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ROADMAP TO POLICE ACCOUNTABILITY – NCOIL

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THE PROBLEM: LACK OF ACCOUNTABILITY FOR OFFICERS WHO ENGAGE IN DANGEROUS, RISKY POLICING

It is our thesis that even if we defund, dismantle and reimagine a narrowed police force by transferring responsibilities to other professionals such as social services, healthcare and community services, we will still need a system of accountability for a police force focused more narrowly on routine, on-going and violent crimes.

1. There is no way to weed out the bad officers so that the good officers can thrive.
2. It is almost impossible to lay-off a police officer because of Union protections.
3. Officers who engage in dangerous, risky policing remain on the force and their dangerous, risky behavior escalates; when they are sued, the taxpayers bear the costs of police misconduct.

POLICE CHIEFS CANNOT

Hire

Due to civil service system

Promote

Due to civil service system

Discipline

Risk overturned by arbitrators

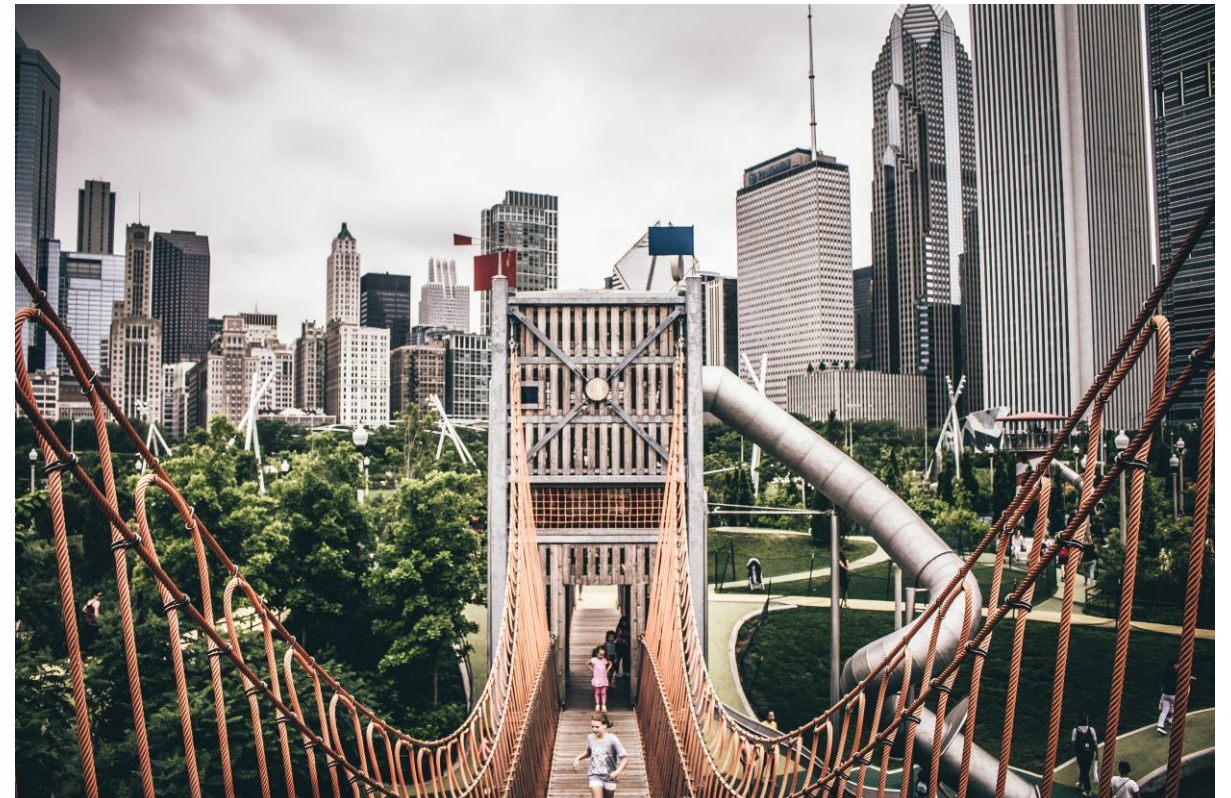
Terminate

Protected by unions

MUNICIPAL BUDGETS PAY TORT JUDGMENTS, ESP. IN LARGE CITIES

NYC paid \$384 million over 5 years (2013-2018) with \$230 million paid in just 1 year (July 2017-June 2018).

Chicago paid \$350 million for the settlement of 1,400 lawsuits over 8 years (2009-2017).



AND IN MINNEAPOLIS..

Minneapolis settled for \$20 million for a **SINGLE** case: the fatal shooting of Damond in July, 2017.



HOW AND WHY ARE TAXPAYERS BILLED FOR POLICE MISCONDUCT



When officers are sued under 42 U.S.C §1983, the parties settle the suit(s) or a judgement is entered against the officer.

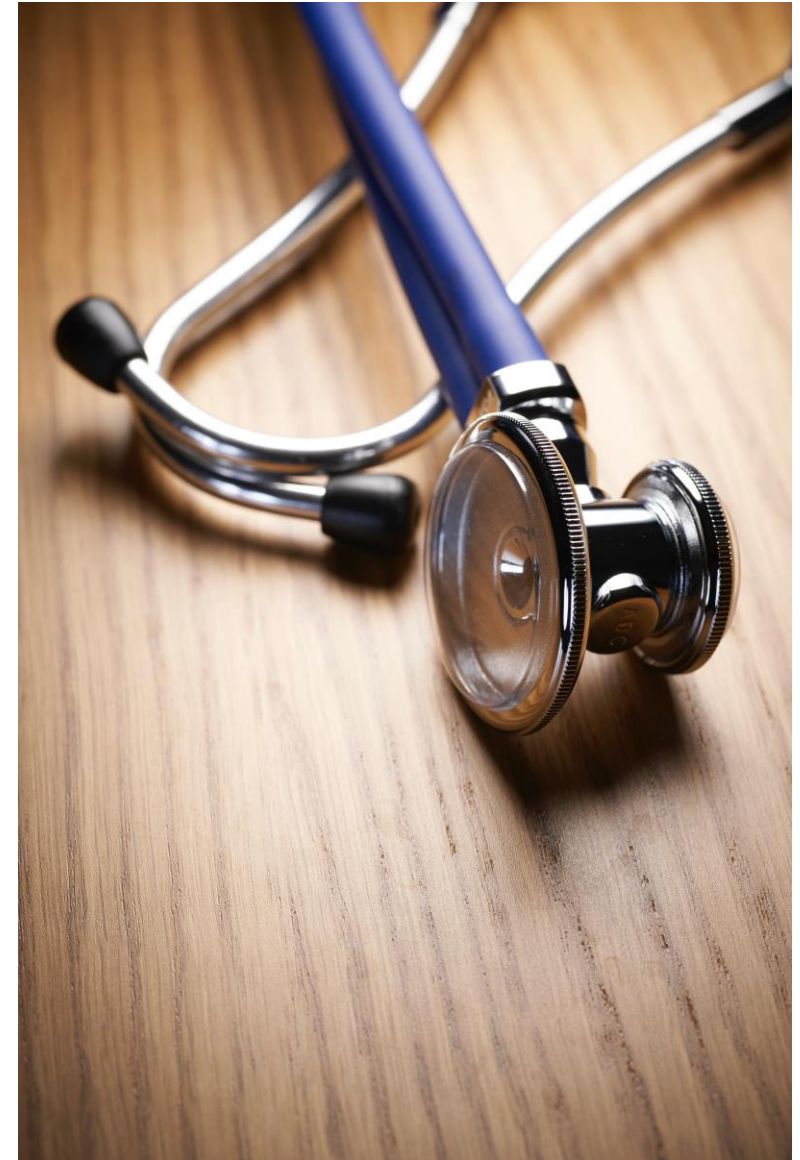
As part of collective bargaining, the Unions have negotiated that municipalities pay **all** of the costs of police misconduct.

In **99%** of the cases the police officer pays nothing.

The city pays. **We pay.**

THE IDEA: INSURING POLICE LIKE OTHER PROFESSIONALS

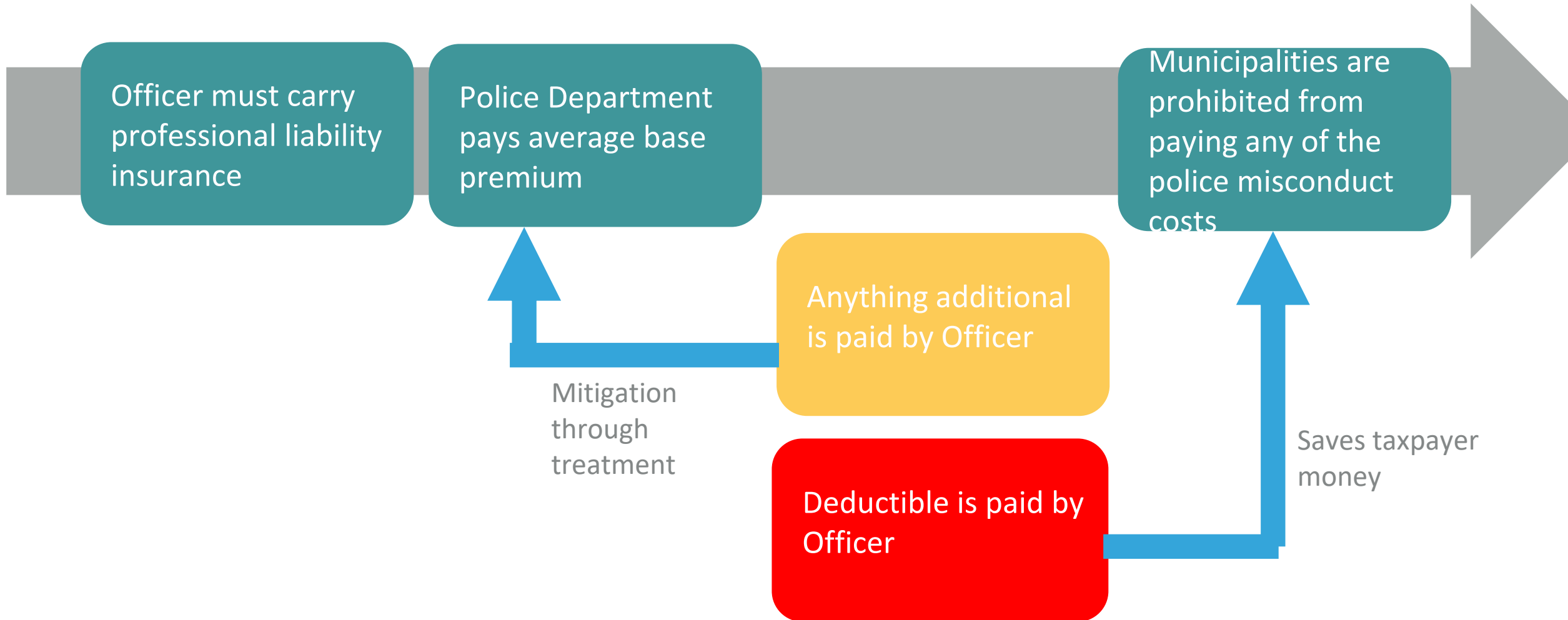
- Just the way that doctors who engage in reckless medical practices may be priced out of practicing medicine by high insurance premiums, police officers with the most dangerous histories and indicators will be priced out of policing by premiums that reflect the actual risk of their dangerous policing.
- Potential reductions or increases in premiums would provide fiscal carrots and sticks.



THE SOLUTION

- **Save lives**
 - **Prevent, detect and deter**
 - **Save money**
 - **Provide traumatized officers with treatment.**
- **How?**
 - State Legislature to limit scope of collective bargaining for police Unions and prohibit them for bargaining about hiring, discipline, termination and allocation of the cost for police misconduct.
 - Mandatory professional liability insurance for all police officers.
 - Amend 42 U.S.C §1983 : no municipality or police department can indemnify a police officer for conduct that violates this statute.
 - Police disciplinary records should be made transparent.

HOW IT WORKS – CARROTS AND STICKS



EARLY WARNING INDICATORS

Objective Indicators

Subjective Indicators



Domestic violence restraining order

Unjustified use of force

No, of settlements or judgements

Unjustified use of service revolver

Civil complaints, esp. no. of sustained complaints

Criminal convictions

Disciplinary action taken

No of times service revolver is discharged (most officers never discharge their service weapon)

Only about a quarter (27%) of all officers say they have *ever* fired their service weapon while on the job, according to a separate Pew Research Center survey conducted by the National Police Research Platform

CHAUVIN: EARLY WARNING INDICATORS



- **19** years in the force
- **18** prior complaints , **16** closed without discipline
- **2** sustained complaints
- 2007: accused of pulling woman out of her car after stopping her for 10mph over limit, put her in his squad car; squad video was off ; finding that questioning could have taken place outside.
- Involved in multiple shootings;
- 2006: Chauvin and 5 others on scene when police shot and killed suspect;
- 2008: shot domestic assault suspect, Toles; put on administrative leave pending investigation. Later placed back in field.
- 2011: on scene when police fired at a man running from another shooting

“ That is a high number [of complaints] compared to other officers.. His numbers should have definitely raised alarm with the department and triggered a review, ... most officers get one or two complaints in seven years. ” quoting Dave Bicking, a board member of Communities United Against Police Brutality, based in Twin Cities. *Source : NY T July 19, 2020 (by Kovaleski, Serge)*

CHAUVIN TRIAL – AMERICAN POLICING ON TRIAL

- Charge: third-degree murder, second-degree murder, and second-degree manslaughter for killing of George Floyd, May 25, 2020
- On October 21, 2020 the third-degree murder charge was dismissed by Hennepin County Judge Peter Cahill but has since been re-instated
- Jury: 9 women, 6 men; 9 white, 4 black, 2 multicultural
- Opening statement: Monday, March 29th.

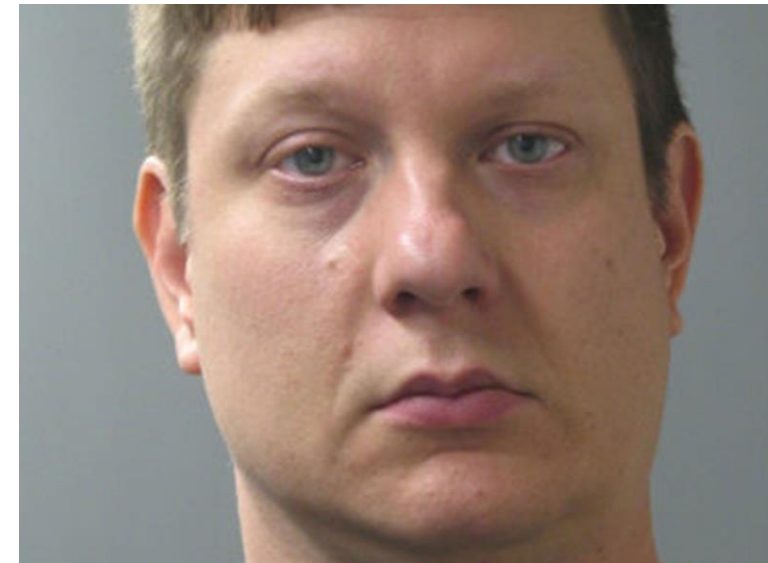
DANIEL PANTALEO: TOP 2% OF NYPD OFFICERS WITH MOST SUSTAINED CIVILIAN COMPLAINTS

- In July 2014, Pantaleo arrested Eric Garner for allegedly selling untaxed cigarettes; Garner was detained in a fatal chokehold on the sidewalk.
- **Prior lawsuits:**
 - Two separate pending lawsuits for illegal searches conducted in Feb of 2012 (substantiated by the civilian review board).
 - In Jan of 2014, city settled suit for illegal strip search.
 - In June of 2014, civil suit for crashing police car into another car.
- One prior disciplinary action (2011)



JASON VAN DYKE: TOP 3% OF CHICAGO OFFICERS BY NUMBER OF CIVILIAN COMPLAINTS

- On-duty shooting of Laquan McDonald
- In 2007, a jury awarded 350 k for excessive use of force in a traffic stop claim against Van Dyke to Edward Nance.
- At the time 20 complaints (not sustained).
- City of Chicago paid \$5 million in damages pursuant to the case.



ROADMAP TO ACCOUNTABILITY

State Legislature

Narrows the scope of collective bargaining by, as a matter of public policy, prohibiting police unions from bargaining about hiring, firing, disciplinary procedures, promotions and the allocation of payment for police misconduct lawsuits.

Requires that all police carry professional liability insurance which indemnifies them for up to one million dollars of police misconduct costs.

Prohibits municipalities from indemnifying police for police misconduct costs.

Police

Releases police disciplinary records as public records.

Officer pays a \$5,000 deductible.

Department pays the average base premium. Officers pay any additional premium costs.



THIS MODEL SAVES MUNICIPALITIES MONEY

	NYC based
No. of Officers	36,000
No. of Settlements for Police Action	2,136
Average Claim	\$10,000
Max Claim Size	\$500,000
Deductible	\$5,000
% Deductible	95%
Total Deductibles	\$10,146,000
Base Premium per officer per month	\$70
Earned Premiums	\$55,944,000
Total Payout Needed per year	\$24,300,000
Total minus deductible	\$14,154,000
% Margin	75%
Loss Ratio	25%

- Source of savings and accountability
 - Deductibles
 - Premiums in excess
 - Capped settlement
- Note: police department pays base premium so reflected savings may be less (53%)

THIS MODEL SAVES MUNICIPALITIES MONEY

- In 2019, NY municipalities paid \$95M for police misconduct for 3612 claims and 2315 settlements.
- On average, this is approximately \$2,700 per Officer.
- Thus, the professional liability insurance model is over **75%** cheaper than the existing model
- There are additional savings because of the \$0.5M cap and there will be savings because brutal misconduct will be Detected, Prevented and Deterred.

FREQUENTLY ASKED QUESTIONS

- **Can private insurance companies regulate public police?**

Insurance companies do not have any direct control over day to day of the police departments. Just as credit ratings affect rate of borrowing, insurance companies will set premium rates to reflect risk.

- **Should insurance companies be doing this?**

This is what insurance companies do. They use risk assessment tools to weed out bad actors – bad drivers, bad doctors, bad lawyers.

- **What are early warning indicators?**

Prior judgements or settlements against the officer, Drunk driving convictions, Criminal convictions, esp for assault, Prior disciplinary actions taken against the officers, Number of complaints , especially sustained complaints, Domestic violence restraining orders, Number of times a service revolver is discharged,

- **Why doesn't the police arbitration system work?**

Like juries, if an arbitrator does not keep the unions happy, they will not be selected.

- **How often do officers discharge their service revolver?**

“[O]nly about . . . (27%) of all officers say they have *ever* fired their service weapon while on the job, according to a . . . Pew Research Center survey conducted by the National Police Research Platform.”

NEXT STEPS

- Model legislation requiring police officers to carry PLI
- Report for municipal government leaders on the need to stop paying full costs of police misconduct
- Draft best practices and practical approaches: how to develop PLI coverage for officers
- Establish academic center at NUSL to study PLI
- On going data collection: police settlements per main cities, no. of officers, disciplinary records

QUESTIONS?