



Enforce Your Rights Manual:

What to know if you think police violated your rights and you want to sue



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INTRODUCTION

In Chicago and many other places, members of the public often experience injustices at the hands of the police. In some places, abuse like illegal searches and seizures and excessive force are everyday affairs. First Defense Legal Aid, which for 24 years represented persons in custody at police stations free and 24/7, has compiled a manual designed to assist the public in enforcing their civil rights when they have been violated. Police misconduct lawsuits play a vital role in the struggle for a healthy and just society—even lawsuits that seek the correction of a single wrong done by a police officer can strengthen the public’s claims to live freely and without state interference and help prevent future wrongs.

Based on interviews with local attorneys, legal workers, and FDLA attorneys’ own research and experience litigating civil rights cases, this guide will explain the basics of police misconduct litigation—litigation refers to the process of suing or being sued—including common legal terms, types of police misconduct lawsuits, factors attorneys consider when taking and pursuing a case, what to expect during this kind of litigation, general “dos and don’ts,” and steps you can take to protect yourself when you feel police have violated your civil rights.

Not every police misconduct case is the same, and, unfortunately, not every violation of your civil rights is a viable case that a lawyer will want to take. This guide is not a substitute for a lawyer, but it does give you some ground rules for what to do and what to expect in police misconduct cases.

There is a glossary of common legal terms at the end of this guide, and those terms are highlighted the first time they appear in the manual. Don’t hesitate to refer to the glossary if something isn’t clear.

Disclaimer: this guide is informational and not legal advice. Before filing a suit or giving a statement to the police about an incident, speak with an experienced civil rights attorney ASAP after you experience police misconduct.

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GENERAL DETAILS ABOUT POLICE MISCONDUCT LAWSUITS

Police misconduct lawsuits are **civil**, not **criminal**—this means you are suing public officers and public bodies, not the other way around. Unlike a criminal case, where a state’s attorney must prove guilt beyond a reasonable doubt, a civil case places the **burden** on you, but at a lower difficulty level—you must prove that it is more likely than not that your account of the events is accurate and that these events represent a violation of your **rights**. Even if it initially seems like it’s simply your word against the police’s word, there is room built in to the **litigation** process for you to investigate and back up your assertions, as well as a chance to ask police officers questions and explore any inconsistencies in their stories. Finally, because it is a civil, and not a criminal case, a police misconduct lawsuit will not directly result in a police officer or other public official being sent to prison.

Answering the question “who can I sue?” in cases for police misconduct can sometimes be tricky. Typically, a suit will proceed against a city or municipality as well as individual police officers. But, for example, you may not know the names of the officer or officers who you believe violated your rights. In those cases, it is possible to sue “John/Jane Doe” and work to reveal the identities of officers later in the legal process.

Police misconduct cases often take years to resolve, so if you bring a suit, you shouldn’t expect to see it decided quickly. This is in part because a given **judge** has many cases at the same time, because there may be multiple disagreements that the court will have to rule on before the matter is ready to be **heard** in full, and because investigating your case is a process that may take considerable time. Typically, courts set time frames for specific parts of the legal process, but these deadlines are routinely extended when requested. Finally, if one **party** believes a decision was made wrongly, they may **appeal** the decision to a higher court, delaying the outcome and further lengthening the process.

KEY POINTS – GENERAL DETAILS ABOUT POLICE MISCONDUCT LAWSUITS

- ✓ **There is a difference between civil suits and criminal suits—police misconduct suits are civil, meaning no one will go to jail at the end of it.**
- ✓ **You and your lawyer will have the opportunity to prove your story during a lawsuit.**
- ✓ **Even if you don't know the names of the officers you encountered, you may still be able to sue, but make sure you leave yourself enough time to identify them.**

A COMPLAINT, SERVICE, AND ANSWER: The Early Stage of a Police Misconduct Lawsuit

A civil rights lawsuit is typically initiated by filing a document called a **complaint**. A complaint, which is a type of legal document known as a “pleading,” outlines the factual and legal basis for a lawsuit. It will indicate who the people involved in the case are—who you are and who you are suing—as well as explain to a court why the lawsuit is being **filed** in the proper place and why that court has the power to hear it. A person initiating the complaint is called the **plaintiff**, while the persons and governmental agencies or city you are suing are the **defendants**.

The bulk of a complaint typically consists of a set of statements in which an attorney explains the factual basis underlying your **claim(s)**, followed by a brief outline of the specific “**causes of action**” your suit rests upon. Causes of action—the **laws** you are arguing the person you are suing broke, sometimes also referred to as your “claims” or your “legal claims”—might include false arrest, excessive force, battery, or malicious prosecution, all of which will be explained later in this guide. Finally, a complaint contains short statements of what you are seeking from the court, whether money to compensate you for the injustice you experienced or “injunctive **relief**” (an **injunction** is an **order** from a court that a defendant do or not do something). Complaints can be simple—you just need enough information to state a claim, not every detail.

Following your complaint, which may be “**served**,” or delivered in an official way, on the defendant(s) by a variety of methods, a defendant has a short period of time to either file their **answer** (in which they accept or **deny** the allegations of your complaint and outline legal **defenses** to your legal claims) or to file a **motion**

to dismiss the suit outright because they believe, for example, that you failed to state a legal claim or that the court does not have the ability to hear your legal claim.

KEY POINTS – THE EARLY STAGE OF A POLICE MISCONDUCT LAWSUIT

- ✓ **Lawsuits begin with the filing of your “Complaint,” which outlines the factual and legal basis for your lawsuit and what you want. The person may then file an “Answer” or a “Motion to Dismiss,” which admit or deny the facts you allege or attempt to challenge a suit entirely on legal grounds.**
- ✓ **“Legal claims,” also known as “causes of action,” are specific laws you allege police have broken.**

WHERE DO I SUE: STATE AND FEDERAL COURT CONSIDERATIONS

Police misconduct lawsuits can be filed in state or federal court, which will primarily be a decision for your attorney. The federal court covering events in Chicago and nearby places is called the District Court for the Northern District of Illinois, while state police misconduct cases are brought in either the Law, Municipal, or Chancery divisions of the Circuit Court of Cook County, which are located at the Richard J. Daley Center Courthouse, or in another relevant state court for the geographic area where the misconduct occurred.

Some misconduct lawsuits allege violations of state law, while others allege violations of the Constitution, which are considered federal claims. Often, federal and state claims are mixed together and heard at the same time by a court. Where you file may influence the nature of a lawsuit. The federal court system has more resources than the state court system, which some attorneys interviewed believed led to a smoother and more orderly process in a suit. Also, some attorneys noted that the exchange of information following the complaint and answer moved quickly in federal court. But the jury, as they say, is out: a smoother or more orderly process in federal court is not a guarantee, nor is a faster resolution. Some attorneys also believe that federal juries are less likely to be representative of the general public in, for example, the City of Chicago, because they draw from a wider geographic area, making it more difficult to get a jury that represents your community. State and Federal courthouses for Chicago are both located in the Loop. Having a conversation with your attorney about where to file a lawsuit is a wise decision.

Cases brought in Federal court primarily address conduct that violates of the [Constitution](#) or statutes of the United States; most often, in the case of potential police misconduct, this means the 4th [Amendment](#) to the United States Constitution. Essentially, the 4th Amendment protects you against unreasonable searches and seizures, whether that’s a warrantless search of your car, a wrongful arrest without probable cause, or the use of excessive force during an arrest. The 4th Amendment may also come into play if you are detained wrongfully after seeing a judge. Some Constitutional claims may involve the 1st, 14th, or other Amendments, as well.

Police misconduct civil rights cases bringing federal claims rely on Title 42, Section 1983 of the United States Code, which is a law passed by Congress during Reconstruction to give federal courts power to address the activities of the Ku Klux Klan and other racist institutions when state courts were unable or unwilling to do so. This statute is often referred to as “section 1983” and cases using it as “1983 cases.” The baseline requirements to bring a case under section 1983 are: 1) that a person was injured by someone acting “under [color of state law](#),” such as a police officer making an arrest or using force while executing their duties as a police officer; and 2) that a person’s civil rights—like the 4th Amendment right to be free from unreasonable searches and seizures—were violated.

Sometimes a police officer might have violated your rights because of a pattern of behavior, a practice, or a policy within the police department. In these situations, there is a special type of claim you can file in a section 1983 case called a “*Monell* claim.” *Monell* provides a unique way for a plaintiff to include a local [municipal](#) authority as a defendant in a suit.

Scholars and courts have outlined common ways in which a municipal agency like the City of Chicago may be made a *Monell* defendant in a police misconduct action. These are 1) when there is an official policy that authorizes the illegal misconduct; 2) when there is an informal but longstanding custom or practice authorizing the illegal misconduct; 3) when government units fail to do something that leads to the constitutional violation, such as failing to train officers, discipline officers, supervise officers, and other

failures; and 4) when a policy maker with final authority in a given area acts in a way that is then considered to be the official act of the government unit. *Monell* claims, as opposed to non-*Monell* section 1983 lawsuits, are generally more costly, time-consuming, and difficult to win.

Police misconduct cases, whether including *Monell* claims or not, may also include claims against a city for “indemnification” or “*respondeat superior*,” which are two ways to ensure that a city pays **damages** if you win your case against an individual police officer. If an indemnification or *respondeat superior* claim is successful, the city will pay damages rather than the individual officers, preventing the circumstance where a court awards you money that an individual officer or officers cannot afford to pay.

Federal courts also sometimes hear claims that would otherwise be brought in state court through a process known as supplemental **jurisdiction**; a victim of police misconduct may bring both state and federal claims simultaneously in federal court. Also, state courts in Illinois can hear claims brought under section 1983, but the person you are suing will have the option to “**remove**” the case to federal court if they prefer to litigate in federal rather than state court, a common occurrence.

KEY POINTS – WHERE DO I SUE?

- ✓ **Lawsuits may be filed in either federal or state court—discuss with your lawyer as there may be pros and cons of each.**
- ✓ **The 4th Amendment, protection against unreasonable searches and seizures, is the basis for many police misconduct lawsuits. Section 1983 is the way to sue for 4th Amendment violations.**
- ✓ **A more complex claim called a *Monell* claim may be filed alleging a pattern, practice, policy, or systemic failure by a government body like the Chicago Police Department or City of Chicago.**

COMMON POLICE MISCONDUCT CAUSES OF ACTION

As mentioned, a large portion of the causes of action you will allege in federal court, such as false arrest and excessive force, rely on your proving some violation of the Fourth Amendment. There are also state law claims that have different requirements to prove them, such as malicious prosecution, battery, and intentional infliction of emotional distress.

FALSE ARREST

Police misconduct suits often include a claim for false arrest, a claim that hinges on the allegation that police wrongfully arrested someone without probable cause. Probable cause is present when the facts and circumstances known to a police officer reasonably support a belief that a person is committing, has committed, or is about to commit a crime. Because the law of probable cause depends on whether a reasonable officer would believe that an offense has been committed, a reasonable mistake on the part of a police officer does not mean that probable cause did not exist in a given set of circumstances. Probable cause is often at issue in a false arrest claim—if there was probable cause, your claim will fail. Notably, probable cause does not depend on the officer’s motivation—an officer may have a grudge against you and still prevail to defeat your claim. If you were convicted or pled guilty to a crime related to your arrest, a false arrest claim will also fail.

EXCESSIVE FORCE

Excessive force claims are also approached under the 4th Amendment protection against unreasonable searches and seizures. Courts decide whether the force used in a given arrest or encounter is “reasonable.” This requires balancing the impact of the force on the 4th Amendment rights at issue against the government interests at stake, which are understood to include that police officers have the right to use some physical force, or the threat of physical force, as part of their role as “keepers of the peace” and public order. Courts look at the totality of the facts and circumstances surrounding a given encounter. The severity of the alleged crime, the threat allegedly posed by the suspect, and the actions of the suspect are all considered in these claims, as well as the fact that officers are often forced to make split-second decisions in tense situations. These claims are evaluated from the perspective of a “reasonable officer” on the scene, not with 20/20 hindsight; also, courts have held that the intentions of the officer are irrelevant.

WRONGFUL DEATH

A tragic and too-common type of police misconduct claim may be brought when someone is killed by the police, typically by that person's surviving relatives. Wrongful death actions may proceed under state law, or as an extreme form of "excessive force" under federal law.

MALICIOUS PROSECUTION

Malicious prosecution is a claim brought under Illinois state law. For state law malicious prosecution claims, there must have been a criminal case brought by the defendants against you that ended in a manner favorable to you and there must have been no probable cause for the government to bring the case against you. Additionally, there must be malice on the part of the police officer or government agency that brought the case against you and you must have suffered a physical, mental, emotional, or monetary **injury**. (Malice may be inferred from the absence of probable cause.)

Malicious prosecution claims may arise, for example, when an officer knowingly signs a false criminal complaint against someone that alleges probable cause where none existed and you are taken to **trial** and subsequently are not convicted. Unlike false arrest claims, the statute of limitations for malicious prosecution claims begins at the point that a criminal case is terminated in your favor, not the time of arrest.

FEDERAL MALICIOUS PROSECUTION

A federal malicious prosecution claim is a relatively new federal claim that is similar to a state malicious prosecution claim. Analyzed under the 4th Amendment, the basis for this claim is where a prosecution was started without probable cause and results in a favorable outcome (typically a dismissal or a not guilty verdict) for the defendant. The statute of limitations for this type of claim begins when a person's criminal cases ends, not at the point of an arrest or original incident. It was recognized in *Thompson v. Clark*, 142 S. Ct. 1132 (2022), and in *Smith v. City of Chicago*, 19-2725, 2022 WL 2752603, at *1 (7th Cir. July 14, 2022), *amended on denial of reh'g*, 19-2725, 2022 WL 19572962 (7th Cir. Aug. 4, 2022).

BATTERY

Battery is a state law **tort** claim that involves an unpermitted touching by another person. In order to prove that a battery occurred, you must show that you were willfully touched by the other person. You may be able to recover money damages if you suffered physical or emotional injury. In addition to defenses generally available to a defendant in a battery suit, such as self-defense or **consent**, police have defenses to battery claims related to their duties and social role, as well.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Another state law you may allege was violated is the intentional infliction of emotional distress. This type of claim, known as IIED, will be successful if you can prove that: 1) a defendant acted in a way that was extreme and outrageous; 2) that defendant intended to **cause** or knew that their actions probably would cause you severe emotional distress; and 3) that you actually suffered severe emotional distress. There is no requirement for physical injury on an IIED claim, but courts will consider physical symptoms of emotional distress.

CLASS ACTIONS VS INDIVIDUAL SUITS

In some official misconduct cases, it may make sense to sue as a group of individuals whose claims are similar from a factual and legal basis. **Class action** lawsuits have involved a group of people who sued because they were wrongfully held at Cook County jail or were wrongfully detained as part of a “stop and frisk” practice. Consult a lawyer to assess your options for a potential class action lawsuit.

DISCOVERY: THE FACT-FINDING STAGE OF A LAWSUIT

Much of the work prior to a trial consists of assembling facts through an often lengthy process called **discovery, often while simultaneously negotiating with the defendants to see if a settlement is possible**. During discovery, the lawyers for the people in the case exchange sets of written questions and requests for

documents, or may interview you, the police officers, and other **witnesses**. You can help your lawyer during this stage of the case by sharing all of the facts related to the incident with them. It is important to share as much as you can, even if some information seems irrelevant. Being honest during discovery is crucial—failing to do so can get you in trouble. It is also helpful to have the names and contact information for anyone who may have witnessed the incident and the names and contact information of any doctors you may have visited. This information will help your lawyer ask the right questions and interview the right people in the right way. As one Chicago attorney described it, discovery is somewhat akin to searching for buried treasure—the right information (the needle in the haystack) found skillfully, can significantly strengthen your case.

Additionally, during discovery, your attorney may conduct a type of formal interview with a police officer or another witness called a **deposition**. You will also be deposed by the defendants' attorneys. During a deposition, an attorney will ask the witness questions about the incident and other matters related to the case. A unique feature of depositions is that the witness must be sworn to testify truthfully and must testify to the best of their recollection. Another unique feature is that the witness has their **testimony** recorded by a court reporter. Your attorney may conduct multiple depositions over the course of the discovery process. Your attorney's depositions and written questions during discovery may draw out inconsistencies in the stories the police have told about the incident. Deposition transcripts can later be used in court for motions or trial. Depositions can be expensive, however, and the nature of an individual case may determine how many depositions, if any, are taken.

Remember: the people you have sued get to request information from and about you as well, and take your deposition, and it can feel quite intrusive. The scope of discovery is very broad, and, often, very personal information about you will be revealed in discovery. Depending on the nature of your case, and the injuries you allege, this could include opening up your medical records—including information about therapists, psychiatrists, or other medical professionals you may have seen—to scrutiny. It may involve extensive questioning about prior emotional trauma, past hospitalizations, childhood experiences, and other matters that

may seem unrelated to the case. This is particularly true if your case seeks compensation for psychological and emotional injuries. Your perception of an event—and your mental health—may be challenged and called invalid by the defendant or their experts, so be prepared, but don't be discouraged. Having an attorney at your side in this process will be a great value to you.

KEY POINTS – DISCOVERY

- ✓ **Discovery is the official process of exchanging information with the person you are suing during a lawsuit. Your attorney cannot be an effective advocate for you if they have false or incomplete information, so it is important to be honest with your attorney. Don't lie at any point in the process, including at a deposition. Let your lawyer guide the process.**
- ✓ **During discovery, you may expose inconsistencies in the police's stories, and you may even find "buried treasure"—information that totally changes a case. Discovery can also reveal potential problems in your case.**
- ✓ **Discovery may reveal very personal details about your life and otherwise feel very intrusive.**

COMMON MOTIONS

After a complaint is filed and before a case goes to trial, both sides may bring motions that ask the court to do certain things. One commonly filed motion is a motion to ask the court to dismiss the case outright. As you may expect, this type of motion is called a Motion to Dismiss. Another commonly filed motion is a motion that asks the court to rule that, based on the law, one side or the other is entitled to victory without a trial. This type of motion is called a Motion for Summary Judgment.

MOTION TO DISMISS

Motions to dismiss are filed by the person or persons you are suing prior to and are filed instead of an answer to your complaint. Rather than admitting or denying the allegations in your complaint, a person who files a motion to dismiss instead attacks the complaint itself. Motions to dismiss may be brought for a variety of reasons, including: that you failed to state a claim, that your suit was brought in a court that does not have the power to hear the claim, or that some other affirmative matter defeats your claim. Commonly, courts considering motions to dismiss do not look at the merits of a claim but rather what your lawyer wrote in the

complaint itself—did they state facts that could, at a later stage, support a winning case. Remember: a Defendant typically cannot include facts outside of what is in the Complaint to try to dismiss your suit.

MOTION FOR SUMMARY JUDGMENT

Motions for **summary judgment** are typically filed during or after discovery, and can be brought by either you, the people you’re suing, or both. In a motion for summary judgment, someone tells the court, in essence, “there is no disagreement about the important facts in the case, and, applying the law to these undisputed facts, I am entitled to win the case.” If a side is successful on one of these motions, the court enters an order of summary judgment and the case is essentially decided as if there had been a trial. It will likely still take time to resolve some issues, though, such as the amount of money damages you are entitled to. A motion for summary judgment may also only resolve some of the legal claims you’ve made, and leave others for trial. Because summary judgment is considered a “drastic” remedy, courts grant the person that does not bring the motion certain advantages, and should not grant these motions unless they believe someone is entitled to win on the law.

WHAT ARE MY DAMAGES?

Most often, civil rights lawsuits are brought with the hope of recovering a monetary amount to compensate you for the physical injuries, pain and suffering, loss of liberty, emotional damage, lost wages, destroyed property, and diminishment of your quality of life experienced as a result of the police’s actions. In cases where someone is killed by police, that person’s family may sue for loss of expected income, loss of the person’s companionship in the future, and other damages. These types of damages are called “compensatory”—they attempt to compensate you for your actual losses. If you can prove that someone’s conduct towards you was malicious, or in **reckless** disregard for your safety or rights, you may also be eligible for “punitive” damages, as well. Punitive damages serve to punish the person you are suing rather than

compensate you for your injury, and are used to set an example that warns against similar actions in the future. Putting a dollar figure on these items—compensatory, punitive, or both—is often a major issue in litigation.

There is no way to estimate with certainty how much a given case is “worth,” both because there are no absolute rules for a given incident and because the amounts involved may differ greatly depending on whether a case is settled or goes to a trial. Your attorney can, however, look at the types of injuries you suffered to understand the types of damages you may be able to recover. If you missed work and lost wages as a result of an unlawful arrest, or incurred medical bills after a violent police encounter, these damages will be recoverable if you win. If police illegally damage your property, you should be able to recover the value of that property.

Being illegally held by the police for a longer period of time naturally can lead to more damages than a shorter detention; being severely injured by police should lead to greater damages than an incident that leads to only minor injuries. There is, however, no ironclad rule. Other types of damages are even more difficult to calculate. What is the price, for example, of your emotional well-being, or your physical pain and suffering? What is the price of a person’s life, and the loss of that person’s companionship if they are killed by police? What if you suffered serious emotional trauma, but the attorney for the person you are suing is able to convince a judge or jury that your injury was not a result of the police’s actions? These are difficult questions that are resolved on a case by case basis.

In general, you should trust your lawyer’s experience when attempting to value damages in a case—their estimates of what you are likely to recover are often informed by years of experience with similar cases. Listening to your lawyer on this question and taking their advice seriously will be helpful to you, even though the ultimate decision to accept or decline a **settlement** or to take a case to trial is yours alone.

KEY POINTS - WHAT ARE MY DAMAGES?

- ✓ **Damages—how much money you are entitled to if you win a lawsuit—are a highly disputed part of a case.**
- ✓ **Depending on the situation, if you win, you can receive compensation for lost wages, emotional distress, pain and suffering, and even loss of companionship if someone is killed by police.**
- ✓ **Experienced lawyers will be familiar with “valuing” a case—take their advice seriously.**

INVESTIGATING AND DOCUMENTING THE INCIDENT

Though an experience with police may be traumatic and disorienting, if you act quickly in the aftermath of misconduct you can strengthen a potential legal case.

RECORDING IMPORTANT DETAILS

Attorneys interviewed for the preparation of this resource indicated that documenting the names and contact information of witnesses to the events can be helpful to verify your story and prove your allegations. Attorneys also emphasized documenting all injuries with photographs as soon as possible after an incident as a strategy to improve your prospects in a potential lawsuit. If you are able, visit a doctor soon after an incident of excessive force to create a medical record of the injuries you sustained.

OBTAINING PUBLIC RECORDS

The Illinois Freedom of Information Act (FOIA) is another resource to investigate a case and is available to any person free of charge. Quickly sending FOIA requests for footage from Chicago POD cameras, red light camera footage, and from officer-worn body cameras can help make sure you preserve video of the incident. In general, FOIA requests can be emailed to the relevant city department using the addresses found here: https://www.chicago.gov/city/en/narr/foia/foia_contacts.html. POD camera footage FOIAs should be sent to both the Office of Emergency Management and Communication (OEMC) and the Chicago Police Department, while dash camera, body camera, and arrest report FOIAs should be sent to the Chicago Police Department. FOIAs for 911 calls and dispatch records should be sent to OEMC. FOIAs should

include a specific description of the videos or other records you are requesting. (For an overview of the Illinois Freedom of Information Act, see the Reporters Committee for Freedom of the Press guide, available online at <https://www.rcfp.org/open-government-guide/illinois/>.)

Going to the Records Department of Chicago Police headquarters at 3510 S. Michigan Avenue, Room 1043 from 8am to 3pm and getting a copy of your arrest report, if there is one, is also an option that can assist in your case. (The police will charge money for copies of arrest reports picked up at police headquarters.)

COPWATCHING

If you see police misconduct in progress, you can consider copwatching—watching and documenting police activities from a distance—in a way that does not obstruct the police officers. Copwatching is the practice of documenting police activities in public to serve as a check on misconduct; it has a history dating back to the Black Panther Party’s Panther Patrols in the mid-late 1960s. In Illinois today, members of the public are free to record police officers in public in the course of their duties. If you copwatch, you should narrate any recordings with times, dates, locations, and descriptions of what the police are doing.

Recording a police interaction in public is a legal right, but it also carries risk. If recording a police encounter you are witnessing, obey commands from police officers to move back and give them space. If the police order you to stop filming, it may make sense to do so to protect your personal safety despite the fact that you have the right to make these videos.

It always makes sense to copwatch in pairs—having a partner can make the activity safer for you. One person should film, and the other should stand between the filmer and the police, and at a safe distance. Your partner can also film you watching the police to record additional police interactions. You should always consider risk factors—be aware of your immigration status, potential warrants, and make sure you don’t have any contraband or illegal materials with you when copwatching in case police attempt to search you.

When copwatching, and in any encounter with police, there are basic rights that every person should know. These are: 1) you have the right to leave a police encounter unless you are under arrest or being

detained; 2) you have the right to not consent to a search (though, practically speaking, you should not physically resist the police even if they are conducting an illegal search); 3) you have the right to remain silent in response to an officer's questions; and 4) you have the right to have an attorney present as soon as you are deprived of your liberty by police... i.e., as soon as you are not free to leave an encounter. Exercising these rights can be scary, but it is also very powerful. The more you practice and make them part of your consciousness, the more prepared you will be in the case of an actual encounter.

In an encounter with police while copwatching—or in any other circumstance—when the police attempt to question you, first determine whether you are being detained by asking, “am I free to go?” If police indicate that you are able to leave—even if they discourage you from doing so by saying it makes you look guilty, or tell you innocently that they “just want to ask a few questions”—you are free to walk calmly away from the situation. To protect yourself, this is often a wise decision. If police tell you that you are not free to go and attempt to search you, the next right you can assert is to be free from any unreasonable searches. You should clearly, calmly, and loudly state, “I do not consent to any searches.” It is important to remember that you should not physically resist the police, even if you believe what they are doing is illegal. If police attempt to detain you, search you, or pat you down, do not do anything that could lead to your facing criminal charges such as resisting arrest or aggravated battery to a police officer—simply state that you do not consent to the search without attempting to run or pull away.

You have the right to speak with an attorney as soon as police deprive you of your liberty—as soon as you are not free to go. When detained, you should state, “I will not talk. I want my lawyer.” in response to any questions by police.

You also have the right to remain silent when police ask you questions. You do not have to share your name, address, telephone number, or other identifying information. (If you are driving a car, however, you must show your license to officers upon request.) Although you are generally not required to provide identifying information to police in Illinois, it may once again lead to a smoother police interaction to share

your name and contact information. Regardless, once you have determined that you are not free to leave a police encounter, remaining silent is one tool you can use to protect yourself.

Knowing these rights will help you if you choose to copwatch an incident of police brutality and even if you don't.

KEY POINTS – INVESTIGATING AND DOCUMENTING THE INCIDENT

- ✓ **Document the police encounter: take photographs of injuries, get contact information of witnesses, and visit a doctor if possible, all as soon as possible after the encounter.**
- ✓ **Sending FOIA requests immediately after an event may allow you to obtain arrest reports, camera footage, and other materials relevant to a case.**
- ✓ **If copwatching, be aware of risk factors like outstanding warrants or immigration status. Know and exercise your rights (but do not physically resist police or disobey police commands).**

DOS AND DON'TS

Beyond speaking with an attorney as soon as possible after an incident occurs, there are steps you can take—and potential traps you can avoid—that will improve your chances of success in a police misconduct suit. Nearly all the attorneys consulted for the preparation of this handbook strongly advised against speaking to the press or posting anything on social media about the incident when you are considering a lawsuit until you talk with an attorney about the pros and cons of making any posts. Statements or messages you share online or with the press can possibly later be used against you by the defendants in a given case. You should also not give statements to the Civilian Office of Police Accountability (COPA, formerly known as IPRA), Chicago Police Department Internal Affairs Division (IAD), or other police investigators about the events surrounding the lawsuit without consulting with your lawyer.

Once you are represented by an attorney, you must be honest with them—giving a selective version of the truth to your legal counsel is a recipe for disaster. Also, make sure you are reliably available to help your attorney as the process moves along—this might include promptly returning phone calls, producing documents your lawyer needs for discovery or for other purposes, attending meetings on time, and generally

making it easy for your lawyer to pursue your lawsuit in the most effective way possible. Some decisions in a lawsuit—such as whether to settle—are ultimately yours, not your lawyer’s, but failing to do things like return phone calls or attend planned meetings can weaken your lawyer’s ability to represent you as well as harm the relationship between you and your counsel. Multiple attorneys interviewed for the preparation of this resource named breakdowns in communication between a client and attorney as a major obstacle they had experienced in their practice.

KEY POINTS – DOS AND DON'TS

- ✓ **Consult with a lawyer before making social media postings or speaking to the press.**
- ✓ **Consult with a lawyer before giving a statement to COPA or other police or prosecutorial body.**
- ✓ **Be honest, forthcoming, and communicative with your lawyer. Try not to miss meetings or calls.**

ROADBLOCKS TO BRINGING A LAWSUIT

Unfortunately, there are many reasons why you might have experienced injustice at the hands of police but still may not be able to achieve a victory in court. Some common reasons are that you are not able to find an attorney or that the law is not on your side despite the unjust actions of police.

One local civil rights lawyer estimated that a complicated civil rights case can take 100s or even 1000s of hours to effectively carry out from its beginning to a **judgment** at trial. Even more simple cases require significant time and energy from an attorney from start to finish. There are often costs associated with the litigation process for expert witnesses, depositions, legal research, copying, and other items. The large energy and sometimes dollar investment an attorney must make on a case poses a problem in certain situations where there was an obvious violation of rights but a relatively small amount of money at issue.

Federal law allows an attorney to recover their fees from the defendant following a successful section 1983 trial. There are no attorney’s fees available for a typical settlement—if a case settles without a trial, which

many police misconduct suits do, the attorney is typically left to take a portion of the settlement amount that may be much smaller than the attorney's costs or value of the amount of work the attorney actually performed.

Another major bar to civil rights suits is the legal “**statute of limitations**,” or SOL, for a given claim. The statute of limitations is the amount of time after your rights have been violated in which you may bring a lawsuit. For different kinds of lawsuits, this number differs, but in Illinois, federal and state civil rights suits typically leave a plaintiff one to two years to bring a claim.

The date at which the SOL starts running depends on the claim you are bringing. This is often a complicated legal question and is one reason that if you experience injustice at the hands of police, it is essential to consult a lawyer as quickly as possible. Failing to reach out for legal assistance as described elsewhere in this guide could mean you miss your chance at some form of justice due to the SOL. You could experience horrible treatment at the hands of police, but unless you file your lawsuit in a timely manner, you may be left with no legal options.

Another roadblock to a successful recovery is a defense available to police known as “**qualified immunity**.” Qualified immunity will defeat a suit even in a case where your rights were violated if it would not have been clear to a reasonable officer that they were violating a right based on established law. Qualified immunity may be available to defendants in a variety of other factual situations and consulting with an attorney on the question is essential to defeating a qualified immunity defense.

KEY POINTS – ROADBLOCKS TO BRINGING A LAWSUIT

- ✓ **Litigation can be expensive and time-consuming. A lawyer may not be able to take a given case.**
- ✓ **The encounter may have occurred too far in the past and the statute of limitations may have run.**
- ✓ **Police may have access to “qualified immunity” or another defense to your claims.**

THE PROCESS OF FINDING A LAWYER FOR A CIVIL RIGHTS CLAIM

There are many ways to look for a lawyer for a civil rights claim, though it is possible that no lawyer will take your case. As a starting point, if you believe the police have abused you or violated your rights, you

can call First Defense Legal Aid at 1-800-LAW-REP4 (1-800-529-7374) and dial the extension indicating that you have experienced police abuse and violations of your rights. FDLA operates a not-for-profit lawyer referral service that will attempt to find you representation with a private law firm. If this effort is unsuccessful, your case may be eligible for representation by FDLA attorneys as part of the organization's Civil Rights Legal Aid Program (CRLAP). Hotline answerers are available 24/7/365.

When you speak with a law office about a civil rights claim, a member of the firm's staff will typically do a brief telephone intake with you and collect the basic details of your situation. If there are no red flags, like an obvious statute of limitations issue, and the firm has capacity, the office may then have you in for an in-person consultation. The office may begin collecting evidence for a potential case before deciding to represent you, which may not always be a speedy process. If the office wants to take your case, you and they will enter into a representation agreement that outlines the responsibilities and rights of the parties. These agreements typically provide for a contingency fee—i.e., you pay nothing up front and the lawyer is reimbursed with a portion of the settlement or if they are awarded fees by the court. If you don't succeed at one firm, don't hesitate to try another. And, finally, there is another free referral service in Cook County called CARPLS that connects lawyers and clients and answers general legal questions. You can reach the CARPLS hotline at (312) 738-9200.

We hope your pursuit of justice in the courts is a successful one.

APPENDIX A

GLOSSARY OF COMMON LEGAL TERMS

Below is a list of legal terms, phrases, and other words that you may come across in this guide or in further research. This list used with permission of its publishers, the Center for Constitutional Rights and the National Lawyers Guild.

Admissible: Evidence that can be used at a trial is known as “admissible” evidence. “Inadmissible” evidence can’t be used at a trial.

Affidavit: A written or printed statement of facts that is made voluntarily by a person who swears to the truth of the statement before a public officer, such as a “notary public.”

Affirm: When the appellate court agrees with the decision of the trial court, the appellate court “affirms” the decision of the trial court. In this case, the party who lost in the trial court and appealed to the appellate court is still the loser in the case.

Allege: To claim or to charge that someone did something, or that something happened, which has not been proven. The thing that you claim happened is called an “allegation.”

Amendment (as in the First Amendment): Any change that is made to a law after it is first passed. In the United States Constitution, an “Amendment” is a law added to the original document that further defines the rights and duties of individuals and the government.

Annotation: A remark, note, or comment on a section of writing which is included to help you understand the passage.

Answer: A formal, written statement by the defendant in a lawsuit which responds to each allegation in the complaint

Appeal: When one party asks a higher court to reverse the judgment of a lower court because the decision was wrong or the lower court made an error. For example, if you lose in the trial court, you may “appeal” to the appellate court.

Brief: A document written by a party in a case that contains a summary of the facts of the case, relevant laws, and an argument of how the law applies to the factual situation. Also called a “memorandum of law.”

Burden of proof: The duty of a party in a trial to convince the judge or jury of a fact or facts at issue. If the party does not fulfill this duty, all or part of his/her case must be dismissed.

Causation: The link between a defendant’s conduct and the plaintiff’s injury or harm. In a civil rights case, the plaintiff must always prove “causation.”

Cause of Action: Authority based on law that allows a plaintiff to file a lawsuit. In this handbook, we explain the “cause of action” called Section 1983.

“Cert” or “Writ of Certiorari”: An order by the Supreme Court stating that it will review a case already decided by the trial court and the appeals court. When the Supreme Court makes this order, it is called “granting cert.” If they decide not to review a case, it is called “denying cert.”

Cf.: An abbreviation used in legal writing to mean “compare.” The word directs the reader to another case or article in order to compare, contrast or explain views or statements.

Circuit Court of Appeals: The United States is divided into federal judicial circuits. Each “circuit” covers a geographical area, and has a court of appeals. This court is called the U.S. Court of Appeals for that particular circuit.

Citation: A written reference to a book, a case, a section of the constitution, or any other source of authority.

Civil (as in “civil case” or “civil action”): In general, all cases or actions which are not criminal. “Civil actions” are brought by a private party to protect a private right.

Claim: A legal demand made about a violation of one’s rights.

Class Action: A lawsuit in which the plaintiffs represent and sue on behalf of all the people who are in the same situation and have the same legal claims as the plaintiffs.

Color of State Law: When a state or local government official is carrying out his/her job, or acting like he/she is carrying out his/her job. Acting “under color of state law” is one of the requirements of a Section 1983 action.

Complaint: The legal document filed in court by the plaintiff that begins a civil lawsuit. A “complaint” sets out the facts and the legal claims in the case, and requests some action by the court.

Consent: Agreement; voluntary acceptance of the wish of another.

Consent Order / Consent Decree: An order for an injunction (to change something the defendant is doing) that is agreed on by the parties in a settlement and given to the court for approval and enforcement.

Constitution: The supreme law of the land. The U.S. Constitution applies to everyone in this country, and each state also has a constitution.

Constitutional law: Law set forth in the Constitution of the United States or a state constitution.

Counsel: A lawyer.

Criminal (as in “criminal case” or “criminal trial”): When the state or federal government charges a person with committing a crime. The burden of proof and the procedural rules in a criminal trial may be different from those in a civil trial.

Cross-examination: At a trial or hearing, the questioning of a witness by the lawyer for the other side. Cross-examination takes place after the party that called the witness has questioned him or her. Each party has a right to “cross-examine” the other party’s witnesses.

Damages: Money awarded by a court to a person who has suffered some sort of loss, injury, or harm.

Declaration: A statement made by a witness under penalty of perjury.

Declaratory Judgment: A court order that sets out the rights of the parties or expresses the opinion of the court about a certain part of the law, without ordering any money damages or other form of relief for either side.

Default judgment: A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant: The person against whom a lawsuit is brought.

Defense: A reason, stated by the defendant, why the plaintiff should lose a claim.

Deliberate Indifference: The level of intent that you must show the defendants’ had in an Eighth Amendment claim. It requires a plaintiff to show that a defendant (1) actually knew of a substantial risk of serious harm, and (2) failed to respond reasonably.

De Minimis: Very small or not big enough. For example, in an Eighth Amendment excessive force claim, you need to prove an injury that is more than de minimis.

Denial: When the court rejects an application or petition. Or, when someone claims that a statement offered is untrue.

Deposition: One of the tools of discovery. It involves a witness giving sworn testimony in response to oral or written questions.

Dictum: An observation or remark made by a judge in his or her opinion, about a question of the law that is not necessary to the court’s actual decision. Future courts do not have to follow the legal analysis found in “dictum.” It is not “binding” because it is not the legal basis for the judge’s decision. Plural: “Dicta”

Direct Examination: At a trial or hearing, the questioning of a witness by the lawyer or party that called the witness. The lawyer conducts “direct examination” and then the lawyer for the other side gets the chance to “cross examine” that same witness.

Discovery: The process of getting information which is relevant to your case in preparation for a trial.

Discretion: The power or authority of a legal body, such as a court, to act or decide a situation one way or the other, where the law does not dictate the decision.

Disposition: The result of a case; how it was decided.

Document Request: One of the tools of discovery, allows one party to a lawsuit to get papers or other evidence from the other party.

Due process: A constitutional right that guarantees everyone in the United States a certain amount of protection for their life, liberty and property.

Element: A fact that one must prove to win a claim.

Enjoining: When a court orders a person to perform a certain act or to stop performing a specific act. The order itself is called an “injunction.”

Evidence: Anything that proves, or helps to prove, the claim of a party. “Evidence” can be presented orally by witnesses, through documents or physical objects or any other way that will help prove a point.

Exclude from evidence: The use of legal means to keep certain evidence from being considered in deciding a case.

Excessive Force: more force than is justified in the situation.

Exhaustion of Administrative Remedies: the requirement that a prisoner use the prison grievance system to make (and appeal) a complaint before filing a lawsuit. One of the requirements of the Prison Litigation Reform Act.

Exhibit: Any paper or thing used as evidence in a lawsuit.

Federal law: A system of courts and rules organized under the United States Constitution and statutes passed by Congress; different than state law.

File: When you officially send or give papers to the court in a certain way, it is called “filing” the papers.

Finding: Formal conclusion by a judge or jury on an issue of fact or law.

Footnote: More information about a subject indicated by a number in the body of a piece of legal writing which corresponds to the same number at the bottom of the page. The information at the bottom of the page is the “footnote.”

Frivolous: Something that is groundless, an obviously losing argument or unbelievable claim.

Grant: To allow or permit. For example, when the court “grants a motion,” it allows what the motion was asking for.

Habeas Corpus (Habeas): An order issued by a court to release a prisoner from prison or jail. For example, a prisoner can petition (or ask) for “habeas” because a conviction was obtained in violation of the law. The “habeas writ” can be sought in both state and federal courts.

Hear: To listen to both sides on a particular issue. For example, when a judge “hears a case,” he or she considers the validity of the case by listening to the evidence and the arguments of the lawyers from both sides in the litigation.

Hearing: A legal proceeding before a judge or judicial officer, in some ways similar to a trial, in which the judge or officer decides an issue of the case, but does not decide the whole case.

Hearsay: Testimony that includes a written or verbal statement that was made out of court that is being offered in court to prove the truth of what was said. Hearsay is often “inadmissible.”

Holding: The decision of a court in a case and the accompanying explanation.

Immunity: When a person or governmental body cannot be sued, they are “immune” from suit.

Impartial: Even-handed or objective; favoring neither side.

Impeach: When one party presents evidence to show that a witness may be lying or unreliable.
Inadmissible evidence: Evidence that cannot legally be introduced at a trial. Opposite of “admissible” evidence.

Injunction: An order by a court that a person or persons should stop doing something, or should begin to do something.

Injury: A harm or wrong done by one person to another person.

Interrogatories: A set of questions in writing. One of the tools of discovery.

Judge: A court officer who is elected or appointed to hear cases and make decisions about them.

Judgment: The final decision or holding of a court that resolves a case and determines the parties’ rights and obligations.

Jurisdiction: The authority of a court to hear a particular case.

Jury: A group of people called to hear a case and decide issues of fact.

Law: Rules and principles of conduct set out by the constitution, the legislature, and past judicial decisions.

Lawsuit: A legal action that involves at least one plaintiff, making one or more claims, against at least one defendant.

Liable: To be held responsible for something. In civil cases, plaintiffs must prove that the defendants were “liable” for unlawful conduct.

Litigate: To participate in a lawsuit. All the parts of a lawsuit are called “litigation” and sometimes lawyers are called “litigators.”

Majority: More than half. For example, an opinion signed by more than half the judges of a court is the “majority opinion” and it establishes the decision of the court.

Material evidence: Evidence that is relevant and important to the legal issues being decided in a lawsuit.

Memorandum of law: A written document that includes a legal argument, also called a “brief.”

Mistrial: If a fundamental error occurs during trial that cannot be corrected, a judge may decide that the trial should not continue and declare a “mistrial.”

Moot: A legal claim that is no longer relevant is “moot” and must be dismissed.

Motion: A request made by a party to a judge for an order or some other action.

Municipality: A city or town.

Negligent or Negligence: To be “negligent” is to do something that a reasonable person would not do, or to not do something that a reasonable person would do. Sometimes a party needs to prove that the opposing party in the suit was “negligent.” For example, if you do not shovel your sidewalks all winter when it snows, you may be negligent.

Notary or Notary Public: A person who is authorized to stamp his or her seal on certain papers in order to verify that a particular person signed the papers. This is known as “notarizing the papers.”

Notice or Notification: “Notice” has several meanings in the law. First, the law often requires that “notice” be given to an individual about a certain fact. For example, if you sue someone, you must give them “notice” through “service of process.” Second, “notice” is used in cases to refer to whether an individual was aware of something.

Objection: During a trial, an attorney or a party who is representing him/herself pro se may disagree with the introduction of a piece of evidence. He or she can voice this disagreement by saying “I object” or “objection.” The judge decides after each objection whether to “sustain” or “overrule” the objection. If the judge sustains an objection it means the judge, based on his or her interpretation of the law, agrees with the attorney raising the objection that the evidence cannot be presented. If an objection is “overruled” it means the judge disagrees with the attorney raising the objection and the evidence can be presented.

Opinion: When a court decides a case, a judge writes an explanation of how the court reached its decision. This is an “opinion.”

Order: The decision by a court to prohibit or require a particular thing.

Oral arguments: Live, verbal arguments made by the parties of a case that a judge may hear before reaching a decision and issuing an opinion.

Overrule: To reverse or reject.

Party: A plaintiff or defendant or some other person who is directly involved in the lawsuit.

Per se: A Latin phrase meaning “by itself” or “in itself.”

Perjury: The criminal offense of making a false statement under oath.

Petition: A written request to the court to take action on a particular matter. The person filing an action in a court or the person who appeals the judgment of a lower court is sometimes called a “petitioner.”

Plaintiff: The person who brings a lawsuit.

Precedent: A case decided by a court that serves as the rule to be followed in similar cases later on. For example, a case decided in the United States Supreme Court is “precedent” for all other courts.

Preponderance of evidence: This is the standard of proof in a civil suit. It means that more than half of the evidence in the case supports your explanation of the facts.

Presumption: Something that the court takes to be true without proof according to the rules of the court or the laws of the jurisdiction. Some presumptions are “rebuttable.” You can overcome a “rebuttable presumption” by offering evidence that it is not true.

Privilege: People may not have to testify about information they know from a specific source if they have a “privilege.” For example, “attorney-client privilege” means that the information exchanged between an attorney and his or her client is confidential, so an attorney may not reveal it without the client’s consent.

Proceeding: A hearing or other occurrence in court that takes place during the course of a dispute or lawsuit.

Pro se: A Latin phrase meaning “for oneself.” Someone who appears in court “pro se” is representing him or herself without a lawyer.

Question of fact: A dispute as to what actually happened. It can be contrasted to a “question of law.”

Qualified Immunity: a doctrine that protects government officials from liability for acts they couldn’t have reasonably known were illegal.

Reckless: To act despite the fact that one is aware of a substantial and unjustifiable risk.

Record (as in the record of the trial): A written account of all the proceedings of a trial, as transcribed by the court reporter.

Regulation: A rule or order that manages or governs a situation. One example is a “prison regulation.”

Relevant / irrelevant: A piece of evidence which tends to make some fact more or less likely or is helpful in the process of determining the truth of a matter is “relevant.” Something that is not at all helpful to determining the truth is “irrelevant.”

Relief: The remedy or award that a plaintiff or petitioner seeks from a court, or a remedy or award given by a court to a plaintiff or petitioner.

Remand: When a case is sent back from the appellate court to the trial court for further action or proceedings.

Remedy: Same as “relief”.

Removal: When a defendant transfers a case from state court to federal court.

Respondent: The person against whom a lawsuit or appeal is brought.

Retain: To hire, usually used when hiring a lawyer.

Reverse: When an appellate court changes the decision of a lower court. The party who lost in the trial court and then appealed to the appellate court is now the winner of the case. When this happens, the case is “reversed.”

Right: A legal entitlement that one possesses. For example, as a prisoner, you have the “right” to be free from cruel and unusual punishment.

Sanction: A penalty the court can impose when a party disobeys a rule or order.

Service, “service of process” or “to serve”: the physical act of handing something over, or delivering something to a person, as in “serving legal papers” on a person.

Settlement: when both parties agree to end the case without a trial.

Shepardizing: Method for determining if a case is still “good law” that can be relied upon.

Standing: A requirement that the plaintiff in a lawsuit has an actual injury that is caused by the defendant’s alleged action and that can be fixed by the court.

Statute: A law passed by the U.S. Congress or a state legislature.

Statute of limitations: A law that sets out time limitations within which different types of lawsuits must be brought. After the “statute of limitations” has run on a particular type of lawsuit, the plaintiff cannot bring that lawsuit.

Stipulation: An agreement between the plaintiff and the defendant as to a particular fact.

Subpoena: An official court document that requires a person to appear in court at a specific time and place. A particular type of “subpoena” requires an individual to produce books, papers and other things.

Summary judgment: A judgment given on the basis of pleadings, affidavits or declarations, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.

Suppress: To prevent evidence from being introduced at trial.

Testimony: The written or oral evidence given by a witness under oath. It does not include evidence from documents or objects. When you give testimony, you “testify.”

Tort: A “wrong” or injury done to someone. Someone who destroys your property or injures you may have committed a “tort.”

Trial: A proceeding that takes place before a judge or a judge and a jury. In a trial, both sides present arguments and evidence.

v. or vs. or versus: Means “against,” and is used to indicate opponents in a case, as in “Joe Inmate v. Charles Corrections Officer.”

Vacate: To set aside, as in “vacating the judgment of a court.” An appellate court, if it concludes that the decision of the trial court is wrong, may “vacate” the judgment of the trial court.

Vague: Indefinite, or not easy to understand.

Venue: the specific court where a case can be filed.

Verdict: A conclusion, as to fact or law, that forms the basis for the court’s judgment.

Verify: To confirm the authenticity of a legal paper by affidavit or oath.

Waive or waiver: To give up a certain right. For example, when you “waive” the right to a jury trial or the right to be present at a hearing you give up that right.

Witness: a person who knows something which is relevant to your lawsuit and testifies at trial or in a deposition about it.

Writ: An order written by a judge that requires a specific act to be performed, or gives someone the power to have the act performed. For example, when a court issues a writ of habeas corpus, it demands that the person who is detaining you release you from custody