

A First Year Assessment  
of the City of Albany  
Citizens' Police Review Board

New York Civil Liberties Union  
Capital Region Chapter

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## **Executive Summary**

The New York Civil Liberties Union (“NYCLU”) has been an advocate for civilian oversight of police departments throughout the State, and the NYCLU Capital Region Chapter actively advocated for the creation of the Citizen’s Police Review Board in the City of Albany. The NYCLU Capital Region Chapter monitored the Board’s activities since its founding and participated in the Board’s development of a complaint form and operating procedures. We attended the public meetings, and herein report on the discussions and determinations of the Board.

The Board began receiving complaints of police misconduct in May 2001, and reviewed 25 complaints by the end of 2001. In the majority of cases, individual Board members reviewed Police Department records of the investigation of the Police Department’s Office of Professional Standards (“OPS”). It appears that OPS also provided a written report to the Board, and attended Board meetings to answer the Board’s questions. In several instances, the Board appointed an investigator to monitor the investigation conducted by OPS.

Following their discussions of individual complaints, the majority of which were held in open meetings, the Board accepted the findings made by OPS with respect to every complaint reviewed.

The Board issued a resolution calling for the elimination of “bias-based” policing. The Police Department held meetings to discuss developing such a policy, but as of the date of this report, has not issued a policy prohibiting “bias-based” policing. The Board expressed the need

to learn whether an individual complaint is part of a pattern of complaints against a particular police officer. The Police Department stated that they do not currently track complaints against individual officers, but will develop an “early warning system” which will do this. This is required by the local law, but to date has not been implemented. The Board inquired about the Police Department’s standards for imposition of discipline and were not provided that information.

The Board made recommendations to the Police Department for the development of policies and implementation of training on standards with respect to: conducting strip searches, frisks and other searches; limiting contact by police officers with plaintiffs in pending civil lawsuits, police officers’ assistance in recovering personal property from a landlord, and the need for officers to use respectful language towards persons perceived as gay. The Police Department has not publicly reported to the Board that it has implemented the Board’s recommendations. In one instance, the Board recommended that a complainant be offered mediation, and OPS responded that the Board must put its request in writing.

The Citizens’ Police Review Board is a “work in progress”. While this report commends the dedication and efforts of the individual Board members, the Board needs increased powers in order to provide more effective oversight of the police. The Police Department must undertake the measures recommended by the Board, be more cooperative, and provide more information to the Board when requested.

The NYCLU makes the following specific recommendations to enhance and improve civilian oversight of the police in Albany:

1. Grant the Board the power to conduct investigations and improve the Board's procedures.
2. The Board should be permitted to hire staff to assist in its work.
3. The Albany Police Department must develop an "early warning system" to track repeat complaints against police officers, as required by the local law.
4. The Police Department must report on implementing the Board's recommendations, and must report its "final determination" to the Board in each case.
5. The Police Department must adopt a policy prohibiting racial profiling.
6. The Board's standard of proof on allegations of misconduct should be lower than the police department's standard for imposition of discipline.
7. The investigator assigned by the Board must actively and contemporaneously monitor the police department investigation.
8. The Board needs to become familiar with Police Department policies and procedures and the range of discipline available for violating a policy.
9. The Board's "findings" should reflect the scope of the Board's review.
10. Increase the openness and information available to the public.

## **Introduction**

Like many cities in the United States, Albany has not been immune to complaints of police misconduct. Since at least 1984, residents and advocates have urged the Albany Common Council to establish an independent civilian review board. In late 1999 and into 2000, there was increased public advocacy for the creation of a civilian review board. In July 2000, the Albany Common Council enacted compromise legislation establishing the Citizens' Police Review Board ("CPRB" or "the Board"), to review and oversee the Albany Police Department's internal investigation of civilian complaints of police misconduct. In May 2001, the Board commenced its review of complaints of police misconduct.

The New York Civil Liberties Union (NYCLU) has prepared this report to review and evaluate the Board's operations and effectiveness in its first year. The report provides an overview of the Board's powers and operations, and a summary and analysis of complaints and findings of the CPRB. Finally, this report presents recommendations for improving civilian oversight of the police in the City of Albany. We hope that the CPRB will be viewed as a work in progress and that the commitment to civilian oversight of the police evidenced in establishing the Board will continue in efforts to improve the Board's effectiveness for the benefit of all who live and work in Albany.

## **Section I**

### **Civilian Oversight: The Law and the Operation of the CPRB**

#### **A. Structure of the Complaint Review Process**

The legislation was enacted in July 2000, taking effect in October 2000. The Board is composed of nine volunteer residents of the City of Albany who serve three-year terms; five of the members are appointed by the Common Council and four are appointed by the Mayor. Code § 42-334.<sup>1</sup> The Mayor and Common Council appointed the initial Board members in October 2000.

The law designates Albany Law School's Government Law Center (GLC) with responsibility for training Board members in police-related issues. § 42-339. The GLC also serves as the Board's staff, maintaining files and records, preparing minutes of meetings, and written reports. § 42-340.

Persons can submit complaints of police misconduct with the Police Department or directly with the Board, using the complaint forms developed by the Board and available at various locations around the City. Complaints must be filed within six months of the incident giving rise to the complaint; the Board may vote to accept and review complaints filed more than six months after the incident giving rise to the complaint. § 42-342.

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<sup>1</sup> Citations refer to provisions of the CPRB enabling law, Part 33 of Chapter 42 (Departments and Commissions) of the Code of the City of Albany.

The Police Department's Office of Professional Standards ("OPS") is required to immediately investigate every complaint and submit a preliminary report of its findings to the Board within ten working days of completing its investigation. § 42-343(E). OPS is required to complete its investigations within 60 days, but may take more time if it advises the Board of the status of its investigation every 30 days. § 42-343(D). OPS is also required to provide the Board with quarterly reports on the status of all investigations. § 42-343(A).

For those complaints which allege the use of excessive force or a violation of civil rights, the Board is authorized to appoint an investigator to monitor OPS's investigation, reporting his/her observations to the Board. § 42-343(B). Monitors can recommend additional avenues of investigation by OPS. *Id.*

At the conclusion of its investigation, OPS presents its preliminary investigation report to the Board. The Board may request further information from OPS, ask OPS to conduct additional investigation into the complaint,<sup>2</sup> refer the matter to mediation and/or make one of several findings. The Board makes findings: "*Sustained*," where the Board finds that the facts in the complaint were proven; "*Not Sustained*," where the Board finds that there were insufficient facts to prove or disprove the complaint; "*Exonerated*," where the Board finds that the acts complained of did take place but the Board found that the acts were proper; "*Unfounded*," where the Board finds that the acts complained of did not occur or were misconstrued; "*Ineffective Policy or Training*," where the matter does not involve guilt or lack thereof, but rather ineffective policy or training; "*No Finding*," in circumstances where the complainant does not provide any

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<sup>2</sup> If the Board is dissatisfied with the extent or quality of any additional requested investigation, it must inform the Mayor and the Chief, who have three weeks to gather information and respond to the Board. § 42-342(G). If the Board is still dissatisfied, it may use limited, independent investigative and subpoena powers under the auspices of the Albany Common Council. § 42-343(H).



information, is unavailable, withdraws the complaint or where the police officer that is the subject of the complaint is no longer employed by the City; or “*Mediated*” where the complaint is referred to mediation. §§ 42-343, 42-344.

The law provides that the Board then notifies the Albany Police Chief, the complainant and the subject officer of its finding. The review scheme is completed when the Chief reviews the preliminary investigation report “in light of” the Board’s finding and makes a “final determination” on the complaint. § 42-345. The Chief must inform the Board, the affected officer and the complainant of his determination. The Board is empowered to ask the Police Chief to explain in writing any inconsistency between his final determination and the Board’s findings. Id.

## **B. The Board Establishes Operating Procedures**

The Board spent several months undergoing training, and established by-laws, operating procedures and the civilian complaint form. The GLC provided training in the enabling law, the Open Meetings Law, Civil Rights Law §50-a, and the structure and operation of other police review boards. Board members have gone on “ride-alongs” with Albany police officers and attended the APD’s Civilian Police Academy.

### ***1. The Civilian Complaint Form: Accessibility of the Complaint Process***

The Albany Police Department had used a civilian complaint form which was in a typical police-style format including spaces calling for the designation of the subject officer’s height, weight and badge number. The complainant was required to swear, upon penalty of perjury, that

the statements in the complaint were truthful and was required to get his/her signature notarized. The complaint form also contained a warning that false statements subjected the complainant to criminal prosecution.

The NYCLU and others urged the CPRB to develop a more “user-friendly” complaint form that would not deter persons from filing a complaint of misconduct. The Board was responsive to those concerns and the Police Department agreed to cooperate after some initial resistance to changes in the form. The Board devised a new “Citizen Complaint Form,” which includes a space for the complainant to supply a narrative describing the complaint, officer(s) and identity of witnesses. The form does not have to be notarized and does not state that the complainant is subject to prosecution for perjury. Rather, the complainant simply signs and affirms that the information supplied on the form is true and complete to the best of his or her knowledge, and acknowledges that if the complaint results in a “legal proceeding,” his/her testimony may be needed. The Board also created a Spanish version of the complaint form.

## ***2. Authority to Appoint a Monitor***

The version of the law enacted did not grant the Board the power to conduct an independent investigation. A compromise provision granted the Board the power to hire and assign an independent investigator to monitor the Police Department’s investigation of the more serious types of complaints. The monitor can recommend additional avenues of investigation to assure the Board that the Police Department investigation is thorough and complete. The law provides for the appointment of a monitor for complaints alleging use of excessive force or a

violation of civil rights. In its first year, the Board appointed a monitor in 11 cases out of the 31 complaints it reviewed.

The law is silent on who – the Board, OPS or the complainant – determines whether a particular complaint falls into the categories of complaints in which the Board can assign a monitor. Initially, APD wanted the power to determine whether a complaint was one of excessive force or a violation of civil rights. The Board determined that it had the duty and authority to make this determination. There was some concern expressed that the complainant could manipulate the appointment of a monitor by how he/she describes the complaint. The Board decided that the Board would review the complaint and the complainant's designation, and make the determination that the complaint was of the type requiring appointment of a monitor.

### ***3. Review of Complaints in Open Meetings***

If the Board is to engender public confidence in its review and oversight of police misconduct complaints, it is important that the Board conduct its review in meetings open to the public. The local law provides that Board meetings can be open or closed, pursuant to the requirements of the State's Open Meetings Law. § 42-347(B). In developing its bylaws, the Board heard from the public on the extent to which its review would be conducted in open meetings. Representatives of the police officers' union argued that the Board's review should be conducted in "executive session" closed to the public, to prevent the release of the identity of the police officer who was the subject of the complaint, pursuant to the confidentiality protection in § 50-a of the Civil Rights Law. Others urged that all meetings should be presumptively open and

the Board could only go into executive session when it determines it is necessary in particular instances.

In developing its bylaws, the Board expressed a desire to hold open meetings. The bylaws do not designate that specific matters will or will not be heard in executive session; they provide that they will not hold executive sessions which are contrary to law. In reviewing complaints in the first year, there were instances in which the complainant wanted to be heard in an open meeting but the Board refused and excluded the public in hearing from the complainant and determining the complaint. In some instances, the public was prevented from learning the outcome of the Board's review.

## **Section II**

### **Board Review of Citizen Complaints**

#### **A. Complaints and Board Action**

The Board began receiving complaints in May 2001, received 31 complaints through the end of October 2001, and reviewed 25 by the end of 2001. The chart provided in the Appendix summarizes each complaint, OPS's findings, and the Board's actions. No final determination by the Police Department is set forth because none was provided publicly with respect to any complaint.

This information is based solely on publicly-available information, including Board meeting minutes, attendance at open meetings, and the Board's quarterly and annual reports. We

did not have access to written complaints, OPS's preliminary investigation report or Police Department records, so the descriptions of the complaints, and the actions of OPS and the Board may be incomplete and less than entirely accurate.

The Board accepted OPS's findings in each and every case. This raises concerns about the limitations of the Board's power in lacking the ability to conduct independent investigations of complaints: the Board can do little more than review the adequacy of OPS's investigations.

It appears that the Police Department has failed to make a "final determination" on any of the complaints, as the local law requires. Though it may to some extent be unnecessary inasmuch as the Board appears to have concurred with OPS's findings in each and every instance, the Board and the public cannot learn the final disposition of the complaints by the APD, or to what extent the Police Department addressed the Board's concerns.

## **B. In-depth Analysis of Review Process**

The following descriptions consist of a sampling of complaints reviewed by the Board. These cases were selected to demonstrate the Board's review process, including the Board's discussions and determinations. The discussion of these complaints should also serve to illustrate some inherent limitations in the effectiveness of the Board's review of complaints. These limitations are addressed in Section III, Recommendations.

### ***1. Complaint Sustained and little information provided to Board***

Complaint # 02-01 alleged that a police officer called the complainant a "vulgar name," pulled the complainant down a flight of stairs, arrested him and called him more rude names.

The complainant also alleged that the handcuffs were put on too tightly. A monitor was not appointed.

OPS found the complaint "sustained in part and not sustained in part." The Board asked OPS for clarification on which of the alleged rude statements were and were not found to have been made; OPS reported that they sustained the allegation that the officer called the complainant a "faggot." The Board asked OPS what happens after a complaint is "sustained." OPS declined to give details and would not address how and if the officer was disciplined, citing the confidentiality protections under Civil Rights Law §50-a. The Board indicated its desire to have officers receive "sensitivity training."

The Board questioned OPS about whether this behavior was part of a pattern of behavior. OPS responded that determining a pattern was part of the "early warning system", which APD was developing. There was also some discussion of why the complainant was arrested and whether he was convicted. Following a dialogue and unanswered questions, the Board voted to accept OPS's finding.

Complaint # 03-01 alleged "inappropriate treatment" by several police officers who allegedly made fun of complainant, blocked his car and ticketed him for being in a "no stopping" area. Witnesses confirmed the allegations. OPS found the allegations to be "sustained." The Board accepted OPS's finding and expressed dissatisfaction that the Board is not informed about what discipline or other action is taken by the Police Department when a misconduct complaint is sustained. The Board asked OPS if it would provide information on the range of discipline imposed for categories of proven misconduct. OPS did not provide that information, stating that each situation is handled on a case-by-case basis and that many factors are considered.

**2. Officers "exonerated"— applicable police procedures not known.  
No report on mediation.**

Complaint # 04-01 alleged the use of excessive force. It was alleged that in the course of police officers executing a "no knock" warrant on an apartment on the first floor, the complainant, who was on her way out from an apartment upstairs, was physically forced to the floor by police officers, kneed in the back and was injured and frightened. The complainant was taken to Albany Medical Center. The Board appointed a monitor.

OPS issued a finding of "exonerated." OPS reported that its investigation did not support the allegation that the complainant was forced to the floor or kneed in the back. OPS reported that medical records did not show an injury. The Board discussed the exigencies of "no knock" warrants and stated that the complainant was unfortunately "in the wrong place at the wrong time." The monitor reported that the police officers acted properly.

The Board accepted OPS's finding, but suggested that complainant be offered mediation. The Board asked OPS if mediation is considered discipline under the collective bargaining agreement and was informed that it is not. APD informed the Board that a recommendation for mediation in this case must be submitted to the Chief.

**3. Racial Profiling**

Complaint # 05-01 alleged that an African-American middle-aged man was pulled over by the police while driving home late at night in May 2001, and that six Albany police cars surrounded his car. One officer brandished a gun. The Police Department asserted that the car was pulled over because it matched the description and partial license plate number of a car

involved in an earlier violent incident. The suspect in the earlier incident was a 20 year-old white man.

The complainant, a college professor, alleged that the stop was racially motivated, and that the officers continued to be very aggressive and searched his car though it became apparent that he did not fit the description of the suspect. OPS made a finding of “unfounded.”

In June 2001, as a result of this complaint, several Board members met with Public Safety Commissioner Jack Nielsen to discuss concerns about racial profiling. Commissioner Nielsen spoke to this issue at the Board’s June meeting and denied that the APD engages in racial profiling. The Board passed a resolution calling on the APD, the Common Council and the Mayor to take “all reasonable and necessary action to eliminate the potential for . . . bias-based” practices in Albany. The resolution declared that the Board would work with the APD, residents and advocacy groups to address “bias-based” policing. At that meeting, the NYCLU suggested that good record-keeping and data collection on police stops would help determine if such profiling is taking place and stated that the APD needed to institute a racial profiling policy with clear and specific guidelines for avoiding racial profiling. Commissioner Nielsen stated that such a policy is being developed.

The Board accepted OPS’s finding.

***4. Vehicle stop, search and pat-down – officer exonerated despite monitor’s doubts.***

In complaint # 07-01, the complainant alleged that when his/her vehicle was stopped after police pursuit, s/he was improperly touched in the groin area of his/her person and that the police search of his/her car was improper. The complainant was issued a ticket for being uninsured and



for speeding. The Police Department reported that the officer smelled alcohol and marijuana and contended that the stop and search were reasonable. The Board appointed a monitor.

OPS made a finding of "exonerated," stating that the pat-down search was reasonable because the officer feared for his safety and that the complainant had consented to the car search. During the Board's review, there was some discussion about whether the personal touching was intentional or inadvertent. OPS determined that it was inadvertent.

The monitor suggested that the officer be questioned more thoroughly about the reasons for the pat-down search. The monitor questioned whether the officer's suspicion of drugs was genuine inasmuch as the officer made only a cursory search of the car trunk. The monitor reported that the witnesses interviewed stated they thought the search and pat-down were not warranted and that the officer was rude.

The Board sustained OPS's finding and recommended that the APD counsel the officer regarding the need to conduct the search. There is no public information which reflects whether such counseling took place.

***5. Harassment by police officer against plaintiff not sustained – officer claims no recollection.***

Complaint #10-01 alleged harassment by a police officer in retaliation for complainant's pending lawsuit against the individual officer and the City of Albany.<sup>3</sup> The complaint asserted that the officer drove the patrol car the wrong way up a one-way street and stopped at the

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<sup>3</sup> The public record is unclear as to whether this complaint involved one or more police officers.

complainant's house where the complainant was sitting outside. When the complainant asked the officer what he was doing there, the officer said he had dropped by to say "hi".

During OPS's investigation, the officer claimed no recollection of the encounter. Board members expressed skepticism: that it was implausible that a police officer -- or any person -- would forget an interaction with a plaintiff in a lawsuit in which that individual is the defendant, and the Board asked OPS what it does when officers claim lack of recollection of the incident being investigated. The Board accepted OPS's finding, but recommended that the APD implement a policy and training limiting a police officer's contact with plaintiffs in civil lawsuits.

**6. *Arrest and strip search – strip search policies unclear.***

Complaint # 12-01 arose out of a landlord/tenant dispute, in which the landlord had taken possession of his tenant's property for non-payment of rent. When an officer accompanied the tenant to the building the landlord refused the police entry and was arrested for petit larceny of the tenant's property. The landlord alleged physical abuse during the arrest and that police officers made inappropriate advances when he was strip-searched. A monitor was appointed.

The Board reviewed this complaint in executive session over the objections of the complainant, who wanted to address the Board in public session. After the executive session, the Board requested additional information from the Police Department. OPS made a finding of "exonerated" with respect to allegations regarding improper arrest and use of excessive force, and "not sustained" with respect to the officer's entering complainant's residence. It is unclear

from the public record how the Board resolved the complaint with respect to inappropriate advances during the strip search.

The Board recommended that Albany police officers receive training regarding repossession of tenants' property. The Board expressed concern that the Police Department have specific procedures with respect to conducting a strip search.

***7. Traffic ticket as retaliation.***

Complaint # 13-01 alleged that a police officer retaliated against the complainant after the complainant honked his car horn at the officer who was in the car in front of him at a red light. The officer turned his police car, pulled off to the side, allowed complainant to pass and then pulled him over and gave him a traffic ticket for failure to signal a turn and failure to stop. No monitor was appointed.

OPS found the allegation "not sustained." The Board asked OPS how often police officers issue tickets for failing to signal or stop, and whether this particular ticket was still pending. OPS stated they did not know the answer to those questions. One Board member stated that it appeared that the ticket was in fact issued as retaliation. The Board accepted OPS's finding.

***8. Use of mace – existence of police procedures and compliance with procedures uncertain.***

Complaint # 16-01 alleged that police officers sprayed mace in the complainant's face and pushed him down the sidewalk. Because the complaint alleged use of excessive force, a

monitor was appointed.

OPS found the complaint “not sustained.” The monitor was satisfied with the investigation. The Board asked OPS about procedures for the use of mace. OPS indicated that mace can be used to maintain control of a person after a verbal warning is given and the person does not comply. The Board accepted OPS’s finding.

## **Section III**

### **Recommendations**

We commend the members of the CPRB for their dedication and hard work aimed at providing effective citizen oversight of the Albany Police Department. They have made efforts to ensure meetings are open to the public and have undertaken outreach efforts to educate the public about the Board's existence. The Government Law Center of the Albany Law School has provided able and professional services to the Board in maintaining the files, providing and disseminating materials and information, and compiling reports. The Albany Police Department, including the Public Safety Commissioner and the Office of Professional Standards, have pledged a commitment to civilian oversight and were cooperative to some extent in working with the Board in its early stages.

Notwithstanding the commendable dedication and efforts of individual Board members, the Government Law Center and some in the Police Department, there are significant impediments to the Board's fulfilling its goal of providing effective oversight of police conduct in the City of Albany. Improvements are needed in the local law, the Board's operating procedures, and in the fuller participation and cooperation of the Police Department.

The first year was in some respects an experiment in the City's working towards achieving effective citizen oversight of the police in the City of Albany. The local law that was adopted was a compromise that falls far short of a truly independent citizens' review board with the power to conduct investigations separate from the Police Department. The NYCLU had urged the Common Council to create an independent review board with the power to investigate

complaints of police misconduct. In recent years, an increasing number of medium-size cities have done so across the U.S. The Common Council and particularly the Mayor declined to do so, adopting the compromise legislation which was enacted. At the final public hearing prior to the Mayor's signing the bill into law, the Mayor publicly pledged to review and evaluate the law after the first year. It is time for that review, and the NYCLU makes the following recommendations to enable the Citizens Police Review Board to more effectively review and determine complaints of police misconduct. We encourage the Albany Common Council and Mayor to continue in the effort to promote safe and effective policing in Albany, to prevent future police misconduct, and to improve police-community relations in the City of Albany.

**1. Amend the local law to grant the Board the power to conduct investigations and improve the Board's procedures.**

The Common Council should amend the existing law to improve the Board's effectiveness, including granting the Board the power to conduct independent investigations. The local law requires the Board to make findings as to whether a complaint has been proven, but does not empower the Board to conduct investigations. The Board has no power to interview complainants, witnesses or the police officer. While several complainants have attended CPRB meetings and addressed the Board, no witnesses or police officers have addressed the Board. The Board is limited to reviewing OPS investigations after the fact, or in some cases, the investigator appointed by the Board has attended witness interviews conducted by OPS.

In effect, the Board reviews OPS's findings and makes a determination that the investigation was adequate. The Board can do no more than that because it has no information other than OPS's investigation as reported to the Board by OPS or, in some cases, the monitor.

The Board has then has struggled to determine what finding enumerated in the law fits its approval. Lacking the power to undertake investigations, the Board's determination is not independent of the police department. The power to conduct independent investigations and make factual findings is a cornerstone of an optimally effective civilian review board that instills trust in the public of effective police oversight. We urge the City Council and the Mayor to strengthen the Board's powers and grant the power to conduct investigations.

Legislative changes are also needed to improve the Board's procedures to allow the Board to operate more effectively. Many of the procedures set forth in the law have been difficult, cumbersome or unnecessary to the Board's operations. The law's provisions requiring the Board to make a request for information in writing should be changed to allow more informal exchanges of information between the Police Department and the Board.

OPS has reported its findings to the Board orally and answered questions from the Board informally. In August 2001, the Corporation Counsel attempted to stop this exchange of information and requested that the Board follow the law's procedure directing the Board to set forth any concerns about OPS's investigation in writing to the Police Chief. Some members of the Board expressed concern that such formalistic rigidity would impede the Board's ability to review and understand OPS's investigation. The Board and the Police reached an understanding that they would continue with an informal dialogue as in the past, and that if the OPS representative did not understand a request for information, OPS could ask that the request be set forth in writing.

The law should be amended to best facilitate the Board's information-gathering and review.

**2. The Board should be permitted to hire staff to review police department investigations.**

The local law should be amended to allow the Board to hire staff to assist the Board members who are volunteers. They meet monthly to review and decide on complaints, review OPS's investigations prior to meetings, and undergo training. In cases in which no monitor is appointed, individual Board members must also go to the police station to review Police Department records, since the APD insists that their records may not leave the premises. This is quite burdensome on volunteer Board members. Volunteers cannot reasonably be expected to undertake such a demanding workload over an extended period of time.

It appears it would be helpful for the Board to have skilled, professional staff whose responsibility it would be to review Police Department records and transcripts and report to the Board. The Board's staff could review the complaint and transcripts of witness interviews and report this factual information to the Board similarly to the review and reporting performed by a monitor pursuant to the existing law.

The Common Council should also consider compensating Board members at a minimum for their time spent attending the Board's public meetings.

**3. The APD should develop an "early warning system" as mandated by the local law.**

Local Law § 42-339(C) requires the APD and the GLC to develop and implement an "early warning system" to track repeat complaints against individual officers. This has not been done, though OPS stated that it was working on developing this.

OPS presents each complaint separately to the Board, and does not inform the Board whether a particular complaint is the first or the tenth filed against an individual officer.



Typically, a small number of police officers in a police department will generate a disproportionate number of complaints of misconduct. This is important information for the Board to have, particularly coupled with knowledge of the discipline imposed, in order to assess the effectiveness of the Police Department in curbing police misconduct.

**4. The Police Department must report to the Board on implementing the Board's recommendations and must report its final determination to the Board.**

The local law requires the APD to report its "final determination" after receiving the Board's recommendations. It appears that the APD has not reported a final determination as to any complaint reviewed by the Board. In several instances, the Board agreed with OPS's funding to sustain a complaint, but the APD did not report to the Board what action was taken.

In many cases the Board made specific recommendations for changes in policy and training, and in some instances recommended counseling of the police officer. The Board made recommendations with respect to conducting strip searches, conducting frisks and other searches, preventing harassment by police officers against plaintiffs in pending civil rights lawsuits, police officers' assistance in retrieving personal property from a person's former landlord, and improved sensitivity and respect for persons' sexual orientation. *See* Complaints #07-01, 10-01, and 12-01. As required under the Local Law, the Police Chief must report to the Board whether he carried out the Board's recommendations with respect to policies, procedures or training and if not, why not. The cooperation and responsiveness of the police department are essential to the successful operation of a civilian review board. The APD must be more responsive to the Board's policy and practice recommendations in order to prevent future police misconduct and improve police-community relations.

**5. Police Department must adopt a Policy prohibiting Racial Profiling.**

In a prominent case, the Board reviewed a complaint alleging racial profiling in a traffic stop. *See* Complaint # 05-01. The Board reviewed the complaint in June 2001, and passed a resolution calling on the Police Department to undertake action to eliminate “bias-based” policing in Albany. To date the Police Department has not developed or implemented a policy prohibiting “bias-based” policing, or racial profiling. The Police Department must develop and implement such a policy, and the Board should ensure that this is done.

**6. The Board’s standard of proof to sustain a misconduct complaint should be lower.**

The Board should be empowered to make a finding that it is more likely than not that the misconduct complained of occurred, and requires corrective action by the APD. In several cases, OPS found the complaint “not sustained” due to a factual dispute in which the officer denied the conduct complained of, or claimed a lack of memory. *See* Complaint # 10-01 (retaliatory intimidation against plaintiff in lawsuit). There is no need for the standard of proof employed by the Board be identical to that employed by the Police Department in determining whether to impose discipline against an individual officer. While a police officer’s conduct might be insufficient to trigger disciplinary action by the Police Department, the conduct may well support a finding by the Board that it is more likely than not that the police officer engaged in improper conduct, and requires corrective action by the APD. *See* Complaint # 13-01. A finding by the Board based on a preponderance of the evidence should be sufficient to trigger the Police Department’s review of policies, procedures and training.

**7. The investigator assigned by the Board must actively and contemporaneously monitor OPS's investigation.**

While the Board appointed a monitor in nearly one-third of the complaints it reviewed, the monitor did not consistently function in the manner contemplated in the law. The monitor's public reports to the Board generally reflected little or no active involvement by the monitor in the Police Department's investigation. In many cases, the monitor did not observe the Police Department's interviews of witnesses and in fact did no more than read written transcripts of interviews after the Police Department's investigation was concluded. There was then little the monitor could report to the Board other than it appeared the OPS investigation was thorough.

The monitor assigned by the Board acts as the Board's eyes and ears during the course of the police department's investigation into the complaint. The monitor theoretically can report to the Board if he or she believes OPS should be more thorough with respect to identifying and locating additional witnesses or asking additional questions to ensure the investigation is thorough and complete. One of the compromise provisions at the late stages before the law was enacted was the Board's power to appoint an investigator to monitor police department investigations. This allows the Board in effect to contemporaneously oversee investigations of complaints of excessive force or violation of civil rights. That power has not been fully utilized and the Board should insist that the investigator they appoint fully exercise those important functions.

**8. The Board needs to become knowledgeable in the Police Department's policies and procedures and the range of discipline available for violating a policy.**

The Board should become familiar with the Police Department's policies and procedures in order for the Board to determine whether an officer acted in accordance with those procedures. Otherwise, the Board is unable to determine independently whether the police officers' conduct was proper, and instead must rely on the police department's interpretation. *See* Complaint #04-01 (use of excessive force in "no knock" warrant); #16-01 (use of mace).

The Police Department should also explain to the Board how the Police Department interprets and applies those policies. After all, the Board's primary function is the review of OPS's determination of whether the police officer violated procedures. The Board also needs to be familiar with existing Police Department procedures in order to recommend changes. As the Board has reviewed OPS's investigation of complaints, the Board has frequently asked OPS whether the conduct complained of violates Police Department procedures, and what the policy is.

The Board should also be informed about APD's discipline standards or the specific discipline imposed when an allegation of misconduct is sustained. Lacking the power to impose discipline, and lacking the ability to be informed of the discipline imposed by the Police Department, the Board has little ability to make either effective recommendations specific to the offending officer or system-wide recommendations.

The Board needs this information in order to review misconduct complaints and to make appropriate recommendations for changes to existing policy, practices and training.

**9. The Board's "findings" should reflect the Board's scope of review.**

The findings the Board is required to make should be changed to more accurately reflect their review powers. The local law requires the Board to make specific findings of sustained, exonerated, etc. similar to the findings OPS makes: that the alleged misconduct did or did not occur, that the conduct occurred but was proper, that the complaint involves ineffective policy or training, or that no finding can be made, such as when the complaint is withdrawn. In many cases, the Board has visibly struggled to identify which of the findings it should reach or has simply determined to accept the Police Department finding. The findings are unnecessarily difficult to apply and are not well-suited to a Board that lacks the power to undertake factual investigations. In practice the Board does no more than approve the OPS investigation as adequate.

We suggest the local law be amended to set forth the following findings to be made by the Board: (1) approve, (2) disapprove, (3) approve with recommendation of discipline, (4) approve with reservations, (5) mediated. In addition, the Board should be empowered to make recommendations in each complaint for improvements to Police Department policies, procedures and training.

**10. Increase the openness and information available to the public.**

In several instances, the Board's determination of a complaint or basis for its determination has not been made available to the public. *See* Complaint # 12-01, 13-01. It is also not evident that the Board has reported its findings or the Police Department's remedial action to the complainant. The Board's effectiveness at promoting confidence in the integrity of

the Police Department and assuring the public of the Board's effective oversight is dependent on its imparting information to those who submit complaints of misconduct and to the public.

## **Conclusion**

When the Common Council and Mayor agreed on legislation establishing a Civilian Review Board in the City of Albany, many viewed the development as an historic step in improving police-community relations in the City of Albany. An effective review board can monitor the police department to ensure that the Department adopts and enforces appropriate policies, procedures, training and discipline. The legislation was a compromise, and viewed by many as a “work in progress” with a pledge to review the law’s effectiveness after the Board’s first year of operation. It is time for elected representatives in the City to assess and make improvements to the law, the Board’s operations, and the Police Department’s cooperation to continue to make progress to achieve a more responsive and effective police force, effective oversight and improved police-community relations in Albany. All of the City’s residents deserve no less.

Albany, New York  
May 2002

## Appendix



Complaint #      Complaint Allegations      Monitor Appointed      OPS Finding      Board Action      APD Final Determination

01-01	allegation of use of excessive force in 1999	No	No Finding.	Requested additional information from OPS; After review, accepted OPS finding.	None
02-01	Officer was rude to complainant, pulled complainant and put handcuffs on too tight.	No	Sustained in part; not sustained in part. OPS found some alleged rude statements were made but others were not.	Accepted OPS finding but suggested that officers receive sensitivity training; questioned OPS about development of "early warning system"	None
03-01	Inappropriate treatment by officer who made fun of complainant and ticketed him.	No	Sustained.	Accepted OPS finding; expressed dissatisfaction that OPS does not inform Board of discipline or other action APD has taken.	None
04-01	Use of excessive force during "no knock" warrant; complainant forced to floor and kneed in back and injured.	Yes	Exonerated	Accepted OPS finding; but suggested that complainant be offered mediation.	None
05-01	Alleged racial profiling when officers pulled over middle-aged African American driver when looking for 20-year-old white suspect.	No	Unfounded	Passed a Resolution calling on the APD, the Common Council and the Mayor to take all action necessary to eliminate the potential for . . . "bias-based" police practices. Accepted OPS finding, with recommendation for mediation and training.	None

Complaint #      Complaint Allegations      Monitor Appointed      OPS Finding      Board Action      APD Final Determination

06-01	Improper conduct by off-duty officer. [expand]	No	Unfounded. Complainant was officer's former spouse and that this was a domestic dispute.	Accepted OPS finding.	None
07-01	Violation of civil rights; harassment and an improper pat down search (including improper touching in groin area) and improper search of vehicle	Yes	Exonerated. Found that pat-down search was reasonable and complainant consented to car search.	Sustained OPS finding but recommended that the APD counsel the officer regarding the need to conduct the search.	None
08-01	Rudeness and improper arrest.	No	Unfounded.	Tabled initially; no public information on finding.	----
09-01	Officer failed to notify complainant that she was under arrest.	No	Unfounded.	Tabled initially pending discussion in executive session. Upheld OPS finding that complaint was not sustained.	----
10-01	Retaliatory intimidation by officer(s) against complainant who was plaintiff in civil lawsuit against City and officer(s).	Yes	Not Sustained. Officer(s) claimed no recollection of incident.	Accepted OPS finding, but recommended that the APD implement a policy and training regarding police officers initiating contact with plaintiffs in civil lawsuits.	None
11-01	Not clearly stated but related to complainant's arrest for possession of drugs and weapon.	No	Unfounded	Accepted OPS finding.	None

Complaint #      Complaint Allegations      Monitor Appointed      OPS Finding      Board Action      APD Final Determination

12-01	Arose from landlord/tenant dispute where complainant (landlord) alleged unlawful search of home, physical abuse during the arrest and that police officers made inappropriate advances when he was strip searched	Yes	Exonerated -- arrest procedures and use of excessive force  Not sustained -- officer's conduct and officer's entering complainant's residence	Initially tabled for review in executive session and pending additional information; Board suggested officers receive training on [?] of tenants' property and expressed concern that APD needs specific operating procedures for strip searches. No public information on finding.	None
13-01	Officer retaliated against complainant by stopping his car and ticketing him allegedly because complainant had earlier honked at officer's car at a red light.	No	Not Sustained	Accepted OPS finding.	None
14-01	No public information.	----	-----	No public information on finding.	----
15-01	Officer was rude and actions were racially biased.	Yes	Unfounded.	Accepted OPS finding.	None
16-01	Use of excessive force when officer pushed and maced complainant.	Yes	Not Sustained.	Upheld OPS report and found complaint Not Sustained.	None
17-01	Officer goaded complainant into a confrontation during arrest for violation of noise ordinance	Yes	Not Sustained.	Accepted OPS finding.	None
18-01 (several incidents)	Rude behavior during several traffic stops.	Yes	Not Sustained.	Agreed with OPS finding.	None

Complaint #      Complaint Allegations      Monitor Appointed      OPS Finding      Board Action      APD Final Determination

19-01	No public information.	----	----	No public information on finding.	----
20-01	Officers at station were abusive when father and son went to Police Station to file a burglary complaint.	Yes	Not Sustained. Officers claimed to have no recollection of incident.	Accepted OPS finding that complaint was Not Sustained, but raised concern over implausibility of officers' failure to remember.	None
21-01 22-01 23-01	No public information.	----	No public information on finding.	----	----
24-01	Officer squeezed complainant's arm too tightly when she was removed from court room while waiting to speak with the public defender. Complaint later withdrawn.	No	No Finding.	Made no finding but raised concern about how OPS will handle complaints even when withdrawn. OPS indicated that it would only continue to investigate if there were serious allegations of physical injury.	None
25-01	Rude behavior by officer during dispute between complainant and neighbor over a parked car; complainant accused officer of being "racial"	No	Not Sustained.	Found that complaint was not sustained, but inquired about training for handling heated conflict situations; APD stated that officers trained to act professionally even in such situations.	None