

# **POLICE BRUTALITY BONDS**

**How Wall Street Profits  
from Police Violence**

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The Action Center on Race & the Economy (ACRE) is a campaign hub for organizations working at the intersection of racial justice and Wall Street accountability. We provide research and communications infrastructure and strategic support for organizations working on campaigns to win structural change by directly taking on the financial elite that are responsible for pillaging communities of color, devastating working class communities, and harming our environment. We partner with local organizations from across the United States that are working on racial, economic, environmental, and educational justice campaigns and help them connect the dots between their issues and Wall Street so that each of the local efforts feeds into a broad national movement to hold the financial sector accountable.



We'd like to thank Leslie Lowe for her essential contributions to this report. Leslie was our program officer at the Rockefeller Family Foundation and also the key strategic thought partner whose support and brilliance made this work possible. We miss her dearly.

# EXECUTIVE SUMMARY



**A**s the costs of police misconduct rise, cities and counties across the United States are going into debt to pay for it. Often this debt is in the form of bond borrowing. When cities or counties issue bonds to pay these costs, banks and other firms collect fees for the services they provide, and investors collect interest. The use of bonds to pay for settlements and judgments greatly increases the burden of policing costs on taxpayers, while producing a profit for banks and investors. Using bonds to pay for settlements or judgments can nearly double the costs of the original settlement. All of this is paid for by taxpayers.

We call the bonds used to cover police related settlement and judgment costs “police brutality bonds”, because they quite literally allow banks and wealthy investors to profit from police violence. This is a transfer of wealth from communities—especially over-policed communities of color—to Wall Street and wealthy investors. The companies profiting from police brutality bonds include well known institutions like Wells Fargo, Goldman Sachs, and Bank of America, as well as smaller regional banks and other firms.

In our research into the use of police brutality bonds, we found that cities and counties across the United States issue bonds to pay for police brutality settlements and judgments. The cities range from giant metropolises such as Los Angeles to smaller cities like Bethlehem, Pennsylvania. Our report includes details on police brutality bonds in twelve cities and counties, including five in-depth case studies: Chicago, Los Angeles, Milwaukee, Cleveland, and Lake County, Indiana.

# KEY FINDINGS AND RECOMMENDATIONS:

In the twelve cities and counties included here, we found a total of nearly \$878 million in bond borrowing to cover police related settlements and judgments. This number does not include the additional cost of interest paid to investors.

In our five case study cities and county, we estimate a total of \$1.87 billion in costs related to these police brutality bonds, including more than \$1 billion in profit for the investors who buy the bonds.

Police Brutality Bonds in Twelve Cities and Counties <sup>1</sup>	
City/County	Police Brutality Bonds
Bethlehem, PA	\$7.39 million
Canton, OH	\$1.8 million
Chicago, IL	\$709.3 million*
Cleveland, OH	\$12.9 million
Fullerton ,CA	\$1 million
Hammond, IN	\$4.8 million
Lake County, IN	\$18.1 million
Los Angeles, CA	\$71.4 million
Milwaukee, WI	\$26.1 million
Nassau County, NY	\$23 million
New Haven, CT	\$9.5 million
South Tucson, AZ	\$2.1 million
<b>TOTAL BOND AMOUNT</b>	<b>\$877.9 million</b>

The table above includes the bonds we identified as paying or likely paying for police related settlements or judgments. It does not include interest costs or issuance fees.

Police Brutality Bonds and Investor Profits: Five Case Studies <sup>2</sup>			
City/County	Total Estimated Police Brutality Bonds 2008-2017	Interest Paid to Investors	Total Cost to Taxpayers
Chicago (2010-2017)	\$709.3 million*	\$1 billion	\$1.71 billion
Cleveland	\$12.9 million	\$7.4 million	\$20.3 million
Lake County	\$18.1 million	\$1.8 million	\$19.9 million
Los Angeles	\$71.4 million	\$18 million	\$89.4 million
Milwaukee	\$26.1 million	\$3.7 million	\$29.8 million
<b>TOTAL</b>	<b>\$837.8 million</b>	<b>\$1.03 billion</b>	<b>\$1.87 billion</b>

The table above illustrates police brutality bond and interest costs in our five case study cities and county.

\*Chicago numbers may include borrowing that is not only for police related cases. Please see Chicago case study for details on Chicago numbers.

## WHY CITIES AND COUNTIES BORROW TO PAY FOR POLICE MISCONDUCT SETTLEMENTS AND JUDGMENTS

We found a range of circumstances leading cities and counties to resort to borrowing to pay settlement and judgment costs, and a range of consequences. For example:

- ▶ **Some cities and counties use police brutality bonds habitually as part of their budget plan, and police departments regularly exceed their allotted budget for settlements and judgments, knowing they will get the additional money from local elected leaders when they ask for it.** Chicago, Milwaukee and Nassau County, NY all regularly rely on borrowing to cover these costs.
- ▶ **Some cities use police brutality bonds as an emergency option when facing an unexpected big increase in payouts.** Hammond, IN issued \$4.8 million in bonds to pay for the wrongful conviction settlement awarded to Larry Mayes,<sup>3</sup> a Black man who served two decades in prison for rape, a crime for which he was eventually exonerated.<sup>4</sup>
- ▶ **Cities may move money around to cover settlements and then borrow to replenish the funds that were raided.** New Haven, CT's city council voted to fund a \$9.5 million settlement by raiding city funds,<sup>5</sup> including bond funds intended for a bridge renovation project. The city plans to issue new bonds in 2018 to replenish the raided funds.<sup>6</sup> The settlement went to Scott Lewis, a Black man who spent 18 years in prison for murder after a corrupt New Haven detective fabricated evidence against him.<sup>7</sup>
- ▶ **Cities with liability insurance may issue bonds when they face costs beyond what their insurance will pay.** The small Pennsylvania city of Bethlehem settled a wrongful death lawsuit for \$7.89 million in 2004. Its insurance paid for only \$500,000, and the city issued \$7.39 million in bonds to pay for the rest.
- ▶ **Cities have raised taxes to cover costs of police settlements and judgments.** Bethlehem PA, Inkster MI, South Tucson AZ, and Cleveland OH have all instituted taxes to cover the costs of police related settlements and judgments, or other costs associated with the consequences of violent policing.

## THE ROLE OF SETTLEMENTS IN THE PROBLEM OF POLICE BRUTALITY

While the legal system assumes that hefty financial consequences for police violence serve as a deterrent to abusive policing, this does not appear to be the case. Instead, settlements and judgments—including those a city or county can't pay without going into debt—appear to be an acceptable cost of the business of policing for cities and counties across the country. We have identified several factors contributing to this broken system.

- ▶ **Violent Police Officers and Their Departments Are Shielded from Financial Consequences.** Research has found that police officers are “virtually always” indemnified by their employers, meaning that the cities will cover the costs of defending officers in court cases, and will pay for any judgments or settlements that result from actions officers take in the course of their employment.<sup>8</sup> Furthermore, most police departments are also insulated

from the financial consequences of excessive settlement and judgment costs and are not subject to budget cuts when their settlement and judgment costs rise.<sup>9</sup> Those cuts come from elsewhere in the city budget.

- ▶ **Settlements can function as a kind of “hush money” working to prevent accountability for violent officers and their departments.** Settlements and judgments can provide a measure of restitution to victims of police violence and/or their families, but settlements can also function as “hush money” in cases where survivors or their families, in exchange for the settlement award, sign away their rights to discuss the case or the officers involved.
- ▶ **There is a striking lack of transparency and disclosure around cities’ reliance on borrowing,** and in each of our case studies, there is a lack of full, accessible accounting of the costs. Most cities in our sample were unable, or unwilling, to provide a full accounting of how much they are spending on borrowing for settlements and judgments. Accountability and change are impossible without transparency.

As we fight to hold violent officers and police departments accountable to our communities and to curb abusive policing, we must also work to hold banks and investors accountable for their role in perpetuating and profiting from our existing system. Police violence should never be a source of profit for banks or investors, or a reason we do not have the resources we need to invest in the infrastructure and services that make our communities safer and more livable. We need to dismantle this system of policing and build a justice system that prioritizes the needs and well-being of all people. While we work toward that, here are our key recommendations:

1. *If cities must borrow to pay for settlements and judgments, banks and investors should not be allowed to profit from that.*
2. *Police officers must be forced to take out individual liability insurance policies to cover the costs of settlements and judgments caused by their misconduct.*
3. *Governmental bodies at the local, state, and federal levels must account for and provide full transparency about which officers are behaving in ways that lead to settlements and judgments, how they are or are not being held accountable, who is paying for their misconduct and how, and who is profiting from these payments.*

# POLICE BRUTALITY BONDS: HOW WALL STREET PROFITS FROM OUR ABUSIVE POLICING SYSTEM

## INTRODUCTION

In 2015, the *Wall Street Journal* published a story headlined “Cost of Police Misconduct Soars in Big Cities.”<sup>10</sup> The story reported that the U.S. cities with the biggest police departments had collectively paid out more than \$1.02 billion between 2010 and 2015 for settlements and judgments in cases involving violence committed by officers; \$1.4 billion when the total includes cases involving incidents like officer-involved crashes. The story explained that the costs of these settlements and judgments are almost entirely borne by taxpayers, not officers or their home police departments. But what the article did not mention is that by enabling loans to local cities and counties, Wall Street banks and wealthy investors are able to profit off the money municipalities spend to compensate victims of police violence.

As the costs of police misconduct rise, cities and counties across the United States are going into debt to pay for it. Often, this debt is in the form of bond borrowing. When cities or counties issue bonds to pay these costs, banks and other firms collect fees for the services they provide, and investors collect interest. The use of bonds to pay for settlements and judgments greatly increases the burden of policing costs on taxpayers, while producing a profit for banks and investors. Using bonds to pay for settlements or judgments can nearly double the costs of the original settlement. All of this is paid by taxpayers.

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We call the bonds used to cover police related settlement and judgment costs “police brutality bonds”, because they quite literally allow banks and wealthy investors to profit from police violence. This is a transfer of wealth from communities to Wall Street, but it is in

particular a transfer of wealth from over-policed communities of color to Wall Street and wealthy investors. The companies profiting from police brutality bonds include well known institutions like Wells Fargo, Goldman Sachs, and Bank of America, as well as smaller regional banks and other financial firms.

**A 2017 Chicago GO bond allocated \$225 million for settlements and judgments.<sup>11</sup> Chicago will pay 7.045 percent interest over 12 1/2 years<sup>12</sup>. That adds nearly \$80 million on to the cost of the settlements themselves—money that goes directly to investors. Banks and other companies—including lead underwriter Goldman Sachs—collected approximately \$1.8 million in fees on the portion of that 2017 issuance that was allotted to settlements and judgments.<sup>14</sup>**

## THE WIDESPREAD USE OF POLICE BRUTALITY BONDS

In our research into the use of police brutality bonds, we found that cities and counties across the United States issue bonds to pay for police brutality settlements and judgments. The cities range from giant metropolises such as Los Angeles to smaller cities like Bethlehem, Pennsylvania.

This study is not comprehensive. We looked at a limited sample of cities and counties and focused almost entirely on settlements and judgments from the past decade. A more comprehensive examination of the problem would almost certainly find many more examples.

This report discusses police brutality bonds in ten cities and two counties, including five case studies for which we did extensive research. The case studies, which can be found near the end of the report, include Chicago, Milwaukee, Los Angeles, Cleveland and Lake County, Indiana.

### SUMMARY OF FINDINGS

Police Brutality Bonds and Investor Profits: Five Case Studies <sup>15</sup>			
City/County	Total Estimated Police Brutality Bonds 2008-2017	Interest Paid to Investors	Total Cost to Taxpayers
Chicago (2010-2017)	\$709.3 million*	\$1 billion	\$1.71 billion
Cleveland	\$12.9 million	\$7.4 million	\$20.3 million
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<b>TOTAL</b>	<b>\$837.8 million</b>	<b>\$1.03 billion</b>	<b>\$1.87 billion</b>

The table above illustrates police brutality bond and interest costs in our five case study cities and county. \*Chicago numbers may include borrowing that is not only for police related cases. Please see Chicago case study for details on Chicago numbers.

### WHY CITIES AND COUNTIES BORROW TO PAY FOR POLICE MISCONDUCT SETTLEMENTS AND JUDGMENTS

Cities and counties in our sample have used bond borrowing to cover settlements and judgments in a variety of ways and for a variety of reasons:

*Some cities and counties use police brutality bonds habitually as part of their budget plans*

Many cities—particularly smaller cities—buy insurance policies to cover the costs of police related settlements and judgments. Cities without such liability insurance generally pay these costs out of a dedicated fund. This is commonly known as “self-insurance”. Some self-insured cities regularly issue bonds to pay for settlements and judgments when the amount allotted for these expenses in their city or police department budgets is insufficient. In some cities, this happens often enough that it is fair to say cities are knowingly not setting aside enough money to pay these costs and anticipating that they will move money from other areas of the budget, borrow the money, or both.

Cities and counties with structural revenue and budget problems are more likely to borrow because they don’t have enough revenues to cover all of their expenses. Chicago, Milwaukee and Nassau County, NY are the most consistent users of borrowed money for settlement costs in our sample. They are consistently relying on large amounts of debt to close budget gaps caused by underlying revenue crises. The borrowing allows leaders to push the reckoning with those



crises into the future. Meanwhile, banks and investors have their paydays. These places are also facing funding crises for essential services and infrastructure, like education, mental health care, and fire safety.

- ▶ Chicago used money from bonds every year between 2010-2015 to pay for judgments and settlements, and again in 2017. Although the city doesn't provide details on how much of its borrowing is for police related settlements and judgments specifically, the total that the city borrowed in those years to pay for *all* of its judgment and settlements was \$484.3 million, an amount roughly equivalent to what Chicago paid for police related settlements and judgments for the period. The city borrowed another \$225 million for settlements and judgments in 2017. Each year the city borrowed, it exceeded its line item budget for police torts. (See *Chicago case study for more details*)
- ▶ Since 2008, Milwaukee has authorized about \$26.1 million in borrowing to pay for police settlements and judgments,<sup>16</sup> at interest rates of up to 5 percent. Milwaukee authorized borrowing for settlements or judgments in eight of the ten years between 2008 and 2017.<sup>17</sup> (See *Milwaukee case study for more detail*)
- ▶ In February of 2018, New York's Nassau County approved \$23 million in borrowing towards a \$45 million court judgment for two men who served time for a rape and murder for which they were later exonerated.<sup>18</sup> Nassau County has a long history of borrowing to pay legal costs. According to a report in a local paper, Nassau County pays for about 30 percent of its legal settlements and judgments with borrowed funds, including for "almost all of the major ones."<sup>19</sup>

***Some cities use police brutality bonds as an emergency option when facing large, unexpected increases in payouts***

- ▶ In 2013, Fullerton, CA issued \$7.25 million in judgment obligation bonds (JOBs), a type of bond dedicated to paying for settlements and judgments. \$1 million of this went to cover a settlement paid to the family of Kelly Thomas,<sup>20</sup> a mentally ill man who was beaten to death by two Fullerton police officers.<sup>21</sup>
- ▶ Hammond, IN issued \$4.8 million in bonds to pay for the wrongful conviction settlement awarded to Larry Mayes,<sup>22</sup> a Black man who served two decades in prison for rape, a crime for which he was eventually exonerated.<sup>23</sup>
- ▶ In 2010, the City of Canton, OH issued \$1.8 million in notes to pay a jury judgment in a federal case after a man died following a beating by police. The city refinanced this borrowing with new bonds in 2015, lowering interest costs but creating another payday for underwriting banks.<sup>24</sup>

***Cities sometimes move money around to cover settlements and then borrow to replenish the funds that were raided***

In late 2017, New Haven, CT's city council voted to fund a \$9.5 million settlement by raiding city funds,<sup>25</sup> including bond funds intended for a bridge renovation project. The city plans to issue new bonds in 2018 to replenish the raided funds.<sup>26</sup> The settlement went to Scott Lewis, a Black man who spent 18 years in prison for murder after a corrupt New Haven detective fabricated evidence against him.<sup>27</sup>

***Cities sometimes issue bonds when they face costs beyond what their insurance will pay***

The small Pennsylvania city of Bethlehem settled a lawsuit for \$7.89 million in 2004. Its insurance paid for only \$500,000, and the city issued \$7.39 million in bonds to pay for the rest. Bethlehem later passed a law requiring it to hold policies with at least \$10 million in coverage,<sup>28</sup> which presumably raised the cost of the policy considerably.

*Cities sometimes resort to borrowing to cover costs related to “reforms” necessitated by public pressure or agreements with the United States Department of Justice (DOJ)*

The U.S. Department of Justice has investigated many police departments for civil rights violations, and some of these departments have then entered into agreements with the DOJ—known as consent decrees—which lay out specific changes the Police Department must make in order to reduce civil rights violations by officers. These reforms can be costly. (See our discussion of DOJ consent decrees below)

Cleveland budgeted \$800,000 from a 2015 bond issuance for body-worn cameras. Many of the DOJ consent decrees require cities to spend tens of millions of dollars, and it’s likely some of them are borrowing to do it. (See the Cleveland case study for more details on Cleveland’s consent decree)

*Police misconduct costs can contribute to a devastating debt cycle*

The City of South Tucson, AZ entered bankruptcy in 1983 due to a \$3 million judgment awarded to the victim in a police shooting. The city issued \$2.1 million in bonds to help pay off the settlement. Since then, the city has done a seemingly endless series of new bonds to pay off previous bonds.<sup>29</sup> This is similar to a homeowner refinancing a mortgage. Each time the city takes out a new loan to pay off an old loan, it provides another opportunity for banks to collect underwriting fees. At the same time, it also pushes the final payoff further and further into the future. South Tucson is a small city, so the \$600,000 annual debt service on the borrowing makes up 12 percent of the city’s general fund. That annual debt service cost is about the same as the city’s recent budget deficit of \$624,000, which had city officials considering eliminating their fire department.<sup>30</sup>

*Cities have raised taxes to cover costs of police settlements and judgments*

**Bethlehem**, the Pennsylvania city discussed above, instituted a special tax to pay off the bond, which was issued to cover \$7.39 million in settlement costs. The tax became known as the

“Hirko tax”, after the victim John Hirko Jr., a man killed by police during a botched raid. This is a small town of 75,000, and that nearly \$8 million is a significant chunk of its budget.<sup>31</sup>

**Bethlehem, PA’s so-called “Hirko Tax” is named after John Hirko, a man who police officer Joseph Riedy shot 11 times during a house raid in which SWAT officers also burned the house down using two flash grenades, burning Hirko’s body beyond recognition. The city enacted the tax to pay off a bond used to fund a settlement to Hirko’s family, referring to it in budget documents as the “Hirko settlement debt”. The**

following year, Riedy was named “Officer of the Year”.<sup>32</sup> The fact that this tax is referred to popularly as the “Hirko Tax”, while the officer who is actually responsible for the conduct that led to the settlement is celebrated as a local hero, is an egregious example of victim blaming.

**Inkster, MI** instituted a one-time property tax hike to pay for \$1.4 million settlement<sup>33</sup> in a case in which a Black motorist was beaten by an Inkster police officer during a traffic stop.<sup>34</sup>

**South Tucson, AZ** instituted a “secondary property tax” that it used to pay down debt, until a city attorney decided the tax was illegal as it had never been put to a vote.<sup>35</sup>

**Cleveland, OH** in 2016 faced costs relating to the police department’s consent decree with the

DOJ. Hoping to plug a huge budget hole and restore services that had been eviscerated by budget cuts, residents voted in 2016 to impose a tax increase on themselves.<sup>36</sup> (See *Cleveland case study for more detail*)

## **POLICE BRUTALITY BONDS AND THE FINANCIALIZATION OF POLICE VIOLENCE**

At the root of borrowing for police related settlements and judgments is a one-two punch of inadequate revenues to cover a city's expenses, and the escalating costs of police violence. In some of the cases that we researched, there were one or two particularly large settlements that caused a fiscal emergency for the city. In other instances, cities are habitually relying on borrowing to pay settlement and judgment costs that predictably exceed the city's dedicated funding year after year. In some cases, the borrowing happened in the aftermath of the 2008 financial crisis, when many cities struggled with greatly diminished revenues.

This wealth transfer is a feature of a financialized economy, in which the financial sector—or Wall Street—finds a way to extract profit from every facet of our lives. This process is known as *financialization*—the expansive control of the financial sector over our economy, our political system, and our lives.<sup>37</sup> Financialization manifests itself as banks, hedge funds, private equity firms, and other financial institutions finding ways to profit from every possible aspect of our lives and using debt and wealth extraction as key ways in which to do so. Economist Mike Konczal at the Roosevelt Institute writes, “At its core, financialization is about reworking the real economy, the government and ourselves to serve financial needs.”<sup>38</sup> Financialization works to concentrate wealth and power at the very top of a racialized social and economic hierarchy. Wealth extraction in a financialized economy is not color blind, but targets communities of color in particular.

The financial crisis of 2008 was a consequence of a highly financialized economy. The deregulation of financial markets, including the Bill Clinton era decision to shield what's known as “over the counter” (OTC) derivatives from regulation,<sup>39</sup> ultimately led to the banking crisis and subsequent bank bailout.<sup>40</sup> The recession that followed ravaged public tax bases, leading to revenue crises for our cities, counties and states, along with austerity policies as governments struggled to balance budgets. Though the overall economy has recovered from the recession, many governments still face structural revenue deficits. Revenue crises and austerity policies lead to deteriorating infrastructure, a shriveling social safety net, and massive cuts to essential public services—particularly in poor communities of color. Governments facing revenue crises must resort to borrowing money to close budget gaps and can become vulnerable to predatory lending schemes that banks may offer.<sup>41</sup> Police brutality bonds are one way that Wall Street offers “solutions” to public revenue shortages that not only leave the root causes of the revenue shortage unaddressed, but also create room for investor profit.

### **Police brutality bonds: What they are, and why they are bad**

A municipal bond is a type of loan a government takes out with the help of a bank. The bank serves as the underwriter of the bond, which essentially means it will serve as the middle-man between the city that is selling, or issuing the bond, and the investors—the bond buyers, or bondholders—who are purchasing the bond. The investors are loaning the government money by buying the bonds. Bondholders are usually people and institutions with a lot of money to invest, such as wealthy individuals and money market funds. When they buy the bonds, the city gets a large sum of money to spend on its needs. The city will pay the bondholders back, with interest, over a period of time that is typically thirty years (though it can be longer or shorter). Banks profit by providing underwriting services, and other financial and legal firms collect fees

for other services, ranging from legal services to printing costs. Together, the cost of services these banks and other companies provide are called “issuance fees”. The average issuance fees on a municipal bond is about 1.02 percent of the initial principal of the bond—in other words, a tiny bit more than 1 percent of the total amount being borrowed.<sup>42</sup> On a \$200 million bond issuance, Wall Street banks and other firms can collect \$2 million or more in fees.

A city using municipal bonds can be similar to a home buyer taking out a mortgage, spreading the cost of the purchase out over a long period of time and paying the debt down gradually. Just as getting a mortgage can make sense for home buyers, municipal bonds are often a reasonable way for cities to raise money for expensive, necessary longer-term investments, such as to build a school or modernize water infrastructure. But in times of Wall Street-driven austerity and shrinking revenues, many cities also issue bonds when they need to fill budget gaps. Borrowing to fill budget holes is like a person paying the rent with a credit card. It’s an emergency measure that obscures the underlying problem, which is that there is not enough money coming in to cover the bills. It creates more debt, which then has to be paid off with the already limited funds available.


Cities and counties pay bondholders back with funds they have available. Paying back bond debt takes priority over other possible uses of these funds. Unlike funding for schools, mental health services, or street repair, for example, bond debt is not considered “discretionary

spending”. This means that if a city is low on funds, it will prioritize paying back the bondholders over funding public services like schools. For example, Chicago has closed schools<sup>43</sup> and mental health clinics,<sup>44</sup> but the city and school district continue to make their bond payments on time.

In some cases, cities use what is called a general obligation (GO) bond to raise money to pay for police brutality settlements, alongside other projects. In other cases, they issue a special bond, called a judgment obligation bond (JOB) or a final judgment bond, that is specifically used to raise money to pay for legal settlements and judgments. We consider both of these to be forms of police brutality bonds.

When a government issues a bond, it provides a document known as an Official Statement, or OS, which is intended to provide potential bondholders with the information they need to decide whether or not to invest in a given bond. The OS provides a wealth of information about the bonds, including what the bonds will be paying for. However, we found that the Official Statements for most police brutality bonds do not disclose which police misconduct cases the bond will be used to pay. While a few JOB Official Statements

do provide case numbers, names, and descriptions, most police brutality bonds we looked at did not provide enough detail on their own for us to link the bonds to specific cases. With most cases we researched, there is a striking lack of transparency and disclosure around cities’ reliance on borrowing, and in every case study, there is a lack of full, accessible accounting of



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the costs. Most cities in our sample were unable, or unwilling, to provide a full accounting of how much they are spending on borrowing for settlements and judgments. (See *our section on transparency for a fuller discussion of this issue*)

## **THE PROBLEM OF VIOLENT POLICING**

Abusive policing is a persistent problem, and most violent officers are not held accountable for their abuses. Human Rights Watch, which investigates human rights abuses around the globe, issued a report on abuses in the American system of policing in 1998. They found that:

*Police brutality is one of the most serious, enduring, and divisive human rights violations in the United States. The problem is nationwide, and its nature is institutionalized... The excessive use of force by police officers, including unjustified shootings, severe beatings, fatal chokings, and rough treatment, persists because overwhelming barriers to accountability make it possible for officers who commit human rights violations to escape due punishment and often to repeat their offenses.*<sup>45</sup>

Police officers disproportionately target communities of color with abusive behavior. For example, numerous studies have found racial bias in how police determine who to stop, and in whether a person who is stopped will be searched. A 2016 Chicago Police Accountability Task Force investigation found that “black and Hispanic drivers were searched approximately four times as often as white drivers, yet [the Chicago Police Department’s] own data show that contraband was found on white drivers twice as often as black and Hispanic drivers.”<sup>46</sup> A *New York Times* Investigation found that in the 14 cities they examined, Black drivers were much more likely to be searched than whites; even though in all but one of those jurisdictions, white drivers were actually more likely to be carrying contraband.<sup>47</sup> Other investigations looking at Ferguson MO, New York City, San Francisco, Oakland, and Maricopa County AZ, have found serious racial disparities in stop and search practices, with Black and Brown people subjected more often to vehicle searches even though they are less likely to have contraband.<sup>48</sup>

Black and Brown people are also much more likely than white people to be shot to death by police. Native American men and Black men are the most frequent victims of fatal police violence.<sup>49</sup> An academic study utilizing 2015 *Washington Post* data found that police shot and killed unarmed Black men at disproportionately high rates, likely due to implicit bias. Justin Nix, one of the researchers on the project, told the *Post*, “The only thing that was significant in predicting whether someone shot and killed by police was unarmed was whether or not they were black... Officers are perceiving a greater threat when encountered by unarmed black citizens.”<sup>50</sup>

## **DEPARTMENT OF JUSTICE INTERVENTIONS IN ABUSIVE POLICING**

The U.S. Department of Justice (DOJ) has attempted to address abusive policing by launching deep investigations into police departments exhibiting particularly high levels of dysfunctional violence. The DOJ has investigated civil rights violations of various sorts in at least 67 departments in the past two decades.<sup>51</sup> A common civil rights violation involves use of force by officers. In the cities with the worst abuses of use of force, the DOJ has forced cities to enter into binding agreements that provide steps those cities must take to remedy their police-related problems. Some of these agreements, called consent decrees, are managed by federal courts, and cities must comply with them under threat of legal action by the DOJ. These agreements are often extremely costly for the cities to implement.

The DOJ’s approach has had mixed results.<sup>52</sup> “A May 2017 study by researchers at the University

of Texas at Dallas found that although DOJ consent decrees “*may* contribute to a modest reduction” in police misconduct lawsuits, that the moderating effect usually only lasts while the consent decree is actually in effect [emphasis in the original]. Lawsuits start to trend back up once the decree is lifted. This suggests that DOJ consent decrees do not adequately address the structural causes of police brutality, as there does not appear to be a lasting impact.”<sup>53</sup>

After Jeff Sessions took office as U.S. Attorney General in 2017, he ordered a review of all the DOJ’s police reform agreements and said consent decrees can “reduce morale” of police officers.<sup>54</sup> Sessions also requested a delay in a consent decree for Baltimore, which was negotiated during the Obama administration, saying he had “grave concerns that some provisions of this decree will reduce the lawful powers of the police department”. While many cities have resisted the DOJ’s intervention, Baltimore wanted federal assistance with its police department, and appealed to a federal court, where a judge ruled against the delay.<sup>55</sup> Attorney Jonathan Smith, who for five years was the DOJ’s chief of special litigation, said that Sessions’ actions “raises the question of whether, under the current attorney general, the Department of Justice is going to walk away from its obligation to ensure that law enforcement across the country is following the Constitution.”<sup>56</sup> Under the Sessions DOJ, city leaders and police officers are likely to feel that they have a reprieve from federal scrutiny of law enforcements’ civil rights violations.


## **VIOLENT POLICE OFFICERS AND THEIR DEPARTMENTS ARE SHIELDED FROM FINANCIAL CONSEQUENCES**

UCLA School of Law professor Joanna Schwartz has extensively researched how governments pay for police settlements and judgments. She has found that police officers are “virtually always” indemnified by their employers, meaning that cities will cover the costs of defending

officers in court cases, and will pay for any judgments or settlements that result from actions officers take in the course of their employment. When plaintiffs bring a case against police officers and win financial awards, those officers almost never have to contribute to their legal defense costs nor to the payment of the award. Instead, taxpayers pay. In her six-year sample of cases involving \$735 million in awards to plaintiffs, Schwartz found that officers personally satisfied just 0.02 percent of awards.<sup>57</sup>

Schwartz has also found that most police departments are insulated from the financial consequences of excessive settlement and judgment costs. Smaller cities often have liability insurance that covers payouts related to police misconduct cases, while larger cities are generally “self-insured”, meaning that they pay

costs out of a dedicated fund. Sometimes that fund is part of the police budget, but often the money comes out of the general budget with no contribution from the police department. However, Schwartz found that even when the police department itself is required to contribute to settlements and judgments out of its own budget, this does not generally impose a financial burden on the department. Many police departments routinely go significantly over their budget for settlements and judgments, with no financial consequences for the department. Often a police department simply asks the city for more money and gets it from the city without a fight.<sup>58</sup>



*When plaintiffs bring a case against police officers and win financial awards, those officers almost never have to contribute to their legal defense costs nor to the payment of the award. Instead, taxpayers pay.*

For example, Chicago allocated an average of \$16.2 million a year in its budget for police lawsuit payouts between 2012 and 2014, but actually paid an average of \$52 million for police-related payouts in each of those years.<sup>59</sup> Another example Schwartz cites is Boston, which had allocated about \$1.3 million a year but had actual litigation payouts an average of three times that amount, with the difference coming from the city's overall budget, not the police department's budget.<sup>60</sup> *(See our Chicago case study for more details on Chicago's police costs)*

The huge costs of settlements add to the already high costs of policing. Even without fully accounting for the costs of police misconduct settlements and judgments that are paid from cities' general operating budgets rather than just the police budgets<sup>61</sup>—the costs of mounting a legal defense for accused officers and the interest and fees on police brutality bonds—police departments are costing cities and counties huge amounts of money. *Freedom to Thrive*, a carefully researched report put out in 2017 by the Center for Popular Democracy, Black Youth Project 100 and Law for Black Lives, looked at the budgets of ten cities and two counties<sup>62</sup> and found that police departments accounted for up to 41.2 percent of the cities' and counties' budgets.<sup>63</sup> Since the costs of police-related settlements and judgments are often not fully captured by the official police budget, the true burden of policing costs can be even higher than that. This is all money that we could be investing in the things that actually do make our communities safer and more livable, such as public education and mental health services.<sup>64</sup> Instead what we see is an overinvestment in policing and underinvestment in services, infrastructure, and the social safety net.

## **SETTLEMENTS OFTEN FUNCTION AS HUSH MONEY AND PREVENT REAL ACCOUNTABILITY**

Settlements and judgments can provide a measure of restitution to victims of police violence and/or their families, but settlements can also function as “hush money” in cases where survivors or their families, in exchange for the settlement award, sign away their rights to discuss the case or the officers involved. Baltimore, for example, was sued by the American Civil Liberties Union (ACLU) for its use of what's known as a non-disparagement clause (also known as a “gag order”).<sup>65</sup> The ACLU got involved after the City of Baltimore withheld half of a woman's settlement after she responded to comments in an online news story about her case. Such non-disparagement agreements protect a city and its police force from scrutiny and accountability and are unfair to victims of police violence and their families.

## **TRUE TRANSPARENCY IS NONEXISTENT**

We found that it can be very difficult to determine whether or not a city is borrowing for police related settlements and judgments, and it can be even harder to identify which cases they're borrowing to pay for and what their total costs are *(See methodology section for details on how we did the research)*. While some cities make information more available than others, most cities we looked at either could not or would not provide us with a list of cases covered by borrowing and information about which bond paid for which case. A Chicago spokesperson, for example, told us that the city does not keep track of which settlements and judgments are financed by bonds. *(See Chicago case study for more detail)*

As we mentioned above, some cities issue judgment obligation bonds (JOBs), which are dedicated entirely to paying for settlements and judgments against the city. This makes it much easier to at least determine whether the city has borrowed to cover any kind of settlement or judgment. However, many JOB Official Statements do not mention which cases they cover, or if they do provide a list of cases, it is not clear how many or which of these cases are related to

police misconduct. Other cities include money for settlement and judgments in a larger General Obligation bond issuance, where they may indicate that some portion of the bond revenues will be used for settlements or judgments and may or may not specify how much money that is.

Many cities ignored portions of our Freedom of Information Act (FOIA) requests or gave us information that only partly answered our questions. But nobody should have to send an official request to access information about the costs and the sources of money for settlements and judgments. This information should be readily accessible to anyone who wants it, whether it's a city councilmember representing the interests of their constituents, or a member of a community interested in the stewardship of their community's tax dollars. Accountability is impossible without transparency. While transparency alone cannot solve our police violence problems, it is a necessary first step in the right direction. We cannot act effectively solve problems we don't fully understand. *(See Recommendations section)*



# LOCAL CASE STUDIES

## CHICAGO

**C**hicago is habitually relying on bond borrowing to fund its legal settlements and judgments, as well as other litigation costs. The city of Chicago provides detailed information about its use of bond financing for these purposes. However, Chicago's use of bond borrowing to cover police claims specifically is difficult to parse, because the city fails to track exactly *which* of its settlements and judgments are covered by bond money. In addition to police related settlements and judgments, the City of Chicago settles numerous other types of cases every year, including property damage, "slip and fall", and labor related suits, among many others. This means that while we have concrete figures for Chicago's overall use of borrowing for settlement and judgment costs, and we have separate reliable data for Chicago's police related settlements, we had to extrapolate from these two data sets to reach our conclusions about Chicago's use of police brutality bonds.

Some of Chicago's bond official statements mention that some of the money may or will be used for settlements and judgments, but there is no mention of any specific cases. This makes it virtually impossible to connect individual settlements or judgments with specific cases of misconduct. A member of the city's law department explained that the city doesn't track the information "because it serves us no purpose". This person also told us that settlements may be paid for with money from a particular city fund, which would later be replenished with bond proceeds. As this person pointed out, those settlements were in effect paid for with borrowed money.<sup>66</sup>

Based on the data the City of Chicago does make available, we estimate that the total dollar amount of the settlements and judgments related to cases against the Chicago Police Department (CPD) or CPD officers is less than or roughly equivalent to what Chicago is borrowing to pay for all of its settlements and judgments. For example, according to records available on the city's law department website, Chicago spent \$360 million on police-related settlements and judgments between 2010 and 2016. During this same period, the city used \$484.3 million in bond proceeds to pay for settlements and judgments. The larger figure includes costs beyond the settlement amounts. Essentially, this means that it is fair to say that most of the city's police related settlement and judgment costs (or an equivalent amount) are covered by bond borrowing. *(See methodology section for more details on our sources and figures)*

**This report focuses on Chicago's police-related settlement and judgment costs since 2010, but we know that since 2004, Chicago has spent more than \$800 million on such cases.**

in early 2017, Chicago borrowed another \$225 million for settlements and judgments,<sup>68</sup> bringing the 2010-2017 total to \$709.3 million. **We estimate that this borrowing will cost taxpayers more than \$1 billion in interest that the city will pay to investors over the life of these bonds.**<sup>69</sup> *(See methodology section for more detail)*

We estimate that since 2010, big banks and law firms have made approximately \$7.1 million in fees for underwriting the bonds authorized to pay for Chicago's lawsuits.<sup>70</sup> In recent years, some

of the banks that have profited from these particular deals, and Chicago's growing number of lawsuits, are Goldman, Sachs, Wells Fargo, Mesirow Financial, Inc., and the Bank of Montreal (which is the parent company of Chicago's BMO Harris Bank).<sup>71</sup>

According to the City of Chicago's Office of Budget and Management, the city set aside just over \$19 million a year to cover police brutality settlements in 2015 and 2016.<sup>72</sup> However, Chicago has exceeded this budget consistently. The city's practice of allocating tens of millions less a year for police settlements than it actually spends obscures the true cost of these cases.

## **CHICAGO'S POLICE BRUTALITY PROBLEM**

In 2015, a court ordered the city to release video footage of a white officer, Jason Van Dyke, fatally shooting Laquan McDonald, a young Black man.<sup>73</sup> The video showed Van Dyke shooting McDonald 16 times; 15 times while McDonald was lying wounded on the ground, posing no threat to the officer.<sup>74</sup> Three officers were later indicted for allegedly engaging in a cover up of the killing, while Van Dyke is currently awaiting trial on murder charges as of this writing.<sup>75</sup> Following the release of the video, facing protests and demands for change, Mayor Emanuel appointed the Police Accountability Task Force, whose mission was to "lay the foundation for the rejuvenation of trust between the police and the communities that they serve by facing hard truths and creating a roadmap for real and lasting transparency, respectful engagement, accountability and change."<sup>76</sup> The Task Force released a report in 2016, in which it described a deeply troubled relationship between the CPD and Black and Brown communities:

*The civic outrage that followed [the release of the video] gave voice to long-simmering anger not just about McDonald, but the deaths of others at the hands of the police, including Rekia Boyd, Ronald Johnson and, more recently, Quintonio LeGrier, Betty Jones and Philip Coleman. The deaths of numerous men and women of color whose lives came to an end solely because of an encounter with CPD became an important rallying cry. That outrage exposed deep and longstanding fault lines between black and Latino communities on the one hand and the police on the other arising from police shootings to be sure, but also about daily, pervasive transgressions that prevent people of all ages, races, ethnicities and gender across Chicago from having basic freedom of movement in their own neighborhoods.<sup>77</sup>*

The Task Force found that 74 percent of those injured or killed by Chicago police shootings were Black men and that police disproportionately used Tasers against Black people. The report found that "CPD's own data gives validity to the widely held belief the police have no regard for the sanctity of life when it comes to people of color."<sup>78</sup>

After the LaQuan McDonald shooting, the DOJ launched an investigation into the CPD. Its report, released in January 2017, found that CPD's "unreasonable force and systemic deficiencies fall heaviest on the predominantly black and Latino neighborhoods... CPD has tolerated racially discriminatory conduct that not only undermines police legitimacy, but also contributes to the pattern of unreasonable force."<sup>79</sup> The DOJ named the department's code of silence and lack of accountability for officers that commit these offenses as institutional problems, specifically saying that "discipline is haphazard, unpredictable and does not deter misconduct."<sup>80</sup> The DOJ outlined a total of 99 recommendations to improve CPD practices.<sup>81</sup>

The City of Chicago has made attempts at implementing some of the DOJ's recommendations. This includes conducting a review of its use of force policy and providing refresher trainings for officers.<sup>82</sup> However, the problem of police violence in Chicago shows no sign of abating. In 2017 the city paid \$46.3 million for police-related settlements,<sup>83</sup> and settled or received judgments in

other cases that will have to be paid in the coming months and years. For example, in October 2017, a jury ordered Chicago to pay a record breaking \$44.7 million to a man who is severely disabled after being shot in the head by an off-duty officer.<sup>84</sup>

Other settlements and judgments in recent years include:

- ▶ \$5 million dollars to the family of Laquan McDonald;<sup>85</sup>
- ▶ \$31 million awarded to four men who were coerced into confessing to a rape and murder they did not commit, and spent 17 years in prison before being exonerated;<sup>86</sup> and
- ▶ \$1 million settlement to Trevor Mitchell for an illegal search and seizure.<sup>87</sup>

In her study of indemnification, Joanna Schwartz quotes a former City of Chicago Attorney on how the costs of police lawsuits affects the people of the city:

“[W]hen you had to budget more for [police] tort liability you had less to do lead poisoning screening for the poor children of Chicago. We had a terrible lead poisoning problem and there was a direct relationship between the two. Those kids were paying those tort judgments, not the police officers.”<sup>88</sup>

In 2012, Chicago closed half of its mental health clinics, including four of the eight clinics on the city’s heavily Black South Side.<sup>89</sup> Disinvestment from mental health services pushes more people into the criminal justice system and results in more contact between police and mentally ill people, sometimes with disastrous consequences.<sup>90</sup> Similarly, disinvestment in public education contributes to the “school to prison pipeline”, resulting in more people getting caught up in the criminal justice system.<sup>91</sup> A year after the clinic closures, Chicago closed nearly 50 public elementary schools, the largest mass school closure in the country’s history at the time. Eighty-eight percent of students affected were Black, and more than 93 percent from poor families.<sup>92</sup> Five years later, in early 2018, Chicago Public Schools (CPS) decided to close four more South Side high schools.<sup>93</sup> Although CPS is a distinct legal entity from the City of Chicago and has a separate budget, it is normal for CPS to request and receive funds from the city to fill budget gaps or pay for certain projects. However, Chicago’s police misconduct settlements leave less money that could be used to help address CPS’s budget problems and avoid school closings. Mental health clinics and schools are exactly the community resources in which we need to be investing to keep our communities healthy, safe, and thriving. Instead, Chicago is going deep into debt to subsidize its police department’s violence.



*“[W]hen you had to budget more for [police] tort liability you had less to do lead poisoning screening for the poor children of Chicago. We had a terrible lead poisoning problem and there was a direct relationship between the two. Those kids were paying those tort judgments, not the police officers.”*

## CLEVELAND

Since 2008, Cleveland has issued \$12.1 million in judgment obligation bonds with help from banks like Wells Fargo, at interest rates of up to 6 percent.<sup>94</sup> The city has also used bonds to borrow \$800,000 for body cameras for police.<sup>95</sup> Cleveland is under a consent decree from the Department of Justice after a DOJ investigation found rampant use of excessive force and a lack of accountability, among other problems.<sup>96</sup> The consent decree requires reforms that will also cost the financially strapped city tens of millions of dollars, if implemented.

These bonds have provided investors with more than \$4.4 million in profits thus far.<sup>97</sup> The city issued more than \$4 million in new bonds in 2016 to refinance earlier borrowing, providing a new opportunity for banks and other firms to get a cut. The city will be paying off these bonds until 2033, providing investors with an additional \$3.1 million in interest.<sup>98</sup> That's a total of \$7.4 million for investors by the time the bonds are paid off.

The costs of police brutality in Cleveland, like in many other cities, are rising. Between 2004 and 2014 Cleveland shelled out \$10.5 million for police settlements. But in just the two years between 2015 and early 2017, Cleveland paid \$13.2 million—a huge increase in a short period of time. The police department is responsible for much more than its share of the city's legal costs: an *ABC Channel 5* investigation found that 73 percent of cases filed against the city between January 2013 and the end of 2017 were against the police department.<sup>99</sup>

## **CLEVELAND'S POLICE BRUTALITY PROBLEM**

The Cleveland Division of Police (CDP) has been under a consent decree with the DOJ since June 2015. The DOJ initiated an investigation after a “series of incidents of potential excessive force revealed a rift between CDP and certain segments of the communities it serves.” This included an incident that the Ohio Attorney General had investigated and concluded was an example of “systemic failure” by the CDP.<sup>100</sup> In its report following a 21-month-long investigation, the DOJ identified the following problems:

- ▶ The unnecessary and excessive use of deadly force, including shootings and head strikes with impact weapons;
- ▶ The unnecessary, excessive or retaliatory use of less lethal force including Tasers, chemical spray and fists;
- ▶ Excessive force against persons who are mentally ill or in crisis, including in cases where the officers were called exclusively for a welfare check; and
- ▶ The employment of poor and dangerous tactics that place officers in situations where avoidable force becomes inevitable and places officers and civilians at unnecessary risk.<sup>101</sup>

The DOJ also noted problems with stop, search and seizure practices, and a lack of officer accountability and training, among other issues.<sup>102</sup> The DOJ called the Department's accountability systems regarding use of force “structurally flawed”. For example, during CDP's internal investigations, investigators would not find that an officer violated Department policy unless the evidence proved “beyond a reasonable doubt” that the officer was guilty. This is a standard appropriate for criminal prosecutions, not internal investigations, as the DOJ points out. Because of this unreasonable standard, it is “exceedingly rare” that CDP issues a finding of use of excessive force.<sup>103</sup>

Making matters worse, the DOJ had found many of the same “structural deficiencies” more than a decade earlier. In 2004, the DOJ gave CDP a set of recommendations regarding its use of force, recommendations that “were either not fully implemented or, if implemented, were not maintained over time.”<sup>104</sup> This highlights a weakness in the DOJ approach to policing reform.

A *Cleveland Plain Dealer* investigation reviewed 70 lawsuits filed against the CDP in the previous decade that had resulted in taxpayer-funded payouts. The claims against the department align with the DOJ findings, including allegations of excessive force, wrongful arrests and needless escalation of violence.<sup>105</sup>

When the consent decree was announced in 2015, city officials estimated that meeting its requirements would cost about \$13.2 million in 2016, and a minimum of \$32 million more over

the following four years.<sup>106</sup> Cleveland City Council President Kevin Kelly said at the time that spending this money would “have profound implications on other services... This is a large chunk of our budget, and it will be all hands-on deck to figure out solutions to this.”<sup>107</sup> Facing the costs of addressing their police department’s problems, trying to plug a huge budget hole, and hoping to restore services that had been “cut to the bone”, Cleveland residents voted in 2016 to impose a tax increase on themselves.<sup>108</sup>

During the DOJ’s investigation, about six months before the consent decree announcement, a white Cleveland police officer shot to death a Black 12-year-old boy, Tamir Rice. This happened in a city park, mere seconds after the officer’s police car stopped near the boy. The officer, Timothy Loehmann, had been hired by CDP despite a “damning” personnel file from a previous police job.<sup>109</sup> When an investigation and grand jury probe resulted in no indictment of Loehmann or his partner, the community’s pain and outrage led to protests.<sup>110</sup> A lawsuit filed by the child’s family later resulted in a \$6 million settlement, prompting the *Cleveland Plain Dealer* to write in an editorial that Cleveland “can’t afford these kind of horrific deaths or these kind of eye-popping financial payouts.”<sup>111</sup>

Cleveland has looked for ways to avoid having to pay for some settlements. Facing \$18.7 million in payouts for two cases—one a fatal police shooting, the other a “sloppy and malicious”<sup>112</sup> wrongful conviction—the city got creative. As we explained above, most police officers are indemnified by their employers against personal financial liability. This means that taxpayers foot the bill for officers’ legal defense and any settlements or judgments. But in at least these two cases in Cleveland, the city let the cases against the officers go to court without indemnifying them, so that the officers themselves would be liable for any financial awards to victims or their families. Then, the city paid for attorneys to provide assistance to the officers so that they could file for bankruptcy and get the settlement debt discharged. Had it worked, this unethical scheme could have saved the city millions while depriving the victims of their settlements.<sup>113</sup> However, a judge in one of the cases ruled that Ohio law requires cities to indemnify officers, and Cleveland must pay for the settlement.<sup>114</sup>

Another way Cleveland may be reducing its police misconduct costs is by coercing some victims of police brutality into dropping cases. An investigation by the *Cleveland Plain Dealer* and Northeast Ohio Media Group found that the city has offered to drop or reduce charges against some people in exchange for those people agreeing not to sue officers or the city.<sup>115</sup> The *Plain Dealer* and Northeast Ohio Media Group identified multiple cases in which people were charged with crimes *after* they accused police of brutality.

The *Cleveland Plain Dealer* also reported that the city has paid millions in settlements that were “hidden behind confidentiality agreements, never vetted in city meetings and were kept quiet by plaintiffs themselves who feared reprisals and often faced criminal charges”. The paper quoted Cleveland City Councilman Matt Zone, Public Safety Committee chair, saying that the City Council is only informed of settlements during the budgeting process and that the Council needs to “ask for more transparency in relation to lawsuits being paid out.”<sup>116</sup>

## LAKE COUNTY, INDIANA

Lake County is in the northwest corner of Indiana and is part of the Chicago metropolitan area. It is the second largest county in the state and includes cities like Hammond and Gary.

Lake County has a long history of issuing municipal bonds to pay for settlements and lawsuits against the county and its offices, including the Lake County Sheriff’s Department and Lake

County Jail, since at least 1995.<sup>117</sup> Since then, Lake County has issued nearly \$24 million in judgment obligation bonds, \$18.1 million of which has been issued since 2008.<sup>118</sup> At least \$11.8 million of the borrowed money went to cover settlements and judgments in cases involving the Lake County Jail and Sheriff's Department. This is a conservative estimate and includes only cases we were able to confirm were related to the Sheriff's Department or the jail. By the time the existing judgment obligation bonds reach maturity in the year 2025, investors will have collected about \$1.8 million in interest from taxpayers. Underwriters on Lake County's judgment obligation bonds include Fifth Third Bank, Piper Jaffray, and others. Underwriters and other firms collected more than \$1.13 million in issuance fees in connection with these bonds.<sup>119</sup> (See *methodology section for more details on our numbers*)

The settlements and judgments covered by Lake County's police brutality bonds include cases involving inadequate and negligent medical care in the Lake County Jail, brutal and at times fatal use of force, inhumane living conditions, wrongful arrests, and other civil rights violations.<sup>120</sup> These settlements include:

- ▶ \$2.75 million in a wrongful death lawsuit filed on behalf of 39-year-old Gregory Smith.<sup>121</sup> Smith was arrested in Hobart, Indiana for driving 35 miles per hour in a 30 miles per hour zone. He died of cardiac arrest in Lake County Jail after officers used a stun gun on him.<sup>122</sup> Allegations in the lawsuit included excessive force by jail officers, and "a custom or practice of failing to provide adequately for the mental health needs of inmates and detainees."<sup>123</sup>
- ▶ \$2.2 million in the hanging death of 39-year old Adekunle Odumabo<sup>124</sup> in jail. The suit alleged that the jail failed to keep Odumabo on suicide watch despite a court order.<sup>125</sup>
- ▶ \$4.2 million<sup>126</sup> to settle a federal lawsuit involving the jailhouse death of 43-year-old Kenneth Hobson.<sup>127</sup> Hobson was arrested for a misdemeanor offense and transferred to the Lake County Jail. Hobson was mentally ill and his symptoms prevented him from being able to drink the tap water in the jail. In her lawsuit, Hobson's mother Dorothy alleged that the jail denied her son medical care and bottled water, which resulted in his death from dehydration.<sup>128</sup>
- ▶ \$310,000 total in settlement awards to family of Ricardo Diaz, who was shot to death by Lake County and Hobart police officers responding to a distress call.<sup>129</sup>
- ▶ \$635,000 total in two settlements involving two separate wrongful arrest cases.<sup>130</sup>

## **LAKE COUNTY'S POLICE BRUTALITY PROBLEM**

In 2007, Lake County Jail inmates filed a class action lawsuit against the jail and the County,<sup>131</sup> alleging that the County held people "for weeks or months" in overcrowded holding cells, and that a shortage of beds forced inmates to sleep directly on concrete. The complaint included stories about human waste on the jail's concrete floor, and allegations that medical care was "nearly nonexistent".<sup>132</sup>

Lake County settled the inmates' lawsuit for \$7.2 million, but the allegations attracted the attention of the U.S. Department of Justice. The DOJ investigated the jail and released a summary of its findings in 2009. The DOJ wrote that the jail "subjects inmates to systemic violations of federal constitutional rights, specifically in regard to: (1) suicide prevention, (2) mental health care, (3) the medical care, and (4) sanitary and safe living conditions." The report cited civil rights violations such as inadequate fire safety, housing and maintenance deficiencies, and inadequate housekeeping, laundry, food and janitorial services. The report also cited instances of the unsupervised and unverified distribution of narcotics and prescription drugs,

undiagnosed or misdiagnosed mental illness, and understaffed and overworked medical workers.<sup>133</sup>

Lake County and the DOJ reached a settlement agreement requiring the jail to make significant and expensive changes, including hiring additional staff and renovating buildings.<sup>134</sup> The County has spent at least \$25.2 million thus far to comply with the DOJ agreement. As of March 2018, the jail remains under federal supervision.<sup>135</sup> This is the second time in the jail's history that it has been subjected to federal intervention. A lawsuit filed in 1974 over health care, overcrowding and violence in the jail resulted in federal oversight that was not lifted until 1997.<sup>136</sup>

## LOS ANGELES

Los Angeles issued \$71.4 million in judgment obligation bonds in 2009 and 2010, and came close to issuing new JOBs in 2017. These bonds paid for settlements and judgments that included, but were not limited to, police related cases. Banks and other private firms collected more than \$1 million in issuance fees on the 2009 and 2010 JOBs. The financial firms involved included Merrill Lynch (Bank of America) and De La Rosa and Co.<sup>137</sup> By the time the bonds are paid off, taxpayers will have handed over more than \$18 million to investors.<sup>138</sup>

Significant portions of the JOBs Los Angeles issued in 2009 and 2010 were police brutality bonds. For example, the 2009 bonds covered a \$20.5 million settlement related to the messy Rampart Police corruption scandal of the 1990s and 2000s.<sup>139</sup> The Rampart Scandal, as it is commonly known, involved numerous officers in the city's anti-gang Rampart Division engaging in misconduct, including physical abuse of suspects, evidence tampering, and perjury.<sup>140</sup> LAPD officer Rafael Perez had been arrested on cocaine charges. As part of a plea bargain, he agreed to help uncover corruption inside the LAPD, and the information he provided on misconduct within the department led to the overturning of over 100 criminal convictions.<sup>141</sup> The city had to pay more than \$95 million in police misconduct settlements in connection with the Rampart Scandal, including the \$20.5 million that was covered by the 2009 police brutality bond.<sup>142</sup>

The 2010 JOBs covered \$12.8 million in settlements<sup>143</sup> for people injured or mistreated by LAPD in what the *Los Angeles Times* described as a "May Day melee",<sup>144</sup> when police used batons and rubber bullets to disperse crowds that had gathered to participate in a pro-immigrant march.<sup>145</sup> The aggressive police response resulted in over 300 claims against the city.<sup>146</sup> The 2010 JOBs also covered \$5 million to settle two cases involving negligent driving by an LAPD officer that resulted in personal injuries.<sup>147</sup>

In 2017, Los Angeles faced a huge spike in settlements and judgments, including about \$8 million for several cases involving fatal police shootings.<sup>148</sup> Concerned about a potential deficit of \$245 million, the Los Angeles' City Administrative Officer (CAO), Miguel Santana, issued a memo with recommendations for how Los Angeles should handle the deficit and "restore the reserve fund level."<sup>149</sup> One of his recommendations was that the city issue between \$50 million and \$70 million in judgment obligation bonds to cover settlements and judgments.<sup>150</sup> At the time, the city had already used reserve funds for \$28.5 million in settlements.<sup>151</sup> The City Council authorized the bond borrowing in April 2017. In November, however, a new Acting CAO, Richard H. Llewellyn Jr, issued a memo in which he recommended that the City of Los Angeles not proceed with the earlier plan to issue judgment obligation bonds. Llewellyn indicated that the city had eliminated the need for the bonds in part by "requesting departments to reduce expenditures and generate savings."<sup>152</sup>

Often, a city's attempts to reduce costs results in cuts to public service jobs and diminished public services. For example, in 2009, in the midst of a recession and facing a \$529 million deficit, Los Angeles' mayor declared a fiscal emergency and the city began looking for ways

to cut labor costs.<sup>153</sup> One result of the budget tightening was a loss of thousands of city jobs providing necessary services such as tree trimming, sidewalk repair, traffic control, and emergency response services.<sup>154</sup> A coalition of community organizations and labor unions pushed the city to replace these jobs when the economy improved, and the city signed an agreement to restore 5,000 jobs and create a targeted local hiring program to fill them. The program is intended to “help under-served and under-employed populations find an alternative pathway” in civil service careers.<sup>155</sup> However, community groups involved in the process say that the city has only filled 964 of the 5,000 promised positions.<sup>156</sup>

Los Angeles did not issue police brutality bonds in 2017, but in finding other ways to pay settlement costs, the city also may have further delayed restoring service positions lost nearly a decade ago. The November 2017 memo from the new Acting CAO also indicated that the city had already spent \$116,000 as it prepared to issue the judgment obligation bonds that had since been canceled. That money could have funded city services.

## **LOS ANGELES’ POLICE BRUTALITY PROBLEM**

In large part because of the Rampart Scandal, the DOJ launched an investigation of the LAPD. In a May 2000 letter to the city announcing its findings, the DOJ identified various forms of misconduct, which it said happened “on a regular basis”, including “unconstitutional use of force by LAPD officers, including improper officer-involved shootings; improper seizures of persons, including making police stops not based on reasonable suspicion and making arrests without probable cause; seizures of property not based on probable cause; and improper searches of persons and property with insufficient cause.”<sup>157</sup>

The investigation resulted in a consent decree with the city that lasted until 2013.<sup>158</sup>

Despite being under federal supervision, between 2002 and 2011, the City of Los Angeles settled almost 1,000 lawsuits on behalf of the police department, at a cost to the city of over \$138 million—including the May Day Melee.<sup>159</sup>

## **MILWAUKEE**

Since 2008 Milwaukee has authorized about \$26.1 million in borrowing to pay for police settlements and judgments, with \$18.3 million of that since just 2015.<sup>160</sup> Milwaukee’s borrowing is habitual; the city authorized borrowing for settlements or judgments in eight of the ten years between 2008 and 2017.<sup>161</sup> We estimate that the use of borrowed money has added about \$3.7 million in interest payments to the cost of settlements.<sup>162</sup> We estimate that Bank of America, Wells Fargo, and other firms have collected at least \$261,000 for their services related to police brutality bonds.<sup>163</sup> Milwaukee’s police brutality bonds have been used to cover settlements that include:

- ▶ A \$6.5 million settlement for Chante Ott, a Black man who spent 13 years in prison for a murder he didn’t commit after police pressured witnesses into making false testimony.<sup>164</sup>
- ▶ \$5 million for a class action settlement of a suit filed by 74 men against several police officers who for years imposed hundreds of illegal, dehumanizing body cavity searches on Black male victims. The worst offending officer, a white man, was sentenced to 26 months in



prison.<sup>165</sup>


- ▶ \$2.5 million for a woman who was strangled and raped by an officer after she called 911 for help. Before the rape, the officer had been kept on the force without ever being disciplined despite a long record of complaints, including sexual misconduct and an arrest for domestic violence.<sup>166</sup>

Milwaukee budgets about \$1.2 million per year to cover police settlements and judgments.<sup>167</sup> But in 2017 alone, the city authorized more than \$7.43 million in settlement payouts and related expenses,<sup>168</sup> and between 2014 and 2017, we found authorizations for nearly \$28 million in spending for settlements and other costs related to claims involving the police department.<sup>169</sup> Those figures include funds to pay for the defense of Officers Zachary Thoms and David Latteer,<sup>170</sup> who were involved in the arrest and death of Derek Williams. Williams, a 22-year-old Black man, died while in the officers' custody, after repeatedly telling them that he could not breathe.<sup>171</sup>

Milwaukee does not issue judgment obligation bonds. Instead, most of the police misconduct-related borrowing is folded into larger bond issuances. For example, in early 2017 the city included \$2.5 million for claims embedded in a \$104 million issuance underwritten by Wells Fargo.

While Milwaukee borrows money to cover the costs of its aggressive policing, the city in late 2017 passed a budget that raises property taxes, closes six out of its 36 fire stations,<sup>172</sup> and eliminates 75 firefighter positions.<sup>173</sup>

## MILWAUKEE'S POLICE BRUTALITY PROBLEM



*While Milwaukee borrows money to cover the costs of its aggressive policing, the city in late 2017 passed a budget that raises property taxes, closes six out of its 36 fire stations, and eliminates 75 firefighter positions.*

In 2015, Milwaukee's Mayor and Chief of Police asked for help from the U.S. Department of Justice, citing "community concerns" about the police department. They asked the DOJ to evaluate and assess the department. This request followed a 200 percent increase in officer-involved shootings between 2014 and 2015, and community outrage over the 2014 fatal shooting of Dontre Hamilton.<sup>174</sup> Hamilton was a young Black man with a history of mental illness who had been sleeping in a park shortly before a white officer shot him fourteen times. Officer Christopher Manley was fired for violating department rules, but did not face criminal charges.<sup>175</sup>

Months later, while the DOJ worked on its assessment, the city erupted in protests after officer Dominique Heaggan-Brown shot and killed 23-year-old Sylville

Smith.<sup>176</sup> Heaggan-Brown was later arrested for sexual assaults he committed during the unrest and fired by the department over those assaults. According to one of the sexual assault victims, Officer Heaggan-Brown had "bragged about being able to do whatever [he] wanted without repercussions."<sup>177</sup>

The DOJ's report on the Milwaukee Police Department was expected to be released in January 2017,<sup>178</sup> but the new Jeff Sessions-led DOJ apparently scuttled it.<sup>179</sup> In August 2017, the *Milwaukee Journal Sentinel* obtained a draft of the DOJ report and made it available online.<sup>180</sup>

The draft report highlighted problems such as a significant weakness in the department's investigation of use of force, lax accountability, and stop and search practices that are

“inflammatory to the community ethos”.<sup>181</sup> For example, the report states that “MPD command does not routinely review the involved officers’ use of force, complaint, and discipline history” during use of force investigations.<sup>182</sup> Presumably, this could mean that a pattern of excessive force or complaints against an officer could be missed during a new investigation. The report also raised concerns about the use of video evidence in such investigations. For example, one concern was that MPD policy seems to allow officers discretion as to when they should activate their body cameras. Another concern was about inconsistencies in the actual practice of making use of video evidence, “making it difficult to determine if those investigation steps occurred or were just not documented.”<sup>183</sup> The problems the DOJ identified are some of the same factors underlying Milwaukee’s recent payouts for settlements and judgments, much of which has been covered with borrowed money.

The concerns the DOJ draft report raised about stop and search surfaced again in February 2018 when the American Civil Liberties Union, which had sued MPD over its stop and search policy in February 2017, released data from its lawsuit. According to the ACLU, between 2010 and 2017, Milwaukee police allegedly made more than 350,000 unconstitutional traffic and pedestrian stops, disproportionately targeting people of color.<sup>184</sup>

# CONCLUSION AND RECOMMENDATIONS

**T**his report focuses on just one aspect of the cost and profits of policing—the use of borrowing to pay for police-related settlements and judgments. But police brutality is not just an economic problem. The truth is that our policing system, which gives officers the right to use deadly force against civilians, is inherently prone to abuse. As long as there are police, there will be police brutality, and in a society built on white supremacy and structural racism, communities of color will always be targeted for the brunt of this abuse. There is no economic solution to this.

However, as we fight to hold violent officers and police departments accountable to our communities and to curb abusive policing, we must also work to hold banks and investors accountable for their role in perpetuating and profiting from our existing system. Police violence should never be a source of profit for banks or investors, or a reason we do not have the resources we need to invest in the infrastructure and services that make our communities safer and more livable. We need to dismantle this system of policing and build a justice system that prioritizes the needs and well-being of all people. While we work toward that, here are our key recommendations:

## **1. If cities must borrow to pay for settlements and judgments, banks and investors should not be allowed to profit from that.**

Neither banks and other firms, nor private investors, can continue to make a profit from police violence. Banks who hope to do business with a city—such as by providing bond underwriting services, or other financial services—should be required to provide no-fee, interest-free loans when that city needs to borrow money to meet police-related settlement or judgment costs. Banks who refuse to do so should be barred from doing business with the city. This would enable cities to cover these costs without generating a profit for companies or investors.

## **2. Police officers must be forced to take out individual liability insurance policies to cover the costs of settlements and judgments caused by their misconduct.**

It is clear that the expense of settlement costs has not been incentive enough for cities to transform their police department cultures and hold violent officers accountable. Officers whose behavior results in multiple misconduct claims will see their insurance premiums rise, creating a strong financial incentive for them to change their behavior. If they do not and the claims continue to rack up, they will eventually be uninsurable and therefore unemployable. This will protect taxpayer dollars from being used to pay for police abuse, while also creating repercussions for individual officers for abusive behavior. Doctors have to take out malpractice insurance; so should police officers.

We recognize that this is a flawed remedy. Public officials are charged with holding abusive officers accountable. This proposal would give that power to insurance companies as well—private companies embedded in the financial sector. Ordinarily, this is something

we would be strongly opposed to. However, public officials have proved unwilling to use their authority to effectively curb police violence, which is literally a life and death matter. It is an emergency. Until we radically transform America's policing system, we need interim fixes that create incentives for abusive officers to change their behavior and force cities to remove officers who won't change from their police departments. Requiring officers to carry individual liability insurance would force the hands of police officers and police departments alike, without draining money from public budgets.

Many state and local laws and police union contracts require public sector employers to indemnify government employees. Some of these laws and union contracts may need to be changed for cities to be able to require police officers to carry individual liability insurance.

**3. Governmental bodies at the local, state, and federal levels must account for and provide full transparency about which officers are behaving in ways that lead to settlements and judgments, how they are or are not being held accountable, who is paying for their misconduct and how, and who is profiting from these payments.**

There cannot be true accountability without transparency. As we detailed in this report, there is a range of transparency around the use of borrowing to fund police-related settlements and judgments, but no city we looked at had a full accounting of these costs. Cities must make data regarding claims against officers or the police department easily accessible to anyone who wants to see it by putting that data on a public website. They also must do a full accounting of the costs of settlements and judgments, including borrowing-related costs such as issuance fees and interest. This information should be included in cities' Comprehensive Annual Financial Reports. Finally, cities must provide a full, itemized accounting of the cost of policing beyond the department line item in their budgets. Besides the costs of settlements and judgments, there are costs for lawyers and other firms involved in defending cities, their police departments, and individual officers. There are also costs associated with building, maintaining, and operating police facilities, and in many cases, maintaining a police presence in the city schools. All of these costs must be shared with the public.

# METHODOLOGY

## HOW WE FOUND POLICE BRUTALITY BONDS

We looked for PBBs in several ways:

- ▶ We looked for judgment obligation bonds in the Municipal Securities Rule Making Board's (MSRB) Electronic Municipal Market Access database, or EMMA. <https://emma.msrb.org>
- ▶ We looked at press reports of cities and counties that either had paid out police misconduct settlements or judgments or entered into DOJ consent decrees for police abuses and checked to see whether they had borrowed to pay the costs. This means that we were mostly looking at larger cities and counties, and this is reflected in our case studies. Since we know that small cities also issue police brutality bonds, it is likely that an expanded project focusing on smaller cities and counties would also be fruitful.

## HOW WE GATHERED OUR DATA

- ▶ Our data came from a variety of sources, depending on the city or county. Data sources we used included:
- ▶ Freedom of Information Act (FOIA) requests;
- ▶ Conversations with city officials over the phone and via email;
- ▶ Bond Official Statements, which we accessed either via EMMA or on city websites;
- ▶ Comprehensive Annual Financial Reports (CAFRs) and other similar reports available on city and county websites;
- ▶ City Council documents and settlement authorizations available on city websites (for example, Milwaukee's and Los Angeles' settlement and borrowing authorizations are available in searchable databases on city websites);
- ▶ Other information available on city websites, such as memos from the City Administrative Officer of Los Angeles, and detailed spreadsheets with case and settlement information on the Chicago Law Department website;
- ▶ News reports;
- ▶ U.S. Department of Justice memos and reports; and
- ▶ Lawsuit dockets.

## HOW WE ESTIMATED INTEREST AND OTHER BOND COSTS

In a few of our case studies, we had to estimate costs without access to complete data sets. Our methods in those cases are explained below.

### Chicago

Chicago's 2016<sup>185</sup> and 2017<sup>186</sup> Annual Financial Analysis reports both include tables with details on how much bond revenue the city used for judgments and settlements each year from 2007 through 2015. We also used spreadsheets available for download on the city's Law Department website that provide dollar amounts, department, and other details pertaining to all of the city's settlement and judgment payments made in a given year.<sup>187</sup> We needed a way to estimate the interest costs of Chicago's settlement and judgment bonds between 2010 and 2017. The 2014 and 2017 bond OS indicate a specific amount of the proceeds that would be used for

settlements and judgments (\$198 million in 2014<sup>188</sup> and \$225 million in 2017<sup>189</sup>), so we were able to calculate interest costs just using the information in the Official Statements for those bonds. Chicago's other bonds with language indicating that they might be used for settlements or judgments do not indicate a particular amount of the bond issuance dedicated to that purpose. To calculate an interest cost estimate for the bonds whose proceeds were used between 2010 and 2016, we first subtracted the 2014 police brutality bond amount—\$198 million—from \$484.3 million (the total of bonds proceeds used in those years as indicated by the Annual Financial Analysis). That gave us a figure of \$286.3 million.

We then calculated an average interest rate for the bonds issued between 2010 and 2016 with language in the OS indicating they might be used for settlements and judgments. We used those numbers to calculate an interest payment estimate on the \$286.3 million.

For the estimate of the issuance fees for the portion of the 2017B bonds allotted to settlements and judgments, we used the issuance fees for the full amount of those bonds and calculated a percentage of that full value that was used for settlements. The total par value for the 2017B bonds is \$274,260,000. The \$225 million earmarked for settlements and judgments is about 82 percent of that total. The issuance fees were \$2,192,556. 82 percent of that is about \$1.8 million.<sup>190</sup>

We analyzed the following Chicago bonds:<sup>191</sup>

- ▶ General Obligation Bonds, Taxable Project Series 2017B
- ▶ General Obligation Bonds, Taxable Project and Refunding Series 2014B
- ▶ General Obligation Bonds, Project Series 2012A
- ▶ General Obligation Bonds, Taxable Project and Refunding Series 2012B
- ▶ General Obligation Bonds, Project Series 2011A
- ▶ General Obligation Bonds, Taxable Project Series 2011B
- ▶ General Obligation Bonds, Taxable Project Series 2010C-1

According to the City of Chicago Law Department spreadsheet the city paid out an additional \$46.3 million in police-related settlements in the last few months of 2017. The spreadsheet did not include another \$69,418,125 in the settlements for Jose Lopez,<sup>192</sup> the “Englewood Four”,<sup>193</sup> and Michael LaPorta.<sup>194</sup> This \$69.4 million was approved between September and December 2017 but was not actually paid out in 2017.

### **Cleveland**

Cleveland's Comprehensive Annual Financial Reports provided annual debt service information for the JOBs. We used those figures and added to them our own estimates of the interest costs for the 2016 JOB refunding, based on information available in the Official Statement.

We used CAFRs for the years 2008 through 2016.<sup>195</sup> In response to two FOIA requests we sent, Cleveland sent us bond documents and lists of police involved cases that resulted in settlements or judgments.

We analyzed the following Cleveland judgment bonds:<sup>196</sup>

- ▶ Final Judgment Obligation Bonds, Series 2007B

- ▶ Final Judgment Obligation Bonds, Series 2008A
- ▶ Final Judgment General Obligation Refunding Bonds, Series 2016B

### **Lake County, Indiana**

We analyzed the following Lake County bonds:<sup>197</sup>

- ▶ General Obligation Judgment Funding Bonds of 2018
- ▶ General Obligation Judgment Funding Bonds, Series 2015C
- ▶ General Obligation Judgment Funding Bonds, Series 2008B
- ▶ General Obligation Judgment Funding Bonds of 2008

### **Milwaukee**

Milwaukee makes city government records –such as authorizations for settlements and for borrowing to pay for them—available on its Legistar database.<sup>198</sup> Some of the documents authorizing borrowing for settlement payments included estimates for annual debt service costs and interest rates. Many also included details on the type of borrowing the city expected to do, which was usually a ten-year note at level principal terms and a 2 percent or 2.5 percent interest rate. “Level principal terms” means that the borrowing would be paid off within ten years, with principal payments being about the same each time. However, based on information in Official Statements, it appears that at least some of the notes secured significantly higher interest rates than the city estimated, up to 5 percent. For the cases where we didn’t have an interest cost estimate from the City of Milwaukee, we assumed a ten year note at level principal terms and a 2.5 percent interest rate. Due to the higher interest costs on some of the bonds, we believe that 2.5 percent is a conservative estimate.

**Corrections:** *An earlier version of this report erroneously stated that the City of Chicago makes no principal payments on its term bonds before the bonds mature. The term bonds analyzed in this report have mandatory redemption provisions, meaning that the city does make some payments before maturity. That version also erroneously stated that Chicago Mayor Rahm Emanuel had pledged to end bond borrowing to finance settlements and judgments before 2017.*

## Endnotes

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