

**WHAT WILL IT TAKE TO END POLICE VIOLENCE?
Recommendations for Reform**

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May 25, 2020 was a both a personal tragedy for the Floyd family and a community tragedy. But it was also a watershed moment locally and nationally in people's understanding of police violence, the racism and classism that underpins it, and the systems that enable it.

This document seeks to provide specific recommendations for addressing police brutality, misconduct and abuse of authority in the state of Minnesota. Many of these recommendations are not new—our organization has presented them several times. Prior failures of leaders at the city, county and state level to adopt these solutions is what has led us to this place.

In the aftermath of other high-profile police killings, occasional half-measures have been enacted but, generally, public officials simply outlast the storm and go back to business as usual. Even now, there are public officials laboring under the illusion that they can put the genie back into the bottle. That can't happen this time.

Every recommendation on this list is readily able to be implemented. All that is required is the will. Each recommendation below is tagged with the appropriate agency for implementation.

POLICE ACCOUNTABILITY

Require police officers to carry their own professional liability insurance.

LEGISLATURE

Under existing conditions, departments are incentivized to avoid disciplining officers because doing so is an admission of wrongdoing that could potentially increase the value of lawsuits over officer conduct. Officer conduct can cost taxpayers millions of dollars, yet the officer faces no consequences.

Requiring officers to carry their own professional liability insurance shifts the risk burden to the individual and their insurance company. This common sense proposal was raised to Minneapolis leadership but they rejected it. Under our proposal, the city could choose to pay the base rate for the coverage but would not be permitted to pay for any additional premiums charged to officers due to their history. This plan incentivizes officers not to engage in conduct that would raise their insurance rates and creates a consequence if they do. Some of the worst offenders—likely including ex-Officer Derek Chauvin—would become uninsurable and then would no longer be able to work as police officers.

Along with this recommendation, there must be a ban on the indemnification of police officers for misconduct engaged in during their personal time. Famously, Minneapolis paid the attorney fees for Ofc. Michael Griffin, who on his own time became intoxicated

at a bar and beat up a man, then used his position as a police officer to get other officers to arrest the man. When he faced federal prosecution, the city paid \$75,000 for Griffin's private attorney.

Require police chiefs to adopt a disciplinary reset mechanism.

MN POST BOARD

There are numerous incidents in which police chiefs have disciplined an employee, including termination, only to have the discipline overturned or greatly reduced by arbitration. The most common reason for this is past practices—officers were not disciplined for similar conduct in the past so cannot be disciplined for it in the current situation. This eventually becomes a vicious cycle.

The solution is the adoption of a disciplinary reset mechanism. There are a number of steps involved but, essentially, the department revamps their use of force policy with clear consequences for violations and a declaration that past practices no longer apply. Officers are trained on the policy and supervisors are trained on proper documentation of violations. Discipline is consistent and progressive.

Departments that adopt a disciplinary reset mechanism are much more likely to have their discipline upheld in arbitration. *See Appendix A.*

Enact robust civilian oversight of police.

CITIES, LEGISLATURE

Civilian review agencies have come and gone in the Twin Cities. In 2012, the City of Minneapolis scrapped civilian oversight in favor of the Office of Police Conduct Review (OPCR). This agency is controlled at every step of the complaint adjudication process by city staff, including police. As a result, this agency has disciplined 12 complaints out of about 2600 complaints filed by members of the community over the last 7.5 years. This is an appalling 0.4% rate when the national average for civilian oversight bodies is 7-8%.

St. Paul's Police Civilian Internal Affairs Review Commission (PCIARC) isn't much better. This agency does not conduct its own investigation. Instead, it simply reviews investigations conducted by internal affairs. The PCIARC has a 3% discipline rate.

Both agencies suffer from an additional structural problem. When one files a complaint with either agency, you are complaining to police about police. This is also true for smaller communities that don't have civilian oversight at all.

Even when civilian oversight is in place, these agencies are hamstrung by MN Statute 626.89, subd. 17 which states "*A civilian review board, commission, or other oversight body shall not have the authority to make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer. A civilian review board,*

commission, or other oversight body may make a recommendation regarding the merits of a complaint, however, the recommendation shall be advisory only and shall not be binding on nor limit the authority of the chief law enforcement officer of any unit of government.” To achieve real civilian oversight, this section must be overturned.

Thus, our recommendations are to overturn MN Stat. 626.89, sub. 17 and put into place civilian oversight bodies with subpoena power and the ability to require discipline.

Overturn MN Statute 609.505, Subd. 2.

LEGISLATURE

This statute makes it a crime to falsely report police misconduct, with the potential for misdemeanor or gross misdemeanor conviction. The problem is that many incidents of police misconduct are not captured on video and become a “he said/she said” dynamic with a presumption that the officer is right. In addition, the same agency that employs the officer is the agency that decides whether a complaint is false. This situation has led to prosecution of people simply for criticizing police, a First Amendment-protected activity. Because of the way the law is written, even journalists reporting on allegations of police misconduct could be prosecuted.

The law as applied has had disparate impacts. 100% of people prosecuted under this statute to date are African Americans.

Require the MN POST Board to adjudicate complaints on chief law enforcement officers.

LEGISLATURE

People frequently file complaints about police officers with the Minnesota POST Board. Their procedure is to refer the complaint to the agency that is the subject of the complaint with an expectation that the complaint will be addressed. However, when the subject of the complaint is the chief law enforcement officer (CLEO) of that department, it is unrealistic to expect subordinates to investigate and issue discipline. Yet, any misconduct by a CLEO must be properly addressed because CLEOs set the culture of the department. The POST Board is the only agency capable of disciplining CLEOs.

Require the MN POST Board to take prompt, consistent action on licenses.

LEGISLATURE

As the licensing agency for law enforcement officers in the state, the MN Post Board is mandated to revoke licenses for officers convicted of certain crimes but has discretion on whether to revoke licenses for others. Studies have shown that POST has nearly always failed to act on their discretion, allowing officers who engaged in drunk driving, domestic assault and other crimes to remain licensed. This must stop.

Pass legislation recognizing the right to videotape police and document their conduct.

LEGISLATURE

In 2011, Communities United Against Police Brutality participated in a federal appeal suit, *Glik v. Cunniffe*, that codified the right of people to videotape and document police conduct. This was followed in 2012 by a letter from the Department of Justice to the Baltimore police department—but widely understood to apply to all departments—mandating that law enforcement departments develop a policy prohibiting police officers from interfering with the First Amendment-protected right to videotape police activities. For four years, our organization pressed the Minneapolis Police Department to adopt such a policy. Finally, in May of 2016, the MPD adopted a policy and credited us for it. However, smaller departments have not adopted this required policy and we continue to get calls on our hotline from individuals who were arrested, had their recording device seized and sometimes brutalized simply for recording the police. There must be legislation requiring every law enforcement agency in the state to adopt a policy upholding the right of people to videotape police and creating discipline for officers who violate that right. Recall that it was a bystander video that exposed the true nature of what occurred in the killing of George Floyd.

Ensure badges are visible and legible.

LAW ENFORCEMENT AGENCIES

Because law enforcement officers are empowered to use physical force if necessary to affect a lawful purpose, it is essential that the public be able to identify individual officers. Generally this is done by badge number. However, many badge numbers are stamped into the metal with no paint or other way to read the badge, especially at night. The MN POST Board should require departments to issue badges with large, easily read numbers or ensure that identifying indicia are on officer uniforms.

POLICE CRITICAL INCIDENTS

Create an independent agency for investigation and prosecution of law enforcement critical incidents.

LEGISLATURE, GOVERNOR

Most law enforcement critical incidents in Minnesota are investigated by the Bureau of Criminal Apprehension (BCA), essentially the state's version of the FBI. This agency works hand in glove with all other law enforcement agencies in the state to assist with their investigations and forensic testing needs.

Because of their cozy relationship with these law enforcement agencies, the BCA has shown itself to perform slipshod, biased investigations in police-perpetrated killings. The community is fed up with one law enforcement agency investigating another law enforcement agency, with predictable results. Some BCA agents themselves have a

history of killing members of the community. They are not capable of non-biased investigations of other law enforcement agencies.

What is actually needed is an agency that is independent of law enforcement and that would be tasked with both investigating and prosecuting deadly force incidents. Such an agency was proposed by Sen. Scott Dibble in previous legislative cycles. This proposal should be brought forward and passed by the legislature.

End the practice of allowing officers involved in critical incidents 48 hours before giving a statement.

MN POST BOARD, LEGISLATURE

There is no legal requirement to allow officers to wait 48 hours before giving a statement in a critical incident. There is also no legitimate rationale for doing so. Officers' memories are likely to be fresher in the immediate aftermath of an incident. Further, waiting to interview officers after a critical incident provides time for dishonest officers to collude on a narrative about the incident. Civilian witnesses, including children, are questioned right after witnessing a crime. The same should hold true for law enforcement officers.

Ensure officers involved in deadly force incidents are treated the same as other suspects.

LAW ENFORCEMENT AGENCIES, COUNTY PROSECUTORS

The special treatment afforded the four officers in the killing of George Floyd caused great anger in the community and contributed to the climate where some people expressed that anger through destructive conduct. All four officers should have been arrested immediately. All that is needed for an arrest is probable cause, which the bystander video provided. Anyone who is arrested must be brought before a judge for a probable cause hearing, where bail is also set. In the interim between arrest and trial, any additional investigation needed is conducted and the prosecutor makes a final determination on charges during that time. There was simply no reason to wait days to over a week to arrest the four officers responsible for the death of Mr. Floyd. Further, most officers involved in deadly force incidents are never arrested.

Prosecute excessive force, investigator misconduct and perjury.

COUNTY PROSECUTORS

Excessive force is a crime, as is investigatory misconduct and lying in court that lead to false convictions. Yet these crimes are virtually never prosecuted. If such crimes were prosecuted routinely, officers would be less likely to engage in them and the culture of impunity would be overturned.

Require detailed reviews of law enforcement critical incidents.

MN POST BOARD

When hospital care results in the death or serious injury of a patient, both the Minnesota Department of Health and national accreditation agencies require the facility to engage in a sentinel event investigation. The purpose of such investigations is not to point the finger at individuals but to assess the conditions and system breakdowns that led to the sentinel event. Institutions are then expected to implement changes to prevent similar incidents in the future.

Because we have no such mechanism in place after police critical incidents, we fail to examine the failures that led to the incident or learn how to prevent such incidents in the future. The city of Minneapolis promised the community a review after the killing of Justine Damond Ruszczyk in 2017 but to this day, no such examination has occurred.

Lengthen the statute of limitations for wrongful death civil actions.

LEGISLATURE

Most lawsuits in deadly force incidents are based on wrongful death and civil rights violations. The Federal statute of limitations on most civil rights violations is 6 years but the state statute of limitations on wrongful death claims is 3 years from the date of death. This is far too short for a family that must wait for a year or more for an investigation to conclude before they can obtain records, video and other evidence to even consider a suit. Further, many of these families are shaken to their core by the unexpected death of their loved one and need time to grieve and get to the point psychologically where they can initiate a lawsuit. Extending the statute of limitations would significantly assist these families.

Require the state to pay for independent autopsies in deaths associated with law enforcement activities.

LEGISLATURE

Medical examiner offices work hand-in-glove with law enforcement. They exhibit the same biases as the BCA in assessing the cause of death and comorbidities of people killed in encounters with law enforcement. Medical examiner offices should be precluded from performing autopsies in cases of deaths at the hands of law enforcement and, instead, the state should pay for independent autopsies by forensic pathologists chosen by the families.

Our organization has funded a number of independent autopsies in law enforcement lethal force cases and quite often the cause of death significantly differs from the purposely vague cause of death reported by the medical examiner's office, such as has occurred in the post-mortem examination of Mr. Floyd.

POLICE FITNESS FOR DUTY

Require law enforcement agencies to conduct mandatory psychological testing.

MN POST BOARD

Individuals receive psychological testing when they are hired by the department but generally never after that. Because of the stressful nature of policing, officers should be retested every 3 years, after critical incidents involving police shootings, after deadly force incidents and when transferring to other police departments within the state. Some departments in the state already require psychological fitness assessments every two years.

Require drug and anabolic steroid testing after a police critical incident.

MN POST BOARD

Victims of deadly force incidents are tested for drugs, alcohol and other chemicals in their blood. The officers involved in these incidents should be as well.

COLLECTIVE BARGAINING

Require community participation in negotiations of collective bargaining agreements.

LEGISLATURE

Community members are stakeholders in the collective bargaining agreement and should be parties to it. We should be given the opportunity to provide input on the contract prior to the start of negotiating sessions. The negotiating sessions are open to the public but there is no legal requirement to notice the meetings so that the public can attend.

Our organization participated in a coalition that thoroughly reviewed the Minneapolis Police Federation collective bargaining agreement and developed 14 sensible recommendations. All of them would benefit the community, the officers and the city. However, since the city refused to provide notice of negotiating sessions, we were unable to attend to determine if our demands were part of the negotiations. The community should not be frustrated in their efforts to improve policing by a lack of transparency in what is supposed to be a transparent process. See <https://www.mplsforabetterpolicecontract.org/>. See Appendix B.

Split police federations into separate unions for rank-and-file staff and supervisors.

LEGISLATURE

Most unionized workplaces have separate unions for management and line staff. This is in large measure to avoid the inherent conflicts that occur when a staff member challenges discipline that was meted out by a front line supervisor, who is also a union

member. This also avoids a difficult conflict for supervisors themselves, who are expected to be loyal to the employer while also remaining loyal to the union. These conflicts are a barrier to accountability and meaningful discipline.

TRAINING

Improve the course approval process for the MN POST Board.

LEGISLATURE, MN POST BOARD

The POST Board approves law enforcement continuing education courses. However, their course approval process is weak. The individuals approving courses are not trained in law enforcement and lack subject matter expertise. Virtually any course that has some relationship to law enforcement is approved without any regard to the quality of the course or course content.

This is not conjecture. Two members of our organization participated in a POST Board work group on their course approval process. One has completed significant coursework in a Masters in Adult Education. They found the process to be sloppy and unaccountable. Since then, the process has not improved.

End fear-based, military style, “warrior” trainings and significantly increase the amount of de-escalation training through POST Board requirements.

LEGISLATURE, MN POST BOARD

Currently the POST Board requires 90 hours of in-person firearm training, and only 1 hour of an online de-escalation training module that law enforcement officers can easily skip ahead to complete, taking in little information. Minnesota law enforcement officers must spend at least as many hours completing in-person de-escalation training as they do firearm training, and pass a required skills test. There must be a culture shift from a military training framework to a comprehensive self-defense and de-escalation training framework rooted in serving all community members, specifically our most vulnerable community members.

Require training for law enforcement in recognizing and interacting appropriately with people on the autism spectrum.

LEGISLATURE, MN POST BOARD

Numerous individuals on the autism spectrum have been killed or injured during encounters with law enforcement when they were unable to respond quickly or in an expected manner to law enforcement orders. There must be accommodations made for individuals with autism by law enforcement officers. Training to ensure these accommodations are made must be mandated by the POST Board.

Require annual in-person anti-oppression training conducted by community-based organizations that represent people from oppressed groups.

LEGISLATURE, MN POST BOARD

This is not implicit bias training or merely cultural competence training. This is training on the root causes and effects of historical and current oppression, the role of police in that oppression, and ways to avoid oppressive conduct in encounters with historically oppressed groups. This training must be provided by organizations representing oppressed people.

Require EPIC or other peer intervention training along with a duty to intervene.

LEGISLATURE, MN POST BOARD

Ethical Policing is Courageous (EPIC) is a training program that teaches officers about both the duty to intervene to stop a fellow officer from engaging in community-harming or career-ending conduct. While officers in some departments are mandated by policy to intervene, in practicality it is difficult for officers of lower seniority or lower rank to challenge officers who outrank them. EPIC and similar training provides the tools and changes the culture to allow such interventions to occur.

When the troubled New Orleans police department adopted EPIC, rates of use of force decreased by 50% and lawsuits over use of force are near zero. EPIC training saves the lives of community members and the careers of officers.

Stabilize and increase training funds.

LEGISLATURE

Police training funds are currently managed through the POST Board and are funded from a surcharge on non-DUI license reinstatement fees. This is an unstable source of funding. Instead, training should be funded as part of the POST Board's overall budget, which should come through standard appropriations similar to other state agencies.

Create certification tracts for sexual assault investigators, homicide investigators.

MN POST BOARD

Sexual assault and homicide investigations are specialty police work. Research has shown that many law enforcement agencies around the state do a poor job with these investigations. The POST Board should develop robust training tracks for these specialized areas of law enforcement with the ability to earn certification. Eventually such certification would become the expectation for individuals engaged in these investigations and those individuals could reap increased pay and prestige through being certified while the quality of these investigations would improve.

SAFER COMMUNITY INTERACTIONS

End police-only responses to mental health crisis calls.

COUNTY COMMISSIONS, LEGISLATURE

Law enforcement officers need to stop being the primary responders to mental health crisis calls.

Every county in Minnesota currently has a mobile mental health crisis team. What's needed is dispatch triage to deflect calls to these teams rather than routing them through law enforcement and expecting the department to decide whether to route them to the mental health crisis team. This can be achieved by embedding a mental health worker in dispatch to make decisions about the most appropriate responders for these calls. This model is working well in other states, even states with low population density counties.

In 2019, the Minneapolis Police Department responded to 15,000 emotionally disturbed person (EDP) calls. Very few involved any kind of weapon. Thus, a mobile mental health crisis team could just as easily respond to most of those calls, providing initial assessment and starting treatment on-scene. At minimum, there should be a co-response of mental health workers and officers at all calls involving a mental health component. There should never be a police-only response to mental health crisis calls.

End anti-camping and other ordinances targeting homeless people.

CITIES

Anti-camping ordinances serve only to enable routine harassment or worse of unsheltered homeless people by law enforcement. People have to be somewhere. It is better for all if people who cannot get into shelters can erect a tent rather than sleeping in a doorway. In this time of a pandemic, it is even more important that homeless people are not driven into the shadows where public health and outreach workers can't find them.

Homeless people make up 0.03% of the population of Hennepin County but nearly 20% of arrests in Hennepin County jail, often for livability crimes.

Restrict use of deadly force to last resort.

MN POST BOARD

The POST Board must mandate that all law enforcement agencies adopt a use of force standard that restricts deadly force to use only as a last resort. This standard must then be applied in any reviews of law enforcement critical incidents.

Ban lateral vascular neck restraint (LVNR), choke holds, body-pins to the neck, hobble tying and other potentially lethal restraint methods.

MN POST BOARD

The POST Board must mandate a ban on these dangerous restraint methods, which are banned by most law enforcement agencies around the country.

Change canine policy to locate and bark vs. locate and bite.

MN POST BOARD, CITIES

Canines are best used to locate fleeing or hidden suspects. However, there have been several incidents of canines attacking and maiming non-suspects. The cases of Frank Baker and Desiree Collins come to mind. If canines were trained to locate and bark, even if they locked on to the wrong person, that person would not be injured.

Review and improve pursuit policies.

MN POST BOARD, CITIES

In the aftermath of a number of deaths in high speed chases over minor traffic infractions or mistaken identification of stolen vehicles, the POST Board must mandate more robust pursuit policies including specific requirements of when to end such pursuits, especially in densely populated areas.

Mandate appropriate law enforcement response to civil disturbances.

MN POST BOARD, CITIES, LEGISLATURE

After recent events in which there are widespread reports of people being shot with rubber bullets, pepper spray, flashbang grenades and other projectiles and chemical weapons while in their own yards, while peacefully protesting, or while reporting the news, the state must create standards limiting the use of these weapons against the populace to very narrow circumstances.

End the use of military equipment in our community.

CITIES, LEGISLATURE

The streets of our communities are no place for military equipment. Much of this equipment, which was obtained through the 1033 surplus military equipment program, should be returned to the military to ensure our neighborhoods never again look like war zones.

Significantly limit the use of SWAT teams and no-knock warrants.

MN POST BOARD, CITIES

The use of SWAT teams to serve warrants has increased by 538% since 1980. Yet rarely are their tactics justified as most warrant service is routine and not dangerous.

SWAT team raids are deeply traumatizing to the community, especially children. Their routine use must end.

DATA

Provide for penalties in MN Statute Chapter 13, the MN Government Data Practices Act (MGDPA) for failure to release data timely, especially the “super public data” outlined in MN Stat. 13.82, subd. 2.

LEGISLATURE

The state of Minnesota is fortunate to have a very robust data practices act. Under MN Stat. 3.82, subd. 2, “data created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty shall be public at all times in the originating agency” and the statute provides a list of such data. This data is often referred to as “super public data.” Yet the community consistently has to fight to get this data released by law enforcement. Our own organization has had to litigate to gain access to this data. Many individuals do not have the means to litigate such matters. MN Statute Chapter 13 should be modified to include penalties and a non-judicial process for asserting one’s rights to data, including data of which one is the subject.

Ensure better access to body-worn camera footage.

LEGISLATURE

The MGDPA operates under the proposition that most government data is public, with carve outs for juvenile records, information on sexual assault victims and other sensible exceptions. However, one exception is not sensible and that is access to body-worn camera footage under MN Stat. 13.825. This statute presumes the footage is non-public and the individual has to prove they are in the footage or otherwise entitled to it. Even then, if an individual is in a crowd in a public space, that person would have to get signed authorization from every other person in the video before an unredacted version could be released to them—and they have to do that without seeing the video to try to identify the others. This requirement is too onerous and renders BWC footage inaccessible to most. MN Stat. 13.825 needs a serious overhaul.

Require the release of unedited video footage to families of people killed by law enforcement officers within 48 hours of the fatal incident (e.g., body cam, dash cam, witness video and surveillance video from police, business, and residents).

MN POST BOARD, LEGISLATURE

When an individual is killed by law enforcement, a representative selected by the family of that individual becomes the subject of the data, having the same rights of access to

the data as the individual would have had. Families should not have to wait months and sometimes a year or more to learn the circumstances of how their family member died.

Require law enforcement agencies to collect data for every encounter, whether it results in arrest or not.

MN POST BOARD, LEGISLATURE

Require every department to document the officer's perceived race of individuals involved in an encounter, probable cause or basis for the encounter, actions taken (including searches) and outcome with data submitted to a central agency for analysis and trending. Racial profiling is established by a pattern of encounters and this pattern cannot be discerned if data is not collected and analyzed for all encounters.

Post lawsuit data on a dashboard or other access mechanism.

CITIES, LEGISLATURE

The City of Chicago posts information on every lawsuit on their website. We deserve the same easy access to our city's own data. Require cities to add this information to the data portals on their websites.

Make information on use of force information quickly available to the public through a dashboard or other access mechanism.

CITIES

The community can obtain this data through data requests but it should be widely available through a common access source. Readily providing this data would improve transparency.

Require departments to review search warrants relative to the results of those warrants.

MN POST BOARD

There have been a number of high profile incidents in which it was learned that law enforcement officers lied or relied on specious information from informants to obtain search warrants. There have also been incidents of raids of wrong addresses based on bad information on warrants. The POST Board should mandate a regular review of warrant applications compared with the results obtained through the service of those warrants. Officers who are found to have lied to attain the warrants must be disciplined.

WHAT WON'T WORK

As we consider measures to end police violence, we must also consider those measures that have been proposed in various settings that will not actually address the problem. We must not waste our resources on non-solutions.

Residency requirements.

Over the years, our organization has researched the idea of residency as either a requirement or an incentive. We believe in evidence-based best practices for police reform. Throughout our research, we have never encountered a shred of evidence that requiring or incentivizing police officers to live in the communities in which they work has any positive effect on the quality of policing.

An analysis by FiveThirtyEight shows that cities with residency requirements had “police forces [that] were less demographically similar to their cities.” Even when controlling for racial and ethnic composition and size of their minority groups, a residency requirement was found to be the most significant variable in the poor levels of demographic similarity to a city’s population. That same study also found that “residency requirements were correlated with less public confidence in the police, specifically in the police force’s ability to protect its citizens.”

Implicit bias training.

Training to reduce implicit bias is a major component of many law enforcement reforms. Yet the scientific literature regarding implicit bias training shows that the enduring effects of the training are negligible. A 2016 meta-analysis of 17 studies of this training by Dr. Gene Borgida showed that there was no measurable effect from the training that lasted more than 24 hours. He also noted that none of the studies showed any effect on explicit biases. What his studies demonstrate is that implicit bias training, as currently practiced, is utterly worthless.

Police- community relations efforts.

Far too many reform efforts center on the proposal of “police-community relations.” The underlying premise is that if police and the community could somehow just get along better, trust would be built and the problem would be solved. This framing places half the responsibility for the problem on the community, when we have little control over the conduct of police. This is a false framing.

We need to be clear—the issue is and always has been police abuse of authority, the oppression that underpins it, and the lack of accountability that encourages it. No amount of “dialogue” or other relationship-building measures will improve this because

“relationships” aren’t the cause of the problem. The real cause is a lack of accountability. Unless efforts shift from “police-community relations” to police accountability, these problems will continue. In fact, if police were held accountable for their actions in meaningful ways right now, police misconduct—including deadly force incidents—would greatly decrease and police-community relations would improve on its own, with no special efforts needed.

Appendix A

DISCIPLINARY RESET MECHANISM AND LANGUAGE RECOMMENDATIONS **Communities United Against Police Brutality**

Discipline and Best Practices

In an ideal situation, police officers understand and act within expectations and, thus, avoid the disciplinary process altogether. In that environment, discipline becomes the last—and seldom used—option. However, in all organizations of any size, employees range in judgment and willingness to meet the organization’s expectations. Thus, appropriate disciplinary practices must be in place as part of an overall infrastructure of effective personnel management.

Issue: Disciplinary Actions Overturned during Arbitration

While it is hard for members of the public to know the full extent of the problem due to data privacy, it is clear that a significant percent of terminations and other disciplinary actions grieved by St. Paul Police Department officers have been overturned by arbitrators. Much of this stems from a lack of disciplinary action for similar offenses by past administrations. Other causes include poor documentation leading to a finding of insufficient evidence, and disproportionate discipline compared to similar offenses by other officers.

An instructive example is the arbitration of Ofc. Brett Palkowitsch. Ofc. Palkowitsch was terminated for kicking Frank Baker multiple times, causing ribs on both sides of his body to fracture along with the collapse of both lungs. The city noted the clear violation of policy and the denial by Palkowitsch that his actions were wrong. Despite this, the arbitrator reduced the discipline to a 30-day suspension. The arbitrator listed five different incidents involving kicks—two of which involved Palkowitsch—and noted that those incidents resulted in little or no discipline.

These issues with making discipline “stick” and the disempowerment of the chief when discipline is overturned are likely to continue unless a reset mechanism is adopted. Otherwise, effective discipline is impossible due to lack of effective discipline in the past - a Catch 22.

Opportunity

The introduction of a new policy or a new disciplinary matrix provides the opportunity to adopt a disciplinary reset mechanism. A disciplinary reset mechanism frees the Department from the constraints of past practices and allows police administration to create a greater culture of accountability, which improves policing overall. Essentially, in a disciplinary reset mechanism police administration draws a line indicating from that point forward, policy violations will be treated in a particular and consistent manner.

Nuts and Bolts

Elements of a reset mechanism include:

1. A well-defined disciplinary section of the policy manual and/or a disciplinary matrix with clear and specific mitigating and aggravating factors. The use of a disciplinary matrix is considered a best practice. However, information on the consequences of violating a policy can be included in that policy or in a disciplinary section of the policy manual as long as information on progressive discipline is also included.

The matrix in use by the Vancouver PD (Police Discipline: A Case for Change, page 11—see below) provides an example of a well-defined disciplinary matrix with specific ranges for first, second and subsequent offenses. This is the crux of a progressive disciplinary system.

Table 1. Vancouver Discipline Matrix

Offense Class	First Offense		Second Offense		Third Offense	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1	N/A	Memo of Correction	N/A	Written Reprimand	Memo of Correction	1-Day Suspension
2	Memo of Correction	Written Reprimand	Memo of Correction	Written Reprimand	1-Day Suspension	3-Day Suspension
3	Memo of Correction	1-Day Suspension	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension
4	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension
5	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension	10-Day Suspension	Termination
6	5-Day Suspension	Termination	15-Day Suspension	Termination	Termination	N/A
7	Termination	N/A	N/A	N/A	N/A	N/A

2. A firm statement of expectations in either the new policy, new disciplinary policy manual section, or new disciplinary matrix indicating that from a certain date forward, the department intends to change prior disciplinary practices and that discipline will be applied consistently. An example of the appropriate wording:

With the establishment of the _____ policy dated _____, employees are on notice that the Department intends to change any prior disciplinary practices and the discipline outlined in this policy is now the standard of discipline for the St. Paul Police Department, effective with its issuance.

3. Training for all managers, supervisors and other police leadership in application of the new disciplinary standard, including mitigating and aggravating factors, detailed and legally correct documentation of incidents and reasons for all disciplinary

actions, proper coaching and counseling techniques and documentation of same, employee assistance procedures, last chance statements and other disciplinary mechanisms.

4. Training for all officers on the new disciplinary standard and any changes in mitigating and aggravating factors prior to implementation, with a signed or otherwise documented affirmation of this training and understanding by every officer.
5. Consistent application of the disciplinary standard, mitigating and aggravating factors in all cases by all police supervisors and managers, along with proper documentation. Consistency is the core requirement. As noted in *Why Progressive Discipline Systems Often Fail*, "A policy-based progressive discipline system only works properly if all supervisors play team ball." The success of an accountability culture shift is hinged on supervisors being fully on board. Thus, the department must track results by supervisor.
6. Systematic review of arbitration decisions to understand the standards applied and how best to meet those standards in future disciplinary actions. There should be an analysis of arbitrations in which the city prevailed as well as those grievances that are partially or fully sustained.

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DISCIPLINARY RESET MECHANISM AND LANGUAGE RECOMMENDATIONS TO THE ST. PAUL POLICE DEPARTMENT

**Communities United Against Police Brutality
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Discipline and Best Practices

In an ideal situation, police officers understand and act within expectations and, thus, avoid the disciplinary process altogether. In that environment, discipline becomes the last—and seldom used—option. However, in all organizations of any size, employees range in judgment and willingness to meet the organization’s expectations. Thus, appropriate disciplinary practices must be in place as part of an overall infrastructure of effective personnel management.

Issue: Disciplinary Actions Overturned during Arbitration

While it is hard for members of the public to know the full extent of the problem due to data privacy, it is clear that a significant percent of terminations and other disciplinary actions grieved by St. Paul Police Department officers have been overturned by arbitrators. Much of this stems from a lack of disciplinary action for similar offenses by past administrations (past practices). Other causes include poor documentation leading to a finding of insufficient evidence, and disproportionate discipline compared to similar offenses by other officers.

An instructive example is the arbitration of Ofc. Brett Palkowitsch. Ofc. Palkowitsch was terminated for kicking Frank Baker multiple times, causing ribs on both sides of his body to fracture along with the collapse of both lungs. The city noted the clear violation of policy and the denial by Palkowitsch that his actions were wrong. Despite this, the arbitrator reduced the discipline to a 30-day suspension. The arbitrator listed five different incidents involving kicks—two of which involved Palkowitsch—and noted that those incidents resulted in little or no discipline.

These issues with making discipline “stick” and the disempowerment of the chief when discipline is overturned are likely to continue unless a reset mechanism is adopted. Otherwise, effective discipline is impossible due to lack of effective discipline in the past - a Catch 22.

Opportunity

The introduction of a new policy or a new disciplinary matrix provides the opportunity to adopt a disciplinary reset mechanism. A disciplinary reset mechanism frees the Department from the constraints of past practices and allows police administration to create a greater culture of accountability, which improves policing overall. Essentially, in a disciplinary reset mechanism police administration draws a line indicating from that point forward, policy violations will be treated in a particular and consistent manner.

Nuts and Bolts

Elements of a reset mechanism include:

1. A well-defined disciplinary section of the policy manual and/or a disciplinary matrix with clear and specific mitigating and aggravating factors. The use of a disciplinary matrix is considered a best practice. However, information on the consequences of violating a policy

can be included in that policy or in a disciplinary section of the policy manual as long as information on progressive discipline is also included.

The matrix in use by the Vancouver PD (Police Discipline: A Case for Change, page 11— see below) provides an example of a well-defined disciplinary matrix with specific ranges for first, second and subsequent offenses. This is the crux of a progressive disciplinary system.

Table 1. Vancouver Discipline Matrix

Offense Class	First Offense		Second Offense		Third Offense	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1	N/A	Memo of Correction	N/A	Written Reprimand	Memo of Correction	1-Day Suspension
2	Memo of Correction	Written Reprimand	Memo of Correction	Written Reprimand	1-Day Suspension	3-Day Suspension
3	Memo of Correction	1-Day Suspension	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension
4	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension
5	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension	10-Day Suspension	Termination
6	5-Day Suspension	Termination	15-Day Suspension	Termination	Termination	N/A
7	Termination	N/A	N/A	N/A	N/A	N/A

2. A firm statement of expectations in either the new policy, new disciplinary policy manual section, or new disciplinary matrix indicating that from a certain date forward, the department intends to change prior disciplinary practices and that discipline will be applied consistently. An example of the appropriate wording:

With the establishment of the _____ policy dated _____, employees are on notice that the Department intends to change any prior disciplinary practices and the discipline outlined in this policy is now the standard of discipline for the St. Paul Police Department, effective with its issuance.

3. Training for all managers, supervisors and other police leadership in application of the new disciplinary standard, including mitigating and aggravating factors, detailed and legally correct documentation of incidents and reasons for all disciplinary actions, proper coaching and counseling techniques and documentation of same, employee assistance procedures, last chance statements and other disciplinary mechanisms.

4. Training for all officers on the new disciplinary standard and any changes in mitigating and aggravating factors prior to implementation, with a signed or otherwise documented affirmation of this training and understanding by every officer.
5. Consistent application of the disciplinary standard, mitigating and aggravating factors in all cases by all police supervisors and managers, along with proper documentation. Consistency is the core requirement. As noted in *Why Progressive Discipline Systems Often Fail*, "A policy-based progressive discipline system only works properly if all supervisors play team ball." The success of an accountability culture shift is hinged on supervisors being fully on board. Thus, the department must track results by supervisor.
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