

# CPCA

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Coalition for Police Contracts Accountability

## Requirements that Evidence of Misconduct be Ignored or Destroyed

A Series on Police Accountability and Union Contracts by the Coalition for  
Police Contracts Accountability

## Introduction

### *The Problem*

For decades, the Chicago Police Department (CPD) has had a “code of silence” that allows officers to hide misconduct. The Fraternal Order of Police (FOP) Lodge 7 and the Illinois Police Benevolent and Protective Association (PBPA) union contracts with the City of Chicago effectively make this “code of silence” official policy, making it too hard to identify police misconduct and too easy for police officers to lie about it and hide it. Both the Department of Justice and the Police Accountability Task Force have raised serious concerns about provisions in the police contracts, and Chicago mayors have acknowledged that the “code of silence” is a barrier to reform of the police department. Until the harmful provisions in the police contracts are changed, police officers will continue to operate under a separate system of justice.

### *The Coalition*

The Coalition for Police Contracts Accountability (CPCA) proposes critical changes to the police union contracts and mobilizes communities to demand that new contracts between the City of Chicago and police unions don’t stand in the way of holding officers accountable. We are composed of community, policy, and civil rights organizations taking action to ensure police accountability in the city of Chicago.

### *This Report*

CPCA has proposed 14 critical reforms to Chicago’s police union contracts, which, collectively, can have a significant impact in ending the code of silence and increasing police accountability.

This report is the third of a series of reports that the CPCA will publish presenting substantial evidence in support of each of our 14 recommendations. The focus of this report is on recommendations 7, 8 and 9, which speak to the provisions in the contracts that require officials to ignore or destroy evidence of officer misconduct.

## Eliminating the Requirement that Investigators Ignore and Destroy Evidence of Misconduct

The FOP and PBPA contracts strongly limit the use of evidence of past officer misconduct in present proceedings. The contracts also require that evidence of misconduct be destroyed after relatively short intervals of time. Finally, the contracts require that investigators acquire approval from the superintendent to investigate complaints older than five years. Because the contracts require information about misconduct to be ignored and subsequently destroyed, the police department and Civilian Office of Police Accountability, or COPA (previously the Independent Police Review Authority, or IPRA), is unable to access information about an officer's history. These records would provide CPD and the City of Chicago with crucial red flags that could be used to identify past misconduct and prevent future misconduct.

*The contracts limit the use of past disciplinary records in investigating and resolving current complaints.<sup>1</sup>*

If COPA cannot prove a complaint against an officer, the information in that complaint cannot be used in any future investigation, unless that complaint involves excessive force or criminal conduct. Even then, the information may only be used to determine credibility and notice. Additionally, if a complaint is sustained but resulted in little or no discipline, it is also removed from the officer's file after a short period of time. These restrictions prevent investigators from looking at patterns of alleged misconduct other than excessive force and criminal behavior. Other patterns, like patterns of false arrest, illegal searches, or racial or sexual abuse are useful to present and future misconduct investigations to show credibility, establish intent, or help determine the penalty an officer should receive. Investigators should be able to use any relevant evidence and findings to identify potential patterns of misbehavior. Under current contract provisions they cannot.

Other law enforcement departments have access to and consider past complaints.<sup>2</sup> Moreover, the U.S. Department of Justice (DOJ) has recognized that these provisions undermine the effectiveness of CPD's accountability processes by preventing investigators from fully accessing an officer's complaint and disciplinary file and preventing the department's intervention systems from considering the full range of relevant behavior.<sup>3</sup>

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<sup>1</sup> Fraternal Order of Police Chicago Lodge 7, Current Contract: July 1, 2012 – June 30, 2017 §8.4 (2014), <http://www.chicagofop.org/contract/> [hereinafter FOP Contract], as interpreted in an arbitration decision and adopted in CPD General Order G08-01-01, Sec. III(C); City of Chicago, Policemen's Benevolent & Protective Association of Illinois, Unit 156-Sergeants Collective Bargaining Agreements §8.4 (2013), [https://www.cityofchicago.org/city/en/depts/dol/supp\\_info/city\\_of\\_chicago\\_collectivebargainingagreements.html](https://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html) [hereinafter Sergeant Contract]; City of Chicago, Policemen's Benevolent & Protective Association of Illinois, Unit 156-Lieutenants Collective Bargaining Agreements §8.4 (2014), [https://www.cityofchicago.org/city/en/depts/dol/supp\\_info/city\\_of\\_chicago\\_collectivebargainingagreements.html](https://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html) [hereinafter Lieutenant Contract]; City of Chicago, Policemen's Benevolent & Protective Association of Illinois, Unit 156-Captains Collective Bargaining Agreements §8.4 (2014), [https://www.cityofchicago.org/city/en/depts/dol/supp\\_info/city\\_of\\_chicago\\_collectivebargainingagreements.html](https://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html) [hereinafter Captain Contract].

<sup>2</sup> See Buffalo Police Department Amended Consent Decree ¶¶ 11(a), 32, 34; LAPD Consent Decree ¶¶ 83-84; NJSP Consent Decree ¶¶ 41(b), 90; Pittsburgh Bureau of Police ("PBP") Consent Decree ¶¶ 11(b), 12(a), 57, 63, 66.

<sup>3</sup> U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT, 89, 111-13 (2017), <https://www.justice.gov/opa/file/925846/download>.

*The contracts require destruction of disciplinary records after five years.*<sup>4</sup>

A recent ruling by an Illinois appellate court upheld public access to CPD misconduct complaint records, but despite this, provisions mandating their destruction remain in the FOP and PBPA contracts. As discussed above, complaint records are often critical to establishing a pattern of misconduct based on civilian complaints. Showing such a pattern can resolve credibility disputes between officers and civilians.<sup>5</sup> The retention of disciplinary records is necessary for the implementation of proactive early intervention systems, which can assist in identifying officers with ongoing problems.<sup>6</sup> Indeed, the DOJ found that the provision requiring the destruction of disciplinary records “deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct.”<sup>7</sup>

The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records for the entirety of an officer’s employment, plus an additional five years in Cincinnati, and an additional three years in Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely).<sup>8</sup>

*The contracts limit the investigation of older complaints.*<sup>9</sup>

The police department is prohibited from investigating complaints known to CPD that are over five years old without permission of the Superintendent. It makes sense to require solid proof before disciplining an officer, and it may be harder to determine reliability of older evidence.<sup>10</sup> However, a high standard for considering evidence does not require investigators to ignore evidence solely because it is older. Because, as the DOJ found, CPD already has a “code of silence” that discourages timely disclosure of misconduct, this provision may prevent the disclosure of misconduct at all.<sup>11</sup>

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<sup>4</sup> FOP Contract §§ 8.4; Sergeant, Lieutenant, and Captain Contract, *supra* note 1, at §§ 8.4.

<sup>5</sup> Police Accountability Task Force, *Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve*, 72-73 (2016), [https://chicagopatf.org/wp-content/uploads/2016/04/PATF\\_Final\\_Report\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> DOJ Investigation, *supra* note 3, at 52.

<sup>8</sup> Cincinnati Police Department Consent Decree ¶¶ 58(g), 59, 63; LAPD Consent Decree ¶¶ 41(g)-(h), 49; PBP Consent Decree ¶¶ 12(a), 12(c), 44.

<sup>9</sup> FOP Contract §§ 8.4; Sergeant, Lieutenant, and Captain Contract, *supra* note 1, at §§ 8.4.

<sup>10</sup> PATF report, *supra* note 5, at 72.

<sup>11</sup> DOJ Investigation, *supra* note 3, at 52.

Relevant Contract Language	CPCA Recommendations
<p>Any information of an adverse employment nature which may be contained in any unfounded, exonerated, or otherwise not sustained file, shall not be used against the Officer in any future proceedings. Information contained in files alleging excessive force or criminal conduct which are not sustained may be used in future disciplinary proceedings to determine credibility and notice.</p> <p>A finding of "Sustained — Violation Noted, No Disciplinary Action" entered upon a member's disciplinary record or any record of Summary Punishment may be used for a period of time not to exceed one (1) year and shall thereafter be removed from the Officer's disciplinary record and not used to support or as evidence of adverse employment action. The Department's finding of "Sustained — Violation Noted, No Disciplinary Action" is not subject to the grievance procedure.</p> <p>Reprimands and suspensions of one (1) to five (5) days will stay on the Officer's disciplinary history for a period of three (3) years from the last date of suspension or date of reprimand, or five (5) years from the date of the incident, whichever is earlier.</p> <p>Information relating to a preventable traffic accident involving a Department Vehicle may be used and/or considered in determining future discipline for a period of time not to exceed two (2) years from the date of such preventable traffic accident and shall thereafter not be used and/or considered in any employment action provided there is no intervening preventable traffic accident involving a Department Vehicle and if there is, the two-year period shall continue to run from the date of the most recent preventable traffic accident and any prior incidents may be used and/or considered in employment actions. In no event shall any prior incident five (5) or more years old be used and/or considered.</p> <p><i>Contract with the Fraternal Order Of Police § 8.4. See also, contracts with the Policemen's Benevolent &amp; Protective Association Of Illinois § 8.4.</i></p>	<p><b><i>Recommendation 7</i></b> Allow past disciplinary records to be used in investigating and resolving present complaints.</p>

**All disciplinary investigation files, disciplinary history card entries, IPRA and IAD disciplinary records, and any other disciplinary record or summary of such record other than records related to Police Board cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, except that not sustained files alleging criminal conduct or excessive force shall be retained for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and thereafter, cannot be used against the Officer in any future proceedings in any other forum, except as specified below, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five- (5-) year period. In such instances, the Complaint Register case files normally will be destroyed immediately after the date of the final arbitration award or the final court adjudication, unless a pattern of sustained infractions exists.**

**A finding of "Sustained — Violation Noted, No Disciplinary Action" entered upon a member's disciplinary record or any record of Summary Punishment may be used for a period of time not to exceed one (1) year and shall thereafter be removed from the Officer's disciplinary record and not used to support or as evidence of adverse employment action. The Department's finding of "Sustained — Violation Noted, No Disciplinary Action" is not subject to the grievance procedure.**

**Reprimands and suspensions of one (1) to five (5) days will stay on the Officer's disciplinary history for a period of three (3) years from the last date of suspension or date of reprimand, or five (5) years from the date of the incident, whichever is earlier.**

*Contract with the Fraternal Order Of Police § 8.4. See also, contracts with the Policemen's Benevolent & Protective Association Of Illinois § 8.4.*

***Recommendation 8***  
Eliminate the provision requiring the destruction of police misconduct records.

**Unless the Superintendent of Police specifically authorizes in writing, no complaint or allegation of any misconduct concerning any incident or event which occurred five (5) years prior to the date the complaint or allegation became known to the Department shall be made the subject of a Complaint Register investigation or be re-opened or re-investigated after five (5) years from the date the Complaint Register number was issued.**

*Contract with the Fraternal Order Of Police § 6.1(D). See also, contracts with the Policemen's Benevolent & Protective Association Of Illinois § 6.1(D).*

***Recommendation 9***  
Eliminate the need for the Superintendent's authorization to investigate complaints that are five years old or older.

## The Case for Eliminating Requirements that Investigators Ignore and Destroy Evidence of Misconduct

### *I. Requirements Prevent Implementation of Early Identification Systems, are Extremely Costly to the City and Taxpayers, and Harm Citizens.*

The FOP and PBPA provisions prevent CPD from implementing effective disciplinary and intervention systems to prevent future misconduct, create enormous costs to the City, and harm citizens unable to resolve their complaints and access crucial information.

#### *A. Prevention of Implementation of Early Intervention Systems*

Because the FOP and PBPA contracts require that disciplinary records be ignored and destroyed, CPD is unable to implement systems shown to be effective at detecting and reducing patterns of misconduct. Specifically, these requirements prevent the use of an Early Intervention System (EIS), a method of tracking and analyzing officer behavior that allows departments to identify, assess, and evaluate officer performance over time. Recommended by the International Association of Chiefs of Police (IACP), early intervention systems are “[m]ost often used within the context of Internal Affairs,” and are “effective in identifying, addressing, and preventing problem behavior before it escalates to a matter for Internal Affairs.”<sup>12</sup>

The IACP is a professional association that aims to positively affect the goals of law enforcement by encouraging adherence of all police officers to high professional standards of performance and conduct. The IACP recommends policies and practices to law enforcement organizations in order to promote those ends. In 2009, the IACP published a guide on Internal Affairs practices for local law enforcement agencies, in which it recommended the implementation of an EIS.<sup>13</sup> The guide states that “[e]mployee evaluations should use the EIS to identify an officer who may have repeated complaints lodged against him or her, and after analyzing the data, management can assist the employee in rectifying the problem behavior. This kind of tracking contributes to the internal structure that can increase citizen trust in the agency, and decreases the department’s (and the city’s) legal liability as a risk-management tool.”<sup>14</sup> The IACP also notes that “[t]hrough an EIS, many behavior problems could be reduced significantly, resulting in a decrease in the caseload of the Internal Affairs Unit.”<sup>15</sup>

In order to identify patterns and predict future misconduct, an EIS requires the maintenance of thorough disciplinary records. In a 2017 law review, Stephen Rushin, a criminal law professor at Loyola University Chicago, analyzed how police union contracts prevent meaningful reforms aimed at reducing police misconduct.<sup>16</sup> Rushin explains that preserving disciplinary records for use in an EIS is crucial because, “a pattern of more serious civilian complaints over many decades—even if

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<sup>12</sup> International Association of Chiefs of Police, *Building Trust Between Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, 12 (U.S. Dept. of Justice, Office of Comm. Oriented Policing Servs., 2009).

<sup>13</sup> International Association of Chiefs of Police, *supra* note 12, at 12.

<sup>14</sup> *Id.* at 32.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> Stephen Rushin, *Police Union Contracts*, 66 Duke L.J. 1191, 1231 (2017).



those complaints are rarely if ever sustained—is often demonstrative of a problem requiring management intervention.”<sup>17</sup> The implementation of an effective EIS requires a complete and reflective record collection such that the system may correctly identify misconduct patterns. Contract provisions that require records to be ignored and destroyed on a regular basis prevent the possibility of implementing an effective EIS system.

### *B. Costs Imposed on the City of Chicago and Taxpayers*

The FOP and PBPA provisions that prevent the implementation of an EIS—or any other effective misconduct prevention system—also result in expensive lawsuits against CPD and the City of Chicago, requiring that the City and taxpayers bear the burden of officer misconduct. The City of Chicago pays out excessive amounts of taxpayer dollars to victims of police misconduct.

Elizabeth Andonova, a criminal defense attorney in Chicago, reviewed lawsuits and settlements against CPD for officer misconduct. As described in her law review article, “Cycle of Misconduct: How Chicago has Repeatedly Failed to Police its Police, in 2016, Andonova found that “in the past ten years, the city paid out \$610 million in police misconduct settlements.”<sup>18</sup> Individual officers can incur millions in liability fees for which the City is responsible: Since 2011, the city has settled 317 lawsuits with amounts of over \$80,000, some totaling up to \$15 million.<sup>19</sup> These individual officers, each of whom has cost the City millions, represent exactly the individuals that an EIS is designed to identify through the use of past disciplinary records.

For example, Officer Kenneth Wojtan has been accused of performing illegal searches over 50 times, and has had a total of 106 allegations of misconduct filed against him—more allegations than 99.8% of other CPD officers.<sup>20</sup> However, only one complaint resulted in any discipline.<sup>21</sup> Meanwhile, Wojtan has been the subject of three separate lawsuits against CPD and the City, resulting in settlements that cost over \$800,000.<sup>22</sup>

Similarly, Officer Jerome Finnigan had 175 allegations of misconduct filed against him, which is more allegations than 99.9% of other officers.<sup>23</sup> Finnigan had also been the subject of seven separate misconduct lawsuits against CPD and the City, the settlements of which cost the City more than \$1.1 million.<sup>24</sup> In one case, Finnigan and other officers searched a suspect, and upon finding no incriminating evidence, entered his home, physically abused and handcuffed another resident, and

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<sup>17</sup> *Id.*

<sup>18</sup> Elizabeth J. Andonova, *Cycle of Misconduct: How Chicago has Repeatedly Failed to Police its Police*, 73 Nat'l. Law. Guild 65, 76 (2016).

<sup>19</sup> Settling For Misconduct, Chicago Reporter, <http://projects.chicagoreporter.com/settlements/> (last visited Nov. 4, 2019); Andonova, *supra* note 17, at 77 (\$18 million settlement between City of Chicago and the Haggarty family).

<sup>20</sup> *Police Officer Kenneth Wojtan*, Citizens Police Data Project, Invisible Institute, <https://cpdp.co/officer/31119/kenneth-wojtan/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Kenneth Wojtan*, Settling for Misconduct, Chicago Reporter, <http://projects.chicagoreporter.com/settlements/officer/19842/>.

<sup>23</sup> *Police Officer Jerome Finnigan*, Citizens Police Data Project, Invisible Institute, <https://cpdp.co/officer/8562/jerome-finnigan/>.

<sup>24</sup> *Jerome Finnigan*, Settling for Misconduct, Chicago Reporter, <http://projects.chicagoreporter.com/settlements/officer/16974/>.

stole \$50,000 from the house. In 2011, Finnigan was sentenced to 12 years in prison for being the ringleader of a corrupt squad that stole hundreds of thousands of dollars and for trying to set up a hit on a fellow officer he feared would testify against him.<sup>25</sup> During his sentencing, he acknowledged that he “did become a corrupt police officer.”<sup>26</sup> Despite this widespread and blatant misconduct, Finnigan had only faced disciplinary action six times.<sup>27</sup>

Disturbingly, Finnigan and Wojtan are not unique. Many officers in CPD have extensive complaint histories and have cost the City large sums in settlements and judgments. The Chicago Reporter maintains a database entitled *Settling For Misconduct*, which compiles summaries of CPD misconduct lawsuits published by the City of Chicago’s Law Department, in which settlements or judgments were made to plaintiffs.<sup>28</sup> In 2017, the City paid \$33 million in settlement payouts, which is enough to fully fund the City’s youth mentoring, violence reduction, and early childhood education programs.<sup>29</sup> Through an EIS, equipped with complete disciplinary records, such costs to the City and taxpayers could be significantly reduced.<sup>30</sup>

### *C. Harm to Citizens Unable to Access and Use Information*

Citizens need information about officer misconduct in order to achieve resolution of their past and present complaints, but contract provisions that require records be destroyed, that prohibit the use of previous records in the resolution of current complaints, and that limit investigation of older complaint make this impossible. Because disciplinary records can be destroyed after a short period, evidence of officer misconduct, which might be crucial to citizens alleging a pattern of behavior, is unavailable. Even when disciplinary records are available, investigators of citizen complaints are unable to use past records for the purposes of investigation and resolution. This means that the records of past misconduct that do exist are useless to individuals with new allegations. This prohibits citizens from making full and complete allegations, and deprives them of accurate and satisfactory resolution of their complaints. By requiring superintendent approval for the investigation of older complaints, the contracts deny citizens, who may already be wary of coming forward, the resolution of their often serious complaints.

## *II. Requirements Undermine Accountability Processes*

The FOP and PBPA provisions prevent CPD, the City, and the public, from holding officers accountable for serious misconduct. Because of these provisions, some officers may have dozens of misconduct complaints and incurred millions in liability costs for the City, but have never been held accountable for their actions through official disciplinary systems.

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<sup>25</sup> *Ex-Cop Sentenced to 12 Years in SOS Probe*, ABC7Chicago.com (Sept. 8, 2011), <https://abc7chicago.com/archive/8346447>.

<sup>26</sup> *Id.*

<sup>27</sup> *Police Officer Jerome Finnigan*, Citizens Police Data Project, Invisible Institute, <https://cpdp.co/officer/8562/jerome-finnigan/>.

<sup>28</sup> *Settling For Misconduct*, *supra* note 19.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

In October 2014, CPD Officer Jason Van Dyke shot 17-year-old Laquan McDonald 16 times, as McDonald was walking away from Van Dyke.<sup>31</sup> This was not the first time Van Dyke's on-duty behavior should have raised serious concerns. Since 2001, Van Dyke had been subject to 11 complaints about his use of force, as well as the subject of at least two lawsuits.<sup>32</sup> In one lawsuit, the jury awarded the plaintiff \$350,000 after finding Van Dyke "employed excessive force during a traffic stop."<sup>33</sup> In another, the City settled for \$100,000 after Van Dyke and another officer were accused of beating a man with a baton, knocking him unconscious, and causing multiple injuries, including facial fractures and concussion.<sup>34</sup> However, CPD had never pursued disciplinary action against Van Dyke, nor even flagged Van Dyke's behavior as potentially problematic.<sup>35</sup>

Instead, Van Dyke's behavior was allowed to continue unaddressed, eventually culminating in McDonald's shooting. This was a direct result of the provisions in the FOP and PBPA contracts that prevent CPD from holding officers accountable for their actions. Rushin explains that "if Chicago had used a comprehensive EIS to assess officer risk, the city would have noticed that Van Dyke was the subject of more civilian complaints than almost all other Chicago police officers." The clear pattern of allegations would have justified preventative or disciplinary intervention, but this information was not accessible to the CPD officials. In fact, "[b]y mandating the destruction of disciplinary records in officer personnel records," the FOP and PBPA contracts would "make it nearly impossible for police chiefs to identify such troubling patterns in officer behavior."<sup>36</sup>

Similarly, after CPD Officer David Rodriguez shot Herbert McCarter in the back, the CPD Office of Professional Standards (OPS) recommended that Rodriguez be fired.<sup>37</sup> Despite OPS's recommendation, CPD took no action against Rodriguez.<sup>38</sup> Between 1996 and 2016, Rodriguez had 62 complaints filed against him, over half of which were for use of force. Rodriguez was not disciplined for any of these complaints, and as of today, remains at CPD as a sergeant, earning over \$100,000 a year.<sup>39</sup>

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<sup>31</sup> Jason Meisner, Jeremy Gorner & Steve Schmadeke, *Chicago Releases Dash-Cam Video of Fatal Shooting After Cop Charged with Murder*, CHI. TRIB. (Nov. 24, 2015), <http://www.chicagotribune.com/news/ct-chicago-cop-shooting-video-laquan-mcdonald-charges-20151124-story.html> [<https://perma.cc/X258-3FEA>] (citing the number of shots fired by Van Dyke in a short period of time).

<sup>32</sup> Elliot C. McLaughlin, *Chicago Officer Had History of Complaints Before Laquan McDonald Shooting*, CNN (Nov. 26, 2015), <http://www.cnn.com/2015/11/25/us/jasonvan-dyke-previous-complaints-lawsuits> [<https://perma.cc/VQ86-TV2I>]; *Police Officer Jason Van Dyke*, Citizens Police Data Project, Invisible Institute, <https://cpdp.co/officer/29310/jason-van-dyke/>.

<sup>33</sup> Elliot C. McLaughlin, *Chicago Officer Had History of Complaints Before Laquan McDonald Shooting*, CNN (Nov. 26, 2015), <http://www.cnn.com/2015/11/25/us/jasonvan-dyke-previous-complaints-lawsuits> [<https://perma.cc/VQ86-TV2I>]; P.R. Lockhart, *Former Officer Jason Van Dyke Sentenced to 6 Years for Laquan McDonald Shooting*, Vox (Jan. 18, 2019), <https://www.vox.com/2019/1/18/18188086/jason-van-dyke-sentencing-laquan-mcdonald-chicago-81-months>.

<sup>34</sup> *Case 15-L-3870*, Settling for Misconduct, Chicago Reporter, <http://projects.chicagoreporter.com/settlements/case/15-l-3870/>.

<sup>35</sup> Rushin, *supra* note 16, at 1195.

<sup>36</sup> Rushin, *supra* note 16, at 1232.

<sup>37</sup> Andonova, *supra* note 18, at 73.

<sup>38</sup> *Sergeant of Police David Rodriguez*, Citizens Police Data Project, Invisible Institute, <https://cpdp.co/officer/24425/david-rodriguez/>.

<sup>39</sup> Police Salary, City of Chicago, <https://data.cityofchicago.org/Administration-Finance/Police-Salary/ap92-235q> (last visited on October 7, 2019).

After investigating CPD for patterns and practices of unlawful conduct and civil rights violations, the U.S. Department of Justice Civil Rights Division (DOJ) issued a report detailing findings and recommendations. In its report, DOJ noted that because “[t]he City has agreed with CPD’s police unions to prohibit the investigations into older incidents of police misconduct, even where those incidents may include serious misconduct or be probative of a pattern of misconduct,” such behavior and patterns may go undisclosed and unaddressed.<sup>40</sup>

The Department of Justice and other experts have expressed concerns about how the contract provisions prevent CPD and the City from holding officers accountable for their misconduct. Both the DOJ and Andonova express concern that the disciplinary system, in combination with the “code of silence,”<sup>41</sup> rewards problem officers while incentivizing other officers to keep quiet about misconduct. The DOJ investigators found that “CPD’s culture and ‘code of silence’ . . . may prevent disclosure of serious misconduct in a timely fashion.”<sup>42</sup> Andonova explains that, “[f]or officers who are prone to misbehavior, they are rewarded—by escaping disciplinary action—when they use this silence to protect each other from accountability” and oversight agencies fail to discipline officers with patterns of misconduct.<sup>43</sup>

Rushin argues that this system greatly undermines CPD’s ability to identify and discipline serious officer misconduct. The contract provisions make it so that, after five years, an officer “can have his or her personnel file wiped clean—even if that officer has previously engaged in a pattern of egregious misconduct that raises serious questions about whether he or she is fit to serve as a police officer.”<sup>44</sup>

### *III. Best Practices Call for Police Departments to Eliminate Requirements that Evidence of Misconduct Be Destroyed or Ignored*

As mentioned above, the IACP, an organization with policy expertise and experience in the law enforcement arena, recommends that police departments discontinue mandatory record destruction, allow past records to be used in current proceedings, and allow investigation of past claims without superintendent authorization. Other experts, stakeholder organizations, and law enforcement organizations agree, advising departments to remove these policies from union contracts.

Rushin argues that the requirements that past records be ignored in present complaints, and later destroyed, are both highly problematic. These practices prevent both “public oversight of internal police disciplinary decisions,” and, more troubling to Rushin, prohibit “even police chiefs from fully using officer disciplinary records, prevent[ing] supervisors from considering prior disciplinary history when taking future employment action.”<sup>45</sup>

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<sup>40</sup> DOJ Investigation, *supra* note 3, at 52.

<sup>41</sup> This refers to the cultural phenomenon within police departments that discourages officers from reporting the misconduct of other officers’ misconduct to the relevant authorities.

<sup>42</sup> DOJ Investigation, *supra* note 3, at 52.

<sup>43</sup> Andonova, *supra* note 18, at 79.

<sup>44</sup> Rushin, *supra* note 16, at 1229.

<sup>45</sup> Rushin, *supra* note 16, at 1229.

The Police Accountability Task Force (PATF) a citizen group convened to recommend strategic and pragmatic reforms to CPD and IPRA/COPA, highlighted in its final report the impracticality of the requirements that disciplinary records be ignored. The Task Force asserts that “[t]here is no compelling reason for these provisions.”<sup>46</sup> Instead, “CPD and various police oversight entities should be able to draw on any relevant evidence and findings to identify potential patterns of misbehavior.”<sup>47</sup> PATF believes that such requirements “obstruct accountability,” and “violate[] the public trust.”<sup>48</sup> Eliminating these requirements, “will allow valid complaints to be reviewed and make it easier to uncover patterns of abuse.”<sup>49</sup>

The PATF report also questions the practicality of the requirement that disciplinary records be destroyed:

Expunging records contradicts best practices, impedes the development of early intervention systems and deprives the public of information that is rightfully theirs. As noted above, it also deprives police oversight bodies of evidence of potential patterns of bad behavior. Moreover, it may also deprive wrongfully convicted persons of exonerating information.<sup>50</sup>

PATF recommends that these provisions be eliminated, in part because such practices “deprive[] the public of important information that is rightfully theirs, and may include the destruction of information that serves numerous operational and public policy objectives.”<sup>51</sup>

DOJ concluded that CPD’s practice of document destruction “not only may impair the investigation of older misconduct, but also deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct.”<sup>52</sup>

Finally, PATF also recommends the removal of the requirement that investigators obtain superintendent permission to investigate complaints older than five years. PATF argues that “[t]his is an unnecessary rule, as the statute of limitation will apply for criminal matters, and for administrative matters, the nature and severity of the conduct should determine whether the complaint should be investigated.”<sup>53</sup>

#### *A. Other Law Enforcement Entities*

A significant number of law enforcement agencies across the country have removed similar provisions from their police union contracts as part of compliance with consent decrees with the DOJ.

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<sup>46</sup> PATF Report, *supra* note 5, at 72.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 70.

<sup>49</sup> *Id.* at 70.

<sup>50</sup> *Id.* at 14.

<sup>51</sup> *Id.* at 159.

<sup>52</sup> DOJ Investigation, *supra* note 3, at 52.

<sup>53</sup> PATF report, *supra* note 5, at 159.

In 1997, the Pittsburgh Bureau of Police (PBP) entered a consent decree with the DOJ, requiring, among other things, that PBP “establish a database containing relevant information about its officers, as well as a statistical model to identify and modify the behavior of problem officers (also known as an ‘early warning system’).”<sup>54</sup> The consent decree requires that PBP use the system to:

collect and record, at a minimum, the following information: . . . citizen complaints, including textual descriptions of the allegations . . . discipline imposed and related file numbers; . . . all training, reassignments, transfers and mandatory counseling; status of any administrative appeals or grievances; a detailed description of all criminal investigations of possible officer misconduct; a detailed description of all civil or administrative claims filed against the City arising from PBP operations; a description of all lawsuits filed against the City, the PBP or its officers arising from PBP operations.<sup>55</sup>

Additionally, the consent decree specifies that data acquired by the PBP EIS system be retained for “three years after the officer leaves the PBP,” and that should data be removed from the EIS, it should be “maintained in an archive indefinitely.”<sup>56</sup>

In 2002, the Cincinnati Police Department entered a consent decree, revising, among other things, their risk management system and officer performance evaluation methods.<sup>57</sup> The consent decree requires that Cincinnati PD both collect “data necessary for supervision and management,” and “use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of [Cincinnati] PD officers across all ranks, units and shifts.”<sup>58</sup> Cincinnati PD must collect and use in these evaluations “all complaints (and their disposition)” as well as “all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from [Cincinnati] PD operations or the actions of [Cincinnati] PD personnel.”<sup>59</sup>

In 2001, the Los Angeles Police Department (LAPD) entered a consent decree with the Department of Justice, requiring, among other things, that LAPD “establish a database containing relevant information about its officers, supervisors, and managers to promote professionalism and best policing practices and to identify and modify at-risk behavior (also known as an early warning system).”<sup>60</sup> The system must record and retain records, among other things, “the results of adjudication of all investigations (whether criminal or administrative) and discipline imposed or non-disciplinary actions taken,” “all written complaints received by LAPD about officer performance,” and “all criminal arrests and investigations known to LAPD of, and all charges against, LAPD employees.”<sup>61</sup>

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<sup>54</sup> Pittsburgh Bureau of Police (“PBP”) Consent Decree ¶¶ 12.

<sup>55</sup> Pittsburgh Bureau of Police (“PBP”) Consent Decree ¶¶ 12(a).

<sup>56</sup> Pittsburgh Bureau of Police (“PBP”) Consent Decree ¶¶ 12(c).

<sup>57</sup> Cincinnati Police Department Consent Decree.

<sup>58</sup> Cincinnati Police Department Consent Decree ¶¶ 57.

<sup>59</sup> Cincinnati Police Department Consent Decree ¶¶ 58(g)-(h).

<sup>60</sup> Los Angeles Police Department Consent Decree ¶¶ 39.

<sup>61</sup> Los Angeles Police Department Consent Decree ¶¶ 41(h)-(k).



## CPCA's Fourteen Reforms

For too long and in too many ways, Chicago police union contracts have included provisions that have served as barriers to identifying misconduct. The result has been an inability to investigate civilian and officer complaints of misconduct and address bad behaviors at an early stage. Offenses go unreported and undisciplined and the “code of silence” culture is reinforced. The negotiation of new FOP and PBPA union contracts presents an opportunity to address these problematic provisions identified by both the Department of Justice and the Police Accountability Task Force as barriers to accountability. The new contracts require the removal of these barriers in order for the City and CPS to begin to build a culture of accountability worthy of public confidence and trust.

First, the contracts must permit the investigation of anonymous complaints and complaints without an affidavit. Second, the contracts must ensure that a complainant's name is not disclosed to the officer prior to an investigation, and that officers who perform their ethical and moral duty of reporting misconduct are not barred from promotion and recognition. In addition to removing these barriers to identifying misconduct, the CPCA advocates for the reformation of union contract provisions that have made it too easy for officers to lie about misconduct, that require officials to ignore and destroy evidence of misconduct, and that make it difficult to investigate police misconduct in transparent ways.

Only through addressing each of these areas, as detailed in the CPCA's fourteen recommendations for reform, will the City, the CPD, and the community it is committed to serve be able to embark on the path of trust and accountability.

1. Eliminate the requirement of a sworn affidavit for investigating civilian complaints of misconduct.
2. Allow for the filing and investigation of anonymous complaints.
3. Prevent the disclosure of a complainant's name prior to the interrogation of an accused officer.
4. Remove the ban on offering rewards to officers that cooperate or provide information on ongoing investigations.
5. Eliminate the 24-hour delay on officer statements in shooting cases and create a clearly outlined process to receive statements from all officers involved in a timely manner.
6. Eliminate an officer's right to review and amend statements previously made to investigators without consequences for lying.
7. Allow past disciplinary records to be used in investigating and resolving present complaints.
8. Eliminate the provision requiring the destruction of police misconduct records.
9. Eliminate the need for the Superintendent's authorization to investigate complaints that are five years old or older.
10. Remove constraints on how interrogators can ask questions.
11. Specify that information provided to officers prior to interrogations should be a general recitation of allegations.
12. Allow for the disclosure of the identities of officers who are the subject of civilian complaints.
13. Require officers to disclose secondary employment and any other pertinent information that may cause a conflict of interest in performing their duties as a sworn officer.
14. Reduce years of seniority for officers who have been repeatedly recommended for suspension because of findings of complaints filed against them.