

# INDEPENDENT OVERSIGHT



## Policy Background

Civilian oversight bodies exist to provide independent, civilian oversight of law enforcement. A civilian review board is defined as “an agency that is staffed by civilians, and not sworn officers, charged with investigating civilian complaints” against law enforcement.<sup>1</sup> In addition to civilian review boards, some cities also have inspectors general or oversight commissions, which are third-party government agencies or officials that provide external oversight of law enforcement policies and practices. There are several primary categories of oversight bodies, ranked in order of most to least active:

- The first type is granted independent disciplinary authority, in which the board’s recommendations are binding and must be followed.<sup>2</sup>
- The second type investigates civilian allegations of police misconduct and recommends disciplinary action to the police chief (but recommendations are not binding).<sup>3</sup>
- The third type does not have the power to conduct investigations, but reviews the internal investigations and recommendations made by police, and then makes recommendations to the police chief about whether or not to follow those internal recommendations.<sup>4</sup>
- The fourth type allows civilians to appeal the results of internal investigations, while the review board reviews internal police process and makes recommendations to the police based on the internal police investigation.<sup>5</sup>
- The fifth type serves in a limited auditor capacity by investigating police department processes for accepting and investigating complaints.<sup>6</sup>

There are now more than 100 jurisdictions across the country with some type of civilian oversight body.<sup>7</sup> However, despite the growing prevalence of civilian oversight in cities across the country, many communities have lost faith in their effectiveness. And understandably so: nationally, between 6 and 20 percent of citizen complaints are sustained (in other words, deemed credible),<sup>8</sup> and in some cities the rates are even lower. Police departments’ own data—often not readily available to the public—paints a “portrait of impunity,” in which the vast majority of complaints are thrown out and few officers are ever disciplined.<sup>9</sup> In Chicago, for example, in the five years preceding an investigation by the Department of Justice (DOJ), only two percent of 30,000 police misconduct complaints were sustained, resulting in no discipline in 98 percent of complaints.<sup>10</sup> Complaints were even less likely to be sustained when made by Black Chicagoans.<sup>11</sup> The DOJ’s investigation unveiled a number of systemic factors contributing to the failures of misconduct investigations, including “an unwillingness to investigate anonymous complaints, provisions in unions agreements, and officers’ ‘code of silence’ aimed at covering up misconduct.”<sup>12</sup>

Effective oversight is only possible if oversight bodies are independent from the police department (so that, for example, officers may not conduct their own internal investigations with no accountability or oversight). Oversight bodies should be representative of communities most impacted by police brutality, adequately funded, granted subpoena power, and equipped with full investigatory and disciplinary power. They should also have the authority to monitor police department policies and to issue binding policy recommendations. A number of jurisdictions, including Seattle, Oakland, San Francisco, and Newark, have started to advocate for review boards with greater power and authority to ensure that officers cannot operate with impunity, including the power to investigate departmental practices, impact hiring decisions, and help identify policing priorities.<sup>13</sup>

The following best practices are categorized as best practices for civilian review boards and best practices for external oversight agencies. However, these powers may rest with either type of oversight body, so long as the criteria is ultimately met between them. For example, a locality may only have a civilian review board and not an external oversight agency, but the civilian review board may be granted the power to monitor police department practices and policies.

## Assessing the Landscape

Questions to help assess the current landscape include the following:

- How many complaints have been filed in your jurisdiction versus sustained in recent years? Are complaints sustained at different rates based on race? Are there certain officers or precincts with higher rates of complaints?
- Of all complaints filed, how many alleged excessive force, abuse of force, or offensive language?
- How many complaints result in officer discipline?

## Best Practices: Civilian Review Boards

Local elected officials can directly legislate the creation of a strong civilian review board (CRB). The following recommendations build on best practices developed by the Center for Popular Democracy and PolicyLink in the “Toolkit for Promoting Justice in Policing,”<sup>14</sup> as well as those from Campaign Zero<sup>15</sup> and the ACLU of New Jersey.

## Best Practices: External Oversight Agencies

In addition to a civilian review board, jurisdictions may establish an inspector general or oversight commission. These entities can aid transparency and monitor the practices and policies of police (as opposed to investigating individual incidents of misconduct).<sup>16</sup> These agencies should be specific to law enforcement and not charged with overseeing the policies of other departments. Local elected officials should have authority to legislate the creation of an external oversight agency. The following recommendations build on best practices developed by the Center for Popular Democracy and PolicyLink in the “Toolkit for Promoting Justice in Policing.”<sup>17</sup>

## INDEPENDENT OVERSIGHT: Civilian Review Boards

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>A CRB should have true independence.</li> </ul>	<ul style="list-style-type: none"> <li>Does the CRB conduct investigations independently of the police department?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
	<ul style="list-style-type: none"> <li>Does the mayor appoint less than 50% of board members? (For true independence, members should not be majority-appointed by the mayor.)</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
		<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
<ul style="list-style-type: none"> <li>A CRB should have necessary investigatory powers, including subpoena power.</li> </ul>	<ul style="list-style-type: none"> <li>Does the CRB have either subpoena power or administrative powers that enable direct and unfettered access?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
	<ul style="list-style-type: none"> <li>Does the CRB have the power to compel witnesses?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
	<ul style="list-style-type: none"> <li>Does the CRB have the power to compel testimony?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
	<ul style="list-style-type: none"> <li>Does the CRB have the power to compel documents?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
<ul style="list-style-type: none"> <li>A CRB should have independent disciplinary authority to hold police officers accountable for their actions.</li> </ul>	<ul style="list-style-type: none"> <li>Does the CRB have independent disciplinary authority?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>

## INDEPENDENT OVERSIGHT: Civilian Review Boards

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>A CRB should have funding necessary for thorough and timely investigations (tied to percentage of police department's non-capital budget).</li> </ul>	<ul style="list-style-type: none"> <li>Are investigations completed within 120 days?</li> </ul>	<div>Y N</div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> <li>CRB policy documents</li> <li>Budget documents</li> </ul>
	<ul style="list-style-type: none"> <li>Is funding no less than 5% of the total police department budget?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>Is funding tied to the police department's non-capital budget (so that increases in the police department budget result in increases in funding for oversight)?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>Does funding cover an investigative staff, with at least one investigator for every 70 police officers or four investigators at all times (whichever is greater)?</li> </ul>	<div>Y N</div>	
<ul style="list-style-type: none"> <li>A CRB should have membership that reflects diversity, expertise, and connection to the community.</li> </ul>	<ul style="list-style-type: none"> <li>Does the legislation explicitly have a statement about diversity of the board?</li> </ul>	<div>Y N</div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> <li>CRB policy documents</li> </ul>
	<ul style="list-style-type: none"> <li>Does the legislation require the membership of community members most impacted by police surveillance, abuse, and brutality?</li> </ul>	<div>Y N</div>	
<ul style="list-style-type: none"> <li>A CRB should have public access that allows residents to file complaints through a variety of methods and during non-business hours.</li> </ul>	<ul style="list-style-type: none"> <li>Can residents file complaints:</li> </ul>		<ul style="list-style-type: none"> <li>Enabling legislation</li> <li>CRB policy documents</li> <li>CRB webpage for information on how to file a complaint</li> </ul>
	<ul style="list-style-type: none"> <li>by phone?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>online?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>in person?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>after hours and during the weekend?</li> </ul>	<div>Y N</div>	
	<ul style="list-style-type: none"> <li>in multiple languages/locations?</li> </ul>	<div>Y N</div>	

## INDEPENDENT OVERSIGHT: Civilian Review Boards

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>A CRB should have broad jurisdiction to investigate police department policies and practices (may also be in form of an inspector general or commission).</li> </ul>	<ul style="list-style-type: none"> <li>Does the CRB, inspector general, or police commission have authority to review and make recommendations on police department policies and practices?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>A CRB should be transparent, reporting quarterly to the public on complaints and dispositions (without personally identifiable information).</li> </ul>	<ul style="list-style-type: none"> <li>Are reports issued quarterly, and to the public?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> <li>CRB website</li> </ul>
	<ul style="list-style-type: none"> <li>Do reports include demographics of complainants?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	
	<ul style="list-style-type: none"> <li>Do reports include status and findings of investigations and actions taken as a result of investigations?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	

## INDEPENDENT OVERSIGHT: External Oversight Agencies

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>An external oversight agency should have a clear mandate about its purpose and function. (While mandates may differ—i.e., some may make recommendations while others audit practices against current policy—the mandate should be clear and unambiguous.)</li> </ul>	<ul style="list-style-type: none"> <li>Does the entity have a clear mandate that spells out the purpose of the external oversight body?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>An external oversight agency should have a sufficient budget.</li> </ul>	<ul style="list-style-type: none"> <li>Is the entity funded adequately enough to fulfill its mandate?</li> </ul>	<div> <input type="checkbox"/> Y           <input type="checkbox"/> N           _____         </div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>An external oversight agency should have authority that is permanent (and not time-limited).</li> </ul>	<ul style="list-style-type: none"> <li>Does the entity have an authority that is permanent?</li> </ul>	<input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>An external oversight agency should have full independence from law enforcement with the authority to determine what to investigate. (City or state law may limit the ability to create truly independent bodies, but it is normally possible to ensure that oversight agencies are not controlled by law enforcement.)</li> </ul>	<ul style="list-style-type: none"> <li>Can the entity conduct itself independently from law enforcement?</li> <li>Is the entity <i>structurally</i> designed to be free from the influence of law enforcement (i.e., law enforcement does not determine the majority of staffing nor oversee the agency)?</li> <li>Can the entity independently determine what policies and practices to review?</li> </ul>	<input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>

## INDEPENDENT OVERSIGHT: External Oversight Agencies

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>An external oversight agency should have the mandate to monitor and investigate patterns and practices of police interactions.</li> </ul>	<ul style="list-style-type: none"> <li>Does entity investigate patterns of police interactions by:               <ul style="list-style-type: none"> <li>race? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>gender identity? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>sexual orientation? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>immigration status? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>housing status (homeless people, those living in public housing)? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>disability status? <input type="checkbox"/> Y <input type="checkbox"/> N</li> </ul> </li> <li>Does the entity investigate patterns of use of force? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>Does the entity investigate patterns of weapons discharges? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>Does the entity investigate patterns of officer misconduct? <input type="checkbox"/> Y <input type="checkbox"/> N</li> <li>Does the entity investigate patterns in civilian complaints and officer discipline? <input type="checkbox"/> Y <input type="checkbox"/> N</li> </ul>	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>An external oversight agency should report findings to the public.</li> </ul>	<ul style="list-style-type: none"> <li>Does the entity share policy changes in a publically accessible format? <input type="checkbox"/> Y <input type="checkbox"/> N</li> </ul>	<div></div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> <li>Oversight agency website</li> </ul>



## INDEPENDENT OVERSIGHT: External Oversight Agencies

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> <li>An external oversight agency should issue policy changes.</li> </ul>	<ul style="list-style-type: none"> <li>Is law enforcement required to adhere to the entity's policy changes?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> <li>If not, is law enforcement required to respond to recommendations?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> </ul>	<div>_____</div> <div>_____</div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>An external oversight agency should have subpoena power (or other means of direct and unfettered access).</li> </ul>	<ul style="list-style-type: none"> <li>Does the entity have either subpoena power or administrative powers that enable direct and unfettered access?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> <li>Can the entity compel testimony?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> <li>Can the entity access relevant internal documents?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> <li>Can the entity access relevant personnel of the police department?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> </ul>	<div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>
<ul style="list-style-type: none"> <li>An external oversight agency should have an outreach capacity.</li> </ul>	<ul style="list-style-type: none"> <li>Is the entity directed to and equipped to hear concerns from the public?                             <div> <input type="checkbox"/> Y <input type="checkbox"/> N                             </div> </li> </ul>	<div>_____</div>	<ul style="list-style-type: none"> <li>Enabling legislation</li> </ul>

## Lessons from the Field

In 2017, the city of Austin began negotiating a new contract with the Austin Police Association (APA), and Council Member Greg Casar saw this as an opportunity to begin to rethink how Austin defines public safety. Casar worked with community leaders to make a push to reject the contract unless eight key police oversight, transparency, and discipline reforms were made.

The negotiations have been ongoing for many months as the Austin City Council has certain authority over specific parts of what they can legislate, while others are mandated to be collectively bargained.

Council Member Casar and the city council voted to reject the negotiated contract in December 2017 because it lacked sufficient gains on increasing police accountability for behavior that adversely impacted residents, and failed to increase transparency around the civilian complaint process. Although through community organizing, the police contract did improve—for example, the new contract allowed for anonymous citizen complaints—it did not go far enough. For example, officers who engaged in non-criminal misconduct could potentially remain immune to discipline of the misconduct was over 180 days old.

As such, the city has opted to do two things. The first is that the city's Office of Police Monitor is undergoing a current assessment of examples of oversight models in other cities to find something that could be replicated and tailored to Austin. Secondly, the council has continued to stand strong during negotiations, by refusing to renew discretionary police pay stipends until the oversight reforms are achieved.

## Resources

- See Udi Ofer's "Getting it Right: Building Effective Civilian Review Boards to Oversee Police," for an overview of CRB boards in the 50 largest cities and a description of key components of effective boards: <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>
- See the National Association for Civilian Oversight of Law Enforcement (NACOLE) for a number of civilian oversight agency profiles: [http://www.nacole.org/agency\\_profiles](http://www.nacole.org/agency_profiles)
- See NACOLE's overview of police oversight models: [http://www.nacole.org/oversight\\_models](http://www.nacole.org/oversight_models)
- See the Invisible Institute's Citizens Police Data Project: <https://invisible.institute/police-data/>
- See Seattle's police oversight ordinance: <https://seattle.legistar.com/View.ashx?M=F&ID=5256007&GUID=C6C20636-273B-4D07-941C-4E9BD0EE440C>
- See Newark's police oversight ordinance: <https://newark.legistar.com/LegislationDetail.aspx?ID=2573481&GUID=13232B4A-53F9-4E99-8440-8FE11FB761B2&Options=&Search=>
- See legislation establishing New York City's Inspector General: <http://www1.nyc.gov/assets/oignypd/downloads/pdf/Local-Law-70.pdf>
- See legislation establishing the Los Angeles Sheriff Department's Inspector General (for an example of a clear mandate): [https://oig.lacounty.gov/Portals/OIG/Reports/6.44.190\\_\\_\\_Office\\_of\\_Inspector\\_General.pdf?ver=2017-03-02-162755-183](https://oig.lacounty.gov/Portals/OIG/Reports/6.44.190___Office_of_Inspector_General.pdf?ver=2017-03-02-162755-183)
- For additional reading, see Samuel Walker's book, "The New World of Police Accountability," available: <http://samuelwalker.net/books/>

# NOTES

1. Samuel Walker, “The History of the Citizen Oversight,” *Citizen Oversight of Law Enforcement Agencies*, 1, 2 (Justina Cintron Perino ed., 2006), [http://apps.americanbar.org/abastore/products/books/abstracts/5330089samplech\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5330089samplech_abs.pdf), quoted in Udi Ofer, “Getting it Right: Building Effective Civilian Review Boards to Oversee Police,” *Seton Hall Law Review*: Vol. 46: Iss. 4, Article 2, <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>, 1039-1040.
2. Correspondence with Udi Ofer, March 2018.
3. Udi Ofer, “Getting it Right: Building Effective Civilian Review Boards to Oversee Police,” 1041.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. “Citizens Police Data Project,” Invisible Institute, Accessed May 15, 2018, <https://invisible.institute/police-data/>.
9. Ibid.
10. Yasmeen Serhan, “What the Investigation into the Chicago Police Department Found,” *The Atlantic*, January 13, 2017, <https://www.theatlantic.com/news/archive/2017/01/justice-department-chicago-police-report/513113/>.
11. Timothy Williams, “Chicago Rarely Penalizes Officers for Complaints, Data Shows,” *The New York Times*, November 18, 2015, <https://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html>.
12. Yasmeen Serhan, “What the Investigation Into the Chicago Police Department Found.”
13. See, for example: J.B. Wogan, “The New, More Powerful Wave of Civilian Oversight of Police,” *Governing the States and Localities*, February 27, 2017, <http://www.governing.com/topics/public-justice-safety/gov-police-civilian-oversight-oakland-seattle.html>; Steve Miletich, “Seattle City Council passes historic police-accountability legislation,” *The Seattle Times*, May 23, 2017, <https://www.seattletimes.com/seattle-news/crime/seattle-city-council-passes-historic-police-accountability-legislation/>; Rebecca Ibarra, “Newark Judge Weakens Police Review Board,” *WNYC News*, March 15, 2018, <https://www.wnyc.org/story/newark-judge-weakens-board-meant-fight-police-wrongdoing/>.
14. “Building Momentum from the Ground Up: A Toolkit for Promoting Justice in Policing,” The Center for Popular Democracy and PolicyLink, <http://populardemocracy.org/sites/default/files/JusticeInPolicing-webfinal.pdf>, 25.
15. “Community Oversight,” Campaign Zero, Accessed May 15, 2018, <https://www.joincampaignzero.org/oversight>.
16. “Building Momentum from the Ground Up: A Toolkit for Promoting Justice in Policing,” The Center for Popular Democracy and PolicyLink, 37.
17. Ibid.