



CITY OF SANTA BARBARA

COMMISSION AGENDA REPORT

AGENDA DATE: April 21, 2021

TO: Community Formation Commission

FROM: City Attorney's Office

SUBJECT: Civilian Police Review Systems

RECOMMENDATION: That the Community Formation Commission:

- A. Receive a presentation on Civilian Police Review Systems;
- B. Provide direction for other future actions/research as the Commission may deem appropriate.

EXECUTIVE SUMMARY

On June 9, 2020, the Santa Barbara City Council directed the City Attorney's Office to provide an overview of police civilian review systems. This report does not provide an evaluation of the Santa Barbara Police Department or recommendations in favor of any particular review system.

This report does present information to facilitate community discussion on the goals and methods of civilian review for Santa Barbara and the Santa Barbara Police Department. While this report focuses upon the "police" or the Santa Barbara Police Department, we recognize that the City's Airport, Parks and Recreation, and Waterfront Departments each have peace officers who could be part of a civilian police review system.

This report begins with a comparison of civilian police review systems. This report also describes existing state and local laws related to police review, transparency and accountability, including current Santa Barbara Police Department practices.

We have relied heavily upon several third-party sources for this report. The references and authorities are in Attachment 1.

Finally, a word about implicit bias is in order. We have done our best to consult with numerous interested parties before releasing this public review draft report. Our purpose in that work was to identify and eliminate bias or deficiencies in approach. We think that process has improved this report. Nonetheless, it is important to acknowledge that the manner in which we have chosen to organize and represent our findings may not reflect universal norms, or even the “best” way to look at the information presented.

DISCUSSION

Civilian police review efforts trace back to the 1920s. Early review boards focused upon simply "reviewing" actions of municipal police agencies. The early efforts were not effective, and in time, they faded from use. Review boards gained renewed interest after the Civil Rights Act of 1964, and into the 1970s.

Today there are more than 140 variations around the country. California has 33 police review entities, 16 of which run out of chartered cities like Santa Barbara. Regardless of the type of civilian police review, the purposes and goals of these review systems include:

- Increasing police accountability
- Building trust between the community and the police
- Eliminating bias and implicit bias
- Demystifying police internal affairs investigations
- Deterring police misconduct
- Ensuring due process of law for all involved parties
- Increasing the transparency of police operations, and
- Involving the community in the creation of policing standards.

While there are many ways to establish civilian police review, each system seeks to influence and change police practices to help ensure that community law enforcement is constitutional, effective, and responsive to the standards, values, and needs of those served.

A successful civilian review system requires consideration of these elements:

- Organizational structure of the system
- Necessary and desirable powers and processes, and
- Integration of civilian review with existing internal procedures, statutes, and constitutional accountability systems.

Tailoring the civilian police review systems to local needs is critical for several reasons. Some civilian police review systems have larger budgets than others do. Full investigative agencies, for example, typically have the largest budget needs, followed by auditor/monitor and review-only agencies. Budget needs generally correlate to staffing. Investigative agencies report having the largest number of full-time, paid staff, while

review-focused agencies were the least likely to report having full-time paid staff. Investigative and auditor/monitor agencies were much more likely to be found in metropolitan cities and counties with large law enforcement agencies, while review models are more prevalent in smaller jurisdictions.

Many cities seek guidance from an organization called the National Association for Civilian Oversight of Law Enforcement ([NACOLE](#)), a non-profit established in 1995. NACOLE has identified four civilian police review systems:

- Investigation-focused
- Review-focused
- Auditor/Monitor-focused, and
- Hybrid combinations of two or more of the other.

NACOLE's June 1, 2020 Recommendations for Effective Practices is included as Attachment 2. A comparison of the major characteristics of these systems is included as Attachment 3.

CIVILIAN POLICE REVIEW SYSTEMS

Investigation-focused

In this form of civilian review, the reviewing body has its own professional staff who investigate complaints or alleged misconduct independently and parallel to a police department's internal affairs (IA) or professional standards process, or as a replacement for a department's IA critical functions. Investigation-focused agencies have greater access to records and police personnel. Investigatory agencies can act in an advisory capacity or leadership capacity by initiating investigations, issuing subpoenas, determining dispositions of misconduct, and conducting public outreach or making policy recommendations. This is the most staff-intensive and costly system.

The investigation-focused system has many strengths in relation to its high costs. First, it is the most independent form of oversight, and hence less likely to continue patterns of intentional or implicit bias. Second, although costly, the community gains more resources and larger staffs focused on police oversight than other systems. A related potential strength of the investigation-focused system is its ability to increase public confidence in the integrity of investigation processes, especially in the aftermath of significant police misconduct. In turn, a potential weakness is the significant cost and resource commitment needed to conduct competent, timely investigations, with staff who require expensive training to remain professionally competent. In addition, civilian investigators may harbor either pro- or anti-police bias, depending upon their own personal background and experiences or may also be less willing to challenge an officer's account of events than a peer investigator or a police supervisor.

California cities that use this system include Berkeley, Long Beach, and San Francisco. Attachment 4 provides a city-by-city comparison of major civilian review systems for 25 police departments in California and around the country.

Review-focused

A review-focused system examines internal investigations for quality control, but lacks independent investigatory authority. An individual reviewer or reviewing body relies on the police department's original reports, and then conducts an independent review of the results. The reviewer may issue independent findings and conclusions, or recommend further investigation or community outreach. The issues reviewed can range from customer service complaints to the use of force, up to and including deadly force. Review-focused systems are often advisory in nature. The review may take the form of agreeing or disagreeing with the administrative resolution or recommending more police department training to reduce the likelihood of recurring misconduct. This system is typically the least costly and least staff-intensive model.

Where review-focused boards have diverse community representation, there may be a stronger motivation on the part of police investigators to avoid not only bias in the conduct of their investigations, but also the equally pernicious appearance of bias. With respect to the review of policies and officer conduct, review-focused boards have the ability to identify policy deficiencies or training needs as they apply to individual cases under review.

The weaknesses of the review-focused model include limited investigative authority and possibly less independence than other forms of oversight. Because of what might be considered a reactive focus, the ability of review-focused systems to promote large-scale systemic organizational change may be limited.

California cities that have some variation of a review-focused system include Claremont, Davis, Novato, Riverside, and Santa Cruz. Other cities include Indianapolis and Las Vegas.

Auditor/monitor-focused

Auditor/monitor-focused systems often review data developed by hired analysts who report to a board or commission, with an eye for broad patterns in the quality of investigations, findings and degree of discipline. Based upon these data and depending upon the structure of the system, the auditor/monitor may make recommendations to the police chief, city administrator, a review board such as the Fire and Police Commission, or City Council. For example, if complaints of use of force were trending upward, this trend would be reported publicly along with possible corrective actions. The primary cost of this model depends on the number of analysts assigned.

The strength of an auditor/monitor-focused model is that it may be more effective than investigation-focused systems at promoting long-term, systemic change in police organizations. This advantage comes from the auditor/monitor's focus on broader trends

and patterns in complaints, and their power to make public recommendations as to how the police department can improve. Auditor/monitor agencies also have the ability to track whether police departments implement their recommendations and whether those changes have resulted in organizational improvement over time. This increases credibility with the public and leads to more effective public outreach.

Auditor/monitor-focused systems developed as a compromise between community activists and police unions. The weakness of these systems is that they do not focus on individual cases. In addition, the auditor/monitor is typically advisory.

California cities that use this model include San Jose, Anaheim, Fresno, Inglewood, and Sacramento.

Hybrids

Hybrid systems combine elements of the different civilian review systems. Hybrid models can exist in two ways, hybrid systems and hybrid agencies. In the first case, a board may have multiple functions, such as investigations and auditing. The latter may have two boards reviewing the department, such as an investigatory model for misconduct allegations and a separate advisory panel for reviewing policies and practices. The strengths and weaknesses of a hybrid system correlate with each component system, along with costs and resource requirements.

As a practical matter, hybrid systems are often the best choice for a city.

California cities that use this model include Los Angeles, Oakland, and San Diego. Other cities include Albuquerque, Chicago, and Eugene, Oregon.

EXISTING LAWS AND PRACTICES

In addition to “purpose-built” civilian review systems, existing laws and practices include very significant monitoring, public scrutiny, and disciplinary standards for peace officers. This section surveys those laws and practices.

Santa Barbara Police Department Professional Standards Division

The Santa Barbara Police Department staffs the position of the Professional Standards Sergeant who conducts investigations of citizen complaints or administrative complaints received from within the Department. The Professional Standards Sergeant’s independence during any investigation conducted is reflected in the organizational chart of the Police Department, in which the position is delineated separately from any captain or Lieutenant. The Professional Standards Sergeant reports directly to the Police Chief.

The Professional Standards Sergeant conducts investigations into all employees of the Police Department and makes findings as to policy violations; however, the Sergeant makes no recommendation on discipline. The police captain who manages the division for which the officer/employee works (in consultation with Human Resources) imposes

discipline. The discipline is then subject to a final due process review by the Police Chief pursuant to *Skelly* protocol. The Police Department's public complaint flow chart is Attachment 5.

The Board of Fire and Police Commissioners

Santa Barbara Charter Section 816 establishes the Board of Fire and Police Commissioners. The Charter broadly empowers the Fire and Police Commission as follows:

“There shall be a Board of Fire and Police Commissioners composed of five (5) members. The Board of Fire and Police Commissioners shall have the following powers and duties:

(a) Act in an advisory capacity to the City Council and City Administrator in all matters relating to efficient and adequate Fire and Police protection for the City of Santa Barbara.

(b) Recommend to the City Council and City Administrator rules and regulations concerning the operation and conduct of the Fire and Police Departments.

(c) Consider with the Chiefs of the respective Fire and Police Departments an annual budget of such Departments and make recommendations with respect thereto to the City Council and City Administrator.

(d) Recommend to the City Administrator and City Council appointments to the offices of Fire Chief and Chief of Police.

(e) Exercise such other functions, powers and duties not inconsistent with this Charter as may be prescribed by ordinance.”

The Santa Barbara Fire and Police Commission clearly has the power to recommend to the City Council and City Administrator rules and regulations concerning the operation and conduct of the Police Department. Currently the Commission has little or no operating budget, therefore, it is not equipped to provide a review of the policies and practices of the Santa Barbara Police Department, or to provide a critical review of individual events/officer conduct. Section 816(e) makes it plain that the Council could empower the Commission by ordinance to undertake very specific civilian review responsibilities if desired.

The Civil Service Commission

The City's Charter creates a Civil Service System (Article 10) and a Civil Service Commission (§808). One of the major responsibilities of the Civil Service Commission is to hear disciplinary appeals made by any classified (non-probationary) officer or employee under the Civil Service System. Appeals are available to employees who are terminated, suspended, or demoted (City Charter, §1007). All peace officers, except for the higher levels of management, are classified employees and are entitled to appeal to the Civil Service Commission if the discipline issued by the Police Department falls into one of the three aforementioned serious categories.

During a Civil Service Commission appeal hearing, the Police Department must present evidence supporting both the fact-finding of the Professional Standards Sergeant and the level of discipline imposed by management. Likewise, the employee or officer is given an opportunity to present evidence and to be heard. The Civil Service Commission must review the evidence and decide whether to uphold the factual findings and whether to affirm, modify or rescind the discipline imposed by the Police Department. Either the employee or Police Department can appeal the decision to Santa Barbara Superior Court.

ACCOUNTABILITY AND TRANSPARENCY LAWS

This section discusses laws that seek to improve police accountability by allowing public access to police department remedial and information resources.

Complaints by Members of the Public

California Penal Code Section 832.5(a) requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and to make a written description of the procedure available to the public. The Santa Barbara Police Department's website has a [complaint form](#), which allows people to submit a complaint against an officer either online or by mail, or in person by delivering it at the City Clerk's Office, City Hall, or the Police Department.

Racial and Identity Profiling Data Reporting

In 2016, [AB 953](#) went into effect to require California law enforcement agencies to collect and report data on complaints that allege racial or identity profiling. (Pen. Code, §13012.) This law also expanded the definition of racial and identity profiling, to clarify that it is:

“ . . . the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.” (Pen. Code, §13519.4(e).)

AB 953 also requires law enforcement agencies to collect and report the specific types of profiling alleged. In other words, whether the alleged profiling is based on, to any degree, actual or perceived race (including color), ethnicity, nation origin, religion, gender identity or expression, sexual orientation, or mental or physical disability. The California Department of Justice is then required to prepare and present to the Governor, on or before July 1, an annual report containing the criminal statistics of the preceding calendar year, including, among other statistics, the total number of citizen complaints alleging racial or identity profiling.

Enhanced Access to Police Records

In January 2019, [SB 1421](#) went into effect to increase public access to police records under the California Public Records Act (CPRA; California's Freedom of Information Act equivalent). This bill amended Penal Code Sections 832.7 and 832.8 to require disclosure of documents related to certain high profile categories of officer conduct or misconduct, including:

- Discharge of a firearm at a person
- Use of force causing death or great bodily injury
- Sexual assault, and
- Findings of dishonesty that have been sustained.

The types of records that must be released pursuant to a CPRA request include:

- All investigative reports
- Photographic, audio, and video evidence; transcripts or recording of interviews
- Autopsy reports
- All material compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of disciplinary or administrative action, or what discipline to impose or corrective action to take
- Documents setting forth finding or recommended findings, and
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. (Pen. Code, §832.7(b)(2).)

Peace Officer Bill of Rights

Initially enacted in 1976, the Peace Officer Bill of Rights ([POBAR](#)) sets forth a list of basic rights and protections that must be afforded to all peace officers by the public entities that

employ them. Codified under California Government Code Sections 3300-3310, POBAR is a catalog of the minimum rights that the state Legislature deems necessary to secure stable employer-employee relations in public safety. When a law enforcement agency investigates alleged misconduct by an officer, the procedural protections in POBAR balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment.

These POBAR rights include:

- Limits on and guidelines for investigations and interrogations of public safety officers in connection with disciplinary proceedings (Gov. Code, §3303)
- The right to an administrative appeal and a one-year statute of limitations for investigations and completion of discipline (§3304)
- The right to notification of adverse comments placed in a Peace Officer's personnel file and the right to comment thereon (§3305)
- The right to self-inspection of personnel files (§3306)
- The right to refuse to submit to a lie detector test (§3307), and
- The right to the protections of POBAR (§3309.5(a)).

42 USC Section 1983

This federal statute is extremely important in deterring police misconduct because it creates civil liability for police misconduct. Section 1983 of Title 42 of the United States Code was enacted by Congress as Section 1 of the Ku Klux Klan Act of April 20, 1871 in order to enforce the 14th Amendment following the Civil War.

Police officers can be held personally liable for Section 1983 violations. Since 1978, cities can also be liable when a local government "policy" causes the civil rights violation.

Section 1983 was not particularly important until it was extended to state officials by the United States Supreme Court in 1961. Under Section 1983, police officers and cities may face civil liability when the "rights, privileges, or immunities secured by the United States Constitution and laws" are deprived "under color" of law, meaning by a person with official authority. Section 1983 is often the vehicle by which claims of excessive force are raised in court against police officers and the city.

Federal law also authorizes an award of attorneys' fees to successful Section 1983 plaintiffs. The risk of attorneys' fees dramatically increases the cost of civil rights litigation. Virtually every city, including Santa Barbara, exercises extensive risk management to avoid civil rights claims (and the attendant harm they represent). Risk management typically takes the form of extensive training and discipline to prepare police officers to protect the rights of the accused in all situations, including when the use of force is necessary.

Constitutional Protections for Persons Accused of Crimes

Regardless of civilian review or police internal affairs processes, prosecutors have an independent constitutional duty to disclose favorable, material evidence to a criminal defendant, including information contained in police personnel files. ([*Brady v. Maryland* \(1963\) 373 U.S. 83.](#)) The legal rationale for this constitutional rule is that evidence of police misconduct can be used to attack an officer's credibility on the witness stand, and can make the difference between acquittal and conviction. A *Brady* violation occurs when the prosecution (including the City and Police in their assistive roles) fails to disclose to the defendant exculpatory or impeaching evidence.

Examples of exculpatory or impeaching evidence in police personnel files include performance evaluations, disciplinary write-ups, and, importantly, internal affairs investigations that show an officer has been dishonest. This information can be critical to a defendant in attacking the officer's credibility on the stand. Examples of dishonesty include findings that officers falsified reports, provided false testimony, stole money, or otherwise lied on the job. Even when the initial misconduct does not implicate the officer's truthfulness, the internal affairs investigation that follows may do so if the officer is caught in a lie or in a cover-up. *Brady* thus creates institutional incentive to terminate dishonest peace officers.

CONCLUSION

Broad considerations for effective civilian police review and oversight include independence, adequate resources, community outreach, and community involvement.

Each civilian police review system includes the ability to make recommendations for improving police policies and practices. Another common characteristic for many review systems is to place police reports or information on a website to work to educate the community about policing matters, and to encourage its engagement through public meetings and outreach.

Consideration should also be given to the composition of a civilian review body and the manner of appointment. In other California chartered cities, appointment power rests with either the City Council or City Manager/administrator. In strong mayor systems like San Diego or Oakland, the mayor appoints the review body members. Members of the Riverside Community Police Review Commission are appointed by the City Council. The Independent Police Auditor in Santa Cruz is hired by the City Manager. The Independent Police Auditor in San Jose is one of five Council appointees and reports to the Mayor and City Council.

Whichever path the City chooses to take should be formalized in an ordinance or charter amendment to establish the review system. As we noted on January 7, 2020 in our Annual Legislative Report, both AB 931 (which addresses gender diversity on boards and commissions) and SB 225 (which allows non-citizens to serve on appointive boards and commissions) may need to be considered by Council as well.

Charter amendments also may be necessary to reconcile the roles of the Fire and Police Commission, Civil Service Commission, and any newly created civilian review system.

Given the scope and complexity of the issues at hand, we believe that substantial civic engagement should be undertaken to gather information from the community. We envision informational public workshops in conjunction with local social justice and community groups to gather community feedback on civilian police review needs and concerns.

- ATTACHMENTS:**
1. References and Authorities
 2. NACOLE recommendations for Effective Practices, June 1, 2020
 3. Major Characteristics Comparison of Civilian Police Review Systems
 4. City-by-City Comparison of Civilian Police Review Systems
 5. Flow Chart for Complaints against the SBPD

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