

Date: June 24, 2022
To: Research Subcommittee
From: Debbie Aiona

City and County of Denver, Colorado

Office of the Independent Monitor

Created in 2004

Civilian oversight agency for city police and county sheriff – Denver has a consolidated city and county.

Citizen Oversight Board

- Nine members, residents of City and County of Denver. Mayor appoints four; city council appoints four; one is appointed jointly. Four-year terms.
- Appointees selected from a list developed by a nomination committee from lists of at least three people per vacancy.
- Nomination committee: mayor appoints one; city council appoints one; and third is appointed jointly. They serve for four years and meet only when needed to fill vacancies. City employees are not eligible to serve.
- Board vacancy notices issued no later than 15 days after vacancy occurs. Committee reviews applications, interviews, and consults with oversight board about qualifications required in new members. Submits list of candidates to mayor and city council.
- Seated board members may apply to serve another term by informing the nomination committee at least 90 days before their term expires. Nomination committee interviews board member to determine if they should be reappointed. If not, they issue a notice of vacancy. If the nomination committee recommends renewal, but the appointing body disagrees, then a vacancy notice is issued.
- No city/county employee may serve on the board nor may former police, sheriff, or their family members.
- Membership must reflect the diversity of Denver: ethnic, racial, geographic, professional backgrounds, expertise.
- Compensation limited to \$1,200 per year and members are reimbursed for expenses.
- Training required
- As of effective date of the recent voter-adopted act (2020) strengthening the system, current members continue to serve the remaining portions of their terms. Others are added in a way that staggers the terms. This is a transition between original and updated systems.
- Four unexcused absences from regularly scheduled meetings constitute a resignation. Misconduct or failure to perform are grounds for removal. Mayoral appointees may be removed by mayor. City Council appointees by City Council.
- Board elects chair and vice-chair.

- Recently granted funding for a full-time board administrator. They also receive funding for legal or policy consultants as needed, annual board retreat, and improvements to communications infrastructure. Conflicting information on board budget, but it is less than \$100,000.

Citizen Oversight Board Meetings

- At least three meetings per year focused on public comment, with one required no more than 30 days after issuance of annual report.
- Meetings from time to time with community groups.
- Meet in public at least bi-monthly with Monitor: Monitor updates board on status of investigations and disciplinary proceedings and the Monitor's role in each.
- Meet at least quarterly in public with Manager of Safety, chief of police, undersheriff.
- Meetings must comply with open meetings law. They go into executive session when specific individuals/cases are under discussion.

Citizen Oversight Board responsibilities

- With the assistance of a selection committee and the consent of city council, appoint Independent Monitor. The Monitor serves at the pleasure of the oversight board.
- Assess performance and effectiveness of OIM
- Make policy and training recommendations
- Direct the Monitor to monitor or review certain cases
- Address other issues of concern to the community and other stakeholders
- May review closed cases where the Monitor conducted the investigation. Case may be referred back to agency with recommendations on the outcome and/or with recommendations related to policies or procedures.
- In order to determine Monitor's office effectiveness, the board receives regular reports on investigations. Board may review portions of personnel files of uniformed staff and internal affairs files. May make recommendations to Manager of Safety, police chief, sheriff, and Monitor's office regarding investigations and determinations of policy violations and discipline.
- Board is responsible for issuing an annual report concurrently with Monitor's annual report (2021 report – 20 pages). The report assesses the work of the Monitor's office, reports on board's activities, community concerns, assesses investigations and disciplinary processes, and recommends how to improve policies, rules, training, etc.
- Board may hire consultants to assist in assessing the Monitor's effectiveness, writing annual reports and other reports.

Office of the Independent Monitor

- Receives and processes complaints about sworn personnel in police dept. (DPD) and county sheriffs' department (DSD)

- Monitors investigations into complaints, officer-involved shootings, and in-custody deaths involving DPD and DSD sworn personnel
- May recommend findings and discipline
- Publicly reports patterns of complaints, findings, and discipline
- Makes policy recommendations related to law enforcement, corrections, and oversight
- Engages the community in issues related to law enforcement and OIM
- Oversight board is responsible for hiring Monitor with assistance from a Screening Committee. Screening Committee consists of the chair of Citizen Oversight Board, city council member, current or retired judge, director of Career Services Authority, person with extensive knowledge of internal police investigations or monitoring, but who has never been employed by the Denver police, sheriff, or fire dept., and a justice system-involved community member selected by the oversight board.
- Selection Committee forwards names of three candidates to oversight board. It conducts a community process. Oversight board nominates a candidate for appointment. City council confirms. Oversight board has the authority to fire the monitor.
- OIM may employ independent legal counsel.
- 2021 Annual Reports states: 13 staff members in the following categories -- Administration/Policy and Monitors/Community Outreach
- Office location – Denver Post Building that also houses parks and public health departments, economic development office, and Civil Service Commission

Jurisdiction

Monitor may monitor or conduct investigations of:

1. Uniformed personnel involved in duty-related incidents that result in serious bodily injury or death. This includes participation and monitoring of criminal investigations to the extent permitted by the agency (D.A.'s office).
 2. Uniformed personnel charged with felonies or other crimes
 3. Uniformed personnel charged with misdemeanor use of force, including incidents when the employee was off-duty. If criminal case is dismissed, Monitor can monitor internal investigations related to the incident.
 4. Citizen complaints regarding force, discrimination, retaliation, discourtesy, or in the best interest of the city.
- Monitor participates in or monitors internal investigations of misconduct upon request of Citizen Oversight Board or Manager of Safety.
 - Monitor shall review closed internal affairs investigations upon request of Citizen Oversight Board or Manager of Safety. This applies to cases that the Monitor did not monitor in the first place.
 - Monitor may conduct additional investigation and make recommendations on sufficiency of investigation, findings, and level of discipline.

Monitor's Public Reporting

- An annual public report (2021 report – 77 pages) to mayor, city council, oversight board is required by March 15 covering the prior year's trends regarding complaints, investigations and discipline, information about personnel (no names) who were the subject of multiple complaints, complainants who filed multiple complaints, issues raised by complaints. Make recommendations regarding sufficiency of investigations, appropriateness of discipline, changes to policies and training. The OIM also publishes a semi-annual report.
- Status report available to the public that includes analysis of patterns related to complaints, analysis, and recommendations to chief and sheriff, and Manager of Safety about early warning system and other policy issues.

Citizen Complaints

- Members of the public may file complaints of alleged misconduct by uniformed personnel to the Monitor's office, with the oversight board, or with internal affairs.
- Encourage complaint filing within 60 days of incident, but there is no firm deadline.
- Mediation is an option available to community members and officers.
- There is no mention of appeal options for community members.

Investigations

- Upon completion of cases handled by the D.A., but not later than 60 days after the incident, internal affairs will open a file and initiate an administrative investigation, unless the Manager of Safety and D.A. decide the administrative investigation would jeopardize the D.A.'s investigation.
- Public safety departments will cooperate with the Monitor's office in ensuring Monitor is able to actively monitor investigations.
- Monitor ensures investigations are accurate and complete if it monitored that investigation. If the investigation is not complete, Monitor requests additional investigation. If that is not satisfactory, Monitor may conduct additional investigation, including issuing subpoenas.
- Upon request, Monitor has access to files, reports, evidence, etc., within a reasonable amount of time.

Internal Investigations

- Possible screening options: decline, informal, service complaint, mediation, and formal
- Administrative investigations will be conducted by internal affairs of each affected department (DPD or DSD).
- Internal affairs conducts interviews of uniformed personnel and civilian witnesses. Monitor may attend and suggest questions.

- Monitor may discuss investigation with internal affairs during the course of the investigation, including recommending additional investigation.
- If an investigation takes longer than stated time period, that is not the basis for an officer challenging jurisdiction, administrative action, or discipline.
- Findings: Sustained, Not Sustained, Unfounded, Exonerated
- Thirty-day time limit on administrative investigations. Extensions allowed by submitting request to chief or undersheriff. (some of these time limits were not clear, this being one of them)

Police Department Disciplinary Process

Step 1

- Review of case by Use of Force Review Board (UFRB) or officer's chain of command. Use of Force Review Board handles cases in which serious injury or death results from use of force, firearm discharges, in-custody deaths, or at the request of chief of police.
- UFRB made up of four division chiefs, the commander of the subject officer's unit, and two members of the citizens' pool.
- Citizens' pool members selected for two-year terms by Manager of Safety, executive director of Civil Service Commission, and a city council member. May serve on no more than three UFRB or Disciplinary Review Board panels in one year.
- UFRB reviews file, may call witnesses to testify, direct additional investigation. UFRB makes a recommendation to chief about whether any policies were violated and if so, level of discipline. They also make policy and training recommendations.
- Monitor may attend UFRB meetings, has access to files, but may not participate in deliberations. May suggest questions to be asked.
- For cases not covered by UFRB, two members of chain of command with ranks of lieutenant and above review the case and make recommendations about rules violations and discipline.

Step 2

- Disciplinary Review Board is a six-member board made up of one command officer (captain or higher) who is not in the subject officer's chain of command, one supervisor (sergeant or lieutenant) who is not in the subject officer's chain of command, one peer officer, and three citizens. The board reviews the file and hears from the involved officer and management as to the allegations of the case. Board makes recommendations to chief regarding discipline.
- Monitor may attend hearings, but may not ask questions or participate in presentations or deliberations. May be present when board recommendation is announced.

Step 3

- Chief reviews the case and recommendations. Prepares a "pre-disciplinary letter" with charges and facts of the case to send to involved officer.

Conducts a meeting with the officer to hear their side of the story. Chief makes disciplinary recommendation to Manager of Safety.

- Monitor may review letter before it is given to officer and discuss concerns before it is sent to officer.
- Monitor may attend meeting with chief and involved officer.

Step 4

- Manager of Safety reviews files and recommendations and decides if any rules were violated and level of discipline. If the officer disagrees with final determination they can appeal to the Civil Service Commission and then the courts.
- Monitor reviews chief's recommended findings and discipline before they are sent to Manager of Safety. Monitor informs Manager of Safety if they disagree with chief's recommendations and states reasons.
- Monitor may review Manager of Safety's final order of discipline.

There are similar processes for including Monitor in sheriff department's investigative and disciplinary processes.

There are set timelines by which these steps should be completed.

Miscellaneous

- Recent development from Citizen Oversight Board 2021 Annual Report, p. 10: Department of Safety will give Garrity Advisement to officers subject to supplemental investigation conducted by OIM. In the past, a lack of Garrity Advisement has been a barrier to OIM conducting supplemental investigations.
- No independent review of shootings and deaths in custody
- No Inspector General

OIM Website

<https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Office-of-the-Independent-Monitor>

Unanswered questions:

Standard of Review

Budget

Materials/information provided to complainant

Any required response or action on policy and training recommendations?

Specifics of training for Citizen Oversight Board members.