

City of Portland

Police Accountability Commission

Areas of Agreement on Proposals to Consider, and to Avoid, from Subject Matter Experts

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.

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

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.

Commented [PAC SC:R1]: Note: Fact-checked and NPAP (<https://www.nlg-npap.org/absolute-immunity/>) lists these items. Other sources differ.

3. Changes to Police Employer Liability

Proposed by: National Police Accountability Project

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. 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. Suing federal officers for constitutional violations

Proposed by: National Police Accountability Project

This is important for agents of federal agencies of law (FBI, narcotics, etc), so less applicable to Oregon officers.

6. Proactive

Proposed by: NACOLE (National Association of Civilian Oversight Law Enforcement)

Not just reviewing misconduct complaints. Can 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; and more.

7. Independent

Proposed by: NACOLE

Must be independent authorities, not subsidiaries of the police departments they oversee. Must be independent from political processes. Must be independent and permanently secured financially. Must have independence of voice. Oversight should not keep secrets for law enforcement.

8. Community Driven

Proposed by: NACOLE

Oversight should be conducted—in part or in whole—by the people most impacted by policing in their communities.

9. Empowered

Proposed by: NACOLE

Subpoena (witnesses) and subpoena duces tecum (documents) authority. The statewide repeal of laws that prevent public access to and publication of police records on discipline and other matters of public concern. Final decision-making authority on: disciplinary matters, adjudicating use of force, recruiting practices, and creating policies.

10. Transparent

Proposed by: NACOLE

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

11. Individualized

Proposed by: NACOLE

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.

12. Investment in Communities

NACOLE

Justification: Financial and administrative support (as requested by the individual oversight body) by municipalities is critical to the success of police oversight.

13. An iterative process that is fluid and changes over time, learns from it's processes

NACOLE

Justification: Meaningful civilian oversight faces numerous hurdles in the United States due to the overwhelming protections law enforcement officers have, including statutory procedural guarantees when faced with discipline or firing that no other public official enjoys, qualified immunity, and more. Oversight will change as these landscapes change.

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. Oversight is not solely a reactive civilian review board

Proposed by: NACOLE

“Civilian Review Board” indicates that the only power an Oversight Body has is to “review” individual complaints. It leaves out the ability independently investigate (rather than relying on the police department’s records) and to engage in work focused on systemic problems.

2. Oversight is not chosen or housed within police departments

Proposed by: NACOLE

Appointees should not be chosen by the Chief of Police. Oversight bodies should be independent of the Police Department in all ways.

3. Oversight is not a state-wide body

Proposed by: NACOLE

Justification: A statewide Oversight Bodies overseeing all law enforcement agencies in the state would disregard best practices identified by the National Association of Civilian Oversight of Law Enforcement (“NACOLE”).

4. Oversight is not done from the top down

Proposed by: NACOLE

Commented [PAC SC:R2]: If NACOLE didn't suggest housing it within the police, then this wouldn't be a “proposal to avoid” from NACOLE; if NACOLE suggested *not* housing it within police, then the suggestion (to house it elsewhere) would be a “proposal to consider”.

Justification: Localities should be encouraged and empowered to create strict Oversight Bodies membership criteria based on the history and patterns of local policing to ensure that communities most impacted by policing are represented.

5. Oversight is not performative

Proposed by: NACOLE

Justification: 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.

6. Oversight is not secretive

Proposed by: NACOLE

Justification: This is a public-facing process and all efforts should be made by the Legislature and localities to ensure that policing matters are able to be discussed in public settings and all reports are made public.

7. Oversight is not solely volunteer based

Proposed by: NACOLE

Justification: Staff can and should be able to be hired by localities, with statewide and/or local permanent financial support.

8. Oversight is not a quick fix

Proposed by: NACOLE

Justification: Community-Police distrust is not new. We are at a critical moment in our nation's history and, as Civilian Oversight Bodies become more widespread, additional statewide legislative pushes may be needed to ensure meaningful oversight and community legitimacy of the oversight process.