

City of Portland
Police Accountability Commission
Areas of Agreement on Proposals to Consider,
and to Avoid, from Subject Matter Experts

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Proposals to Consider

The Police Accountability Commission, having evaluated proposals given to the Commission or the City from experts and academics, agrees that the following items are proposals worth considering for implementation in Portland.

A. Structure

A1. The oversight body should have the ability to proactively provide structural oversight, not solely react to misconduct by individual officers.

Proposed by: National Association for Civilian Oversight of Law Enforcement

- [NACOLE](#) proposes that oversight bodies should not solely be reactive entities like “civilian review boards”. The term “Civilian Review Board” indicates that the only power an Oversight Body has is to “review” individual complaints. These structures often cannot engage in work focused on systemic problems and development of structural solutions. NACOLE’s examples of proactivity include independent analysis of police data related to Use of Force, Stop-and-Frisk, or other procedures; financial auditing and recommendations; review of policies, independent investigations, and proposals to address systemic issues.

A2. The oversight body should be independent of the police department.

Proposed by: NACOLE

- Oversight bodies should be independent of the police department in all ways. NACOLE proposes that they have independent authority, be independent from political process, and not keep secrets for law enforcement. NACOLE specifically suggests that the police department should not be involved in member selection in any way.

A3. The oversight body should be the final decision-making authority on disciplinary matters, adjudicating use of force, recruiting practices, and policy development.

Proposed by: NACOLE

- NACOLE proposes these powers as part of ensuring that the oversight body is sufficiently empowered to provide civilian oversight of law enforcement. State laws already afford extraordinary protections to law enforcement officers and conceal extensive information regarding their work from the public. Civilian oversight bodies must be given real power or else they risk being performative political statements with no actual “teeth” or power.

A4. The oversight body should be individualized to the local jurisdiction, with a structure and rules meeting their unique needs.

Proposed by: NACOLE

- NACOLE proposes individualized civilian oversight, for each locality based on specific needs of the community. This requires broad (not prescriptive) enabling legislation for each municipality to establish a structure that meets their unique needs.

B. Reporting

B1. The oversight body should present annual reports to City Council each year.

Proposed by: Eileen Luna Firebaugh

- Eileen Luna Firebaugh proposes that annual reports from the oversight body be presented to City Council. Public reporting on oversight keeps elected leaders and community members informed on an ongoing basis.

B2. The statistical definition of “sustain rate” in oversight agency reports should be sustained complaints out of all complaints received, not just those investigated.

Proposed by: Eileen Luna Firebaugh

- Portland calculated its sustain rate, at the time of Eileen Luna Firebaugh's 2008 IPR assessment, based on the number of *investigated* cases, which makes the percentage seem higher by removing cases that were never investigated. The sustain rate calculation should show sustained complaints out of *all complaints received*, including those never referred to another agency, and be presented alongside the rates by which cases are dismissed or declined; referred to Internal Affairs; and those received by Internal Affairs regardless of the disposition decision made by IA.

C. Access to Information

C1. The oversight body should have direct access to police files.

Proposed By: Washington DC Oversight System Staff Support, NACOLE

- Washington DC's oversight system does not have direct access to police files, and receives them only upon request. Staff from that agency ([Police Complaints Board](#)) suggests that Portland's oversight board should get direct access to police files.
- NACOLE proposes empowered civilian oversight systems which can subpoena duces tecum (or compel documents). They also propose the repeal of laws at the city or state level that prevent public access to and publication of police records on discipline and other matters of public concern.

C2. The oversight body should be able to compel testimony from police officers, as a condition of continued employment.

Proposed By: Eileen Luna Firebaugh, NACOLE

- In her 2008 IPR assessment, Eileen Luna Firebaugh suggested that PPB members should be ordered by City Council to testify as a condition of employment. This is one possible mechanism to ensure the power to compel testimony is vested in the oversight body.

- NACOLE proposes empowered civilian oversight systems which can subpoena witnesses, and compel testimony from police officers.

D. Staff and Budget

D1. The oversight body should have support from paid staff across the range of duties the oversight body is expected to perform.

Proposed By: NACOLE, City of San Diego oversight body staff

- NACOLE proposes that staff be hired by localities, with statewide and/or local permanent financial structures for staff.
- City of San Diego oversight staff ([Commission on Police Practices](#)), when contacted regarding current practices, suggested that they hoped to create positions in analysis, communications, and personnel management. They also suggested these as practices for Portland, as these functions may be essential to the new oversight system in Portland.

D2. The oversight body should have permanent guarantees of sufficient funding.

Proposed By: NACOLE

- NACOLE proposes that as a prerequisite for independence, oversight bodies must be permanently secured and supported financially. Financial and administrative support (as requested by the individual oversight body) by municipalities is critical to the success of police oversight.

D3. The oversight agency should include as a preference in staff recruitment that candidates have experience working with community.

Proposed By: Oakland oversight body staff

- The interim director of the Oakland Community Police Review Agency suggested that candidates with public defense or civil rights backgrounds might be better suited to lead oversight agencies because it is important for

them to know how to connect to the community. This would be a desired qualification alongside investigative, policy, and/or management skills.

E. Continual Improvement

E1. The oversight system should be able to be improved by City Council, or independently, over time.

Proposed By: NACOLE, Eileen Luna Firebaugh

- NACOLE defines as a principle the idea that oversight is an iterative process that is fluid and changes over time, and learns from its experiences. The oversight system should be built to work within existing legal structures that guarantee overwhelming protection to law enforcement officers, including statutory procedural guarantees when faced with discipline or firing, qualified immunity and more. It should also be able to change and grow as these legal structures change and hurdles to meaningful civilian oversight from those structures are reduced.
- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposes that the City Council use its authority to make changes to improve the system if it is not meeting the community's needs. Her assessment indicates that the City was unwilling to make any changes to IPR's structures for the first 8-9 years of IPR's existence.

F. Findings and Standard of Review

F1. Use the standard four options for "findings" after investigation for clarity, and allow the addition of other findings for systemic solutions.

Proposed By: Eileen Luna Firebaugh

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that the City of Portland adopt the standard four findings used by most other jurisdictions, using language that is clear to the public. These findings are Sustained, Exonerated, Insufficient Evidence, and Unfounded.

- In the same assessment, Firebaugh recommended creating three additional options to add on to the option selected from the four standard findings. These additional options were: Policy Failure, Supervisory Failure, and Training Failure. Having findings which are not specific to the officer's behavior can provide the possibility of systemic change.

F2. The oversight body should use the “preponderance of the evidence” standard, not the “reasonable person” standard.

Proposed By: Eileen Luna Firebaugh

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that the City of Portland change the standard of review. Preponderance of the evidence seems to be standard in most oversight decision making. The “reasonable person” standard is too difficult to understand, and the more commonly used “preponderance of the evidence” is easier.

G. Mediation

G1. Mediation should be offered in more minor cases, but not in more serious cases.

Proposed By: Eileen Luna Firebaugh, Mental Health Alliance

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that mediation be offered on all discourtesy and procedural complaints, but not for use of force, legal violations such as improper stop, detention, search, or arrest, or for officers with a pattern of misconduct.
- The Mental Health Alliance, in briefing the full Police Accountability Commission, also supported mediation, cautioning that complainants should not be pushed to accept mediation as a way of avoiding investigation of the complaint.

H. Board Jurisdiction and Case Authority

H1. Some categories of cases should be defined for automatic investigation by the oversight body.

Proposed By: Oakland oversight body support staff

- Acting Community Police Review Agency Director Aaron Zisser suggested that Portland adopt a practice under consideration in Oakland: designating cases related to use of force, in-custody deaths, profiling protected classes, untruthfulness, and First Amendment violations, as categories for automatic investigation by the civilian review agency. This suggestion would apply regardless of the potential role of Internal Affairs. Zisser suggested that this approach would be a good way to ensure that serious cases were always investigated by the civilian agency.

I. Transparency and Public Access

I1. All meetings and reports should be public, and all operations should be transparent.

Proposed By: NACOLE, Eileen Luna Firebaugh

- NACOLE defines civilian oversight of law enforcement as a public-facing process, and proposes that all efforts should be made by the locality as well as the state legislature to ensure that policing matters are able to be discussed in public settings and all reports are made public.
- Eileen Luna Firebaugh, in her 2008 assessment of IPR, promotes transparency as well, saying that “transparency is about ‘the public’s right to know the public’s business’”.

J. Oversight Body Membership Selection

J1. Oversight body selection criteria should reflect those most affected by policing.

Proposed By: NACOLE

- NACOLE proposes community-driven civilian oversight, in which localities are both empowered and encouraged to create membership criteria for the oversight of law enforcement. These criteria should be based on the history and patterns of local policing to ensure that communities most impacted by policing are represented. Oversight should be conducted – in part or in whole – by the people most impacted by policing in their communities.

Proposals for City, State, and Federal Consideration

The Police Accountability Commission, having evaluated proposals given to the Commission or the City from subject matter experts, agrees that the following items are proposals to consider. The Police Accountability Commission's mandate from City Council does not include addressing these items. Nonetheless, these proposals support the community police oversight board's ability to function.

1. Eliminate Qualified Immunity for police officers

Proposed by: [National Police Accountability Project](#)

- Qualified immunity is a court doctrine that prevents many lawsuits against police officers unless the officer is found to have violated "clearly established statutory or constitutional rights of which a reasonable person would have known." When applied, qualified immunity results in cases being thrown out before being heard, which prevents the community member filing the lawsuit from being heard or presenting evidence.

2. Eliminate Absolute Immunity for prosecutors

Proposed by: National Police Accountability Project

- NPAP states that prosecutors are protected by law from liability if they falsify evidence, coerce witnesses into guilty pleas, soliciting and knowingly sponsor perjured testimony, withholding exculpatory evidence (evidence of innocence), introducing evidence that has been illegally seized, initiating a prosecution in bad faith. They recommend the elimination of this prosecutorial immunity.

3. Change Police Employer Liability

Proposed by: National Police Accountability Project

- NPAP states that a municipality can only be held liable if the actions of their "official policy" caused a constitutional violation. This avoids police

departments and municipalities being held liable for many actions. If their actions were not in keeping with their "official policy" the officer may be held liable but not the municipality- which has deeper pockets and is able to provide more compensation for victims of violence/abuse of power. In addition, if a police officer for example has a long history of abuse and the police department was aware of this, this can be used to hold them liable. But police records are most often kept private and not shared so the public is kept unaware of this history or have no access to it, so they can't use it to prove the pattern of misbehavior.

4. Eliminate Civil Asset Forfeiture

Proposed by: National Police Accountability Project

- Forfeiture of civil assets can be done before a person is found guilty of a crime- all that needs to be said is that the person is a suspect of a crime, and the department can seize all of your property in the name of "their investigation". This has caused a major issue especially for communities with economic barriers and as a result communities of color, who are disproportionately affected. It is one of the many ways that the system perpetuates poverty and systemic oppression and disadvantage.

5. Sue federal officers for constitutional violations

Proposed by: National Police Accountability Project

- The National Police Accountability Project recommends that jurisdictions in which federal law enforcement (FBI, ATF, DHS, etc.) operates sue federal officers for their constitutional violations.

Proposals to Avoid

The Police Accountability Commission, having evaluated proposals given to the Commission or the City from subject matter experts, agrees that the following items are proposals to avoid for implementation in Portland.

1. The community oversight agency should limit community involvement where it “interferes with the ability to get work done.”

Proposed By: San Diego (City) oversight agency staff

- In research on the City of San Diego’s practices, PAC members heard concerns from an oversight agency staff member that community member involvement, including by those who helped put the system on the ballot, interfered with the ability to get work done. An example was having to go start a search for a staff position a second time. The PAC believes that community members should have a voice in how things move forward, for a community-driven oversight system.