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## Foundational Elements and Structure for the National Law Enforcement Accountability Database

Matt Hickman, PhD<sup>1</sup>

### Executive Summary

Section 5 of Executive Order (EO) 14074 establishes a National Law Enforcement Accountability Database (NLEAD). The EO requires federal agencies, and encourages state and local agencies, to submit records to the NLEAD on a quarterly basis. Federal agencies are required to query the database when hiring, assigning, or promoting officers, and when screening state and local officers for participation in federal programs or activities such as joint task forces. The EO also requires that state and local agencies have access to the database for employment-related queries. The EO specifies the following types of records for submittal to the NLEAD: criminal convictions, decertification actions, terminations, civil judgments (and amounts if available) related to official duties, resignations or retirements while under active investigation for serious misconduct, sustained complaints for serious misconduct, disciplinary action for serious misconduct, and commendations and awards. The EO requires annual public reports containing aggregated, anonymized summary data from the NLEAD.

### *Federal agencies*

Federal agencies should be able to provide most of the required data elements through their Offices of Professional Responsibility (OPR), their respective Offices of Inspector General (OIG), and their human resource or labor units. The OPRs typically fulfill the internal affairs function for federal agencies, investigating criminal and non-criminal misconduct allegations and proposing or referring completed cases for disciplinary action by labor units. Some agencies have automated case management systems that may facilitate data extraction and reporting, while others may rely on multiple independent databases and/or paper records for some data elements. Law enforcement agencies within non-Executive branches of government (such as US Probation and Pretrial Services, US Capitol Police) and independent agencies (such as the Smithsonian Institution's Office of Protective Services) would not be subject to the EO.

For federal agencies, the specific data elements listed in the EO can be addressed as follows:

- Decertification: Federal agencies do not certify or license officers, so they do not decertify. Some agencies may suspend or revoke officer commissions, barring individuals from future employment with their agency. Agencies may pursue broader debarment of an individual through the Office of Personnel Management (OPM) under 5 CFR Part 731 Subpart B, which makes an individual unemployable by the federal government for up to 3 years. These actions can be reported by labor units.
- Terminations: These can be reported by labor units.
- Criminal convictions: The EO is not clear whether this refers to criminal convictions related to official capacity (for example, convictions under 18 USC 242) or to broader criminal matters. In either case, OPRs or OIGs should be made aware either by legal notice or by the officers/agents

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themselves, and typically monitor these cases until resolution, followed by administrative investigation. These can be reported by OPRs and/or OIGs.

- Resignations or retirements while under investigation for serious misconduct: These should be recorded by agencies in official personnel folders under 5 USC 3322, if the investigation was completed and there was an adverse finding. However, there is no standardized recording format (the suggested format is a memorandum for the permanent side of the official personnel folder), and implementation varies. These can be reported by labor units.
- Sustained complaints for serious misconduct, and disciplinary action for serious misconduct: Complaint dispositions can typically be reported by agency OPRs and OIGs, and disciplinary action can typically be reported by labor units.
- Civil judgments (and amounts): *Bivens* cases involving federal law enforcement personnel could be reported by the DOJ Civil Division. OPRs should be made aware either by legal notice or by the officers/agents themselves. OPRs should treat these cases as complaints, monitor/track them until resolution, and follow with administrative investigation. While records of civil judgments may be useful for background investigators and for accountability purposes, there is little utility to damage amounts for the purposes of the NLEAD.
- Commendations and awards: At the federal level there are two prominent national awards and numerous agency and industry awards, but these have no identifiable purpose in an accountability database and should not be included in the NLEAD. A separate database could be developed for compiling national award information.

There is a broad range of automation and integration in federal law enforcement agency records management, and so a systematic survey of records management systems may be a necessary first step if an automated solution for extracting NLEAD data from agency records is desired. Such an effort should seek to catalog data management systems as well as document the investigative and adjudicative processes that generate the data. Given the broad range of automation and integration, a manual entry solution may be required.

### ***State and local agencies***

Since state and local agency participation in NLEAD is voluntary, obtaining a high degree of participation will present a significant challenge. Grants, training and technical assistance, and attaching participation to eligibility for federal funding may be necessary. The data elements specified in the EO typically reside within Internal Affairs units (or equivalent), human resource or labor units, and City Attorney or Law Departments. A review of existing data reporting programs, agency practices, and available research literature points to the following conclusions regarding the specific data elements listed in the EO, for state and local agencies:

- Decertification: Officer decertification actions can be reported through the National Decertification Index (NDI) with a high likelihood of success in terms of both reporting and data integrity.
- Terminations: Can be reported by labor units, and state Peace Officer Standards and Training (POST) agencies in some states.
- Criminal convictions: As noted earlier, the EO is not clear whether this refers to criminal convictions related to official capacity (for example, under 18 USC 242) or to broader criminal matters. In either case, Internal Affairs units should be made aware either by legal notice or by

the officers themselves, and typically monitor these cases until resolution, followed by administrative investigation. These can be reported by Internal Affairs units.

- Resignations or retirements while under investigation for serious misconduct: If agencies complete investigations rather than administratively closing them, these can be reported by Internal Affairs units and labor units.
- Sustained complaints for serious misconduct, and disciplinary action for serious misconduct: These can be reported by Internal Affairs units and labor units, but these are more challenging data elements with a lower likelihood of success in terms of both reporting and data integrity due to variation in complaints and discipline processes and data reporting practices.
- Civil judgments (and amounts): These are challenging data elements that will likely require inter-agency coordination to report. This may include Internal Affairs units, and City Attorney or Law Departments. Internal Affairs units should be notified of these cases either by legal notice or by the officers themselves, treat them as complaints and monitor/track them until resolution, followed by administrative investigation. While records of civil judgments may be useful for background investigators, there is little utility to damage amounts for the purposes of the NLEAD.
- Commendations and awards: There are numerous awards at the local, state, and national levels, as well as agency and industry awards, but these have no identifiable purpose in an accountability database and should not be included in the NLEAD. As suggested for the federal sector, a separate database could be developed for compiling national award information.

### ***Possible models***

A very efficient and effective solution for the NLEAD would be to adopt the National Decertification Index (NDI) administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) as the backbone of the system. The NDI infrastructure relies upon state POST agencies to submit decertification records and to query the database (or authorize individual agencies to query the database) as part of hiring processes. The NDI already provides thorough coverage of decertification actions; there are currently 49 states having decertification authority and who are contributing records or are required to do so based upon recent legislation. While the NDI is currently limited to decertification actions, it could easily be expanded to capture the additional NLEAD data elements from state POSTs, state and local agencies, and federal agencies.

Some states (for example, California, Massachusetts, and New York) have recently passed laws requiring that their POSTs notify the NDI of peace officer suspensions or revocations, and to query the NDI when hiring officers. Massachusetts' recent law is particularly noteworthy because it also requires state and local agency internal affairs units to report to the Massachusetts POST all complaints alleging bias, excessive use of force, actions that resulted in serious bodily injury or death, and complaints relating to unprofessionalism, policy or procedure violations/conformance to laws, conduct unbecoming, and untruthfulness. The law requires agencies to submit the information to the POST within two business days of receipt of a complaint alleging officer misconduct.

Several states have undertaken statewide data collection programs, primarily focused on use of force. This includes California, Connecticut, New Jersey, New York, Ohio, Washington, and Wisconsin, and other states that are in earlier legislative stages of development (such as North Carolina). These data infrastructures could potentially be supported and enhanced to facilitate NLEAD data requirements. For

example, in addition to use of force New Jersey recently started publicly reporting aggregated internal affairs data, including complaints, investigative dispositions, and discipline.

The FBI National Name Check Program (NNCP) might serve as a possible model for other federal agencies to consider adopting. In brief, the FBI engages in Memorandums of Understanding to allow other federal law enforcement agencies to submit names of applicants to the NNCP for review of any records in the FBI's electronic records system. This includes records of any misconduct investigations if the applicant was a former FBI employee. If other federal law enforcement agencies provided a similar service, then a centralized access point could be designed to cover all participating agencies.

### ***Privacy, due process, corrections, and security***

Following from the success of the NDI model, the NLEAD should be structured as a pointer system. "Pointer" is a term commonly used in database management to refer to a piece of data that specifies the location of information contained in another record or file. The NLEAD does not need to contain extensive individual- or incident-level details, nor should it attempt to do so. The NLEAD can simply indicate that a record of a particular type exists for a researched individual and provide background investigators with the contact information for the agency that entered that pointer. This places the burden of records privacy and management on the agency entering the pointer into NLEAD.

There is common acceptance of the term "final" as meaning that all avenues of administrative and/or legal appeal have been exhausted. However, it is debatable whether final status is the appropriate threshold for entry into the NLEAD. There is certainly interest in knowing that an individual is the subject of an investigation, but this must be balanced against due process considerations. For example, there are known cases of officers who are under investigation for misconduct being hired by other agencies (with or without the hiring agencies' knowledge of the matter) and working for those agencies for long periods of time while the cases are adjudicated. This can obviously pose some risk to the hiring agency. At present, some POST agencies do enter NDI pointer records for officers under investigation related to decertification actions.

Since state POSTs and individual agencies would be entering and removing NLEAD pointers as appropriate, officers requesting corrections or removal of pointers would direct those requests to the specific agencies that entered them. Considering the full scope of NLEAD it would be very challenging to integrate a correction process into overall NLEAD program management. Decentralized data entry and removal would be both more efficient and more consistent with the burden of records privacy and management.

The NLEAD should be a cloud-based system as these systems are generally known to be more cost-effective, reliable (including backup/restoration), secure, and scalable as compared to local solutions. The Federal Risk and Authorization Management Program (FedRAMP, see [fedramp.gov](https://www.fedramp.gov)) provides a common security framework for cloud service providers. Since all Executive branch agencies recognize FedRAMP authorization, any NLEAD vendor(s) should ideally be FedRAMP authorized. This would greatly facilitate federal agency compliance with NLEAD.

### ***Data governance***

The NLEAD program structure should incorporate a Data Governance Committee charged with periodic review of data reporting and agency participation, advising on data quality concerns, making

recommendations on instructions, documentation, and policy, and advocating for valid, reliable, and comprehensive information. The committee could include individuals drawn from federal, state, and local law enforcement agencies (such as staff from OPRs, OIGs, internal affairs, background investigations, and information technology units), state POST agencies, labor representatives, and members of the public.

### ***Data volume and reporting burden***

Assuming full participation by Executive branch federal agencies and all state and local law enforcement agencies, the NLEAD could reasonably anticipate receiving about 25,800 pointer records annually (1,500 federal and 24,300 state and local). This is a crude estimate based upon limited available data and many assumptions, but it is important to try and estimate the reporting burden as the Office of Management and Budget (OMB) will likely require a burden estimate and burden statement for state and local reporting to NLEAD. Overall, on an annual basis one might expect about 300 criminal convictions, 1,000 decertification actions, 5,800 terminations, 5,200 civil judgments, 2,000 resignations or retirements while under investigation for serious misconduct, 5,900 sustained complaints for serious misconduct, and 5,600 disciplinary actions for serious misconduct. These estimates would not include any historical records that agencies might choose to submit to NLEAD, and the contribution of historical records could substantially increase the annual volume of records submitted.

### ***Public reporting***

The EO requires annual public reports containing anonymized data drawn from the NLEAD, reported in a manner sensitive to the risk of statistical disclosure. If a pointer system is adopted then the amount of information available will be limited, but it will still be of value to the public. NLEAD should have a stable, public-facing website that clearly explains the purpose of the NLEAD, provides summary statistics, and includes an interactive dashboard tool that members of the public can use to query the aggregated data. For example, the dashboard tool could facilitate looking up the number of decertified officers in a given state and year, visualizing trends, making comparisons by state, region, and type of agency, as well as generating reports for download. There are many different platforms and private contractors who could design and build this dashboard tool.

### ***NLEAD “ownership”***

If the NDI is considered as a possible base infrastructure for NLEAD, questions about its ownership might focus on historical efforts to locate the NDI within the FBI and within the U.S. Attorney General’s Office, neither of which happened. The NDI is administered by IADLEST, and it enjoys a very high rate of participation. Even though the IADLEST membership is mostly comprised of law enforcement personnel, some object that IADLEST does not have law enforcement organizational status. From that perspective both the FBI and the U.S. Attorney General’s Office could be logical “owners” of the NLEAD. In discussions with representatives of the FBI Criminal Justice Information Services (CJIS) Division, it was suggested that if the NLEAD were located within CJIS it could potentially undermine law enforcement agency cooperation with other CJIS data collections. Regardless of what entity is tasked with administering the NLEAD, they should consider contracting the operational aspects of NLEAD to IADLEST rather than attempting to construct and manage their own reporting infrastructure. The best role for the administering agency would be in lending their imprimatur to the NLEAD and encouraging agency participation.

***Additional legislation and support***

Requiring state participation in the NDI and setting minimum decertification standards either through legislation or by tying participation to eligibility for federal funding would enhance the utility of the NDI and ensure a solid foundation for expansion into the other data areas specified in the EO. President Obama’s Task Force on 21st Century Policing recommended that the Department of Justice should partner with IADLEST to expand the NDI to “serve as the National Register of Decertified Officers with the goal of covering all agencies within the United States and its territories” (President’s Task Force on 21st Century Policing, 2015, Recommendation 2.15) and tying participation to federal funding is one possible mechanism for helping to achieve this goal. On the other hand, one of the long-standing challenges of data collection programs is the claim of being burdened with an “unfunded mandate.” While the EO is clear that state and local participation is voluntary, grant funding to support compliance with NLEAD among state and local agencies could help to increase participation. Support could also take the form of training and technical assistance to install or upgrade records management systems. Finally, the federal government could encourage states to follow Massachusetts’ recent law requiring their state POST to collect internal affairs records regarding complaints and discipline for all officers; these state-level efforts would greatly facilitate the goal of national data collection.

## Introduction

The purpose of this study was to investigate and assess the feasibility of data requirements for the National Law Enforcement Accountability Database (NLEAD) described in Section 5 of Executive Order (EO) 14074. The study was to address questions, issues, and concerns that centered around: challenges to developing a fully operational database meeting the required specifications; records that could be acquired from existing databases, other agencies and entities, court records, and reliable public sources of data; the structure of the database to account for legal requirements, privacy and fairness considerations; existing databases that could be adapted or expanded to align with the requirements of the EO; and any elements and factors beyond those described in the EO that should be considered in development of the database.

This study drew on existing research literature related to the collection and reporting of data on law enforcement officer behavior, interviews and communications with personnel from Offices of Professional Responsibility, Offices of Inspector General, Internal Affairs units, human resource units, as well as researchers in academe and in private think-tanks. Although many law enforcement agency personnel were happy to assist with general inquiries about their procedures and data management, any greater level of detail (such as requests for summary data specific to the EO) required Freedom of Information Act (FOIA) requests. FOIA requests for data were submitted to all agencies within the Department of Homeland Security and the Department of Justice, which together comprise about 80% of all federal officers. All these requests are pending at the time of writing.

The EO requires all federal law enforcement agencies to submit records to the NLEAD quarterly and to query the database when hiring, assigning, or promoting officers, and when screening state and local officers for participation in federal programs or activities such as joint task forces. State, local, tribal, and territorial agencies are encouraged, but not required, to submit records and to access the database for employment-related queries. The EO identifies the following types of records for submittal to the NLEAD:

- Criminal convictions
- Decertification actions
- Terminations
- Civil judgments (and amounts if available) related to official duties
- Resignations or retirements while under active investigation for serious misconduct\*
- Sustained complaints for serious misconduct\*
- Disciplinary action for serious misconduct\*
- Commendations and awards

\* “Serious misconduct” is defined in section 21(c) of the EO as “excessive force, bias, discrimination, obstruction of justice, false reports, false statements under oath, theft, or sexual misconduct.”

An initial screen of these data elements shows that all of them have a clear connection to accountability and have utility to NLEAD in its capacity as both a tool for background investigators and for public information purposes, with the exception of commendations and awards. Table 1 summarizes in general terms the utility of each element for NLEAD (bearing in mind that the core purpose is for agencies to be

able to make informed decisions about hiring officers), the likelihood of reporting (considering the complexity of data generation and reporting) and expected data integrity (data reporting in a standardized manner, and in a consistent and timely fashion).

Table 1. Initial screen of data elements in terms of utility for NLEAD, likelihood of reporting, and data integrity

Category	Utility for NLEAD	Likelihood of reporting	Data integrity
Criminal convictions	High	High	High
Decertification actions	High	High	High
Terminations	High	High	High
Sustained complaints for serious misconduct	High	High	Medium
Disciplinary action for serious misconduct	High	High	Medium
Resignations & retirements while under investigation for serious misconduct	High	Medium	Medium
Civil judgements	Medium	Low	Medium
Damage amounts	Low	Low	Low
Commendations and awards	None	Low	Low

Sustained complaints and disciplinary action for serious misconduct are rated “medium” on data integrity due to the somewhat idiosyncratic nature of complaint processing and discipline. Resignations and retirements while under investigation for serious misconduct are rated “medium” on the likelihood of reporting and data integrity since these events may not be being captured, particularly among state and local agencies. Civil judgments and amounts were rated “medium” or “low” due to debate over the utility of judgments vs. settlements data, and data pitfalls regarding damage awards (many factors go into damages, and there is not necessarily a linear connection between damages and, for example, the severity of conduct). These points are discussed in detail later in this report.

Regarding the commendations and awards data element, there are many awards at the local, state, and national levels, as well as within the private sector, in which officers are the named recipients. Commendations and awards may also commonly be referred to as citations and medals. Some are associated with bravery, honor, and courage; some are associated with creativity and innovation; others with outstanding leadership, performance, and achievements in a wide variety of categories. Some agencies and entities may use military-style bars, certificates, medals, plaques, and the like to recognize officers. Presumably all these awards could be within scope for this NLEAD data element.

At the federal level there are two prominent national awards, both of which are coordinated by the Bureau of Justice Assistance (BJA). The highest award is the Public Safety Officer Medal of Valor (established in 2000 by Executive Order 13161, and subsequently passed into law as Public Law 107-12). There are typically about five Medal of Valor awards each year. The other national award is the Law Enforcement Congressional Badge of Bravery (established in 2008 by Public Law 110-298) given annually to selected officers with a separate federal and state/local law enforcement award process. There are typically about 10 state and local Badge of Bravery awards, and 3 to 5 federal Badge of Bravery awards

each year. Also at the federal level is the Attorney General’s Award for Distinguished Service in Community Policing, which makes several annual awards to officers within three categories.

Individual states often have statutory awards for law enforcement officers. Awards are made by major professional associations such as the International Association of Chiefs of Police and the National Sheriffs’ Association. The Federal Law Enforcement Officers Association has annual national awards in eight different categories. Many private foundations make annual awards.

Commendations and awards given by law enforcement agencies to their sworn officers are highly idiosyncratic in terms of both scope and frequency. Commendations may be made as frequently as a weekly basis in some agencies, some use an ‘officer of the month’ type of approach, while others may make commendations and awards on an annual basis. While these employee recognition programs are an important part of employee welfare, awards and commendations have little to do with police accountability and a connection should not be drawn between “good” and “bad” behavior. For example, awards and commendations should not be viewed as somehow offsetting acts of officer misconduct.

This information would not be useful to background investigators. There is no identifiable purpose for including commendations and awards in the NLEAD, but another option would be to develop a separate database for recording this information. This could be limited to national awards, including the BJA-coordinated Medal of Valor and Congressional Badge of Bravery, as well as the Attorney General’s Award for Distinguished Service in Community Policing.

### **Scope of data reporting & contribution**

In the 2020 Census of Federal Law Enforcement Officers, the Bureau of Justice Statistics (BJS) identified 94 federal law enforcement agencies in the US and collected employment data for 90 of them, including 44 Offices of Inspector General that employed criminal investigators with arrest and firearm authority (Brooks, 2022). These agencies employed approximately 137,000 full-time officers. Since the EO only has the force of law for Executive Branch law enforcement agencies, the number of agencies that can be required to participate totals 49, including 16 OIGs, collectively employing approximately 123,000 full-time officers. Law enforcement data for the Central Intelligence Agency, the Federal Air Marshal Service, and Mount Weather Police Department are classified, so these agencies were excluded from the BJS census. Also excluded from the census were law enforcement officers in the US Armed Forces and federal officers stationed abroad.

Just four of the 94 federal law enforcement agencies in the BJS census employed roughly two-thirds of all federal law enforcement officers: Customs and Border Protection (CBP) employed about one-third of all federal officers (34.3%) and the next three largest agencies collectively employed nearly one-third of officers, including the Federal Bureau of Prisons (12.5%), Federal Bureau of Investigation (9.9%), and Immigration and Customs Enforcement (9.5%). The Department of Homeland Security (which includes both CBP and ICE) employs about half (49%) of all federal law enforcement officers, and the Department of Justice employs another 30%.

In the 2018 Census of State and Local Law Enforcement Agencies, BJS identified a total of 17,541 agencies including 11,824 local police departments, 3,051 sheriffs’ offices, 49 primary state law enforcement agencies, 217 tribal police departments, 1,753 special jurisdiction agencies (for example,

airport police), and 647 other agencies (primarily county constable offices in Texas) (Gardner & Scott, 2022). Collectively, these agencies employed about 788,000 sworn personnel, most of whom were employed in local police departments (59%) and sheriffs' offices (24%).

### ***Federal sector***

In most cases, agency Offices of Professional Responsibility (OPR) and/or their respective Offices of Inspector General (OIG) will be responsible for investigating allegations of criminal and non-criminal serious misconduct. OIGs typically have the right of first refusal on investigations, and generally take the most serious cases (such as criminal allegations or high-profile cases). Some agencies have another name for OPR, such as Internal Affairs Division, and some agencies separate the investigations and adjudications functions and assign them to separate units (such as an Internal Affairs Unit for investigations and an OPR for adjudications). But in general, the OPR or an equivalent entity has responsibility for investigating complaints about officers and recommending disciplinary action. Disciplinary processes (including appeals) are typically carried out within labor units, such as employee relations or human resources.

There is great variation in the degree of automation as well as the degree of integration in case management and tracking among the various executive branch agencies, their constituent agencies or bureaus, and the OPR's (or equivalent units) within. In brief, this ranges from paper-based tracking to use of independent Excel spreadsheets, to fully integrated electronic case management systems. An essential step toward satisfying the mandatory reporting requirement of the EO, particularly if an automated solution to submitting records to the NLEAD is desired, would be to systematically assess the current state of case management systems across the OPRs. This would require more time and intensive study than is presently available, and such an effort would benefit from coordination across the many affected agencies. Such an effort should seek to catalog data management systems as well as document the investigative and adjudicative processes that generate the data. Given the wide range of automation and integration, a manual entry solution for NLEAD may be required.

A few examples of automated systems are documented in publicly available sources, including agency or unit annual reports as well as OIG audits and reviews. These examples help demonstrate some of the variability in records management. U.S. Customs and Border Protection (CBP) is the largest federal law enforcement agency (employing about 1 out of every 3 federal law enforcement officers) and CBP produces a comprehensive annual report on internal investigations and discipline (U.S. Customs and Border Patrol, 2022). The CBP Office of Professional Responsibility fulfills an internal affairs investigation function, in addition to oversight & review, prevention & awareness, and protective functions. Members of the public, as well as CBP employees and members of other law enforcement agencies, can complain about CBP officers to the OPR Joint Intake Center (JIC), the Office of Inspector General (OIG) for the Department of Homeland Security (DHS), or to the CBP Information Center (CIC). CBP officers are expected to report violations of CBP Standards of Conduct to the JIC and must report activity that violates state or federal criminal laws, any arrests, and any serious misconduct to either the JIC or the OIG. OPR tracks complaints in a Joint Integrity Case Management System (JICMS).

A recent review of disciplinary processes within the Federal Bureau of Investigation (FBI) identified three databases used to track cases at the time of the review (Department of Justice, Office of the Inspector General, 2021). These included a Case Management System (CMS) which was replaced in 2020 with a

“Disciplinary Module,” a Disciplinary Management System (DMS), and Sentinel, which is the FBI’s fully electronic records system for case management and official records.

The Department of Interior has an integrated case management system called the Incident Management, Analysis and Reporting System (IMARS). The IMARS includes an internal affairs module that was built for OPRs and internal affairs units operating within Interior department law enforcement agencies. All Interior department agencies except Fish and Wildlife use IMARS for this purpose. IMARS contains records on sustained complaints and criminal cases, but individual OPRs may maintain other databases; for example, the National Park Service OPR has maintained Excel spreadsheets tracking investigations since 2003. Labor units maintain records of disciplinary action, resignations or retirements, terminations, and revoked commissions. OPRs would have records of civil cases.

***Estimating federal records scope and reporting burden***

*Decertification actions.* Federal agencies do not certify or license officers, so they do not decertify. Some agencies may suspend or revoke officer commissions, effectively barring individuals from future employment with their agency. Agencies may pursue broader debarment of an individual through the Office of Personnel Management (OPM) under 5 CFR Part 731 Subpart B, which makes an individual unemployable by the federal government for up to 3 years. These actions should be reportable by labor units; however, there is very limited data available that could aid in estimating the annual scope of records or reporting burden. In their annual report on internal investigations and discipline (U.S. Customs and Border Patrol, 2022), the CBP reported 24 indefinite suspensions within the Office of Field Operations and the US Border Patrol (which comprise 85% of the CBP workforce and includes most law enforcement employees), for FY 2021. Similar data on indefinite suspensions was not reported in publicly available FBI reports. The report also noted that OPR investigations in that year led to 6 suspension and debarments of CBP employees. Using the 24 indefinite suspensions and an estimate of 46,993 total officers, this would equate to a rate of about 0.5 per 1,000 officers.

*Terminations.* Terminations should be reportable by labor units. In their annual report on internal investigations and discipline (U.S. Customs and Border Patrol, 2022), the CBP reported 89 disciplinary removals from federal service within the Office of Field Operations and the US Border Patrol (which comprise 85% of the CBP workforce and includes most law enforcement employees), for FY 2021. Assuming most of these removals were law enforcement officers, and using an estimate of 46,993 total officers, this would equate to a rate of about 1.9 removals per 1,000 officers. In a recent review of disciplinary processes within the Federal Bureau of Investigation (FBI), the DOJ OIG reported 184 disciplinary dismissals during fiscal years 2013-2018, or about 31 per year (Department of Justice, Office of the Inspector General, 2021). If these removals were mostly special agents, using an estimate of 13,687 agents during 2018 would yield a rate of about 2.3 dismissals per 1,000 agents, somewhat similar to the CBP estimate. The report noted that about 55% of the cases adjudicated by the FBI OPR were special agents and while it is unknown whether that rate applies equally to dismissals, one might adjust the estimate to 1.3 dismissals per 1,000 agents. The 1.9 per 1,000 figure for CBP might then serve as a reasonable estimate of the potential annual volume of termination records submitted to NLEAD by federal agencies.

*Sustained complaints and disciplinary action for serious misconduct.* In their recent review of disciplinary processes within the Federal Bureau of Investigation (FBI), the DOJ OIG examined data from the FBI’s CMS (Department of Justice, Office of the Inspector General, 2021). The DOJ OIG returned 84% of

allegations to the FBI during fiscal years 2013-2018. The analysis of CMS data by the OIG showed there were 1,992 cases adjudicated by the FBI OPR during this period. 55% of these cases (or approximately 1,096 cases) pertained to FBI special agents. This yielded a 6-year rate of 12 misconduct cases per 1,000 agents. Of these cases, 13% were administratively closed, 17% resulted in no disciplinary action, 47% resulted in a non-adverse action (oral and written reprimands, and 1-to-14-day suspensions), and 23% resulted in an adverse action (15-day or more suspension up to dismissal). Discounting the 30% of cases that were administratively closed or resulted in no discipline would yield a very rough sustain rate of 8 per 1,000 agents for all misconduct (and not the subset of serious misconduct as defined in the EO), and one might halve that as an initial estimate for serious misconduct. In terms of disciplinary action, taking adverse actions as a proxy for serious misconduct, this would equate to approximately 252 cases with adverse action over the 6-years, or 42 per year on average. Estimating 13,687 agents during 2018, this would equate to a rate of about 3 per 1,000 agents.

*Resignations & retirements while under investigation for serious misconduct.* It is challenging to scope the number of resignations and retirements that might occur while under investigation for serious misconduct, due to a lack of data. The DOJ OIGs review of disciplinary processes within the Federal Bureau of Investigation (Department of Justice, Office of the Inspector General, 2021) noted that starting in 2017, the FBI began reviewing files for employees who separated under inquiry to determine whether the case would likely have resulted in dismissal. These determinations are documented by the FBI OPR in a memorandum for the misconduct file. For FY 17-18, there were 617 cases adjudicated by OPR. In 72 of these cases, the employee separated under inquiry. In 40% of these cases, a decision substantiating misconduct was documented. If one assumes based on the general case distribution noted earlier that 55% of the separation under inquiry cases pertain to special agents, this will result in 40 cases of separation under inquiry over the two-year period, or about 20 separations under inquiry per year, 8 of which might be expected to have a decision substantiating misconduct. The effective annual rate of separation under inquiry would be about 1.5 per 1,000 agents, and when limiting it to cases with decisions substantiating misconduct, about 0.6 per 1,000 agents. It may be reasonable to use this rate as an initial estimate for other federal agencies.

*Civil judgments and amounts.* Federal law enforcement officers can be sued in their individual capacity and monetary damages can be awarded for actions performed as part of their official duties. Typically, these are 4<sup>th</sup> Amendment claims (for example, claims alleging excessive use of force) pursued under the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* claims are defended by Constitutional Tort Attorneys from the DOJ Civil Division, Constitutional and Specialized Tort Litigation Section. The Civil Division has a case management system, and cases involving federal law enforcement personnel could be reported by the Civil Division. In their *FY 2023 Budget & Performance Plans* (DOJ Civil Division, 2022), the Civil Division reported receiving an average of 125 requests per month for representation in *Bivens* claims from all three branches of government. While federal employees fulfill many different types of roles with varying exposure to civil litigation, it is fair to observe that those employed in law enforcement may face a higher degree of exposure than other employees. For purposes of estimation, one might assume that half of these requests for representation are from law enforcement personnel.

The EO calls for the NLEAD to track civil judgments (where a court has ruled in favor of the plaintiff and may award damages), not civil settlements (where the parties agree to settle the matter, often involving a financial payment without any admission of wrongdoing). A review of literature on civil litigation in the

state and local sector (discussed in detail later) suggests that most cases are settled and that as few as 6.5% are litigated in plaintiff’s favor. Assuming half of the annual requests for representation involve federal law enforcement officers, one might then estimate civil judgments involving federal law enforcement officers at a rate of about 0.4 per 1,000 agents/officers. While the Civil Division should be able to report on these cases, OPRs should also be made aware either by legal notice or by the officers/agents themselves. OPRs should treat these cases as complaints, monitor/track them until resolution, followed by administrative investigation. While records of civil judgments would be useful for a background investigator, there is little utility to recording damage amounts for the purposes of the NLEAD.

*Criminal Convictions.* The EO is not clear whether this refers to criminal convictions related to official capacity (for example, convictions under 18 USC 242 for deprivation of rights under color of law) or to broader criminal matters. Prosecutions of federal officers under 18 USC 242 are very rare; in a study using data obtained from the DOJ Civil Rights Division covering fiscal years 2001-2006, there were 186 total prosecutions under 18 USC 242, only 11 of which involved federal law enforcement officers (Johnson & Bridgmon, 2009). Stinson et al. (2016) examined nonfederal law enforcement officers arrested during the period 2005-2011 (discussed in detail later) and reported an overall individual officer arrest rate of 0.72 per 1,000 officers, with fewer than half of the cases (42%) resulting in a criminal conviction. A rough estimate of the conviction rate for state and local officers is in the region of 0.30 per 1,000 officers; one might reasonably apply this rate to federal officers for purposes of estimation.

Table 2, below, summarizes the potential scope of records that could reasonably be expected to be contributed by Executive branch federal law enforcement agencies, assuming there was full participation in NLEAD. To be clear, these are extremely crude estimates, but these figures can be used as a starting point to estimate the necessary capacity of the NLEAD as well as the total reporting burden. In sum, the NLEAD would need to be capable of absorbing about 1,500 records annually from federal agencies. Of course, this would not include any historical records that agencies might choose to submit to NLEAD, and the contribution of historical records could substantially increase the annual volume of records submitted.

Table 2. Estimated scope of annual records contributed from Executive branch federal law enforcement agencies, assuming full participation in NLEAD

Category	Estimated annual rate per 1,000 officers	Estimated annual records (based upon 123,000 officers)
Decertification actions (indefinite suspensions, decommissions, debarments)	0.5	60
Terminations	1.9	235
Sustained complaints for serious misconduct	4.0	490
Disciplinary action for serious misconduct	3.0	370
Resignations and retirements while under investigation for serious misconduct	1.5	185
Civil judgments (from <i>Bivens</i> cases)	0.4	50
Criminal convictions	0.3	40

It is important to note that the reporting burden will vary by agency size. While the total reporting burden is estimated to be relatively low, it is important to consider some of the larger federal agencies, such as CBP, BOP, FBI, and ICE. Those four agencies might be expected to contribute about two-thirds of the total records (about 545, 200, 160, and 150 records annually, respectively).

### ***State and local sector***

In most cases, agency Internal Affairs units (or their equivalent) or designated personnel performing the Internal Affairs function, will be responsible for investigating allegations of criminal and non-criminal serious misconduct, and commonly recommend disciplinary action. Disciplinary processes are somewhat idiosyncratic but are typically carried out within the structure or purview of human resource or labor units. Like agencies in the federal sector, records management varies from paper records and independent databases up to fully automated and integrated records systems.

### ***Estimating state and local records scope and reporting burden***

*Decertification Actions.* Decertification actions can be reported through the NDI. Reporting the results of a 2011 survey of state POST agencies on current certification and decertification practices (including the possible reasons for decertification, the total number of decertification actions by type of officer and reason for decertification, reporting practices, and data retention), Atherley & Hickman (2013) estimated base rates of decertification among states having decertification authority. They reported an overall rate of 1.2 decertification actions per 1,000 officers, and this rate varied at the state level from zero to 7.6 per 1,000 officers. The authors discussed variation in the breadth of reasons for decertification, as well as in surveillance mechanisms for learning of potentially decertifiable conduct, as likely explanations for varying state decertification rates. Overall, it may be reasonable to use a 1.2 per 1,000 decertification rate for estimating the potential annual volume of decertification records that might be submitted to the NLEAD from state and local agencies.

*Terminations.* Terminations can typically be reported by labor units, and by the POST agencies in some states (POST agencies must be notified of officer separations in some states). A sample survey of about 3,000 agencies included in the 2008 BJS census of state and local law enforcement agencies completed a supplemental questionnaire on hiring and retention. From the sample survey (which was limited to local police departments, sheriffs' offices, and primary state agencies), BJS was able to estimate that there was about a 7 per 100 separation rate from state and local agencies in that year (amounting to about 51,000 officers), and about 10% of those separations were dismissals (Reaves, 2012). These figures are consistent with earlier findings reported for local police departments and sheriffs' offices in 2003 (Hickman & Reaves, 2006; Reaves & Hickman, 2006). It may be reasonable to use this 7 per 1,000 dismissal rate for estimating the potential annual volume of termination records that might be submitted to the NLEAD from state and local agencies.

*Sustained complaints and disciplinary action for serious misconduct.* In a study for the Seattle Police Department, Hickman (2014) analyzed all complaints and disciplinary action over a three-year period (2010-2012). Complaint allegations that, if sustained, would constitute serious misconduct (under agency policy) are routed for internal investigations while less serious cases are routed for supervisor action. Over the three-year period, there were 511 internal investigation cases, 94 of which had at least one allegation sustained. These cases included 108 officers, an average of 36 per year. There was an average of 1,312 officers employed across the three years, yielding an internal investigation sustained

rate of 27.4 per 1,000 officers. Almost all of these sustained internal investigations resulted in disciplinary action of some type, with 104 officers or an average of 34.6 officers per year receiving disciplinary action, and a discipline rate of 26.4 per 1,000 officers. These rates pertain to all internal investigations, rather than the subset of serious misconduct as defined in the EO. Taking one quarter of these rates might be a reasonable starting point, with resulting rates of sustained complaints and discipline adjusted to 6.9 and 6.6 per 1,000 officers respectively.

*Resignations & retirements while under investigation for serious misconduct.* As noted earlier, it is challenging to scope the number of resignations and retirements that might occur while under investigation for serious misconduct, due to a lack of data. In addition, in some agencies these cases are administratively closed without any investigative conclusion; in others, the investigation is completed, and the likely outcome recorded. One study was located that had some data bearing on this issue. Fyfe et al. (1998) conducted a study of 10 years of NYPD disciplinary data (covering the years 1987-1996) that was focused on assessing gender and racial disparity in the disciplinary process. The average rate of mandatory disciplinary actions (mandatory in the sense that these cases had little to no discretion in how to proceed) was 8.9 per 1,000 officers. As part of this study, Fyfe et al. reviewed the dispositions of illegal activity/drug cases (a proxy for more serious violations) and administrative violations (less serious violations). In 26% of illegal activity/drug cases, officers resigned or retired before charges were heard. Combining these figures, one might estimate the rate of resignation or retirement while under investigation for serious misconduct at 2.3 per 1,000 officers. This does not precisely align with the definition of “serious misconduct” in the EO but may serve as a reasonable estimate.

*Civil judgments and amounts.* As noted earlier, the EO calls for the NLEAD to track civil *judgments* (where a court has ruled in favor of the plaintiff and may award damages), not civil *settlements* (where the parties agree to settle the matter, often involving a financial payment without any admission of wrongdoing). The major categories of civil liability for state and local law enforcement officers include state tort law and state civil rights law, as well as federal civil rights law (primarily actions under 42 USC 1983). Common causes of action include excessive force, assault & battery, illegal search, false arrest, false imprisonment, and wrongful death. Lawsuits are typically served on the officer and the employer, and it is considered a best practice for internal affairs units to handle a civil claim or lawsuit against an officer (for misconduct on duty or off duty under color of authority) by treating it as a complaint (Office of Community Oriented Policing Services, 2009). Some IA units refer to these complaints as “monitor” cases (where they monitor the civil case until it is resolved, before launching their own administrative investigation) while others may investigate before or during the case.

There is some debate about the utility of settlement data, with some arguing that city attorneys may make decisions to settle cases out of efficiency concerns (judging it to be less expensive to settle than to litigate) and therefore settlement data may not indicate actual problem police behavior. Others argue that settlements (and particularly officers having repeated settlements) may still be indicative of problematic police behavior. Relevant research has drawn a connection between citizen complaints and civil actions and payouts (e.g., Rozema & Schanzenbach, 2019). On the scope of settlements, a recent *Washington Post* investigation collected public records data from federal and local civil lawsuits in 25 of the largest police departments and sheriffs’ offices over the period 2010-2020 (Alexander et al., 2022). Nearly 40,000 settlements were recorded over that time period for these 25 agencies, collectively paying out more than \$3 billion. New York City paid out \$1.779 billion in settlements during this time period, including \$2.75 million for a single officer who had 74 claims against them. Chicago paid out

\$528 million; Los Angeles, \$215 million; Philadelphia, \$136 million, including \$5.76 million for a single officer who had 143 claims against them; and Washington, DC, \$91 million. Similar data was collected by *fivethirtyeight.com* working with *The Marshall Project*, and they highlight several of the pitfalls of collecting, interpreting, and comparing settlement data in their investigation (Thomson-DeVeaux, et al., 2021).

Most civil cases are settled; for example, Meadows and Trostle's (1988) analysis of a small non-probability sample of closed civil actions against the Los Angeles Police Department over a 12-year period showed that 75% resulted in pretrial settlement. In a broader review of all cases during the 10-year period 1977-1986 (n=3,041), among those that were adjudicated or settled (n=1,130), 55% resulted in pretrial settlement, 30% were litigated in defendant's favor, and 15% were litigated in plaintiff's favor. Using average employment of about 7,000 officers during that time period, this would equate to a civil action rate of approximately 43.4 per 1,000 officers, and a judgement rate (plaintiff's favor) of approximately 6.5 per 1,000 officers. Similar rates of civil action were reported in a study of 165 law enforcement agencies in Washington state during the period 1987-88: approximately 30 to 40 civil actions per 1,000 officers with the higher rates among sheriffs' offices (Dugan & Breda, 1991). Pate and Fridell's (1993) national study of use of force reported a rate of civil suits alleging excessive use of force at 23.7 per 1,000 among city police departments, with lower rates among sheriffs' offices, county, and state agencies, and generally higher rates among smaller agencies. Across all agencies, about 55% of cases with a resolution were settled, 38.5% were litigated in defendant's favor and about 6.5% were litigated in plaintiff's favor. More recently, a much higher rate of civil action was reported for the Chicago Police Department during the period 2009-2014. Rozema & Schanzenbach (2019) reported about 23 lawsuits per 100 officers (17 per 100 unique officers, as officers could be sued more than once), and 14 payouts per 100 officers (11 per 100 unique officers); 3 payouts greater than \$100k per 100 officers.

*Criminal Convictions.* The EO is not clear whether this refers to criminal convictions related to official capacity (for example, convictions under 18 USC 242) or to broader criminal matters. In either case Internal Affairs units (or the equivalent) should be made aware either by legal notice or by the officers themselves, and typically monitor these cases until resolution, followed by administrative investigation. Internal Affairs units should be able to report these data. Prosecutions of state and local officers under 18 USC 242 are rare; in a study using data obtained from the DOJ Civil Rights Division covering fiscal years 2001-2006, there were 186 total prosecutions under 18 USC 242, 82 of which involved municipal police officers, 19 county police officers, and 7 state police officers (Johnson & Bridgmon, 2009). Taking a broader view, Stinson et al. (2016) used an open-source methodology (Google News searches and alerts) and identified 6,724 cases in which nonfederal law enforcement officers were arrested during the period 2005-2011. Because some officers were arrested more than once, these cases involved 5,545 individual officers. These officers were employed by 2,529 state and local law enforcement agencies, and Stinson et al. reported an overall individual officer arrest rate of 0.72 per 1,000 officers. Fewer than half of the cases (2,846 or 42%) resulted in a criminal conviction. One might then roughly estimate a conviction rate in the region of 0.30 per 1,000 officers.

Table 3, below, summarizes the potential scope of records that could reasonably be expected to be contributed by state and local law enforcement agencies, assuming there was full participation in NLEAD. To be clear, these are extremely crude estimates, but these figures can be used to estimate the necessary capacity of the NLEAD as well as the total reporting burden. In sum, the NLEAD would need to

be capable of absorbing about 24,300 records annually from state and local agencies. Of course, this would not include any historical records that agencies might choose to submit to NLEAD, and the contribution of historical records could substantially increase the annual volume of records submitted.

Table 3. Estimated scope of annual records contributed from state and local law enforcement agencies, assuming full participation in NLEAD

Category	Estimated annual rate per 1,000 officers	Estimated annual records (based upon 788,000 officers)
Decertification actions	1.2	950
Terminations	7.0	5,520
Sustained complaints for serious misconduct	6.9	5,440
Disciplinary action for serious misconduct	6.6	5,200
Resignations and retirements while under investigation for serious misconduct	2.3	1,810
Civil judgements	6.5	5,120
Criminal convictions	0.3	240

While the overall reporting burden for state and local agencies might appear low (24,300 records covering 788,000 officers in 17,541 agencies, or less than two records per agency annually) it is important to recognize that most of these agencies are relatively small in terms of their sworn workforce. The latest BJS Census indicates that 69% of state and local agencies have fewer than 25 full-time officers (Gardner & Scott, 2022). In 2018, just 7% of all agencies (or 1,268 agencies) employed 100 or more full-time sworn officers, and these agencies employed nearly two-thirds of all full-time sworn officers (Gardner & Scott, 2022). These larger agencies will have a substantially larger reporting burden. The EO calls for quarterly reporting, and smaller agencies will likely have many ‘zero report’ quarters. It would be useful for NLEAD to have a method for agencies to submit a zero report, so as to distinguish them from agencies that are not participating in NLEAD.

**Summary of data sources and existing databases**

Table 4, below, summarizes the various possible data sources as well as any existing databases for state and local agencies, as well as for federal agencies. With the exception of the NDI for decertification actions, and DOJ Civil Division records for federal *Bivens* actions, all other databases (if they exist) are at the individual agency level.

Table 4. Summary of data sources and existing databases

Category	Possible sources		Existing databases	
	State & local	Federal	State & local	Federal
Criminal convictions	Individual agencies	Labor units	Individual agencies	Individual agencies
Decertification actions	POST agencies	Labor units; OPM	IADLEST NDI	Individual agencies
Terminations	Individual agencies; some POST agencies	Labor units	Individual agencies, some POST agencies	Individual agencies
Civil judgments	City Attorney/ Law Depts	Civil Division, OPRs	Individual agencies	Civil Division CMS
Damage amounts	City Attorney/ Law Depts	Civil Division	Individual agencies	Civil Division CMS
Resignations & retirements while under investigation	Individual agencies	Labor units	Individual agencies	Individual agencies
Sustained complaints for serious misconduct	Individual agencies	OPRs, OIGs	Individual agencies; some states	Individual agencies
Disciplinary action for serious misconduct	Individual agencies	Labor units	Individual agencies; some states	Individual agencies

## Promising Models

### *The National Decertification Index (NDI)*

Decertification is the process by which a state authority determines that an individual should no longer be a sworn law enforcement officer. In a typical scenario an officer is terminated or otherwise separates from a law enforcement agency, and if there is underlying misconduct that would disqualify a person from being certified as a law enforcement officer under state law, the state POST agency can then investigate and pursue decertification (sometimes called revocation). Decertification essentially invalidates an individual’s Basic Law Enforcement Training (BLET) credential and makes them unemployable as a law enforcement officer in that state. Decertification actions are typically considered permanent but individual state laws may allow individuals to petition for reinstatement after a period of time (for example, 5 years) depending on the nature of the actions that led to decertification.

The purpose of the National Decertification Index (NDI) is to help ensure integrity in law enforcement by preventing the intrastate rehire of problem officers. For example, an officer decertified in a particular state might move to another state and seek employment as an officer. If the hiring agency queries the NDI, they will be informed about the decertification action and who to contact from the decertifying state in order to request information and make an informed decision about hiring the officer. The NDI serves as an important tool for background investigators. The database contains records of decertified individuals and enables background investigators to check whether a job applicant has been decertified

in another state. If a record is located, the investigator is then directed to the contact person at the decertifying POST to follow-up for additional information. The NDI also contains records about officers under investigation; however only some state POSTs provide these records.

The NDI is searched by name and date of birth. It is a pointer system that returns very basic information about the reason for the decertification, the POST name, and the agency name. “Pointer” is a term commonly used in database management to refer to a piece of data that specifies the location of information contained in another record or file. If the user views the entry, the POST contact name and phone number are provided. No actual records concerning the individual officer or the decertification action are contained in the database. The NDI presently receives between 3,000 and 4,000 queries monthly, and a number of different authorized entities query the system, including: city, county, and state police departments; sheriffs’ offices; university and college police; special jurisdiction police (such as fish and wildlife, railroad police); district attorney offices; departments of correction; US Department of Justice; Federal Reserve Bank; State Lottery; Federal Protective Services; Federal Bureau of Investigation; Department of State; probation and parole agencies; and others.

The International Association of Directors of Law Enforcement Standards and Training (IADLEST) administers the NDI, which has been in operation for more than 20 years. The NDI’s origins are in the late 1980’s and early 1990’s, when the IADLEST membership began discussing the need for a decertification database. It was originally proposed that the FBI would manage the database through its National Crime Information Center (NCIC), but due to legal concerns the FBI determined this was not feasible. Legislation proposed by Senator Bob Graham (D-FL) in 1994 and again in 1996 sought to create a national clearinghouse of officer employment histories for access by hiring agencies, to be operated by the U.S. Attorney General. While neither legislative effort was successful, a few states began pilot programs and in 1999 IADLEST received support from the Office of Community Oriented Policing Services (COPS) to help develop the pilot database. IADLEST had the system up and running in February, 2000. By the end of 2001, six states were contributing records. Several technical changes and enhancements have occurred over the ensuing years, and by 2011, 30 states were contributing records. Notably, President Obama’s Task Force on 21st Century Policing recommendation 2.15 was that the Department of Justice should partner with IADLEST to expand the NDI to “serve as the National Register of Decertified Officers with the goal of covering all agencies within the United States and its territories” (President’s Task Force on 21st Century Policing, 2015). At that time, 39 of the 44 states then having decertification authority were contributing records.

At present, 44 of 49 states having decertification authority are contributing records to the NDI. The District of Columbia POST (which is located within the DC Metropolitan Police Department) is also contributing records, as is a second decertification authority within North Carolina (covering corrections officers). Rhode Island is the only state POST lacking decertification authority. Recent legislation created decertification authority for the POSTs in California, Hawaii, Massachusetts, and New Jersey but these states have not yet submitted records (due to not yet having any records to report, or due to resource constraints). The Georgia POST tracks decertification but has not yet uploaded these records to the NDI; they will soon be loading more than 8,000 records.

Federal and military law enforcement agencies have recently requested access to the NDI, including the National Park Service and the Department of Defense POST. A far more detailed and comprehensive

history of the NDI, from which much of the above material was drawn, is reported in Chapter 11 of *A Quest for Professionalism* (Fink, 2020).

***Massachusetts law regarding internal affairs data***

The Massachusetts state legislature passed a law in 2022 that requires the state POST to contribute records to the NDI and additionally requires collection of internal affairs records regarding complaints about all officers in Massachusetts. This includes the officer’s name, the type of complaint, the complaint disposition, and any disciplinary action. The Massachusetts POST presently has instructions posted on their website (<https://www.mass.gov/info-details/complaint-and-incident-reporting>):

Law Enforcement Agencies ("LEA's") are required to submit information to POST within two (2) business days of receipt of a complaint alleging the misconduct of an officer. Complaints can originate from a member of the public (external complaint), from personnel at the agency (internal complaint or incident), or any other source.

All complaints that fall in the following three categories must be submitted to POST:

1. Complaints alleging bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level
2. Complaints regarding use of force (excessive, prohibited, or deadly force)
3. Actions that resulted in serious bodily injury or death (including Officer-Involved Shootings or "OIS")

Complaints related to Unprofessionalism:

Certain complaints related to unprofessionalism also need to be submitted to POST. However, if the complaint is related to minor matters, including discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions, please refer to POST regulations to maintain a log of these complaints, which need not be submitted to POST, but made available upon request.

Complaints and incidents that are not related to minor matters as described above and fall in the category of officer misconduct or unprofessionalism, should also be submitted to POST and subcategorized as follows:

4. Unprofessionalism
  - a. Policy or Procedure Violations/Conformance to Laws
  - b. Conduct Unbecoming
  - c. Untruthfulness

It will be important to monitor progress in Massachusetts. If other states followed Massachusetts’ lead, it would greatly facilitate data reporting to NLEAD since state POST agencies would then serve as data repositories for several of the key NLEAD data elements. Further, if the NDI is adopted as a solution for NLEAD then legislative movements in other states, similar to Massachusetts, would help ensure reporting.

### ***The National Name Check Program (NNCP)***

The FBI operates the National Name Check Program (NNCP) which was initially intended for vetting candidates for national security positions. The program has expanded over the years to include immigration and naturalization requests, visas, admittance to the federal bar, attendance at White House functions, and more. The NNCP receives several million requests annually. Other federal law enforcement agencies can engage in a Memorandum of Understanding with the FBI in order to submit name check requests to NNCP as part of their hiring process. The NNCP performs an automated search of Sentinel (the FBI's electronic recordkeeping system). If the Sentinel search identifies a misconduct investigation related to the candidate, then an analyst will contact the FBI OPR to request additional information regarding the allegation and outcome, and then provide the information to the federal agency who made the name check request. If other federal law enforcement agencies provided a similar service (that is, allowing requests to search their electronic databases), then a centralized access point could be designed to cover all participating agencies. This would possibly make some of the required NLEAD information more accessible and facilitate background checks (and would achieve some of the same goals as NLEAD), but it would not fulfill the other requirements of the EO. In addition, this type of approach would be unlikely to be able to support the volume of requests from state and local agencies without substantial additional resources.

### **Privacy, due process, corrections, and security**

Following from the success of the NDI model, the NLEAD should be structured as a pointer system. "Pointer" is a term commonly used in database management to refer to a piece of data that specifies the location of information contained in another record or file. The NLEAD does not need to contain extensive individual- or incident-level details, nor should it attempt to do so. The NLEAD can simply indicate that a record of a particular type exists for a researched individual and provide background investigators with the contact information for the agency that entered that pointer. This places the burden of records privacy and management on the agency entering the pointer into NLEAD.

There is common acceptance of the term "final" as meaning that all avenues of administrative and/or legal appeal have been exhausted. However, it is debatable whether final status is the appropriate threshold for entry into the NLEAD. There is certainly interest in knowing that an individual is the subject of an investigation, but this must be balanced against due process considerations. For example, there are known cases of officers who are under investigation for misconduct being hired by other agencies (with or without the hiring agencies' knowledge of the matter) and working for those agencies for long periods of time while the cases are adjudicated. This can obviously pose some risk to the hiring agency. At present, some POST agencies do enter NDI pointer records for officers under investigation related to decertification actions.

Since state POSTs and individual agencies would be entering and removing NLEAD pointers as appropriate, officers requesting corrections or removal of pointers would direct those requests to the specific agencies that entered them. Considering the full scope of NLEAD it would be very challenging to integrate a correction process into overall NLEAD program management. Decentralized data entry and removal would be both more efficient and more consistent with the burden of records privacy and management.

The NLEAD should be a cloud-based system as these systems are generally known to be more cost-effective, reliable (including backup/restoration), secure, and scalable as compared to local solutions. The Federal Risk and Authorization Management Program (FedRAMP, see [fedramp.gov](https://www.fedramp.gov)) provides a common security framework for cloud service providers. Since all Executive branch agencies recognize FedRAMP authorization, any NLEAD vendor(s) should ideally be FedRAMP authorized. This would greatly facilitate federal agency compliance with NLEAD.

### **Data governance**

The NLEAD program structure should incorporate a Data Governance Committee charged with periodic review of data reporting and agency participation, advising on data quality concerns, making recommendations on instructions, documentation, and policy, and advocating for valid, reliable, and comprehensive information. The committee could include individuals drawn from federal, state, and local law enforcement agencies (such as staff from OPRs, OIGs, internal affairs, background investigations, and information technology units), state POST agencies, labor representatives, and members of the public.

### **Data volume and reporting burden**

Assuming full participation by Executive branch federal agencies and all state and local law enforcement agencies, the NLEAD could reasonably anticipate receiving about 25,800 pointer records annually (1,500 federal and 24,300 state and local). This is a crude estimate based upon limited available data and many assumptions, but it is important to try and estimate the reporting burden as the Office of Management and Budget (OMB) will likely require a burden estimate and burden statement for state and local reporting to NLEAD under the 1995 Paperwork Reduction Act. Overall, on an annual basis one might expect about 300 criminal convictions, 1,000 decertification actions, 5,800 terminations, 5,200 civil judgments, 2,000 resignations or retirements while under investigation for serious misconduct, 5,900 sustained complaints for serious misconduct, and 5,600 disciplinary actions for serious misconduct. These estimates would not include any historical records that agencies might choose to submit to NLEAD, and the contribution of historical records could substantially increase the annual volume of records submitted.

### **Public reporting**

The EO requires annual public reports containing anonymized data drawn from the NLEAD, reported in a manner sensitive to the risk of statistical disclosure. If a pointer system is adopted then the amount of information available will be limited, but it will still be of value to the public. NLEAD should have a stable, public-facing website that clearly explains the purpose of the NLEAD, provides summary statistics, and includes an interactive dashboard tool that members of the public can use to query the aggregated data. For example, the dashboard tool could facilitate looking up the number of decertified officers in a given state and year, visualizing trends, making comparisons by state, region, and type of

agency, as well as generating reports for download. There are many different platforms and private contractors who could design and build this dashboard tool.

### **NLEAD “ownership”**

If the NDI is considered as a possible base infrastructure for NLEAD, questions about its ownership might focus on historical efforts to locate the NDI within the FBI and within the U.S. Attorney General’s Office, neither of which happened. The NDI is administered by IADLEST, and it enjoys a very high rate of participation. Even though the IADLEST membership is mostly comprised of law enforcement personnel, some object that IADLEST does not have law enforcement organizational status. From that perspective both the FBI and the U.S. Attorney General’s Office could be logical “owners” of the NLEAD.

In discussions with representatives of the FBI Criminal Justice Information Services (CJIS) Division, it was suggested that if the NLEAD were located within CJIS it could potentially undermine law enforcement agency cooperation with other CJIS data collections. CJIS data collections, such as the National Incident-Based Reporting System (NIBRS) and the National Use of Force Data Collection, are voluntary in nature and depend on relationship building with law enforcement agencies. There is a risk that agencies may react negatively to NLEAD and that this could impact their participation in other important data collection efforts.

Regardless of what entity is tasked with administering the NLEAD, they should consider contracting the operational aspects of NLEAD to IADLEST rather than attempting to construct and manage their own reporting infrastructure. This would be duplicative, inefficient, and unlikely to garner a high level of participation. The best role for the administering agency would be in lending their imprimatur to the NLEAD and encouraging agency participation.

### **Additional legislation and support**

Requiring state participation in the NDI and setting minimum decertification standards either through legislation or by tying participation to eligibility for federal funding would enhance the utility of the NDI and ensure a solid foundation for expansion into the other data areas specified in the EO. President Obama’s Task Force on 21st Century Policing recommended that the Department of Justice should partner with IADLEST to expand the NDI to “serve as the National Register of Decertified Officers with the goal of covering all agencies within the United States and its territories” (President’s Task Force on 21st Century Policing, 2015, Recommendation 2.15) and tying participation to federal funding is one possible mechanism for helping to achieve this goal.

On the other hand, one of the long-standing challenges of data collection programs is the claim of being burdened with an “unfunded mandate.” While the EO is clear that state and local participation is voluntary, funding to support compliance with NLEAD among state and local agencies could help to increase participation. Support could also take the form of training and technical assistance to install or upgrade records management systems.

Other states should be encouraged to emulate Massachusetts' recent law requiring their state POST to collect internal affairs records regarding complaints and discipline for all officers. State-level efforts such as this will greatly facilitate the goal of national data collection.

### **Next steps**

A systematic assessment of the current state of case management systems across the OPRs or equivalent units (and to include OIGs) would be a necessary first step toward achieving the mandatory federal reporting requirement of the EO. This will be a key part of determining whether and how to implement automated and/or manual data entry solutions for NLEAD. The goal would be to catalog data management systems as well as to document the investigative and adjudicative processes that generate the data. The assessment should center around the required data elements specified in the EO, and identification of specific databases or records systems where the information resides (including other agency components or units). It would also be useful for determining how many points-of-contact or user accounts might be necessary on an agency basis in order to fulfill NLEAD requirements. This could be accomplished through an administrative survey, systematic interviewing, or ideally a combination of these methods.

This effort could be facilitated through the creation of a working group that includes several OPR representatives. These representatives would help guide the assessment and make recommendations based upon the findings. The members could also continue to serve beyond this initial working group as a core part of the recommended NLEAD Data Governance Committee. If it is determined that adoption and expansion of the NDI to accommodate the NLEAD data requirements is a viable path forward, it would be important to include NDI representatives from IADLEST in this working group.

Another next step will be to engage in ongoing outreach efforts to the law enforcement community and the public about the purpose and structure of NLEAD. Communications should be very clear and fully transparent about what the NLEAD is and what it is not. It is very important to be transparent about the path forward, the anticipated timeline, and the eventual products. It is also important to be honest about what can be accomplished and to address any misalignment with public expectations. A dedicated website could report to the public on progress, and possibly provide a mechanism for public comment or feedback. This website could also serve as the eventual location of required public reporting, including written summary reports and an interactive dashboard tool that can be used to query the aggregated data.

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