

City of Portland

Police Accountability Commission

Areas of Agreement on Best Practices, and Practices to Avoid, from Other Jurisdictions

The Police Accountability Commission agrees that the following items are best practices from other jurisdictions.

Policy

Oakland: Commission approves or rejects police department policies -- city council has final say.

Justification: This practice helps ensure community input is incorporated into adoption of police department policies.

Denver, Seattle, Oakland: Oversight board has authority to make recommendations regarding policy and training.

Justification: Oversight boards develop an understanding of police officer actions and their impact on community members. Recommending policy and training improvements based on that understanding has the potential to improve police department operations.

Makeup of Oversight Board

Oakland, Denver, Seattle: Reserved seats for some commission members based on desirable areas of expertise or experience.

Justification: Examples include people with trial experience, civil rights or public defense lawyers, police accountability experience, lived experience

Oakland: Designated alternates for commission

Justification: Alternates are selected along with active commissioners and are available when openings occur. Alternates serve on ad hoc committees.

Selection of Oversight Board

Oakland: Selection committee for screening commission applicants

Justification: Consider having a committee of community volunteers designated for screening applications, conducting interviews, and then recommending nominees to City Council for appointment.

Denver: Nomination Committee appointed to screen and nominate candidates for Citizen Oversight Board. Four-year terms.

Justification: Having a committee screen, interview, and check with oversight board on specific needs brings community priorities into the process. Four-year terms would bring consistency and longer-term knowledge.

Terms of Removal and Oversight Board Members

Denver: Seated oversight board members can apply for another term. Nomination committee decides whether to forward their name to appointing body. Appointing body may reject the recommendation.

Justification: Having some longer serving members brings institutional memory to the oversight board. It is important for nominating committee and appointing body to decide if that person's skills and experience are still needed on the board.

Denver: Specific number of unexcused absences constitutes a resignation.

Justification: Portland needs to think carefully how to handle attendance so our new commission is not hamstrung by unfilled seats or commission members who don't have the time to fully participate.

Quorum

Seattle: Quorum based on number of seated members.

Justification: This is not a Seattle police commission practice, but their annual report notes a high absentee rate and the number of meetings they cancelled because of lack of a quorum.

Public Nature of Meeting/ Hearings

Oakland: Meetings open to the public with participation throughout

Justification: The public should be an integral part of the system and feel welcome to offer opinions and participate at full commission meetings and in subcommittees.

Oakland: Open/transparent proceedings of misconduct cases

Justification: Until 2006, police oversight agencies held open evidentiary hearings of misconduct complaints and public investigative reports. The public could follow the cases to understand exactly what the allegations of misconduct were against identified officers, how the complaints were investigated, and what the findings and recommendations for discipline were. California court case ended this practice, but Oakland advocates point to it as a best practice even though it is no longer possible in Calif.

Seattle: Sworn officer appeal hearings open to the public.

Justification: Some appeal hearings are open to the public. If officer chooses arbitration then they are not. Best practice would be having all appeal hearings both from complainant and officer open to the public.

Denver: Regularly scheduled Community Oversight Board public meetings with agency director, chief of police, and manager of public safety.

Justification: Open meetings with leaders in public safety and accountability give the oversight board and public the opportunity to discuss critical issues, ask questions, and consider policy issues.

Portland: Restorative Justice Open Hearings for Officers

Justification: An analysis by Cop Watch showed that in CRC open hearings, officers that showed up for the hearings fared better and received better restorative justice.

Maryland: The proceedings of the Trial Board are open to the public, except in certain circumstances, such as to protect the identity of a victim. The subject officer may not be compelled to testify.

Justification: The Trial Board is the least civilian-controlled part of the system, so making proceedings open to the public as far as possible increases transparency. It appears that the Trial Board meeting may be open to the public largely due to the fact that the subject officer may not be compelled to testify. It is possible that, if the subject officer has not been compelled to testify before this point, and they do not choose to testify at the Trial Board, no Garrity or 5th amendment self-incrimination challenges would be implicated, which would allow the proceeding to remain open to the public. However, it appears that the officer may choose to testify, which would likely trigger the same concerns as a Loudermill hearing, and the hearing would likely need to be closed or partially closed to protect that officer's 5th amendment rights against self-incrimination.

Budget

Oversight body conducts public review of police department budget

Spreadsheet Reference (Column A): Line 231

Identified in: Oakland

In Oakland, the oversight body (the [Oakland Police Commission](#)) is the designated place for community input on decisions related to the police and oversight, including public review of and adjustments to the police department's annual budget.

Hiring/Firing of Chief (or Staff)

Oakland: Commission has integral role in hiring police chief and recommend four candidates to Mayor. It also has a key role to play in firing and with enough votes can make that decision independently of the mayor.

Justification: This approach ensures community input is considered in police chief selection and removal.

Oakland: Empowered system has independent commission with authority to hire and fire agency director, police chief, and inspector general. Also has independent legal counsel, final say in findings and discipline, subpoena power and power to compel testimony.

Justification: Oakland's system took years to develop. Empowered system is getting off the ground and still needs additional staffing and better division between internal affairs and civilian agency investigations. They are working towards shifting more investigations over to civilian agency.

Audit Functions

Oakland: Inspector General position responsible for continuing DOJ or court monitor type of oversight, ensure allegations of misconduct are thoroughly investigated, identifies systemic practices and policies needing improvement. Commission hires and fires IG

Justification: IG provides a layer of systemic oversight and ensures city remains in compliance with requirements in settlement agreement or consent decree

Seattle: Inspector General reviews all misconduct investigations to ensure they are complete before findings and discipline are determined.

Justification: This practice helps ensure agency and/or Internal Affairs conducts thorough investigations.

Seattle: Sentinel Event Review -- this is a process overseen by the Office of Inspector General and led by a select group of community members, police representatives, and OIG. It studies in depth, a significant and undesirable event with the goal of prevention.

Justification: A broad review of incidents of concern to the community for the purpose of learning from past mistakes gives the community and police the opportunity to learn and develop new policies and practices that will lead to better outcomes.

Reporting

Seattle: Spell out required contents of agency and commission annual reports

Justification: The annual report should contain certain data and information and that should be spelled out in the code.

Seattle: Include an online tracker for implementation of commission recommendations.

Justification: Placing a recommendation tracker on the website gives the public the opportunity to see which commission, civilian agency, and IG recommendations have been implemented. The Seattle tracker provides reasons for the recommendations that have not been implemented.

<https://www.seattle.gov/community-police-commission/our-work/recommendations-tracker>

Denver: Set number of oversight board meetings focused on public comment with one specifically tied to oversight board's annual report.

Justification: Involving the community and acting transparently should help contribute to system success.

Philadelphia: Every case reviewed is posted with detail on complaints/findings/outcomes with names (if complainant allows) as well as the names of the officers involved. Reports will be published in public websites that are easy to search and be able to be used for looking at patterns, etc.

Justification: Philadelphia has decided that the way to gain accountability and trust in the police department is to be as transparent as possible.

Seattle: Post closed case summaries online

Justification: Seattle Office of Police Accountability posts closed case summaries online. They include a summary of the incident and alleged misconduct, as well as the Director's response to each allegation of misconduct. If discipline is imposed, the type and severity of discipline are also included.

Collective Bargaining

Seattle: A representative from the police commission has a seat at the bargaining table in contract negotiations.

Justification: Having a commission member participate in police union contract negotiations would inject the community perspective.

Portland: More Transparent Collective Bargaining

Justification: The last Police Union collective bargaining included all the City Counselors, to better outcomes. Having members of the Accountability Board would also help give more transparency to the process.

Oakland: List names of commissioners and alternates on meeting agendas

Justification: Agendas for Oakland commission meetings list commissioners' and alternates' names. (Note: Oregon Open Meetings Law requires meeting minutes/summaries to include the names of commission members)

Staff

Denver, Oakland: Agency director is hired and serves at the pleasure of the oversight board.

Justification: Giving oversight board/commission the authority to hire and fire the agency director makes the system more accountable to the community. This is already built into Portland's new system.

Denver: Appoint screening committee to select candidates for agency director who will be forwarded to oversight board. After a community process, oversight board selects new agency director.

Justification: Screening committee is made up of oversight board chair, city council member, current or retired judge, director of Career Services Authority, person with extensive knowledge of police oversight or internal investigations but has never worked in Denver in law enforcement, and a justice system-involved community member selected by the oversight board.

Denver: Employ a community process when selecting agency director.

Justification: Screening Committee forwards three candidate names to oversight board. Board conducts a community process and selects a candidate to recommend to city council for appointment. City Council confirms. Oversight board has authority to fire the agency director.

Philadelphia: Citizen Review Board will be volunteers from the community-small stipend for their work. They will have an Executive Director that is a paid

city position as well as full staffers paid by the city to support the work of the CRB. Their budget is limited to less than 1% of the police department's budget.

Justification: N/A

Oakland: Consider experience working with community along with investigative, policy, and management skills when hiring agency director.

Justification: Oakland Community Police Review Agency interim director 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.

Board Authority Cases

Denver: Oversight board has authority to direct monitor to investigate certain cases, review closed cases when the monitor conducted the investigation.

Board has access to certain portions of personnel files, investigative files and may make recommendations regarding quality of investigation and findings and discipline.

Justification: The oversight board serves as the eyes and ears of the public, so the more involvement they have in individual cases, the better.

Oakland: Designate categories of cases for automatic investigation by civilian review agency regardless of Internal Affairs role. Cases include: use of force, in-custody deaths, profiling protected classes, untruthfulness, and First Amendment assemblies.

Justification: Acting Community Police Review Agency Director Aaron Zisser suggested this approach would be a good way to ensure that serious cases were always investigated by the civilian agency even if Internal Affairs was still conducting investigations of cases that did not arise from a community complaint.

Chicago: One Board (like COPA) that takes ALL complaints

Justification: Chicago has COPA that takes all complaints and forwards the complaints not under their jurisdiction to the proper body. COPA is independent of the Police Bureau, and this type of process would show the public that the process is independent of Police influence.

Maryland: A standing civilian Police Accountability Board receives complaints, appoints civilians to a civilian Charging Committee and to any necessary Trial Boards, and reviews all data regarding complaints and submits an annual report each year to the local Council. The civilian PAB identifies trends and makes policy recommendations about the complaint process.

Justification: The civilian Police Accountability Board has significant power to influence all stages of the complaint and disciplinary process. The civilian Board touches all three layers of the process, including complaint, charging decision, and appeal. The civilian Board interacts directly with citizens making complaints, which increases both face time and credibility with the general public. The civilian Board appoints members to the civilian charging committee which reviews investigations and decides charges and discipline, ensuring civilians appoint civilians to a critical internal process. The civilian Board appoints a civilian to any Trial Boards which must be stood up during internal appeals, again ensuring that civilians appoint civilians at another critical point in the process.

Independent Legal Counsel

Denver, Oakland: Authority for civilian agency and/or oversight board to hire independent counsel.

Justification: Independent counsel gives civilian oversight agency the legal advice they need to carry out its duties. City attorneys are responsible for representing the interests of the municipality, which sometimes conflicts with the interests of a civilian police oversight agency.

Timeframe for Filing Complaints

Denver, Oakland: Deadline to file community complaints

Justification: No firm deadline. Denver encourages waiting no longer than 60 days so it is easier to conduct the investigation while the event is still fresh. Oakland has no deadline but faces California's one-year statute of limitations mentioned above.

MISC

Maryland: Uniform Three-tier structure for an entire state

Justification:

1. Accountability Commission - civilian
2. Admin Charging - decision making where officer can accept or reject the decision and the Chief can only deviate to harsher penalty
3. Trial Board - made up of one civilian, one law enforcement officer and a retired admin judge to moderate.

Investigative Process

Philadelphia: Transparency for investigations

Justification: While investigations are still proceeding, Philly publishes all the information in anonymous form, with names withheld. When investigations are complete, the information is published with identifying information.

Chicago: Investigation includes recommendation for how avoid misconduct or improve response

Justification: Investigators can also assess policy issues regarding how incident could have been avoided, training, policy deficiencies, etc.

Intake

Maryland: Members of the public may submit complaints to either a law enforcement agency or to the civilian Police Accountability Board.

Justification: Members of the public can submit complaints directly to law enforcement agencies, which are expressly required to facilitate the complaint process, or to a civilian Police Accountability Board. This reduces the chances that civilians will be frustrated in their attempts at making a complaint because they were turned away for making their complaint to the "wrong" person or agency. Forcing law enforcement agencies to accept complaints also requires law enforcement agencies to continue to bear some of the administrative load of the complaints which they generate.

Philadelphia: Centralized placed to receive all complaints and to investigate all allegations of all types (except for labor law disputes- like overtime issues, labor law issues within the police department).

Justification: Simplifies the process and provides one centralized place of access

Discipline

Maryland: A civilian Administrative Charging Committee shall recommend discipline in according with a standardized disciplinary matrix.

Justification: Civilians control the decision to charge. Charges then trigger what is essentially automatic discipline according to the disciplinary matrix. The standardization of the disciplinary matrix fosters transparency and predictability for both community members and members of law enforcement. The civilian charging committee is not required to "invent the wheel" from scratch each time they recommend administrative charges, which may save time and resources.

Maryland: The Chief of Police may deviate upwards from the discipline chosen by the civilian Administrative Charging Committee, but not downwards.

Justification: The Chief of Police is allowed to influence the discipline of the officer, which may lend the system more credibility with law enforcement officers. However, the Chief is bound by the charging decision made by the civilian charging committee. If the Chief wishes to deviate, the Chief may only deviate upwards, which means that civilians set a "floor" below which discipline may not fall. This can also serve as a check on the automatic disciplinary matrix, in case for some reason the discipline required by the matrix is insufficient to the instant case.

Maryland: An officer has a right to reject the discipline recommended by the Chief and ACC. An officer may request a Trial Board be convened for further review.

Justification: The officer has a right to request a third look at the disciplinary action being recommended. A separate trial board will be convened for each incident, and only at the request of the subject officer. No standing trial boards are required, which reduces spend and which also implies that they are considered for use only in exceptional circumstances.

Oakland: Discipline Committee - subset of police commission -- makes final call when oversight agency and police chief disagree on findings and discipline

Justification: Incorporating a policy that creates a police commission discipline committee that makes the final call would ensure the civilian committee, not the police, have the final say.

Philadelphia: Citizen review board makes recommendations for discipline, action, but they do not have the power to execute it. It is up to the Police Department to follow the recommendations. When they decide they will not follow the recommendation they have to say why they won't

Justification: This was because of how the law in PA is written

Hearing Process

Maryland: Trial Boards consist of three members: one police officer of equal rank to the subject officer, selected by the Police Chief, one civilian chosen by the civilian Police Accountability Board, and one administrative law judge, selected by the chief county administrator.

Justification: The Trial Board is the final step before state law requires that a party be allowed to appeal to the local circuit court. By including an administrative law judge as the deciding vote, the Trial Board process seems designed to ensure that anything that is appealed to a circuit court is easily

upheld on appeal. The judge's expertise lends the impression that the investigation has been reviewed for any egregious errors, as well as that a neutral third party has reviewed, and had significant impact on, the case.

Maryland: A civilian Administrative Charging Committee shall review the investigation and make a determination that the subject officer shall be, or shall not be, administratively charged.

Justification: A civilian administrative committee need not do the investigation itself in order to have a significant impact on the disciplinary process. Another option is to allow a law enforcement agency to do the investigation, and then routing the investigative file to a civilian group for review and charging and discipline decisions. Since the civilian group is not doing the heavy lift of conducting investigations, more resources and time can be dedicated to civilian oversight of the charging and discipline process.

Subpoena Power and Compelling Testimony

Philadelphia: Police are required to be present at hearings/proceedings/investigation- it is part of their subpoena powers

Justification: N/A

Chicago: Broad subpoena power, plus duty of all employees (including high level management) to cooperate and failure is grounds for termination

Justification: Information access and cooperation required for accountability process to function. LA County Sheriff currently refusing to cooperate with oversight entities and thwarting investigation of deputy gangs

Continuous Improvement

Seattle: Periodic complainant satisfaction surveys

Justification: Conduct periodic complainant experience reports and develop recommendations for improving the system based on the information gathered.
<https://seattle.gov/documents/Departments/OPA/Reports/Complainant-Experience-Report-June-2021.pdf>

LA County: Require oversight commission to conduct self-evaluation every three years and determine whether commission should continue or change. If commission's charter is changed, require a report on change after one year

Justification: This allows for agency to evolve in response to changing circumstances

Officer Participation

LA County: Head of law enforcement agency or their designee attends and participates, but is not a voting member of oversight commission

Justification: Provides information and perspectives to commission and potentially helps law enforcement buy-in to oversight model

Structure (Broadly)

Chicago: Integrating three forms of civilian oversight: investigatory, auditing/monitoring, and holistic review functions

Justification: Chicago combines the three civilian accountability models: an **investigatory and disciplinary** function (Civilian Office of Police Accountability and the Police Board); an **auditing/monitoring** function (Public Safety Inspector General, which reviews patterns and practices for civil rights violations and fairness and consistency of officer discipline); and a **review** function (Community Commission for Public Safety--which drafts policies and can hire and fire leaders

of police and accountability agencies). This allows oversight of both individual officer conduct and overall agency practices and policies.

Complaints Process

Chicago, LA County: Workarounds if signed/sworn complaint cannot be obtained but investigation appears warranted

Justification: To address the fact that many complaints were not being investigated due to the lack of verification, Chicago created an override system that allows COPA to investigate complaint and recommend override to Internal Affairs Chief; in LA County, if complaint is anonymous, it cannot be referred for investigation but it is reviewed and maintained for purposes of monitoring patterns and systems of misconduct

Mediation

Chicago: Referral to mediation

Justification: All complaints where discipline would be suspension of 30 days or less eligible for voluntary mediation

Community Engagement

Chicago, LA County: Oversight Commission solicits community input and engagement on use-of-force incidents and civil rights issues and functions as bridge between community and law enforcement

Justification: Builds community engagement and trust

Oversight Board Training

Chicago, LA County: Civilian oversight board members get training and a reasonable stipend for service; vacancies must be filled within set period

Justification: Chicago provides stipend of \$15K; LA County provides stipend of \$5K. LA County provides 6-month mandatory training and orientation, and vacancies must be filled within 60 days.

Philadelphia: CRB members will receive training on police law, investigations, criminal justice partners, the DA, policies/procedures, state constitutional law, community and civil rights organizations, etc.

Justification: Still in process

The Police Accountability Commission agrees that the following items are practices to avoid from other jurisdictions.

Practice to Avoid 1: Statute of limitations on completing complaint process

Identified in: California (State Law)

Justification: According to sources in Oakland, there is a Calif. law that places a statute of limitations on completing complaint/disciplinary process of one year. If deadline is not met, the complaint investigation and disciplinary process is terminated.

Practice to Avoid 2: Civilian board and internal affairs running parallel investigations

Identified in: Oakland

Justification: The civilian board and the police internal affairs will conduct investigations at the same time, then decide on discipline together. This process appears to be very ineffective.

Section 2: Practices to Avoid

Oakland: Civilian board and internal affairs running parallel investigations

Justification: The civilian board and the police internal affairs will conduct investigations at the same time, then decide on discipline together. This process appears to be very ineffective.

California: Statute of limitations on completing complaint process

Justification: According to sources in Oakland, there is a Calif. law that places a statute of limitations on completing complaint/disciplinary process of one year. If

deadline is not met, the complaint investigation and disciplinary process is terminated.

Philadelphia: Citizen review board has subpoena powers and gets access to all the files and evidence. They are allowed to go to the crime scene and gather information independently.

Justification: Decreases the chance that evidence will be tampered with or that evidence will be withheld in cases needing to be reviewed

Philadelphia: Members of the CRB requirements- living in Philadelphia, no background in work for the police, may not be a sworn member or past member of the city, municipal or state police department or current officer of a political party

Justification: N/A

Portland: A system that is very complex

Justification: The current Portland system has been deemed too complex. The complexity appears to confuse citizens and stymie justice.