

CPCA

Coalition for Police Contracts Accountability

Conditions That Make Lying Easy

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 Mayor Rahm Emanuel has 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 second 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 5 and 6, which speak to provisions in the contracts that enable collusion and make it easier for officers to lie about misconduct.

Making it More Difficult for Officers to Lie About Misconduct

The Mayor of Chicago, along with many former high-level CPD officials, has recognized that a “code of silence” exists within the CPD.¹ This code of silence includes a pattern of collusion among CPD officers and officials that stifles police accountability, community relations, and the safety of community residents. Chicago’s police union contracts include provisions that make it easy for officers to lie, and might even make it easier for officers to lie than to tell the truth. The City and unions must reform these provisions in order to encourage officers to make the right choice – not to lie or collude – but to tell the truth about what happened.

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.²

Under the current CPD contracts, in officer-involved shootings, the shooting officer(s) can wait 24 hours before providing a statement on the incident. This waiting period does two harmful things. First, it interferes with COPA investigators’ abilities to fully participate in police shooting investigations from the beginning. Second, it provides officers with the opportunity to collaborate and establish a false narrative of the incident to protect themselves from discipline. Even with the most honest officer, the appearance and opportunity for collusion remains and results in an overall lack of trust in investigations of officer-involved shootings. Having a clear process to receive statements from all officers on the scene as soon as possible after an officer-involved shooting will support police, by setting expectations during a stressful period, and protect potential victims in cases where police misconduct has occurred.

Eliminate an officer’s right to review and amend statements previously made to investigators without consequences.³

In order for investigators to charge an officer with making a false statement, the officer must first have the opportunity to review any video or audio recording pertaining to the incident and correct

¹ U.S. DEP’T OF JUST. C.R. DIV. & U.S. ATT’Y’S OFF. N. DIST. OF ILL., INVESTIGATION OF CHICAGO POLICE DEPARTMENT (HEREINAFTER “DOJ REPORT”) at p. 75 (2017); Police Accountability Task Force Report, April 2016 (hereinafter “PATF”), at pp. 69-70; *Asked & Answered: Lori Lightfoot*, Crain’s Chicago Business (Feb. 3, 2019), <https://www.chicagobusiness.com/government/asked-answered-lori-lightfoot>.

² Fraternal Order of Police Chicago Lodge 7, Current Contract: July 1, 2012 – June 30, 2017 §6.1(A), Appendix L (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 §6.2(E) (2013), 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 §6.2.(E) (2014), 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 §6.2(E) (2014), https://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html [hereinafter *Captain Contract*].

³ FOP Contract, Sec. 6.1(M). The Sergeants’, Lieutenants’ and Captains’ Contracts do not contain a comparable provision.

his or her false statements.⁴ This provision, in effect, allows officers to lie as long as they have not reviewed the video or audio recordings, by giving them a consequence-free opportunity to change their statements after being confronted with contrary evidence. In addition, this provision makes it difficult to hold officers responsible for what is an already rarely enforced, though serious rule, prohibiting sworn officers of the peace from making false statements to investigators.

⁴ This right is absolute. It holds true regardless of whether the false statements were made intentionally or concerned a material aspect of the incident, unlike the prerequisites for actually holding an officer liable for a rule 14 violation.

Relevant Contract Language	CPCA Recommendations
<p>The interrogation of the Officer, other than in the initial stage of the investigation, shall be scheduled at a reasonable time, preferably while the Officer is on duty, or, if feasible, during daylight hours.</p> <p><i>Contract with the Fraternal Order Of Police § 6.1(A). See also, contracts with the Policemen's Benevolent & Protective Association Of Illinois § 6.1(A).</i></p> <p>The foregoing provision was interpreted in an arbitration decision as requiring a 24-hour waiting period before an officer could be interviewed by COPA investigators, and was subsequently incorporated in CPD General Order G08-01-01, Section III(C) as follows: “The shooting member(s) will be required to give his or her statement to COPA at the COPA offices, or any other mutually agreed upon location, no earlier than twenty-four hours after the shooting incident.”</p>	<p><i>Recommendation 5</i></p> <p>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.</p>
<p>If, prior to taking an Officer’s statement, the Employer, IPRA or IAD is in possession of video or audio evidence relevant to the matter under investigation, it may, in its discretion, elect to advise or not to advise the Officer of such fact and, further, may allow or not allow the Officer an opportunity to review the video or audio evidence prior to taking the Officer’s statement. An Officer who is not allowed to review the video or audio evidence prior to giving a statement shall not be charged with a Rule 14 violation unless the Officer has been presented with the video or audio evidence and given the opportunity to clarify and amend the Officer’s original statement. In any event, the Employer shall not charge an Officer with a Rule 14 violation unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.</p> <p><i>Contract with the Fraternal Order Of Police § 6.1(M).</i></p>	<p><i>Recommendation 6</i></p> <p>Eliminate an officer’s right to review and amend statements previously made to investigators without possible consequences for lying.</p>

The Case for Removing Contract Provisions that Make Lying Easy

I. Police Oversight Experts Have Called for the CPD to Modify or Eliminate These Provisions

Two recent investigations into the manner in which the CPD and COPA handle investigations into police shootings of civilians have recommended modifying or doing away with both of the contract provisions—i.e., the 24-hour waiting period and the right to change statements without consequences.

The 2016 Police Accountability Task Force Report recommended changes to both these provisions. The Task Force report includes two primary recommendations addressing the 24-hour waiting period and CPD's protocol for officer-involved shootings. These recommendations read as follows:

- “The provisions delaying interviews in shooting cases for at least 24 hours should be revised to ensure that officers are separated and remain separated from other officers until all officers have given statements. The Department of Justice’s Consent Decree with the Los Angeles Police Department contains such a requirement.” [The LAPD’s consent decree will be further discussed below in the DOJ’s recommendations.⁵]
- “When formal questioning begins, the inquiry will start with a recitation of any and all conversations that the officer has had with law enforcement between the shooting and the commencement of the interview.”⁶

The Task Force also explicitly recommended that the collective bargaining agreement (CBA) provision providing officers with the right to review and amend their statements without consequences for intentional lying should be eliminated.⁷ The Task Force further recommended that the CBA provision conditioning Rule 14 charges on an officer’s review of video or audio recordings should be eliminated, as well.⁸

The Department of Justice’s Report and Recommendations, issued in January 2017, contained similar recommendations. The DOJ’s report contains more in-depth recommendations addressing the 24-hour provision and CPD’s protocol for officer-involved shootings. These recommendations read as follows:

- “[...] the provision requiring that IPRA provide witness officers with two-hour notice and accused officers with 24-hour notice before interviews, [...] should be renegotiated or, alternatively, all witness discussions with CPD must likewise be delayed until IPRA can participate.”⁹

⁵ PATF Report at p. 74 (citing Los Angeles Police Department Consent Decree Sec. 61, available at http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf).

⁶ PATF Report at pp. 74 and 159.

⁷ *Id.*

⁸ *Id.*

⁹ DOJ Report at p. 58.

- “[...] the CBA-imposed 24-hour rule should be eliminated [...], but until this is done, CPD and IPRA should arrive at creative and enforceable ways to ensure that both the shooting officers’ well-being and Chicago’s broader accountability goals are satisfied.”¹⁰
- “Revise CBA provisions or other restrictions on how soon officers may be interviewed following an officer-involved shooting;”¹¹
- “Revise the initial response to officer-involved shootings to prevent collusion and the contamination of witnesses.”¹²
- “CPD rules should at a minimum prohibit officers from discussing the incident (other than with counsel) outside of IPRA’s presence, and this rule should be stringently enforced with significant penalties imposed for violations.”¹³
- “Adopt a policy requiring that IPRA investigators participate in the preliminary assessment during the immediate aftermath of an officer-involved shooting to the same extent as the CPD commander in charge and CPD investigators conducting administrative or criminal investigations.”¹⁴
- “Adopt policies and practices that preclude involved and witness officers from speaking with one another, or with civilian witnesses, about the shooting incident until after they have been interviewed by IPRA investigators, except to the extent necessary to ensure public safety [...] Require that, where possible, involved officers, witness officers, and civilian witnesses be transported to the station separately and their conversations be monitored to avoid contamination prior to interviews;”¹⁵
- “[...] prohibit involved officers and witness officers from using cell phones before they speak with the on-scene commander;”¹⁶
- “Consider prohibiting involved officers, witness officers, and civilians from viewing footage from dashboard cameras, body cameras, surveillance cameras, or cell phones before their interview with IPRA.”¹⁷
- “In all cases, inquire [...] whether [officers and witnesses] have viewed any recordings prior to the interview.”¹⁸
- Many agencies, such as the LAPD, follow a contrary protocol to officer-involved shootings. LAPD’s protocol works to eliminate officer collusion and witness contamination primarily through separation: “After all public safety concerns have been addressed, the [on-scene] commander shall ensure that involved officers and witness officers are transported from the scene, physically separated unless logistical problems [...] preclude individual separation, and

¹⁰ DOJ Report at p. 59.

¹¹ DOJ Report at p. 153.

¹² DOJ Report at p. 152.

¹³ DOJ Report at p. 58.

¹⁴ DOJ Report at p. 152.

¹⁵ *Id.*

¹⁶ DOJ Report at p. 153

¹⁷ *Id.*

¹⁸ DOJ Report at p. 58.

monitored to eliminate the possibility of contaminating their statements prior to their interview by [Force Investigation Division] personnel.¹⁹

With respect to the right to amend statements without penalty, rather than focus directly on altering the CBA's provision on an officer's right to review and amend prior made statements (which arguably was probably outside the scope of the DOJ's powers), the DOJ repeatedly emphasized the importance of strictly enforcing and pursuing Rule 14 charges to more effectively better discover officer collusion and to demonstrate that an officer would face real consequences as a result of false statements.

II. *Real World Practices Also Call for These Provisions to be Modified*

A. *Inappropriate Investigative Procedures*

The history of lying, collusion and the code of silence in police shooting cases calls for not just the additional precautions recommended in the PATF and DOJ reports, but the elimination of those provisions. Moreover, eliminating them would be consistent with the best practices in many other police departments around the country. The Peace Officers Bill of Rights (that applies to smaller, non-unionized police departments in Illinois²⁰ and many other states around the country) does not require a 24 hour waiting period before taking a statement from an officer involved in a shooting or a consequence-free right to change such a statement.

One of a police officer's duties is to honestly report what happened in any incident. This is required under the rules governing CPD,²¹ as well as basic decency and common sense. A police officer who refuses to provide such a statement until he or she has had an opportunity to concoct a false narrative or who intentionally lies in such a statement can and should be disciplined for such actions. The United States Supreme Court has held that while such "compelled" statements cannot be used to *criminally* prosecute an officer for his or her underlying conduct in the incident (unless the officer has been provided with *Miranda* warnings and rights, like any criminal suspect), such compelled statements may be used as a basis for administrative and disciplinary proceedings.²² In most police departments, supervisors are authorized to take such statements from officers without any waiting period. If a formal investigation is subsequently commenced regarding the officer's actions, such statements can be used in administrative and disciplinary proceedings (without any consequence-free right to change intentional lies in the statements), but not in subsequent criminal proceedings. The FOP collective bargaining agreement should be changed to provide the public and COPA investigators with similar access to such officer statements.

B. *Examples of Incidents Involving the 24-Hour Rule*

¹⁹ *Id.*

²⁰ 50 ILCS 725/1-8.

²¹ Rules and Regulations of the Chicago Police Department, Art. I. Standards of Conduct, § B.12, Art. V. Rules of Conduct, No. 14, 20 & 21 (Apr. 16, 2015), available at <http://directives.chicagopolice.org/directives/data/a7a57bf0-12d7c186-a4912-d7c1-8b12822c2ca106c4.html>.

²² *Garrity v. New Jersey*, 385 U.S. 493 (1967). In *Garrity* officers were charged with "ticket fixing" and were required to provide their employer with statements in the course of the investigation. The officers involved were subsequently fired and charged with criminal violations. The officers had not received *Miranda* warnings, though they were warned that false statements could result in discipline. Under these circumstances the Supreme Court held that the statements not "voluntary" and could not be used in the criminal cases against them because they had been "compelled" by their employment to give them.

The prohibition that COPA investigators must wait a minimum of 24 hours before interviewing an officer involved in a shooting seriously interferes with COPA investigations in two ways. First it excludes COPA investigators from participating in the initial interviews and discussions at the scene of the incident. Second, it creates a substantial opportunity for officers to “get their stories straight” by discussing them in unrecorded conversations with supervisors, union representatives and other officers—frequently leading to false narratives as to what actually happened.

Though many instances of the 24-hour rule interfering with investigations into officer shootings have gone unrecorded, there are also numerous documented examples of intentional collusion facilitated by the 24-hour waiting provision of the CBAs:

Laquan McDonald Shooting (2014). Laquan McDonald was shot by a Chicago Police Officer on October 14, 2014.²³ Various officers were called to the scene on a report of someone damaging vehicles. Although the shooting officer was the last officer to arrive on the scene, he exited his vehicle and immediately fired shots at McDonald. Although McDonald fell to the ground upon being hit by the first shot, the shooting officer fired 15 more shots. This information would not be available if it were not for a police cruiser videotape, because the officers’ initial interviews and written reports of the shooting were objectively false. Five different witnessing-officer interviews and one former Fraternal Order of Police spokesperson statement all corroborated a narrative that was entirely different from the later-revealed video recording. Each of these interviews provided a variation of a narrative that described McDonald as dangerous man, lunging at the officers with a knife, refusing to take orders, and continuing to get back up with the knife after being shot.²⁴

The video recording was released 13 months after the shooting. The footage revealed that McDonald had made no movements toward the officers when he was initially shot and he continued to pose no threat as he was shot 15 more times. Furthermore, the footage resulted in recommendations to terminate seven officers due to falsifying reports about the shooting.²⁵ Four officers were ultimately terminated and four resigned.²⁶

Paul O’Neal Shooting (2016). In July 2016 Paul O’Neal was shot by a Chicago Police Officer. Video footage from a body camera worn by an officer depicted the collusion that can result from not requiring officers to remain separated following an officer involved shooting. The footage revealed that, immediately after the shooting, the officers discussed the facts of the incident, coordinating agreement on their perceptions of the incident. A CPD supervisor could also be heard telling officers to “talk about that stuff afterwards” and advising officers with body cameras not to go near the involved officer.²⁷

Esau Castellanos Shooting (2013). In March 2013, Esau Castellanos was shot and killed by CPD officers after getting into a car accident. The officers fired 19 shots at his car, hitting him 3 times. The officers claimed Castellanos opened fire on them and even that a bullet had hit one of them in the head. However, no gun was ever found, no stray bullets were ever recovered, and it was

²³ For details on this incident see the PATF at p. 2-4 and the DOJ Report at pp. 57-58.

²⁴ See PATF at pp. 2-3; DOJ Report at pp. 57-58.

²⁵ *Id.*

²⁶ See Police Board Report 16PB 2909-2912; Chicago Tribune Staff, *Beyond Jason Van Dyke: Officers Who Faced Criminal Charges and/or Discipline over Laquan McDonald Shooting*, Chicago Tribune (Jul. 18, 2019), <https://www.chicagotribune.com/data/ct-laquan-mcdonald-shooting-police-officers-htmlstory.html>.

²⁷ See DOJ Report at p. 58.

determined that neither officer had been shot. Two years later, the officers suggested a second person may have been in the car with Castellanos, though they never mentioned this to investigators. In 2016 City attorneys agreed to pay \$3.75 million to Castellanos's family.²⁸

Jamaal Moore Shooting (2012). In December 2012, Officers Ruth Castelli and Christopher Hackett hit an unarmed Jamaal Moore with their car, then shot and killed him. The initial CPD narrative stated that Officer Hackett attempted to place Moore in handcuffs, but Moore fought back by flipping him to the ground twice and threw him around “like a rag doll.” The CPD narrative then claimed that one of the officers shouted that Moore had a gun and Moore charged at Officer Castelli, and she responded by fatally shooting Moore. However, dashcam footage revealed that, while attempting to handcuff Moore, Officer Hackett fell forward and Moore was able to break free. The footage also shows that Moore never charged at either officer and was attempting to run away when he was killed. A black flashlight was found at the scene, which Officer Castelli claimed Moore was holding at the time; two witnesses said he was not. IPRA did not interview Officer Castelli until almost a year later. In 2014, the City settled a lawsuit filed by Moore's mother for \$1.25 million.²⁹

As the foregoing examples illustrate, the 24-hour waiting rule period prevents COPA investigators from fully participating in the initial investigations at incidents and creates substantial opportunities for officers to collude with one another as to what they will eventually say happened when COPA investigators can finally speak with them. And that is precisely what happens in far too many cases, as the DOJ Report and PATF Report both sadly confirmed.

III. *Current rules barring the interview of a CPD officer until 24 hours after a shooting and providing an opportunity to change statements after viewing additional evidence, interfere with proper investigations and make it too easy to lie*

Unlike in many other places, when a CPD police officer shoots a civilian, that shooting immediately triggers two investigations—one by CPD detectives to determine if the civilian was engaged in criminal activity and the other by a COPA (or previously an IPRA)³⁰ investigator to determine if the use of deadly force by the officer was justified. Unfortunately, these investigations are not handled in an even-handed manner. Instead, as the US Justice Department Report determined after reviewing hundreds of such prior investigations, the use of force investigations by COPA (then IPRA) were characterized by “entrenched investigative deficiencies and biased techniques.”³¹ Some of the deficiencies in such investigations can be addressed by CPD and COPA internal changes in the way they conduct such investigations (such as by giving the COPA investigator and the CPD

²⁸ Jeremy Gerner, et al., *FBI Investigating Another Fatal Shooting by Chicago Police*, Chicago Tribune (Jan. 9, 2016), <https://www.chicagotribune.com/news/breaking/ct-chicago-cop-shooting-esau-castellanos-met-20160108-story.html>; *City Council Committee to Consider More Than \$4M in Payouts in Police Misconduct Cases*, ABC7 Chicago (July 19, 2016), [https://abc7chicago.com/news/city-to-consider-more-than-\\$4m-in-payouts-in-police-misconduct-cases/1433022/](https://abc7chicago.com/news/city-to-consider-more-than-$4m-in-payouts-in-police-misconduct-cases/1433022/).

²⁹ Yana Kunichoff, *How Chicago's 'Fraternal Order of Propaganda' Shapes the Story of Fatal Police Shootings*, Chicago Reader (Feb. 3, 2016), <https://www.chicagoreader.com/chicago/fraternal-order-of-police-shootings-propaganda-pat-camden/Content?oid=21092544>; Phil Rogers, *\$1.25 Million for Family of Unarmed Man Shot by Police*, NBC5 Chicago (Sep. 8, 2014), <https://www.nbcchicago.com/investigations/125-for-Family-of-Unarmed-Man-Shot-by-Police-274404421.html>.

³⁰ COPA (the civilian Office for Police Accountability) replaced IPRA (the Independent Police Review Authority) as the agency that investigates serious instances of police misconduct in September, 2017. The terms are essentially used interchangeably as appropriate in this paper.

³¹ DOJ Report at p. 56.

incident commander shared authority at the incident site)³²—but others require changes to the collective bargaining agreements between CPD and the police unions, particularly the FOP contract.³³

The two contract provisions that are the subjects of this paper (the 24-hour waiting period and the right to change statements without consequences) are among those that need to be changed to make investigations by COPA more professional, more accurate and more credible. Both of those contract provisions give officers special treatment and rights not available to ordinary citizens in similar circumstances; both seriously interfere with the quality of the investigations COPA conducts; and both effectively encourage and enable officers to maintain a code of silence and lie about what actually happened with little or no consequence.

To understand the impact of these provisions upon shooting investigations, a brief overview of how such investigations are commenced and conducted by CPD and COPA is helpful. The DOJ Report describes these procedures in detail.³⁴ At the scene of the shooting, the CPD Commander has the opportunity to complete a preliminary assessment, involving a survey of the scene and interviews with officers and civilians, before COPA can begin its investigation. While the Commander conducts this assessment, supervising sergeants, detectives, and union representatives are also allowed to conduct interviews and view evidence. During this time, however, COPA must wait outside of the taped area. Therefore, all of these initial assessments and interviews occur without COPA's presence and none of them are recorded. This factor alone makes it difficult to avoid and detect collusion from the start of the investigation. The potential for collusion only increases because officers are not prohibited from talking to each other nor are they required to remain separated after the shooting. Once the Commander completes the preliminary assessment, he or she guides COPA investigators in a walk-through of the scene, providing a narrative of the incident. CPD continues to control the flow of information to COPA by not allowing COPA investigators to speak with witnesses directly until they return to the headquarters.

At headquarters, COPA is virtually the last to interview officers and civilian witnesses. The CPD supervisors, detectives, union representatives and counsel, and possibly even prosecutors from the State's Office (SAO) are able to conduct interviews before COPA, which are, again, unrecorded. Beyond this, officers may receive assistance in completing their reports of the incident from union representatives and counsel. Similar to the troubling procedures at the scene of the incident, COPA investigators are further hindered during the investigation by being required to be in a different room while these communications occur. As described above, in accordance with the CBA, COPA cannot even interview the shooting officers for at least 24 hours after the incident, and non-shooting officers are entitled to a 2-hour notice prior to any recorded interviews with COPA.³⁵

CPD's current procedures have very real and severe consequences, some of which have already been observed by the public and the DOJ. These private, unrecorded communications before COPA can even speak with the shooting officer create a breeding ground for inadvertent conflation of narratives and/or officer collusion. Without doubt, the provisions in question in the CBA impede

³² For other examples of internal procedures that need to be changed, *see* DOJ Report, at pp. 58-70.

³³ DOJ Report at p. 58-59, 153.

³⁴ DOJ Report at p. 56-57.

³⁵ DOJ Report at p. 58-59, 153.

COPA's ability to properly investigate the incident and greatly hinder the community's perception of both the CPD and COPA, as documented repeatedly in the DOJ Report.

IV. *The 24-Hour Waiting Period Should be Eliminated from the Collective Bargaining Agreements*

A. There is No Real Justification for the 24-Hour Waiting Rule

The FOP contract and other CBAs provisions requiring a 24-hour waiting period before a shooting officer may be interviewed by COPA investigators is, unfortunately, not unique. The majority of police union contracts around the country do not have strict waiting periods before interrogations.³⁶ Advocates of such "waiting period" provisions argue that traumatic incidents adversely affect people's memories, with the result that an officer involved in a stressful event like a shooting will not be able to give an accurate account of the incident until after his or her memory has had a sufficient wait for their memory to "gel."

At the outset it is appropriate to note that such a contention is at odds with both common sense and best investigative practices in virtually every other context. Generally, officers and investigators are routinely directed to obtain witness statements from civilians and other non-officers involved in similar events "as soon as possible," and before such statements and recollections are contaminated with exposure to other's recollections and accounts. Ordinary citizens, including crime victims, criminal suspects, accident victims and other eye-witnesses and participants are not afforded such mandatory "waiting periods" to permit their memories or accounts to "gel". Nor do any other City employees receive the benefit of such a waiting period. They must provide their statements to supervisors and investigators immediately.

There is good reason for that practice in other contexts. Despite some scientific disagreements over the past 100 years, current studies indicate that "there is little evidence to support the view that emotional stress is bad for memory."³⁷ While some details regarding a traumatic event may improve over time, memories of the critical aspects of what happened rarely change significantly. Recent studies have confirmed this, finding no evidence "that delay improves either recall or cognitive capability that could indicate enhanced ability to respond to questioning."³⁸ In fact, as Stanford professor and renowned expert on human memory, Elizabeth Loftus, has found, memory "not only fades, but it is also vulnerable to post-event contamination, or eroding."³⁹ As a result, as noted criminal justice expert Samuel Walker has concluded,

"Police union contract provisions that grant officers a waiting period before they can be interviewed about possible misconduct are not supported by scientific evidence on the impact of trauma on memory."⁴⁰ Moreover, apart from the science involved, officers should be treated no differently than others when being questioned in connection with a shooting investigation.

³⁶ Stephen Rushin & Atticus DeProspero, *Interrogating Police Officers*, 87 Geo. Wash. L. Rev. 646, 674 (2019), *available at* <https://www.gwlr.org/wp-content/uploads/2019/06/87-Geo.-Wash.-L.-Rev.-646.pdf>.

³⁷ Sven-Åke Christianson, *Emotional Stress and Eye-Witness Memory: A Critical Review*, 112(2) Psychol. Bull. 284 (1992).

³⁸ Radley Balko, *Study: 'Cooling-off periods' don't help cops remember officer-involved shootings*, The Washington Post (Jul. 31, 2018), <https://www.washingtonpost.com/news/the-watch/wp/2018/07/31/study-cooling-off-periods-dont-help-cops-remember-officer-involved-shootings/>.

³⁹ *Id.*

⁴⁰ Samuel Walker, *Police Union Contract Waiting Periods for Misconduct Investigations Not Supported by Scientific Evidence* 6 (Jul. 1, 2015), *available at* <http://samuelwalker.net/wp-content/uploads/2015/06/48HourSciencepdf.pdf>.

The simple fact is that there is no legitimate basis for imposing such a waiting period requirement on investigations into possible officer misconduct. That is undoubtedly why similar mandatory waiting periods are not imposed in other contexts.

B. Removing the 24-Hour Waiting Period is the Best Remedy

Some police departments attempt to minimize the problems created by waiting periods by isolating or separating involved officers during their waiting periods. Unless and until the 24-hour waiting period is eliminated from the CPD-FOP contract and related CBAs, the CPD should, at a minimum, adopt similar policies that separate officers involved in shootings and should prohibit them from discussing the incidents with others until their statements may be taken. Both the DOJ Report and the PATF recommend such changes in policy.⁴¹

However, such separation measures are difficult to adhere to and to monitor. They are, at best, a poor substitute for permitting COPA investigators to participate in taking statements from officers involved in shootings as soon as practical. The best way to address the problems created by the 24-hour waiting period is to simply eliminate that provision from the collective bargaining agreements. That is what the City should insist upon in the course of renegotiating those agreements.

V. The Right to Change Statements Without Penalty Also Encourages Lying

According to the CBA, for investigators to charge an officer with making a false statement under Rule 14, the officer must first have the opportunity to review any video or audio recording pertaining to the incident and correct his or her statements.⁴² If they have not been shown such recordings prior to making their statements, officers must be given a chance to change their statements without being penalized, even if the false statements were made intentionally and concerned a material aspect of the incident. Giving officers the right to review and amend their statements provides them with little incentive to tell the truth because this provision, in effect, allows them to lie initially as long as they have not reviewed the video or audio recordings.

Unfortunately, even on those rare occasions that Rule 14 can be enforced under this provision, it has rarely been enforced. In fact, in the five years prior to the DOJ report, only 98 Rule 14 charges have been sustained.⁴³ Even high-ranking police officials and rank-and-file members have acknowledged that officers will lie to investigators because they do not feel that they will face severe consequences if caught lying.⁴⁴

Examples of IPA's failure to investigate false statements and officer collusion, which encourages the code of silence culture, include the following:

The Laquan McDonald Case. In this case, as described above, officers completed reports, which were approved by supervisors that were entirely inconsistent with the video recording of the incident. Despite these apparently intentionally false reports, IPRA chose not to pursue any Rule 14

⁴¹ DOJ Report at p.58; PATF Report at 159. Four officers involved in writing up the McDonald incident falsely were subsequently fired and four resigned.

⁴² FOP Contract at Sec. 6.1(M), quoted above at page 4.

⁴³ DOJ Report at pp. 75-77.

⁴⁴ *Id.*

charges against these officers or supervisors. Rule 14 charges were only pursued, and the findings eventually sustained, when Chicago's Office of Inspector General took control of the case.⁴⁵

Examples from the DOJ Report. The DOJ report provides many other examples of IPRA failing to investigate the possibility of false statements and officer collusion:

- In the first case, an unarmed man was shot in the back by an officer. This incident quickly gained publicity as prosecutors from the State's Attorney Office began investigating, at which point IPRA temporarily halted investigations. After beginning investigations again a year later, IPRA failed to inquire into what information officers had obtained about the incident from the media or fellow officers. This lack of inquiry is especially troublesome considering that the shooting officer's report immediately after the incident was inconsistent with the video footage from the officer's patrol car.⁴⁶
- In the second case, two officers' narratives of a shooting incident contained identical terms and the same digressions during the narratives.⁴⁷ Despite these shockingly similar narratives, IPRA investigators took no steps to inquire into the possibility of officer collusion.⁴⁸
- In the third case, an IPRA supervisor discovered that an officer had lied in his police report, but was blatantly denied permission to pursue Rule 14 charges.⁴⁹
- In the fourth case, although an investigator discovered that an officer had lied during his interview and sustained a Rule 14 charge, IPRA supervisors refused to recommend a Rule 14 charge and commanded the investigator to alter his report to "exonerated".⁵⁰

Ultimately, the issue of IPRA failing to investigate the possibility of false narratives and collusion permeated virtually all officer-involved shootings. Consequently, officers were given the ability to provide prepared narratives of the incident, with little fear of having the validity of their statements questioned. Because IPRA (now COPA) and the Bureau of Internal Affairs do not typically later cross-reference statements made by officers, failure to investigate officer collusion at this early stage often means that the collusion will likely never be discovered (at least in the absence of civil litigation). And if the false statements are discovered, Section 6.1 (M) of the FOP Agreement permits the officers involved to amend their statements to conform to the recorded video or audio recordings, without penalty and without the possibility of being charged with a Rule 14 violation (which carries the risk of discipline up to and including discharge). Unintentional inaccuracies and misstatements about non-material facts can never be the basis for a Rule 14 charge whether before or after the additional visual or audio evidence is reviewed.

Similar rights to amend statements without penalty do not exist for ordinary citizens, such as people filing misconduct charges, crime victims, criminal suspects or other City employees. There is no reason to extend such a "one free bite" provision to officers, who are sworn to tell the truth and have the right to use lethal force when necessary.

⁴⁵ *Id.*

⁴⁶ DOJ Report at p. 60.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ DOJ Report at p. 76.

⁵⁰ *Id.*

The language in Section 6.1(M) permitting officers to change their statements in investigations regarding excessive use of force or other misconduct without penalty should be eliminated from the FOP contract and the other CBAs.

VI. CPCA Recommendations

For the reasons set forth above, both the 24-Hour Waiting Period provision and the Officer's Right to Amend Statements Without Penalty After Reviewing Video or Audio Recordings should both be eliminated from the FOP contract and the other CBAs, together with any corresponding provisions in the CPD's General Orders.

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 must eliminate the 24-hour waiting period and the right to change statements without consequence in order to make investigations by COPA more effective and credible. Only through removing these barriers can the City and CPD begin to build a culture of accountability worthy of public confidence and trust.

In addition to removing these provisions, which have made it too easy for officers to lie about misconduct, the CPCA supports the reformation of union contract provisions which in the past have created barriers to identifying 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.