

FIFTEEN RECOMMENDATIONS TO MAKE
THE CIVILIAN REVIEW BOARD
EFFECTIVE: A PRELIMINARY REPORT TO
THE COMMUNITY OVERSIGHT TASK
FORCE

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THE BALTIMORE CITY OFFICE OF CIVIL RIGHTS
Preliminary Report to the Community Oversight Task Force
November 2, 2017

A. Introduction

Since its creation in 1999, numerous structural barriers have blocked the Civilian Review Board's (Board) ability to play a meaningful role in the process of investigating police misconduct and improving police policy in Baltimore City.

At the root of these barriers is the Law Enforcement Officers' Bill of Rights (LEOBR)ⁱ – a state law created in 1974 that broadly defines the formal process through which police officers are to be investigated and disciplined for misconduct.

Unfortunately, the law completely excludes civilian oversight from the investigation stage of the process. It does this by restricting who can investigate and interrogate officers accused of conduct that may lead to discipline. Under LEOBR § 3-104(b), only sworn officers or the state's Attorney General can do so; civilians cannot, which means the Board cannot.

This exclusion, which has been woven into the fabric of the Board's enabling statuteⁱⁱ and police labor contracts, both explicitly and implicitly, has created a restrictive legal regime that consigns the Board to the role of outsider looking in. The cumulative effect has been a statutorily weak, chronically under-resourced Board dependent on the Baltimore Police Department (BPD) to function, as well as a justified public perception that the Board is a "Toothless Tiger" with little to no influence.

In order to alter the status quo and shift the prevailing paradigm, a number of legislative changes must occur, and soon. Below are 15 preliminary recommendations identified by the Office of Civil Rights to help ensure Baltimore City has the kind of civilian oversight that is strong, durable, and reliable for decades to come.ⁱⁱⁱ The Community Oversight Taskforce should strongly consider using these recommendations as a guide and including them in its final report.

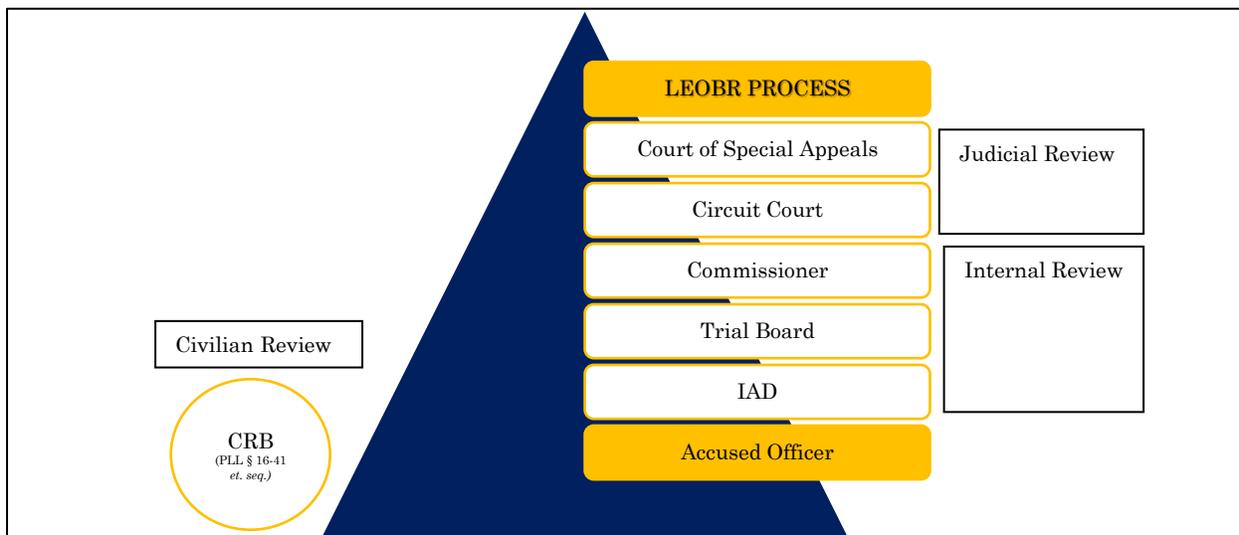
The Office of Civil Rights thinks the implementation of these recommendations will accomplish at least three important things: (1) integrate civilian oversight into the formal disciplinary process, thereby making community review an integral part of police accountability in Maryland; (2) strengthen the Board's authority by expanding its powers and duties, and increasing its funding and staffing to effectively carry out those duties; and (3) limit the police union's power to constrict the effectiveness of civilian oversight through the bargaining process.

It is important to note that all 15 recommendations are linked inextricably and must be addressed together. They set the foundation upon which all progress rests. Little to no change in these areas means little to no change in the status quo. And as we are reminded by the U.S. Justice Department's 2016 findings report, the status quo for many in Baltimore is unjust and therefore unacceptable.

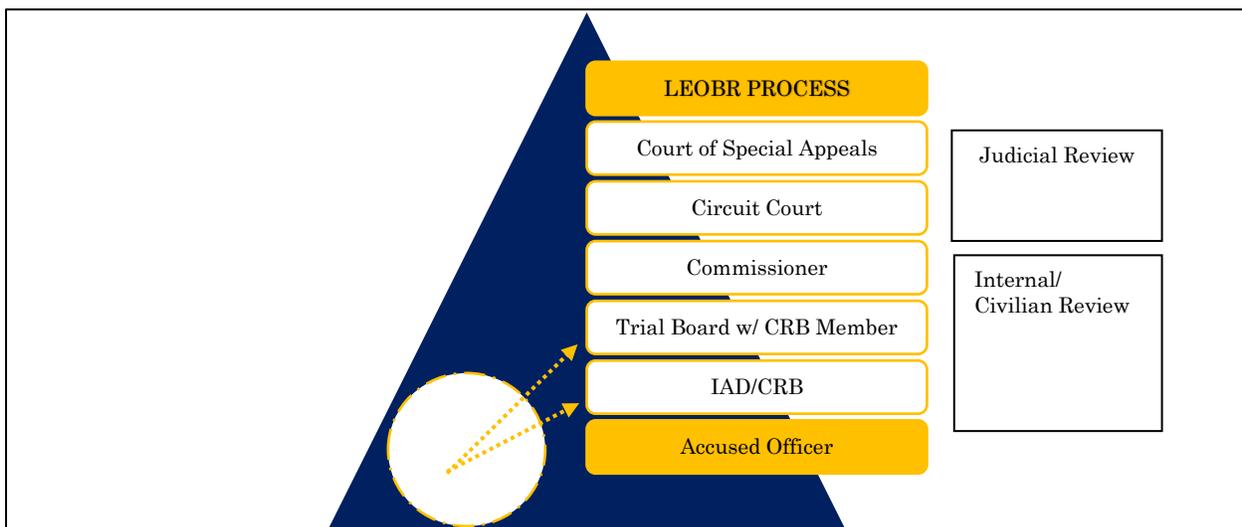
B. Loosen the Restrictive Legal Regime

1. **The LEOBR excludes civilian oversight from the formal disciplinary process.** LEOBR §§ 3-104(b), 3-107(a), 3-107(c)(1)(i) and 3-107(c)(5)(i). Recommendation: Propose an amendment to include civilian oversight personnel on the list of individuals authorized to investigate and interrogate officers accused of misconduct. Also, propose amendments to require that Trial Boards include not less than two (2) voting members who are elected or appointed members of a civilian oversight body. This change will add a civilian component to both the investigation stage and trial board stage of the process. This will also resolve a provision in the collective bargaining agreement, Article 16(D), which forbids civilians from serving on Trial Boards.

Current LEOBR Process: Civilian Oversight Excluded



Proposed LEOBOR Process: Civilian Oversight Included



2. **The Board’s enabling statute excludes too many allegations from its subject matter jurisdiction, capping the number to just five – excessive force, false arrest, false imprisonment, harassment and abusive language.** PLL § 16-42(b). Recommendation: Propose an amendment to expand the Board’s subject matter jurisdiction to include all complaint types lodged by members of the public against police officers. Additional allegations should include but not be limited to: coercion, conduct unbecoming an officer, death or serious bodily injury in custody, firearm discharge, failure to wear or display required identification, improper search and seizure, inappropriate language, neglect of duty, pattern or practices of misconduct, retaliation, taser discharge resulting in death or serious bodily injury, unlawful denial or access to counsel, and unnecessary force.
3. **The Board’s enabling statute creates a duplicative and inefficient investigative process by giving the Board and BPD “concurrent jurisdiction” over the few allegations the Board can investigate.** PLL §§ 16-45(a) and 16-46(a)(2). Recommendation: Propose an amendment to provide the Board “original jurisdiction” over all complaints within its authority to investigate. This means that in combination with Recommendations 1 and 2, the Board will have sole authority to investigate all complaints filed by members of the public and make findings and recommendations that are binding at the investigation stage of the process. Consequently, the Board will replace BPD’s Internal Affairs Division (IAD) as the formal investigator of external complaints. IAD’s mission will shift to investigating and addressing issues pertaining to BPD’s internal affairs only.
4. **The Board’s enabling statute fails to provide a way that disparate findings between the Board and BPD’s Internal Affairs Division (IAD) can be independently resolved.** Recommendation: In case the Board is not granted “original jurisdiction” per Recommendation 3 and must continue conducting investigations concurrent to IAD, also propose an amendment to require that an independent arbiter resolve disparate findings between the Board and IAD. The current process is dictated by BPD and biased in favor of IAD findings.^{iv}
5. **The Board’s enabling statute forecloses the Board’s ability to accept complaints filed anonymously or through various methods by attaching strict form requirements to complaints filed with the Board.** PLL § 16-44(c). Recommendation: Propose an amendment to grant the Board authority to accept and act upon complaints filed anonymously and by various means, including by telephone, email, letter, electronic form, etc.
6. **The Board’s enabling statute denies the Board authority to initiate investigations. The Board’s authority is triggered only when a complaint is filed.** PLL § 16-42(b). Recommendation: Propose an amendment to provide the Board authority to unilaterally initiate investigations into certain incidents, including those where no misconduct complaint is filed. Such incidents should include but not be limited to: officers discharging firearms in a manner that potentially could strike another individual; discharging a stun gun or taser in a manner that results in death or serious bodily injury; or the use of other weapons, including the use of equipment as a weapon that results in death or serious bodily injury. The Board should also

have authority to unilaterally investigate all incidents of an officer-involved or in-custody death.

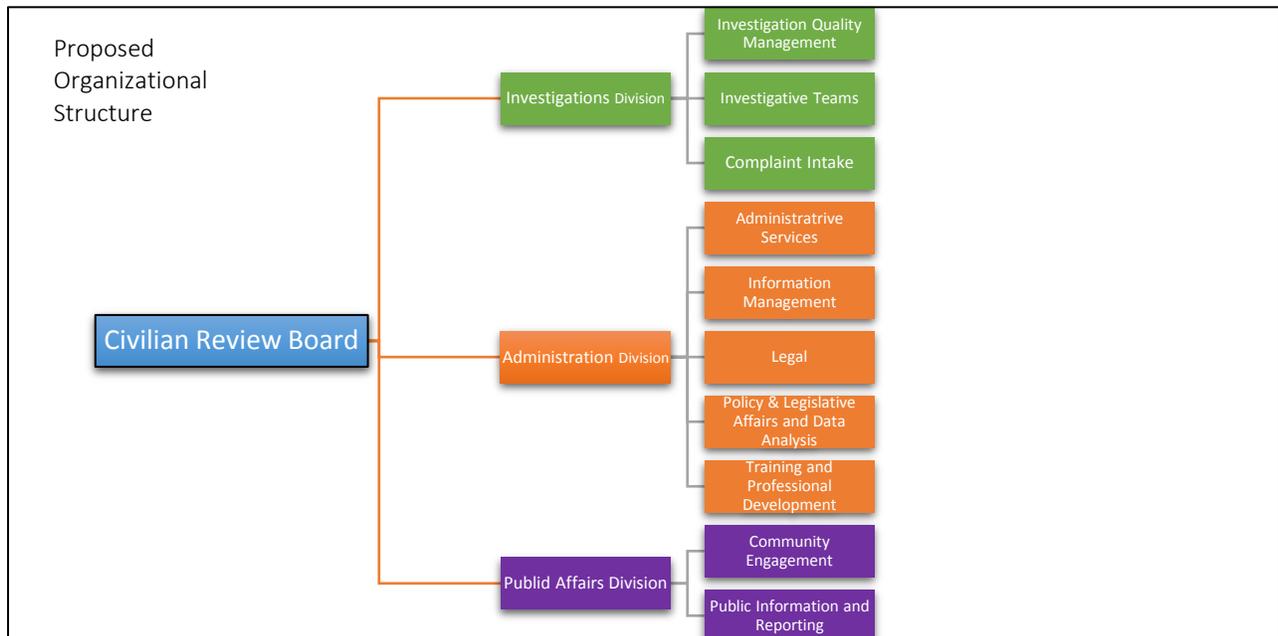
7. **The Board's enabling statute fails to grant the Board authority to compel cooperation of accused officers with its investigations and/or proceedings.** PLL § 16-46(b)(1)(i). Recommendation: Propose an amendment to require every officer, employee, department, and agency of the city to cooperate in Board investigations and proceedings. Provide that failure to cooperate is subject to discipline, including but not limited to release from employment.
8. **The Board's enabling statute fails to grant the Board access to information needed to conduct independent and thorough investigations.** PLL § 16-45(a). Recommendation: Propose an amendment to provide the Board full and timely access to all evidence and information in the possession or control of BPD, and any other city department or agency, for the purpose of conducting investigations within the Board's jurisdiction.
9. **The Board's enabling statute fails to require BPD to respond in any way to Board correspondence concerning its recommendations or other matters of import.** PLL § 16-48(a). Recommendation: Propose an amendment requiring the Police Commissioner (or designee) to respond in writing to Board concerns and recommendations – whether advising officer discipline, counseling or training, or proposing changes to departmental policies – within 60 calendar days of the date of receipt.
10. **The Board's enabling statute fails to require BPD to notify the Board of final disciplinary actions taken against officers.** PLL § 16-48. Recommendation: Propose an amendment to require the Police Commissioner to notify the Board of BPD's final disciplinary actions against officers within 48 hours of the decision. This will resolve a provision in the current collective bargaining agreement, Article 16 (K), which prevents BPD from sharing such information with the Board.
11. **The LEOBR and the Board's enabling statute prevent the Board from viewing officer performance holistically by allowing the expungement of formal complaints from officer records.** LEOBR § 3-110(a)(2) and PLL § 16-48(b). Recommendation: Propose an amendment to LEOBR and the enabling statute prohibiting the expungement of formal complaints from officer records, regardless of the finding. This will enable the Board to capture the most holistic picture of an officer's performance when evaluating complaints and considering discipline, counseling, training, or even commendation. The change will also close the expungement loophole created by an attachment to the collective bargaining agreement, Addendum D, which creates a process that allows a finding of misconduct to be transformed into a finding of no misconduct, thereby making the complaint against the officer eligible for removal from their record.^v
12. **The Board's enabling statute allows police labor contracts to shape its provisions and therefore its power.** Recommendation: Propose the inclusion of a provision that requires all collective

bargaining agreements to be in accord with the enabling statute’s policy, which should be to ensure that complaints made by members of the public concerning police misconduct and abuse are resolved timely, fairly and impartially.

C. Increasing the Board’s Funding and Resources

13. **The Board’s enabling statute fails to grant the Board an annual operating budget.** PLL § 16-43(f). Recommendation: Propose an amendment to guarantee the Board an annual operating budget, and that the budget totals not less than two and one-half percent (2.5 %) of BPD’s annual operating budget. This will provide the Board the steady funding necessary to carrying out its duties and have an impact over time. To note, the Fiscal 2017 Operating Budgets of BPD and the Board were approximately \$480,697,000 and \$556,000, respectively.^{vi} If this change were in effect today, the Board would have a minimum operating budget of approximately \$12,017,400 to recruit and retain talented personnel, procure much needed information and data management technology, etc.

14. **The Board’s enabling statute fails to grant the Board its own staff and set out an organizational structure that maximizes staff effectiveness.** PLL § 16-43(f). Recommendation: Propose an amendment to guarantee the Board its own staff, including but not limited to additional investigators and administrative staff, an independent administrator, and independent legal counsel to advise and represent the Board with respect to its investigations and subpoenas (see endnote viii for more positions).^{vii} The amendment should also incorporate the description of an organizational structure designed to maximize Board effectiveness (see proposed structure below).^{viii} In combination with Recommendation 14, this will not only protect Board staffing, it will protect against arbitrary organizational restructurings that inhibit Board effectiveness in overseeing the eighth-largest police force in the country.



15. **The Board’s enabling statute erects an unnecessary barrier to filling Board vacancies by imposing a dual-residency requirement on eligibility.** PLL §§ 16-43(a)(1)(i) and (a)(3). Recommendation: Propose an amendment to ease the historical burden of filling vacancies on the Board by either removing the dual-residency requirement or providing an exception to the requirement.^{ix} Currently, a Board member must be a resident of both Baltimore City and the police district in which he or she represents. For other boards and commissions in Baltimore City, residency within municipal boundaries is the only requirement.

D. Conclusion

The Office of Civil Rights believes these 15 preliminary recommendations (and other such changes), will fundamentally alter the trajectory of civilian oversight in both Maryland and Baltimore City for years to come, and narrow the current power imbalance between the Baltimore Police Department and the Civilian Review Board – an imbalance that at its base is structural in nature.

Implementation of these recommendations, which centers on amending LEOBR § 3-104(b) to formally include civilian oversight into the investigation stage of the disciplinary process, will swing the pendulum away from a statutorily weak, chronically under-resourced Board dependent on BPD to function, to a Board that is fundamentally independent,

resourced, and influential in the process of holding officers accountable and conforming police culture to the principles of community policing. This will enable the Board to rebuild itself internally and be well-positioned to successfully carrying out its intended purpose: To help enrich police-community relations in Baltimore City by improving police accountability and transparency.

It is the desire of the Office of Civil Rights that the Community Oversight Task Force – whose mandate it is to publish a report proposing recommendations that will improve the effectiveness of the Board – to strongly consider using these recommendations as a guide and including them in its final report. To leave in place the status quo is not an option.

ⁱ Maryland Code Annotate, Public Safety, §§ 3-101 – 3-113.

ⁱⁱ Code of Public Local Laws of Baltimore City (“PLL”) §§ 16-41 – 16-54.

ⁱⁱⁱ The Office of Civil Rights is in the process of drafting a more comprehensive report that may include additional recommendations. The timeline for completion of the comprehensive report is TBD.

^{iv} Prior to September 2017, BPD resolved differences in findings by first forwarding them to a legal consultant for evaluation. The consultant, who was hired without input or consultation of the Board or Office of Civil Rights, reviewed IAD’s casebook and then issued an opinion to the police commissioner, who made a final decision. The Board had no access to the opinion because IAD asserted it was protected by attorney-client privilege. Recently,

BPD fired the legal consultant and created a new process where such disputes are forwarded to the Baltimore Law Department, who will issue an opinion to the police commissioner for a final decision. IAD also asserts that said opinions are protected by attorney-client privilege and should not be provided to the Board.

^v Addendum D of the collective bargaining agreement states that if the legal affairs division recommends administrative closure of a sustained case, an administrative body (likely a hearing Board) will dismiss the case as "not viable for prosecution." Once this happens, the sustained finding "revert[s]" to a not sustained finding, making it "subject to the expungement provisions of the Law Enforcement Officers' Bill of Rights."

^{vi} The Board's budget was increased from \$555,998 in FY 2017 to \$608,727 in FY 2018 (+9.50%).

^{vii} As of November 2, 2017, the Board has a staff of five to carry out its affairs: Staff Supervisor Jesmond O. Riggins, Full-time Investigators Evangula Brown and Shaun Clark, Part-time Investigator Samantha Jeffrey, and Special Assistant Jill Muth-Sanders.

^{viii} The proposed organizational structure is identical to the City of Chicago's newly created civilian oversight agency – the Civilian Office of Police Accountability (or COPA). COPA is divided into three core components – Administration, Investigations, and Public Affairs. The Administration component includes the following personnel: a Chief Administrator, a 1st Deputy Chief Administrator, a Chief of Staff, an Executive Administrative Assistant, a Director of Administrative Services, a Director of Training and Professional Development, a Director of Information Systems, a Director of Public Policy and Legal Affairs, an Administrative Services Officer, Administrative Assistants, an Inquiry Aid, a Policy Analyst, Senior Information Analysts, Technical Support Admin, and others. Also a part of the Administration component is the Legal Division, which includes the following personnel: a General Counsel, a Supervising Staff Attorney, a Senior Litigation Counsel, Attorneys, a Supervising Paralegal, Paralegals, and a Clerk. The Investigations component includes the following personnel: Chief Investigators, Supervising Investigators, Major Case Specialists, Investigators, a Director of Quality Management, Quality Management Analysts, Evidence Specialists, Digital Forensic Analysts and Data Entry Operators. And the Public Affairs component includes the following personnel: a Deputy Chief Administrator/Public Information Officer, a Director of Community Outreach and Engagement, Senior Public Information Officers, and Community Case Liaisons.

^{ix} Eliminating or modifying this requirement will substantially widen the pool of talent and experience available to serve on the Board while also decreasing the likelihood of the Board losing quorum. The last time the Board lost quorum and the ability to function was in February 2017, when four Board members resigned within a few months' time. It was not until June 2017, four months later, that enough Board members were recruited and appointed to the Board to regain quorum. However, between February and June, a number of cases expired before the Board could render a finding. And although the new class of Board members began with nine candidates, three of them could not serve on the Board because it was discovered at the last minute that they lived on the boarder of the police district they were slated to represent. As of November 1, 2017, these seats were filled.

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| | Subject | Preliminary Report Addendum – Recommendations for the short-term | | |

To: The Community Oversight Task Force

Date: November 02, 2017

In recognition of the long-term goals set out in the Preliminary Report to improved civilian oversight in Baltimore City, the Office of Civil Rights also proposes five (5) recommendations that we believe the Task Force can push in the short term. We believe that with urging from the Task Force, these changes can be accomplished sooner rather than later. Here are the recommendations:

1. Propose that the City of Baltimore take all necessary steps to substantially increase the Civilian Review Board's (Board) operating budget as soon as possible. Provide that the budget total not less than 2.5 percent of the Baltimore Police Department's (BPD) operating budget. The Board will use these funds to capacity build – i.e., acquire staff, training, needed technology, etc.
2. Propose that BPD (and other law enforcement units) provide Board investigators with full and timely access to all relevant evidence and information in its possession or control that pertains to Board investigations.
3. Propose that BPD's Internal Affairs Division (IAD) not change or create any internal process or policy in a way that impacts Board functions without Board input and agreement.
4. Propose that in cases where the Board and IAD render different findings and the Police Commissioner upholds the IAD finding, the Police Commissioner provide his/her reasoning to the Board in writing within 30 calendar days of the decision.
5. Propose that BPD work in collaboration with the Board to develop policies that (1) protect individuals from relation or harassment who have either filed a misconduct complaint or witnessed the alleged misconduct; (2) prevent all evidentiary materials associated with an investigation - whether audio, video, photographic, etc. – from being deleted or otherwise made unavailable by IAD for "lack of evidentiary value"; (3) allow Board access to the training records of officers who have received multiple complaints of misconduct; and (4) subject officers' body worn camera history to auditing after an officer has received multiple misconduct complaints of the same type.