

Please accept the NAACP Charlotte-Mecklenburg Branch submission on improving the Charlotte Citizen Review Board.

The NAACP Charlotte-Mecklenburg Branch believes we need all 4 components to create a strong citizen review process. Reforms and models that include external oversight or involve individuals from outside the police department render the complaint process with an aura of objectivity, as external control by definition is exercised by individuals who are not part of the police department. Implementing any one of the external control models, therefore, is likely to improve the public's faith.

Including all four components creates greater public faith and fairer outcomes.

1. Civilian Review Board

A civilian review board is an entity external to the police department's internal affairs, and consists of citizens from outside the department, appointed by the mayor or other senior government officials. A civilian review board is generally charged with the duty of reviewing complaints and making recommendations as to disciplinary action after the police department has completed its own investigation and made a disciplinary recommendation.

A civilian review board is usually charged with reviewing the same materials or a redacted version of what the internal affairs division examined, although a civilian review board could be given investigative power in order to conduct its own inquiry into the complaint. Such authority could include subpoena power, and the ability to administer oaths and compel the production of documents. The sufficiency of individual case files, and thus the accuracy of a subsequent review, may depend heavily on what information the board is given and whether it can supplement these files on its own initiative.

A key concern with instituting a civilian review board has to do with how much weight the recommendation of the board is accorded by law, that is, how binding. The activities of the board may be symbolic, as it has indeed been suggested that civilian review boards end up "agreeing with the police department in almost all instances."

For civilian review boards to be effective, they should be provided the authority to override the recommendations of the police, although such prospects are somewhat unrealistic.

Charlotte is not unique regarding the outcomes of our CRB. A study of 17 law enforcement agencies found that citizen review boards sustain police brutality complaints at a higher percentage than do the police themselves, suggesting that such boards operate more fairly, although the "sustained" rate is only one means by which to measure possible success of civilian review boards. It is important to note that it is unclear exactly what power the examined civilian review boards had, such as whether they could overrule the recommended sanctions of the internal affairs division.

2. Independent Monitor/Auditor

An independent monitor or auditor, appointed by the mayor or other government officials, "does not investigate individual complaints, but reviews procedures for investigating" individual complaints of police misconduct. More specifically, an independent monitor is appointed to (1) "scour and test the law enforcement agency's policies, procedures, and practices to determine whether they are, in fact, up to the job of preventing misconduct"; (2) "propose new policies and practices where the old ones have failed"; and (3) "suggest the implementation of best practices from other law enforcement agencies."

An independent monitor compiles and examines data, and can produce reports that could include recommendations for improving existing procedures and deterring police brutality. The monitor may also aid in the development of “use of force” standards, which can be very helpful in teaching officers when to exercise discretion in dealing with suspects. Moreover, if there is an instance in which force is used, standards can be revisited and improved as appropriate.

This model was successfully used by the Los Angeles County Sheriff’s Department (LASD), where an independent monitor was instituted in part because of strained police–community relations and high-profile instances of police brutality. LASD’s monitor believes excessive force has been “substantially curbed” to some extent by having a monitor. Indeed, the number of excessive force complaints dropped from 381 in 1992–1993.

3. Independent Investigator

An independent investigator, who is not a member of the police department, oversees and directs the investigation of individual citizen complaints. The investigator, often appointed by the mayor, is empowered to participate in the investigation process, and is permitted to interview witnesses and review evidence. These investigators could be given greater power, such as the ability to issue subpoenas and compel production of documents.

Unlike a civilian review board that conducts an external review after the police’s own investigation is complete, the independent investigator helps shape the police’s initial investigation. If an independent investigator and civilian review board were in place together, the civilian review board would review files produced by the independent investigator and the internal affairs division he directs. If an independent investigator works in concert with an independent monitor, the independent monitor would assess the procedures in place that the independent investigator would be using while involved in individual investigations.

4. Special Prosecutor

If criminal charges are sought against a police officer for police misconduct, a district attorney (DA) presents evidence to a grand jury for an indictment and argues the subsequent case. However, a central problem associated with a DA is that the DA may not want to file charges and proceed to trial against a police officer, perhaps because she does not want to either create the public impression that she is anti-police, offend the law enforcement officers to whom the DA relies on to receive evidence in other cases, or prosecute “one of her own.” For this reason, some jurisdictions have turned to a special prosecutor for cases involving police brutality and civil rights violations.

It has been noted that with an independent or special prosecutor, the “frequency and quality” of “investigations and prosecutions” will increase. The use of special prosecutors in police brutality cases has been successful in many cities. A governor, judge, or the DA, who may have recused himself from the proceedings, often appoints a special prosecutor. With the benefits of a special prosecutor in mind, there should be a permanent statutory mandate for a special prosecutor in certain cases involving police misconduct.

This alternative appears to be promising. A special prosecutor was successfully used in a December 1999 suit filed against a West Virginia state police officer. Moreover, a special prosecutor does not have anything to do with the internal mechanisms of the police internal affairs division—a special prosecutor is merely a different prosecutor with identical powers, leaving the police’s duties and functions entirely intact.

Despite the benefits of a special prosecutor, police officers may provide incomplete, inaccurate, or misleading material to him/her in order to minimize the allegations brought against their colleague. While a

DA may face these same problems, a special prosecutor may encounter even less cooperation from the police if they solely prosecute police officers charged with misconduct.

Community Concerns

Accountability and Identification of Rogue Officers

Most misconduct arguably occurs because of a small group of rogue officers. For example, a 2001 National Institute of Justice publication found that “10 percent of . . . officers cause 90 percent of the problems,” and investigations have revealed that approximately “2 percent of all officers are responsible for 50 percent of all citizen complaints.” As such, measures are needed to help ensure that these officers are identified before they can harm citizens and are sufficiently deterred from misbehaving if they are on active duty.

Resolutions

1. The NAACP Charlotte-Mecklenburg Branch believes investigating officers extra-curriculum activities addresses who are individual officers of concern.
2. An accountability and incentives model employs rewards for police officers (through promotions, formal recognition, commendations, and monetary awards, etc.) for nonaggressive behavior with citizens under trying conditions (e.g., an officer “avoids a shooting or talks a suspect into custody”). If a reward system is in place and officers know there will be a direct positive consequence for their good actions, their behavior is likely to improve. Conversely, officers should be held accountable for their misconduct. In addition, the efficacy of the system depends on whether and to what extent officers are willing to hold one another accountable and whether the community is able to identify misbehaving officers.

This model is advisable because it is an internal accountability mechanism: the police reward and punish themselves. Moreover, the police already reward officers for “actions that led to arrest(s), the capture of a dangerous felon, or some other heroic activity.” Rewarding officers for nonviolent behavior in tough situations will merely extend the types of actions for which officers can receive recognition. More importantly, a positive reinforcement mechanism will reorient the officer’s perception as to what his role is, namely to fight crime in a citizen- and community-friendly fashion.

3. A greater proportion of an officer’s composite score should be based on the officer’s performance while on duty, both positive and negative behavior. The existing statutory provisions should be amended to include consideration of negative behavior in performance evaluations. The type of disciplinary action taken or the number of complaints against an officer could measure negative behavior. Moreover, if an officer has received serious disciplinary action, frequent discipline, or a certain number of complaints in a given time period, the officer should be precluded from consideration for promotion and/or termination.
4. A computerized risk-management system can help incentive strategies operate more effectively and accurately by recording the actual police behavior that is to be rewarded or punished. A computerized risk-management system tracks officers’ “use of force, search and seizure, citizen complaints, as well as criminal charges or civil lawsuits filed against officers.” The system can also be designed to track positive behavior or the recognition of positive behavior, such as commendations or monetary awards.

The effectiveness of this strategy depends first and foremost on the accuracy of the information entered into the system, as officers may not consistently or honestly record positive or negative conduct into the system. Second, the system’s effectiveness also hinges on how often the system is checked by supervisors, and

what, if any, accountability procedures are in place to appropriately reward or punish the officers who are in the system.

A computerized data-collection tool, combined with real consequences that may follow for police conduct, may deter negative or encourage positive behavior. In the least, a computerized system should be encouraged because it will serve as hard evidence of police conduct. Computerized tracking systems have been installed in various police departments across the nation, including the Pittsburgh city police, the Los Angeles Police Department, and the New Jersey State Police, among others. In Pittsburgh, reports of police misconduct have dropped by more than half on average since the tracking system was installed.

5. Again, police brutality and misconduct can be traced to a small group of rogue officers, preemptive assessment evaluations can help identify those officers who are likely or may be predisposed to use unnecessary force, or who may be unable to handle high-pressure situations in a calm, resolute fashion. These evaluations may consist of medical and psychological tests, interviews, and performance assessments. Collectively, these tools could uncover behavioral issues, health problems, alcohol or drug abuse, or stress that may preclude an officer from exercising proper discretion. An officer identified under an “early warning system” may be compelled to undergo specialized training, may be relegated to administrative duties or termination.

6. An Independent oversight agency or committee must have the ability to obtain all information in order to be an effective overseer. Independent investigatory power yields the greatest community trust and outcomes.

7. Subpoena powers is most useful to compel information from witnesses outside the police department and officers in fear of retaliation.

Internal Affairs may refuse to submit evidence about police officers being investigated. This limitation may severely impact an investigation.

8. Transparency and openness are both extremely important because they engender trust. CRB hearings should be publicized and open for public viewing.

9. Mayoral and city council appointments makes CRB a political entity. Community selections of at least half of the board would address the lack of trust of CRB decisions and outcomes.

10. Community involvement through quarterly surveys and discussions to continue trust.

11. All CRB members must undergo implicit bias and dismantling racism training annually.

12. Police and family members have no place on CRB or policing committees. Their presence automatically causes distrust for the process.