



# FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

## STATEMENT OF PRINCIPLES

## Promoting Independent Police Accountability Mechanisms

### Key Principles for Civilian Oversight of Law Enforcement

*Fair and Just Prosecution (FJP) brings together recently elected District Attorneys<sup>1</sup> as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP provides District Attorneys with best practices about a variety of critical and timely topics. For each topic, FJP has additional "Issues at a Glance" briefs available on the FJP website, as well as supporting materials, including model policies and guidelines, key academic papers, and other research. For further guidance on police accountability and systemic policing reform, please also consult FJP's [Blueprint for Police Reform and Accountability](#) as well as FJP's [Issues at a Glance: Promoting Independent Police Accountability Mechanisms](#). If your office wants to learn more about this topic, we encourage you to contact us.\**

### SUMMARY

Civilian oversight of law enforcement serves a vital purpose.<sup>2</sup> Fundamentally, civilian oversight should work to ensure that communities who most frequently have encounters with law

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<sup>1</sup> The terms "District Attorney," "DA," or "elected prosecutor" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

<sup>2</sup> Civilian oversight of law enforcement can be defined most broadly as "individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions" in the local governmental context. See The National Association for Civilian Oversight of Law Enforcement (2015), *Written Testimony for the President's Task Force on 21st Century Policing*, 2, <https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/115/attachments/original/1458135958/NACOLE-Written-Testimony-for-the-Presidents-Task-Force-on-21st-Century-Policing-Final1.pdf?1458135958>. Note that a variety of different terms are used to characterize or describe civilian oversight, including "citizen oversight," "police oversight," and "civilian review boards." In this brief, we use "civilian oversight" to describe three divergent models of civilian oversight mechanisms (defined in *Models of Oversight*), as well as hybrids of these models. Other vital forms of community oversight, such as advocacy, protesting, cop-watch efforts, or crowd-sourcing police data are important vehicles for accountability, but beyond the scope of this Statement of Principles.

**"A police officer's word, and the complete veracity of that word, is fundamentally necessary to doing the job. Therefore, any break in trust must be approached with deep concern."**

— CITY OF ST. LOUIS (MO) CIRCUIT ATTORNEY KIMBERLY GARDNER

enforcement have the power to shape what those encounters look like. Civilian oversight can help ensure that police services are provided in a manner that is consistent with the values of the communities where those services are delivered. It can also help promote police accountability, enhance public safety, and deter police misconduct. As President Obama’s Task Force on 21st Century Policing concluded in 2015, “civilian oversight of law enforcement is important in order to strengthen trust with the community.”<sup>3</sup>

**This Statement of Principles outlines key principles integral to creating effective and meaningful civilian oversight that furthers these important objectives across various models of civilian review. It provides a framework guiding what elected DAs and other stakeholders should seek to establish, promote, and implement in their communities.**

## **PROMOTING POLICE ACCOUNTABILITY, PUBLIC SAFETY, AND COMMUNITY TRUST**

Racial disparities infect nearly every aspect of the criminal legal system, creating a profound crisis of legitimacy and public mistrust. Police kill nearly one thousand Americans per year, and Black Americans are killed by police at nearly twice the rate of white Americans.<sup>4</sup> In the wake of high-profile police shootings, scandals, or other complaints of police misconduct, many communities have turned to civilian oversight mechanisms as one avenue to enhance police accountability and identify where reforms are needed. Indeed, “[t]he public expects, and experience has shown, that strong, independent oversight builds legitimacy and public trust, through increased police transparency and accountability to the public served.”<sup>5</sup> As such, civilian oversight is one of many reforms necessary to improve accountability and combat systemic racism in policing.<sup>6</sup>

Elected DAs, selected by voters to promote public safety for all members of the community, have a key role to play in promoting best practices in policing.<sup>7</sup> A prosecutor’s role in protecting communities from harm includes addressing harm caused by police. To that end, DAs should, in addition to prosecuting police misconduct, proactively support the establishment of processes, including civilian oversight, that promote law enforcement accountability to the communities they are charged with protecting.

Moreover, prosecutors rely on public trust to promote public safety. Distrust of law enforcement among communities disproportionately impacted by the criminal legal system, exacerbated by a

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<sup>3</sup> Community Oriented Policing Services (2015), *Final Report of the President’s Task Force on 21st Century Policing*, 26, [elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf](https://www.elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf).

<sup>4</sup> The Washington Post (2021), *990 people have been shot and killed by police in the past year*, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

<sup>5</sup> The National Association for Civilian Oversight of Law Enforcement (2015), *Written Testimony for the President’s Task Force on 21st Century Policing*, 1, <https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/115/attachments/original/1458135958/NACOLE-Written-Testimony-for-the-Presidents-Task-Force-on-21st-Century-Policing-Final1.pdf?1458135958>.

<sup>6</sup> Fair and Just Prosecution (2020), *Blueprint for Police Accountability and Reform: A New Vision for Policing and the Justice System*, <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

<sup>7</sup> There are a variety of avenues through which to pursue police accountability, ranging from criminal prosecution, to civil sanctions, to administrative remedies, to systemic reform. It is beyond the scope of this Statement of Principles to comprehensively analyze the array of options for police accountability mechanisms. Indeed, it is, in part, the project of individual civilian oversight entities to determine what such accountability entails in their respective communities. For more recommendations around improving police accountability, see Fair and Just Prosecution (2020), *Blueprint for Police Accountability and Reform*, <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

lack of meaningful police accountability, chills access to justice and deters cooperation with law enforcement investigations – leaving vulnerable community members unprotected.<sup>8</sup> Conversely, trust in law enforcement can increase the likelihood that community members will turn to law enforcement after a crime has occurred and participate in the ensuing investigation.<sup>9</sup>

As one important step towards building public confidence in law enforcement, DAs should advocate for empowered systems of civilian oversight to complement their own role in holding law enforcement accountable for misconduct. Civilian oversight of law enforcement can foster accountability, diagnose problems within police departments, give the public an avenue for engagement, improve governmental transparency, and strengthen relationships between law enforcement and the communities they serve.<sup>10</sup> Ultimately, these mechanisms serve a dual public safety purpose: working to hold police officers who commit misconduct accountable and identifying and changing organizational policies that precipitate such misconduct; and facilitating enhanced cooperation between law enforcement and the communities they are tasked with protecting.

## MODELS OF OVERSIGHT

There are three main models of civilian oversight of law enforcement: investigation-focused; review-focused; and auditor/monitor-focused.<sup>11</sup> Each of these models of oversight has its respective advantages and disadvantages; and some entities may be hybrids of these models and

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<sup>8</sup> See, e.g., Tyler, T., and Wakslak, C. (2004), *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and the Acceptance of Police Authority*, 42 *Criminology* 253, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2004.tb00520.x>; Xie, M. and Baumer, E. (2019), *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 *Criminology* 237, <https://perma.cc/QS5R-K867>; Theodore, N. (2013), *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, <https://perma.cc/XEE8-P42V>; Fontaine, J., Leitson, D., Jannetta, J., and Paddock, E. (2017), *Mistrust and Ambivalence between Residents and the Police: Evidence from Four Chicago Neighborhoods*, The Urban Institute, 15-16, <https://www.urban.org/research/publication/mistrust-and-ambivalence-between-residents-and-police>.

<sup>9</sup> See, e.g., Tyler, T., and Fagan, J. (2008), *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, *Ohio State Journal of Criminal Law*, 263, [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4027&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4027&context=fss_papers) (finding that “people are more willing to cooperate with the police when they view the police as legitimate social authorities” and that “[i]f people view the police as more legitimate, they are more likely to report crimes in their neighborhood”); Murphy, K., Hinds, L., and Fleming, J. (2008), *Encouraging public cooperation and support for police*, *Policing and Society*, 18, <https://www.tandfonline.com/doi/abs/10.1080/10439460802008660>; O’Brien, T. C., and Tyler, T. R. (2019), *Rebuilding trust between police & communities through procedural justice & reconciliation*, *Behavioral Science & Policy*, 5(1), 42, <https://behavioralpolicy.org/wp-content/uploads/2020/01/Rebuilding-trust-between-police-communities-through-procedural-justice-reconciliation.pdf> (finding that “individual experiences and community-level judgments about police... in the neighborhood were associated with... willingness to cooperate”).

<sup>10</sup> The National Association for Civilian Oversight of Law Enforcement (2015), *Written Testimony for the President’s Task Force on 21st Century Policing*, 1-2, <https://d3n8a8pro7vnm.cloudfront.net/nacole/pages/115/attachments/original/1458135958/NACOLE-Written-Testimony-for-the-Presidents-Task-Force-on-21st-Century-Policing-Final1.pdf?1458135958>.

<sup>11</sup> Also sometimes known as Civilian Review Boards, Citizen Review, and External Review, among other titles.

**“As community leaders and law enforcement, we believe in accountability. We also believe that safety and fairness are not in conflict, but mutually reinforcing.”**

— KINGS COUNTY (NY) DISTRICT ATTORNEY ERIC GONZALEZ

contain elements of each.<sup>12</sup>

Investigation-focused models (often referred to as civilian review boards or CRBs) operate separately from the law enforcement agency itself, are staffed by civilians, and are vested with the authority to investigate civilian-initiated allegations of police misconduct; review-focused models provide for independent review of internal affairs investigations completed by the law enforcement agency; and auditor/monitor-focused models provide for the investigation of systemic patterns and practices within law enforcement departments and/or the monitoring or review of individual investigations.<sup>13</sup>

## GOALS AND CHALLENGES OF CIVILIAN OVERSIGHT

Irrespective of the specific model of civilian oversight a jurisdiction may opt to implement, certain core principles are important to bear in mind and seek to advance. The key principles set forth in the next section are predicated upon the fundamental goals and values set forth below, and also seek to address the many challenges these bodies face.

Elected prosecutors seeking to promote civilian oversight should bear in mind the following starting points:

- **Prosecutors** are responsible for promoting the public safety of the communities to whom they are democratically accountable;
- **Community trust** in the justice system is vital to the operation of that system and integral to promoting public safety, and unaddressed police misconduct erodes community trust;
- Police misconduct **harms communities** – disproportionately Black and brown communities – that law enforcement is tasked with protecting;
- Policing tactics and practices that comply with legal requirements may still fail to comport with the **values of impacted communities**; and
- **Transparent, thorough, and fair investigations**; accountability for substantiated misconduct; accessible complaint processes; and **meaningful civilian oversight** of police conduct and practices can build community trust.

To be sure, civilian oversight is not a panacea for police misconduct and such entities face significant obstacles to achieving their objectives in practice. Most fundamentally, civilian oversight entities often lack disciplinary or enforcement power, blunting their ability to hold officers accountable for misconduct or to require systemic reform. Moreover, among other challenges, police unions can hamper effective community-driven civilian oversight by declining to cooperate with investigations or pursuing legal action to reduce the scope and authority of such oversight entities. When these entities do not have sufficient funding and robust safeguards established by law to mitigate resistance and preserve their authority, they are at risk of being rendered impotent to provide meaningful oversight.

Additionally, there is a notable lack of quantitative research into the effectiveness of civilian

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<sup>12</sup> A detailed discussion of the structure, benefits, and limitations of these models is beyond the scope of this Statement of Principles. The sources outlined in the *Resource List* on page 11 provide valuable and detailed information for those interested in learning more about the elements of these different oversight models.

<sup>13</sup> Angelis, J.D., Rosenthal, R., and Buchner, B. (2016), *Civilian Oversight of Law Enforcement: Assessing the Evidence*, OJP Diagnostic Center and the National Association for Civilian Oversight of Law Enforcement, 7, [https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE\\_AssessingtheEvidence\\_Final.pdf?1481727974](https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/161/attachments/original/1481727974/NACOLE_AssessingtheEvidence_Final.pdf?1481727974).

oversight models or other methods for investigating and addressing police misconduct.<sup>14</sup> This dearth of research renders it difficult to assess the impact of civilian oversight entities in practice. Furthermore, the highly localized nature of civilian oversight entities poses barriers to conducting generalizable efficacy research.<sup>15</sup> More research is needed to establish a decisive set of best practices and processes for civilian oversight entities.<sup>16</sup>

However, some principles and best practices necessary for meaningful oversight are apparent based on the experience of previously established oversight mechanisms, even absent an extensive research base, and can provide a helpful guide for DAs and others seeking to advance meaningful police accountability in their communities. As a starting point, civilian oversight entities must have safeguards built into their structure to avoid being undermined by law enforcement resistance and pushback, as laid out in more detail in the *Key Principles* section below.

Jurisdictions should empower oversight entities both to review complaints of *individual officers'* alleged misconduct and to conduct investigations of law enforcement policies that may precipitate and enable misconduct. Additionally, more research and consideration is needed into effective methods for countering resistance to the establishment of civilian oversight entities.

Civilian oversight cannot, in a vacuum, build community trust. To combat the systemic issues that precipitate misconduct and, correspondingly, begin to improve community trust in law

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<sup>14</sup> See, Walker, S. (2007), *Police Accountability: Current Issues and Research Needs*, Paper presented at the National Institute of Justice Policing Research Workshop, 20, <https://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf> ("There are no studies evaluating the effectiveness of external citizen oversight agencies. As is the case with internal misconduct investigations...there are no studies attempting to assess whether a particular organizational structure or procedure is more effective than another. Nor are there any studies attempting to assess whether the investigation of officer misconduct by external oversight agencies is more effective investigation by internal units."). See also Angelis, *supra* note 13, at 12 ("This dearth of information is made more pronounced by the "lack of standardization in reporting and measurement between agencies [which] makes it difficult to compare across jurisdictions.").

<sup>15</sup> Civilian oversight entities' differences in language and lexicon render it difficult to accurately compare their complaints, adjudication rates, and findings relative to other jurisdictions' oversight entities. Some divergences are due to terms as defined in state law; however, where possible, it is important to adopt oversight concepts that mirror those established in other jurisdictions, to allow for effective comparison, analysis, and further study.

<sup>16</sup> Scholars have conducted research into certain discrete characteristics of oversight mechanisms. This body of research includes research into the impact of consent decrees, the impact of lawsuits on police reform, and the impact of oversight on officer morale, among other research. However, these studies do not fill the gap discussed by Walker, *supra* note 14, regarding the "effectiveness of external citizen oversight agencies" and the relative effectiveness of divergent oversight models; as such, more research is still needed on the effectiveness of civilian oversight entities to establish a decisive set of best practices and processes for such entities. See, e.g., Green, R.D., and Aldebron, J. (2019), *In Search of Police Accountability: Civilian Review Boards and Department of Justice Intervention*, Phylon, 130, <https://www.jstor.org/stable/26743833>; Goh, S.L. (2020), *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?*, Justice Quarterly, 915-916, <https://www.tandfonline.com/doi/abs/10.1080/07418825.2020.1733637?journalCode=rjqy20>; Jiao, A.Y. (2021), *Federal consent decrees: a review of policies, processes, and outcomes*, Police Practice and Research, 800, <https://doi.org/10.1080/15614263.2020.1722664> ("auditing was clearly the most effective way to measure police performance and accountability. The audit process established accountability by addressing the audit reports directly to those in charge of particular areas of police operations."); White, M., Fradella, H., Morrow, W., and Mellom, D. (2016), *Federal Civil Litigation as an Instrument of Police Reform: A Natural Experiment Exploring the Effects of the Floyd Ruling on Stop-and-Frisk Activities in New York City*, Ohio State Journal of Criminal Law, <https://core.ac.uk/download/pdf/159563628.pdf>.

**"Trust is fundamental in order for the criminal justice system to work."**

— BALTIMORE CITY (MD) STATE'S ATTORNEY MARILYN MOSBY

enforcement, civilian oversight entities must be part of a larger web of accountability, work in tandem with other oversight structures, and be paired with broader systemic policy reforms that bring a new vision to the footprint and reach of policing and the criminal legal system.<sup>17</sup>

## KEY GUIDING PRINCIPLES AND RECOMMENDATIONS FOR CIVILIAN OVERSIGHT

The principles set forth below provide recommendations for jurisdictions and leaders considering adopting civilian oversight of law enforcement. These recommendations are geared towards establishing and maintaining empowered and effective community-driven oversight mechanisms.

1. **Independence and Credibility** – To avoid conflicts of interest and ensure credibility and impartiality, civilian oversight entities should retain independence from law enforcement agencies and/or the chain of command they oversee.<sup>18</sup> The structure and membership of these bodies are integral to their independence. Civilian oversight entities should not be part of law enforcement agencies, nor report to them, and members of civilian oversight bodies should not be current (and perhaps not even former) members of the police department they oversee.<sup>19</sup> Moreover, the membership of civilian review boards (CRBs) should include civilians, a majority of whom are not selected by – or beholden to – any local or state politician.<sup>20</sup> These safeguards can help insulate the oversight entity from undue political influence. For example, in Detroit, the Police Commission has 11 members; of these 11 members, seven are directly elected by the community. Atlanta provides another model: there, the Citizen Review Board has 11 members; four are appointed by community organizations. Finally, to promote independence and stability, members of the oversight body should be appointed for a set term and, absent cause, not be subject to removal by the appointing authorities.
2. **Expansive Jurisdiction and Scope** – Civilian oversight entities should have jurisdiction to investigate a broad array of cases and should not be limited in scope to a narrow set

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<sup>17</sup> This vision of shrinking the criminal legal system’s footprint should include shifting resources away from policing and instead investing in communities, reimagining the role of police and prosecutors, and implementing changes in federal and state laws to hold law enforcement accountable. For additional reforms that elected officials, chief prosecutors, law enforcement heads, and other leaders should embrace to address police misconduct and racial injustice, see Fair and Just Prosecution (2020), *Blueprint for Police Accountability and Reform*, <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

<sup>18</sup> To be sure, in other contexts, oversight entities exist within agencies they oversee – such as Inspectors General both within and outside of the policing context. While these are also often valuable oversight mechanisms, this Statement of Principles is focused on *civilian* oversight entities.

<sup>19</sup> See Angelis, *supra* note 13, at 36, (“A consensus exists in the literature relating to the crucial nature of independence for the implementation of successful oversight of law enforcement (Prenzler and Ronken 2001; Walker 2001; Walker 2003; Olson and Attard 2013; (Savage 2016). The extent to which oversight is independent of police, political actors and other special interests has been argued to be strongly related to effectiveness of oversight.”).

<sup>20</sup> Some localities may find it valuable to have state and local politicians involved in the establishment and/or selection process. This recommendation would not preclude any involvement by local elected leaders in the process; rather, this recommendation simply seeks to insulate and protect the oversight entities from *undue* political involvement.

***“We should not try to protect [police officers] in a way that we would not do any other person that came before us. ... That’s what fairness and justice is about.”***

— PORTSMOUTH (VA) COMMONWEALTH’S ATTORNEY STEPHANIE MORALES

of allegations of police misconduct or internal affairs investigations (e.g., limited to only examining officer-involved shootings or in-custody deaths). Instead, they should have broad authority to investigate alleged misconduct, review internal affairs investigations, and/or examine concerning *patterns and practices* by law enforcement across varying levels of severity. Concerning patterns over time can be as indicative of deeper problems as a single serious high-profile incident. Indeed, “[w]hile a wrongful stop-and-frisk is nowhere as egregious as a police shooting, the fact is that the former offense is committed with much more frequency...and with fewer people paying attention.”<sup>21</sup>

3. **Authority to Mandate Accountability and Effectuate Reforms** – Civilian oversight entities should be empowered to determine whether an allegation of misconduct or pattern of misconduct is substantiated (or for review models, whether an internal investigation was deficient). Upon substantiation of misconduct, the oversight entity should have the authority to require the law enforcement department to discipline the officer, remedy a deficient investigation, or address systemic practices that facilitated and enabled the misconduct.<sup>22</sup> One potential model is for the oversight entity’s recommended adjudication and discipline to create a binding floor that police leadership can go above, but not below, in deciding the ultimate sanctions and consequences. Civilian oversight entities should also have the power to investigate and, in most cases, issue *public reports* with enforceable recommendations.

These prerequisites are particularly critical for investigation-focused models, as they focus on individual-level allegations of misconduct. In most jurisdictions, while CRBs have the authority to provide recommendations based on fact-finding in the course of the investigation of alleged misconduct, the police commissioner or chief is empowered to decline to follow the CRB’s recommendation. This blunts the impact of the CRB, thereby undermining the oversight body’s credibility, as well as its ability to hold officers accountable and precipitate change.<sup>23</sup>

Research on the New York City’s Civilian Complaint Review Board (CCRB), for example, demonstrates the shortcomings of models of civilian review that endow police leadership with the authority to decline to discipline an officer following a substantiated allegation of misconduct. A 2012 study found that the New York Police Department followed the recommendations of the CCRB in only 25 substantiated complaints out of 258.<sup>24</sup>

While relatively rare, several jurisdictions have adopted CRB models that include some kind of disciplinary authority, including Chicago, Washington, D.C., Detroit, Milwaukee, San

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<sup>21</sup> Ofer, U. (2016), *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, Seton Hall Law Review, 1045-1046, <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>.

<sup>22</sup> One such model would provide for the police department to determine discipline following a substantiated finding of misconduct according to a predetermined set or “matrix” of disciplinary actions for given misconduct. State law enforcement agencies, including the Washington State Patrol and the Tucson Police Department, have adopted discipline matrices. See Stephens, D.W. (2011), *Police Discipline: A Case for Change*, Harvard Kennedy School and National Institute of Justice, <https://biblioteca.cejamericas.org/bitstream/handle/2015/3027/234052.pdf?sequence=1&isAllowed=y>, 10-12; Ofer, *supra* note 21, at 1047-1048.

<sup>23</sup> To be sure, oversight entities can serve important functions without binding disciplinary authority, including conducting systemic investigations, making policy recommendations, improving transparency of the law enforcement agency, and precipitating public engagement with law enforcement. However, in the context of police oversight, public trust can be tied to perceived effectiveness (or lack thereof) of the oversight entity at fulfilling its designated function of holding law enforcement accountable for misconduct.

<sup>24</sup> Horan, K. and Veltman, N. (2014), *Police Officers Rarely Disciplined by NYPD for Misconduct*, WNYC, <https://www.wnyc.org/story/nypds-poor-track-record-meting-out-discipline-officer-misconduct/>.

Francisco, and Newark.<sup>25</sup> More research is needed into the impact of such provisions on police discipline – and whether such provisions can provide a model for moving towards fully binding recommendations.<sup>26</sup>

This problem is not exclusively one of investigation-focused models, however. One study found that only 18 percent of auditor/monitor-focused models and 34 percent of review-focused models reported that police stakeholders “very frequently” or “frequently” implement their recommendations – underscoring the importance of binding or presumptively binding recommendations across divergent models of oversight.<sup>27</sup>

4. **Investigating and Addressing Systemic Problems** – Civilian oversight entities should be empowered to conduct investigations into systemic patterns, policies, and practices of law enforcement agencies and departments. This power is important across divergent oversight models and can enable investigations by entities with differing authority into the critical drivers of misconduct. For example, if a CRB identifies complaint patterns, there should be a civilian oversight entity (whether the CRB or a separate one) that is empowered to review underlying policies and practices that may precipitate and enable such misconduct by multiple individual officers.

Auditor/monitor models are often charged with investigating police department patterns and practices in this manner. In 2013, New York City, for instance, established the Office of the Inspector General for the New York City Police Department (OIG-NYPD). This office, which is independent of the NYPD, has the authority to “investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices of NYPD.”<sup>28</sup> The OIG-NYPD publicly releases annual reports and assessments.<sup>29</sup>

CRBs should also have the authority to investigate systemic patterns. Although systemic oversight is necessary to facilitate department-wide accountability and reform, such a function is largely unmet by current CRBs. One study found that only 20 percent of surveyed CRBs

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<sup>25</sup> Ofer, *supra* note 21, at 1053-1062.

<sup>26</sup> There is not consensus about who *should* have authority over police discipline. Some argue that police officer discipline should fall solely within the purview of the chief of police or sheriff, and most CRB models lack any disciplinary authority, retaining only the authority to investigate, not discipline, officers. The argument for maintaining police discipline within the purview of the chief of police or sheriff is that, as the agency’s chief executive and manager, he or she rightfully has the authority to mete out discipline as a vital agency management tool. Providing for binding disciplinary processes or matrices necessarily cedes some of that authority to the civilian oversight entity. In some models, hybrid disciplinary processes have been adopted: for instance, in Washington, D.C., the Office of Police Complaints’ findings of facts are binding, but not the disciplinary recommendations, meaning that the police department must include these investigations and findings of facts within its final decision as to discipline.

<sup>27</sup> See Angelis, *supra* note 13, at 11.

<sup>28</sup> Department of Investigations for the City of New York, *Office of the Inspector General for the New York City Police Department*, <https://www1.nyc.gov/site/doi/oignypd/faq.page>.

<sup>29</sup> Department of Investigations for the City of New York, *IG-NYPD Reports*, <https://www1.nyc.gov/site/doi/oignypd/reports.page>.

**“Public safety is enhanced when there is trust and cooperation between law enforcement and the communities that we serve.”**

— CONTRA COSTA COUNTY (CA) DISTRICT ATTORNEY DIANA BECTON



regularly conducted analysis of patterns in police practices and policies, such as complaints relating to stops, searches, and arrests.<sup>30</sup> CRBs, however, often are the entities that have particular access to the information needed to identify such patterns, underscoring the importance of also empowering CRBs to conduct such investigations.

In addition, the identification of trends, patterns, or systemic problems ideally should extend beyond misconduct to police conduct, policies, or organizational procedures that fail to comport with community values. Civilian oversight can be an important voice in identifying where policy changes are advisable, even when they are not required by law, and in doing so, can improve the delivery of policing services.

5. **Complete Access to Records and Personnel** – Civilian oversight entities should have unfettered access to police records, personnel, and other necessary resources of the law enforcement department or agency throughout the investigative and adjudicative process. This should include *requiring full cooperation* by law enforcement in investigations or inquiries. The oversight entity's access to personnel and records, ideally, should be required by law.
6. **Enforcement and Subpoena Power** – Civilian oversight entities should possess subpoena power, including the authority to subpoena witnesses, internal affairs investigations, disciplinary documents and recommendations, body camera footage, and any other information necessary to successfully investigate alleged misconduct. Civilian oversight entities must also have the ability to enforce their requests for information and records.

Subpoena authority varies across divergent models of civilian oversight. A 2016 study found that of the 24 largest police departments in the country that had civilian review boards, nearly eighty percent (or 19 departments) were empowered with subpoena authority.<sup>31</sup> On the other hand, another study found that only about a third of surveyed auditor/monitor-focused and review-focused models reported possessing the authority to subpoena personnel and/or records.<sup>32</sup> Similarly, a 2018 study found that, of 41 civilian oversight bodies surveyed, including a mix of investigative, review, and auditor/monitor models, over forty percent had the authority to subpoena police records.<sup>33</sup>

7. **Sufficient, Stable, and Independent Resources and Funding** – Civilian oversight entities should have established and stable resources, staff, and funding adequate to carry out their duties. Establishing civilian oversight entities without providing them with sufficient resources undermines their ability to effectively investigate misconduct. Similarly, failing to allocate sufficient staff can hamper a civilian oversight body's ability to independently execute oversight responsibilities without relying on the police department for support and resources. A well-funded oversight entity can become an inadequately funded one with each budgetary process unless safeguards are adopted to insulate the civilian oversight entity from political gamesmanship. To that end, civilian oversight entities should have their funding *statutorily* established and protected from the whims of political forces.

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<sup>30</sup> See Angelis, *supra* note 13.

<sup>31</sup> Ofer, *supra* note 21, at 1053-1062.

<sup>32</sup> See Angelis, *supra* note 13, at 69 (30 percent of auditor/monitor models and 32 percent of review models surveyed reported they always or sometimes have the right to subpoena witnesses; 26 percent of auditor/monitor models and 35 percent of review models surveyed reported they always or sometimes have the right to subpoena records).

<sup>33</sup> Stephens, D.W., Scrivner, E., and Cambareri J.F. (2018), *Civilian Oversight of the Police in Major Cities*, The U.S. Department of Justice Community Oriented Policing Services, 7, <https://cops.usdoj.gov/RIC/Publications/cops-w0861-pub.pdf>.

8. **Transparency** – Civilian oversight entities should be required to release public reports aggregating findings and adjudications. In these reports and in day-to-day operations, oversight entities must respect statutory confidentiality requirements, which may vary in accordance with state and local law.<sup>34</sup>
9. **Due Process Protections** – Civilian oversight entities, regardless of their form, jurisdiction, or authority, must comply with and protect officers’ due process rights. Entities must provide for protection of rights within the investigation and adjudication processes. In certain entities, this might include the right to appeal and a transparent process for the appeal of findings, disciplinary recommendations, and/or decisions. For other entities where the right to appeal is not applicable, other safeguards to protect due process must be adopted.
10. **Tracking and Disclosure of Metrics and Outcomes** – Civilian oversight entities should use a variety of metrics to track key outcomes and data points, including: workload measures, patterns in findings and outcomes, timelines, results of public opinion surveys, the degree to which recommendations of discipline were imposed, and recent and long-term trends in civilian-initiated police misconduct complaints. These metrics should be made publicly available and transparent through, at minimum, annual reports on aggregate metrics, accompanied with analysis of long-term patterns.
11. **Stakeholder Input** – Ideally, civilian oversight entities should seek input as well as support from all stakeholders. A shared commitment to transparency and accountability in working to build community trust and promote effective policing can play a crucial role in enhancing the oversight entity’s effectiveness. Conversely, government officials and bodies can undermine the effectiveness of civilian review models; so too, resistance from police unions, prosecutors, or other law enforcement personnel can hamper the oversight entity’s ability to meaningfully carry out its duties. Every effort should be made to engage and listen to these stakeholders, even in the face of resistance. However, achieving full support for the oversight body’s mission and role often will not be possible – underscoring the importance of legislatively establishing mechanisms that ensure and protect the oversight entity’s independence and authority.
12. **Community Engagement and Responsiveness** – The oversight entity, process, and mechanisms must be accessible and accountable to the public. To that end, civilian oversight entities must engage in robust community outreach and involvement. This should include publicizing the complaint process; making the process accessible and transparent; centering community involvement in the development of the civilian oversight body’s structure, process, and procedures; and regularly soliciting feedback on its operation and effectiveness. Civilian oversight entities should also endeavor to make accessible and transparent to the public both the procedures and mechanisms of the oversight entity as well as those of the police agency they oversee. Key to meaningful civilian oversight are transparency, accessibility, accountability, and ongoing community involvement in the oversight body’s core work, governing boards, and in other key capacities community stakeholders may identify. The community must have a seat at the table and be co-owners of these entities. Community accessibility and engagement can serve a vital role in withstanding resistance by key stakeholders, in building public consensus in favor of strong oversight, and ultimately, in establishing and maintaining

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<sup>34</sup> See Angelis, *supra* note 13, at 44 (“Many states and local jurisdictions have legal rules that prevent the disclosure of certain kinds of personnel records.... Failure to respect state statutes relating to confidentiality may constitute a serious violation of professional ethics, undermine trust between the oversight agency and the local police department and may cause the oversight agency to lose access to confidential records.”)

civilian oversight entities empowered to achieve the twin objectives of accountability and transparency in practice.

## CONCLUSION

Civilian oversight of law enforcement can be an important step towards building trust between law enforcement and the communities they serve, ensuring police accountability, promoting public safety, and deterring police misconduct. By promoting a criminal legal system that holds police officers accountable for misconduct, effective civilian oversight can help strengthen fractured relationships between law enforcement and communities disproportionately affected by police misconduct and over-policing – and begin to address the intergenerational harms wrought by unaddressed police misconduct.

Elected DAs, democratically chosen and put in office to protect the public safety of all members of their communities, can use their positions to promote the establishment of empowered and meaningful civilian oversight. DAs should advocate for civilian oversight entities to have safeguards built into their structure, established by law, to mitigate law enforcement resistance and preserve their authority. DAs should also push for these entities to be empowered to review individual complaints of alleged misconduct, to conduct investigations of, and recommend reforms to, law enforcement policies that may precipitate and enable individual-level misconduct, and to identify and propose reforms of policies that fail to comport with community values. Such protections are necessary to ensure civilian oversight entities can meaningfully achieve oversight and accountability in practice, while also fostering meaningful and lasting systemic change.

## RESOURCE LIST

[Civilian Oversight of Law Enforcement](#), Joseph De Angelis, Richard Rosenthal, and Brian Buchner, National Association for Civilian Oversight of Law Enforcement (NACOLE) (2016). A comprehensive report on key issues facing civilian oversight of law enforcement. (Abridged version available [here](#)).

[Civilian Oversight of the Police in the United States](#), Merrick Bobb (2003). A paper that discusses the history of policing in the United States and the need for civilian oversight and independent monitors.

[Effectively Implementing Civilian Oversight Boards to Ensure Police Accountability and Strength](#), Kevin King, Hastings Race and Poverty Law Journal (2015). A journal article that describes three distinct types of civilian oversight boards, how to effectively implement such boards, and lessons learned from California and Ferguson, Missouri models.

[Getting it Right: Building Effective Civilian Review Boards to Oversee Police](#), Udi Ofer, Seton Hall Law Review (2016). This journal article describes the history of civilian review boards and advocates for the implementation of a model that focuses on independence from politics and law enforcement.

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