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National Police Misconduct Registry

Assertion: A public police misconduct registry will have many of the same serious problems as sex offense registries. Since Sec. 201 of the Justice in Policing Act of 2020 includes the use of a public police misconduct registry, NARSOL opposes it as we oppose all public shaming registries.

Executive Summary

The George Floyd Justice in Policing Act of 2020, H.R.7120 (1) and the Justice in Policing Act of 2020, S.3912 (2) being proposed by House and Senate Democrats in Washington, in response to George Floyd's inexcusable death under the knee of a Minneapolis police officer, include the creation of a public registry for police officers with misconduct or bad behavior. Many parts of this act are useful changes to law enforcement in this country to rebuild public trust, enhance public safety, promote racial equity, and enhance accountability and transparency. However, public registries have been shown to be ineffective for changing desired human behavior, disproportionately affecting minorities and creating harmful collateral consequences to the people on them, their families, and society.

There are methods other than a public registry to prevent police who have been accused or convicted of misconduct from continuing to cause harm. Two examples are (a) a national certification process that all law enforcement personnel are required to have and maintain and (b) a private national database with independent oversight of complaints and disciplinary action against law enforcement personnel that is used only by law enforcement agencies in making employment decisions.

Proposals over recent years have called for increased use of public registries for people who commit undesirable behavior from drunk driving to animal abuse. Those who proliferate registries, attempting to make some people feel safer, are ruining other people's reputations, even their lives, creating new crimes for failing to register, and severely reducing privacy and freedom. They are increasing inequality in our society by creating additional categories of "us" versus "them."

Many of us have participated in protests and marches over the last year with our black and brown friends over the disproportionate impacts of our carceral system, Covid-19, and George Floyd's death. We are as angry as anyone else — our flawed carceral system as a whole needs redressing

NATIONAL ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS

Fighting to restore dignity & constitutional rights to millions

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to rid itself of its race and class prejudices. Playing more of the name, blame, and shame game is a solution only for those who aren't interested in the work necessary for genuine reform.

What is a Registry?

We are members of the National Association for Rational Sexual Offense Laws – NARSOL – who have been directly harmed by U.S. sex offense registries. Academic researchers have studied these registries and found that they do not benefit society. As an organization, we take a stance against all public shaming, dehumanizing registries; therefore, we are against a public police misconduct registry. (3)

Registries are places where information is combined and saved so that it can be accessed later. Registries are often innocuous or beneficial, such as a bridal registry or a registry of voters. However, registries can also be designed or used for harmful or shaming purposes, such as a Communist blacklist. In the U.S., sex offense registries are the most well-known shaming registries. The first sex offense registry, compiled in California in 1947, required people who had been convicted of any of 11 sex offenses to register with the police. (4) Legislators included gay sex among the deviant, sexual practices they identified as dangerous. (5) Sex offense registries became more popular after several high-profile child abductions in the 1990s, with the belief that they would make children safer.

Modern-day sex offense registries are quite different from the early ones. They impose a significant burden for the people on them. Instead of being passive, with information maintained and used by law enforcement, there is public notification, even posting on the Internet, readily available to everyone for shaming and discrimination. Offenses requiring registration have grown – 169 in California now – (6) and some are minor, such as public urination, consensual teenage sex, and sexting. The categories of personal information maintained on each person have increased to include phone numbers, vehicles, car license plates, including family members' cars, email addresses, work addresses, and more. This information often must be reported in person within a few days of it changing. Children who commit “sexual offenses” can be included. There are errors in the information. Even dead people sometimes still show up. Like the rest of the U.S.'s criminal justice system, there is a disproportionate number of black and brown people on registries. (7) It falls on the people listed to maintain their information or suffer severe criminal penalties, sometimes worse than their original sentence, and they often must pay for their own registration. The number of people in the U.S. on sex offense registries has grown to almost a million. (8) A police misconduct registry can be expected to have many of the same problems of accuracy, discrimination, collateral consequences, and an increase in scope over time.

Moreover, people on these registries and their families are hurt. Besides the loss of privacy and the consequence of public shaming, there is discrimination, making it hard to find housing and

employment. There are collateral consequences, such as laws that say if you are on a sex offense registry, you cannot do something, such as work within 1,000 feet of a school or in a particular profession. Even if there is no law, citizens assume that registrants are dangerous and ostracize them. There is vigilantism. People have even been murdered by strangers just because they were on a public sex offense registry. Not only are the people on the registry hurt, but their families, even their children, suffer bullying, shame, and violence. This collateral damage is the same for all shaming registries and will be the same for the police misconduct registry.

A shaming registry might be considered worth it if the harm it caused were more than offset by making the rest of society safer. Research has shown this not to be the case with sex offense registries. A 2011 study compared states both before and after implementing sex offense registries, and there was no measurable decrease in sex offender recidivism after the registries were implemented. (9) The public thinks that because someone is on a registry, the government is saying they are a danger. Likewise, the public will believe that people on the police misconduct registry are bad people who should be avoided. The nuances of accusations versus convictions and learning from your mistakes will not be taken into account.

Despite these problems, the majority of the public *feels* that sex offense registries are helping to keep them safe. (Note: this false sense of security can actually cause a harmful complacency.) Lawmakers, building on this belief, have been suggesting other types of “safety” registries, e.g., animal abuse, domestic violence, child abuse, driving under the influence, drug use, and now police misconduct. Where will this stop? Eventually, everyone in the United States will be on a registry.

What is a Police Misconduct Registry?

We are living in a tumultuous time. New police misconduct videos appear almost daily on any given television channel or social media outlet. It’s practically routine... a police video showing an apparently outrageous police reaction to an unmerited and/or in-existent crime is then followed by hundreds or thousands of people marching and chanting, “No justice - no peace.” But with the most recent incidents of Breonna Taylor, George Floyd, and Jacob Blake – this is different. People want reform, and rightly so. But what should that reform look like? What does society want it to look like? Police reform needs to be an evidence-based, solutions-focused response that can truly bring the needed relief to an overburdened population. In contrast, while not thoughtful or reflective or predictive of collateral consequences, one of the fastest-moving answers is creating a police misconduct registry.

Registries are intended to serve a purpose. With regard to the creation of a police misconduct registry, several reasons are driving its popularity. First, the public wants reform to curb police violence and killings. In particular, over 1,000 people are killed by police action every year, and the most recent numbers show nearly 65% of the victims did NOT have a gun. (10) Second,

communities want a police organization free of racism. The research from “Mapping Police Violence” shows that black and brown people are three times more likely to be killed by police than white people. (11) Lastly, people want police transparency and accountability. If a civilian can be charged and suffer consequences for an action, then that same action done by a police officer should have the same result.

A significant consideration is that there are no standards or consistency from state to state regarding statutes. The same illegal behavior is called different things from Connecticut to California to Virginia. This is hard to understand for the average citizen. Most likely this inconsistency and lack of understanding will also be reflected in a police misconduct registry. What constitutes behavior worthy of being entered in such a registry? Who is the arbiter? What is police misconduct? Taken literally, misconduct simply signifies actions that are unprofessional, improper, or unethical. The deeper meaning to this can be misleading and subjective.

Our Position on Sex Offense Registries

One of NARSOL’s goals is to “. . . advocate for the abolishment of dehumanizing registries as they are ineffective, wasteful, and contradictory to rehabilitation and public safety.” The public listing of people on sex offense registries causes harm, encouraging discrimination in many essential areas of life and even vigilantism to registrants, their families, and innocent bystanders. NARSOL wants a safe society for all. Instead of the enormous amount of money spent maintaining sex offense registries, public safety could be better enhanced by applying more resources to preventing sex crimes in the first place and rehabilitating those who do offend.

Sex offense registries are ineffective at promoting safety for two reasons. The primary reason is that they target the wrong audience. The greatest preponderance of new sexual crime, especially with child victims, is committed by persons who have not entered the criminal justice system and therefore are not on a registry. Only 7% of child abuse victims are abused by a stranger, and not all of those, of course, are persons on the registry. (12)

Registries are contradictory to rehabilitation and public safety. Rehabilitation and restoration require connection with the community, employment opportunities, housing and education, and family and community support. The registry fosters isolation, impediments to jobs and housing, and often separation from family and community. (13) Some municipalities even create laws to push people on sex offense registries out of their communities. (14) Public safety is not enhanced by a system that focuses in the wrong direction, favors retribution over prevention, and makes registrants and their family members targets of vigilante activity.

Unfortunately, because the information is public, for-profit companies take this information and repackage it into what they sell as “safety” products to eager, uninformed people using advertising, such as, “Do you know where the sex offenders/predators/monsters live in your neighborhood?” A few examples are *Score Sense* and *Patch* on-line news with their Halloween maps. There is even

less control of this data, less need for accuracy, adding to the travesty of an already trouble-riddled registry.

The ASPCA, like NARSOL, has concerns about public registries: (a) registries are expensive to institute and maintain, (b) registries have limited reach and are rarely utilized, (c) registries are limited in scope and do not offer real protection for potential victims of animal cruelty, (d) Registries can create a “vigilante” mentality in the public, and (e) other registries (e.g. sex offense) have not been shown to reduce recidivism. (15) This has led the ASPCA to consider alternative approaches.

Our Position on a Public Police Misconduct Registry

The proposed National Police Misconduct Registry (H.R.7120 - 116th Congress (2019-2020), 2020, Sec 201; S.3912 - 116th Congress (2019-2020), 2020, Sec 201) does not fit NARSOL’s vision of a society free from public shaming, dehumanizing registries, discrimination, and unconstitutional laws. NARSOL advocates against the establishment and for the abolishment of all dehumanizing registries as they are ineffective in improving public safety, wasteful, and contradictory to rehabilitation and public safety.

Police misconduct data collection and registries already exist and have proved unsuccessful. (16) The data show thousands of police misconduct violations with very little accountability. (17) Moreover, if we extrapolate and include registries for people convicted of sex offenses, we have over 25 years of data and empirically based studies that prove registries are ineffective. (18) So why would yet another public shaming and dehumanizing registry be any different?

Racial equity is one of the goals of the George Floyd Justice in Policing Act. However, there is every reason to expect that, like sex offense registries, a police misconduct registry will be racially biased. (19)

Another reason we oppose a police misconduct registry is that its stated purpose, transparency, does not seem to provide much benefit. What can citizens do with transparency about police officers’ past conduct? A citizen cannot choose who will stop them or come knocking on the door with a warrant. It seems the only benefit to the public will come after-the-fact when an aggrieved citizen sues a police department for employing an officer with previous offenses.

Like all public registries, a police misconduct registry will harm society by hurting innocent family members and preventing the people on the registry from continuing with their lives and contributing to their potential. Research indicates that “. . . the collateral consequences such as loss of jobs, housing, friends, and continued physical, verbal, and emotional harassment follows offenders [and their families] long after they have served their prison sentences and paid their fines.” (20) Even spouses have lost their jobs because of their spouse’s status on a registry. The stigma and shaming of a public registry can traumatize for a lifetime. As a society, we must learn

compassion, allow for second chances, and not cut the legs off of those who make mistakes. Just because a law enforcement officer reacts badly during the crisis of police work does not mean that he/she is inherently bad. Perhaps this person just needs retraining, a mental health break, or a different line of work.

National registries are also very expensive. SORNA, which is intended to force states into compliance with federal sex offense registry law, was estimated by the Justice Policy Institute to cost states \$488 million to implement in its first year. The expenses of a national police misconduct registry will be paid for by both federal and state governments. Even by conservative standards, many millions in taxpayer dollars will be squandered with no meaningful return. (21) (22)

Keeping data accurate in registries requires a great deal of attention and expense. False information is worse than no information as it ruins people's lives. Bad data can arise in different ways. First, there can be false accusations. In a sex offense registry, this can come from a spurned lover or a child custody battle; in a police misconduct registry, it is not hard to imagine people with an ax to grind against a police officer making a false report. Next, the reporting requirements can be misunderstood. This does not necessarily mean willful non-compliance. Laws are often complex and written in legalese that the average person does not understand. Next, a clerk can make errors entering or transcribing the data. Lastly, information can become out-of-date or obsolete. The person can move, change his name, or die. The person who brought the misconduct charge can retract the statement, but this is unlikely to get entered into the registry.

Why Registries Don't Work

Being experts on the harms and inefficacy of the registry, we know that the sex offense registry is failed public policy. One gentleman was mistakenly placed on the sex offense registry for under an hour, and he lamented rather loudly that his life was over – ruined. We understand that politicians often succumb to knee-jerk and fear-based reactions rather than listening to the overwhelming evidence. These reactions result in bad laws and, at the same time, falsely perpetuate the idea of feeling safe while actually doing nothing to protect anyone.

It would be remiss not to include the Association for the Treatment of Sexual Abusers (ATSA). ATSA is a non-profit, international organization with over 3,000 members, including leading researchers in the study of sexual offense, practitioners who evaluate and treat individuals adjudicated or convicted of sexual offense and those at risk of offending, law enforcement and corrections individuals, victim advocates, public defenders, and members of the judiciary. The ATSA public policy committee recently issued a position paper called "Registration and Community Notification of Adults Convicted of a Sexual Crime: Recommendations for Evidence-Based Reform 2020." Their position paper considers the effectiveness of the sex offense registry and public notification to meet the intended goals of preventing sexual abuse and increasing public safety. It concludes that neither the registry nor public notification achieves these goals. It continues by asking to limit public community notification practices and establish law enforcement

only registries, while at the same time significantly reducing the number of registrants by only including the highest risk individuals. (23)

Conclusion on the George Floyd Justice in Policing Act

We cannot support Sec. 201. However, we too, want law enforcement officers who use minimal force and treat all humanely. There are other ways to ensure that police behave correctly. We prefer ways that prioritize prevention and rehabilitation. One possible solution is a national police certification process that also de-certifies bad actors. The beginnings of this process are in the Justice in Policing Act in Section 202. A certification process is preferable to a registry because it doesn't set up people for public shaming. Instead, it allows them to seek treatment if needed, to work to regain certification, i.e., have a second chance, or to go into a different profession for which they may be better suited without the public stigma following them.

If a national database for police misconduct is deemed necessary, we ask that it be private, with privacy and accuracy safeguards, to be used only by police agencies for hiring and other personnel decisions. Not allowing the records to be public protects law enforcement officers and their families from intimidation, public "doxing," some false accusations, public shaming, and more. This would not be a "registry" in that it is not public, and it does not require the people on it to do anything, such as report their current addresses. One concern, however, with this database of shameful, personal information is that it may gradually morph over time to become public and, like sex offense registries did, become more intrusive as well as more expensive.

We also favor restorative justice processes over punitive measures when possible after misconduct, contingent upon the individual accepting responsibility for his/her actions. Restorative justice helps people learn from their mistakes and helps those hurt to recover and heal, including families and communities.

Our Vision

What is needed is a fundamental rethinking of what justice should look like – what safety should look like. We want police who are peace officers, who will help us when we are in trouble; we don't want police who are militarized law enforcement officers we fear. Our society has been reacting to crime and misbehavior with increasing punitiveness over the last 50 years. This has resulted in mass incarceration and shunning of those that we think of as "bad" or with whom we have conflict. NARSOL instead envisions a society that uses restorative justice to hold accountable people who harm and to repair relationships.

In cases of harm by police, restorative justice would have the officer and those harmed come together in dialog and decision-making for what needs to be done to make things right. This results in a better understanding by the officer of what his behavior has done and also more customized

accountability than pure punishment or incarceration would accomplish.

Restorative justice can also be used to help restore police departments to a place of trust and esteem in the communities they serve. It can do this by bringing members of the police together with those in the community who have been harmed. All voices are heard rather than having others speak for them. Deep listening will improve understanding. Together the police and the community will decide what needs to be done to repair the harm and create a safe community. “Man must evolve or all human conflict a method which rejects revenge, aggression, and retaliation. The foundation of such a method is love.” (24)

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