



POLICE ACCOUNTABILITY

HOW IT IS NOW

Background

- Police accountability involves a system of checks and balances aimed at ensuring that police are held to a high standard and are held responsible if they fail to meet that standard. The goals of a police accountability system are to uphold police integrity, deter misconduct, and enhance public confidence in policing. In NYC, this includes a system that consists of the Civilian Complaint Review Board, the Commission to Combat Police Corruption, elected officials, the Police Commissioner, the Internal Affairs Bureau (IAB), the NYPD–Office of the Inspector General (NYPD–OIG), the judiciary, the Federal Monitor, and members of the public.
- The Police Commissioner is appointed by the Mayor and can be removed by the Mayor or Governor of New York.
- Under the current law, the Police Commissioner has broad authority and control over the discipline of the police force. To this end, the Police Commissioner makes all final decisions on police disciplinary outcomes.



- Since 1966, when civilians were permitted to participate in police accountability, their role has changed over the years and been controversial. In 1953, the New York City Police Department (NYPD) established the Civilian Complaint Investigation Board (CCIB). This internal review committee consisted of three deputy commissioners and was supported by an investigative staff made up entirely of uniformed members of the NYPD. In 1966, the Board was restructured to add four private citizen members. After pushback, a November 1966 referendum eliminated private citizens from the CCIB. Then in 1986, a local law was passed to allow private citizens to serve on the Board.
- The structure of the city's police accountability system changed significantly in 1993 with the creation of the Civilian Complaint Review Board (CCRB or "Board"), a civilian-led body independent of the NYPD's organizational structure.

CCRB Structure

- Under the Charter, the CCRB has the power to receive, investigate, hear, make findings, and recommend disciplinary action when members of the public file complaints against police officers for certain acts of misconduct including: excessive or unnecessary use of force; abuse of authority (e.g., refusal to provide name or shield, unlawful stop or search, threat of arrest); discourtesy (e.g., word, action, gesture, demeanor, tone); and offensive language (e.g., slurs relating to race, ethnicity, religion, gender).
- The CCRB is comprised of 13 members. The City Council designates five members, one from each borough; the Police Commissioner designates three members with law enforcement experience; the Mayor selects five members. The Mayor makes all final appointments and selects the Chair. All of the Board members serve at the pleasure of the Mayor.
- Appointments to the CCRB must “reflect the diversity of the City’s population.”
- As per a 2012 agreement between the CCRB and NYPD, commonly referred to as a “Memorandum of Understanding” (MOU), attorneys from the CCRB’s Administrative Prosecution Unit (CCRB-APU) can prosecute the most serious CCRB cases. Before this agreement was made, attorneys from the NYPD prosecuted all CCRB cases.

CCRB Powers & Duties

- **Rule Making:** The Board sets its own rules of procedure, including how to conduct complaint investigations, how to make recommendations, and how the CCRB will inform a member of the public about the status of his or her complaint.
- **Subpoena Power:** The Board, by majority vote, may compel witnesses in an investigation and may require the production of records and other materials necessary for investigating civilian complaints of police misconduct. The full Board must convene to vote each time the agency’s investigative staff requests an administrative subpoena be issued. Subpoenas are generally issued when a witness fails to produce records or materials requested by the CCRB.
- **Mediation:** The Board provides a voluntary mediation program to resolve civilian complaints. Many cases end in mediation, but mediation is not considered a form of discipline.
- **Appointment:** The Board employs all civilian investigators and staff.
- **Reporting:** The Board is required to issue a semi-annual report and an annual report describing its activities and actions, which is submitted to the Mayor and City Council.
- **Outreach:** The Board is required to inform the public about the Board and its duties. This includes establishing and administering an ongoing public education program.

Investigation & Review Process

- The CCRB is empowered to conduct independent investigations into citizen complaints of police misconduct in four categories—Force, Abuse of Authority, Discourtesy, and Offensive Language (FADO).
- When the CCRB receives a complaint, a staff investigator is assigned to the case for its duration. The assigned investigator will conduct an in-person interview with the complainant. Following the initial interview, the investigation will proceed with witness interviews and evidence collection.
- Under the City Charter, the police department must fully cooperate with CCRB investigations and provide records and materials necessary for complaint investigation, except those records and materials that cannot be disclosed by law.

- The Police Commissioner must also ensure that officers and employees of the NYPD appear before and respond to inquiries of the CCRB and its investigators in connection with FADO investigations.
- Once the CCRB conducts a full investigation, it generates a closing report and a board panel reviews the report. The Board may then: (1) determine that an allegation is substantiated, unsubstantiated, or unfounded; (2) refer the complaint to another investigative agency if it determines that the allegation is not within its jurisdiction; (3) find that a case cannot be pursued because a witness is unavailable, unidentifiable, or uncooperative; or (4) indicate that the complaint has been resolved through an alternative means, such as mediation.
- After review, the Board submits its findings and recommendations to the Police Commissioner, who has final decision-making authority over disciplinary outcomes. The Police Commissioner may accept the Board's disciplinary recommendation, or may impose a lower level discipline, or no discipline at all.
- The NYPD's Department Advocate's Office (DAO) may formally request that the Board reconsider its disciplinary recommendations. The Independent Panel on Police Discipline report found that the lack of a timeline in this process creates "significant" delays in resolving officers' cases.

When the Board substantiates allegations of misconduct, it can recommend the following types of discipline in descending order of severity:

- **Charges and Specifications:** Recommended for the most serious allegations of misconduct. The filing of charges launches an administrative prosecution before the NYPD's Deputy Commissioner of Trials (DCT). If found guilty, an officer may lose vacation days, be suspended, or terminated.
- **Command Discipline:** Recommended for misconduct that is more problematic than poor training but does not rise to the level of Charges. An officer may lose up to ten vacation days as penalty.
- **Instructions or Formalized Training:** Recommended for officers who misunderstand police policy. This determination results in training at the command level (i.e., Instructions) or formalized training at the Police Academy or NYPD Legal Bureau.

WHY SHOULD YOU CARE?

- The CCRB's key role is to ensure that complaints of police misconduct are handled fairly, judiciously, and most importantly, independently.
- The police disciplinary process has been criticized for a lack of timely investigations. For example, there is no deadline for the Police Commissioner to act on a CCRB recommendation. In addition cases settled with the DAO have had significant delays.
- Critics of the CCRB have expressed concern over the appointment process and have argued that appointments to the CCRB are politically motivated.
- The Police Commissioner has broad powers, including the imposition of discipline. But for the most serious cases of misconduct - where the CCRB recommended the highest possible discipline - the Commissioner acted on the Board's recommendation in only 26% of the cases in the first half of 2018, a decline from 37% in the first half of 2017.
- The Mayor does not require advice and consent or public input when appointing or removing the Police Commissioner.

WHAT EXPERTS AND ADVOCATES ARE PROPOSING

- Give the City Council advice and consent for the appointment of the Police Commissioner.
- Require the election of all or some of the CCRB board members.

- Make CCRB decisions binding.
- Change the composition of the CCRB to include appointees from other elected officials such as the Public Advocate or Borough Presidents.
- Authorize the CCRB to give subpoena power to high-ranking staff members or authorize the Executive Director to issue subpoenas directly in order to improve the timeliness of complaint investigations.
- Clarify that administrative subpoenas issued by the CCRB are fully enforceable by court order.
- Establish timelines and procedures for police discipline, the hearing process, and other interactions between the NYPD and the CCRB.
- Establish the CCRB's power to prosecute certain complaints in the Charter itself.
- Establish an independent budget for the CCRB that is fixed to a percentage of the NYPD's annual operating budget.
- Require a "disciplinary matrix" that would establish guidelines for categorizing police discipline and corresponding penalties.