

**POSITION STATEMENT
OF CHICAGO COUNCIL OF LAWYERS
ON POLICE ACCOUNTABILITY
February 2016**

I. Introduction

The Chicago Council of Lawyers recommends that:

1. The City of Chicago and the Fraternal Order of Police (FOP) jointly agree to abolish the provision in their Collective Bargaining Agreement that allows an officer to clarify and amend a statement he has already made under oath about an incident if it has been caught on a video.

2. The Independent police Review authority (IPRA) should prioritize the investigation of complaints against officers who have been named in an abnormally high number of misconduct complaints, and the Chicago Police Department (CPD) should more closely monitor police named in an abnormally high number of misconduct complaints,

II. Sections 6.1.M and 6.2.J of the Collective Bargaining Agreement Should be Repealed. They give police officers the Opportunity to “clarify and amend” their prior statements in certain Situations.¹

Sections 6.1.M and 6.2.J of the Collective Bargaining Agreement with the Fraternal Order of Police each deal with situations during an investigation of a police officer who has filed a report or made a statement about an incident when IPRA or the Internal Affairs Division (IAD) of the Chicago Police Department (CPD) has video or audio evidence of that incident. They each provide:

An Officer who is not allowed to review the video or audio evidence prior to giving a statement [to IPRA or IAD] shall not be charged with a Rule 14 violation² 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.

This privilege to “clarify and amend” a sworn statement is unique to police officers. The Board of Education’s Collective Bargaining Agreement with the Chicago

¹ Section 6.1 M of the CBA applies to officers who are the subject of an investigation. Section 6.2 J has the same language and applies to officers who are witnesses in an investigation.

² Rule 14 of The Rules of Conduct of the Chicago Police Department prohibits “Making a false report, written or oral.”

Teachers Union does not allow teachers to “clarify and amend” statements they have made in the course of their duties, including statements required to be made when a student is disciplined, even if the conduct involved was captured on a video. Why should police be treated differently?

The City’s Collective Bargaining Agreement with the Public Safety Employee’s Union, which covers animal control officers, parking and traffic control aides, aviation security officers, and police communication operators, does not allow them to “clarify and amend” statements they have made in the course of their duties. Why should police be treated differently?

In addition, a person who gives a statement to a police officer is not allowed to “clarify and amend” that statement before he can be charged with perjury, even if it is about the same incident as to which that officer may change his statement. Why should police officers be treated differently?

The provisions in the Collective Bargaining Agreement with the Fraternal Order of Police that allow officers to “clarify and amend” their statements may discourage some officers from taking seriously their duty to tell the truth in the first instance. Those provisions may also enable an officer who has lied once to lie again. Suppose the City has a video of an incident about which an officer has made a false initial report or statement. Section 6.1.M. means that before that officer can be charged with a Rule 14 violation, he must first be given an opportunity to review the video and then allowed “clarify and amend” his first statement. He surely will be tempted to come up with another story - this time consistent with the video, but still false.

B. Sections 6.1.M and 6.2.J should be Repealed

Police officers should not have a special privilege to “clarify and amend” their statements. As a result, the Chicago Council of Lawyers calls on the City of Chicago (through the Mayor’s Office) and the Fraternal Order of Police to agree within 30 days to repeal Sections 6.1.M and 6.2.J from the current Collective Bargaining Agreement.

C. Alternatives to Repeal

Recognizing, however, that the City and the Fraternal Order of Police (FOP) may not reach such an agreement in 30 days, the Chicago Council of Lawyers recommends the following:

1. The City of Chicago, through the Mayor’s Office, should publicly state that it will not agree to keep in effect after June 30, 2017 (the date the current CBA with the FOP expires) Sections 6.1.M and 6.2.J.³ The City should also publicly state that it will

³ The current CBA between the City of Chicago and Chicago Lodge 7 of the FOP is effective from July 1, 2012 through June 30, 2017.

not agree to these or similar provisions in the next or any future Collective Bargaining Agreement with FOP.

2. The City of Chicago should state, if it has complied with 6.1.M or 6.2.J by giving an officer an opportunity to review a video of an incident, and then an opportunity to “clarify and amend” his prior report or statement, that it interprets those Sections to allow it to charge that officer with violating Rule 14 if it concludes that his initial statement or report was deliberately false, notwithstanding his later effort to conform his statement to the video.

3. The City Council should pass an ordinance providing that after the date of enactment of the ordinance, the City may not agree to any provision in a Collective Bargaining Agreement that:

a) Authorizes a police officer or other employee to “clarify and amend” any previously made report before being charged with filing a false report; or

b) Allows an employee of the City of Chicago to avoid discipline for violating a duty to tell or report the truth.

III. The Independent police Review authority (IPRA) should Prioritize the investigation of complaints against officers who have been named in an abnormally high number of misconduct complaints, and the Chicago Police Department (CPD) should More Closely Monitor those officers.

A. A Small Number of Police Officers Engage in Repeated Misconduct.

A small number of officers are named in a very high number of complaints of misconduct, but are rarely disciplined.

On January 31, 2016, the Chicago Tribune reported that 10% of Chicago police officers (124 officers out of about 12,000) were involved in nearly a third of the 1,100 police misconduct suits in state or federal court settled since 2009. The Tribune also reported that “despite the fact that such a small number of officers have been involved in a disproportionate number of settlements for police misconduct, discipline against the officers has been scant.” (*Small Group of Police Costs the City Millions*, Angela Caputo and Jeremy Gerner). Prior investigations reached similar conclusions:

1) The *Chicago Reporter* in 2012 reviewed 441 police misconduct lawsuits that ended with city damage payments between January 2009 and November 2011. It found that 140 officers were named in at least two of those cases, but they accounted for more than a quarter of the damage payments. Moreover, 80% of those officers remained on the

job with few signs of discipline. *Abusing the Badge*, Chicago Reporter, May 1, 2012, Angela Caputo.

2) In June 2015, the Chicago Tribune reported that over a four-year period, “the 11 officers with the most complaints amassed a combined 253 [complaints], in some cases for serious allegations of misconduct, such as excessive force or illegal searches. Yet just one was punished - and received only a five-day suspension for neglecting his duties.” *Cops who Pile Up the Most Complaints Routinely Escape Discipline*, Jeremy Gorner and Geoffrey Hing, Chicago Tribune, June 13, 2015.

3) On July 29, 2015, the Chicago Tribune posted on-line a database of 244 reports of investigations conducted by IPRA of police shootings between 2007 and July 29, 2015. That database shows that only 5 (2%) of the investigations led to a recommendation of some kind of discipline. *Officer Involved Shootings*, Geoff Hing, Alex Bordens, Abraham Epton, Chicago Tribune, July 29, 2015. <http://apps.chicagotribune.com/news/local/ipra/>

4) On November 10, 2015, independent reporter Jamie Kalven posted online a database of Chicago police misconduct complaints obtained through Freedom of Information Act requests. Kalven requested all complaints against Chicago police officers from January 1, 2011 through December 7, 2015 and obtained 28,588 records of complaints against 7,758 officers during that period. (The records are posted at: <http://invisible.institute/police-data/>.)

Rob Arthur, a columnist for an online column found at Fivethirtyeight.com, has statistically analyzed the data that Kalven posted, and found that among the 7,758 officers who received a complaint from 1/1/11 through 12/7/15, ten percent generated 30 percent of the complaints since 2011. He also found that the number of complaints against an officer in one period predicted the probability of being named in another complaint later. More specifically, he found that those officers named in 10 or more complaints in 2011-13 had a 96% chance of being named in a complaint in 2014-2015. And those named in 15 to 20 complaints in the first period were almost certain to be named in a complaint in 2014-2015. He also analyzed the possibility that officers assigned to high crime neighborhoods are named in a higher number of complaints than are other officers. He controlled for this factor, and still found that individual officers with more complaints in 2011-13 were more likely to be named in a complaint in 2014-2015. *How to Predict Bad Cops in Chicago*, Rob Arthur, Fivethirtyeight.com

B. The Costs of Allowing a Small Number of Police Officers to Repeatedly Engage in Misconduct are High

Chicago’s failure to take effective steps against the small number of police who repeatedly engage in misconduct has several major costs.

The first is monetary. In 2014, the Chicago Sun-Times reported that police brutality-related lawsuits cost Chicago taxpayers more than half a billion dollars (\$521

million) in the preceding decade. About 15 percent of these payments went to victims of police torture under former Police Commander Jon Burge. *City Pays Heavy Price for Police Brutality*, Chicago Sun Times, April 14, 2014, Andy Shaw, Better Government Association.

The second is that it builds distrust of the police among the residents of Chicago, especially minorities, and makes them more reluctant to report crimes to the police or cooperate with law enforcement.

The third is that it dishonors the vast majority of the police who regularly perform dangerous jobs honorably.

C. The Chicago Police Department should Identify and Closely Monitor the Conduct of Officers named in an Abnormally High Number of Complaints

The Chicago Police Department (CPD) should identify and closely monitor the conduct of officers named in abnormally high number of complaints. What do we mean by “abnormally” high?

We suggest 10 or more complaints in the last three years, or more than three complaints per year for those officers who have been on the force for fewer than three years.

In the alternative, the City could calculate the number of complaints that is a statistically significantly higher number of complaints than other officers receive, provided it shares its calculations with the public for comment. In addition, if the City can show that the average number of complaints during the last three years is statistically significantly higher in certain police districts than others, it should share its calculations with the public for comment, if it wants to use a higher cut-off number of complaints in those neighborhoods.⁴ If the City proposes using other or additional criteria, such as use of force, use of excessive force, number of shots fired, or use of racial slurs, it should calculate those numbers and share them with the public for comment.

D. The CPD Should Adopt an Early Intervention Program

The Department of Justice’s Office of Community Oriented Policy Services has published a study titled “Early Intervention Systems for Law Enforcement Agencies.” An early intervention system is designed to identify officers with performance problems and then coach them in order to improve their performance. Such a system requires close supervision of officers with performance problems, and keeping a database of such

⁴ It has been asserted that, on the average, officers receive more complaints if they make more arrests, and thus that receipt of a higher number of complaints in neighborhoods that have high crime rates is not a sign of bad policing.

problems. The report states that one of the virtues of an Early Intervention (EI) system is that if there are complaints in one neighborhood about frequent use of force:

[A]n EI system can help to confirm or refute the allegations, and if confirmed, identify the officers involved. At the same time, it can help to identify those officers who are engaged in active police work (e.g., a high volume of arrests) without resorting to inappropriate behavior.

The CPD should adopt such a system in order to improve police performance in the future and reduce the number of officers named in such a high number of complaints. (If the CPD has such a system, it should improve it so that the pattern of rarely punishing those officers who repeatedly engage in misconduct is broken.)

E. IPRA should prioritize the investigation of complaints against officers named in an abnormally high number of complaints.

IPRA should give high priority to investigating complaints against officers who have already been named in an abnormally high number of complaints.

F. IPRA currently reports each quarter the number of complaints filed against each police officer, in each district and unit, since the last quarter, without identifying any individual. The City Council should require IPRA to report such data quarterly and annually for the last two or three years.

IPRA is currently required to list each quarter “without identifying any individual, the number of complaints filed against each police officer in each district and unit since **the last report.**” (Emphasis added.) Its quarterly reports do so in a format that looks like this:

<u>District 015</u>	
Officers 1-22:	1 complaint each
Officers 23-26:	2 complaints each
Officer 27:	3 complaints

But in each quarter, IPRA assigns to each officer a new identifying number. For instance, Officer #27 above, named in 3 complaints in this quarter, may have been listed as Officer #23 in the prior quarter. As a result, you cannot tell whether an officer named in several complaints in one quarter was also named in multiple complaints in prior quarters.

As a result, the City Council should require IPRA to publish, both quarterly and annually, the number of complaints filed against each police officer in each district and

unit in the last 24 or 36 months.⁵ The identifying number assigned to each officer should remain with that officer permanently, so that it is possible to determine whether the same officer is the subject of multiple complaints in different reporting periods.

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⁵ We suggest 24 or 36 months because if an officer moves from one district to another during the reporting period, that may need to be explained by a footnote for that officer. If 36 months leads to so many footnotes that the report is too long to be easily read, we suggest the period be 24 months.