

SAN DIEGO COMMUNITY REVIEW BOARD ON POLICE PRACTICES (CRB)

SUMMARY

The 2017/2018 San Diego County Grand Jury (Grand Jury) investigated the organization and operations of the City of San Diego Community Review Board on Police Practices (CRB). The investigation was based on a citizen's complaint that the CRB was understaffed and unable to carry out its obligations because the City has not enacted implementing legislation and regulations after Measure G, an amendment to City Charter Section 43(d) was approved by the voters with the effective date of December 19, 2016.

The Grand Jury recommends that the San Diego Mayor and City Council consider:

- Taking steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:
 - a. The need for the CRB to have the ability and authority to track all complaints.
 - b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.
 - c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.
 - d. The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.
 - e. The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.
- Consider proposing an amendment to the City Charter to give the CRB Subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.
- Taking action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.

INTRODUCTION

The San Diego City Charter Section 43(d), as amended on December 19, 2016 states...
the Mayor and City Council shall have the exclusive authority to create and establish a community review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints.

It further states that:

the Mayor and City Council shall establish rules and regulations for this board to carry out its functions.

As defined by its bylaws and operating procedures the CRB reviews and evaluates SDPD IA investigations of citizens' complaints, officer-involved shootings, all in-custody deaths, all police

actions that result in the death of a person, and the administration of discipline arising from such complaints.

The Grand Jury examined the history of the CRB, its current operation, and the status of the implementing legislation and rules that the Mayor's office decided were necessary to carry out the new provisions of City Charter Section 43(d). The Grand Jury also examined issues that arose during this investigation, specifically the public perception of the CRB's independence.

PROCEDURE

The Grand Jury examined:

- the CRB as created on April 3, 1989 as the Citizens Review Board on Police Procedures.
- the CRB as constituted following the passage of Measure G on December 19, 2016.
- the status of implementing legislation after the City Charter Section 43(d) was amended by the adoption of Measure G on December 19, 2016.
- issues that arose during this investigation concerning the independence of the CRB from the SDPD and the perception of the CRB by the public.

The Grand Jury reviewed:

- the City Charter
- CRB reports
- the CRB Bylaws
- the Memorandum of Understanding (MOU) between City of San Diego and San Diego Police Officers Association dated July 1, 2015.
- the 2015/2016 Grand Jury Report "Citizen Oversight Boards of Police Behavior"
- the 2011/2012 Grand Jury Report "Citizen's Review Board on Police Practices"
- the SDPD Discipline Matrix
- San Diego City Council Policy 000-13, Procedure for Mayor and Council Appointments
- videos of several past City Council Meetings where the CRB and Measure G were discussed.

The Grand Jury interviewed:

- Past and present members of the CRB.
- Members of the Mayor's office.
- Members of the San Diego City Council.
- Interested citizens.
- Members of the San Diego City Attorney's office.

DISCUSSION

APPOINTMENT OF MEMBERS TO THE CRB

The San Diego City Charter, Section 43(a) provides that the City Council may by ordinance create and establish advisory boards. Advisory boards are created "...to consult and advise with the Mayor, City Council or City Manager, as the case may be, but not direct the conduct of any Department or Division."

On April 3, 1989 the Citizens' Review Board on Police Practices (CRB), an advisory board as defined by San Diego City Charter Section 43(a), was established by the enactment of Charter Section 43(d). On December 19, 2016 Section 43(d) was amended following the passage of Measure G, which changed the name of the CRB to the Community Review Board on Police Practices, gave the Mayor and City Council the exclusive authority to create the board and to establish the rules and regulations for its operations, and added a provision relative to officer-involved shootings and in-custody deaths.

Prior to the passage of Measure G no ordinance or other implementing legislation was deemed necessary in order to appoint members to the Board. None was enacted, and during that time members were appointed under the provisions of Charter Section 43(a) and Council Policy 000-13.

The CRB operates under the authority of bylaws and Standard Operating Procedures adopted by the CRB and approved by the Mayor. The bylaws establish that the CRB has 23 Appointed Members and 23 Prospective Members. Prospective Members are in training to become Appointed Members and they can be called upon to serve when an Appointed Member is on leave, when case review backlog requires, or in the event of a mid-year resignation of an Appointed Member. City officials who oversee the operations of the CRB decided that following the amendment of Section 43(d), an ordinance or other implementing legislation is required to establish the authority for appointments to the CRB. Consequently, no appointments to the CRB have been made since December 2016 and it does not appear that any will be allowed until such legislation is enacted.

To date no implementing legislation has been proposed or enacted. The CRB has repeatedly asked the Mayor's office about the status of this action, but has not received a definitive response, or even a firm timeline. The issue was raised again in the CRB's FY2017 Annual Report to the City. In October 2017 the CRB raised this issue with the City Council Public Safety and Livable Neighborhoods Committee.

At present the CRB has only 15 Appointed and two Prospective Members, rather than the 23 of each established in the bylaws. This reduced membership has negatively impacted its operation. Limited membership reduces the number of members available to conduct reviews of police investigations of citizens' complaints and makes it more difficult for the CRB to muster the ten members needed to vote for approval or disapproval of a case review as required by the bylaws.

Appointments to the CRB have always been made under the authority defined in Section 43(a) and Council Policy 000-13. Those authorities were not changed by the 2016 amendments to Section 43(d). The Grand Jury has determined that the decision to suspend appointments was not based on any formal legal opinion, and it is uncertain whether that question was posed to the City Attorney. Instead, the City is operating on an assumption that the respective roles of the Mayor and the Council need to be defined before appointments can be made. This assumption has not applied to other CRB functions, as the operation of the CRB has continued based on the bylaws and Operating Procedures under which it operated prior to December 19, 2016.

The delay in appointing new members to the CRB was a San Diego Mayor's office management decision. Thus, the problem could be solved immediately whenever management chooses to solve it.

CURRENT CRB OPERATIONS

The CRB bylaws establish the composition, the organizational structure, and provisions for management of the CRB. The Standard Operating Procedures include two components: (1) the Case Review Procedure, the document that defines the processes by which the CRB reviews the SDPD IA investigations; and (2) the Administrative Standing Rule and the Presentation of CRB Case Review Reports, the document that describes the content and format of the CRB report.

The primary function of the CRB is to review and evaluate the SDPD IA's investigation of citizens' complaints against the SDPD. A small number of these complaints are submitted directly to the CRB, but most are submitted to SDPD, which divides them into two categories:

- Category I includes complaints concerning arrest, criminal conduct, discrimination, use of force, and/or slur.
- Category II includes complaints concerning procedures, courtesy, conduct, and/or service.

All Category I complaints are investigated by SDPD IA and reviewed by the CRB. Category II complaints are considered less serious, and are not seen by the CRB unless they are part of a Category I complaint. Instead, the Division Commander where the incident took place is responsible for review, investigation, and action.

The CRB does not participate in the categorization of complaints submitted to the SDPD. Consequently, the CRB cannot be certain that it sees all complaints that may be relevant to its advisory responsibilities, and cannot determine whether any have been misclassified. In addition, the SDPD IA uses a tracking system to control the processing of all complaints. The CRB does not have access to this tracking system. To ensure the CRB maintains control of their review process, it needs access to the SDPD IA tracking system.

The CRB reviews investigations completed by SDPD IA rather than conduct its own investigations. CRB teams of three board members review each SDPD IA investigation. The reviews take place in the SDPD IA facilities and are subject to facility access constraints that may be imposed by SDPD IA. The CRB teams do, however, have access to all materials used or created by SDPD IA for Category I complaints such as reports, interviews, video recordings, and the analyses of the SDPD IA officer(s) who conducted the investigation. When the CRB team review is complete, the team presents its findings to the full CRB in closed session. Such sessions are closed because of the confidential nature of the information to be discussed. During these sessions the CRB votes either to agree with SDPD IA findings, to agree with SDPD IA findings with comment, or to disagree with the SDPD IA finding with comment.

Members of the SDPD routinely attend CRB closed sessions to answer questions about the investigations. The most recent available draft of the Standard Operating Procedures, dated March 14, 2017 (which appear to be the procedures under which the CRB currently operates) states...

CRB Closed Meetings should be attended by only the responsible lieutenant and/or the IA Investigator for any case scheduled to be presented to the Board. The IA Captain and IA Liaison Officer (Custodian of Record), and the Executive Assistant Chief also may attend.

The current bylaws provide that,

Attendance [at closed meetings] is limited to Board Members, the Executive Director and assigned City Staff, designated SDPD Internal Affairs staff, designated City Attorney Office representatives ...

There is no agreement among members of the CRB, the Mayor's staff, the SDPD, and the City Attorney's Office as to whether the CRB can exclude the SDPD from closed sessions. SDPD testimony would be useful in explaining the investigations conducted by the SDPD IA and the reasons surrounding the IA findings. However, SDPD personnel are also present during the CRB's closed sessions. Even though the SDPD normally accommodates a request by the CRB for exclusion, it does so without fully acknowledging that the CRB has the right to exclude SDPD personnel from its closed sessions. The presence of SDPD officers during closed CRB deliberations compromises the CRB's independence and has intimidated some of its members. The Grand Jury finds that the CRB should have the authority to include or exclude persons other than the members of the CRB during closed sessions. Otherwise, the CRB's appearance of being an unbiased and fair citizen review board will continue to be questioned.

STATUS OF THE CRB AS AN ADVISORY BOARD

City Charter Section 43(a) defines the CRB as an advisory board. Section 43(d) imposes on the CRB the duty to consult and advise the Mayor and Council. The semi-annual report that the CRB makes to the Mayor and City Council provides only general information about, and a statistical analysis of, the activities of the board. The report does not deal with the specifics of police actions and policies that arose during the incidents that were the basis of the citizen complaints. In practice the CRB seldom offers the Mayor and City Council specific advice. Thus, it is not clear that the CRB's current practice actually complies with the Section 43(d) requirement to consult and advise the Mayor and Council.

The CRB's review of the SDPD IA investigation of complaints is discussed with representatives of the Police Department. Differences between the CRB and the Police Department regarding the conclusions reached by the CRB relative to the investigation and policy recommendations are generally resolved by compromise. It is only in matters where the CRB and the SDPD cannot reach a compromise that matters go to the Mayor for resolution. As a result, the day-to-day review of IA investigations, the proposals of the CRB for changes to SDPD procedures, and the advisory opinions of the CRB reach the Mayor only on those occasions where the CRB and the SDPD cannot reach agreement.

To more fully comply with the reporting requirements of Charter Sections 43(a) and 43(d) the CRB reporting procedures should require reports on all cases reviewed, or a summary of all cases reviewed, be submitted to the Mayor and City Council.

CRB INDEPENDENCE

There were two competing measures for the creation of a police review board on the November 8, 1988 ballot. Proposition F proposed Charter Section 57, a “Police Review Commission” that would have independent investigative authority including the power to subpoena and obtain sworn testimony during investigations of alleged police misconduct. Proposition G, “Citizens Review Board on Police Practices,” proposed that the Board would have only authority to review and evaluate SDPD IA’s investigations of citizens’ complaints against members of the SDPD.

Both propositions were approved by a majority of the voters. However, Proposition F received 181,195 votes and Proposition G received 182,075 votes. The law provides that when there are competing propositions, the one with the greater number of votes prevails. Consequently, Charter Section 43(d) and the Citizens’ Review Board on Police Practices came into effect on April 3, 1986.

Even though the weaker form of the measure won, it was a very narrow victory and there continues to be strong support for an independent investigative board. This position was most recently expressed during hearings leading to the placement of the December 19, 2016 amendment of Section 43(d) on the ballot, when many members of the public made strong arguments in favor of a fully independent Police Review Board. Many who have spoken on the matter do not consider the CRB as currently constituted to be independent from SDPD and do not believe the CRB reports reach fair and unbiased conclusions.

FACTS AND FINDINGS

***Fact:* The Mayor and City Council have the authority to create and establish a Community Review Board on Police Practices and to appoint members to that board.**

***Fact:* For more than a year the San Diego City Government has neither introduced nor passed legislation to implement Measure G.**

***Fact:* The Grand Jury was unable to find any legal reason that implementing legislation is required before new CRB members can be appointed.**

Finding 01: The CRB requires frequent replacement of members who leave in order to maintain a membership level necessary to accomplish its assigned tasks.

Finding 02: The operation of the CRB has been negatively impacted by the failure of the San Diego City Government to implement Measure G.

Finding 03: The Mayor’s office and the City Council can resume filling CRB member and prospective member vacancies immediately.

***Fact:* The CRB does not participate in the categorization of complaints**

***Fact:* The CRB does not have access to all complaints, does not track all complaints, and does not review the SDPD IA investigation of all complaints.**

Finding 04: The CRB is hindered in carrying out its mission because it does not receive, categorize, and track all complaints that are submitted to the Police Department and to the CRB.

Fact: The CRB has a duty to consult and advise the Mayor and City Council.

Fact: The CRB provides semiannual overview reports to the Mayor and the City Council.

Fact: Other than the semi-annual report, the CRB advises the Mayor and City Council only when it disagrees with SDPD IA.

Finding 05: The CRB does not adequately fulfill its responsibility to advise the Mayor and the City Council under the current reporting practices.

Fact: Members of the SDPD routinely attend closed CRB meetings.

Fact: There is no stated rule asserting that the CRB has the authority to exclude SDPD officers from closed meetings.

Finding 06: SDPD presence in closed meetings may inhibit free and open discussion by CRB members.

Finding 07: The CRB should have the authority to control attendance at closed sessions.

Fact: The CRB does not have independent investigators or subpoena power and is authorized only to review some citizen complaints.

Finding 08: Many members of the community do not consider the CRB to be independent from the SDPD.

RECOMMENDATIONS

The San Diego County Grand Jury recommends that the San Diego Mayor and City Council:

- 18-13:** Take steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:
- a. The need for the CRB to have the ability and authority to track all complaints.
 - b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.
 - c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.

- d. **The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.**
- e. **The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.**

18-14: Consider proposing an amendment to the City Charter to give the CRB Subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.

18-15: Take action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.

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:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	18-13 through 18-15	8/20/18
San Diego City Council	18-13 through 18-15	8/20/18