

CPCA

Coalition for Police Contracts Accountability

Barriers to Identifying Police Misconduct

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

Introduction

The Problem

For decades, the Chicago Police department has had a “code of silence” that allows officers to hide misconduct. The Fraternal Order of Police (FOP) Lodge 7 and the Illinois Policemen’s 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 first of five 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 1-4 which speak to provisions in the contracts that make it difficult to identify police misconduct.

Removing Barriers to Reporting Misconduct from Police Contracts

Much of the debate about police accountability focuses on how the system fails to adequately investigate and address civilian complaints of misconduct. Whether it is the way the Civilian Office for Police Accountability (COPA) conducts investigations, the rate at which COPA sustains allegations of misconduct, or how the Police Board too often fails to administer punishment, these issues can only come to light after an individual makes an allegation of misconduct, and that allegation is investigated.

Unfortunately, many instances of police misconduct are never investigated, either because they are not reported, or they are not reported in the “right” way. Chicago’s police union contracts include several provisions that discourage the public from reporting misconduct and place restrictions on what type of complaints can be investigated. Approximately half of all allegations of police misconduct are not investigated because of such restrictions.¹ CPCA argues that the City and unions must reform these provisions in order to make it easier for oversight agencies to identify and address police misconduct.

- The City’s contracts require all complaints about police misconduct to be accompanied by a signed affidavit, which is a written statement of facts that must be signed and sworn to be true by a complainant.²

The affidavit requirement greatly narrows which allegations of police misconduct are investigated—in fact, investigations are not initiated for half of misconduct complaints because they are tagged as having “no affidavit.”³ When investigations are not even initiated, the ability to identify misconduct is hampered.⁴ Many people are reluctant or even afraid to submit sworn statements within a system where they’ve faced abuse or have historically been treated unfairly. Furthermore, the threat of being prosecuted for perjury if one’s complaint is disbelieved scares police abuse victims away from bringing forward valid claims. Even in cases where complainants do feel comfortable providing an affidavit, the process can be so time-consuming that the resulting investigation is heavily delayed and

¹ Dep’t of Justice, Investigation of the Chicago Police Department 47, 50 (2017), <https://www.justice.gov/opa/file/925846/download>.

² Fraternal Order of Police Chicago Lodge 7, Current Contract: July 1, 2012 – June 30, 2017 §6.1, Appendix L (2014), <http://www.chicagofop.org/contract/> [hereinafter *FOP Contract*];

City of Chicago, Policemen’s Benevolent & Protective Association of Illinois, Unit 156-Sergeants Collective Bargaining Agreements §6.10 (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 §6.10 (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 §6.10 (2014), https://www.cityofchicago.org/city/en/depts/dol/supp_info/city_of_chicago_collectivebargainingagreements.html [hereinafter *Captain Contract*].

³ Dep’t of Justice, *supra* note 1, at 50.

⁴ *Id.* at 51.

evidence becomes stale.⁵ Effectively, the affidavit requirement turns the already-extant code of silence into “official policy.”⁶

- The City’s contracts do not allow anonymous complaints to be investigated unless they are violations of the Illinois Criminal Code, the criminal code of another state, or a criminal violation of a federal statute.⁷
- When an officer is named in a complaint, the police contracts require investigators to give the complainant’s name to the officer before the officer is questioned.⁸

The civilian complaint process is the method by which law enforcement agencies accept, investigate, and adjudicate allegations of misconduct or incompetence on the part of police personnel.⁹ Unfortunately, many serious complaints that do not amount to criminal conduct, like the use of racially abusive language, are never be investigated unless the complainant gives their name. Requiring complainants to disclose their identities when lodging a complaint may have a chilling effect on misconduct reporting.¹⁰ Many complainants fear retaliation from police officers and do not want to give their name when they make a complaint. As consumers of police services, civilians have the right to be heard and to seek remedy when they believe that they have been aggrieved by acts ranging from discourteous treatment to criminal misconduct on the part of police personnel, regardless of their need or desire to remain anonymous.¹¹

- The City’s contracts contain provisions barring the police department management from promoting or otherwise recognizing officers who report misconduct by other officers.¹²

Officers have a *duty* to report misconduct that they are aware of, under both their oath of office and the rules of the Chicago Police Department (“CPD”). However, by disincentivizing whistleblowing, the contract implicitly endorses the “Code of Silence,” and permits officers who regularly abuse their powers to go unpunished, while the public is left to absorb the high costs associated with that misconduct. By prohibiting management from recognizing officers who report misconduct, the contract sends a powerful message to both supervisors and line officers that misconduct will be tolerated, while reports of misconduct will not.

⁵ *Id.* at 73.

⁶ Police Accountability Task Force, *Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve* 14 (2016), https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf.

⁷ *FOP Contract, Sergeant Contract, Lieutenant Contract, Captain Contract*, *supra* note 2.

⁸ *Id.*

⁹ International Association of Chiefs of Police Task Force on 21st Century Policing, *Listening Session on Policy and Oversight: Testimony of the International Association of Chiefs of Police* 82 (2015), <http://www.theiacp.org/Portals/0/documents/pdfs/IACPTestimonyListeningSessionPolicyandOversight.pdf>.

¹⁰ Dep’t of Justice, *supra* note 1, at 52.

¹¹ International Association of Chiefs of Police Task Force on 21st Century Policing, *supra* note 9.

¹² *FOP Contract, Sergeant Contract, Lieutenant Contract, Captain Contract*, *supra* note 2.

| CPCA Recommendations | Contract Provisions |
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| <p><i>Recommendation 1</i></p> <p>Remove the requirement that all complaints about police conduct must be supported by an affidavit in order to be investigated.</p> | <p>No Officer will be required to answer any allegation of misconduct unless it is supported by an appropriate affidavit...</p> <p><i>Contract with the Fraternal Order Of Police, Effective July 1, 2012 - June 30, 2017 §6.1, Appendix L</i></p> <p>If an affidavit is not executed by the Independent Police Review Authority or the Internal Affairs Division, the matter shall not be used by the Department with respect to any aspect of the [Sergeant's] [Lieutenant's][Captain's] employment.</p> <p><i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois, Effective July 1, 2012 - June 30, 2016 §6.10</i></p> |
| <p><i>Recommendation 2</i></p> <p>Allow for the filing and investigation of anonymous complaints.</p> | <p>No anonymous complaint made against an Officer shall be made the subject of a Complaint Register investigation unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute.</p> <p><i>Contract with the Fraternal Order Of Police §6.1(D), Appendix L</i></p> <p>No anonymous complaint made against a [Sergeant][Lieutenant] shall be made the subject of a Complaint Register investigation, unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute.</p> <p><i>Contracts with the Policemen's Benevolent & Protective Association Of Illinois §6.1(E)</i></p> <p>No anonymous complaint made against a Captain shall be made the subject of a Complaint Register investigation, unless the allegation is of a criminal nature.</p> <p><i>Contract with the Policemen's Benevolent & Protective Association Of Illinois §6.1(E)</i></p> |
| <p><i>Recommendation 3</i></p> <p>Prevent disclosure of a complainant's name prior to the interrogation of an accused officer.</p> | <p>Immediately prior to the interrogation of an Officer under investigation, he or she shall be informed in writing of the nature of the complaint and the names of all complainants.</p> <p><i>Contract with the Fraternal Order Of Police §6.1(E), Appendix L</i></p> <p>Immediately prior to the interrogation of a [Sergeant][Lieutenant][Captain] under investigation, the [Sergeant][Lieutenant][Captain] shall be informed, in writing, of the nature of the complaint, the names of all complainants and the specific date, time and, if relevant, location of the incident.</p> <p><i>Contract with the Policemen's Benevolent & Protective Association Of Illinois §6.1(G)</i></p> |

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| <p><i>Recommendation 4</i></p> <p>Remove a provision barring management from promoting or otherwise recognizing officers for reporting misconduct by other officers.</p> | <p>An Officer under interrogation shall not be ... promised a reward as an inducement to provide information relating to the incident under investigation or for exercising any rights contained herein.</p> <p><i>Contract with the Fraternal Order Of Police §6.1(G), Appendix L</i></p> <p>A [Sergeant][Lieutenant][Captain] under interrogation shall not be ... promised a reward as an inducement to provide information relating to the incident under investigation or for exercising any rights contained herein.</p> <p><i>Contract with the Policemen's Benevolent & Protective Association Of Illinois § 6.1(I)</i></p> |
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The Case for Removing Barriers to Reporting Misconduct

I. Best Practices in Policing Call for Police Departments to Make the Complaint Process More Accessible by Allowing for and Preserving Anonymity

In 2017, the Department of Justice (“DOJ”) published a report documenting its investigation and findings regarding the Chicago Police Department (“CPD”). The report states that the prohibition against investigating anonymous complaints should be modified, because it “impedes the ability to investigate and identify legitimate instances of misconduct.”¹³ In making this recommendation the DOJ built upon precedent it established in other jurisdictions. After investigating the Ferguson Police Department following the death of Michael Brown, for example, the DOJ similarly recommended that the department change its procedures and practices in order to allow for anonymous or online complaints about police conduct, because it would be easier and less intimidating for civilians.¹⁴ Several other police departments are currently required to investigate anonymous complaints under consent decrees and memorandums of agreement with the DOJ, including police departments in New Orleans,¹⁵ Los Angeles,¹⁶ Washington D.C.,¹⁷ and the New Jersey State Police.¹⁸

In addition to the DOJ, numerous organizations, including other law enforcement organizations, recommend that police departments allow for the anonymous reporting of complaints against police officers. The Commission on Accreditation for Law Enforcement Agencies (“CALEA”) was created in 1979 as a law enforcement credentialing authority.¹⁹ The purpose of CALEA’s Accreditation Programs is to improve the delivery of public safety services. This is accomplished primarily by maintaining a body of standards, developed by public safety practitioners, covering a wide range of

¹³ Dep’t of Justice, *supra* note 1, at 51-52 (CPD’s and IPRA’s failure to investigate anonymous complaints, pursuant to the City’s collective bargaining agreement with officers, further impedes the ability to investigate and identify legitimate instances of misconduct. As noted above, given the code of silence within CPD and a potential fear of retaliation, there are valid reasons a complainant may seek to report police misconduct anonymously, particularly if the complainant is a fellow officer.”).

¹⁴ Dep’t of Justice, Investigation of the Ferguson Police Department 96 (2015), <https://www.courts.mo.gov/file.jsp?id=95274>.

¹⁵ Consent Decree at 97, United States v. City of New Orleans (No. 2:12-cv-01924, E.D. La., July 24, 2012), *available at* <https://www.nola.gov/getattachment/NOPD/About-Us/NOPD-Consent-Decree/NOPD-Consent-Decree-7-24-12.pdf> (“NOPD agrees to accept all misconduct complaints, including anonymous and third party complaints, for review and investigation.”).

¹⁶ Consent Decree at 28-33, United States v. City of Los Angeles, CA (No. CV0011769 GAF JWJX, C.D. Cal., Feb. 16, 2001), *available at* http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf (“The department shall continue to provide for the receipt of complaints as follows . . . anonymous complaints.”) (“Withdrawal of a complaint, unavailability of a complainant to make a statement, or the fact that the complaint was filed anonymously or by a person other than the victim of the misconduct, shall not be a basis for adjudicating a complaint without further attempt at investigation.”).

¹⁷ Dep’t of Justice, Memorandum of Agreement Between the United States Department of Justice and the District of Columbia ¶92 (2001), <https://perma.cc/PXE8-BUEF> (“MPD shall accept and investigate anonymous complaints and complaints.”).

¹⁸ Joint Application for Entry of Consent Decree at ¶161, United States v. New Jersey (No. 99-5970, D.N.J., Dec. 30, 1999), *available at* <http://www.nj.gov/lps/jointapp.htm> (“The State Police shall accept and investigate anonymous complaints and complaints filed by civilians other than the alleged victim of misconduct.”).

¹⁹ *About Us: The Commission*, The Commission on Accreditation for Law Enforcement Agencies, Inc., <http://www.calea.org/content/commission>, last visited Apr. 11, 2018.

up-to-date public safety initiatives, in addition to other measures.²⁰ CALEA standards call for police departments to allow for anonymous complaints.²¹ Specifically, CALEA Accreditation Standard No. 52.1.1 states that a written directive must require that all complaints against a police department or its employees be investigated, including anonymous complaints.²²

The International Association of Chiefs of Police (“IACP”), founded in 1893, 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.²³ The IACP’s goals are to advance the science and art of police services by developing, disseminating, and promoting improved administrative, technical and operational practices in police work.²⁴ The IACP periodically releases a model policy that outlines how employee misconduct complaints and investigations should be handled.²⁵ In 2007, the association released a model policy stating that there should be little or no restriction on the means of receiving a complaint, and that anonymous complaints should be accepted and reviewed.²⁶

Additionally, the Mayor’s Police Accountability Task Force stated that anonymous complaints should be allowed in order to encourage reporting by those who fear retaliation, including whistleblowers.²⁷ Allowing for anonymous complaints could help civilians and officers who know about misconduct come forward because they would not have to fear their name being disclosed or face possible retaliation.

It is clear, police accountability and reform experts across the country believe that the complaint process should be made more accessible to civilians by allowing the investigation of anonymous complaints. Police contracts that require affidavits and disallow the reporting of anonymous complaints force what is increasingly becoming a backward practice onto the Department.

II. CPD Contract Provisions Dissuade Victims from Reporting Misconduct

Unless a complaint against a police officer amounts to a criminal allegation, complainants are expected to swear to the truth of their accusation in a written affidavit and have their identities disclosed to the accused officer. Proponents of these requirements argue that they are necessary to prevent investigative agencies and police officers from being overburdened by false accusations.²⁸

²⁰ *Id.*

²¹ Dep’t of Justice, Building Trust Between the Police and the Citizens They Serve 67 (2010), <http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf> (“To ensure the integrity of its operations and personnel, agencies should investigate all allegations of misconduct, regardless of their source. Anonymous complaints can be difficult to investigate; however, the agency should carefully review each complaint for validation before disregarding it for lack of a credible complainant.”).

²² *Id.*

²³ *History*, International Association of Chiefs of Police, <http://www.theiacp.org/History>, last visited Apr. 11, 2018.

²⁴ *Id.*

²⁵ International Association of Chiefs of Police National Law Enforcement Policy Center, *Investigation of Employee Misconduct Model Policy* 12 (1990) [hereinafter *Investigation of Employee Misconduct Model Policy*].

²⁶ *Id.*

²⁷ Police Accountability Task Force, *supra* note 6, at 74.

²⁸ See, e.g., Eleanore Catolico, *One Change Police Can Make to Show They’re Serious About Reform*, The Chicago Reporter, May 3, 2016, <http://www.chicagoreporter.com/one-change-police-can-make-to-show-theyre-serious-about-reform/>.

However, there are many reasons why someone with a justified complaint may not wish to sign their name to an affidavit, nor have their identities disclosed.

According to the DOJ's research in Chicago, many people do not want to make a complaint if the officer will learn the complainant's name while the investigation is pending, out of fear that the officer will intimidate or retaliate against them.²⁹ Civilians often believe that filing a complaint against an officer will make them a target of both the police department and the officer against whom the complaint was lodged. According to IACP, "[v]isions of daily parking tickets, citations for minor or nonexistent infractions, and officer failure to respond to a genuine emergency because the citizen was responsible for punishment of another police officer may scare the citizen into requiring anonymity or not registering a complaint at all."³⁰

Sadly, such visions are a reality in Chicago. The 2017 DOJ report describes instances where officers retaliated against civilians who witnessed misconduct.³¹ For example, the report states that some CPD officers escalated encounters unnecessarily and exercised retaliatory force against people who objected and claimed that they were unlawfully stopped.³² The DOJ report also documented numerous incidents where CPD used retaliatory force against citizens, including children, when they were displeased with a situation. One such incident involved an officer repeatedly punching a handcuffed man,³³ and another described how officers retaliated by killing people's dogs.³⁴

In 2013, Chicago Police Sergeant Ronald Watts plead guilty to theft of government funds after he was caught in a sting operation taking protection money from drug dealers and pinning false claims on those who would not pay.³⁵ During the undercover investigation, officers learned that many people believed Watts was responsible for the deaths of two drug dealers who he believed were going to provide incriminating information about him the FBI.³⁶ After paying off Watts numerous times, one dealer, Karmane Fears, threatened to give Watts up to the feds and was shot a few days later.³⁷ Wilbert Moore, another drug dealer who previously made several payoffs to Watts, was also shot a few days after telling Watts he was going to the feds.³⁸ Everyone who CPD talked to on the street believed these shootings were the work of Watts who feared being outed to the FBI.

Other Chicagoans have even filed lawsuits based on the retaliatory discrimination they've faced by CPD. In 2002, Nilda Gomez filed a civil rights lawsuit against the City of Chicago and several police

²⁹ Dep't of Justice, *supra* note 1, at 50.

³⁰ Investigation of Employee Misconduct Model Policy, *supra* note 25, at 13.

³¹ Dep't of Justice, *supra* note 1, at 79.

³² Dep't of Justice, *supra* note 1, at 33-34.

³³ Dep't of Justice, *supra* note 1, at 34-37.

³⁴ Dep't of Justice, *supra* note 1, at 28, FN 4.

³⁵ Jamie Kalven, *Watch Your Back: Chicago Police Bosses Targeted Cops Who Exposed Corruption*, The Intercept (Oct. 6, 2016, 8:01 a.m.), <https://theintercept.com/2016/10/06/chicago-police-bosses-targeted-cops-who-exposed-corruption/> [hereinafter *Watch Your Back*].

³⁶ Jamie Kalven, *Operation Smoke and Mirrors: In the Chicago Police Department, If the Bosses Say It Didn't Happen, It Didn't Happen*, The Intercept (Oct. 6, 2016, 8:01 a.m.), <https://theintercept.com/2016/10/06/in-the-chicago-police-department-if-the-bosses-say-it-didnt-happen-it-didnt-happen/> [hereinafter *Operation Smoke and Mirrors*].

³⁷ Jamie Kalven, *Operation Brass Tax: Corrupt Chicago Police Were Taxing Drug Dealers and Targeting Their Rivals*, The Intercept (Oct. 6, 2016, 8:01 a.m.), <https://theintercept.com/2016/10/06/corrupt-chicago-police-were-taxing-drug-dealers-and-targeting-their-rivals/>.

³⁸ *Operation Smoke and Mirrors*, *supra* note 36.

officers alleging that she was retaliated against by CPD for filing a different lawsuit for misconduct against the CPD. Gomez alleged that after filing the initial lawsuit, she was arrested for domestic battery.³⁹ After her arrest, Gomez said that one of the officers named in her first lawsuit, Riccio, directed the officers who arrested her to charge her with two felony counts of battery of police officers and say that Gomez had battered them during her arrest. According to Gomez, because of the false felony charges, she was held in custody far longer than she would have been detained pursuant to the initial charges, and was unlawfully subjected to several personal body searches, including a cavity search, at the direction of Riccio. Gomez also stated that Riccio verbally harassed and degraded her at the station, all because of her initial lawsuit against Riccio and CPD. The City refused to admit fault, but the case was settled for \$75,000 in 2007.⁴⁰

In a community where many people believe an officer can get away with shooting two men who threatened to come clean about the officer's actions, and in light of the fact that CPD is documented as having repeatedly retaliated against citizens, it is understandable that many people who encounter CPD and want to file a complaint do not want the accused officer to learn of their identity via affidavit or otherwise.

Beyond fear of retaliation, there are many other reasons why civilians may not want to provide their name when filing a complaint against a police officer. For example, the IACP found that elderly civilians who have witnessed misconduct may be unable to participate in the complaint process due to illness or infirmity.⁴¹ In general, writing and signing an affidavit is a time-consuming process that can require taking time off work⁴²—time not everyone can afford. This issue is most keenly felt by people in poor, predominantly minority neighborhoods—precisely the areas where CPD most needs to rebuild trust.⁴³

Notably, signing an affidavit means that if your statement is believed to be false, you can be charged with perjury and potentially face jail time.⁴⁴ The possibility that a disbelieved sworn affidavit may result in a perjury charge or jail time ends up severely discouraging many complaints from coming forward with legitimate complaints, especially persons who are already wary of engaging with the police beyond what is necessary due to a lack of trust in the police or in institutional power generally.⁴⁵ Other civilians may fear that their criminal histories or reputations will lead officers to automatically disregard or disbelieve their complaints. If you already believe the justice system treats you unfairly, then you might also think that signing an affidavit puts you at risk of going to jail even if you tell the truth.

Part of the affidavit process involves explicitly telling the would-be complainant that they run the risk of perjuring themselves.⁴⁶ Civil plaintiffs and criminal defendants will therefore, justifiably, want

³⁹ Complaint at 3, *Gomez v. Riccio*, No. 02-C-5911, 2006 WL 1030196, at *1 (N.D. Ill. Apr. 12, 2006).

⁴⁰ Release and Settlement Agreement at 1-2, *Gomez v. Riccio*, No. 02-C-5911 (N.D. Ill. June 4, 2007), ECF No. 151.

⁴¹ Investigation of Employee Misconduct Model Policy, *supra* note 25, at 13.

⁴² *Id.*

⁴³ *Id.* at 1.

⁴⁴ Coalition for Police Contracts Accountability, Recommendations for the City of Chicago & Law Enforcement Union Contracts 2 (2016), <https://www.cpcachicago.org/the-recommendations/> (follow the “READ THE FULL DESCRIPTIONS” hyperlink).

⁴⁵ Dep’t of Justice, *supra* note 1, at 51 (2017).

⁴⁶ Kyle Rozema & Max M. Schanzenbach, *Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct*, Social Science Research Network 8 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2866696.

to avoid making verified statements when they have litigation pending.⁴⁷ Because of the affidavit requirement and the provision that allows officers to learn the name of complainants, criminal defendants must effectively give up their right to remain silent in order to file a complaint against an officer.⁴⁸ As a result, defendants are often advised by their attorneys to *not* file complaints while their cases are pending.⁴⁹ Complaints may interfere with defendants' cases, because they will be required to discuss the facts of the incident with the police department outside the bounds of litigation, and may need to do so without proper legal representation.⁵⁰ Complaints by criminal defendants, in particular, might also incentivize the police department to retaliate by preparing cases more thoroughly in order to obtain a conviction against the complainant.⁵¹ Under these circumstances, the ability to file complaints anonymously could help defendants report police misconduct in a way that doesn't jeopardize their civil or criminal case.

The absence of a signed affidavit, or the fact that a complaint is filed anonymously, should not preclude an earnest misconduct investigation. There can be fair and thorough investigations of officers even without a sworn statement or knowing the complainant's name. For example, all CPD beat officers are currently equipped with body cameras to record public interactions and encounters.⁵² Body camera footage, surveillance videos, and GPS data can be used to corroborate or challenge the account of an anonymous tipster. Other willing witness statements or interviews might also prove useful. Ultimately, if an investigation uncovers sufficient evidence of misconduct, the fact that the investigation was triggered by an anonymous complaint should not make a difference.

III. Officers who report misconduct fear retaliation and should be protected

Anonymous complaints are not only useful tools for civilians who fear retaliation if they report officer misconduct; they are also particularly useful for other officers who fear retaliation if they report a fellow officer. According to the 2017 DOJ report, a complainant may seek to report police misconduct anonymously, particularly if the complainant is a fellow officer, because of the code of silence within the department and a potential fear of retaliation.⁵³ Two recent lawsuits brought by CPD officers demonstrate this phenomenon.

First, in 2016, Jaeho Jung, a Chicago police officer, filed a complaint against the City of Chicago and several CPD officers and sergeants after he was retaliated against for reporting another officer's misconduct.⁵⁴ Jung reported to supervisors that another officer was generating false reports, generating radio traffic communications without a plausible legal basis, and running license plates of innocent civilians.⁵⁵ Jung also reported that a different officer refused to use her weapon when required to do so to protect fellow officers and failed to fill out obligatory paperwork after

⁴⁷ *Id.* at 11.

⁴⁸ *Ways to Complain About Police Brutality and Police Misconduct*, Law Offices of Howard Friedman, PC, <http://www.civil-rights-law.com/how-to-complain-about-police-m/> (last visited Apr. 11, 2018).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Randi Belisomo & Mike Lowe, *Every Chicago patrol officer now equipped with body camera*, WGN Chicago, Dec. 11, 2017, <http://wgntv.com/2017/12/10/chicago-police-body-cam-rollout-complete/>.

⁵³ Dep't of Justice, *supra* note 1, at 51.

⁵⁴ Complaint at 1-5, *Jung v. Elizondo*, (No. 2016-L-010054, Cir. Ct. of Cook Cnty., Ill., Oct. 11, 2016), *available at* <https://www.themaven.net/pinacnews/wp-content/uploads/2016/10/JAEHO-JUNG-Plaintiff-v-SERGEANT-ELIZONDO.pdf>.

⁵⁵ *Id.* at 2.

performing arrests and other police work.⁵⁶ After reporting these activities, Jung was told that he had a “brick” over him, meaning he was tarnished in the eyes of superior officers and would be a target for retaliation.⁵⁷ Subsequently, Jung was forced to reduce his furlough, threatened with arrest, called a “chink,” removed from his tactical team, subjected to ridicule, and given write-ups for falsified work infractions.⁵⁸ At the time of these actions Jung had worked for the City of Chicago for ten years and had never been disciplined.⁵⁹ His lawsuit is still pending in Cook County.

Second, in 2013, Ronald Watts, a former Sargent, pled guilty to federal corruption charges after he was caught shaking down drug dealers for protection money and pinning false cases on those who would not pay.⁶⁰ Two officers, Shannon Spalding and Daniel Echeverria, initially reported this conduct to their supervisors, but when they did not address the problem, the officers subsequently worked undercover with the FBI.⁶¹ Their undercover work resulted in federal charges against Watts and another officer, who were convicted and sent to prison.⁶² Instead of praise for unraveling the corruption, the officers were met with severe retaliation.⁶³

High ranking officers, who were supposed to protect Spalding and Echeverria, instead outed them and the operation they were working on, and ordered officers under their command to retaliate against them for violating the code of silence. Spalding and Echeverria were also reassigned to other departments where they were not given meaningful work, and their supervisors told others to shun them.⁶⁴ Officers and supervisors repeatedly told them they should have expected such treatment for outing a fellow officer.⁶⁵ After relentless retaliatory measures, the officers eventually filed a federal whistleblower lawsuit alleging that “they were labeled as ‘rats’ by superiors, given less-desirable jobs and told that fellow police officers wouldn't back them up on the street.”⁶⁶ In November 2016, the City settled the lawsuits for \$2 million.⁶⁷

According to Spalding, “[t]he code of silence is only silent to the outside world... For cops, it’s a constant ringing in your ears from the day you enter the academy to the day you retire.”⁶⁸

Anonymous complaints gives officers working under the code of silence an ability to report misconduct without becoming targets of the same type of treatment experienced by Jung, Spalding, and Echeverria. In addition, changing the environment that allows a code of silence will require strong signals from the Police Department that ethical, professional conduct, and accountability are

⁵⁶ *Id.* at 3.

⁵⁷ *Id.*

⁵⁸ *Id.* at 2, 4.

⁵⁹ *Id.* at 5.

⁶⁰ Jason Meisner & Annie Sweeney, *Case Spotlights Code of Silence Among Chicago Police*, Chicago Tribune (Dec. 17, 2015, 7:15 a.m.) <http://www.chicagotribune.com/news/ct-chicago-police-code-of-silence-conviction-met-20151216-story.html>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Jamie Kalven, *Code of Silence*, The Intercept (Oct. 6, 2016, 8:01 a.m.) <https://theintercept.com/series/code-of-silence/>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ John Byrne, *\$2M Settlement in Whistleblower Case that Allowed Mayor to Skip Testimony*, Chicago Tribune, Nov. 1, 2016, 5:00 a.m.) <http://www.chicagotribune.com/news/local/politics/ct-emanuel-whistleblower-police-settlement-met-20161031-story.html>.

⁶⁸ *Watch Your Back*, *supra* note 35.

valued. Lifting the ban on rewarding officers who report misconduct will allow more officers to come forward and break the code of silence while giving supervisors a way to support and protect those who do come forward.

IV. Anonymous Reporting of Complaints is a Standard Practice in Other Cities and Other Industries

Many large police departments follow DOJ recommendations and accept anonymous complaints. Cities that investigate anonymous complaints include: Seattle,⁶⁹ Pittsburgh,⁷⁰ Atlanta,⁷¹ Tulsa,⁷² Las Vegas,⁷³ San Francisco,⁷⁴ Baltimore,⁷⁵ Salt Lake City,⁷⁶ Nashville,⁷⁷ and Syracuse.⁷⁸ Additionally,

⁶⁹ *File a Complaint About the Seattle Police*, Seattle.gov, <http://www.seattle.gov/opa/file-a-complaint-about-the-seattle-police> (last visited June 19, 2017) (“Complaints can be filed anonymously. The OPA strongly recommends providing contact information because it allows follow-up for additional information that might be crucial to the investigation.”).

⁷⁰ *Filing a Complaint*, Pittsburghpa.gov, <http://pittsburghpa.gov/omi/filing> (last visited April 25, 2018) (“Complaints may be anonymous or made by a third party (i.e., someone who witnessed an incident but was not directly involved in it). If a complaint is made anonymously or by a third party, enough information must be provided so that the incident can be corroborated.”).

⁷¹ *File a Complaint*, acrbgov.org, <http://acrbgov.org/file-a-complaint/> (last visited June 20, 2017) (“By law, the following are the only types of complaints the ACRB is authorized to review: (1) abusive language; (2) false arrest; (3) false imprisonment; (4) harassment; (5) use of excessive force; (6) serious bodily injury; or (7) death which is alleged to be the result of the actions of a sworn employee of the APD or ADC; (8) a wide range of discrimination; (9) discriminatory references; (10) abuse of authority; (11) an officer's conduct; (12) retaliation; (13) failure to provide identification; (14) anonymous complaints; (15) violation of APD Standard Operating Procedures (APD SOPs).”)

⁷² *Internal Affairs*, Tulsapolice.org, <https://www.tulsapolice.org/content/internalaffairs.aspx> (last visited June 19, 2017) (“The department investigates all complaints against Tulsa Police employees, including anonymous complaints.”).

⁷³ *Complaints*, lvmpd.com, <https://www.lvmpd.com/en-us/Pages/InternalAffairs-Complaints.aspx> (last visited June 19, 2017) (“While the LVMPD will accept any complaint, please be aware that anonymous complaints can sometimes be difficult to investigate as an investigator may need additional information and the complainant may be the only source available. For this reason, please consider providing contact information when submitting your complaint.”).

⁷⁴ *Complaint Process*, sfgov.org, <http://sfgov.org/occ/complaint-process> (last visited June 19, 2017) (“The Office of Citizen Complaints does receive anonymous complaints. Anonymous complaints will be treated with the same importance as any other complaint; however, the Police Commission has determined that anonymous complaints cannot be sustained without additional evidence.”).

⁷⁵ *Compliments and Complaints about BCoPD Personnel*, Baltimorecountymd.gov, <http://www.baltimorecountymd.gov/Agencies/police/complaints.html> (last visited June 19, 2017) (“You can file a complaint anonymously. Be aware, however, that anonymous complaints often are difficult to investigate as investigators typically find a conflict between protecting the identity of a complainant, and reaching out to and gathering information from other sources.”).

⁷⁶ *Police Civilian Review Board – FAQ*, SLCGOV.com, <http://www.slcgov.com/civilianreview/police-civilian-review-board-faq> (last visited June 19, 2017) (“Anonymous complaints may be accepted if the individual making the complaint professes firsthand knowledge of the alleged police misconduct, and the complainant gives a reason for refusing to identify himself/herself that is deemed credible by the Investigator.”).

⁷⁷ *Complaints Against Police Officers or Civilian Employees of the Metropolitan Police Department*, Nashville.gov, <http://www.nashville.gov/Police-Department/Chief-of-Police/Professional-Standards-Division/How-to-Make-a-Complaint.aspx> (last visited June 20, 2017) (“Complaints may also be made anonymously, if enough details regarding the incident are provided.”).

⁷⁸ *Syracuse Police Department Complaint Form*, syracusepolice.org, <http://www.syracusepolice.org/complaints.asp> (last visited June 19, 2017) (“If you simply want the Syracuse Police Department to know about your concerns, but do not wish to participate in the formal complaint process, you may file an anonymous complaint”).

several state police departments including the Indiana State Police⁷⁹ and the Ohio State Highway Patrol⁸⁰ allow for anonymous reporting. When someone submits an anonymous complaint, there obviously is not a name to provide to officers, yet these cities still make efforts to investigate the complaints and inform officers of what information they are able to uncover. The fact that the investigation was triggered by an anonymous complaint should not prevent cities from taking all reasonable steps to corroborate or disprove the allegations through other means.

Various government offices and departments within the City of Chicago and the State of Illinois rely on anonymous reporting, because they understand that civilians often report more information if they feel protected. For example, the City's Office of Inspector General ("OIG") receives anonymous complaints through a variety of methods.⁸¹ Members of the public can anonymously report fraud or corruption by city employees by filling out an online form, sending an email, calling a toll-free number, mailing a letter, or faxing a complaint.⁸² The City's Department of Business Affairs and Consumer Protection similarly allows for anonymous online complaints of business licensing.⁸³ Additionally, the City's Department of Buildings allows for anonymous online reporting of suspected building code violations.⁸⁴

In addition to several City departments and offices, the State of Illinois also relies on anonymous reporting. The state's Office of Executive Inspector General allows for anonymous complaints filed via an online form, fax, telephone, and mail.⁸⁵ The Illinois Department of Child and Family Services also accepts anonymous reports.⁸⁶ Members of the public can call a 24-hour hotline and anonymously report suspected child abuse or neglect.⁸⁷ Similarly, the Illinois Department on Aging accepts anonymous reports from members of the public about suspected abuse, financial exploitation or neglect through several hotlines.⁸⁸ The University of Illinois System's Ethics and Compliance Office allows for anonymous complaints of fraud, abuse, mismanagement misconduct,

⁷⁹ *Indiana State Police*, In.gov, <http://www.in.gov/isp/3240.htm> (last visited June 20, 2017) ("The Indiana State Police Department accepts complaints in person, by U.S. Mail, by telephone, fax, e-mail, or anonymously from any person who alleges misconduct by a department employee. The complaint should be made by the person involved, his or her attorney or, in the case of a juvenile, a parent or guardian.").

⁸⁰ *Allegation of Ohio State Highway Patrol Employee Misconduct*, statepatrol.ohio.gov, <http://statepatrol.ohio.gov/doc/hp24b.pdf> (last visited June 20, 2017) ("The Ohio State Highway Patrol has a well-defined procedure for investigating citizen complaints whether through identified or anonymous sources.").

⁸¹ *OIG Rules and Regulations*, chicagoinpectorgeneral.org, <http://chicagoinpectorgeneral.org/about-the-office/igo-investigation-faqs/> (last visited April 18, 2018).

⁸² *Report Fraud or Corruption*, chicagoinpectorgeneral.org, <http://chicagoinpectorgeneral.org/get-involved/fight-waste-fraud-and-abuse/report-fraud-or-corruption/> (last visited April 18, 2018).

⁸³ *Consumer Complaint Online*, cityofchicago.org, https://www.cityofchicago.org/city/en/depts/bacp/provdrs/pros_adj/svcs/file_a_citizen_complaintonline.html (last visited April 18, 2018).

⁸⁴ *Submit Building Code Request*, cityofchicago.org, http://311request.cityofchicago.org/reports/new?service_id=4fd3bd72e750846c530000cd (last visited April 18, 2018).

⁸⁵ *Complaint Process*, illinois.gov, <https://www.illinois.gov/oeig/complaints/Pages/process.aspx> (last visited April 18, 2018).

⁸⁶ *Reporting Child Abuse and Neglect*, illinois.gov, <https://www.illinois.gov/dcf/safekids/reporting/Pages/index.aspx> (last visited April 18, 2018).

⁸⁷ *Id.*

⁸⁸ *Report Abuse*, illinois.gov, https://www.illinois.gov/aging/ProtectionAdvocacy/Pages/abuse_reporting.aspx (last visited April 18, 2018).

waste, or other wrongdoing via telephone.⁸⁹ The Illinois Board of Higher Education also allows for anonymous complaints from students, faculty, staff, and others via an online form.⁹⁰

In the private sector, all publicly traded companies in the U.S. are required by federal law to create reporting systems that allow for the confidential, anonymous reporting by employees of concerns regarding questionable accounting or auditing matters.⁹¹ An article entitled “Elements of an Effective Whistleblower Hotline” describes how *all* companies should establish hotlines that allow people to report fraud.⁹² The report recommends that employees be able to make whistleblower tips anonymously, because “[a]nonymous and confidential reporting mechanisms help foster a climate whereby company employees are more likely to report or seek guidance regarding potential or actual wrongdoing without fear of retaliation.”⁹³

A consensus is growing among various departments and offices within the City of Chicago and the State of Illinois, as well as the private sector, that anonymous reporting is the most effective way to encourage civilians to report misconduct and preserve privacy. The CPD should follow these departments and offices, and allow for anonymous complaints. If it does not, the department will be an outlier among the government departments and offices that have progressed, and now use anonymous reporting systems.

The CPD already uses multiple anonymous reporting systems which encourage civilians to submit anonymous tips about suspicious activity. For example, the CPD allows civilians to submit anonymous tips about the suspicious activity of fellow civilians using an online system called TipSubmit.⁹⁴ The system allows an anonymous individual to describe the suspicious activity, the location of the activity, and to upload photos or videos.⁹⁵ The tip is sent directly CPD’s Crime Prevention and Information Center (CPIC).⁹⁶ The tips are analyzed by CPIC and then forwarded to the appropriate police unit for direct action.⁹⁷ Similarly, the CPD uses the TXT2TIP system, which allows civilians to send information about suspicious activity via text message.⁹⁸ The department created the program so civilians can anonymously and safely help rid their communities of crime.⁹⁹ The CPD’s Organized Crime Division also accepts anonymous tips about suspected drug trafficking through an online form.¹⁰⁰

⁸⁹ *Making a Complaint*, uillinois.edu, https://www.ethics.uillinois.edu/ethics_line/making_reports

⁹⁰ *Institutional Complaint System*, ibhe.org, <http://complaints.ibhe.org/register.aspx> (last visited April 18, 2018).

⁹¹ Bill Libit et al., *Elements of an Effective Whistleblower Hotline*, Harvard Law School Forum on Corp. Governance and Fin. Regulation, Oct. 25, 2014, available at <https://corpgov.law.harvard.edu/2014/10/25/elements-of-an-effective-whistleblower-hotline/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *TipSubmit*, Chicago Police Department, <https://new.tipsubmit.com/#/submit-tip/ChicagoPD> (last visited April 18, 2018).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Help Fight Crime Anonymously*, chicagopolice.org, <https://home.chicagopolice.org/community/crime-prevention/txt2tip/> (last visited April 18, 2018).

⁹⁹ *Id.*

¹⁰⁰ *Help Chicago Police Fight Drug Trafficking*, cityofchicago.org, <https://webapps1.cityofchicago.org/eforms/org/cityofchicago/drugTrafficking/index.jsp> (last visited April 18, 2018).

The CPD recognizes the value of anonymous reporting, because it encourages civilians to anonymously report suspicious activity and relies on those reports to stop and prevent crime. The value of anonymous reporting does not diminish simply because a civilian is reporting misconduct by an officer rather than by a fellow civilian. The Chicago police contracts should therefore allow for the anonymous reporting of officer misconduct.

V. There are significant costs resulting from policies that prevent oversight agencies from identifying misconduct

Failing to adequately identify misconduct comes at significant cost to CPD, the City of Chicago, and taxpayers. The affidavit requirement, prohibition of anonymous complaints, disclosure of complainants' names, and ban on rewards for whistleblowers can all result in legitimate misconduct complaints never being filed or investigated. Consequently, problem officers who could pose a threat to public safety are never identified or disciplined and can keep abusing their authority with impunity, further eroding the already broken trust between law enforcement and civilians in many communities across Chicago. This lack of trust comes at a significant cost to the legitimacy of the police department and its ability to effectively combat crime in many of Chicago's neighborhoods.

The affidavit requirement, in particular, creates a barrier to investigating complaints even when someone files a lawsuit against the City regarding an officer's behavior. Per the DOJ, in most lawsuits against CPD that resulted in the department paying out to the plaintiff, the original complaint had been closed by IPRA for lack of an affidavit.¹⁰¹ From a risk-management standpoint, this means that officers whose behavior leads to a settlement or a jury verdict against the City never face discipline, or evaluation for more training, leaving the City open to more potential risk in the future. No private industry would allow such a system to continue.

For example, the City of Chicago paid \$100,000 because officers used excessive use of force against a Chicago resident on May 18, 2013. Because no formal complaint was filed, the City did not conduct an investigation of the officers involved for discipline or re-training.

Rashan, a bearded Muslim and son of Iraqi immigrants, was driving his car when Officers Gordon, Hardy, Buford and Pozulp, who were in unmarked police cars, pulled him over and approached his car with their guns drawn. Officer Buford reached through the sunroof of Rashan's car and pulled him up. Other officers dragged Rashan out, threw him to the pavement, beat him, searched his car and strip-searched him. Police found no drugs, but they took Rashan to a police station, where Officer Bozek threatened to tase him if he did not submit to a body-cavity search. After the second search failed to turn up drugs, Bozek told Rashan that he "shouldn't be in this country anyway" and ought to return to where he came from. Police filed false reports claiming that narcotics were found in Rashan's car, and he was charged with possession of a controlled substance. The charges were later dropped. When he was released from Cook County Jail, Rashan was treated at a hospital for anal fissures and injuries to other parts of his body.¹⁰²

In another case, Chicago taxpayers paid \$100,000 because officers allegedly made multiple unjustified arrests and threats of intimidation in 2012. Again, because there was no affidavit, there was no investigation by the City for the purpose of discipline or more training.

¹⁰¹ Dep't of Justice, *supra* note 1, at 51.

¹⁰² See App. A (CPD Misconduct Settlements Not Investigated by IPRA Due to Lack of Affidavit) at 16.

Moore was wrongly arrested twice in the Humboldt Park neighborhood. The first arrest happened in September 2012 as Moore was walking to a corner store and saw several men running ahead of him. Minutes later, two officers grabbed Moore and asked about the men. When Moore said he didn't know anything about them, police took him to a gray van and said they would charge him with anything illegal they found inside. During a search, police found a plastic bag with drugs and said it belonged to Moore. Frightened, Moore pulled away from police, and one of the officers shocked him with his Taser, accidentally shocking the other officer. Angered by the incident, the officers began to beat Moore; one of them fractured his own hand punching him. Moore was charged with possession of a controlled substance and aggravated battery to a police officer. In August 2013, Moore was awaiting trial when he was arrested a second time by two officers, one of whom stated that Moore was the cause of him fracturing his hand. The officers drove Moore to a nearby alley, where they slapped him in the face several times and coerced him to plead guilty in the previous arrest. Meanwhile, a neighbor had recorded a video of the second arrest, which later proved that the officers lied to the Independent Police Review Authority about the circumstances. The charges against Moore were eventually dropped.¹⁰³

These examples are neither unique nor occasional. The Chicago Reporter maintains a database entitled *Settling For Misconduct*, which compiles summaries of Chicago police misconduct lawsuits, published by the City of Chicago's Law Department, where judgment or settlement payouts were made to plaintiffs after January 1, 2011.¹⁰⁴ Separately, the Invisible Institute operates the Citizens Police Data Project, which uses FOIA requests to collect, publish, and maintain data about police misconduct complaints filed against CPD officers, and the resulting outcomes of any complaint investigations.¹⁰⁵ The data on the Citizens Data Police Project currently runs through 2016, but the entire database is regularly updated based on the results of new information received through FOIA and other validated sources.¹⁰⁶ A cross reference of these two databases as of July 27, 2017 reveals that the City routinely pays out large sums of money in private lawsuits for misconduct claims that IPRA (now COPA) cannot investigate due to lack of an affidavit. *See* Appendix A (summarizing 143 CPD police misconduct cases between 2008 and 2014 where, in total, the City paid more than 5.5 million dollars in judgements and settlements, but IPRA separately dismissed the corresponding misconduct complaint).

If the affidavit requirement were not in place, IPRA (now COPA) could have investigated these allegations of misconduct, and many others like them and identified problem officers, administered discipline, and increased CPD's legitimacy with the communities it serves. No private company would allow its employees to engage in behavior that resulted in high-dollar settlements or judgments and fail to even investigate whether they should be disciplined or re-trained.

¹⁰³ *Id.* at 22.

¹⁰⁴ *Settling For Misconduct*, [chicagoreporter.com](http://projects.chicagoreporter.com/settlements/), <http://projects.chicagoreporter.com/settlements/> (last visited April 18, 2018).

¹⁰⁵ *Citizens Police Data Project*, [invisible.institute](https://invisible.institute/police-data/), <https://invisible.institute/police-data/> (last visited April 18, 2018).

¹⁰⁶ *Id.*

VII. Arguments against reforms are unsubstantiated

Frivolous Complaints

The most commonly cited rationale for maintaining the affidavit requirement is that it prevents false or frivolous complaints. However, it has more than once been empirically demonstrated that affidavits discourage even legitimate complaints.¹⁰⁷ An analysis by faculty at Northwestern University, found that in Chicago there is no correlation between whether or not a complaint about police behavior is supported by an affidavit and whether the allegation ends up being sustained.¹⁰⁸ Seattle removed its affidavit requirement and has not found any increase in false complaints.¹⁰⁹

The IACP has also acknowledged in a related paper that criticisms of the public complaint review process which focus on its potential for abuse have some merit, because civilian abuse of the process has occurred.¹¹⁰ Nevertheless, the paper states:

[W]hen weighed against the benefits accrued to the department and public from a strong public review process, these criticisms prove negligible. In short, all citizen allegations of employee misconduct should be recorded and reviewed by the internal investigation authority. This doesn't mean that a full-scale investigation of every public complaint should be launched. But at a minimum each should be reviewed to determine whether it merits further investigation. The complaint should be accepted and reviewed whether or not the complainant wishes to remain anonymous.

Therefore, the justifications for the affidavit requirement are demonstrably untrue, while the downsides are immense. The requirement results in misconduct going unchecked, and removing it would not result in a wave of false complaints.

State law and the affidavit override

Proponents for not changing the affidavit requirement often argue two contradictory positions about why this policy cannot be changed. First, they argue that a state law requiring a signed affidavit for all investigations of misconduct prohibits any changes to this policy at the local level and, therefore, the provision cannot be removed from Chicago's police union contracts.¹¹¹ They also argue that COPA has rules in place which allow them to execute an override of the affidavit requirement when absolutely necessary, and therefore, a policy change in the union contracts is not necessary.¹¹²

¹⁰⁷ Bocar A. Ba, *How Far Are You Willing to Go Against Police? Evaluating the Effects of Citizen Affidavits in Chicago* (2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2897063.

¹⁰⁸ Kyle Rozema & Max M. Schanzenbach, *supra* note 46, at 9.

¹⁰⁹ Elizabeth J. Andova, *Cycle of Misconduct: How Chicago has Repeatedly Failed to Police its Police*, 73 NAT'L LAW. GUILD REV. 65, 85 (2016).

¹¹⁰ International Association of Chiefs of Police, IACP National Law Enforcement Policy Center Investigation of Employee Misconduct 13 (1990) available at <http://community.iaclea.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2925facd-94db-4edb-8d01-22753dc41cee>.

¹¹¹ Adeshina Emmanuel, *State Law Protects Police Contract Provisions Blasted by Task Force*, Chicago Magazine, Apr. 26, 2016, <http://www.chicagomag.com/city-life/April-2016/State-Law-Protects-Police-Contract-Provisions-Blasted-by-Task-Force/>.

¹¹² Eleanore Catolico, *supra* note 28.

The affidavit override is in fact official COPA policy and it is possible because of a provision in the police contracts that allows the BIA Chief administrator to sign an affidavit that lets COPA continue an investigation without a signed affidavit by the complainant. This provision is an example of the City of Chicago exercising home rule authority. Home rule municipalities, like the city of Chicago, can enact ordinances that overrule state statutes unless the state expressly exercises exclusive control over the matter.¹¹³ Since the Illinois statute establishing the affidavit requirement does not negate home rule authority, the City of Chicago has full authority to negotiate a change in this policy in the police union contracts, which are voted on as an ordinance by the City Council.

As official policy, the affidavit override has been an attempt to exercise local control and allow for more investigations to continue without a signed affidavit. However, the reality is that very few investigations are actually being conducted under the affidavit override. Since September 2007, affidavit overrides have been requested 66 times,¹¹⁴ but IPRA and COPA have closed over 5,700 investigations because of a lack of an affidavit.¹¹⁵ While perhaps well intended, the affidavit override is not good policy and it is not achieving the goal of conducting more investigations without an affidavit. This is why it is critical that new police union contracts eliminate this provision entirely.

Officer's right to face their accuser

Advocates of the status quo in police accountability often argue that the current contract language is necessary in order to protect the legal right of police officers' to face their accuser. As one police officer told *In These Times*, "In our legal system, you have the right to confront your accuser...It's the same thing for us."¹¹⁶ Such arguments confuse protections afforded by the criminal justice system to civilians and officers alike, with those protections provided in the police contracts, which give officers significantly more protection than other municipal employees and more rights than potential victims of brutality.

For example, the next largest employee contract agreed to by the city is with the Coalition of Unionized Public Employees, which includes trade unions, laborers, and teamsters. This union contract does not contain an affidavit requirement, nor does it set any requirements as to how complaints may be received and responded to by the City. If a resident were to make an anonymous complaint accusing a City employee of committing a hit-and-run in a city vehicle, that matter would be investigated and brought to a criminal court according to the standards of the criminal justice system, where the U.S. and Illinois State Constitutions preserve a criminal defendant's right to

¹¹³ Ill. Const. art. VII, § 6.

¹¹⁴ Independent Police Review Authority, Third Quarter 2017 & Final Report at 16 (Oct. 15, 2017), *available at* http://www.chicagocopa.org/wp-content/uploads/2017/10/Q32017_IPRA_Final_Report.pdf; Civilian Office of Police Accountability, Annual Report 2017 at 6, *available at* <http://www.chicagocopa.org/wp-content/uploads/2018/02/2017-Annual-Report-Final.pdf>; Civilian Office of Police Accountability, Quarterly Report Q1 2018 at 6, *available at* <http://www.chicagocopa.org/wp-content/uploads/2018/04/1Q-2018-Quarterly-Report.pdf>.

¹¹⁵ Independent Police Review Authority, Third Quarter 2017 & Final Report at 26 (Oct. 15, 2017), *available at* http://www.chicagocopa.org/wp-content/uploads/2017/10/Q32017_IPRA_Final_Report.pdf; Civilian Office of Police Accountability, Annual Report 2017 at 9, *available at* <http://www.chicagocopa.org/wp-content/uploads/2018/02/2017-Annual-Report-Final.pdf>; Civilian Office of Police Accountability, Quarterly Report Q1 2018 at 9, *available at* <http://www.chicagocopa.org/wp-content/uploads/2018/04/1Q-2018-Quarterly-Report.pdf>.

¹¹⁶ *How Chicago's Police Union Contract Ensures Abuses Remain In the Shadows*, *inthesetimes.com*, http://inthesetimes.com/features/chicago_police_union_contract_reform.html (last visited April 18, 2018).

confront their accuser.¹¹⁷ If no witnesses came forward to testify in court the case might be dropped. However, even if the criminal case did not proceed, the City would have the ability to investigate and pursue the matter as a non-criminal breach of the City's rules, which could at most result in a suspension or termination, not prison or any harsher punishments.

Police should be not treated differently. In the case of a police shooting, the criminal justice system's requirements exist regardless of what is in the City's union agreements. And, in fact, the criminal justice system places such a high bar on police shootings that convictions are exceedingly rare.¹¹⁸ However, when it comes to looking at non-criminal accusations of misconduct, the signed affidavit requirement creates a bar that is far higher than that applied to any other City employee.

¹¹⁷ *OIG Rules and Regulations*, chicagoinspectorgeneral.org, <http://chicagoinspectorgeneral.org/about-the-office/igo-investigation-faqs/> (last visited April 18, 2018).

¹¹⁸ Nancy C. Marcus, *From Edward to Eric Garner and Beyond: The Importance of Constitutional Limitations on Lethal Use of Force in Police Reform*, 12 *Duke J. Const. L. & Pub. Pol'y* 1, 93 (2016) (discussing the rarity of police indictments and convictions).

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 address the ability to investigate anonymous complaints and complaints without an affidavit and ensure that a complainant’s name is not disclosed prior to an investigation. The new contracts must ensure that officers who perform their ethical and moral duty of reporting misconduct are not barred from promotion and recognition. 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 barriers to identifying misconduct, the CPCA supports the reformation of union contract provisions which in the past have made it too easy for officer 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 officer’s right to review and amend statements previously made to investigators.
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.