

Civilian Oversight Working Group

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DRAFT RECOMMENDATIONS

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Note: this is a preliminary draft. It has not yet been finally approved by members of the Working Group. We welcome any comments, which can be submitted to coareform1@gmail.com.

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Introduction

The Civilian Oversight Working Group was tasked with examining all questions related to transparency and accountability. The goal of the Collaborative, as we understand it, is to reform and reinvent policing in Albany in a way that will earn the trust of the community. Community trust must be the test for all proposals. The question, therefore, is what strategies for transparency and accountability are needed for the community to trust the police.

The members of this Working Group played different roles and contributed in different ways to the creation of these recommendations.

- Ava Ayers and Tandra LaGrone co-chaired the group. Ayers was the primary drafter of these recommendations. (Anyone who wishes to comment on them can send comments to aayer@albanylaw.edu.)
- Joe Ingemie and Larry Becker, as members of the Working Group, participated in the Working Group's conversations and the creation of the recommendations below.
- Hon. Corey Ellis served as a member of the Working Group, participated in the Working Group's conversations, and contributed to the development of the recommendations below. Because he is President of the Common Council, and will thus be responsible for coordinating community input on, and eventually voting on, the ideas that emerge from this Collaborative, he will abstain from voting on these recommendations.
- Commander Anthony Battuello and Sgt. Jimm Lewis of the Albany Police Department participated in all of the Working Group's meetings. Their role was to answer questions from members of the Working Group and to help the members understand the current policies and practices of the Albany Police Department. As such, they did not vote on these recommendations.
- Rebecca Campbell served as staff for the Working Group, organizing all of our meetings and taking care of all other necessary arrangements. Our work would not have been possible without her tireless work and skillful coordination.
- Members of the community who were not formally part of the Collaborative nonetheless contributed significantly to the development of these recommendations. We deeply appreciate comments we received at a public meeting on January 11, as well as written comments we received from several people and organizations, and meetings in which numerous members of the community gave us additional suggestions.

Challenges

- Racism in all its forms, including structural, systemic and individual; historic and present; implicit and explicit;
- Widespread mistrust of the police, grounded in a long history of acts of violence and racism by members of the Albany Police Department as well as everyday incidents that reinforce mistrust;
- Little public trust in oversight and accountability for officers accused of misconduct;

- Members of the public don't understand accountability procedures and their outcomes; specifically, members of the public don't trust the Community Police Review Board or believe it has a meaningful impact ;
- City of Albany's financial resources are limited by a number of factors, including a tax base that is limited by the concentration of wealth in adjacent affluent suburbs due to factors that include historical racist redlining practices and continuing patterns of residential segregation.

Assets

- Active, well-informed community
- Knowledge resources: Albany is a center for educational institutions, government institutions, and activist organizations
- 20 years' experience with civilian oversight of police

Goals and Recommendations

Goal 1. Earn Community Trust in Internal Accountability Procedures

Strategy: Aggregating disciplinary information to identify lessons learned

- Require APD to annually evaluate all the counseling memos/discipline issued during the year, and report on what conclusions can be drawn from that discipline, including whether additional training or new policies/procedures are needed.

Strategy: Standardizing discipline to heighten fairness

- Create a disciplinary matrix which standardizes consequences for misconduct. This matrix should include a way for unusual or extenuating circumstances to be recognized, as long as they are articulated.

Strategy: Transparency of internal accountability procedures

- Members of the public do not trust the APD's internal disciplinary procedures. In order to earn trust, it will be necessary to allow the public to evaluate the fairness and effectiveness of those procedures for themselves. This means publicizing the results of internal investigations to the greatest extent possible, both individual investigations and aggregated information about investigations.

Goal 2. Develop Mediation Processes

Strategies:

When a member of the public makes a complaint to the Community Police Review Board, mediation is available. However, many members of the public are not aware of this.

The City and the Board should work to make the public aware that mediation is available with or without formal complaint. In other words, mediation should be an option even for people who do not file complaints.

The mediation process should otherwise be evaluated and expanded.

Also, officers (not complainants) should be required to participate in the mediation process. If an officer is not temperamentally able to participate in a mediation process, and to calmly discuss issues with a complainant, then they lack an essential skill for policing and should not be part of the APD.

Goal 3. Give the Police Review Board Sufficient Powers and Resources to Earn the Community's Trust

Too many members of the Albany community have no faith in the Community Police Review Board. In fact, in our conversations with members of the community about the CPRB, we did not hear anyone voice the opinion that it is effective. The current CPRB is limited in power and resources; while the City's arrangement with Albany Law School provides administrative staffing, policy research, training, and advice on procedures and best practices, there are many resources that are simply not available to the Board.¹ Moreover, the CPRB is institutionally limited in some key ways: it is not sufficiently independent of the City and APD, and its powers are limited to essentially making recommendations.

The Working Group believes that several significant changes are necessary if the public is to begin trusting the CPRB to serve as an effective mechanism for accountability. The following sections outline those changes.

Strategy: Give the review board sufficient powers to earn community trust:

- Clarify/confirm the Board's power to initiate its own investigations
- Power to conduct independent investigations of alleged misconduct
- Power to subpoena documents or testimony when relevant to investigations
- Power to impose discipline on police officers.

¹ Full disclosure: As a reminder, the primary drafter of these recommendations is the director of Albany Law School's work on the CPRB.

To be sure, the proposal to give disciplinary power to the CPRB will be controversial, and will require negotiation with the unions, possibly negotiation or lobbying with the NYS legislature, and/or litigation. However, the community currently has little faith in the CPRB because it has no power to create consequences for misconduct. Unless the CPRB has the power to create meaningful consequences, it is difficult to see how it can gain the trust of the community.

Strategy: A Strong, Independent Police Review Board

Create a single, independent civilian oversight agency with sufficient staff. Some of these staffing resources could be provided through consulting or contracting arrangements with outside entities. The resources should include:

- Executive Director nominated by the members of the Board, and confirmed by the Common Council
- Experienced investigators
- Independent counsel (i.e., not Corporation Counsel) as well as assistance with data processing, reporting and policy advice/recommendation
- A “Complainant and Community Advocate” (or some similar title; CPRB should control the job title, as long as the title is not “victim’s advocate,” which presumes victimhood in advance of the investigative process)
 - Work with individual complainants on their complaint AND on helping them get other services
 - Work with community groups, learn about community concerns, and voice those concerns to the Board and APD through regular reports and as-needed interventions
- Outreach coordinator who supports both the CPRB and ACPAC; the role is to raise community awareness and understanding
- All staff should go through Citizens Police Academy, and NACOLE conferences, as well as other relevant training.

Strategy: Give the Board responsibility not only over individual complaints, but also more systemic powers

- Power to audit APD policies and recommend changes to APD or to the Common Council, allows for CPRB to have input to policy and procedures

- Power to conduct random audits of bodycam videos and similar data.

Strategy: Ensure Board procedures facilitate community trust:

- Assign a monitor to every case, not just excessive force / “Civil rights”
- Require target officers to appear at Board hearings (even if they only listen)
- Require the OPS detective who investigated any given complaint to appear at the Board’s hearing
- Require all Board members to review materials for each case
- Require APD to make relevant materials available to Board members electronically
- Require Board to issue written decisions explaining their findings
- Simplify findings to make them more comprehensible (e.g., “adequate investigation,” “inadequate investigation,” “inappropriate conduct,” “appropriate conduct,” “insufficient evidence to find inappropriate conduct,” etc)
- As discussed above, require officers to participate in mediation for cases of non-violent misconduct (complainant should never be required to participate in mediation)
- Require monitors for all cases. (If necessary, amend City Code to remove language that makes a case ineligible for mediation when a monitor is assigned—there is no reason the assignment of a monitor should make a case ineligible for mediation, but that might be the case under current law.)

Strategy: Ensure adequate funding for the CPRB

- We recommend adopting this language, based on section 8-13 of the Rochester City Charter: “The annual proposed budget of the Community Police Review Board shall provide for sufficient funding to carry out the powers and duties set forth in the City Code, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within 90 days.”

Strategy: CPRB Role in Hiring

- Explore strategies that would allow members of the community or the CPRB to meet with new officers before a decision is made on whether to hire them. See Schenectady’s practice: <https://www.timesunion.com/news/article/Community-members-to-interview-new-Schenectady-15808986.php>

Strategy: recruitment of leaders

- Create a clear process for community members to apply for positions
- Encourage staff (like the outreach person) to recruit

Goal 4. Ensure that Civil Litigation Promotes Community Trust and Better Policing

Strategies: Independent indemnification board, and lessons learned

- Create an independent board that would assess whether to indemnify officers for civil lawsuits
- Collect data
- Create a mechanism to make sure that any lessons learned through litigation are communicated internally

Goal 5. Create Special Prosecutor's Board

Strategies: State Involvement and Local Independence

- Encourage NYS AG to take responsibility for more criminal investigations—not just cases of killing unarmed civilians
- Meanwhile, at the city level, consider creating a Conflict Prosecutor's Office, similar to the Conflict Defender's Office run by many municipalities—an office specifically tasked with prosecuting crimes in cases where the DA's office has a conflict. And make that office responsible for all cases involving alleged criminal misconduct by APD officers.

The NAACP recommends A.P.D. in cooperation with community leaders examine best practices for appointing a special prosecutor and adopt such practice into their operation. The Albany NAACP is currently engaged in this research and will be available to assist in this effort.

Goal 6. Collect Enough Information to Meaningfully Assess Police Conduct

Strategy: Mandate Data Collection About Individual Police Actions

Require APD to collect sufficient information to determine whether there is evidence of racial profiling and other forms of biased policing. This data should include everything listed under Goal 7, below. It should also include demographic information, for all enforcement actions, including stops, arrests, citations, searches, and uses of force.

For traffic stops, it is particularly important to record whether the traffic stop was motivated by on-the-spot observations or prior investigative reasons. Otherwise, it is impossible to determine whether racial profiling is happening and whether the stop was a “pretext” stop.

Before any assessment of racial inequalities is possible, it is also necessary to collect “denominator” information. For example, when assessing whether racial profiling is occurring in traffic stops, we need to know not only how many white and Black drivers were stopped (the “numerator”) but how many total motorists are estimated to pass through the relevant area (the “denominator”). This information is challenging to collect, and it will be necessary to develop strategies for doing so. But it is essential.

Strategy: Caution in Assessing Subjects’ Race

Officers should not ask people what race they are. This would create a hostile environment. Instead, officers should record their own observations of the person’s apparent race. Of course, this will sometimes be mistaken. However, it is crucial to understanding the reasons for the officer’s choice about what actions to take.

Strategy: Stop Saying “Pedigree Information”

The working group learned that the phrase “pedigree information” is used by police departments to refer to information about the individual person who is stopped, arrested, searched, etc. Race is part of the “pedigree information.” This is not an APD-specific practice; on the contrary, it is widespread.²

APD should immediately stop using the phrase “pedigree information” to refer to personal information that includes race. The word “pedigree” literally means “the record of descent of an animal, showing it to be purebred.”³ APD should avoid the implication that the subjects of police actions are animals whose breeding is subject to purity criteria.

A new term, like “demographic information” or “biographical information,” should be used instead, and we’re sure APD can find an appropriate abbreviation (e.g., “bio-info”) if necessary. When interacting with other agencies that use “pedigree information” (e.g., DCJS or other police departments) APD should explain why it no longer uses the phrase, and encourage other agencies to follow suit.

We also recommend that APD generally evaluate its use of policing jargon and other forms of professional/expert language to see if other terms carry similarly negative connotations.

Strategy: Body Camera and Other Video/Audio Footage

- Upon request by any resident of New York State, the Department shall make any video

² See, e.g., <https://www.legalaidnyc.org/get-help/arrests-policing/what-to-expect-if-youre-arrested/> (referring to “pedigree” information).

³ Oxford dictionary, via Google.

footage pertaining to an incident public within 14 days, with only those redactions that are necessary. (This would presumably have to be harmonized with FOIL, and the limited circumstances identified in which withholding information would be appropriate.)

- Under no circumstances shall a person be charged for access to video footage.

Strategy: Racial-Justice Audits

In 2020, the City Auditor commissioned a racial-justice audit from the firm CNA. The CPRB recommends repeating this audit at least once every five years. The Working Group endorses this recommendation.

Goal 7. Publicize Information That Will Create Confidence and Trust

Strategy: Staff Analysts, Accessible Data Portals. and Regular Public Reports

- The City should maintain easily accessible online portals where a wide swath of data is publicly released on a regular basis without people or organizations having to submit Freedom of Information Law requests. The current open-data website, <https://data.albanyny.gov/>, makes available a great deal of useful data. But it is not easy to browse or search, and the data it produces is not easy for non-experts to interpret.
- In order to make the APD truly transparency to the public, significant resources will have to be devoted to making data available and distilling data into a user-friendly format. These means staff resources, both inside the APD and at the CPRB (which should also by analyzing and disseminating data). (In our proposed new arrangement, the CPRB staff include the staff who support ACPAC, which means that ACPAC too can play a useful role in disseminating and criticizing the data.) Both the Police Review Board and the APD itself should have employees responsible for processing the data into a format sufficiently clear and well-presented to answer whatever questions the public may have about officers' conduct.
- To ensure the public knows what data is available, APD and the CPRB should make regular reports on various topics listed in this section (Under "Which Data Should the City Collect and Distribute?"). These reports should be presented by APD and CPRB/ACPAC staff at regular public CPRB/ACPAC meetings, with an opportunity for public comment and questions. Public presentations are important because members of the public and the press will be better able to absorb the data if it is presented at a specific event where members of the public can ask questions about it. Also, events will help raise public awareness of the

Strategy: Which Data Should the City Collect and Distribute?

At minimum, the online data made available should include:

1. responses to 911 and 311 calls, with information on call type, demographics of people involved in the calls (where available), type of personnel, officer, or unit dispatched to the call, and whether force was used by responding officer, along with all other data that will allow users of the portal to understand how many calls involve the need for armed police response;
2. what officers are being trained on, what officers are not being trained on, hours per training session, how officer training is reinforced, how often officers face discipline for failing to follow training rules, whether and how training explicitly addresses white supremacy, misogyny, ableism, homophobia, and transphobia, and whether and how training addresses on-the-job trauma;
3. the historical size and budget of the APD, comparative data that allows users of the portal to compare the APD's operations and per-resident staffing levels to other communities (allowing for the fact that we are the state capital, with whatever implications that has), and program-specific budget and staffing data that will reveal the APD's public-safety priorities;
4. what force tactics APD officers are using (including, but not limited to, breathing restrictions), how often those tactics are being used, what racial and ethnic groups those tactics are being used against, the written and verbal instructions that determine how officers choose what tactics to use, when those tactics cause injuries, and whether an internal review was conducted after the use of a given tactic;
5. if and how the APD uses "less-than-lethal" weaponry, including data on: (1) relevant training procedures; (2) spending on such weaponry; (3) use and equipment rates; (4) related injuries; (5) the cost-benefit analyses the APD uses to justify the training regarding, purchase of, and use of such weaponry; and (6) verbal and written instructions about how to use such weaponry;
6. if and how the APD enforces low-level violations, including data on: (1) how often officers enforce, through both arrests and stops, certain misdemeanors and infractions including disorderly conduct, harassment, loitering, simple trespass, criminal mischief, and petit larceny; (2) what percentage of officer time is spent addressing these low-level offenses; (3) the training and directions officers receive regarding whether and how to address these low-level offenses; (4) the assignments officers were on when they arrested or stopped the subject; (5) the age, gender, race, and socioeconomic status of the people whom these laws are enforced against; and (6) historical enforcement figures to compare current and past practices;
7. how much revenue the City generates from traffic tickets and code enforcement, who is subject to this kind of enforcement, the difference between what violations people are ticketed for and what violations people are pleading to, and whether the City is using this kind of enforcement to fill budget gaps;

8. if and how the APD conducts stop-and-frisk practices, including data on enforcement patterns of individual officers who conduct arrests and stops and data on numbers of stop-and-frisk incidents that retrieve no evidence or contraband along with demographic and geographic data;
9. how the APD engages in high-speed pursuits, including data on the number of pursuits, speed by which pursuing officers override the speed limit, and any accidents officers have been involved in during pursuits;
10. SWAT training and SWAT activity to determine how often SWAT is used in hostage or active shooter situations as opposed to search warrant execution;
11. past and present use of no-knock warrants, including the rejection rates for no-knock warrant requests, claims against the city for personal injuries or property damage linked to no-knock warrants, and statistics regarding raids involving no-knock warrants that were executed at the wrong location;
12. if and how the APD uses de-escalation tactics, including data on: (1) hours spent training officers on de-escalation tactics; (2) percentage of training devoted to de-escalation; (3) specific de-escalation tactics taught to officers; (4) percentage of crisis calls responded to by people not armed and/or dressed up as ordinary police officers; (5) how and when officers are deploying de-escalation tactics on a day-to-day basis; and (6) what written and verbal policies relating to de-escalation the APD has issued;
13. If and how the APD uses alternatives to arrest, including data on enforcement, non-enforcement, and offender demographics regarding appearance tickets, issuance of warnings for traffic violations, voiding of parking violations, and a list of all cases where these alternatives were used that include demographic data and location;
14. • effectiveness, funding, and staffing for diversion programs, restorative justice programs, community-based outreach & violence interruption programs, and hot spot policing;
15. purchase and use of advanced technologies such as ShotSpotter;
16. budgets, case processing statistics, and staffing levels of other civilian review boards, as well as any other data that will allow the City to craft a proposed budget for the CPRB that fulfills the City Charter's requirements;
17. anonymized aggregate data on how officers who are Black and Brown, women, and part of the LGBTQ community are disciplined, promoted, recruited, and terminated;
18. per-officer spending on trauma-related support, the rates at which officers use trauma support, and the incidents of domestic violence, workplace harassment, and other outcomes of untreated trauma;
19. backgrounds of recruits and new hires, including information on whether officers are recruited or hired from the military and information on whether new hires have disciplinary histories from law enforcement agencies in which they previously served;
20. data on number of officers who claim disability for injuries stemming from incidents where civilians were also injured;

21. number of civil and criminal cases filed against officers, along with case disposition and settlement data;
22. number of cases where felony for causing an injury to an officer was filed, nature of injuries to officers in such cases, and nature of injuries to civilians in such cases; and
23. budgets, staffing, training, goal achievement, and resident satisfaction regarding nontraditional policing programs and tactics to ensure users of the data portals can determine whether these programs should be continued, expanded, or ended.

The CPRB should regularly evaluate the data collected and made public by APD and determine whether additional categories of information should be collected and made public.

Training and Enforcement of Data-Collection Requirements

The City should ensure officers are adequately trained in data-collection requirements, and that there are clear consequences for failure to collect it.

Strategy: Transparent Policies

- Require APD to maintain on their website all APD policies and procedures, as well as collective bargaining agreements
- Require APD to publish concise, plain-language distillations of its policies so that members of the public can easily understand the rules that govern police. This is a resource-intensive project that will take time, but it is crucial that the public be able to easily understand the rules that govern police behavior.
- Under no circumstances shall the Department ask any member of the public to pay for access to information that would be subject to disclosure under the Freedom of Information Law.

Strategy: Transparent Disciplinary Records

- The Albany Police Department should post online any information about disciplinary actions taken against individual officers that would be subject to disclosure under the Freedom of Information Law.
- Require APD to publish quarterly reports on disciplinary actions taken within the department – complaints, investigations, and their resolution. These reports should include both individualized information about specific cases and aggregate information.
- The CPRB should have the power to request a report from the Department on whether disciplinary action was taken in any specific case.

Strategy: Public Oversight of Surveillance Technology

- The City should create policies and data-release procedures that allow the public to monitor the APD's justifications for, purchase of, and use of all its technologies.
- The City should also release comprehensive data on its citizen surveillance technology, such as traffic cameras, police surveillance cameras, and wiretap usage.
- Publicly release contracts for surveillance technology, including UAV, social media scrubbing, phone unlocking devices, etc.
- Every time each technology is used, create a process to have a master list of each use. Provide that list to the CPRB. Then, provide CPRB with a list of warrants corresponding to uses. CPRB will review and report to the public any failures to secure a warrant.
- Retention of surveillance information: The City should create a policy that balances the interests of privacy (residents' interest in having data relevant to them deleted) against the need to preserve information that might be exculpatory for people accused of crimes (including officers accused of misconduct).

Strategy: Inclusive FOIL Processes

- Freedom of Information Law requests should be posted on an easily accessible data portal. The portal should have a "recently requested" page where all responses to FOIL requests go online in chronological order.

Strategy: Policy for public statements about people subject to police action

APD should adopt a policy that governs both when and how police officials make public statements about people who are arrested or otherwise subject to police action. The guiding criterion for public statements should be public safety: the police should speak publicly about an individual who has been arrested or otherwise subject to police action only when it is in the public interest. And police should limit what they say to those pieces of information that are in the public interest.

The Common Council should adopt the following requirement:

- "No member of the Police Department shall make a public statement about a case or incident unless they simultaneously make public all documents and recordings relevant to the case, including any material that would be subject to disclosure under Brady v. Maryland and related cases."

- The Common Council should also explicitly give the Police Chief (or their designee) the power to comment on individual cases of alleged misconduct by officers, and encourage the Chief to acknowledge apparent misconduct where he believes it exists. The Chief has been understandably reluctant to comment on pending investigations or cases about police officers in the past, but the inability to acknowledge that conduct on a video appears inappropriate, for example, undermines public trust. A policy should be developed to make clear what standards govern such decisions.

Goal 8. Improve Public Outreach and Strengthen ACPAC

Strategy: Continue working on outreach

- Generally: Increase communication between community and APD
- Create Community Outreach Plan
- Paint on police cars lettering that says, “How’s my policing?” (similar to the “How’s My Driving?” signs on trucks.) The contact number could go to CPRB. Could print number on the back of business cards. See comparable idea in Sacramento: <https://sacramento.cbslocal.com/2020/06/16/sacramento-councilmember-hows-my-policing-decals/>.
- Ensure that information about accountability mechanisms is distributed on business cards and victim rights forms, as is current policy.
- Publicize community-service work that officers do.

Strategy: Support outreach with clearly defined institutional roles and staff resources

- Create Budget specific to Public Education on Policing and duties from DA’s Office, APD or Independent body
- Clarify ACPAC’s mission by codifying it in legislation from Common Council.
 - ACPAC should function as a liaison between the police and the community, performing outreach and also helping the APD understand community concerns. (Some members of the Working Group perceive some redundancy between ACPAC and CPRB, in that CPRB should function as an advocate for community concerns; discussions within the Working Group continue on this point.)

- Support this structure with staff. Two people:
 - Staffperson (at CPRB?): outreach coordinator. They should support ACPAC and community outreach (awareness of policing, rights, resources, etc) generally.
 - Separate staffperson: is community/victim advocate. Give strong consideration to any candidate who has experienced mistreatment by police, as well as other experiences.
- Every volunteer position should have a term expiration date (not necessarily term limits—that's up to them).

Strategy: Education

- Educate public on civilian oversight group, police duties, transparency, Garrity, use of lethal force etc
- Create more 'know your rights' materials.
- Create accessible, plain-language, concise summaries of Department policies