



GOVERNMENT OF THE DISTRICT OF COLUMBIA POLICE COMPLAINTS BOARD OFFICE OF POLICE COMPLAINTS

Office of Police Complaints
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PCB POLICY REPORT #21-2: Discipline

Introduction:

Police misconduct damages the relationship between police departments and the communities they serve. It is important that community members trust that police officers are held accountable for wrongdoing, since community members who think that a department allows misconduct are less likely to believe that police officers wield legitimate authority which in turn makes them less likely to assist with investigations and cooperate with officers' requests.¹ Currently, the Metropolitan Police Department (MPD) is solely responsible for deciding the discipline for MPD officers for sustained allegations of misconduct based on community member complaints to the Office of Police Complaints (OPC). But this has led to an opaque system that can appear to the community as being too lenient. The Washington D.C. community would benefit from a discipline system that consistently holds officers accountable, and this report examines this issue.²

Background:

OPC investigates complaints alleging that a member of the Metropolitan Police Department or the D.C. Housing Authority Police Department (DCHAPD) engaged in harassment, inappropriate language/conduct, retaliation, unnecessary/excessive force, discrimination, or failure to identify.

¹ JUSTICE COLLABORATORY, YALE LAW SCH., PRINCIPLES OF PROCEDURALLY JUST POLICING 25 (2018) (suggesting that being perceived as legitimate allows police departments to “improve police-community interactions, increase police situational control and safety, and increase community members’ compliance with laws and social norms”).

² The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

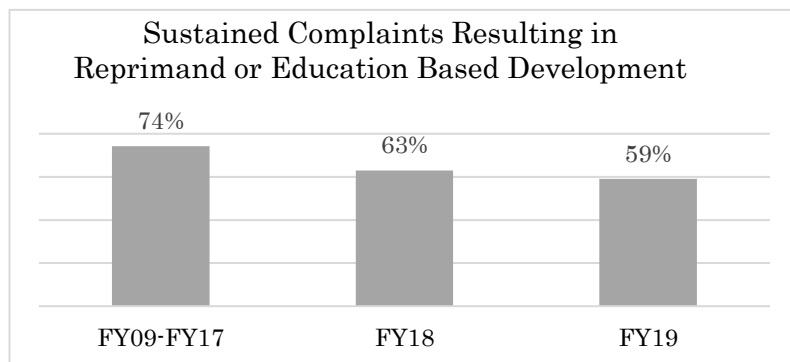
When a complaint is fully investigated and reveals that there is reasonable cause to believe that misconduct occurred the case may be referred for adjudication by a Complaint Examiner. Complaint Examiners evaluate evidence submitted by OPC and the subject officer’s representative. In FY2019, twenty-four complaints went through the adjudication process.³ Twenty-three of those complaints saw at least one allegation sustained by a Complaint Examiner.⁴

When the Complaint Examiner sustains at least one allegation of misconduct, OPC refers the case to the Chief of Police. However, neither Complaint Examiners nor other members of OPC staff are currently authorized to provide disciplinary recommendations.⁵

Discipline for Sustained OPC Complaints:

When a sustained complaint is referred to the Chief of Police, they must impose an “appropriate penalty from the Table of Penalties Guide in General Order 120.21 (Disciplinary Procedures and Processes).”⁶

However, the sanctions imposed by MPD in response to sustained community complaints suggest that the Department is reluctant to impose serious sanctions based on community complaints, and often goes outside of the Table of Penalties Guide. As visualized in the graphic below, the majority of sustained complaints for the past two years have resulted in reprimands or education-based development.⁷ These minor disciplinary sanctions allow officers to believe that complaints from community members are unimportant and that MPD tolerates, or endorses, behaviors likely to produce complaints.⁸



³ *Id.* 19

⁴ *Id.* 19

⁵ OFFICE OF POLICE COMPLAINTS, 2019 ANNUAL REPORT, 19.

⁶ D.C. CODE § 5-1112 (2020).

⁷ *See* POLICE COMPLAINTS BOARD & OFFICE OF POLICE COMPLAINTS, 2019 ANNUAL REPORT, 18 app.box.com/s/rs8mgw2369ecd2fax389sullvtw2hzb., at 20 (noting that a reprimand or educational development was utilized in thirteen of the twenty-two cases of sustained civilian complaints in FY 2019, seventeen of twenty-seven complaints for FY 2018, and from FY 2009 to FY 2017, 75 of the 101 resulted in a reprimand, educational development, or *no action*.).

⁸ CARL B. KLOCKARS ET AL, THE CONTOURS OF POLICE INTEGRITY, 3 (2004) (“Discipline plays a central role in conveying the gravity of misconduct by demonstrating what the agency regards as serious.”).

	FY09-FY17	FY18	FY19
Number of Complaints Resulting in Reprimand or Educational Development	75	17	13
Total Sustained Complaints	101	27	22

Specifically, education-based development is not discipline at all, and is merely additional training. For this reason, it is not listed in the Table of Penalties Guide. Further, since the NEAR Act’s passage in 2016, OPC has had the authority to refer cases to MPD for policy training.⁹ This is done prior to sustaining the complaint and is solely based on the investigation. If the allegations were deemed appropriate for training, then the case would have been referred for policy training, rather than going through the adjudication process to make a sustained merits determination.

Recently MPD’s actions have further raised concerns as to the seriousness with which MPD takes OPC’s sustained cases. Here are the two most recent examples:

20-0105: Education-Based Development

Summary: SUBJECT OFFICER #1 and SUBJECT OFFICER #2 stopped their marked MPD police cruiser alongside COMPLAINANT’s truck that was legally parked. When the officers approached the driver’s side of the truck, COMPLAINANT immediately and voluntarily placed both of his hands out of the window and said words to the effect “I have a gun.” COMPLAINANT was told to exit his vehicle, which he did, and was handcuffed. COMPLAINANT advised the officers that the gun was registered and that he had a concealed carry permit. SUBJECT OFFICER #1 then removed COMPLAINANT’s wallet from his pants’ pocket and found the gun registration and concealed carry documentation. COMPLAINANT alleged that he was improperly stopped and searched by the officers. The Complaint Examiner sustained the allegations.

OPC determined not to refer this case for Policy Training because reasonable suspicion stops, and probable cause and consent searches are basic and well-understood 4th Amendment law that is extensively taught at the Metropolitan Police Academy and reinforced through Professional Development Training and roll call trainings. MPD did not make clear why they think additional training is more appropriate than discipline for this case.

19-0291: PD 62E

Summary: The complainant alleged that SUBJECT OFFICER failed to provide necessary medical services and evaluation at the scene, where complainant was under arrest, despite complainant’s repeated statements that he was epileptic, felt ill and needed his medication. The Complaint Examiner sustained the allegation.

⁹ D.C. CODE § 5–1107(g)(6) (2020).

The subject officer in this case was a Sergeant. He failed to provide necessary medical care to the complainant, even after multiple requests and visible signs of distress. A PD 62E is also known as a Job Performance Documentation Form, which is intended to be used by supervisors to document observations of a subordinate's job-related behaviors.¹⁰ While MPD refers to this as a "Corrective Action" in the discipline notification letter, Corrective Action is defined in General Order 120.21 as "A PD Form 750 (Dereliction Report), a letter of prejudice, or an official reprimand." The PD 62E does not meet this definition. Further, this is outside the Table of Penalties, and OPC previously found that a PD 62E does not constitute discipline as General Order 201.20 specifically states a PD 62E is non-disciplinary.¹¹

Discipline Models:

Community member input should be solicited to determine how disciplinary decisions should be made when OPC complaints are sustained as this would lend more credibility to the discipline imposed. Currently MPD controls the entire decision-making process. Looking at the ways that discipline is handled for other major city police departments is instructive in determining what should be done in the District.

The Oakland Police Commission is made up of community members and has the power to unilaterally fire the police chief for cause or to recommend that the mayor fire the chief without cause.¹² Community members in Oakland are also responsible for final police disciplinary decisions stemming from public complaints.¹³ The Community Police Review Agency (roughly equivalent to OPC) investigates community complaints and recommends discipline to the Chief.¹⁴ However, if the Chief disagrees with the Review Agency's recommended discipline, a committee of three civilians from the Oakland Police Commission (analogous to the PCB) makes the final determination on discipline.¹⁵ This ensures that the community viewpoint is included in the discipline decision-making process, and it is not solely up to the police department.

In Milwaukee, a Fire and Police Commission has the power to hire and fire officers and the chief.¹⁶ It also has the authority to assume control over internal affairs investigations,

¹⁰ MPD General Order 201.20: Performance Management System (PMS) for Sworn Members in the Rank/Position of Civil Service Sergeant, Investigative Personnel, and Officer (2006)

¹¹ *Id.* at 6.

¹² See Robert Kuznia & Casey Tolan, *When It Comes to Policing the Police, Strong Watchdogs Are the Exception*, CNN (June 25, 2020) [cnn.com/2020/06/25/us/police-reform-civilian-oversight-invs/index.html](https://www.cnn.com/2020/06/25/us/police-reform-civilian-oversight-invs/index.html).

¹³ Sharon R. Fairley, *Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy*, 2020 CARDOZO L. REV. DE NOVO 1, 26-27 (2020).

¹⁴ *Id.*

¹⁵ *Id.*; OAKLAND CODE § 2.45.130 (2020).

¹⁶ Will Cushman, *From Union Contracts to City Commissions, How Police Oversight Works in Wisconsin*, WISCONTEXT (July 23, 2020) wiscontext.org/union-contracts-city-commissions-how-police-oversight-works-wisconsin [perma.cc/56K9-TK CJ]. In Milwaukee, the Chief of Police also has the power to fire officers.

investigate civilian complaints, and set department policy.¹⁷ In other Wisconsin cities, mayors appoint between five and nine civilians to local police and fire commissions.¹⁸ These commissions have the exclusive power to hire and fire police chiefs and review internal affairs investigations to impose serious discipline against officers.¹⁹

When Chicago's Civilian Office of Police Accountability (COPA) sustains one or more allegations the agency recommends discipline of the accused officer to the Superintendent of the Chicago Police Department (CPD). However, it is ultimately up to the police department and/or the Chicago Police Board (CPB) to come to a final decision regarding discipline.²⁰ When COPA issues its findings and discipline recommendation to the CPD they have 60 days to review. If the CPD proposes less or no discipline, then a written response with an explanation is required. COPA and CPD then have the opportunity discuss the case and come to a mutual resolution on discipline. If they cannot come to an agreement a member of the CPB is randomly selected to review the case and decides which discipline recommendation to impose.²¹

Recommendations:

To help improve and facilitate better relations and increase trust from community members, the PCB recommends that the DC Council consider reviewing the process by which discipline is determined for OPC sustained complaints. A public discussion on what the community desires for outcomes in police complaints would be beneficial in improving the current process. One process the PCB believes would correct the current inequities is to amend DC Code §5-1112 to include a revised procedure for determining the level of discipline for sustained allegations of misconduct based on complaints made to OPC, as outlined below. This procedure is like those of Oakland and Chicago. The basic framework of this process for the District would be as follows:

1. Complaint Examiner sustains an OPC complaint,
2. OPC transmits this finding to MPD or the DC Housing Authority Police Department (DCHAPD)²² along with a discipline recommendation from the Executive Director for the misconduct,

¹⁷ *Id.*; MILWAUKEE FIRE & POLICE COMM'N, CITY OF MILWAUKEE, HOW TO FILE A COMPLAINT, city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Brochures/Complaint_Brochure.pdf [perma.cc/5RD5-5NYR]. The Fire and Police Commission was founded in 1885. Milwaukee Fire and Police Comm'n, *About the Fire and Police Commission*, city.milwaukee.gov/fpc/About [perma.cc/8EFR-SAYS].

¹⁸ Cushman, *supra* note 16. In Milwaukee, the Chief of Police, in addition to the Commission, has the power to fire officers. There, officers can appeal discipline imposed by the Chief to the commission.

¹⁹ *Here and Now: Police Union Contracts* (PBS WISCONSIN broadcast July 23, 2020) pbs.org/video/police-union-contracts-wb0xjq/. In cases of officer involved shootings, state law requires the investigations be conducted by an outside law enforcement agency rather than an internal affairs unit. WIS. STAT. § 175.47 (2017-18).

²⁰ CIVILIAN OFFICE OF POLICE ACCOUNTABILITY, 2019 ANNUAL REPORT, 39.

²¹ See Section 2-78-130 of the Municipal Code of Chicago, and Article VI of the Police Board's Rules of Procedure.

²² OPC and the PCB also have oversight of the DCHAPD, and the discipline process should be the same for both MPD and the DCHAPD.

3. MPD or DCHAPD is permitted time to review the case and either accept the discipline recommendation or find a more severe penalty and impose it, or oppose the OPC recommendation with a written explanation,
4. If MPD or DCHAPD opposes the OPC recommendation and wants a less severe penalty then the written explanation is sent to OPC for review,
5. MPD or DCHAPD and OPC discuss their positions on discipline determinations and work toward a mutual agreement,
6. If MPD or DCHAPD and OPC cannot agree, then the case is forwarded to a panel comprised of three members of the PCB for review,
7. The PCB panel can accept the discipline recommendation of either OPC, MPD/DCHAPD, or reach a decision on a compromise discipline,
8. MPD or DCHAPD imposes the discipline decision approved by the PCB panel.

Following this type of procedure for discipline will build community trust in the entire complaint process by including the input of those outside MPD. When only MPD is involved in the discipline process, it can appear as though the Department is not taking community member complaints seriously. This process would make the discipline decision more transparent to the community and it would also decrease any appearance of leniency when MPD makes the decision alone.²³

²³ OPC and the PCB provided draft versions of this recommendation to both MPD and the DC Police Union for review and comment. MPD's response, dated October 6, 2020, stated that OPC can make disciplinary recommendations to MPD without any changes to the current statute and this would allow MPD to retain full authority over discipline. The DC Police Union response, dated October 7, 2020 stated that they were concerned about the how a change in the discipline process for sustained OPC complaints would function with the Collective Bargaining Agreement.