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Strong and Independent Police Oversight: Recommendations for a CCRB in Newark

Newark communities have struggled with an absence of police accountability for decades. The findings of the United States Department of Justice following its three-year civil rights investigation into the Newark Police Department (NPD) confirmed “a lack of accountability for serious misconduct” and found that “it has been exceedingly rare for the NPD to sustain citizen complaints of misconduct.”¹ These conclusions came in the context of the Justice Department’s findings that the Newark Police Department has engaged in widespread civil rights and civil liberties violations.

While independent oversight boards have become standard public safety infrastructure in large cities across the United States, Newark, New Jersey’s largest city, remains without such a body. The public grants police officers tremendous power, including the power to use lethal force; as such, strong and independent accountability tools are an imperative.

Drawing from best practices from around the United States, the following policy paper describes key features of how a Civilian Review Board (CRB) in Newark should operate to ensure police accountability and transparency:

CIVILIAN REVIEW BOARD POWERS

Hearing Various Types of Complaints: Newark’s police oversight agency should be able to hear and investigate police misconduct complaints submitted by members of the public. The agency should be empowered to hear complaints involving:

- Force:** improper uses of force or use of excessive force;
- Abuse of Authority:** including improper stop-and-frisks, unlawful searches or seizures;
- Disrespect:** including cursing at someone or using foul language, or using discriminatory

¹ UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION & UNITED STATES ATTORNEY’S OFFICE DISTRICT OF NEW JERSEY, INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 35-36 (Jul. 22, 2014), *available at* <http://www.justice.gov/usao/nj/Press/files/pdf/2014/NPD%20Findings%20Report.pdf>.

slurs aimed at a person's actual or perceived race, gender, religion, ethnicity, national origin, sexual orientation, gender identity, disability, or housing status.

Independent Investigatory Authority: Newark's civilian review board must have the power to conduct thorough and independent investigations into Newarkers' allegations of police misconduct and abuse. These powers include the authority to subpoena witnesses and documents, including internal NPD policy and Office of Professional Standards (OPS) documents.

Independent Fact-finding: If the board sustains a complaint following a thorough, professional investigation in which the complainant, any witnesses, and officers in question are provided an opportunity to be heard, the NPD Director should be compelled to accept the facts that the board determined took place. Any discipline issued by the NPD Director should use the facts found by the CCRB as the basis for his or her decision, unless there was a clear error in the CCRB's process.

Discipline Guidance: If the oversight board determines discipline is appropriate, the NPD Director should administer discipline within a range of discipline options. Those options should be determined according to a predictive discipline matrix created by the CCRB together with the NPD, police unions, and other stakeholders, establishing reasonable guidelines for appropriate disciplinary actions that correspond with gradations of misconduct and an officer's disciplinary history.

Policy Auditing and Recommendations: The oversight board must not be limited to investigating individual allegations of misconduct. The board should also have the power to investigate NPD policy and practices broadly on areas of concern to Newarkers, including civil rights and public safety concerns. The board should be empowered to make formal recommendations of policy reform to the Mayor, Police Director, and/or the Newark Municipal Council, as well as publish reports for the public.

POLICE OVERSIGHT AGENCY STRUCTURE

Professional Staff: The CCRB's research and investigations should be conducted by professional, trained, and certified investigators and legal staff. Such individuals will be responsible for the day-to-day functioning of the agency, including community education about the complaint process, collecting civilian complaints, conducting thorough investigations, and, when appropriate, making disciplinary recommendations to the oversight board. The professional staff is charged with fulfilling the agency's mission and supporting the work of the oversight board.

Agency staff may include: an executive director, legal staff, policy analysts, investigators, community outreach workers, and support staff.

Oversight Board: The oversight board is composed of qualified individuals, trained according to national best practices for CCRB board members and appointed according to the proscribed process. The board will review the investigations and recommendations of the agency's professional staff, make determinations of sustainment, and create a negotiated disciplinary matrix that will guide the NPD Director's ultimate disciplinary decision.

Due Process Protections for Police Officers

Due Process and Right to Counsel: At all stages of the investigatory and, if applicable, disciplinary process, officers alleged to have committed misconduct should have the right to due process and to be represented by an attorney.

Right to a Hearing: Before any discipline is imposed, fairness requires that officers be able to contest the merits of a misconduct complaint through a hearing that responsibly provides an opportunity to present and challenge evidence, provide testimony, and offer defenses. Like all public employees, police officers are entitled to due process rights.

Appeal Rights: Should the oversight board sustain an allegation of misconduct and recommend discipline and the officer disagrees with the finding, the officer should have the right to appeal the decision or discipline through an arbitration process or administrative hearing, with full due process rights, via a procedure determined through a negotiated agreement.

Auditing: In order to ensure the integrity of the agency's investigations and the board's review process, the agency should hire an independent firm to conduct annual audits of the agency's work and publicly report on its findings.

BOARD COMPOSITION

Size: While the size of the board is up to the discretion of Newark policymakers, the board should be large enough to represent the diversity of the city and a diversity of expertise. As a recommendation, the Newark police oversight board should be made up of nine members.

Appointment of Board Members: A nine-member board should include representation from every ward in Newark. The Mayor should appoint members and the chairperson of the board in consultation with the Newark Municipal Council and consult on the appointment of certain members with outside organizations. Board appointees should live or work in the City of Newark.

Qualifications: Appointees to the board should be required to have certain professional expertise in a relevant field in order to be appointed. Appointees should have a legal, law enforcement, or a civil rights background. However, a majority of the board should not have a background as uniformed law enforcement. Further, no member of the board should be permitted to have been an employee of the Newark Police Department for seven years prior to his or her appointment to the board.

Terms: Members of the oversight board should serve three-year terms. However, for the first slate of board appointees, three appointees shall serve an initial term of one year, followed by appointment for a full three-year term; three appointees shall serve an initial term of two years, followed by an appointment for a full three-year term, and the final three appointees shall be appointed to an initial three-year term.

Remuneration: Members of the board should be provided a stipend for board function-related expenses, but should not receive a salary or wages for serving on the oversight board.

SECURE FUNDING

Structure: In order for the oversight board to remain truly independent, its funding must be sufficiently robust, independent, and secure. To insulate the oversight board from cuts to its funding due to politically unpopular decisions it may make, the board's budget should be tied to a percentage of the NPD's non-capital budget. If the NPD's operating budget increases, so in turn should the oversight board's. This percentage should be fixed in law.

Protected Budget: To provide adequate funding for the operation of the oversight board, the board should be allocated an annual budget of 0.8 percent of the NPD's non-capital budget, or approximately \$1.1 million according to the projected FY2014 NPD budget. This funding should cover operating expenses including staff (e.g., executive director, operations manager, CCRB attorneys, policy analyst, investigators, outreach staff, and support staff), outreach and public education tools and materials, office space and supplies, civilian complaint intake hours that include nighttime and weekend availability, website development, operations and maintenance, and staff and board training, among other costs.

PUBLIC ACCESS/REPORTING

Hours: Newarkers should be able to file complaints at times that make reporting possible for people who work or have other obligations, including evenings and weekends.

Accessibility: The board should be charged with proactively educating Newark communities about the powers of the board, as well as how, where, and when to file complaints. The board should maintain an easily accessible website, and permit the filing of complaints in person, or by email, telephone, fax, or on the web. Moreover, policies should ensure that the filing of complaints is accessible to all, regardless of race, ethnicity, religion, age, immigration status, sex, gender identity or expression, socioeconomic status, housing status, or disability.

Public Hearings: The board should hold monthly public meetings to report to the public on its activities, summaries of its findings, hear Newarkers' concerns, and ask public questions of NPD leadership.

Reporting: The board should publish quarterly reports on the number of complaints it receives, the types of complaints it receives, the basic facts of the complaints (confidentially), the disposition of those complaints, and any discipline issued. Further, the board should request or obtain from the NPD policing information in the public interest, including enforcement activity, to strengthen transparency and accountability.

Newark Communities for Accountable Policing (N-CAP) is a new movement in Newark to build a respectful, accountable, and transparent Newark Police Department. N-CAP Steering Committee members include: 1199SEIU Healthcare Workers East, American Civil Liberties Union of New Jersey, Garden State Equality, Ironbound Community Corporation, NAACP New Jersey State Conference, New Jersey Communities United, New Jersey Institute for Social Justice, Newark LGBTQ Community Center, Newark NAACP, People's Organization for Progress. Sign up for updates at www.newarkpolicereform.org.