

ACLU

West Virginia



**POLICE
MISCONDUCT
REPORT 2020**



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INTRODUCTION

Over the past decade public awareness of police misconduct has grown. High profile incidents have become regular news stories and have garnered attention on social media. These are stories of the police killing unarmed citizens, and all too often they are Black or other people of color. But there are countless stories involving other forms of misconduct and violence. These have led to public demonstrations and civil unrest, as well as an erosion of trust between communities, particularly marginalized communities and law enforcement.

West Virginia has not been spared these incidents. In 2013 in Berkeley County, a Black man was shot 22 times.¹ In 2018, a 16-year-old was severely beaten by State Police outside Martinsburg.² Police in Westover are facing a federal lawsuit for beating a Black man in 2019.³ Also in 2019, Charleston Police came under fire for officers repeatedly punching a restrained woman.⁴ These are only a sample of incidents in West Virginia. A two-part exposé by the Charleston Gazette Mail revealed a pattern of allegations of misconduct not being prosecuted but eventually leading to civil suits and settlements.⁵

Despite these incidents, there is no comprehensive review of police conduct in West Virginia.⁶ It is unclear how many use-of-force incidents occur,

how often misconduct is alleged, or the outcome of internal reviews. There is no publicly available department-by-department assessment of what tools, trainings, or policies have resulted in lowering incidents of police violence and complaints.

This report attempts to address these questions. It is not a comprehensive study. Low response rates and a lack of data from responding agencies makes it very unlikely that estimates of aggregate data would be accurate.

Instead, this report will focus on information that establishes a minimum estimate of use-of-force incidents and allegations of misconduct. It can provide a baseline for future studies and makes some basic recommendations based on the available data.

This study is not anti-police. It does recognize that every use-of-force incident is violence perpetrated by agents of the state. It recognizes that, even when permissible by law and policy, these incidents constitute significant violations of our most basic rights. It recognizes that complaints against police demonstrate a feeling of being wronged even when the alleged actions were not found to be misconduct, and that these perceptions erode community trust. It recognizes that certain

1 Jeff Jenkins, U.S. appeals court says jury should hear excessive force allegations against Martinsburg police, MetroNews, June 11, 2020, <https://wvmetronews.com/2020/06/11/u-s-appeals-court-says-jury-should-hear-excessive-force-allegations-against-martinsburg-police/> (last visited Sep 22, 2020).

2 Jeff Morris, Dashcam video shows alleged beating of teen by officers in Martinsburg, W.Va., arrest, WCHS ABC 8, March 21, 2019, <https://wchstv.com/news/local/dashcam-video-shows-alleged-beating-of-teen-by-officers-in-martinsburg-arrest> (last visited Sep 22, 2020).

3 Dave Wilson, Westover Police accused of using excessive force in federal lawsuit, MetroNews, August 5, 2020, <https://wvmetronews.com/2020/08/05/westover-police-accused-of-using-excessive-in-federal-lawsuit/> (last visited Sep 22, 2020).

4 Lacie Pierson, 'She is a victim': Parents of woman in Charleston police arrest video want officers held accountable, Charleston Gazette Mail, October 24, 2019, https://www.wvgazette.com/news/kanawha_county/she-is-a-victim-parents-of-woman-in-charleston-police/article_627ee473-aa4b-513b-9193-efa6307dc6f8.html.

5 Jake Zuckerman, WV State Police says trooper sexually assaulted 2 women; he was never charged, Charleston Gazette Mail, November 22, 2020, https://www.wvgazette.com/news/legal_affairs/wv-state-police-says-trooper-sexually-assaulted-women-he-was/article_a6133ed1-f242-5853-a529-2db456453c0c.html (last visited Sep 22, 2020), & Jake Zuckerman, WV troopers are cleared by internal reviews, then taxpayers spend millions settling the lawsuits, Charleston Gazette Mail, November 23, 2020, https://www.wvgazette.com/freepass/wv-troopers-are-cleared-by-internal-reviews-then-taxpayers-spend/article_983b3b50-1c06-58c1-aefb-f8f98c628734.html (last visited Sep 22, 2020).

communities are much more likely to experience violence and misconduct. And it recognizes that official statistics do not capture every lived experience.

THESE INCIDENTS CONSTITUTE SIGNIFICANT VIOLATIONS OF OUR MOST BASIC RIGHTS

We hope this report may help reduce use-of-force and misconduct incidents. It seeks to reduce misconduct by ensuring that it is reported and met with an appropriate response. It seeks to examine what effect training and discipline have on violent tactics and misconduct. It seeks to explore policies that can rebuild mutual trust between communities and police.

Ultimately, the data provides interesting insights, but it is also subject to various interpretations. Further research will be necessary to make more concrete findings. Nonetheless, there are recommendations from the available findings.

Standardized and mandatory data collection is essential for evidence-based policy decisions, and is also crucial for creating transparency. Police need to emphasize better communication with the communities they serve, and ensure community input informs use-of-force policies. There must be more emphasis on making complainants feel heard and protected. This report concludes by acknowledging additional research will be necessary to fully understand the scope of policing in West Virginia and the effects of various policy decisions.

METHODOLOGY

Under the West Virginia Freedom of Information Act⁷, records requests were sent to law enforcement agencies, the clerks of the courts for all 55 counties (comprising 31 circuits), and to the city attorneys for the 15 largest cities in West Virginia by population.

The information requested from law enforcement agencies was:

1. The number of officers on the force on:
 - January 1, 2015
 - June 1, 2015
 - January 1, 2016
 - June 1, 2016
 - January 1, 2017
 - June 1, 2017
 - January 1, 2018
 - June 1, 2018
 - January 1, 2019
 - June 1, 2019
2. The number of complaints for officer misconduct received per year from January 1, 2015 to December 31, 2019.
3. The number of officers that have been the subject of complaints for each year from January 1, 2015 through December 31, 2019.
4. The number of use-of-force incidents for each year from January 1, 2015 to December 31, 2019.
5. The number of internal reviews for each year from January 1, 2015 to December 31, 2019 including:

⁶ The last comprehensive look at police misconduct was conducted in 2004. That report was primarily qualitative, with only a cursory quantitative analysis of State Police disciplinary outcomes. West Virginia Advisory Committee to the U.S. Commission on Civil Rights, *Coping with Police Misconduct in West Virginia: Citizen Involvement in Officer Disciplinary Procedures—A Review of Existing Law, Legislative Initiatives, and Disciplinary Models* (2004), <https://www.usccr.gov/pubs/sac/wv0104/main.htm>.

⁷ W.Va. Code §29B-1-1 et seq.

- Reviews initiated by civilian complaint
- Reviews initiated internally

6. The number of disciplinary actions, broken down by the type of disciplinary action taken for each year from January 1, 2015 to December 31, 2019.

7. Any extra training required by your agency above and beyond the minimum state requirements required for officers on the force.

The requests for the court clerks was:

1. From January 1, 2015 through December 31, 2019, the number of cases filed in your court where a police department, sheriff's office, or other law enforcement agency was a defendant.

2. Of the cases described in (1) above, the number of cases where there was a final judgement in favor of a plaintiff (against a law enforcement agency).

3. Of the number of cases described in (1) above, the number of cases where there was a final judgement in favor of the defendant (for a law enforcement agency).

4. Of the cases described in (1) above, the number of cases dismissed on procedural grounds.

5. Of the cases described in (1) above, the number of cases settled out of court.

Data requests for city attorneys included the following requests:

1. The number of payments pursuant to a judgment or settlement agreement in civil suits against [municipal] police per year from January 1, 2015 to December 31, 2019.

2. The amount paid in judgments or settlements for

suits described in item (1) per year from January 1, 2015 to December 31, 2019.

Every request included an acknowledgment that the West Virginia Freedom of Information Act does not require agencies to generate reports. Agencies were notified that while aggregate numbers were requested and might be easier to provide, all records and documents providing information relevant to the question would be accepted.

The data requests were initially emailed to any agency with a listed e-mail address. Hard copy requests were mailed to all other agencies and those that had not responded. Follow-up emails and calls were made several times as information was being compiled.

Information was entered into a database as it was provided. Several responses were received during the composition of this report. That data has not been updated in the report, however it is generally consistent with the findings herein.

It was anticipated that between non-responsive agencies and agencies that did not have the requested information, the data would be insufficient to make confident findings regarding the overall level of sworn officers in the state, use of force incidents, or misconduct.

Available data was aggregated to create a baseline floor. Certain correlations and ratios were calculated by aggregating available data, while eliminating data sets that were incomplete. In some cases simple regression and correlation analysis were possible. Finally, the data allowed for comparisons between responsive agencies.

In addition to quantitative data, interviews were held with several individuals to provide context. The interviews primarily focused on individuals

who were active in advocacy around policing issues, and who were from or worked with communities most likely to have adverse experiences with police. Geographic diversity was also emphasized in choosing interviewees.

GENERAL RESULTS

Records-Keeping and Response Rates

Records requests were sent to 275 law enforcement agencies in West Virginia. Of those, 156 provided responses.⁸ Of the responses, 16 indicated there was no law enforcement agency or officers and 31 agencies provided information that was incomplete but responsive to at least half the queries. Excluding inactive departments, this is a response rate of 54 percent. 22 percent of responding departments did not have or maintain records on a substantial portion of the data requested.

ONLY 21 OF 55 SHERIFF’S OFFICES RESPONDED TO THE RECORD REQUEST

Only 21 of 55 sheriff’s offices responded to the record request. Large municipalities were more likely to respond to the request than small municipalities. Similarly, large municipalities and large and extra large departments, as defined below, were more likely to have data to more fully respond to the request.

Of the 15 cities asked to provide data on lawsuits and settlements, four did not respond. Only 17 of the 55 court clerk data requests received responses. While Covid-19 and communication issues were barriers, the overall response rate was unacceptable for a process that is mandatory.

SIZE Categories

For the purposes of this report, law enforcement agencies were broken down into size categories. “Small” departments had fewer than five members and comprised 33 percent of total respondent agencies. “Medium” departments employed between

Size of Respondent Departments

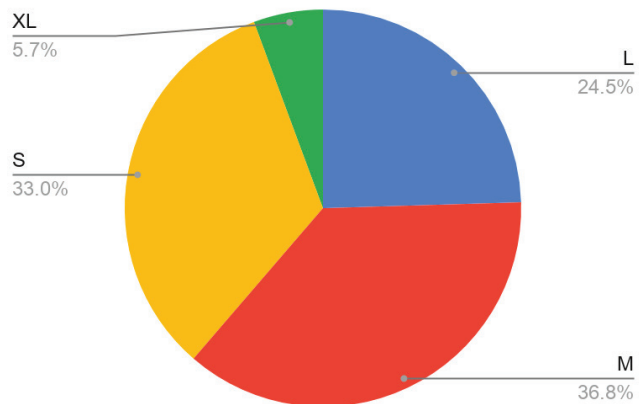


FIGURE 1

five to 15 members and comprised 36.8 percent of respondents. “Large” departments had at least 15 and fewer than 60 members. They composed 24.5 percent of respondent agencies, and 5.7 percent of respondent departments had more than 60 members. This group is categorized as “XL” and includes three police departments and three statewide law enforcement agencies. Figure 1 provides a breakdown of respondent departments by size grouping in the categories described above.

As shown in Figure 1, a significant majority (70 percent) of West Virginia’s law enforcement agencies have fewer than 15 officers. From 2015-2019, the average department size was approximately 15 officers. The median department size, which eliminates large and small outliers, was only seven officers.

⁸ Three additional responses were received during the drafting of this report. Those responses were not incorporated into the data and analysis.

According to the 2008 census, there were 3,382⁹ sworn police officers in West Virginia. In the present study, responding agencies accounted for 1,579 officers. The data did not demonstrate any clear trends in the overall number of officers increasing or decreasing. Most departments did not have any significant changes in size over the time period measured. Notable increases occurred in Charleston (125 officers in 2015 and 162 in 2019) and with the Capitol Police (19 officers in 2015 and 30 in 2019). Huntington was notable for shrinking from 107 officers in 2015 to 92 officers in 2019.

All sworn law enforcement officers must complete state-mandated minimum training requirements. “Upon completion of their entry level Academy training, certified officers are required to complete in-service training. The amount of training and time frame in which it must be completed is based on their rank. All officers, regardless of rank, are required to complete sixteen (16) hours of annual level in-service each year. The yearly training period runs on a fiscal year from the 1st of July to the 30th of June. Officers with the rank of Sergeant and above are required to complete an additional eight (8) hours of supervisory level in-service within a two year training period. The two year period runs on a continuous cycle regardless of when a promotion occurred.”¹⁰

Every agency also requires semi-annual firearms qualifications: “It is the responsibility of each law enforcement agency to require, at a minimum, semi-annual firearms qualifications of all active members, one of which will be a low light firing for qualification.”¹¹

Extra Training Required in Respondent Law Enforcement Agencies

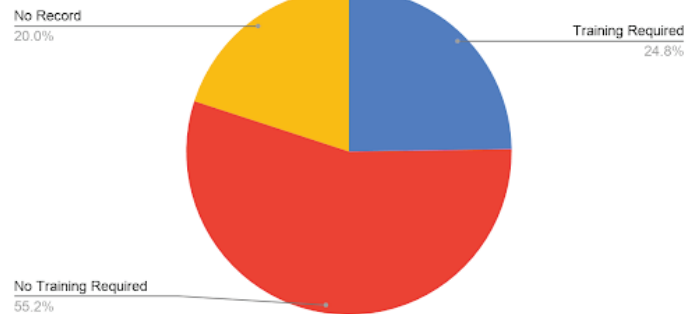


FIGURE 2

Amount / Type of Extra Training

While all departments are assumed to meet the minimum state requirements for training, only 31.0 percent of departments who provided records require training beyond this minimum. Figure 2 shows the total breakdown of respondent departments, including departments classified as providing no record in answer to inquiries about training. This category includes both departments who did not keep or refused to disclose the relevant records and departments who did not answer or acknowledge the question.

Based on the responses received the most common form of training was to be weapons-based instruction. Other common subjects included forensics, report-writing, case law, and specialty interviewing skills. Of the departments that provided records, 4.9 percent required de-escalation training. 3.7 percent required some kind of bias or diversity training, and 4.9 percent required mental health training. “Mental health training” here refers to any training with a discernible focus on mental health including both training focusing on the

9 2008 Census of State and Local Law Enforcement Agencies, by Brian A Reaves, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 2011

10 West Virginia Department of Military Affairs & Public Safety: Division of Justice & Community Services “Commonly Asked Questions” <https://djcs.wv.gov/law-enforcement-professional-standards/Pages/CommonlyAskedQuestions.aspx#:~:text=All%20officers%2C%20regardless%20of%20rank,to%20the%2030th%20of%20June.>

11 Ibid.

Percentage of Respondent Law Enforcement Agencies Requiring Extra Training Broken Down by Type

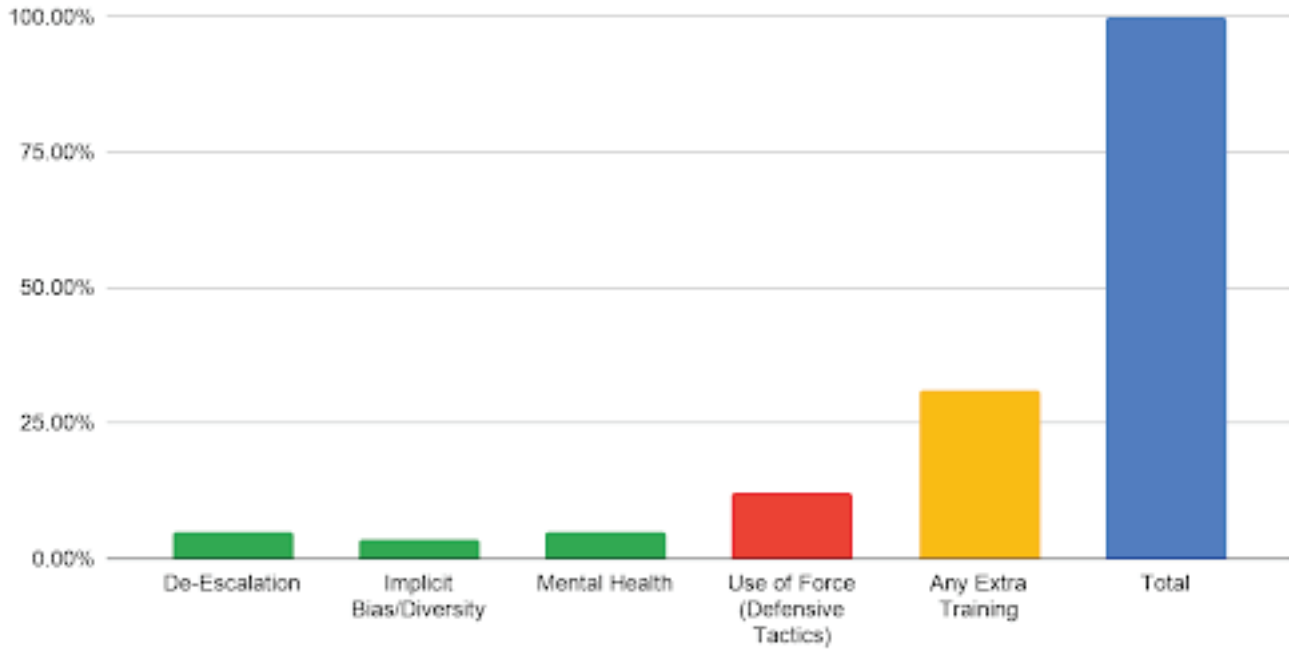
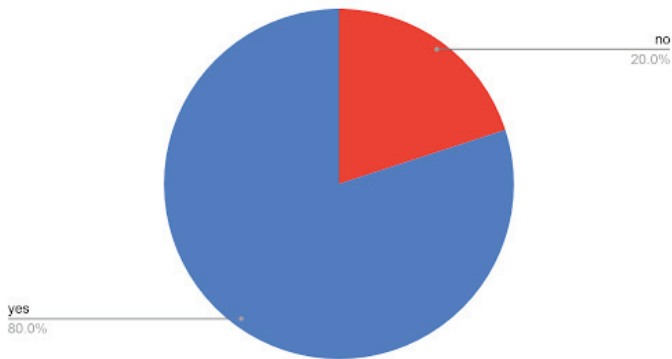
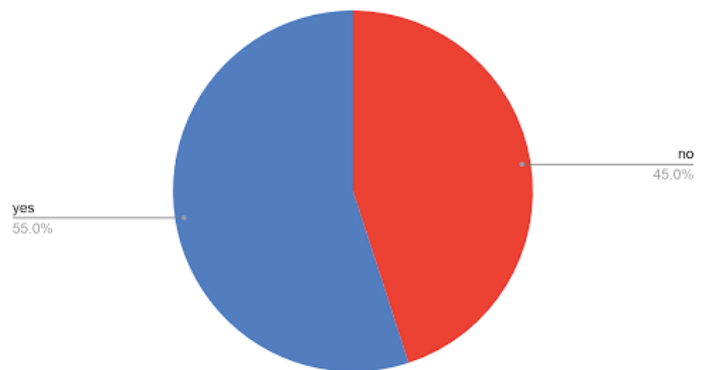


FIGURE 3

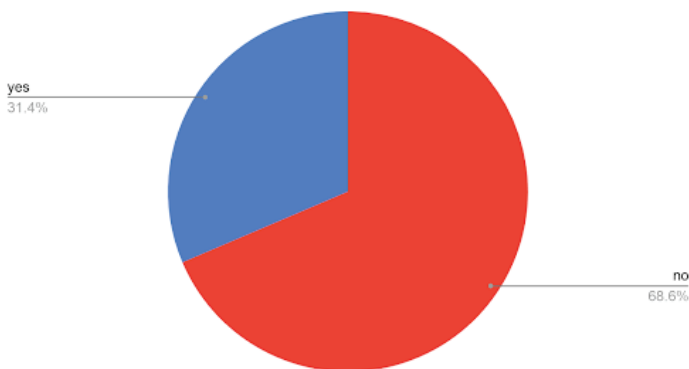
Percentage of XL Departments Requiring Extra Training



Percentage of Large Departments Requiring Extra Training



Percentage of Medium Departments Requiring Extra Training



Percentage of Small Departments Requiring Extra Training

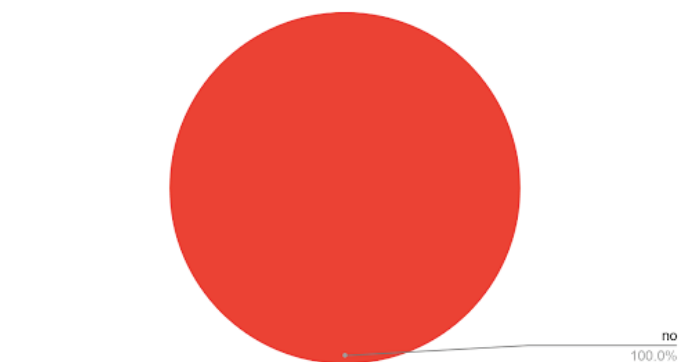


FIGURE 4

mental health of officers and training aiming to assist officers dealing with individuals experiencing mental health crises. [Figure 3] 12.3 percent of respondent agencies required use of force training (usually referred to by departments as “defensive tactics training”). [Figure 4]

The percentage of agencies requiring additional training decreases significantly from each size bracket to the next. While 80.0 percent of XL departments require their officers to undergo some form of extra training, only 55.0 percent of large departments and 31.4 percent of medium departments mandate the same. None of the small departments that provided information required any type of extra training. [Figure 4]

Within the extra-large departments, none required any type of mental health training. Only one department (Morgantown) required de-escalation training. Only two of the XL departments required either training in diversity, and use of force training. Among these municipal agencies, Huntington required one additional training, Charleston required two, and Morgantown required four.

Of the 26 responding large law enforcement agencies, 19 provided responses to training. Nine of the departments reported requiring some training above the state minimum. None of these departments required any diversity or bias training. The same two departments (Vienna Police and Wood County Sheriff) reported requiring de-escalation training and mental health training. Those two agencies, along with Fayette County Sheriff and Beckley Police Department, required additional training on tactics or use of force.

As noted above, less than one-third of responding medium-sized departments required any additional

training. The most common type of trainings for those departments were uncategorized trainings, followed by use-of-force trainings. Mental health training was required by two departments. Only the Westover Police Department reported requiring some form of de-escalation training, and only Buckhannon reported requiring bias or diversity training. Buckhannon also stood out for requiring four different trainings. The Morgan County Sheriff required three trainings.

MISCONDUCT/USE OF FORCE Results

The majority (54.3 percent) of law enforcement agencies with records responsive to the information request reported zero complaints from 2015 to 2019. A similarly large percentage (46.3 percent) reported no use of force incidents in the same time span.

Of the 92 agencies that provided information on use of force, there were 665 use of force incidents in 2015, 738 incidents in 2016, 723¹² incidents in 2017, 899 incidents in 2018, and 966 incidents in 2019. The West Virginia State Police make up a significant percentage of all use of force incidents. However, over the years studied, there was a consistent decline in State Police use of force incidents (221 incidents in 2015 down to 145 incidents in 2019) and a corresponding rise in use of force incidents for all other agencies. While the total number of use of force incidents rose each year, there was no clear trend within individual agencies. The largest contributors to the overall increase in use of force were the Beckley Police Department (109 incidents in 2015 to 147 incidents in 2019) and the Charleston Police Department (156 incidents in 2015 to 196 incidents in 2019).

91 agencies had and provided records regarding complaints of misconduct. There were 204 formal

12 The West Virginia State Police did not have statistics on use of force for 2017.

complaints of misconduct in 2015, 173 in 2016, 198 in 2017, 134 in 2018, and 152 in 2019. The State Police had more complaints of misconduct than all other responding agencies combined in 2015 and 2016. For the remaining years, State Police still made up a significant percentage of misconduct complaints.

THE STATE POLICE HAD MORE COMPLAINTS OF MISCONDUCT THAN ALL OTHER RESPONDING AGENCIES COMBINED IN 2015 AND 2016

88 agencies were able to provide data on the number of officers who were the subject of complaints. This metric was measured to see if complaints centered around a few problematic officers or were more evenly distributed.¹³ In 2015, 90 officers were the subject of complaints. In 2016, there were 93. In 2017, there were 130 officers who were the subject of complaints, and 90 in 2018. In 2019, the number was 175.¹⁴

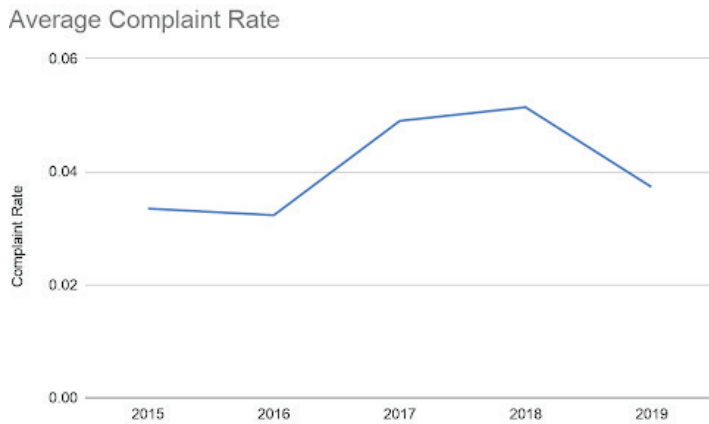


FIGURE 5

13 Some agencies reported more officers subject to complaints than complaints. This arose from situations where multiple officers were named in a single complaint.

14 The West Virginia State Police only had data for 2019. They accounted for 76 of the officers subjected to complaints.

The overall complaint rate (average number of complaints per officer) peaked in 2018 at .051. the number of complaints per officer increased. [Figure 5]. For departments that provided both the number of complaints and the number of officers who were subject to complaint, there was an average of 1.71 complaints per officer. In other words, the data generally demonstrated that single officers were not repeatedly named in complaints. However, there were notable exceptions such as, in 2019, the Morgan County Sheriff Office reported eight

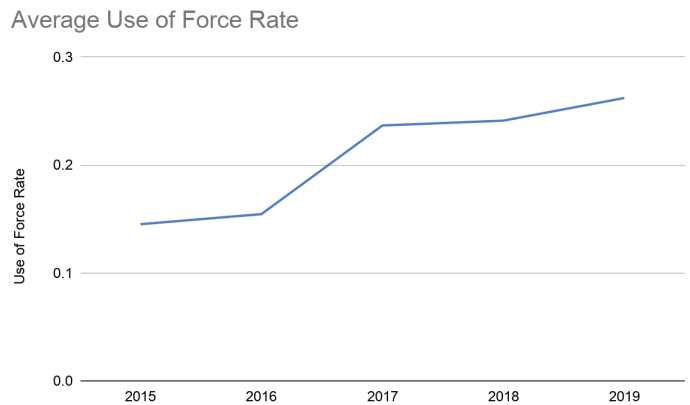


FIGURE 6

complaints against one officer. The average rate of use of force incidents per officer have increased each year from 2015 to 2019. The use of force rate peaked in 2019 at .262 incidents per officer, and the total number of use of force incidents peaked the same year at 826.9. [Figure 6] Among individual departments, there was significant variance in use of force rates. Agencies reported as few as .04 incidents per officer to 2.05 incidents per officer.

The average complaint rate, or number of complaints per officer in an average year, reported for XL, large and medium departments was

Use of Force Incidents vs. Number of Complaints

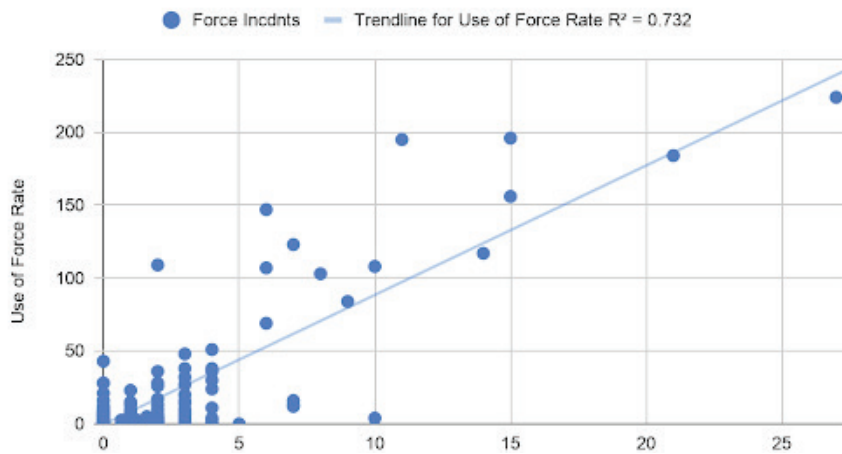


FIGURE 7

strikingly similar at .061, .060, and .060 respectively [Figure 8]. However, while the median rates of complaint for XL and large departments remained relatively steady at .061 and .062 respectively, the median complaint rate for medium departments dropped to zero [Figure 9]. This shift is reflective of the fact that the majority of medium departments reported zero complaints over the five year period and no medium sized agency reported more than four complaints in a single year.¹⁵ The complaint rate for small departments remained low in both measurements, averaging .008 complaints per officer per year and zero complaints per officer per year in the median measurement.

Average Complaint Rate by Department Size

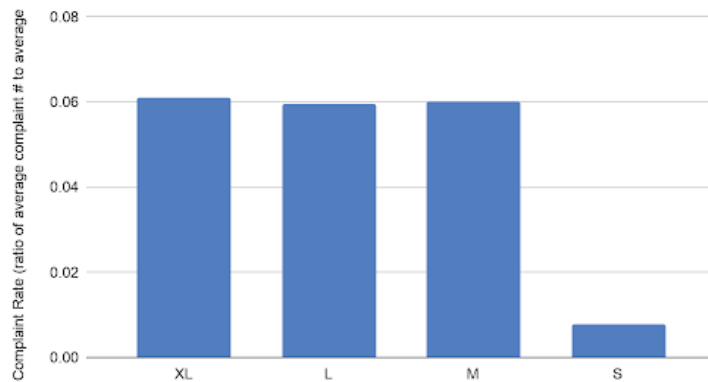


FIGURE 8

Unlike the complaint rate, the average use of force rate, or average use-of-force incidents per officer per year, decreases steadily with department size. The XL departments average .618 use of force incidents per officer per year; the large departments average .478 incidents per officer; the medium departments average .167, and small departments average .002. [Figure 10]

Median Complaint Rate From 2015 to 2019 by Department Size

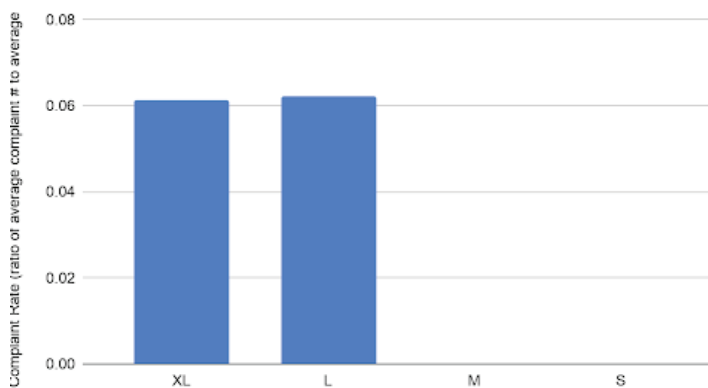
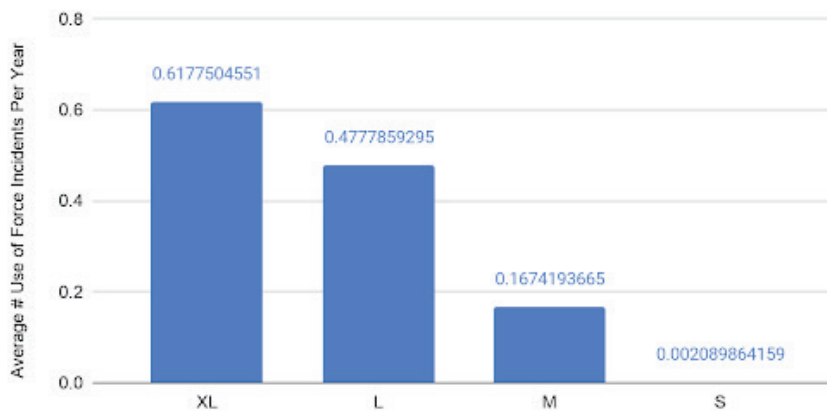


FIGURE 9

Departments requiring extra training had, on average, a complaint rate over twice as high as those that did not. While departments that did not require any extra training average a complaint rate of .035 complaints per officer per year, the rate for departments requiring training averages out to .074 [Figure 11]. Larger departments also tend to have a higher complaint rate than their smaller counterparts. It may not be surprising that more training, more use-of-force incidents, and more complaints occur in larger departments.

¹⁵ The Star City Police department was the agency with 4 complaints in 2018. Several other medium-sized agencies reported 3 complaints in various years.

Average Use of Force Rate From 2015 to 2019 by Department Size



averaged .120 use-of-force incidents per officer per year, departments that did not require it averaged 0.505 incidents per officer per year [Figure 12]. As with the collected data on complaint rates, some of this difference can be attributed to differences in size between departments requiring training and departments that do not.

Figure 10 shows clearly the average reported use-of-force rate decreases with department size, and larger departments are significantly more likely to require their officers to undergo additional training than smaller departments.

FIGURE 10

The average use of force rate for departments of any size requiring extra training exceeds the average use-of-force rate for large departments by 0.21 incidents per officer and medium departments by 0.45 incidents per officer despite the fact that 88 percent of departments requiring extra training are medium or large. However, even when XL departments are excluded, the average use-of-force rate for departments requiring extra training exceeds the average.

Average Complaint Rate Broken Down by Presence of Extra Training



However, the average complaint rate for departments requiring training is significantly higher than the average complaint rate for any of the size groups, indicating size differences may not constitute a complete explanation of the data. Further potential explanations for this difference will be discussed in the Analysis section.

FIGURE 11

Similar to the complaint rate results discussed above, departments requiring extra training are also associated with a higher use of force rate. The use of force rate in departments that required additional training was over four times the use of force rate of departments that did not. While departments that did require extra training

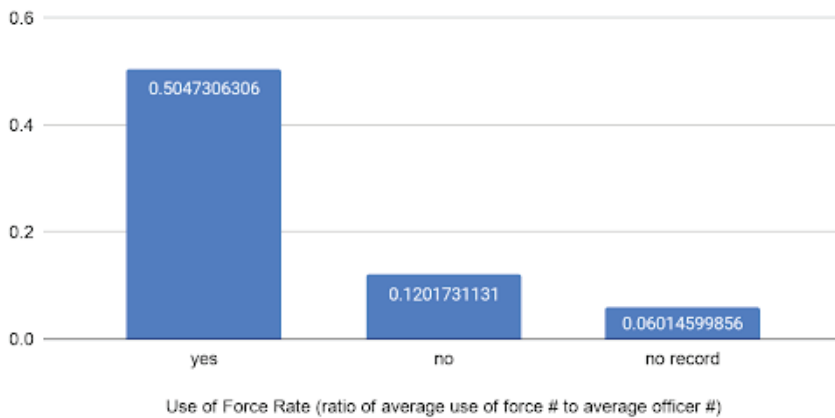
By Type

The average complaint rate for departments requiring de-escalation training was 0.077 complaints per officer per year, slightly higher than the 0.074 complaints per officer calculated as the average for departments requiring any form of extra training. The complaint rate for departments requiring any form of extra training is 0.045, significantly higher than the 0.035

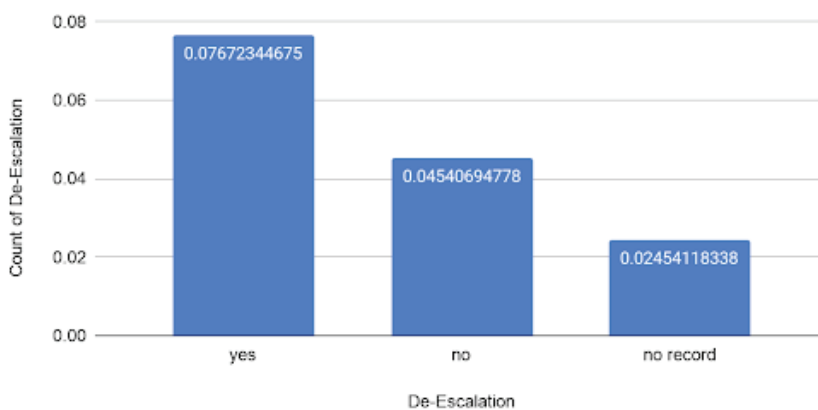
Reviews

Responding agencies reported a total of 1,354 internal reviews over the study period. 706 reviews were initiated by civilian complaints, and 513 reviews were initiated internally by the

Average Use of Force Rate Broken Down by Presence of Extra Training



Average Complaint Rate Broken Down by Whether the Department Requires De-Escalation Training



department.¹⁶ While only 47 percent of complaints resulted in a review, reviews initiated by civilian complaint outnumbered those that were initiated internally. The total number of reviews was significantly lower than number of use of force incidents, with a linear regression of just over 0.34.

However, the regression is not a close fit to the data, as Figure 15 demonstrates. Data from the State Police, which had a large number of reviews

¹⁶ The total number of reviews does not equal the sum of reviews initiated by complaint or internally. This is due to differences in how agencies reported the data.

¹⁷ This data excludes data from the West Virginia State Police. The State Police reported 53 disciplinary actions in 2018 and 65 disciplinary actions in 2019. Of those, the majority were written reprimands, 38 in 2018 and 35 in 2019. 8 resulted in resignation and 2 resulted in discharge.

per force incident skewed the regression away from other agencies demonstrating an even lower ratio between use-of-force incidents and internal reviews than predicted by the regression.

Discipline

Over the entire five-year period examined, responding agencies reported a total of 243 disciplinary actions against officers.¹⁷ The aggregate number of disciplinary actions ranged from 34 actions in a year to 66 actions in a year. Counseling was the most common form of discipline, while reassignments or demotions were the least common.

THE DATA SHOWS THERE WERE 16 TIMES AS MANY USE OF FORCE INCIDENTS AS DISCIPLINARY ACTIONS

At the outset, it is important to note data does not show causal relationships. For example, data shows there were 16 times as many use-of-force incidents as disciplinary actions but we cannot conclude six percent of use-of-force incidents resulted in discipline. The comparison can be useful for appreciating ratios between discipline and various sources. In addition to use of force, there were just under four times as many complaints of misconduct as disciplinary actions. There were only 30 percent as many

FIGURE 13

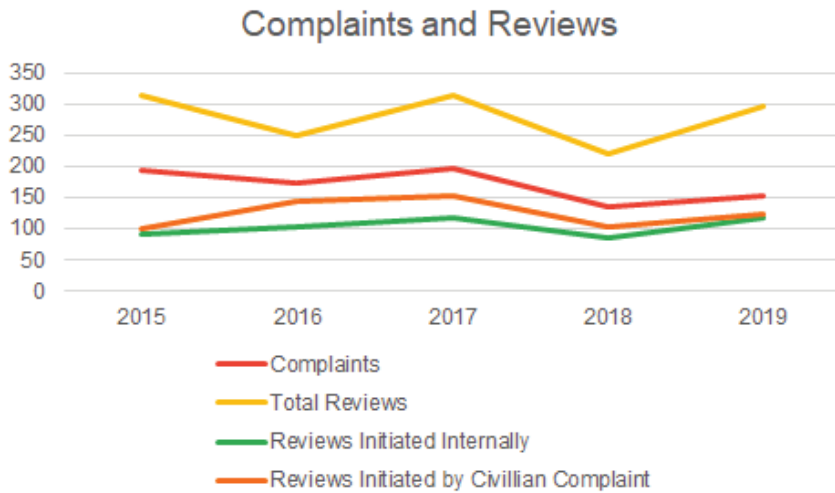


FIGURE 14

of misconduct and disciplinary actions within these agencies.

City Settlements/Lawsuits

As noted in the Methodology section, public records requests were mailed to the city attorneys for the 15 largest cities in West Virginia, as well as to the clerk of each county court system. While the requests were different, they also provided different ways to examine significant misconduct that resulted in legal action.

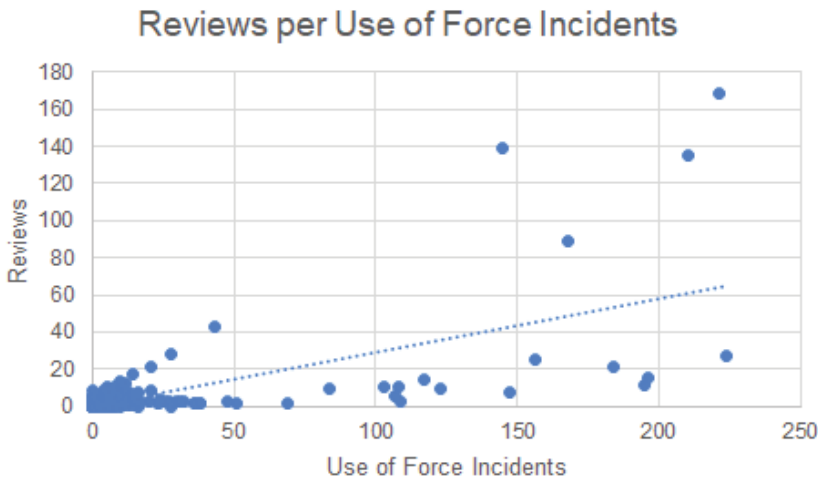


FIGURE 15

The responses from the cities showed 68 cases against local law enforcement agencies in which there was some payment or settlement. Only eight of those cases were clear misconduct. Many others were incidental issues such as motor vehicle accidents.¹⁸ Over the five years studied, the 15 cities reported a total of \$2,878,522 in settlements, of which \$779,218 was for cases related to misconduct. The largest misconduct settlement was from Charleston in 2018 for \$675,000.

disciplinary actions as internal reviews.

Larger agencies predictably accounted for more disciplinary actions. Because so many small and medium agencies reported no disciplinary action, and because there are several confounding variables, it is unclear if large and extra large agencies were more likely to discipline officers. In reviewing data from large and extra large agencies only, there was a loose direct correlation between discipline and use-of-force incidents. No clear correlation was found between complaints

Only 17 counties responded to the records request. Of those, they noted 27 cases where a police agency was the defendant. Again, some of those may also be cases in the data provided by the cities. Of those 27 cases - nine were still pending, 12 were settled out of court, one resulted in a judgment against the police, and five resulted in dismissals for various reasons. It is also important to acknowledge this includes all cases against a police agency and may or may not have included misconduct.

¹⁸ Some cases were unclear - for example motor vehicle accidents that resulted from dangerous driving by the officer. In those issues the authors examined the court records to use discretion as to whether the incident should be counted as misconduct.

INTERVIEWS

In order to supplement statistical data, as well as to add context and to confirm if qualitative information corroborated or conflicted with quantitative assessments, nine people were interviewed for this report. The interviewees were:

Steve Walker - a white male, former police officer, chief of police and current president of the West Virginia Fraternal Order of Police (FOP), located in Charleston, WV.

Matthew Kerner - a white male recovery coach, person in recovery, and prior candidate for local office, located in Buckhannon, WV.

Spenser Darden - a Black male Director of Diversity Initiatives and Community Engagement at the West Virginia University (WVU) Division of Diversity, Equity, and Inclusion, located in Morgantown, WV.

Shalom Tazewell - a white female community activist, adult education instructor and English-as-a-second-language teacher who has worked with incarcerated peoples, located in Hinton, WV.

Reverend Matthew Watts - a Black male religious leader and community activist involved in many issues related to policing, racial disparities, and community development, located in Charleston, WV.

Jennifer Wells - a Black female who is the former executive director of Our Future WV, and social worker located in Huntington, WV.

Dr. James Nolan - a white male who is the Chair of the Sociology Department at WVU, focusing on issues related to policing, and a former police officer located in Morgantown, WV.



Delegate Danielle Walker - a Black female and member of the West Virginia House of Delegates representing the 51st District, located in Morgantown, WV.

Dr. William Zakee McGill - a Black male retired medical doctor and President of the [Martinsburg] Berkeley County National Association for the Advancement of Colored People (NAACP), located in Martinsburg, WV.

Overall, the interviewees indicated a variety of attitudes about whether police misconduct was a problem in their areas, and what sort of behaviors constituted misconduct. Some spoke of first-hand experiences where they felt they had been unfairly profiled, denied protection, or mistreated. Others described situations they had not directly experienced, but had either witnessed, or that close family or friends experienced. Many described high profile incidents. Six of the nine interviewees including all of the Black interviewees described a sense that communities that they worked with were likely to experience incidents ranging from over policing to regular use of excessive force. The FOP acknowledged occasional issues with “bad apples” but explained misconduct was not systemic and law enforcement agencies do not want problematic police.

With the exception of the representative of the FOP, all interviewees were asked if they believed the number of complaints filed about misconduct is an accurate reflection of the frequency of misconduct. All interviewees agreed complaints were a significant undercount of misconduct incidents. The most common reason given was a belief complaints would not result in discipline or change. With prompting, several said there was concern about retaliation. Del. Walker highlighted this view by asking, “How do you report it?...I was already a target.” Dr. McGill stated every refusal to document misconduct by filing a written report was because of fear on the part of the civilian about being targeted. Other barriers included confusion, bureaucracy and people wanting to avoid involvement with the police generally. Dr. McGill believes law enforcement officers are told to never admit mistakes or misconduct, much like physicians are advised by medical liability lawyers to never admit mistakes nor talk to the patient honestly about a bad outcome. Studies have shown when patients are talked to with honesty, the risk of lawsuits decreases dramatically. This view was also expressed by Dr. Nolan, who said officers are unlikely to acknowledge their own misconduct over concern it could affect promotions (or other forms of advancement) later. He also explained while misconduct is undercounted, the amount of the undercount is likely to be stable over time.

Interviewees also expressed significant distrust in the review and discipline of misconduct. Most reported knowing of incidents where alleged misconduct did not result in a finding that an officer violated any rules or, if they did, the consequences were not significant enough. Roughly half the interviewees specifically noted a lack of transparency in the review and discipline process as an issue. Both Steve Walker and Dr. Nolan explained systemic issues can limit the efficacy of reviews. Dr. Nolan noted most complaints of

misconduct result from physical altercations and are not actually violations of the law. Steve Walker explained some of the civil service and due process protections for officers created by legislative and judicial rule may limit the ability to implement more significant discipline.

The interviewees were also asked about community-police relations. Respondents were evenly split over whether their communities felt safe or protected by police. In Huntington, a past practice of police taking suspects to a flood wall to “beat” them continues to affect community relationships even though the practice has ended. Del. Walker noted she feels afraid to call 911, and said most of her threats come from vocal supporters of the police, creating a situation where she feels like the police will be more sympathetic to the people making threats. Most of the respondents felt there were not enough overtures or communication initiated by police to their community. Several noted there was communication after a specific incident, but it did not turn into regular or sustained dialogue. In particular, Dr. Nolan described a model of changing policing emphasizing community building, which he says is at odds with how the system works now.

Several interviewees, including Steve Walker, noted there are many small departments which present other problems. Officers may be overworked or unable to attend to issues regarding internal investigations. One interviewee said community trust was diminished due to poor response times, while another reported overlapping jurisdictions by multiple agencies could lead to confusion and relationships that may be good with one agency and poor with another agency. Steve Walker also noted that police are often tasked with issues that should be handled by other professionals, and explained the need for social workers, mental health experts and housing experts.

ANALYSIS

The purpose of this study was to try and understand issues surrounding policing in West Virginia. Specific issues included the frequency that force was used, how misconduct was recorded and handled, and what effects training and discipline may have on these issues.

From the outset it was known this report would not be a comprehensive accounting. Past experience has shown even though it is required by law, there would be a significant number of agencies that would not respond to public records requests. Covid-19 provided additional challenges. It is likely some of the non-responsive agencies did not receive requests, and some replied but responses were missed. In at least two instances agencies offered to have records open for inspection but geographic barriers and additional Covid-19 related restrictions made it impractical to follow through on these offers. It was also anticipated many agencies would not have data or records for the requested information. Finally, as discussed in the interviews, the actual incidents of misconduct, and even force, may exceed official counts if complaints are not made and reports not filed. For these reasons, this report will not attempt to make broad statements about how agencies act or try to extrapolate onto other agencies from the data available.

Nevertheless, the available data is illustrative. It is a partial view of police conduct overall. Even incomplete this data can help identify broad trends and make reasonable assumptions about police practices more broadly.

In 2008 West Virginia had 186 sworn officers for every 100,000 residents. Only six states had fewer officers per capita.¹⁹ With a response rate of 54 percent, which included most of the larger law

enforcement agencies in the state, the report was able to identify just under half as many officers as in 2008. This suggests the overall number of officers has declined. Since West Virginia has also seen a decline in population, it is not clear the number of officers per capita has changed significantly or in which direction.

Responding agencies reported an average of nearly 800 force incidents per year. Taking into account the low response rate and the number of agencies that do not track this data, it is safe to assume at least 1,000 people are subjected to some form of physical violence by police every year. Even if some of these situations were unavoidable, and many others were permissible, this still amounts to a large number of people. It begs the question: Was there a better way to handle the situation?

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Framed another way, there is roughly one use-of-force incident per year for every four officers. The average officer will only apply force once in a four-year span out of hundreds of interactions with civilians. Understood in this light, use of force is relatively rare.

It could also be taken as heartening there are roughly 200 complaints per year and statistically an officer is likely to go an entire career without being the subject of a complaint. It also means at least 200 West Virginians every year feel an officer violated their rights or otherwise acted inappropriately. Based on interviews, it is likely the actual number is significantly higher. It is also important to acknowledge departments with a

¹⁹ 2008 Census of State and Local Law Enforcement Agencies, by Brian A Reaves, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 2011

high overall complaint rate could be due to a high number of potential misconduct incidents, or it could reflect an agency that making it easier and safer for people to come forward. Further review is necessary to understand what drives high complaint rates.

It is not surprising larger agencies, typically representing urban areas and agencies with higher use of force rates are subjected to more complaints. Perhaps more surprising is that more training was associated with a higher rate of use-of-force and a higher complaint rate. Even in jurisdictions requiring de-escalation training, the use-of-force rate was higher than in jurisdictions with no additional required training. One explanation is larger, more urban departments are more likely to have resources for trainings but are also more likely to be in situations where force is commonly applied (appropriately or otherwise).²⁰ Another likely explanation is that there is significant overlap from agencies requiring more robust reporting and data collection and those requiring more training. People in urban centers may also feel some sense of anonymity and likely have more access to institutional protections if they do file a complaint. Alternatively, there are some critics of law enforcement who believe modest reforms, including training, do not address underlying systemic issues.²¹ More research is necessary to draw conclusions about efficacy of training in reducing frequency of use-of-force incidents. Less than half of civilian complaints result in any formal internal review process. This supports the premise, put forward by several interviewees, that many people do not report potential misconduct

incidents because they feel allegations will not be taken seriously.

MORE RESEARCH IS NECESSARY TO DRAW CONCLUSIONS ABOUT THE EFFICACY OF TRAINING IN REDUCING THE FREQUENCY OF USE-OF-FORCE INCIDENTS

At least 100 reviews each year are initiated internally. The data does not break down what the alleged conduct was leading to these reviews, but at least some were for procedural issues such as chronic tardiness, incomplete paperwork, or misuse of funds. Consequently, the number of internally-initiated reviews resulting from alleged misconduct toward a civilian is even less than the data suggests. Overall, the data might suggest, as Dr. Nolan explained, officers are unlikely to report against themselves or, as other critics have suggested, that officers are unlikely to report against their peers.²² The relatively low number of internal reviews might suggest a significant percentage of complaints from civilians describe conduct actually permissible by department rules or policies.²³

There are slightly more than one-third as many reviews as use of force incidents. Further review of data suggests a few departments skew that number to reflect a higher ratio of reviews-to-force than is typical for most departments. Overall this suggests the overwhelming majority of use of force incidents, even when documented, are not thoroughly reviewed. This could be because many are clearly within policies. However, it also suggests

²⁰ Alternately, it could be argued that in small communities with relatively homogenous populations, there's an increased need to ensure officers are made aware of biases and the ways that they can affect decisions.

²¹ See e.g. Scharder, Stuart. Police Reform Won't Fix a System That Was Built to Abuse Power, *The Nation*, 2020, <https://www.thenation.com/article/society/police-reform-defund-iacp/> (last visited Sep 23, 2020).

²² Radley Balko, *Rise of the Warrior Cop*, 178 (2013).

²³ A future topic for review is to compare what behaviors and tactics are permissible under police policies with what civilians would expect to be permissible.

that there is rarely consideration for other ways situations may have been handled.

As noted above, of the thousands of incidents of force, hundreds of complaints, and hundreds of reviews performed each year, data only found several dozen officers faced any disciplinary action annually. Only half of those involved serious actions like termination, suspension, or demotion. Even making the assumption that every incident was handled correctly, huge disparities between officers who face discipline and perceptions of misconduct help explain the overall sense, shared by many community members, that officers are not held accountable for misconduct. Notably, even the president of the FOP noted legislative and judicial protections for “bad apples” that prevented removing them.

Excessive use of force and misconduct has a fiscal toll in addition to the erosion of trust. The study, which by design is an incomplete picture, identified hundreds of thousands of dollars in settlements and judgments for misconduct. This does not include the time and resources used to defend these suits. The Charleston Gazette-Mail identified an additional \$3.1 million in settlements and \$400,000 in legal fees from suits arising from misconduct.²⁴ While it is unlikely every act of misconduct can be eliminated, investing in data which can drive policy may ultimately result in cost-savings.

CONCLUSIONS

In many ways this study is a Rorschach test. The data can be interpreted in many ways which may serve to support preconceived notions. The total number of incidents and force seems high, but the relative rate is low. Rates of discipline to reviews may suggest a system unfairly favoring police, or police who regularly act within policies

and procedures. While the data leaves room for ambiguity, it is clear from interviews with community leaders that in some communities, there is a significant level of distrust of the police.

One of the most evident takeaways from this study is the need for better data. Better data starts with standardization. Even straightforward concepts like “use-of-force,” “misconduct complaints,” and “internal reviews” are understood differently between agencies. In addition to not having standard definitions, many agencies are not tracking some or any of these metrics, and there is no standard tool for agencies to do this sort of tracking. Taking steps to standardize and keep good data would help create transparency with the community, help to track trends, and identify areas where an agency is doing well or where it needs to improve. Creating a central repository for this data would be an even better step and would easily allow comparisons between agencies and helping to identify best practices. These policies could be created piecemeal by local jurisdictions. Alternatively, the State could intervene with legislation, clear rules, and financial and technical assistance to set up systems to input, store, and share relevant data.

While the data does allow for a variety of interpretations, there is clearly a large gap between the reported number of civilian complaints and the number of disciplinary actions taken. This belies a significant disconnect between what civilians and what police view as actionable misconduct. This gap was demonstrated in the interviews as well. Police need to engage more with the communities they serve regarding policies. Doing so will give the community valuable input into what procedures and practices they expect and accept. It will also help police communicate about their perspectives about what tools and tactics are necessary for their work.

²⁴ See supra. Zuckerman, WV troopers are cleared by internal reviews, then taxpayers spend millions settling the lawsuits.

Ultimately, further engagement with the community may help answer the question posed above: Even if an action was permissible, was it appropriate?

POLICE NEED TO ENGAGE MORE WITH THE COMMUNITIES THEY SERVE REGARDING POLICIES

Along with direct communication, it is clear trust in safe reporting and the ability and willingness of agencies to take corrective action is also problematic. The state has a role to play in removing unnecessary barriers to investigating and disciplining officers who engage in unacceptable conduct. There is also a need for a system of receiving complaints that people can trust to take the matter seriously, and to conduct fair, impartial reviews. Civilian review boards may be one way to address this problem.

Deciding how many use-of-force incidents or allegations of misconduct is acceptable will depend on individual perspectives. It should be universally agreed fewer is better. To this end, further investigation into policies and practices minimizing these incidents is merited. The available data suggests that current trainings do little to reduce either metric, and while confounding variables offer explanations, other approaches should be examined.

This study should provide a foundation upon which future work can be built. The poor response rate and lack of data leaves much to be desired, but available information provides an important insight into the overall state of policing in the Mountain State. There are already steps state and local agencies can take to help to restore public trust and ensure aggressive, evidence-based steps are being taken to eliminate police misconduct and make police violence as rare as possible.

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