

PAC Research Subcommittee

July 25, 2022

Review of Chicago Police Accountability History and Framework

Background

- Chicago police officer Jason Van Dyke shot and killed Laquan McDonald in October 2014. Police initially provided false reports, claiming that McDonald had a knife, refused to comply with orders, and lunged at officers. Thirteen months later, a court ordered release of the dash cam video, showing that McDonald was walking away from police when he was shot 16 times. Chicago settled a case with McDonald's family for \$5 million. In October 2018, Officer Van Dyke was convicted of second-degree murder and 16 counts of aggravated battery. He was sentenced to almost 7 years in prison, served just three and was released in early 2022.
- In response, Chicago created a Police Accountability Task Force.
 - It found that the Independent Police Review Authority (IPRA) failed to investigate 40 percent of the complaints received (because of a requirement that complaints be supported by an affidavit from the complainant). It sustained misconduct filings in only 7 percent of complaints. Ultimately, arbitrators reduced or eliminated discipline in 73 percent of cases where misconduct was sustained.
 - It also found that IPRA was run by former law enforcement, who allowed Chicago Police Department (CPD) to reverse or undermine investigative findings. Recommended replacing IPRA
 - Recommended appointment of a police inspector general for public safety to ensure effective accountability system
 - Recommended a video release policy which was immediately adopted, replacing the practice of waiting until all investigations were concluded to release video
 - Recommended early intervention for officers with multiple complaints, changes to collective bargaining agreement to allow anonymous complaints, and posting of all disciplinary actions online
- In 2016, Chicago replaced IPRA with the Civilian Office of Police Accountability, or COPA, described in more detail below.
- In 2016, Chicago added a public safety section to its Inspector General's office (OIG).
 - OIG given power to audit CPD and COPA to identify patterns and practices that violate civil rights.
 - OIG reviews all discipline against CPD to ensure consistency and fairness in accountability process.
- In 2021, Chicago created the Community Commission for Public Safety and Accountability to oversee COPA, CPD and the Police Board. Chicago is now in the process of setting up an interim Commission, with election of the permanent Commission in the summer of 2023
 - Commission has power to draft CPD, COPA and Police Board policies
 - Commission has authority to hire and fire leaders of CPD, COPA and Police Board
 - Commission consists of 7 members with 4-year terms, elected by district councils.
 - District Councils are an elected body for each police district (3 members per district, 22 districts, with four-year terms of office)

- Commission based on model from LAPD
- Chicago Police Board
 - Decides disciplinary cases when CPD fires officer
 - Resolves disagreements on discipline between COPA and Police Dept
- CPD collective bargaining agreement provides for a grievance process to challenge discipline, with different processes depending on officer's rank and severity of discipline

COPA

- Staff of 140, including 10 attorneys
- Jurisdiction over:
 - complaints of DV, excessive force, coercion, verbal abuse
 - All incidents involving firing a gun that could hit someone; use of a stun gun or taser that causes serious harm; discretion to investigate other use of weapons that results in harm
 - All incidents where someone dies while being detained or in police custody, including all incidents of officer-involved death
 - Complaints of improper search and seizure and denial of access to counsel
 - Patterns and practices of misconduct in any form
 - May reopen closed investigations for good cause
- Does intake for all complaints
 - Complaints taken through hotline, office visit, mail or at scheduled community meetings
 - Police required to file misconduct report same day information is received; these reports must be forwarded to COPA
 - Complaints outside jurisdiction forwarded to Internal Affairs or to law enforcement for criminal investigation
 - COPA must confirm receipt of complaint within 5 days
 - COPA must then seek to get an affidavit from complainant swearing to contents of complaint; after 30 days, if no affidavit, COPA may seek an affidavit override from Chief of Internal Affairs based on preliminary investigation results. If Chief agrees, they supply affidavit. Otherwise the complaint is dismissed.
- COPA may recommend suspension of officer's duties pending investigation if officer presents a public safety threat or COPA is likely to recommend termination of officer. COPA can also recommend behavioral intervention programs. CPD Superintendent makes this decision.
- In investigations, COPA is clear that it will attach no greater value to officers' statements than civilians' statements
- Investigations presumptively concluded within 6 months; if not achievable, COPA must give written notice to Mayor, the complainant and the officer and their counsel
- It is the duty of every officer and City employee to cooperate fully with COPA and violators are subject to discharge;
 - non-exempt officers must allow interviews to be recorded
 - COPA advises officers of rights—administrative rights to not have statements used in criminal process; criminal rights to remain silent
 - Before interviewing officer, must give notice of allegations; union members must be notified of complaint within 10 days
 - Officer may have union rep or lawyer attend interview

- COPA has subpoena power and full access to all information in possession of police and all other city departments, including complaint history against officer
- Cases where civilians have died or sustained serious bodily injury are considered “Major Case Incidents”
 - COPA is informed as soon as incident occurs and responds to the scene immediately with a response team consisting of deputy administrator, three investigators and other forensics or evidentiary specialists as needed
 - COPA must develop an investigation plan within 48 hours; COPA must confer with State Police within 96 hours re forensic evidence
 - For officer involved shootings, officers who witnessed but did not shoot can postpone an interview with COPA for 2 hours; if officer claims that they are physically or emotionally unable to provide information, can postpone for up to 48 hours
 - For officer who discharged weapon, COPA can request but cannot require an interview sooner than 24 hours. After 24 hours, officer can make a good faith claim that they are unable to make a statement and COPA may decide to conduct interview later
 - When Major Case Incident involves a civilian death, CPD handles underlying criminal investigation and COPA, and CPD/IA handle police conduct investigation
 - When police shoot a civilian, COPA refers all such cases to the DA after COPA’s preliminary investigation is completed, or to FBI/US Attorney Office if shooting implicates civil rights issues
 - COPA continues its administrative investigation concurrently, but in a way that avoids impacting the criminal investigation
- In excessive force cases COPA applies 4th amendment reasonableness standard
- COPA can investigate patterns or practices and issue report to CPD, who have 60 days to respond. Report is made public after CPD response received. COPA can also issue Advisory Letters if investigations uncover problem or potential liability for CPD
- At end of investigation, COPA staff evaluates evidence under preponderance of evidence standard and prepares a report categorizing findings in complaint cases as sustained, not sustained, unfounded, and exonerated.
 - Report also recommends discipline, up to discharge. Can recommend remedial discipline.
 - COPA can consider victim statement in recommending discipline, as long as statement is included in file
 - Discipline recommendations are subject to CPD review. CPD has 60 days to respond, may get a 30-day extension, and may seek additional investigation.
 - If COPA and CPD don’t agree on discipline, matter is sent to Police Board
- In officer-involved shooting cases where no misconduct is alleged, COPA determines whether conduct was or was not with CPD Policy.
- COPA staff can also assess policy issues regarding how incident could have been avoided, training, policy deficiencies, etc.
- COPA can refer complaints to mediation, as long as they are not Major Case Incidents or other serious charges (unlikely that discipline longer than 30 days will be imposed). Mediation is voluntary for complainant and officer

- Final Summary Reports are posted publicly and served on complainant. These reports are redacted for information protected under FOIA and collective bargaining agreements.