



HOW TO APPROACH POLICE MISCONDUCT AND SEEK POLICE REFORM

A Guide for
Police Reform
from the ACLU
of Northern
California

DRAFT

2007

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September 2007

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A SUMMARY GUIDE FROM THE ACLU OF NORTHERN CALIFORNIA

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Introduction

While most police officers do an admirable job, in communities throughout California, police misconduct remains a serious problem. Whether it is racial profiling, excessive force, unwarranted surveillance, or any number of other issues, there are several things that community members and organizations can do to advocate on behalf of victims of police misconduct and in support of reforms.

This guide is not intended to be a comprehensive analysis of how to organize around the whole range of policing issues, but rather presents an overview of some strategies that individuals and community groups can employ when they witness police misconduct, receive police misconduct complaints, or want to change a pattern of practice within a department.

A word of caution – because of the current state of the law as well as the hurdles that must be overcome to pursue litigation – mechanisms for seeking meaningful relief in the courts for most police related complaints are very limited. While serious cases that result in significant damages may be suitable candidates for lawsuits, most situations will not wind up in the courts.

Additionally, the recent California Supreme Court decision *Copley Press v. Superior Court* has resulted in the closure of records of police complaints and discipline.

In this context, community action and advocacy are more important than ever to holding police departments accountable for misconduct.

Range of Police Complaints

Community groups and organizations may receive complaints on a wide variety of police-related issues. They may range from relatively minor complaints about discourtesy to more serious allegations about racial profiling, improper arrest or detention, and use of force including officer involved shootings.

Other times, groups will learn about incidents through the press and will want to find out more about what happened and see if there is some way to help.

However a complaint is received, any work on the issue will generally fall into one of two—often overlapping—categories:

1. Support for individual complainants; and,
2. Advocacy on broader policy issues.

Preliminary Considerations in Individual Cases

When you receive a misconduct complaint, there are several steps that should be taken before pursuing any particular course of action.

First, it is important to assess whether the police action that is the subject of the complaint is potentially illegal or in violation of a departmental policy. There is little that can be done, for example, about complaints for a traffic violation if the individual committed the violation. You will also want to determine whether or not the police conduct is the type of activity that your organization is interested in pursuing. Get the full picture of the complaint and incident. You do not want to be surprised by information released by a representative of the police department in response to your advocacy.

Second, if the complaint involves serious injuries you should make sure that the complainant photographs the injuries and seeks appropriate medical care. If the complaint is serious, you should also



refer the individual to an attorney referral service. Bay Area Police Watch has a lawyer referral panel. Their phone number is 510.428.3939. The National Lawyer's Guild also has an on-line list of attorneys that handle police misconduct cases. It can be found at <http://www.nlg-npap.org/>.

Third, if you are going to advocate on behalf of a particular complainant, it is important to gather as much information as possible about what happened. Are there any supporting documents or witness that the complainant has? If there are witnesses, talk with them to get a fuller picture of what happened.

Fourth, even if the complaint is not one you are interested in pursuing, you can still explain to the complainant how to file a complaint with internal affairs or a civilian oversight agency if one exists (see below for details on this).

STEP 1

Assess whether the police action, subject to the complaint, is potentially illegal or in violation of a departmental policy.

STEP 2

Photograph any injuries, seek appropriate medical care, and contact lawyer referral service, if appropriate.

STEP 3

Gather as much information as possible about what happened.

STEP 4

File a complaint with internal affairs of the police department or a civilian oversight agency.

What You Can Do in Individual Cases

Once you determine that you want to advocate on behalf of an individual complainant, there are a number of steps you can take. All of them have benefits and drawbacks. You will want to consider your and the complainants' goal—Is it to get an apology from the department? Is it to see the officer disciplined? Is it merely to find out how a situation developed, or is it to effect a broader policy change? Decisions about which strategies to pursue should be made while taking into account your goals.

Filing a Citizen Complaint

Every police and sheriff department in the state of California is required to have a mechanism for receiving complaints from members of the public. They are required to make complaint forms available. Some jurisdictions such as Oakland, Berkeley, San Jose, and San Francisco have civilian oversight agencies (which are external bodies, not governed by the police and sheriff departments) that receive and/or investigate complaints. For most jurisdictions, however, the only avenue to lodge a complaint is with the police or sheriff department's internal affairs unit.

Filing a complaint with the police or sheriff department can often be intimidating for police misconduct victims – especially in smaller communities. You can assist in filing the complaint by helping the person get the form, document what happened, and turning in the complaint form.

Some departments take complaints more seriously than others and, since the whole process is internal and confidential, it is difficult to gauge whether the internal affairs unit is doing a thorough job or not.

Nonetheless, the filing of a complaint still serves important functions. Complaints become part of an officers' file and can effect future assignments and promotional decisions. Further, complainants are entitled to a letter indicating whether or not the complaint was sustained or not—meaning, if the officer was found accountable for the actions alleged in the complaint. Because complaint information is now otherwise confidential under the *Copley Press v. Superior Court* decision, this is the only window we have into how an agency treats complaints.

IT IS IMPORTANT TO FILE COMPLAINTS:

1. Complaints become part of an officers' file and can effect future assignments and promotional decisions.
2. Complainants are entitled to a letter indicating whether or not the complaint was sustained or not—the only window the public has into how complaints are treated.

If you are working with a complainant, encourage them to give you a copy of the complaint along with any letter of decision they receive from the department to retain. This information can be used for tracking patterns of conduct within a department.

Filing a Public Records Act Request

In addition to filing a citizen complaint, you can also seek information about the incident under the California Public Records Act, Government Code 6254, et seq. Under the Records Act, anyone can seek documents (video and electronic communication count as documents) from government agencies including the police department.

To file a public records act request, simply write a letter citing the Act (California Public Records Act, Government Code 6254, et seq) and requesting records. It is best to be as specific as possible about what you are requesting. For example, you could ask for the police report, any use of force reports, computer assisted dispatch (CAD) tapes and printouts, video, and other relevant police records.

The benefit of a records request is that you are asking questions about a case, putting the department on notice that there is another organization monitoring what the department is doing.

The only problem is that the public records act has a very broad exemption for certain law enforcement records that the department may cite to withhold records. However, the exception is discretionary, meaning that the department can provide the records to you. If the records are not provided, consider additional advocacy steps (see below) to pressure the department to make more information public.

To file a Public Records Act Request from your police or sheriff department, write a letter to the department and be sure to:

- 1. Cite the Act**
"California Public Records Act, Government Code 6254, et seq"
- 2. Request Records**
Request the records you are looking for, being as specific as possible.

For more information on how to file requests for records under the public records act, visit the websites for Californians Aware at <http://www.calaware.org/> or the California First Amendment Coalition at www.cfac.org.


What You Can Do to Achieve Policy Reforms

Often police complaints will raise policy issues – how is the police department using certain types of force, how do they determine how traffic stops are made, what type of accountability mechanisms does the department have, etc. Individual complainants may also be interested in changing police policy and the combination of their complaint and individual story coupled with additional information and strategies may result in important changes in police policy.

Before approaching a police department about changing policy, however, several things should be done.

Background Research

Before meeting with policy makers, it is important to be prepared. Do some basic research on similar police related problems in the area, reaching out to other community groups and researching articles in the local paper.



Second, take a look at what the policy is in the department. You can get copies of departmental policies by filing a public records act request (see above). Again, be specific in what you are asking for and make sure to ask for training materials, informational bulletins, and departmental general orders.

Third, take a look at what the best practices are in the area. If you are looking at the department's use of force policy, for example, it would be helpful to know which departments have better more protective policies.

There are several places to go for this type of information. The ACLU of Northern California has information about a number of topics on our website www.aclunc.org. Other groups that have information about police policies include the Police Assessment Resource Center at www.parc.info, the Police Executive Research Forum (a police think tank) at www.policeforum.org, and the International Association of Chiefs of Police at www.iacp.org. Each of these organizations approaches issues from a different perspective so make sure to consider that when looking at their materials.

Visit the following websites for information on what the best practices are for police policy:

- **ACLU of Northern California:** www.aclunc.org
- **Police Assessment Resource Center:** www.parc.info
- **Police Executive Research Forum:** www.policeforum.org
- **International Association of Chiefs of Police:** www.iacp.org

Prepare for a Meeting with the Police/Sheriff Department

After finishing your background research, you will want to meet with the police or sheriff department. It is important to meet with the department before going to the press or city council as doing so will make it more likely that he or she will be receptive to your requests; and if you go to City Council first, it is likely that they will tell you to meet with the Department first anyway. Things that can be done in advance of your meeting include:

- **Reaching out to other community groups.** The more people that are supporting your reform efforts, the greater the likelihood of success. A police chief is more likely to be responsive to concerns if they are coming from a large segment of the community as opposed to one individual or organization. Potential allies include the faith community, other local community groups, and chapters of state and national organizations such as the ACLU, NAACP, LULAC, or Democracy for America.

- **Create a written document outlining your concerns and proposed recommendations.** It is important to document your request (and when it was made) and it will create a starting point for discussions with the police chief. Talk with your coalition partners and agree on a strategy of how to approach the meeting and then either make a call or send a letter requesting a meeting.

Meeting with the Department

Police reform takes time and it is very unlikely that the chief (or representative) will commit to anything in the first meeting.

Persistence is key. Get assurances for next steps and timelines for how the department will move forward on the issue. Even when assurances are made, they are often vague and open ended. It is important to be clear about what is being requested, what is being committed to, and how the department intends to proceed.

When meeting with the police or sheriff department, it is important to be clear about:

- **What is being requested;**
- **What is being committed to; and,**
- **How the department intends to proceed.**

Additional Steps and Things to Consider

This guide outlines the initial steps that can be taken to advocate on behalf of victims of police misconduct and pursue reforms; however, this guide is not exhaustive. If you do not get a positive initial response, there are several additional tactics that you can employ. Here is a list of a few of them and some resources for where you can find additional information:

Create a Plan and Get Organized

Work with coalition allies to create a plan of how you intend to move the issue. Make a tentative timeline with realistic goals of when you hope things to happen by.

Approach Government Officials

Members of city councils and boards of supervisors may be good people to approach for help on these issues. They need to approve police and sheriff's budgets and have influence (direct influence in the case of city councils) over police policy. Find out who the most potentially sympathetic and influential members of the council or board are and set up a meeting with them or their staff. Try to enlist their help in moving the issue forward.

Go to the Press

The media extensively covers police related issues – especially local newspapers and television. Consider holding a press conference with victims and allied organizations, or, simply pitch the story to the reporter who covers crime and justice issues. Media coverage will get the attention of public officials and increase the chances of your getting a timely response from the police department.

Especially if you are trying to get access to basic information, the press can be a real ally. You can ask if they will do an editorial or you can write an opinion piece or letters to the editor.

Put Pressure on Your Target

Whether your target is a police chief, sheriff, Mayor or member(s) of a city council or board of supervisors, they are all in some way accountable to the public. Work with allied organizations to generate letters, phone calls, and e-mails to your target highlighting the problem and the need for reform.

Reach Out to Law Enforcement

Depending on the size of the department, there may be police organizations sympathetic to your position. Organizations such as the National Black Police Officers Association and the National Organization of Black Law Enforcement Executives have long histories of supporting police reforms and expanding civil rights protections.

Seek Other Resources

Finally, do not rely on this guide alone. There are additional resources that you can consult in determining how to pursue this issue. The best

and most comprehensive is a manual published by Policy Link, and written by current ACLU-NC Executive Director Maya Harris, called *Organized for Change, The Activist's Guide to Police Reform*. It contains over 100 pages of strategy considerations and examples of successful police reform efforts.

You can also contact the ACLU of Northern California's Police Practices Project at (415) 621-2493 for advice, sample letters, and policy ideas. In certain cases, we may be able to help you pursue the policy change you are working towards.

Resources

Regional Organizations

ACLU of Northern California	www.aclunc.org	415.621.2493
National Lawyers Guild	http://www.nlgsf.org/	415.285.1041
Bay Area Police Watch	http://ellabakercenter.org/	510.428.3939

Local Organizations

People United for a Better Oakland	http://www.peopleunited.org/	510.452.2010
Copwatch (Berkeley)	http://www.berkeleycopwatch.org/contactus.htm	510.548.0425
Central California Criminal Justice Committee (Fresno)	www.cccjc.org	
Idriss Stelley Foundation	iolmisha@cs.com	415.595.8251

Most communities have local chapter of national/statewide organizations, such as:

NAACP	http://www.naacp.org/unitfinder/community.html	
ACLU-NC Chapters	http://www.aclunc.org/action/chapters/index.shtml	
LULAC	http://www.calulac.org/about_us.html	

