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Stop the Problem Before It Begins

By Chris Braunlich

With the General Assembly taking up policing reform in this summer's special session, there should be at least one bill stopping a problem before it begins.

Most big problems are created by a small number of people. The same is true of police officer transgressions. Derek Chauvin was a bad cop, with 18 prior complaints in 19 years at the time he killed George Floyd. His partner, Tou Thao, has six complaints, including an open one at the point he was fired. The head of their police union, Lt. Bob Kroll, is the subject of at least 29 complaints.

Their continued presence was an insult to the more than 680,000 good law enforcement officers who are guardians of our safety, who took the job to serve the public and who put their lives on the line.

Yet, instead of eliminating a narrow source of major abuse, they were allowed to continue their abuse of Minneapolis citizenry. Why?

Increasingly, we can point to provisions commonly found in Collective Bargaining Agreements (CBAs) negotiated between governments and the police union as part of the contract process. The issue has never arisen in Virginia before, because collective bargaining was prohibited. But Governor Ralph Northam has signed into law legislation that could mean local governments and their police unions next year will negotiate the conditions of the disciplinary process against misbehavior by individual police officers.

This is a bad idea. A [review of police contracts in 81](#) of the nation's largest cities demonstrates a number of ways accountability over police actions is thwarted –

- 50 cities restrict interrogations by limiting how long an officer can be interrogated, who can interrogate them, the types of questions that can be asked, and when an interrogation can take place – sometimes delaying interrogations for up to 30 days.
- 41 cities give officers under investigation access to information that civilian suspects do not get.
- 64 cities limit disciplinary consequences for officers, including preventing an officer's history of past misconduct from being considered in future cases.
- 43 cities erase records of misconduct, in some cases in as little time as six months.

Perhaps worst of all, 48 cities let officers appeal disciplinary decisions to an arbitrator who can reinstate that officer. This has led to cases like that of Chicago police officer Jason Van Dyke, who in 2014 killed 17-year-old [Laquan McDonald](#) by shooting him in the back as he was *7011 Dreams Way Court* ■ *Alexandria, Virginia 22315* ■ *703/440-9447* ■ *info@thomasjeffersoninst.org*

walking away. At the time, Van Dyke had been the subject of 20 complaints, ten of which alleged excessive use of force.

Or Oakland, California officer Hector Jimenez, who killed an unarmed man, shooting him three times in the back as he ran away – just seven months after Jimenez had shot and killed an unarmed 20-year-old. Despite killing two unarmed men and costing taxpayers \$650,000 in a settlement to one of the dead men’s family, he was [reinstated and given back pay](#).

You surely will remember Sgt. Brian Miller, a sheriff’s deputy who, as a gunman murdered 17 students inside Marjory Stoneman Douglas High School, hid behind his police cruiser and waited 10 minutes before radioing for help. Fired for “neglect of duty” he was [reinstated last month with full back pay](#) – estimated at more than \$138,000.

The problem is more than anecdotal.

A [2018 University of Florida study](#) updated last year examined the “before” and “after” effects of a 2003 Florida Supreme Court decision conferring collective bargaining rights on sheriffs’ deputies. It concluded that “collective bargaining rights led to a substantial increase in violent incidents of misconduct among Sheriffs’ offices.”

A [forthcoming research study](#) out of the University of Victoria’s economics department looked at the roll-out of collective bargaining rights for police at the state level over 30 years, and found the introduction of access to collective bargaining results in “a substantial increase in police killings of civilians over the medium to long run ... of whom the overwhelming majority are non-white.”

And a [2017 Duke Law Journal](#) article examined 178 union contracts, showing how “these agreements can frustrate police accountability efforts” by “limiting officer interrogations after alleged misconduct, mandating the destruction of disciplinary records, indemnifying officers in the event of civil suits and limiting the length of internal investigations.

Good police officers shouldn’t pay the price for bad cops. But overwhelming evidence shows that collective bargaining agreements create obstacles to holding bad cops accountable, and there is a growing national consensus among conservatives and liberals to eliminate these mechanisms.

The General Assembly has an opportunity in its special session to limit the scope of public safety officer collective bargaining to compensation and benefits. It should do so and stop the problem before it begins in Virginia.

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