

# TRACKING POLICE MISCONDUCT

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## How Prosecutors Can Fulfill Their Ethical Obligations and Hold the Police Accountable

Executive Summary | July 2021

Although most police officers perform their duties honorably and with integrity across the country, the murder of George Floyd and so many others serve as a stark reminder that some officers engage in misconduct. As a commitment to police accountability and legal ethics, a growing number of prosecutors are creating internal police disclosure lists, or databases of police officers with a history of wrongdoing, in order to systematically track police misconduct. Below are recommendations for prosecutors to follow as they create, maintain and use police disclosure lists.

- Recommendation #1:** Collect as much information as possible about police misconduct from local police departments.
- Recommendation #2:** Provide staff with clear policies and training so they are aware of their legal obligations if they discover official misconduct in their cases.
- Recommendation #3:** Designate a person or group of people responsible for deciding which officers are added to the office's police disclosure list. In addition, develop a standard of proof that must be met for an officer to be added to the list.
- Recommendation #4:** If the policy states that only "material" information will be included in the police disclosure list, the policy should take an expansive view of what constitutes a "material" disclosure.
- Recommendation #5:** Have an appeals process in place so that officers can, if they wish to challenge their designation on the police disclosure list, voice their opposition.
- Recommendation #6:** Consider having two separate lists or categories of officers - one that merely requires disclosure to the defense, and another that bars calling that officer as a witness in a hearing or trial, or as an affiant in a search warrant.
- Recommendation #7:** Ensure line prosecutors become aware as early as possible if their case includes officers on the police disclosure list.
- Recommendation #8:** Train and require prosecutors to disclose information in the police disclosure list to defense counsel as early as possible.
- Recommendation #9:** Support efforts to make substantiated claims of police misconduct more accessible to the public.
- Recommendation #10:** Engage with the local police department(s) to explain the purpose of the police disclosure list and to address their concerns before implementing the policy.
- Recommendation #11:** Educate the community about the existence of the police disclosure list and the option of making a complaint about a police officer directly to the prosecutor's office.