



New Oversight Model for BPD: Reform Recommendations

June 2020

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BACKGROUND

As evidenced by the work of the Buffalo Police Advisory Board (BPAB), many members of the Buffalo community are, at best, unsatisfied by the performance of the Buffalo Police Department (BPD).¹ Many citizens, however, believe that the BPD underserves, over-polices, and does not protect the best interests of all Buffalo residents, and, at worst, believe that there are white supremacists within the BPD ranks.² Buffalo residents believe that increased police oversight is needed to protect the interests of the Buffalo community as a whole.

Currently, police oversight in Buffalo is accomplished by a piecemeal amalgamation of unconnected entities. This report seeks to: (1) identify the various forms of police oversight already present in Buffalo, (2) identify which category of police oversight models Buffalo's current model fits, (3) assess the strengths and weaknesses of Buffalo's current model, and make suggestions for improving police oversight in Buffalo. The BPAB calls for adoption of model legislation proposed in this brief that will create new independent oversight in Buffalo.

THREE CATEGORIES OF POLICE OVERSIGHT MODELS

Although the authors recognized that there are many possible ways to categorize civilian police oversight, a 2016 National Association for Civilian Oversight of Law Enforcement report separated police oversight models into three general categories:³

1. *Investigation-focused Agencies* models
2. *Review-focused* models
3. *Auditor/Monitor* models

¹ Buffalo Police Advisory Board. Community Forum Report (2018).

² *Id.*

³ See Joseph De Angelis et al, *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models*, NACOLE (2016), https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE_short_doc_FINAL.pdf?1481727977. NACOLE suggests that most models of civilian oversight of police are unique and may or may not fit snugly into these categories. *Id.* at 6.

Investigation-focused Agency models often consist of organizations that conduct their own independent investigations of complaints against police departments.⁴ These organizations are often made-up of investigators that are not a part of the police chain of command, and their investigations may either supplement or completely supplant the IA process.⁵

Review-focused models often review the quality and outcomes of completed internal affairs (IA) investigations.⁶ These organizations are primarily comprised of civilian volunteers, and often make recommendations to police administration in relation to IA investigations.⁷ These organizations may also facilitate communications between the police and the communities they serve.⁸

Auditor/Monitor models look at the quality of investigations, as well as the ultimate outcome.⁹ Unlike review-focused models, however, auditor/monitor models include agencies that may actively participate in and monitor ongoing IA investigations.¹⁰ Organizations that fall under the auditor/monitor model tend to take the form of Inspector General offices.¹¹

BUFFALO'S CURRENT OVERSIGHT MODEL

Police oversight in Buffalo is primarily accomplished by (1) the Police Oversight Committee (POC), (2) the Police Advisory Board, and (3) the Commission on Citizen's Rights and Community Relations (CCRCR). Although they do not currently operate in a coordinated effort, these bodies together serve functions that are most similar to a *review-focused* model.

The POC is a sub-committee of the Buffalo Common Council that focuses on policing-related issues in the city. The POC hold semi-annual meetings where community members and stakeholders may engage directly with top-level police brass, as well as the councilmembers who control the department's budget.

The PAB is an independent advisory committee of volunteer Buffalo residents created by the Buffalo Common Council, under Resolution 18-423, to focus on policing and community-police relations in the City of Buffalo. The PAB consults with Buffalo residents and advocate on their behalf by making recommendations to the Council and Buffalo Police Department about how policing and community-police relationships can be improved.

The CCRCR webpage states that the office "strives to eliminate prejudice, intolerance, bigotry and discrimination . . . and to assure respect for the civil liberties of all citizens."¹² The CCRCR has been

⁴ NACOLE at 7; *Review of National Police Oversight Models*, Police Assessment Resource Center ("PARC") (2005), <https://www.portlandoregon.gov/ipr/article/652580>

⁵ NACOLE at 7; PARC at 8-9.

⁶ NACOLE at 9. PARC at 7-8.

⁷ NACOLE at 9. PARC at 7-8.

⁸ NACOLE at 9.

⁹ NACOLE at 12; PARC at 12-13.

¹⁰ NACOLE at 12; PARC at 12-13.

¹¹ NACOLE at 12; PARC at 12-13.

¹² <https://www.buffalony.gov/341/Commission-on-Citizens-Rights-Comm-Relat>

tasked with the responsibility of “assist[ing] citizens with filing and pursuing complaints of police misconduct”¹³ and has the power to:

Review, monitor, report on, and recommend to the appropriate city officials action concerning the police department's (i) initial and continuing training program in community relations and respect for citizens' rights; and (ii) standards and procedures for investigating, acting upon, and resolving complaints of police misconduct.¹⁴

Additionally, CCRCR has the power to review the file of any completed IA investigation.¹⁵

Taken together, the POC, PAB, and CCRCR have the ability to:

1. Approve the BPD budget, including funds for specific projects (ex. the body-worn camera program). (POC)
2. Subpoena the BPD to produce documents or testify. (POC)
3. Hear concerns and ideas from community members and present them to the appropriate police administrators and city representatives. (PAB)
4. Identify policy issues and provide POC, BPD, and the Buffalo community with research reports, presentations, and recommendations. (PAB)
5. Help individuals with submitting IA reports, and review completed IA investigations. (CCRCR)
6. Review and monitor police training related to community-police relations. (CCRCR)
7. Review standards for investigating and handling police misconduct. (CCRCR)

WHAT IS THE BEST POLICE OVERSIGHT MODEL?

Communities should focus on their specific and unique needs when considering best options for police oversight.¹⁶ There are many models utilized throughout the United States. Jurisdictions should take into account the specific needs of their communities, as well as the organizational and cultural characteristics of their police departments.¹⁷ The BPAB believes that a new body for police oversight is needed and current models need to be expanded upon as laid out in the proposal below.

In order to properly serve the interests of all Buffalo residents, the City needs to create a new body specifically dedicated to police oversight. Although the existing oversight bodies have crucial powers and responsibilities, improvement of these bodies alone will not be sufficient for adequate police oversight in Buffalo.

The now inactive City of Rochester Civilian Review Board (RCRB) had powers similar to the CCRCR, but the RCRB was far more active in its oversight activities. The RCRB required its panelist take a 40-hour course and become certified mediators, who were then tasked with reviewing completed IA

¹³ City of Buffalo Charter § C-18-22(d)

¹⁴ City of Buffalo Charter § C-18-22(e)

¹⁵ City of Buffalo Charter § C-18-22(e)

¹⁶ NACOLE at 14; See PARC at 14-15; Darrel W. Stephens et al, *Civilian Oversight of the Police in Major Cities*, U.S. Department of Justice Community Oriented Policing Services (“COPS”) (2018)

<https://cops.usdoj.gov/RIC/Publications/cops-w0861-pub.pdf>

¹⁷ NACOLE, at 15. PARC at 14-15.

investigations, and submitting any concerns to the investigation sergeant.¹⁸ The RCRB then compiled the data from these reviews and submits a statistical report to the Mayor of Rochester and the Rochester City Council.¹⁹ However, a report by CGR,²⁰ commissioned by the Rochester City Council, found that even Rochester's model, more robust than Buffalo's CCRCR, was dated and not as effective as it could be.²¹

The report by CGR found that Albany and Rochester's *review-focused* models lacked adequate authority and capacity, and that replacing them with an *auditor-monitor* model could increase community trust while maintaining key functionality.²² In particular, The City of Buffalo should look to Syracuse's Civilian Review Board (SCRB) and New York City's Civilian Review Board (NYCCRB). The SCRB and NYCCRB both hold the authority to conduct independent investigations of police misconduct by experienced investigators who are able to interview witnesses and officers and review evidence. Both have independent subpoena power as well.²³ Additionally, in 2015, CRG reported that Syracuse spent about 92 cents per resident (\$132,000 total) on police oversight, and New York City spent about \$1.49 per resident (\$12,758,025 total) on police oversight.²⁴ While it is hard to quantify how much Buffalo spent on police oversight in the same year,²⁵ it is likely that the number was substantially less, or almost zero.²⁶

BPAB PROPOSAL FOR COMMON COUNCIL ADOPTION

In order to increase independence, activity, and authority in police oversight in the City of Buffalo, the City should create a new body that has authority to audit/monitor as well as intercede and discipline officers in cases of alleged misconduct. Below is model legislation that we believe is best for the City of Buffalo:

An Amendment to the Charter of the City of Buffalo (Article[§18-80])

It is the mission of the Buffalo Police Advisory Board to conduct meetings with the community and Buffalo Police leadership, and research and propose policy, practices, and customs that conform to national standards of constitutional policing, as well as appoint members to the Commission on Community Police Oversight.

In furtherance of these goals, there is hereby created the Buffalo Police Advisory Board.

Initial membership of the Buffalo Police Advisory Board shall consist of:

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ A Rochester organization that specializes in conducting public policy research and creating reports.

²¹ Erika Rosenberg, *Police Oversight in Rochester: An Examination of Outcomes and Other Models*, CGR, 27-28 (2017) https://www.rochestercitynewspaper.com/media/pdf/cgr_-_rochester_civilian_review_board_review_2_.pdf

²² CGR at 30-32, 40.

²³ CGR at 32-36.

²⁴ CGR at 39.

²⁵ This is because there is not an oversight body in Buffalo with the sole function of police oversight.

²⁶ It is worth noting that the CGR report considers all of New York's major cities, besides Buffalo, which is the only major city in New York without a dedicated police oversight body substantially similar to bodies in other cities.

1. The membership of the Buffalo Police Advisory Board to the Common Council's Police Oversight committee, &
2. Membership thereafter shall be nominated by the outgoing Police Advisory Board members, undergo a background check by the city administration, and confirmed by the Buffalo Common Council.

Vacancies shall be filled in the same manner of the original appointment.

Members will hold term limits. Members who joined the original Advisory Board in 2017 will have up to three (3) more years to serve as of the enactment of this law. Members who joined the original Advisory Board in 2020 will have term limit start dates of January 2020. Following term expirations of original members, any new appointee shall serve a two (2) year term. No member of the Board shall serve more than six (6) consecutive years as a member of the Board.

Officers, Meetings, Rules and Procedures.

1. There shall be two (2) Co-chairpersons ("Co-chair") elected within the 11 Board members.
2. The Co-chairs shall preside over meetings of the Board and shall have the right to vote.
3. The board shall present, to the extent permissible by law, its findings at each Police Oversight Committee meeting held by the Common Council.
4. The board shall provide the mayor copies of its findings and meet with the mayor at least once a year.
5. The Board may make and alter rules for its conduct and procedure, providing they are consistent with state law and applicable provisions of the city charter.
6. The Board may approve a leave of absence, not to exceed three months, for a board member that is temporarily unable to fulfill the duties of a Board member.
7. Fifty percent plus one of the current membership, not including any Board member who is on leave of absence, shall constitute a quorum.
8. The Board's budget shall be comprised of no less than 1% of the sum of all city budget lines related to policing outside of the Board and the Commission.
9. The Board may secure the necessary facilities and personnel from its budget allotment.

The duties and powers of the commission shall be to:

1. Conduct public and private hearings at least once a year on Buffalo Police Department ("Department") policies, rules, practices, customs, and General Orders. The Board shall determine which Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing.
2. Take testimony under oath, and to issue subpoenas requiring the attendance of persons and the production of books, papers and other physical evidence.
3. Propose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, profiling based on any of the Constitutionally protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department.

4. All such proposed changes and modifications shall be submitted to the Common Council for approval or rejection. If the Common Council does not approve, modify and approve, or reject the Board's proposed changes or modifications within one hundred and twenty (120) days of the Board's vote on the proposed changes, the changes or modifications will become final.
5. Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department.
6. If the Board does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Board, the Department's proposed changes will become final. If the Board rejects the Department's proposed changes, notice of the Board's rejection, together with the Department's proposed changes, shall be submitted to the Common Council for review. If the Common Council does not approve or reject the Board's decision within one hundred and twenty (120) days of the Board's vote on the Department's proposed changes, the Board's decision will become final.
7. Review and comment, at its discretion, on all other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Buffalo police Commissioner who shall provide a written response to the Board upon request.
8. Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, customs, and General Orders. The Board shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the Common Council any recommendations for change. The Mayor should submit budget to Board at same time as submission to Common Council. And, the Board must be given the opportunity to express perspective on budget proposal by the final budget hearing.
9. Require the Chief of Police to submit an annual report to the Board regarding such matters as the Board shall require.
10. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Buffalo Police Commissioner's report in addition to such other matters as are relevant to the functions and duties of the Board. Once provided the Commissioner's report, the Board will be provided to the Mayor and Common Council, and must be made publicly available to the extent permissible by law.
11. Acting separately or jointly with the Mayor, remove the Buffalo Police Commissioner by a vote of not less than seven affirmative votes. If acting separately, the Board may remove the Buffalo Police Commissioner only after adopting a finding or findings of cause, which shall be defined by City ordinance. The Board must make its finding of just cause by no less than seven affirmative votes. Board findings will be provided to the Mayor and Common Council, and must be made publicly available to the extent permissible by law.
12. When there is a vacancy in the office of the Buffalo Police Commissioner, The Board, with the assistance of the City Administration, shall prepare and distribute a job announcement, and prepare a list of at least four candidates and transmit the names and relevant background materials to the Mayor. The Mayor shall appoint one person from this list, or reject the list in its entirety and request a new list from the Board. This provision shall not apply to any recruitment for the position of Chief of Police that is pending at the time of the Board's first meeting.
13. Perform such other functions and duties as may be prescribed by this Charter or by City ordinance.

An Amendment to the Charter of the City of Buffalo (Article 18 [§18-81])

It is the mission of the Commission on Community Police Oversight of the City of Buffalo to strive to investigate and discipline in instances of alleged police misconduct.

In furtherance of these goals, there is hereby created a commission to be designated the commission on community Police Oversight.

The commission shall consist of:

1. Five At-large commissioners to be elected by the residents of the city of Buffalo,
2. Five commissioners to be nominated by the Buffalo Police Advisory Board, undergo a background check, and confirmed by the common council and
3. A chair (11th member) to be appointed by the 10 other commissioners.

Elections for the At-Large commissioners shall be held at the general election in the year 2021 and each fourth year thereafter for a term of four years.

In cases where the Common Council declines a nominee to the Commission on Community Police Oversight, Council shall provide a written explanation for the nominee's rejection to the Buffalo Police Advisory Board.

Vacancies of an elected commissioner shall be filled by mayoral nomination and Common Council confirmation within two months from the date in which the vacancy began. The newly confirmed commissioner shall serve the remainder of the term.

Vacancies of all other commissioners shall be made in the same manner as the original appointees.

Each community member of the commission shall serve a four (4) year term. No member of the commission shall serve more than eight consecutive years as a member of the commission. Members of the commission on community police oversight shall be residents of the city, who do not hold elective or appointed office in government.

All Commission reports will be provided to the Mayor and Common Council, and must be made publicly available to the extent permissible by law.

Officers, Meetings, Rules and Procedures.

1. The commission officers shall be Chair and Vice-Chair
2. The Commission Chairperson shall preside over meetings of the commission and shall have the right to vote.

3. The vice-chair shall perform the duties of the chairperson in the temporary absence or disability of the chairperson.
4. The officers shall serve for terms of two (2) years.
5. The Commission shall submit at least once each year, and as requested by the mayor or common council, a report on its activities.
6. The commission shall meet at least six (6) times a year, with such additional meetings as it deems necessary to properly perform its duties.
7. The commission may make and alter rules for its conduct and procedure, providing they are consistent with state law and applicable provisions of the city charter.
8. The commission may approve a leave of absence, not to exceed three months, for a commissioner who is temporarily unable to fulfill the duties of a commissioner.
9. Fifty percent plus one of the current membership, not including any commissioner who is on leave of absence, shall constitute a quorum.
10. The Commission shall hire an attorney to represent its interest independent of corporate counsel.
11. The Commission's budget shall be comprised of no less than 1% of the sum of all city budget lines related to policing.
12. The commission may secure the necessary facilities and personnel from its budget allotment.

The duties and powers of the commission shall be to:

1. Hold public and private hearings, take testimony under oath, and issue subpoenas requiring the attendance of persons and the production of books, papers and other physical evidence.
2. Request the cooperation of other agencies of city government.
3. Beginning sixty (60) days after the establishment of the first group of Commissioners, the Commission shall receive, review, and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees.
4. The Commission shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies.
5. The Commission shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Buffalo Police Advisory Board.
6. The Commission shall forward a copy of each complaint received to the Internal Affairs Division of the Buffalo Police Department within one business day of receipt.
7. Subject to applicable law, the Commission shall have the same access to all Department files and records, with the exception of personnel records, in addition to all files and records of other City departments and agencies, as the Police Department's Internal Affairs Division (IAD). Access to personnel records shall be limited to the Commission chair who shall maintain confidentiality as required by law. The Police Department and other City departments and agencies shall make every reasonable effort to respond to the Commission's requests for files and records within ten (10) days.
8. The Commission shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Commission. Within thirty (30) days of completion of the investigation, the Commission Chair shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Commission and the

Buffalo Police Commissioner. No one shall not have the authority to reject or modify the Commission's findings and proposed discipline.

Commission Adjudication

9. To the extent allowed by law and after consultation with the Buffalo Police Advisory Board, the Agency shall forward information to other enforcement agencies, including but not limited to the Erie County District Attorney, when such information establishes a reasonable basis for believing that a crime may have been committed by a sworn Police Department employee.
10. If the Buffalo Police Commissioner agrees with the Commission's findings and proposed discipline, they shall send the subject officer notification of findings and intent to impose discipline. The Buffalo Police Commissioner may send such notification to the subject officer before Internal Affairs (IA) has begun or completed its investigation.
11. If the Buffalo Police Commissioner disagrees with the Commission's findings and/or proposed discipline, the Buffalo Police Commissioner shall prepare his or her own findings and/or proposed discipline which shall be submitted to a Discipline Committee comprised of three Buffalo Police Advisory Board Members. The Mayor shall not have authority to reject or modify the Buffalo Police Commissioner's findings and proposed discipline. The Commission's findings and proposed discipline shall also be submitted to the Discipline Committee which shall review both submissions and resolve any dispute between the Commission and the Buffalo Police Commissioner.
12. Based solely on the record presented by the Commission and the Buffalo Police Commissioner, the Discipline Committee shall submit its final decision regarding the appropriate findings and proposed discipline to the Chief of Police who shall notify the subject officer. The Mayor shall not have the authority to reject or modify the Discipline Committee's final decision regarding the appropriate findings and level of discipline. The Discipline Committee shall not have the authority to conduct its own investigation.
13. If the Buffalo Police Commissioner prepares their own findings and proposed discipline and provides it to the Commission before the Commission's investigation is initiated or completed, the Commission may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Buffalo Police Commissioner. If the Commission declines to proceed with an investigation that is otherwise required, the Buffalo Police Advisory Board must then approve the Commission's decision by a majority vote.
14. If the Commission chooses not to close its investigation, imposition of final discipline shall be delayed until the Commission's investigation is completed and the Commission makes its findings and recommendations for discipline.
15. The Commission shall notify the Buffalo Police Commissioner of its final decision regarding how it will proceed within five (5) business days of the Buffalo Police Commissioner's notice of completion of his or her investigation.
16. All employees are afforded their due process and statutory rights. After the findings and imposition of discipline have become final, the subject officer shall have the right to grieve/appeal the findings and imposition of discipline if such rights are prescribed in a collective bargaining agreement.

