

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO		DATE FILED: November 23, 2021 4:42 PM FILING ID: 6138E444FC117 CASE NUMBER: 2021CV32026
7325 S Potomac Street #100 Centennial, Colorado 80112		^ COURT USE ONLY ^
STATE OF COLORADO, ex rel. PHILIP J. WEISER, ATTORNEY GENERAL,		
Plaintiff,		
v.		
CITY OF AURORA, COLORADO,		
Defendant.		
PHILIP J. WEISER, Attorney General ERIC R. OLSON, 36414* Solicitor General JANET S. DRAKE, 27697* Deputy Attorney General, Criminal Justice ALEXA D. JONES, 51460* Special Counsel for Civil Rights Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: 720-508-6000 E-mail: eric.olson@coag.gov *Counsel of Record		Case No. _____ Div. [____] Ctrm. [____]
COMPLAINT		

1. The State of Colorado, through Philip J. Weiser, its Attorney General, brings this action against the City of Aurora, Colorado to ensure that Aurora enacts comprehensive, lasting reform of the Aurora Police Department, Aurora Fire Rescue, and the Aurora Civil Service Commission.

2. The Attorney General brings this action under § 24-31-113, C.R.S. to enjoin Aurora Police from engaging in a pattern or practice of racially biased policing, of using excessive force, and of failing to document stops as required by law; and to enjoin Aurora Fire from engaging in a pattern or practice of using

ketamine or other chemical sedatives in connection with law enforcement activities in violation of the law.

3. The Attorney General and Aurora have worked together collaboratively to reach a Stipulated Consent Decree and Judgment that, with oversight from this Court and an Independent Consent Decree Monitor, will address the facts alleged below and build upon improvements already made by Aurora.

BACKGROUND

4. In recent years, governmental agencies and community groups have made many efforts to reform the composition and practices of Aurora Police, Aurora Fire, and the Civil Service Commission. Aurora has also formed various community groups to consult on and recommend changes to its police operations.

5. Aurora Police and Aurora Fire have been the subject of multiple investigations. For example, in February 2021, Aurora's City Council commissioned a report on the death of Aurora resident Elijah McClain that recommended changes to Aurora Police's policies and training on bias and encounters with individuals perceived to be in mental health crises, Aurora Police and Aurora Fire's policies and training on the relationship between the agencies and designation of authority, and Aurora Fire's pre-hospital use of ketamine. And in August 2021, the City of Aurora commissioned a report that recommended sweeping reforms to Aurora Police's use-of-force, arrest, crisis intervention, and bias-free policing policies and training; disciplinary process; and recruiting and hiring procedures, among other topics.

6. Following Colorado's passage of Senate Bill 217, a law enforcement accountability bill, the Attorney General initiated a civil investigation of Aurora Police and Aurora Fire to determine whether these agencies have a pattern or practice of violating the United States or Colorado constitutions or laws.

7. On September 15, 2021, the Attorney General concluded the investigation and released a report ("Investigation of the Aurora Police Department and Aurora Fire Rescue," attached as Exhibit A and incorporated here by reference) finding that:

- a. "Aurora Police has a pattern and practice of racially biased policing[,] . . . treating people of color (and Black people in particular) differently from their white counterparts,"
- b. "Aurora Police has a pattern and practice of using excessive force" as it "repeatedly engaged in unlawful and

unconstitutional uses of force, regularly applying greater force than reasonably warranted by the situation,”

- c. “Aurora Police has a pattern and practice of failing to document stops as required by law [Colorado Senate Bill 20-217],” and
- d. “While it administered ketamine, Aurora Fire had a pattern and practice of using ketamine in violation of the law.”¹

8. The Attorney General brings this action seeking declaratory and injunctive relief to require Aurora to eliminate these unlawful patterns and practices and implement meaningful and lasting reform.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter and each of the parties to this action. This Complaint states a claim upon which relief may be granted against Defendant under § 24-31-113, C.R.S.

10. Venue is proper under C.R.C.P. 98(c)(1) because Aurora is located in Arapahoe County, Aurora Police and Aurora Fire are headquartered in Arapahoe County, and the events, actions, or omissions giving rise to these claims occurred in Arapahoe County.

PARTIES

11. This action is brought for and on behalf of the State of Colorado, by Philip J. Weiser, Attorney General of the State of Colorado.

12. Defendant City of Aurora is a municipality and a political subdivision of the State of Colorado located in Adams, Arapahoe, and Douglas counties.

13. The Aurora Police Department is the primary law enforcement agency within the City of Aurora.

14. Aurora Fire Rescue is the primary fire department within the City of Aurora.

15. Aurora is responsible for the oversight, supervision, discipline, and training of Aurora Police and Aurora Fire personnel.

¹ Ex. A at 1-2.

16. Aurora funds and operates various municipal entities including the Civil Service Commission, which administers the Civil Service System governing most members of Aurora Police and Aurora Fire. At all times relevant to the subject matter of this Complaint, the Civil Service Commission has been responsible for entry-level hiring of Aurora Police and Aurora Fire personnel.

FACTUAL ALLEGATIONS

17. The Attorney General's investigation of Aurora Police and Aurora Fire found that, through acts and omissions, both agencies have a pattern and practice of conduct that violates state and federal law.

18. The Report found that systemic and severe culture problems facilitate this pattern and practice of conduct, including Aurora's failure to adequately train, supervise, and teach officers and firefighters about expectations for appropriate behavior; Aurora Police's failure to meaningfully review officers' uses of force; and the Civil Service Commission's control over entry-level hiring and disciplinary actions.

19. This Court's oversight through a judicially enforceable consent decree will most effectively support Aurora as it improves its operations to address the unconstitutional and illegal conduct alleged in this Complaint.

I. Aurora Police engages in a pattern and practice of racially biased policing. This pattern disproportionately impacts Aurora's non-white population.

20. Aurora Police engages in a pattern and practice of racially biased policing against people of color, including Black individuals in particular. Aurora Police disproportionately arrests and uses force against people of color as compared to white individuals, based on their relative percentage of Aurora's population.

21. This conduct violates Article II, § 25 of the Colorado Constitution, the Fourteenth Amendment to the U.S. Constitution, Title VI, the Safe Streets Act, and Colorado's Anti-Discrimination Act, which prohibit intentional discrimination or discriminatory practices that create an unjustified disparate impact based on race and other demographic factors.

22. As discussed in the Report, Aurora Police arrests people of color at higher rates than white individuals and disproportionately uses force against people of color as compared to white individuals.

23. These disparities persist when controlling for income, gender, geographic boundaries, and severity of the crime, and also when accounting for individuals who have multiple interactions with police. Each of these disparities is statistically significant and cannot be explained by random chance.

24. These disparities are driven in part by deficient policies, training, supervision, and hiring and disciplinary procedures.

25. Aurora Police's "Biased-Based Policing" policy does not define what impermissible "biased-based policing" is or give officers guidance about how to identify and avoid engaging in it.

26. Aurora Police does not have a policy dedicated to officer stops, leaving officers with minimal written guidance on the standards governing stops, factors to consider when making stops, and when stops are appropriate.

27. Aurora Police's policy on arrests does not provide any specific guidance on when an arrest should be made once it appears that a crime has been committed, leaving officers with complete discretion that allows for biased decision-making.

28. Aurora Police's in-service and academy training historically has failed to emphasize scenario-based training that facilitates deliberate decision-making. Training instead has focused on the boundaries of the law, rather than what is appropriate under the law.

29. Aurora Police does not have an efficient or dedicated system through which it can track and understand the activities of its officers, including any racial disparities in their policing activities.

30. The Civil Service Commission's hiring process disproportionately eliminates people of color who meet the Commission's minimum requirements, as compared to white individuals. For example, in the 2018-2020 police academies, only 1.1% of Black applicants who met minimum qualifications were offered a job, as compared to 4.2% of white applicants who met minimum qualifications.

31. Together, these failures preclude Aurora Police from preventing, identifying, and correcting its pattern and practice of racially biased policing.

II. Aurora Police engages in a pattern and practice of using excessive force, particularly against individuals in mental health crises and those charged with “failure to obey.”

32. Aurora Police has a pattern and practice of using force that is objectively unreasonable under the circumstances, including the threat posed by the suspect and the severity of the alleged crime, in violation of Article II, § 7 of the Colorado Constitution and the Fourth Amendment to the U.S. Constitution.

33. Since the enactment of Senate Bill 217 in June 2020, Aurora Police has continued this pattern and practice of excessive force by failing to de-escalate situations and failing to use nonviolent means where possible before using force in violation of § 18-1-707(1), C.R.S.

34. Aurora Police uses excessive force against people who present little or no threat to them or others. For example, officers have used excessive force against individuals who are already restrained or who are fleeing from officers.

35. Aurora Police uses excessive force against individuals undergoing mental health crises. Officers often fail to recognize or address the mental health status of the subject and respond with overwhelming displays of force instead of first attempting de-escalation or other nonviolent means to address the situation.

36. Aurora Police uses excessive force against individuals who do not present a threat to them or to the public and have committed no crime besides allegedly violating Aurora’s Disorderly Conduct Ordinance, which outlaws failing to obey a lawful order. Officers frequently use violation of this ordinance as the sole justification for using force against a subject.

37. Aurora Police uses ineffective tactics that often escalate encounters unnecessarily. For example, all officers on scene frequently engage with the subject at the same time, leading to a lack of coordination and reduction of the ability to de-escalate. Officers also frequently escalate encounters through the use of tasers, including during routine encounters that escalate when individuals do not want to interact with police and flee, leading to a foot pursuit and taser use.

38. Aurora Police emphasizes the justification for force rather than the appropriateness of force, permitting excessive uses of force to escape scrutiny. For example, officers reflexively recite “stop resisting” during uses of force—even where no resistance occurred—and treat the subject’s reaction to pain compliance techniques as active resistance justifying further force.

39. Supervising officers and the Force Review Board do not generally evaluate uses of force appropriately, failing to assess whether the officer could have used nonviolent means before resorting to force in accordance with Colorado law, and interpreting de-escalation as what happens *after* the officer has used force.

40. Aurora Police fails to document use-of-force incidents adequately, often using conclusory and boilerplate language to describe why the officer used force. This documentation failure also results in supervisors being unable to appropriately evaluate some uses of force.

III. Aurora Police has a pattern and practice of failing to document stops and other police contacts as required by Colorado law.

41. Aurora Police has a pattern and practice of failing to comply with § 24-31-309(3.5), C.R.S., which requires law enforcement to keep detailed records of all police contacts with individuals.

42. Section 24-31-309(3.5) took effect in June 2020 and required law enforcement agencies to begin recordkeeping upon its enactment. Aurora does not currently comply with the recordkeeping requirements of this statute and has not complied with it since its enactment.

43. Aurora Police does not have a written policy governing the provisions of § 24-31-309(3.5), nor has Aurora Police trained officers on its provisions. Aurora Police does not have a system that allows officers to capture all of the information required by § 24-31-309(3.5).

44. Aurora Police fails to adequately document stops even when officers write reports. For example, Aurora Police's use-of-force reporting policy does not detail what officers should record if a stop results in a use of force and does not require officers to document the specific articulable facts supporting their decision to stop or continue detention of the person in the first place.

IV. Aurora Fire has a pattern and practice of administering ketamine illegally.

45. Until September 14, 2020, Aurora Fire used ketamine to sedate patients outside of the hospital setting pursuant to a waiver program managed by the Colorado Department of Public Health and Environment. This program permitted paramedics to use ketamine to sedate patients in the field who exhibited "excited delirium," described in the waiver guidance as a state of extreme agitation.

46. Aurora Fire had a pattern and practice of illegal ketamine administrations outside of the hospital setting in violation of §§ 18-13-123 and 18-3-203(1)(e), C.R.S.

47. Although the waiver program only permits paramedics to use ketamine in response to the medical emergency of excited delirium, Aurora Police officers have requested sedation for combative suspects in the absence of a medical emergency. Aurora Fire paramedics have complied without independently evaluating the patient themselves.

48. From January 2019 through September 2020, Aurora Fire administered ketamine at doses above the maximum allowable level, which is assessed based on the patient's weight. The maximum dose of ketamine permitted for any patient is 500 mg, but Aurora Fire's protocols require smaller doses depending on the patient's weight. Paramedics frequently administered anywhere between 50-100 mg of ketamine in excess of the dose dictated by patient weight.

49. During that same time period, Aurora Fire failed to consistently follow medical observation protocols required after the administration of ketamine in the field.

50. The Colorado Department of Public Health and Environment required Aurora Fire's medical director to review every ketamine administration. Although Aurora Fire paramedics failed to consistently follow the ketamine protocols on dosage and monitoring from January 2019 to September 2020, Aurora Fire's review of ketamine administrations never identified additional training needs or triggered a further case review.

51. Aurora stopped using ketamine as a chemical restraint in the field after City Council suspended its use in September 2020. The scope of practice waiver authorizing Aurora Fire to use ketamine in the field expired in June 2021, and Aurora has not sought to renew it. However, nothing precludes Aurora Fire from applying for a new ketamine waiver in the future.

52. Aurora Fire is authorized to use other, similar chemical sedatives in the field. Absent court intervention addressing the underlying causes for Aurora Fire's pattern and practice of illegal ketamine administrations, this pattern and practice of illegal conduct is likely to recur with the use of other chemical sedatives.

CLAIM FOR RELIEF

I. Aurora Police and Aurora Fire's enforcement activities violate § 24-31-113, C.R.S.

53. The Attorney General re-alleges and incorporates by reference all the allegations set forth above.

54. Section 24-31-113, C.R.S. authorizes the Attorney General to seek all available relief, including declaratory and equitable relief, to eliminate a pattern or practice of conduct by employees of government agencies that deprives persons of rights, privileges, or immunities secured or protected by the constitution or laws of the United States or the state of Colorado.

55. Article II, § 7 of the Colorado Constitution provides that “[t]he people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures[.]”

56. Article II, § 25 of the Colorado Constitution requires that all persons receive “equal treatment under the laws.”

57. Section 24-34-601, C.R.S. of Colorado’s Anti-Discrimination Act states that it is a “discriminatory practice and unlawful” for a person “to refuse, withhold from, or deny to any individual or a group, because of [protected characteristics, including race], the full and equal enjoyment of the . . . services . . . of a place of public accommodation.”

58. Section 18-1-707(1), C.R.S. requires that officers “apply nonviolent means, when possible, before resorting to the use of physical force.”

59. Section 24-31-309(3.5), C.R.S. mandates that “[a]fter making a contact, a peace officer . . . shall report to the peace officer’s employing agency” detailed information about the contact and subject.

60. Section 18-13-123, C.R.S. provides that ketamine may only be “distributed or dispensed for bona fide medical needs by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense such substances.”

61. Section 18-3-203(1)(3), C.R.S. provides that the unlawful administration of drugs occurs where a person “intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury” by

administering a drug “for a purpose other than lawful medical or therapeutic treatment.”

62. The Fourth Amendment to the U.S. Constitution provides that “[t]he right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]”

63. Section II of the Fourteenth Amendment to the U.S. Constitution provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

64. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Aurora Police receives federal financial assistance and is subject to the requirements of Title VI and its implementing regulations.

65. The Safe Streets Act of 1968, 34 U.S.C. § 10228, provides that “[n]o person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.” Aurora Police receives funding from programs that are subject to the requirements of the Safe Streets Act and its implementing regulations.

66. Through the actions described above, Defendant and its agents, including Aurora Police and Aurora Fire personnel, have engaged in a pattern and practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the Colorado constitution or laws, including Article II, §§ 7 and 25 of the Colorado Constitution; and §§ 18-1-707(1), 24-34-601, 24-31-309(3.5), 18-13-123, and 18-3-203(1)(e), C.R.S. This pattern and practice violates § 24-31-113, C.R.S.

67. Through the actions described above, Defendant and its agents, including Aurora Police and Aurora Fire personnel, have engaged in a pattern and practice of conduct that deprives persons of rights, privileges, or immunities secured or protected by the U.S. Constitution and laws, including the Fourth and Fourteenth Amendments, Title VI of the Civil Rights Act of 1964, and the Safe Streets Act. This pattern and practice violates § 24-31-113, C.R.S.

REQUEST FOR RELIEF

68. The Attorney General respectfully requests that this Court:
- a. As set forth in the Stipulated Consent Decree and Judgment, enjoin and restrain Defendant from engaging in any of the actions that led to the pattern and practice of unlawful conduct described in this Complaint;
 - b. As set forth in the Stipulated Consent Decree and Judgment, order Defendant to adopt and implement policies, procedures, training, and other mechanisms that will prevent and correct the pattern and practice of unlawful conduct described in this Complaint; and
 - c. Award such other relief as the Court may determine is necessary to enforce the Stipulated Consent Decree and Judgment.

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/s/ Eric R. Olson

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