



National Police Accountability Project

A Project of the National Lawyers Guild

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About This Manual

This manual is intended to provide victims of police misconduct with an overview of the remedies they have available and of what to expect and prepare for if they decide to take legal action. It is limited to information that is generally applicable to police misconduct cases in the United States.

The table of contents contains a summary of each section and reading it will give you a broad synopsis of the information in the manual. Read the full sections for more details. If you are using a computer, you can go directly to any of the sections by clicking on the title in the table of contents.

Find an attorney in your area by going to the NPAP website at <http://www.nlg-npap.org/find-an-attorney> and entering your state in the drop-down list.

Keep in mind that the information in this guide is not a substitute for legal advice from a civil rights attorney. We highly recommend that you speak to a civil rights lawyer about the specific facts of your case before taking any action. Additionally, if you have criminal charges pending against you, you should talk to your criminal defense attorney to find out if any civil action you are considering might have negative consequences on your pending case.

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One of the most important ways that people deal with serious police misconduct is by filing a civil suit, commonly referred to as a lawsuit, in order to recover money for the damage that was done to them. When you file a civil suit, you are the plaintiff and the police are the defendants. You will have an opportunity to present evidence that the police acted badly, and that their bad acts harmed you in a way that deserves compensation. Civil suits can result in damages payments by the municipality to the plaintiff and ideally deter future police mis-conduct. However, the law governing this kind of lawsuit is complicated and the city and police department will usually fight hard in court. It is very important to find a lawyer who has experience litigating police misconduct cases to help you bring your case.

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One of the most important reasons to talk to a lawyer as soon as possible is that there are strict deadlines for civil suits. These deadlines are different depending on what state you are in. As more time passes, some of your options will no longer be available, and it may become impossible to bring a lawsuit even if the misconduct that you experienced would otherwise make a strong case.

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It is important to gather as much evidence as possible for your case. Take high-quality pictures of any visible injuries. Get names and contact information of witnesses if possible. If you know of photo or video evidence in somebody else's possession, you should make sure these people keep that evidence or share it with you. If you need to track down evidence or witnesses, it is a good idea to get a lawyer to help you. Don't talk about the incident on social media websites like Facebook, in email, in text messages, etc., unless your lawyer tells you it is ok to do so, which is unlikely! Your statements can provide unexpected help to the police defense team.

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Most police misconduct attorneys work on a contingency fee basis, meaning they get paid according to whether and how much they win for you. This arrangement works to your benefit because you will not have to pay in advance but it also means that the attorney has to evaluate cases very carefully. To increase your chances of getting a lawyer to take your case, you should talk to one as soon as possible after an incident; don't miss appointments or show up late; bring documents such as an arrest report or medical records if you have them; be honest with your attorney and don't withhold information from him/her. It is especially important to let your attorney know if there are criminal charges pending against you.

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If you decide that you do not want to file a lawsuit, or if a lawsuit is not feasible for other reasons, there are some other options to hold police accountable. These options might help deter future misconduct or result in punishment of the officers who harmed you. You can also pursue one or more of these options in addition to a lawsuit, but make sure you ask your lawyer if it is a good idea first.

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Many cities have review boards that accept complaints about misconduct by police officers. The procedures and degree of investigation that a review board uses vary widely from place to place. One important thing that filing a complaint with a review board will do is create a record of the incident. Creating a record can be a deterrent to future misconduct. If you are planning on filing a lawsuit, you should make sure that you talk to your attorney before filing a review board complaint, because any statements that you make can be used against you.

File an Internal Affairs Complaint 10

If a police department is seriously committed to addressing misconduct, internal affairs complaints would, ideally, result in some remedial action such as additional training, discipline or termination of the problem officer. However, internal affairs investigations are notoriously biased in favor of the officer and departments are often more interested in protecting their officers than in holding them accountable. Be sure to talk to your attorney beforehand if you are filing a lawsuit, because the police department will definitely use your words against you if you give them the opportunity.

File a Complaint With a Prosecutor11

If a police officer's misconduct is bad enough to be a crime, only a state or federal prosecutor has the authority to start a criminal proceeding. It is generally very difficult to convince a prosecutor to investigate because state prosecutors work closely with police officers and depend on their cooperation. While federal prosecutors may be more independent of local police, they only pursue a small number of cases and require very strong evidence of serious misconduct.

File a Complaint with the US Department of Justice 12

The Department of Justice (DOJ) may investigate a law enforcement agency if there is evidence that the entire department has longstanding policies or practices that seriously violate citizens' rights. DOJ investigations can lead to major changes in police departments, but the DOJ undertakes only a few investigations at a time in the entire country. A single complaint of police misconduct will not be enough to get the DOJ to investigate.

Small Claims Court 13

If the amount of damage that you suffered from a police misconduct incident is small, you may consider filing your lawsuit in small claims court. Small claims proceedings vary by state, but they will always have a limit to the amount of money that can be recovered. Small claims court can be easier and less expensive than an ordinary lawsuit, but you should talk to a lawyer to make sure that you are not losing your chance to recover a larger amount. A lawyer may also be able to refer you to groups in your area that assist individuals who file small claims.

I. A Civil Suit

Because of the enormous power that we as a society entrust to police officers, an incident of police misconduct can cause a great deal of harm to its victim. Even if no physical injuries are involved, time spent wrongfully arrested or making mandatory court appearances can have serious work, school, or personal repercussions. Even if you are not arrested or charged, police misconduct can be a frightening and demeaning experience. If you are a victim of police misconduct, you might be considering whether to file a civil lawsuit, especially if you have sustained physical injuries or economic damages.

A civil suit is a complaint that you file against somebody who has violated a duty that they owed you. One of the duties police owe you is to not violate your constitutional rights. Once you or your lawyer files the complaint with a court, you become the plaintiff, and the person or people that you have filed the complaint against are the defendants. A civil complaint differs from a criminal charge in a number of important ways, the most important being that *anybody* can bring a civil suit. Although an individual can file a criminal complaint with the police or with a district attorney, it is ultimately the district attorney's decision whether or not to press charges.

A civil suit can involve either federal or state law claims, or both, as is frequently the case for police misconduct cases. It can also be brought in either state or federal court, although bringing it in federal court requires at least one federal claim. There will usually be a choice between federal or state court based on a number of factors, which your attorney can go over with you.

Federal claims are brought under section 1983 of title 42 U.S. Code (written as 42 U.S.C. § 1983) a section of the Civil Rights Act of 1871 that allows individuals to sue for violations of constitutional rights by somebody acting under state authority such as a police officer. Common state law claims against police officers include assault, battery, and false arrest.

Civil rights lawsuits are an important and often effective method of protecting citizens' constitutional rights. By holding municipalities financially responsible when police officers violate those rights, civil rights plaintiffs can have a positive effect on police policies and practices. NPAP member attorneys have achieved great results in civil rights lawsuits against police officers. NPAP members around the country communicate with each other about the constantly changing aspects of this area of the law. They are able to draw from the combined experience of other members to overcome the many legal obstacles that go along with a police accountability lawsuit.

When police officers are sued in civil court, their legal defense is usually provided by the municipality that maintains the police department. The municipality may have its own law department, or may hire outside counsel.

Either way, the result is usually that police officers will be formidable legal opponents. You can expect them to utilize experienced lawyers, to have easier access to whatever evidence is in the possession of the police, and to have adequate resources for hiring experts and investigators. Although some municipalities may prefer to settle cases quickly to reduce legal fees and avoid negative media attention, it is more common for them to view tenacious legal defense of police officers as the most effective way to cut costs and deter future claims.

Another factor that makes it very difficult to successfully win lawsuits against police defendants is the doctrine of qualified immunity. Qualified immunity means that a government official cannot be subjected to a lawsuit for a violation of constitutional rights unless the right he or she violated was clearly established by legal precedent at the time of the violation. In other words, it protects officials who reasonably could have believed that their conduct was lawful. Unfortunately, qualified immunity has made civil rights suits against police officers considerably more difficult. Overcoming qualified immunity requires intensive research, and having an experienced attorney who understands this complicated area of the law can mean the difference between success and failure.

Despite the difficult and time-consuming nature of civil lawsuits, they remain an effective remedy under the right circumstances. However it is important to be prepared, and the following sections are intended to help you to evaluate your case and give you some ideas of how to strengthen your position. It is also very important that you speak to your criminal defense attorney if you have criminal charges pending against you.

II. Evaluating and Preparing Your Case

As a victim of police misconduct, you should start the process of evaluating and preparing your potential civil rights lawsuit as soon as possible after the incident occurs, even before you are fully certain that you want to proceed with that option. Doing so will keep your options open, make it more likely that an attorney will be willing to take your case, and also potentially save you and your attorney from some of the problems that can arise in this kind of case.

Statutes of Limitations and Notice Requirements

A statute of limitations is a law that limits the amount of time that can elapse between the occurrence that the lawsuit is based on and the commencement of the lawsuit. If that time runs out, there is simply no case. Statutes of limitations vary by state, and depending on your state, the time to file your lawsuit could be as short as one year from the date of your injury.

Despite the variations, one thing Statutes of Limitation have in common is a tendency to be strict, with virtually no exceptions.

Many states have additional laws that require claimants to take other steps before they are allowed to commence a lawsuit against a government entity such as a police department. Because of the complexity of the deadlines and the state to state differences in the law, it is highly advisable to speak with a local attorney as soon as possible, even if you are not yet certain that you wish to file a lawsuit. Doing so will give you a clear understanding of the timeline and prevent you from “losing on a technicality” before the case even begins.

Evidence and Spoliation

In order to recover the full value of your injury, you will need to make a very strong showing of evidence. Evidence can come in many forms, including photographs, videos, police reports, and statements and testimony from witnesses. As a victim of police misconduct, you are yourself a witness, and your own testimony and statements are evidence (which can either help or hurt your case).

Sometimes the plaintiff’s testimony may even be the only evidence of the police misconduct. However, finding additional evidence to back your testimony and make it stronger will make it more likely that you are offered an attractive settlement or convince a jury that the officer violated your rights. Despite growing documentation of police officers lying on the stand, many people still find police witnesses to be inherently trustworthy. If multiple officers are involved, they will also have ample opportunity to coordinate their testimony to bolster their credibility.

Collecting your evidence needs to begin as soon as a police officer violates your rights. You should try to get the names and contact information of anybody who witnessed what happened. In many situations, doing so may be impossible, especially if you are placed under arrest. However, if there are witnesses whom you cannot identify, it may still be possible to track them down, and the sooner you take steps to do so, the more likely it is that you will be successful in finding them. Many lawyers work with professional investigators who have experience tracking down witnesses and evidence.

If you decide to try to find witnesses on your own, you should not use social media to do so before consulting an attorney. Your adversaries in court can and will use anything you say on Facebook or Twitter, in email or texts, against you. Remember that not only what you write, but also the replies by others to your communications can hurt your case in unexpected ways. Also, once you do post something to a social media site, you are not legally allowed to remove it because that would be destruction of evidence. To be safe, talk to

a lawyer and if he or she thinks it is a good idea to use social media to reach out to potential witnesses, you can form a plan together and avoid giving your adversaries anything to use against you.

Other evidence can be available from surveillance cameras of local businesses that may have recorded what happened. Store surveillance is often only saved for a short period of time, even as short as a single day. If you believe that a business's surveillance cameras may have caught evidence of police misconduct against you, you should request that the owner preserve that evidence as soon as you can. You should make your request by certified mail or by delivering a written request yourself and keeping a copy. You can also ask a lawyer to make the request for you, as many lawyers will have sample preservation letters and experience with making such requests. This is a good reason to speak to a lawyer as soon as possible, even if you are not yet sure you want to file a lawsuit.

Other pieces of evidence that may become unavailable as time passes are things that are already in the hands of the police department or other government agencies, such as recordings of police radio and 911 transmissions and police dashcam recordings. Again, a lawyer can help you obtain this evidence or ensure that it is not destroyed. If you are being prosecuted, your criminal defense attorney may also be able to obtain this evidence for you and make it available to you for your civil case.

Another important piece of evidence that should be documented as soon as possible is evidence of any injuries you may have suffered. You should get your injuries evaluated by a doctor and get copies of the medical records. If you decide not to see a doctor, you need to at least take pictures of scrapes and bruises, which will begin to heal immediately and may disappear within days or weeks. Use the highest available quality for the photographs to avoid creating evidence that will be unclear and unhelpful to your case.

Retaining an Attorney

Although different financial arrangements are possible, most civil rights attorneys work for a "contingency" fee, which means that they only get paid if the client wins or settles. The fee is an agreed-upon percentage of the money recovered. The court may also award attorney's fees directly, to be paid by the defendant. A court-awarded fee may reduce or eliminate the amount of money that you owe your lawyer. Contingency fee arrangements are beneficial because they let clients with little or no financial resources obtain legal representation for violations of their civil rights.

Some attorneys will also advance the costs of litigation if you are unable to afford them. These costs can add up to several thousand dollars or more. The biggest expenses are expert witnesses, if they are required, and depositions

(witness interviews recorded by a professional stenographer). If an attorney pays the litigation costs, those costs will be reimbursed out of any money that you are awarded for the lawsuit.

Whether an attorney will take your case depends both on the particular circumstances of your encounter with the police and on the attorney's practice. In some cases the officer's conduct, as objectionable it may be, and as violated you may feel, does not amount to illegal conduct under state or federal law. In other cases, you may have a valid legal claim, but the attorney may believe the case is not winnable or is too risky. This can happen for many reasons, among them that evidence is nonexistent or unavailable, that the harm caused was minimal or difficult to quantify, or that previous court decisions have made your claim difficult to bring. It is the attorney's responsibility to advise a potential client of whether they have a viable case.

On the other hand, if you are rejected by one attorney, there may still be a different attorney that is willing to take your case. It may help to search for an attorney who specializes in your particular type of case (for example, cases involving the use of a TASER or K-9 unit). Remember that for any police misconduct case, it is best to find an attorney who is experienced in this area. You will also have to find an attorney who understands that these cases take a lot of time and money, and is willing to commit the necessary resources.

Another issue that can affect your ability to retain a lawyer is the impression you make as a client. By taking your case, an attorney must agree to represent you fully and zealously. It is a major commitment, and one that he or she will be more comfortable making if you show that you will be equally as committed and diligent throughout the course of the case. Even if a particular attorney cannot take on your case, he is more likely to refer you to somebody who is a better match if you come across as a client that will be easy to work with and make a good witness.

There are a number of ways that you can make a good impression as a client. One way is to come into the attorney's office soon after the police misconduct incident, the importance of which was discussed earlier. Another is by bringing all the documentation that you have available to your first meeting. Bring the names and contact information of any doctors you have seen for your injuries.

If the police misconduct against you resulted in your arrest, bring the police report if you have it as well as the contact information for your defense attorney. It is important for your civil attorney to have access to information about your criminal case. If your criminal case is still ongoing when you file a civil suit, the prosecution may pursue your criminal case more vigorously. This danger does not necessarily mean that you must wait until your criminal case is over, but it is a fact that your attorney needs to know about in order to

give you legal advice. It may be necessary for your attorney to contact your criminal defense attorney to discuss your criminal case to get a clearer picture of the prospects for your civil case.

Most importantly, do not conceal information that you think could hurt your case from the lawyer and do not exaggerate your injuries. Doing so will only hurt your case and make your lawyer's job more difficult. If an injury feels better in a few weeks, do not claim that it still hurts and if you were being loud and obnoxious when the police illegally beat you, admit it. A lawyer will not take your case, and a jury will not rule in your favor, if you are not credible. Honesty is the most important quality to have both for a plaintiff in court and for a potential client doing an initial interview at a lawyer's office.

If you want to get in touch with an attorney in your area, the National Police Accountability Project website has a list of police misconduct attorneys organized by state. The website also links to news and publications related to police misconduct. The information is available at www.nlg-npap.org. You can reach the attorney referral list from the main page or by going directly to <http://www.nlg-npap.org/find-an-attorney>.

III. Other Options

Victims of police misconduct have a variety of other options. In some cases, pursuing these may have an impact on a potential civil suit, so if you are considering filing a suit you should consult with your attorney first. If you decide not to file a suit or if your attorney gives you his/her approval, one of these options may provide an alternative way to seek redress. Below is a general overview of each option, followed by the pros and cons that go with it.

Filing a Complaint With A Citizen Review Board

Many cities have created civilian review boards to hear complaints about misconduct by police officers. Everything about these review boards, including their effectiveness, policies, and investigative and enforcement power, varies widely from place to place. To make an informed decision about whether to file a review board complaint, you should become informed about how the board in your area operates. Although we encourage you to do your own research, it is a good idea to speak to a police accountability organization in your area. Grassroots and community organizations often have valuable information about the effectiveness of a civilian review entity.

You should not file a review board complaint without a lawyer's advice if you plan on filing a civil suit or have criminal charges pending.

Pros:

- Your complaint creates an individual record of an officer's performance, and can be taken into consideration regarding promotions or assignments. The desire not to look like a repeat offender to his superiors may prevent the officer from taking similar actions in the future.
- Your complaint may become part of a public record. Where boards are required to report their findings, the public is able to get information about the performance of the police departments and the number and severity of complaints filed. Information about the number and type of complaints in your area may also be available to researchers who carry out long-term studies of trends in complaints against law enforcement.
- In cases where review boards have the power to discipline police officers or make disciplinary recommendations, your complaint may result in discipline against the officer.
- If the complaint results in a recorded interview, it can lock the police officer into a story and make it harder for him/her to change the account of the incident later.
- The complaint may result in evidence being gathered and preserved as well as witnesses being identified early on.

Cons:

- The investigation gives officers early access to the evidence against them and provides them with an opportunity to coordinate and tailor their statement accordingly.
- The non-adversarial style of the interview might help officers to perpetuate an innocuous explanation for their behavior.
- Your statements can be used against you in a later lawsuit
- If the review board finds in favor of the officer, the officer may try to use the finding in a subsequent civil suit as evidence of proper conduct

File an Internal Affairs Complaint

Internal affairs is the division within a police department that is assigned with the responsibility to investigate lawbreaking and misconduct by police officers. An internal affairs investigation occurs within the police department; you might not be provided with any information about the investigation other than the conclusion. Sometimes you may never hear back from the department.

Although internal affairs has the power to discipline, reassign or fire police officers for misconduct, the inherent pro-police bias of the IA investigators often prevents them from conducting an independent and

thorough investigation. As a result, internal affairs often protects officers rather than hold them accountable.

Police accountability attorneys have varied opinions on whether it is a good idea to file a complaint with internal affairs. The efficacy of these complaints depends on the police department involved and whether the police leadership is committed to officer accountability. Since it is impossible to give a general rule, it is best to speak to an attorney to find out the pros and cons of an internal affairs complaint that are specific to your case.

Pros:

- If your complaint is sustained, the officer may face disciplinary action.
- The complaint is kept on file, which can deter repeat offenses.
- Internal affairs may gather and preserve evidence that may be useful in a subsequent civil lawsuit.

Cons:

- You will be questioned by a representative of the police department.
- The investigation is internal and secretive.
- Filing an internal affairs complaint can potentially compromise your civil rights claim; before you file a complaint speak to a civil rights attorney.

File a Complaint With a Prosecutor

While a civil suit can be brought by any individual, pursuing criminal charges requires the authority of a state or federal prosecutor. In most parts of the country, the state prosecutor is called the District Attorney (DA). Federal prosecutors are called United States Attorneys.

Convincing either a state or federal prosecutor to investigate a police officer is usually very difficult. Even with very strong evidence that an officer committed a crime, it is better to go to a lawyer first and decide together when, if at all, to pursue criminal charges. This will minimize the chances that you weaken your case by making inconsistent or damaging statements.

Pros:

- Criminal prosecutions can be a strong deterrent to police misconduct.

Cons:

- Criminal prosecutions of police officers are very rare. Convictions are even rarer.
- Statements you make to a prosecutor can be used against you later if you file a suit in civil court.

- State prosecutors work with police officers regularly. They depend on police investigations and officer testimony to get convictions in their criminal cases and will be reluctant to jeopardize a good working relationship by prosecuting an officer.
- Federal prosecutors do not have a close relationship with police officers and may not be as biased. However since they pursue a limited number of cases, it is difficult to get them involved. They require very strong evidence that major misconduct occurred.
- A criminal prosecution will likely delay your civil case.

File a Complaint with the US Department of Justice

The DOJ has a civil rights division that works with the FBI to investigate possible civil rights violations by local law enforcement agencies. Unlike local prosecutors, they typically do not have a prior relationship with the police officers. However, in order to get involved, the DOJ requires a finding of a pattern or practice by the law enforcement agency that systematically violates people's rights. Harm to a single person, or isolated action, is usually not enough to show a pattern or practice that violates these laws.

When the DOJ investigates a law enforcement agency, their strategy is to take as much time as they need to build a strong case so that they can use the threat of a federal suit to convince the local government to agree to a “consent decree.” Under a consent decree, the municipality makes changes to its policies and practices and a federal observer oversees the implementation of the changes. The DOJ has entered into them with several large law enforcement agencies including the Los Angeles Police Department, Pittsburgh Police Department, and New Jersey State Police, as well as a number of smaller departments.

You can file a DOJ complaint whether or not you decide to file a civil suit. Information about how to file a complaint and additional information about DOJ investigations are available on the Civil Rights Division website at <http://www.justice.gov/crt/about/spl/police.php>

If you are considering filing a complaint with the DOJ but want to get a better idea of whether the civil rights violation that you suffered is part of a broad policy or practice, you can also consider getting in touch with the local chapter of the ACLU. The ACLU website, www.aclu.org, has information about national civil rights issues and has a tool for finding your local ACLU affiliate.

Pros:

- Can lead to long-term policy changes.

- May be less biased and less likely to use your statements against you than a CCRB or IAB since there is no prior working relationship with the police department.

Cons:

- Requires a finding of a pattern or practice of constitutional violations.
- Requires an accumulation of a lot of evidence.
- Can take a very long time.
- Is very rare

Small Claims Court

If the damages you suffered from an incident of police misconduct are minor, you might consider filing a suit in small claims court. Small claims court differs from normal civil court in that the amount of damages that can be awarded is capped. The cap varies by state but is typically between \$2,500 and \$10,000. Because of the damages cap, it is a good idea to talk to an attorney before filing a claim in small claims court to see if your claim might be worth more than the small claims limit.

If the amount of harm that you suffered is within the cap that your state sets for small claims, the filing fee, which varies by state, is less than filing fees in civil court. A small claims action may also take less time than a typical civil action. In some states, neither side is allowed to be represented by an attorney.

If you win in small claims court, the police officer may be able to appeal to a higher court and use the full legal resources of their department. Before filing, you should talk to an attorney or legal assistance organization in your area to find out about your state's damages cap, filing fee, and other rules such as the availability of appeal and whether attorneys are allowed.

Pros:

- Inexpensive filing fee.
- It is unlikely that the defendants will have a large amount of resources available for their legal defense.
- If you are unable to retain an attorney, small claims court may be less complicated than filing a civil case on your own (you should still talk to an attorney first!)

Cons:

- The amount of money that you can recover is capped.
- If you win, the defendants may be able to appeal.