

CIVILIAN REVIEW BOARD WORK GROUP MEETING SUMMARY

Friday, July 24, 2020

Members Present: Deputy Mayor Ellen Heslen, Co-Chair, Councilwoman Paula McCraney, Co-Chair, Kendall Boyd, Raoul Cunningham, Councilwoman Keisha Dorsey, Drew Fox, Eric T. French, Sr. Reginald Glass, Ingrid Geiser, Councilwoman Jessica Green, Jessie Halladay, Brenda Harral, Chris Hartman, Amy Hess, Councilman Bill Hollander, Paul Humphrey, Chandra Irvin, Ricky Jones, Rep. Nima Kulkarni, Rev. Roosevelt Lightsey, Jr., Edgardo Mansilla, Kim Moore, Senator Gerald Neal, Ryan Nichols, Sadiqa Reynolds, Erwin Roberts, Judy Schroeder, and Anthony Smith.

I. Introduction and Roll Call

Deputy Mayor Heslen called the roll of members. She thanked members for participating in the virtual Civilian Review Board Work Group meeting and provided a brief overview of the agenda that was emailed to all members. She reminded members that the public is watching via Facebook Live. She recapped the progress the Work Group has made to date and thanked the Jefferson County Attorney's Office for the first draft of an ordinance reviewed during the July 10th meeting. She noted that at today's meeting, thanks to Councilwoman McCraney and Councilman Hollander, the work group would be hearing from the Atlanta Citizens Review Board, but would first hear from Maj. Jamey Schab and Ingrid Geiser on PIU vs. PSU investigations, as well as prosecutorial functions, and then Councilwoman Paula McCraney will discuss next steps.

2. Overview of Professional Integrity and Professional Standards Unit

Maj. Jamey Schwab began by providing an overview of the differences between Professional Integrity Unit [PIU] and Professional Standards Unit [PSU] investigations. Maj. Schwab uploaded a PowerPoint presentation and began to explain the staffing make-up and hierarchy for each unit. He explained how PIU oversees criminal investigations for both departmental members of the Louisville Metro Police Department [LMPD] but also Louisville Metro employees when suspected of having committed a felony, while PSU oversees administrative investigations of strictly LMPD employees. PSU conducts, for example among other functions, 500-600 random drug tests annually, and have not encountered a positive drug test since 2013. Maj. Schwab explained that the investigative functions are adhered to based on KRS 67C.326. PIU and PSU are both physically housed in separate facilities other than the LMPD headquarters, and staff of both units have years of experience, often specialized, and shed light on the selection process for positions. Last year, PIU handled 99 cases, 51 of which involved LMPD officers, and other cases included employees at the Dept. of Corrections, Emergency Medical Services, and 23 were from other various Louisville Metro government employees. PSU handled 124 cases last year.

At this point in the meeting, we encountered a technical glitch with the Webex platform and the virtual meeting had to refresh before Maj. Schwab could continue.

Maj. Schwab continued his presentation once the virtual meeting room reopened, and

began an overview for how complaints are received and the process it undergoes while an incident is being investigated. He explained how it isn't uncommon for frustrations to emerge with the perception of an investigation 'taking too long', however, it is often due to waiting on forensic data, DNA and/or toxicology reports, or ballistic reports that have been submitted to the ATF with the federal government; many times PIU investigators will have completed their work, but are waiting for data out of their control before the investigation can be formally completed. Investigators are 'fact gatherers', not anyone who recommends or suggests what an outcome should be in a legal sense. Occasionally, once an investigation is provided to the prosecutor[s], that individual will request additional information [another interview, forensic resampling, etc.].

Prosecutorial review often includes a grand jury process to determine whether or not to prosecute. Screen out letters are provided to PIU if prosecutors choose not to prosecute, and then at that point, once PIU can finalize any remaining paperwork, it is almost always turned over to PSU for any administrative investigation and/or action. PSU also receives cases if the Chief has initiated an administrative complaint to be investigated, or when a civilian has filed a complaint on an officer. Maj. Schwab described the limitations KRS 67C.326 creates when an investigation goes to the PSU process where no public comment or discussion can really occur while the investigation is ongoing. The investigation findings are able to be appealed to the Police Merit Board.

Carmen Moreno-Rivera facilitated questions and discussion for Maj. Schwab's presentation. The first question about whether citizens have the right to not self-incriminate, Maj. Schwab replied they do have the right. An officer being investigated are read their Miranda Rights and they do not have to provide a statement; officers being criminally investigated can have attorneys present and so forth. Officers undergoing PSU investigations can be penalized for not offering a statement. The next question was whether an officer statement could be used to impeach the officer in a criminal matter. Maj. Schwab said it could. If there is a sustained untruthfulness charge, or similar charge, it could be used. Ingrid Geiser spoke to the details about a compelled statement that would be given by an officer during a PSU investigation, indicating the difficulty in using that particular statement and using it against the individual; only very limited instances would allow for that.

The next question was about the Mayor's recommendation that the KY State Police [KSP] investigate all LMPD cases involving deadly force and how it may relate to the timeline for the Inspector General [IG] investigation. Dep. Mayor Heslen indicated the Mayor's Office has had conversations with the state about seeking KSP assistance currently, should there be an officer involved death or injury in the interim period until an IG role is created and detailed on the local level for future circumstances.

The next question was about the number of OIS investigations KSP would now handle versus the total number of cases PIU handles. Maj. Schwab said in 2019, of the 99 total cases, 8 were officer involved shootings that including 11 officers, and so far in 2020 there were 8 officer involved shootings including 16 officers. The next question asked how many of those cases were settled of the PIU and PSU total cases. Maj. Schwab said the case by case status is detailed and due to time, explained how the information is available on the LMPD transparency page.

The next question asked for clarification on the KRS citation that governs what can be done or not done in these investigations; Maj. Schwab listed KRS 67C.326 [aka, the "Police Officers Bill of Rights"] as the governance statute for officers employed by a consolidated or metro government and investigation language. The last question for Maj. Schwab was about what is done when a complaint is found to be a lie or false allegations and whether there are charges filed. Maj. Schwab explained it is a case by case basis determination. If a complaint is filed in good faith, typically no.

3. Presentation by Atlanta Citizen Review Board [ACRB]

CW McCraney thanked Maj. Schwab for his comments and presentation. She then thanked the next presenter in advance for his time so far and for today's meeting and introduced ACRB Executive Director Samuel Lee Reid, II, who has been with the ACRB since 2012. Prior to his time with Atlanta, he worked with the Minneapolis Citizen Review Authority 2006-2012 and is a lawyer by training.

Mr. Reid described the ACRB as an independent investigative agency, including mediation services. The structure includes a citizens board, as well as city staff to maintain day to day operations. The board makes the official decisions of the agency, and then forwards to the police department for disciplinary decisions. Any materials that would be or could be related to the investigation are automatically provided to the ACRB if they are under the city's control and do not require a subpoena [bodycam footage, audio recordings, paperwork, 911 calls, etc.], thanks in part to 2010 change regarding ACRB's subpoena authority. For materials not under the city's control [e.g. a store's private video footage], subpoena authority can be exercised.

Mr. Reid described the ACRB's hallmark themes for independency, transparency, fairness, and accountability. Independency is maintained by being able to perform investigative work without police department or elected official interference. As Executive Director, his position is hired by the board and he reports directly to the board. The funding stems from the city's General Fund. Mr. Reid provided details for who and how the 15 ACRB members are selected in Atlanta, recently increase from 13 members so as to incorporate youth representation. Previously, too, the entire ACRB was required for decisions, which seemed to sometimes extend the time it took to reach decisions, but now the ACRB has sub-group panels that can make preliminary decisions, with the potential for appeal to the full ACRB. In circumstances where there is a disagreement or discrepancy between the ACRB and the Police Chief on the validity of a complaint, there is now an additional independent authority [currently a retired judge], who will provide insight on what should take place on a case by case basis. The ability of the ACRB to be successful, it relies on compliance and coordination with the police department, and should Louisville select an IG model, consistent funding will be very important.

Carmen again facilitated discussion for Mr. Reid's presentation, and there was an immediate agreeing statement that youth must be represented as well on Louisville's model. The first question was about the number of cases the ACRB handles each year; which they received 130-150, but only fully investigate 60-70 annually. With awareness and outreach, this number will likely rise.

The next question was about the ACRB's \$953K budget and whether or not that had increased; which, yes, in FY21, the ACRB received an additional \$427K to focus on three new positions. The next question was about whether the ACRB handled only citizen complaints or also criminal investigations, which, the ACRB only handles citizen complaints. If the ACRB determines a case may have a criminal issue, it is forwarded to Atlanta's Professional Standards Unit. On the question of since the ACRB, has community and police relations change, Mr. Reid indicated that in light of the events of the last few months, some of the ACRB's challenges were amplified and they were able to achieve additional and necessary funding for surveys, staff, and so on.

The next question was related to prosecutorial decisions and what role the ACRB plays in those recommendations or decisions. Mr. Reid said criminal charges go through the police department or Georgia Bureau of Investigations. Even in criminal investigations, there will still be an administrative investigation. The next question asked if the ACRB has the authority to investigate for patterns and practices if an issue might not be related to a single incident. Yes, the ACRB has the ability and does utilize it on a regular basis. On whether or not there are conflicts of timetables in the event the ACRB investigation is completed before the police department investigation is completed, Mr. Reid said that there are instances where timing is not aligned.

The next question was about trust within the community about the ACRB and how the community has responded to ACRB decisions. The community trust is there, but awareness building among the full community is in focus for the ACRB currently. Mr. Reid indicated the larger challenge has been when the ACRB makes a decision that the police department does not agree with, but the recent creation of the independent third party reviewer has helped alleviate the frequency of that issue.

In officer involved shootings, Mr. Reid explained the ACRB would continue to do the investigation under their purview as they are able; pretty much any work they are able minus the officer statement. The next question was about the separation of criminal versus administrative investigations, but Mr. Reid explained the ACRB is not responsible for criminal investigations. The ACRB ordinance has been in place since 2007 and began taking complaints in 2008, following the death of a 92-year old grandmother in 2006; it has been in existence for 12 years. In circumstances where charges are not pursued, ACRB has no control over legal actions, so both paths are not reliant on the other, per se. The next question was related to the ACRB authority and what Mr. Reid wishes were in the ACRB purview that currently isn't – he responded that with the latest ordinance changes, the ACRB has more of what they truly need, and also shed light on the unique scenarios that dictate Atlanta's landscape in terms of police discipline and citizen review.

The next question was about training requirements and qualifications of ACRB members. ACRB members by ordinance have to have attended a 9-week course at the Atlanta Citizens Academy, they have to participate in ride-along's with police officers, be trained in ethics and the Fourth Amendment, open records and open meetings laws, and they also attend NACo training. Some training for ACRB is upfront upon appointment, some is ongoing throughout their 3-year tenure. The next question was about whether Mr. Reid swears an oath in his position, which, no he does not, as a city

employee he is bound to the same ethics of all city personnel, but ACRB members do swear an oath in their capacity as public officials. The next question was about the timing of release of information to the public. Mr. Reid said the ACRB cannot provide the public access to the information until the ACRB has made a final decision.

The final question for Mr. Reid was related to whether the ACRB has been able to study the effectiveness of the ACRB and its impacts and involvement with the police department. Mr. Reid spoke to the ACRB's existence alone, the police department has been taking their investigations more seriously. Policy and training reviews by ACRB have impacted changes in police department policies overall. Although not a formal study, there were notable circumstances Mr. Reid could speak to that support the ACRB's effectiveness, and that the work remains continuous with both police and community relations.

3. Next Steps & Closing

Councilwoman Paula McCraney thanked Mr. Reid and everyone for their participation and feedback today. She indicated that the timeline remains tight, but wanted to pose to the work group a consideration for extending the timeline due to the amount of work and materials necessary to make positive change in the fierce urgency of now. The work group overall agreed for adding additional meetings, however keeping it contained to roughly an additional month before submitting a more final ordinance to Metro Council.

The work group agreed the next meeting would be on July 31st, and the topics would be a presentation by the Police Merit Board and the Crime Commission to understand local timing on current incidents, a presentation on the Police Officers Bill of Rights and the collective bargaining agreement, as well as a presentation from the state delegation [Sen. Neal and Rep. Kulkarni] on state law needs for the July 31st meeting. Dep. Mayor Hesen encouraged members to submit additional topics for possible meeting review at work group meetings.

CW McCraney indicated that with the value of Mr. Reid's presentation today, would an additional city representative in a similar capacity be a presentation to consider. The work group agreed and Baltimore was specifically mentioned. A more structured review approach to section by section of the DRAFT ordinance was agreed to moving forward. Additional meetings will be August 14th and August 28th, with a new targeted goal to submit DRAFT ordinance to Metro Council by August 31st. CW McCraney thanked the presenters and the work group a final time, and Dep. Mayor Hesen concluded the meeting saying if anyone has additional cities beyond Baltimore for the co-chairs to reach out to for input at a future meeting, to please let them know.