

## **COMMUNITY OVERSIGHT TASK FORCE**

### **PUBLIC SESSION MINUTES**

November 2, 2017

Present at the meeting were Community Oversight Task Force (COTF) members Jeff Anderson, Daniel H. Levine, Denise Duval, Andrew Reinel, Marvin McKenstry, Ralph M. Hughes, Edward Jackson, and Danielle Kushner.

Also present were:

Jill Carter, Civilian Review Board  
Ray Kelly, No Boundaries Coalition  
Jill Muth, Civilian Review Board  
Jesmond Riggins, Civilian Review Board

#### **Summary of Motions Adopted**

- October 19 minutes adopted with minor revision
- Denise Duval authorized to draft an opinion piece on trial board transparency on behalf of the COTF

#### **I. Welcome**

The meeting was called to order at 5:06PM.

#### **II. Adoption of October 19, 2017 Minutes**

Jeff Anderson moved that the draft minutes from October 19 be adopted, with the inclusion of attendance lists that Ed Jackson had obtained from Baltimore City Community College. Denise Duval seconded, and the motion passed unanimously.

#### **III. Discussion with Members of the Civilian Review Board**

Marvin McKenstry expressed his appreciation for the meeting that he and Ed Jackson had had with members of the Civilian Review Board (CRB) prior to this meeting with the full COTF, and said that they would be critical partners in the process of making recommendations to reform civilian oversight of police in Baltimore.

Jill Carter, Director of the Office of Civil Rights and Wage Enforcement (within which the CRB operates), thanked Mr. McKenstry, and told the Task Force that the work of the Board was detailed and intense, and distributed to COTF members a binder of relevant documents, including copies of the CRB's governing statute, a preliminary report from the CRB with 15 reform recommendations, the Law Enforcement Officers' Bill of Rights (LEOBR), the police collective bargaining agreement, and responses to questions that had been sent to the CRB by COTF member Valencia Johnson. Dir. Carter said that the CRB was currently dramatically under-resourced and under-staffed and needed to partner with the COTF to ensure that the Board could be transformed into a true oversight agency – an undertaking that would require not only resources, but legislative/policy changes.

Jill Muth, from the CRB, followed up with a brief Powerpoint presentation laying out the basic structure and authorities of the CRB.

Jesmond Riggins of the CRB then reviewed the Board's report and reform recommendations. He began by noting the ways in which the LEOBR excludes civilian oversight from the police disciplinary process. The enabling statute for the CRB also, in his view, excludes too many types

of allegations against police from CRB review. Mr. Riggins also said that the statute created an inefficient process by creating concurrent jurisdiction between the CRB and the police Internal Affairs Division (IAD) – which also created investigative barriers, as sometimes individuals would become confused or hesitant when CRB investigators asked them to answer questions they had already answered to police. The CRB recommended that they be given original jurisdiction over complaints from non-police against officers, with IAD retaining jurisdiction over matters purely internal to the department. The current statute also does not provide for any independent resolution of a disagreement between an IAD and CRB investigation; whether the CRB investigation results are taken account of at all is at the discretion of the Baltimore Police Department (BPD). Mr. Riggins said that the BPD commissioner said that, in cases of disagreement, the BPD would discuss with the CRB, but that this was not accurate.

In response to comments from Mr. McKenstry and Andrew Reinel, Mr. Riggins noted that some cities, such as Chicago, already gave the civilian oversight agency original jurisdiction, but in Maryland it would be barred by LEOBR in its current form. Daniel Levine asked if the CRB would favor an approach like Seattle's, where in cases of disagreement the police department needed to make a public explanation of why it did not follow the recommendations of the civilian review. Dir. Carter replied that a public explanation was one of the recommendations in the report, but it was still too weak a constraint. Ralph Hughes noted that provisions for independent resolution in cases of disagreement had been in early versions of the bill that became the CRB statute, but were stripped – for instance, in one version, the federal Attorney General's office would have adjudicated some disputes between the CRB and IAD. Col. Jackson asked if the weakness of the CRB was unique to Baltimore, and Dir. Carter replied that no civilian oversight agency in the state had authority over the disciplinary process.

Mr. Riggins also pointed out that the statute limited the CRB's ability to accept complaints anonymously. Mr. McKenstry and Ray Kelly noted that revision of both the enabling statute for the CRB and LEOBR might be necessary. This sparked a discussion of which allies would be needed for such a change, including Baltimore's state legislative delegation, friendly legislators outside the city (for example, in Montgomery County, and members of the Black Caucus), the Baltimore City Council (particularly members that showed a special interest in policing issues, such as Councilman Brandon Scott), the Mayor, and grassroots organizations both in Baltimore and the rest of the state. Denise Duval pointed out, in particular, that an alliance for change would be strongest if all actors could agree on a single set of legislative/policy changes to support. Mr. Riggins argued that part of building such broad support should be framing the changes not as weakening LEOBR or the police, but strengthening the integrity and legitimacy of the police as an institution by including a community component. There was some discussion of whether the first legislative priority should be the CRB statute or LEOBR. On the one hand, some argued that it made sense to focus on strengthening the CRB first, given the likely strong resistance to amending LEOBR, especially since LEOBR changes would have an impact statewide; on the other hand, others argued that any changes to the CRB would be irrelevant without giving it a formal role in the police disciplinary process – since that would still mean that the BPD could ignore CRB findings at its discretion – which would require LEOBR amendment.

Dir. Carter pointed out that other jurisdictions in Maryland were looking to Baltimore as a model for how to do and reform civilian oversight, including sending representatives to observe CRB meetings, and that the consent decree gave weight to attempts to reform policy and legislation.

Mr. Riggins further noted that the CRB statute gives the Board only “reactive” power – it cannot investigate potential instances of misconduct unless a complaint has been filed. Dr. Levine asked if the CRB should, in the opinion of the members present, have a role in analyzing broader statistics and trends, as well as individual incidents. Dir. Carter replied that the CRB did track and report on statistics, and discuss trends of concern with command staff. Mr. Riggins pointed out that being given original jurisdiction would allow them to more easily look at broader issues, since the Board would have a larger amount of data to work with. Ms. Duval suggested that the

CRB should have a role in oversight not just misconduct, but all aspects of community relations, including training of officers on how to interact with the community.

Mr. Riggins argued that the CRB should be granted the ability to compel testimony from police officers, members of government agencies, and anyone else they believed relevant to an investigation. He noted that the BPD currently had discretion over which information to share, and did not always share everything the CRB considered relevant. Mr. Reinel asked if it was not the case that IAD was required to share all complaints with the CRB. Dir. Carter said that, at least recently, the BPD had been complying with that obligation, but that under the current system, IAD had discretion over what category of alleged misconduct complaints were classified as – and in some cases, would classify cases in such a way that they were not required to hand them over to the CRB (because outside the class of complaints handled by the CRB). Mr. Riggins pointed out that original jurisdiction would render questions of how to adjudicate the proper classification of a complaint irrelevant. Col. Jackson concurred that it was important to be clear about the precise way in which alleged misconduct was categorized. In response, Jeff Anderson pointed out that, in many other jurisdictions, it was the CRB that decided which alleged offenses should be categorized in such a way that the police had jurisdiction, rather than the other way around.

Mr. Riggins recommended that the BPD be required to reply in a timely fashion to CRB correspondence. Dir. Carter pointed out that this had caused practical problems, such as when the CRB would not get a response to a letter confirming an agreement with the BPD, and only find out later that this was not simply a failure to respond but represented the city legal department objecting to the agreement.

Mr. Riggins further recommended that the BPD be required to notify the CRB of final disciplinary action against officers. This is currently barred by the collective bargaining agreement between the City and the BPD. Col. Jackson pointed out that negotiations over the agreement seemed to be deadlocked, though this left the old agreement in place. Mr. Kelly noted that personnel information, such as disciplinary records, was also private information – exempt, for example, from requests under the Maryland Public Information Act. Dr. Anderson noted that some of these questions implicated general labor law, which was outside the scope of the current discussion. Dir. Carter expressed confidence that enough information could be shared publicly to show resolution for the complaint, without violating individual police employees' right to privacy.

Mr. Riggins pointed out that current processes allowed complaints – even some that were sustained by IAD – to be expunged from an officer's record. Among other things, this prevented them from being taken account of in future disciplinary decisions by the CRB. Col. Jackson pointed out that the current rules were intended to protect officers who might have a complaint sustained against them, but not be convicted by a police trial board (which was held to a higher standard of evidence) – similar to the way in which an individual might be arrested and indicted on the basis of some evidence, but not convicted at trial. Others acknowledged this role, but Dir. Carter noted that complaints could be expunged not only when a board tried but did not convict an officer, but also when the complaint was not sent to the trial board – which could be done for “administrative reasons” that the BPD was not required to publicly explain.

Mr. Riggins recommended that the CRB be given, by statute, an operating budget tied to the BPD budget, of not less than 2.5% of the police budget, to ensure adequate staffing. Mr. Riggins pointed out that, under the current statute, the CRB was not even guaranteed its own staff, and any staff it had were technically seconded from other City agencies and could be removed from service at the City's discretion. Dir. Carter pointed out that, in particular, the same legal counsel that advised the CRB also represented officers under investigation.

Danielle Kushner asked for clarification of the relationship between the City and the BPD.

Several participants replied at once that the BPD was technically a state agency, with the Mayor only given the power to appoint the Commissioner. Col. Jackson informed the meeting that this unusual arrangement dated back to the Civil War, when the BPD remained loyal to the Confederacy and so was brought under state control. Ms. Duval asked if there were any attempts to bring the BPD under “home rule.” Mr. Kelly noted that, in the last legislative session, a home rule bill had been presented by Delegate Curt Anderson, but ultimately withdrawn over concerns regarding City liability for lawsuits against the police.

Mr. Riggins noted that one difficulty for the CRB was maintaining quorum, in part because the requirement that members live in the police district they represented made it more complicated to recruit members. Mr. McKenstry suggested that the requirement be broadened to allow a CRB member to live, work, or attend church (or other spiritual services) in the district. Dr. Anderson pointed out that some other cities had civilian, but professional, boards – rather than being made up of volunteers (even if supported by a staff). There was some cross-talk regarding the trade-offs between volunteer and professionalized boards: a professional board would be more knowledgeable (undercutting some arguments against oversight, among other things), but might make the board less representative of the citizens of the city. Mr. Reinel suggested that a larger budget might permit more aggressive outreach to find qualified members.

#### **IV. Community Oversight Task Force Position on Access to Trial Board for Caesar Goodson**

Ms. Duval reported that she had attended part of the trial board for Officer Caesar Goodson, one of the officers implicated in the death of Freddie Gray. She was concerned that, despite the trial being ostensibly open to the public, the public had been excluded from the trial board’s examination of the police wagon in which Mr. Gray had been transported and sustained fatal injuries. Objections had been dismissed very quickly, in her view, on the grounds that the wagon was in an area of the police station closed to the public. Ms. Duval proposed that she draft an opinion piece on behalf of the COTF emphasizing the importance of public transparency for trial board proceedings, to be circulated to COTF members for comment before being submitted for publication. Col. Jackson moved that Ms. Duval be authorized to draft such a piece. The motion was seconded by Dr. Levine and passed unanimously.

#### **V. Future Coordination with the CRB**

Dir. Carter said that further COTF/CRB working sessions would be necessary. Mr. McKenstry concurred, but said that it would likely be easier for most work to happen at the sub-committee level, and that sub-committee chairs should reach out to the CRB to coordinate.

#### **VI. Future Meeting Times**

Mr. McKenstry noted that a change to the Thursday meeting schedule might be necessary in the future to accommodate members’ outside commitments, but the issue was tabled until the next meeting.

*The meeting was adjourned at 7:00PM*