

# Accountability in Policing: The Unexplored Power of the POST Board

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*Dedicated to driving meaningful change to Minnesota's criminal legal system through rigorous and community-centered research, education, and policy development*

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## Executive Summary

Over the past year, we at the Minnesota Justice Research Center have engaged with community members, policy makers, scholars, and members of law enforcement to explore how to increase trust in policing. One thing we have heard consistently is that **trust cannot be built without true accountability**. Our current systems of accountability in Minnesota largely rely on the police to police themselves, and the public lacks meaningful access to data to understand and evaluate them. Instead, examples of unlawful violent policing continue without meaningful consequences. The Minnesota Peace Officer Standards and Training (POST) Board could change this.

The Minnesota POST Board is a state agency primarily made up of sworn officers alongside some community members that regulates licensing and training standards for police officers. The POST Board was originally designed to hold peace officers accountable through licensing, and it has the authority to improve our current systems of accountability, especially when officers use force excessively resulting in civil rights violations, other forms of short- and long-term harm, and even loss of life.

This report begins by examining the complexity of accountability, focusing specifically on the standards around “use of force.” Researchers find that the perceived dangerousness of policing often encourages officers to use force excessively, increasing the chances of harm to the officer and the public ([Sierra-Arévalo, 2021](#)). In addition, data shows vast disparities in use-of-force cases for Black and Indigenous populations.

### Current Accountability Systems in Minnesota

Accountability (and lack of accountability) for individual officers can have cascading effects ([Wood et al., 2019](#)). Currently, in Minnesota, individual officers are primarily held accountable to standards at the department level through policies that create expectations. Standards for conduct and model policies also exist at the state level where they are guided by state statute. In addition, the state (through the POST Board) has the authority to address incidences of individual officer misconduct. Department and state standards around use of force are typically vague in description and rely heavily on an officer’s “reason” around what behavior is justified.

Internal departmental procedures are the primary way officers are disciplined when they use excessive force. Chief law enforcement officers are primarily responsible for holding individual officers accountable when they engage in misconduct. Citizen oversight exists but carries no authority to provide consequences for misconduct. External oversight through the courts is costly, involves lengthy appeals processes, and often favors police ([Levine, 2016](#)). Police unions and arbitration are protective factors against accountability procedures and also play a role in whether or not internal consequences are effective ([Kelly, Lowery & Rich, 2017](#)).



At the state level, the POST Board holds authority for both front-end accountability standards, and back-end consequences through the suspension or revocation of licenses. Addressing accountability through licensing at the POST Board ensures consistent accountability for officers across Minnesota. **When we examine the potential of the POST Board, it appears it could better hold officers accountable.**

### Reviewing the Evidence

In the second half of this report, we review the publicly available data that exists on how the current accountability structures function. Overall, the public has access to minimal state-wide data on police misconduct. Our review of the evidence was based on scattered and often unclear data from departments and the state where available. **The limited data at the department and state level on complaints, outcomes of investigations, and discipline of misconduct show that internal department and external state and oversight mechanisms of accountability are complex, ineffective, and convoluted.** For example, complaint data from the Minneapolis Police Department show that misconduct is happening as oversight bodies receive between 300 and 400 complaints each year, on average. Yet, far fewer investigations are conducted on those complaints and even fewer officers are disciplined for misconduct. Furthermore, state-wide, Minnesota's license revocation rate as a disciplinary accountability tool ranks among the bottom of the 47 states that license peace officers.

### Recommendations to Improve Accountability at the POST Board

The POST Board has the authority to address misconduct through licensing and is increasing its commitment to meaningful accountability. Specifically, we recommend:

1. **Collect more and better data.** Many of the policies and procedures in place to hold law enforcement officers accountable require data collection. The POST Board could begin this process of improving data quality and transparency. Research shows the collection and analysis of data on use of force by law enforcement can help to further accountability and improve community relations and trust ([James, 2020](#)).
2. **Increase community outreach at the POST Board.** As the POST Board is an integral part of the broader set of systems of accountability, we recommend that the POST Board incorporate efforts to educate the community about its mission, role, and authority and listen to (and learn from) community members. In August 2020, the POST Board began an important rules overhaul and sought to engage with the community in the process. However, these efforts were not well-publicized, limiting public engagement. Moving forward, the POST Board must develop more effective methods for engaging the community, especially Black and Brown community members and others who are most directly impacted by police misconduct.
3. **Adopt recent rule changes to strengthen accountability at the POST Board.** As of May 5, 2022, the POST Board approved a new rules draft. The approved rule changes allow the

POST Board to better align its scope of authority with Minnesota statutes. Specifically, the changes allow the POST Board to address conduct that, under minimum selection standards, would bar officer licensure; expand the POST Board's oversight beyond its previous scope of only hearing allegations of misconduct that have resulted in criminal convictions; and establish standards of conduct for duties central to law enforcement, such as the use of force, hate crime reporting, participation in white supremacist groups, and discriminatory policing. If the POST Board approves the recently proposed changes, it will increase its ability to hold individual officers accountable.

4. **Include both specific and general language in standards of conduct.** To achieve accountability through licensing, research suggests that standards of conduct must include both specific and general language ([Hanner, 2021](#)). Standards of conduct that are too specific increase the risk that officers' legal representatives can maneuver the complaint around the scope of the POST Board oversight. On the other hand, language that is overly broad likely would create vague and ambiguous standards that could lead to inconsistent enforcement.
5. **Adequately staff and fund the POST Board.** The POST Board must be adequately staffed and resourced to effectively hold officers accountable. Increasing the political will of the POST Board to use licensure to hold officers accountable will require an organizational investment that will ensure the POST Board has the staffing and resources to investigate and address instances of misconduct effectively.

In examining accountability and the current systems in place in Minnesota, we find a significant need for change. Accountability is a complex value, one that requires us to consider who is being held accountable, what they are being held accountable for, and what a response looks like when they don't meet expectations. Currently, Minnesota has a dearth of data, vague standards, and an ineffective system of procedures for responding when officers use excessive force.

Yet Minnesota has a state agency, the POST Board, designed for the very purpose of holding individual officers, of all ranks, accountable and identifying clear standards for conduct. As many have argued, the culture of policing must fundamentally change. We must also have transparency and explicitly address the behavior of individual officers to create a system of law enforcement so that communities, especially communities of color, might begin to trust. The POST Board has the authority and the responsibility to strengthen its accountability system. People's lives and well-being depend on it.

## Introduction

*"Accountability is an essential part of building trust with the community, and public safety requires public trust." - Merrick Garland, U.S Attorney General*

Across the country and in Minnesota, conversations about police accountability abound. The relationship between public safety, trust, and accountability in policing is consequential. The public cannot trust the system of policing when police are not held accountable for their actions. Minnesota's systems of accountability rely primarily on the police to police themselves, and the public lacks meaningful access to data to truly understand and evaluate them. We continue to see examples of unlawful violent policing with no consequences. To build trust and promote public safety, this must change.

At the Minnesota Justice Research Center (MNJRC) we believe that our criminal legal system needs to be transformed. This cannot happen without a deep examination of the values that undergird justice practices and those motivating movements for change. In a previous report, we examined trust as a value in relation to policing ([Remington Cunningham, 2021](#)). We held conversations with community members, policy makers, scholars, and members of law enforcement about the role of white supremacy in policing, and how and whether communities of color might ever trust the system of law enforcement. One thing we heard consistently, and local research has found the same ([Phelps & Juhn, 2020](#); [Phelps, Robertson, & Powell, 2021](#)), was that trust cannot be built without true accountability, especially in instances of violent misconduct or unjustifiable use of force by police officers. In addition, true accountability must be sustained long-term for this trust to be developed.

In the uprising that followed the murder of George Floyd in Minneapolis, body camera footage and reports from residents showed members of the Minneapolis Police Department firing at protesters with "less-lethal" 40 mm rounds without warning or provocation. In one instance, Jaleel Stallings, a Black man (with a legal license to carry a gun), was struck by officers who were driving in an unmarked van. Fearing for his life, Stallings fired back "three shots toward the ground near the front of the van" hoping the gunfire "would disrupt further attacks" ([Stallings v. Bittell, 2021](#); [Dickinson, 2021](#)). The officers announced themselves and leapt out of the van, at which point Stallings immediately dropped to the ground and tossed his gun. However, the officers beat Stallings badly while arresting him, despite his immediate surrender and disarming. In addition to being severely assaulted, Stallings was charged with attempted murder. The court later dismissed these charges. Video footage of the incident shows a clear example of excessive use of force by the Minneapolis police officers ([Winter, 2021](#)). However, there is no evidence that the officers received any discipline following this incident.

To trust the institution of policing and trust individual officers, people must trust that officers will follow principles of policing and that our systems of accountability will ensure they do so and



provide consequences if they do not. Moving forward, we need to clearly conceptualize “accountability,” what it looks like now across Minnesota, and how we might improve the system to bring true accountability – and with it, true justice.

In this report, we provide an overview of the Minnesota Peace Officers Standards and Training (POST) Board, then examine the value of accountability and the current systems of accountability for law enforcement in Minnesota. We also examine available data that shows the ways in which internal department and external state and oversight mechanisms of accountability are insufficient. **We argue that the Minnesota POST Board has the potential to be an effective mechanism for holding law enforcement officers who engage in use-of-force misconduct accountable.**

## The Minnesota POST Board

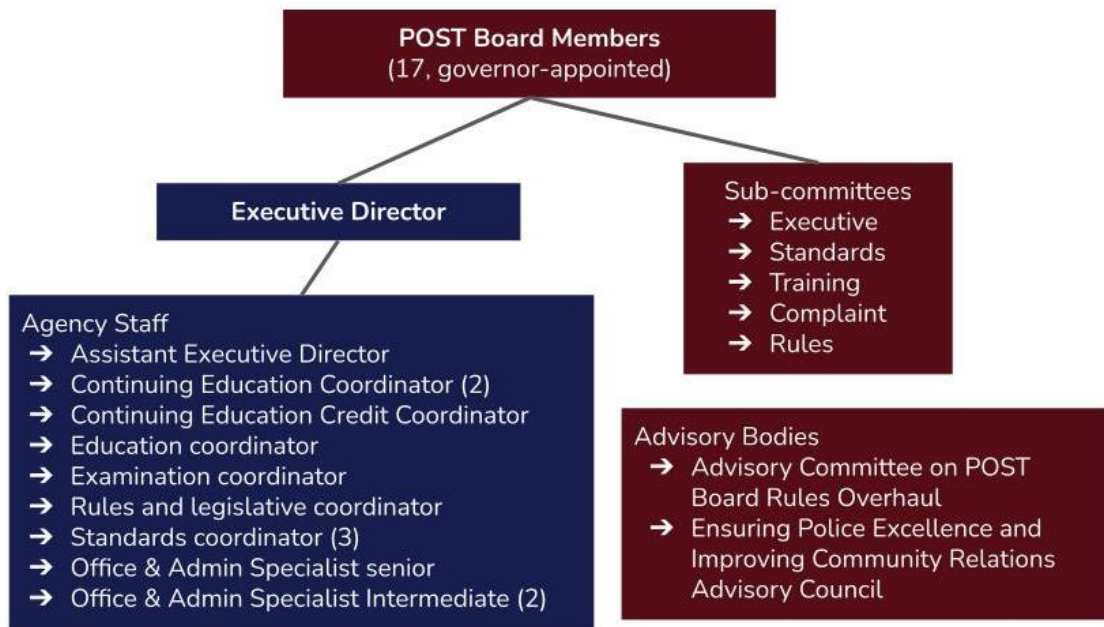
The Minnesota Peace Officer Standards and Training (POST) Board is an executive branch state agency that regulates licensing and training standards for the nearly 12,000 peace officers in Minnesota. Peace officers include municipal and tribal police officers, state troopers, Department of Natural Resources law enforcement officers, special agents of the Bureau of Criminal Apprehension, and sheriffs. The POST Board was originally designed to hold peace officers accountable through its licensing authority.

### Structure and function

The Minnesota state legislature created the Minnesota Peace Officer Training Board (POTB) in 1967 to monitor and certify agencies offering police academy training. In 1977, as part of a push for greater police accountability, the state legislature reorganized the POTB into the POST Board, which would become the first law enforcement occupational licensing system in the United States ([2021](#)).

The POST Board is managed and led by 17 governor-appointed members representing the public and law enforcement. Board appointees consist of: (4) representatives from the public, (8) licensed officers, (1) elected official, (1) the superintendent of the state Bureau of Criminal Apprehension, and (3) representatives from higher-education institutions that administer state-sponsored peace officer pre-licensing programs.

Figure 1: POST Board Organization Chart



The POST Board Members hire and oversee an agency director, who is responsible for managing agency staff. Agency staff assist with misconduct investigations and ensure implementation and compliance with POST Board policies and procedures. Several working committees also exist under the Board. These committees craft potential rules and standards, which are submitted to the Board for review and approval.

Minnesota Statute requires the POST Board to establish in rule “minimum standards of conduct which would affect the individual's performance of duties as a peace officer” ([Minnesota Statutes, Chapter 626.843](#)). In addition, the POST Board hears peace officer misconduct complaints. It holds the authority to address standards of conduct and fitness for licensure and place an officer on probation, suspend, or revoke an officer's license based on the results of complaints investigations (when and how they do this is something we dig into later). The POST Board also oversees and sets the training requirements for the specialized education and training required to become a licensed peace officer (peace officer training is offered at 30 board-approved Minnesota colleges and universities). Finally, the POST Board sets model policies for policing procedures that provide frameworks for local departments across the state. Model policies are based on state law and there are 14 model policies that every agency across the state must adopt and comply with. The POST Board checks departmental compliance with having policies aligned with its model policies (e.g., on use of force). **In total, the POST Board has the potential to be an effective accountability system.**



## Accountability as a Value

### Defining Accountability

To examine how the POST Board might be a more effective accountability system, we first examine accountability as a value: What do we mean by “accountability”? Depending on the context, accountability has several overlapping definitions. Accountability always requires systems and individuals to take some level of responsibility. It also requires a set of procedures and policies that support the process of taking responsibility. To be accountable is to be obliged (via procedures or policies) or willing (as an individual) to accept responsibility and to account for one’s actions.

Scholars of accountability generally address three main components: 1) the “loci” of accountability - with whom the accountability lies, 2) the “domains” of accountability - for what activities we should hold individuals and agencies accountable, and 3) the procedures of accountability - how we evaluate and oblige compliance with the domains ([Emanuel & Emanuel, 1996](#); [Punch, 2009](#); [Kelling et al., 1988](#)). Put simply, we must consider **who is accountable and to whom, what they are accountable for, and how we can ensure that accountability**. Efforts to address accountability rarely dig into the complexity of this value.

### Breaking it down: Loci, domain, and procedures

Accountability is necessary across all professions. In particular, accountability is critical in professions in which individuals may do harm. Take health care professionals. To treat patients, doctors use tools that may cause harm if not administered with deep caution and care. Doctors administer anesthesia, for example. When a doctor misuses anesthesia, an individual can die. In this instance, the individual doctor must be accountable to their patient (loci), they are accountable for their ability to practice medicine safely (domain), and they are held accountable often by hospitals/clinics, the medical licensing board and, if applicable, the courts (procedure).

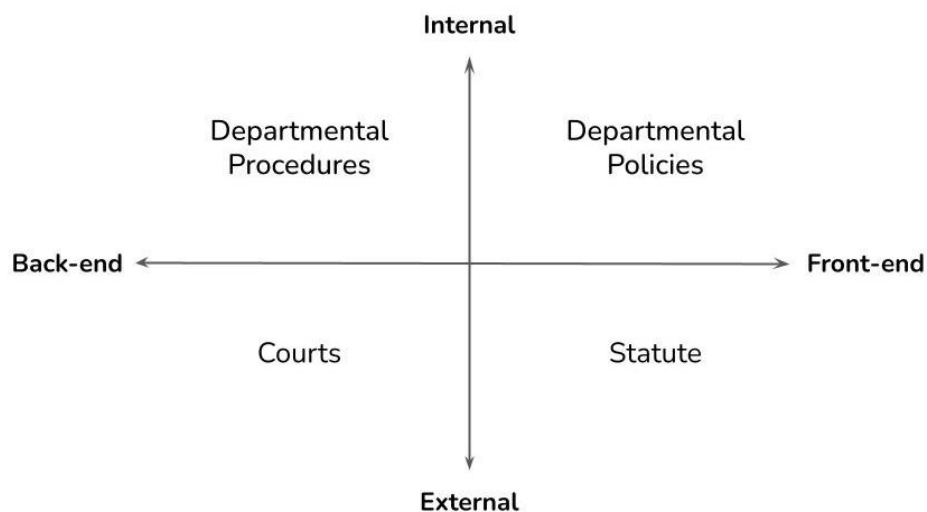
Let us consider the loci of accountability in policing. Policing is a profession in which individuals not only may cause harm but have the authority to do so. In public discourse about accountability, we often talk about individual accountability to the community or public. Accountability to the community is often thought of as transparency and involves carrying out duties within the bounds of policies and procedures that are humane. Law enforcement officers relate to, operate within, and are transparent with the community while carrying out their sworn duties. Transparency is an important first step in accountability, but it does not represent the whole picture. The domains of accountability in policing are generally focused on conduct and behavior and in particular, misconduct. Finally, when we consider the procedures of accountability in law enforcement, we can explore individual behaviors alongside the creation of systems that evaluate the ability of law enforcement officers to do their job effectively and when they don’t, deliver consequences for their actions. Generally,

these procedures are housed within individual departments at the administrative level (within the authorities given to them by statute), but they may also include legal processes (in the case of criminal conduct or conduct that may give rise to civil liability), and often involve some community oversight.

The American Law Institute (ALI) put forth a comprehensive guide on the principles of policing, one of which is accountability. In considering the loci of accountability, the ALI argues that agencies must be both transparent and accountable internally (within agencies) and externally (to the public) along multiple channels of responsibility ([Friedman et al., 2019](#)). In addition, the procedures for internal and external accountability must include both “back-end” and “front-end” procedures. “Back-end” procedures are what we generally imagine when we think of accountability (the consequences for actions) while “front-end” procedures are the creation of and transparent public access to rules and policies that govern the back-end accountability processes.

Taking these dimensions together, we present an accountability axis to explore how accountability plays out. Policies and legal statutes represent examples of front-end mechanisms of accountability: These are the ways in which we create systems to set the domains for accountability. Front-end accountability systems set the expectations of behaviors and the standards by which we hold individuals accountable. Procedures and courts represent back-end accountability: These are the ways in which we deliver consequences for individuals when they don’t meet the standards set by the front-end processes. In policing, we might think of internal accountability as generally held within law enforcement departments while external accountability lies with the disciplinary bodies like the courts or the state.

*Figure 2: Accountability Axis*



We should note that accountability, downstream work, is not the same thing as prevention, upstream work. If front-end accountability is effective, it is possible that misconduct will

decrease as individuals and community members gain confidence that high standards exist, ensuring misconduct will not be tolerated (though there is very little research on this). If back-end accountability is effective, it may also serve to decrease misconduct as a method of desistance. However, accountability systems will never in and of themselves eliminate misconduct. Prevention of violence and prevention of violent policing is certainly as (if not more) important as creating accountability systems that govern behavior and address harm when it happens. Ideally, we can create a world full of systems and structures (and caring compassionate people) where we can worry less about accountability for misconduct and instead build the contexts and the cultures that actually prevent vast misconduct from happening in the first place. This kind of system and culture change will require deep investment in transformative and liberatory practices. It will take an investment in the community. It is critical, but it will take time.

In the sections that follow, we narrow our focus to use of force. We then describe the current accountability systems in Minnesota around use of force by exploring each component, the loci (who), domain (what), and procedures (how), at the internal and external levels. We start with a description of the existing systems and then explore what actual practice looks like by examining the limited data we have on how each approach to accountability functions. **We show that our current internal and external accountability systems are ineffective, at least by examining the data we have, but that the POST Board is a place where change is possible.**

## Use of Force

For this report, we explore excessive or unjustified “use of force” as a type of misconduct that is unique to police officers. If the role of police is to ensure compliance with the law, some level of force is likely a necessary part of that. Determining what is “excessive” depends on the context. In some instances, lethal force may be “justified” in the eyes of the law. For example, in their in-depth examination of data on police killings, [Selby, Singleton, & Flosi, \(2016\)](#) present the context surrounding several police killing incidents, arguing that some required deadly force. While doing the job of a police officer, the use of force, even deadly force, may be authorized. Thus, it is critical to get clear on where to draw the line for use-of-force misconduct.

In considering the necessity to use force, researchers find that the perceived dangerousness of policing often causes officers to use force excessively, increasing the chances of harm to the officer and public. Policing culture socializes officers into adopting both policy-compliant and policy-violating behaviors to reduce risks to officer safety during police work ([Sierra-Arévalo, 2021](#)). A common phrase in police culture is, “I’d rather be judged by twelve than carried by six.” In essence, law enforcement officers would rather use deadly force to protect their own life and allow a jury to determine their fate if the force was unwarranted. As a result, officers may use force pre-emptively and excessively to ensure their personal safety. Scholar Michael Sierra-Arevalo has studied what he terms the “danger imperative,” examining the socialization of police officers into a culture preoccupied with violence and the demand for officer safety.

This is further exacerbated by implicit and explicit biases, mental health concerns, and geographic location. Police believe policing is increasingly dangerous. However, FBI data on the number of felonious police deaths (that is, non-accidental police deaths) has been steadily declining since 1970 ([Sierra-Arévalo 2017](#); [White et al., 2019](#)). In Minnesota, 284 officers have died in the line of duty **since 1776**, for all possible reasons including things like COVID-19 and heart attacks ([Officer Down Memorial Page](#), accessed May 2022). Again, 108 citizens have been killed by police **since 2013**. Thus, an argument for the necessity of force for police to survive is not fully borne out by the data.

Furthermore, we focus on excessive use of force because the limited data shows vast disparities in use of force cases for Black and Indigenous populations. Of the 1,100 killings by police in the U.S. in 2015, Black and Indigenous individuals were killed at a rate twice their share of the population ([Zimring, 2018](#)). High racial disparities exist for non-deadly use of force incidents as well, which are much more common ([Hickman, Piquero, & Garner, 2009](#)). A recent investigation of the Minneapolis Police Department (MPD) finds that officers use disproportionately higher rates of more severe force against Black individuals, and that this remains true even when comparing use of force against Black and white individuals in similar circumstances ([Minnesota Department of Human Rights, 2022](#)). In fact, in downtown Minneapolis, MPD officers were six times more likely to use force against Black individuals compared to white individuals during traffic stops.

Racially disparate outcomes in police use of force incidents make this type of misconduct critically important, as research shows that trust in communities of color is especially low ([Remington Cunningham, 2021](#)). In addition, using the Minneapolis Police Department again as an example, officers are twice as likely to be injured themselves when they use inappropriate levels of force ([Minnesota Department of Human Rights, 2022](#)). Thus, creating systems that ensure accountability for officers who use excessive force is a critical part of rebuilding trust in policing in communities of color and in keeping officers safe.

## Current Accountability Systems in Minnesota

**What are the current accountability systems in Minnesota for law enforcement officers?** This is a complex and multi-faceted inquiry, and we just scratch the surface in this exploration. We assume that the loci of accountability must lie both on individual officers and police departments, but for this report, we focus on what accountability of individual officers looks like and how to improve it. Who is accountable? Police officers. Who are they accountable to? The community. We then narrow our focus to one (of the many) domains of misconduct: use of force. What are police officers accountable for? Among many other things, we hold officers accountable for engaging in conduct that protects and serves the community *without using excessive and unjustified force*. Finally, we examine whether our current systems actually ensure that police officers are held accountable to not engage in excessive use of force both at the front-end (through clear policies) and the back-end (through disciplinary consequences).

### The “Who”: Individual Accountability

In considering who is accountable to whom in policing, we focus on individual officers being accountable to the communities they serve. The accountability of departments and the system is another critically important topic for exploration.<sup>1</sup> (In fact, the Minnesota Department of Human Rights is currently in the process of negotiating a consent decree<sup>2</sup> with the City of Minneapolis and Minneapolis Police Department to address the organizational culture of which accountability is one critical aspect.) In this report, we assume that policing exists as it does today at least in the near future. As a result, we focus on how our systems hold individual police officers accountable. Further work should examine the accountability of departments and the broader system to look toward real transformational change.

#### Individual accountability at the departmental level

Research shows that holding individual officers accountable can have cascading effects inside of departments such that addressing accountability at the individual level can lessen misconduct more broadly. Individual police are often influenced by a social network of misconduct. In other words, poor policing behaviors transcend the actions of an individual officer to include a network of officers. In a study of police misconduct in Chicago, researchers found that 83% of the 6,348 officers who received at least one citizen complaint did so alongside another officer ([Wood et al., 2019](#)). Furthermore, a small number of officers receive a large share of misconduct complaints ([Wood et al., 2019](#)).

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<sup>1</sup> With departments as the loci of accountability, we might examine how the courts (for example, lawsuits against departments) and the federal government (for example, through receivership or civil rights investigations) can act as systems of accountability. Conversations about defunding and dismantling policing as we know it and creating new mechanisms for community safety must also consider what accountability looks like.

<sup>2</sup> A consent decree is a court-enforceable agreement that identifies specific changes that must be made at the department-level and timelines for those changes to occur

Use of force misconduct follows a similar network of misconduct patterns. Officers with histories of excessive use of force complaints are more likely to both be involved in future use of force complaints and influence other officers in being named in a use of force complaint ([Oullet et al., 2019](#)). Therefore, by focusing on accountability at the individual level, we can likely address misconduct more broadly.

#### Individual accountability at the state level

As mentioned above, the POST Board currently has the power and can play a role in holding individual officers accountable. The POST Board receives complaints from chief law enforcement officers (CLEOs) about individual peace officer misconduct and can make the decision to place an officer on probation, suspend, or revoke an officers' license. The POST Board also has a process to collect complaints directly from community members via [a complaint form](#) (we dig into these processes later in this report). As the licensing body for peace officers, the POST Board not only holds the authority to suspend or revoke an individual officer's license, but they hold the responsibility to do so.

### The “What”: Standards of Conduct and Use of Force

Next, we must be clear on the standard for conduct for law enforcement officers: what are we holding officers accountable for? Standards of conduct exist at various levels of law enforcement from local county and city departments to state governing bodies to the federal government. Here we focus on department and state standards.

#### Department standards

What is excessive? What are the front-end standards shaping our current accountability system? At the department level, individual agencies across the state of Minnesota (and the entire country) create their own standards of conduct. Many departments adhere to the tenets of procedural justice in setting standards (fairness in the processes, transparency in actions, opportunities for voice, and impartiality in decision making). Departments typically identify some kind of “Code of Ethics”, and officers generally take an “Oath of Office.”

Take the City of Duluth as an example. The Duluth Police Department (DPD) uses a 584-page policy and procedure manual to guide officer conduct ([2020](#)). Squarely on the first page, the DPD lists their mission statement as “To provide a safe Duluth for all by strengthening relationships and serving in a respectful, caring and selfless manner.” The manual also has a section on conduct (on page 161) and integrates conduct expectations throughout the report. (For example, they have a section on conduct expectations around use of force.) These are examples of front-end accountability policies that exist in writing (practice and adherence to these policies is a different question which we explore later).

Take the City of Minneapolis as another example. The Minneapolis Police Department (MPD) uses a 600-page policy and procedure manual to guide officer conduct ([2022](#)). Immediately

on the second page, the manual highlights the department's values, goals,<sup>3</sup> and Pillars of Procedural Justice.<sup>4</sup> According to this document, the MPD values trust, accountability, and professional service. Accountability is, at least in writing, a critical value of the MPD. The manual contains a section on "code of conduct" starting on page 226. In this section, the MPD lists truthfulness, ethics, use of discretion, impartialness, and professionalism as standards, outlining in detail specific examples of each of these (e.g., professionalism means "be courteous, respectful, polite," or "explain and/or apologize if you determine that a reasonable suspicion was unfounded").

Departments generally identify misconduct in outlining the domains for accountability. Police misconduct can capture a wide swath of behaviors. Misconduct can include violations of department-set values and goals. For example, if the department values truthfulness, then lying would be one example of misconduct. Misconduct can also include violations of the law. For example, the Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures. Therefore, law enforcement officers must obtain consent, have probable cause, or obtain a warrant to search a person or property. Illegal conduct can include everything from driving under the influence to murder. Thus, policies serve as the front-end accountability mechanism at the department level for law enforcement agencies.

At the local level, departments generally outline a set of expectations around use of force. However, **specificity is uncommon**. The DPD's policies around use of force are "governed by an objective reasonable standard." The MPD expects officers to "recognize and respect the sanctity of life and value of all human life, and the need to treat everyone with dignity and without prejudice." In Minneapolis, officers are required to use objectively reasonable force, or the amount of force that a reasonable officer at the scene would have used, based upon the facts known at the time of the incident, that is consistent with training, state law, and departmental policy. Officers are also expected to safely intervene, by verbal and physical means, when they see other officers use any inappropriate or unreasonable force. The DPD adds a bit more clarity but still uses "objective reason" as the barometer for when force can be used. In Duluth, officers are required to intervene if "observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances."

How does this translate into concrete guidelines? What is "reasonable" in a profession where officers are preoccupied with danger and trained to prepare for even routine interactions to turn deadly? Would a reasonable officer have assaulted Jaleel Stallings after he was lying face-down, un-armed?

#### State standards: The role of the POST Board

In addition to department-level policies, front-end accountability standards exist at the state-level. In 47 states, the standards of conduct for law enforcement are governed by a POST

<sup>3</sup> Their goals are to ensure public safety, justice, and employee wellness.

<sup>4</sup> The manual lists the Pillars of Procedural Justice as voice, neutrality, respect, and trustworthiness

agency. State statute gives the POST board the authority to set the rules. In Minnesota, the POST Board details the standards of conduct for law enforcement under [Minnesota Administrative Rules, Chapter 6700](#). At a high level, this board “believes that in order for the public to have confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation” ([Minnesota Administrative Rules, Chapter 6700.1500](#)). However, the state does not get more specific than that: The overall standard for conduct is self-regulation. Behavior that “maintains public integrity and confidence” in law enforcement is not clearly defined in the standards, and thus is often left up to departments to interpret. The POST Board does, however, set more explicit rules to govern standards of conduct along with model standard policies for policing procedures that provide frameworks for local departmental policies.

Much like at the department-level, the POST Board focuses on violations of conduct, providing at least some detail on how not to behave rather than on fully clarifying a gold standard for conduct. In examining what police officers should not do, the state administrative rules outline 15 categories of misconduct, with some overlap, that will result in “disciplinary action” (more on that later, [Minnesota Administrative Rules, Chapter 6700.1710](#)). As of the writing of this report, these 15 categories only clearly specify misconduct that:

1. Includes providing false information to the POST board (e.g., cheating on a licensing exam or failing to report a license suspension from another jurisdiction),
2. Engages in sexual harassment, and
3. Results in conviction of a crime including “using deadly force when not authorized by Minnesota Statutes, section 609.066.”

This vagueness suggests that officers are legally held to the standard of being a law-abiding citizen despite having significantly more authority and power than an average citizen to cause harm.

Examining misconduct accountability domains related to use of force is challenging. Minnesota Statute also turns to reason, allowing all public officers the authority to use “reasonable force” to do their job, engaging in everything from effecting an arrest to executing an order of the court. A series of U.S. Supreme Court rulings have sought to regulate the ambiguity of reasonable force ([Tennessee v. Garner, 471 U.S. 1 \(1985\)](#); [Graham v. Connor, 490 U.S. 386 \(1989\)](#)). At the state level in Minnesota, one recent statutory exception now limits the use of choke holds unless these restraints are necessary for the use of deadly force where justified. At the city-level in Minneapolis, a recent temporary court order completely banned the use of neck restraints, without exception ([Minnesota Department of Human Rights, 2022](#)). This kind of specificity is promising.

Yet broadly speaking, the State posits that officers should be accountable for using reason when administering force. For example, use of deadly force by officer is justified when “an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is



necessary” to protect against threats that “can be articulated with specificity” that may cause death or great bodily harm to the officer ([Minnesota Statute, Chapter 609.066](#)). It is also justified to effect the arrest of a person the officer “reasonably believes” may cause death to another person ([Minnesota Statute, Chapter 609.066](#)). In effect, deadly force is legal when officers are protecting themselves or protecting others from death, weighing heavily again on reason.

### The “How:” Accountability Procedures

In examining the complexity of accountability, we arrive at the third component and arguably the crux of value: **What are our systems set up to do when the person we trust fails to adhere to professional standards?** Just as standards of conduct are set at different levels of law enforcement, policies and procedures around violating standard of conduct, or engaging in misconduct, exist at the federal, state, and local levels. We examine the procedures that exist for holding officers accountable at the department level internally and externally through the courts.

#### Internal department procedures

The main way in which law enforcement officers are held accountable when they engage in misconduct is through internal departmental discipline procedures. **Generally, this means the police are responsible for policing themselves.** Each local department typically has a set of policies and procedures which outline both standards for conduct and processes should an officer violate those standards. Typically, the back-end accountability falls within the purview of internal affairs offices. Using the Minneapolis Police Department (MPD) [manual](#) as an example, the department highlights the significant role of MPD’s Internal Affairs (starting on page 39), outlining the duties and responsibilities of supervisors and chief law enforcement officers in particular; departments primarily handle misconduct internally.

In addition to Internal Affairs, departments generally have other bodies or agencies involved in the review process including human resources departments, commissions, and other city offices or councils. Some departments also have a civilian oversight body. Civilian oversight often takes the form of Civilian Review Boards, which are independent, government-sponsored advisory boards that, in some cases, can investigate and review citizen complaints against police officers. Civilian review boards seek to give the community a voice in the police accountability process. Because the primary mechanism for police accountability is through departments, many cities have established external oversight to ensure that departments are able to hold “their own” to account for misconduct. Research shows that police internally investigating citizen complaints is a major part of the police-community relations problem ([Walker, 2007](#)).

The City of Duluth has a Citizen Review Board (CRB) that serves as an advisory body “for the purpose of fostering relationships and strengthening trust and communication between the police department and citizens of Duluth in furtherance of the best interests of the city and all

of its residents" ([City of Duluth website, 2022](#)). The mission of the CRB in Duluth does not explicitly connect to accountability. Minneapolis established a Civilian Review Authority in 1990 which has shifted in name and function over the past 30 years, including after 2012, when Minnesota law ([Peace Officer's Discipline Procedure Act \(Minnesota Statute 626.89\)](#)) prohibited civilian review boards from imposing disciplinary action on an officer. The Civilian Review Authority in Minneapolis became the Office of Police Conduct Review (OPCR), a body that could no longer make a finding of fact or determination on a complaint, but instead could make only non-binding recommendations based on its investigations of misconduct complaints to the chief of the department. Again, the decision-making power about when and how to discipline an officer for misconduct lies with the chief.

In its recent determination, the Minnesota Department of Human Rights notes that general oversight of Minneapolis Police Department officer misconduct occurs within the Internal Affairs Unit, the Office of Police Conduct (OPCR, which investigates misconduct complaints made to the City of Minneapolis), the Police Conduct Review Panel (PCRP, a panel that makes recommendations to the chief based on OPCR investigations), the City's Human Resources Department, the City Attorney's Office, and the Police Conduct Oversight Commission (PCOC, citizens who audit summary data and review policies and procedures, making recommendations for change) ([2022](#)). Of all these bodies, the Minnesota Department of Human Rights finds that none are actually independent. They note, "in practice, OPCR and Internal Affairs are not distinct. Almost every investigation of a police misconduct complaint against an MPD officer, no matter how preliminary, is assessed or guided by sworn MPD officers." The OPCR appears to give the community a voice but holds no actual power in the accountability process.

Regarding use of force, the MPD manual notes that, if "an employee is alleged to have used force resulting in great or substantial bodily harm," they must immediately notify the Internal Affairs Unit. The accountability process also falls under the category of "duty to report." An MPD officer, "regardless of tenure or rank... who observes another employee use any prohibited use of force, or inappropriate or unreasonable force (including applying force when it is no longer required), has an affirmative duty to immediately report the incident while still on scene to an on-scene supervisor and by phone or radio to their Inspector or Commander or to their Inspector or Commander's superiors. The employee must also notify Internal Affairs." Thus, investigations of these use of force misconduct are again handled primarily by Internal Affairs who are responsible for fact finding following alleged incidents of misconduct. Ultimately, the Chief of Police determines whether a policy violation occurred and controls the potential subsequent disciplinary or consequential action triggered by investigations.

Thus, at the department level, accountability procedures lie within administrative controls. Administration can control officer conduct through written policies, routine supervision, regular performance evaluations and investigation of misconduct, and early intervention systems

([Walker, 2007](#)). Research on best practices for accountability within departments points to the potential power of administrative controls. For example, early work in this space by James Fyfe demonstrated that administrative control effectively reduced firearm discharges by officers and reduced racial disparities in lethal use of force instances ([McCoy, 2010](#)). Additionally, much of the research in this space points to the necessity of several changes in practice including accountability procedures that increase transparency (e.g. body-worn cameras, [Ariel, Farrar, & Sutherland, 2014](#)), training for officers to address front-end accountability, and the collection of data to identify patterns in behavior.

### External Procedures - Courts

Outside of departments, our existing systems of accountability turn to the courts and to the state to administer consequences for misconduct. In the criminal legal system, courts provide accountability for civilian criminal conduct. Many scholars have argued that police officers should be held accountable like any other citizen, or perhaps even more so than the average citizen, when they break the law because of the trust necessary to provide public safety. Thus, we examine the role of courts in holding officers accountable for criminal conduct.

As with civilians, local prosecuting attorneys are responsible for investigating and pursuing criminal charges against officers. Prosecutors wield wide discretion in deciding to either bring the case before a jury or to not pursue criminal charges. However, to prosecute civilians, prosecuting attorneys generally work in close collaboration with law enforcement who bring civilian cases to them via arrests. As a result, scholars suggest that prosecutors may be less likely to pursue charges against police officers because of their close working relationships ([Levine, 2016](#)). Furthermore, excessive force cases that are heard in court will encounter a legal terrain that favors the police.

The accountability procedures at the courts are also complicated by a legal doctrine called “qualified immunity.” Qualified immunity is designed to protect individual officers from frivolous lawsuits and liability for civil rights violations arising out of discretionary acts, such as the use of force ([Blum, 2008](#)). The landmark case of [Harlow v. Fitzgerald, 457 U.S. 800 \(1982\)](#) articulated the modern formulation of qualified immunity, which relies on the notion of reason ([Sobel, 2020](#)). In the case of excessive force, the court takes a two-step process to determine whether qualified immunity applies. First, the court assesses whether the excessive force violated a person’s constitutional rights. Next, the court determines whether the officer’s conduct violated a clear legal standard that had been established by a prior court ruling (Congressional Research Service, 2020). In other words, for qualified immunity to not apply, a court must have found the conduct in question to have been illegal or unconstitutional in the past.

Recent research finds that qualified immunity is rarely used by local and district courts ([Schwartz, 2017](#)). Rather, the U.S. Supreme Court has frequently applied qualified immunity to overrule lower court rulings and dismiss civil rights lawsuits against law enforcement ([Blum,](#)

[2018](#)). Scholars suggest that the threat of qualified immunity may reduce the willingness of plaintiffs and attorneys to pursue excessive force lawsuits against law enforcement ([Schwartz, 2017](#)). Accountability through the courts means navigating costly and lengthy appeals processes, where the court venue grows increasingly more favorable to law enforcement as the case rises in the legal system. Together, the ambiguity around reasonable force and the qualified immunity doctrine create high legal bars that greatly lower that chance that an officer will be held accountable ([Gross, 2017](#)).

Thus, the court system has multiple decision points where police officers are often advantaged. Law enforcement's occupational status and proximity to prosecutors reduce the chances that officers face criminal accountability.

### Police Unions

Police unions provide protective factors against external accountability procedures and play a significant role in whether internal consequences are effective. The impact of police unions have only recently been thoroughly studied in the academic literature ([Walker, 2008](#)). At the department level, police unions function to provide job protection for their members through collective bargaining processes ([Rushin, 2017](#)). Historically, police unions have also played a powerful role at the legislature, using their political power to lobby and shape the statute which governs standards of conduct. "The result is that changing the internal procedures and the culture of police departments is tougher in jurisdictions with police unions" ([DiSalvo, 2021](#)).

Recent research also shows that violent misconduct increased in Florida following a Florida Supreme Court ruling allowing officers to collective bargaining rights through unions ([Dharmapala, 2018](#)). In this case, unions may have functioned to decrease accountability for use of force misconduct. Use of force complaints are also more common nation-wide for departments in which officers are able to unionize ([Hickman, 2006](#)). Furthermore, police unions protect officers who are fired for misconduct during appeals processes ([Kelly, Lowery & Rich, 2017](#)) and advocate to shield disciplinary records from public view ([Bies, 2017](#)).

Most public-sector unions have similar power. However, Levin points out that police unions are unique in many ways, including the fact that police as public servants are authorized to use force. This should require them to adhere to a much higher standard of accountability ([Levin, 2020](#)). In his recent piece on police unions, Levin argues that the unions in and of themselves may be less of an issue. Instead, the problem is with policing as a whole, and the unions are problematic in that they protect the power of police.

### POST Board procedures - Internal and External

We turn back to the POST Board, **a unique state-level body originally designed to hold peace officers accountable through its licensing authority**. The POST Board addresses police misconduct: (1) when complaints are submitted directly by citizens (again, see [here](#) for the form); (2) when misconduct is self-reported by officers; or (3) when outcomes of misconduct

investigations are submitted by the chief law enforcement officer within 30 days of the final resolution of their department's investigation. The POST Board can also request misconduct data from local departments ([Minnesota Administrative Rules, Chapter 6700.2500](#)). In total, the POST Board is equipped to investigate complaints of misconduct and to use licensing as a consequence after a complaint has been sustained.

The complaint procedure at the POST Board, described in more detail [here](#), begins with a review of the complaint to determine whether the behavior was a violation of the POST Board standards of conduct based on state statute. If the complaint does not violate the standards of conduct adopted by the POST Board, it is sent to (or back to) the department, informing the CLEO at the agency employing the officer and obliging the agency to process the complaint.

If the complaint does violate the standards of conduct, the POST Board agency staff refers the complaint to an investigation by a third-party law enforcement agency ordered under rule to investigate (for example, the POST Board Executive Director may order the Bloomington Police Department to investigate a Minneapolis Police Department complaint). Importantly, POST Board agency staff then work with the third-party department to compile an investigation file. The Complaint Investigations Committee (CIC) at the POST Board reviews the file and decides to sustain the complaint, not sustain it, or exonerate the officer. If an investigation is sustained, the CIC then recommends disciplinary consequences and then the full Board ultimately votes to: (1) suspend the officer for a time period; (2) place the officer on probation; or (3) revoke the officer's license.

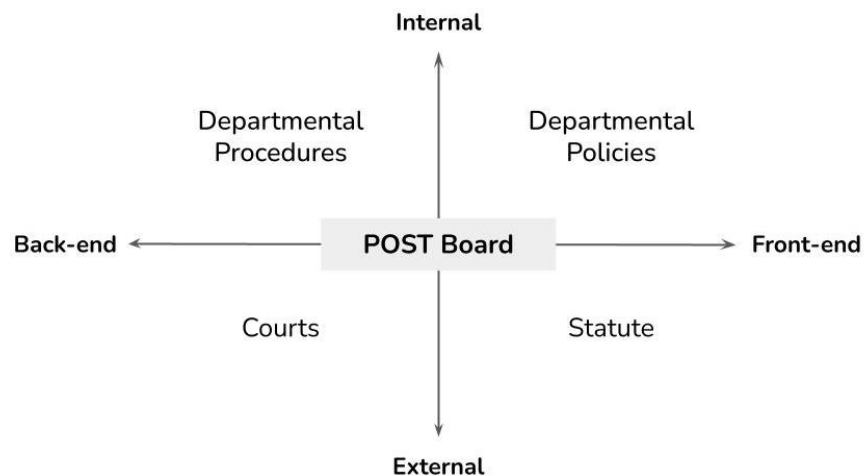
This accountability procedure is important. If accountability procedures are left solely to departments, we see vast differences in the enforcement of the standards for conduct across the state from one department to the next. **Addressing accountability through licensing at the POST Board ensures consistent accountability for officers across Minnesota** from the Minneapolis Police Department, to the Duluth Police Department, and to sheriffs operating across the state. This can also address a phenomenon known as the “wandering officer,” when officers are effectively disciplined at the department level but maintain their license and can continue to work as an officer at another department in a different county or state. In their systematic investigation of wandering officers in Florida, Grunwald and Rappaport found that once officers were fired, 3% were rehired within a three-year period. Upon rehire, these wandering officers tended to work for smaller agencies with fewer resources in areas with slightly larger communities of color and are more likely to be fired from their next job or to receive a complaint for a “moral character violation” ([Grunwald & Rappaport, 2020](#)). Using licensing as an accountability tool addresses this issue.

Addressing misconduct through licensing also has the potential to appeal to law-abiding police officers. In debates around police reform, the “bad apple” metaphor is often used to explain the behavior of officers who engage in misconduct. While data points to the extension of this metaphor, that the bad apples are likely the result of a tree with rotten roots, acting

firmly to address excessive use of force by suspending or revoking officers' licenses may leave the law enforcement officers who are upstanding and committed to high standards of conduct the opportunity to serve as shining examples of good policing. And if reform efforts actually weed out the bad apples, we may better be able to identify the rotten trees and soil in the orchard while at the same time highlighting those who act in compliance with the high standards.

Furthermore, the POST Board is unique because it situates police accountability processes both internally and externally and at the front- and back-end (see Figure 3). As an authoritative body, the POST Board has the capacity to create model policies for departments across the state to adopt and recommend changes to the language of statute.<sup>5</sup> In addition, the POST Board holds power to shape the back-end accountability structures. The POST Board has the authority to address both departmental and criminal misconduct allegations and circumvents some of the challenges outlined above with departments (internal politics, unions), civilian oversight (authority), and the courts (cost, time, immunity).

*Figure 3. The POST Board and Accountability*



Finally, as an oversight and disciplinary body, the POST Board is made up of both law enforcement officers and members of the public. **The structure of the POST Board brings together diverse voices and perspectives.** Again, accountability through departments relies on the police to police themselves. In theory, citizen oversight boards provide oversight, but no actual decision-making authority. Accountability through the courts relies on system actors, often prosecutors who work closely with police, to deliver consequences. The POST Board Members, the body that has the authority to give and take police licenses, is made up of both community members and sworn officers. Furthermore, the POST Board advisory committees

<sup>5</sup> This is currently being debated as there is uncertainty as to whether POST can mandate policies without a state statute to require it.

are also made up of civilians and law enforcement. The current [Advisory Committee on POST Board Rules Overhaul](#) consists of some of Minnesota's fiercest community advocates sitting alongside active sworn officers. And, according to a member of the POST Board, this committee has been able to reach agreement on the vast majority of the proposed rule changes currently being discussed. That kind of collaboration is rare and powerful, especially when the agency they are advising has authority to enact real accountability through licensure.

Thus, when we examine the systems in place through the POST Board, it appears as though meaningful accountability is possible. In the second half of this report, we review the evidence to explore whether each of these existing accountability structures works. Do the policies set by departments and the state affect behavior? Do the procedures to administer consequences for officers effectively do so?

## Reviewing the Evidence

To improve accountability, we need to explore data on police misconduct to examine the nature of the problem. Before discussing the data around police misconduct, we name two important considerations.

A look at data should always include qualitative and quantitative approaches. Quantitative numbers can tell us the scope, but qualitative stories tell us the context and are critical to humanizing the numbers. As part of its recent civil rights investigation into the Minneapolis Police Department, the Minnesota Department of Human Rights compiled [a comprehensive list](#) of reports and efforts to review the MPD, many of which tell important stories about police violence. Efforts like the [Portals Policing Project](#) engage community members in conversations about their experiences with police and create patterns using data across the U.S. **Without the stories and more robust data on police misconduct, we are only scratching the surface on the nature of the problem.**

Second, the data available are incomplete. Research shows that a significant number of negative interactions with the police go unreported. Nationally, studies have found that rates of misconduct may be anywhere from two-times to **20-times more than reported** ([Dunn & Caceres, 2010](#)). A recent study compared data from three databases on police violence (Fatal Encounters, Mapping Police Violence, and The Counted) and the USA National Vital Statistics System (a medical database) estimated that between 1980 and 2018, 55.5% of all deaths attributable to police violence are not reported ([Lancet, 2021](#)). The number for instances of excessive use of force is likely even higher. Despite this, important efforts like the Citizen's Police Data project based out of Chicago have begun to work on addressing this issue ([Invisible Institute](#), accessed May 2022).

To understand the current state of accountability for police misconduct in Minnesota, we sought to examine data at the department level and state level on complaints, outcomes of investigations, and discipline of misconduct. Where possible, we focused on use-of-force data. Complaint data can tell us how well officers are adhering to the standards from the perspective of the communities they serve. Investigations of complaints can give us some insight into how serious the systems of accountability take the allegations of misconduct. Discipline data can tell us whether back-end procedures of accountability are used to address the misconduct.

Unfortunately, we do not have access to all the data we sought. Thus, **we present a brief snapshot of the data available to the public that point to the complexity, ineffectiveness, and convoluted nature of our current systems of accountability.**



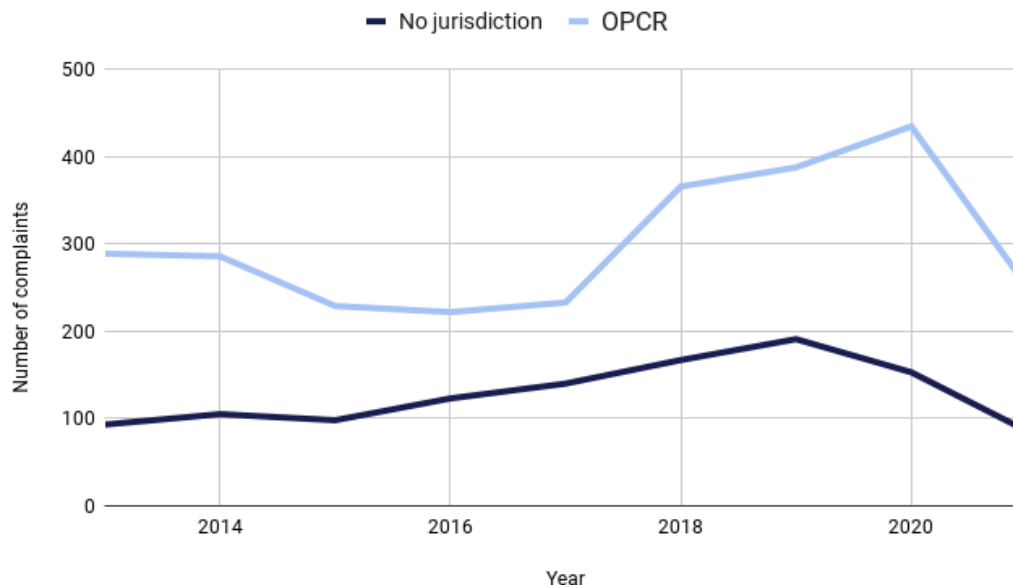
## Adhering to the Standards

As described above, standards of conduct are defined at the department and state level. Data on misconduct varies in scope and detail department-by-department, and across Minnesota few departments release any complaint data to the public. In addition, the data that is available prompts many more questions than answers. However, the volume of complaint data suggests community members are clearly unsatisfied with the ability of the existing front-end department-level standards to hold officers accountable.

### Complaints at the Department-level

Complaint data (our best proxy to explore whether or not individual officers are accountable to the community in meeting standards of conduct) is provided through the Office of Police Conduct Review (OPCR) [dashboard](#) for the city of Minneapolis. The dashboard shows that the OPCR received a total of 4,673 complaints from 2013-2021 (see Figure 4). Looking at the graph, we can see a spike in complaints in 2020, likely connected to the uprising following the murder of George Floyd. A little more than half of these (2,700) are categorized as “MPD complaints”<sup>6</sup> which equates to an average of about 300 complaints per year. These complaint totals raise many questions. Do 300 complaints mean 300 officers are engaging in misconduct or, do a handful of officers receive several complaints? Are these only the complaints that have been processed or all the complaints received? What does “no jurisdiction” (which accounts for around 100 complaints every year) mean? Was the complaint outside of the scope of OCPR, or was the officer outside of Minneapolis, or both?

Figure 4. OPCR complaint data



<sup>6</sup> As opposed to “duplicate” and “no jurisdiction” which make up the remainder of the complaints

Additionally, recall the research shows that misconduct incidents are underreported, and actual misconduct may be anywhere from two to 20-times greater than the data shows. If complaints equate to misconduct, which we recognize is not always the case, this means there may be hundreds if not thousands of instances of misconduct every year, just in Minneapolis alone.

On the OPCR's dashboard, the total complaints filed are not broken up by complaint type. However, another page on the OPCR dashboard that presents data on the joint supervisor decisions about complaints breaks up the complaints by allegation.<sup>7</sup> One allegation category is "excessive use of force" which totals 475 complaints since 2015, which would average about 68 excessive use of force per year.<sup>8</sup> However, we cannot clearly determine the total volume of the complaints related to excessive use of force as the data also includes a catch-all category called "violations of police or procedure" in which community members filed 2,051 complaints, and unjustified use of force is a violation of policy and would likely fit into that category as well. Again, the data raises more questions, and the numbers do not add up. Who categorizes the complaints? What is the standard for excessive use of force as a separate category versus a violation of department policy? The Police Scorecard, a nationwide public evaluation of policing that collects data on non-fatal police use of force incidents and police misconduct complaints,<sup>9</sup> reports 177 use of force complaints from 2016-2020, which would equate to about 35 use of force complaints per year ([Police Scoreboard](#), accessed May 2022).

While data is confusing and incomplete in Minneapolis, it is largely inaccessible across the rest of Minnesota. For example, the City of Duluth does not have a public facing database for the Duluth Police Department (DPD). However, Duluth released an operational assessment of the DPD in 2019 conducted by an outside organization that addressed DPD's existing accountability systems ([Rowe, 2019](#)). In conducting interviews with DPD staff (note, not community members), the report found "a perception of inconsistent internal accountability for staff within the DPD." Regarding complaints, the assessment reports a total of 20 "biased police complaints" from 2015-2018 but noted that "the DPD does not collect outcome data from all law enforcement related contacts." DPD also released its first Complaint Accountability Report summarizing complaint data from 2018-2020 and reported a total of 158 complaints from internal and external sources ([DPD](#), accessed May 2022 ). Furthermore, the Police Scorecard reports 234 civilian complaints of police misconduct, 31 of which were for use of force from 2016-2020 or about 6 per year ([Police Scoreboard](#), accessed May 2022).

Again, these numbers do not add up and are also hard to analyze out of context. What exactly is a "biased police complaint" in Duluth? What is the nature of all the complaints?

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<sup>7</sup> We should note, the total complaints filed (4,763) and total complaints with joint supervisor decisions (4,050) do not add up.

<sup>8</sup> The dates also do not align from one dashboard to the next.

<sup>9</sup> The Police Scorecard sources data directly from police agencies via public records requests, annual reports, and departments' open data sites.

What else is missing from this picture? In comparing complaint numbers in Duluth to Minneapolis, we must consider the population of both cities (the population of Minneapolis is nearly five times the size of Duluth) in addition to the structure of the departments and complaint processes. Somewhere between 6 and 68 individuals from Duluth to Minneapolis have encounters with law enforcement involving excessive use of force.

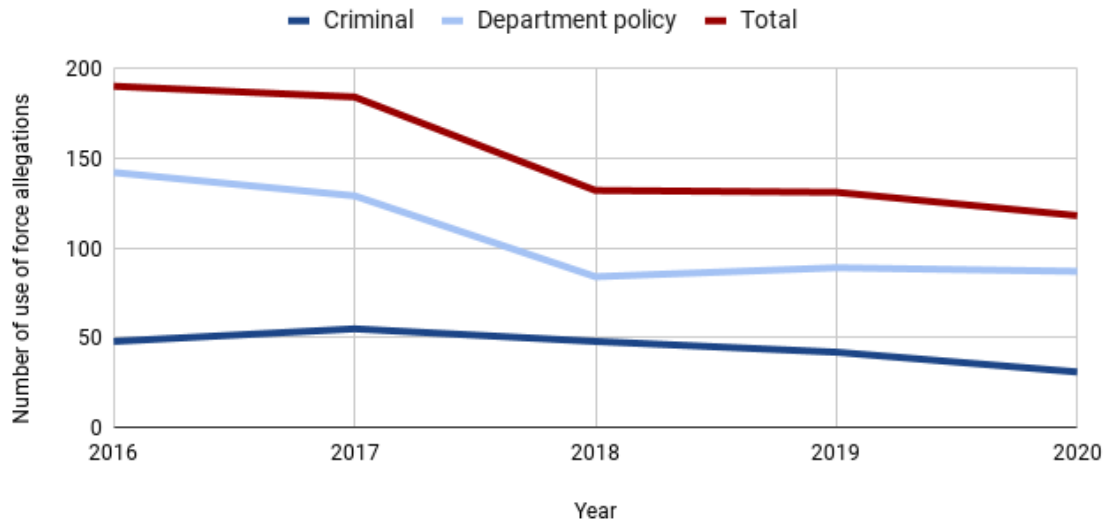
In short, there is limited access to clear data on police misconduct at the department-level, and thus it is hard to determine how the front-end accountability systems function. We can conclude that effective front-end accountability systems with clear standards of conduct would likely not result in hundreds of complaints every year and thousands of complaints over the past decade, but without clear and transparent accountability systems, we cannot fully understand the nature and extent of misconduct.

### Complaint Investigations at the State-level

While local departments offer the first layer of accountability domains for officers, the state also sets standards for conduct. Evidence here shows that the front-end accountability standards for conduct at the state level, based largely on reason, are ineffective as well. Again, we can explore the (also limited) data on police misconduct at the state-level to examine the nature of the problem. Minnesota Statute requires chief law enforcement officers (CLEOs) to annually report summary data “regarding the investigation and disposition of cases involving alleged unprofessional conduct by peace officers based on [the] department’s allegations of misconduct policy” ([Minnesota Statute 626.8457, subd. 3](#)). The CLEO ultimately holds the authority to determine whether complaints are investigated and thus the number of investigations only gives us a sense of the number of instances of misconduct the departments take seriously.

Sourcing data from the state also paints an incomplete picture but can give us a sense of the volume of complaints at the state-level that result in investigations. Using the publicly available data on alleged misconduct available through the [POST Board website](#), we find that, from 2016 to 2020, a total 755 investigations were reportedly launched by departments just around incidents categorized as use of force. This equates to an average of about 150 per year across the state. Since 2016, the number of investigations has dropped somewhat at the state level (despite the number of complaints increasing somewhat over a similar period for the Minneapolis Police Department).

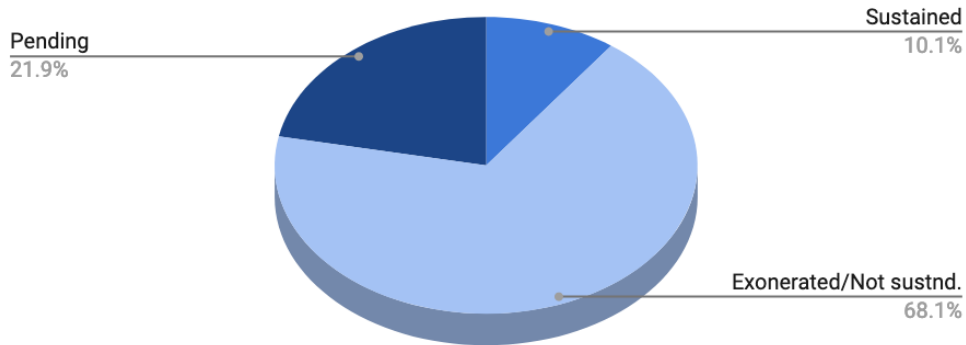
Figure 5. State-wide use of force allegations of misconduct investigations



Of those 755, 70 percent were categorized as violations of department policy related to use of force (see the middle line on Figure 5) and the remaining 30 percent were criminal convictions or alleged criminal misconduct related to use of force (see the bottom line on Figure 5). As with the city-level data, we cannot tell the nature of the use of force investigations. We also do not know, for example, the breakdown by race or geographic region for these investigations as these include all departments across the state of Minnesota. How many of these allegations came from Minneapolis or Duluth?

The data on the outcomes of the investigations is also limited. Again, the [POST Board](#) compiles department data from across the state based on what is submitted to them. Examining the outcomes of investigations from 2016 to 2020, we see that just 10% of use of force investigations in Minnesota were “sustained” while 68% were either “not sustained” or “exonerated.” 22% of the investigations each year are left as “pending.” What is the bar for investigations to be sustained? Recall that these investigations are being conducted at the department level and thus primarily by Internal Affairs and other insufficiently independent bodies. Most importantly, what happens with the near quarter of investigations that are left pending?

Figure 6. State-wide Use-of-Force Allegations of Misconduct Outcomes 2016-2020



Without having access to the data for every department in the state, we can't determine how many of the total complaints are investigated. However, the fact that across the state, around 150 complaints are investigated for officers engaging in excessive use of force points to a problem. The data that we have suggests that misconduct around use of force is happening, but that departments may not be investigating misconduct complaints as frequently as they receive them, and that two-thirds are not sustained or exonerated. The Police Scorecard reports that Duluth Police Department upheld excessive force complaints 16% of the time and the Minneapolis Police Department upheld excessive force complaints 5% of the time ([Police Scoreboard](#), accessed May 2022). Certainly, there are complaints which are unfounded. But for those who have experienced violence via excessive use of force at the hands of a police officer, the numbers may underestimate their reality.

In Minnesota, these standards which provide the front-end accountability mechanisms are somewhat vague, based heavily on reason, and the bar for behavior is quite low. They also vary significantly from department to department. Thus, any efforts to address and improve police accountability must shift the very standards we hold officers to. The extremely limited department- and state-level data suggest that many individual police officers are not adhering to the front-end standards in order to be accountable to the community. The next critical question to examine is: What happens when officers engage in misconduct? What does the data from the back-end procedures that govern disciplinary consequences show?

### Adhering to the Procedures

We next examine data to explore the effectiveness of departmental back-end accountability procedures (with the caveats again that the data we have access to is incomplete and the numbers do not tell a complete picture) by examining disciplinary consequences. The data available again prompts more questions than answers but shows discipline is not frequent.

## Discipline at the Department-level

Using Minneapolis and Duluth again as examples, we find limited access to discipline data and the data we have is confusing. For example, on the same dashboard page, the Minneapolis OPCR database reports a total of 88 cases that received discipline decisions from the chief from 2015 to 2022 but a total of 99 cases of discipline when broken down by discipline type. Which number is it? Furthermore, this would seem to indicate some response to misconduct investigations, on average 15 disciplinary consequences per year. However, comparing these numbers to the complaint data (potentially around 68 per year), it appears there are far fewer disciplinary actions than allegations of misconduct around use of force. In addition, investigations that have access to more data report far lower numbers of disciplinary consequences; one report found only 12 disciplinary actions total since 2012 with the most severe a 40-hour suspension ([Kovaleski, 2020](#)). The Minnesota Department of Human Rights reports that none of the investigative processes in OPCR, Internal Affairs, and Human Resources in the City of Minneapolis “lead to proper investigation of and accountability for race-based policing and find that the city “inconsistently and irregularly disciplines officers for misconduct” ([2022](#)).

Furthermore, officers can appeal disciplinary decisions through a process called arbitration. One study found that between 2014 and 2019, Minnesota arbitrators, a group that hears a range of public service complaints, ruled in favor of terminated law enforcement and correction officers 46 percent of the time, reinstating them ([Gottfried & Horner, 2019](#)). In Duluth, an officer dragged a Native American man in handcuffs and slammed his head into a door, an unreasonable use of force that resulted in his termination (the chief noted several other complaints on his record as well). The decision was ultimately overturned by an arbitrator ([Lee & Befort, 2020](#)). The Minnesota Department of Human Rights finds that few discipline decisions go to arbitration from the Minneapolis Police Department and those that are overturned were done so because of actions or inactions by the City or MPD ([2022](#)).

We can also scan through individual officer files to examine discipline outcomes. Scanning through a few of the hundreds of officers in Minneapolis as examples, we see one instance in which an officer received 16 complaints and no discipline and one instance where an officer received 16 complaints and two disciplinary consequences (a letter of reprimand and a suspension). Digging more deeply into the file, this second officer was in fact charged with domestic assault, fired, and then rehired by the department ([Communities United Against Police Brutality](#), accessed May 2022). Countless stories like this one have been reported (e.g., [Jones & Radnofsky, 2020](#); [Nesterak & Webster, 2021](#)).

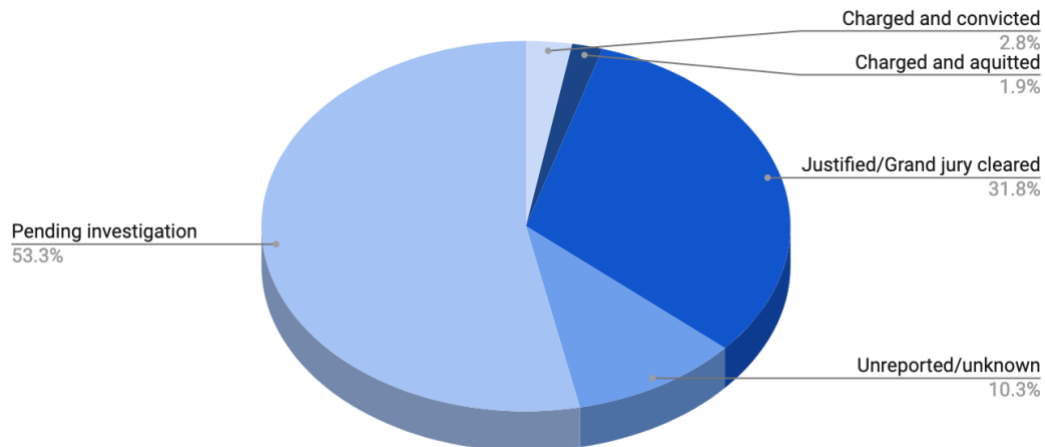
In Duluth, there is no publicly available database on police disciplinary outcomes. The Complaint Accountability report does not include any information about discipline. One article from the CUAPB archives presents the case of a Duluth officer who was criminally charged for shooting an unarmed man and was removed from payroll ([Olsen, 2021](#)).

Ultimately, without clear and non-contradictory data from departments about discipline, we again cannot conclude that the accountability systems are effective.

### Discipline at the State-level

At the state-level, we can use court data and POST Board data to explore disciplinary outcomes. In 2021, the POST Board reported that departments state-wide used a total of four suspensions and one oral reprimand for violations of the use-of-force model policy. When it comes to lethal force, from 2013 to 2021, police officers in Minnesota killed 107 people but over half (63 percent) of the incidents remain unreported or pending investigation ([Mapping Police Violence](#), accessed March 2022). Of the 107, five officers were charged and three were convicted. On the other end, 32 of the killings were ruled as justified and two were cleared by a grand jury. The remaining are either unreported or unknown (11) or pending investigation (57).

*Figure 7. Outcomes of Police Killings in MN from 2013-2021*



Victims of police misconduct most often find restitution through civil litigation. However, the civil court system offers both a lower standard of guilt and an opportunity for departments to settle claims without admitting guilt. In addition, these settlements come at a steep cost to taxpayers. The Washington Post found that the 25 largest cities in the U.S. spent \$3.2 billion to settle police misconduct cases within the past decade. Claims involving officers with multiple misconduct complaints account for more than half of the \$3.2 billion ([Alexander et al., 2022](#)). Cities pass the costs of these settlement payments, including higher insurance premiums, onto taxpayers through tax increases. Despite the high cost, officers still may avoid accountability. Civil settlements do not require departments to acknowledge wrongdoing or to discipline an officer.

Despite the authority to do so, to date the POST Board has rarely used its disciplinary powers. An investigative report found that between 1995 to 2017, the POST Board disciplined only 126

of the approximately 500 Minnesota police officers that were convicted of crimes. These numbers did not include all the officers found to engage in violent misconduct outside of criminal convictions ([Webster & Bjorhus, 2017](#)). Nationally, Minnesota's license revocation rate ranks among the bottom of the 47 states that license peace officers. For example, from 2015 to 2019, Georgia decertified (took away the licenses of) 3,239 officers while Minnesota decertified just 21.

In fact, since 1981, the POST Board has only revoked the licenses of a total of 167 officers ([Minnesota Peace Officer License Revocations](#), accessed February, 2022).<sup>10</sup> Of those 167, 3% percent (five) were for homicide<sup>11</sup> and 7% (11) were for violent crimes (e.g. assault or discharge of a dangerous weapon). The majority of the license revocations were for property crimes (23%) or sex-related crimes (25%). Historically, POST Board revocation of licensure is automatically triggered by criminal convictions. The rules currently read that an officer violates standards of conduct by "being convicted of a felony or gross misdemeanor in this state, or in any other state or federal jurisdiction of an offense that would constitute a felony or gross misdemeanor if committed in Minnesota, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or no contest." In these instances, the revocation decision does not need to go to the Board for review or a final determination. Consequently, a significant portion of the very small number of revocations have actually been automatic.

In sum, the local disciplinary data is incomplete and inconclusive, and the state disciplinary data shows very few instances of back-end accountability.

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<sup>10</sup> Since February, more licenses have been revoked. See [here](#) for updated data.

<sup>11</sup> Three of the five were revoked just in the past three years (Kimberly Potter for the killing of Daunte Wright in 2022, Derek Chauvin for the murder of George Floyd in 2021, and Mohamed Noor for the murder of Justine Damond in 2019).



## Recommendations to Improve Accountability at the POST Board

A review of the evidence leaves us with many questions and a clear need to transform our current systems of accountability for police misconduct. However, meaningful transformation will take time and a continued examination of our values. Immediately, we can turn to the POST Board, which has the authority to address misconduct through its licensing authority and is strengthening its commitment to meaningful accountability. We conclude with four recommendations to improve accountability at the POST Board.

### 1) Collect more and better data

First, the public desperately needs access to more and better data to both fully understand police misconduct and evaluate effective solutions. Many of the policies and procedures in place to hold law enforcement officers accountable to uphold standards of conduct require data collection. Our review of the evidence was based on scattered and often unclear data from departments, and even then, only from the departments where data was available. Research shows the collection and analysis of data on use of force by law enforcement can help to improve community relations and trust, further accountability, and work towards transparency ([James, 2020](#)). To understand how the systems of accountability work, the public needs to know what actually happens when misconduct occurs. The POST Board and departments should collect more and better data.

Law enforcement agencies rightfully argue that police-community interactions are deeply complex, and context is critical for understanding officers' behavior. In their book, *In Context: Understanding Police Killings of Unarmed Civilians*, [Selby, Singleton, and Flosi \(2016\)](#) analyze all the incidents in 2015 where police officers killed unarmed civilians. But even in this exploration, the authors must rely on limited publicly available data, which does not include race, age, gender, officers' past records, or body camera footage. In fact, the key finding of the book is that the public does not have access to sufficient data to truly understand what "reason" might look like in each situation.

The POST Board could begin this process of improving data transparency. For example, it could produce data on the number of agencies that adopt the model policies set by the POST Board, making it possible to better understand front-end accountability. By collecting data on the total number of complaints that the POST Board receives, in conjunction with a full accounting of complaints from departments (including the context surrounding the incidents), the agency would provide a clearer picture of the quantity of alleged misconduct in the community. If the POST Board required and shared more data on the outcomes of investigations of complaints in departments across the state, the public would gain more trust in the back-end accountability process. Analyses of past cases of misconduct in which use of force was deemed reasonable versus when it was excessive may help police departments begin to make their standards of conduct more specific. Critically, the agency's publicly available data must be clear and complete.

## 2) Increase community outreach at the POST Board

By collecting better data, community members can begin to understand the complex accountability systems that exist in Minnesota. As the POST Board is an integral part of the broader system, we recommend that it develop new and better strategies for educating the public about its mission, role, and authority. In part, this report seeks to begin that process. Moving forward, the POST Board must also establish more effective methods for engaging the community, specifically Black and Brown community members and others who are most directly impacted by police misconduct. Education about the POST Board is a critical first step but listening and learning from community members about how police misconduct affects their lives can help the POST Board better serve its mission.

In August 2020, following the murder of George Floyd and the uprising that followed, the POST Board began to overhaul its rules governing the licensing and standards for peace officers in Minnesota ([Minnesota Administrative Rules, Chapter 6700](#)). Buried in its website, the agency put forth a request for comments on the process and launched an Advisory Committee (meetings and materials can be found on the website [here](#)) and a Board Rules Committee (meeting and materials can be found [here](#)). In addition, the POST Board held listening sessions in March 2022 to receive community input (recordings can be found [here](#)). Unfortunately, these opportunities were not well-publicized or accessible to many community members. Moving forward, we recommend the POST Board better involve public input both on its evolution as an accountability body and its process for holding officers accountable.

## 3) Adopt the recent rule changes to strengthen accountability at the POST Board

As of May 5, 2022, the POST Board approved a draft of new rules (the new approved rules can be found [here](#)). Despite being responsible for addressing officers' fitness for licensure and adherence to standards of conduct, the POST Board's acting authority had been previously limited to only hearing misconduct cases involving criminal convictions or unauthorized uses of deadly force. This limited scope of POST Board authority: (1) prevents effective oversight of non-criminal misconduct, (2) sets the standard of culpability to the criminal court standard of "beyond a reasonable doubt," which is higher than the Board is directed to use in state statutes, and (3) fails to hold officials accountable when criminal charges are dropped, dismissed, or pled down. The proposed rule changes allow the POST Board to better align its scope of authority with Minnesota statutes. The rule changes include the following:

- Establish that any conduct that would bar licensure under the minimum selection standards (the basic requirements to become an officer) is a violation of the standards of conduct.
- Add courts and law enforcement agencies as entities that officers may not provide false information to without violating standards of conduct.
- Clarify that any conduct that may lead to the removal of an officer's testimony as a witness in a criminal trial is a violation of the standards of conduct.

- Add unreasonable or excessive use of less-than-lethal force to the current unauthorized use of deadly force standard.
- Add the statutory reporting requirement [Minn. Stat. 626.8475](#) to the standards of conduct, requiring officers to intercede and report in writing within 24 hours to their chief law enforcement officer any inappropriate or illegal use of force used by other officers.
- Require that officers comply with statutory reporting requirements on allegations of bias crimes in [Minn. Stat. 626.5531](#).
- Require that officers report an arrest or criminal charge, or any violation of standards of conduct to the POST Board and their chief law enforcement officer within ten days (instead of 90 days).
- Clarify public employee misconduct as identified in [Minn. Stat. 609.43](#) as a misuse of a peace officer's authority.
- Define and establish discriminatory conduct as a standard violation.
- Establish supporting, advocating on behalf of, or participating in white supremacist, hate or extremist or criminal gangs by licensed officers as a violation of the standards of conduct.

These rules changes allow the POST Board to oversee aspects of officer conduct that are central to their law enforcement duties and increases the POST Board's ability to ensure that law enforcement officers across the state protect the rights of all Minnesotans.

#### 4) Standards of Conduct must include both general *and* specific language

Under the current system, the POST Board has been limited by standards of conduct that have confined officer discipline for convicted crimes. Officers' lawyers can often get courts to plead down charges to misdemeanors, which are outside the scope of an automatic revocation process at the POST Board. For accountability through licensing to work, scholars suggest that standards of conduct must include both general and specific language ([Hanner, 2021](#)). Standards of conduct that are too specific increase the risk that officers' legal representatives can maneuver the complaint around the scope of the POST Board oversight. Overly broad language can create vague and ambiguous standards and inconsistent enforcement. Historically, the POST Board has not acted to address many types of misconduct despite the current vague language in the standards that some argue gives them the authority to do so.

In its recent rules changes, the POST Board has proposed the adoption of both general and specific language to improve its oversight of core law enforcement duties. For example, in the case of excessive force, the POST Board's authority has historically been restricted to the unauthorized use of deadly force. This limitation has prevented the POST Board from addressing allegations of excessive, yet non-deadly, force. However, the approved rules changes have added language to the existing deadly use of force standard of conduct, expanding the Board's authority to cases of "unreasonable or excessive use of force against a person." This rule change expands the POST Board's scope to hold individual officers

accountable for brutal assaults, as in the case of Jaleel Stallings, that cause great bodily injury but no loss of life.

The POST Board is currently facing the challenge of striking a balance between general and specific language and attempting to draw a clear line where the POST Board should address misconduct through licensure. Complaints about officer tardiness or dishonesty, for example, may be best handled by departments and addressed through coaching or internal discipline and not treated as a licensure issue. However, if government agencies continue to allow officers to engage in excessive and unjustified violence, community members will never trust the police. Thus, the more specific the POST Board can be around excessive use of force and violent misconduct, the better they will be able to hold officers to account. Simultaneously, the POST Board must include general language to ensure that officers in individual incidents are not able to litigate their way out of accountability and to ensure that officers who use force in rare cases where it may be necessary to protect public safety are able to continue to serve the community.

#### **5) Adequately staff and fund the POST Board**

The POST Board must be adequately staffed and resourced to carry out its duties. Increasing the political will for the POST Board to act will involve an organizational investment, ensuring that the POST Board has the staffing and resources to investigate and address instances of misconduct effectively.

The recommendations above will also require an investment of resources. For example, creating and maintaining an accessible public-facing database on misconduct and POST investigations will require funding and time. Furthermore, working with and educating the community about the role of the POST Board and how it holds officers accountable through licensure will likely require additional staff. In addition, we recommend that increased resources come with increased transparency so the public can be sure that the POST Board is using funding to actually improve accountability for officers.

## Conclusion

In examining the value of accountability and the current systems of accountability in place in Minnesota, we find a significant need for change. **We explored how systems in Minnesota, at both the department and state level, hold individual officers accountable to standards of conduct around use of force, and respond if officers do not meet those standards.** We found a dearth of data, vague standards, and an ineffective system of procedures for responding when officers use excessive force.

Yet Minnesota has a state agency designed for the very purpose of holding individual officers accountable and identifying clear standards for conduct: The POST Board. As we explored accountability domains and procedures, so much of our current system relies on local departments policing themselves. Throughout this report, we used examples from Duluth and Minneapolis Police Departments, but these are just two cities in a vast state with law enforcement officers throughout. The POST Board has the authority to set clear and consistent standards for officers across the state. The POST Board can raise the bar for conduct to ensure officers are not using unreasonable force and, if they do, has the power to suspend or revoke their license, preventing further harm.

Two years after Jaleel Stallings was brutally assaulted by Minneapolis police officers (and less than a year after Chauvin's conviction of killing George Floyd), on February 2, 2022, a Minneapolis SWAT team executed a forced entry "no-knock" raid, shooting and killing a 22-year-old young man, Amir Locke. Two of the very same officers who beat Stallings were part of that SWAT team ([Winter, 2022](#)). The killing of Amir Locke in Minneapolis marks the 65th officer-involved killing in the Twin Cities metro area since 2013 and the 108th officer-involved killing in Minnesota during that same period. Imagine that, if the officers that assaulted Jaleel Stallings were held accountable for their excessive force, Locke might still be alive today. On April 6, 2022, the Hennepin County Attorney and Attorney General declined to file criminal charges against the officer who killed Amir Locke, determining that the State would be "unable to disprove beyond a reasonable doubt any of the elements of Minnesota's use-of-deadly-force statute that authorizes the use of force" by the officer ([Hennepin County Attorney Office, 2022](#)). Thus, accountability will not be enforced in the courts in this case. Will the POST Board review this case and possibly hold the officer accountable? It could if it approves the recently proposed rule changes.

Community members have been calling for increased accountability for police for decades. In the age of cell phones that can capture police misconduct on video, demands for increased accountability have only grown. The Minnesota Department of Human Rights (MDHR) highlighted several illustrative examples of a pattern of racially discriminatory policing by the Minneapolis Police Department in its recent report, including an instance in which an officer choked a child unconscious for not obeying an order to stand up quickly enough ([2022](#)). Many community members responded to the report by wondering whether and how the officers mentioned in the report's examples have been held accountable for their actions.

The MDHR's investigation focused on the department and patterns and practices of behavior across a ten-year timeframe, not on individual officer accountability. They identified a deeply problematic and violent culture in MPD.

The culture of policing must fundamentally change. Accountability for departments and the system is absolutely critical. However, as community members noted, we must also have transparency and explicitly address the behavior of individual officers. Both organizational culture change and individual behavior changes are essential for a system of law enforcement that communities might begin to trust. This report focuses on the importance of strengthening our ability in Minnesota to ensure individual accountability. The POST Board has the authority and the responsibility to strengthen its accountability system. People's lives and well-being depend on it.

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