

# Report on the Composition of a Civilian Review Board for Richmond, Virginia

Submitted to the office of Mayor Levar Stoney

November, 2021

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## Statement of the Problem

Recent incidents of civilian and police conflict have been brought into critical focus through the media and civilian actions. High profile, tragic deaths of suspects in police custody exemplify the importance of police accountability. Police agencies across the United States are emphasizing movements such as Fair and Impartial Policing, recognizing the role of Implicit Bias, and revising policies and practices to enhance equity. A key element of these movements is civilian oversight of police.

The President's Task Force on 21<sup>st</sup> Century Policing, assembled and charged by President Obama, issued their report in 2015. They recommended some form of civilian oversight for police organizations should be evident with all major police organizations. One key purpose of civilian oversight, as noted in the report, was to foster trust between police and their constituents. This was the first time a major federal level report advocated uniform adoption of civilian oversight. The President's Task Force was populated by police leaders and experts and was chaired by Charles Ramsey (who led both the Washington DC and Philadelphia Police Departments) and a well-respected academic, Dr. Laurie Robinson.

The Commonwealth of Virginia has recognized the importance of law enforcement civilian oversight as evinced by the passage of *SB 5035*. This legislation, implemented on July 1, 2021, defines several parameters and responsibilities of oversight, primarily in the form of civilian review boards. While many large Virginia law enforcement organizations currently have civilian oversight, Richmond does not. There is unanimity in the need for a civilian review board in Richmond—Mayor Levar Stoney, the Richmond City Council members, and Police Chief Gerald Smith have all publicly endorsed the need for such an entity. The complexity lies in the authority and powers of the Civilian Review Board.

## Introduction

This report has several elements oriented towards a single purpose—informing decision makers regarding civilian review board possibilities. The first section presents a series of case studies, describing civilian review boards in similarly situated cities. These case studies demonstrate how oversight can occur. A set of recommendations, based on a review of scholarly literature and best practices, framed by the history of the Richmond Police Department, is provided. A response to the report issued by the Civilian Review Board Advisory Task Force follows. Finally, several conclusions are offered.

### Project Formation

In 2020, I was invited to join a number of criminal justice practitioners, community leaders, and subject matter experts to serve on Mayor Levar Stoney’s *Reimagining the Police Task Force*. Following completion of that effort, I met with Mayor Stoney and staff to discuss a number of the recommendations offered by the task force, including civilian oversight. Following the issuance of a final report by the Civilian Review Board Advisory Task Force (September, 2021), I was invited to conduct this review.

### Methodology

Multiple methodologies were employed to complete this report. Case studies of similarly situated cities were collected via online searches—all information used is publicly available. The literature referenced in this report was acquired through searches of the VCU library system using a variety of keywords. An analysis of publicly available Richmond Police Department citizen complaint data was conducted. The Civilian Review Board Advisory Task Force report, which is publicly available, was reviewed thoroughly.

Several qualitative strategies were implemented, including an interview with Richmond Police Chief Gerald Smith and Deputy Chief John Hayes. Conversations with other policing experts, including researchers specializing in police use of force and citizen accountability were conducted.

## Extant Literature

There is limited comprehensive scholarly research on Civilian Review Boards. This is understandable given the varied nature of CRBs—each one is unique in terms of composition, authority, process, and effort. Further, each CRB represents a single city with a distinct set of issues, problems, and police culture. Much of the work conducted by a CRB is non-public which makes it difficult to secure process or outcome data and then identify themes or patterns. The literature available is drawn from two different avenues—refereed journal articles and law reviews. The following paragraphs provide a summary of current scholarly thinking on CRBs.

Authors consistently advocate for the need of civilian oversight in policing (Briggs, 2017; King, 2015, Ofer, 2016). Several variables are noted as facilitators, or predictors, of CRB success. Proactive formation of a CRB, as opposed to formation in response to a crisis, is likely to lead to a more well-conceived and effective CRB (Fairley, 2020). When law enforcement agencies are supportive of the formation of a CRB, information exchange is more effective. Conversely, agency backlash may occur when a CRB is granted authority out of scope relative to agency history (Fairley, 2020).

Multiple authors note the various paths which CRB formation can follow. King (2015) suggests there are three types: Independent Investigatory, Pure Monitoring, and Auditing Boards. The Independent Investigatory Board has investigative and subpoena power and acts independently of the law enforcement agency. An Auditing Board utilizes police internal affairs reports and may then follow-up where deficits are noted. A Pure Monitoring Board has little review authority and instead assesses policy and practice.

The most comprehensive analysis of CRB approaches was published by Ferdik, Rojec, and Alpert (2013). They conducted a detailed analysis of different CRB modalities, observing key issues and outcomes with each approach. Ferdik et al. describe four models of agency oversight, each with different levels of responsibility and authority. A Class I system has complete investigative responsibility and exists autonomously from the police department. They may also make recommendations for officer disciplinary actions and are frequently found in cities with a history of police problems. A Class II system relies on police investigations into incidents and complaints but the civilian committee may make recommendations on the process. A Class III

system rests investigative responsibilities with the law enforcement agency but appeals go to a board of civilian reviewers who then determine the veracity of the internal affairs effort. A Class IV system uses an independent civilian auditor or civilian committee which reviews the complaint process and investigation as a transparency step. They may then make policy recommendations regarding the review process.

## Richmond Police Department Annual Complaints

The Richmond Police Department is comprised of approximately 750 sworn personnel, serving a city of approximately 226,000. Like many police agencies, RPD is currently operating with a deficit of officers although more are expected via two pending academy classes.

When considering the formation and responsibilities of a CRB, it is illustrative to note how many complaints are addressed each year by RPD. Complaints can be divided into two primary categories—citizen initiated complaints and departmental initiated complaints. A citizen initiated complaint originates with a citizen who is dissatisfied with some element of a police encounter. They then submit a formal complaint which outlines their assertion. All citizen complaints are then directed towards the RPD internal affairs office for investigation.

Complaints can be filed in person at any police district office or online. Submissions can include complainant name and contact information or may be submitted anonymously.

Departmental complaints are internal and usually revolve around personnel issues. For example, a supervisor might file a complaint if an officer is consistently late for duty, or fails to follow proper procedure in submitting reports. More serious departmental complaints may revolve around improper firearm discharge or suspected criminal activity.

Subsequent to RPD internal affairs investigation, possible outcomes include

- Substantiated—complaint was supported by the evidence
- Unsubstantiated—evidence did not support complaint
- Unfounded—evidence was indeterminate
- Withdrawn—complainant withdrew the complaint

Within each of these categories there may be multiple sub-categories. Substantiated complaints are referred to the Chief's office for disciplinary action.

A review of publicly available Richmond Police Department Internal Affairs annual reports, published on the RPD website, provides important guidance regarding the role and expectations for a Civilian Review Board. The following table, titled "Richmond Police Complaints" depicts annual complaint information since 2013.

**Table 1: Richmond Police Complaints**

<b>Year</b>	<b>Citizen Complaints</b>	<b>Department Complaints</b>	<b>Total</b>
<b>2021 (through 10/31/2021)*</b>	<b>18 (+4 Est)</b>	<b>29 (+6 Est)</b>	<b>47 (+8 Est)</b>
<b>2020</b>	<b>26</b>	<b>58</b>	<b>84</b>
<b>2019</b>	<b>52</b>	<b>57</b>	<b>109</b>
<b>2018</b>	<b>49</b>	<b>93</b>	<b>142</b>
<b>2017</b>	<b>47</b>	<b>80</b>	<b>127</b>
<b>2016</b>	<b>86</b>	<b>75</b>	<b>163</b>
<b>2015</b>	<b>87</b>	<b>89</b>	<b>176</b>
<b>2014</b>	<b>69</b>	<b>30</b>	<b>99</b>
<b>2013</b>	<b>78</b>	<b>33</b>	<b>111</b>
<b>Totals</b>	<b>516</b>	<b>550</b>	<b>1066</b>
<b>Mean</b>	<b>57.3</b>	<b>61.1</b>	<b>118.4</b>

\*Note—data for 2021 are available through October 31. Those numbers are shown with estimates (in parentheses) through the end of the year to facilitate derivation of annual means.

Reviewing the past five years of annual reports indicates that, on average, approximately 70% of the complaints are noted by RPD as allegations of serious misconduct. RPD reports state that 5-10% of all complaints suggest possible criminal activity.

If approximately seventy percent of complaints involve what RPD calls allegations of serious misconduct, and the mean of annual complaints is 118, that suggests that about 80 complaints per year will reach the standard of alleged serious misconduct. Many of those investigations will lead to very clear outcomes. The availability of body worn camera footage has dramatically increased the efficacy of internal affairs investigations across the nation. If one quarter of the serious misconduct complaints, or about 20 per year, warrant careful scrutiny by the Civilian Review Board, that is about 1.5 cases per month. If half of all the alleged serious misconduct cases warrant careful scrutiny by the Civilian Review Board, that is about 40 cases per year so about 3.25 cases per month.

Those 2-4 cases per month do not represent the totality of the CRB work. In addition, they will likely review citizen appeals of internal investigation outcomes, deaths and serious injuries while in custody or in pursuit, and perhaps firearm discharges. Fortunately, those are all rare instances and would add only a few incidents per month.

Workload expectations, based on the above data and estimates, suggest no more than ten cases or issues per month for a Richmond CRB. That estimate is likely high. In each case, CRB members will have access to RPD internal investigation materials. After reviewing those materials, they may decide to question or interview persons associated with the issue, including (but not limited to) the plaintiff, the officer(s) involved, the investigators, and the RPD liaison. Subpoenas may be required to compel persons involved to participate in interviews with the CRB.

## Civilian Review Board Case Studies

This section provides summaries of civilian oversight in a number of similarly situated cities. The cities identified are in the southeast portion of the United States. This is important as these agencies are rarely unionized—many agencies in the northeast and Midwest are unionized which carries a very different set of policies regarding oversight and disciplinary sanctions. Several cities have significantly larger populations than Richmond—these serve as examples of CRB budget and scope of authority. A few of the selected cities are state capitals. A number host a large university which is notable as these populations are rarely considered city residents. For example, Florida State University has about 32,500 students but most are not residents of Tallahassee. Virginia Commonwealth University serves approximately 29,500 students. City population figures are often not representative of the daily person numbers. Atlanta, for example, is an employment hub and hundreds of thousands of commuters enter the city each business day. The cities selected represent a purposeful sample—they are intended for comparison purposes. Cities that are dramatically different from Richmond (i.e. Chicago, Los Angeles, Minneapolis, Portland) are not included as comparisons with those cities would have limited utility.

There are several important methodological notes which warrant consideration. The information used to create the case study section was collected via publicly available sources, usually on agency and city websites. Population information is drawn from the 2020 United States Census. Population numbers and the number of sworn officers should be viewed as approximations rather than absolutes—these figures can change and an agency website may not be updated regularly. These numbers represent guides rather than absolutes. Many agencies do not publish citizen complaint data—Richmond Police Department publishes this information on a monthly basis with an annual summary.

The following table presents summary data from Richmond, VA and selected cities. Key information includes residential population, number of sworn law enforcement officers, presence of a civilian review board, and two columns denoting whether the city is a state capital or has a large university.

**Table 2: Case Study Summary Table**

City	Population	State Capital	Large University	# of Officers	CRB
<b>RICHMOND, VA</b>	<b>226,622</b>	<b>Y</b>	<b>Y</b>	<b>750</b>	<b>No</b>
<b>Nashville, TN</b>	<b>678,448</b>	<b>Y</b>	<b>Y</b>	<b>966</b>	<b>Yes</b>
<b>Memphis, TN</b>	<b>651,011</b>	<b>N</b>	<b>Y</b>	<b>2,011</b>	<b>Yes</b>
<b>Louisville, KY</b>	<b>615,924</b>	<b>N</b>	<b>Y</b>	<b>1,170</b>	<b>Yes</b>
<b>Atlanta, GA</b>	<b>524,067</b>	<b>N</b>	<b>Y</b>	<b>1,603</b>	<b>Yes</b>
<b>Lexington, KY</b>	<b>324,604</b>	<b>N</b>	<b>Y</b>	<b>639</b>	<b>No</b>
<b>Orlando, FL</b>	<b>290,520</b>	<b>N</b>	<b>Y</b>	<b>840</b>	<b>Yes</b>
<b>Durham, NC</b>	<b>287,865</b>	<b>N</b>	<b>Y</b>	<b>537</b>	<b>Yes</b>
<b>St. Petersburg, FL</b>	<b>267,121</b>	<b>N</b>	<b>N</b>	<b>575</b>	<b>Yes</b>
<b>Winston-Salem, NC</b>	<b>250,765</b>	<b>N</b>	<b>Y</b>	<b>559</b>	<b>Yes</b>
<b>Norfolk, VA</b>	<b>241,056</b>	<b>N</b>	<b>Y</b>	<b>746</b>	<b>No</b>
<b>Baton Rouge, LA</b>	<b>216,328</b>	<b>Y</b>	<b>Y</b>	<b>645</b>	<b>No</b>
<b>Birmingham, AL</b>	<b>207,235</b>	<b>N</b>	<b>N</b>	<b>912</b>	<b>Yes</b>
<b>Tallahassee, FL</b>	<b>197,974</b>	<b>Y</b>	<b>Y</b>	<b>364</b>	<b>Yes</b>

**Nashville, TN, population 678,448**

**Authority:** The Civilian Review Board has the power to investigate allegations of misconduct by officers against members of the public, issue policy advisory statements, and publish resolution reports assessing allegations of misconduct by officers. The Board has the power to issue subpoenas and compel testimony, gather evidence and conduct interviews and investigations. Once the investigation is completed the Board can make recommendations on discipline but the final authority rests with the police department and the mayor's office.

**Membership:** The Board consists of 11 members, all approved by the city council. Seven from community organizations or by petition; two from the city council; and two recommended by the mayor's office. Members of the board are not compensated for their time.

**Budget:** \$1.5 million funded through police budget.

**Creation:** The Board was approved by referendum on November 6, 2018. The Board appointed its first members on January 22, 2019.

**Personnel:** According to the most recent annual report by the Nashville Metro Police Department (FY2018) the department had 966 sworn officers.

**Complaints:** Nashville Metro Police Department does not publish complaint data.

### **Memphis, TN, population 651,011**

**Authority:** The Board has the power to investigate excessive or deadly force, death or injury of a person in police custody, physical abuse, verbal abuse, harassment, improper procedure arrest, search, and/or entry, responses to investigations, intimidation or threat, improper fire-arm or vehicle usage, the policies of law enforcement, and incidents of misconduct based on protected classes. The Board also investigates all incidents concerning the discharge of a service weapon while on duty. The Board advises the Mayor, City council and the Chief of Police regarding police actions and policies. The Board only has these authorities *after* Internal Affairs has completed their investigation. The Board has jurisdiction over all civilian complaints, the power to conduct investigations, public hearings, and initiate studies upon request to the board by any member of the public or Memphis Police Department. The charter for the Board requires intergovernmental cooperation to conducted interviews and review evidence and records but does not have subpoena powers. The Board's recommendations are nonbinding, and the Police Director retains full and ultimate authority, power, discretion, management prerogatives, and responsibility to set disciplinary actions and policies.

**Membership:** The Board consists of 11 members with 5 members appointed by the City Mayor and approved by City Council, 5 members appointed by the County Manager and approved by the County Commission, 1 member appointed jointly by the City and County and approved by the City Council and County Commission.

**Budget:** The Budget for CLERB is \$233,000 per year.

**Creation:** Citizens Law Enforcement Review Board in Memphis was created in 1994 by ordinance. This original Board went inactive in 2011 because of a lack of support from the administration and no enforcement power. On 11/3/2015 CLERB was reestablished and in August 2016 its direct subpoena power was removed and replaced with the ability of the Board to request a subpoena from city council.

**Personnel:** In June of 2021 Memphis Police Department had 2011 sworn officers.

**Complaints:** In FY 2019 MPD had 656 internal and external complaints with 131 of those sustained or justified and 20 pending. In FY 2018 they had 751 internal and external complaints and in 2017 they had 622 internal and external complaints.

### **Louisville, KY, population 615,924**

**Authority:** Vote on whether to require the Inspector General to investigate a complaint, review the final report from the Inspector General, review internal police investigations into police shootings and loss of life by police actions, advise the Mayor, Metro Council, and Chief of Police on matters relating to internal police investigations, IG investigations, and recommend changes in policy. The Board lacks any authority to subpoena—this power rests with the IG. The Board also lacks disciplinary authority—held exclusively by the Chief of Police.

**Membership:** The Board consists of 11 members, each appointed by the Mayor and approved by city council. Three members are submitted by the city council, two from self-nominations of citizens, two selected at the sole discretion of the Mayor, four at large positions are selected by the Mayor from the nominations from the ACLU of Kentucky, Greater Louisville Inc, Interdenominational Ministerial Coalition, NAACP of Louisville, Louisville Urban League, University of Louisville, Louisville Bar Association, and Young Professionals Association of Louisville.

**Budget:** \$700,000 per year for the Citizens Review Board.

**Creation:** The Board was established on December 2, 2020.

**Personnel:** According to the most recent data FY2020 the Louisville Metro Police Department has 1,170 sworn officers.

**Complaints:** For the first three quarters of FY 2021 34 total complaints have been investigated by the LMPD's Professional Standards Unit with 2 complaints being sustained and 31 pending. In FY 2020, 134 complaints were investigated with 15 sustained and 91 still under investigation. In FY 2019, 122 complaints were investigated with 31 sustained, and 25 still pending.

### **Atlanta, GA, population 524,064**

**Authority:** The Board has the power to conduct investigations, subpoena witnesses and officers and hold public hearings. The Board forwards recommendations and findings to the Police or Corrections Chief for review. If the Chief does not implement the Board's findings, a written justification must be provided to the Board. The Board must also make recommendations on the suitability of employment of all police recruits which requires observation of the applicant interviews by one board member.

**Membership:** The Board consists of 15 members; 1 member appointed by the Mayor, 1 member by City Council, 1 member by the President of Council with previous law enforcement experience, 1 member by the Neighborhood Planning Unit Group A-F, 1 member by Neighborhood Planning Unit Group G-L, 1 member by Neighborhood Planning Unit Group M-R, 1 member by Neighborhood Planning Unit Group S-Z, 1 member by the Gate City Bar Association, 1 member by the Atlanta Bar Association, 1 member by the League of Women Voters, 1 member by the Atlanta Business League, 1 member by Georgia Coalition for the People's Agenda, 1 member by the Urban League of Greater Atlanta, and 2 members from a Youth-Serving Organization.

**Budget:** The Atlanta Citizens Review Board has a 2021 operating budget of \$1,367,940.00 with a proposed FY2022 budget of \$1,422,060.00.

**Creation:** The ACRB was established pursuant to ordinance on May 5, 2007.

**Personnel:** In December of 2020 the Atlanta Police Department had 1,603 sworn officers but has an authorized strength of 2,046 officers.

**Complaints:** In 2020 APD had 522 internal and external complaints with 172 sustained and 203 pending. In FY 2019, 713 internal and external complaints were file with 161 sustained and 388 pending.

**Lexington, KY, population 324,604**

There is not a civilian review board serving Lexington at present. A proposal was recently submitted to add three civilians to an internal police disciplinary review board. That board is currently comprised of senior police officials. In addition, a working group recommended the creation of a civilian review board that will investigate complaints against police. The board would be independent but mirror the department’s public integrity unit which investigates internal complaints. Another proposal suggested a citizen ombudsmen position to assist citizens file complaints.

**Complaints:** In 2019 the Lexington Police Department reported 20 formal complaints with 14 sustained. 96 informal complaints were investigated, with 57 sustained.

**Orlando, FL, population 290,520**

**Authority:** The Board reviews the investigations conducted by the Orlando Police Department’s Internal Affairs department. The Board does not have the authority to independently investigate, administer discipline, or require officers to testify. The Board is advisory to the Chief of Police.

**Members:** The Board consists of 9 members who are recommended by a nominating board, appointed by the Mayor and confirmed by City Council.

**Budget:** Unknown

**Personnel:** Orlando Police Department reported 840 sworn officers.

**Complaints:** The Orlando Police Department had 792 complaints from 2016-2020 of those 410 were sustained and 46 were still pending.

**Durham, NC, 287,865**

**Authority:** The Board hears appeals for citizens' complaints after the Durham Police Department's Professional Standards Division initially investigates. The board's mandate is to determine whether or not the investigation was conducted in an appropriate manner, specifically, whether the Police Department abused its discretion in the conduct of the investigation. The board will examine the written evidence submitted by the complainant and the police department to determine whether a hearing should be held. The board will hold a hearing only if that evidence persuades the board that a hearing is justified. The board's findings are submitted to the city manager for his or her action.

**Membership:** The Board has 9 members who are selected by the City Manager and approved by City Council.

**Budget:** Unknown

**Creation:** CPRB was formed by ordinance in 1992.

**Personnel:** Durham Police Department reports 537 sworn officer positions as of September 1, 2021.

**Complaints:** Durham Police Department does not publish yearly Internal Affairs, instead they publish quarterly complaint data which makes it difficult to determine the number of complaints, pending investigations, and sustained complaints.

**St. Petersburg, FL, 267,121**

**Authority:** The Civilian Police Review Committee reviews and analyzes cases, and determines, through consensus, the adequacy and appropriateness of internal police investigations and findings. Pursuant to Florida law, the CPRC cannot change the findings but it can provide recommendations for policies within the Police Department.

**Membership:** CPRC has 13-members appointed by the Mayor.

**Budget:** Unknown

**Creation:** Established by City Council in 1991.

**Personnel:** St. Petersburg Police Department has 575 sworn officers.

**Complaints:** The Internal Affairs Department reported 80 complaint cases in 2020 with 53 of them being sustained. Cases may have more than one complaint but are reported as a whole.

**Winston-Salem, NC, population 250,765**

**Authority:** The Citizens' Police Review Board serves as an advisory board to the City Manager and Public Safety Committee. The Board reviews citizens' request for appeals of the Police Chief's decision regarding complaints against Police Department employees, determines necessity of a hearing, and, when necessary, conducts appeals hearings which include receiving and evaluating testimony, and issuing findings of facts to the City Manager for action and the Public Safety Committee for its information. The board receives and reviews a summary of internal and externally made complaints against the police officer.

**Membership:** The Mayor recommends appointments to the City Council which confirms members. Currently there are 12 members but a charter or the amendment for the Boards creation could not be found on Municode.

**Creation:** February 15, 1993 by amendment to the City Code by the City Council.

**Budget:** Unknown

**Personnel:** Winston-Salem police force has 559 sworn officers.

**Complaints:** The Winston-Salem Police Department's Professional Standards Unit reported 2 citizen complaints in 2021 with both still open and 8 internal complaints with 1 sustained and 7 still open. In 2020, they reported 51 citizen complaints with 27 still open and 8 sustained. They reported 79 internal complaints with 14 still open and 64 sustained.

**Norfolk, VA, population 241,056**

Norfolk is currently considering the creation of a civilian review board. The city appears to be in the early stages of that effort.

**Complaints:** The Norfolk Police Department last published complaint data was for FY 2018 and reported 120 citizen complaints with 14 sustained and 28 cases awaiting adjudication.

**Baton Rouge, LA, population 216,328**

The Baton Rouge Police Department does not have a civilian review board. There have been discussions of forming a CRB, or appointing an independent monitor, for several years.

**Complaints:** The Baton Rouge Police Department's Internal Affairs office conducted 102 investigations in 2020. Of those investigations, 29 were sustained, 27 were not sustained, and the remainder varied between outcomes of Exonerated, Pending, and Investigations Terminated (which occurs when the complainant withdraws their complaint).

**Birmingham, AL, population 207,235**

**Authority:** The Board has the authority to conduct investigations and has general subpoena power relating to community complaints of officer misconduct except in cases that have been submitted to the District Attorney, City Department of Human Resource, County Personnel Board and/or Internal Affairs. The Chief of Police or the Personnel Board retain authority over discipline.

**Membership:** The Board consists of 5 members, one from each of the following groups: 1 former judge or prosecutor, 1 Birmingham resident, 1 retired Birmingham Police Department officer designated by the current Chief of Police, 1 criminal defense attorney practicing in Jefferson County, and 1 at-large Board member that will serve as the Board chairperson.

**Creation:** The Board was created on April 19, 2021

**Complaints:** In 2020 Birmingham PD reported 217 Internal Investigations with 73 sustained and 82 pending. In 2019 they reported 297 investigations with 136 sustained and none pending.

**Tallahassee, FL, population 197,974**

**Authority:** Board members have the authority to review and provide recommendations on completed internal affairs investigation after any grand jury proceedings.

**Membership:** The board is made up of 9 individuals, 5 of which are appointed by city commissioners and the mayor, the remaining 4 are from social community organizations.

**Creation:** September 2020

**Budget:** Unknown

**Complaints:** Tallahassee Police Department does not publish internal affairs investigation summary data.

## Observations on Advisory Task Force Report Recommendations

Advisory Task Force Committee Members worked at the request of the City Council to make recommendations regarding the establishment of a Civilian Review Board in Richmond. Task Force members represented a wide array of backgrounds, perspectives, and demographics. Limited policing expertise or experience working with law enforcement agencies was evident among task force members.

Members of the task force made a number of recommendations regarding scope and powers, evinced in the report. The following paragraphs address some of those recommendations.

Task force members recommended that **the CRB should accept all complaints, of all types**. Earlier in the report, task force members assert that “most major city’s oversight bodies (including jurisdictions like Minneapolis, Atlanta, Portland, New Orleans, etc.) investigate all complaints.” (pg. 3). There are several issues with this assertion.

Most of the cities specified as fielding all types of police complaints were under a federal consent decree and were required to do so (New Orleans, Minneapolis, Portland). A Consent Decree is an agreement between a police agency and the federal Justice Department, supervised by a federal judge, enacted due to repeated Constitutional violations. Agencies under a federal consent decree are usually mandated to take extreme measures in addressing police oversight as a compensatory step for historically deficient practices. Cities including Ferguson, Flint, New Orleans, Newark and others have been under a Consent Decree for a number of years. They were paused during the Trump administration (as bad for police “morale”) but resumption is underway.

The two major national policing organizations, CALEA (the Center for the Accreditation of Law Enforcement Agencies) and IACP (the International Association of Chiefs of Police), have consciously elected to not set standards for civilian oversight of policing. While both endorse civilian oversight as a general practice, neither defines best practices the way that NACOLE (the National Association for Civilian Oversight of Law Enforcement) does. The task force report asserts that CALEA advises civilian review boards to review all types of complaints. This is not an accurate representation of CALEA accreditation standards.

### **National Association of Civilian Oversight of Law Enforcement (NACOLE)**

While this organization presents as a think-tank or forum for distributing policy recommendations regarding policing and civilian oversight, inspection of their composition is warranted. Ten of the eleven members of the NACOLE Board of Directors work in civilian oversight. The founders all worked in civilian police oversight. The authors of their major 2021 report, sponsored by the COPS Office (housed in the Department of Justice), were NACOLE consultants or full-time staff. None of the report authors are policing professionals, academics, policy makers, or researchers. While NACOLE generates information that is interesting and relevant, they may be viewed as a lobbying organization. An association of dentists, for example, will always advocate for more and better dental care. This does not negate the utility of information provided by NACOLE. Skepticism regarding the motivation of information distributors, however, is always appropriate.

Task force members recommended that the CRB should have the **ability to make binding disciplinary decisions**. The report noted previously that this an extremely rare authority among civilian oversight entities yet they recommended it for Richmond. No rationale is presented to justify this recommendation. Assigning this power to a civilian entity would severely undermine a Police Chief's authority. In the vast majority of police departments in the United States, discipline and sanctions are dispersed by the Chief, Sheriff, or their designee (i.e. an Assistant Chief). In localities where the Chief is not the authority for officer discipline, there is usually either a Police Commission which holds responsibility for officer discipline, or sanctions are dictated by Union contracts. Obviating a sitting police chief's disciplinary authority over officers would be extraordinarily rare. Substantial justification would be necessary.

The task force report stated that the CRB should **have the ability to make policy recommendations** regarding police policy and practices. Any CRB will always view issues from a different perspective than police administrators. Richmond CRB members might identify patterns or themes which were not noted by police decision makers. There is little downside to the CRB offering policy recommendations to the police department. Requiring a written response in a defined time frame, however, may be onerous. While one should reasonably expect that police administrators will offer a response in a timely fashion, some policy

recommendations may require an impact analysis, research, legal consideration, or other step which precludes a defined time frame.

Another recommendation of the task force regards budgetary issues. The task force suggests that the **CRB should provide budget recommendations** regarding the police annual budget. This seems both inappropriate and unrealistic. Citizen members of a civilian review board are unlikely to be budget specialists. They will view snapshots of police/civilian encounters and assess the appropriateness of police actions, concurrence with police policy, and accuracy of internal police investigations. Further, CRB members will not regularly interact with police officers, police administrators, or elected officials outside of case specific officer communications. Reviewing annual budgets and providing recommendations should be left to those with a holistic view of the agency rather than those viewing a small number of non-representative cases.

Task force members suggested that the CRB office should have the opportunity to “**audit police data** in order to identify potential patterns or concerns with policing in Richmond” (pg. 6). Unfortunately, very little detail is provided to substantiate this assertion. It is not clear what kinds of data should be made available to the CRB office. Agency and civilian complaints are reported monthly and annually by RPD and summary information is published on the agency website. Further, an audit is different than a review as an audit carries assignment of responsibility and the possibility of penalty. This recommendation lacks sufficient detail to be effectively assessed.

**Subpoena power** was posed as a consideration in the City Council creation of the CRB Advisory Task Force (Ordinance No. 2020-155). The ordinance states:

*WHEREAS, the Council believes that it is in the best interests of the citizens of the City of Richmond that the Council establish a Task Force on the Establishment of a Civilian Review Board to review and provide recommendations to the Council concerning the creation of a Civilian Review Board with subpoena powers and duties that include the independent investigation of citizen complaints against the Department of Police.*

Subpoena power is not an absolute authority. Future CRB guidelines may define the scenarios in which subpoena power can be exercised. For example, subpoena power may be granted in cases

of an officer-involved shooting, or usage of deadly force. Not every investigation will require the application of subpoena authority. The types of cases which necessitate this authority should be defined in the guidelines establishing the CRB.

The task force recommends that the CRB office should field “**concerns from members of the public and members of the Richmond Police Department in a confidential manner**” (pg. 7). According to the Task Force report, these concerns could then help CRB members identify problems with the agency which could be addressed through policy changes. Most CRBs review a defined range of issues, such as officer involved shootings, application of deadly force, cases where a suspect dies in custody, and similar. Some CRBs review citizen-initiated complaints. Fielding *concerns* (which is not the same as a formal complaint) is aligned with a position such as an ombudsperson, who has discretion to pursue a comment or concern. Assessing concerns entails a tremendous amount of subjectivity and judgment. The process for internally investigating complaints, however, is carefully proscribed in existing agency policy. Richmond Police Department personnel have access to all city services, including a human resources office, where workplace concerns can be addressed consistent with legal limitations.

In the comparative analysis of other jurisdictions section, **Portland Police Bureau is misrepresented**. The Portland Police Bureau has approximately 900 officers serving a population of about 650,000 persons. The civilian oversight budget is proposed, not actual. It is proposed at 5% of the police budget which would equal 11.5 million dollars. That is unlikely to be actualized. Further, Portland has spent many years under a federal consent decree due to a history of constitutional violations. Portland bears little resemblance to Richmond in terms of population, police organizational culture, and law enforcement agency history. A proposed budget process should not be taken as finalized.

## Recommendations for Richmond Civilian Review Board

All principal decision makers have indicated a desire for a CRB in Richmond. The key issues revolve around the details: board composition, types of cases to be reviewed, investigative authority, process, budget, support personnel, and similar issues. The following sections draw on several information sources to provide recommendations to address these issues.

### Composition of the CRB

Most of the CRBs of the similarly situated cities reviewed for the purposes of this report have a varied citizen composition. Some are appointed by the city council and some members are appointed by the mayor. In some, the police chief can appoint members. Board members usually serve a proscribed multi-year term (perhaps two or three years). Most CRBs require potential participants to undergo and pass a criminal background check. This is done to increase objectivity and reduce the risk of bias. Many CRBs preclude former officers, or the family members of current or former officers, from serving.

In the case of Richmond, a CRB comprised of approximately 7-11 persons is reasonable. Some should be appointed by the Mayor, some by the City Council, and some by the Richmond Police Chief. Members of the CRB should not be former law enforcement personnel, or family members of former law enforcement. They should serve defined terms (i.e. 3 years) that overlap. CRB members should be drawn from a diverse background, representing different ages, genders, races, and economic backgrounds. All should be residents of Richmond and may need to satisfy a minimum number of years as a resident (i.e. at least five years as a Richmond resident).

In addition to the civilian board members, there should be an RPD officer designated by the Chief who can communicate directly with the CRB. That officer, ideally an investigator experienced in both violent crimes and internal, officer related issues, could then serve as the point of contact with the CRB. The liaison could secure and provide information, explain police jargon (found in reports), define police practices and procedures, and communicate between the CRB and RPD. Centralizing this process with a single, dedicated sworn liaison will enhance efficiency and facilitate effective communication.

The goals for persons under consideration to serve on the CRB should include representativeness, objectivity, and a lack of police bias (either for or against). A “stacked” CRB, with pro-police persons appointed by one faction and anti-police persons appointed by another faction, undermines the purpose of integrity in civilian oversight.

## Cases to be Reviewed

Virtually all Civilian Review Boards investigate officer involved shootings and deaths in custody. These are the most critical law enforcement events and consistently warrant external scrutiny. Many CRBs also investigate serious injuries of suspects who are in police custody, citizen appeals of internal investigations, and internal investigations into abuse (physical or verbal). Richmond does not have a consistent history of problematic police/citizen outcomes so additional investigative categories should be included judiciously.

## Process

Most Civilian Review Boards conduct investigations subsequent to a completed internal investigation. Other paths include concurrent review of investigations or independent investigations. Both of those are more labor and resource intensive and are warranted with agencies which have histories of corruption, excessive police force, abuse of citizens, or problematic police community relations. Richmond does not fall into any of those categories. If the CRB reviews the investigations conducted by the Richmond Police Department’s Office of Professional Standards, they will have access to citizen complaints, investigative notes and outcomes, and the Chief’s decision.

If the CRB determines that an internal investigation was not well conducted, lacked objectivity, or reached an inaccurate or inappropriate outcome, further steps may be considered. These could include review of a case or an external investigation.

The external investigation could be conducted by the CRB where they meet with key parties and question them. Alternatively, a hired investigator, working on a contract basis, could fulfill this goal. Key parties, particularly law enforcement officers, may not be willing to respond to questions from the CRB. In those instances, subpoena authority is warranted. This power can compel witnesses to participate in CRB investigations.

Exercising subpoena power should not be taken lightly. Decision makers may elect to identify a threshold for CRB votes to proceed to requesting subpoenas. For example, if a two-thirds majority (or more) of CRB members vote to proceed with a subpoena request, then that request could go before a judge.

## Budget and Personnel

Key expenses for a CRB include payments for CRB members, salary for a staff/coordinator, and investigative costs. The case studies reviewed for this report are not particularly informative—many cities do not post their CRB budget. Full time investigators are likely unnecessary given the caseload expectations noted previously. The preponderance of cases that come before the CRB will likely be resolved via confirmation of RPD internal investigations. Budget should be derived through an additive process—the cost of a staff member, stipend payments to those who serve on the CRB, and ancillary expenses. The cost of a contract investigator will vary depending on the number and complexity of cases where outside assistance is needed.

## Conclusions

Richmond should and will likely soon have a Civilian Review Board. The purpose of a CRB is to provide legitimacy, transparency, and accountability to a city and the law enforcement agency. The complexity lies not in the determination of whether a CRB is appropriate but in the construction, composition, and scope of authority of civilian oversight.

This report has addressed a number of important elements with the intention of informing decision makers as a CRB is organized and implemented. A review of scholarly literature and case studies of similarly situated cities provides a foundation of knowledge from which a CRB can be conceptualized. An overview of complaints addressed by the Richmond Police Department demonstrates the caseload which a CRB may address. The Task Force Advisory Board report was considered and key issues were raised. Finally, a set of recommendations regarding CRB formation were provided to assist policy makers.

The first iteration of the CRB may be imperfect. Adjustments can be made to enhance effectiveness. Problems may emerge in terms of communication with the agency, persons attempting to exert influence or compromise the objectivity of board members, or with the selection of persons to serve on the CRB. Those, or other problems, can be resolved by reasonable people in pursuit of the same goal—public safety.

Officer resistance is possible. The rollout and messaging to RPD personnel will be critical. While the CRB may be empowered to compel officers to participate, willing participation is much more desirable.

The citizens of Richmond are ably served by the Richmond Police Department. Civilian oversight can strengthen the agency, improve trust of community members, and facilitate continued improvement of law enforcement services. A well-conceived and objective CRB, granted reasonable powers relative to the history of policing in Richmond, will be an asset to the community.

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