CLEAR: Commission for Law Enforcement's Assessment of Recruits

Screening for White Supremacy Sympathizers in Law Enforcement Candidates

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1. Overview of the Socio-Economic Climate

In the wake of George Floyd and Breonna Taylor protests, some incidents have indicated the police officers demonstrate an affinity with armed White counter-protestors[i] over Black Lives Matter protestors. While some of that support is no doubt in reaction to accusations of brutality, we've also seen recent reports that White supremacists have infiltrated police ranks[ii]. In addition, evidence continues to build that police officers kill Black civilians at a far higher rate than White (28% of those killed by police, despite being only 13% of the population),[iii] indicating that even while police officers may not personally associate with known White supremacist organizations, racism affects their judgment and actions.

A state-wide resolution to weed out White supremacy in law enforcement agencies would demonstrate a commitment to reducing bias and troubling behavior in law enforcement, build a new generation of officers, and establish trust among civilians.

According to the Southern Poverty Law Center, Pennsylvania is 8th in the nation in hate groups[iv]. The average of 36 hate groups in Pennsylvania has been unchanged from 2008 through 2017; ten of the groups identify as "White nationalist" or "racist skinhead"; five were identified as Neo-Nazi (principally anti-Semitic groups). Seven others fell into a "general hate" category. (The SLPC study does not include groups that appear to exist only in cyberspace, and this resolution could close that gap by investigating recruits' online activity.)

A paper published in 2018[v] cites several cases in the last five years:

> "In 2015 a University of Cincinnati police officer was wearing an undershirt depicting a Confederate battle flag when he killed an unarmed Black motorist, a fact that the judge in his murder retrial barred prosecutors from presenting to jurors. Ironically, wearing this garment, which raised questions about the officer's potential White supremacist sentiment, was deemed "too prejudicial." In another case, in 2017 a Washington D.C. officer brazenly appeared in court wearing a T-shirt emblazoned with White nationalist symbols and other threatening content *over* his police uniform."

Courts have generally determined that firing a police officer for espousing racist views is not a First Amendment violation because of a "heightened need for order, loyalty, morale and harmony." It's reasonable to assume that law enforcement agencies can also ensure that applicants are held to the same standards.

2. Legislative Proposal to Address White Supremacy in Law Enforcement

In order to effectively weed out potentially supremacist candidates for police, Pennsylvania would require all police recruits to undergo rigorous testing and background checks to ensure that, not only is the recruit not affiliated with an organization, but they are also not "silent"

White supremacists. The state would first pass a resolution to assemble a commission of experts to develop a screening evaluation for White supremacy in police recruits.

1. **Pass a resolution to appoint a Commission for Law Enforcement's Assessment of Recruits (CLEAR) on screening for White supremacy in law enforcement recruits.** The commission would conduct research and develop a screening evaluation to establish the breadth and depth of a recruit's unconscious biases, and whether White supremacist sympathies would affect their ability to fully commit to all aspects of law enforcement, including peacekeeping, fair arrests, use of force, investigation, and acting as a witness in court. The evaluation could include simulations, questionnaires, interviews, and a full examination of the candidate's social media activity.
    a. CLEAR would be funded through grants, both in the public sector and through academic institutions.
    b. Counties can agree to opt-in to the resolution.
    c. Members of the commission would include:
        i. Screening Development
            1. One constitutional lawyer, to ensure the legality of the screening process. (Appointed by Governor)
            2. Two experts in White supremacist organizations and risk factors, ideally associated with the FBI or another law enforcement organization, to advise on White supremacy markers and risk factors (1 appointed by House Majority, 1 by House Minority)
            3. Two experts in psychological evaluation, ideally associated with academic institutions in Pennsylvania, to advise on assessments (1 appointed by House Majority, 1 by House Minority)
            4. One expert in software development, to plan how the evaluation would be administered and integrated into the existing police database. (One possibility would be faculty associated with CMU's AI profiling project.) (As part of the grant process, applications/bids would be filed and approved by Congress.)

        ii. Law Enforcement Representation
            1. One representative from PA State Police Officer Testing and Placement Division, to provide representation from law enforcement recruitment and testing. (Nominated by State Police, appointed by Governor)
            2. One representative from PA State Police Equality and Inclusion Office, to provide representation from law enforcement equality and inclusion. (Nominated by State Police, appointed by Governor)
            3. One representative from Municipal Police Officers Education and Training Commission. (Nominated by MPOETC, appointed by Governor)
            4. One representative from a rural police recruiting department in an opt-in county. (Nominated by opt-in Representative, appointed by Governor)

        d.   Goals of the commission

           i.   To develop a quantifiable screening for White supremacy that could be administered statewide, to any law enforcement candidate; and

          ii.   To develop the platform through which the screening would be administered; and

       iii.   To create extra-screening methodologies to supplement the screening itself, such as social media activity; and

       iv.   To develop training on how agencies will administer the screening and methodology;

        v.   To integrate the data into the existing database of law enforcement hiring practices; and

       vi.   To create recommendations to law enforcement agencies on how to handle results.

2. **Pass legislation to implement CLEAR screening and recommendations in**:
   a. State police recruitment procedures; and
   b. Law enforcement agencies in counties that opt to take part in the screenings.

3. Policy Analysis

3.1 Inadequacy of Existing Law

The Municipal Police Officers Education and Training Commission includes information regarding training and the application process, including a psychological evaluation, but is not transparent about screening candidates for associations or sympathy with White supremacist organizations or philosophies. The City of Pittsburgh also conducts psychological evaluations, but offers no details on the contents of that evaluation. There is no statewide legislation or recommendation to specifically evaluate recruits who associate or sympathize with White supremacy.

3.2 Existing Legislation

The CLEAR resolution and legislation is related to, but not duplicated by, recent legislation:

- Senate Bill 1208[vi], sponsored by Senator Wayne Fontana, is currently with the Law and Justice committee and established an Independent Citizens Law Enforcement Review Board at the county level, but does not target recruits.
- Senate Bill 946[vii], sponsored by Senator Jay Costa, was referred to the Judiciary committee on November 18, 2019. The Hate Crimes Prevention and Victims' Rights Package more closely defines hate crimes, and also establishes a database to track known hate groups in Pennsylvania. This database would be a useful tool in background checks of candidates if it can be made accessible through the Attorney General's office.
- House Bill 1904[viii], sponsored by Representative Dan Miller, provides for use of force reporting and for duties of the MPOETC, State Police, and law enforcement agencies and establishes a database to "receive, store, tabulate and analyze the data sets required to be

documented by all law enforcement agencies." This database should be expanded to include CLEAR data or integrated with the CLEAR database.

While some recent legislation addresses police misconduct and creates a statewide database on police dismissals, addressing potential misconduct at the hiring stage is handled only by local agencies.

3.2 Other States

After conducting research, I have not found much evidence that other states have recently integrated sweeping White supremacy screening for law enforcement candidates.

A Fortune magazine article[ix] includes the most recent police reform bills.

- In New York, the House passed a bill[x] requiring terrorist threat assessment of "foreign violent White supremacist extremist groups," but it is more focused on terrorist groups than police recruits.
- In Colorado[xi], The Police Integrity Transparency and Accountability Act prevents the transfer of problematic police officers to different departments, but does not address recruits.
- Iowa also restricts police departments from hiring officers[xii] with records of misconduct.
- Massachusetts created a Commission on Structural Racism[xiii] that seems most closely aligned with the CLEAR goals. Two of its associated bills create diversity guidelines and create an independent commission to investigate institutional racism in the criminal justice system.

While addressing racial bias in existing law enforcement officers is vitally important, the lack of attention paid to recruits on a state level could break new ground in the fight against institutional racism.

3.4 Who benefits and who loses from this proposal?

Beneficiaries include:

- Existing law enforcement agencies; opting in to the program will improve their recruitment and rebuild trust with the public. This trust-building could fall under the umbrella of "community policing."
- Civilians—especially Black and civilians of color—who will benefit from increased trust in law enforcement agencies.
- Pennsylvania legislators, as it's breaking new ground in fighting a known White supremacist threat, and could be used as a model for other states.
- Courts of law, as fewer convictions would be overturned due to inherent biases in law enforcement officers.

Losers:

- White supremacist candidates. One issue that would have to be dealt with long-term is a candidate who is screened twice; how does the second screening compare? Can the commission make recommendations on whether we believe candidates can grow?
- This will be an additional training and recruitment requirement for agencies, which will likely increase the workload of Human Resources, Training, and even Internal Affairs.

3.5 Fiscal Impact/Cost

As the resolution's Commission would be funded by grants, its financial impact would be minimal. The grants would cover setting up the infrastructure, integration, and a training program for the eventual rollout.

3.6 Who Pays

Because the legislation rolling out the screening would be opt-in (other than the PA State Police), local implementation and maintenance would be covered by the participating law enforcement agencies.

3.7 Necessary Implementation Hurdles and Steps

1. Find allies in urban areas who would be willing to opt in to the resolution at the start.

Specifically, start with Allegheny County/City of Pittsburgh police; the Citizen Review Board would be a strong place to start here. Philadelphia-area representatives would be another logical opt-in; we would also seek out opt-ins from Erie, Harrisburg, State College, and Wilkes-Barre/Scranton area. (See section 4.1.)

2. Find a rural-area ally to opt-in for CLEAR (the commission requires 1 rural police department representative).

Possible options listed in the section 4.2.

3. Determine the likely cost of developing the CLEAR screen, building the interface, integrating the database, and developing the training.

4. Find funding for the CLEAR resolution.

The commission would be funded by grants and private funding. Developing this kind of tool, with likely input from academic institutions, could open us up to grants from:

- [Pennsylvania Commission on Crime and Delinquency](#) – Grants for Community Policing
- US Department of Justice through the [JustGrants system](#) - Grants for Community Policing would be especially relevant
- [Police Grants Help](#)
- Other grants listed at the [National Policing Database](#)

5. Establish success metrics for the program.

Establish a methodology to measure the success of the program, with an accompanying timeline. One success metric may include the number of recruits who scored poorly on the CLEAR screen, whose White supremacist sympathies may not have been otherwise caught during the screening process.

6. Pass the resolution and agree on the CLEAR composition.

This would require buy-in from the State Police, opt-in police departments, and Congress. The established success metrics and timeline would identify the length of time the opt-in municipalities and counties would agree to be in the program before opting out.

7. Assemble CLEAR.

8. Develop the screening and training.

CLEAR screening development would also involve taking bids from software developers—or hiring developers—to implement and develop the screening itself, guarantee system security, and integrate into the hiring database. In addition, training would have to be developed for the participating departments. Any such teams would also have to undergo the screening.

9. Implement the CLEAR screen in opt-in counties and municipalities.

If it's a cloud-based tool, rollout should be fairly straightforward; training on the "soft" screens, like social media background checks, would be more involved. Social media checks would require frequent updates as language evolves; red flags from SPLC and other anti-Hate organizations would be required to stay current.

Depending on the influx of applications, regional or county-level expert(s) could handle background checks for multiple counties or municipalities. That would reduce the cost of training and improve the consistency of the checks. Any such teams would also have to undergo the screening.

10. After the original pilot period ends, assess the success of the program and establish legislation statewide that all police departments must engage in the CLEAR screening.

Funding, training, and administration at this point would be the responsibility of the counties and municipalities. Maintenance of the tool would be funded by grants, or, if the success is especially strong, win state-level funding to continue growing the program.

4. Political Analysis

4.1 Supporting/Opposing Organizations

Organizations that are likely to support anti-White supremacy criminal justice include:

- NAACP
- PA Coalition Against Hate
- Jewish Anti-Defamation League
- PA Jewish Coalition
- Catholic Conference
- Southern Poverty Law Center
- City of Pittsburgh Commission on Human Relations
- SisTersPGH

Organizations likely to oppose such a resolution include:

- Fraternal Order of Police
- Organizations listed on the SLPC hate group list

4.2 Legislative Supporters/Opponents and Past Votes

Supporters and indicative votes:

- House
    - Members of the Black Caucus would have to be integral. Rep. Frankel recommended we would need to work directly with them to ensure it falls into their legislative strategy.
    - If we assume all Democrats would support this (if not opt-in), we still only have 93 votes. We can add one vote for Todd Stephens, who co-sponsored Frankel's hate crimes legislation[xiv].
    - HB 1841[xv], which requires that employers disclose employment information about law enforcement recruits during the hiring process (and immunizes them from liability) recently passed unanimously. Even if we can't depend on every yes vote for this, we do gain 8 Republicans who co-sponsored 1841, bringing the total to 102.
    - A main hurdle would be finding a well-entrenched Democrat in a rural area who would be willing to opt in at the beginning.

- Senate
    - Looking to the Senate's Hate Crimes legislation[xvi], the only co-sponsors are Democrats. If we trust that all Democrats would support this legislation, we still fall 5 votes short.
    - That said: HB 1841[xvii], which requires that employers disclose employment information about law enforcement recruits during the hiring process (and immunizes them from liability) recently passed with 50 Yea votes. Given that this resolution is opt-in and also increases the integrity of the hiring process, we will likely be able to bring more senate votes.

Opposition:

- House
  - As Stephens was the only Republican willing to co-sponsor a hate crimes bill, it seems unlikely we would get other Rs to vote for this (although we could get Stephens to co-sponsor.) That said, as it's a resolution designed to allow an option into the screening, some moderate Republicans may be in favor.

4.3 Bipartisan Champions

- In this case, I would look to Todd Stephens and the 8 Republicans who co-sponsored HB 1841 as the primary bipartisan champions in the House.
- In the Senate, I haven't found Republicans who have co-sponsored bills, but some Democrats in more rural or affluent areas may be seen as bipartisan, including Santarsiero (Bucks County) and Pam Iovino (Washington and Allegheny), who both co-sponsored a hate group database bill[xviii].

4.4 Potential Consensus of Leaders

I predict that the minority leaders (Democrats) would definitely be in favor of this bill; Sen. Jay Costa seems like a likely sponsor for a Senate version.

Republicans in leadership roles seem to have recently sponsored a number of "awareness day" legislations, although Benninghoff, in particular, has sponsored a number of transparency-related bills (HB 431, HB 429); CLEAR could also be considered to be a transparency bill.

4.5 Persons of Influence

While Governor Wolf would support this resolution, I believe that Lt. Gov. Fetterman would be a primary champion for it. He has dedicated much of his career to criminal justice reform, and he also campaigned heavily in all counties, so he may have a stronger relationship with the rural constituents.

Other champions would likely come from the groups listed in Section 5. The FBI may also be a strong champion, given their recent research into the rise of White supremacy. That would add a "law and order" credibility to the resolution.

Opponents are likely to include the Fraternal Order of Police, who have historically opposed any legislation increasing restrictions on police.

5. Advocacy Analysis

5.1 Path to Approval and Implementation

I believe this was primarily outlined in 3.7, but we would start with a referendum; assemble CLEAR and develop the screening; roll it out to opted-in municipalities and counties; and after a pre-determined pilot period, attempt to pass legislation across the state.

5.2 Public Opinion Research

Public opinion research would likely reveal:

1) Constituencies who would be strongly in favor of early opt-in, and the reasons why. Obviously, this information would be valuable for representatives considering whether to join the pilot CLEAR program.
2) Constituencies who would be strongly *against* early opt-in, and the reasons why. Ironically, this may reveal areas of the state where the screening would be most likely to weed out candidates, but these areas may also have a smaller non-White population, so the issue may not be as urgent. Rural counties in Pennsylvania are largely Republican, and a 2019 Pew study[xix] demonstrated that 84% of Republicans believe "giving Black people equal rights with Whites, our country" has "gone too far" or "been about right." This indicates they'd believe taking steps to curb White supremacy would be overreach.
3) Constituencies who are neither strongly for nor against the concept of the screening could be targeted in a second-wave pilot program after it's launched in the initial opt-in areas.

Method-wise, I would want to see surveys conducted in constituencies around the state—ideally in each county—with randomized samples and questions to gauge the perception of White supremacy in law enforcement.

5.3 Swaying Public Opinion via Grassroots and Media

Grassroots is the best place to start with this resolution; starting with the nonprofit organizations mentioned above, we would meet with them, discuss the parameters and goals of CLEAR, and provide them with tools to campaign their representatives to support it. In addition, working with police leadership to hone the language and concepts would be a vital step in getting their buy-in.

Social media ads, blogs, and editorials in newspapers—backed with studies regarding the problem of White supremacy in law enforcement—would provide a base of knowledge about the pervasiveness of the problem and how CLEAR goes hand-in-hand with other efforts (like the database of police misconduct). Ideally, it could be framed as a "Good Apple" effort—we talk about the bad apples, so let's make a more concerted effort to hire only "good" apples.

5.4 Winning Support During the Legislative Election Campaign

1. Hitching this resolution to the current hate crimes and police legislation would be a reasonable start: win the support of co-sponsors of the hate crimes bills.

2. We would then move on to Lt. Gov. Fetterman and Governor Wolf; it's entirely possible Fetterman will run for Governor when Wolf's term is up in 2022, and if this takes that long, Fetterman will continue to be a strong ally.
3. Influencers might include allies in city councils—Erika Strassberger and Corey O'Connor in Pittsburgh, and sympathetic city councilors in Philadelphia, Harrisburg and Erie may also be able to test support among the municipal police departments and win their support (and thus the support of the local representatives, and even public opinion). My hope is that city council and police in these smaller cities could influence reluctant representatives to opt in.
4. Supporters could include the sympathetic Republican legislators listed in section 4.2 and 4.3—representatives who co-sponsored hate crime bills or police accountability bills, who might be less likely to reject police reform out of hand. My hope is that because it's a grant-funded resolution *and* it's opt-in—with the future option of passing legislation statewide—that they would be open to voting yes.
5. Garnering a cross-section of the supporters of the PA Coalition Against Hate—Jewish as well as Black—would reinforce that White supremacy is not just a race issue.
6. Getting influencers from the FBI and State Police Equality and Inclusion team would also improve that support.

5.5 Legislative Campaign Organizational Chart

1. **Legal Adviser**: Because the lines of constitutionality/First Amendment can be hazy in regards to this kind of screening, a Legal Adviser would ensure that early messaging (before we're able to get CLEAR up and running) would be essential in ensuring that the messaging clearly does not imply First Amendment violations. (Pro bono)
2. **Content Manager**: This marketing role would develop marketing collateral and an online social media strategy for distributing and managing messaging about CLEAR. (Likely volunteer/pro bono.)
3. **Volunteer Coordinator**: This community organizer would be experienced in collaborating with coalitions, running campaigns, and developing and running a volunteer force to distribute and advocate for the content. In addition, they would work with existing organizations like the PA Coalition Against Hate and other groups listed in section 4 to ensure adequate distribution and amplification of marketing collateral. (Likely volunteer, or perhaps a paid member of the resolution sponsor's staff.)
4. **Media Relations Manager**: This could be shared with the Content Manager, but this role requires experience specifically with media relations, print and television ads, and managing public relations. (May be able to use someone from the Democratic Party in Pennsylvania.)

5.6 Financing

I suggest that we look to the foundations for grant money to fund the production of collateral and paid staff. Another option is to look to the Democratic Party for funds.

6. Endnotes

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[xi] Senate Bill 217

[xii] HF 2647

[xiii] Commission on Structural Racism

[xiv] House Bill 2013

[xv] House Bill 1841

[xvi] Senate Bill 944

[xvii] House Bill 1841

[xviii] Senate Bill 946

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