

Charlottesville Police Civilian Oversight Board

March 9, 2023, at 6:30 PM

Agenda

Streamed at: <https://www.charlottesville.gov/zoom>

I. Call to Order

II. Announcements, Introduction of New Board Members

III. Board History, Procedures, and Challenges

IV. Approval of Minutes

V. Approval of Agenda

VI. Public Comments (First)

VII. Executive Director Search

VIII. Status of Complaints and Review Requests

IX. Training Requirements and Schedule (Internal Board Training, CPD Training Resources)

X. Pending Issues (Policy Recommendation on Bias-Based Policing, Hearing Examiner Deskbook, Commendation)

XIII. Public Comments (Second)

XIV. Adjournment



Police Oversight in Charlottesville: A Brief History

MARCH 9, 2023



Before the PCRB

- ▶ Historical factors have contributed to an environment where overpolicing of the Black community was the perceived norm
- ▶ Oversight body was purely advisory in the 1990s, chaired by Chief of Police
- ▶ Internal Affairs reviewed all complaints; “police policing police” lead to perceived conflict of interest, lack of transparency, lack of responsiveness
- ▶ Unite the Right and perceived police inadequacies lead to City Council Resolution on oversight of 12/2017

Interim Civilian Review Board



- ▶ Interim PCRB initiated in 2018 with mission to draft oversight ordinance and bylaws
- ▶ Conducted extensive research on oversight models, sought and received substantial public involvement
- ▶ Worked within Commonwealth legal framework that severely limited powers of oversight organization
- ▶ Resistance from CPD and inconsistent political support led to weakened ordinance and bylaws compared to Board recommendations

New PCRB


- ▶ New PCRB Appointed in early 2020 (just in time for COVID)
- ▶ Operating (reluctantly) under 2019 ordinance and bylaws
- ▶ New police oversight ordinance passed General Assembly in late 2020
 - ▶ Allowed municipalities to grant extensive powers to oversight organizations

Ordinance, Operating Procedures, and the PCOB

- ▶ City Council passed new Ordinance in Decembers 2021, Operating Procedures in December 2022. Key features:
 - ▶ PCRB → PCOB (“review” → “oversight”)
 - ▶ Independent investigation of complaints and serious incidents
 - ▶ Monitor and review completeness and quality of IA investigations
 - ▶ Hold hearings and make findings related to citizen complaints
 - ▶ In narrow circumstances, request subpoenas
 - ▶ Make disciplinary recommendations to Chief of Police
 - ▶ Develop and implement procedures for mediation of complaints
 - ▶ Audits of police policies and procedures, make policy recommendations

Current Status

- ▶ After major membership turnover, back at full strength (Thanks!)
- ▶ Currently hiring Executive Director
- ▶ Preparing to implement review, investigative functions, hold hearings
 - ▶ Functions are delayed pending ED hiring and Board training
- ▶ Developing our first policy recommendation (Bias-Based Policing)
- ▶ Planning public outreach events
- ▶ (Talk more about this under “Challenges”)



PCOB Structure, Procedures, and Challenges

March 9, 2023



Purpose of the PCOB

- ▶ “... establish and maintain trust between and among the Charlottesville Police Department, the City Council, the City Manager, and the public... the Board shall provide objective and independent civilian-led oversight of the Charlottesville Police Department ("CPD") in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the civil and constitutional rights of the people of the City of Charlottesville.”

BOARD ORGANIZATION



- ▶ Empowered by 2021 Ordinance and 2022 Operating Procedures
- ▶ Seven voting members, one nonvoting member
- ▶ Chair, Vice Chair elected annually
- ▶ PCOB is a “Working Board” (as opposed to advisory)
- ▶ Independent investigations, complaint review, hearings, audits, policy and disciplinary recommendations
- ▶ Many Board functions “on hold” until we are trained, Executive Director is hired

BUDGET AND STAFFING



- ▶ FY 2023 Budget = \$362,000
- ▶ Staff = Executive Director
 - ▶ Administrative support to all Board functions
 - ▶ Liaison with CPD
 - ▶ Supervise Training
 - ▶ Lead or manage independent investigations, audits
- ▶ Management Analyst/Deputy Director (maybe)

PROCEDURES



- ▶ All Board powers are defined in Ordinance and Operating Procedures
- ▶ PCOB is unique in VA; we're the only fully empowered Board (?)
- ▶ Developing procedures has been a focus for the last 18 months
- ▶ Procedures are means to assure due process, achieve legitimacy and procedural justice for all parties
- ▶ Learning what we can and cannot do will be major focus of initial training

MEETINGS

- ▶ Regular meetings 2nd Thursdays at 6:30 (for now)
- ▶ Informal structure, guided by Roberts Rules (and FOIA, etc.)
- ▶ Include at least one public comment period
- ▶ Special meetings can be called by any two members or Chair

MEMBER RESPONSIBILITIES



- ▶ Members serve at pleasure of City Council, can be removed for cause only
- ▶ Attendance at meetings
- ▶ Fulfilling training requirements
- ▶ Participate in Board activities
- ▶ Maintain confidentiality as required by FOIA
- ▶ Maintain impartiality and fairness
- ▶ Adhere to Code of Ethics, avoid other mal/misfeasance

CHALLENGES



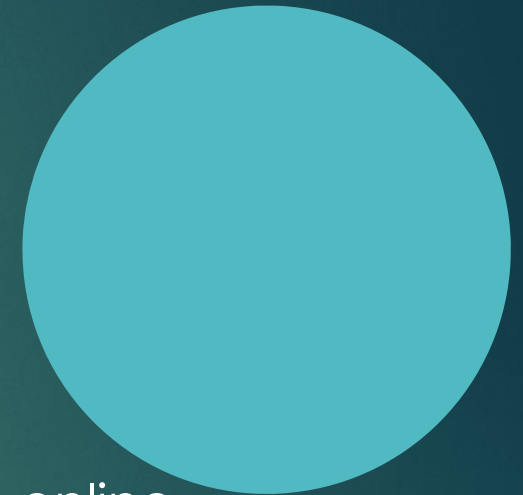
- ▶ Transition to full function
- ▶ Build capability hold hearings, conduct investigations, fulfill other Board responsibilities
- ▶ Effective, ongoing outreach to the community
- ▶ Build constructive relationship with CPD
- ▶ Comprehensive planning

TRAINING REQUIREMENTS AND SCHEDULE

- ▶ New members must receive eight hours training within 90 days
- ▶ History of oversight and basic Board procedures (tonight)
- ▶ Homework:
 - ▶ “Civilian Oversight 101” (NACOLE video)
 - ▶ Familiarize yourself with the 2021 PCOB Ordinance, 2022 Procedures
- ▶ Special Meeting (3/25 or 4/1) to:
 - ▶ Meet and greet each other
 - ▶ Discuss Ordinance and Procedures
 - ▶ Learn about FOIA/COIA responsibilities

Training (continued)

- ▶ Self-guided study and sessions on:
 - ▶ Hearings
 - ▶ Investigations
 - ▶ Audits/Policy Recommendations
 - ▶ Mediation
 - ▶ Other Board responsibilities
- ▶ Lots of Information about oversight in the PCOB online library



Training Resources Provided by CPD

- ▶ We will be collaborating with the CPD and City Manager's office to provide additional training on police policies and procedures
- ▶ Lieutenant Robert Haney has agreed to be the CPD training liaison with the Board

CHARLOTTESVILLE POLICE OVERSIGHT BOARD MEETING

MINUTES

Date: January 19, 2023 (Postponed from January 12 due to member travel)

Scheduled Time: 6:30 p.m.

Location: Virtual/Electronic Meeting

Board Members Attending: Bellamy Brown, Chair William “Bill” Mendez, Vice Chair James Watson, Dr. Jeff Fracher

Staff: Kyle Ervin

Board Members Not Attending: Deirdre Gilmore

Guests: PCOB Counsel Pamela O’Barry

Call to Order: The meeting was called to order at 6:31 PM

Announcements:

There were no announcements.

Approval of Minutes:

The minutes of the December meeting were approved unanimously without amendment.

Approval of Agenda:

The agenda was unanimously approved as proposed.

Election of Officers:

Mr. Mendez yielded the chair to Vice Chair Watson to conduct the election of officers for 2023. Mr. Mendez was nominated for Chair and Dr. Jeffrey Fracher was nominated for Vice Chair. There being no further nominations, the nominations were closed. Both candidates were elected by acclamation. Mr. Watson relinquished the gavel to Chair Mendez.

Public Comments (I):

No members of the public requested to speak.

Progress on Executive Director Search:

The Chair stated that the City Manager’s office has conducted the first round of interviews for Executive Director, selecting six candidates who best fit the qualifications in the job description. Member Watson had participated in the interviews; comments and rankings from the seven interviewers were considered. Mr. Watson stated that he was pleased with the quality of the candidates.

The next step in selection of the Executive Director will be a final round of interviews of 3-4 candidates to be conducted as soon as practicable, probably in the first half of February. Under the Board’s enabling statute, two members may participate in the final interviews. The Chair asked for volunteers to participate, Dr. Fracher and the Chair agreed to do so, schedule permitting, with Mr. Watson on “stand-by” in case scheduling conflicts arose.

Status of Complaints and Review Requests:

The Board continues to have two review requests pending; no action can be taken until an Executive Director is hired. The Chair expressed concern at the continuing delay.

In the interim, the CPD has been conducting investigations of all complaints submitted either to the Board or to the Department. The IA division reported receiving one complaint during December for “unsatisfactory performance” during a response to a traffic accident. The IA Division has also notified the Board of a recent complaint alleging what may have been an improper arrest. Given the seriousness of that complaint, the Chair has asked the IA Division to keep the Board informed on developments in the case. The new Chief of Police has been copied on that request.

Board Review of Police Policies and Procedures:

Mr. Brown led a brief discussion of a draft policy recommendation (circulated to Board members) related to changes in the CPD’s General Order on Bias-Based Policing. He noted that the current wording of the Order (requiring that an officer’s unfair treatment of a citizen be found to have been “on the sole basis of their racial, ethnic status, or characteristics”) made it very difficult to sustain an allegation. This wording may have contributed to the situation that no allegation of bias-based policing has yet been sustained. Member Brown discussed alternative approaches for framing policies to reduce bias in policing, citing several examples. Chair Mendez invited comments from individual Board members to be incorporated into Mr. Brown’s draft.

Priorities for 2023

Chair Mendez presented a slide showing his take on important priorities and challenges for the Board in 2023 (See Attachment.) Characterizing several priorities as “survival requirements,” he pointed to the hiring a new Executive Director, filling Board vacancies with diverse new members, and establishing regular communications and a good working relationship with the Chief of Police as key goals. The Board engaged in a brief discussion of the issues.

Public Comments (Second):

No members of the public requested to speak.

Adjournment:

The meeting was adjourned by unanimous vote at 7:08 PM.

2023 PCOB DeList

Town Hall Meeting

- Expand Public Outreach

Recruitment to Fill Board Vacancies

- Increase Diversity

Establish Effective Lines of Communication with the New Chief

Hire and On-Board Executive Director

- Management Analyst

Design and Implement Charlottesville Specific Training

- Focus on Board Powers

Plan and Implement Mediation Program

Line up Hearing Examiners

- Draft Deskbook

Identify Independent Investigators

- Draft Investigation Manual

Charlottesville Police Civilian Oversight Board Policy Recommendation

February 10, 2023

Revision of the Definition of Biased-Based Policing in General Order 06-2

Legal Authority for the Board's Recommendation

Sections 2-452(c)(4) Section 2-462(a) of the Charlottesville City Code grant the Charlottesville Police Civilian Oversight Board the authority: "...To investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices and procedures..." The authority of municipalities to grant such powers to oversight organizations is found in VA Code 9.1-601(a)(4).

Provisions of the Bias-Based Policing General Order

Charlottesville Police Department General Order 06-02, Bias-Based Policing¹, was issued on August 8, 2019. The aim of the policy is stated as: "The Charlottesville Police Department insists that citizens will only be stopped or detained when there exists reasonable suspicion to believe that they have committed, are committing, or are about to commit a violation of the law..." Further, "The purpose of this policy is to unequivocally state that biased-based policing in law enforcement is unacceptable." The policy goes on to affirm the constitutional rights of all individuals to equal protection, stating that despite Police responsibilities to proactively enforce the law, the CPD must protect the rights of all citizens "regardless of race, creed, color, ethnicity, sex, sexual orientation, physical handicap, or religion."

The Order further specifies approaches to assuring that bias-based policing does not occur, including ongoing training for officers in "courtesy, cultural diversity, laws of search and seizure, and interpersonal communication skills", as well as training on the law related to stops, searches and detentions. The Order finally specifies that citizen complaints related to bias-based policing be investigated by the Internal Affairs Department, and includes an explicit prohibition against retaliation against, or harassment of, individuals who file such complaints.

Areas of Concerns Related to the General Order

1. Definition of Bias-Based Policing. While the Order recognizes the need to preserve the rights of citizens, the definition of what constitutes bias-based policing is very narrow: "The detention, interdiction, or other disparate treatment of any person on the sole basis of their racial, ethnic status, or characteristics." From a practical standpoint, this appears

¹ <https://www.charlottesville.gov/DocumentCenter/View/708/400-05---Biased-Based-Policing-PDF>

to be a standard that is almost impossible to fulfill, depending as it does on being able to prove the intent and mental state of an officer during an incident. In addition, it leaves out a wide range of circumstances where the treatment of an individual was influenced by, but not totally dictated by racial or other forms of prejudice. Surely, individuals deserve protection from unequal treatment whenever bias is a contributing factor.

2. Outcomes of Bias-Based Policing Allegations. Since the General Order was issued in 2019, no allegations of bias-based policing have been sustained². Sixteen such allegations have appeared in the IA reports spanning calendar year 2019 through September 2022. Of these, 13 were judged by IA to be “unfounded”, two were closed as “exonerated” and one was administratively closed when an officer left the CPD. It may be that in all 16 cases, the police had not, in fact been responsible for bias-based policing. However, as noted above, it seems more likely that in practice the definition of bias-based policing is just too narrow to be sustained under commonly occurring circumstances.

Alternative Approaches to Defining Bias-Based Policing

Difficulties with regard to the use of a bias-based policing policy that requires an officer’s actions to be “solely” based on race, ethnicity, etc. have been known since at least 2002, when the Police Executive Research Forum (PERF) published Racially Biased Policing: A Principled Response³ In their report, they pointed out that the “solely” requirement did not apply to a wide range of police activities that might be classified as discriminatory under then-prevailing law. Focus group research conducted for their report also found that this definition of bias-based policing to be confusing to both officers and civilians. While there is not space here to review all the relevant literature on the definition of bias-based policing, it is becoming clear that discriminatory behavior by police is rarely driven “solely” by conscious prejudice. Thus, a number of analyses, including the President’s Task Force on 21st Century Policing⁴ (2015) and Bias-Free Policing⁵ (2020) by the Law Enforcement Policy Center stress the need for a wholistic approach to addressing discriminatory policing, including public outreach efforts, improved officer training on the legal basis for police actions and implicit racial and cultural bias, and increased supervision and performance monitoring. In support of such wholistic approaches, there is a distinct tendency to move to a more nuanced and broader definition of what constitutes

² All statistics in this discussion were abstracted from monthly and annual Internal Affairs Reports provided by the Charlottesville Police Department. <https://charlottesville.org/1495/Internal-Affairs-Case-Data>

³ Friedel et al. (2001); <https://cops.usdoj.gov/ric/Publications/cops-w0172-pub.pdf>

⁴ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁵ International Association of Chiefs of Police (2020) <https://www.theiacp.org/sites/default/files/2020-06/Bias-Free%20Policing%20January%202020.pdf>

bias-based policing. The Appendix provides a small set of example definitions, some of which have been adopted by Virginia municipalities.

Recommendation⁶

As a first step in revising the CPD’s approach to addressing Bias-Based Policing, the Board urges the CPD to broaden the definition of what constitutes bias-based policing to be more consistent with current thinking on the nature of discriminatory police actions and to be more applicable to the situations addressed in the “real world” when evaluating citizen complaints.

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⁶ This recommendation was approved by a vote of the PCOB at their February 9, 2023 meeting.

Appendix: Alternative Definitions of Bias-Based Policing

This appendix provides a number of definitions of bias-based and discriminatory policing that have been suggested by standards and accreditation organizations and that have been implemented by police departments in Virginia and other states. This is by no means an exhaustive listing; however, the definitions are generally representative of what is found during simple web searches on the key phrase “biased-based policing.” The definitions are presented first, followed by citations. The cited documents generally also describe comprehensive programs for addressing discriminatory policing.

1. Biased policing is defined herein as discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of agency personnel toward classes of individuals based on specified characteristics. Conversely, fair and bias-free treatment refers to conduct of agency personnel wherein all people are treated in the same manner under the same or similar circumstances irrespective of specified characteristics.

Bias-Free Policing (2020), IACP/LEPC

2. Biased policing is the application of police authority based on a common trait of a group. This includes but is not limited to race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.

Accreditation Standards (2021), Commission on Accreditation for Law Enforcement Agencies (CALEA).

3. Unlawful discrimination is any action that unjustly results in unequal treatment of persons or groups based on personal characteristics such as age, race, gender, color, national origin, ethnicity, creed, religion, or disability. Racial discrimination, sexual harassment, racial profiling, bias based policing, or any other form of unlawful discrimination, either by a specific act or omission, by or against any employee, is unlawful and will not be tolerated... Inappropriate behavior, even absent any specific intent of the actor, can have a discriminatory impact.

Regulation 201.General Responsibilities (2019) Fairfax County Police Department.

4. Employees shall not make decisions or take actions that are influenced by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description.

5.140 - Bias-Free Policing. Seattle WA Police Department Manual (2019)

5. Bias-based policing - An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic

status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement.

Harrisonburg, VA Police Operations Manual 314.1 (2018)⁷

6. Biased policing is the inappropriate consideration of specified characteristics in carrying out duties. Specified characteristics include, but are not limited to race, ethnicity, national origin, gender, gender identity, sexual orientation, socio-economic status, religion, housing status, disability, and/or age.

Virginia Beach Police Department Operational General Order 6.04 Biased Policing (2021)

7. Bias-Based Policing - A law enforcement-initiated action based on race, ethnicity, gender, sexual orientation, economic status, religious beliefs, age, or other bias rather than an individual's behavior or other information identifying the individual as having engaged in criminal activity.

Arlington VA County Police Department Directive 531.06 (2021)

8. Bias-Based Policing: When a CHPD member takes a law enforcement action or decides to provide or not provide police services, and that action or decision is motivated by discrimination on the basis of an individual's demographic characteristics.

Cleveland Heights OH Police Department Policy 401.1.1 (year?)

9. Biased Policing- The inappropriate consideration of specified characteristics while enforcing the law or providing police services. Specified characteristics includes, but is not limited to, race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, political status, or any other legally protected characteristics.

North Miami Beach FL Police Department Bias-Based Policing 1-02 (2022)

⁷ The same definition is used by the Danville, VA Police Department (Policy 401, 2021)

Resolution: Police Civilian Oversight Board Commendation for Outstanding Community Service

Whereas: The Charlottesville Police Civilian Oversight Board has been empowered to issue commendation to individuals who have provided outstanding service to the community (City Code XVI, Section 2-467)

Whereas: Major Latroy A. (“Tito”) Durette provided outstanding leadership to the Charlottesville Police Department as interim Chief during a period of difficult transition,

Whereas: Major Durette established strong lines of communication with the Board and its Executive Director, and sent a clear message that just and fair policing was a basic value of the Charlottesville Police Department,

Whereas: Major Durette afforded the Civilian Oversight Board unprecedented cooperation and support in the pursuit of its mission,

Therefore: The Charlottesville Police Civilian Oversight Board issues this Commendation to Major Durette for Outstanding Community Service and their thanks for his assistance and support.

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