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We are all aware of the dire fiscal state that Illinois currently finds itself in. One of the main causes of this has been years of passing laws without any consideration of the financial costs of their enactment. One of the most egregious examples of this being the Truth-In-Sentencing (TIS) law. TIS in Illinois requires that nearly all violent offenders serve 85% to 100% of their sentences. Prior to TIS being enacted here in 1998, offenders served, on average, 44% of their sentences.

For more than a decade Illinois resisted enacting a TIS law when other states rushed to do so. Instead, we increased sentencing ranges for violent crimes. The State didn't pass its TIS law until after the federal government began offering monetary incentives to the states to do so. Although TIS was enacted in Illinois over a decade and a half ago, not a single comprehensive cost/benefit analysis has been undertaken to determine what monetary effect its enactment has had on the state.

Other states that enacted TIS legislation adjusted for it by reducing sentences so the average imposed sentence was about half of what it was before enactment. That way a prisoner ended up serving the same amount of time in prison and didn't cost the state additional money. Illinois, on the other hand, failed to adjust. Instead, judges here actually increased average sentences imposed or kept handing out similar sentences. With the sentencing ranges having already been increased, Illinois taxpayers are being hit twice as hard.

A couple of years ago I compiled a preliminary report using rudimentary calculations and the limited statistics available on the internet or from the Illinois

The report can be downloaded at www.realcostofprisons.org.

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See <http://www.vera.org/files/price-of-prisons-illinois-fact-sheet.pdf>.

department of Corrections (IDOC). I found that even if one considers the meager funds received from the federal government from 1996-2004, which altogether totalled less than \$125 million, the additional costs incurred by the state for sentences imposed under TIS for 2002-2004 alone will be over \$750 million. My estimates were extremely conservative. They were reached using a roughly \$25,000-per-year-per-person cost of incarceration figure, which is nearly \$10,000 too low.

Also, that number failed to account for the increased expenses required to care for prisoners when they become elderly and require expensive medical care. Writing in an article for the Chicago Reader entitled "Guarding Grandpa," Jessica Pupovac reports that the IDOC "spends roughly \$428 million a year—about a third of its annual budget—keeping elderly inmates behind bars." As Pupovac notes, "[w]hile keeping a younger inmate behind bars costs taxpayers about \$17,000 a year, older inmates cost four times as much," or \$68,000 per year.⁻¹ This is close to the \$69,000 figure that the Center for Disease Control (CDC) arrived at as well.

As for the \$17,000 figure, or the \$25,000 figure that I used from the IDOC itself, these are ridiculously low. According to the Vera Institute of Justice, the IDOC does not calculate the full cost to taxpayers when reporting the average costs of incarceration. They neglect to account for pension contributions, employee benefits, healthcare contributions for both employees and retirees, capital costs, and state-wide administration costs. When one takes all of these costs into account, as Vera has, it shows that Illinois spends, on average, \$38,268 annually per inmate to incarcerate someone.⁻²

So, prior to the passage of TIS in Illinois, if a person received a 50-year sentence for murder at age 18, he or she would have had to serve, on average, 44% of that sentence, or 22 years, due to the numerous types

of good time awarded then. Thus, they would have been released at age 40, and it would have cost the State \$841,896 to carry out that sentence. After passage of TIS, though, that same sentence means that the offender must now serve the entire 50 years and won't be released until they are 68. Therefore, the first 32 years will cost the State \$1,224,576, and the last 18 years, when he or she is elderly will cost the State an additional \$1,242,000 (the IDOC considers prisoners elderly at age 50). So before TIS, a 50-year murder sentence cost taxpayers \$841,896, but after TIS it cost taxpayers \$2,466,576. (This is in addition to the million dollars or so they may have already spent on a trial and appeals.) Thus, TIS nearly tripled the cost to taxpayers, adding \$1,624,680 to the tab for this one sentence. Each year, over 300 people in Illinois are sentenced for murder. Thousands more are sentenced for other violent crimes.

All of these TIS sentences add up to the State incurring well over a quarter of a billion dollars per year in added liabilities. How many more teachers, police officers, and firefighters can a quarter billion dollars per year pay for? How many more of them will need to be laid off in order to continue paying for TIS? Every year that TIS remains law without action to adjust, reform it, or repeal it we add another quarter billion dollars to the State's credit card that we'll all be paying for years to come.

Isn't it time we had a discussion about what constitutes a reasonable amount of money to spend to punish someone? Isn't it also about time we consider whether there are more efficient ways to spend that money to reduce crime? Studies have shown that inmates who have served 25 years in prison and are 50 or older have less than a 1% recidivism rate. They also consistently show that "murderers," the so-called most "violent" criminals, have the lowest recidivism rate of any category of offenders. Keeping elderly people incarcerated well past the point where they cease to pose

a threat to society may sate our appetite for revenge, but it does nothing to keep society safe. It actually does the opposite by taking away funds that could have been used to employ police officers and teachers, fix dangerous bridges and roads, and rehabilitate the 90% of prisoners who will return to the streets. It is time to use some “common cents” in our criminal justice policies.

THE CHICAGO POLICE DEPARTMENT: AT THE PINNACLE OF POLICE
CORRUPTION, AND A MENACE TO SOCIETY

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When is enough enough? How about when the police torture and imprison innocent people? How about when innocent people are routinely snatched off the streets and locked up for life with little recourse? How about when even after police officers are found to have tortured innocent people they still aren't punished? How about when police officers can easily keep all of their misconduct secret from the public for years, decades, or even indefinitely? How about when the police, with impunity, with the complicity of the State's Attorney's Office, and in violation of both discovery laws and the Illinois Freedom Of Information Act (IFOIA), conceal exculpatory and exonerating evidence from those who are wrongfully convicted? Then, enough is enough in Chicago where all of this occurs on a daily basis.

While the majority of people in prison are, in fact, guilty of the crimes they were convicted of, way too many are actually, completely innocent. Many of these innocent people have had their entire lives stolen from them when they received the death penalty, life imprisonment, or its numerical equivalent (i.e. a fifty-year sentence and must serve 100% of it). Even the ones who were later able to prove their innocence, and there have been many, lost decades of their lives while in prison fighting for their freedom.

The reasons for false convictions are numerous: false confessions, perjured testimony, coerced witnesses, suggestive identification, fabricated evidence, concealed exonerating or exculpatory evidence, and more. The common

denominator in the majority of these is police misconduct. In a study of death penalty cases over a twenty-year period, Marc Mauer, then of the Sentencing Project in Washington, found that two-thirds of them were overturned due to a serious error. One of the most common of which was the suppression of evidence by police and prosecutors.⁻¹ The most unconscionable aspect of all of this is that, in Chicago, we know that it happens on a regular basis, but allow it to continue.

As I write this, yet another police misconduct scandal is coming to light concerning the Chicago Police Department (CPD). This time it involves Detective Reynaldo Guevara and numerous other officers at Area 5 Police Headquarters. Det. Guevara had a history of improperly influencing witnesses (such as showing eye witnesses a photo of who he wanted them to pick out of a line-up) and physically coercing suspects into making false confessions. Dozens of people most likely spent years or decades behind bars for crimes they didn't commit.

Lieutenant Jon Burge routinely tortured people into confessing to crimes they were innocent of, or into implicating the innocent in order to escape either the torture or false charges against themselves. He physically beat, burned, and shocked people with electricity, to get them to say what he wanted them to say. He was not alone. His associates at Area 2 Police Headquarters were complicit, as was at least one Assistant State's Attorney who took the "suspects" statements. (That ASA now sits as a criminal court judge in the Cook County Circuit Court). Tens of millions of dollars have been paid out to try and compensate some of the victims who often, in addition to being tortured, had to spend many years of their lives behind bars (and often their family's entire life's savings on attorney's fees) due to the criminal actions of members of the CPD.

More appalling than that even, is the fact that

Jon Burge has never faced charges for his torture of innocent Chicagoans. The reason being is that he and the CPD were successful in keeping it all secret from the public until long after the statute of limitations had run out to charge him. Oh, be assured, the victims told anyone who would listen that they were tortured and only falsely confessed to escape further torture. Unfortunately, they decried to a society with deaf ears. Society has such an animosity against people who are charged with crimes that it refuses to believe them. It wasn't until DNA evidence started proving, unequivocally, that they were innocent and had therefore falsely confessed, that anyone began to take them seriously.

These types of police misconduct are no aberration, either. This was and is routine operating procedure at the CPD, and many other police departments in Illinois. Although the CPD clearly wins the "misconduct and concealment thereof award," they clearly are not alone. For instance, during the Brown's Chicken murder trial, it came out that the Palatine Police Department had coerced witnesses into falsely implicating an innocent suspect. In 2004, Steven A. Drizin and Richard A. Leo conducted a study of 125 people who had been completely exonerated by DNA evidence after having been wrongfully convicted based on false confessions.⁻² They found that out of all the states, Illinois had the most cases with twenty-seven, or 22% of the total. More than half of those were found in Chicago alone. This was before the vast majority of the Burge and Guevara cases came to light. When these police crimes remain hidden for years, or forever, it has an incredibly deleterious effect on individuals' lives, citizens' rights, and the fabric of our democracy.

First, it destroys both the lives of those wrongfully convicted and the lives of their families. Second, it allows the truly guilty to remain free to murder others or commit further crimes. Third, it denies the

Christian
Henrichson and
Ruth Delaney,
"The Price Of
Prisons: What
Incarceration
Costs Taxpayers,"
Vera Institute
Of Justice,
January 2012,
[www.vera.org/
priceofprisons](http://www.vera.org/priceofprisons).

victims and their families justice, or at the very least, delays that justice, forcing the victims and their families to relive the emotional strain of another trial. Fourth, it exacerbates the problems of police misconduct when there isn't any deterrent effect of punishing police misconduct. Also, when

the police officers gain promotions based upon these false confessions and allegedly "solving" these crimes, other officers see an incentive in this type of misconduct. Fifth, it corrupts the entire police department as the code of silence pressures other members of the CPD to keep silent, to conceal evidence of misconduct, and to deny the public their right to have access to police files.

Sixth, it wastes taxpayers' money to put innocent people on trial unnecessarily. (A capital murder trial can cost \$1 million or more). Seventh, it wastes the taxpayers' money to incarcerate innocent people for years or decades. (It costs Illinois \$38,268 to incarcerate one person for a single year).⁻³ Eighth, it wastes taxpayers' money to compensate the wrongfully convicted when it does come to light. Though few deserve compensation more than they do, without the illegal acts of police, neither the prison time nor the compensation would have been necessary. (Over the past decade, Chicago has spent tens of millions of dollars trying to compensate Jon Burge's victims.). Ninth, it denies the wrongfully convicted and tortured the justice they deserve, as the statute of limitations to charge the officers with a crime (official misconduct, assault, etc.) quickly runs out.

Police misconduct disproportionately affects the poor. This is because the poor are: least able to afford competent defence counsel; least likely to be able to afford civil counsel to file a lawsuit against the police; least politically powerful, so they are routinely ignored by both the press and those elected as aldermen, legislators, and judges; and least educated, so they are often easier to intimidate and coerce into keeping quiet

or falsely confessing, and are often unaware of the extent of their rights. More importantly, though, any person (especially if poor) accused of a crime in America is automatically viewed as scum, a liar, and untrustworthy in the eyes of the public. This is the result of four decades of tough-on-crime rhetoric that has tainted the national psyche; it directly facilitates police misconduct, because anyone accused of a crime who then accuses police of misconduct is never believed. This also incentivizes false charges, because if the police don't charge the victims of police abuse they then become more credible in the eyes of the public.

At the same time, there is an equal misconception that the police are upstanding, honest, and serve the public. This has never been more of a myth than it currently is in Chicago. As the University of Illinois at Chicago's Department of Political Science found:

The real problem of [police corruption in Chicago] is that an embarrassingly large number of police officers violate citizens' rights, engage in corruption and commit crimes while escaping detection and avoiding discipline or prosecution for many years. The "code of silence" and "deliberate indifference" have prevented police supervisors and civilian authorities from effectively eliminating police corruption.-4

Prosecutors often refuse to even acknowledge police misconduct, let alone prosecute it. The reason is actually twofold. First, as noted, the police code of silence makes gathering evidence difficult. Second, there exists a tight working relationship between the police department and prosecutor's office. The people working in both become friends and watch each others' backs. More importantly though, the prosecutors are often complicit in much of this misconduct, because it helps with their cases. Often the false confession or false eye-witness identifications are the only "evidence" against a person and the prosecutor knows that without it they would lose

the case. In other instances, the prosecutor knows that if he or she discloses the exonerating evidence they'll lose the case.

Prosecutors, in general, have little interest in justice. They want to advance their careers, and only successful prosecutors (i.e. lots of wins) advance. The average citizen would be shocked to learn how often exculpatory and exonerating evidence is concealed for decades. It is done both by the police and prosecutors, often conspiring together. This prevents defendants from not only being able to defend themselves against false charges, but also from being able to successfully appeal or challenge their wrongful convictions. When evidence does finally come to light the State's Attorney's Office vociferously fights against the defendant getting released or a new trial. Often they will, in concert with the CPD and the Internal Affairs divisions of the Illinois Department of Corrections, craft additional false statements of other people in prison or who are charged with minor crimes, who further implicate the defendant in exchange for a time cut or dropped charges. (Ironically, and detrimentally, society usually views these criminal/prisoner-witnesses as credible, because they are now aligned with the other side of the courtroom.)

As things stand now, there is no transparency or accountability in the Chicago Police Department. Ironically, current laws and policies seem to create an incentive not to discipline officers for misconduct. Furthermore, the independent body supposedly set up to investigate misconduct at the CPD is not only toothless, but actively conceals evidence of misconduct by citing the IFOIA as requiring secrecy. The IFOIA states that:

Pursuant to the fundamental philosophy of the American Constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public

officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfil their duties of discussing the public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.

Inconsistent with all of the above is Section 7(1)(n) of the IFOIA, a 2010 amendment that exempts:

Records relating to a public body’s adjudication of employee grievances of disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

Both the CPD and the Independent Police Review Authority (IPRA) claim that this exemption justifies their refusal to disclose any information concerning complaints or investigations of police misconduct unless those investigations result in disciplinary action against that officer, and then it only requires that the final outcome be disclosed. The courts are split on whether this exemption actually applies to Complaint Register (CR) files.-⁵

As the federal district court for the Northern District of Illinois noted: “Even if we assume that Section 7(1)n exempts CR files from disclosure under IFOIA, it is not clear what interest that exemption serves.”-⁶ It certainly doesn’t serve the interests of the abused or wrongfully charged and/or convicted. Nor does it serve society’s interests. Rather, it unequivocally works against their interests and erodes the very soul of the IFOIA.

According to Tia Mathew, Assistant Corporation Counsel for the City of Chicago:

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CR is the name given to any complaint filed against, or investigation of, misconduct of a member of the CPD.

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Martinez v. City of Chicago, 2012 WL 1655953*3 (N.D.ILL, May 10, 2013).

In 2007, the IPRA was established as “an office of the municipal government” by municipal ordinance of the City of Chicago. See Chicago Municipal Code, Chapter 2-57-020. Pursuant to the Chicago Municipal Code, the IPRA’s powers and duties include, inter alia: (a) receiving and registering all complaints filed against Bombers of the CPD; (b) conducting investigations into complaints against members of the CPD concerning domestic violence, excessive force, coercion, and verbal abuse; (c) conducting investigations into all cases in which a CPD member discharges his/her firearm, stun gun, or taser in a manner which potentially could strike an individual, even if no allegation of misconduct is made; and (d) conducting investigations into cases where the death of a person or an injury sustained by a person occurs while in police custody or where an extraordinary or unusual occurrence occurs in lockup facilities, even when no allegation of misconduct is made. Chicago Municipal Code, Chapter 2-57-040. It should be noted that prior to 2007, these complaints and allegations were investigated by the Office of Professional Standards (OPS), which was a division of the CPD before the IPRA’s creation. Both pre and post 2007, all other investigations that were not undertaken by OPS or IPRA were conducted by Internal Affairs Division (IAD), which is a division of the CPD the IPRA investigation and finding as to whether the allegation is sustained, not sustained, unfounded or exonerated, and its recommendations of discipline are not a final determination.

So the IPRA simply makes a recommendation to the CPD concerning disciplinary action. It has no power to impose discipline themselves. That falls back to the CPD, which makes the final determination. The CPD can simply ignore an IPRA recommendation for discipline, which, in the CPD’s reasoning, would keep all records of any investigation of police misconduct, whether investigated by the CPD or IPRA, exempt from disclosure under the IFDIA.

All that the CPD needs to do in order to keep police misconduct a secret from the public is choose not to discipline its officers, even if the toothless IPRA recommends that it should. Then they can tell the public that any allegations of misconduct were unfounded, and

refuse to disclose any details of the complaint or investigation, thereby saving the CPD from yet another public relations nightmare, media scrutiny, etc. Therefore, it creates a clear incentive to refrain from disciplining its own officers when they torture people into falsely confessing. Or when they suggest to eye-witnesses who should be picked out of a line-up. Or when they conceal or destroy exonerating evidence. Transparency and accountability be damned. Furthermore, it makes officers feel above the law, and thereby promotes officer misconduct, cover-ups, and the code of silence—all to the great detriment of society.

One can only guess at how many other Lt. Burges or Det. Guevaras types are failing to be uncovered because of this. One can only imagine how emboldened officers feel when there is no accountability for their misconduct, and where they can ruin peoples' lives with impunity. One can only imagine how many more citizens' rights are being trampled, and how many additional lives have been destroyed because of this.

More importantly, though, with the vast amount of misconduct that is known to occur, and the monumental hindrances to uncovering misconduct, one should be terrified at the amount of misconduct that remains concealed from the public. It is high time that the Chicago Police Department is made transparent and accountable. If not, no one in Chicago will ever be safe.