

# Pressure mounts on prosecutors to scrutinize police, disclose troubled pasts

Watch lists in Massachusetts have flagged 350 current and former officers

By **Matt Rocheleau** Globe Staff, Updated October 9, 2020, 9:57 a.m.



Worcester DA Joseph D. Early Jr. is one of three who refused to provide records regarding officer misconduct. SUZANNE KREITER

Amid a national reckoning over law enforcement misconduct and a recent ruling from the top court in Massachusetts, prosecutors across the state are reexamining their efforts to keep tabs on problem police officers whose court testimony may be considered unreliable.

Already, district attorneys have identified at least 350 current and former officers whose credibility is in question due to past accusations or findings of lying and various types of misconduct, according to records compiled by the Globe. The tally grew just two weeks ago, when Suffolk County prosecutors [released](#) a newly created watch list of 136 current and former officers.

The officers on these lists range from the lowest ranks to the chiefs of police forces large and small. The files cite misconduct such as rape, assault, and witness intimidation, as well as drug and alcohol violations and lying.

The actual number of officers who may merit inclusion is undoubtedly much higher. Only five of the state's 11 district attorneys even keep such a centralized list or database, and those are incomplete, at best. In Suffolk, the database doesn't include scores of officers whose history should qualify them for continued scrutiny, the Globe found.

Meanwhile, six county prosecutors have no monitoring mechanism in place; instead, they make disclosures on a case-by-case basis, relying on scattered records, memories, and institutional knowledge.

The inconsistent practices raise questions about whether prosecutors are fulfilling their legal requirement to turn over evidence — including about past police misconduct — that may be favorable to a defendant at trial, critics say.

“If there's a scintilla of doubt about the credibility of any witness, whether it's a police officer or any other witness in a case, the DA's office needs to be transparent about it," said Vanessa Vélez, deputy chief counsel of the Committee for Public Counsel Services' Private Counsel Division. “It may lead to an unlawful prosecution, someone serving a term for

a crime that they either didn't commit or an inflated charge."

Experts said that prosecutors failing to disclose information most often hurts people of color, who are disproportionately represented in the criminal justice system.

Under landmark Supreme Court decisions — *Brady v. Maryland* in 1963 and *Giglio v. United States* in 1972 — prosecutors must turn over evidence favorable to a defendant, including material that may undermine the credibility of a witness, such as a police officer. Nationwide, many prosecutors' offices keep lists of those with blemished histories, in case they are needed at trial.

Prosecutors aren't legally required to maintain such a list, but in a ruling last month, the Massachusetts Supreme Judicial Court said prosecutors must disclose all past "dirty deeds" committed by police to their supervisors, as well as to defense lawyers on a case-by-case basis, even if they glean the information from secret grand jury proceedings.

The ruling also strongly recommended that prosecutors adopt clear policies to proactively seek information about wrongdoing by law enforcement officers, and it favorably noted that some prosecutors already maintain watch lists.

Most of the county district attorneys without a list in Massachusetts said they are examining the issue and considering changing their practices, with several citing the recent SJC decision. Some said they have sought advice from Attorney General Maura Healey's office, which also maintains a list.

Much of the officer misconduct outlined in the DA files obtained by the Globe had been made public before through court proceedings, media coverage, or both.

"Typically, prosecutors have relied on the good faith of their police departments and officers" to volunteer the

information, said Ellen Yaroshefsky, a legal ethics professor at Hofstra University.

“We’ve learned over the years that that’s not a great practice, because there’s some officers who are not being truthful, and police departments don’t necessarily want to cooperate,” she said, “And it’s difficult for prosecutors to push back because they rely on the police to pursue their cases.”

The Globe began requesting watch lists from each district attorney last year. Initially, only two offices — those of Middlesex DA Marian Ryan and Norfolk DA Michael W. Morrissey — shared their roster of officers with troubled pasts.

The list from Ryan’s office included 125 names. Morrissey’s list had 38 names.

Since then, two other prosecutors — Berkshire DA Andrea Harrington and Suffolk DA Rachael Rollins — have created and released lists, following inquiries from the Globe and [WBUR](#).

Hampden DA Anthony D. Gulluni’s office repeatedly said it kept no such “list,” but acknowledged late last month that it maintains a “database” of problem officers. The agency refused to provide more details or a copy.

Another office, that of Northwestern DA David E. Sullivan, said it is making a list.

Two other prosecutors — Bristol DA Thomas M. Quinn III and Essex DA Jonathan W. Blodgett — said they kept other types of records.

The state’s remaining prosecutors — Cape & Islands DA Michael D. O’Keefe, Plymouth DA Timothy J. Cruz, and Worcester DA Joseph D. Early, Jr. — said they had no such list and refused to provide records regarding officer misconduct.

Early, in a [statement](#) on his website, said creating a list is not legally required, would be “impractical” and “misleading,” and would violate due process rights of officers. He said his office makes all court disclosures necessary to comply with the law.

O’Keefe said the lack of a centralized list hasn’t been a problem because his office tends “to know what police officers have a problem.”

He criticized other district attorneys for publicizing lists, particularly those naming officers whose charges of misconduct are still pending. He worried he might be sued if he did the same.

“I think that’s terrible. It’s almost McCarthy-ish from the 1950s,” O’Keefe said, referencing a misguided campaign to expose supposed communists from the US government.

Barbara O’Brien, a law professor at Michigan State University and editor of the National Registry of Exonerations, said defense attorneys rely on prosecutors to share this type of information.

“If defense attorneys know that the complaining officer has a history of misconduct or has been caught lying in the past, they might advise their client differently. This changes the calculus for them,” O’Brien said. “If we have to keep this information from the public in order to preserve a perception that officers are categorically honest, that’s not serving the interest of justice.”

When prosecutors have failed to disclose potentially exculpatory evidence, meaning evidence that may help a defendant, they have rarely faced any sanctions, experts said. But the consequences for defendants can be significant.

Thousands of people have faced criminal charges or gone to prison based in part on testimony from officers with credibility problems, [according to USA Today](#). The newspaper reported last year that at least 300 prosecutors' offices

across the country keep no watch lists.

*Milton J. Valencia of the Globe staff contributed to this report.*

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