

# OVERVIEW OF CIVILIAN OVERSIGHT OF LAW ENFORCEMENT IN THE UNITED STATES

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## I. Introduction<sup>1</sup>

Civilian oversight of law enforcement in the United States is an evolving governmental function established to provide monitoring of police practices and the misconduct complaint process, along with review of police agency policy and training systems. Civilian oversight can provide a means to examine a wide range of issues within law enforcement agencies to ensure that policing is responsive to the standards, values, and needs of the community served.<sup>2</sup>

Policing in the U.S. is primarily the responsibility of local municipal and county governments, although the laws enforced by local police agencies can involve municipal or state penal codes. Individual state governments focus law enforcement efforts on public highways, and have the primary responsibility for housing prisoners found guilty of state crimes. Also, the U.S. federal government has a number of law enforcement branches with jurisdiction to address federal laws, such as the Federal Bureau of Investigation, the U.S. Border Patrol, and the Drug Enforcement Administration. The federal government also manages prisons for those convicted of federal crimes. While there is some oversight at the state and federal levels, this report focuses on civilian oversight of law enforcement at the local level.<sup>3</sup>

Civilian oversight in the U.S. is not regulated or standardized by national or state statutes. Until the 20<sup>th</sup> century, city mayors acting alone or in conjunction with politically appointed police commissions were responsible for overseeing the police. Police commissions had varied responsibilities and their members served at the pleasure of the appointing authority, with expectations of loyalty to the executive as well as to the police departments.<sup>4</sup> Because politically

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<sup>1</sup>Though a number of changes have been made, this paper initially was developed pursuant to a U.S.-Russia Civil Society Partnership Program in the spring of 2013, to review civilian oversight of law enforcement in the United States and prison oversight in Russia, and was supported by a grant funded by the Eurasia Foundation. Barbara Attard, Consultant, Accountability Associates, and Kathryn Olson, Former Director, Office of Professional Accountability, Seattle Police Department participated in the U.S. – Russia Partnership project on behalf of the National Association for Oversight of Law Enforcement (NACOLE). Barbara is a past president of NACOLE and Kathryn Olson is the immediate past president and currently on the NACOLE Board of Directors. Brian Buchner, Special Investigator II, Los Angeles Board of Police Commissioners, Office of the Inspector General and NACOLE Vice-President made significant contributions throughout the project.

<sup>2</sup> Numerous resources were reviewed in preparing this paper. For historical perspective, the authors relied on Merrick Bobb, Police Assessment Resources Center, “Internal and External Oversight in the U.S.,” October 2005, and “Review of National Police Oversight Models for the Eugene Police Commission,” February 2005 (available at: <http://www.parc.info/publications.chtml>), and, Samuel Walker, *The New World of Police Accountability*, Sage Publications: Thousand Oaks, 2005; and *Police Accountability: The Role of Citizen Oversight*, Belmont: Wadsworth Professionalism in Policing Series, 2001.

<sup>3</sup> For example, both the California State Department of Corrections and the California Highway Patrol have Inspector General offices providing oversight of those organizations.

<sup>4</sup> Police commissions continue in some jurisdictions today, though with more accountability to the public. They may participate in the hiring and firing of the police chief, have input on police department policies, and/or have authority to decide misconduct cases. The Chicago Police Board and the San Francisco Police

entrenched commissions of this era were ineffective in providing oversight, police departments were not accountable to anyone and there was an increase in abuse of power by the police.

Beginning as early as the 1940's, racial tensions and riots erupting in larger cities across the country led to the creation of the first citizen oversight agency, the Citizens Review Board (CRB) for the Metropolitan Police in the District of Columbia.<sup>5</sup> Despite challenges for the CRB and its ultimate demise, the call for closer scrutiny of the police continued, particularly in minority and immigrant communities where individuals felt unfairly targeted by heavy-handed police tactics. Although much of the early oversight that developed in the U.S. focused on investigations of individual police misconduct complaints, the field expanded to examine systemic issues where policy and training changes are required to address matters such as civil rights concerns, racial profiling, discrimination, illegal search, seizure and arrest, misuse of force, and other matters.<sup>6</sup>

Oversight in a particular jurisdiction can be established as a response to recurring problems within a law enforcement agency, such as wide-spread unnecessary use of force, or in response to a particular high profile police misconduct incident. In some cases, a local government or law enforcement agency will proactively develop an oversight model to address issues in their jurisdiction. Oversight has become an integral part of municipal governments in most large cities in the United States, with some smaller municipalities and counties developing agencies to allow community members to weigh in on policing as well.<sup>7</sup> By creating a system of accountability and transparency, civilian oversight of law enforcement in the U.S. has the goal of fostering trust and respect between the police and community served, constitutional policing, and enhanced public safety.

## **II. Three Primary Approaches to Oversight**

Most oversight agencies in the U.S. today are multifaceted “hybrids” that incorporate a combination of functions and can include a community board or commission, investigation of police misconduct complaints, monitoring/auditing of a police department's internal investigations, or review of broader policy and training systems. The development of a new oversight office typically involves stakeholders from many differing perspectives coming together and negotiating to establish a program that will benefit their jurisdiction. Traditionally, three primary approaches to oversight have been used in the U.S., though today, we more typically find individualized “models” of oversight utilizing a variety of the components

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Commission are examples of present day commissions serving as independent civilian bodies that oversee some activities of their respective police departments and have some authority to decide disciplinary cases.

<sup>5</sup> Frank V. Ferdik, Jeff Rojek & Geoffrey P. Alpert (2013): Citizen oversight in the United States and Canada: an overview, *Police Practice and Research: An International Journal*, 14:2, 104-116, at 105 (citing to Walker, S. (2000)).

<sup>6</sup> Justina Cintron Perino. Editor, *Citizen Oversight of Law Enforcement*, American Bar Association (ABA) Publishing, (2006), Chapter 1.

<sup>7</sup> The resource page on the website for the National Association for Civilian Oversight of Law Enforcement (NACOLE) lists 116 links to cities and counties in the United States that have oversight, as well the Washington D.C. Office of Police Complaints and one university oversight agency, the UC Berkeley Police Review Board. NACOLE is currently in the process of updating the list in order to confirm the existence and role of each oversight organization listed. See: <http://nacole.org/resources/police-oversight-jurisdiction-usa>

described below.<sup>8</sup> Two of the three primary approaches (conducting misconduct complaint investigations and auditing/monitoring investigations or other police practices) are focused on oversight processes, while the third approach (creating civilian review boards or commissions) is generally described from a structural perspective.

### **A. Conducting Investigations**

Many oversight agencies conduct investigations of complaints of police misconduct. Investigative agencies have the authority to accept complaints, collect evidence, interview witnesses—including law enforcement personnel—and make findings or recommendations for findings on the misconduct allegations involved. In agencies that have a community board or commission as the adjudicatory body, a civilian staff typically conducts fact-finding investigations and a hearing is held before the commission or review board to determine findings. In other jurisdictions, recommended findings are presented to the chief of police who has the ultimate decision-making authority on matters of conduct and discipline.

Investigative authority strengthens an oversight agency's influence. Investigative agencies classify complaints, frame the misconduct issues by delineating allegations, identify witnesses to be interviewed and questions to be asked, and determine relevant evidence to review. Civilian witnesses may be more willing to be involved and forthcoming in an investigation if it is conducted by an independent agency separate from the law enforcement agency. Investigative methods, skill level, and creativity influence the thoroughness and, in many instances, the outcome of the case.

In considering an oversight approach involving investigative powers, among other considerations, it is important to contemplate: (1) the types of complaints that can be investigated (e.g., on duty/off duty, criminal, use of force, biased policing, discourteous conduct, etc.); (2) the ability to require witnesses to provide testimony (though subpoena power or otherwise); (3) whether investigators will roll out to critical incidents; (4) access to incident reports, communications data, use-of-force statements, video and audio recordings, and other evidence maintained by the law enforcement agency; (5) witness representation rights; (6) the statute of limitations for bringing complaints; (7) timelines for completing investigations; (8) whether complaints need to be triaged so that only the most serious allegations or those involving broader organizational issues will be investigated; (9) who will make final decisions on complaints and how discipline will be determined; (10) review and appeal options for complainants and officers; and, (11) whether there will be systematic reviews of complaint trends to report to the police agency and public.

### **B. Auditing or Monitoring Police Internal Investigations and Other Systems**

Auditor/monitor oversight agencies review and analyze a police department's internal investigations of police misconduct or other police action, such as use of force, and may have

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<sup>8</sup> The Appendix to this report provides examples of the three primary models, with details illustrating how each oversight agency is unique in its authority and approach to accomplishing its mission.

broad authority to evaluate the policies and procedures of the department.<sup>9</sup> It is a newer form of oversight, developed since the 1990s. Where the auditing/monitoring is focused on misconduct, it involves a systematic examination of the police agency's internal complaint process to ensure that misconduct investigations are conducted in a fair and thorough manner. In many jurisdictions, the auditor/monitor may sit in on officer or witness interviews and present questions to be asked. The process may include an appeal procedure for disagreements between the auditor and internal affairs, but in most organizations the police chief or the city manager has the authority to determine the final outcome of misconduct investigations. The more effective auditor/monitor oversight agencies have been fortified with the authority to delineate allegations, classify complaints based on the seriousness of the issues involved, and conduct investigations in cases that internal affairs either refuses to investigate or has handled in a less than thorough or fair manner.

A significant strength of the auditor/monitor approach is the ability to review all complaints and other sources of information about police activity to analyze trends and patterns of conduct, as is also often seen in investigative models. The auditor/monitor may also evaluate other police agency systems, such as use of force review procedures, police training, or risk management programs. This information is used to generate reports, make policy and training recommendations, and effect broader change in the police agency, as well as identify officers or specialized units with a problematic complaint history.

In considering an auditing/monitoring oversight approach, factors to assess include: (1) whether the auditor/monitor will focus only on reviewing complaint investigations or has the authority to investigate cases; (2) the range of the auditor/monitor's access to police agency data; (3) whether the auditor/monitor will roll out to critical incidents; (4) the statute of limitations for bringing complaints; (5) review and appeal options for complainants and officers; (6) whether the auditor/monitor has the authority to analyze other police systems such as use of force review procedures or training programs; (7) whether there are clear procedures for the law enforcement agency to respond to recommendations made by the auditor/monitor; (8) whether the auditor/monitor has the power to require implementation of policy and training recommendations; and, (9) the frequency and nature of reports to be generated by the auditor/monitor to the police agency and public.

### **C. Civilian Review Boards and Commissions<sup>10</sup>**

Many oversight organizations in the U.S. include a civilian body that brings the perspective of the community to the police agency. Authority of police review commissions or boards vary, ranging from hearing appeals of cases brought forward by disgruntled complainants or officers, to conducting evidentiary hearings and making findings in misconduct investigations conducted by commission staff or the police agency's internal affairs bureau. Some review commissions or boards have a primary purpose of holding regular forums to elicit testimony from the community

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<sup>9</sup>The auditor/monitor role is called an Inspector General in some oversight agencies, such as the Los Angeles Board of Police Commissioners Office of the Inspector General.

<sup>10</sup>As discussed in Footnote 3 above, the term "commission" is used for oversight bodies with a wide range of authority, with some functioning like a board of directors for a police department, while others may have a more narrow role, such as reviewing complaints or bringing community concerns to the attention of the department.

about police concerns or to facilitate discussions between law enforcement and community members.

Commissioners or civilian review board members are typically political appointees, selected by the mayor, city council, or county supervisors. Because of an interest in selecting members representing a cross-section of the community, a challenge presented by the commission or board form of oversight is that members may have a wide range of skills and analytical ability regarding oversight of law enforcement. It is incumbent upon the commission or board staff and the law enforcement agency involved to ensure that members receive training regarding their authority, police practices, investigative procedures, and ethics involved in oversight. They also must be provided with sufficient documentation and information upon which to base their decisions or recommendations.

Boards and commissions can greatly enhance community confidence in a law enforcement agency. When members of the public are empowered to hear concerns and weigh in on complaints and policy recommendations, as well as provide an avenue of access to those who may otherwise feel disenfranchised, public trust is increased. However, if the power of the board or commission is limited or ill defined, there can be a sense of frustration for all involved.

Important considerations in using the board or commission approach include: (1) whether there is a means to ensure broad community representation; (2) whether there are administrative staff and other resources to support the oversight work; (3) how members of the board/commission receive training in relevant legal issues and police practices, and are provided with the skills and documentation needed to make informed decisions; (4) if the board/commission or assigned staff investigates or reviews complaints, what are the statute of limitations for bringing complaints and review and appeal options for the parties; (5) whether the commission and/or staff will roll out to critical incidents; (6) whether the commission has the authority to analyze other police systems such as use of force review procedures or training programs; (7) whether there are clear procedures for the law enforcement agency to respond to recommendations made by the commission; (8) whether the commission has the power to require implementation of policy and training recommendations; and, (9) the frequency and nature of reports to be generated by the auditor/monitor to the police agency and public; and, (10) whether there is an effective mechanism for members of the civilian body to communicate with the law enforcement agency, other governmental entities, and the public about oversight efforts.

### **III. Components Contributing to Successful Oversight**

Regardless of the oversight structure set up in a particular jurisdiction, there are a number of factors that contribute to whether an approach will be successful. As stakeholders learn more about the strengths and weaknesses of a model adopted in their community, there may be interest in changing or enhancing the police oversight system. Oversight is not a static process and should evolve over time to incorporate effective practices learned from others and to be continually responsive to changing community needs. The components outlined below should be considered in adopting oversight at the outset or as changes are contemplated.

#### **A. Independence**

In order to succeed, the oversight body must be independent from special interest groups, police, and elected and other government officials. The community, as well as the police officers under oversight scrutiny, must trust that the oversight agency and its leadership are fair and unbiased. If investigations are conducted by an oversight agency, it is vital that both community members and officers receive due process and are treated respectfully. The oversight body and leadership should not be censored or controlled in making findings or issuing public reports, as long as they act within the law.<sup>11</sup> Oversight bodies must be empowered to make independent judgments about cases and policy issues without fear of reprisal.

Oversight agencies should have the authority and funding to hire outside consultants, including independent counsel, as needed. At times, outside consultants are needed to gather and present information underlying policy recommendations, and can do so more effectively than members of the oversight agency. City and county counsel offices, which represent the larger jurisdiction and may be defending the law enforcement agency against law suits, often have a conflict of interest and do not independently represent the oversight agency—particularly in times of controversy. Inadequate legal representation can result in decisions being made without all of the relevant issues being vetted and could negatively impact the oversight agency and its mission.

## **B. Support of Government Officials**

Without the political will to support independent oversight, the agency will flounder and fight a constant uphill battle to address problems in the law enforcement agency it oversees. Oversight is most often created in a time of crisis. Whether it is the result of public outrage over a questionable police shooting, or in response to the sustained action of a particular community group that feels victimized by disparate treatment, political pressure is usually necessary to move government officials to establish an accountability mechanism. Oversight agencies and their recommendations can sometimes be portrayed as anti-police in an effort to undermine the oversight body's authority. The backing of courageous politicians who value independence, accountability, and transparency is necessary for the survival of oversight.

In the end, political support can determine whether oversight is successful. An agency can have significant authority, yet if it does not have the support of those in power, it may not succeed. Oversight can be undermined in many ways, such as by appointments of ineffective or inept managers or board members, cuts in funding, inadequate authority, or failure to obtain support for its recommendations and findings. Where government officials or those seeking office value police oversight, political contests about the “best” oversight model can undermine contributions already being made. In order for the civilian oversight movement to succeed in transforming law enforcement, government representatives on all levels must be willing to confront issues of police misconduct and embrace the role of independent oversight, while acknowledging that political differences can interfere with the ultimate goal of promoting accountability and transparency in policing.

## **C. Access to the Law Enforcement Agency and Government Officials**

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<sup>11</sup>In the U.S, states have a wide range of laws regarding confidentiality of police officers' complaint and discipline histories.

Oversight agencies throughout the U.S. differ in regard to their authority to work directly with those in the government structure. Most agencies have authority to meet with the chief of police, and in some cases an oversight commission may have authority to weigh in on the hiring of a police chief. It is important for the integration of the oversight agency into the government structure that oversight practitioners have direct access to elected and other government officials, along with the law enforcement agency involved. Regular meetings between oversight bodies, government representatives, and the police ensure that everyone understands and supports each other's role in fostering police accountability.

#### **D. Ample Authority**

It is imperative that oversight organizations have ample authority to provide a credible service to the communities they serve. For example, agencies that have investigative authority must have the ability to interview all witnesses, including officers, and have access (via subpoena power or otherwise) to all documents and other evidence needed to complete their investigations. Auditor/monitor agencies must have the ability to correct deficient investigations either by requiring further inquiry or having the authority to conduct an independent investigation. Boards and commissions must have the ability to initiate change or positively impact the police department it oversees. The creation of an oversight agency is usually a process that involves community support and action, and with it community expectations are raised. In order for the oversight agency to be effective and maintain the support of the community it serves, it must have ample authority to ensure changes are made, when needed, in the law enforcement agency under its jurisdiction.

#### **E. Reviewing Police Policies, Training and Other Systemic Issues**

Policy review is widely seen as one of the most important aspects of an oversight program in that it can effect broad organizational change in the law enforcement agency. Reviewing a police agency's policies and training, and making recommendations for improvements are functions that can be associated with any oversight approach. Systemic problems may surface through the investigation process, during an audit, or through testimony taken during community meetings. Whenever an oversight body makes recommended changes, it is imperative that the law enforcement agency responds through implementation or public explanation as to why a recommendation is not adopted. It is also important that there is ongoing monitoring to ensure follow through and training in new procedures that result from recommended changes.

Given the range of issues at any law enforcement agency that could be of interest to an oversight body, it is important to strategize about where to focus attention and how to effectively garner support for the oversight agency's initiatives. Because of the limited resources available to any oversight organization, prioritizing concerns will allow for a more systematic and effective review process. It is also important that the oversight agency inform stakeholders (community members, government officials and police personnel) from the outset and at regular intervals that it brings a valuable perspective to policing.

#### **F. Adequate Funding**

Oversight programs must have adequate funding and spending authority to complete the work outlined in the enabling legislation and to be effective in their efforts. Oversight agencies must have funding and authority to hire staff at a level that allows for timely and thorough investigations, reviews, or audits. Staff must be able to analyze investigations or other police systems and prepare documentation in a timely manner for reports, appeals, public disclosure, litigation, and other purposes. Funding to support outreach efforts is also imperative, in order to maintain strong communications with both law enforcement agency members and the community. Some agencies have staffing ratios written into the enabling legislation.<sup>12</sup>

Oversight agencies that investigate, audit, or monitor complaints must have funding to purchase and utilize databases to track all aspects of the process. Complaints are important quality-control indicators, and the statistical information they provide, if properly gathered and analyzed, provides invaluable information for police managers and government officials to identify potential areas for remediation. This data can identify specific police practices, such as “stop and frisk” detentions, consent searches, and discretionary arrests, which give rise to complaints, along with police units or commands where patterns of police-civilian interactions merit closer examination. Complaint history should be seen as one of many factors in the assessment of an officer or a police unit or team—a factor that is taken seriously as an indicator as to how officers are handling interactions with those with whom they have contact. An effective computerized complaint tracking system allows for this important analysis. Many oversight agencies have joint databases, shared with the internal affairs unit of the police agency, providing valuable real-time complaint data simultaneously to the law enforcement and oversight agency.

## **G. Core Qualifications for Effective Oversight**

In order to be effective and seen as legitimate in conducting police oversight, it is vital that practitioners have adequate training and experience to perform the work. Some oversight agencies require that staff have a background in law or criminal justice, whereas consideration of possible board/commission members might focus more on broad community representation. Regardless, some basic understanding of policing and the role of oversight is imperative. Fortunately, those involved in oversight often have access to police training facilities, can go on “ride-alongs” with patrol officers, can learn about law enforcement challenges by participating in shoot/don’t shoot simulations, and can access other training opportunities.

In support of its training program for oversight professionals, the National Association for Civilian Oversight of Law Enforcement (NACOLE) has developed a set of core competencies that are central to effective oversight. The competencies fall into six categories: (1) the history, theories, and models of oversight; (2) skills and techniques for conducting or auditing complaint investigations; (3) informing the public and transparency, including outreach and reporting; (4) relevant law, including constitutional standards, police bill of rights and collective bargaining, public disclosure regulations, and ethics of law enforcement and oversight; (5) policing policies and procedures; and, (6) remediation and discipline, including mediation, early warning systems,

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<sup>12</sup>A San Francisco voter initiative in 1996 amended the S.F. Charter to require the San Francisco Office of Citizen Complaints to have one investigator for every 150 police officers.



education-based discipline, and the appellate process. The NACOLE website ([www.nacole.org](http://www.nacole.org)) provides a wealth of information about training recommendations for oversight practitioners.

## **H. Ethical Standards**

The development of ethical standards for practitioners of civilian oversight of law enforcement is an important step for the field. NACOLE has adopted a Code of Ethics to guide the practice of civilian oversight in promoting public trust, integrity, and transparency. As noted in the preamble to the Code, “Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described [in the Code].”<sup>13</sup> The Code of Ethics includes expectations: (1) to demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude; (2) to conduct investigations, audits, evaluations and reviews with diligence, an open mind, objectivity and fairness; (3) to respect the confidentiality of information that cannot be disclosed while striving for transparency concerning oversight activities and analysis of work conducted; (4) to treat all individuals with dignity and respect; (5) to disseminate information and learn about community interests through outreach; (6) to continually seek ways to improve the effectiveness of oversight efforts; and, (7) to seek opportunities for professional development.

## **I. Community/Stakeholder Support and Outreach**

In many U.S. jurisdictions, oversight is started as a grass roots or a voter initiative. Regardless of how oversight begins, garnering community support is important for the success of the agency. Maintaining community interest is important for sustaining an agency through difficult times when cities or government jurisdictions may need to cut services for budget reasons—or during periods when the oversight agency reports critical information that may create new demands for the government entity. Yet, maintaining this support can be difficult for oversight practitioners, who must remain objective and unbiased whether investigating a misconduct complaint or assessing the need for policy or training changes. The oversight agency cannot be seen as a champion of the community or a mouthpiece for the police department; instead, in order to have legitimacy, the agency must be seen as fair to all stakeholders. It is important that through community outreach, websites, reporting and other methods of communication, the agency keep the community (and all stakeholders) informed of how the process works and what the agency is doing to improve policing. Community members, government officials, and members of the law enforcement agency will support effective, fair and impartial oversight.

Educational outreach should also clarify the limitations to the oversight agency’s authority. Too often, the community expects oversight to address all individual and organizational problems encountered at a law enforcement agency, while most oversight agencies are not empowered to do so.

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<sup>13</sup>The full Code of Ethics is available at: <http://nacole.org/resources/nacole-code-ethics>

## **J. Transparency**

A major benefit of oversight is shining a light on otherwise closed institutions. Investigations of police misconduct were historically the purview only of internal investigators and were handled by the police department, often with a great deal of secrecy and suspicion from the public. The growth in oversight has increased the amount of information about police organizations available to the public, as established oversight agencies publish regular reports about their activities. Systematic reporting provides transparency and accountability to the community, and typically includes complaint analysis and other observations about the law enforcement organization and its practices. Reporting also increases public confidence in the oversight agency, as much of the work related to complaint investigations may be confidential and protected from public disclosure. While privacy laws in many jurisdictions prohibit the reporting of officer's names or specific case identifiers, information on complaint numbers, trends, types of allegations, policy recommendations and follow-up go a long way to informing the community about the process, and help establish an historical context and baseline for future research and reporting.<sup>14</sup>

As oversight functions are considered, important questions to ask related to transparency include: (1) Is there an expectation of confidentiality by the officer and/or citizen and, if so, what must the oversight agency do to ensure confidentiality rights are protected? (2) Should the oversight agency respond directly to public disclosure requests or discovery demands involving the work of the agency, or should such requests be handled by another entity, such as the police department's public disclosure unit or the jurisdiction's law department? (3) How often should reports be issued, what is the best reporting format to use, and should information be shared through websites and/or via hard copy reports? and, (4) Should oversight agencies be making better use of social media to receive and share information about their work?

## **IV. Other Considerations When Establishing Oversight**

### **A. Alternative Dispute Resolution for Misconduct Complaints**

More and more oversight agencies are establishing mediation and other alternative dispute resolution options to resolve complaints of police misconduct. While programs differ in determining the types of cases that can be mediated, traditional misconduct investigations can have limited efficacy since some complaints are difficult to prove (or disprove) or involve misperceptions or miscommunication between the complainant and officer. Mediation provides an opportunity to meet and discuss the incident to learn about each other's experience and perspective. In successfully mediated complaints, both the complainant and the officer can gain an understanding of why the other person acted as he or she did. This understanding can change

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<sup>14</sup>In areas where there are not privacy laws shielding officers names, oversight bodies have posted information on the Internet regarding specific complaints, such as reports posted by the Philadelphia Police Advisory Commission, which include opinions detailing recommendations from commission hearings. Other jurisdictions with privacy restrictions post redacted data; for example, the Los Angeles Board of Police Commissioners Office of the Inspector General posts public discipline reports that provide an overview of disciplinary actions and describe sample cases in detail and the Seattle Office of Professional Accountability regularly posts summaries of all closed cases, with information about findings, discipline, training referrals and policy and training recommendations growing out of each complaint.

behavior in a more meaningful and effective way than is possible through the disciplinary process, and helps build police/community trust on the individual level.

While most programs offer voluntary mediation, a limited few have mandatory mediation, whereby the oversight agency director can require that the complainant and the involved officer meet to discuss the incident. Whether mandatory or voluntary, mediation participants generally find the mediation experience to be very satisfying.

Other forms of dispute resolution for police misconduct complaints are emerging, including the use of restorative justice and restorative circles. This approach might be particularly useful where there are larger police/community concerns at play and a structured group experience to help everyone understand each other's concerns would be valuable.

## **B. Term Limits and Staff Rotation**

The enabling legislation that creates oversight entities often includes term limits for directors, auditors, monitors, and board and commission members involved in oversight. The purpose is to ensure that those involved do not become entrenched in a particular perspective of problem solving or complacent in performing their oversight function. Also, because political appointees often fill these roles, term limits ensure turnover as elections bring new governmental representatives into power.

Consideration also should be given to regular staff rotations. For example, if the oversight agency conducts investigations and investigators are assigned to work in specific locations in the law enforcement agency, they may develop relationships with police personnel that cause favoritism or familiarity with certain issues that lead them to be less rigorous in their work. A regular rotation in assignments helps avoid these sorts of concerns and promotes staff professional development.

## **C. Effective Use of Current and Changing Media and Technology**

Oversight in the U.S. has benefited historically from a robust investigative journalistic tradition in print news outlets in most large cities. Stories of police misconduct on the front page of daily newspapers and television newscasts have helped to generate community interest in establishing and supporting independent oversight. However, today in the U.S., online news sources have increased and print media outlets (newspapers) are shutting down. News is now communicated through Twitter, cell phone texting, blogs, and the Internet. Oversight agencies are learning to put the word out on Twitter to find witnesses and establish Facebook pages to inform constituents about their work.

Modern technology has dramatically changed the policing environment. Cell phone camera videos of police use of force, even shootings, are posted and broadcast worldwide. Many police departments have placed video cameras in police vehicles and on officers' lapels. Surveillance cameras are posted on many storefronts and intersections. There is more evidence—and real-time documentation of incidents. Oversight agencies must keep informed of all available

technology to conduct thorough investigations, as well as utilize current technology to inform the public about their services.

### **C. Measuring the Impact of Oversight**

While civilian oversight of law enforcement has been in existence in a variety of forms across the U.S. for over 50 years, there is a limited body of independent empirical research evaluating the different systems involved. Among other recommendations, Ferdik, Rojek & Alpert suggest that future research should focus on the perceptions of complainants and officers about the complaint investigation process and outcomes.<sup>15</sup> Others have stressed the importance of systemic change in positively impacting police culture, and the need to evaluate organizational interventions that involve different oversight models. Regardless of the research mode or focus, oversight bodies should recognize the importance of using evaluation tools to measure their impact, and should seek out opportunities to partner with academic institutions to conduct research on the impacts of civilian oversight.

### **V. The Importance and Benefits of Oversight Associations**

In many parts of the world there are regional associations that support oversight practitioners.<sup>16</sup> The associations provide a source of training, development of professional standards, and keep those involved current on updates and trends in oversight and law enforcement practices.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) in the United States was an offshoot of IACOLE, the International Association for Civilian Oversight of Law Enforcement (which no longer exists). NACOLE's international beginnings have made the leadership aware of the importance of international dialogue for more in-depth learning and understanding of oversight practices. To this end, NACOLE has traditionally reached out to international oversight practitioners to participate in NACOLE conferences and other projects.

NACOLE brings its members and the larger community, including government and police officials, community members, international attendees and academics, together for conferences and other meetings. NACOLE's annual professional development conference provides training, certification, and credentialing opportunities, offers panel discussions and workshops to keep attendees up to date on developments in the field and programs in other agencies, and features inspirational keynote speakers who make presentations on best practices and critical issues related to the work of oversight. The conferences provide an opportunity for dialogue and networking, and challenge attendees to approach their work with new insights and ideas.<sup>17</sup>

NACOLE has no official offices; its board of directors, with members representing oversight agencies across the U.S., meets primarily via teleconference throughout the year, working to further the goals of the organization—to support oversight practitioners and improve policing and police accountability. NACOLE's website includes resource documents and links providing

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<sup>15</sup> See FN 5, *supra*, at 113-114.

<sup>16</sup> The NACOLE website has links to associations in Canada, Europe and Africa.

<http://nacole.org/resources/accountability-organizations>

<sup>17</sup> NACOLE's 19<sup>th</sup> annual conference is scheduled for September 22-26, 2013, in Salt Lake City, Utah.

information to those establishing or researching oversight issues. A Yahoo email group delivers multiple articles daily regarding policing and oversight issues in the U.S and internationally. For more information, see: [www.nacole.org](http://www.nacole.org).

## **VI. Conclusion**

Oversight continues to develop and expand throughout the U.S. and the world. Oversight is no longer a radical notion; it is now a recognized profession and an integral part of “good government.” Law enforcement officials in the U.S. are increasingly learning that independent oversight raises the bar on integrity in their departments, as well as improving the quality of internal investigations in misconduct cases. They also are seeing that they stand to reap the benefit of an independent agent working to improve police policies and initiate changes that might be difficult for them to make without outside support. Ultimately, oversight contributes to trust and respect between the community and law enforcement agency, and everyone benefits from the more effective public safety program that results.

Oversight is borne of negotiation and compromise, as jurisdictions work to develop a program that works for their community. The wide variety of “models” is indicative of the process of cooperation necessary to establish oversight, and the evolving nature of the field. While no oversight agency embodies all of the possible “features” discussed above, each provides a level of transparency, increased accountability, and an avenue for community participation in policing. As the oversight field continues to grow and mature, the expectations for leadership to make a difference will increase as well, to provide assurance that law enforcement agencies practice constitutional policing and are accountable to the communities they serve.

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## Appendix

### Examples of Oversight Models in the United States

With well over 100 oversight agencies in the U.S., it is difficult to pick a sample that is truly representative of the variety of approaches that have evolved over time. As we have emphasized throughout this report, most oversight bodies are a hybrid of the investigative, auditor/monitor, or commission/board models. Recognizing there are many agencies throughout the U.S. doing very important work to further police accountability and transparency, we describe just a few of them below in an effort to illustrate differing approaches to the practice of oversight.

#### A. Examples of Agencies that use the Investigative Model

##### (1) District of Columbia Police Complaints Board – Office of Police Complaints (OPC)

- Established by ordinance passed by the Council of the District of Columbia (DC) in 1999 and opened to the public in 2001.
- Governed by the Police Complaints Board (PCB), composed of five members appointed by the Mayor; one of who shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency.
- Produces detailed statistical reports assessing complaint trends and summarizing policy recommendations.

##### Authority of OPC:

- Independent of the DC Metropolitan Police Department and the DC Housing Authority Police Department, but investigates complaints filed against officers in both departments.
- Has authority to investigate complaints involving harassment, inappropriate language or conduct, retaliation, unnecessary or excessive force, discrimination, and failure of an officer to self-identify.
- If finds reasonable cause to believe misconduct occurred, the case is referred to a complaint examiner with the DC Police Complaints Board who makes a final determination, based either on OPC's investigation or following an evidentiary hearing.
- By statute, officers must cooperate fully during investigations and OPC issues discipline memorandum if there is non-cooperation.
- Makes recommendations to improve the police departments' policies.

##### Other Functions of OPC:

- Has a mediation program in which complainants and officers are required to participate if the case is selected as appropriate for mediation.
- Conducts outreach online, through social media, and in-person throughout the community.

<http://policecomplaints.dc.gov>

(2) **City of Chicago Independent Police Review Authority (IPRA)**

- Established by ordinance passed by the City of Chicago City Council in 2007.
- Produces detailed statistical reports assessing complaint trends and summarizing policy recommendations.

Authority of IPRA:

- Independent agency of the City of Chicago.
- Has direct access to Chicago Police Department (CPD) documents.
- Has authority to receive all allegations of misconduct against CPD officers, whether generated by the public or by police department personnel.
- Investigates allegations of excessive force, domestic violence, coercion through violence, and verbal bias-based abuse. All other allegations are referred to the CPD Internal Affairs Division for resolution.
- Investigates and reviews (even if no complaint is involved) all officer-involved shootings, extraordinary occurrences in lock-up, and use of Tasers.
- Recommends findings to the CPD for review and implementation.
- Makes training and policy recommendations.

Other Functions of IPRA:

- Has a mediation program used when officers admit to misconduct, as a means to reduce the discipline that otherwise would be imposed.
- Conducts outreach through training at the CPD and throughout the community.

<http://www.iprachicago.org/index.html>

(3) **Seattle Police Department – Office of Professional Accountability (OPA)**

- Established by ordinance passed by the Seattle City Council in 1999.
- Produces detailed monthly and annual statistical reports assessing complaint trends and making policy recommendations.

Authority of OPA:

- Located inside the Seattle Police Department (SPD)
- A civilian director, appointed by the Mayor and confirmed by Seattle City Council, manages OPA and oversees investigations performed by sworn personnel.
- Has direct access to SPD documents, reports, video and audio recordings and any other material relevant to a complaint investigation.
- Investigates all allegations of misconduct against SPD officers and civilian employees, whether generated by the public or by department personnel.

- OPA Director makes findings on all cases except those where there is a sustained recommendation and discipline is involved. Chief of Police has final authority on all discipline matters, with OPA Director consulting throughout the decision making process.
- Can refer individual officers for training.
- Makes department-wide training and policy recommendations.

Other Functions of OPA:

- Has a mediation program used primarily for cases in which it appears there was a miscommunication or misunderstanding between the officer and complainant, such that an opportunity to share perspectives would be useful.
- Conducts outreach through social media, training at SPD and throughout the community.
- In addition to the OPA, Seattle has an OPA Auditor and an OPA Review Board, both of which are outside the police department. Along with the OPA Director, the Auditor reviews all complaints from the outset and after investigations are completed to ensure quality, and makes policy and training recommendations. The OPA Review Board can look at closed cases to assess complaint trends, can make policy and training recommendations, and is tasked with taking the lead on community outreach.

<http://www.seattle.gov/police/opa/default.htm>

**B. Examples of Agencies that use the Auditor/Monitor model**

**(1) Denver Independent Police Monitor (OIM)**

- Established by the City of Denver and began its work in 2005.
- Has a Citizen Oversight Board (COB) component which consists of seven residents appointed by the Mayor and confirmed by City Council. The COB assesses the effectiveness of the Monitor's Office, makes policy-level recommendations relevant to the Police, Sheriff and Fire Departments, and, reviews and make recommendations as to closed internal affairs cases where the findings were not sustained, as appropriate.
- Produces detailed reports on patterns of complaints, findings, and discipline.

Authority of OIM:

- Works to ensure accountability, effectiveness, and transparency in the Denver police and sheriff's disciplinary processes.
- Monitors internal investigations into community complaints, internal complaints, and critical incidents involving sworn personnel.
- May request additional investigation in cases that the Monitor cannot certify that the internal investigation was thorough and complete; if satisfaction with the investigation is not achieved, may conduct additional investigation.
- Makes recommendations on findings and discipline to the Manager of Safety, Chief of Police and Director of Corrections.
- Issues recommendations for improving police and sheriff policy, practices, and training.



- The COB has the ability to hire consultants to assist in assessing the effectiveness of the Monitor and in preparing the COB's annual report and any other reports.

Other Functions of OIM:

- Conducts outreach to the Denver community and stakeholders in the disciplinary process.
- Promotes alternative and innovative means for resolving complaints, such as mediation.

[www.denvergov.org/oim](http://www.denvergov.org/oim)

**(2) New Orleans Office of the Independent Police Monitor (OIPM)**

- Was created in 2009. Although a Police Civilian Review Task Force recommended the office in 2002, it was not until 2008 that it was supported by a City Council resolution. In 2008, the Police Monitor's Office, along with the Office of Inspector General, were voted into the city charter by over 70% of the New Orleans electorate.
- Produces annual reports detailing investigations, complaint data, and disciplinary action, including names of involved officers.

Authority of OIPM:

- Receives misconduct complaints that are referred to the New Orleans Police Department (NOPD) Public Integrity Bureau (PIB) for investigation. When making the complaint referral, the OIPM includes a review of the subject officer's disciplinary history for the previous five years, and makes a recommendation as to whether the officer should attend the Professional Performance Enhancement Program.
- Reviews the classification of the complaint and can make recommendations for a change in classification. Reviews the PIB investigation upon completion to determine whether it was fair, thorough and timely. If finds the NOPD PIB investigation was not fair, thorough and timely, it will inform the NOPD. Complainants are informed of recommendations for change in classification and/or recommendations about complaint investigations.
- Reviews disciplinary action for appropriateness.
- Monitors the NOPD's early warning system to identify problem officers and analyzes complaint statistics and risk-levels of police behavior to reveal trends in the department.
- Has access to a database shared with NOPD that tracks internally and externally generated complaints.
- Can develop and make recommendations for improvements in policies, procedures, tactics and training to increase police integrity and improve the performance of the NOPD.
- Monitors critical incidents, to include deadly force and specified use of force cases, on the same level it monitors complaint investigations.

Other Functions of the OIPM:

- Conducts extensive community and stakeholder outreach and online outreach through Facebook and Twitter.

<http://www.nolaipm.org/main/index.php?page=home>

**(3) San Jose Independent Police Auditor (IPA)**

- Was established by ordinance passed by the San Jose City Council in 1993 as a proactive response to the Rodney King incident in Los Angeles, CA.
- Produces detailed statistical annual reports assessing trends and complaint statistics, detailing outreach conducted throughout the year, and presenting policy recommendations.

Authority of IPA:

- Office is an alternative to the police department to receive complaints. Complaints filed at the both the IPA and the San Jose Police Department internal affairs office are entered into a shared database, accessible to both units.
- Has the authority to interview complainants and witnesses and sit in on internal affairs interviews of police officers.
- Reviews internal investigations of complaints upon completion and can request additional investigation or review. Disagreements are reported in annual reports.
- Makes recommendations to improve police department policies.
- Reviews officer-involved shootings and death in custody cases and sits in on high-level meetings to assess the incidents.

Other Functions of IPA:

- The office has a strong public outreach component that meets with community groups, has regular television appearances, and meets with youth in the community and incarcerated settings. The IPA produces “A Student’s Guide to Police Practices” in multiple languages.
- Promotes mediation as an alternative means for resolving complaints.

<http://www.sanjoseca.gov/index.aspx?nid=200>

**C. Examples of agencies using a Board or Commission Model**

**(1) Berkeley Police Review Commission (PRC)**

- Established by ordinance passed by City of Berkeley voters in 1973 as a response to police handling of demonstrations associated with the Free Speech Movement at the University of California, Berkeley and police handling of arrests related to the Black Panther Movement.
- Is a nine-member commission composed of Berkeley residents appointed by the Mayor and City Council members.
- Produces annual reports about the complaint process and policy recommendations.

#### Authority of PRC:

- Civilian staff receives and investigates complaints and presents cases before a subcommittee of the PRC. Due to privacy laws, the commission's hearings are now held behind closed doors.
- Findings of the PRC are advisory to police chief and city manager.
- Makes recommendations to improve police department policies.

#### Other functions of PRC:

- Meetings and policy subcommittee meetings are open to the public.
- Promotes mediation as an alternative means for resolving complaints.

<http://www.ci.berkeley.ca.us/DepartmentHome.aspx?id=10184>

#### (2) **New Haven Civilian Review Board (CRB)**

- Established by Executive Order of the Mayor in 2001.
- Is comprised of 16 members: 2 appointed by the New Haven Mayor, 1 appointed by the President of the Board of Alderman; 1 appointed by the Chair of the Police Commissioners, and 1 from each of the 12 Community Management Teams for all Police Districts.
- Members serve without compensation.
- The staff of the Chief Administrators Office (CAO) provides administrative and clerical support to CRB. The office of Corporation Counsel provides legal assistance.
- A comprehensive training program for members is required under the enabling Executive Order and CRB Bylaws.

#### Authority of CRB:

- Reviews all civilian complaints filed with the New Haven Police Department, including all complaints resulting in an investigation by the Internal Affairs Unit.
- Can recommend further investigation, indicate to the Chief of Police that the Internal Affairs' determination was biased or incomplete, state that the investigation appears complete and unbiased, or recommend other actions deemed appropriate, including discipline.
- Has the power to conduct random or targeted reviews of investigations handled by the Internal Affairs Unit and reviews any incident resulting in the death of an individual in connection with police action.

#### Other Functions of CRB:

- Members speak to the public and press through the CRB Chair.

<http://cityofnewhaven.com/CivilianReviewBoard/>

**(3) Philadelphia Police Advisory Commission (PAC)**

- Established by executive order signed by the mayor in 1994.
- Made up of fifteen volunteer members appointed by the mayor.
- Produces annual reports documenting the complaint process and the work of the commission.

Authority of PAC:

- Conducts investigations of complaints of police misconduct from the public and prepares reports for public hearings before a subcommittee of the PAC.
- Findings and recommendations made by the Commission are forwarded directly to the Mayor, the City Managing Director and the Police Commissioner for their review and appropriate action.
- Conducts studies of police department policies, procedures or practices and makes recommendations for improvements.

Other functions of PAC:

- Meetings, hearings, and community meetings are open to the public.
- Conducts outreach online with Twitter and through a Facebook page

<http://www.phila.gov/pac/>