



MEMO

To: **The Illinois Legislative Black Caucus**

Senator

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Representative

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From: Law Office of the Cook County Public Defender
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Cook County Legislative & Government Affairs
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Communities United - Survivors Alliance for Healing and Justice
Illinois Justice Project
Shriver Center on Poverty Law

Re: Police Accountability Legislative Recommendations

Date: June 25, 2020 (revised 10/19/20)

In light of police related events that have sparked outrage in recent weeks around the issue of police accountability and systemic racism that disproportionately impact black people, the time is ripe to act to address these issues via state legislation. There are several bills that are currently pending before the Illinois General Assembly that should be moved and that the authors of this memo support. In addition, there are other actions that can be taken by the General Assembly that aren't currently included in pending legislation that are suggested below.

This memo serves as a first step toward providing initial recommendations to guide the members of the Black Caucus as you begin to tackle these critically important and time sensitive issues. If there are recommendations included herein that Representatives are interested in pursuing, we are willing to have follow-up discussions to discuss a legislative strategy and provide any assistance that would be helpful, including drafting language for potential bills.

I. Current Bills Pending in the General Assembly that we support:

HB 4796: Arrestee rights bill – introduced by Rep. Justin Slaughter, assigned to the Judiciary-Criminal Committee but referred to Rules at the time of this writing.

Summary: Clarifies an arrestee’s right to have access to a phone within one hour of arrival at a police station or other place of custody. Also mandates that signage be posted in a conspicuous place notifying an arrestee of their right to have access to a phone and, in jurisdictions where the court has appointed the public defender or other attorney to represent persons in custody, the telephone number must also be displayed.

SB 3072 – Amends Habitual & Class X requirements – introduced by Senator Laura Fine, assigned to Criminal Law Committee, but referred to Assignments.

Summary: Amends the Unified Code of Corrections. Provides that the habitual criminal statute does not apply unless the first offense was committed when the person was 21 years of age or older. Provides that the third time offender provision concerning being sentenced as a Class X offender does not apply unless all 3 offenses were forcible felonies and the first offense was committed when the person was 21 years of age or older.

HB 4999 (HCA-1) - Withholding of Benefits – Rep. Curtis Tarver, Rep. Barbara Hernandez recently added as a co-sponsor, this bill was assigned to the House Personnel and Pensions Committee, but House Committee Amendment One was referred to the Rules Committee.

Summary: Provides that benefits would not be paid to police officers convicted of a felony or “disqualifying offense” relating to or arising out of or in connection with his or her service as a police officer. Defines “disqualifying offense” as the following:

1. Indecent solicitation of a child
2. Sexual exploitation of a child
3. Custodial sexual misconduct
4. Exploitation of a child
5. Child pornography
6. Aggravated child pornography
7. First degree murder
8. Second degree murder
9. Predatory criminal sexual assault of a child
10. Aggravated criminal sexual assault
11. Criminal sexual assault
12. Aggravated kidnapping
13. Aggravated battery resulting in great bodily harm or permanent disability or disfigurement

HB 4999 also provides that survivor benefits would not be paid out should the police officer be convicted of a felony or “disqualifying offense.”

For persons who first became a police officer before effective date – prohibits payment of benefits for persons convicted of any felony relating to or arising out of his or her service as a police officer.

For persons who first became a police officer on or after effective date – prohibits payment of benefits for persons convicted of any felony relating to or arising out of his or her service as a police officer or a disqualifying offense.

HB 3926ⁱ – Special Prosecutor Appointment – introduced by Rep. Kambium Buckner, with Rep. Barbara Hernandez being added as a co-sponsor, this bill has been assigned to the Judiciary-Criminal Committee.

Summary: Amends the Police and Community Relations Improvement Act and provides that in the case of a law enforcement officer-involved death, the chief judge of the circuit court in which the law enforcement officer-involved death occurred shall appoint a special prosecutor to review the investigators' report and to prosecute the officer involved in the death, if the special prosecutor determines there is a basis for the prosecution. Note: this has an immediate effective date.

HB 5800 - Attorney General/Police Use of Force – recently introduced by Rep. Rita Mayfield, has not been assigned to a committee yet.

Summary: Amends the Attorney General Act to provide that if an incident occurs between a police officer, or multiple police officers, and another person in which an apparent use of force was used and death occurred from that use of force, the Attorney General shall investigate the matter instead of the State's Attorney of the jurisdiction where the incident occurred. The Attorney General would bring appropriate charges and prosecute the case.

HB 5830 – Police Bargaining Complaints – filed with the Clerk by Rep. Carol Ammons.

Summary: Amends the Illinois Public Labor Relations Act. Provides that on or after the effective date of the amendatory Act, any provision in a collective bargaining agreement applicable to peace officers, including, but not limited to, the Illinois State Police, that does not pertain directly to wages or benefits, or both, is declared to be against public policy and unenforceable.

Also amends the State Police Act and the Uniform Peace Officers' Disciplinary Act. Deletes provisions that anyone filing a complaint against a State Police Officer or a sworn peace officer must have the complaint supported by a sworn affidavit. Deletes provisions that any such complaint, having been supported by a sworn affidavit, and having been found, in total or in part, to contain false information, shall be presented to the appropriate State's Attorney for a determination of prosecution.

In the Uniform Peace Officers' Disciplinary Act, deletes provision that if a collective bargaining agreement requires the presence of a representative of the collective bargaining unit during investigations, the representative shall be present during the interrogation, unless this

requirement is waived by the officer being interrogated. Deletes provision that admissions or confessions obtained during the course of any interrogation not conducted in accordance with the Act may not be utilized in any subsequent disciplinary proceeding against the officer. Deletes provision that in the course of any interrogation no officer shall be required to submit to a polygraph test, or any other test questioning by means of any chemical substance, except with the officer's express written consent. Deletes provision that refusal to submit to such tests shall not result in any disciplinary action nor shall such refusal be made part of his or her record.

HB 2111 – Official Misconduct – Body Cameras – introduced by Rep. Carol Ammons, assigned to Judiciary-Criminal Committee, re-referred to Rules Committee.

Summary: Amends the Criminal Code of 2012. Provides that an employee of a law enforcement agency commits misconduct when he or she knowingly fails to turn on an officer-worn body camera or turns off an officer-worn body camera when there is a reasonable opportunity to act in a manner that is consistent with the officer-worn body camera policy of the respective law enforcement agency. Provides that a violation is a Class 3 felony and forfeiture of employment. Defines "officer-worn body camera".

HB 2112 – Official Misconduct – Introduced by Rep. Carol Ammons, assigned to Judiciary-Criminal Committee, re-referred to Rules Committee.

Summary: Amends the Criminal Code of 2012. Provides that an employee of a law enforcement agency commits misconduct when he or she knowingly misrepresents facts describing an incident in a police report or during investigations regarding the law enforcement employee's conduct. Provides that law enforcement employees and prosecutors have an affirmative obligation to report any knowledge of the misrepresentations to the law enforcement employee's supervisor or to whomever necessary for the law enforcement employee to be held accountable. Provides that a violation is a Class 3 felony and forfeiture of employment.

HB 5798 - Private College Police Records – introduced by Rep. Curtis Tarver, has not been assigned to a committee yet.

Summary: Amends the Private College Campus Police Act and provides that information and records in the custody or possession of a campus police department subject to the Act shall be open to inspection or copying to the extent the information and records relate to the members of the campus police department's exercise of the powers of municipal peace officers or county sheriff. Any person denied access to records required to be publicly available may file a request for review with the Office of the Attorney General Public Access Counselor

HB 5803 - Use of Deadly Force – introduced by Rep. Kambium Buckner

Summary: Amends the Criminal Code of 2012. Provides that a peace officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a peace officer and to warn that deadly force may be used, unless the officer has reasonable grounds to believe the person is aware of those facts. Provides that a peace officer shall not use deadly force against a person

based on the danger that the person poses to himself or herself, if a reasonable officer would believe that the person does not pose an imminent threat of death or serious bodily injury to the peace officers or to another person.

HR0861 – Economic Vitality Plan – introduced by Rep. Mary Flowers, with numerous co-sponsors, has not been assigned to a Committee.

Summary: Urges the Illinois General Assembly and the United States Congress to explore a new, domestic investment plan to promote economic growth and recovery in targeted African American communities.

HB 4666: Drug asset forfeiture-vehicle – introduced by Rep. Will Guzzardi, assigned to the Judiciary-Criminal committee and currently referred to the Rules Committee.

Summary: Amends the Drug Asset Forfeiture Procedure Act. Deletes provision that when the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding the vehicle.

SB3449 Emergency mental health care – introduced by Senator Robert Peters with Senators Antonio Munoz and Laura Fine signing on as co-sponsors, bill has been referred to Assignments.

Summary: Creates the Community Emergency Services and Support Act. Provides that every unit of local government that provides emergency medical services for individuals with physical health needs must also provide appropriate emergency response services to individuals experiencing a mental or behavioral health emergency. Amends the Emergency Telephone System Act to make conforming changes.

II. Recommended Proposals that are not Present in Current Bills:

As a matter of public policy, Illinois grants police officers the right to “bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment” *See* 5 ILCS § 315/4. An article published by Loyola University regarding Police Union Contracts provides some helpful insight on this issue. *See* [Police Union Contracts](#). In the article, author Stephen Rushin states that courts have interpreted the phrase: “terms and conditions of employment” in Illinois and elsewhere to permit or require the negotiation of internal procedures used by police management to investigate or punish officers suspected of misconduct.

This broad interpretation has resulted in contract provisions that have contributed to rampant abuses by police officers, with little to no recourse available to residents who law enforcement officers are sworn to protect and serve and who are also victims of police misconduct. For example, the current collective bargaining agreement between the Chicago Police Department and the Fraternal Order of Police forbids incentives for whistleblowers, allows for the destruction of misconduct records after 5 years, allows officers to wait and amend statements regarding allegations of misconduct after recordings are found, and also allows complainant information to

be shared with officers accused of misconduct. However, this is not only a Chicago Police Department issue; this is an issue that must be addressed for law enforcement departments throughout the state in order for real change to occur.

The union contract provisions listed above, along with several others, help maintain the code of silence, foster a culture of police abuse of people of color, and limit the ability of effective police accountability reforms to take hold. The state-level legislative proposals provided above would help Illinois begin to cut against and preempt those provisions. But additional legislative measures should be taken to ensure reform occurs systemically. Below, we provide a few recommendations for future legislative initiatives:

- A. Create a “Civilian Bill of Rights”
- B. Other Considerations for Police Accountability Legislation
- C. Eliminating Crime Free and Nuisance Ordinances

A. Create a “Civilian Bill of Rights”

Until now, federal and state laws and union contracts have been written with the presumption of protecting law enforcement officers from civilian complaints. We believe the time has come to reverse course. Accordingly, we propose that the General Assembly consider creating a Civilian Bill of Rights, written with the premise that all civilians should have certain rights that protect them from law enforcement misconduct and other abuses by police officers. Examples of some of the categories that should be included in the Civilian Bill of Rights are:

- All records related to law enforcement complaints, investigations and adjudications of police misconduct may not be destroyed and shall be permanently retained.ⁱⁱ
- Local law enforcements agencies should be required to include members of the local community in the department’s decision-making and policy-making processes.
- Complainant information should not be shared with the subject officer; affidavits should not be required for filing a complaint of police misconduct
- Officers should not have a waiting period before they must give testimony on a shooting or allegation of misconduct.
- Officers should not be able to amend their statements related to allegations of misconduct after viewing recordings or other evidence.
- Whistleblower protections should be expanded to include contractors with police departments
- Restrict officers’ ability to engage in use of force tactics (including a blanket ban on any tactics that restricts breathing, including chokeholds)

- There should be a prohibition on law enforcement's use of militarized weapons on civilians
- There are certain calls for help where police officers should not be the first responders, such as calls asking for help when someone is experiencing a mental health challenge. Rather, other qualified professionals (such as mental health service providers) should be the first responder, or in the alternative, there should be a co-responder model implemented statewide mandating that the mental health professional respond with law enforcement
- Discipline of police officers should not be subject to collective bargaining
- Statutorily restrict the legal application of qualified immunityⁱⁱⁱ
- All police officer interactions with civilians should be captured on body worn cameras. Failure to do so should result in discipline up to and including termination
- Establish a statewide database of complaints made against law enforcement officers that includes the outcome for each, and that is open and available to members of the public for viewing

The provisions provided in the Civilian Bill of Rights should preempt and override any conflicting language contained in local law enforcement union contracts/collective bargaining agreements and should prevent such provisions from being negotiated as a part of collective bargaining.

B. Other Considerations for Police Accountability Legislation

Criminal Justice advocates throughout the Chicagoland area have fought for police accountability reforms for several years, with some limited success in the form of a Chicago Police Accountability Task Force Report entitled: [Recommendations for Reform](#) and a federal consent decree (<http://chicagopoliceconsentdecree.org/>). Nonetheless, the Chicago Police Department has either delayed implementation or flat out refused to implement the reforms identified in both forums. We believe that the authority to mandate implementation should not fall on the will of the police department. Rather, certain reforms should be codified in state statute with funding tied to the police department's compliance therewith.

Examples of issues that should be addressed via the introduction and passage of legislation include:

- Establishing a licensure requirement for law enforcement officers
- Requiring that officers intervene when they witness another officer using excessive force
- Developing a divestment plan wherein portions of State and local tax dollars currently earmarked for law enforcement departments (which tend to encompass a significant percentage of local government budgets) are disinvested from police departments and reinvested to support marginalized communities

- Implementing a statewide ban on high speed chases, with very limited exceptions for when they are permissible
- Eliminating felony murder liability for death that results from police conduct (including death that results from high speed chases)
- Institute a statewide ban of assigning police officers (including School Resource Officers) to patrol in schools and instead provide alternative school staff such as counselors and restorative justice practitioners to respond to student behavioral issues.

III. Issues to Avoid when Thinking about Police Accountability Reform

In general, any and all new state provisions should be written with an emphasis of protecting civilians from law enforcement abuse, not protecting police officers when they are the subject of potential misconduct allegations. One place to start would be a complete overhaul of the Uniform Peace Officers' Disciplinary Act, which affords certain rights to police officers facing allegations of misconduct that are not afforded to any other citizens facing allegations of criminal conduct and in fact go above and beyond any of the rights afforded to non-law enforcement arrestees. If anything, the rights incorporated in that Act should apply to all citizens.

A summary of those rights is provided below:

[Uniform Peace Officers' Disciplinary Act \(50 ILCS 725\)](#)

- 3.2: No officer shall be subjected to interrogation without first being informed in writing of the nature of the investigation.
- 3.3: All interrogations shall be conducted at a reasonable time of day.
- 3.5. Interrogation sessions shall be of reasonable duration and shall permit the officer interrogated reasonable periods for rest and personal necessities.
- 3.6. The officer being interrogated shall not be subjected to professional or personal abuse, including offensive language.
- 3.7. A complete record of any interrogation shall be made, and a complete transcript or copy shall be made available to the officer under investigation without charge and without undue delay.
- 3.8 No officer shall be interrogated without first being advised in writing that admissions made in the course of the interrogation may be used as evidence of misconduct or as the basis for charges seeking suspension, removal, or discharge; and without first being advised in writing that he or she has the right to counsel of his or

her choosing who may be present to advise him or her at any stage of any interrogation.

- 3.9. The officer under investigation shall have the right to be represented by counsel of his or her choosing and may request counsel at any time before or during interrogation. When such request for counsel is made, no interrogation shall proceed until reasonable time and opportunity are provided the officer to obtain counsel.
- Limitation: 5” This Act does not apply to any officer charged with violating any provisions of the Criminal Code of 1961, the Criminal Code of 2012, or any other federal, State, or local criminal law.

In addition, members of the General Assembly should try to avoid implementing policies or initiatives that include investing additional dollars in police departments, above and beyond what is already allocated to those departments for items such as training. While training is important and has the potential to help with police reform efforts, investing additional dollars in training is not productive unless we also reform the current disciplinary structures that are currently in place which fail to adequately hold officers accountable to use the techniques learned during training.

ⁱ HB 3926 and HB 5800 are similar in concept. As a preference we would prefer HB 5800 but would be generally supportive of whichever bill moves.

ⁱⁱ Just this week, the Illinois Supreme Court held that the provisions in the FOP contract that require the destruction of records that relate to complaints of Chicago Police misconduct are void & unenforceable as a matter of established IL public policy. *See City of Chicago v. Fraternal Order of Police*, 2020 IL 124831.

ⁱⁱⁱ It’s important to note that as recently as June 15, 2020, U.S. Supreme Court Justice Thomas raised “strong doubts” about the §1983 qualified immunity doctrine in a case accusing police officers of committing excessive force and failure to intervene. Justice Thomas stated that “our §1983 qualified immunity doctrine appears to stray from the statutory text” and he therefore believes that the Court should revisit its original use and intent at common law. *See Baxter v. Brad Bracey*, et al., 590 U.S. ____ (2020). Similarly, on June 10, 2020, the Fourth District refused to apply the qualified immunity doctrine where five police officers killed a black homeless man, shooting him a total of 22 times stating: “Although we recognize that our police officers are often asked to make split-second decisions, we expect them to do so with respect for the dignity and worth of black lives.” *See Wayne A. Jones v. City of Martinsburg, West Virginia*, 2020 WL 3053386.