

# **CITIZEN OVERSIGHT BOARDS OF POLICE BEHAVIOR**

## ***SUMMARY***

The 2015/2016 San Diego County Grand Jury investigated several citizen complaints regarding police officer behavior in local jurisdictions and found there are differing methods for handling citizen complaints. All local jurisdictions meet California requirements for reviewing complaints regarding police behavior, though several cities have no formal citizen oversight board. In San Diego County, there are two models for citizens' review boards, the City of San Diego Citizens' Review Board (CRB) and the San Diego County Sheriff's Department Citizens' Law Enforcement Review Board (CLERB). The Grand Jury recommends that all law enforcement agencies in the county establish independent citizens' review boards to investigate complaints against law enforcement officers. The openness and transparency of the complaint process, including citizen oversight and the prompt resolution of complaints, are essential to maintaining citizen trust in law enforcement.

The Grand Jury recommends the following:

The City of San Diego:

- Provide independent legal counsel to the CRB
- Prepare and submit annual reports of its actions
- Revise the recruitment and appointment processes for board members to encourage broader citizen involvement
- Provide limited compensation for board member time and involvement

The County of San Diego:

- Review CLERB recruitment and appointment processes to encourage broader citizen involvement
- Provide limited compensation for board member time and involvement

Cities of El Cajon, La Mesa, Escondido, Oceanside, Carlsbad, Chula Vista, and Coronado:

- Establish a Citizen Review Board or Commission or consider the formation of regional review boards that serve more than one jurisdiction

## ***INTRODUCTION***

In response to several citizen complaints the Grand Jury reviewed practices and procedures for resolving complaints against law enforcement officers for all eighteen cities in San Diego County and the San Diego County Sheriff's Department.

## ***PROCEDURE***

The Grand Jury interviewed members of CLERB and CRB, San Diego City Council members, police chiefs and Sheriff's Department command staff. The jury surveyed the seven cities in San Diego County (El Cajon, La Mesa, Escondido, Oceanside, Carlsbad, Chula Vista, and Coronado) that do not have CRBs. The jury received a response from every city.

The survey asked police departments to respond to the following items:

- The procedure to file a complaint against a police officer
- How complaints are investigated
- Who decides whether a complaint is sustained
- The process followed once a finding is reached
- The appeal process if a citizen disagrees with the outcome of the complaint
- If the city is considering implementing a citizens' oversight board

The Jury reviewed:

- The 2011/2012 Grand Jury report concerning the San Diego Citizens' Review Board
- Guidelines from the National Association for Civilian Oversight of Law Enforcement (NACOLE)
- The Final Report of the President's Task Force on 21<sup>st</sup> Century Policing

## ***DISCUSSION***

### ***Federal Involvement***

NACOLE is a national non-profit organization that assists with establishment and improvement of citizen oversight of police officer behavior.<sup>1</sup> The organization is dedicated to promoting greater police accountability through citizen oversight agencies. They do not promote a specific model but offers advice and support to citizen boards.

The Task Force on 21st Century Policing, established by President Obama, was created to "strengthen community policing and trust among law enforcement officers and the communities they serve, especially in light of recent events around the country that have underscored the need for and importance of lasting collaborative relationships between local police and the public."<sup>2</sup> The Executive Summary of the Final Report of President's Task Force on 21st Century Policing, dated May 2015, states: "Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services."<sup>3</sup>

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<sup>1</sup> <http://www.nacole.org/>

<sup>2</sup> [www.cops.usdoj.gov/pd/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pd/taskforce/taskforce_finalreport.pdf)

<sup>3</sup> *ibid*

The report makes a variety of recommendations to improve that trust, including item 2.2.6: “Law enforcement agencies should establish a Serious Incident Review Board comprising sworn staff and community members to review cases of officer involved shooting and other serious incidents that have the potential to damage community trust or confidence in the agency. The purpose of this board should be to identify any administration, supervisory, training, and tactical or policy issues that need to be addressed.”<sup>4</sup>

### ***State of California Involvement***

California Penal Code §832.5 requires that all local agencies have a written procedure for handling citizen complaints against law enforcement officers. California has a procedure for processing citizen complaints<sup>5</sup>. However, it is the policy of the California Department of Justice that local government has primary responsibility for citizen complaints against law enforcement agencies or employees of law enforcement agencies, and that appropriate local resources (e.g. sheriff or police department, district attorney, citizens’ review commissions and/or grand jury) be utilized for resolution of such complaints prior to request for intervention by the Attorney General.

### ***San Diego County***

Of the eighteen cities in San Diego County, San Diego and National City have Citizens’ Review Boards to respond to complaints and advise their respective police departments. The other seven cities with independent police departments (listed above) investigate citizen complaints internally. The nine remaining cities (Santee, Vista, Lemon Grove, Poway, San Marcos, Del Mar, Solana Beach, Imperial Beach and Encinitas) contract with the Sheriff’s Department for law enforcement services and so use CLERB to investigate citizen complaints. CLERB also investigates deaths-in-custody in county jails and juvenile detention facilities.

The complaint review model used by each of these law enforcement agencies complies with state requirements, but there remain concerns about the independence, openness and accountability of the complaint processes, evidenced by the complaints received by the Grand Jury, media reports, and statements by local politicians and citizens.

The following dispositions are determined for each complaint regardless of whether the review was by a board or internal:

- **SUSTAINED** The investigation produced sufficient evidence to find that the officer(s) did commit the alleged act(s) of misconduct
- **NOT SUSTAINED** the investigation failed to produce sufficient evidence to find that the officer(s) did or did not commit the alleged acts(s) of misconduct

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<sup>4</sup> *ibid*

<sup>5</sup> <http://oag.ca.gov/contact/general-commentquestion-or-complaint-form>

- EXONERATED The investigation produced sufficient evidence to find that the alleged act(s) occurred but was/were justified, legal and/or properly within department policy
- UNFOUNDED The investigation produced sufficient evidence to find that the officer(s) did not commit the alleged act(s) of misconduct

***San Diego County Citizens' Law Enforcement Review Board (CLERB)***

In November 1990, a public vote established the Citizens' Law Enforcement Review Board pursuant to County Charter §606.<sup>6</sup> CLERB investigates complaints about the conduct of peace officers in the Sheriff's Department, Detention Facilities, and the Probation Department. §606 requires CLERB to receive, review, and investigate citizen complaints charging any of these actions:

- Use of excessive force
- Discrimination or sexual harassment in respect to members of the public
- Improper discharge of firearms
- Illegal search or seizure
- False arrest
- False reporting
- Criminal conduct
- Misconduct

CLERB consists of not less than nine or more than fifteen members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Members serve without compensation for a term not to exceed three years and are limited to no more than two consecutive full terms. In order to avoid the appearance of bias, county employees, peace officers, or custodial officers are ineligible to serve. CLERB reviews 125- 150 complaints each year. In 2014, CLERB sustained fourteen complaints, roughly ten percent.

At present, CLERB has eleven members. It is supported by a small staff of county employees including two full-time independent investigators, allowing CLERB to act independently of Sheriff's Department internal investigations. CLERB has the power to subpoena and require attendance of witnesses and to administer oaths, though, according to interviewees, this power is rarely used. When CLERB was first established, officers were reluctant to cooperate or testify. In response, CLERB developed a procedure in which it submits written questions to the officers involved, who are allowed ten days to answer in writing. If, as a result of its preliminary investigation CLERB determines a potential finding, it can request a face-to-face interview.

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<sup>6</sup> <http://www.sandiegocounty.gov/clerb/docs/Section606.pdf>

## ***FACTS AND FINDINGS***

**Fact:** CLERB is a citizens' oversight committee that investigates complaints of behavior by Sheriff's Department officers in unincorporated San Diego County and nine county cities.

**Fact:** Board members serve without compensation or reimbursement of expenses such as mileage.

**Finding 01:** Due to the large geographic area under CLERB's jurisdiction, modest compensation and reimbursement of expenses to board members could encourage greater community involvement and increase board diversity.

### ***City of San Diego Citizens' Review Board (CRB)***

The purpose of the Citizens' Review Board on Police Practices "is to review and evaluate complaints brought by members of the public against officers of the Police Department of the City of San Diego (SDPD) and to review and evaluate the administration of discipline arising from sustained complaints. The Board also reviews and evaluates officer-involved shootings, all in-custody deaths, and all police actions that result in the death of a person."<sup>7</sup>

CRB was established in the mid-1980s after a controversial police shooting. Planned as a temporary commission, it proved successful and its existence extended. In 1988, San Diego voters approved Proposition G, which gave the City Manager authority to "create and establish a Citizens' Review Board on Police Practices to review and evaluate citizen's complaints against police officers and the discipline arising from such complaints."<sup>8</sup> CRB is not incorporated into the City Charter.

CRB has twenty-three appointed members and twenty-three prospective members. All members serve as non-compensated volunteers. Members are selected by an interview committee, appointed by the Mayor, and approved by the City Council to renewable one-year terms, to a maximum of eight years. As of this writing, there are no prospective members. Three-member teams review each case; the Chair and the 1<sup>st</sup> Vice Chair do not participate in review teams.

Officials interviewed by the Grand Jury expressed concern over the lack of adequate diversity among current members. This concern is not limited to race, ethnicity or gender, but includes the perception that CRB members have a pro-police bias which may influence their decision making. The 2011/2012 Grand Jury report was also critical of the lack of CRB diversity. Providing CRB members with modest compensation for the

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<sup>7</sup> <http://www.sandiego.gov/citizenreviewboard/about/index.xshtml>

<sup>8</sup> [http://articles.latimes.com/1988-11-11/local/me-662\\_1\\_police-review](http://articles.latimes.com/1988-11-11/local/me-662_1_police-review)

significant time and work commitment required of members, such as a stipend, mileage reimbursement, and paid parking, could increase and diversify the pool of nominees.

CRB relies exclusively on the investigations prepared by the SDPD Internal Affairs Unit (IA). CRB does not have professional independent investigators, does not have the power to subpoena witnesses, and does not independently interview witnesses or complainants. This complete reliance on the Internal Affairs Unit has generated criticism both from the public and the 2011/2012 San Diego County Grand Jury.

Staff and commission members interviewed by the Grand Jury asserted that SDPD has been responsive and forthcoming to CRB requests. They did not see the need or benefit of paid independent investigators, or the need for subpoena power.

Interviewed officials expressed dissatisfaction with the legal services provided by the office of the City Attorney, which serves as legal counsel for the CRB. The City Attorney also defends the Police Department, creating a potential conflict of interest.

CRB staff has fallen significantly behind in preparing annual reports as required by ordinance. These reports need to be current to improve accountability with the public.

### ***FACTS AND FINDINGS***

**Fact:** Legal counsel is provided to the CRB by the City Attorney's Office, which also defends SDPD.

**Finding 02:** Using the City Attorney as legal counsel to CRB while also defending SDPD represents a potential conflict of interest.

**Fact:** Board members serve without compensation or reimbursement of expenses.

**Finding 03:** Modest compensation and reimbursement of expenses to board members could encourage greater community involvement and increase board diversity.

**Fact:** Required annual reports of CRB activities have not been kept current.

**Finding 04:** Annual reports provide the public with timely information on CRB activities and increase transparency.

### ***National City Community and Police Relations Commission***

In October, 2003, the City Council of National City established the Community and Police Relations Commission (CPRC).<sup>9</sup> The CPRC gives citizens a forum to voice their

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<sup>9</sup> <http://www.ci.national-city.ca.us/index.aspx?recordid=3073&page=111>

concerns about police conduct, practices, and policies, and improves communication between residents and the National City Police Department (NCPD).

Complaints of alleged NCPD misconduct are reviewed by CPRC, which also recommends changes to department policies and procedures. This long-standing volunteer commission does not employ independent investigators but reviews and comments on the investigations by the NCPD Internal Affairs Unit. The commission has complete access to information gathered by the NCPD.

CPRC consists of eight individuals appointed by the Mayor and approved by the City Council. Seven are voting members, of which five must be residents of National City. The non-voting member is a member of the National City Police Officers' Association. The make-up of the current CPRC is diverse.

#### ***Cities without a Community Review Board or Commission***

Seven San Diego county cities (listed above) have Police Departments but do not have a community review board or commission. Complaints are investigated internally.

The Grand Jury distributed a written survey to the police departments in these seven cities. All stated that they have policies and procedures in place for the receipt and investigation of citizen complaints against police officers. None of them have plans to establish an oversight board or commission. One reason given for maintaining the status quo is the low number of complaints received; a second reason given is existing citizen input into complaint resolution.

Chula Vista does have a Police Chief's Advisory Commission (CAC) that includes Chula Vista citizens. The group meets quarterly to discuss subjects of concern with the Police Chief and senior staff. The department provides the CAC with complaint statistics and discusses complaint procedures. In its survey response, Chula Vista stated that the CAC, which has extensive insight into department operations and is in the best position to represent the concerns of the citizens of Chula Vista, has not advocated for or pressed for a citizens' review board and one is not being considered at this time.

This jury has received complaints from citizens in several of these cities who felt there was inadequate resolution of their grievances, suggesting the current process needs improvement. The presence of a review board gives citizens a means to seek justice in dealing with law enforcement; the absence of a citizens' review board can seriously erode public trust in its police department. If a city decides to establish a review board, there is more than one model available, as this report shows. Extensive public participation in adopting a model appropriate for the specific needs of the community and police will help ensure the board's effectiveness. It will also comply with California Department of Justice policy that holds local government responsible for dealing with citizen complaints.

The size of these cities makes it worthwhile to consider establishing regional citizen review boards through Joint Powers Agreements. This might include one board that oversees complaints in northern San Diego County (Escondido, Oceanside, Carlsbad), one serving eastern San Diego County (El Cajon and La Mesa), and one serving southern cities (Coronado and Chula Vista, and possibly incorporating National City).

### ***FACTS AND FINDINGS***

***Fact:*** Seven cities with separate police departments (El Cajon, La Mesa, Escondido, Oceanside, Carlsbad, Chula Vista and Coronado) do not have citizen oversight committees.

***Fact:*** Trust between law enforcement agencies and the people they protect and serve is essential.

**Finding 05:** Cities without a citizens' oversight board do not have public review of complaints of police behavior and risk losing the trust of their citizens.

***Fact:*** There are different models of law enforcement citizens' review boards available to local jurisdictions.

***Fact:*** California Department of Justice policy states that local government has primary responsibility for citizen complaints against law enforcement agencies.

**Finding 06:** A review board shaped with citizen input will promote confidence in actions taken by the board.

### ***RECOMMENDATIONS***

**The 2015/2016 San Diego County Grand Jury recommends that the Mayor and City Council of San Diego:**

- 16-26: Prepare and publish annual reports on Citizens' Review Board actions.**
- 16-27: Provide the Citizens' Review Board with independent legal counsel.**
- 16-28: Provide modest compensation for board member time and expenses.**

**The 2015/2016 Grand Jury recommends that the San Diego County Board of Supervisors:**

- 16-29: Provide modest compensation for board member time and expenses.**

**The 2015/2016 Grand Jury recommends that Mayors and City Councils of El Cajon, La Mesa, Escondido, Oceanside, Carlsbad, Chula Vista, and Coronado:**

**16-30: Establish independent citizen commissions for oversight of police behavior.**

**16-31: Determine the specific commission model with community input to ensure acceptance, independence, and accountability.**

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Date</b>
<b>Mayor, City of San Diego</b>	<b>16-26, 16-27, 16-28</b>	<b>8/23/16</b>
<b>City Council, City of San Diego</b>	<b>16-26, 16-27, 16-28</b>	<b>8/23/16</b>
<b>San Diego County Board of Supervisors</b>	<b>16-29</b>	<b>8/23/16</b>
<b>Mayor, City Council—El Cajon</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—La Mesa</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—Carlsbad</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—Chula Vista</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—Coronado</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—Escondido</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>
<b>Mayor, City Council—Oceanside</b>	<b>16-30, 16-31</b>	<b>8/23/16</b>