

MINNESOTA'S POLICE ACCOUNTABILITY ACT: WHAT IT MEANS FOR THE FUTURE OF POLICING

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I. INTRODUCTION

On May 25, 2020, Minneapolis police officer Derek Chauvin and three other Minneapolis police officers arrested Mr. George Floyd after he used a counterfeit \$20 bill to buy cigarettes.² Seventeen minutes after the first squad car arrived, Mr. Floyd was dead.³ All four officers were fired the next day.⁴ Within a week, all four were criminally charged for their roles in Mr. Floyd's death.⁵ Moving forward, I use the term murder to refer to Mr. Floyd's death because Mr. Chauvin was found "guilty of second-degree unintentional murder, third-degree murder and second-degree manslaughter."⁶ I remember the days that followed Mr. Floyd's murder because I was working as a police officer. I was a sergeant with the Saint Paul Police Department. Saint Paul borders Minneapolis and they are commonly known as the Twin Cities.

Within hours of its release, the video of Mr. Floyd's murder went viral on social media.⁷ That night, I saw thousands of people take to the streets and express their rage at the brazen murder of an African American man at the hands of peace officers. I saw many of the businesses in my city looted and burned to the ground during the civil unrest that followed. At one

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² Evan Hill et al., *How George Floyd was Killed in Police Custody*, N.Y. TIMES (last updated Jan. 24, 2022), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html?auth=link-dismiss-google1tap>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Chao Xiong & Paul Walsh, *Derek Chauvin, Convicted of Murdering George Floyd in Minneapolis, is Led Away in Handcuffs*, STAR TRIB. (Apr. 21, 2021, 5:36 AM), <https://www.startribune.com/derek-chauvin-convicted-of-murdering-george-floyd-in-minneapolis-is-led-away-in-handcuffs/600048324/>.

⁷ Nelson Oliveira, *'A Hero': Darnella Frazier who Filmed Viral Video of George Floyd's Murder Credited with Making Guilty Verdict Possible*, N.Y. DAILY NEWS (Apr. 21, 2021, 5:17 PM), <https://www.nydailynews.com/news/national/ny-darnella-frazier-praised-as-hero-for-filming-floyd-murder-20210421-jlziqd3mfvgchdizi57whmkh3r4-story.html>.

point, I was part of a caravan of squad cars that went to Minneapolis to assist their officers. As we drove, we had to dodge cars that were crashed and left in the middle of intersections. Some of these cars were on fire. I heard explosions, roaring fires, and gunshots fired around us. I felt like I was in a war zone. When all was said and done, rioters looted and damaged more than 1,500 locations and caused hundreds of millions of dollars of damage.⁸

The days and weeks following Mr. Floyd's murder were the darkest of my career. I felt helpless. I did not think there was anything I could do to help my community heal. I felt hopeless that anything would improve the way we police in this state. I was torn because I know the bad and the good of policing. I must accept that there are some ignorant, ill-prepared, or brutal people who wear the badge. But I also know there are many dedicated public servants who love their communities and risk their lives to protect the public. Unfortunately, these public servants work within a system that creates unintended harm.

Our country was built as a "racialized system[.]"⁹ A racialized system is a "complex of institutions that produces systemic racial biases and disadvantages."¹⁰ This includes a history of systems that promoted slavery, segregation, racist housing policies, disparate outcomes for many Americans in healthcare and education, voter suppression, mass incarceration, and our current criminal justice system.¹¹ The racialized system that brought about the death of Mr. Floyd can only be changed if multiple institutions are reformed. I agree with President Obama when he said:

It can't just be all on the police. It [has] also got to be on the community. It [has] also got to be on civic leaders. It [has] got to be on churches. It [has] got to be on elected officials to try to create these kinds of conversations before crises happen.¹²

⁸ Josh Penrod & C.J. Sinner, *Buildings Damaged in Minneapolis, St. Paul After Riots*, STAR TRIB. (Jul 13, 2020, 2:45 PM), <https://www.startribune.com/minneapolis-st-paul-buildings-are-damaged-looted-after-george-floyd-protests-riots/569930671/>.

⁹ Brandon Vaidyanathan, *Systemic Racial Bias in the Criminal Justice System Is Not a Myth*, WITHERSPOON INST.: PUB. DISCOURSE (June 29, 2020), <https://www.thepublicdiscourse.com/2020/06/65585/>.

¹⁰ *Id.*

¹¹ See Janice H. Hammond et al., *African American Inequality in the United States*, HBS No. 620-046 (Sept. 2019, revised May 5, 2020), <https://www.utsouthwestern.edu/about-us/assets/harvard-business-school-study-on-african-americans.pdf> (exploring the history of these systems that led to inequality for African Americans in the United States).

¹² Jordyn Phelps, *8 Powerful Quotes from President Obama's ABC Town Hall*, ABC NEWS (July 14, 2016, 7:56 PM), <https://abcnews.go.com/Politics/powerful-quotes->

Law enforcement may be viewed as the current face of our racist past, but we were not the creators of our racialized system. I do not believe our profession is full of racist or brutal officers. However, changing this entire racialized system demands we also improve the institution of law enforcement. I believe our communities deserve and require us to “[p]rotect the peace and maintain public safety through trusted service with respect.”¹³ I believe the most effective and expedient way to achieve these goals is through our legislature. The Minnesota Legislature showed they could bring about meaningful law enforcement reform when they passed *The Minnesota Police Accountability Act* (“the Act”) within weeks of Mr. Floyd’s murder.¹⁴

This article will explore how the Act changed laws that govern peace officers and some of the outcomes from those changes. It will explore how the Act changed the ways peace officers train, use force, investigate officer-involved deaths, self-report, and how they are governed by the Minnesota Board of Peace Officer Standards and Training. This article will also explore some of the outcomes from each of these changes. These include greater community input, transparency, and oversight that will hopefully lead to improved accountability and legitimacy of law enforcement in Minnesota.

II. THE PATH FROM BILL TO LAW

The legislative action to pass the Act began two weeks after Mr. Floyd was murdered. On June 12, 2020, Governor Tim Walz convened a special session of the Minnesota Legislature.¹⁵ One of his main priorities for the session was to pass legislation to promote police reform and accountability.¹⁶ Although no bills were passed to address these issues, Representative Carlos Mariani, from the House Ways and Means Committee of the Public Safety and Criminal Justice Reform Finance and Policy Division, held remote hearings and continued to explore how the legislature could address officer accountability and how doing so would prevent civil unrest.¹⁷ This included comparing the proposals from both chambers of the

[president-obamas-abc-town-hall/story?id=40591539](https://www.abc-tv.com/news/politics/governor-walz-town-hall-story?id=40591539).

¹³ *Police*, CITY OF ST. PAUL, MINN., <https://www.stpaul.gov/departments/police> (last visited Apr. 26, 2021).

¹⁴ *Governor Walz Signs Minnesota Police Accountability Act*, OFF. OF GOVERNOR TIM WALZ & LT. GOVERNOR PEGGY FLANAGAN: NEWSROOM (July 23, 2020), <https://mn.gov/governor/news/?id=1055-441356>.

¹⁵ *Governor Walz Convenes Special Session of the Minnesota Legislature*, OFF. OF GOVERNOR TIM WALZ & LT. GOVERNOR PEGGY FLANAGAN: NEWSROOM (June 10, 2020), <https://mn.gov/governor/news/?id=1055-435517>.

¹⁶ *Id.*

¹⁷ *Police Accountability in Minnesota: Hearing Before the H. Pub. Safety and Crim. Just. Reform Fin. and Pol’y Div. of the H. Comm. on Ways & Means*, 91st Leg., Pub. Info. Sess. (Minn. 2020), <https://www.lrl.mn.gov/media/file?mtgid=1010891>.

legislature for a future law enforcement reform bill.¹⁸

When no bills were passed to address these issues during the first special session, Governor Walz called a second special session to begin on July 13, 2020.¹⁹ On the first day of the second special session, forty-nine days after Mr. Floyd's death, Representative Mariani introduced House File 1 (HF 1) which would later be named *The Minnesota Police Accountability Act* ("the Act").²⁰ Once the bill was read for the first time, it was referred to the House Committee on Ways and Means.²¹ The next day, the Committee recommended the bill be placed on the General Register.²² The bill was only amended slightly²³ before it was signed into law by Governor Walz on July 23, 2020.²⁴

III. CERTAIN CHANGES CREATED BY THE ACT

When the Act was passed into law, it created new statutes and amended others. This article will explore some of these changes. It will focus on changes to the following:

- how peace officers are trained to use force,
- the statutes that govern the use of force by peace officers,
- the process for investigating officer-involved deaths,
- how law enforcement organizations report use of force and misconduct by their peace officers,
- and the role of the Minnesota Board of Peace Officer Standards and Training.

In Minnesota, the term "peace officer" generally refers to "an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest[.]"²⁵ This term includes state and local peace officers we commonly refer to as police,

¹⁸ *Id.*

¹⁹ *Governor Walz Convenes Special Session of the Minnesota Legislature*, OFF. OF GOVERNOR TIM WALZ & LT. GOVERNOR PEGGY FLANAGAN: NEWSROOM (July 10, 2020), <https://mn.gov/governor/news/#/detail/appId/1/id/439786>.

²⁰ Minn. H.J., 91st Leg., 2nd Spec. Sess. 5 (2020).

²¹ *Id.*

²² *Id.* at 20.

²³ *See id.* at 188-212.

²⁴ *Id.* at 343-44.

²⁵ MINN. STAT. § 626.84 (2020).

sheriffs, deputies, and troopers.²⁶ This does not include law enforcement personnel employed by federal agencies like the Federal Bureau of Investigations (FBI) or the Drug Enforcement Agency (DEA). The “board” referenced above is the Minnesota Board of Peace Officer Standards and Training (“the MN POST Board”).²⁷ The MN POST Board has regulatory authority over peace officers in the state of Minnesota.²⁸ In later sections, this article will discuss the powers and duties of the MN POST Board, but it is important to note early on that the MN POST Board plays a significant role in many areas of training, licensing, and standards under the new Act.²⁹

The most common way a person may become a peace officer is to earn a postsecondary degree, successfully complete a Professional Peace Officer Education program, and pass the licensing exam.³⁰ To be eligible to sit for the licensing exam, a person must be a citizen of the United States, possess a valid driver’s license, complete a written application, and submit to a background investigation into their criminal history and conduct.³¹ No one may become a peace officer if they have been convicted of a felony or any of the following crimes: assault, domestic assault, mistreatment of a resident or patient, criminal abuse, criminal neglect, financial exploitation of a vulnerable adult, failure to report, prostitution related crimes, presenting false claims, medical assistance fraud, theft, disorderly conduct by a caregiver, or controlled substance laws.³² The person must submit their fingerprints as part of their criminal background check.³³ The person must pass a medical examination, an oral interview with a licensed psychologist, and a physical strength and agility exam.³⁴ Once a person meets these minimum standards, a chief law enforcement officer informs the MN POST Board they wish to appoint the person as a peace officer, the person applies for a license, the MN POST Board approves the application, then the person become a peace officer.³⁵

²⁶ See *id.* (listing the agencies that have employees included within the definition of peace officer).

²⁷ *Id.*

²⁸ *Id.*

²⁹ MINN. R. 6700.0200 (2020).

³⁰ *Routes to Peace Officer Licensure*, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING (POST), <https://dps.mn.gov/entity/post/becoming-a-peace-officer/Pages/Routes-to-Peace-Officer-Licensure.aspx> (last visited Apr. 26, 2021).

³¹ MINN. R. 6700.0800 (2020).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

A. Changes to How Peace Officers are Trained to Use Force or Avoid Using Force

The Act changed the way peace officers are trained in four ways. First, it required the MN POST Board to create a statewide model policy for the use of force.³⁶ Second, it amended the crisis-intervention training standards to maintain a peace officer license.³⁷ Third, it added training intended to ensure safer interactions with persons with autism.³⁸ Finally, it created a statute that specifically prohibits the use of Warrior-Style training.³⁹ In order to implement these changes, the Act provided six million dollars per year from 2021 through 2023 to “support and strengthen law enforcement training and implement best practices.”⁴⁰ This allocates roughly \$550 per year to train each of the 11,000 peace officers in Minnesota.⁴¹

1. *A Statewide Model Use of Force Policy Required*

The Act required the MN POST Board to consult with interested parties and adopt a model policy on the use of force and use of deadly force by peace officers.⁴² Although “interested parties” is not defined, it would be reasonable to believe these include people and peace officers who seek reform. The model policy was required to “recognize and respect the sanctity and value of all human life and the need to treat everyone with dignity and without prejudice” by implementing three duties on peace officers: (1) to intercede when they are present and observe another officer use force that is clearly beyond what is objectively reasonable; (2) to report any illegal use of force by another peace officer; and (3) to only use deadly force when authorized by statute and after less lethal measures have been considered.⁴³ The Act required the MN POST Board to distribute this model policy to every chief law enforcement officer in the state by September 1, 2020.⁴⁴ Finally, it required every law enforcement agency to update their use of force policy to be identical or substantially similar to the model by December 15,

³⁶ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 17.

³⁷ *Id.* at sec. 21.

³⁸ *Id.* at sec. 22.

³⁹ *Id.* at sec. 14.

⁴⁰ *Id.* at sec. 26.

⁴¹ *Who are Minnesota Peace Officers?*, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING (POST), <https://dps.mn.gov/entity/post/becoming-a-peace-officer/Pages/who-are-minnesota-peace-officers.aspx#:~:text=They%20do%20what%20it%20takes,enforcement%20agencies%20in%20the%20state> (last visited Apr. 21, 2021).

⁴² Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 17.

⁴³ *Id.*

⁴⁴ *Id.*

2020.⁴⁵ On July 23, 2020 the MN POST Board called a special meeting and approved a model policy.⁴⁶ The model policy met the statutory standard and implemented the required duties.⁴⁷

2. *New Required Training*

The amendment to the previously required crisis-intervention training (CIT) added six hours of CIT and mental illness crisis training and four hours of training meant to ensure safer interactions between peace officers and persons with autism.⁴⁸ This training cycle must be repeated every three years.⁴⁹ In order to promote quality training for peace officer on these topics, the MN POST Board is required to consult with the Commissioner of Human Services and mental health stakeholders to create a list of approved entities and training courses.⁵⁰ The training must include techniques for relating to persons with mental illness and their families, crisis de-escalation, techniques for relating to diverse communities and mental illness diversity, how mental illness and the criminal justice system intersect, information about community resources for the mentally ill and their families, and suicide prevention.⁵¹ Importantly, the new law requires each law enforcement agency to keep records of said training and submit those records to the MN POST Board so it may evaluate the effectiveness of the training.⁵² If an officer fails to comply with these licensing requirements, the MN POST Board may seek an injunction to restrain the peace officer from continuing to work.⁵³ The Act appropriated approximately \$140,000 per year for this training.⁵⁴

Separately, the Act created a statute to ensure safer interactions between peace officers and persons with autism.⁵⁵ Once again, the MN POST Board was tasked with preparing learning objectives for the

⁴⁵ *Id.*

⁴⁶ *Special Meeting of the Board Agenda*, MINN. BOARD OF PEACE OFFICER STANDARDS AND TRAINING, (Aug. 17, 2020), <https://dps.mn.gov/entity/post/meetings/meetingminutesdocumentlibrary/Signed%20August%2017%2c%202020%20Minutes.pdf>.

⁴⁷ *Use of Force and Deadly Force Model Policy*, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING, (Aug. 17, 2020, revised Jan. 28, 2021) <https://dps.mn.gov/entity/post/model-policies-learning-objectives/Documents/pdf.pdf>.

⁴⁸ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 21.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.*; accord MINN. STAT. § 214.11 (2020).

⁵⁴ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 35.

⁵⁵ *See id.* at sec. 22; accord MINN. STAT. § 626.8474 (2020)).

training.⁵⁶ It was specifically required to consult with persons with autism, their families, autism experts, and peace officers.⁵⁷ The training minimums include an overview of autism, best practices for intervention and de-escalation, prevention and crisis reduction models, and a review of the tools and technology available.⁵⁸ Unlike the CIT and mental illness training, this training must be completed before a person can be eligible to take the peace officer licensing exam.⁵⁹ Similar to the CIT training, officers must refresh this training at least every three years and failure to do so would allow the MN POST Board to seek an injunction to impose licensing sanctions against them.⁶⁰ Each law enforcement agency must keep records of their training on this subject and these records are subject to periodic review by the MN POST Board.⁶¹ Unfortunately, the Act only appropriated \$8,000 to support this training.⁶²

3. *Warrior-Style Training Prohibited*

Warrior-Style training is defined in the Act and the newly enacted statute as “training for peace officers that dehumanizes people or encourages aggressive conduct by peace officers during encounters with others in a manner that deemphasizes the value of human life or constitutional rights, the result of which increases a peace officer's likelihood or willingness to use deadly force.”⁶³ This definition may render this prohibition useless. It is unlikely providers of training will use language that “dehumanizes” anyone or “deemphasizes the value of human life or constitutional rights.” Also, without a more specific definition or clarification of its terms, this prohibition may be applied in a capricious manner.

Whether a course includes Warrior-Style training is impliedly up to the MN POST Board.⁶⁴ The MN POST Board may not certify any continuing education credits (CEs) for trainings that meet the definition of Warrior-Style training, may not grant CEs to any officer who attends a course that includes Warrior-Style training, and may not reimburse agencies or officers for training that includes Warrior-Style training.⁶⁵ In short, Warrior-Style training will no longer count towards the credits required to

⁵⁶ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 22.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 31.

⁶³ *Id.* at sec. 14.

⁶⁴ *Id.*

⁶⁵ *Id.*

renew a MN POST Board license.⁶⁶ The Act also prohibits any law enforcement agency from providing Warrior-Style training to any peace officer.⁶⁷ An example of Warrior-Style training might be the training of Lieutenant Colonel Dave Grossman from the Killology Research Group.⁶⁸ Minneapolis Mayor Frey banned this “fear-based training” in 2019.⁶⁹ “The warrior style of policing teaches officers to adopt a mind-set that threats are ever present in their daily work.”⁷⁰ Mayor Frey noted, “[w]hen you’re conditioned to believe that every person encountered poses a threat to your existence, you simply cannot be expected to build out meaningful relationships with those same people.”⁷¹

Admittedly, I have not attended Lt. Col. Grossman’s training, so I cannot comment on which part(s) of the training led Mayor Frey to ban it. If the training truly conditioned peace officers to believe every person, they encounter poses a mortal threat, then I understand the problem. If a training truly trains peace officers to dehumanize members of the communities they serve, then there is a problem. On the other hand, if a training merely prepares peace officers to survive violent encounters, then the training is appropriate. Peace officers need training that prepares them to survive violent encounters.

An example of appropriate survival training might be as simple as something I experienced in the police academy. I remember my defensive-tactics training sergeant shouting at me as I grappled with another trainer. The second trainer was much larger and more skilled than I was. I heard my sergeant shouting, “Say it! I will survive! I will survive!” I shouted back, “I will survive! I will survive!” I lost every round against that trainer and was sore for a week, but I never gave up. This training showed me I was tougher than I thought I was. It taught me that I could take a beating for a while and it would not kill me. Most importantly, it taught me to breathe and think while I was in the middle of a fight. It taught me to stay under control while struggling with my adversary.

Peace officers need appropriate survival training. They need it because they are more likely to encounter violence than others. They are more likely to encounter violence because they are called upon daily to stop or address violence. Every officer will encounter situations where there is

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See generally KILLOLOGY RESEARCH GROUP, <https://www.killology.com/> (last visited Apr. 26, 2020).

⁶⁹ Andy Mannix, *Minneapolis to Ban 'Warrior' Training for Police, Mayor Jacob Frey Says*, STAR TRIB. (Apr. 18, 2019, 10:35 PM), <https://www.startribune.com/minneapolis-to-ban-warrior-training-for-police/508756392/>.

⁷⁰ *Id.*

⁷¹ *Id.*

either no time for de-escalation or where de-escalation does not work. In situations like these, a peace officer must be prepared to use an amount of force that is reasonable and necessary to stop a violent actor. A peace officer that is unprepared to respond to resistance or aggression with controlled violence and a determination to survive may be more likely to use unreasonable or unnecessary force.

B. Changes to the Use of Force Statutes and New Duties

Minnesota has two statutes that authorize peace officers to use two different kinds of force; both were amended.⁷² One authorizes the use of force.⁷³ The other authorizes the use of deadly force.⁷⁴ As discussed in section III, the Act required the MN POST Board to create a model use of force policy that included a duty to intercede and report.⁷⁵ The Act concurrently codified these into a new statute.⁷⁶ The statute requires peace officers to intercede if they are able to do so when they are present and observe another employee or peace officer use unauthorized force or force that is beyond that which is objectively reasonable.⁷⁷ It also requires the witnessing peace officer to report this conduct to the violating peace officer's chief law enforcement officer within 24 hours.⁷⁸

A breach of either duty may subject a peace officer to civil sanctions. An example would include a judgment against a peace officer for money damages in an action against him or her for a civil rights violation⁷⁹ or a tort action like battery.⁸⁰ The new statute adds an ability for the MN POST Board to discipline the officer.⁸¹ This could include sanctions like suspending or revoking a peace officer's POST license.⁸²

1. *Authorized Use of Force*

The statute that authorizes the use of force by peace officers and

⁷² See Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 7-10.

⁷³ MINN. STAT. § 609.06 (2020).

⁷⁴ *Id.* at § 609.066.

⁷⁵ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 17.

⁷⁶ See *id.* at sec. 23; accord MINN. STAT. § 626.8475 (2020)).

⁷⁷ MINN. STAT. § 626.8475 (2020).

⁷⁸ *Id.*

⁷⁹ See 42 U.S.C. § 1983 (2019).

⁸⁰ Sang v. City of St. Paul, No. 09-455, 2010 WL 2346600, at *7 (D. Minn. June 8, 2010) (stating if a police officer uses excessive force when physically contacting an individual, he or she may be liable for battery).

⁸¹ MINN. STAT. § 626.8475 (2020).

⁸² *Id.* at § 626.8432.

laypeople alike is Minn. Stat. § 609.06.⁸³ This statute authorizes peace officers to use force in the execution of their duties.⁸⁴ The most significant change to the use of force statute is the addition of a bar on using certain types of restraints unless deadly force is authorized.⁸⁵ These restraints include choke holds, tying all of a person's limbs behind the person's back so they are immobile, and securing a person in a way that results in transporting the person face down in a vehicle.⁸⁶ The Act further defines choke hold as:

a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible, and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Choke hold *also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries*" (emphasis added).⁸⁷

Importantly, the second sentence addresses a carotid restraint that stops blood flow to the brain via the carotid arteries. This is different than a respiratory restraint that restricts oxygen from passing through the windpipe.⁸⁸ A carotid restraint looks like a respiratory restraint⁸⁹ but it uses "a combination of physiological factors to restrict blood flow to the brain which may cause the subject to lose consciousness."⁹⁰

A month before the Act was passed, a similar police-reform bill, also authored by Representative Mariani, referred to this restraint by its trademarked name of Lateral Vascular Neck Restraint® (LVNR®).⁹¹ LVNR® is the number one neck restraint system used by law enforcement.⁹²

⁸³ *Id.* at § 609.06.

⁸⁴ *Id.*

⁸⁵ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 8.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Jack Ryan, *Neck Restraints Choke Holds/Carotid Holds What Law Enforcement Policy/Training Tells us the Medical/Scientific Debate what the Cases Tell Us*, LEGAL & LIAB. RISK MGMT. INST. (Sept. 8, 2020), https://www.llrmi.com/articles/legal_updates/2020_chokeholds/.

⁸⁹ See generally KMBC 9, *Protest Leaders Want KCPD Neck Restraint Technique Banned*, YOUTUBE (July 16, 2020), <https://www.youtube.com/watch?v=tdqITGGYDPo> (explaining and displaying differences between the carotid and respiratory restraints).

⁹⁰ Ryan, *supra* note 89.

⁹¹ H.F. 4, 91st Leg., Spec. Sess. (Minn. 2020).

⁹² *Lateral Vascular Neck Restraint (LVNR®)*, NAT'L LAW ENF'T TRAINING CTR., <http://www.nletc.com/lateral-vascular-neck-restraint-lvnr> (last visited Jun. 14, 2021).

That police-reform bill was not passed. The new language from the Act provides a broader prohibition on neck restraints, but it may require specific messaging to peace officers so they understand the new statute applies to the LVNR®.

2. *Authorized Use of Deadly Force by Peace Officers*

The statute that authorizes peace officers to use deadly force is Minn. Stat. § 609.066.⁹³ The Act added a subdivision labeled “Legislative Intent” to the statute and amended the language for when deadly force is authorized.⁹⁴ This subdivision is unique among Minnesota statutes. In a search of Minnesota’s online statutes, “legislative intent” only appears thirty times.⁹⁵ Of these, only section 609.066 refers to peace officers.⁹⁶ The language and mere presence of the “legislative intent” subdivision demonstrates its significance to our lawmakers and communities. It expresses how concerned our legislators are about the use of deadly force by peace officers. No one wants to see the people responsible for protecting the public take another human life.

The first words of the new subdivision express that the power to use deadly force is an authority “conferred” or bestowed on peace officers by the statute.⁹⁷ It goes on to say this authority must be “exercised judiciously with respect for human rights and dignity and for the sanctity of every human life” and “every person has a right to be free from excessive use of force by officers acting under color of law.”⁹⁸ When I read these words, I heard them say, “Listen! We need you and we need to trust you, but right now, we do not. We cannot be more clear. We demand change.”

The final section states, “peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from

⁹³ MINN. STAT. § 609.066 (2020).

⁹⁴ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 9, 10.

⁹⁵ See *Document Search*, MINN. LEG. OFF. OF THE REVISOR OF STATUTES, (https://www.revisor.mn.gov/search/doc_result.php?search=all&keyword_type=exact&keyword=%22legislative+intent%22&stat=1&stat_year1=2020&stat_year2=2020&stat_chapter=&laws_session1=92&laws_session2=92&laws_chapter=&rule_year1=2021&rule_year2=2021&rule_chapter=&rule_agency%5B%5D=&court_year1=2010&court_year2=2010&court_type%5B%5D=&sreg_vol1=45&sreg_vol2=45) (last accessed Apr. 25, 2021) (revealing 32 returns for a search of “legislative intent” where two returns reference the statute indices).

⁹⁶ MINN. STAT. § 609.066 (2020).

⁹⁷ *Id.*

⁹⁸ *Id.*

peace officers.”⁹⁹ This language supports the earlier provisions for more and improved training for peace officers to protect these communities from unnecessary uses of force by peace officers.¹⁰⁰

The amended portions of the next subdivision, § 609.066 subd. 2, set higher standards for when and how deadly force may be used. Use of deadly force by a peace officer is only justified when necessary to protect themselves or another from a threat of great bodily harm or death.¹⁰¹ Great bodily harm is “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.”¹⁰² The new language expresses requirements that the law enforcement officer¹⁰³ be able to articulate the threat with specificity; that great bodily harm or death is reasonably likely to occur absent the officer’s action; and the threat must be addressed without unreasonable delay.¹⁰⁴ The previous version of this statute authorized use of deadly force in more circumstances by stating the threat only needed to be “apparent” instead of reasonably likely to occur absent the officer’s action.¹⁰⁵

The next paragraph further narrows the authority to use deadly force. This is the “capture clause.” Previously, the statute authorized a peace officer to use deadly force to effect the capture, or prevent escape of a person known to have committed or attempted to commit a crime “involving the use or threatened use of deadly force[.]”¹⁰⁶ This language did not require the suspect to be currently armed or threatening. It could be interpreted to authorize deadly force to capture or prevent the escape of an unarmed suspect simply because a peace officer believed that the suspect recently used or threatened to use deadly force. Now the statute requires that (1) the suspect be a threat, (2) the threat can be articulated with specificity, (3) great bodily harm or death are likely to occur absent the officer’s actions, (4) the threat must be addressed with deadly force without unreasonable delay, and (5) the peace officer believes the suspect will cause death or great bodily

⁹⁹ *Id.*

¹⁰⁰ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 21, 22.

¹⁰¹ MINN. STAT. § 609.066 (2020).

¹⁰² *Id.* at § 609.02.

¹⁰³ *Minnesota Chiefs of Police Association v. Walz*, 2021 WL 2808920 (Minn. Dist. Ct. July 2, 2021). On Dec. 22nd, 2021, this district court concluded that the phrase “by the law enforcement officer” rendered this section of the statute unconstitutional because it violated the constitutional privilege against self-incrimination. It ordered the phrase severed from the statute.

¹⁰⁴ MINN. STAT. § 609.066 (2020).

¹⁰⁵ MINN. STAT. § 609.066, subd. 2(1) (2018).

¹⁰⁶ *Id.*

harm if not immediately apprehended.¹⁰⁷

The final addition to this statute prohibits the use of deadly force in situations where the threat of great bodily harm or death is based on the danger a person poses to himself and no one else.¹⁰⁸ This change supports the Act's themes of narrowing the authority to use deadly force and requiring peace officers to deescalate. The language of this paragraph bases the decision to use deadly force on whether an objectively reasonable officer would believe, based on the totality of the circumstances, that the person was threatening great bodily harm or death to someone else.¹⁰⁹

One example of a situation like this shows how complicated it might be to determine whether someone is a threat to others or just himself. It occurred in Lake Elmo, Minnesota, three years ago.¹¹⁰ On that day, a young man decided to kill himself. He had just lost his job as an emergency medical technician (EMT) and found out his ex-girlfriend had started dating one of his friends. Washington County sheriff's deputies found the man dressed in his EMT uniform, kneeling in a crosswalk, with a pistol in his right hand, and the barrel of the pistol pointing at his own head.¹¹¹ The young man pointed his pistol at deputies at least once during the interaction.¹¹² In this situation, there are many reasons why an objectively reasonable peace officer would believe the young man was a threat to people other than himself, but there are more facts to consider.

One deputy took the lead during this incident. He talked to the young man and tried to convince him to discard his pistol. The deputy said the man was in crisis and he did not want to make him feel cornered or that he was running out of time.¹¹³ The deputy negotiated with the man for about forty minutes.¹¹⁴ He later testified that even though the man pointed a pistol at him that he did not feel threatened.¹¹⁵ The man repeatedly said he did not want to push the deputies into shooting him and even complimented the way they were handling the situation.¹¹⁶ Then the young man began to turn his head to look at the nine deputies that were on scene. These facts show

¹⁰⁷ MINN. STAT. § 609.066 (2020).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Mary Divine, *Washington County Deputy 'Ignored the Law' Prosecutors Say as Manslaughter Trial Begins*, TWIN CITIES PIONEER PRESS (Mar. 11, 2020, 8:59 PM), <https://www.twincities.com/2020/03/11/washington-county-deputy-krook-evans-manslaughter-trial/>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

reasons why a peace officer might believe the young man was not a current threat to anyone else. However, one of the nine deputies did believe he was a threat.

That deputy was Deputy Krook.¹¹⁷ He said, “I’m getting uncomfortable with him turning his head, just so you know.”¹¹⁸ A short time later, while the young man knelt in the crosswalk, Deputy Krook shot him four times.¹¹⁹ He was the only deputy that fired.¹²⁰ Two years later, a jury found Deputy Krook not guilty of manslaughter.¹²¹ This example shows how complex officer-involved deaths can be and how much care should be used when encountering suicidal persons. The statute sets this group apart and now allows officers to disengage in situations where they believe the person is only a danger to himself.

Though most decisions to use deadly force will continue to be complicated, the new version of this statute actually simplifies the way peace officers process these decisions. The decision process is simpler because the new language of the statute is uniform. Each paragraph that authorizes deadly force refers to one set of requirements.¹²² In each situation (1) the suspect must be a threat to someone other than himself, (2) the suspect must pose a threat of great bodily harm or death, (3) the threat can be articulated with specificity, (3) great bodily harm or death are likely to occur absent the officer’s actions, and (4) the threat must be addressed with deadly force without unreasonable delay.¹²³ So the analysis is effectively the same for any situation where an officer may be authorized to use deadly force. This may sound like a lot, but it can be simplified to cover most situations. If I reasonably believe a suspect poses an immediate threat to kill someone and I believe victim will be killed if I do not immediately intervene, then it is likely that I am authorized to use deadly force.

C. Changes to the Way Officer-Involved Deaths are Investigated

An “officer-involved death” is defined as “the death of another that results from a peace officer’s use of force while the officer is on duty or off duty but performing activities that are within the scope of the officer’s law

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Mary Divine, *Sheriff’s Deputy not Guilty of Manslaughter in Lake Elmo Shooting*, TWINCITIES PIONEER PRESS (Mar. 19, 2020, 11:39AM), <https://www.twincities.com/2020/03/19/krook-evans-mn-sheriffs-deputy-not-guilty-of-manslaughter-in-lake-elmo-shooting/>.

¹²² MINN. STAT. § 609.066 (2020).

¹²³ *Id.*

enforcement duties.”¹²⁴ Few police officers are charged with a crime for an officer-involved death.¹²⁵ Of the ones that are charged, only about a third of those officers are convicted.¹²⁶ Of the nearly fifteen thousand people who have died at the hands of police in the last fifteen years, only forty-four officers have been convicted of any crime.¹²⁷ It makes sense that critics would be suspicious if Police Department X was allowed to investigate one of their own officers, Officer Y, in a case of an officer-involved death. It also makes sense that critics would be suspicious if the county attorney of the jurisdiction of Police Department X was in charge of prosecuting Officer Y. The specters of corruption and collusion arise when an organization is allowed to investigate its own members or when they are prosecuted by the organization with whom they work closely.

To avoid situations like this, the original version of the HF 1 provided an amendment to the powers of the attorney general so that “[t]he attorney general has charge of the prosecution of peace officers alleged to have caused an officer-involved death.”¹²⁸ However, this amendment did not make it into the final bill. Even though this language did not make it into the final version of the Act, the Office of the Minnesota Attorney General has prosecuted some cases of officer-involved deaths. For example, Governor Walz transferred the case against Mr. Chauvin to the Attorney General’s office after Minneapolis legislators expressed concerns about the ability of the Hennepin County Attorney’s Office to prosecute the case.¹²⁹ The Attorney General’s office currently has three avenues to appear for the state in officer-involved-death cases.¹³⁰ It shall appear for the state in cases where the interests of the state require it or upon the request of the jurisdiction’s county attorney, and may prosecute any person charged with an indictable offense if the governor makes a request in writing to do so.¹³¹

Although the amendment to the attorney general’s powers did not survive the legislative process, another amendment that promotes accountability and transparency did. This amendment was the creation of an

¹²⁴ MINN. STAT. § 299C.80 (2020).

¹²⁵ Shaila Dewan, *Few Police Officers Who Cause Deaths Are Charged or Convicted*, N.Y. TIMES (last updated Nov. 30, 2021), <https://www.nytimes.com/2020/09/24/us/police-killings-prosecution-charges.html>.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Minn. H.F. 1 sec. 2 (2020), http://wdoc.house.leg.state.mn.us/leg/LS91/2_2020/HF0001.0.pdf (last accessed Apr. 27, 2021).

¹²⁹ Alex Johnson, *Minnesota Attorney General to Take Over Prosecutions in George Floyd's Death*, NBC NEWS (May 31, 2020, 8:12 PM), <https://www.nbcnews.com/news/us-news/minnesota-attorney-general-take-over-prosecutions-george-floyd-s-death-n1220636>.

¹³⁰ MINN. STAT. § 8.01 (2020).

¹³¹ *Id.*

independent use of force investigations unit within the Bureau of Criminal Apprehension (BCA).¹³² This unit's purpose is to investigate officer-involved deaths.¹³³ The BCA is the law enforcement agency for the state.¹³⁴ The "superintendent" is the head of the BCA.¹³⁵ The unit is also charged with investigating all criminal sexual conduct and conflict of interest cases involving peace officers.¹³⁶ The unit employs peace officers and other staff to conduct these investigations.¹³⁷ It is the responsibility of the superintendent of the BCA to develop policies and procedures to ensure there are no conflicts of interest in these investigations.¹³⁸ BCA agents are also peace officers.¹³⁹ Therefore, to avoid an interest conflict and promote accountability, if BCA agents are themselves the subject of an officer-involved death investigation, the county attorney in the jurisdiction where the offense took place will select an agency, other than the BCA, to conduct the investigation.¹⁴⁰

Once the BCA completes an officer-involved death investigation and the data becomes public, the superintendent must make that data available on the BCA website within thirty days of the final criminal appeal.¹⁴¹ By the first of February each year, the superintendent must also report to the Commissioner of the Department of Public Safety, the governor, and the chairs and ranking minority leaders of the committees with jurisdiction over public safety finance and policy.¹⁴² The report must include the following: the number of investigations initiated and investigated, the outcomes and current status of these investigations, how they were charged, the number of plea agreements, and any other information relevant to this unit's mission.¹⁴³ There are BCA agents who were once employed as local peace officers in other jurisdictions. This may cause some critics to believe this is just another example of corruption in the system. However, future investigations will be more independent than previous ones as the investigators are not employed by the same organization as the subjects of the investigations, and should therefore promote transparency and accountability.

¹³² See Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 5; accord MINN. STAT. § 299C.80 (2020).

¹³³ MINN. STAT. § 299C.80 (2020).

¹³⁴ MINN. STAT. § 299C.01 (2020).

¹³⁵ *Id.*

¹³⁶ *Id.* at § 299C.80.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ MINN. STAT. § 626.84 (2020).

¹⁴⁰ *Id.* at § 299C.80.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

D. Changes to the Way Law Enforcement Agencies Report Use of Force and Misconduct

In addition to the changes to how peace officers are trained, changes to the use of force statutes, and the more independent process for investigating officer-involved deaths, the Act promotes transparency and accountability by changing the way law enforcement agencies report the use of force and the misconduct of their employees to outside agencies.

1. *Use of Force Reporting Changes*

In an effort to promote more informed conversations about the use of force by law enforcement, the FBI developed the National Use-of-Force Data Collection and began collecting data on January 1, 2019.¹⁴⁴ The information collected in this data set includes officer-involved deaths, serious bodily injury due to law enforcement use of force, and other cases where peace officers discharge their firearms at humans that do not result in serious bodily injury or death.¹⁴⁵

In 2020, 353 of 473 Minnesota law enforcement agencies participated in providing use-of-force data to this FBI database.¹⁴⁶ This represented 89% of the peace officers in the state.¹⁴⁷ Prior to the Act, reporting this data to the FBI was voluntary.¹⁴⁸ Now, the Act requires all chief law enforcement officers to report this data to the FBI database and to the superintendent of the BCA.¹⁴⁹ Now that this reporting is mandatory, it should change the number of officers represented in the report to the FBI from 89% to 100%. The report from the chief law enforcement officers to the superintendent must be filed once a month.¹⁵⁰ The superintendent is then charged with summarizing and analyzing the information in a report that must be submitted annually to the chairs and ranking minority members of the House of Representatives and Senate committees with jurisdiction over public safety.¹⁵¹ Afterwards, the superintendent must also submit this information to the FBI.¹⁵²

¹⁴⁴ *Crime Data Explorer*, FED. BUREAU OF INVESTIGATION, <https://crime-data-explorer.app.cloud.gov/officers/state/minnesota/uof> (last visited Apr. 28, 2020).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 11; accord MINN. STAT. § 626.5534 (2020).

¹⁵⁰ MINN. STAT. § 626.5534 (2020).

¹⁵¹ *Id.*

¹⁵² *Id.*

2. *Misconduct Reporting Changes*

Prior to January 15, 2021, public data about peace-officer misconduct was submitted to the MN POST Board by the chief law enforcement officer of each agency in an annual summary report.¹⁵³ This report was required to include the investigation and dispositions of alleged misconduct, total number of investigations, the types investigated, and the number dismissed because they were determined to be unfounded or unsubstantiated.¹⁵⁴ Minnesota, though one of the twelve states that treat most police misconduct reports as matters of public record,¹⁵⁵ limits this information to general information like the existence and status of complaints or charges against an employee, irrespective of whether they resulted in disciplinary action, and final dispositions of any “disciplinary action together with the specific reasons for the action and data documenting the basis of the action[.]”¹⁵⁶ As discussed in the next section, after January 15, 2021 this data and other “data that the [MN POST Board] determines is necessary” must be submitted in real time to a new central repository.¹⁵⁷ This deadline was subsequently pushed to July 1, 2021.¹⁵⁸

E. Changes to the Minnesota Board of Peace Officer Standards and Training

As the licensing body for peace officers, the MN POST Board has the power to refuse to issue, refuse to renew, refuse to reinstate, suspend, revoke eligibility, and revoke a peace officer’s license for multiple reasons.¹⁵⁹ This puts the MN POST Board in a unique position to require transparency and accountability from Minnesota peace officers. The legislature recognized this and made multiple changes to the MN POST Board that promote justice.¹⁶⁰ Each of these changes are explored in the following subsections.

As discussed in earlier sections, the Act required the MN POST Board to create and distribute a new statewide model use of force policy. It required the MN POST Board to work with stakeholders to develop learning objectives for newly implemented CIT, mental illness, and autism training

¹⁵³ *Id.* at § 626.8457.

¹⁵⁴ *Id.*

¹⁵⁵ Rachel Moran, *Police Privacy*, 10 U.C. IRVINE L. REV. 153, 175 (2019), <https://scholarship.law.uci.edu/ucilr/vol10/iss1/6>.

¹⁵⁶ MINN. STAT. § 13.43 (2020).

¹⁵⁷ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 20.

¹⁵⁸ Laws of Minn. 2020, 3rd Spec. Sess. ch. 2, sec. 1.

¹⁵⁹ MINN. STAT. § 626.8432 (2020).

¹⁶⁰ *See* Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 12-22.

and it implicitly required the MN POST Board to evaluate the effectiveness of this training. It also required the MN POST Board to ensure no peace officers were granted CE credits for Warrior-Style training and that no law enforcement agency provided Warrior-Style training.

1. *Board Member Positions*

The Act added two members to the MN POST Board.¹⁶¹ The two additions must be appointed from the general public.¹⁶² Now the MN POST Board is made up of seventeen members.¹⁶³ It includes the superintendent of the BCA, or his/her designee, and the following gubernatorial appointees: two sheriffs, four municipal peace officers of which at least two must be chiefs of police, another peace officer, at least one peace officer from the Minnesota State Patrol Association, two current or former peace officers who are full-time employees of a professional peace officer education program, one administrator of a Minnesota college or university that offers professional peace officer education, one elected official from a community with a population under 5,000, and four members from the general public.¹⁶⁴ The addition of two members of the public means the MN POST Board is not guaranteed to have a majority made up of sworn peace officers. The superintendent could preside over a balanced board. It could have eight members who are peace officers and eight who are not. However, at least two of the members who are not peace officers would have to be former officers.

2. *Power to Investigate Licensure Actions*

Section 13 of the Act is short and vague. It says, “[i]f the [MN POST Board] adopts rules to establish a subcommittee to investigate licensure actions, the subcommittee must have . . . ” one board member from the general public and three who are current or former peace officers.¹⁶⁵ As of now, there is no subcommittee to investigate licensure actions. This addition appears to allow the MN POST Board to seek injunctive relief for the failure of a peace officer to meet the requirements of the earlier discussed requirements for CIT, mental illness, autism training, and for failing to intercede and report the unauthorized use of force by other officers.¹⁶⁶

The MN POST Board is currently limited to investigating violations

¹⁶¹ *Id.* at sec. 12.

¹⁶² *Id.*

¹⁶³ *See id.*; accord MINN. STAT. § 626.841 (2020).

¹⁶⁴ MINN. STAT. § 626.841 (2020).

¹⁶⁵ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1. sec. 13.

¹⁶⁶ *Id.* at sec. 21, 22.

of standards of conduct where a person no longer meets one of the requirements to be a peace officer or where someone obtained a peace officer license by fraud or cheating.¹⁶⁷ The MN POST Board may also investigate licensed peace officers in situations where a peace officer was convicted of a gross misdemeanor or felony; failed to report adverse license actions while resolving a complaint or other disciplinary action; was convicted for a narcotics violation; was adjudicated mentally ill and dangerous to the public, incapacitated, chemically dependent, having a psychopathic personality, or being required to register as a predatory offender; was convicted for criminal sexual conduct; was convicted of solicitation, inducement, or promotion of prostitution; or violated an order of the MN POST Board.¹⁶⁸

3. *Creation of a Misconduct Repository*

The Act requires the MN POST Board to create a central repository for data that is both public data and peace officer misconduct data.¹⁶⁹ As stated earlier, this public data is usually limited to the existence, status, and outcomes for complaints of misconduct.¹⁷⁰ The Act appropriated \$3.5 million in 2021 to design, build, implement, and operate the database.¹⁷¹ It appropriated another \$500,000 to this activity for each year thereafter.¹⁷² It appropriated \$96,000 to staff the database in 2021 and another \$128,000 per year thereafter.¹⁷³ The MN POST Board is required to consult with the Minnesota Chiefs of Police Association (MCPA), Minnesota Sheriff's Association, and the Minnesota Police and Peace Officer Association (MPPOA) for this task.¹⁷⁴

There is no mention of whether this repository public data will be available to the public. There is also no mention of whether law enforcement agencies who seek to appoint a person to the position of peace officer will be allowed to access it. Although the MN POST Board will house the repository, it will offer little assistance for future licensing sanctions because the information it gathers will only be the limited public data. It would be more useful to the MN POST Board and hiring agencies if the data included more than the existence, status, and final disposition of complaints.¹⁷⁵ “In 2015, WNYC News published a fifty-state survey summarizing each state’s

¹⁶⁷ MINN. R. 6700.1600 (2020).

¹⁶⁸ MINN. R. 6700.1600 (2020).

¹⁶⁹ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 16.

¹⁷⁰ MINN. STAT. § 13.43 (2020).

¹⁷¹ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 32.

¹⁷² *Id.*

¹⁷³ *Id.* at sec. 34.

¹⁷⁴ *Id.* at sec. 16.

¹⁷⁵ MINN. STAT. § 13.43 (2020).

approach to whether law enforcement disciplinary records are available to the public.”¹⁷⁶ It found misconduct records fell within one of three general categories.¹⁷⁷ They were “confidential in twenty-three states, of [‘]limited availability[‘] in fifteen states, and publicly available in only twelve.”¹⁷⁸ Some states prevent access to virtually all law enforcement misconduct records.¹⁷⁹ Minnesota makes most misconduct records available upon request.¹⁸⁰ If this data is statutorily defined as public¹⁸¹ and much of it can be found online elsewhere,¹⁸² then why not make it available to the public via this new repository?

Communities United Against Police Brutality (CUAPB) is an organization based in the Twin Cities that combats police brutality and abuse of authority.¹⁸³ They spent years creating their own source for police misconduct records by submitting data practices requests to obtain public records about formal complaints about police misconduct.¹⁸⁴ I invite the reader to review the public information, as compiled by the CUAPB, of my misconduct records.¹⁸⁵ The reader will find four complaints that were investigated by Internal Affairs and were closed.¹⁸⁶ That is it; there is nothing more. The responses to CUAPB’s data practices request about my misconduct records provide no facts about the investigations or their outcomes. This limited information does nothing to inform the public or potential employers. It is basically useless.

It would be beneficial for the legislature to add a requirement to reveal more information about police misconduct complaints. Transparency is a way to promote the legitimacy of law enforcement and build a trustworthy reporting system that would encourage trust in the thousands of peace officers in Minnesota. Additional information could be some form of the original complaint against the officer, the misconduct accused, the

¹⁷⁶ Rachel Moran & Jessica Hodge, *Law Enforcement Perspectives on Public Access to Misconduct Records*, 42 CARDOZO L. REV. 1237, 1245-46 (2021).

¹⁷⁷ Robert Lewis et al., *Is Police Misconduct a Secret in Your State?*, WNYC NEWS (Oct. 15, 2015), <https://perma.cc/HG62-NMWS>.

¹⁷⁸ *Id.*

¹⁷⁹ Moran & Hodge, *supra* note 181, at 1246.

¹⁸⁰ MINN. STAT. § 13.43(a) (2020).

¹⁸¹ *Id.*

¹⁸² *Police Complaint Lookup*, COMMUNITIES UNITED AGAINST POLICE BRUTALITY, <http://complaints.cuapb.org/> (last visited Apr. 4, 2021).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See Complaints filed against Eric D. Vang-Sitcler, COMMUNITIES UNITED AGAINST POLICE BRUTALITY, http://complaints.cuapb.org/police_archive/officer/4494/ (last visited Apr. 4, 2021) (revealing four complaints and the minute amount of public data that is available).

¹⁸⁶ *Id.*

officer's response to the allegation, and even what steps were taken to determine the outcomes of the complaint. To further promote accountability and transparency, the MN POST Board should consider making this public data available on their webpage. Alternatively, the MN POST Board could collect more comprehensive, non-public data and use it for limited purposes. These purpose could include sanctioning licensed peace officers or informing law enforcement agency hiring decisions.

4. *Ensuring Police Excellence and Improving Community Relations Advisory Council*

The Act established the Ensuring Police Excellence and Improving Community Relations Advisory Council (the Advisory Council) under the MN POST Board. It has fifteen members.¹⁸⁷ This council is made up of the superintendent of the BCA and the executive directors of the MN POST Board, MPPOA, Minnesota Sheriff's Association, and MCPA.¹⁸⁸ It also includes ten community members.¹⁸⁹ Four of the community members represent the Community-Specific Boards.¹⁹⁰ The Indian Affairs Council, the Minnesota Council on Latino Affairs, the Council for Minnesotans of African Heritage, and the Council on Asian-Pacific Minnesotans are the Community-Specific boards created by statute.¹⁹¹ A significant responsibility of these boards is to inform their respective ombudsperson who has the duty to review "government and government related agencies in an effort to ensure that their practices are fair, reasonable and appropriate."¹⁹²

One community member is a mental health advocate that was appointed by the Minnesota chapter of the National Alliance on Mental Illness.¹⁹³ Another is an advocate for victims that is appointed by Violence Free Minnesota.¹⁹⁴ Each of the final four members are appointed by one of the following: the speaker of the house, the house minority leader, the senate majority leader, and the senate minority leader.¹⁹⁵

¹⁸⁷ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 15.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ MINN. STAT. § 257.0768 (2020).

¹⁹² *About Us*, MINN. OFF. OF OMBUDSPERSON FOR FAMILIES, <https://mn.gov/ombudfam/about-us/> (last visited Apr. 30, 2021).

¹⁹³ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 15.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

The purpose of the Advisory Council is to:

[A]ssist the [MN POST Board] in maintaining policies and regulating peace officers in a manner that ensures the protection of civil and human rights. The council shall provide for citizen involvement in policing policies, regulations, and supervision. The council shall advance policies and reforms that promote positive interactions between peace officers and the community.¹⁹⁶

As such, the Advisory Council submits recommendations to the MN POST Board.¹⁹⁷ Then the chair of the MN POST Board must place these recommendations on their agenda.¹⁹⁸ The Advisory Council meets quarterly and reports to the “chairs and ranking minority members of the senate and house of representatives committees and divisions having jurisdiction over criminal justice policy and the board.”¹⁹⁹ This report includes all the recommendations the Advisory Council presented to the MN POST Board and how that board acted on the recommendation, recommendations for statutory reform and legislative initiatives, and updates on the Advisory Council’s review and determinations.²⁰⁰ At its fourth meeting, the Advisory Council received two recommendations from the community.²⁰¹

a. First Amendment Standard for Public Assembly Response

The Advisory Council first discussed a recommendation received in the form of a letter to the MN POST Board from The Council for Minnesotans of African Heritage.²⁰² The letter called for the MN POST Board to establish a First Amendment Standard for Public Assembly Response to protect the rights of protestors, bystanders, and the media as the trial for Mr. Chauvin approached.²⁰³ The primary concerns were the inadequate accountability measures to protect these rights and the abuse of

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1. sec. 15.

²⁰⁰ *Id.*

²⁰¹ *Ensuring Police Excellence and Improving Community Relations Advisory Council Meeting Agenda*, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING (Feb. 19, 2021), <https://dps.mn.gov/entity/post/meetings/meetingagendadocumentlibrary/Amended%20Meeting%20Materials%202-19-2021.pdf> [hereinafter *Advisory Council Agenda*].

²⁰² *Id.*

²⁰³ *Id.*

participants and the media by law enforcement.²⁰⁴ The coalition called on the MN POST Board to pass a measure to protect First Amendment rights that required peace officers to comply with their existing policies or be subject to discipline; this included the loss of their license to serve as a peace officer.²⁰⁵ The letter said the MN POST Board's authority over licensure is an effective instrument for First Amendment protections.²⁰⁶ The letter also said this authority could help law enforcement leadership who have argued that the current disciplinary appeals process "make[s] it difficult to remove problem officers."²⁰⁷

The letter closed with examples of language the coalition requested the Advisory Council to hear and pass forward to the MN POST Board with its recommendations for a proposed rule change, a requirement for a model policy, and a requirement for each agency to have a policy.²⁰⁸ This language incorporated a grant of power to the MN POST Board to take licensure action against peace officers who violate the new model policy.²⁰⁹ On April 22, 2021, the Advisory Council forwarded and presented the recommendation to the MN POST Board where it was discussed.²¹⁰ On that same day, the MN POST Board voted to develop the recommended model policy for public assembly and protection of First Amendment Rights.²¹¹ At the same meeting the MN POST Board decided to create a Special Committee to review the POST complaint process.²¹²

b. Public Searchable Statewide Misconduct Database

The second recommendation received by the Advisory Council was from the Just Action Coalition.²¹³ The Coalition holds the position that recent police misconduct and crime are a result of an oversight system that

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Advisory Council Agenda, supra* note 206.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Board Meeting Agenda, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING* (Apr. 22, 2021), <https://dps.mn.gov/entity/post/meetings/Documents/Updated%20Board%20Agenda%204-22-21.pdf>.

²¹¹ Dan Gunderson, *Police Standards Board Calls for Changes in Response to Protests*, MINN. PUB. RADIO NEWS (Apr. 22, 2021, 7:59 PM), <https://www.mprnews.org/story/2021/04/22/police-standards-board-calls-for-changes-in-response-to-protests>.

²¹³ *Advisory Council Agenda, supra* note 206.

focuses on discipline rather than prevention.²¹⁴ They believe law enforcement agencies can improve oversight via their recommendation for a more coherent and uniform system.²¹⁵ In part, they recommend a mandated report for every time an officer unholsters a firearm.²¹⁶ This report must include the gender, race or ethnicity, height, weight and other obvious physical details about the subject in question.²¹⁷ It must also include why the officer felt the need to draw the firearm, whether the subject was armed, and whether the officer saw a weapon.²¹⁸ Then, the subject may file a complaint with the law enforcement agency.²¹⁹ The recommendation creates three tiers of complaints and classifies certain complaints as substantial.²²⁰ The tiers are classified as Level 1 Red, Level 2 Yellow, and Level 3 Blue flags.²²¹ A substantial complaint is one made by the subject or someone who was physically present during the interaction.²²²

Level 1 Red Flag complaints involve an interaction where an officer drew a firearm and there was excessive force, racial bias, socioeconomic bias, or bias based on disability.²²³ These also include bias based on gender, gender presentation, sexuality, perceived sexuality or where there is sexual exploitation.²²⁴ All Level 1 Red Flag complaints require the “department of origin” to initiate an internal investigation and to forward a copy of the complaint to the MN POST Board for review.²²⁵ Level 2 Yellow Flag complaints include when an officer breaches the Act’s duty to intercede and report or fails to intervene where they witnessed a Level 1 offense.²²⁶ These also include interactions where an officers abuses power for personal gain, unlawfully searches and/or seizes property without probable cause, or unlawfully questions about citizenship.²²⁷ A violation of this sort that is factually supported by an officers body camera footage requires an internal investigation with the intention of drawing a punitive conclusion.²²⁸ Level 3 Blue Flag complaints shall be recorded in the officer’s file but do not

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Advisory Council Agenda, supra note 206.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Advisory Council Agenda, supra note 206.*

require an internal investigation.²²⁹ These complaints include complaints that do not fall under the previous two types, where there is insufficient evidence, or there is inconclusive body camera footage.²³⁰

The MN POST Board review process will be used to identify and distinguish whether trends may be addressed by the agency or require the legislature to address them.²³¹ For this type of review, the department of origin shall send all the officer's previous complaints, the current complaint, the body camera footage, the results of the internal investigation, the officer's report, and any other pertinent evidence.²³² This recommendation does not request the MN POST BOARD to be empowered to execute punitive punishment but grants them the power to strip an officer of their license.²³³ This review shall be included in the MN POST Board's annual report to the legislature and then released to the public.²³⁴

The recommendation continues by requiring an annual public meeting where the mayor, chief of police, and other ranking law enforcement personnel are required to attend.²³⁵ These meetings must allow for at least one hour of community questioning for every 250,000 persons per community with a minimum of one hour.²³⁶ The purpose of the meeting is to explain all Level 1 Red Flag reports.²³⁷ In an attempt to promote transparency, this recommendation concludes with the call for a public searchable database to document all complaints.²³⁸ The database should include the name, a photo of the officer, badge number, department, branch of law enforcement, and all verified complaints against the officer.²³⁹

At the April 16, 2021 MN POST Board meeting, the Board met with stakeholders to begin development of their misconduct repository.²⁴⁰ The Board estimated that the repository would be operating by July 2021.²⁴¹ In November 2021, the Board completed their user guide for the misconduct report database.²⁴² The database is live but may only be accessed by law

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Advisory Council Agenda, supra* note 206.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Mike Meehan, *What's New? Evolving Training Standards for Mandatory Continuing Education*, MINN. BD. OF PEACE OFFICER STANDARDS AND TRAINING (POST) <https://dps.mn.gov/entity/post/Pages/default.aspx> (last visited Apr. 30, 2021).

²⁴¹ *Id.*

²⁴² *Post Misconduct Reporting*, MINN. BD. OF PEACE OFFICER STANDARDS AND

enforcement officials.²⁴³ The database allows law enforcement agencies to submit reports of misconduct to the MN POST Board in real time.²⁴⁴

IV. CONCLUSION

The civil unrest that followed the murder of Mr. Floyd sparked a movement toward meaningful changes to law enforcement in the State of Minnesota that culminated with the passage of *The Minnesota Police Accountability Act*.²⁴⁵ The Act changed the rules for how peace officers, law enforcement agencies, and the MN POST Board are held accountable to the people of Minnesota. The Act repealed, amended, and created new statutes that change how peace officers are trained to use force, respond to crises, and interact with persons with mental illness and autism.²⁴⁶ It empowered the MN POST Board to create a statewide model use of force policy and required every law enforcement agency to adopt a same or substantially similar policy.²⁴⁷ This change specifically prohibited choke holds²⁴⁸ and banned Warrior-Style training that “dehumanized” or “deemphasized the value of human life.”²⁴⁹ It amended the statutes that authorized the use of force and deadly force in a way that sent a clear message to peace officers that this authority has been narrowed and is on the front of the minds of the legislature.²⁵⁰ It created new duties for peace officers to intercede when they see other peace officers use unauthorized force, report the use of unauthorized force, and to consider less lethal measures before using deadly force.²⁵¹

The Act promotes accountability by creating a new independent unit within the BCA to investigate officer-involved deaths and other significant crimes and requires the superintendent to report these outcomes to the legislature.²⁵² It further promotes accountability by requiring law enforcement agencies to report to the FBI’s National Use-of-Force Data Collection²⁵³ and misconduct to the MN POST Board’s repository of

TRAINING (POST), <https://dps.mn.gov/entity/post/Pages/misconduct-reporting.aspx#search=database%20user> (last visited Jan. 27, 2022).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Minn. H.J., 91st Leg., 2nd Spec. Sess. 5 (2020).

²⁴⁶ Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 21.

²⁴⁷ *Id.* at ch. 1, sec. 17.

²⁴⁸ *Id.* at ch. 1, sec. 8.

²⁴⁹ *Id.* at ch. 1, sec. 14.

²⁵⁰ *Id.* at ch. 1, sec. 7-11.

²⁵¹ *Id.* at ch. 1, sec. 17.

²⁵² Laws of Minn. 2020, 2nd Spec. Sess. ch. 1, sec. 17.

²⁵³ *Id.* at ch. 1, sec. 11.

misconduct data.²⁵⁴ Finally, it promotes accountability by empowering the MN POST Board, its councils, and committees to impose licensure sanctions, recommend future changes to law enforcement, and create future approved statewide model policies.²⁵⁵

Our communities deserve and require us to “[p]rotect the peace and maintain public safety through trusted service with respect.”²⁵⁶ This comprehensive act has created a path that improves accountability and transparency which may promote trust in law enforcement. Hopefully, it will prevent many officer-involved deaths and begin to heal the relationship between law enforcement and the communities we serve.

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²⁵⁴ *Id.* at ch. 1, sec. 16.

²⁵⁵ *See id.* at ch. 1, sec. 13, 15, 17, 20-22.

²⁵⁶ CITY OF SAINT PAUL, POLICE, (last visited Apr. 26, 2021, 2:42 PM) <https://www.stpaul.gov/departments/police> (internal quotation marks omitted).