

## City seeks to reduce IMPD lawsuits

Written by John Tuohy  
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*Indianapolis Metropolitan Police department Chief Rick Hite said the lawsuit review is needed but said the department made meaningful changes after both the David Bisard and Brandon Johnson incidents. / Charlie Nye / The Star*

Indianapolis officials will scrutinize all lawsuits filed against the Indianapolis Metropolitan Police Department in the last five years to determine how to reduce litigation against the department.

The city has paid \$4.1 million in IMPD settlements in the last year alone (from May 2012 through May 2013), with another \$28 million in claims pending, and officials want to know if the department and city lawyers are learning enough from those losses.

“We need a high-end analysis,” said City-County Council member Ben Hunter. “It’s something corporations have been doing for years. You constantly analyze to reduce your liability and

exposure.”

The lawsuits against IMPD make up 75 percent of all lawsuits against the city, with the Department of Public Works a distant second.

At the end of March, 75 lawsuits demanding \$38 million in claims against the city were pending; 46 of them against IMPD.

The suits range from the trite to the serious, with the demand amounts varying widely. Many of the lawsuits will be dismissed by judges, some will be settled by the city and some will go to trial.

In the end, the city will pay out only a fraction of the \$38 million in claims. But officials said there are ways to eliminate many from being filed in the first place.

Reducing IMPD complaints in some areas might be as simple as changing a policy, tinkering with a procedure or an added a drill in training, officials said.

“We should be learning from every lawsuit,” said Public Safety Director Troy Riggs. “If there are training or policy issues that need to be addressed that can reduce our exposure, then we should not hesitate to make those changes.”

Hunter said police need to stay ahead of court rulings and laws on searches, use of force, interrogation and police chases.

“It honestly comes down to staying on top of what is happening in the the changing world and paying attention to appellate court rulings,” Hunter said.

A task force headed by Corporation Counsel Samantha Karn and Deputy Public Safety Director Valerie Washington will examine lawsuits from 2008 forward.

“We will be looking for trends in litigation and complaints” Washington said.

### **A joint settlement fund**

The IMPD settlements in the last year far exceed those of all city departments combined (including the police) in any of the past five years.

In 2012, the city paid \$2.6 million in judgments and settlements; in 2011 it paid \$1.2 million; in 2010, \$1.6 million; in 2009, \$893,000; and in 2008, \$1.2 million.

The city payouts come from the City Legal Settlement Self Insurance Fund, to which all city departments contribute annually. Each department tries to anticipate its liability in the coming year and cover it. The Department of Public Safety’s contribution is about \$1 million a year, the most of any department.

The money rolls over to the next year if it isn’t spent. At the end of 2012, the settlement fund had a balance of \$7.1 million.

But with funding cuts in about every city office, refreshing that piggy bank is more difficult than ever for department heads. The shortage was so acute earlier this year the City-County Council considered borrowing money to make some payments.

The amount of recent large payouts is somewhat skewed because the majority has come from one incident — the fatal crash of suspended police officer David Bisard on Aug. 6, 2010.

Bisard was driving his patrol car on east 56th Street when it struck three motorcyclists, killing one and critically injuring two.

The city paid \$1.5 million to the family of Eric Wells, who was killed in the crash; \$1.35 million to Kurt Weekly, who was injured; and \$975,000 to Mary Mills, also injured.

### **Filing suits to push for change**

In addition, the city paid a total of \$150,000 to three police commanders who sued because they were demoted after the crash. The commanders said the demotions damaged their reputations.

Defense attorneys said they were encouraged that the city was reviewing its lawsuits. One of the goals of filing lawsuits in the first place is to change flawed policies, said Mark Ladendorf, the attorney for Mills.

“Clients don’t sue just for the money, they want to see change so it doesn’t happen to someone else,” he said. “They seek accountability and transparency. Show me how it went wrong and how it is getting fixed.”

### **Officers can prompt, pursue lawsuits**

Over the past four years, more than three dozen IMPD officers have been arrested, disciplined or fired for misconduct or lawbreaking. Some of those cases have prompted lawsuits.

One of those was for the beating of Brandon Johnson, then 15, by police during an arrest in 2010. The city agreed in May to pay Johnson's mother, Shantay Chandler, \$150,000.

In several lawsuits against police, the plaintiffs assert they were physically or verbally abused by an arresting officer. Others claim false or unlawful arrests.

It is not just citizens who go after the IMPD for damages; police officers also sue the department.

Most of those lawsuits involve accusations that superiors treated an officer unfairly or discriminated against them based on gender, ethnicity, or race.

Some, like the Bisard commanders, assert professional harm. One officer is suing the Indianapolis Department of Parks and Recreation because he contends he injured his back breaking up a fake fight a parks worker staged to make a point about police brutality.

The litigation is part of doing business for a municipality; mayors, police chiefs and other city officials are named in many lawsuits in most cities across the country.

But some cities analyze lawsuits more closely than others to reduce legal exposure, including Los Angeles, Seattle and Portland.

The Los Angeles County Sheriff's Department decreased its payouts by \$30 million annually within five years of overhauling its analysis, said Merrick Bobb the executive director of the Police Assessment Research Center in California. The Los Angeles police decreased the number of lawsuits from about 800 a year to 200 over a 10 year period the same way.

Bobb said many departments now identify officers who might be lawsuit magnets by tracking citizen complaints for abusive language and excessive use of force.

"Police are taking a much more careful look at their officers and which ones are a risk and which ones have potential to be a risk," Bobb said. "They have early warning systems. They will re-educate them if they have to, keep a careful eye on them or terminate them."

Riggs said by the end of the year, IMPD will have a computer program that will centralize complaints so supervisors can easily identify high-risk officers.

"The way it is now, one sergeant can write an officer up for a citation one day and another can write him up another day but neither knows about the other's report," Riggs said. "Sometimes a pattern of abusive language could be an indicator of worse things to come. That can be fixed early with re-training."

The training could be as simple as basic reminders to officers about how to cordially speak to citizens, with reminders that people will sue for rudeness. Other training could be more thorough, like teaching officers to avoid certain use-of-force techniques.

### **Meaningful change not easy**

But Stephen Wagner, who represented Johnson, said dismissing even the most abusive officers isn't as easy as it sounds because of the strength of the police union.

"It is impossible to get a problem officer fired, even when the chief recommends it," he said.

All four officers accused of excessive force in Johnson's arrest were exonerated by the Civilian Police Merit Board, though then-Chief Paul Ciesielski had wanted to fire one of them and said others violated policy.

Wagner said meaningful policy change in a bureaucracy like IMPD is difficult because leadership is fluid.

"The decision-makers change on a regular basis," he said. "You have elections and the regime changes and new people at the top come in."

Police Chief Rick Hite said the lawsuit review is needed but said the department made meaningful changes after both the Bisard and Johnson incidents.

Bisard's crash prompted the department to require portable breathalyzers tests of all officers involved in an auto accident. IMPD now also prohibits officers from carrying alcohol in their take-home cars even while off-duty, or from having even trace amounts of alcohol in their blood.

Following the Johnson case, the department began cultural sensitivity training for all officers and recruits.

City-County Councilor Jack Sandlin, a former Indianapolis police officer, said he favors reducing lawsuits but doesn't want to see the department overreact to every legal setback.

"The potential for a lawsuit is always going to be there as long as officers are allowed to use force to protect themselves," he said. "But you can't do anything about stupid sometimes."

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