

**Police Oversight in Rochester**  
An Examination of Outcomes and Other  
Models

September, 2017



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# Police Oversight in Rochester

## An Examination of Outcomes and Other Models

September, 2017

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Rochester City Council

**Prepared by:**

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## Summary

The Rochester City Council engaged CGR (Center for Governmental Research) to provide research and analysis of the current Civilian Review Board process for reviewing complaints of police misconduct. Specifically, City Council requested the following specific tasks be completed within a 60-day time frame if possible: analyze data on complaints and findings by the Civilian Review Board, RPD's Professional Standards Section and Chief of Police; provide information on how other cities handle police oversight, including best practices nationally; and provide more detailed information on 2-3 cities in New York from which Rochester might glean lessons.

To meet these goals within a 60-day time frame, CGR conducted the following tasks:

- Data analysis: We obtained and analyzed historical data from CRB, PSS and the Chief's office to shed light on outcomes of the current process.
- Stakeholder interviews: We conducted individual and small group interviews with more than 15 people with key perspectives on the current process. Many more interviews could have been conducted and would have been helpful, but we were limited by the scope of this project and the tight time frame desired for completion.
- High-level national research: We reviewed current national reports and studies to learn more about the national context surrounding police oversight, including material from the National Association for Civilian Oversight of Law Enforcement, the Department of Justice, President Obama's Task Force on 21<sup>st</sup> Century Policing, and the work of Samuel Walker, one of the foremost national experts in police accountability.
- Review of practices in three New York cities: We selected three cities in New York to learn more about: Albany, Syracuse and New York City - and in each city conducted one or more interviews with directors of review boards and/or inspector general offices or other sources knowledgeable about the local systems.

Our key findings include:

- The type of citizen review process in Rochester, review-focused, was part of the first wave of civilian oversight in the first half of the 20<sup>th</sup> century, and many communities have moved beyond or enhanced this approach with other forms of monitoring, as discussed in the body of this report.
- The number of allegations reviewed by the Civilian Review Board has declined 69% since 2003 – a trend at odds with the strong opinions of several community leaders and groups that police misconduct is a major and under-reported problem.

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This suggests issues with meaningful citizen access to and trust in the current process.

- Whether you examine all allegations, citizen-initiated allegations, or use of force allegations, the CRB as currently structured does tend to sustain a higher share of allegations than PSS or the Chief, but not dramatically higher in most years. There is no objective way of telling whether this is appropriate or inappropriate without studying specific cases, but, once again, strong voices in the community take it to mean that the CRB as currently structured is not sufficiently independent from the police.
- There are ways within the current state civil service law and local collective bargaining agreement to strengthen the process in the direction community voices are pushing, as shown in the 3 New York cities studied. They range from having a monitor observe all force-related investigations to independent investigations of all complaints to creating an auditor/monitor agency to do systematic reviews and make police-related recommendations. In addition, city officials could lobby for changes in state civil service law and the local police contract to provide for a community body to decide police discipline. Other communities have expressed interest in state-level changes, though this is likely an uphill battle politically.
- There seems to be general agreement that RPD could be doing more to implement the latest thinking on risk management in terms of using data to identify and address troubling patterns in officer behavior – including before such behavior even turns into a complaint from a citizen. While it is our understanding that the department would like to move in this direction, careful monitoring of progress is warranted and funding could be needed for software enhancements.
- Both the fields of law enforcement and civilian oversight of police are evolving new approaches to thinking about how to address police misconduct with a larger goal of improving police department culture and officers' relationships with communities. These approaches hold significant promise for Rochester – some have been explored or partially adopted but more could be done to implement them to their full potential.

## Acknowledgements

CGR is grateful to the community members and city officials who provided information and perspectives for this study.

## Staff Team

Paul Bishop, Donna Harris and Erika Rosenberg conducted interviews for this report; Ms. Rosenberg led the data analysis work. Dr. Harris compiled information for the city profiles. The report was co-authored by the three primary team members. In addition, Donald Pryor provided high-level oversight and guidance.

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# Introduction

The City of Rochester's Civilian Review Board and police complaint process have gained heightened attention in the past year and been the focus of community concern at various points over the last several decades. Recent national and local media stories of police misconduct have strained police-community relations and highlighted concerns about use of force, racism and racial profiling, backlash against the police, and many other related issues. Locally, the publication in spring 2017 of "The Case for an Independent Police Accountability System" by local researchers and a reform community group sparked a new wave of attention and discussion about the issue. Just this month, the issue gained the spotlight as a \$125,000 payment to a man allegedly choked by police was revealed,<sup>1</sup> and Rochester police canceled the department's participation in a controversial training by a consultant who has defended hundreds of officers nationally in questionable shootings (the police union has said it will still hold the event and is sending several of its own members).<sup>2</sup>

In this context, the Rochester City Council engaged CGR (Center for Governmental Research) to provide research and analysis of the current Civilian Review Board process for reviewing complaints of police misconduct. Specifically, City Council requested the following specific tasks be completed within a 60-day time frame if possible: analyze data on complaints and findings by the Civilian Review Board, RPD's Professional Standards Section and Chief of Police; provide information on how other cities handle police oversight, including best practices nationally; and provide more detailed information on 2-3 cities in New York from which Rochester might glean lessons.

## Methodology

To meet these goals within a 60-day time frame, CGR conducted the following tasks:

**Data analysis:** We obtained and analyzed historical data from CRB, PSS and the Chief's office to shed light on outcomes of the current process.

**Stakeholder interviews:** We conducted individual and small group interviews with more than 15 people with key perspectives on the current process. Many more interviews could have been conducted and would have been helpful, but we were

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<sup>1</sup> <http://www.democratandchronicle.com/story/news/2017/09/05/city-rochester-police-choking-fbi-settlement-dkuan-webb-thomas-rodriguez-john-parrinello/632147001/>

<sup>2</sup> <http://www.democratandchronicle.com/story/news/local/columnists/andreatta/2017/09/06/rochester-backpedals-controversial-police-training/639216001/>

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limited by the scope of this project and the tight time frame desired for completion. Our interviews included:

- City officials – Deputy Mayor Cedric Alexander, Corporation Counsel Brian Curran
- Rochester Police Department - Police Chief Michael Ciminelli, Professional Standards Section Commanding Officer Lt. Henry Favor, Locust Club President Michael Mazzeo
- Center for Dispute Settlement representatives
- Authors of Enough is Enough report calling for overhaul of current process
- Local ministers and advocates concerned with police oversight
- John Klofas Ph.D., director of the Center for Public Safety Initiatives at Rochester Institute of Technology

High-level national research: We reviewed current national reports and studies to learn more about the national context surrounding police oversight, including material from the National Association for Civilian Oversight of Law Enforcement, the Department of Justice, President Obama’s Task Force on 21<sup>st</sup> Century Policing, and the work of Samuel Walker, one of the foremost national experts in police accountability.

Interviews with three cities: We selected three cities in New York to learn more about: Albany, Syracuse and New York City - and in each city conducted one or more interviews with directors of review boards and/or inspector general offices or other sources knowledgeable about the local systems.

## Overview of Current Process

People who feel they have been mistreated by the police have two avenues for making an official complaint: They can make a report to the Rochester Police Department’s Professional Standards Section (PSS), which has its own office on South Clinton Avenue separate from RPD’s headquarters, or they can contact the Center for Dispute Settlement (CDS), a 44-year-old nonprofit in Rochester that provides mediation and conflict resolution services in a variety of contexts and which has been involved in police oversight and police-community relations locally for the past 40 years.

Regardless of which avenue a complainant takes, he or she will then be interviewed by a police sergeant (or higher-ranking officer) at PSS. PSS will investigate the complaint, interviewing witnesses, gathering photos, videos or other evidence, and preparing a report and recommending a finding to the Chief of Police. For each complaint, a number of allegations may be developed based on the behavior of the officer(s) involved. As an example, one complaint might lead to 3 allegations against one officer

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and 2 allegations against another officer resulting in a total of 5 allegations from one complaint. Each allegation in a complaint receives one of four possible findings:

- Sustained - The complaint is supported, meaning the officer(s) involved acted improperly and may be disciplined.
- Unfounded - The investigation found no basis to the complaint.
- Exonerated - The police officer(s) involved acted properly and will not be disciplined.
- Unprovable - There was not enough evidence to prove the complaint true or false, so no further action will be taken.

All allegations are investigated by PSS and then a subset are referred to the Civilian Review Board (CRB) for review: those involving allegations of unnecessary use of force or potentially criminal conduct, as well as any additional cases referred to it by the Chief of Police. The current chief's practice is to also refer cases to the CRB if they include allegations of racial discrimination or profiling, or involve immigration issues.

The CRB operates under the Center for Dispute Settlement, which has played a role in civilian oversight of Rochester police since 1977. The CRB in its current form was created by City Council in 1992, with some adjustments since then, including in 2013 the creation of a Community Advocate position and a requirement that all CRB panelists be City residents. The Community Advocate helps residents file complaints and is available to guide them through the entire process.

The CRB consists of panelists and chairpersons who undergo 40 hours of training in the Principles of Mediation Training and complete an apprenticeship program with Center for Dispute Settlement to become certified mediators. They also receive 40 hours of training on police policies, procedures and practice and observe a complete session of the CRB review process before being appointed as a panelist.

CRB reviews are conducted by three-member teams of panelists. The focus of the reviews is to determine the fairness, thoroughness and timeliness of the investigation, as well as any possible deficiencies. The CRB issues findings on each allegation of misconduct, which may agree or disagree with the findings of the PSS. The panelists may also make training, investigative or policy recommendations to the Chief of Police and the PSS.

While the CRB does not conduct independent investigations of citizen complaints, it may request additional interviews or investigation by the PSS. CGR received different accounts of how often that happens, with Center for Dispute Settlement leaders saying that frequently happens, and the PSS leadership saying it is rare. We were not able to obtain data to independently quantify the extent to which this happens.

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The findings and recommendations of the Civilian Review Board are forwarded to the Chief of Police for review. The Chief issues final decisions on all complaints and determines any remedial or disciplinary action.

If complaints are sustained, the Chief may file department charges against the officer(s) involved. Officers then plead guilty if they accept the charges and are subject to discipline ranging from a letter of reprimand to suspension, monetary fines, or termination

If a charged officer does not accept charges and pleads not guilty, the case may go to a disciplinary hearing under Section 75 of New York Civil Service Law. However, the City of Rochester has not had a Section 75 hearing for several years. The hearing process outlined under the City's contractual agreement with the Locust Club police union has been stalled, as the City and union have not had in place the so-called "panel of neutrals" from which 3 people would be selected to serve as hearing officers. The City's Corporation Counsel is currently working with the union to form the panel and believes it will be in place soon. The union chief attributed the absence of the panel to a dwindling number of labor arbitrators who usually serve in this role.

The effect has been that about 10 PSS cases cannot be resolved because the Chief has filed charges but officers have pled not guilty<sup>3</sup>.

Discipline of police officers is governed by state civil service law<sup>4</sup> and local collective bargaining agreements. State civil service law specifies that the Police Chief must make final disciplinary decisions and that discipline of specific officers cannot be publicly revealed. The City's agreement with its police union, as noted above, outlines procedures such as panel hearings. These provisions place some constraints on what cities like Rochester can do to strengthen police oversight, but several communities have adopted changes that enhance the process even with these constraints in place, as discussed in the section on models in other communities. It is also possible, of course, for state lawmakers to amend civil service law and for the City to negotiate changes in its union contract, though those are politically difficult tasks.

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<sup>3</sup> As the report was being edited, PSS staff indicated that the first Article 75 hearing to address one of the "backlog cases has been scheduled.

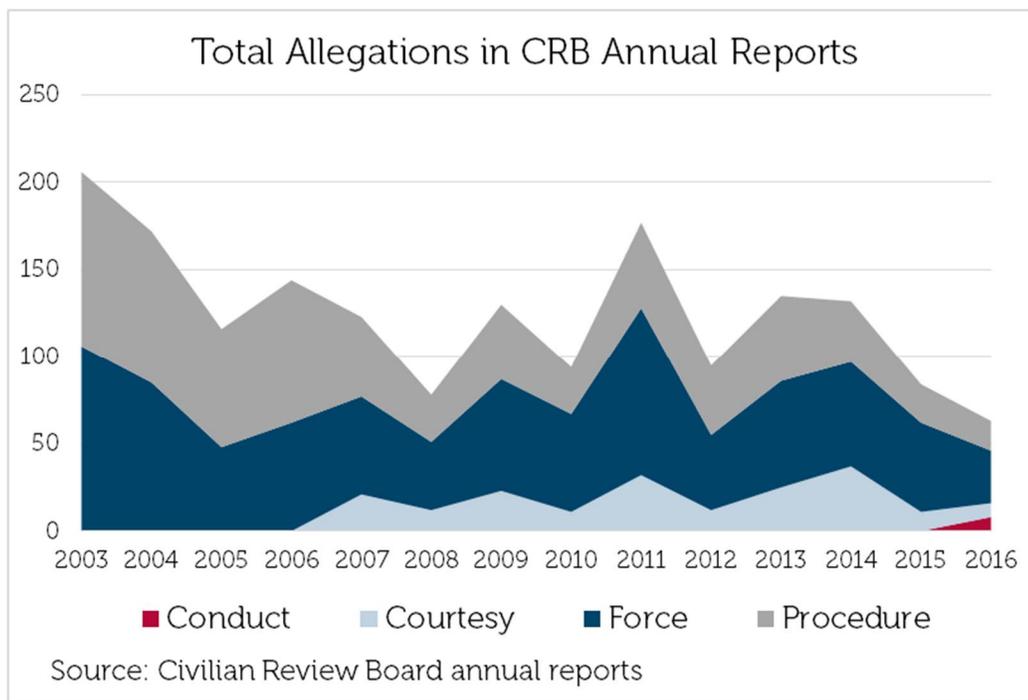
<sup>4</sup> NYS Civil Rights Law Article 50-A

# Outcomes & Perspectives - Current Process

## Data Analysis

In our analysis of annual report data, we looked at the reported outcomes of allegations by both the Civilian Review Board and the Professional Standards Section. As mentioned earlier, not all cases are reviewed by CRB – only those involving force, potentially criminal conduct and those requested to be reviewed by the Chief. The current chief’s practice is to send additional cases to the CRB if they include allegations of racial discrimination or profiling, or involve immigration issues.

From 2003 to 2015, the ratio of reported CRB outcomes to reported PSS outcomes ranged from 116:399 in 2005 to 177:276 in 2011. Note that these may not be the same cases, as investigations and CRB reviews may stretch out over a year. On average over the time period, PSS processed 2.4 allegations for every 1 that went to CRB.



### CRB Data

All the data in this section came from Civilian Review Board annual reports, and so reflect the allegations the CRB reviewed and made findings on in each year from 2003 to 2016.<sup>5</sup>

From 2003 to 2016, the number of allegations reviewed by the CRB dropped 69%, from 206 to 63.

<sup>5</sup> A note about the timing and comparison of CRB and PSS data discussed later: Allegations reviewed in 2016 by the CRB may be counted in earlier year’s PSS reports. Each agency’s report reflects an end-of-year count of allegations and findings completed that year, so totals will not match and individual investigations may span multiple years within one or both of the organizations.

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The decline was not steady, with spikes in 2006, 2009, 2011, 2013 and 2014, and 2016 had the lowest number.

On average over the time period, 50% of the allegations related to police use of force, while 38% related to police following procedure. Allegations related to courtesy were tracked beginning in 2007 and made up 12% on average of the total, and allegations related to conduct were tracked beginning in 2016 and totaled 8 that year. Both force and procedure allegations reviewed by CRB declined from 2003 to 2016 in line with the overall trend.

PSS defines these categories in the following ways:

- Force: Any allegation of an employee's failure to utilize appropriate intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint or restraint as defined in General Order (GO) 335. GO 335 defines Appropriate Force as the reasonable force, based upon the totality of the circumstances known by the member, to effect an arrest, overcome resistance, control an individual or situation, defend oneself or others or to prevent a subject's escape.
- Procedure: Any allegation relative to an employee's failure to abide by the procedures set forth in the Policies, General Orders, and/or Rules and Regulations of the Rochester Police Department.
- Courtesy: Any allegation of an employee's failure to display appropriate conduct as defined in section 4.2 of the RPD's Rules and Regulations, which states that employees shall be courteous, civil and tactful in the performance of their duties; shall not express or otherwise manifest any prejudice concerning age, marital status, handicap, disability, race, creed, color, religion, national or ethnic origin, sex, sexual preferences or any other personal characteristics; and shall not use harsh, profane, insolent, or intentionally insulting language toward any other employee or any other person.
- Conduct: Any allegation of an employee's failure to display appropriate conduct as defined in section 4.1 of the RPD's Rules and Regulations, which require employees to conduct themselves in both their private and professional lives as to avoid bringing discredit upon the Department and prohibits them from engaging in conduct on or off-duty that adversely affects the efficiency of the Department or impairs public respect for the employee and/or the Department and/or impairs confidence in the operation of the Department.

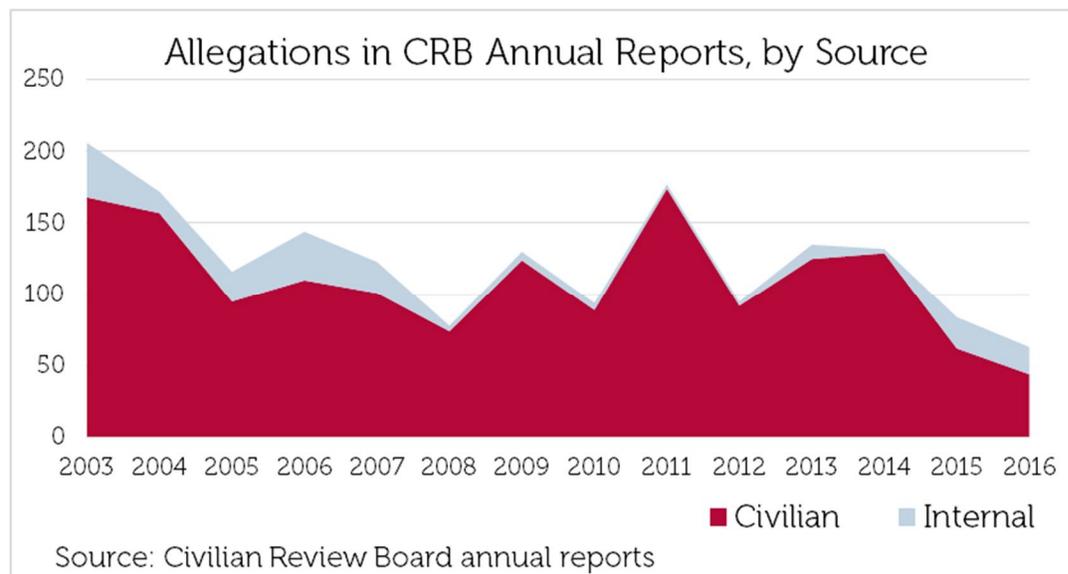
The reasons for the decline in allegations of all types, which is consistent with the PSS data discussed in the next section, are not clear. The law enforcement community believes the trend may reflect a lower incidence of misconduct, while those in the community calling for reform of police oversight in Rochester believe it shows

declining public trust in the process, with fewer residents interested or willing to make complaints about misconduct. In addition, they worry that residents are intimidated by police, the process or both, and for that reason do not make official complaints. Meaningful access to the complaint process allowing citizens to make complaints without feeling intimidated is a concern nationally as well as locally that may have a major impact on the number of allegations made.

CRB Total Allegations														
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Conduct														8
Courtesy					21	12	23	11	32	12	25	37	11	8
Force	106	85	48	62	56	39	64	56	96	43	61	60	51	30
Procedure	100	87	68	82	46	27	43	27	49	40	49	35	22	17
Total	206	172	116	144	123	78	130	94	177	95	135	132	84	63

Source: Civilian Review Board annual reports

Allegations are generated by citizens or internally, by officers referring suspected misconduct to the Professional Standards Section for review. Most allegations reviewed by the CRB come from citizens, ranging from 70% to 98% from 2003 to 2016. Both categories declined substantially over the time period.



The CRB, as well as PSS and the Chief, make findings on each allegation, and they fall into four main categories:

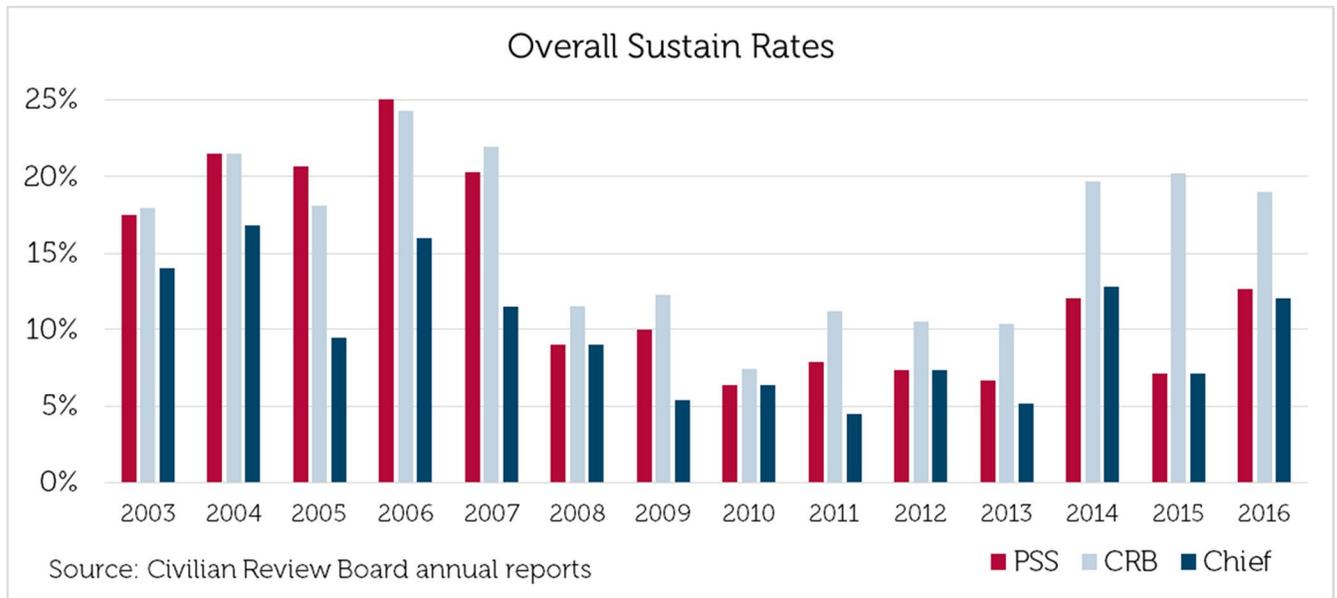
- Exonerated: The officer's conduct was lawful, justified and proper.

- Sustained: The alleged act occurred, and amounts to misconduct or misjudgment on the part of the officer.
- Unprovable: There is insufficient evidence to prove or disprove the allegation.
- Unfounded: The act complained of apparently did not occur.

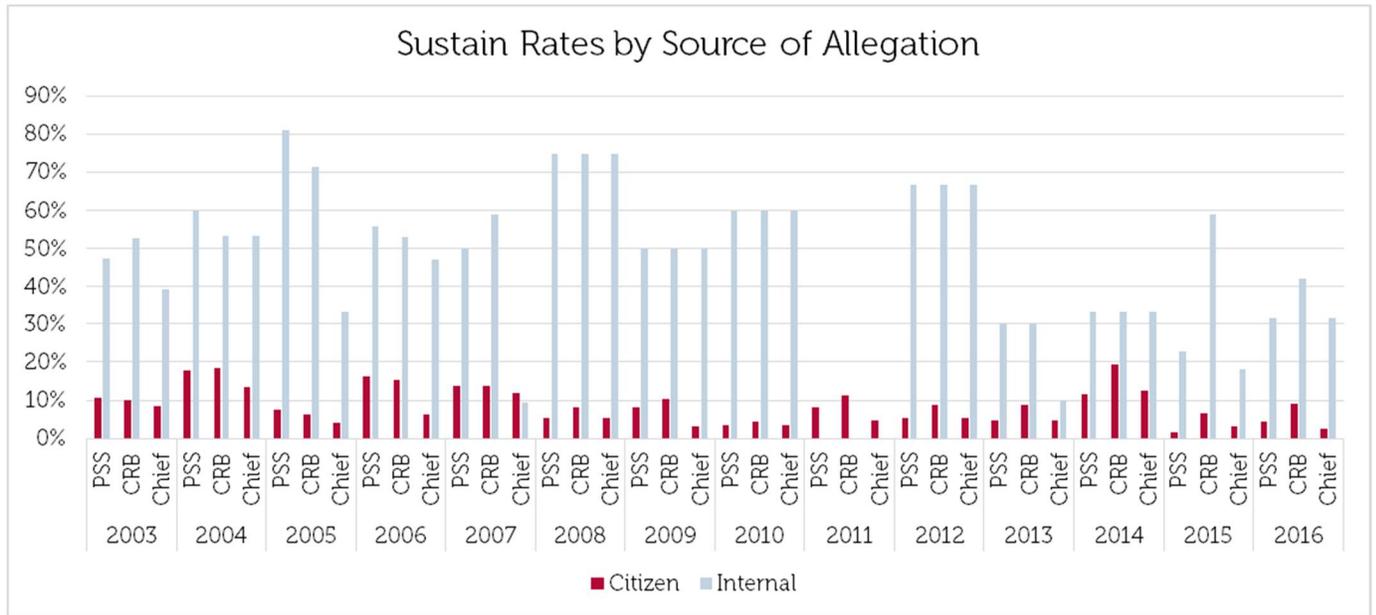
We focused our analysis of the outcome of allegations on the share of allegations sustained by the PSS, CRB and Chief of Police over the 2003-16 time period. Over that 14-year time span, PSS sustained on average 13% of allegations, CRB sustained 16% and the Chief sustained 10%. The aggregated data in CRB reports does not allow us to compare the three bodies' findings on individual allegations, though the City-provided data discussed in a later section does allow some of that type of analysis.

Over the time period, annual sustain rates for PSS ranged from 6% to 26%, for CRB from 7% to 24%, and for the Chief from 5% to 17%, with a few notable patterns:

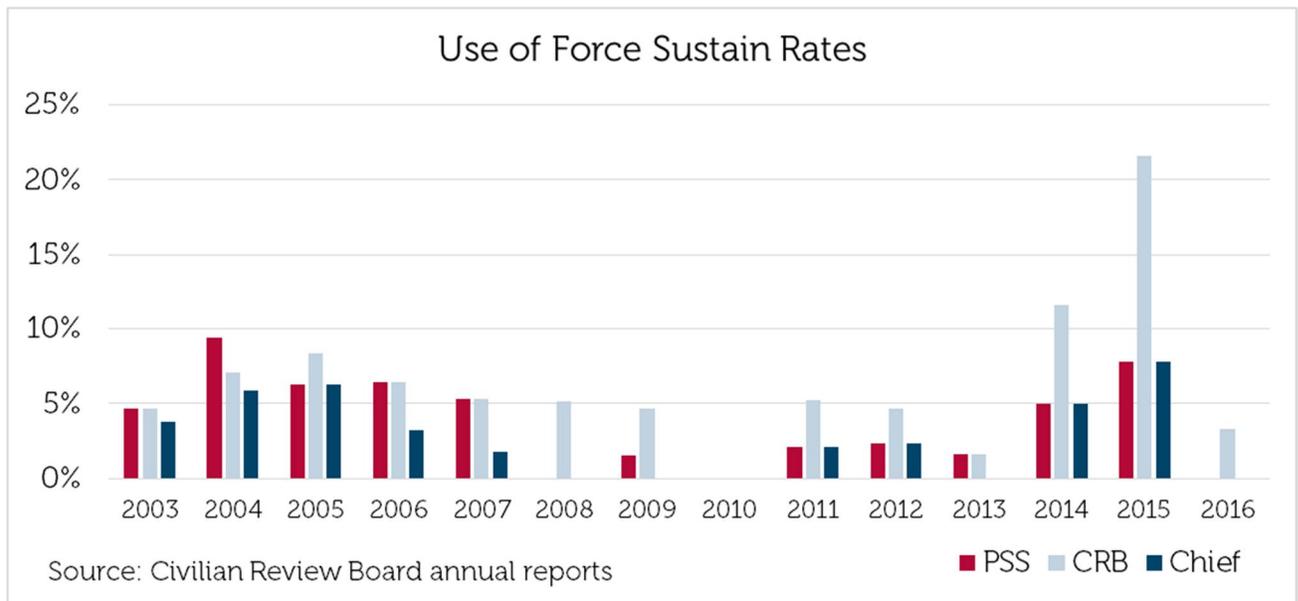
- The Chief's sustain rate was consistently lower than CRB's, in some years considerably lower.
- The Chief's sustain rate has historically been considerably lower than PSS as well, though less so in recent years.
- In earlier years, PSS and CRB sustain rates were quite similar, though in the last three years, CRB has sustained a noticeably higher share of cases than PSS and the Chief.



Looking at sustain rates by source of allegation, allegations were far more likely to be sustained by all three bodies when they were internally generated. For citizen-initiated allegations, average sustain rates from 2003-16 were 9% for PSS, 11% for CRB and 6% for the Chief. By comparison, average sustain rates for internally generated allegations were about 50% for PSS and CRB and 38% for the Chief. It’s important to keep in mind, though, that citizen allegations far exceed internal allegations. The average annual number of citizen allegations over the time period was 110, compared to 15 internally generated allegations.



Looking at sustain rates by category, a smaller share of use of force allegations are sustained than total allegations by all three bodies. On average from 2003-16, PSS sustained 4% of force allegations, CRB 6% and the Chief 3%. The number of force allegations in this time period ranged from 106 in 2003 to 30 in 2016. In 2010, 56 force allegations were made and none were sustained by any of the three bodies.



<b>Use of Force Allegations &amp; Number Sustained</b>				
	Total	PSS	CRB	Chief
2003	106	5	5	4
2004	85	8	6	5
2005	48	3	4	3
2006	62	4	4	2
2007*	56	3	3	1
2008	39	0	2	0
2009	64	1	3	0
2010	56	0	0	0
2011	96	2	5	2
2012	43	1	2	1
2013	61	1	1	0
2014	60	3	7	3
2015	51	4	11	4
2016	30	0	1	0

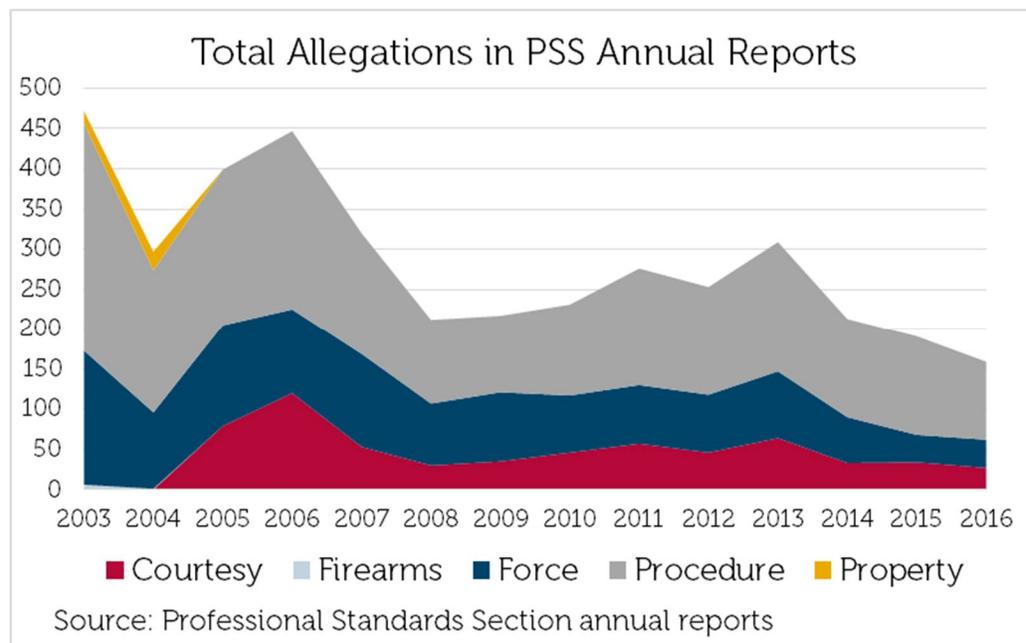
Source: Civilian Review Board annual reports

## PSS Data

Data from PSS annual reports provide another view of police oversight, as they include some allegations that are not reviewed by CRB. In some sense, they are therefore less relevant to this report but we nonetheless provide an overview of the PSS data.

Firearms and property are two allegation categories that were used by PSS in 2003 and 2004 but have since not been used. The conduct category that was added in 2016 did not have any allegations in the PSS data in 2016.<sup>6</sup>

Similar to the allegations reviewed by the CRB, complaint allegations to PSS have been declining. Total allegations fell 60% since 2003 to a low of 159 in 2016, with similar declines in the two largest categories of force and procedure. PSS handles more non-force related complaints than CRB – on average from 2003-16 more than half the allegations it investigated were related to procedure, and 30% related to force. (This is by definition, since all force-related allegations go to the CRB.)

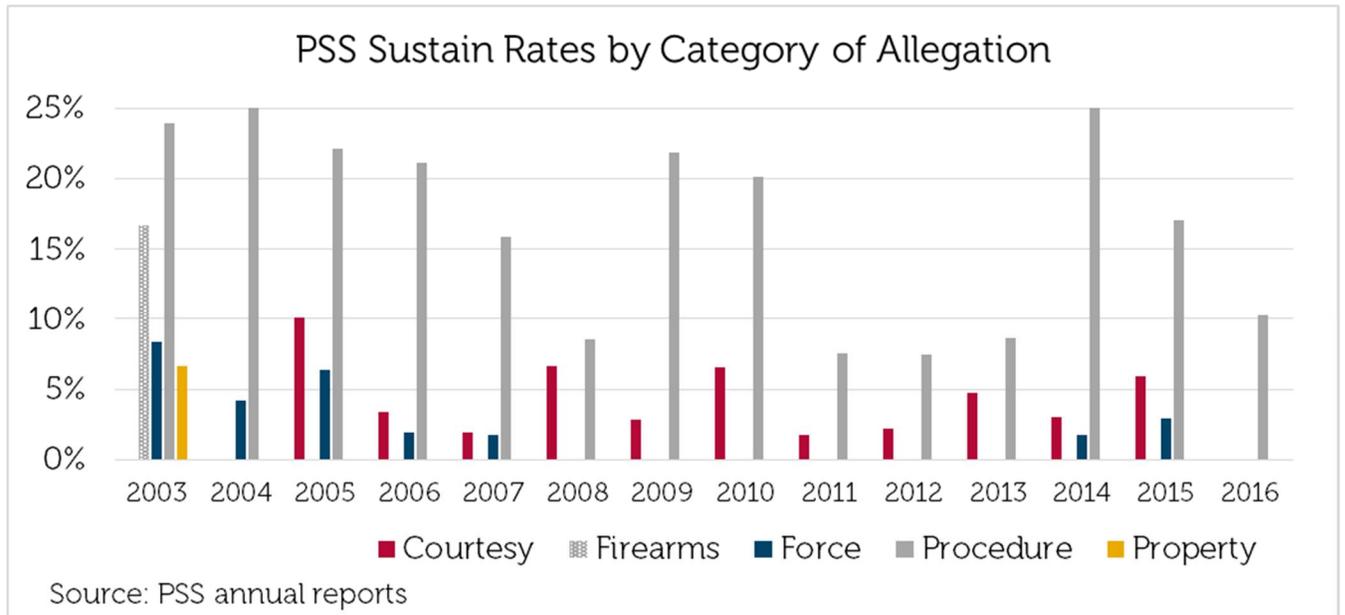


From 2003 to 2016, PSS sustained 11% of nearly 4,000 allegations it investigated. The lowest sustain rates were for allegations of unnecessary use of force, with 3% over the 14-year time period sustained.<sup>7</sup> For six years, from 2008 through 2013, PSS did not

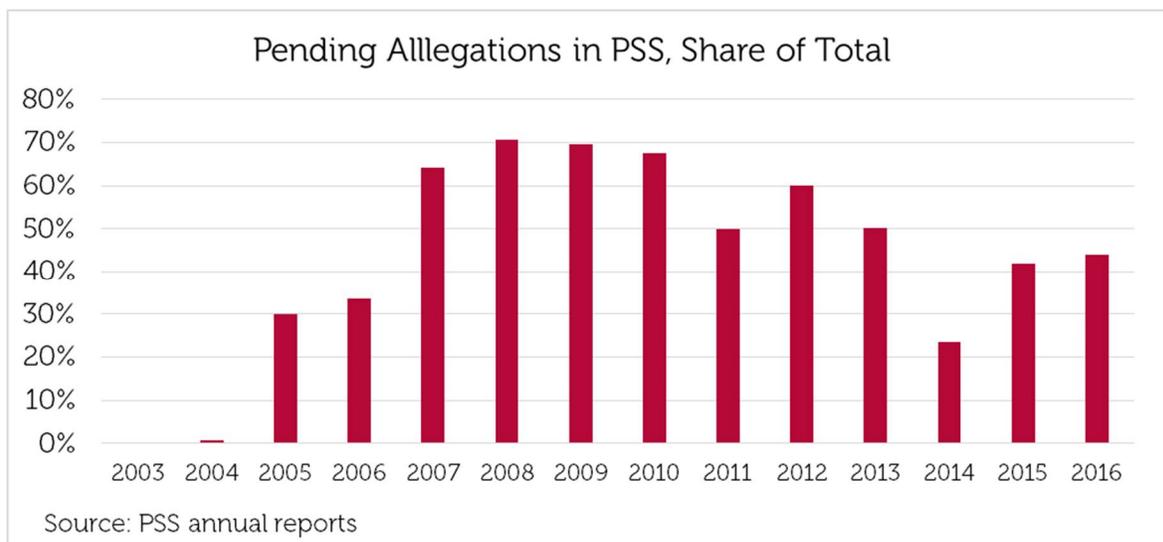
<sup>6</sup> The 2016 PSS Annual Report does report on some conduct allegations in tables on officer discipline, however in the breakdown of allegations tables that CGR used for the data analysis throughout this report (on Pages 8 and 9 of the 2016 report) no allegations are listed under the conduct category.

<sup>7</sup> This is slightly lower than the rate reported for PSS by the CRB, likely because some cases hit PSS and the CRB in different years.

sustain any force-related allegations. The highest sustain rates were for procedure allegations, with 18% of allegations over the time period sustained.



A high share of allegations investigated by the PSS are reported as “pending” in most years’ annual reports. This was not true in 2003 and 2004 but was the case to varying degrees every year since.



As these counts represent an end-of-year accounting, many of the allegations listed as pending in one year are listed as sustained, exonerated, unfounded or unprovable in a subsequent year. But the current data and reporting practices do not allow a longitudinal analysis of each case – which should be rectified in the future.

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Another issue affecting the share of allegations reported as pending at the end of year is the matter discussed above of lacking a “panel of neutrals” to hear cases where officers are disputing charges that PSS and the Chief have sustained. PSS reports that there are currently about 10 pending cases of this type, involving an unknown number of allegations.

## RPD Data

The Rochester Police Department created a new data set for the years 2014-16 to more consistently capture the outcome of each complaint of police misconduct. This required a new review of paper files to record in a consistent way each incident, allegation, action and officer involved in a complaint. RPD believed this would be helpful because there has not been a consistent way of recording these data over the years.

In the new dataset, each complaint counts as 1 incident which may have multiple allegations (force, procedure, courtesy, etc.). Each allegation may have multiple actions – for example, if an officer is accused of knocking a complainant to the ground and using a Taser, that would be two actions related to the force allegations. Each action can be associated with an individual officer or other employee of the department.

The RPD then coded the data so that if any action was sustained (that is, the complaint of misconduct was judged to be accurate), the allegation and incident were also counted as sustained (even if there were other actions that were not sustained).

In its summary of 70 complaints that were resolved in 2014, 2015 or 2016, RPD found that the CRB sustained 34% of incidents, 27% of allegations, 21% of actions and 12% of individuals. The Chief sustained 24% of incidents, 19% of allegations, 14% of actions and 7% of individuals.

One of the unique aspects of the RPD data is that it allows tracking of individual complaints through the CRB and Chief processes. In its analysis comparing the CRB and the Chief’s rate of sustaining complaints, it found that the CRB and Chief disagreed on sustaining 9 of 70 incidents, 19 of 180 allegations, 28 of 282 actions, and 40 of 607 individuals. (Note that this is not an unduplicated count of individuals counted in complaints – the count represents each individual in each action.)

In summary, that means the CRB and the Chief agreed far more than they disagreed from 2014 to 2016.

The data also allows looking at whether the CRB and Chief agreed or disagreed on findings of exonerated, unprovable or unfounded. Looking at all possibilities for the 607 individuals in actions, the CRB and Chief agreed 436 times, or 72%.

<b>Comparison of CRB and Chief Findings</b>				
	CRB Findings			
Chief Findings	Sustained	Exonerated	Unprovable	Unfounded
Sustained	39	0	3	1
Exonerated	5	116	15	37
Unprovable	24	20	245	15
Unfounded	7	17	27	36
Source: RPD OBI analysis of 2014-2016 cases				

There was a bit less agreement between the CRB and the Chief when it came to force-related allegations, only, with the two bodies agreeing 63% of the time.

<b>Comparison of CRB and Chief Findings - Force Allegations</b>				
	CRB Findings			
Chief Findings	Sustained	Exonerated	Unprovable	Unfounded
Sustained	9	0	1	0
Exonerated	5	75	11	24
Unprovable	5	19	76	12
Unfounded	0	11	21	27
Source: RPD OBI analysis of 2014-2016 cases				

RPD is in the process of finalizing its analysis, after which it will be presented to the City Administration and City Council. At that time RPD will determine whether to continue this analytical model for future comparisons.

## Case Settlements

We were able to obtain data on court settlements in cases involving the RPD from the Corporation Counsel's office for fiscal years 2015-16 and 2016-17. The amounts paid out in those years were nearly \$950,000 and \$7.3 million, respectively. The 2016-17 total includes a \$6.9 million settlement for an overturned conviction in a 1976 rape case. Excluding that settlement and settlements related to employment, the total settlements for false arrest, excessive use of force, civil rights and other such cases were \$909,000 in 2015-16 and \$392,000 in 2016-17.

Those totals include \$60,000 paid to the estate of a man (Gregory Davis) who died after being Tased by police and \$280,000 to the mother of a 14-year-old boy struck

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and killed by a police recruit driving to an emergency. No information was available for prior years.

## Summary of Key Points

Allegations have been declining, though we cannot say whether that is due to less dissatisfaction with police actions, disillusionment with the complaint process, and/or other factors. In general, most allegations are not sustained by either PSS, CRB or the Chief, with average sustain rates over the last 14 years by all three bodies below 17%. The CRB does tend to sustain a higher share of allegations than the PSS or Chief, with the Chief sustaining the lowest proportion of all cases, and of those involving use of force. Complaints by citizens and those alleging unnecessary use of force were less likely to be sustained, not only by the CRB but also by PSS and the Chief.

## Stakeholder Perspectives

As discussed above, CGR conducted interviews with a set of key stakeholders in order to summarize their perspectives as part of our examination of the outcomes of the current CRB process.

### Reformer Perspective

#### Enough is Enough

The organization Enough is Enough seeks justice for Rochester citizens who endure police misconduct. The group was founded in response to Benny Warr's confrontation with RPD officers in 2013 when he was ordered to leave Jefferson Avenue as he was waiting for the bus. As a result of an RPD officer's use of force, Mr. Warr was thrown to the ground from his wheelchair and left with long term leg damage and PTSD. Since that incident, Enough is Enough has been in the forefront of highlighting similar cases and working with victims of police misconduct on a weekly basis. The group works to demystify the civilian complaint process to members of the community.

Two activists and researchers, Barbara Lacker-Ware and Theodore Forsyth, authored a detailed and comprehensive April 2017 report, *The Case for an Independent Police Accountability System*, for Enough is Enough and the Coalition for Police Reform, another community group.

A major point of contention between the authors of the report and the Center for Dispute Settlement is the authors' choice to focus their data analysis on use of force cases reported by citizens, rather than including all misconduct categories. The authors report that from 2002 to 2015, Rochester's CRB sustained only 5% of citizen-initiated force allegations, and compare that to the Syracuse review board's sustain rate for use of force allegations in 2015 of 23%. The authors said they chose to focus

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on citizen complaints about force because this is the key issue that the community is concerned about.

Center for Dispute Settlement leaders believe that this is an unfair way to present the data, and that all allegations, regardless of category or source, should be included in any analysis of the CRB's effectiveness. In our discussion above, we present an analysis that includes all allegations, but also looks at force allegations by themselves in order to give a more complete picture of the data.

A major concern for Enough is Enough is that the current CRB process lacks transparency. Some of the transparency concerns are directed toward the Center for Dispute Settlement with questions about selection of the agency as the CRB administrator. The group also questions whether CDS is an "independent" agency since they are "financially dependent upon the agency it is reviewing."<sup>8</sup>

In regard to CRB criteria, Enough is Enough questions whether the mediation training currently required of CRB members is needed to review RPD investigations of misconduct. Instead, community appointments may be an alternative way to expand the board's representation. Enough is Enough has additional concerns that the City Council has had the power to get involved in investigations of police misconduct (through its ability to subpoena records) but has not used that power until this spring, when it began a review of the Rickey Bryant case.

Enough is Enough is calling for Rochester to adopt an independent investigative model similar to the process in Syracuse, discussed in detail in a later section. The group believes this is critical to providing real accountability for police actions and estimates the cost to the City could be about \$500,000 annually.

Enough is Enough members are well versed in the current literature about civilian oversight and have used this knowledge to forge connections locally and nationally. The 2017 report by Barbara Lacker-Ware and Theodore Forsyth has been used to foster community awareness and discussions about the need for a strengthened police accountability process. Enough is Enough is leveraging this community awareness to advocate for change and is using multiple platforms including radio and public meetings as their stage. In addition, the group is in coalitions with other groups such as RocActs, a faith-based coalition, to canvass neighborhoods to get registered voters to pledge that they want a revised police accountability system. In addition, they were a co-sponsor for a City Council candidates' forum where the focus was on police accountability.

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<sup>8</sup> Lacker-Ware & Forsyth (2017). The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York. (p.30.)

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## Faith-Based Community

The United Christian Leadership Ministry (UCLM) of Western New York leads faith-based efforts to address social injustices experienced by the African American community. Initiatives of UCLM include police reform through the Rochester Coalition for Police Reform. This coalition is focused on addressing unjust policing. Among its community partners are Enough is Enough, Jefferson Avenue Faith Community, and Metro Justice. Their perspective is that there has been little improvement regarding the CRB and police accountability since the 1990s, and that the CRB lacks independence and subpoena power.

The lack of transparency regarding negative police encounters in the community is central to the Rochester Coalition for Police Reform. There is still dissatisfaction regarding how the Rickey Bryant case was handled by the RPD and the time it took to get a response from RPD leadership. Although there was footage of the incident with police, in the Coalition's view, there are still unanswered questions a year later. There was disappointment that the availability of footage did not result in sustained findings for the officers involved. This case, among others, breeds suspicion about the RPD. When police are disciplined, the Coalition also wants to know the consequences but say that NYS Civil Rights Law Article 50a prevents this information from being released. They raised concerns about the low rates of sustained findings with use of force cases, and offered that people are afraid to go through the complaint process at PSS or CDS (although they are less intimidated with CDS staff). The fact that UCLM gets 2 to 3 calls per week about police behavior suggests to them that the complaint statistics provided do not accurately reflect all cases of alleged police misconduct.

The Rochester Coalition for Police Reform recommends the creation of an independent civilian review board as one component of a comprehensive campaign for police accountability. This includes an independent department that has a budget and staff including a director, administrative support, researchers, and independent investigators. The board would have the power to subpoena witnesses and could potentially draw a more diverse set of members from a larger pool because the current requirements for mediation training would be eliminated. Former police officers would be excluded from the CRB. Improved accountability would allow for the final discipline decision to be turned over to City Council, Mayor, or the CRB. As part of this, the state's civil service law would have to be changed, which is part of the Coalition's larger agenda.<sup>9</sup>

The Rochester Coalition for Police Reform campaign for police accountability has been concerned with addressing other concerns beyond a revised CRB, such as the use of police body cameras (adopted this year in Rochester), ending stop and frisk practices that many community members believe is unconstitutional, the education of

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<sup>9</sup> [http://uclmwny.org/wp-content/uploads/2015/06/Coalition\\_for\\_Police\\_Reform\\_brochure.pdf](http://uclmwny.org/wp-content/uploads/2015/06/Coalition_for_Police_Reform_brochure.pdf)

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the community about citizens' right to withhold consent to police search during a traffic stop, increased police training to address racial bias, and better police practices regarding citizens with disabilities.

Although UCLM members are vocal about the limitations of the current police accountability system, they also recognize the difficulty of policing. UCLM works collaboratively with local police departments to build trust in the greater Rochester community. During summits in 2016 and 2017, UCLM collaborated with at least 9 police agencies and the sheriff to work on strategies to build trust between community and police. UCLM is also involved with the implementation of RPD's body cameras and is working with the RPD to monitor the implementation of this new technology.

Other leaders believe the CRB should have independent investigative authority and would like to see Rochester adopt a model more like Syracuse's system. However, at the same time a concern was expressed that efforts for true police reform must equally address broader issues that address the various ways of improving police-community relations through prevention, addressing overt and implicit racial bias, and improving race relations in general in the community. Finding ways to bridge the racial divide and particularly the divide between police and citizens in our respective communities is crucial. If these issues get addressed more effectively, the expressed view is that then there should be fewer incidences of police misconduct and complaints in the future, and the civilian review board would need to address fewer cases as a result.

## Center for Dispute Settlement Perspective

Center for Dispute Settlement leadership is strongly committed to the current CRB process and very supportive of the agency's record in administering what it considers to be a fair and accurate program to evaluate citizen complaints and hold police accountable. The leadership says the agency and CRB have a good working relationship with RPD and PSS and engage in back and forth with PSS in about a third of the cases CRB reviews, asking for additional information. But they deny that they are in any way too close to the agency or compromised in evaluating police behavior.

To CDS, the requirement that CRB panelists undergo significant mediator training is absolutely critical to the fairness of the process because it ensures that CRB panelists have the ability to neutrally and fairly evaluate the facts of a case. This is one of the characteristics of Rochester's approach to police oversight that CDS said has made it a national leader in the field.

CDS acknowledged that it has had to grapple with a shrinking number of CRB panelists since the requirement in 2013 that panelists be City of Rochester residents (the Police Accountability Board report expressed concern about the declining number of

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panelists). But CDS rejects the suggestion that its training requirements be relaxed to expand the number of potential panelists.

CDS leaders believe that independent investigations may be worth exploring as a way of increasing public trust in the oversight process, but they assert that independent investigations will not result in different decisions on cases.

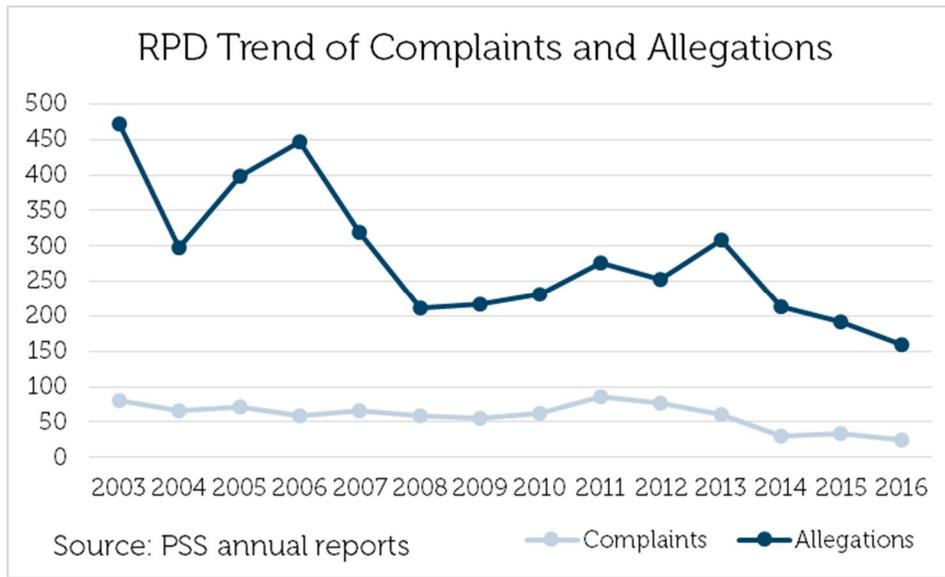
CDS leaders believe that adopting a Syracuse-style model establishing independent investigative authority, and therefore a power base outside of the police to challenge police decisions and practices, would be divisive and harmful to the community. They strongly support Rochester's model as one that not only fairly and accurately resolves complaints but also builds community rather than tearing the community apart.

## Law Enforcement Perspective

### Scope of Issue

The mission statement of RPD is "through proactive police-citizen engagement, we provide fair, impartial and innovative police services for our culturally diverse community and unique neighborhoods to address crime and solve problems." RPD handled an average of 370,000 calls for service annually in the last 5 years. These incidents range from minor motor vehicle accidents to high profile crimes. The 730 officers (when fully staffed) endeavor to assist the residents and visitors with professionalism and courtesy. However, there are inevitably times when an officer's conduct does not meet expectations or conform to professional standards.

The scope of the problem is measured by RPD in terms of formal complaints and resulting allegations. Over the last five years, RPD reports receiving an average of 45 complaints a year or slightly more than one per ten thousand calls for service. These complaints resulted in about 6 allegations per ten thousand calls for service. The chart below shows allegations and complaints as reported in Professional Standards Section annual reports – it has the same data reported above for allegations tallied by PSS and adds the total complaints containing those allegations. Complaints have fallen at a similar rate to allegations, about 70% since 2003.



However, this figure probably does not capture all the occasions when there is a negative interaction between the police and the public. Unknown numbers of incidents involving citizen complaints against police officers are not reported for various reasons

(see below). In addition, RPD does not measure<sup>10</sup> the number of informal counseling actions that occur at the field supervision or training level. It is an expectation that sergeants and lieutenants will counsel their employees for negative interactions that are either directly observed or identified internally. Similarly, during the field training process for new officers, when new officers are working in the field under the supervision of a field training officer (FTO), the FTO is expected to coach the new officers on appropriate behavior. The FTO coaching interactions will usually be documented by the FTO on a standard form while the new officer is in training. Depending on the circumstances, the field supervision counseling interactions with officers may be documented in a memorandum or in an annual Performance Appraisal.

An unknown number of negative interactions goes unreported to the police department. While it is not possible to estimate the number of unreported complaints, it is possible to identify potential reasons why complaints may not be made:

- First, the process to make a formal complaint<sup>11</sup> itself may be a barrier. A citizen needs to either visit the Professional Standards Section or speak with the Center for Dispute Settlement's Community Advocate to initiate the complaint. (The process can be initiated through a web form or phone call, but to move it forward and gather additional information, the complainant must speak with an officer.) As

<sup>10</sup> Many counseling sessions and remedial training are documented, but not currently tracked in a central database.

<sup>11</sup> Some complaints are made directly to supervisors in sections and are dealt with by supervisors without a referral to PSS.

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described above, regardless of how the process begins, the complainant ultimately needs to speak with an investigator from RPD to express his or her concerns.

- Second, there is skepticism regarding the RPD's ability to police itself. While this concern of police policing themselves has existed since the origins of western civilization,<sup>12</sup> it seems to be compounded in the current environment by existing legal requirements that prevent the disclosure to the public of investigative reports, officer personnel records and any punishment given to the officer. Some in the community also take issue with the lack of outside involvement in the incident investigation process.
- Third, a general lack of trust and engagement between RPD and the community was identified by some interviewees. The administration and RPD have acknowledged that community relations, particularly with African American and Latino communities, needs to be improved. The recent *90 Days of Community Engagement*<sup>13</sup> was an attempt to jumpstart this process. (The public meetings associated with that project also identified the need to improve community engagement.)

### Role of Law Enforcement Expertise

The current investigative process is handled internally by the Professional Standards Section. PSS has a supervising lieutenant and six detective sergeants. The PSS is located in a non-descript city office building along South Clinton Avenue. It is intentionally designed to appear like other commercial buildings in the area and not a police station. The building is located along an RTS route and is handicapped accessible.

The role of PSS is to conduct a complete investigation of alleged complaints. This process involves gathering written statements, conducting interviews, reviewing documents, and gathering any evidence such as video recordings of the incident. The investigation will involve those who made the complaint, all RPD officers that were on the scene, and any other witnesses that are identified as having relevant information. Investigations can take weeks or months to complete. Barriers to completing investigations include that officers must be compelled to give statements and if witnesses are not available. Additionally, gathering and reviewing of video evidence has become more time consuming because there is more to review with most officers

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<sup>12</sup> Plato acknowledged in *The Republic* that the guardians of society must be of highest character and represent the virtues of wisdom, courage, justice and temperance. In the 1<sup>st</sup> century, the question "Who watches the watchmen?" was first posed in literature by the Roman poet Juvenal.

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<http://www.cityofrochester.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8589971591&libID=8589971573>

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generally using body worn cameras and the prevalence of other video recordings from cell phones or security cameras.

Based on all the available information, PSS compares the officer's behavior to the relevant operational policy or orders to determine if the officer acted appropriately. The cases are then judged by PSS to fall into one of the disposition categories discussed above – sustained, unfounded, unprovable or exonerated. PSS considers the officer's behavior in light of the facts available to officers at the time of their action. Their behavior is compared using a "reasonable person" standard that considers what a person with similar training and experience would do in that situation. Some written policies are general in their nature and leave room for interpretation based on the situation. This leads to potential conflicts in an officer's actions and how a civilian might think the officer should have performed.<sup>14</sup> In short, the behavior of an officer might meet the letter of the policy or guideline, but would be inappropriate in the eyes of the public or department leadership. A case such as this might result in an "exonerated" or "unprovable" finding, even though officers might generally acknowledge that it could have been handled better. In some of these cases officers are directed for remedial training or counseling despite not having a sustained finding.

If the complaint falls into a category that needs to be reviewed by the CRB, it will be referred to it. Cases that are supposed to be reviewed include allegations of use of force, potentially criminal acts, as well as accusations of racism and bias and potential violations of sanctuary city policy. The PSS lieutenant will then initiate that referral process and assist CRB panelists in their review. PSS will then conduct any additional investigation requested by the CRB. They are presented the case for review, including PSS's investigating sergeant's recommendation and are given all the information that PSS gathered. The CRB makes its findings. A parallel review is conducted by the officer's chain of command. Once both the CRB and chain of command reviews are complete, the PSS Commanding Officer issues a recommendation that may differ from CRB, PSS sergeant or chain of command. The complaint investigation packet, including all findings, is then forwarded to the chief for a final decision that includes discussion from all appointed staff in RPD.

The Professional Standards Section draws its staff from the ranks of RPD sergeants. All of the officers assigned to this section volunteered for this assignment. They have received training in a variety of investigative skills and handle each complaint with the same general methodology that would be used on a criminal complaint. PSS works independently of the patrol sections and reports only to the chief. Its investigators are

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<sup>14</sup> There was concern expressed within PSS that it is necessary for an officer's behavior to be evaluated by another trained officer, especially in the arena of use of force. When an officer uses force to effect an arrest or protect themselves, it can be violent and disturbing to watch even when done according to training and within standards. Judging whether the force was acceptable, PSS believes, requires understanding of both the situation and the expected actions of an officer based on their training.

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to approach each complaint from a neutral perspective. They are empowered to compel a statement from a police officer who might otherwise decline to cooperate. The compelled statements are not later admissible in court if there are criminal charges, based on the *Garrity*<sup>15</sup> standard, but may be used against the officer in internal disciplinary findings.

RPD and PSS leadership believes that PSS investigators do a thorough and unbiased investigation of each allegation, and say that the CRB rarely asks its investigators to conduct additional interviews or seek more evidence. The sustain rate from PSS has been roughly comparable to the CRB sustain rate, though as noted above that is less true in the last few years.

RPD is one of 15 police departments in New York that uses IAPro software to track police behavior. The program is used to track complaints that involve PSS and also officer behavior such as arrests and use of force. The program is designed to flag officer behavior if the reports related to the officer's action meet certain thresholds. This usually prompts a counseling from the officer's supervisor at their section. PSS is looking to upgrade the software to provide additional reports on officer behavior and better link the information with the records management system. Currently, some key data needs to be transferred manually between the two computer systems.

There is also consideration of purchasing an additional module of the IAPro software that is focused on early intervention. This module is capable of tracking activities of the entire workforce to identify minor behavioral patterns that might lead to future incidents.

## Training

One response to the allegations of inappropriate behavior among police is that officers need to be better trained. RPD officers undergo about 1,050 hours of education and training during their initial police academy. This exceeds the state minimum of 654 hours of training by nearly 50 eight-hour days. This also exceeds the national average of about 840 hours. The police academy is held at the Public Safety Training Facility on Scottsville Road. The academy course typically includes officers from RPD, the Monroe County Sheriff's Office and other regional police departments. The course is overseen by a full time staff member of Monroe Community College and instructed with a variety of state credentialed personnel. The instructors are drawn from RPD as well as any other agencies that have students in the class.

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<sup>15</sup> *Garrity v New Jersey* is a 1967 Supreme Court case that found it was illegal to use compelled statements from police officers (and other public employees) in criminal procedures. It was found that individuals had protection under the 14<sup>th</sup> Amendment against coerced statements being used in future criminal proceedings if they were obtained under the threat of removal of office.

The academy curriculum includes over 100 topics. The topics receiving the most instruction include supervised field training (160 hours), firearms (96 hours), defensive tactics (96 hours), physical fitness (73 hours) and emergency medical care (48 hours). The first four topics all receive more than the mandated state minimum hours of education. Topics related to community interactions have specific time dedicated to their instruction. The topics of Elder Abuse, Cultural Diversity, Sexual Harassment, Persons with Disabilities, and Community Oriented Policing receive a total of 19 hours during the academy, which is 4 hours over the state minimum. In addition, recruits receive 16 hours of training on mental health situations. RPD recruits also receive 80 hours of additional training after the completion of their formal academy that includes topics such as departmental policy and cultural considerations.

In addition to the initial training during the academy, RPD officers have semiannual in-service training that includes topics identified by department leaders to meet the needs of their employees. Typically, there are 8 hours taught for all officers in both the spring and fall. These class sessions have been used to provide training on topics including diversity, responding to mental health issues, and de-escalation. The officers also receive firearms training including a video “shoot/ don’t shoot” simulator annually.

Improved training may indeed help the performance of RPD officers. Topics that have been suggested include implicit bias awareness, multi-cultural sensitivity and the impact of poverty<sup>16</sup>. Both providing that training and changing the culture within RPD pose challenges for an organization of over 730 employees and a deeply ingrained culture.<sup>17</sup>

## Rank and File Perspective

The actions of patrol officers may have a greater impact on the reputation of the police department than anything the department leadership does. Members of RPD, from the Chief on down, acknowledge that there is room to improve their relationship with the community. There is a belief that they are in the process of improving through initiatives such as the 90 Days of Community Engagement and the movement to 5 patrol sections. In addition, the leadership of RPD has answered

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<sup>16</sup> Implicit bias training is being given to all RPD officers during the fall of 2017 and a Procedural Justice curriculum is under development for 2018.

<sup>17</sup> Police culture is defined by appointment to a job that requires a person to put themselves in a dangerous position to enforce laws and protect order in a community. Officers feel that the public doesn’t understand the risks and challenges they face. While they feel proud of their job and are often thanked by the community, many have been verbally abused and have been involved in a physical confrontation during their job. (Morin, R. *Behind the Badge*, Pew Research Center, 2017, - [http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report\\_FINAL\\_web.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf))

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numerous invitations' to meet with community groups in an effort to foster improved relations.

It is difficult to separate the actions of RPD from the other 12,000 police departments and the individual 730 RPD officers from the other 750,000 sworn police officers in this country. Inappropriate behavior, alleged or actual, anywhere in the country is often used as a lens to view the behavior of RPD. Similarly, the treatment of law enforcement officers, including the recent trend of ambush attacks - including a local police shooting that some officers believe may have been an ambush - influences police attitudes and tactics. The resulting scenario breeds skepticism and mistrust between officers and the community. Additionally, the union leadership reports that some officers have a perception of mistrust regarding department leadership and the city administration.

The Locust Club is the union representing all police officers up to and including the rank of captain. Their leadership expressed concerns related to the current process. There is a strong belief that in order for an officer's behavior to be evaluated, the review should be done by a person who is an expert in law enforcement procedures and has knowledge around the science related to use of force. The perspective is that the only person who can review an officer's behavior is another police officer.

The Locust Club also expressed some concern with how the office of police chief handles punishment. In a typical case where the Chief sustains a complaint against an officer, the Chief offers a punishment plea at one level if the officer agrees to the plea and avoid the potential of a greater punishment if the officer chooses to fight the charge. The union believes that an officer will ultimately choose to take the lower level punishment as a guarantee rather than risk a potentially more severe punishment. Officers retain the right to challenge the Chief's decision in court.

## Potential for Change

The Chief expressed a willingness to work to change the existing CRB process to make the process more efficient and open. However, he acknowledged that there is a need to maintain due process for the officers, but unless there are changes to the existing state laws, current protections related to officer discipline will remain in effect and the changes being advocated by some could not be implemented. He brought up the possibility that changes could be included in the collective bargaining agreement. He is aware of the auditor-monitor model (discussed below) and believes some characteristics of that could be implemented in Rochester. He also suggested the formation of a police training advisory committee. The Chief said he would not necessarily be opposed to having the CRB make the final decision in officer discipline as long as there were strong requirements that ensured the board make its findings based on evidence; however he also believes there is value in the Chief having the ultimate decision regarding discipline matters.

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The Locust Club expressed a need to maintain due process for the officers and to ensure that the process involves an option for an impartial hearing. There was skepticism that an elected board would not be influenced by the political environment. There was support for keeping the Chief as the arbiter of punishment, with the ability to appeal to a neutral party. The union believes it is necessary for police officer actions to be reviewed by police officers as they are the only ones who can truly understand the working conditions of the officers and the factors that would influence their actions.

## Summary of Key Points

The Center for Dispute Settlement has a strong case to make that its approach has value and is effective. However, key community constituencies remain very dissatisfied with the process and strongly believe that it does not serve residents well or fairly or effectively hold police accountable for misconduct. Law enforcement believes it is doing a good job of “policing their own” but acknowledge a role for civilian review. There is little support within the law enforcement community for strengthening civilian review, though the Police Chief expressed some openness.

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## Overview of Other Models

Civilian oversight of police is not done in a standard way but instead takes many different forms in communities across the country. The National Association for Civilian Oversight of Law Enforcement provides a brief overview of the history of the field and a framing of current models in a September 2016 report.<sup>18</sup>

The pursuit of police accountability in Rochester aligns with national civil rights concerns about police misconduct disproportionately targeted toward communities of color. Early police oversight that occurred between 1920 and 1960 had limited success given inadequate resources and insufficient expertise regarding police procedures. As civilian oversight has grown as a field, so has the availability of the human capital (e.g. expertise) and financial resources necessary to sustain their existence. The NACOLE report finds that that 55% of 97 civilian oversight agencies reported that they had been in existence for 16 or more years. Current civilian oversight boards benefit from the professionalization of their activities through association with organizations such as NACOLE.

The first civilian oversight models formed in the 1920s to the 1960s were focused on civilian review of police investigations of complaints – as is Rochester’s process. In the 1970s and ‘80s, some communities moved to an independent investigation model that took the responsibility for investigating complaints out of police hands. Since the 1990s, new models have emerged that focus not just on individual complaints but on holding police accountable through broad oversight of policy and practice and use of data and policy analysis to examine police outcomes and recommend improvements.

Civilian oversight activity focus has shifted over time and reflects several approaches including review, investigative, auditor/monitor, and hybrid. Each method will be described below in more detail.

## Review Approach

In this approach, members of the civilian oversight body examine investigation materials from the police investigation unit and may request additional information such as interviews or videos. After the review, the oversight group may offer decisions regarding police complaints or suggest recommendations about police procedure or policy. Since civilian review process is likely to use volunteers, this strategy tends to

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<sup>18</sup> See report at:

[https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE\\_report\\_doc\\_FINAL.pdf?1481727977](https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE_report_doc_FINAL.pdf?1481727977)

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be the least expensive approach compared to others. Those involved with the review approach have limited power to impose recommendations.

Strengths of this approach include the community's role in overseeing police and the relative affordability of this model. Weaknesses are the possibility that review boards are less independent than other models, that members may lack expertise in police issues, and that they have limited authority and perhaps fewer resources than other models.

## Investigative Approach

In this approach, the civilian oversight body pursues independent inquiry of citizen complaints. The investigation is conducted by civilians with sufficient background about investigation and police procedures. It is common practice that both civilian and police entities conduct concurrent investigations of complaints. Funding to cover costs for an independent investigation is incurred by the oversight organization. As a result, the investigation approach tends to have the highest costs compared to other approaches, given additional personnel and data gathering expenses.

Key strengths of this model are the possibility of reducing bias in investigations and increasing community trust, while weaknesses include the significant expense (due to the need to employ trained investigators), the possibility of resistance and obstructionism by police, and the chance that the public may be disillusioned if change does not occur.

## Auditor/Monitor Approach

The auditor/monitor approach differs from the review and investigation models of civilian oversight since it is focused on the systematic review of data to examine high-level trends regarding outcomes of internal police investigation and civilian reviews of officer complaints. Paid staff, depending on the budget, or volunteers conduct data analysis. The research results are used to inform decisions about police policies, practice, and professional development. Analysts may also monitor the civilian review process over time by tracking the number of complaints or perceptions about civilian oversight quality. The auditor/monitor approach may be the most useful for changing police systems over time. However, it may not provide local communities with immediate resolutions about individual police behavior in specific cases.

Potential strengths include robust public reporting practices, the ability to effect systemic changes, and the cost – which is often less than investigation-focused models though more than review board. However, significant expertise is required to broadly evaluate police policy and auditor/monitors generally recommend but cannot enforce changes.

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## Hybrid Approach

As civilian oversight organizations have matured and expanded, communities are more likely to use an approach that mixes elements of review, investigation, and auditor/monitor styles. One approach may serve as the primary strategy while the other plays a secondary role. For example, Rochester’s civilian review process is primarily focused on the review of PSS investigations, but the Center for Dispute Settlement also produces annual reports with an auditing dimension that summarizes the complaint types, complaint outcomes, and disciplinary trends for the CRB, PSS, and the Police Chief. The availability of comparative data allows the community and CDS to monitor complaint outcomes. Although the data analysis conducted by CDS may not be at the scale of large civilian oversight agencies, it does provide information to inform the improvement of RPD’s policies and practices.

The NACOLE report does not recommend best practices for any city – instead it suggests the need for each community to identify “best fit” practices for itself, based on its own social, cultural and political issues, and the organizational history, traditions and culture of its police department. To quote the report:

“While some police agencies may be proficient at holding their officers to account with respect to certain types of conduct, other police agencies may struggle. Some large jurisdictions have ample financial resources to implement highly professionalized, organizationally complex forms of oversight while smaller jurisdictions may have far fewer resources with which to implement and sustain police oversight.”

## Civilian Oversight in New York

Large and small cities have implemented civilian oversight organizations in communities across the state, with most emerging in the 1990s and subsequent years. By 2002, the Government Law Center of Albany Law School reported 11 communities in New York had civilian oversight including large urban centers such as Buffalo to small cities including Ithaca.<sup>19</sup> As a result, there are many places where CGR can draw examples about practices that support the goals of a civilian review process.

For the three requested profiles of cities in New York, CGR focused its review on Albany, Syracuse, and New York City, given that they are urban communities with diverse populations, and comprise three other of the six most populated cities in the

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<sup>19</sup> <https://www.albanylaw.edu/centers/government-law-center/publications/past-publications/Documents/The%20New%20York%20Experience-%20Existing%20Models%20of%20Citizen%20Oversight.pdf#page=1&zoom=auto,-99,798>

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state. Like Rochester, several of these cities implemented or made revisions to their civilian oversight groups around the same time.

In order to understand the organization of civilian oversight agencies in Albany, Syracuse, and New York City, CGR conducted interviews with staff and panel members at each site and reviewed program documents including brochures, websites, by-laws, charter documents, quarterly and annual agency reports, board agendas and minutes, research reviews, and web-based news articles. Phone interviews were conducted in July and August 2017 to solicit detailed information about the civilian oversight features with discussion about their benefits and limitations. Conversations also solicited insights about police cooperation, community awareness, board powers, and state policy.

The summaries below offer basic information about each model, and a brief analysis of strengths, challenges and lessons associated with each city's experience. We include costs for each city's oversight functions based on city budgets but did not do an in-depth analysis or comparison of costs.

### **Albany's Citizens' Police Review Board (CPRB)**

The Albany review process shares several characteristics with Rochester in that it is a review-focused model. However, the board members are selected by elected officials and the process is administered by the Albany Law School.

Established in 2000, Albany's Citizens' Police Review Board (CPRB) is an independent agency that works to increase police accountability and credibility; improve communication between police department and community; and maintain a fair process to review citizen complaints that are investigated by police practice. The board includes 9 appointed members. Five CPRB members are chosen by the Common Council and the mayor appoints the remaining 4. The tenure of board members is three years. The board chair is elected each year and all members have a two-term limit. Review board membership excludes Albany Police Department officers and their immediate families, as well as city employees and their immediate families.

The review board is administered by the Government Law Center of Albany Law School and has a \$250,000 budget. The staff includes a coordinator who is responsible for overseeing the civilian complaint review process from beginning to end. The CPRB coordinator maintains continuous communication with complainants during the review process; serves as a liaison between the board and the police department; trains new board members; and organizes and provides the board with all materials necessary for review. The coordinator analyzes program data and writes all review board reports. The coordinator can also receive citizen complaints. Additional support for the board is provided by Albany Law School students and interns. Albany Law

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Center may contract with local researchers to survey complainants to evaluate experiences going through the review process.

Citizens' written complaints can be filed with the CPRB or Albany Police Department in person or by mail. Several community agencies (e.g. Albany Housing Authority) provide assistance with filling out the complaint forms. All complaints are turned over to the Albany Police Department's Office of Professional standards for investigation. If a complaint includes the use of excessive force or a violation of civil rights, then an independent monitor is assigned to the case and this person observes the Office of Professional Standards investigation by sitting in on interviews with victims or witnesses. However, the monitor is excluded from officer interviews. The monitor is selected from a vetted group of certified investigators, attorneys or retired judges preapproved by the Common Council and Mayor. The monitor's report is included in the review board materials.

The board reviews cases on a monthly basis after the Professional Standards investigation, including examining the Police Chief's initial findings report, the original complaint and evidence. One person on the board is assigned to investigate the case further where he/she reviews the files and examines all evidence (both audio and video); and speaks with detectives about the complaint. The designated board member makes a recommendation and then the board votes. The police commander and head detective come to every board meeting to provide additional information and clarify police department policy. The board makes findings in each case, ranging from sustaining the complaint to exonerating the officer; other findings include unfounded, ineffective policy or training, or no finding. The board's findings are communicated to the Police Chief. The Police Chief makes the final determination regarding civilian complaints. When the findings of the board and the police department do not match, the board can request an explanation from the police chief.

Mediation has been an option available since 2000 for a subset of cases that do not involve excess force or civil rights violations. However, this option has been rarely used by complainants, especially since a protocol had not been developed. A 2014 amendment to the Albany board ordinance specified a mediation protocol.<sup>20</sup> The board is also involved with outreach by talking to community groups such as neighborhood associations and churches. These events offer an opportunity to share information about the board and hear opinions about police experience.

## Strengths

Although the Albany review board does not provide for independent investigations of police misconduct, key stakeholders believe that it injects a community perspective

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<sup>20</sup> <http://www.albanylaw.edu/centers/government-law-center/police/Pages/Legislation.aspx>

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into the process and has improved the department's investigation of civilian complaints because the board has a strong relationship with the police department.

The board has also advanced policies for the department to adopt, including an early warning system that identifies police officers who demonstrate problematic behaviors and provides them with interventions to address challenges.<sup>21</sup>

## Challenges

As in other cities, some community members in Albany remain frustrated that the Police Chief is the sole disciplinary decision-maker and that discipline for specific officers is not publicly shared.

The board is working with the Police Chief to determine whether it is possible to release anonymous reports of discipline in aggregate on a quarterly basis. It's hoped that the implementation of a new IT system will allow for new reports and increased public access to data.

Lack of understanding about what the board does is another challenge. Some in the community perceive that the board holds hearings where the complainant, witnesses, and police officers provide testimony and a final judgment is rendered at that time. The misalignment between community expectations and board responsibilities demonstrates insufficient communication with the community. These misunderstandings also foster the perception that the board is in collusion with the police department.

## Lessons

Albany's process and structure share similar characteristics to Rochester's Civilian Review Board. A few key distinctions include that board members are appointed by elected officials and that a monitor sits in on many of the interviews conducted in investigations of unnecessary use of force or civil-rights violations. In addition, Albany's budget is about 70% higher than Rochester's for this function, which may allow for a more robust and effective operation.

## Syracuse Citizen Review Board (CRB)

Despite its name, the Syracuse model is investigation-focused in contrast to a review model like Rochester's. Board members, like in Albany, are appointed by elected city officials.

Syracuse's Citizen Review Board (CRB) was established in 1993 and serves as a platform to independently investigate and review citizen police complaints, with its

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<sup>21</sup> <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>

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investigative function significantly enhanced in 2011 city legislation. The CRB functions as an independent city agency with a FY17 budget of \$138,000 and an administrator that coordinates all aspects to the CRB process including taking complaints, completing investigations, managing organizational expenses, and coordinating public outreach. The CRB administrator maintains records, and writes quarterly and annual reports with complaint and findings statistics.

The CRB consists of 11 members with 3 appointed by the mayor and 8 appointed by the Common Council. Each Common Council district has a CRB representative and the remaining three represent the Council at large. CRB members and their family are prohibited from working for the City of Syracuse or any local, state, or federal agency, and members cannot be related to any incumbent politician or have financial ties to the Syracuse Police Department or an elected incumbent city political official. Also, CRB members and immediate family cannot have personal, family or work ties to attorneys or firms that represent plaintiffs or defendants in a police complaint.

The investigation process, conducted by the administrator, includes taking complaints, interviewing the complainant, witnesses and officers, requesting medical records, and reviewing 911 audio, video, and Office of Professional Standards (OPS) files including officer reports and other records. Although the CRB takes anonymous complaints, a signed statement is required for a formal review. The CRB has the option to hire an independent investigator. After a review of compiled information, a case summary is written.

At monthly CRB meetings, the full board reviews cases before voting on the administrator's recommendation about whether there are credible reasons to advance each case to a panel hearing. For those cases that are moved forward, the CRB convenes 3-member panels including one mayoral appointee, one Common Council district appointee, and one Common Council at large appointee to decide the case. The composition of panels rotates and each has a designated chairperson.

During closed hearings, the complainant with witnesses and the police officer are able to attend and have the option to bring legal counsel. Witnesses can be cross examined by the complainant or the police officer. By majority vote, the full CRB can issue a subpoena to the police department for records and evidence or to compel the appearance of complainants, witnesses, and police officers. Updated hearing procedures implemented in 2014 instituted parameters regarding cross examination including time limits and question guidelines. The panel holds private deliberations and findings are determined with a majority vote.

Sustained panel findings include disciplinary recommendations that are forwarded to the Police Chief. If the panel believes that officer actions are criminal, then it can recommend charges to the district attorney. The CRB panel can also recommend

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monetary restitution in cases of property damage, medical expenses, or other personal losses. Once notified about the CRB panel's sustained finding, the Police Chief has 30 days to respond indicating what, if any, sanctions were imposed. An explanation is required if sanctions are not enforced.

## Strengths

The strengths of the Syracuse model include its ability to conduct independent investigations by either a staff person or a qualified investigator, and the fact that it establishes an independent agency with the authority to challenge the police department, both on individual complaints and policies and practices. For example, in its 2015 annual report, the review board includes summaries of sustained cases that provide compelling and disturbing anecdotal information about police misconduct.

Another strength is the panel hearings, which despite being closed to the public offer complainants the opportunity to voice their allegation directly to appointed officials who will be making a recommended finding. In addition, the Syracuse board is explicit about taking complaints from citizens about police *inaction*, which is an important consideration for the community that does not appear to be a part of Rochester's process. In addition, the CRB negotiated direct access to inmates at the Jamesville Correctional and Justice Center to take police misconduct complaints.

## Challenges

The CRB confronted a challenge to its process in October 2014 when the Police Chief stopped telling the CRB what, if any, disciplinary sanctions he imposed in sustained cases that it decided more than 60 days after complaints were received. The Police Chief interpreted the 60-day language in the CRB legislation as a strict deadline instead of a guideline. When the CRB was unable to resolve the matter through city channels, it sought legal counsel and pursued a lawsuit.

Rulings in favor of the CRB were handed down by the Appellate courts in July 2016, and the Supreme Court of the State of New York Appellate Division, Fourth Judicial Department in March 2017 confirmed that the 60-day stipulation in the city ordinance was a guideline not a strict deadline. If the review process goes beyond 60 days, the CRB must inform the Police Chief. The CRB administrator is working with the Police Chief to ensure there is open communication between these two organizations.

## Lessons

Because the Syracuse model establishes a stronger base of power to challenge the police department, it elicits more push-back, and the relationship between the oversight agency and the police department is less open and cooperative. This may have the unintended and unwanted effect of reducing the agency's ability to

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successfully advocate for systemic changes. On the other hand, it provides a strong platform for publicly pushing for change.

Any review board is potentially at risk of encountering conflict with police officials or local politicians at one point in time. As a result, the board should have the ability to sue under its charters when unable to resolve disagreements with the city, and should have a budget for legal counsel. Syracuse was able to successfully sue because of the money allocated in the annual budget.

Syracuse stakeholders highlighted the importance of the CRB's subpoena power as a way to expand access to evidence such the acquisition of cell phone videos or surveillance videos at stores or other venues. Although Rochester's CRB has indirect subpoena power through appealing to City Council, CRB has not used this power and is dependent upon the will of Council.

## **New York City**

New York City has both a review board that functions as a hybrid model incorporating independent investigations and some auditor/monitor functions, and a police inspector general that performs auditing and monitoring functions. The agencies are not connected though both are part of city government.

### **New York City Civilian Review Board (CCRB)**

The New York City Civilian Review Board (CCRB) was established in 1993 and is an independent New York City agency with a budget of \$15,076,755 in FY2016. The CCRB's scope and budget are the largest in the state. The CCRB uses investigative and monitoring oversight approaches. In addition, the CCRB has the power to prosecute cases with findings of the most serious police misconduct. The agency receives police complaints directly from citizens for allegations regarding the use of force, abuse of power, discourtesy, and offensive language. As a result of this process, complainants avoid direct police contact. The CCRB independently investigates civilian complaints including interviewing complainants, witnesses, and officers, reviewing evidence, making findings, mediating complaints, and recommending punishment.

The CCRB has a staff of 90 with an executive director. It has three organizational units including investigation, policy, and administrative prosecution. The CCRB employs civilian investigators, who are primarily recent college graduates that go through six weeks of training with curricula that teach them about all aspects of the NYPD organization and its functions. New investigators learn about police practices and procedures including the legal principles governing use of force, stops, frisks, and searches. Investigators also complete a two-day training course at the Police Academy, ride-along on a police patrol, and receive instruction on firearms and tactics

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at the NYPD outdoor firing range.<sup>22</sup> They are trained about investigation practices including interviewing and are placed on squads with senior investigators.

The policy unit includes analysts and lawyers that conduct data analysis and produce statistical reports that describe disaggregated trends regarding civilian complaints and board outcomes.<sup>23</sup> Theme-based reports are produced that address issues on topics such as Officer Interference with Civilian Recording of Police.<sup>24</sup> Data is also available through an online data portal where civilian complaints are mapped by precinct.<sup>25</sup> Online data and reports increase transparency about the civilian review process and the nature of police complaints.

The Administrative Prosecution Unit (APU) is the newest component of the CCRB. It was established in 2012 and includes a Chief Prosecutor, 2 Deputy Chief Prosecutors, 16 prosecutors, 4 trial preparation assistants, and one administrative assistant. The APU gets involved when the board sustains a finding on the most serious charges. The APU prosecutes the case in front of an administrative law judge, either the Deputy Commissioner of Trials or an Assistant Deputy of Trials. These trials occur at the Police Department. If an officer is found guilty, the APU recommends punishment ranging from a warning and admonishment to dismissal. However, the Police Commissioner has the final say regarding the matter.<sup>26</sup>

The CCRB also provides mediation to resolve police complaints. Mediation is an option for cases that do not involve physical injury, property damage, or a pending lawsuit. A trained mediator facilitates a discussion between the complainant and police officer in order to resolve the pending conflict. Each party is able to articulate their perception about what transpired. The session ends when the complainant and officer are satisfied with a mutual understanding. The police officer involved in the mediation does not face disciplinary actions after the mediation.<sup>27</sup>

The board consists of 13 members with a representative from each of the 5 boroughs appointed by City Council, 3 members with law enforcement experience appointed by the Police Commissioner, and 5 members appointed by the Mayor. They serve 3-year staggered terms. The board chair is selected by the Mayor. Board members are excluded from holding public office or city employment. Only those who were appointed by the Police Commissioner can have law enforcement experience or be former employees of the New York City Police Department (NYPD). The board provides oversight to the entire agency process and hires the agency's executive

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<sup>22</sup> <http://www1.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>

<sup>23</sup> [http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2016\\_annual.pdf](http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2016_annual.pdf)

<sup>24</sup> [http://www1.nyc.gov/assets/ccrb/downloads/pdf/20172806\\_report\\_recordinginterference.pdf](http://www1.nyc.gov/assets/ccrb/downloads/pdf/20172806_report_recordinginterference.pdf)

<sup>25</sup> <http://www1.nyc.gov/site/ccrb/policy/complaint-activity-map.page>

<sup>26</sup> [http://www1.nyc.gov/assets/ccrb/downloads/pdf/CCRB\\_APU\\_announcement.pdf](http://www1.nyc.gov/assets/ccrb/downloads/pdf/CCRB_APU_announcement.pdf)

<sup>27</sup> [http://www1.nyc.gov/assets/ccrb/downloads/pdf/mediation\\_brochure\\_for\\_website.pdf](http://www1.nyc.gov/assets/ccrb/downloads/pdf/mediation_brochure_for_website.pdf)

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director. The board also develops the procedures that guide complaint investigations, board case deliberations, and the communication of recommendations to various parties including the complainant. The board has the power to compel witness testimony including officers and request documentation as needed from the NYPD or other entities with evidence pertinent to the case.<sup>28</sup>

All investigated cases are assigned for review to a panel or the full board as designated by the board chair. All panels include at least one appointee from City Council, one from the Police Commissioner, and one from the Mayor with panel size determined by the board chair. If the panel is not satisfied with the evidence, it can send the case back for further investigation. Each panel determines findings and make recommendations based on a preponderance of the evidence in the case files.

### Strengths

The CCRB's strengths include independent investigations, subpoena power and the power to prosecute cases with findings of acute police misconduct. All cases are examined through a prism of those who are not part of the police department and by civilians trained about police procedures.

The CCRB's policy unit is an example of how an oversight agency can support transparency via data. It provides various ways to understand statistical trends and offer data stories conveyed via theme-based reports. The data is available in various formats including visualizations of complaints by precinct.

### Challenges

It is believed that many in New York City do not know about the CCRB and as a result citizens are being underserved. Although the CCRB has a large degree of independence from the city and police department, some people fear that the CCRB is part of the police department and fear retaliation from the police.

CCRB, like other cities, would like to have final say regarding police discipline but changes would have to be made regarding the civil service law.

### Lessons

The agency's theme-based reports, website, and data visualizations are exemplars for Rochester to consider as the CRB and Rochester Police Department work toward building greater transparency regarding complaints and police disciplinary dissemination.

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<sup>28</sup> [http://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/nyc\\_ccrb\\_charter.pdf](http://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/nyc_ccrb_charter.pdf)

New York City leaders also suggested that it is important that review boards have direct access to body camera evidence, rather than having to go through the police department to receive it.

## Office of the Inspector General of the New York City Police Department

In addition to the CCRB, the Inspector General for the New York City Police Department was established in 2014 via local law 70 to investigate and monitor NYPD operations and practices to ensure effective practices and public safety. This agency is not part of the NYPD but is a unit within the Department of Inspector General (DOIG). The Inspector General for the NYPD has 40 staff including lawyers, analysts, and auditors that assist with determining pertinent issues related to the NYPD via public outreach. The data analysis and research conducted aims to understand system-wide patterns associated with ineffective NYPD policies and practices (e.g., corruption) in order to remedy those that cause harm or violate civil rights. The NYPD must respond to all recommendations made by this agency. Although the Inspector General takes complaints, it refers cases specific to individual officers to the CCRB or the NYPD.<sup>29</sup> The key distinction is that the CCRB is looking at actions of individual officers versus the Office of the Inspector General that takes data from a number of agencies including the NYPD and the Attorney General to examine issues at a higher level than the CCRB. An example of this systems analysis is a recent Inspector General for the NYPD report titled *When Undocumented Immigrants are Crime Victims: An Assessment of NYPD's Handling of U Visa Certification Requests*.

## City-Level Civilian Police Oversight Comparisons

As revisions to Rochester's civilian oversight process are considered, additional data is provided below with city specific information about budgets, expenditure estimates by allegation and officer, police misconduct allegation sustain rates, and crime rates. This allows for a comparative examination of relevant indicators but it should be noted that these data have been compiled from different cities each with their own approach to and process for handling complaints of police misconduct. What constitutes a reported allegation in Rochester may be handled at a lower level (section or precinct) and not reported in this data in one of the other cities, and vice versa. For these reasons, readers should not make definitive judgments in comparing the cities using this data.

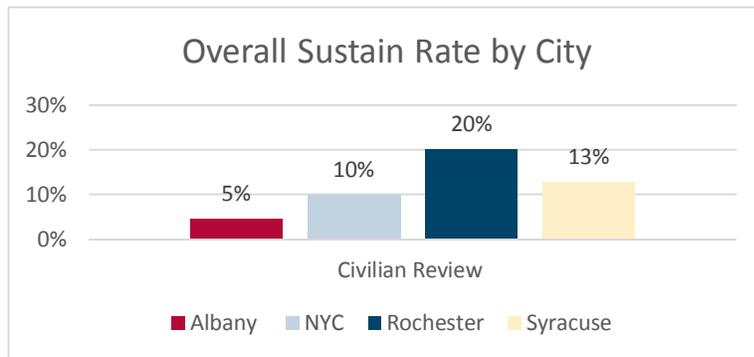
The table below shows data for 2015 to show the civilian oversight costs associated with each police misconduct allegation and the costs per officer. Costs per incident were lowest at \$1,000 in New York City compared to Rochester at \$1,700. And

<sup>29</sup> <http://www1.nyc.gov/site/doi/offices/oignypd.page>

Rochester had the lowest expenditure per officer at \$200 followed by Syracuse, New York City, and Albany.

City	Police Oversight Budget	City Population	# Officers	Allegations 2015	Expenditure/ Allegation 2015	Expenditure/ Officer 2015
Rochester	\$ 145,000	208,880	728	84	\$ 1,726	\$ 199
Albany	\$ 250,000	98,111	336	90	\$ 2,778	\$ 744
Syracuse	\$ 132,000	143,378	415	101	\$ 1,307	\$ 318
NYC	\$ 12,758,025	8,537,673	36,228	12,763	\$ 1,000	\$ 352

Given the total number of all police misconduct allegations (e.g. use of force, discourtesy, call handling, etc.) considered by each city in 2015, Rochester's Civilian Review Board had the highest sustain rate at 20% followed by Syracuse at 13%, New York City at 10%, and Albany at 5%.



Another helpful point of context is crime in each city, which we present using the rate of serious crimes (DOJ Index 1).<sup>30</sup> While New York leads in number of crimes, Rochester has the highest rate of crimes per capita. The 5-year crime average from 2012 to 2016 shows that property crimes

represent the majority of offenses across the cities with 83% occurring in Albany, Rochester and Syracuse respectively and 63% in New York City.

5 year Index Crime Average (2012-16)				
	Violent Crimes	Property Crimes	Total Index Crimes	Per 10,000 residents
Rochester	1,910	9,256	11,166	535
Albany	809	3,843	4,652	474
Syracuse	1,182	5,588	6,771	472
NYPD	38,120	63,596	101,716	119

Using the number of allegations reported by agencies in 2015, we present allegations on a per-capita, per-officer and per-crime basis in the table below. Police in Rochester have a substantially lower rate of allegations per capita, per officer and per reported

<sup>30</sup> Every police agency in the country reports the crimes that occur in their jurisdiction to the Department of Justice. The crimes are categorized using common definitions. Index 1 crimes are the more serious crimes such as murder, rape, aggravated assaults, and grand larceny.

crime by a substantial margin. NYC has the highest rate of allegation by a wide margin for all three measurements. There are many reasons why this may be the case, including that some communities, such as New York City, for example, may have a more active approach to gathering complaints about police and a strong civil rights/civil libertarian community. As noted above, complaints may also be resolved more or less informally in different communities as well.

Allegations of Police Misconduct			
	per 10,000 residents	per Officer	Per 100 Index Crimes
Rochester	4.02	0.12	0.75
Albany	9.17	0.27	1.93
Syracuse	7.04	0.24	1.49
NYC	14.95	0.35	12.55

## Summary of Key Points

All three of the in-state models have elements that would likely appeal to Rochester community members seeking enhanced police accountability. These range from Albany's use of an outside observer in investigations of unnecessary force or civil rights violations to Syracuse's independent investigations and panel hearings to New York City's prosecution unit for the most serious sustained cases of misconduct.

Rochester spends less on police oversight than Albany or Syracuse (and, less relevantly, New York City).

A model calling for independent investigations would require investment but would likely increase community trust in the process in the short term. In the long term, the independent investigative body would have to demonstrate its effectiveness to the community. In other words, if the vast majority of allegations, especially those by citizens and those complaining of unnecessary use of force, continued to be not sustained, the agency would have to explain those findings to the public in order to maintain their trust.

An auditor/monitor approach is another possible way of increasing community trust while maintaining internal complaint investigations. One potentially fruitful area for an auditor/monitor to examine is the use of the IAPro software to identify early and address effectively problematic police behavior at the individual officer level. In addition, a longitudinal analysis of each case and allegation that would allow a full understanding of how citizen complaints are handled from start to finish would contribute greatly to the public's understanding of how the City's police oversight process is working.

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## Conclusions/Suggestions to Consider

CGR was not asked to provide comprehensive recommendations; nonetheless we offer a few concluding considerations:

- The type of citizen review process in Rochester, review-focused, was part of the first wave of civilian oversight in the first half of the 20<sup>th</sup> century, and many communities have moved beyond or enhanced this approach with other forms of monitoring, as discussed in the body of this report.
- The declining number of complaints is at odds with the strong opinions of several community leaders and groups that police misconduct is a major and under-reported problem. This suggests issues with meaningful citizen access to and trust in the current process. An area of further research could be gathering more specific information about what are considered the best approaches to ensuring citizen access and gaining greater citizen insights concerning how to improve access and trust in the complaint process – an area CGR did not study in depth.
- Whether you examine all allegations, citizen-initiated allegations, or use of force allegations, the CRB as currently structured does tend to sustain a higher share of allegations than PSS or the Chief, but not dramatically higher in most years. There is no objective way of telling whether this is appropriate or inappropriate without studying specific cases, but, once again, strong voices in the community take it to mean that the CRB as currently structured is not sufficiently independent from the police.
- There are ways within the current state civil service law and local collective bargaining agreement to strengthen the process in the direction community voices are pushing, as shown in the 3 NY city examples above. They range from having a monitor observe all force-related investigations to independent investigations of all complaints to creating an auditor/monitor agency to do systematic reviews and make police-related recommendations. In addition, city officials could lobby for changes in state civil service law and the local police contract to provide for a community body to decide police discipline. Other communities have expressed interest in state-level changes, though this is likely an uphill battle politically. Short of releasing confidential information about individual cases, more can be done to provide the community with aggregate summaries of disciplinary actions taken in particular types of cases.
- There seems to be general agreement that RPD could be doing more to implement the latest thinking on risk management in terms of using data to identify and address troubling patterns in officer behavior – including before such behavior

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even turns into a complaint from a citizen. While it is our understanding that the department would like to move in this direction, careful monitoring of progress is warranted and funding could be needed for software enhancements.

- Existing training for law enforcement officers, both for recruit and veteran officers, is developed based on state guidelines under the oversight of city and regional law enforcement leaders. RPD has developed and offered training on topics such as Latino culture, mental health concerns and child advocacy on an ad hoc basis. A practice that could be adopted by RPD would be to engage a community advisory board to help shape recruit and veteran officer training to include community issues such as implicit bias, restorative justice, impacts of poverty and multi-cultural awareness.

Both the fields of law enforcement and civilian oversight of police are evolving new approaches to thinking about how to address police misconduct with a larger goal of improving police department culture and officers' relationships with communities.

On the law enforcement side, the National Institute for Justice has authored reports on two relevant, emerging philosophies – the concept of guardians vs. warriors in policing<sup>31</sup> and the idea of non-punitive review of criminal justice errors or “sentinel events.”<sup>32</sup> The guardian concept calls for law enforcement to abandon a historic notion of protecting a community from crime or “the bad guys” (the warrior mentality) and shift to a mindset of safeguarding a community by becoming part of it and deeply understanding it. The idea of a non-punitive review of police behavior is drawn from the medicine and aviation communities and puts a focus on identifying and eliminating the root cause of the unwanted behavior, often through cultural shifts or changes in work practice and training and orientation, rather than just identifying and punishing individuals.

Samuel Walker, a national expert on police accountability, discusses some of the same ideas in addressing how to effectively implement civilian oversight of police as part of a larger framework for implementing police accountability.

Walker argues that the pursuit of police accountability and reform through the implementation of strategies focused on changing organizational problems or the practices of individual officers are likely to be insufficient to change deeply ingrained institutional values and actions. “These efforts have not achieved lasting improvements, in large part, because dysfunctional organizational cultures limit or undermine reforms or condone misconduct by other officers (p.2).”<sup>33</sup>

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<sup>31</sup> <https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>

<sup>32</sup> <https://www.ncjrs.gov/pdffiles1/nij/247141.pdf>

<sup>33</sup> <http://samuelwalker.net/wp-content/uploads/2016/09/NewParadigmStLouisUPubLawRevt.pdf>

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He offers a new police accountability framework that draws on key components of all Justice Department consent decrees and memoranda of decrees and memoranda identified in by the Clinton administration. The collection and use of data and the systematic analysis of it plays a prominent role regarding police reform. This paradigm shift integrates external and internal strategies regarding police accountability. The new push for change learns from the successes and limitations of prior reform with an eye on efforts that (a) reach deep into the police organization and its internal culture; (b) have some direct impact on day-to-day behavior of police officers; and (c) ultimately change, or at least begin to change, the culture of police organizations. (p.3).”

Walker offers four specific practices as key: a comprehensive use-of-force reporting system, an open and accessible citizen complaint system, early warning system to identify problematic behavior by officers, and collection of traffic stop data to address racial profiling. All of these are also held up as exemplary by President Obama’s Task Force on 21<sup>st</sup> Century Policing.

Regardless of the strategies adopted to revise civilian oversight, attention must be focused on addressing barriers to filing complaints. This could include having more and more accessible locations where citizens can begin a complaint, taking complaints over the phone or via email, having officers carry complaint forms available by request to citizens, allowing citizens to give their statements about a complaint to someone besides a police officer, or even allowing some consideration of anonymous complaints.

In addition, the consent decrees implemented in many cities offer ideas and experience that could be used to strengthen police accountability in Rochester.

Finally, we suggest that the schism between the law enforcement and the larger community will not be healed simply through changes to civilian oversight and law enforcement training – larger police and community conversations concerning police-community relations, race and racial bias, mutual understandings of the perspectives of police and community by each other, and perhaps the application of restorative justice practices may well be needed for a full reconciliation to take place.