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A Contract for Public Safety: A Model for the 21st Century

Key Points

- Police officers must be allowed their due process rights as afforded by the U.S. Constitution to all individuals.
- If liberty and self-government are to be retained, the role of police unions must be reconsidered and should be made explicit in state statutes.
- Collective bargaining should be limited in scope and not include areas such as discipline, training, and policy implementation.
- An ombudsman appointed by the states' attorneys general should be considered as a public representative in the areas of officer use of force.
- Successful police departments need to incorporate dialogue and goal setting that include officers, the community, and the business sector, such as by establishing a police board or commission instead of being under just one elected official, like a mayor.

Introduction

Far too often, law enforcement officers are found guilty in the court of public opinion before being afforded their due process rights. In addition, on many occasions elected officials have spoken against police officer misconduct prior to due process being afforded, creating antipathy for law enforcement. Further, police unions, through the collective bargaining process, have made such areas as officer discipline, new training standards, and new policies more difficult to institute.

In many union-friendly, progressive cities, elected officials and non-elected officials, such as city managers and administrators, have often been too quick to agree with union demands in collective bargaining agreements. As a result, many of these agreements no longer reflect community standards and values and instead are legal documents, written by attorneys, with little reflection of external concerns.

A model with an ombudsman appointed by the states' attorneys general as a public representative in the areas of officer misconduct and use of force should be considered. In addition, a national registry should be developed that tracks officers who have reached a certain threshold of founded complaints during their career. This registry should be part of the background investigation prior to hiring for a police officer position at any level.

Recommendations that could be part of the Contract for Public Safety include:

1. Reaffirm police officers' due process rights, as afforded by the U.S. Constitution.
2. Limit the scope of collective bargaining agreements and consider the elimination of binding arbitration related to officer discipline, use of force, and training.
3. Embrace transparency and accountability within the criminal justice system and include an ombudsman-type system that allows for effective communication between law enforcement and the community in which they serve.
4. Entrust a state investigative agency with the investigation of police-related shootings and police aggravated batteries instead of the police department or another agency appointed by the department that has direct involvement in the investigation.
5. Focus on new leadership standards that are more inclusive of the employees as well as the community in a more bottom-up approach to leadership.
6. Ensure that meaningful performance reviews of police officers are considered.

7. To help govern police departments, establish police boards or commissions made up of various members of the community and appointed by various elected officials at the local, county, and state levels.
8. Embrace federal databases that track complaints against officers.

Law enforcement executives, elected leaders, and police unions must find common ground regarding the role of police departments in their respective communities and agree to limitations to collective bargaining agreements that adversely affect good public policy and instead pursue a codified set of legitimate protections through state legislation, such as a contract for public safety.

Why Have a Contract for Public Safety?

Trust, accountability, and transparency within the criminal justice system are vital parts of community relations. There is a predisposition on the left to assume that collective bargaining is the answer to that lack of trust, accountability, and transparency, but actually collective bargaining can decrease trust, accountability, and transparency. Experience demonstrates that collective bargaining does not lead to increased cooperation between public safety employees and their employers. The process is inherently adversarial. Pitting employees and employers against each other at the bargaining table creates as much conflict as cooperation ([Sherk, 2007](#)). Additionally, police officers are convicted in the court of public opinion, and, in many cases, local prosecutors have been a part of this lack of due process protections ([Rayam, 2020](#)).

Protection of Due Process Rights

A Contract for Public Safety (CFPS) should be designed to reaffirm the law enforcement officers' due process rights normally provided to all citizens. Discipline processes and outcomes often do not appear to be fair to employees and are often improperly influenced by the amount of publicity the alleged misconduct receives ([Rousseau, 2020](#)), both of which can be addressed by statutory guidelines surrounding the investigation and discipline of the officer ([Molokotos, 2018](#)). The process should also be timely. CFPS language should consist of best practices that will allow for a more consistent standard for the investigation of law enforcement officers when there is a system of overwatch, like an ombudsman model. We ask law enforcement officers to protect us from harm, and as a result, we must recognize that this work creates a specific hazard to them personally.

Afford Police Officer Protections and Decrease Collective Bargaining and Union Overreach

State legislatures can play a major role in American policing reform and make good public policy decisions in the years to come by establishing a public safety contract at the state

level that reflects basic processes, duties, and standards. Within the CFPS statute, one consideration is to eliminate individual agency collective bargaining agreements altogether and instead embrace right-to-work standards at the state level through CFPS statutes ([Myers, 2019](#)).

Collective bargaining regarding the police officer disciplinary process within individual police departments has led to a growing concern that such contractual provisions undermine the ability of management to deter misconduct ([Dharmapala et al., 2018](#)). When officers are disciplined, far too often the discipline process is subject to grievance and arbitration procedures that could take months if not years to be fully resolved. There has been significant empirical evidence of the causal role that collective bargaining rights play in the behavior of law enforcement by exploiting a January 2003 change in Florida labor law ([Dharmapala et al., 2018](#)). Moreover, police executives' decisions on officer discipline are frequently reversed or modified by arbiters, civil service boards, and grievance panels ([Stephens, 2011](#)).

The discipline appeal process, through arbitration, often weakens the purpose of discipline. A study on the Cincinnati Police found that officer discipline punishments were reduced 37% by the arbitration process and in a Chicago and Houston study found that there was a 50% reduction in officer discipline punishments ([Stephens, 2011, p. 7](#)). These types of reductions in officer discipline are problematic as they adversely impact the police executive's authority to administer discipline and often minimize his or her ability to lead and effect positive change. According to Stephen Rushin, a Loyola University Chicago law school professor who studied police contracts nationally and detailed their problems in an article published in the *Duke Law Journal*, "A substantial number of these agreements limit officer interrogations after alleged misconduct, mandate the destruction of disciplinary records, ban civilian oversight, prevent anonymous civilian complaints, indemnify officers in the event of civil suits, and limit the length of internal investigations" (quoted in [Bellisle, 2020](#)). Early intervention to identify potential "problem" officers and correct them before they become a problem is needed. These efforts are often thwarted by collective bargaining agreements and the confounding efforts of the unions. Often, collective bargaining agreements (CBAs) in law enforcement create procedural rights for officers that make it difficult for agencies to investigate and discipline misconduct, including the excessive use of force. Scholars have expressed concern that such contractual provisions undermine the ability of management to deter misconduct and thus may promote its commission. Unions may also successfully lobby for state and local legislation that provides the same kind of procedural protections against

investigations and discipline, or lobby and litigate against reform efforts ([Dharmapala et al., 2018](#)).

Internal investigations are often conducted like any other criminal investigation. However, they are not the same and should not be treated the same. The language and environment of handling police discipline should be open and transparent to the department and to the public. The current process for the complainant is often viewed as inaccessible, with little to no information on the outcome. In addition, police unions often provide lawyers during the earliest phase of an internal investigation.

Consideration should be given to use an education-based discipline process, which was created by Sheriff Leroy Baca of the Los Angeles County Sheriff's Department. The overall focus was to shift officer discipline to a process that emphasized education, training, and interventions designed to promote a successful outcome for the officer and department ([Cobos, n.d.](#)). This behavior-focused approach has helped enhance not only the communication and trust between but also the character of the department and the officer. This process allows the department to identify problematic behavior early, make corrections through outcomes-based teaching and leadership, and then resolve or change the problematic behavior ([Parker, 2009](#)). Data suggest that employees who experienced the discipline process and understood the reasons taken by the department were able to avoid similar problems in the future ([Stephens, 2019](#)).

Eliminate Binding Arbitration

In binding arbitration, both sides present their case before an arbitrator, who issues a decision that is final and binding on both parties. The state or county must spend whatever the arbitrator awards. This violates the principles of representative democracy. Removing binding arbitration from collective bargaining agreements allows the legitimate levels of government, including our courts, to play their assigned roles and not be circumvented by systems unaccountable to the people.

Embrace the Ombudsman Model

In general, an ombudsman investigates and monitors complaints from the public or law enforcement officers regarding decisions, actions, or failures to act by public law enforcement authorities. The benefits of this model are the promotion and protection of individual rights, due process, a forum for dispute resolution, and a bridge between the agency, the officer, and the public ([Ayeni, 2005](#)).

Citizens have a right to know about police officers' founded complaints, including histories of violence or misconduct. Clear and concise information on police shootings and use

of force complaints with notification of outcomes and time-tables established so the public is aware of the status of cases would provide transparency and consistent expectations for both the officers involved and the public they serve. This includes strong exoneration statements if the officer is cleared of the use of force issue, a practice that is not only fair to the officer but also educates the public on the reasons for exoneration in cases where the exoneration does not otherwise appear justified. Public outrage might be avoided when explanations are clear and expected.

Investigation of Police Shootings and Police Aggravated Batteries Conducted by State Investigative Agencies

Police shootings and police-related aggravated batteries should automatically be investigated by the state police agency or the investigative arm of the state's attorney general's office. A police department conducting its own criminal investigation or appointing another police department in the region only leads to potential perceptions of a conflict of interest and transparency problems. This does not mean that an agency cannot have a dual internal investigation of the complaint to see if the officer(s) violated internal policy and controls.

Employee discipline must be fair, consistent, and transparent not only to the public but also to the officer. Unfortunately, today many police misconduct cases have processes and outcomes that are influenced greatly due to the publicity surrounding the alleged misconduct. This is especially true in the age of social media. High-profile police use-of-force cases are difficult to manage from a public communication point of view. A misstatement by a police executive or an elected leader can easily compromise an investigation, resulting in due process rights violations. Openness, candor, and transparency are key to success in this area.

An example of elected leaders potentially compromising an investigation is the Rayshard Brooks police shooting in Atlanta, Georgia, on June 12, 2020. In this case, Fulton County District Attorney Paul Howard filed charges prior to the Georgia Bureau of Investigation completing its investigation, and he shared information to the public that may result in a prejudicial outcome of the trial ([Haney, 2020](#)). The actions of the district attorney even caused the Atlanta police chief to complain publicly about the process used by the district attorney in filing the charges on his officers. Chief Rodney Bryant stated in a news interview, "What we do want is a level of due process as it relates to how investigations are handled and how we're criminally charged" ([WSBTV, 2020](#)). Police executives often feel compelled to make statements as soon as possible, with very limited

information. In an investigation, evidence and information may change quickly and over time, so understanding limitations when speaking is critical. Misstatements or overcharging a police officer can result in more problems down the road and only reinforces the perception of a lack of transparency.

Meaningful Performance Reviews

Officers need to understand their mission and the expectations of their specific agency, including having clear and concise standards to follow, such as a performance review system. Agencies should have bi-annual reviews, which allow for more interaction with the officer than the annual review process. The first review allows the officer and the supervisor to concentrate on opportunities for improvement in areas such as training, professional development, and job performance. Special attention should be given to data that show public interactions and any complaints. The second review can then go back to see if the officer has addressed the opportunities for improvement demonstrated in the first review. Conversely, if an officer fails to remedy those opportunities for improvements he or she needs to be placed on a 90-day performance evaluation period with specific feedback and recommended training to be completed. The 90-day evaluation will determine disciplinary actions, such as suspensions, terminations, or loss of rank.

Embrace Police Boards or Commissions

Elected officials play a similarly important role in leadership. Cherry-picking laws that will be enforced or not enforced, only adds confusion for the public and the officers and sets a standard for illegality. Conversely, overcriminalization also plays a role in the behavior of and interactions between the community and officers. Overenforcement of laws, edicts, or local orders that do not follow the traditional legislative process leads to poor community-police relations. Using the police as revenue generators—through the collection of fines and asset forfeiture of property—has proven problematic over the years ([Jackson, 2015](#)). More recently, overenforcement of unreasonable and over-officious COVID-19 orders have added to unreasonable searches and seizures and improper police-community interactions that have hurt the police-public trust ([Malcolm & Stimson, 2020](#)). A police board or commission, with appointments by elected officials in various positions, such as governor, mayor, county commissioner, sheriff, etc., can help add value to the leadership of a department with respect to police goals, direction, and vision. These boards can help provide a watchful eye regarding the community relations between the department and the citizens.

Embrace Federal Databases on Officer Behavior

Codify at the federal level minimum standards for the use of databases for officer misconduct and criminal investigations as already noted in President Trump's executive order on police reform ([White House, 2020](#)). The federal government through the Bureau of Justice Statistics already accumulates data on law enforcement agencies and officers. The collection of law enforcement use-of-force statistics has been mandated as a responsibility of the attorney general since the passage of the Violent Crime Control and Law Enforcement Act of 1994. In this act, the attorney general shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers and the data acquired under this section shall be used only for research or statistical purposes ([Bureau of Justice Statistics, n.d.](#)). This database should be used by agencies when hiring potential officers from other jurisdictions so they can fully understand previous use-of-force complaints on the officers being considered.

Focus Police Funding at the Jurisdictional Level Rather Than Federal Funding of Local Police

Existing funds should be dedicated to the training, hiring, retention, and the professionalization of policing, as well as bottom-up community-police programs. We need to find and employ the right people for this unique and difficult career—people who are servant-based leaders and have clear standards on previous arrest records, driving records, and drug use. Lowering standards is a mistake, and attracting the right people to the profession is the most important factor in successful hiring practices. With respect to training, law enforcement officers must be highly trained, and trained often, in a myriad of different areas, such as effective communication, critical thinking, self-defense, and in dealing with mental health. Today's officers need clear expectations and training that helps fulfill those expectations. Law enforcement also needs a commitment to a regimen of lifelong learning and to reward those officers that obtain additional training and educational opportunities. In many areas of the nation, additional training and professional development is limited. Funding should be in concert with the needs and desires of that specific community. If a program should exist, it should be funded locally to exist. Federal funding of police removes this oversight from the local community and incentivizes federal influence in what should be a local initiative.

Conclusion

Transparency and accountability are at the heart of change for policing. Skepticism and mistrust can be countered if police organizations, executives, and unions are open to change and embrace transparency and accountability. The

federal government can play an important role in oversight of policing standards with systems that help identify problematic officers. The state governments can also play an equally important role by ensuring that the law enforcement agency and the community follow the tenets of the Contract for Public Safety. In addition, local governments have a responsibility to adequately fund and oversee their departments through boards and to ensure that best standards and practices are always followed.

Many states have allowed police unions to have considerable power over their employers and affect how governments operate. Unions in states that do not have right-to-work

protections frequently force their members to accept the union's representation and prevent non-union workers from working outside the terms of the union contract.

Law enforcement executives, elected leaders, and police unions must find common ground regarding the role of police departments in their respective communities and agree to limitations to collective bargaining agreements that adversely affect good public policy. Law enforcement officers and the communities in which they serve need certain protections. Therefore, states should endorse a Contract for Public Safety with certain protections guaranteed. ★

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ABOUT THE AUTHOR



Sheriff (Ret.) Currie Myers, PhD, is a senior visiting fellow at the Texas Public Policy Foundation. He has spoken on criminal justice public policy across the country, including at U.S. Senate roundtables. He was a participant in the White House's 2015 Criminal Justice Reform Summit.

Sheriff Myers has a combined 30 years of professional experience as a state trooper, special agent, sheriff, criminologist, professor, and university executive. He ended his law enforcement career as the sheriff of Johnson County, Kansas, which serves a population of more than 600,000 citizens in the Kansas City Metropolitan area and is one of the largest sheriff's offices in the Midwest with nearly 750 employees and a jail population of approximately 1,000 inmates. He is a nationally recognized expert in criminal justice public policy as well as organizational management and

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As a professor, Sheriff Myers has developed and taught more than 25 undergraduate and graduate courses, including disciplines within criminal justice, criminology, organizational management, leadership, ethics, and in the humanities. As the dean of the school of justice studies at Rasmussen College in Bloomington, Minnesota, Myers led a student population of nearly 2,000 along with approximately 150 faculty and staff to include a state-of-the-art police academy and corrections academy.

Sheriff Myers earned a PhD in criminal justice from Southwest University and an MBA from Benedictine College. His B.A. in criminal justice management is from Ottawa College. Myers is currently the president of Sheriff Myers & Associates, which is a consultancy firm that focuses on business, security, and public policy. He is also on faculty in the Criminology Department at Benedictine College in Atchison, Kansas.

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