

**NEW
ERA
OF
PUBLIC
SAFETY**

A GUIDE TO FAIR, SAFE, AND EFFECTIVE
COMMUNITY POLICING

7

ACCOUNTABILITY

Police officers have extraordinary power — and enormous discretion over how and when to wield it. When justified, they have the authority to surveil members of the public, to use force against them, and to deprive people of their liberty. To riff on the old adage, with power comes the responsibility to exercise it appropriately — as well as the expectation that abuse of power (through misconduct or inappropriate or deficient performance) will be identified and addressed with appropriate discipline.

If officers — or their supervisors — fail to meet this responsibility, they should be held accountable. Accountability is central to fair, safe, and effective community policing; it deters misconduct and heals communities if officers violate law or policy. Officers, and departments, should be held accountable for performing in a way that complies with federal, state, and local laws, departmental policies, and community values. Doing so sends a message to communities that unjust and unconstitutional conduct is not tolerated and will receive swift discipline. It builds public trust and, in turn, strengthens the legitimacy of police departments and the criminal justice system at large. A lack of accountability, in

contrast, weakens the relationship between police and the people they serve, undermining departments' efforts — and the ability of the entire justice system — to protect and preserve public safety.

Strong accountability systems also strengthen departments from within. Police departments, like all professional organizations, flourish when employees know what is expected of them and understand the consequences if they fail to meet expectations. Officers are also more likely — and more motivated — to consistently make good decisions if they know that leaders and colleagues are also accountable for their actions.

This chapter takes a comprehensive look at how to create robust internal and external accountability systems. Internal accountability mechanisms include rules, policies, and practices that ensure that department members are held responsible for their conduct. External mechanisms exist outside of departments, such as community/civilian review boards¹ and independent prosecutors who hold officers accountable for misconduct.





RECOMMENDED BEST PRACTICES

To create robust internal and external accountability systems, departments should work with communities to:

7.1

Create transparent, effective processes to receive and respond to external misconduct complaints.

7.2

Create transparent, effective processes to receive and respond to internal misconduct complaints.

7.3

Delineate policies about how and by whom misconduct complaints are investigated.

7.4

Develop policies for investigating and addressing sexual misconduct and intimate partner violence.

7.5

Create transparent, effective processes for conducting misconduct investigations.

7.6

Ensure supervisors address and discipline officer misconduct.

7.7

Integrate the principles of procedural justice into disciplinary processes.

7.8

Use early intervention systems to track officer behavior and address officer needs and deficiencies at the earliest opportunity.

7.9

Investigate misconduct to the extent possible after statutory or contractual time limitations for discipline have passed.

7.10

Identify, maintain, and share material evidence relating to officer misconduct or credibility with prosecutors in criminal cases.

7.11

Inform officers of their right to file complaints with outside agencies.

7.12

Expand the role of community/civilian review boards and independent monitors in discipline.

7.13

Establish clear protocols for determining who investigates and prosecutes officer-involved crimes and shootings.

7.14

Oppose provisions that weaken accountability systems when negotiating collective bargaining agreements.



HOLDING POLICE ACCOUNTABLE

Fair, safe, and effective community policing requires the highest standards of professionalism, a commitment to justice, and strong, trusting relationships with communities. Most officers are skilled, principled, and compassionate; those who aren't — whether by intention or not — damage relationships with communities, tarnish fellow officers' reputations, jeopardize departments' ability to deliver community policing, and weaken the nation's criminal justice system.

To demonstrate a commitment to fair, safe, and effective community policing at the highest professional standards, department leaders should adopt fact-finding and disciplinary processes that are just, thorough, transparent, and timely. In jurisdictions where officers have a vested right to employment through civil service or union contracts, departments are required to accord officers due process by giving them the opportunity to respond to charges of misconduct and offer evidence that may mitigate the gravity of violations. In cases where misconduct is criminal, it is even more important to hold officers accountable and to discipline or terminate them as appropriate, while ensuring the accused their

constitutional protections. Essential elements of accountability systems include:

Intake systems. Departments need multiple, easily accessible means for community members to lodge complaints about misconduct and/or inadequate police services. Casting the broadest net possible enables departments to identify potential problems at the earliest opportunity and to affirm their commitment to community and internal feedback. Intake requires careful tracking, training for those who receive complaints, and safeguards to ensure that community members are not dissuaded from voicing concerns about police operations or individual officers. For example, departments should implement policies forbidding officers from retaliating against people who file complaints.

Classification and assignment. Departments need systems for prompt, neutral assessment of the type of conduct or performance implicated in a complaint, followed by swift assignment to appropriate units for investigation. In some instances, complaints may allege criminal conduct, which requires additional attention to safeguards and constitutional protections. In other cases, complaints may allege misconduct punishable by discipline, which should be referred to an administrative investigation unit, such as an internal affairs (IA) unit, or to an outside civilian agency, such as a community/civilian review board (CRB) tasked with investigation. Minor infractions, such as tardiness or uniform and equipment violations, should be referred to supervisors for prompt corrective action.

Timely, full, impartial investigations. Investigations of all types of misconduct should be swiftly pursued to follow the facts where they lead. Detailed investigative procedures are necessary to ensure integrity, transparency, and confidence in the investigation process.

Fair resolution and decision-making. Complaints of misconduct or poor police service may require remediation beyond personnel investigations and discipline. Community members may have suffered economic or personal injury that can be addressed via mediation or restorative justice practices. Fair, prompt resolution enhances community trust, especially when community members tell friends and family members about officers' willingness to accept responsibility, take appropriate steps to address the misconduct, and pledge to do better.

In cases where early mediation or resolution is not practical, personnel investigations should be adjudicated in a manner that is consistent, fair, and compliant with legal and policy requirements. If evidence supports a finding of misconduct, decision-makers should say so and proceed with fair, predictable discipline, even if they expect the officer to appeal the decision. By the same token, if evidence exonerates the officer, decision-makers should not hesitate to say so, even if it disappoints or angers some in the community.



There will always be concerns about whether professional organizations — including police departments — meaningfully hold employees accountable. To alleviate these concerns and strengthen community trust in police, departments should include community members in the investigation and adjudication processes. Outside participation addresses concerns about the so-called “code of silence” — a practice in which officers conceal wrongdoing to protect or support colleagues. It may also broaden the perspective of department leaders who seek to meet community needs. Community voices may, for example, prompt leaders to address legal and policy violations as well as “lawful but awful” behaviors through training, changes in tactics, and additional support.

Early intervention systems. Along with disciplinary systems, departments need nonpunitive systems to identify and rectify problematic performance. Such systems, which vary widely in sophistication, are known as early intervention systems (EISs). At a minimum, an EIS should provide supervisors and leaders with data to help them identify and assist officers who may be at risk of injury, career burnout, or violation of legal or policy standards. Interventions, such as counseling, training, or referral to an employee assistance program (EAP), are designed to fit officers’ performance and professional needs. EISs are not a substitute for accountability; rather, they provide an extra means for supervisors and managers to make nuanced, fact-based decisions about how to create and grow a workforce of productive, fair, and principled professionals.

BEST PRACTICES IN ACCOUNTABILITY

Like other professional organizations, police departments should have robust accountability systems to ensure that officers are operating properly and serving the community safely and effectively. Because of the vast powers and discretion afforded police, departments should hold officers responsible when they are not. To do so, they should implement systems to identify, address, correct, discipline, and prevent misconduct.

How a department receives and responds to misconduct complaints is a critical part of police accountability systems, whether complaints come externally from community members or internally from department personnel. The following guidance identifies the issues that should be addressed when tackling accountability in law enforcement. To create robust internal and external accountability systems, departments should work with communities to:



RECOMMENDATION 7.1

CREATE TRANSPARENT, EFFECTIVE PROCESSES TO RECEIVE AND RESPOND TO EXTERNAL MISCONDUCT COMPLAINTS.

External complaints come directly from community members. To address misconduct, department processes should not discourage people from filing complaints. Specifically, departments should:

Implement transparent processes for filing complaints. Complaint processes should be simple, and information should be easily available, including in alternative and accessible formats. People should be able to file complaints in person, by phone, or online.² Information about how to file complaints should be available in many forms and places (e.g., at police stations, court houses, schools, online, and on officer contact cards) and in multiple languages, and it should be accessible to people with disabilities (e.g., in locations that are physically and technologically accessible and compliant with the Americans with Disabilities Act [ADA]).³ A clear and simple complaint process helps ensure that departments don't miss out on valuable community input.⁴

Accept anonymous complaints. Departments should accept anonymous complaints, though they should let complainants know in a noncoercive manner that the anonymity of the complaints may hinder a full and complete investigation; this is because investigators may not be able to follow up with complainants or others with firsthand knowledge of the facts.⁵ Departments should eliminate deadlines for filing complaints and should not require a complainant's signature, oath, certification, or affidavit for reviews and investigations, as these requirements discourage people who fear retaliation from coming forward.⁶ All officers should be required to accept, document, and report any allegation of police misconduct.⁷

Continue investigations involving uncooperative witnesses. Departments should continue investigations when complainants are anonymous or stop cooperating with the investigation or otherwise become unavailable (e.g., a woman who accuses an officer of intimate partner violence may stop cooperating with police because of her relationship with the accused officer).⁸

Assuage fear. Departments' training and internal guidance materials should take into account the fear people may experience when filing complaints against officers and their possible reluctance to do so. They should take steps to assuage fear and encourage community members to report misconduct, and they should provide personnel with specific strategies to ensure cooperation throughout investigations by building personal and community trust.



Develop anti-retaliation policies.

Departments should protect complainants by implementing anti-retaliation policies. Community members and departments may have different views about what constitutes “retaliation.”⁹ Accordingly, department policies, training materials, and public outreach materials should contain clear definitions and provide examples of conduct that may constitute retaliation. Department leaders should seek community input to ensure that policies reflect community views and don’t disincentivize or punish people for filing complaints. Discretionary police action that might otherwise be lawful or permissible (e.g., issuing a ticket for a civil infraction) may become unlawful or impermissible if done in response to a complaint.

Disclose investigation outcomes. Once a complaint is filed, departments should have robust and independent internal mechanisms to investigate swiftly, thoroughly, and fairly. Upon conclusion, departments should make public information about complaints from members of the public and officer misconduct (not including minor violations such as tardiness or uniform violations), and

they should do so in aggregate form as well as in relation to individual cases.¹⁰ Public disclosure is required in certain cases (e.g., officer-involved crimes), but disclosure policies that go beyond minimum requirements foster public trust.

The extent of disclosure may be restricted by state or federal law, such as a state law enforcement officer bill of rights (LEOBOR)¹¹ or restrictions regarding the disclosure of physical or mental disabilities pursuant to the ADA.¹² Community members and officers should educate themselves about these constraints to ensure shared understanding of and expectations about disclosure practices.

Regularly assess the complaint process.

Departments should ensure that intake mechanisms are effective and working as intended by regularly examining the number, sources, and types of complaints they receive and regularly communicating with community leaders and stakeholders who may be better attuned to complaint barriers or disincentives.



RECOMMENDATION 7.2

CREATE TRANSPARENT, EFFECTIVE PROCESSES TO RECEIVE AND RESPOND TO INTERNAL MISCONDUCT COMPLAINTS.

While facilitating complaints from community members is critical to accountability, departments also need processes that allow department employees, including officers, to easily report misconduct and file complaints.

Create a “duty to report” for officers. Officers should have an affirmative duty to report possible misconduct to supervisors or to a centralized internal affairs bureau or its equivalent. (Internal affairs units investigate allegations of officer misconduct and criminal conduct.) This duty should be emphasized in recruiting, academy training, and continuing education to make clear that the department does not condone officer silence, or broader codes of silence, and that failure to report may jeopardize employment. For example, the Los Angeles Police Department’s (LAPD) Policy Manual states:

The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an employee to exercise courage, integrity, and decisiveness. ... An employee’s obligation to report and prevent misconduct begins the moment the employee becomes a member of the Los Angeles Police Department. Police officers, because of their status as peace officers, have an even greater responsibility to report and prevent misconduct.¹³

Crucially, departments should not place artificial limitations on when officers can come forward with complaints. If laws and collective bargaining agreements (CBAs) impose time limitations on disciplinary action, department leaders should nonetheless accept and investigate complaints. While supervisors may not impose discipline, investigations may shed light on problematic

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L.A. Police Dep't, Employee's Duty to Report Misconduct, 1 LAPD Policy Manual Section 210.46,
http://www.lapdonline.org/lapd_manual/volume_1.htm#210_EMPLOYEE_CONDUCT (emphasis added).

behaviors that might be addressed outside of the disciplinary process; this also communicates to officers that department leaders care about their concerns and stand by them when they make the difficult decision to step forward and file a complaint against a supervisor or fellow officer.

Ensure supervisors' have a "duty to respond." Just as officers have a duty to report, supervisors and managers have a duty to respond. That response may include referring the complainant or witness members to EAPs to help them address stress or personal difficulties associated with the complaint or its investigation.

Develop anti-retaliation policies. Officers are sometimes the best source of information about misconduct by fellow officers because they bear witness to it. Policies should ensure that officers reporting misconduct face no retaliation, either in the short term (e.g., via harassment, ostracism, or adverse assignment) or long term (e.g., via denial of employment opportunities). Such retaliation may violate not only personnel policies and CBAs¹⁴ but also state or federal law.¹⁵

Encourage intervention. Efforts to engender a culture in which officers intervene in problematic behavior are already underway. In 2016, the New Orleans Police Department launched Ethical Policing Is Courageous (EPIC), a training initiative to support officers seeking to mitigate misconduct.¹⁶ The program trains officers to identify problematic behaviors and to intervene safely and effectively.¹⁷ Such

programs build upon long-standing policies in other departments that require affirmative reporting of fellow officer misconduct, such as the LAPD's aforementioned policy.

Create avenues to file misconduct complaints with external organizations.

Because department members may have misconduct complaints against supervisors or others in positions of power within organizations, they should know how to file complaints with external organizations. All officers should know how to contact external agencies such as the Equal Employment Opportunity Commission or its state or local equivalent to report sexual harassment or other types of misconduct; local prosecutors' offices to report potential criminal conduct; or labor representatives to report concerns about workplace safety or other adverse working conditions. (For more detail, see Recommendation 7.11.)

RECOMMENDATION 7.3

DELINEATE POLICIES ABOUT HOW AND BY WHOM MISCONDUCT COMPLAINTS ARE INVESTIGATED.

Because not all misconduct is equal, departments should have protocols in place for addressing varying degrees of it. Misconduct ranges from minor infractions, such as tardiness, to serious crimes, such as assault and theft. Departments should develop internal protocols to respond to various types of misconduct based on their size, organizational structure, and available resources, such as whether they have dedicated internal affairs investigators.

Upon reviewing complaints, department leaders should authorize certain types of infractions to be investigated at the precinct level (referred to in some departments as “districts”), while more serious allegations should be investigated by internal affairs units.¹⁸ Relatedly, departments should implement internal quality control systems, such as authorizing internal affairs investigators to review and audit investigations at the precinct or division level and tapping external entities, such as oversight bodies, to review the work of internal affairs specialists.¹⁹ Departments can also implement other mechanisms to enhance integrity, such as “intake stings,” to test whether officers comply with policy when taking complaints.

To initiate an investigation, supervisors should identify, document, and report potential misconduct. After their investigation is complete, they should send a report up the chain of command for executive review. Department leaders should prepare a response and, when appropriate, take disciplinary action (preferably after consulting labor relations counsel) to ensure it aligns with prior discipline for similar conduct (and to ensure disciplinary actions are, in fact, meted out).

The officer’s immediate supervisor should provide information pertinent to the disciplinary process, such as officers’ performance history; the impact the offense has on their ability to meet performance expectations; the impact on supervisors’ confidence in their ability to perform assigned duties and work with others; and mitigating factors (e.g., unusual job or personal stressors, mental or physical impairments, etc.) or aggravating factors (e.g., resistance to prior rehabilitation efforts, malice toward the public or colleagues, etc.).²⁰ The ultimate decision, however, should come from the chief — to reinforce the organization’s core values and to avoid the appearance that supervisors are “soft” on members of their own teams.

When violations don’t concern interactions between officers and community members and are investigated at the precinct level, immediate supervisors typically take disciplinary or corrective actions, including counseling, coaching, and managing the behavior at issue. If supervisors have a demonstrated history of failing to hold subordinate officers accountable, then responsibility for corrective action should be delegated until the underlying leadership problem is resolved.

RECOMMENDATION 7.4

DEVELOP POLICIES FOR INVESTIGATING AND ADDRESSING SEXUAL MISCONDUCT AND INTIMATE PARTNER VIOLENCE.

Sexual misconduct (e.g., harassment or violence) is, sadly, a common complaint against police officers, especially among LGBTQ and gender-nonconforming people.²¹ LGBTQ youth, one study found, were twice as likely as their peers to have had negative sexual contact with police in the preceding six months.²² Survivors, especially those from marginalized groups, may be reluctant to come forward because of uneven power dynamics or fear of retaliation. Sex workers, for example, are often targets of sexual violence and harassment but may not come forward for fear of further targeting by police.²³

Nonetheless, some of the nation's largest departments lack policies addressing sexual harassment, extortion, misconduct, abuse, and violence.²⁴ All departments should partner with community members to develop and implement policy in the areas of prevention, detection, and accountability. Indeed, the International Association of Chiefs of Police states:

The problem of sexual misconduct by officers warrants the full attention of law enforcement leadership. It represents a grave abuse of authority and a violation of the civil rights of those victimized. Law enforcement agencies and executives have a duty to prevent sexual victimization, to ensure it is not perpetrated by their officers, and to take every step possible to ensure the safety and dignity of everyone in the community. ... Sexual misconduct within an agency may be indicative of a need for systemic and cultural changes. Creating and implementing a policy are key steps to ensure an agency is prepared to respond to allegations, reinforce officer accountability, and ultimately prevent abuses of power.²⁵

Intimate partner violence is also prevalent in the police force, and survivors are often scared to call police departments if their abusers work there.²⁶ To address this problem, departments should implement intervention programs to detect and respond to allegations of officer-involved intimate partner violence.²⁷ They should also staff specially trained investigators and trauma-informed specialists to interview survivors of sexual assault and intimate partner violence. Departments should have processes in place to protect survivors, whether they are community members or department members who report coworkers, to avoid retaliation.

Regulating Officer Discipline:

Officer discipline is regulated by laws constraining what departments can and can't do. The standards or processes for investigating or disciplining police officers arise out of state civil service rules or state/local labor relations laws that permit employees to form or join unions and negotiate collective bargaining agreements (CBAs) with their employers. These rules and laws typically provide that nonprobationary employees have a continued right to employment absent good cause for discharge or discipline.

The U.S. Supreme Court has viewed this general right as a protectable property interest subject to due process protections, such as notice of an employer's intent to impose discipline and a fair opportunity to dispute the charges of misconduct or present mitigating evidence in support of lighter discipline. More specifically, the employee must be accorded an *informal* opportunity to respond prior to the imposition of discipline and a *formal* opportunity to appeal the discipline once imposed. See generally *Loudermill v. Cleveland Bd. of Educ.*, 470 U.S. 532 (1985).

Beyond these due process rights, state/local law or union contracts may govern other aspects of the disciplinary process, such as:

- Who may conduct police misconduct investigations.
- Time limitations for initiating or completing a misconduct investigation.
- Whether or when accused officers may view the complaints against them.
- Time, place, and manner restrictions on the conduct of investigations.
- The process for challenging discipline through civil service appeal, labor arbitration, or other administrative processes.

Such standards may arise out of standards for police discipline processes. At least 14 states have enacted so-called LEOBOR (law enforcement officer bill of rights) laws. Thus, local communities seeking to improve their local agencies' accountability processes should begin with an understanding of already existing legal constraints, such as LEOBOR laws, civil service rules, and union contracts. Some states, such as Maryland and Illinois, are considering amending their LEOBOR laws to increase officer accountability.

RECOMMENDATION 7.5 CREATE TRANSPARENT, EFFECTIVE PROCESSES FOR CONDUCTING MISCONDUCT INVESTIGATIONS.

When officers are accused of violating a department rule or policy, departments should investigate fairly, thoroughly, and in a timely manner. All departments are required to follow the employment laws in their own jurisdictions, but they should also incorporate the following components into their own accountability and disciplinary systems. Specifically, departments should:

Conduct timely investigations. Ideally, investigations should be completed within six months.²⁸ The New Orleans Police Department requires officers to initiate investigations no later than 14 days after they receive a complaint and to complete investigations no later than 60 days after the date of initiation.²⁹ The Albuquerque Police Department requires administrative investigations to be completed within 90 days³⁰ and all critical incident investigations to be completed within two months.³¹ If an investigation is not completed within the specified period, investigators must get approval for an extension from the internal affairs commander and department chief.³²

Timeliness — and clear timelines — enhance justice and trust. They allow community members to see complaints resolved and, when appropriate, discipline applied on

anticipated timeframes. Officers who are falsely accused, meanwhile, can take some comfort in the fact that their cases will be resolved by a certain date. Moreover, swift adjudication reduces the loss or destruction of evidence, as witnesses disappear or forget details, as physical items deteriorate, or as complainants change their minds or reverse course (e.g., when a sexual assault survivor decides to stop cooperating). Timely investigations can have a deterrent effect, too, as swift remedial measures improve behavior and deter future misconduct.

Departments with backlogged investigations should make plans to clear them, which can be done via outside counsel or mediation programs if permitted by law or union contract.³³ At the same time, new investigations should be completed within stated timeframes; indeed, placing new cases at the bottom of the list only perpetuates the problem. Department leaders should also set clear expectations (if not requirements) regarding the length of time that each investigatory phase should take.

Notify complainants. Department leaders should periodically notify complainants about the progress of investigations. They should send a letter when initiating investigations informing the complainant about the investigation process, its various phases and timelines, and the investigator's name and contact information.³⁴ They should also send a letter upon completion of the investigation explaining the outcome or, if the case is extended, explaining why.

Document evidence and information. To ward off claims of coaching or coercion, investigators should document all available evidence and information about alleged misconduct, including interviews with complainants, witnesses, and other affected individuals. They should also photograph scenes of the incident from witnesses' points of view and document adjudication and disciplinary outcomes.

Develop transparent policies. Investigation and review processes should be clearly defined in departmental policy so community members and officers know what to expect and to ensure that investigations of the same type of misconduct are handled similarly, creating procedural justice. (For more detail, see Chapters 9 and 10.) Minor violations, like tardiness, may be appropriately handled at the precinct level. More serious violations, such as allegations of sexual harassment or theft, may require referral to an internal affairs bureau, adjudication by a full disciplinary board, or notification to the local prosecutor's office.

Train investigators. Investigators should be trained to conduct thorough and impartial investigations; otherwise, departments run the risk of letting misconduct go unexamined and unaddressed. They should also be trained in implicit bias, which can result in the dismissal of a complainant's account of the facts based on race, gender, sexual orientation, or other characteristic.³⁵ (For more detail, see Chapter 2.) Cultural sensitivity training, meanwhile, enables investigators to interview people from marginalized communities, such as undocumented immigrants. (For more detail, see Chapter 11.)

RECOMMENDATION 7.6

ENSURE SUPERVISORS ADDRESS AND DISCIPLINE OFFICER MISCONDUCT.

Disciplinary rules and processes should apply to all department members, regardless of status or title. Leaders and supervisors should be held accountable for their actions and for failing to hold subordinates accountable for their actions.

Indeed, accountability should start with supervisors. Supervisors should set the standard for exemplary behavior. They are also in the best position to identify problems with performance and signs of misconduct. They might witness an officer coping poorly with stress, ignoring policy or training, or unfaithfully reporting actions. In response, they might offer simple feedback or referral to counseling, or they might initiate disciplinary processes. Departments should have clear policies and training to guide supervisors through problem management, particularly when confronted with potential misconduct.³⁶

The most effective policies (1) grant supervisors discretion to handle minor infractions (e.g., those relating to tardiness, uniform violations, personal appearance, and equipment, such as failing to carry a less-lethal weapon) and (2) require them to refer more serious violations (e.g., offenses relating to the use of force, biased policing, and integrity) to internal affairs bureaus, where specialists outside the chain of command adopt formal, rigorous investigatory processes. Because lax approaches to misconduct foster cultures of sloppy, unsafe, and lawless policing, departments should hold supervisors accountable for failing to monitor performance. (For more detail, see Chapter 9.)



RECOMMENDATION 7.7

INTEGRATE THE PRINCIPLES OF PROCEDURAL JUSTICE INTO DISCIPLINARY PROCESSES.

Procedural justice involves four principles: (1) fair processes (i.e., treating people with dignity and respect), (2) transparency (i.e., conveying trustworthy motives), (3) providing opportunity for “voice,” and (4) impartial decision-making.³⁷ Departments should adhere to these principles by establishing fair systems with clear disciplinary processes. Specifically, departments should:

Promote internal fairness. If officers believe their supervisors’ actions and disciplinary decisions are fair and understandable, they’re more likely to accept, support, and comply with those decisions.³⁸ The lack of clear, definitive, and advance knowledge about disciplinary systems leaves officers and supervisors uncertain about what to expect when infractions or misconduct occurs. This creates a culture of unfairness, results in processes that appear arbitrary and unjustified, and erodes officers’ trust in supervisors. Officers who work in such systems are more likely to mirror corrosive institutional cultures when they interact with community members. On the contrary, internal procedural justice leads to externally just behavior toward communities because it promotes fairness and respect.³⁹ (For more detail, see Chapter 9.)

Make processes transparent. Communities are often in the dark about departmental processes for holding officers accountable. The lack of transparency heightens tensions, especially when departments aren’t forthcoming with information in the aftermath of police shootings or don’t fire involved officers. It is no surprise that terms like “code of silence” and “blue wall,” which suggest that departments protect officers and cover up their wrongdoing, have persisted for decades.⁴⁰ Departments must contend with this perception to establish and maintain legitimacy with the community. Indeed, disciplinary processes that lack transparency foster public distrust; clear policies, in contrast, provide the foundation for accountability and earning community trust.

Establish clear disciplinary policies. Procedural justice also requires that officers understand the consequences for law and policy violations. Department leaders should spell out the penalties or remedial measures for violations by type and degree. Many departments have a matrix listing different types of policy violations along with their disciplinary consequences. The Austin (Texas) Police Department’s matrix indicates that an officer who fails to report a violation, for example, will receive an oral reprimand or up to three days’ suspension on the first occurrence.⁴¹ Such flexibility allows decision-makers to consider mitigating factors (e.g., superior work history, acceptance of responsibility, and exhibited potential for rehabilitation) and aggravating factors (e.g., prior discipline history, malicious conduct, and expressed unwillingness to change behavior) when making disciplinary decisions.

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Engage officers and community members. As with all policies, departments should engage communities when developing investigatory and disciplinary policies so they meet community needs and reflect community values. Community members deserve a seat at the table during these discussions because they are often on the receiving end of misconduct. Although labor laws may prohibit community members from participating in the collective bargaining process with unions, they do not prevent them from presenting departments with a firm set of expectations or goals to achieve through bargaining processes. When communities provide input into how departments investigate misconduct and impose discipline, they assume greater responsibility for government services.

To adhere to the principles of internal procedural justice, department leaders should seek input from officers for investigatory and disciplinary processes. By taking their concerns into account, and creating a dialogue in which officers understand the reasoning and purpose of the policies, departments will generate more buy-in from officers and create legitimacy for the departmental processes.



RECOMMENDATION 7.8

USE EARLY INTERVENTION SYSTEMS TO TRACK OFFICER BEHAVIOR AND ADDRESS NEEDS AND DEFICIENCIES AT THE EARLIEST OPPORTUNITY.

To hold officers accountable, departments should thoroughly and impartially investigate misconduct allegations; identify problematic behaviors and poor performance; and mete out consequences. As at any workplace, departments also need nondisciplinary systems to track officer performance objectively over time and to identify potentially problematic behaviors as early as possible.

Officers may fail to meet performance expectations for a variety of reasons, such as insufficient knowledge of the issue at hand (e.g., the nuances of a newly revised policy), deterioration of skills (e.g., insufficient tactical or de-escalation training), or personal stressors (e.g., substance dependency, family conflicts, or insufficient sleep). Supervisors should therefore identify and respond to possible problems at the earliest opportunity to help officers meet professional expectations, develop professionally, and avoid more serious misconduct. Such approaches (which are sometimes multitiered) may include referral to an employee assistance program, training, mentoring, and/or other professional growth programs. Specifically, departments should:

Implement early intervention systems.

Implementing and maintaining early intervention systems improves supervision, especially at mid-sized (those with 50-999 officers) and larger (those with 1,000+ officers) departments.⁴² Indeed, the Commission on Accreditation for Law Enforcement Agencies, the primary law enforcement credentialing authority in the country, has incorporated comprehensive EISs into their standards.⁴³ New Jersey's attorney general, meanwhile, has mandated that all law enforcement agencies implement an "early warning system."⁴⁴

EISs identify and respond proactively to behaviors and performance trends that — while not rising to the level of legal or policy violations — nonetheless indicate that officers are not performing at optimal levels. These systems analyze a variety of indicators to identify misconduct and performance problems, such as officer-community relations (e.g., the number of complaints officers receive in a given period) and racial profiling (e.g., demographic data for traffic stops).⁴⁵ (For more detail, see Chapter 2.) Departments that carefully and consistently implement EISs have reduced the incidence of misconduct.⁴⁶

That said, EISs are not a substitute for disciplinary systems. Officers should still be held accountable for complying with legal, policy, and performance standards. EISs strive to correct behavior before it leads to misconduct, but they don't immunize officers from consequences for misconduct that has already occurred. Departments should

ensure all officers understand and accept the goals of EISs, even in the face of uncertainty and suspicion.

Because EISs allow for some flexibility in implementation, community and officer input is vital. To inform the development of an EIS, some departments, such as the Austin (Texas) Police Department, have formed a committee of community members and other stakeholders to identify factors that indicate problematic behavior and to discuss productive interventions.⁴⁷ This is because EISs developed with community and officer input will likely be met with less resistance.

Ensure supervision. EISs are a supplement to, not a replacement for, close day-to-day supervision. Even effective, well-intentioned supervisors inadvertently overlook warning signs about employee performance or miss patterns that only become apparent over time or with the help of data collection.

EISs address this problem. First, they are a repository for information about conduct of interest to officers, departments, and communities (e.g., uses of force, disciplinary actions, complaints by community members, stops, arrests, lawsuits, vehicle and foot pursuits, workplace injuries, etc.) and other data departments are willing and able to track. Second, most EISs have a mechanism that identifies officers who reach predefined thresholds for potentially problematic behavior, such as a certain number of uses of force or public complaints over a defined period. Often, departments develop thresholds based on models that identify officers who

are statistical outliers in given areas.⁴⁸ More sophisticated systems compare officer conduct to that of colleagues with similar assignments and hours.

Develop effective review processes.

EISs that identify officers as statistical outliers (as compared to other officers) or who have had a set number of infractions in a given period, trigger formal review processes. In some departments, the first-level review is conducted by a unit of specialists who administer the EIS. In others, this review is conducted by a supervisor in the officer's chain of command.

Under both models, the first-level review takes a fresh, retrospective view of officer performance. This includes examining the incident reports that prompted the EIS review as well as recent performance evaluations, supervisory feedback, and, often, relevant body-worn camera or other video footage. The goal is to review materials to identify patterns of potentially problematic behavior, indicators of stress, training needs, and the like. This review should include at least one meeting with the officers in question to discuss the review, address frustration with and/or misconceptions about the EIS, and listen to what officers have to say about underlying incidents or other issues they wish to discuss.

This first-level review typically leads to a proposed remedial, nondisciplinary intervention, which may include a referral to an employee assistance program, increased

supervision (e.g., supervisor ride-alongs), counseling, training, and coaching. Typically, an EIS panel, committee, or other officials experienced in EISs conduct the first-level review and propose interventions to ensure they are consistent with prior interventions for the same type of misconduct and are relevant, fair, and adequate.

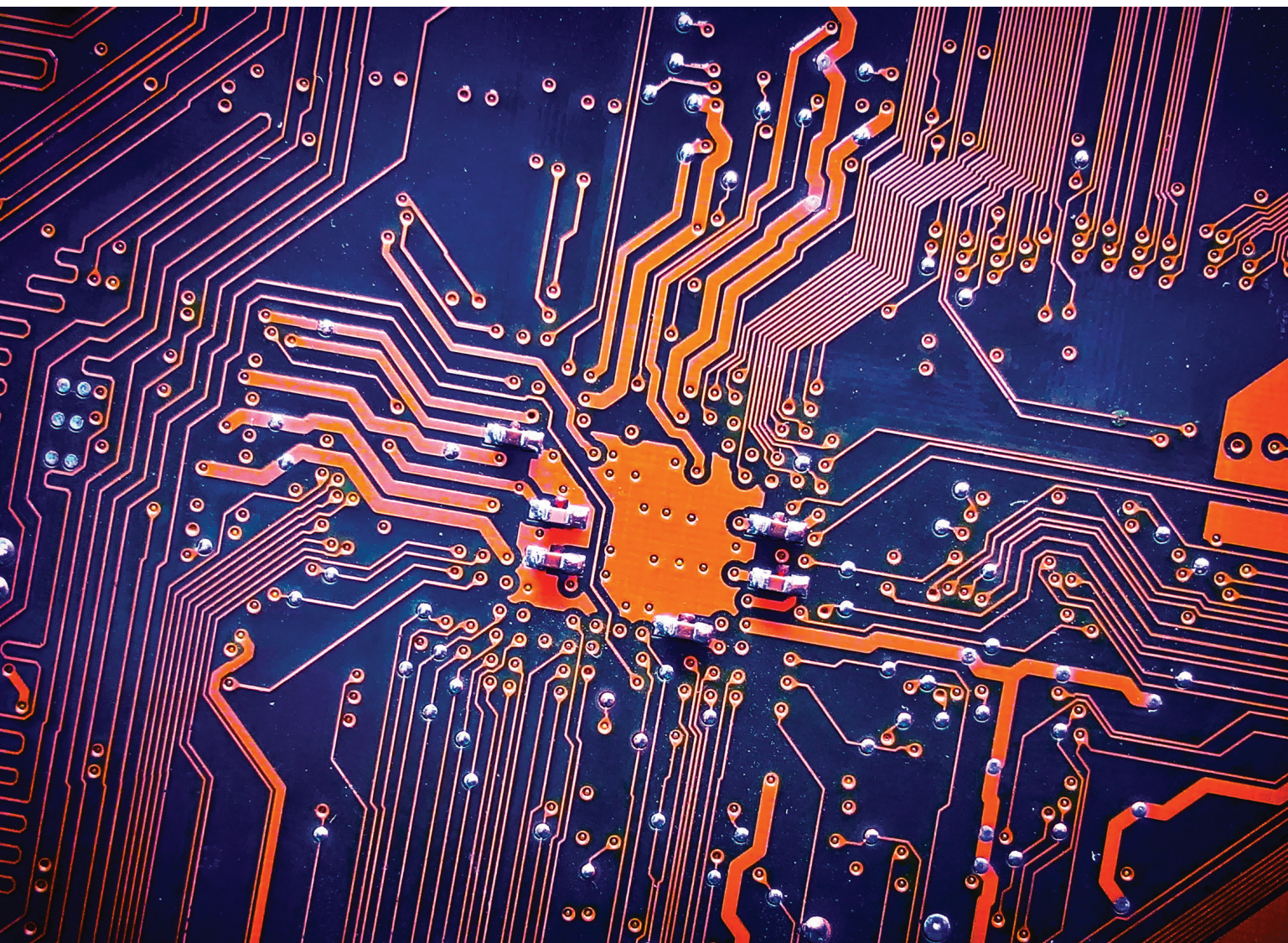
In some instances, only minor interventions are proposed, such as increasing coaching and counseling. Review of video footage may, for example, identify officers who take unnecessary risks when stopping motorists. Even when they don't lead to interventions, EISs benefit officers, departments, and communities because they foster communication between officers and supervisors and provide valuable information about officer conduct. These interventions should be viewed as learning opportunities.

Create sufficient data storage. Because EISs are driven by data, special efforts are needed to protect data integrity and ensure that data warehouse(s) are capable of responding to sophisticated queries whenever necessary. Several EIS software programs are commercially available, but software is no substitute for procedures and business rules that ensure that data are entered correctly and on a timely basis. Officers seeking to implement EISs should look to — and learn from — the many other departments that use and benefit from them.

Train supervisors to use early intervention systems. Supervisors should be trained to use EIS software, to examine past performance impartially, and to provide corrective supports in a manner that encourages officers to correct problematic behavior. EISs often prove to be valuable training tools for instructors as well. Well-built systems have officials who are trained to mine the data to find out, for example, how many foot pursuits result in the use of force, whether certain tools, tactics, or techniques are ineffective, and so on. Data-rich EISs also make it easier to identify how successfully — or unsuccessfully — training instructors prepare officers for duty.

Supervisors should track interventions, along with remedial steps or recommendations regarding officer conduct, in an electronic database system. Many systems also enable supervisors to track officer progress and hold supervisors accountable if they fail to follow through.

Implement simplified EISs in small departments. Smaller departments may not have the resources to implement an electronic EIS, but they can still institute processes to track officer performance and spot red flags. Because smaller departments have fewer officers and are often in less densely populated areas, leaders likely have fewer interactions to track and thus may be able to develop data systems with Excel or other widely available software.⁴⁹



RECOMMENDATION 7.9

INVESTIGATE MISCONDUCT TO THE EXTENT PERMISSIBLE AFTER STATUTORY OR CONTRACTUAL TIME LIMITATIONS FOR DISCIPLINE HAVE PASSED.

Law enforcement officers' bills of rights and collective bargaining agreements often place time limits on investigations and discipline for misconduct, but departments should still determine whether the misconduct occurred. Time limits on investigations generally place restrictions on requiring an officer to respond to the charges. Even if questioning an officer is time-barred, supervisors or investigators should still interview other witnesses and review relevant information, if not prohibited by the collective bargaining agreement (CBA).

Other CBAs or statutory regulations prohibit imposing discipline after a certain time has passed. Generally, such provisions are not an impediment to investigation of misconduct or even to interviewing involved officers; these provisions bar supervisors from disciplining officers if misconduct occurred. Departments may still have an interest in finding out whether allegations are true, addressing misconduct through nonpunitive, corrective action, such as feedback or coaching, and revising department policies and training to prevent similar misconduct. The key is that corrective action is nonpunitive.

Investigations of older complaints might be limited in scope depending on available evidence, but they are often worth pursuing because they make for a procedurally just system in which complainants' allegations are taken seriously. Thorough investigation of complaints also allows department leaders to ensure accountability at the department level by identifying potential failures in policies, training, and practices, which can be corrected based on the findings.



RECOMMENDATION 7.10

IDENTIFY, MAINTAIN, AND SHARE MATERIAL EVIDENCE RELATING TO OFFICER MISCONDUCT OR CREDIBILITY WITH PROSECUTORS IN CRIMINAL CASES.

The U.S. Supreme Court has long held that constitutional due process requires prosecutors to turn over to the defense — whether or not they are requested to — all evidence in their possession that is exculpatory to the defendant, including evidence that may be used to impeach an officer’s credibility.⁵⁰ Such evidence, known as “Brady” or “Giglio” material (and named after respective Supreme Court cases), includes records in the prosecutor’s office and the police department involved in the case.⁵¹ Those accused of crimes have the right to know that one or more involved officers’ credibility is on the line — and may be undermined by disciplinary or performance records.⁵²

In addition, police departments and individual officers can be held personally liable for damages arising out of their failure to provide Brady/Giglio materials to prosecutors.⁵³ One federal appeals court explained that “because the police are just as much an arm of the state as the prosecutor, the police inflict the same constitutional injury when they hide, conceal, destroy, withhold, or even fail to disclose material exculpatory information.”⁵⁴

Given these constitutional stakes, departments should develop policies and processes to alert prosecutors when officers may be subject to impeachment and to provide Brady/Giglio-pertinent materials for disclosure to the defense when going to trial. For example, the Austin Police Department set forth procedures to designate a department official who is responsible for reviewing officer records



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POLICING NEED TO
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**- CHANGA HIGGINS,
FOUNDER OF DALLAS COMMUNITIES
ORGANIZING FOR CHANGE.**

for disciplinary or other Brady/Giglio materials, notifying prosecutors of results, and ensuring officers' right to privacy is preserved to the extent possible.⁵⁵ Other departments, such as the Louisville (Kentucky) Police Department, maintain a confidential "Brady list" of officers whose disciplinary or personnel records may be subject to disclosure and affirmatively require officers involved in a potential prosecution to alert prosecutors about the existence of potential Brady/Giglio material.⁵⁶

RECOMMENDATION 7.11 **INFORM OFFICERS OF THEIR** **RIGHT TO FILE COMPLAINTS** **WITH OUTSIDE AGENCIES.**

Like all government agencies, police departments are subject to state and federal laws governing the terms and conditions of employment, such as workplace safety, wages and benefits, and equal employment opportunity. Suspected violations of fair employment practice laws may be investigated by the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, or other federal agencies. They may also be subject to enforcement by state or local authorities, such as the state attorney general or state or local fair employment practice agencies, such as the New York Division of Human Rights or the Atlanta Human Relations Commission.⁵⁷

Such agencies present an avenue for internal accountability when officers or department members file complaints against fellow officers or supervisors. Federal and state laws provide officers with a means of filing confidential complaints of unsafe or unfair working conditions and legal protections against retaliation by their employer. However, officers can't exercise these rights unless they know about them and receive assurances from their departments that they can seek legal redress or cooperate in an external investigation without fear of reprisal. Thus, departments have a responsibility to inform officers, starting in the academy, about these rights and protections. Communities have a vested interest in this training, too. If officers are subject to work conditions that are discriminatory, unsafe, or otherwise unlawful, they will be less likely to interact with community members in a fair and impartial manner.



RECOMMENDATION 7.12 EXPAND THE ROLE OF COMMUNITY/CIVILIAN REVIEW BOARDS AND INDEPENDENT MONITORS IN DISCIPLINE.

When departments receive a complaint from an officer or community member, they should apply efficient and just mechanisms for conducting investigations and handing down discipline. To build community trust and amplify community voices, jurisdictions should involve nondepartment personnel such as independent investigators, community/civilian review boards, and independent monitors or auditors in the disciplinary process.

Oversight bodies such as community/civilian review boards signal to members of the community that they have the power to affect outcomes in instances of serious misconduct. But to conduct a meaningful investigation, these individuals and entities require appropriate expertise, adequate staff and funding, and clearly defined roles. This requires a serious commitment of resources, as at the Office of Police Complaints (OPC) in Washington, D.C. Since 2001, the OPC has been staffed with personnel who receive and investigate public complaints regarding key areas of misconduct, including harassment, inappropriate language or conduct, retaliation, unnecessary or excessive force, discrimination, and officers' failure to identify themselves during interactions.⁵⁸

In a similar vein, the City of Las Vegas maintains an independent Civilian Review Board (CRB) tasked with investigating public allegations of police misconduct and deaths in police custody. The Las Vegas CRB not only has the authority to recommend whether allegations should be sustained but also to recommend, in light of an officer's prior record, the appropriate level of discipline.⁵⁹ By contrast, entities that focus on structural or big-picture review, such as independent auditors or monitors, may not play a role in the investigation and outcome of a particular event but may have the potential to have a broader impact on the police department as a whole.



Regardless of the entity, departments should work with communities to ensure that individuals involved have the requisite expertise to review complicated matters involving proper police conduct. Jurisdictions that implement community review mechanisms may require their oversight practitioners to attend trainings and obtain certification from organizations such as the National Association for Civilian Oversight of Law Enforcement or the Association of Local Government Auditors.⁶⁰ Participation in these associations also allows oversight practitioners to tap resources and build networks through which to develop best practices. And because expertise only goes as far as the resources provided, jurisdictions should compensate investigators rather than rely on volunteers. Independent review entities include:

Independent investigatory agencies. Independent investigatory agencies are not part of a department but are authorized to oversee or participate in the investigations of individual officers. They differ from community/civilian review boards in that they participate in actual investigations and can have subpoena power or other investigatory tools to support thorough investigations. The advantage of independent agencies is that investigators who conduct the investigations and fact-gathering aren't affiliated with departments. One such agency is the Chicago Office of Police Accountability (COPA), which is staffed entirely by civilian personnel who investigate complaints and make disciplinary recommendations to the chief of police.⁶¹ The Seattle Office of Police Accountability is also an independent agency that conducts investigations, though it employs a hybrid of sworn and civilian personnel.⁶²

But the mere existence of an adequately funded independent investigative agency will not necessarily result in impartial investigations. Politics in most cities and towns run deep and, without institutional firewalls, can influence purportedly independent investigations.

For example, a 2017 U.S. Department of Justice (DOJ) investigation of the Chicago Police Department found that COPA's predecessor, the Independent Review Authority, had substantial, persistent integrity weaknesses in its investigations.⁶³ The city now works to ensure COPA operates in an environment free of political pressures and is undergirded by additional checks and balances to ensure thorough, impartial investigations.

Community/civilian review boards. A community/civilian review board is an external entity that

plays a role in the police disciplinary process. There are two types of review boards: (1) boards that review misconduct investigations and then adjudicate and/or make disciplinary recommendations (e.g., Cleveland's Civilian Police Review Board); and (2) boards, such as Seattle's Community Police Commission, that address broader police issues, such as whether departments' internal disciplinary review processes achieve fair results, but do not review investigations.⁶⁴

There is a great deal of variation within these categories. Some review boards are funded to employ dozens of investigators, such as the aforementioned OPC in Washington, D.C. and the Las Vegas Civilian Review Board. Others, such as the Citizens' Police Review Board in Albany, New York, are staffed entirely by volunteers.⁶⁵ Another key difference among boards is how much weight departments accord the board's recommendations. Most, including D.C.'s OPC and the Las Vegas CRB, are authorized to make recommendations rather than final determinations of officer discipline.⁶⁶

Independent monitors/auditors. Some jurisdictions appoint an independent monitor or auditor to review departments' overall performance across any of several areas, such as uses of force, stops, misconduct investigations, and discipline. Independent monitors or auditors do not conduct investigations. Rather, they typically compile and examine data and then produce reports that include recommendations for improving existing policies or procedures.

Independent monitors or auditors should be assisted by a staff capable of conducting in-depth reviews and assessments.⁶⁷ Several jurisdictions have had successful monitors, such as the LAPD's Inspector General and the Independent Police Review in Portland, Oregon.⁶⁸ Such entities can also address individual cases requiring special attention. For example, the LAPD Inspector General's Office includes a force investigations division that scrutinizes serious use-of-force incidents and that reports findings to the Board of Police Commissioners.⁶⁹



RECOMMENDATION 7.13

ESTABLISH CLEAR PROTOCOLS FOR DETERMINING WHO INVESTIGATES AND PROSECUTES OFFICER-INVOLVED CRIMES AND SHOOTINGS.

In practice, police misconduct can be prosecuted by local, state, or federal officials, each of which has its own advantages and disadvantages.

Local authorities. These authorities are often best positioned to quickly respond and investigate, but there is an inherent possibility of conflict — or at least the appearance of conflict — given the close relationships that can exist between local prosecutors and police officers.⁷⁰

State authorities. Depending on the state, these authorities may not have the legal authority, experience, or ability to intervene in an investigation of officer misconduct in a timely fashion.

Federal authorities. These entities, such as the Civil Rights Division of the DOJ or local U.S. attorneys' offices, often have expertise, resources, and greater independence, but their jurisdiction is sharply limited to willful civil rights violations.

Evidence shows that prosecutions of officers, particularly for killing unarmed people, rarely result in officer convictions.⁷¹ There are many reasons for this, from the legal complexities of finding excessive use of force when the law sets a low bar to juries' reluctance to convict officers for decisions made under potentially dangerous circumstances.⁷² (For more detail, see Chapter 4.) The prosecution and conviction of Jason Van Dyke, the officer who killed Laquan McDonald in 2014, is one of the few instances where an officer was held accountable for murder by jury verdict.⁷³ To investigate officer-involved crimes or shootings, departments should:

Clarify who should investigate and prosecute. Departments and prosecutors should establish clear policies and protocols for investigating officer-involved criminal misconduct, such as excessive force, theft, planting of evidence, and sexual assault. Particularly in the case of officer-involved fatalities, protocols should include mechanisms to ensure that independent investigators are not employed by the same law enforcement agency as the officer under investigation.

Jurisdictions should consider whether decisions to prosecute will be made by the local prosecutor or a special prosecutor, such as an official in a neighboring jurisdiction or a state-level official.⁷⁴ Indeed, the Final Report of the President’s Task Force on 21st Century Policing recommends that communities use external and independent prosecutors to investigate “cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths” in order to “demonstrate the transparency to the public that can lead to mutual trust between community and law enforcement.”⁷⁵

Conduct administrative investigations during criminal investigations. Finally, departments and community members should decide how to handle administrative investigations of officers when criminal investigations are also underway. Historically, departments have suspended administrative investigations until local prosecutors decide whether to charge officers under investigation because departments don’t want to implicate officers’ constitutional right against self-incrimination. The U.S. Supreme Court ruled in Garrity v. New Jersey that officers compelled to speak to investigators in order to avoid discipline may not have their statements — or other evidence obtained by means of those compelled statements — used against them in a criminal prosecution.⁷⁶ In light of this ruling, departments have sought to delay administrative investigations to avoid even the slightest possibility of tainting subsequent criminal prosecutions.

However, under this approach, the administrative investigation takes so long — sometimes more than a year — that the ability to obtain reliable statements from involved officers can be seriously compromised. Another disadvantage is that accused officers (or officers involved in a lethal force incident who are not accused of misconduct) might remain paid members of the department longer than is appropriate. Even if officers are placed on paid leave or reassigned to an administrative duty to avoid potential negative performance, delaying the disciplinary process nonetheless exacts a substantial drain on typically scarce government resources.

Put simply, tax dollars should not support officers who violate people’s civil rights or who commit crimes. In addition, officers may have engaged in discharge-worthy misconduct prior to the alleged criminal offenses. Keeping such officers on department payrolls corrodes community confidence in police. Finally, delayed investigations may present safety risks to others: Departments may remain unaware of, and thus unable to address, critical weaknesses in equipment, communications, tactics, or training that can contribute to dangerous incidents, thereby compromising public and officer safety.

A more recent trend is to conduct administrative investigations of lethal force incidents or alleged misconduct in a bifurcated or parallel administrative review in which compelled statements from officers (and evidence derived from those statements) are walled off from criminal enforcement authorities to avoid tainting potential criminal prosecutions.⁷⁷ Departments in major cities, such as Los Angeles and Denver, have long followed this approach.

RECOMMENDATION 7.14

OPPOSE PROVISIONS THAT WEAKEN ACCOUNTABILITY SYSTEMS WHEN NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS.

Union contracts are entered into after negotiations between police unions and government officials. Following negotiations, those agreements typically must be approved by a governing body of the jurisdiction (i.e., city, county, etc.). Police unions and fraternal organizations, and elected officials that seek their endorsements, may try to negotiate provisions in their collective bargaining agreements or through a law enforcement officers' bill of rights that can conflict with, compromise, or undermine some of the accountability mechanisms discussed earlier. To ensure strong accountability systems, departments should:

Avoid provisions allowing for “recovery” or “cooling-off” periods. Certain provisions place special requirements on interviewing or interrogating police officers, such as allowing “recovery” or “cooling-off” periods after a violent incident before questioning commences.⁷⁸ These provisions may hinder investigations — officers interviewed may have a sharper recollection immediately after an incident than they would a few days afterward.⁷⁹

Cities like Phoenix and Seattle have long demonstrated that officers interviewed prior to being relieved from their shifts are able to provide substantial detail about critical incidents.⁸⁰ Investigators who are free to conduct follow-up interviews as necessary are able to memorialize as much of the officer's untainted recollection as soon as practicable. Notably, neither law enforcement officers' bills of rights nor collective bargaining agreements provide similar “recovery” periods before police interview community members who are survivors of, suspected of, or witnesses to violent crimes or other traumatic events.

Avoid provisions that place time limits for discipline. Some provisions severely limit the time for imposing discipline — potentially compromising departments' ability to base discipline on a full, fair, and thorough investigation, especially in a complex case.⁸¹

Regulate investigation procedures. Other provisions may regulate the finer details of a personnel investigation, such as whether or when officers accused of misconduct may view their own or fellow officers' body-worn camera footage and their previous statements prior to submitting to a recorded interview.⁸² A best practice is to allow officers to view the footage only after providing an initial statement and then to allow officers to correct the original statement with explanation for the discrepancy. (For more detail, see Chapter 8.)

While officers should be given due process in disciplinary processes, collective bargaining agreements should not compromise departments' ability to determine precisely how officers have performed and to take prompt, meaningful remedial measures where warranted.



Chapter 7

¹ See Nat'l Assoc. for Civilian Oversight of Law Enforcement, NACOLE, Building Public Trust Through Police Accountability and Transparency, FAQs (describing the functions and benefits of civilian oversight agencies), <https://www.nacole.org/faqs> (last visited Feb. 19, 2019).

² Deputy Chief Beau Thurnauer, Best Practices Guide, Int'l Ass'n of Chiefs of Police, Smaller Police Dep'ts Technical Assistance Program, Internal Affairs: A Strategy for Smaller Police Dep'ts 3, [hereinafter IACP Best Practices Guide] <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

³ In Washington, D.C., for example, the Metropolitan Police Department's Office of Police Complaints provides complaint forms in nine languages and in audio on its website. Mayor Muriel Bowser, Office of Police Complaints, Complaint Forms and Brochures, <https://policecomplaints.dc.gov/node/161132>.

⁴ IACP Best Practices Guide, *supra* note 2, at 2.

⁵ IACP Best Practices Guide, *supra* note 2, at 2, 3 (referring to CALEA accreditation standard 52.1.1); see also Mayor Muriel Bowser, Metropolitan Police Dep't, How to File a Citizen Complaint or Commendation, <https://mpdc.dc.gov/page/how-file-citizen-complaint-or-commendation>; see also U. Pa., Div. of Public Safety, Police Complaint Procedure (advising complainants that it may not be possible to investigate anonymous complaints), <https://www.publicsafety.upenn.edu/about/uppd/police-complaint-procedure/>.

⁶ The Chicago Tribune reported in 2015 that the city agency charged with reviewing misconduct complaints against Chicago Police Department officers dismissed nearly 60 percent of complaints for lack of a signed affidavit. Jeremy Gorner & Geoffrey Hing, Tribune Analysis: Cops Who Pile Up Complaints Escape Discipline, Chi. Trib., Jun. 13, 2015, <https://www.chicagotribune.com/news/ct-chicago-police-citizen-complaints-met-20150613-story.html>.

⁷ See IACP Best Practices Guide, *supra* note 2, at 2, 3.

⁸ See IACP Best Practices Guide, *supra* note 2, at 1-6.

⁹ Generally, the adverse action standard is fairly low — it involves actions sufficiently adverse to dissuade a reasonable person from making a complaint. See, e.g., Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006). (In explaining a retaliation the Court found “a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, ‘which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.’”) (citing Rochon v. Gonzales, 438 F.3d 1211, 1219 (C.A.D.C. 2006) (quoting Washington v. Illinois Dep't. of Revenue, 420 F.3d 658, 662 (C.A.7 2005)).

¹⁰ There may be some information that should not be made public to protect a complainant. For example, a gay man may file a complaint that an officer made homophobic remarks to him and may not be “out” to his employer or family. Generally, though, it is “good policy to make public all complaints received for the year.” IACP Best Practices Guide, *supra* note 2, at 7.

¹¹ See e.g., Public Safety Officers Procedural Bill of Rights, Cal. Gov't Code § 3300-13, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=

¹² Americans With Disabilities Act, 42 U.S.C.A. § 12101 (West 2018).

¹³ L.A. Police Dep't, Employee's Duty to Report Misconduct, 1 LAPD Policy Manual Section 210.46, http://www.lapdonline.org/lapd_manual/volume_1.htm#210_EMPLOYEE_CONDUCT (emphasis added).

¹⁴ For example, the Los Angeles Police Department prohibits retaliation against any employee who provides information or files a complaint with the Office of the Inspector General. *Id.* at §§ 272, 273.

¹⁵ See, e.g., U.S. Dep't of Justice Addressing Police Misconduct Laws Enforced by the Department of Justice, Title VI of the Civil Rights Act of 1964 and the “OJP Program Statute” <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>; Office of Justice Programs, 34 U.S.C.A. § 10101 (West 2018).

¹⁶ New Orleans Police Dep't, EPIC: Ethical Policing Is Courageous, <http://epic.nola.gov/home/>; Subject to Debate, A Newsletter of the Police Executive Research Forum, 30, No. 2, July-Sept. 2016, https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf at 2.

¹⁷ Subject to Debate, A Newsletter of the Police Executive Research Forum, 30, No. 2, July-Sept. 2016, https://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf at 2.

¹⁸ See, e.g., U.S. Dep't of Just., Office of Community Oriented Policing Serv., Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice 31 (2003) (recommending that internal affairs units investigate all “officer-involved shootings, in-custody deaths, alleged constitutional violations, allegations of racial profiling or discriminatory policing or racial prejudice, dishonesty, drug use, sexual misconduct, cases handled for other jurisdictions, interagency cases, cases referred directly by the agency head or command staff,” “all administrative investigations of allegations of misconduct that are likely to result in litigation against the agency or its members,” and, “[u]nless there is a specialized unit to handle internal complaints by employees of discrimination, sexual harassment, and other unlawful employment practices”), <https://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

¹⁹ See Nat'l Assoc. for Civilian Oversight of Law Enforcement, Building Public Trust Through Police Accountability and Transparency, FAQs, <https://www.nacole.org/faqs>.

²⁰ These factors come from Douglas v. Veterans Administration and apply in virtually all civil service and labor arbitration tribunals. See Douglas v. Veterans Admin., 5 M.S.P.R. 280, 332 (1981), <https://www.mspb.gov/mspbsearch/viewdocs>.

²¹ See Andrea J. Ritchie & Delores Jones-Brown, Policing Race, Gender, and Sex: A Review of Law Enforcement 27 Policies, *Women & Crim. Justice* 21, 24-25 (2017) [hereinafter Ritchie, Policing Race], <http://andreaJRitchie.com/wp-content/uploads/2017/05/Policing-Race-Gender-and-Sex-A-Review-of-Law-Enforcement-Policies.pdf>.

²² Brett G. Stoudt, et al. Growing Up Policed in the Age of Aggressive Policing Policies. 56 N.Y. L. Sch. L. Rev., 1331, 1350-51 (2011) (LGBTQ youth are more likely to experience negative verbal, physical, and legal contact with the police and more than twice as likely to experience negative sexual contact in the preceding six months.), <http://www.nyislawreview.com/wp-content/uploads/sites/16/2012/04/56-4.Growing-up-Policed-in-the-Age-of-Aggressive-Policing-Policies.Stoudt-Fine-Fox.pdf>.

²³ Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color 106-109, 112-113, 118-119, 156-158 (Boston, MA: Beacon Press, 2017); see also Andrea J. Ritchie, How Some Cops Use the Badge to Commit Sex Crimes, Sexual Misconduct Persists During Traffic Stops, Ridealongs and Mentorship Programs, *Wash. Post* (Jan. 12, 2018) [hereinafter Ritchie, *Wash. Post*], https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html?noredirect=on&utm_term=.6af86dfabb.

²⁴ See Ritchie, *Wash. Post*, *supra* note 23 (“most police departments have no policies or training making it clear that on-duty sexual misconduct against civilians is prohibited”) (citing Ritchie, Policing Race, *supra* note 21).

²⁵ Int’l Ass’n of Chiefs of Police, Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide 1 (Jun. 2011), <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

²⁶ See, e.g., U.S. Dep’t of Justice, Civil Rights Div. & U.S. Atty’s Office, N.D. Ill., Investigation of the Chicago Police Department, at 115, 118, 124 (2017) [hereinafter Chicago Investigation] (describing how victims of officer-involved domestic violence may be reluctant to file complaints because of shame and the possibility that officers will lose their jobs, affecting finances), <https://www.justice.gov/opa/file/925846/download>; see also Razaqat Cheema, Black and Blue Bloods: Protecting Police Officer Families from Domestic Violence, 7 *Hofstra Law Student Works* 488 (2016) https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1009&context=hofstra_law_student_works.

²⁷ Int’l Ass’n of Chiefs of Police, Domestic Violence by Police Officers, Model Policy, at 2-3 <https://www.theiacp.org/sites/default/files/all/d-e/DomesticViolencebyPolicePolicy.pdf>.

²⁸ See, e.g., MCC §2-78-135 (requiring that investigations be completed within six months and that the mayor, superintendent, complainant, involved employee, and other officials are notified of the reasons for the failure to complete the investigation), <https://www.chicago.gov/content/dam/city/depts/copa/general/COPAOrdinance.pdf>.

²⁹ The New Orleans Police Department requires that an investigation for alleged employee misconduct be initiated within 14 days of the supervisor receiving the complaint and completed within 60 days of the initiation of the investigation. New Orleans Police Dep’t Manual, Ch. 52.1.1, Misconduct Complaint Intake and Investigation 16:83, 19:98 (March 18, 2018), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-52-1-1-Misconduct-Intake-and-Complaint-Investigation-EFFECTIVE-3-18-18.pdf>. A 60-day extension may be granted by the City Civil Service Commission.

³⁰ Albuquerque Police Dep’t Admin. Orders Review of Completed Administrative Investigation Cases 4 (June 6, 2016), <http://documents.cabq.gov/police/standard-operating-procedures/3-44-review-of-completed-administrative-investigation-cases.pdf>.

³¹ Albuquerque Police Dep’t Prof’l Accountability Bureau Orders, 7-2 Critical Incident Review Team (CIRT) 21 (June 7, 2016), <http://documents.cabq.gov/police/standard-operating-procedures/7-02-critical-incident-review-team-cirt.pdf>.

³² *Id.*

³³ See, e.g., Interim Chief Administrator Patricia Banks, Chicago Civilian Office of Police Accountability, COPA Looking Ahead to 2018 (Dec. 29, 2017), <https://www.chicagocopa.org/copa-looking-ahead-to-2018>

³⁴ See, e.g., New Orleans Police Dep’t Manual, *supra* note 29, at 7, 10.

³⁵ For example, gender bias may result in less robust investigations of sexual assault or domestic violence allegations. See U.S. Dep’t of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence, at 3 <https://www.justice.gov/opa/file/799366/download>.

³⁶ See IACP Best Practices Guide, *supra* note 2, at 1, 2.

³⁷ Community Policing Dispatch, The e-newsletter of the COPS Office, Organizational Change Through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors 8, Issue 4 (Apr. 2015), https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See, e.g., Monica Davey, Police ‘Code of Silence’ Is on Trial After Murder by Chicago Officer, *N.Y. Times* (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/chicago-police-code-of-silence.html>; Jerome Skolnick, Code Blue, *The American Prospect* (Dec. 19, 2001), <https://prospect.org/article/code-blue>.

⁴¹ Austin Police Dep’t, Policy Manual 537:Policy 903, 503:Policy 902 (2015), <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569abb6e25981de028ab67e6/1452981151162/Austin+Police+Policies.pdf>.

⁴² Int’l Ass’n of Chiefs of Police, Midsize Agencies Division, <https://www.theiacp.org/working-group/division/midsize-agencies-division> (The IACP defines mid-size agencies as those comprised of 50 to 999 sworn officers. Large-size agencies are those with 1,000 or more sworn officers).

⁴³ Samuel Walker, Ph.D., *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, U.S. Dep't of Justice, Community Oriented Policing Services, 8 (2003) [hereinafter Walker, Planning] (citing Comm'n on Accreditation for Law Enforcement Agencies, CALEA Standards for Law Enforcement Agencies Standard 35.1.5 (2001)) ("A comprehensive Personnel Early Warning System is an essential component of good discipline in a well-managed law enforcement agency. The early identification of potential problem employees and a menu of remedial actions can increase agency accountability and offer employees a better opportunity to meet the agency's values and mission statement."), <https://ric-zai-inc.com/Publications/cops-w0085-pub.pdf>.

⁴⁴ Gurbir S. Grewal, State of N.J. Office of the Att'y Gen., Attorney General Law Enforcement Directive 2018-3 Statewide Mandatory Early Warning Systems (Mar. 20, 2018), <https://www.nj.gov/lps/dcj/agguide/directives/ag-directive-2018-3.pdf>.

⁴⁵ Samuel Walker, Ph.D. et al., U.S. Dep't of Justice, Nat'l Inst. of Justice, *Early Warning Systems for Police: Responding to the Problem Police Officer*, Research in Brief 7 (July 2001), <http://www.ncjrs.gov/pdffiles1/nij/188565.pdf>.

⁴⁶ See *id.* at 2 (finding that a study of three departments showed significant reductions in problem behaviors and encouraged changes for both officers and supervisors); see, e.g., Thomas D. Bazley, et al., *Early Intervention Program Criteria: Evaluating Officer Use of Force*, 26 *Just. Q.* 107 (March 2009) (suggesting improvements to EIS implementation by demonstrating through a small study that merely measuring the number of times officers use force as compared to their peers is insufficient to identify all the officers who need to be enrolled in an early intervention program. Departments should also take into account whether the force applied equals the resistance encountered, thus identifying and enrolling those officers who use excessive force, albeit infrequently, into early intervention programs.), <https://www.tandfonline.com/doi/pdf/10.1080/07418820801989742>; Samuel Carton et al., *Identifying Police Officers at Risk of Adverse Events*, 22nd ACM SIGKDD Conference on Knowledge Discovery and Data Mining (2016) (suggesting ways to improve EIS systems, such as assigning risk scores to police officers and subsequently dispatching officers to neighborhoods and incidents with those scores as a filter. For example, not dispatching a "hot" officer to a high intensity incident in a high-risk neighborhood.), <https://www.kdd.org/kdd2016/papers/files/adf0832-cartonAemb.pdf>; but see Robert E. Worden et al., *Intervention with Problem Officers: An Outcome Evaluation of an EIS Intervention*, 40 *Crim. Just. & Behav.* 409, 415 (2013) (reporting that rates of complaints declined following implementation but expressing skepticism and finding that evidence is neutral and does not support the emphasis being placed on adoption of these systems), https://www.researchgate.net/profile/Robert_Worden/publication/258129275_Intervention_With_Problem_Officers_An_Outcome_Evaluation_of_an_EIS_Intervention/links/55133d650cf23203199baca6.pdf.

⁴⁷ Samuel Walker, Ph.D., et al., *Supervision and Intervention Within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*, U.S. Dep't of Justice, Community Oriented Policing Services 32 (Dec. 2005), https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf.

⁴⁸ Worden et al., *supra* note 53, at 410-411; see Frank Hughes, Lisa B. Andre, *Int'l Ass'n of Chiefs of Police, Police Chief Magazine, Problem Officer Variables and Early-Warning Systems* ("approximately 10 percent of police officers can cause, or have caused, 90 percent of the problems in law enforcement agencies."), <http://www.policechiefmagazine.org/problem-officer-variables-and-early-warning-systems/>.

⁴⁹ See Samuel Walker, Ph.D., et al., *Supervision and Intervention Within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*, Community Oriented Policing Services, 31 (Dec. 2005) ("[S]maller systems cannot do as much, but they are less expensive and easier to create. Some departments still use paper files or simple Excel spreadsheets. A police department must determine the size, capacity, and purpose of the system at the outset."), https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf; Walker, Planning, *supra* note 50, at 21 ("Medium-sized and small agencies do not need as complex and sophisticated a system as do large departments.").

⁵⁰ See *Brady v. Maryland* 373 U.S. 83, 87 (1963); see *Giglio v. United States*, 405 U.S. 150, 153-55 (1972).

⁵¹ See *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999) (Brady also "encompasses evidence known only to police investigators and not to the prosecutor.") (quoting *Kyles v. Whitley*, 514 U.S. 419, 438 (1995)).

⁵² See *Giglio*, 405 U.S. 154-55 (defendant and jury entitled to evidence bearing on witness' credibility); *Strickler v. Greene*, 527 U.S. 263.

⁵³ See, e.g., *Owens v. Balt. City State's Att'y's Office*, 767 F.3d 379, 401 (4th Cir. 2014) (officers' failure to provide impeachment material may sustain damages claim).

⁵⁴ *Moldowan v. City of Warren*, 578 F.3d 351, 379 (6th Cir., 2009).

⁵⁵ Austin Police Dep't, Policy Manual, 910.7 Brady Material in Personnel Files 574 (Rev. July 2017), https://www.austintexas.gov/sites/default/files/files/Current_APD_Policy_Manual_2017-1.5_issued_7-20-2017.pdf.

⁵⁶ Louisville Metro Police Dep't, Standard Operating Procedure 11.7 Exculpatory Evidence and Information (Sec. Rev. June 2017), <https://www.louisville-police.org/DocumentCenter/View/615/Standard-Operating-Procedures-PDF>.

⁵⁷ N.Y. Division of Human Rights, *Basic Guide to Employment Discrimination, How to File a Complaint*, <https://dhr.ny.gov/sites/default/files/pdf/bg-employment.pdf>; City of Atlanta, Ga., Human Relations Comm'n, <https://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-constituent-services/human-relations-commission>.

⁵⁸ D.C. Office of Police Complaints, *About Office of Police Complaints*, <https://policecomplaints.dc.gov/page/about-office-police-complaints>.

⁵⁹ See Las Vegas Metro. Police Dep't Citizen Review Bd., Policy and Procedure Manual, Section 3.13 Hearing Panel, at 7-10 (Mar. 2008), https://www.citizenreviewboard.com/Pages/Documents/CRB_PoL_amended_version2008.pdf.

⁶⁰ See Nat'l Ass'n for Civilian Oversight of Law Enf't, Certified Practitioner of Oversight (CPO) Credential Program https://www.nacole.org/cpo_credential_program; Ass'n of Local Gov't Auditors, Training, <https://algaonline.org/index.aspx?NID=31>.

⁶¹ See Civilian Office of Police Accountability, General FAQs, <https://www.chicagocopa.org/faqs/>.

⁶² Andrew Myerberg, Civilian Director, Seattle Gov't, Office of Police Accountability, <https://www.seattle.gov/opa>.

⁶³ Chicago Investigation, *supra* note 26, at 48-74 (describing systemic failures in the oversight body's operations including failing to investigate complaints it deemed not serious enough to warrant a full investigation and the failure to investigate certain types of force, such as Taser discharges and officer-involved shootings that result in a no hit, despite being required to result in a hit.).

⁶⁴ Compare N.Y.C. Gov't, Civilian Complaint Review Bd., About CCRB, <https://www1.nyc.gov/site/ccrb/about/about.page> and Cleveland, Office of Prof'l Standards & Civilian Police Review Bd., http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/OPS_PoliceReview with Seattle Gov't, Cmty Police Comm'n, <http://www.seattle.gov/community-police-commission>.

⁶⁵ Nat'l Ass'n for Civilian Oversight of Law Enforcement, Agency Profile-Albany, https://www.nacole.org/agency_profile_albany.

⁶⁶ Nat'l Ass'n for Civilian Oversight of Law Enforcement, Who Should Make the Final Determination as to Whether the Allegations in a Complaint Should Be Sustained and What Corrective Actions, or Disciplinary Measures Should Be Imposed?, https://www.nacole.org/final_determination ("few existing oversight agencies have the authority to make final determinations as to the outcome of an investigation."); DC Office of Police Complaints, Policy Recommendations, <https://policecomplaints.dc.gov/page/policy-recommendations>; Las Vegas Metro. Police Dep't, Citizen Review Board, <https://www.citizenreviewboard.com/>.

⁶⁷ Police Assessment Resource Ctr., Nat'l Guidelines for Police Monitors 30-31 (2008), <https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54d3b1eae4b07e4908f9ed64/1423159786656/Monitoring+Guidelines.pdf>.

⁶⁸ Office of the Inspector General L.A. Police Comm'n, <https://www.oig.lacity.org/> (housed on a different website than L.A. City; see Official Site of The Los Angeles Police Department, Office of the Inspector General http://www.lapdonline.org/police_commission/content_basic_view/1076); Portland: City of Portland, Independent Police Review, <https://www.portlandoregon.gov/ipr/>.

⁶⁹ Office of the Inspector General L.A. Police Comm'n, Use of Force Section, <https://www.oig.lacity.org/use-of-force-section>.

⁷⁰ See Amari L. Hammonds et al., Stanford Law School, Stanford Criminal Justice Ctr., At Arm's Length: Improving Criminal Investigations of Police Shootings 12-13 (Oct. 2016), <https://law.stanford.edu/wp-content/uploads/2016/09/At-Arms-Length-Oct-2016.pdf> (citing Kate Levine, Who Shouldn't Prosecute the Police, 101 Iowa L. Rev. 1447, 1470-71 <https://ilr.law.uiowa.edu/assets/Uploads/ILR-101-4-Levine.pdf>); Daniel Richman, Prosecutors and Their Agents, Agents and Their Prosecutors, 103 Colum. L. Rev. 749, 758-67 (2003); Rachel E. Barkow, Federalism and Criminal Law: What the Feds Can Learn from the States, 109 Mich. L. Rev. 519, 545-65 (2011), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1165&context=mlr>.

⁷¹ See Kimberly Kindy & Kimbriell Kelly, Thousands Dead, Few Prosecuted, Wash. Post (Apr. 11 2015) ("Among the thousands of fatal shootings at the hands of police since 2005, only 54 officers have been charged"), https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/?utm_term=.6926938baf0d; Cynthia Lee, Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense, 2018 U. Ill. L. Rev. 629, 635 (March 13, 2018), <https://illinoislawreview.org/wp-content/uploads/2018/03/Lee.pdf> ("Despite the increased number of prosecutions in recent years, it is still the case that law enforcement officers are rarely convicted."); Roger Goldman, Importance of State Law in Police Reform, 60 St. Louis U. L. J. 363, 377 (2016) (noting that between 2005 and 2015, there were only 54 indictments of police officers despite approximately 1,000 police shootings per year), https://www.slu.edu/law/law-journal/pdfs/issues-archive/v60-no3/roger_goldman_article.pdf; Zusha Elinson & Joe Palazzolo, Police Rarely Criminally Charged for On-Duty Shootings: Research Shows 41 Officers Were Charged with Murder or Manslaughter for On-Duty Shootings over 7 Years, Wall St. J. (Nov. 24, 2014), <https://www.wsj.com/articles/police-rarely-criminally-charged-for-on-duty-shootings-1416874955?mg=prod/accounts-wsj>.

⁷² See Joseph P. Williams, Why Aren't Police Prosecuted? Experts Say Different Standards, and Laws Protecting Police, Raise the Bar for Prosecution, U.S. News & World Rep. (July 13, 2016), <https://www.usnews.com/news/articles/2016-07-13/why-arent-police-held-accountable-for-shooting-black-men>.

⁷³ See Megan Crepeau et al., Jason Van Dyke Taken into Custody After Jury Convicts Him of 2nd-Degree Murder, Aggravated Battery for Each of 16 Shots, Chi. Trib. Oct. 5, 2018, <https://www.chicagotribune.com/news/local/breaking/ct-met-laquan-mcdonald-jason-van-dyke-verdict-20181005-story.html>.

⁷⁴ Various entities have recommended a range of options for how to assign a special prosecutor to oversee police misconduct complaints, whether by assigning the state's attorney general as the special prosecutor in police use-of-force cases, adopting an automatic referral model to special prosecutors overseen by the attorney general for charges involving killings of members of the public or excessive use of force and similar allegations, or having local police departments agree to memoranda of understanding to investigate each other's police misconduct complaints. See, e.g., Investigation of the Use of Deadly Physical Force by Peace Officers, Conn. Gen. Stat. § 51-277a (2017), https://www.cga.ct.gov/2015/pub/chap_886.htm#sec_51-277a; The Ferguson Comm'n, Forward Through Ferguson: A Path Toward Racial Equality 27 (Oct. 14, 2015), http://3680or2khmk3bzkp33juiea1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf; Mo. Advisory Comm. to the U.S. Comm'n on Civil Rights, The Impact of Community/Police Interactions on Individual Civil Rights in Missouri 34 (June 2016), https://www.usccr.gov/pubs/docs/MOPoliceRelationsReport_Publish.pdf.

⁷⁵ The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 21 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. The President's Task Force Report provides two approaches for facilitating external and independent criminal investigations of lethal use of force: (1) create a multi-agency investigative body staffed by state and local investigators, or (2) refer the investigations to other jurisdictions or state agencies. *Id.*

⁷⁶ *Garrity v. State of N.J.*, 385 U.S. 493 (1967).

⁷⁷ See IACP Best Practices Guide, *supra* note 2, at 3-4.

⁷⁸ See, e.g., Law Enforcement Officers' and Correction Officers' Rights, Fla. Officer Bill of Rights, Fla. Stat. § 112.532(d) ("All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer."), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0112/Sections/0112.532.html; Rights of Law Enforcement Officers While Under Investigation, La. Stat. § 40:2531(b)(i) ("The police employee or law enforcement officer shall be granted up to thirty days to secure such representation, during which time all questioning shall be suspended."), <http://legis.la.gov/legis/Law.aspx?d=98276>; Interrogation or Investigation of Law Enforcement Officer, Md. Code, Public Safety, § 3-1043-104(j)(2) (West 2018) ("The interrogation shall be suspended for a period not exceeding 5 business days until representation is obtained."), [https://govt.westlaw.com/mdc/Document/N292209D05A5711E68B71AFB4A5916F03?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N292209D05A5711E68B71AFB4A5916F03?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default);); see also Paul Butler, The Police Officers' Bill of Rights Creates a Double Standard, *N.Y. Times* (June 27, 2015), <https://www.nytimes.com/roomfordebate/2015/04/29/baltimore-and-bolstering-a-police-officers-right-to-remain-silent/the-police-officers-bill-of-rights-creates-a-double-standard>.

⁷⁹ Jeffrey J. Noble J.D. & Geoffrey P. Alpert Ph.D., Criminal Interrogations of Police Officers After Use-of-Force Incidents, *Law Enf't Bull.* (Sep. 3 2013), <https://leb.fbi.gov/articles/featured-articles/criminal-interrogations-of-police-officers-after-use-of-force-incidents>.

⁸⁰ For example, the Seattle Police Department's Use of Force Policy requires any officer involved in a serious force incident (not a firearm discharge) to provide an audio-recorded interview by the end of the shift. See Seattle Police Dep't Manual, 8.400 Use of Force Reporting and Investigation (Sept. 1, 2015), <https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation>; see also Police Assessment Res. Ctr., The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths 59-60 (Aug. 2003), <https://www.portlandoregon.gov/ipr/article/26225>. For example, the Seattle Police Department's Use of Force Policy requires officers involved in a serious force incident (not a firearm discharge) to provide an audio-recorded interview by the end of their shift. See Seattle Police Dep't Manual, 8.400 Use of Force Reporting and Investigation (Sept. 1, 2015), <https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation>.

⁸¹ See, e.g., Investigation or Interrogation of Law Enforc't Officer, Md. Code, Pub. Safety, § 11-1005(c) (2) (West 2018) ("Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated."), [https://govt.westlaw.com/mdc/Document/N58378D404EAC11DD90A1957440A93AC6?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N58378D404EAC11DD90A1957440A93AC6?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default);); see generally Stephen Rushin, Police Union Contracts, 66 *Duke L. J.* 1191, 1224 (2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3890&context=dj>.

⁸² Reade Levinson, Protecting the Blue, Across the U.S., Police Contracts Shield Officers from Scrutiny and Discipline, *Reuters Investigates* (Jan. 13, 2017) (study finding that nearly half of 82 police union contracts reviewed allowed officers accused of misconduct to view video as well other investigative evidence before being interviewed), <https://www.reuters.com/investigates/special-report/usa-police-unions/>.



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