

## Civilian Complaint Review Board

The New York City Civilian Complaint Review Board (“CCRB”) is one of the largest police oversight agencies in the country, investigating misconduct allegations against the New York City Police Department’s (“NYPD’s”) 36,000 uniformed officers. The CCRB, is mandated to conduct “complete, thorough, and impartial” investigations, overseen by “an independent civilian complaint review board . . . comprised solely of members of the public . . . .”<sup>1</sup>

### CCRB History

In 1950, eighteen civil rights and community-based organizations lobbied New York City to address police misconduct. Three years later, the CCRB was formed as an NYPD-controlled entity, overseen by three deputy commissioners, with no civilians on the CCRB board. In 1965, Lawrence E. Welsh, a former federal judge for the United States District for the Southern District of New York, reviewed the CCRB’s structure at Mayor John Lindsay’s request, recommending that the agency employ civilians. The recommendation was briefly adopted before the Patrolmen’s Benevolent Association (“PBA”) petitioned to undo the change, claiming that civilians would impair public safety and impede officers’ work. Nearly thirty years later, the CCRB was restructured once again; footage of police brutality during the Thompkins Square Riot revitalized support for a civilian-led board. The campaign culminated in 1993, when Mayor David Dinkins and the New York City Council created the current CCRB structure, in which the board is exclusively composed of civilians.<sup>2</sup>

### Current CCRB Operations

Under the New York City Charter, CCRB’s investigative jurisdiction is limited to the so-called “FADO” categories: force, abuse of authority, discourtesy, and offensive language. If a complaint falls outside of the CCRB’s jurisdiction, the complaint may be forwarded to another agency, for example the Internal Affairs Bureau of the NYPD, depending on the nature of the complaint. The CCRB is required to give equal weight to all relevant statements, whether from a civilian complainant, a bystander, or an accused officer. The board itself is composed of thirteen members, five appointed by the City Council, five appointed by the mayor, and three former law enforcement officials chosen by the police commissioner.

CCRB complainants generally have two options: mediation or investigation.<sup>3</sup> Under mediation, the complainant and officer(s) engage in a voluntary and non-disciplinary conflict resolution process. The discussion is mediated by a third party unaffiliated with the NYPD and CCRB.<sup>4</sup> The CCRB reports that approximately 90% of mediations are successful, with all parties

<sup>1</sup> See, New York City Charter, Chapter 18-A, §440, at 134

<sup>2</sup> See CCRB History <https://www1.nyc.gov/site/ccrb/about/about.page>

<sup>3</sup> There are some instances, such as in complaints with sexual assault or pending litigation regarding the case, in which mediation is not a suitable option.

<sup>4</sup> See CCRB – Mediation at <https://www1.nyc.gov/site/ccrb/mediation/mediation.page>

agreeing that a resolution has been reached.<sup>5</sup> Some complaints are deemed as “truncated” when a complainant is unable or unwilling to assist CCRB. A portion of these “truncated” matters are withdrawn when complainants decide to pursue litigation in federal or state court.

If mediation is rejected or inapplicable, a formal investigation is opened. All investigations require complainants’ verified, in-person statement, but they can also review additional testimony and physical evidence such as recordings. A single complaint can contain numerous misconduct allegations, and at the conclusion of its investigation, CCRB staff reaches one of four dispositions on each allegation.

An allegation is “substantiated” when a preponderance of the evidence demonstrates officer(s) violated one or more provisions of the NYPD Patrol Guide or of city, state, or federal law. If CCRB staff substantiate an allegation, it is next review by the CCRB Board, which can uphold or overturn the disposition. If a disposition is upheld, the Board recommends discipline, ranging from additional training or loss of vacation days up to termination of employment. The CCRB cannot recommend imprisonment or other criminal sanctions. CCRB disciplinary recommendations are then reviewed by the police commissioner, who has discretion to disregard the CCRB recommendation without providing any justification.

An allegation is “unsubstantiated” when CCRB staff can not determine if the alleged misconduct occurred. CCRB staff can also find an officer is “exonerated” when the investigation determines by the preponderance of the evidence that the alleged conduct transpired, but that the officer’s actions were legally permissible. An allegation is deemed “unfounded” when the investigation finds by the preponderance of the evidence that the alleged misconduct did not occur at all.

In 2018, 4,745 complaints were filed with the CCRB, including 16,586 separate allegations. According to CCRB’s 2018 Bi-Annual Complaint Data Report:

- 22.9% of allegations contained force allegations
- 63.5% of allegations contained abuse of authority allegations
- 11.1% of allegations contained discourtesy allegations
- 2.5% of allegations contained offensive language allegations<sup>6</sup>

Of those 4,745 complaints, only 1,208 complaints became full investigations,<sup>7</sup> of which only 226 (about 18.7%) were substantiated.<sup>8</sup>

### **Proposed changes to CCRB**

The 2019 New York City Charter Revision Commission, which is charged with proposing revisions to the New York City Charter, adopted five proposed changes to the CCRB. Proposals include expanding the CCRB Board to fifteen members, creating an independent agency budget to

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<sup>5</sup> See Id.

<sup>6</sup> See Bi-Annual CCRB Complaint Data (2018) at 11

<sup>7</sup> See Id. at 53

<sup>8</sup> See Id. at 61

ensure independence, granting subpoena power to more CCRB officials, and requiring the police commissioner to explain any deviation from CCRB's discipline recommendations.

A second proposal would expand CCRB jurisdiction to include false official statements.<sup>9</sup> Such allegations are currently referred to the Internal Affairs Bureau. Another proposal adds two board members, one appointed by the public advocate and the other jointly appointed by the mayor and the city council speaker. There was also additional discussion regarding the formation of an "all elected civilian board", in which members of the public would be elected rather than appointed, but such a proposal did not make it to the final ballot. Similarly, the Charter Revision Commission rejected calls to expand City Council control over NYPD surveillance more broadly. The public will vote on charter revision proposals on November 5, 2019.

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<sup>9</sup> See, Rebecca C. Lewis, *New York City Charter Revision Commission finalizes its ballot proposals*, City and State, New York (July 24, 2019) <https://www.cityandstateny.com/articles/politics/new-york-city/new-york-city-charter-revision-commission-finalizes-its-ballot>