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Abstract

Police have long contributed to the oppression of marginalized communities. Even when victims seek justice, police officers that commit crimes often walk away from an investigation unscathed. Despite increasing awareness from the public, policymakers still fail to pass effective reform, while police are hesitant to implement better policies. Florida passed a data transparency bill in 2018 to hold police accountable and allow the public to view important investigative information. The plan backfired. This essay will explain how Florida's law failed, including systemic causes that are a part of the Constitution. Databases on different levels of government have also backfired due to inconsistency and incompetence. One specific solution comes from the Thurgood Marshall Institute, a research center for the NAACP, who successfully designed a national database for the public to utilize. In the wake of recent Black Lives Matter protests, police reform bills have been passed, yet none of them have been successful in reducing systemic racism and police brutality. Most of the bills have been too general, leading to loopholes and aimless attempts. To encourage reform, rather than forcing it to happen, some experts on law propose a tax-exemption status to complying police departments, giving up union protection.

Copping Out on Cops: Challenging Ineffective Police Reform with Smarter Solutions

Despite increasing awareness on police brutality, lack of consistent data within the system currently hinders reform. Police kill approximately 1,000 citizens every year, but since 2005, only 44 have been convicted (Dewan). Victims rarely receive justice, despite increasing efforts for recording evidence¹. According to a 2016 survey conducted by the U.S. Bureau of Justice Statistics, one in seven law enforcement agencies described evidence as “not ‘easily retrievable,’ or they did not ‘formally document and store’

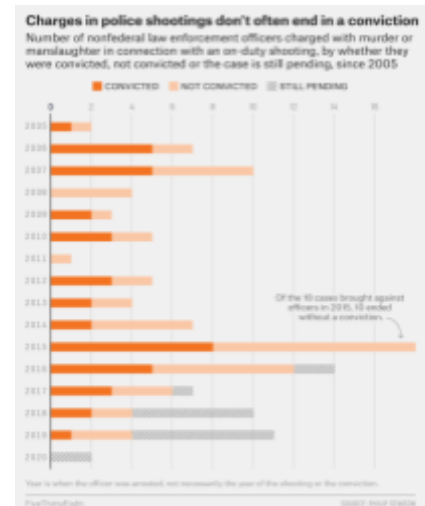


Fig 1: Sinou, Philip. "Changes in police shootings don't often end in a conviction." *FiveThirtyEight*. 04 June 2020. <https://fivethirtyeight.com/features/why-its-still-so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/>

¹ Recordings can also be used to defend the police in court, as judges have argued that police were justified in using force in situations where they felt their lives were in danger.

complaints” (Jacoby). Recent movements, such as Black Lives Matter, have increased awareness about police corruption, leading to a flourish of solutions prioritizing the protection of citizens². While police brutality is a multifaceted systemic issue that cannot be entirely solved

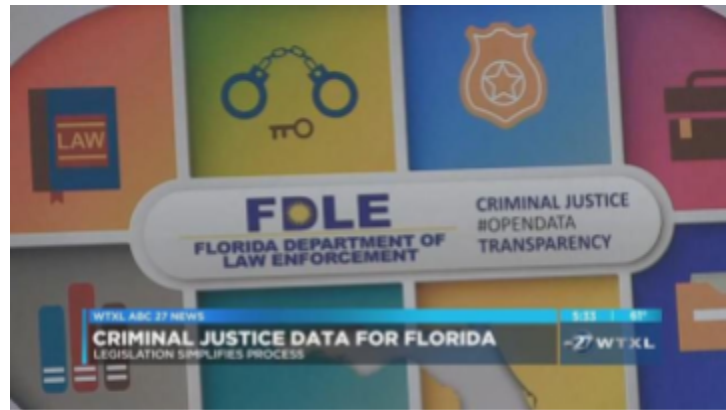


Fig 2: “New bill seeks to give public easier access to criminal justice data”, CNN, 2018. WTXL Tallahassee, 31 January 2018. https://www.wtxl.com/news/new-bill-seeks-to-give-public-easier-access-to-criminal/article_8508f64-06cd-11e8-be05-471a3ffe4812.html. Accessed 1 December 2020

through a singular advocacy solution, an efficient way to diminish its existence is through a federal database. One attempted database pushed for transparency, protecting citizens from lack of knowledge.

Fed up with deception within the criminal justice system, Florida policymakers set out to create data transparency laws. Florida tried to create a statewide database where people could have access to “individual case data, reporting defendants’ bond amounts and their charges... granular information about every misdemeanor and felony case in the state” and “called for cooperation between police agencies, clerk’s offices, prosecutors, public defenders and a myriad of other agencies” (Pantazi). With the system and the public having equal access, corruption would be less likely to occur, as less information would be withheld. One of the main goals of the legislation was to increase accuracy with evidence for judges, law enforcement, clerks, and even lawmakers (Ash). In order to achieve this goal, the plan was to make information more accessible to all parties, encouraging transparency and honesty. A key component in the piece of legislation was the state database, handled by the Florida Department of Law Enforcement

² Black Lives Matter has been a prominent recent advocate for more progressive movements like Defund the Police, which advocates for reallocating funds to go to social programs dedicated to community outreach and crime prevention..

(FDLE). However, several aspects of law enforcement, including the FDLE, proved to be

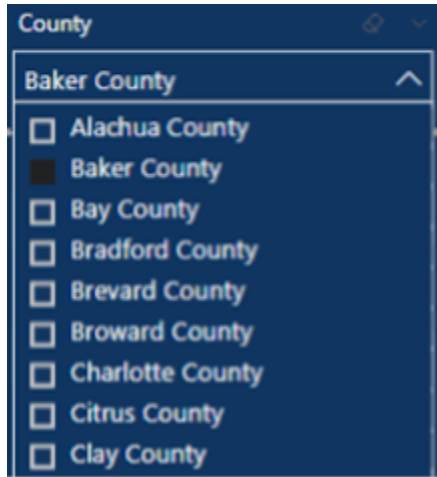


Fig 3: "Criminal Justice Data Transparency."
Florida Department of Law Enforcement.
<http://www.fdle.state.fl.us/FSAC/CJDT/CJDT-Presentation>

unreliable. The good intentions behind the bill were not enough to produce wanted results, mainly due to unforeseen circumstances.

Despite not achieving the initial goal of the database, the bill still made some efforts toward further police reform. Many news sites and organizations, including the American Bar Association, considered Florida's system "the most

transparent in the country" (Pantazi). The passing of the bill itself shows a motivation and willingness from politicians to

adopt laws to create a more fair and transparent justice system. The primary goal of the law was to increase transparency and communication between the justice system and the people it aimed to serve. The legislation itself "revised some definitions, expanded collection requirements, [and] created a pilot program" (Ash). The progress did not rely solely on the actions of the FDLE, as the law took some actions into its own hands. The FDLE itself also put in effort to standardize definitions and put together algorithms (Pantazi). However, local agencies failed to comply and send in the necessary data to finish and send in information by the deadline (Pantazi). The lack of compliance by the agencies is one of the reasons the database failed out of control of the FDLE.

Much of the FDLE's failures happened under unfortunate circumstances. The FDLE, who was largely responsible for the database, mishandled the information. The main reason behind the mismanagement stemmed from inconsistent policies and definitions, leading to a failure to meet deadlines (Pantazi). Since different cities defined terms such as misconduct differently, the same type of situation could be labeled differently, which increased the amount of time the

FDLE used to establish standardized terminology. With an excessive amount of time spent just on creating definitions came missed deadlines (Pantazi). When they missed deadlines, people could not use the data they needed, including policymakers who wanted to make more accurate decisions. Even when handling the algorithms, there was not enough they could achieve without the compliance of law agencies, who did not submit information. Furthermore, the COVID-19 pandemic heightened uncertainty within counties. Prisons and jails cannot report accurate numbers, as they are constantly releasing people, and prosecutors are dropping charges arbitrarily (Pantazi). The unorganization caused by the pandemic only worsened the situation, causing more inconsistencies.

The root cause behind the failure in Florida derives from a lack of standardization. Under the Constitution, the ability to “establish and enforce laws protecting the welfare, safety, and health of the public” is granted by the Tenth Amendment, leaving such powers to individual states (“Police Powers”). Since states have control over police powers, they can decide how rigorous and strict training regimen and policy should be. The flexibility to create different

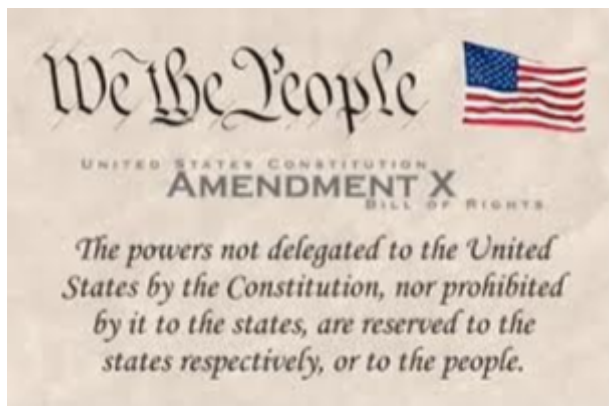


Fig 4: The 10th Amendment. *Constitutional America*, 23 January 2017. <https://constitutional-america.weebly.com/political-blogs/the-10th-amendment>. Accessed 10 December 2020.

standards leads to inconsistent definitions on what makes a bad police officer. The Constitution designs itself so that states can have the freedom to designate their own laws and procedures. The reason behind the prevalence of states’ freedom can be understood within the context behind British colonial rule in America. Before the founding

of the United States of America, the thirteen colonies resented the power of the British

monarchy, thus pushing for less decentralized power in favor of letting states make their own decisions (“About the Tenth Amendment”). Decentralization discourages federal regulation. The only time crimes can be defined on a national level is if they relate to a Constitutional power (Larkin). Otherwise, the states make up their own standards. On the other hand, media attention is enough to enact federal law at times, such as when a 1992 carjacking incident in Washington D.C. led to the Anti-Car Theft Act of 1992 (Larkin). Increased media attention to police brutality has led to a surge in reform attempts, such as the Florida 2018 data transparency bill. Even today, most police reform bills that appear on the news happen on either the city or state level, and occur less on a federal level. Yet, no real change occurs unless it happens on a higher level, as studied by some scholars.

Professor Laurie O. Robinson analyzed the outcomes of different types of legislation on several levels of government and proposed new solutions for the future. Robinson acknowledges that larger departments who enforced stricter training saw a 21% decrease in officer-related shootings. The decrease in violence is progress for those specific police departments, but that does not mean smaller departments experience that change as well, which is why Robinson discusses federal change. On a national level, he advocates for collaboration between several Department of Justice (DOJ) agencies, such as the National Institute of Justice, Community Oriented Policing Services Office, and the Civil Rights



Fig 5: The New York Times Archives. *New York Times*. <https://www.nytimes.com/1992/09/16/us/fbi-forms-unit-to-battle-carjacking.html>

Division to investigate and create solutions, while both the Bureau of Justice Statistics and the Bureau of Justice Assistance focus on the more technical side with data collection and project management (Robinson). The idea of different national organizations collaborating to create a more streamlined system ensures that every major responsibility does not fall on a sole agency. Utilizing specialization would also make sure that each department excels in the aspect they are trained to take care of. Federal agencies will be more successful if they are familiar with their tasks, and the higher the power of the legislature is, the more effective reform will be.

Stephen Rushin, Visiting Assistant Professor at University of Illinois College of Law, researched past policies, including the 1994 Violent Crime Control and Law Enforcement Act, and the extent efforts from the DOJ were effective. Historically, the justice system dealt with police misconduct using “minimally invasive regulatory tools” but many experts argued for more progressive measures (Rushin).



Fig 6: @CouncilonCJ. “Board Chair Laurie Robinson @gmucriminology ‘There are lessons we can draw from the Crime Bill years. First, it’s essential to rely on data and science, not rhetoric - though that’s not always easy.’” *Twitter*. 13 September 2019.

The 1994 Crime Bill made unconstitutional misconduct illegal and initially gained widespread support, but within the most recent years, people have started to claim that the DOJ has not done enough. To make meaningful changes, Rushin suggests that the DOJ utilizes a “transparent case selection process” and that legislators find new, innovative ways to reform. Americans who favor centralized power are most likely to push for federal solutions, but not all Americans will be willing to do so.

Millions of Americans oppose centralized government, and would naturally be against federally mandated police powers. The Tenth Amendment prevents Congress from implementing forms of federal legislation, as it has for universal background checks for gun owners and other policies aimed to benefit Americans (Stanford). If a policy designed to require states to turn in information were to be drafted in the House of Representatives, it would most likely pass, given the Democratic majority, but it is highly unlikely to get past other levels of government. Bipartisan support for general criminal justice reform unfortunately does not translate to bipartisan support for legislation. In June 2020, following the Black Lives Matter protests, the House of Representatives Democrats passed the George Floyd Justice in Policing Act of 2020, but as of December 2020, it has not gone past the House (“H.R.7120 - 116th Congress (2019-2020): George Floyd Justice in Policing Act of 2020.”). Overcoming these barriers requires a change that is easier said than done, which is to find a bipartisan solution that does not infringe on states’ rights.

Federal databases have been in the works for years, particularly one designed by the Federal Bureau of Investigation (FBI), yet they have not successfully created a useful, user-friendly one³. Instead, a much more appealing database has been created by the Thurgood Marshall



Fig. 7: “LDF Thurgood Marshall Institute.” NAACP Legal Defense and Educational Fund, Inc. 14 September 2017.

Institute, a center within the NAACP Legal Defense Fund. While the database cannot verify information, as they do not work directly with law enforcement, they obtain their data from government-operated sites (*Policing Database - The Thurgood Marshall Institute*). According to

³ The FBI has been working on a database for about five years, yet only 40% of police departments have participated.

the *Policing Database* website, they have collected information from over 150 cities and counties. Some information they show includes federal funds and citizens' complaints. They also provide resources that can help users with individual problems they have and include links to organizations for educational and functional purposes. While the Thurgood Marshall Institute Database is not directly linked to a federal network or agency, theirs is more successful, therefore more helpful, than current ones in the justice system. In the absence of competent federal agencies, a division of the NAACP has stepped forward to present accurate information for the public to use.

Some of the incompetence is not necessarily the fault of federal agencies or policymakers. Even with bipartisan support for police reform, legislation often encounters the problem of insubordination from police departments. Bills often force police to take in additional measures, but America is not a country that believes in forcing people to take certain actions, even if the decisions benefit society. An alternative that still aligns with many Americans' principles is through incentivization. One way that Brian Mogck, partner at Walden Macht & Haran LLP⁴, suggests incentivizing is through granting tax-exempt status to departments that enforce accountability measures. Giving law enforcement an economic incentive may seem counterproductive, particularly to those that believe in reducing police budgets, but they are an effective way to encourage systemic change, rather than forcing it. In Mogck's proposal, he suggests that upon receiving tax-exempt status, the police union would waive its rights to state



Fig 8: Hitt, Jim. "How to Maximize Tax-Free Retirement Income." *American IRA*. 17 April, 2020.

⁴ According to U.S. News & World Report, Walden Macht & Haran LLP is one of the best law firms in the country, with a rank 1 regionally and nationally. One of their practice areas include government infringement on rights.

and local protection. Since they no longer have protection, the issue of having too much power is diminished. Unlike previous reform bills, having the option to receive tax-exempt status gives the police force the ability to voluntarily contribute to systemic change. When they choose themselves to reform their own department, they are more likely to enforce real change, instead of trying to find loopholes around legally mandated guidelines.

Years of fruitless attempts at police reform mean that the government needs to change their approach. Police still harass marginalized communities, and continuing to implement redundant policies only furthers the mistreatment. Instead of creating aimless, unspecific policies, essentially throwing spaghetti at a wall and hoping one sticks, legislators and reformers need to identify specific problems within the system and fix the underlying issues. One of the underlying issues stems from deception and distrust, and with a federal database, those will be reduced. With standardization of definitions and information, marginalized communities can trust that police departments of all levels will be held accountable.

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