MOINES REG. (Jan. 10, 2021), <https://www.desmoinesregister.com/in-depth/news/investigations/2021/01/10/des-moines-iowa-police-officer-misconduct-records-secret/3976034001/> [hereinafter *Wall of Protection*].

allegations—those which may result in the complainant taking legal action—resulting in discipline? Where does that leave less serious, but nevertheless harmful, abuses of power by officers who are allowed to continue such action without repercussions? Expanded transparency could shed light on these key questions.

While the Des Moines Police Department (DMPD) acknowledges over 200 complaints have been filed against their officers in the past two years, the DMPD disclosed records of only two of those complaints to the *Des Moines Register* in aiding their investigation into the issue.⁴⁹ One complaint dealt with an officer lying in an incident report and the other with an officer being fired before their hiring probationary period was over.⁵⁰ Of course, neither of these issues pertain to the significant public concern regarding officer abuse of force. By only disclosing two complaints that have narrow applicability to legitimate public concerns, the DMPD is seemingly making deliberate efforts to avoid any opportunity to prove they are holding their officers accountable for misconduct.

Details of initial complaints are not made public, however, records of settlements and jury verdicts concerning such complaints are.⁵¹ “Des Moines has paid more than \$1.7 million in settlements and jury verdicts since 2016 in nine cases that involved allegations of police wrongdoing.”⁵² Moreover, “Officers involved with about \$900,000 of those settlements and legal fees previously had been disciplined by the department for other incidents involving excessive force”⁵³ Despite an officer’s right to pursue civil remedies against a citizen arising from a false complaint,⁵⁴ proponents of limited access to prior complaints and department procedures for handling such complaints argue that lack of transparency in misconduct complaints aids in protecting officers from false allegations.⁵⁵ Despite the arguable concerns these settlements raise regarding the true lack of accountability for misconduct within the DMPD, DMPD spokesman Sergeant Paul Parizek argues that settlement decisions are simply too difficult for the public to understand, they do not constitute an admission of wrongdoing by officers, and are implemented to avoid further litigation costs.⁵⁶ However, the

49. *Wall of Protection*, *supra* note 48.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. IOWA CODE § 80F.1(13) (2021).

55. *Wall of Protection*, *supra* note 48.

56. *Id.*

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abundance of money paid out in such settlements cannot simply be ignored until the next allegation is made. In contrast, the continued litigation attempts by complainants suggest officers are repeating bad conduct while hiding behind settlement money in order to keep victims quiet and prevent media exposure on “bad apple” cops. Simply “dealing with” wrongdoing as it arises, and not addressing the source, contributes to a never-ending cycle of unaccountability and distrust.

While police departments and their policies and procedures generally determine the level of accountability, or lack thereof an officer receives, Iowa law has long allowed officers themselves to single-handedly avoid such accountability throughout their careers by evading decertification and simply moving to different departments when conflict arises.⁵⁷ A law signed by Iowa Governor Kim Reynolds on June 12, 2020,⁵⁸ aims to prevent this from happening by “prevent[ing] officers from being hired in Iowa if they previously have been . . . fired for misconduct or quit to avoid being fired for misconduct.”⁵⁹ While Iowa law mandates decertification following convictions for domestic abuse, felonies, and drug convictions, when an officer has violated a professional standard and been terminated for “good cause,” the Iowa Law Enforcement Academy Council is authorized to weigh the evidence and make a judgment at their own discretion.⁶⁰ This discretionary authority may result in an officer maintaining their certification despite being fired for a misconduct violation. Although they may not be hireable at another department in Iowa, other state law determines whether they will be able to “wander” to another state to continue their career and partake in future misconduct.⁶¹

57. *Cedar Rapids Fired a Police Officer*, *supra* note 47.

58. H.F. 2647, 88th Gen. Assemb. (Iowa 2020).

59. Stephen Gruber-Miller & Ian Richardson, ‘We are Ready and Willing to Act’: Gov. Kim Reynolds Signs Law Banning Most Chokeholds, Addressing Police Misconduct, DES MOINES REG., <https://www.desmoinesregister.com/story/news/politics/2020/06/12/police-misconduct-chokehold-law-governor-kim-reynolds-sign-black-lives-matter-george-floyd/5347514002/> [<https://perma.cc/YQY7-E5GV>] (Jun. 12, 2020, 6:03 PM).

60. *Cedar Rapids Fired a Police Officer*, *supra* note 47.

61. See William H. Freivogel & Paul Wagman, *Wandering Cops Moving from Department to Department is a Roadblock to Police Accountability*, PBS (Apr. 28, 2021, 4:56 PM), <https://www.pbs.org/newshour/nation/wandering-cops-moving-from-department-to-department-is-a-roadblock-to-police-accountability> [<https://perma.cc/9G78-7PNL>] (“Wandering cops’ who lose their jobs in one place only to be rehired pose a persistent roadblock to police accountability.”).

III. IOWA'S LAW COMPARED WITH OTHER STATES

A. Minnesota

Pursuant to Minnesota Statutes § 13.43, general records of police misconduct and disciplinary action in Minnesota are available to the public.⁶² This section states that, except for undercover law enforcement officers, personnel data of an employee of a governmental entity is public, including the “existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action,”⁶³ and “the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action”⁶⁴ At first glance, a simple reading of the law outlined above could indicate that Minnesota has made an honest effort at making disciplinary information transparent and accessible to the public.

However, a closer look at the law suggests the public information is not as transparent as it seems. For example, the status of a complaint is just that: the current state of inquiry that has been made on the complaint. The status of a complaint is, very generally, defined as: (1) complaint received, (2) pending, (3) under investigation, or (4) resolved, completed, or closed.⁶⁵ Further, the nature, type, or character of the complaint is not public information.⁶⁶ This means that citizens do not have access to specific information regarding how the complaint arose or what conduct led to its filing. Even more concerning, once an investigation has been completed on a complaint, if it is determined that no disciplinary action should be imposed upon the officer, no additional data becomes public.⁶⁷ Upon final disposition of a disciplinary action, if discipline is determined to be warranted, the (1) nature of the discipline, (2) specific reasons for the discipline, and (3) data documenting the basis for discipline are public information.⁶⁸ Final disposition occurs when the employer has made a final decision regarding

62. MINN. STAT. § 13.43 (2020).

63. *Id.* § 13.43(a)(4).

64. *Id.* § 13.43(a)(5).

65. MINN. MGMT. & BUDGET, DATA PRACTICES FOR PERSONNEL RECORDS: A GUIDE FOR HUMAN RESOURCE STAFF 1, 11 (Dec. 7, 2015), https://mn.gov/mmb/assets/Data-Practices-Personnel-Records_tcm1059-127062.pdf [<https://perma.cc/6DHE-URN5>].

66. *Id.*

67. *Id.* at 12.

68. *Id.* at 13.

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the disciplinary action and may include resignation by the officer.⁶⁹ However, if an officer resigns before a final disposition has been made by their employer, information regarding the nature of and specific reasons for the potential discipline does not become public record.⁷⁰

Certainly, Minnesota's open records laws are not perfect. However, they are more transparent than Iowa's laws. Unlike Iowa, Minnesota takes a meaningful next step in disclosing the status of any complaints filed against law enforcement officers, regardless of whether they resulted in reprimand.⁷¹ Further, the city of Minneapolis' Office of Police Conduct Review publishes various pertinent complaint information in a searchable online database, including the officer's name, the matter number, case status, discipline imposed, and whether it was a public or non-public allegation.⁷²

Although disclosure of complaints is apparent in Minnesota, this practice does not necessarily serve as an automatic fix to prevent misconduct. On May 25, 2020, the landscape of the Black Lives Matter movement dramatically changed.⁷³ George Floyd was arrested in Minneapolis, Minnesota, for the use of a counterfeit \$20 bill.⁷⁴ Derek Chauvin, a police officer with the Minneapolis Police Department, pinned Floyd to the ground, lodged his knee into Floyd's neck for more than nine minutes, and refused to acknowledge Floyd calling out for air, exclaiming: "I can't breathe."⁷⁵ All caught on camera by bystanders, Floyd's body eventually went lifeless and he died as a result of the encounter.⁷⁶

In his almost 20 years with the Minneapolis Police Department, Chauvin was subject to 17 misconduct complaints, one of which included two letters of reprimand but no significant discipline for firing two shots and

69. *Id.*

70. *Id.*

71. *See id.*

72. Minneapolis Data Source, *Officer Complaint History Dashboard*, MINNEAPOLIS CITY OF LAKES, <https://www.minneapolismn.gov/government/government-data/datasource/officer-complaint-history-dashboard/> [https://perma.cc/P6NA-NBMH].

73. *See* Sandra Lemaire, *How George Floyd's Death Has Impacted American Life*, VOA NEWS (June 26, 2020, 6:42 AM), <https://www.voanews.com/usa/race-america/how-george-floyds-death-has-impacted-american-life> [https://perma.cc/ESB2-Q96J].

74. *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), <https://www.nytimes.com/article/george-floyd.html>.

75. *Id.*

76. *Id.*

critically injuring a man in a heated encounter.⁷⁷ It was not until Floyd's death, caught on camera and resulting in nationwide backlash and outrage, that Chauvin was fired from the Minneapolis Police Department.⁷⁸ However, Chauvin was far from the only officer within the Minneapolis Police Department with a history of misconduct.⁷⁹

More than 2,600 complaints have been filed by citizens against Minneapolis police officers since 2012, with only 12 resulting in disciplinary action against the officer, including eight written warnings and one 40-hour suspension.⁸⁰ Since 2015, half of Minneapolis officers who faced criminal charges were not removed from working on the force.⁸¹

Although disclosure of prior complaints filed against officers—specifically the 17 complaints previously filed against Chauvin—did not prevent the death of Floyd, the tragedy shows that the Minneapolis Police Department and others across the country must be attentive to the accumulation of complaints. Such accumulation sheds light on each officer's compliance with department policy, effectiveness in working with the public, and ultimately, each officer's negative contribution to the distrust of the force as a whole. This Note urges a deep dive be taken to address how departments conduct their investigations and come to conclusions regarding whether to discipline an officer. For purposes of this Note, transparency in disciplinary record disclosure is a necessary first step in the analysis.

B. New York

The state of New York joined in the wave of reforms following Floyd's death by taking significant action on June 12, 2020, to repeal a 44-year-old

77. Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. TIMES (June 8, 2020), <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>.

78. *Id.*

79. *Id.*

80. Dan Frosch et al., *The Minneapolis Police Chief Promised Change. He Got a Disaster.*, WALL ST. J. (May 31, 2020, 8:37 PM), https://www.wsj.com/articles/a-minneapolis-police-chief-promised-change-george-floyds-death-shows-hurdles-11590971860?mod=article_inline.

81. Coulter Jones & Louise Radnofsky, *Many Minnesota Police Officers Remain on the Force Despite Misconduct*, WALL ST. J. (June 25, 2020, 11:01 AM), <https://www.wsj.com/articles/many-minnesota-police-officers-remain-on-the-force-despite-misconduct-11593097308>.

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law prohibiting police misconduct records from public accessibility.⁸² New York Civil Rights Law § 50-a, passed in 1976, barred public access to disciplinary records of law enforcement officers stating: “[P]ersonnel records used to evaluate performance toward continued employment or promotion . . . shall be considered confidential and not subject to inspection or review without the express written consent of such police officer.”⁸³ “[N]on-disclosure did not turn on whether misconduct was substantiated, nor whether discipline was imposed, nor whether charges were merely under consideration.”⁸⁴ Rather, it blocked all records of any police conduct.⁸⁵ According to advocates for the repeal of Section 50-a, the importance of transparency is straightforward: “Officers are given enormous power in their jobs, and their histories of abusive behavior should be available to the public they are charged to protect.”⁸⁶ Moreover, as emphasized in the beginning of this Note, Black communities, especially in New York, are predominantly the victims of such abuses of power, and it is necessary to recognize such patterns before anyone is able to address them.⁸⁷ In the appeal following the repeal of Section 50-a, the court emphasized: “[O]ur nation’s recent history is forever marked by anger and sorrow surrounding controversial arrests involving the use and degree of force, particularly as against [B]lack men, women, and children.”⁸⁸

In 2014, Eric Garner was murdered by New York police officer Daniel Pantaleo after he used a chokehold on Garner that had been banned by the New York Police Department for more than two decades.⁸⁹ Following

82. Jason Newman, *New York Senate Votes to Overturn 44-Year-Old Law Shielding Police Disciplinary Records*, ROLLING STONE (June 9, 2020), <https://www.rollingstone.com/politics/politics-news/new-york-senate-50-a-police-misconduct-1012357/> [<https://perma.cc/69SB-5RKC>]; see *Schenectady Police Benevolent Ass’n v. City of Schenectady*, No. 2020-1411, 2020 WL 7978093, at *2–3 (N.Y. Sup. Ct. Dec. 29, 2020).

83. Newman, *supra* note 82 (quoting N.Y. CIV. RIGHTS LAW § 50-A (repealed 2020)).

84. *Schenectady*, 2020 WL 7978093, at *7.

85. *Id.*

86. Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, VOX (June 16, 2020, 7:30 AM), <https://www.vox.com/2020/6/16/21291595/new-york-section-50-a-police-misconduct> [<https://perma.cc/8KLZ-UUDG>].

87. *See id.*

88. *Schenectady*, 2020 WL 7978093, at *3.

89. Joseph Goldstein & Marc Santora, *Staten Island Man Died from Chokehold During Arrest, Autopsy Finds*, N.Y. TIMES (Aug. 1, 2014),

Garner's death, requests to obtain Pantaleo's disciplinary records were blocked by Section 50-a.⁹⁰ Eventually, information was leaked to the media that Pantaleo had four known prior complaints filed against him for abusive stops and searches.⁹¹ The leak revealed that, although the New York Civil Complaint Review Board had recommended the most severe penalties for Pantaleo's prior misconduct, the New York Police Department declined to impose those penalties.⁹² One such finding of Pantaleo abusing his power in a search resulted in a disciplinary trial where Pantaleo was found guilty and punished with the revocation of two vacation days.⁹³ After the repeal of Section 50-a, the extent of Pantaleo's history of misconduct during his time at the New York Police Department was finally revealed five years after Garner's death.⁹⁴ The review board disclosed that, between 2009 and 2014, Pantaleo had 17 complaints filed against him, 8 of which resulted in a case being opened, and 3 of which resulted in substantiated findings.⁹⁵

Pantaleo was not the only officer whose prior disciplinary records were produced for the public.⁹⁶ After the repeal of Section 50-a, the Civil Complaint Review Board released all records of civilian allegations filed since 1985 of excessive force, abuse of authority, discourtesy and offensive language along with the board's findings on each complaint, and the disciplinary action taken against the officer.⁹⁷ The total amounted to 323,911 allegations against 81,550 active and former New York Police Department officers and all were published online by the New York Civil Liberties Union.⁹⁸ The database is searchable by various characteristics including

<https://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html>.

90. Nikhel Sus, *States Must Lift the Veil of Secrecy Over Police Misconduct*, CITIZENS FOR RESP. & ETHICS WASHINGTON (June 19, 2020), <https://www.citizensforethics.org/reports-investigations/crew-investigations/states-secrecy-police-misconduct-reform/> [<https://perma.cc/ZZD5-85SJ>].

91. *Id.*

92. *Id.*

93. Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold is Finally Released*, CNN (June 23, 2020), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html> [<https://perma.cc/K8JH-WQMK>].

94. *Id.*

95. *Id.*

96. See Ashley Southall, *323,911 Accusations of N.Y.P.D. Misconduct Are Released Online*, N.Y. TIMES (July 28, 2021), <https://www.nytimes.com/2020/08/20/nyregion/nypd-ccrb-records-published.html>.

97. *Id.*

98. *Id.*

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officer name, rank, command, incident date, allegation, disposition, and penalty.⁹⁹

ProPublica also created an online database using records received from the review board of every active-duty police officer who had at least one substantiated claim against them.¹⁰⁰ Their database includes 12,056 total complaints against 3,996 total officers.¹⁰¹ The database is searchable by officer name, badge number, or precinct, but even more helpful and telling, it is searchable by allegation type—specifically, allegations of force, abuse of authority, discourtesy, and offensive language.¹⁰² Within each of these categories are subcategories that further specify the allegation, such as “Gun Pointed,” “Retaliatory Arrest,” and “Demeanor/Tone,” along with the total number of complaints of that nature.¹⁰³ After selecting an allegation type, the database provides a list of every officer who received a complaint of that type, along with their rank at the time of the complaint, their gender and ethnicity, the complainant’s age, ethnicity, and gender, the year the complaint was received, and the review board’s conclusion.¹⁰⁴

Without transparency straight from the source—in this case, the Civil Complaint Review Board—the full nature and scope of the problem cannot be studied. If it cannot be studied, there is no way to know the best way to remedy it. Without a foreseeable remedy, more incidents of police abuse of power will occur and more individuals will be harmed.

C. New Jersey

Enacted in 2001, New Jersey’s Open Public Records Act (OPRA) prohibited an officer’s disciplinary record from being disclosed to the public.¹⁰⁵ New Jersey Statutes Annotated § 47:1A-10 states that personnel

99. *NYPD Misconduct Complaint Database*, N.Y. CIV. LIBERTIES UNION, <https://www.nyclu.org/en/campaigns/nypd-misconduct-database> [<https://perma.cc/X79F-6VG6>].

100. Derek Willis, Eric Umansky & Moiz Syed, *The NYPD Files: Search Thousands of Civilian Complaints Against New York City Police Officers*, PROPUBLICA (July 26, 2020), <https://projects.propublica.org/nypd-ccrb/> [<https://perma.cc/2SSK-X5RY>].

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. N.J. STAT. ANN. § 47:1A-10 (West 2020); Lew Scheindlin, *Attorney General Requires the Public Disclosure of Identities of Police Officers Who Have Disciplinary Infractions*, N.J. OPRA L. REP. (June 17, 2020), <http://www.njoprallaw.com/?p=1956>

records including “records relating to any grievance filed” against an individual are not government records and are therefore not accessible to the public unless “required to be disclosed by another law.”¹⁰⁶ As chief law enforcement officer and head of the New Jersey Department of Law and Public Safety, the attorney general has the ability to adopt rules and regulations, specifically the longstanding Internal Affairs Policy and Procedures (IAPP), which serves to establish “a viable process for the receipt and investigation of citizen complaints concerning police conduct.”¹⁰⁷ By law, New Jersey law enforcement agencies are required to adopt and implement guidelines in line with the IAPP.¹⁰⁸

Twenty years after enacting OPRA, the New Jersey Attorney General announced Directive 2020-5, which amended the most recent version of the IAPP.¹⁰⁹ It required every law enforcement agency in New Jersey “to publish a synopsis of all complaints in which an officer received final discipline of termination, demotion, or a suspension of more than five days, including the name of the officer, a summary of the misconduct, and the sanction imposed.”¹¹⁰ Of course, this Directive did not arrive without pushback. Local police unions appealed the decision, resulting in a stay of the implementation of the Directive, arguing the attorney general exceeded his authority as the Directive was in direct conflict with section 47:1A-10.¹¹¹

On October 16, 2020, the Superior Court of New Jersey Appellate Division issued a ruling finding the attorney general had authority to issue

[<https://perma.cc/N9AL-JSX8>] [hereinafter *Public Disclosure of Disciplinary Infractions*].

106. § 47:1A-10.

107. *Id.* § 52:17B-4(d); *In re Att’y Gen. L. Enf’t Directive Nos. 2020-5 & 2020-6*, 240 A.3d 419, 431 (N.J. Super. Ct. App. Div. 2020) (citations omitted).

108. § 40A:14-181.

109. *In re Att’y Gen. L. Enf’t Directive Nos. 2020-5 & 2020-6*, 240 A.3d at 427.

110. *Id.* See also STATE OF N.J., OFF. OF THE ATT’Y GEN., DEP’T OF L. AND PUB. SAFETY, ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-5 (June 15, 2020), https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-5_Major-Discipline.pdf [<https://perma.cc/AP6K-FU8R>]; *Public Disclosure of Disciplinary Infractions*, *supra* note 105.

111. *In re Att’y Gen. L. Enf’t Directive Nos. 2020-5 & 2020-6*, 240 A.3d at 428; Lew Scheindlin, *Court Stays AG Directive Requiring Disclosure of Names of Disciplined Police Officers*, N.J. OPRA L. REP. (July 10, 2020), <http://www.njopralaw.com/?p=1970> [<https://perma.cc/XE8D-PVV8>]. See Isaac Avilucea, *NJ Supreme Court Rejects AG Gurbir Grewal’s Bid to Lift Stay Over Disciplined Cops Directives*, TRENTONIAN, https://www.trentonian.com/news/nj-supreme-court-rejects-ag-gurbir-grewals-bid-to-lift-stay-over-disciplined-cops-directives/article_e4dc70f6-c1f1-11ea-83cc-d71ece7bd53c.html [<https://perma.cc/4V8M-DDTE>] (Aug. 25, 2021, 2:43 AM).

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Directive 2020-5.¹¹² The court noted it was not its job to analyze the attorney general's policy choice, emphasizing:

The erosion of confidence in our law enforcement agencies is a serious problem, and it is enough that the Attorney General, New Jersey's chief law enforcement officer tasked with the general supervision of criminal justice in our State, has determined that publishing the names of officers incurring major discipline for misconduct will increase public trust in those agencies and make them more accountable to the communities they serve.¹¹³

The court held, pursuant to section 47:1A-10, that the attorney general's authority to make the internal affairs process more accessible to the public through amendment of the IAPP, constituted "another law" by which disclosure of officer names can be required.¹¹⁴ Further confirming the attorney general's authority, the New Jersey Supreme Court issued an opinion upholding the Directive.¹¹⁵

Although the attorney general has made significant and seemingly unpopular steps to increase transparency and accountability for law enforcement officers, direct action by the New Jersey Legislature would likely be the most secure way to ensure the public gains access to disciplinary records and information. Luckily, members of the New Jersey Legislature are beginning to recognize the present concerns and are, in fact, taking action. Senate Bill 2656 was introduced in the New Jersey Senate on June 30, 2020.¹¹⁶ The proposed bill "[r]equires access to law enforcement disciplinary records as government records [and] requires such records to be retained for [a] certain period of time."¹¹⁷ Specifically, the bill states that disciplinary records consist of any complaints against an officer,¹¹⁸ the

112. *In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 240 A.3d at 429–30.

113. *Id.* at 430.

114. *Id.* at 439.

115. Lew Scheindlin, *Supreme Court Upholds Validity of Attorney General's Directive Mandating Disclosure of Names of Disciplined Officers*, N.J. OPRA L. REP. (June 7, 2021), <http://www.njoprallaw.com/?p=2146>.

116. S. 2656, 219th Leg. (N.J. 2020); Michelle Feldman, *New Jersey Introduces SB2656, Bill That Would Expose Police Misconduct*, INNOCENCE PROJECT (July 15, 2020), <https://www.innocenceproject.org/new-jersey-introduces-sb2656-a-bill-that-exposes-police-misconduct/> [<https://perma.cc/7433-JMFJ>].

117. N.J. S. 2656.

118. *Id.* § 1(c)(1).

officer's name,¹¹⁹ the transcript of any disciplinary hearing,¹²⁰ the final disposition of any proceeding,¹²¹ the final written opinion of such proceeding,¹²² internal affairs records,¹²³ and relevant body camera video footage.¹²⁴ To balance the interests of the public with the privacy concerns of officers and their families, the bill further requires certain information to be redacted from disciplinary records, including addresses, telephone numbers, and social security numbers of officers or family members;¹²⁵ the officer's medical history not including injuries relevant to the complaint;¹²⁶ and the names of any complainants or witnesses.¹²⁷ In its statement in support of the bill, New Jersey State Senator Gill Weinberg argues that access to such disciplinary records "can expose significant failings and provide insight into what can be done to effectuate meaningful change."¹²⁸

D. Federal Level

Although many reform efforts are tackled at the state level, the federal government has recently taken steps to attempt to address transparency and accountability for police misconduct with the introduction of the George Floyd Justice in Policing Act of 2021 on February 24, 2021.¹²⁹ The Act was swiftly passed by the House of Representatives on March 3, 2021, and was under consideration by the Senate as of March 9, 2021.¹³⁰ The stated purpose of the Act was "[t]o hold law enforcement accountable for misconduct in court, improve transparency through data collection, and reform police training and policies."¹³¹ Among various other reforms, the Act would (1) lower the criminal intent standard required to convict a police officer of misconduct in a federal prosecution from willfully to knowingly or recklessly,¹³² (2) create a public National Police Misconduct Registry

119. *Id.* § 1(c)(2).

120. *Id.* § 1(c)(3).

121. *Id.* § 1(c)(4).

122. *Id.* § 1(c)(5).

123. *Id.* § 1(c)(6).

124. *Id.* § 1(c)(7).

125. *Id.* § 1(d)(1).

126. *Id.* § 1(d)(2).

127. *Id.* § 1(d)(3).

128. *NJ A996, BILL TRACK 50*, <https://www.billtrack50.com/billdetail/1420122>.

129. *See* George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021).

130. *H.R.1280 - George Floyd Justice in Policing Act of 2021*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1280/actions>.

131. H.R. 1280.

132. *Id.* § 101.

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requiring state and local law enforcement agencies to report each complaint filed against a law enforcement officer (whether resulting in disciplinary action, still pending, or resulting in the exoneration of the officer), to report records of lawsuits and settlements made against officers, and to report termination records including the reason for termination,¹³³ and (3) eliminate qualified immunity, specifically providing that a good faith belief that conduct was lawful and the fact that the law was not clearly established is not a defense to an action brought under 42 U.S.C. 1983.¹³⁴

In order to succeed in passing the wide-ranging legislation, Democrats in the Senate would have to sway at least 10 Republican senators.¹³⁵ While Republican legislators find the bill a threat to officer safety and effectiveness, Democratic legislators urge the bill is necessary to begin rebuilding police-community trust.¹³⁶ Since presentation to the Senate in early 2021, no action has been taken on the matter.¹³⁷

IV. WHY THE PUBLIC'S INTEREST OUTWEIGHS THE OFFICER'S PRIVACY

Transparency of police misconduct records is a hotly debated topic and, as with many social justice reform proposals, there is no overriding consensus on the most fruitful approach to combat the issues surrounding officer abuse of authority and racial profiling. Police unions argue that by allowing for significant transparency in the disclosure of police disciplinary records, officers are put in danger of targeted violence.¹³⁸ However, there is no evidence that this is reality in states whose laws already lean in favor of transparency.¹³⁹ Disclosure simply draws a picture of what the landscape for police misconduct looks like.¹⁴⁰ Further, "Most people who have unpleasant encounters with the police do not file formal complaints."¹⁴¹ Therefore, such disciplinary data would allow a presumption that the problem is even more widespread, providing further support for lawmakers to make changes.

133. *Id.* § 201.

134. *Id.* § 102.

135. Chloe Weiner, *House Approves Police Reform Bill Named After George Floyd*, NPR (Mar. 3, 2021, 9:32 PM), <https://www.npr.org/2021/03/03/973111306/house-approves-police-reform-bill-named-after-george-floyd> [<https://perma.cc/A6CN-YSDG>].

136. *Id.*

137. *H.R.1280*, *supra* note 130.

138. Wykstra, *supra* note 86.

139. *Id.*

140. *See* Macht, *supra* note 25.

141. Southall, *supra* note 96.

Opponents of total transparency suggest a balancing approach be taken to protect police privacy instead of subjecting them to punishment similar to that of a citizen accused of criminal acts.¹⁴² However, why should law enforcement officers who, in some cases, have committed heinous crimes against individuals themselves, receive more privacy protection than any other average citizen accused of a crime? Scholars agree that “mass publication of criminal records brands . . . those who have contact with the criminal justice system with a lifelong stain.”¹⁴³ So long as the United States employs the general practice of publicizing criminal records, making certain the “largely poor, nonwhite, and politically uninfluential” individuals of society be “affected by the forced publication of their worst deeds,” so too should law enforcement officers be held to the same standard.¹⁴⁴

“[T]he data should not be used to ‘name and shame’ officers, but to understand how policing is in need of fundamental change.”¹⁴⁵ With regard to records relating to the performance of public duties, the privacy interest of officers is lessened because of the high priority of accountability to the public.¹⁴⁶ However embarrassing a private disclosure of a record may be, protection of the public is long overdue in serving as the key focus, especially in an environment where nondisclosure is resulting in fatalities at the hands of officers.

Opponents of transparency in misconduct allegations also argue that lifting confidentiality puts law enforcement officers at risk of being perceived in a false light as a result of disgruntled citizens intentionally making false allegations against them.¹⁴⁷ However, “[a]lthough making all allegations public errs on the side of releasing information that may be untrue in some cases, it nonetheless encourages investigators to evaluate allegations as thoroughly as possible in order to ensure the public understands the full story of any allegation of misconduct.”¹⁴⁸

To promote meaningful change for both individual officer conduct and larger departmental policies and customs that protect such conduct, law enforcement officers and agencies need an incentive to depart from their long-held practices and repeated conduct. The only way to someday hope to

142. Kate Levine, *Discipline and Policing*, 68 DUKE L. J. 839, 880–90, 905 (2019).

143. *Id.* at 890.

144. *Id.* at 895.

145. Southall, *supra* note 96.

146. *See id.*

147. Macht, *supra* note 25.

148. *Id.*

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end police misconduct “is to evaluate and reevaluate past practices” to foster public debate and discourse.¹⁴⁹ Public scrutiny through misconduct transparency, rather than only repeated hidden lawsuit settlements, can serve as a strong incentive to encourage police departments to “identify, correctively train, and discipline[] repeat offending officers.”¹⁵⁰ In its analysis of the legality of disclosure following the repeal of Section 50-a, the New York court said it best: “In the balance between the public’s right of access and the impact of disclosure upon the officer . . . the latter (the impact upon the officer) must bow to the former (the public’s right of access).”¹⁵¹

V. CONCLUSION

Overall, in the wake of the Black Lives Matter movement and the death of George Floyd, states have or are beginning to make key changes in their open records laws to make it easier for the public to access police disciplinary records. Iowa, on the other hand, has fallen behind in this movement.

In addition to Iowa’s lack of transparency in misconduct records compared to others states, as recently as March 2021, the Iowa Senate passed legislation aimed at strengthening and codifying qualified immunity for law enforcement officers.¹⁵² This was in drastic opposition to and only nearly a week after the George Floyd Justice in Policing Act was passed by the U.S. House of Representatives calling for the elimination of qualified immunity as a defense entirely.¹⁵³ In the very same month, the Polk County Attorney’s Office adamantly prosecuted Andrea Sahouri, a journalist for the *Des Moines Register*, after almost a year of steadfastly pursuing interference with

149. Steve Zansberg & Dana Green, *The Myth of Police Officer Privacy*, COMM’NS LAW., Summer 2017, at 1, 9, https://www.americanbar.org/content/dam/aba/publications/communications_lawyer/summer-2017/cl-v33-1-summer17.pdf [<https://perma.cc/Y7J8-DBBY>].

150. Macht, *supra* note 25.

151. *Schenectady Police Benevolent Ass’n v. City of Schenectady*, No. 2020-1411, 2020 WL 7978093, at *11–12 (N.Y. Sup. Ct. Dec. 29, 2020).

152. Rod Boshart, *Iowa Senate Approves ‘Qualified Immunity’ for Law Enforcement*, GAZETTE (Mar. 8, 2021, 7:50 PM), <https://www.thegazette.com/subject/news/government/iowa-senate-approves-qualified-immunity-for-law-enforcement-20210308> [<https://perma.cc/UR5V-UENL>].

153. Ian Richardson, *Iowa Senate Votes to Give Police ‘Qualified Immunity’ to Lawsuits and More Details About Complaints Against Them*, DES MOINES REG., <https://www.desmoinesregister.com/story/news/politics/2021/03/08/qualified-immunity-iowa-senate-votes-codify-lawsuit-protections-police/4629475001> [<https://perma.cc/7A4K-Q6E7>] (Sept. 21, 2021, 7:28 PM).

official acts and failure to disperse charges.¹⁵⁴ Sahouri, a Palestinian–American, was one of only 14 journalists to face criminal charges in the United States following her arrest while reporting on Des Moines protests six days after the murder of George Floyd.¹⁵⁵ She was the only reporter arrested at the scene, and the only reporter of color.¹⁵⁶ Sahouri was acquitted of all charges.¹⁵⁷

Again, this Note urges lawmakers to meaningfully listen to the outcries of their community members, and to take action that will encourage law enforcement agencies to keep their officers accountable in order to prevent future tragedies.

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154. Erum Salam, *Andrea Sahouri on her BLM Protest Arrest: ‘I Was the Only Journalist of Color and the Only Journalist Arrested’*, GUARDIAN (Mar. 15, 2021, 12:00), <https://www.theguardian.com/us-news/2021/mar/15/andrea-sahouri-on-her-blm-protest-arrest-i-was-the-only-journalist-of-color-and-the-only-journalist-arrested> [<https://perma.cc/CGG2-HB4X>].

155. *Id.*

156. *Id.*

157. *Id.*

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