

**Civilian Police Review:  
Recommendations for Strengthening  
Police-Community Relations in Ann Arbor**

**Prepared by**

**The Ann Arbor Human Rights Commission**

**November 4, 2015**

*All of us in law enforcement must be honest enough to acknowledge that much of our history is not pretty. ... We have spent the 150 years since Lincoln spoke making great progress, but along the way treating a whole lot of people of color poorly. And law enforcement was often part of that poor treatment. That's our inheritance as law enforcement and it is not all in the distant past. We must account for that inheritance.* – FBI Director James Comey<sup>1</sup>

*Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.* – Interim Report of the President's Task Force on 21<sup>st</sup> Century Policing<sup>2</sup>

*Civilian review or advisory boards are not new to policing and are currently in place in many major and midsize police agencies across the country. The establishment of civilian review or advisory boards may have many benefits for an agency, including; improved citizen-police relationships; enhanced trust in police actions and strategies, and bridge-building among community and police.* –International Association of Chiefs of Police, 2015<sup>3</sup>

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<sup>1</sup> <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>

<sup>2</sup> *Interim Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services. First published March 1, 2015 Revised March 4, 2015. [http://www.cops.usdoj.gov/pdf/taskforce/interim\\_tf\\_report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf)

<sup>3</sup> <http://www.theiacp.org/Portals/0/documents/pdfs/IACPTestimonyListeningSessionPolicyandOversight.pdf>

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>CHAPTER I: ARE THERE COMMUNITY CONCERNS ABOUT POLICING IN ANN ARBOR THAT COULD BE EFFECTIVELY ADDRESSED BY SOME FORM OF CIVILIAN POLICE OVERSIGHT? .....</b>	<b>6</b>
Calls from the Community	
Racial Bias and Unequal Treatment	
AAPD Composition and Culture	
Lack of Police Department Transparency and External Review	
Trust	
<b>CHAPTER II: CIVILIAN OVERSIGHT SYSTEMS: AN OVERVIEW .....</b>	<b>14</b>
Civilian Review Board Model	
Independent Auditor Model	
Hybrid Models	
<b>CHAPTER III: RECOMMENDATIONS.....</b>	<b>22</b>
Engage the Services of a Police Auditor-Consultant on a Temporary Basis	
Create and Maintain a Civilian Police Review Board	
Implement Alternative Dispute Resolution Methods	
Fully Implement the Use of Crisis Intervention Teams and Community Policing	
<b>CONCLUSION .....</b>	<b>33</b>
<b>APPENDIX A: ACKNOWLEDGMENTS AND SOURCES.....</b>	<b>34</b>
<b>APPENDIX B: OVERSIGHT MODELS USED BY SOME OTHER CITIES .....</b>	<b>39</b>

## EXECUTIVE SUMMARY

This past year has seen repeated demonstrations against police killings and calls for police reform across the country. Residents in some minority communities, who have long been subject to aggressive and sometimes abusive police tactics, have expressed their frustration, anger, and desire for reform. Such protests have brought unusual and unprecedented national attention to the topic of police killings and police tactics generally. Here in Ann Arbor specifically, the November 2014 shooting by a police officer of Aura Rosser, a black woman, generated ongoing protests by some calling for justice and reform of the Ann Arbor Police Department (AAPD).<sup>4</sup>

This report responds to the questions raised by incidents of apparent police misconduct nationwide – and by the shooting of Aura Rosser locally – about the policies and practices of Ann Arbor police and to specific community calls for the creation of a civilian police oversight body. It addresses three key questions:

1. Are there community concerns about policing in Ann Arbor that could be effectively addressed by some form of police oversight?<sup>5</sup>
2. What forms of police oversight have other cities implemented?
3. What does the Ann Arbor Human Rights Commission (AAHRC) recommend the City do to strengthen police-community relations?

This report is the product of a three-part process:

- An AAHRC subcommittee, chaired by Commissioner Dwight Wilson, conducted extensive discussions with many people, including law enforcement personnel, Ann Arbor community members and advocacy groups, and experts in the area of police oversight. It also reviewed articles and documents on police practices and oversight models in use across the country. This subcommittee prepared a comprehensive 38-page draft report.
- Michigan law students Divya Taneja, Nick Kabat, and James Thurman, working under the direction of AAHRC, also did considerable research on the subject and produced a comprehensive 37-page draft report.

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<sup>4</sup> The Aura Rosser shooting was reviewed by the Washtenaw County Prosecutor and found to be legally justified. No criminal charges were brought against the officer involved.

<sup>5</sup> Though some may understandably be uncomfortable with the use of the word “oversight” here, that is the word typically used in scholarly articles, by organizations like the National Association of Civilian Oversight of Law Enforcement, by the President’s Task Force on 21<sup>st</sup> Century Policing and in other places where this subject is discussed. Please see Chapter II for more on this.

## Civilian Police Review

### AAHRC Report

November 4, 2015

- Finally, the AAHRC as a whole reviewed and discussed the two draft reports, did some further research, and then, using all of the information gathered, prepared this report and recommendation for the Mayor, City Council and City Administrator.<sup>6</sup>

The two draft reports and this final report and recommendation ultimately conclude that, while Ann Arbor has many reasons to be proud of its police department, there is and will always be concern that vital rights be protected in pursuit of effective law enforcement tactics and strategies. Civilian review of the AAPD could help provide assurance to the community that those rights are being protected. This assurance would, in turn, serve to strengthen relations between the community and the police.

The officers of the AAPD deserve our utmost thanks and respect for the challenging and often dangerous work that they do to keep us safe and help make Ann Arbor a place we are proud to call home. This examination of the need for review of the AAPD focuses on further strengthening this critical community-policy relationship and should be read with that in mind.

The AAHRC recommends that the City of Ann Arbor:

1. Create an independent, all-volunteer civilian police review board charged with a number of duties, the effect of which would be to foster positive police-community relations;
2. Temporarily engage the services of an experienced police auditor-consultant knowledgeable about best practices in policing, training, complaint handling, and oversight to conduct a thorough review and evaluation of present AAPD policies and practices, recommend whatever reforms may be needed, and help start up the civilian board.
3. Implement the use of alternative dispute resolution methods in resolving some types of complaints and increasing communication and understanding between community members and police officers; and
4. Consider implementing several other changes to the AAPD's approach to policing described at the end of this report.

Because of the AAHRC's considerable research on this topic, commitment to these recommendations, and role in protecting human rights in Ann Arbor, the AAHRC also recommends that it be invited to take part in the implementation of these recommendations.

These recommendations are offered in the belief that community input can be very useful in encouraging, developing, and maintaining police practices that meet community standards and will close whatever rifts may exist between some members of the community and its very critical law enforcement providers.

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<sup>6</sup> Appendix A includes more specific information about the resources consulted in the research conducted in the creation of this report.

## Chapter I

### **Are there Community Concerns About Policing in Ann Arbor that Could Be Effectively Addressed by Some Form of Civilian Police Oversight?**

There are many reasons why some form of civilian involvement in identifying, examining, and addressing concerns about Ann Arbor's law enforcement is needed. Here are some of them:

- 1. Calls from the Ann Arbor Community** – Some community members have reported a great deal of frustration both before and especially after the shooting of Aura Rosser.<sup>7</sup> The most consistently requested remedy they identified was the establishment of some form of civilian police oversight.
- 2. Racial Bias and Unequal Treatment** –There are concerns that the expression (whether intentional or unintentional) of racial and other biases by police officers apparent in other American cities may also be present in ours. It would be difficult to put these fears to rest without some outside monitoring.
- 3. AAPD Composition and Culture** – The current demographic composition of the AAPD, particularly in leadership positions, does not reflect the diversity of Ann Arbor and may limit the department's ability to respond to the diverse population of our community as effectively as possible.
- 4. Lack of Police Department Transparency and External Review** – There is a lack of transparency with respect to Ann Arbor's police practices, policies, training, and complaint processing. The current complaint process, for example, where complaints about police conduct are given to and investigated by the police themselves, without any external review or the right of appeal may, no matter how well executed, be considered suspect. There are also insufficient avenues for constructive communication between police and the community to increase understanding and trust.

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<sup>7</sup> See Michigan Department of State Police, Original Incident Report, Incident number 010-0001075-14 (DB), available at <https://secure2.ewashtenaw.org/hosting/Prosecutor/MSP%2010-1075-14%2024%20pages.pdf> The full report was available online until May 2015 and the authors retained a copy for readers to review upon request.

5. **Trust** – Policing must be based on a partnership between police and the people of Ann Arbor that is founded on positive interaction and evidence that all individuals are treated fairly. Currently, as was made clear in discussions with community members, trust in police is uneven in our city. Some people feel less safe than others (from both criminals and, to some extent, police), and a disconnect exists between the police and some groups in the community. Some form of oversight of law enforcement could serve to strengthen trust in the police throughout the community.

### 1. Calls from the Community

The shooting of a black woman, Aura Rosser, by a white Ann Arbor police officer, the subsequent decision in the case by the Washtenaw County Prosecuting Attorney, and the lack of any indication to the community by the AAPD that it would explore ways to make another such tragedy less likely sparked calls from some members of the community for increased oversight of the AAPD. The shooting coincided with nationwide calls for greater accountability of police in the wake of events in Ferguson, Missouri, where protestors were calling for prosecution of former Ferguson Police Officer Darren Wilson after he shot and killed 18-year old Michael Brown. The protests in Ann Arbor and around the country were part of the much larger #BlackLivesMatter movement, which demands, among other things, greater accountability of police officers involved in shootings of unarmed civilians and reforms of police policies, practices, and training. Police killings of black individuals – and the concerning details of some of those incidents -- have been widely reported over the past year and indicate that concerns about racially biased police actions in some law enforcement departments are not without cause.

The members of the Ann Arbor community who spoke to the AAHRC were nearly unanimous in their request for the creation of a civilian police oversight board. They suggested that the board be given the ability to do these, among other, things:

- Review and investigate (through use of subpoena power if necessary) complaints against police
- Inform the public of instances of use of potentially lethal force by the police
- Inform the public of standards followed by the AAPD
- Make policy and training recommendations to the AAPD
- Participate in the hiring and firing of AAPD officers and administrators
- Help to foster positive communication between the police and community through organized events and restorative practices

Other requests by community members included:

- Increased public outreach efforts by the police,
- Having a higher percentage of AAPD officers who are residents of the City,

- Making information about complaints filed and the race, gender, age, religion, etc. of the complainants available to the public, and
- Increased training of police in de-escalation techniques.

In response to the requests of both community members and some members of City Council, the AAHRC agreed to gather information and then advise Council about whether civilian police oversight or other reforms are needed and, if so, what form they should take.

## 2. Racial Bias and Unequal Treatment

“The media is awash with stories about disparate treatment of minorities by police, such as excessive force when restraining minority suspects; the profiling of black motorists; and the now infamous “beer summit” among President Obama, a professor, and a police officer, to name a few. However, none raises more uproar than a police shooting, particularly when it involves a white police officer and black suspect...Police officers are human and, as the [social science] theory contends, may be affected by implicit biases just as any other individual. In other words, well-intentioned officers who err may do so not as a result of intentional discrimination, but because they have what has been proffered as widespread human biases. Social psychologists do not contend that implicit bias should be a scapegoat for unethical police behavior; however, an understanding that biased police behavior could be manifested by even well-intentioned officers who have human biases can reduce police defensiveness around this issue and motivate change.”<sup>8</sup>

The influence of possible bias on police actions in Ann Arbor as elsewhere is very difficult to assess. Is race a factor in certain traffic stops in Ann Arbor, for example? Are concerns that “driving while black” makes black drivers in Ann Arbor a target for traffic stops justified? The last study and report on this subject, *Ann Arbor Police Department Traffic Stop Data Collection Methods and Analysis Study*, conducted in 2004, looked at the frequency of these stops. This study did not find “evidence overall that the AAPD [was] targeting Black motorists for stops.” The number of stops, though, does not tell the whole story: to know whether there is discrimination against drivers of color, one also needs to explore whether there are differences in how people are treated during those stops that correlate with race or ethnicity.<sup>9</sup> The 2004 study did not address that, so we do not know.

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<sup>8</sup> Gove, Tracey G., Captain, “Implicit Bias and Law Enforcement”, in *The Police Chief: The Professional Voice of Law Enforcement*, June, 2015.

[http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=2499&issue\\_id=102011](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2499&issue_id=102011)

<sup>9</sup> Charles Reynolds, former police chief, former president of the International Association of Chiefs of Police, former independent police auditor, and current partner of the firm Police Performance Solutions, LLC

Some residents have not forgotten the 1995 investigation where, in a difficult-to-solve rape case, DNA was collected by Ann Arbor police from 150 black men who met a very general description of the perpetrator, but were not linked to the crime by any other evidence. A lawsuit resulted claiming that the collections were coercive and that the DNA samples were not returned to the men who were cleared (but, instead, were deposited in a DNA bank).<sup>10</sup> This matter, though dated, still influences the community's broader concerns about the AAPD and racial bias in policing more generally.

A number of Ann Arbor residents who came to the AAHRC with concerns about the Rosser shooting suggested that if Aura Rosser had been white, she may not have been shot. This suggestion arose in the context of the reported shootings nationwide of black people. Although there is no evidence that race played a role in the Rosser case, the question was and continues to be raised.

There are Ann Arbor residents who believe that implicit or explicit racial and other biases have impacted the actions of police officers at times even in this city; that belief, whether or not justified, undermines their trust in the police. Measures need to be taken to provide assurance to Ann Arborites that the police are not taking actions based on bias. Many want to know not only that the AAPD acknowledges the possibility that bias may sometimes affect their officers' conduct but also that the Department is taking whatever steps it can towards eliminating it. An external review body can help ensure that such steps are taken and also work to let residents know and feel secure about what the police are doing. The kind of policing that Ann Arbor residents deserve must be based on a partnership between police and community members, as well as a foundation of trust that individuals are treated fairly by law enforcement officers, regardless of their race (or other protected attributes).

### **3. AAPD Composition and Culture**

The racial composition of a police department, especially the number of minority members and women in leadership positions in the force, can yield insights into the "culture" of the department and, perhaps, its responsiveness to community concerns.

Now retired Chief John Seto met regularly with representatives of the AAHRC throughout his tenure as Chief of Police. Those meetings increased in frequency within the few months before he left. Chief Seto provided the AAHRC with information that includes the demographic breakdown of the Ann Arbor Police Force.

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<sup>10</sup> *Shelton v. Ann Arbor*, No. 95-1994 NZ, (Washtenaw County, Mich., January 13, 1995) available at <http://annarborchronicle.com/wp-content/uploads/2012/03/BlairSheltonComplaint1.pdf>.

Tables 1 and 2 summarize the data provided. According to Chief Seto, the AAPD has 119 sworn officers and 82% of them are white (in a city which is only 73% Caucasian). Among the 45 leadership positions (detective or higher) in the department, minority members are rare at the present time.<sup>11</sup> While the former chief himself is Asian, and the prior chief was African American, none of the lieutenants or deputy chiefs currently holding those positions is a member of a minority group. Gender imbalance based on census numbers also exists: only 24% of the officers in the department are female. One female lieutenant currently serves in that position, and there are several female sergeants.<sup>12</sup>

**Table 1. Racial & Ethnic Breakdown  
of Ann Arbor Police Force, 2015.**

	Count	% of Total
<b>Race of Officers</b>		
American Indian	1	1%
Asian	3	3%
Black	12	10%
Hispanic	4	3%
Two or more races	1	1%
White	98	82%
<b>Total Sworn Officers:</b>	119	100%
<b>Gender</b>		
Male	90	76%
Female	29	24%

Although there has been no indication of this in Ann Arbor, a lack of minority presence in leadership positions may result in reluctance among officers to report issues regarding differential treatment of minorities.

Increased diversity in the AAPD workforce could enhance the workplace culture for those in the AAPD; provide a different perspective on the department's policies, procedures, and practices; and broaden its connections to the diverse population of our city. Certain studies have shown that diverse groups are more able to develop creative

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<sup>11</sup> The past two chiefs of the Police Department were minorities (Asian and African American) and, according to information provided by the Office of the City Attorney, over the last 10 years, approximately three African Americans, two Asian Americans, and one Hispanic American have held the position of lieutenant. However, many of those officers have retired and the current diversity of the department in leadership roles is limited

<sup>12</sup> No comparison was made to the racial and ethnic breakdown of other communities in the state to determine if Ann Arbor's numbers are typical within the law enforcement community.

and responsive solutions than homogeneous groups, and it is exactly this sort of creativity and problem-solving that may help to address the many challenges facing our community.<sup>13</sup> External review could help insure, and communicate to the community, that all possible steps are being taken to realize this kind of representative department.

#### **4. Lack of Transparency and External Review**

The most central practices, policies, and procedures of police departments tend not to be made public. Police departments protect the information that makes them most effective, and state and federal laws support this lack of information-sharing. Police departments also protect the privacy of the personnel information of their officers. These safeguards are provided under law in order to protect police officers and their families who may be subject to retaliation from individuals who have had dealings with law enforcement and to ensure that police operations are not made obvious to the criminal elements in society. One result of all this protection is that much of what happens in police departments is undisclosed to the public. This lack of transparency does little to foster trust and understanding.

Discomfort with police works against the interests of the community in a number of ways. Residents, especially members of minority and disenfranchised communities, may be disinclined to speak out to police when they believe a crime has occurred. They may fear their attempt to help will get them in trouble with the suspected perpetrators or with the police themselves. Community members who are black have indicated that they tell their sons to avoid attracting any police notice. Given the long history of unequal treatment by law enforcement in much of this country, individuals may have reason to doubt the likelihood that any engagement with police will be beneficial. Thus, they may be reluctant to speak when questioned by law officers or cooperate in visible ways. They also may hesitate to file complaints against police (or provide them any feedback) because they fear retribution from officers -- and the way Ann Arbor's complaint process works may not help.

To file a complaint about police conduct in Ann Arbor, the complainant must give it to an AAPD police officer (either to the lieutenant in the department's professional standards internal affairs section or to whomever is staffing the patrol desk), in person, by phone, or in writing (anonymously if desired). There does not appear to be an alternative for the complainant who is hesitant to talk with one officer about the misdeeds of another.<sup>14</sup>

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<sup>13</sup> Scott Page, 2008, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*. Princeton University Press.

<sup>14</sup> "Citizen complaints filed in Omaha, Nebraska doubled after the mayor allowed people to file their complaints at City Hall, as well as at the police department." American Civil Liberties Union, *Fighting Police Abuse: A Community Action Manual*, available at <https://www.aclu.org/fighting-police-abuse-community-action-manual?redirect=racial->

After the filing, the complainant receives a letter from the AAPD indicating that the complaint has been received. Typically, the complaint is then assigned for investigation and the complainant is contacted for additional information about the matter. When the investigation is completed, the complainant receives correspondence from the AAPD indicating whether the complaint was “sustained” (the officers’ actions were found to be improper), “not sustained” (the officers’ actions were found to be proper), “unfounded” (there was no indication that the incident occurred as described) or “inconclusive” (there is not enough evidence to determine whether or not there was a violation). That letter may or may not contain some additional information about the investigation findings. For privacy reasons, it will not contain information about what discipline may be issued to the officer involved. If the complainant is dissatisfied with the disposition, there is no way to appeal it.

As part of its investigation into whether to advise Council to establish some form of external review, the AAHRC requested and received from Chief Seto information regarding “complaints and compliments” received by the Department about its officers. The data provided covers the past three years. In 2014, Ann Arbor police handled 65 complaints – similar to the number handled in previous years. About 40% of the complaints originated internally (by police who got into automobile accidents, for example, or by supervisors or officers who saw concerning behavior of other members of the Department). The data provided showed that 77% of the complaints involved police demeanor and/or conduct and four of the complaints concerned officers’ use of force. Little beyond the dispositions of the internal affairs investigations stemming from these complaints was disclosed.

Thirty-three of the 65 complaints, or about 51%, were sustained. No information was provided to show how many of the sustained complaints originated externally and how many internally.<sup>15</sup> If complaints are examined by the AAPD for patterns that may lead to identifying possible problem areas, “bad” cops, policies that could be improved, etc., that examination is not shared with either the complainants or the public generally. Complaints should prompt not only the question, “Did the officer conduct him or herself according to policy?” but also the questions, “Was there a better way to handle this? Is the policy that was followed a good one, or should it be changed?”

Formal complaints filed might not represent a full picture of police-community relations and it is possible that some of the most serious complaints are never made through this system. Most victims of police abuse generally do not file formal complaints. One now admittedly dated 1982 federal study, cited by the ACLU in 1997, found that, nationwide, only 30% of victims of police abuse filed a formal complaint.<sup>16</sup> Complaints may be

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[justice-prisoners-rights-drug-law-reform-immigrants-rights/fighting-police-abuse-community-ac#gather](#)

<sup>15</sup> There were only 39 externally-originated complaints and they are about varied topics, so pattern analysis might be difficult.

<sup>16</sup> American Civil Liberties Union, *Fighting Police Abuse: A Community Action Manual*,

artificially low due to community dissatisfaction or distrust with the complaint process, because the department in some way discourages their filing,<sup>17</sup> a conviction that nothing will be done, or because potential complainants fear antagonizing the police (and their possible retributive response).

Another way to look at potential use-of-force problems might be to examine the “response to resistance” reports AAPD officers are required to complete whenever they use any kind of hands-on force against a person. But neither the form itself nor information about the number or nature of completed forms over the past few years were made available to the AAHRC or are made available to the public.

Some kind of external review of the complaint process could help increase residents’ confidence in both the process and the police. It is in the very best interest of our city and the police themselves that residents feel they can safely express their concerns about police conduct, that objective investigations of their complaints are conducted, that patterns of misconduct or potentially problematic policies or inadequate training are examined and addressed, and that complainants are notified in as much detail as possible of decisions made about their complaints (although not necessarily the details of personnel actions) and have recourse to a fair appeal procedure if they disagree with those decisions.

## 5. Trust

Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. The President’s Task Force on Policing recognized that this trust is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.<sup>18</sup>

To those who have always felt safe, civilian or other external engagement with the police department – either in offering input or reviewing activity – can appear unnecessary. They may not have reason to question behavior or develop mistrust.

On the other hand, because of issues of race, class, gender, sexuality, ability, and more, those with the most strained relationships with law enforcement may feel that their voices are too often drowned out or ignored. Or worse, their voices aren’t raised at all. The majority may be content long before the marginalized feel secure.

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available at [https://www.aclu.org/fighting-police-abuse-community-action-manual?redirect=racial-justice\\_prisoners-rights\\_drug-law-reform\\_immigrants-rights/fighting-police-abuse-community-ac#gather](https://www.aclu.org/fighting-police-abuse-community-action-manual?redirect=racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/fighting-police-abuse-community-ac#gather)

<sup>17</sup> *Id.*

<sup>18</sup> *Interim Report of the President’s Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services. First published March 1, 2015 Revised March 4, 2015. [http://www.cops.usdoj.gov/pdf/taskforce/interim\\_tf\\_report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf)

## CHAPTER II

### CIVILIAN OVERSIGHT SYSTEMS: AN OVERVIEW

Police oversight systems are often formed in the wake of politically contentious police shootings and are seen as a forum for voicing community concerns over policing issues and as an attempt to ensure future adherence to positive police practices.<sup>19</sup> Although the need for and usefulness of these systems are frequently not recognized until problems occur, they can indeed help strengthen, and prevent future breakdowns of, trust in the police. In the diagram<sup>20</sup> below, the National Association for Civilian Oversight of Law Enforcement (NACOLE) provides a good summary of the benefits communities that establish and maintain effective civilian oversight processes can expect. NACOLE lists over 120 cities or other governmental entities with some form of civilian oversight of their law enforcement departments. Other sources, which may include such entities as universities that operate their own law enforcement, put the number of police oversight bodies nationwide at more than 200.

Although in common parlance “oversight” might suggest “supervision,” civilian police “oversight” systems, which is what they are usually called, do not involve supervision of the police departments. Police chiefs supervise their departments and they in turn are supervised by those who hire and fire them. In the case of Ann Arbor, the City Council and the City Administrator are charged with “oversight” of the Police Chief and the AAPD in this sense. The systems we consider here are separate from and do not change those relationships. (When we discuss our specific recommendations, in Chapter 3, we will use the word “review” rather than “oversight” to help avoid confusion.)

There are many forms of civilian oversight of police. Some communities follow a Civilian Review Board model, some an Independent Auditor model, and some a hybrid of both. What follows is an overview of these three models, as well as some of the advantages and disadvantages of each model.<sup>21</sup>

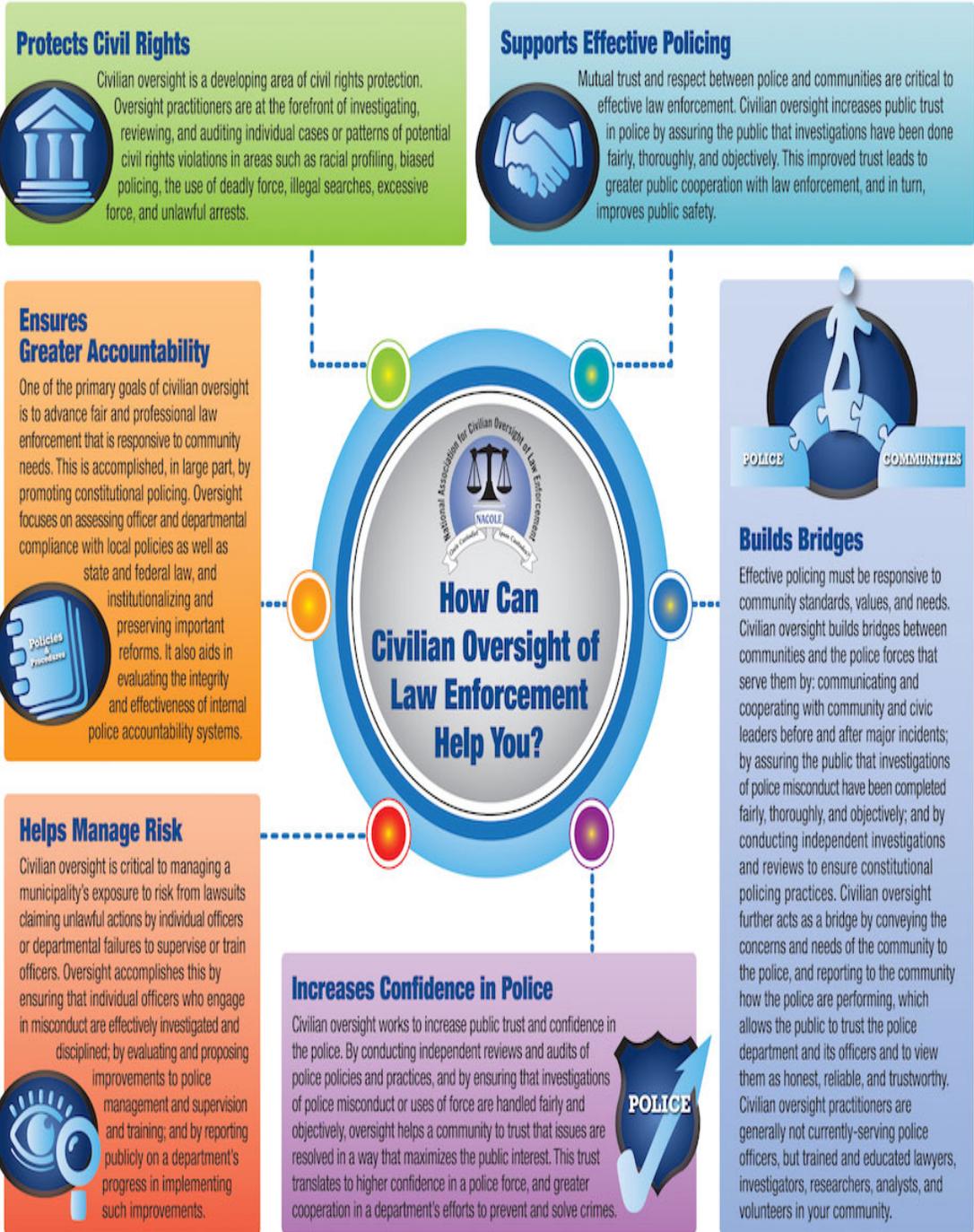
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<sup>19</sup> Citizen Oversight of Law Enforcement. 2006. Ed, Justina Cintron Perino. American Bar Association.

<sup>20</sup> <https://nacole.org/>

<sup>21</sup> Appendix B includes brief descriptions of the oversight models used by a number of cities, many of which are roughly comparable in size to Ann Arbor.

NACOLE Diagram



## Civilian Review Board Model

Civilian review boards generally review allegations of police misconduct and make findings and recommendations to police chiefs. They often have other responsibilities as well. The characteristics of these groups vary from one municipality to another.<sup>22</sup>

- **Scope of Jurisdiction.** Some boards are authorized only to take appeals on formal complaints, but most can review any formal complaint against police and many can address informal complaints or general concerns as well. A few of these boards are especially charged with examining any incident where the use of deadly or potentially deadly force was employed.
- **Investigatory Power.** In some of the larger cities, both the police departments' Internal Affairs (IA) units and their civilian review boards investigate allegations of improper police conduct independently. In most cities, though, the IA units' investigations are primarily and heavily relied upon. This is at least partly because investigations can be costly and often require special expertise. On the other hand, many municipalities find that by empowering the civilian boards to ask IA units to gather additional information and/or to follow up with some investigation of their own if they are not satisfied with what IA provided, boards generally have adequate independence to do their work well. When IA units and boards work cooperatively, there can be significant benefits: minimized duplication of effort, improved IA investigatory processes, decreased officer misconduct, and increased confidence among residents that their complaints are being heard and fully investigated. Some, particularly the larger municipalities, like San Francisco, employ a professional investigatory staff and give their boards subpoena power; some others have a pool of professionals they can hire to investigate cases of special importance. Although some boards have subpoena power, most of them seem rarely, if ever, to use it. When police departments'

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<sup>22</sup> Statements expressed here about the frequency of characteristics of the many civilian review boards and police auditors described in the section below (e.g., “some”, “most”, etc.) are based primarily on the descriptions of the oversight bodies of the more than 120 members of the National Association for the Civilian Oversight of Law Enforcement ([www.naclole.org](http://www.naclole.org)) as well as an in-depth study produced by Peter Finn, *Citizen Review of Police: Approaches and Implementation*, published by the U.S. Department of Justice in 2001. These statements are not the result of a careful tabulation of these frequencies, but a summary of the gross patterns identified. Each municipality has a unique set of needs, expectations, and structures and this is merely a summary of the patterns recognized in them. See Appendix B for brief descriptions of the oversight bodies of a number of cities similar to Ann Arbor in population.

- leadership works with civilian boards by sharing information, answering questions, and requiring officers to cooperate with the boards' supplementary investigations, boards are able to function well and tend not to need subpoena power. Conversely, if there is little cooperation, boards have problems getting the information they need to do their job well.
- **Disciplinary Power.** Almost all the boards we have seen have power to recommend disciplinary actions or policy changes, usually to the chief of police (or sometimes the city administrator); it is usually up to the chief to decide whether or not to accept the recommendation. Some review boards publish those recommendations to their municipalities' councils (or their equivalents) so that their recommendations will be noted, even if they are not actually implemented. In some cities, the chief of police's unwillingness to seriously consider the board's recommendations has been a problem.
  - **Membership.** The number of people who sit on civilian review boards varies. Seven to nine member boards seem the most common, but some are smaller and others larger. The municipalities' political leaders (mayors, city administrators, and/or city council members) almost always have a hand in selecting at least some of the members, but some boards also have members selected by community groups (minority group associations, neighborhood associations, and others representing community stakeholders). Most boards have at least one member who is an attorney and/or has prior experience with matters of law enforcement, but is not a current member of the city's police force.
  - **Leadership.** While some boards have paid directors (and in hybrid models, the director might also be the auditor), many others do not even have an appointed chair. Many require the members to select their own director from among their members.
  - **Staff.** Some boards have their own paid staff and some do not. They typically have access to at least some staff services. Residents need to be able to contact boards easily and unless members (and/or board leadership) are extremely industrious and conscientious about this volunteer work, boards could become ineffective or even a liability without some staff support.
  - **Integrative Power.** As neutral bodies reviewing the complaint process, boards are positioned to see patterns or issues related to the complaints they review, implementation of complaint dispositions, and police-community relations in general. They see and hear from the community (through forums and other mechanisms) about the effects of police policies and procedures and provide useful insights and recommendations to improve them. They sometimes also help make alternative dispute resolution available as part of the complaint process where appropriate. They can become a bridge to enhancing the relationship between the police and their community, helping them understand one another and work together more amicably. Civilian review boards help their communities shoulder their share of responsibility for safety and create a culture of trust between the police and members of the community.

## Independent Auditor Model

Many cities employ independent auditors (also known as monitors or inspector generals) to provide ongoing review and monitoring of police policies and procedures, and to ensure that investigations of complaints are completed in a fair and thorough manner.<sup>23</sup> They are a newer form of police oversight, occurring with more frequency beginning in the 1990s.<sup>24</sup>

- **Scope of Work.** Auditors generally conduct and/or review investigations of alleged police misconduct and search for patterns and trends of misconduct among individual officers or particular units. When the auditor and IA unit of the police department disagree, appeals are usually heard by the police chief or the city manager, whoever has the authority to make a final determination on the outcome of police investigations. Auditors can also review policies, procedures, and training and recommend reforms to police chiefs.<sup>25</sup>
- **Investigatory Power.** Richard Jerome, Deputy Monitor of the New York Police Department Stop-and-Frisk program, and an expert on oversight of law enforcement, believes that strengths of the independent auditor model include the ability of auditors to accept complaints and investigate them independently. But because investigating complaints is very expensive, auditors, like civilian review boards, typically review investigations conducted by the police departments' IA units. Auditors then may raise questions or identify problems with investigations and send cases back for further investigation or conduct further investigation themselves. Auditors might have more investigative and other power than civilian review boards because they are usually employed by and under the direct supervision of the city administrators and might thereby be given greater access than civilian boards to typically confidential policy and procedure manuals, department personnel files, and other sensitive documents.<sup>26</sup>
- **Disciplinary Power.** Again, it is usually the chief of police (and sometimes, his or her boss, the city administrator) who is responsible for deciding whether or not to accept a recommendation by the auditor and what action, if any, to take.
- **Characteristics of an Independent Auditor.** The auditor is usually a professional with law enforcement management experience and training and/or a legal background who is employed by the city manager on a relatively continuing or permanent basis.

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<sup>23</sup> Barbara Attard & Kathryn Olson, *Overview of Civilian Oversight of Law Enforcement in the United States*, obtained through personal correspondence with authors [not yet published]

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Interview with Richard Jerome (March 17, 2015)

- **Staff.** The auditor usually also requires staff for administrative and sometimes investigative work.
- **Integrative Power.** The auditor model puts all of the oversight responsibility in the hands of a professional and his or her staff. While an auditor may have the skill and experience to assess a police department's procedures and policies efficiently and the ability to access police records, one strength of the auditor model – personal responsibility – may also be a weakness. With responsibility for oversight centered in one person who needs to maintain the trust of police leadership, that person's ability to be appropriately independent over time could be easily compromised (or be perceived that way). Community members might have difficulty seeing the auditor as separate from the department itself and be reluctant to file complaints and trust the oversight process. Conversely, if the relationship between the auditor and police chief is strained and uncooperative, this model can also present problems.

Barbara Attard and Kathryn Olson suggest that municipalities considering the Independent Auditor model assess the following:

- whether the auditor/monitor will focus only on reviewing complaint investigations or has the authority to investigate cases;
- the range of the auditor/monitor's access to police agency data;
- whether the auditor/monitor will roll out to critical incidents;
- the statute of limitations for bringing complaints;
- review and appeal options for complainants and officers;
- whether the auditor/monitor has the authority to analyze other police systems such as use of force review procedures or training programs;
- whether there are clear procedures for the law enforcement agency to respond to recommendations made by the auditor/monitor;
- whether the auditor/monitor has the power to require implementation of policy and training recommendations; and,
- the frequency and nature of reports to be generated by the auditor/monitor to the police agency and public.<sup>27</sup>

Many of these considerations could apply to the Civilian Review Board model as well.

### **Hybrid Models**

Hybrid police monitoring systems combine elements from different oversight models in ways that serve the needs of the particular communities. Most importantly, using a

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<sup>27</sup> Attard and Olson, *ibid.* at 4.

tailored, hybrid approach provides flexibility and allows an oversight system to overcome the deficiencies inherent in any one model. Also, hybrid oversight models tend to adopt some logical division of labor (e.g., civilian review boards investigate and advise while auditors focus on reviewing police policy and implementing best practices). A hybrid model allows communities to adopt a nuanced approach, avoiding the stark tradeoffs of choosing a particular model.<sup>28</sup>

Los Angeles County, for example, is implementing a hybrid model by empowering a civilian review board to supplement the oversight of the county's inspector general (auditor).<sup>29</sup> The County Board of Supervisors recently established the board in response to community concerns that the auditor system suffered from a lack of transparency.<sup>30</sup> Notably, the review board will have oversight of not only the department's street operations but also the county's jail system, which has come under intense scrutiny for its treatment of inmates and detainees.<sup>31</sup> Having one person with full oversight authority without other civilian involvement can raise questions regarding power, bias, and uncertain transparency.

Eugene, Oregon, with a population of roughly 160,000, is another city that has both a police auditor and a civilian review board. Its website (<http://www.eugene-or.gov/index.aspx?nid=1039>) is instructive:

**Police Auditor**

*Our Mission*

*To provide an accessible, safe, impartial and responsive intake system for complaints against Eugene Police Department (EPD) employees and to ensure accountability, fairness, transparency and trust in the complaint system through the intake, classification, auditing and adjudication process of the complaint system; and to support and staff a civilian review board that monitors the work of the Police Auditor, reviews complaints cases and provides policy recommendations to the Eugene Police Department and the Police Commission.*

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<sup>28</sup> Finn, Peter, p. 6: "To make an informed decision about which type of oversight procedure to adopt and which additional responsibilities to undertake, jurisdictions need to examine tradeoffs inherent in fashioning an oversight system—what they will gain and lose by the approach they select."

<sup>29</sup> <http://www.latimes.com/local/california/la-me-sheriff-oversight-20141210-story.html#page=1>

<sup>30</sup> <http://losangeles.cbslocal.com/2014/12/09/supervisors-expected-to-approve-creation-of-sheriffs-civilian-oversight-commission/>

<sup>31</sup> <http://www.latimes.com/local/california/la-me-sheriff-oversight-20141210-story.html#page=1>

***Our Purpose***

*The Police Auditor has three broad Mandates:*

- *to receive and classify complaints of police misconduct*
- *to audit the investigations based on these complaints*
- *to analyze trends and recommendation improvements to police services in the city*

*The Police Auditor responds to the scene of a critical incident such as an officer involved shooting, monitors the investigation of a critical incident and is a non voting member of the Use of Force Review Board.*

*The Police Auditor supports a [Civilian Review Board](#) which provides valuable input about the fairness, completeness and thoroughness of the investigative process. Ultimately, the goal of the Civilian Review Board is to make the system of police accountability more transparent and increase public confidence in the manner that police conduct their work. The Civilian Review Board consists of seven members from the community appointed by City Council.*

***Additional Information***

*The Office of the Police Auditor and the Civilian Review Board operate independently. We report directly to, and are funded by, the Eugene City Council. We are an independent, civilian entity performing oversight of the Eugene Police Department; neither our funding nor management overlap with EPD. No employee of the Auditor's office is an employee of the Eugene Police Department.*

Sketches of oversight solutions implemented in some other municipalities are provided as Appendix B.

## CHAPTER III

### RECOMMENDATIONS

*Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.*<sup>32</sup>

Having explored the needs of the city of Ann Arbor and examined the solutions other municipalities have instituted to address similar ones, the Ann Arbor Human Rights Commission recommends that the City take the following four actions:

1. Engage the services of a police auditor-consultant on a temporary basis
2. Create and maintain a civilian police review board
3. Implement alternative dispute resolution methods
4. Implement the use of crisis intervention teams and community policing more fully

#### **1. Engage the Services of a Police Auditor-Consultant on a Temporary Basis**

As we have seen, some municipalities hire police auditors as permanent employees. While it may prove that a hybrid police auditor/civilian review board model like Eugene, Oregon's (described above) is in fact the optimal one for Ann Arbor (given the city's size, number of complaints filed annually, etc.), we do not at this point recommend that Ann Arbor hire a permanent police auditor. We suggest instead, at least for now, that the City engage the services of a temporary, independent auditor-consultant.

To the best of Chief Seto's knowledge, no outside law enforcement expert has conducted a thorough review of the AAPD's policies, procedures, training, and handling of complaints in many years. Aside from past voluntary accreditation reviews, there have been no external evaluations to ensure that the AAPD is using best practices and meeting the highest policing standards. Particularly now, as the demand and standards for police accountability and transparency are changing, it is crucial that City Council, the City Administrator, and the AAPD receive the guidance of an auditor-consultant knowledgeable about what, if any, changes are advisable. His or her findings and recommendations should also be made available to the community.

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<sup>32</sup> *Interim Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services. First published March 1, 2015 Revised March 4, 2015. [http://www.cops.usdoj.gov/pdf/taskforce/interim\\_tf\\_report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf)

The AAHRC recommends that, in addition to conducting this sort of thorough review, the auditor-consultant also be asked to provide guidance in establishing both a civilian review board (discussed further below) and any other review mechanisms (including, perhaps, a permanent police auditor) s/he believes are necessary components of successful and sustainable police review. Formal recommendations resulting from the auditor-consultant's departmental review should be presented to the civilian review board (once it is established) so that the board can help ensure that they are adequately considered and, where appropriate, implemented.

The auditor-consultant selected for this position should have extensive experience in evaluating policing practices and in working on civilian police review. S/he should be selected with input from the Police Chief and the AAHRC. Relevant input from the community should also be considered.

At least two consulting firms have been recommended to the AAHRC to do this important work. They are the Police Assessment Resource Center (PARC) and Police Performance Solutions. According to Matthew Barge, Deputy Director of PARC, a wide-ranging review of all policies/procedures/training would likely take roughly eight to twelve weeks and cost "less than \$45,000 at the highest end." Both Mr. Barge and Chief Charles Reynolds of Police Performance Solutions noted that the cost of their services depends on the scope of what they are being asked to do. Police Performance Solutions would likely charge \$30,000, \$40,000, or more for a full review. A project that is more narrow in scope, like the development of effective civilian review and/or a review just of use-of-force procedures, training, investigations, and what if any role civilian review might play in those, would cost somewhat less. Information about Police Performance Solutions can be found at <http://policeperformancesolutions.com/> and information about PARC is available at <http://www.parc.info/>.

Providing the funding to hire a police auditor-consultant would be an efficient use of taxpayer money, minimizing future litigation costs, building community confidence in the AAPD, and helping to establish an effective civilian review board and, perhaps, other review mechanisms.

It should be noted that, as this report was being drafted, the City has begun taking steps to gain accreditation for the AAPD, which ended several years ago. It has assigned as an accreditation manager a lieutenant to reinstitute the program. Though commendable, the accreditation process is not a substitute for the auditor-consultant that we propose. Matthew Barge of PARC provides an explanation:

*Although PARC does find that the process of accreditation by organizations such as CALEA can be valuable, the organizations that we have worked with over the years have*

*found that it does not address all of the processes, procedures, systems, and attributes with respect to officer accountability, department transparency, officer safety, and departmental effectiveness. Indeed, PARC has worked with numerous organizations that have been accredited – but that [they] themselves felt, or the community felt, that accreditation simply did not address all of their needs or challenges. Many of the cities that have received national attention in the media or been investigated by the DOJ have been accredited.*

*One of the reasons that accreditation can be an incomplete solution is that it usually entails only a cursory, “check-the-box” review of many granular details of police department operations. Our pragmatic assessments focus on measurable outcomes – that is, not whether the Department says that it technically does this policy or has that program but, instead, whether that policy or those programs actually have measurable and tangible outcomes for officers and the public.<sup>33</sup>*

## **2. Create and Maintain a Civilian Police Review Board (CPRB)**

In addition to the hiring of a temporary police auditor-consultant, the AAHRC recommends the creation of an independent civilian review board. Such an entity could be created under the provisions of Section 5.17 of the Ann Arbor City Charter, which specifically allows for the creation of a “citizen board” for the Police Department. We suggest that this board be called the Civilian Police Review Board (CPRB). The AAHRC suggests that the word “civilian” rather than “citizen” be used because Ann Arbor police are responsible for the safety of an international community. While entitled to justice here, thousands hold citizenship elsewhere. We suggest “review” rather than “oversight,” again, recognizing the City Administrator’s and Council’s responsibilities in this regard.

Though a police auditor-consultant could assist in designing an effective Civilian Police Review Board for Ann Arbor, what follows are some recommendations from the AAHRC about what the composition and responsibilities of the board might look like.

### ***2a. Composition of the Review Board***

The Civilian Police Review Board (CPRB) should consist of approximately nine members appointed by the Mayor and confirmed by City Council. Every effort should be made to ensure that, as in Kalamazoo for example, representatives of minority and marginalized community groups are included.<sup>34</sup> Special effort should be taken to ensure

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<sup>33</sup> August 28, 2015 e-mail message from Matthew Barge

<sup>34</sup> Kalamazoo’s Citizen Public Safety Review and Appeal Board board is an advisory body to the Kalamazoo City Manager and its members are appointed by the City Manager. Six of its 12 board members represent key stakeholder organizations in an effort to ensure that marginalized groups have a say in the board’s efforts. The groups represented are the NAACP, the Family Health Center, the Hispanic American

that a large pool of candidates is identified – and that the candidates selected understand the amount of work that is involved and are committed to a police-community partnership that results in policing that is both effective and fair for all the sub-communities that make up our city. In addition, it would be advisable to include among the members at least one who has some law enforcement experience and/or have a representative of the AAPD attend board meetings as a non-voting liaison to the CPRB (a model used by Kalamazoo and the Washtenaw County Law Enforcement Citizens Advisory Board). Similarly, a member of the AAHRC should sit on the CPRB in either a voting or non-voting capacity. None of the voting members of this board should be employed by the AAPD.

Though the CPRB's members and director would serve without compensation, they would require staff support to do their work effectively. The chairperson should be selected by the members of the CPRB and serve for one-year terms with no limit on the number of those terms.

### ***2b. Responsibilities of the Review Board***

The responsibilities of the Civilian Police Review Board should include the following:

- Receive complaints and compliments about police conduct from residents who would prefer to give them to the board rather than directly to the AAPD, and share them with the AAPD which will investigate the complaints.
- Review all complaints and compliments and AAPD investigations and dispositions, ensuring thoroughness and neutrality and requesting or conducting additional investigation as needed.
- Hear appeals from residents dissatisfied with the handling or disposition of their complaints, requesting or conducting additional investigation as needed.
- Hold inquiry into police conduct where concerning or questioned behavior is identified, even in the absence of a formal complaint.
- Ensure that, where appropriate, policy or procedural issues raised by complaints are addressed.
- Hold public forums at least once a year to elicit input from the community on the strengths and weaknesses of police-community relations in the city and ways to improve them.
- Make mediation and restorative practice techniques available where appropriate as a way to address complaints and improve communication between residents and police officers.<sup>35</sup>
- Identify any trends in complaints and community input that can provide early warning of problems in police-community relations.

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Council, Mothers of Hope, the Northside Ministerial Alliance, and the Black Officers' Association.

<sup>35</sup> For a further description of such practices, see section 3 of this chapter.

## Civilian Police Review

### AAHRC Report

November 4, 2015

- If the services of an auditor-consultant have been engaged, work with him or her to understand the strengths and weaknesses of the police department, the reforms that have been recommended, and the indicators needed to measure progress in the recommended areas.
- Recommend changes in policies and practices that would improve police-community relations.
- Ensure that information concerning complaints and their disposition as well as compliments are made available to City Council and the public at least annually.
- Help educate residents on the complaint/compliment process, police operations, how they can best utilize police services, and how the CPRB functions to serve them.

### ***2c. The Review Board's Role in the Complaint Process***

Police hold extraordinary power and so are held to higher standards than are those in most professions. When police act inappropriately, lives may be put at risk.

Complaints can shed light on officer conduct before it is too late to address it. Community members may be more likely to file complaints if they believe that their complaints will receive fair, impartial investigations. A complaint process that relies, as Ann Arbor's does, exclusively on police investigating and making judgments about other police officers with whom they work understandably raises questions among some community members about fairness and impartiality. Affording the CPRB a meaningful role in the complaint process may serve to increase the public's trust and, therefore, its use of the process, which in turn will raise its level of trust in the AAPD.

The complaint process we recommend would operate this way:

- Community members could file complaints either directly with the AAPD or with the CPRB, which would then share them with the AAPD. Complaints filed directly with the AAPD would be shared with the CPRB
- All investigations would be conducted within the AAPD's internal affairs professional standards unit, according to whatever complaint process is instituted following the report and recommendations of the police auditor-consultant.
- The CPRB would be tasked with reviewing every complaint received along with the documents related to the investigation, the decision reached, and, if sustained, any action taken. It is understood that some redacting of original documents may be required.
- The CPRB would assess the objectivity and thoroughness of the investigation and appropriateness of the disposition.
- If the CPRB is not satisfied with the investigation, it would request and receive from the professional standards unit the additional information needed. It could also choose to do some investigation of its own, especially by interviewing the complainant and any witnesses. It could make recommendations to the Police Chief (or other AAPD leadership) regarding further investigation, processes, and

dispositions. The Police Chief would carefully consider these recommendations but also retain the authority to make the final determination about case disposition and discipline.

- Where appropriate, the CPRB and/or internal affairs may recommend to complainants and officers an alternative dispute resolution process either instead of or in addition to the usual complaint process.
- Complainants should be permitted to appeal any decision by the AAPD regarding their complaints to the CPRB for further review.
- The CPRB should summarize the complaints received and its findings at least twice each year. If the CPRB has concerns about the way in which complaints are being handled and the Police Chief is not addressing them, the board should advise City Council and the City Administrator of its concerns.

The CPRB should ensure that accurate information concerning the number and types of complaints filed, the race and gender (to the extent known) of those filing the complaints, and the disposition of the cases is made available to the public annually. The CPRB should also provide Council with a summary of its work on complaints throughout the year, including how many differences of opinion between the CPRB and Police Chief on the handling and/or disposition of complaints remain unresolved.

#### ***2d. Training of the Review Board***

Members of the CPRB should receive training that will foster understanding and a good working relationship between the CPRB and the AAPD. The training could include “lectures, materials review (e.g., department policies and procedures), attending a citizens’ academy, ride-alongs, and training as mediators.”<sup>36</sup> It should include thorough briefings about whatever AAPD policies and practices civilian board members can safely and legally be privy to, particularly those concerning the work of the professional standards unit. It could also include discussions with police officers about their experiences and police union representatives and City Attorney staff about governing contracts and law. Ideally, at least one representative of the CPRB should be sent annually to the conference of The National Association for Civilian Oversight of Law Enforcement.

#### ***2e. The AAHRC’s Role in Ensuring the Effectiveness of the CPRB***

Some of the police review boards we studied became less effective (or even stopped meeting altogether) over time. Although it is not always easy to learn what happened to

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<sup>36</sup> Peter Finn, *Citizen Review of Police*, at 83. See also <https://nacole.org/resources/recommended-training-for-board-and-commission-members/>

diminish the effectiveness of each of these groups, where we have that information, it appears that either the board's original mandate or changes in policies or personnel (in the board, the police department, or city leadership) hampered the board's ability to perform. No monitoring or periodic re-evaluation of the board occurred and nothing was done to solve problems that arose. While the AAHRC believes that an effective police review board can go a long way to strengthening police-community relations, it is also aware that an ineffective board might be worse than none at all. An ineffective board sends a message that strong police-community relations are not a priority of city leaders.

It makes sense for the AAHRC, which is tasked with helping to protect the human rights of the people of Ann Arbor, to play a role in ensuring the ongoing effectiveness of the CPRB. Therefore, it is recommended that the AAHRC

- take part in the process of creating and developing an effective CPRB,
- be involved in the selection of the police auditor-consultant,
- have one of its members serve either as a member of or liaison to the CPRB, and
- partner with the CPRB to review its performance annually and keep Council (and the public) informed about its activities and goals as well as what, if anything, it needs to maintain or increase its effectiveness.

### **3. Implement Alternative Dispute Resolution Methods**

There are few if any more effective methods of building trust and understanding between people than facilitated dialogue in the form of mediation, restorative circles, or other similar forms of alternative dispute resolution (ADR). Many cities with forward-thinking police policies and practices have adopted these methods. Among the cities that have employed ADR methods to resolve complaints involving police officers are Berkeley, CA; Minneapolis, MN<sup>37</sup>; New York, NY; Portland, OR; Rochester, NY; San Diego, CA; and San Francisco, CA.<sup>38</sup>

Objectives laid out in San Diego for their program capture the promise of employing these methods to resolve conflict:

- To increase the satisfaction of community members and police department personnel with regard to the resolution of citizen complaints.
- To foster understanding and open communication between parties in a neutral setting.

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<sup>37</sup> In Minneapolis, agreements were reached in 90% of cases referred by the Civilian Police Review Authority to mediation. Peter Finn at 73.

<sup>38</sup> Walker, Samuel, Carol Archbold and Leigh Herbst. 2002. "Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders." Washington, DC: Government Printing Office.

- To provide the opportunity for parties to accept responsibilities and make changes, if necessary, to resolve conflict.
- To promote effective police/community partnerships.
- To reduce the number of complaints filed by citizens.
- To reduce the number of disciplinary actions.
- To develop problem solving opportunities for both parties.
- To conserve Department resources.
- To improve the Department's image in the community.
- To provide a timely alternative to the formal complaint process.

The AAHRC strongly recommends that ADR methods be offered at least on a voluntary basis to complainants and the officers against whom the complaints are filed as a means of resolving some types of complaints or as a supplement to the complaint process. Complainants and officers, both of whom may be unsatisfied or frustrated by the internal affairs complaint process, would have an opportunity to hear from each other about why each acted as they did and what the impact of their conduct was on each other and others. Such mediation sessions would likely be most appropriate for cases not involving allegations of use of force or particularly egregious misconduct, would typically be confidential, and may or may not result in an agreement or memorandum of understanding.<sup>39</sup>

The goal of a complaint system is to determine essentially guilt or innocence, and if guilt, whether and what discipline. The complainant and the officer never meet. The goal of mediation is for the parties to come to some understanding of each other and a resolution that captures what is needed for each person to leave the conflict feeling heard and satisfied. By encouraging such dialogue, the AAPD would demonstrate a commitment to fostering empathy between police officers and the people they serve.<sup>40</sup> The temporary police auditor-consultant could assist Ann Arbor in designing a workable system for putting mediation and restorative practices into place here.

ADR methods should also be used apart from any particular complaint or incident to build relationships between the AAPD and the community. Restorative practices are particularly useful for this. Restorative circles, for example, would involve police officers and interested members of the community sharing their concerns, fears, perspectives, and

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<sup>39</sup> In Minneapolis, for example, one mediation agreement read this way: “Both parties agreed that the dialogue was helpful in allowing them to understand each other’s experiences and viewpoints. The officer is sorry that the incident occurred and caused [complainant] embarrassment . . . [complainant] acknowledges that the officer made the best decision possible with the information available on the scene.” In another instance, a police officer agreed to take a cultural diversity course. (Finn, p74).

<sup>40</sup> Jack McDevitt, *Enhancing Citizen Participation in the Review of Complaints and Use of Force in the Boston Police Department* (2005), p12. Available at <http://www.nlg-npap.org/sites/default/files/Northeasternreport12-05.pdf>.

hopes with each other. Experienced facilitators, well-trained and carefully vetted, create a safe, respectful space for people to talk comfortably and honestly. In Des Moines, Iowa for example, community justice circles involving police and community members, particularly youth of color, have been so successful in building understanding and trust that the police chief there has indicated that he would like every one of his officers to participate in them.

Skilled mediators trained in both mediation and restorative practices are available through the Dispute Resolution Center, a Community Dispute Resolution Program created by the State Court Administrative Office of Michigan. Dispute Resolution Center Executive Director Belinda Dulin should be contacted and the Center retained for mediation and facilitation assistance. This would likely require some funding, but that investment would go a long way towards strengthening relations between the AAPD and the community and lowering the risk of costly law suits. The CPRB, in cooperation with the AAPD professional standards unit, could oversee the use of these ADR practices, where appropriate.

#### **4. Fully Implement the Use of Crisis Intervention Teams and Community Policing**

Recommendations of the auditor-consultant and the CRPB for changes in the AAPD should be carefully considered by the AAPD and city officials and, where possible, implemented. As those entities are not yet in place, the AAHRC proposes that Ann Arbor consider adopting these reforms:

- The creation of a “Memphis Model” crisis intervention team, described below.
- Increased and more effective community policing and engagement.

The police auditor-consultant and CPRB, working with the city and AAPD, could provide further advice about these suggested reforms.

##### ***4a. Create a “Memphis Model” Crisis Intervention Team***

Because of the reduction in mental health services, much of the responsibility for helping people who would be better served by medical professionals has fallen, by default, on the police, even though police education and training may not prepare them for the situations they encounter.

A high percentage of people with whom the police come in contact have mental challenges. The police need more options for addressing the needs of neurologically, cognitively, and psychologically diverse or challenged people. All people are not as articulate or as able as others to respond appropriately when armed officers make demands. Greater-than-rudimentary training of officers in de-escalation techniques geared toward people with mental health issues is necessary.

A highly commended option aimed at improving police departments' responses to situations involving mental health issues is the "Memphis Model" Crisis Intervention Team (CIT). First developed in Memphis, it has been adopted in many other cities. CIT provides:

- law enforcement-based training for assisting individuals with a mental illness;
- improved safety for patrol officers, consumers, family members, and citizens within the community;
- the foundation necessary to promote community and statewide solutions to assist individuals with a mental illness;
- reduction of both stigma and the need for further involvement with the criminal justice system;
- a forum for effective problem solving regarding the interaction between the criminal justice and mental health care system; and
- the context for sustainable change.<sup>41</sup>

The primary goals of CIT are to improve officer and consumer safety and to partner with community, healthcare, and advocacy groups to redirect individuals with mental illness from the judicial system to the health care system. This program provides self-selected officers (or volunteers selected after a review by a CIT coordinator or other senior officer) with 40 hours of classroom and experiential de-escalation training in handling crises. These trained officers serve as specialized front-line responders who are better equipped to decide whether individuals with mental illnesses should be redirected, when appropriate, to treatment services instead of the judicial system. At any given moment, sufficient numbers of on-duty police officers would be CIT-trained and able to be dispatched as needed. Preliminary research has shown positive outcomes in the ability of CITs to connect individuals with mental illness to needed services.<sup>42</sup>

Programs like these, at the intersection of police services and mental health needs, are supported by the U.S. Department of Justice.<sup>43</sup>

The AAPD does have 7 or 8 officers trained in crisis intervention. This number is not sufficient to ensure the availability of trained officers when they are needed. Ann Arbor does not appear to have adopted the "Memphis Model," which calls not only for a larger percentage of the force to receive intervention training but other changes as well. Ann

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<sup>41</sup> [http://www.cit.memphis.edu/information\\_files/CoreElements.pdf](http://www.cit.memphis.edu/information_files/CoreElements.pdf)

<sup>42</sup> MT Compton, M. Bahora, AC Watson, et al. 2008. "A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs." *Journal of the American Academy of Psychiatry and the Law* 36: 47-55. <http://www.jaapl.org/content/36/1/47.long>

<sup>43</sup> Reuland M, Draper L, Norton B. 2012. "Statewide law enforcement/mental health efforts: strategies to support and sustain local initiatives." Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Council of State Governments Justice Center. Available at [https://www.bja.gov/Publications/CSG\\_StatewideLEMH.pdf](https://www.bja.gov/Publications/CSG_StatewideLEMH.pdf).

Arbor would do well to adopt as much of this model as budgetary and other considerations will allow.

***4b. Increase and Improve Community Policing and Engagement.***

It used to be that those who policed the community lived in the community. That is no longer the case. State law prohibits Ann Arbor from requiring police officers to live in Ann Arbor, and most AAPD officers do not. (According to Chief Seto, Ann Arbor residents comprise only about 5% of the applicants for AAPD officer jobs.) This alters the nature of their investment in as well as their perspective on the community. They are no longer policing their friends and neighbors. So it is more important than ever that efforts are made to connect police officers to the community in other ways.

Police need to see the work that they do not just as capturing the presumed guilty, but also as partnering with the community. Community focused policing attempts to build bridges to reduce conflict. Police presence and involvement in a community prior to any bad things happening helps all parties better assess when things are wrong.

People of all races and socioeconomic classes speak of feeling anxiety when they see police officers. Part of the uneasiness may be because too often law enforcement professionals are visible only from vehicles. Even if the reduced size of the police force limits opportunities, foot and bicycle patrols in neighborhoods should be increased in order to improve person-to-person relationships between officers and the people they serve.<sup>44</sup> When out-of-vehicle presence is reserved for commercial areas, it may give some the impression that business interests are valued above those of its residents. Law enforcement officers should attend community functions, talk to kids at school as adult role models rather than peacekeepers or wardens, chat at community centers, play checkers at homeless shelters, and work together with community members on service projects. Police should be encouraged to take coffee breaks in local shops where they might laugh and joke, while holding conversations about the same topics that civilians discuss. Reaching out to and developing positive relationships with youth should also be an important goal of the AAPD. It is these kinds of interactions that will increase trust in the police and the connection of the police to the community they serve.

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<sup>44</sup> It may not be possible for foot and bicycle patrols to be constant but including a few hours randomly a few days a week may go far toward improving community-police relations.

## CONCLUSION

Nationwide, the wisdom of police departments operating without any civilian monitoring has been called into question. Many cities, large and small, have put into place civilian review of police. While Ann Arbor is fortunate to have a very fine police department and relatively few formal complaints, there are still many reasons why it, too, should establish some form of civilian review.

External police review systems like those we have recommended above have the potential to yield big benefits for complainants, police administrators, city officials, police officers and the community as a whole for a relatively small outlay of funding and effort.

- Complainants have reported feeling:
  - “Validated” when their allegations are sustained—or merely appreciated having an opportunity to be heard by an independent third party.
  - Gratified they are able to address an officer directly.
  - Satisfied the process appears to help hold police and sheriff’s departments accountable.
- Police administrators have said that oversight can:
  - Improve their relationship and image with the community.
  - Increase public understanding of the nature of police work.
  - Promote the goals of community policing.
  - Improve the quality of the department’s internal investigations.
  - Reassure a skeptical public that the department already investigates citizen complaints thoroughly and fairly.
  - Help subject officers feel vindicated.
  - Help discourage misconduct.
  - Improve the department’s policies and procedures.
- Elected and appointed officials have indicated that oversight:
  - Demonstrates their concern for police conduct to constituents.
  - Can reduce the number, success rates, and award amounts of civil suits against the city or county.
- Members of the community at large have suggested that oversight has helped to:
  - Reassure the community that appropriate discipline is being handed out for misconduct.
  - Discourage police misconduct.
  - Increase their understanding of police policies, procedures, and behavior.<sup>45</sup>

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<sup>45</sup> Finn, Peter, *Ibid*, pp. 1-2, 12

## APPENDIX A

### ACKNOWLEDGMENTS AND SOURCES

The many people consulted in the preparation of this report include past and present police commissioners from California, Michigan, Ohio, and Oklahoma; attorneys and law professors; educators and social workers; nurses and doctors; physically and mentally disabled people; representatives of community organizations and city governments and boards; African-American, Asian-American, European-American, and Latin-American civilians and police officers; affluent and homeless people; and others.

What follows are the names of just some of those people. Many thanks to all, whether specifically named here or not, who shared their time and insights. Though this report is the Ann Arbor Human Rights Commission's alone and is not necessarily endorsed by those consulted, their help is greatly appreciated.

**Richard Aitson**, Oklahoma Indian Activist

**Nicole Appleberry**, Clinical Professor of Law, Civil Mediation Clinic, University of Michigan Law School

**Dave Askins**, former Ann Arbor Chronicle Publisher

**Barbara Attard**, past President of NACOLE; founder, Accountability Associates

**Matthew Barge**, Deputy Director, Police Assessment Resource Center

**Peter Bibring**, Senior Staff Attorney, ACLU of Southern California

**James Crowfoot**, Professor Emeritus, University of Michigan

**Belinda Dulin**, Executive Director, Dispute Resolution Center, Ann Arbor

**Philip Eure**, Inspector General, New York (City) Police Department

**Kelli Evans**, Senior Director, Administration of Justice, California Bar Association

**Mark Fancher**, Racial Justice Staff Attorney, ACLU of Michigan

**Richard Friedman**, Professor of Law, University of Michigan Law School and head of the University of Michigan Police Department Oversight Committee

**Matt Harshbarger**, Director of Public Safety, Pittsfield Township

**Mary Howell**, New Orleans civil rights attorney

**Odile Huguenot Haber, Alexandra “Sasha” Hoffman, and Shirley Beckley**, Ann Arbor community members and police reform activists

**Carol Izumi**, law professor who served on DC’s Office of Police Complaints

**Derrick Jackson**, Washtenaw County Director of Community Engagement

**Keith Jason**, Chairman of Washtenaw County Law Enforcement Citizen’s Advisory Board

**Richard Jerome**, Deputy Police Monitor, Stop-and-Frisk, New York Police Department

**Thomas Kent and Nancy Niemela**, Ann Arbor Senior Assistant City Attorneys

**Martha Kern-Boprie**, former Chair of Washtenaw County Law Enforcement Citizen’s Advisory Board

**Hsiao-Wen Lo**, Anti-Racism Facilitator

**Albert Lucas**, Director, Board of Alders/Office of Legislative Services, New Haven, CT

**Brian Mackie**, Washtenaw County Prosecutor

**Samara Marion**, San Francisco Office of Citizen Complaints staff member

**Catherine Milette**, former Partnership Director, Michigan Department of Civil Rights; Executive Director, City of Lansing Human Relations Department; and former member of Lansing’s police oversight group

**Patsy Moore**, Deputy City Manager. Kalamazoo

**Ibraheem Naeem**, former member of Pasadena, CA Police Advisory Committee

**National Police Accountability Project listserv members**, managed by the National Lawyers Guild

**Robert D. Neumann**, Police Chief, University of Michigan Police Department

Civilian Police Review  
AAHRC Report  
November 4, 2015

**Leonard Niehoff**, Professor of Law, University of Michigan Law School

**Megan Norris**, former Detroit Police Commissioner

**Charles Reynolds**, former police chief, former president of the International Association of Chiefs of Police, former independent police auditor, and current partner of the firm Police Performance Solutions, LLC

**Margo Schlanger**, Professor of Law, University of Michigan Law School

**John Seto**, former Chief of Police, Ann Arbor Police Department

**John Stacey**, CSTS Supervisor

**Mike Steinberg**, Legal Director, ACLU of Michigan

**Madiha Tahir**, independent journalist

**Christopher Taylor**, Mayor of Ann Arbor

**Rebecca Webber**, attorney and member of Austin Citizen Review Panel

**Lori White**, Executive Director, Indianapolis Citizens Police Complaint Office

**Diane Wilson**, attorney at University of Michigan

**Katrina Wilson**, Middletown Ohio Police Review Board member

**Frank Wu**, Dean of Hastings Law School

**Katherine A. Wyatt**, Executive Assistant, Washtenaw County Sheriff's Department and Liaison to the Washtenaw County Law Enforcement Citizens Advisory Board

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## **APPENDIX B**

### **OVERSIGHT MODELS USED BY SOME OTHER CITIES**

The National Association for Civilian Oversight of Law Enforcement (NACOLE) lists over 120 cities or other governmental entities with some form of civilian oversight of their law enforcement departments. (See <http://nacole.org>.) Here is some information about some of those cities and the oversight models they use:

**Berkeley, CA** (2013: 170 sworn officers): Berkeley voters created the Police Review Commission (PRC) in 1973 to ensure that Berkeley police officers act in a manner that conforms to community standards. The PRC is an independent nine-member commission composed of Berkeley residents appointed by City Council members and the Mayor. The PRC reviews Police Department policies, practices and procedures, and hears and investigates citizen complaints against Police Department sworn personnel. The PRC makes policy recommendations to the City Manager and the Chief of Police. The PRC continually seeks contribution and feedback from the Berkeley community in this collaborative effort. Mediation between police officers and complainants is offered. The budget is more than \$540,000 which supports a staff of three—Director, Investigator and Administrative staff earning, with benefits, approximately \$470,000 together.

**Cambridge, MA:** The Police Review & Advisory Board was established by Cambridge City Ordinance in 1984 to:

- Provide for citizen participation in reviewing Police Department policies, practices, and procedures;
- Provide a prompt, impartial and fair investigation of complaints brought by individuals against members of the Cambridge Police Department; and
- Develop programs and strategies to promote positive police/community relations and to provide opportunities for expanded discussions, improved understanding, and innovative ways of resolving differences.

The Board consists of five civilians who are representative of the City's racial, social, and economic composition.

**Cincinnati, OH:** The Citizen Complaint Authority Board is to investigate serious interventions by police officers and to review and resolve all citizens' complaints in a fair and efficient manner. Citizen Complaint has three components: (1) a board of seven citizens appointed by the Mayor and approved by City Council; (2) a full time Director with appropriate support staff; and (3) a team of professional investigators. Budget 2014/15 \$845,070.

**Columbia, MO:** Citizens Police Review Board provides an external and independent process for review of actual or perceived misconduct thereby increasing police accountability to the community and community trust in the police. It reviews appeals from the police chief's decisions on alleged police misconduct, hosts public meetings and educational programs for Columbia residents and police officers, reviews and makes recommendations on police policies, procedures and training, and prepares and submits annual reports that analyze citizen and police complaints to the City Council. Members must be residents of Columbia and registered voters. Members may not be employed by the City, be a party to any pending litigation against the City, be an elected public office holder, or be a candidate for elected public office. The length of terms is three years. A HRC Commissioner sits on the board.

**Eugene, OR** (190 sworn officers): Has a Police Auditor and a Civilian Review Board. The mission of the Police Auditor is to provide an accessible, safe, impartial and responsive intake system for complaints against Eugene Police Department (EPD) employees and to ensure accountability, fairness, transparency and trust in the complaint system through the intake, classification, auditing and adjudication process of the complaint system; and to support and staff a civilian review board that monitors the work of the Police Auditor, reviews complaints cases and provides policy recommendations to the Eugene Police Department and the Police Commission. The Police Auditor responds to the scene of a critical incident such as an officer involved shooting, monitors the investigation of a critical incident and is a non voting member of the Use of Force Review Board.

The Police Auditor supports a Civilian Review Board which provides valuable input about the fairness, completeness and thoroughness of the investigative process. Ultimately, the goal of the Civilian Review Board is to make the system of police accountability more transparent and increase public confidence in the manner that police conduct their work. The Civilian Review Board consists of seven members from the community appointed by City Council.

**Iowa City, IA:** The Iowa City Citizens Police Review Board consists of five members appointed by the City Council. The board has its own legal counsel. The board reviews reports prepared after investigation of complaints about alleged police misconduct. It then issues its own written reports that contain detailed findings of fact and conclusions that explain why and the extent to which complaints should be sustained or not sustained. The board maintains a central registry of complaints against sworn police officers and prepares annual reports to the City Council on the disposition of these complaints.

The board reviews police policies, procedures, and practices, and may recommend modifications to them. The board holds at least one community forum each year for the purpose of hearing citizen's views on the policies, practices and procedures of the Iowa City police department, review police practices, procedures, and written policies as those

practices and procedures relate to the police department's performance as a whole, and report their recommendations, if any, to the city council, city manager and police chief.

**Ithaca, NY:** The Community Police Board (CPB) is charged by the City of Ithaca to act as a community liaison to the Police Department and actively foster positive communications between police and all segments of the community. The Commissioners are chosen from a range of culturally and economically diverse community groups with consideration given to the effect each appointment will have on the diversity of representation, including geographic representation, on the board. The Community Police Board conducts investigations of citizen complaints against police officers and forwards its findings and recommendations to the Chief of Police and to the citizen(s) involved, expecting that appropriate action(s) be taken to resolve the complaint to the mutual satisfaction of all parties. It also conveys expressions of appreciation by citizens about police officers to the police.

**New Haven, CT:** The Civilian Review Board, which has 16 members, reviews investigations already completed by the police department of complaints by members of the public concerning misconduct by officers. A director and an investigator make up the staff.

**Palo Alto, CA:** The Independent Police Auditor has the authority to review and assess for objectivity, thoroughness, and appropriateness of disposition citizen complaint investigations of misconduct and internal affairs investigations associated with the Police Department and makes recommendations to the Police Chief. Essential Functions/Duties:

- \* May receive citizen complaints directly.
- \* Reviews and assess for objectivity, thoroughness, and appropriateness of disposition.
- \* Makes recommendations to the Chief of Police regarding further investigation, processes, and dispositions.
- \* Formally meets with the City Manager and Police Chief once a quarter to discuss any issues.
- \* Formally meets with the City Council twice a year to discuss issues.

**St. Paul, MN:** The Police-Civilian Internal Affairs Review Commission consists of five members from the community and two police officers who are appointed by the Mayor with approval of the City Council. This Commission reviews all citizen complaints involving allegations of excessive force, discrimination, discharge of a firearm for other than training purposes, poor public relations, improper procedures and any other complaint referred to it by the Mayor or Chief of Police. Members of the Commission recommend a final disposition on investigations they review and further recommend disciplinary action when warranted. In all cases, the Chief of Police will be the final authority on case disposition and discipline. The Commission has a Civilian Coordinator to assist in receiving complaints from the public. This person is employed by the police

department for the specific purpose of building trust in the complaint investigation process and serving as a staff position to the Commission.