



METRO NASHVILLE COMMUNITY OVERSIGHT

EXPEDITED REPORT:

**Policy Advisory Report Comparing Community Oversight Board and
Metro Nashville Police Department Investigative Findings**

**Issued by the Metropolitan Nashville
Community Oversight Board on May 25, 2022**

The Community Oversight Board

The Community Oversight Board (COB) was created through a Metropolitan Charter Amendment approved by Nashville voters in November 2018. The mission of the Board is to provide an accessible, respectful, independent and effective forum for community participation in the investigation and resolution of complaints of Metropolitan Nashville Police Department (MNP) Misconduct; to examine and issue policy recommendations regarding local law enforcement policies and practices; to encourage open and constructive communication and cooperation between local law enforcement and Metro's residents; and to protect civilians' rights and promote professionalism and best practices in the MNP, enhancing community-police relations and creating a safer Nashville.

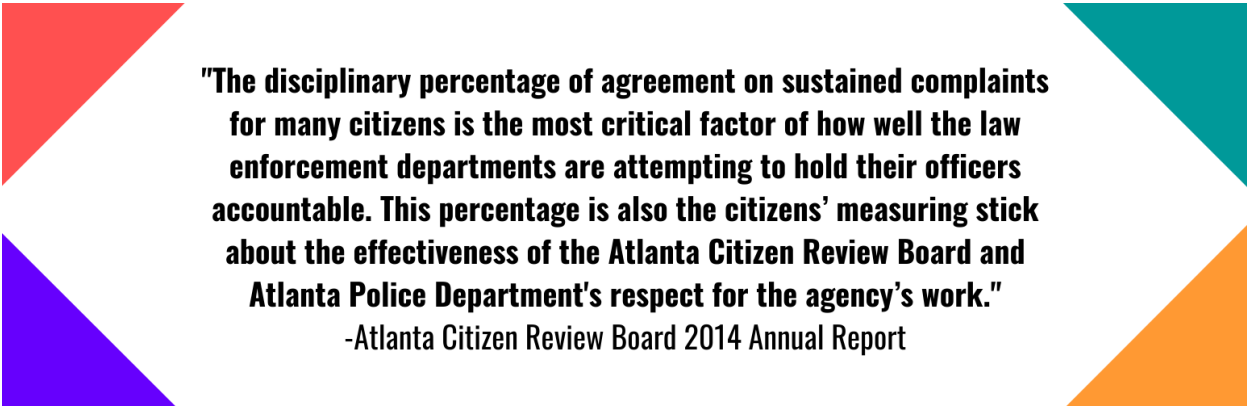
Table of Contents

Executive Summary.....	3
Background.....	4
Research Questions and Methodology.....	5
Results – Atlanta.....	6
Results – Cincinnati.....	8
Results – Cleveland.....	9
Results – San Francisco.....	11
Results – Seattle.....	13
Discussion.....	14
Recommended Actions.....	15
Recommendation 1:.....	16
Recommendations 2-4:.....	17
Appendix A: Chief Response Tracking.....	19

Executive Summary

There are syntactical differences between the investigative findings of the Community Oversight Board (referred to as The Board, or COB) and Metro Nashville Police Department (MNPD). Metro Nashville Community Oversight (MNCO) researchers compared Nashville's policies to peer cities, including Atlanta, Cincinnati, Cleveland, San Francisco, and Seattle. Four of the five peer cities were under some form of federal agreement with the Department of Justice. One of the outcomes of these agreements was to create a standardized set of investigative findings across police and oversight bodies. The one peer agency not under federal agreement, Atlanta, is a city that has long had problems with low rates of acceptance from Atlanta Police as it relates to their investigative findings. MNCO makes four specific recommendations:

- I. The COB and MNPD should meet and develop a shared set of definitions for investigative findings. They should work to develop such standards within 60 days of the issuance of this report.
- II. The COB and MNPD should modify Section IX.B of their Memorandum of Understanding to require MNPD to operate under a presumption of correctness regarding the Board's investigative findings.
- III. The COB and MNPD should modify Section IX.B of the Memorandum of Understanding to require MNPD meet a standard of preponderance of the evidence when it disagrees with the findings of the Board.
- IV. The COB and MNPD should modify Section IX.B of the Memorandum of Understanding to include language outlining that, absent preponderance of the evidence that the Board's findings are in error, MNPD should implement the recommended discipline from the Board.



"The disciplinary percentage of agreement on sustained complaints for many citizens is the most critical factor of how well the law enforcement departments are attempting to hold their officers accountable. This percentage is also the citizens' measuring stick about the effectiveness of the Atlanta Citizen Review Board and Atlanta Police Department's respect for the agency's work."

-Atlanta Citizen Review Board 2014 Annual Report

Background

During a review of Chief Drake’s responses to a recent Resolution Report issued by the Board, MNCO staff observed that the investigative findings of the MNPDP differ slightly from the COB’s.

Specifically, in his response to the Board’s Resolution Report on CC#2020-013, Chief Drake wrote that:

*As to the Board's finding that the charges against Officer Lawson and Sergeant Brown should be not sustained, I concur that there were no violations of Departmental policy. **However, I conclude that the finding should be exonerated on the charges Obstruction of Rights, Vehicle blocking and Self-Identification, instead of [f] not sustained.***

Chief Drake is referencing a section of Resolution Report CC#2020-013 that says:

*The allegations of discourtesy, **improper search/seizure**, lack of professionalism and **excessive use of force** against Officer-1 are **not sustained**.*

*The allegations against Sergeant of discourtesy, **improper search/seizure**, lack of professionalism, **excessive use of force**, and obligations **self-identification** are **not sustained**.*

For comparison’s sake, the COB’s investigative findings are presented adjacent to the corresponding MNPDP outcome.

COB Policy ¹	MNPDP Policy ²
Sustained: The factual findings support the allegations in the complaint by the preponderance of the evidence, which conduct was inconsistent with MNPDP policy.	Sustained: The allegation is true. The action was inconsistent with established policy, procedure, or rules.
Not Sustained: The factual findings do not support the allegations in the complaint by the preponderance of the evidence.	Not Sustained: There is not sufficient evidence to sustain or refute the allegation.
Unfounded: The allegations in the complaint were proven false by the preponderance of the evidence.	Unfounded: The allegation was proven false.
Policy Exoneration: The factual allegations in the complaint do not violate the law or MNPDP policy; or, although the factual findings support the allegations in the complaint, the conduct proved by the preponderance of the evidence was lawful and consistent with MNPDP policy.	Exonerated: An incident did occur but the action was consistent with established policy, rules, or procedure. Policy/Training Failure – Although the action was consistent with departmental policy or training, the need to review, revise or develop departmental policy, procedure or training was identified.

¹ Per the most current version of the ‘Rules of the Nashville Community Oversight Board’: <https://bit.ly/36oCV65>

² Per the most current version of the MNPDP Manual: <https://bit.ly/3LGB2BP>

Note that MNPD has one other investigative outcome for which the COB does not have a parallel outcome:

Matter of Record – Cases may be administratively closed and maintained as a matter of record that the complaint was made, when the investigation cannot conclusively disprove complaint allegations or establish that the alleged events occurred. This designation may also be used when investigations are closed or suspended due to the remoteness of subject events, unavailability of necessary witnesses or unavailability of the subject. (e.g. military leave, incapacitating illness). The summary will report all investigative efforts and acknowledge that the investigation may be revisited at a later date, if additional information becomes available.

Research Questions and Methodology

At first glance, the distinctions in definitions may appear to be minor, and perhaps they are. However, minor distinctions could potentially have major consequences for the investigative findings of the Board and for public perception of the Board's work.

To give one example, the Department of Justice, in reviewing the San Francisco Police Department, notes that that the Office of Civilian Complaints (then San Francisco's oversight body) and SFPD's Internal Affairs Division did not use the same investigative categories for their findings. They flag this as an issue because³

Although this is a subtle difference, administrative process language is important because there is legal precedence to how standards are applied, and different definitions can have significant impact on the process. In addition, the different categories for findings... create challenges for ensuring accuracy and sufficiency of the disciplinary record. Also, these differences add to the challenge of identifying and addressing institutional issues, such as that of training or policy.

As such, several research questions were developed by MNCO research staff:

1. How do the COB's policies, relative to MNPD's, compare to other oversight bodies, relative to their respective police departments?
2. Is the discrepancy between the COB's investigative findings and MNPD's significant enough to warrant concern?
3. Are there any potential negative repercussions of failing to address this discrepancy?

To answer these questions, MNCO researchers first compared the policies of several peer oversight agencies to their respective police departments: Atlanta, Cincinnati, Cleveland, San Francisco, and Seattle. These cities were chosen for two reasons: 1) the presence of an investigative oversight body⁴, and 2) their relative similarity to Nashville in population size⁵. News articles as well as publications from the oversight agencies related to investigative discrepancies were reviewed. Hypothetical outcomes were then explored so as to investigate the potential repercussions of the policy discrepancies.

³ US Department of Justice, Community Oriented Policing Services. Collaborative Reform Initiative: An Assessment of the San Francisco Police Department. October 2016, <https://bit.ly/3t39Jcw>

⁴ An investigative agency is defined as one that has the "ability to conduct independent investigations of allegations of misconduct against police officers". See Civilian Oversight of Law Enforcement, Assessing the Evidence, for more information: <https://bit.ly/33YV5dl>

⁵ Each city studied qualifies as a 'large' city per the National Center for Education Statistics: <https://bit.ly/3vr9A5u>

Results – Atlanta

Review of the Atlanta Citizens Review Board’s disciplinary findings as compared to the Atlanta Police’s disciplinary findings reveal significant differences between the two. Such differences will be outlined following Table 1.

Table 1: Comparing investigative findings of the Atlanta Citizens Review Board and the Atlanta Police.

Atlanta Citizens Review Board (ACRB) ⁶	Atlanta Police (APD) ⁷
Sustained: The investigation established by a preponderance of evidence that the Officer committed the alleged acts of misconduct.	Sustained: The investigative file provides sufficient evidence to support the finding that the employee committed the violation.
Not Sustained: The investigation failed to prove or disprove that the alleged act(s) occurred.	Not-Sustained: There is insufficient evidence to sustain a finding that the employee committed the violation.
Unfounded: The investigation established that the Officer did not commit the alleged acts of misconduct.	Unfounded: Complainant admits to the false allegation, the charge is false or not factual, or the accused employee was not involved in the incident.
Exonerated: The investigation established that the alleged acts occurred but were justified, legal or properly within Department policy.	Exonerated: The incident occurred but the employee’s actions were justified, lawful, and proper.
Complainant Not Cooperative: No Contact could be made with complainant for a proper investigation to take place, or Complainant withdrew Complaint. In some limited circumstances, even when the Complainant is not cooperative and not interviewed, the Board may determine that there is sufficient evidence to reach a disposition.	Exceptionally Closed: Reasons outside the Department’s control prevent it from continuing or completing its investigation of a complaint, and/or from charging and prosecuting an accused employee when sufficient evidence exists to charge the accused employee. Examples may include: the employee resigns, dies, or is no longer employed by the Department.

Note: the ACRB has several findings that APD does not, including policy failure, supervision failure, and training failure.

These are two fundamentally different sets of policies. Below, we outline each substantive difference by outcome type:

- **Sustained:** ACRB’s policy says ‘by a preponderance of evidence’, while APD’s says ‘sufficient evidence’.
 - It is worth noting that ‘preponderance of evidence’ is an established legal standard, while ‘sufficient evidence’ is not. Nowhere in Atlanta Police’s Directive outlining discipline is a definition of ‘sufficient evidence’ given.
- **Not Sustained:** ACRB’s policy says ‘failed to prove or disprove’, while APD’s says ‘insufficient evidence to sustain a finding’.
- **Unfounded:** Both policies establish that the accused officer did not commit the acts of misconduct, but they use different language to establish this.
- **Exonerated:** These are similar findings.

⁶ Per the ACRB Policies and Procedures Manual and Bylaws: <https://bit.ly/3loKpUJ>

⁷ Atlanta Police Department Standard Operating Procedure, Disciplinary Process: <https://bit.ly/3Hw8QhA>

- **Complainant not Cooperative / Exceptionally Closed:** APD provides a more exhaustive list of reasons to close cases; Complainant not Cooperative is just one such example.

The significant differences between these two policies are of potential concern. As ACRB outlined themselves in their 2014 Annual Report⁸,

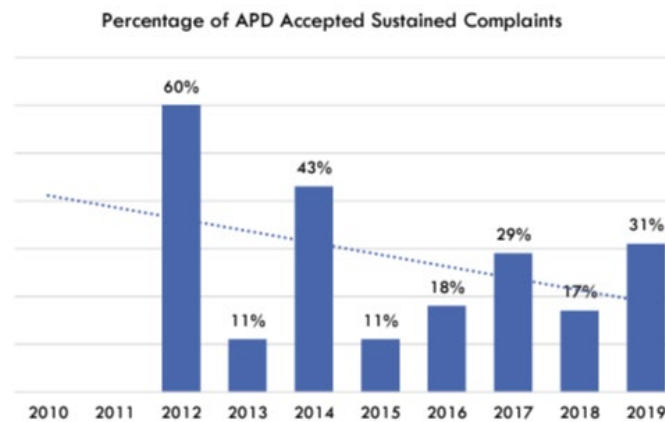
No other measure determines the public’s perception of police accountability than [APD’s] response to citizen allegations of police misconduct. The disciplinary percentage of agreement on sustained complaints for many citizens is the most critical factor of how well the law enforcement departments are attempting to hold their officers accountable. This percentage is also the citizens’ measuring stick about the effectiveness of [ACRB] and [APD’s] respect for the agency’s work.

This discussion is continued in their 2016 Annual Report⁹ where they write that

Citizens want to know what law enforcement departments do with the facts; whether the officer was disciplined. It is the issue that citizens use to measure the ACRB's, and thusly, the City's effectiveness in reducing officer misconduct... Moreover, it further supports community calls for stronger legislation for the ACRB and more prosecution of officers with the hope that the courts may address misconduct more fairly... It is not uncommon for there to be appearances of explicit cooperation and respect for the legitimacy of the civilian oversight agency on the one hand and a subtle, persistent resistance to the success of the civilian oversight operation on the other. In those cities, it is a perpetual cycle of highs and lows that continues for years, with the hope that citizens will lose faith in the oversight agency's ability to be effective or that the elected officials will question the investment.

Atlanta has historically had a very low percentage of their sustained complaints accepted by the police department. At no point aside from 2012 has the department approached its goal of 75% acceptance from APD, mostly fluctuating within the 11-31% range, as can be seen in the graph below.

Figure 1: *Percentage of sustained complaints from the ACRB that were accepted by the Atlanta Police Department. Image from ACRB’s 2019 Annual Report.*



⁸ <https://bit.ly/3JCdyMj>

⁹ <https://bit.ly/3oYPawJ>

Results – Cincinnati

Comparison of the disciplinary findings for the Cincinnati Citizen Complaint Authority (CCCA) and the Cincinnati Police Department reveal virtually identical policies, with the exception of the police policy explicitly outlining a ‘Sustained– Other’ category.

Table 2: Comparing investigative findings of the CCCA and the Cincinnati Police.

Cincinnati Citizen Complaint Authority ¹⁰	Cincinnati Police ¹¹
Sustained: Where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper.	Sustained: Where the allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper.
	Sustained – Other: Sustaining of violation or misconduct other than the allegation of the original complaint.
Not Sustained: Where there are insufficient facts to decide whether the alleged misconduct occurred.	Not Sustained: Where there are insufficient facts to decide whether the alleged misconduct occurred.
Unfounded: Where the investigation determined no facts to support that the incident complained of actually occurred	Unfounded: Where the investigation determined no facts to support that the incident complained of actually occurred.
Exonerated: Where a preponderance of the evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training.	Exonerated: Where a preponderance of the evidence shows that the alleged conduct did occur but did not violate policies, procedures, or training.

It is worth noting that the CCCA was established in 2003 following a Memorandum of Agreement between the U.S. Department of Justice, the City of Cincinnati, and the Cincinnati Police Department. Among other functions, such as review of use of force policies, the agreement outlines that each allegation in an investigation will be resolved by making one of the following dispositions¹²:

- (a.) "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;
- (b.) "Sustained," where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
- (c.) "Not Sustained," where there are insufficient facts to decide whether the alleged misconduct occurred; and
- (d.) "Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training.

¹⁰ Per Citizen Complaint Authority’s Memorandum of Agreement: <https://bit.ly/3hwhHVX>

¹¹ Per Cincinnati Police Manual of Rules and Regulations and Disciplinary Processes: <https://bit.ly/3s0aXWF>

¹² United States Department of Justice. Memorandum of Agreement Between the United States Department of Justice and the City of Cincinnati, Ohio and the Cincinnati Police Department. April 12, 2002. bit.ly/3Hd3Q1s

This language is identical to the current policies of both the Cincinnati Citizen Complaint Authority and the Cincinnati Police Department.

Results – Cleveland

Cleveland’s oversight process is somewhat unique, in that it relies on three complementary agencies: the Office of Professional Standards, the Civilian Police Review Board, and the Cleveland Community Police Commission. According to their website¹³,

The Office of Professional Standards (OPS) is an independent agency within the City of Cleveland Department of Public Safety and is composed of civilian employees only. It has the responsibility of receiving and investigating non-criminal complaints filed by members of the public against sworn and non-sworn Cleveland Division of Police employees.

OPS is also empowered to make findings and recommend action to the Civilian Police Review Board (“CPRB”) regarding those complaints. The CPRB reviews misconduct complaints investigated by OPS and makes recommendations for resolution to the Chief of Police. Prior to recommending discipline or determining that a complaint warrants no action, the CPRB may hold a public hearing. Upon making its decision, the CPRB submits its findings and recommendations to the Chief of Police and notifies the complainant of the disposition.

Only the Office of Professional Standards and the Civilian Police Review Board have any investigative capacities. Thus, their policies are compared below.

Table 3: *Comparing investigative findings of the Civilian Police Review Board and the Cleveland Police’s Office of Professional Standards.*

Civilian Police Review Board ¹⁴	Cleveland Police - Office of Professional Standards ¹⁵
<p>Sustained: Preponderance of the evidence supports a finding that the alleged conduct occurred and the officer’s actions were inconsistent with law or CDP policy, procedure, or training. A complaint may be “sustained in part” if the investigation revealed sufficient evidence to support a finding of a policy violation on one or more, but not all of the complainant’s allegations. A complaint may also be “sustained for a violation not based on original complaint” if the investigation reveals evidence of misconduct that was not included in the complainant’s original allegation but arose out of the incident that is the subject of the complaint.</p>	<p>Sustained: If the preponderance of the evidence supports a finding that the alleged conduct occurred and the officer’s actions were inconsistent with law or Cleveland Division of Police General Police Orders, training, or procedures, the recommended finding will be “Sustained.” A complaint may be “sustained in part” if the investigation revealed sufficient evidence to support a finding of a policy violation on one or more, but not all of the complainant’s allegations. A complaint may also be “sustained for a violation not based on original complaint” if the investigation reveals evidence of misconduct that was not included in the complainant’s</p>

¹³ <https://bit.ly/3hs07Cw>

¹⁴ Per Civilian Police Review Board Operating Manual and Procedures: <https://bit.ly/3BybxOp>

¹⁵ Per Office of Professional Standards Operating Manual and Procedures: <https://bit.ly/3lpdvL>

	original allegation but arose out of the incident that is the subject of the complaint.
Insufficient Evidence: Preponderance of the evidence fails to establish whether or not the conduct occurred.	Insufficient Evidence: If the preponderance of the evidence fails to establish whether the alleged conduct did or did not occur, the Investigator will make a recommended finding of “Insufficient Evidence.”
Unfounded: Preponderance of the evidence supports a finding that the alleged conduct did not occur.	Unfounded: If the preponderance of the evidence supports a finding that the alleged conduct did not occur.
Exonerated: Preponderance of the evidence supports a finding that the alleged conduct occurred but the officer’s actions were consistent with law or CDP policy, procedure or training.	Exonerated: If the preponderance of the evidence gathered throughout the investigation supports a finding that the alleged conduct occurred but the officer’s actions were consistent with law, Cleveland Division of Police General Police Orders, training, or procedures.”

Note the nearly identical language, with identical intent, between the two agencies. This did not come about by accident; following a 2014 investigation by the Department of Justice that found the Cleveland police department engaged in a pattern of excessive force, the city of Cleveland and the Department of Justice entered into a consent decree. The consent decree outlines that¹⁶

OPS will explain its findings using one of the following categories:

- a. Sustained: the preponderance of the evidence establishes that the violation of policy occurred. A complaint may be “sustained in part” if the investigation revealed sufficient evidence to support a finding of a policy violation on one or more, but not all of the complainant’s allegations. A complaint may also be “sustained for a violation not based on original complaint” if the investigation reveals evidence of misconduct that was not included in the complainant’s original allegation.
- b. Exonerated: the preponderance of the evidence fails to establish a finding of a policy violation and does not warrant any further investigation or action.
- c. Unfounded: the preponderance of the evidence fails to establish whether a policy violation occurred or did not occur.
- d. Not Sustained: the preponderance of the evidence establishes that the alleged conduct did occur, but did not violate CDP policies, procedures, or training.
- e. Administratively dismissed.

Note that these are precisely the categories that both the CPRB and OPS use, with minor labeling differences.

¹⁶ United States District Court, Northern District of Ohio, Eastern Division. Settlement Agreement Between the United States of America and the City of Cleveland. May 26, 2016. <https://bit.ly/3hhPSRF>

As such, as it currently stands, non-criminal complaints to the Cleveland Police Department are handled through the Office of Professional Standards, who then make recommendations to the Civilian Police Review Board. The CPRB then reviews the investigation and makes recommendations to the Chief of Police. However, on November 2, 2021, the voters of Cleveland passed Issue 24, which made sweeping changes to the structures of and the interplay between these agencies. It dictates the creation of the Community Police Commission who, in tandem with the Civilian Police Review Board, will oversee police conduct investigations and discipline.

The changes enacted by the legislature, in part, include:

- OPS reports to the CPRB, instead of the police department.
- The Board can initiate its own complaints, rather than only civilian-initiated complaints. Complaints may include topics not addressed in the initial complaint.
- The Board serves as final authority regarding whether disciplinary action against an officer is sufficient.
- **If the Board recommends discipline and the Chief of police disagrees, they must present clear and convincing evidence that the Board’s recommendations are erroneous.**

For the purposes of this report, the final bolded bullet point is most relevant, as it directly addresses circumstances in which there is disagreement between the police and the oversight body.

It is important to note that Issue 24 is currently being challenged in court. A month following the charter amendment’s passage, the city of Cleveland filed a motion asking a federal district court to reconcile the provisions of the amendment with the consent decree. At a March 17th hearing, Judge Solomon Oliver, who has overseen the city’s consent decree since 2015, said he believed Issue 24 presented “no impediment” to the city’s consent decree with the Department of Justice. Oliver did not formally approve an agreement between the DOJ and the city of Cleveland on how to alter the consent decree so as to incorporate changes outlined in Issue 24. Oliver’s approval, however, did afford Cleveland’s Mayor, Justin Bibb, the opportunity to begin appointing members to the newly established Cleveland Police Commission¹⁷.

Results – San Francisco

The Department of Police Accountability (San Francisco’s oversight board) and the San Francisco Police Department (SFPD) have shared language that is explicitly outlined in SFPD’s General Order 2.04.07.A¹⁸:

Table 4: *Investigative findings of the Department of Police Accountability and the SFPD.*

SFPD General Order 2.04.07.A
Improper Conduct: A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy or procedure.
Insufficient Evidence: The evidence fails to prove or disprove that the alleged conduct occurred.
Proper Conduct: The evidence proves that the alleged conduct occurred; however, the conduct was justified, lawful, and proper.

¹⁷ Ferrise, Adam. “Judge signals he’s OK with Cleveland police consent decree changes brought by Issue 24, but makes no formal ruling”. *Cleveland.com*. <https://bit.ly/3u1BYIQ>

¹⁸ San Francisco Police Department General Order 2.04, Complaints Against Officers: <https://bit.ly/3LI0yqk>

Policy Failure: The evidence proves that the alleged conduct occurred but was justified by Department policy or procedures; however, the SFPD or DPA recommends that the policy or procedure be changed or modified.
Supervision Failure: The evidence proves that the alleged conduct occurred and was the result of inadequate supervision.
Training Failure: The evidence proves that the alleged conduct resulted from inadequate or inappropriate training.
Unfounded: The evidence proves that the conduct alleged did not occur or that the accused officer was not involved.
Referral to Other Agency: The evidence proves that the alleged conduct did not involve a sworn member of the Department or that the complaint raised issues not within the scope of DPA or IAD. Referral to other agency allegations are not counted as complaints against sworn members of the Department.

While it is promising to see such alignment between oversight bodies and police, it was not until recently that this was the case in San Francisco. In 2016, the San Francisco Police Department began a Collaborative Reform Initiative with the Department of Justice aimed at proactively addressing the agency’s need to improve long-term trust between the police and community. As introduced previously, the report culminating from this initiative notes³ that the Office of Civilian Complaints (the predecessor of the Department of Police Accountability) and SFPD’s Internal Affairs Division did not use the same investigative categories for their findings. They consider this an issue because

Although this is a subtle difference, administrative process language is important because there is legal precedence to how standards are applied, and different definitions can have significant impact on the process. In addition, the different categories for findings... create challenges for ensuring accuracy and sufficiency of the disciplinary record. Also, these differences add to the challenge of identifying and addressing institutional issues, such as that of training or policy.

They go on to make a recommendation specific to this, writing that³

The SFPD should work with OCC to develop standards within 120 days of the issuance of this report regarding timeliness of complaint investigations, and consistency of investigative findings and practices to ensure progressive discipline is appropriately recommended.

A DOJ Accountability sub-committee working group provided SFPD with suggested revisions to Department General Order 2.04, *Citizen Complaints Against Officers*, in July of 2017. The most recent iteration of Department General Order 2.04, effective as of May 2019, explicitly addresses these changes, and states that the DPA and SFPD shall use the above terms and definitions so as to maintain consistency at the conclusion of investigations.¹⁸

Results – Seattle

As outlined in Chapter 3.29 of the Seattle Municipal Code¹⁹, there are three branches of oversight of the Seattle Police Department. Specifically,

Oversight of SPD shall be comprised of an Office of Police Accountability (OPA) to help ensure the actions of SPD employees are constitutional and in compliance with federal, state, local laws, and with City and SPD policies, and to promote respectful and effective policing, by initiating, receiving, classifying, investigating, and making findings related to complaints of misconduct; an Office of Inspector General for Public Safety (OIG) to help ensure the fairness and integrity of the police system as a whole in its delivery of law enforcement services by providing civilian auditing of the management, practices, and policies of SPD and OPA and oversee ongoing fidelity to organizational reforms implemented pursuant to the goals of the federal Consent Decree; and a Community Police Commission (CPC) to help ensure public confidence in the effectiveness and professionalism of SPD and the responsiveness of the police accountability system to public concerns by engaging the community to develop recommendations on the police accountability system and provide a community-based perspective on law enforcement-related policies, practices, and services affecting public trust; all for the purpose of ensuring constitutional, accountable, effective, and respectful policing.

Of these three branches, only OPA has direct oversight of civilian complaints. All three departments share definitions of ‘sustained’, ‘not sustained’, ‘unfounded’, as defined in the OPA Manual. If the OPA’s review demonstrates by a preponderance of the evidence that a violation of SPD policy occurred, the OPA director can recommend a **sustained** finding. If OPA’s review demonstrates by a preponderance of the evidence that misconduct did not occur, the director can recommend a **not sustained** finding²⁰:

Table 5: *Investigative findings of the Seattle OPA, OIG, and CPC.*

OPA, OIG, and CPC
Sustained: OPA’s review demonstrates by a preponderance of the evidence that a violation of SPD policy occurred, the OPA director can recommend a sustained finding.
Not Sustained: OPA’s review demonstrates by a preponderance of the evidence that misconduct did not occur, the director can recommend a not sustained finding
Not Sustained, Inconclusive: The evidence neither proves nor disproves the allegation of misconduct.
Not Sustained, Unfounded: The evidence indicates the alleged policy violation did not occur as reported or did not occur at all.
Not Sustained, Lawful and Proper: The evidence indicates the alleged conduct did occur, but that the conduct was justified and consistent with policy.
Not Sustained, Training Referral: There was a potential, but not willful, violation of policy that does not amount to misconduct. The employee’s chain of command will provide appropriate training and counseling.
Not Sustained, Management Action: The evidence indicates the employee may have acted contrary to policy, but due to a potential deficiency in SPD policy or training, OPA issues a recommendation to SPD to clarify or revise the policy or training.

¹⁹ Chapter 3.29 of the Seattle Municipal Code: <https://bit.ly/3sTG8IA>

²⁰ Per Seattle Office of Police Accountability’s Internal Operations and Training Manual, <https://bit.ly/3JUeZWP>

As mentioned above, the City of Seattle has been under a federal consent decree since 2012. The coherence in the investigative findings is a direct result of a recommendation from the DOJ, which writes that²¹

OPA should simplify its classifications, and have two findings, for purposes of reporting to the complainant (“Sustained” or “Not Sustained”), for each allegation against each officer. OPA may explain to the Complainant, named officer, and public what remedial steps will be taken in Sustained complaints (i.e., “Formal Discipline” or “Training”) or why a complaint was Not Sustained, whether because the conduct was “Exonerated/Lawful,” “Unfounded/Officer Not Involved,” “Inconclusive,” or “Administrative/Procedural” reasons.

Discussion

An obvious finding of this report is that four of the five agencies studied (or four of six, if you count Nashville) were or are under some sort of agreement with the Department of Justice. While coherence in investigative findings was never the primary focus of these agreements, a portion of the agreement often made explicit that there should be coherence in the investigative findings of oversight and police bodies. This is not to suggest that discrepancies in investigative findings are the cause for intervention from the federal government; rather, it is to suggest the opposite, that federal intervention may help tighten local policy to avoid redundancy, inefficiency, and confusion. Furthering this point, research done by Chanin²² demonstrates that

The best evidence on the DOJ’s pattern or practice initiative suggests that after implementing mandated reforms, affected departments will likely possess a stronger, more capable accountability infrastructure, more robust training, and a set of policies that reflect national best practices.

It must be noted that Atlanta, the one peer agency that was not under a federal agreement, has historically had challenges with low rates of acceptance from the Atlanta Police Department. This caused MNCO staff to wonder whether the disagreements between the departments partially stem from the discrepancies in investigatory findings. Exploring one example, if the ACRB makes a finding of ‘sustained’, meaning that a preponderance of evidence established that the officer committed the alleged misconduct, will the APD sustain this finding knowing that their definition requires ‘sufficient evidence’ to support the alleged misconduct? Even a cursory review reveals that the language difference is significant enough to allow for different interpretations of finding and could be part of the reason for low agreement rates in Atlanta.

In addition to addressing patterns of misconduct, consent decrees are an effective risk mitigation strategy. As can be seen in research done on Los Angeles and DC, civil and force related lawsuits, as well as plaintiff win percentage, decreased shortly after each city was under consent decree (see Figures 1

²¹ United States Department of Justice: Civil Rights Division, United States Attorney’s Office, Western District of Washington. Seattle Police Department Civil Rights Pattern or Practice Investigation, December 16, 2011. <https://bit.ly/36EOlgR>

²² Chanin, Joshua. “Evaluating section 14141: An empirical review of pattern or practice police misconduct reform.” *Ohio St. J. Crim. L.* 14 (2016): 67. <https://bit.ly/35kH0b7>

and 2, below). This is suggestive that consent decrees can reduce the risk of lawsuit and hefty monetary penalty due to better, more efficient policies.

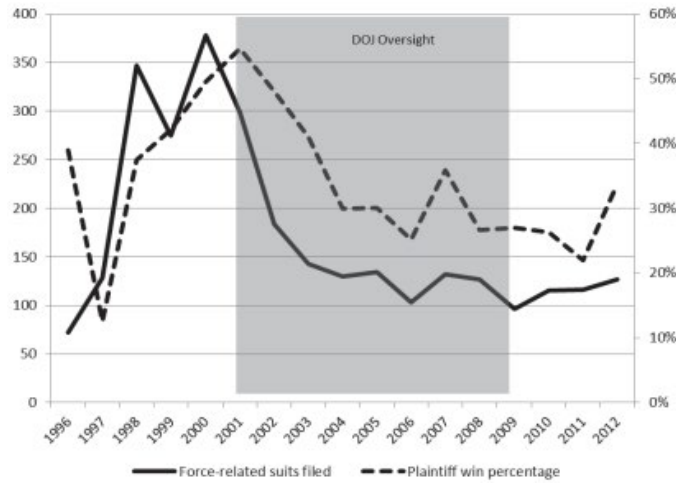


Figure 1: Use of Force-Related Civil Litigation in Los Angeles (1996-2012). Both figures reproduced²² with permission from Dr. Joshua Chanin.

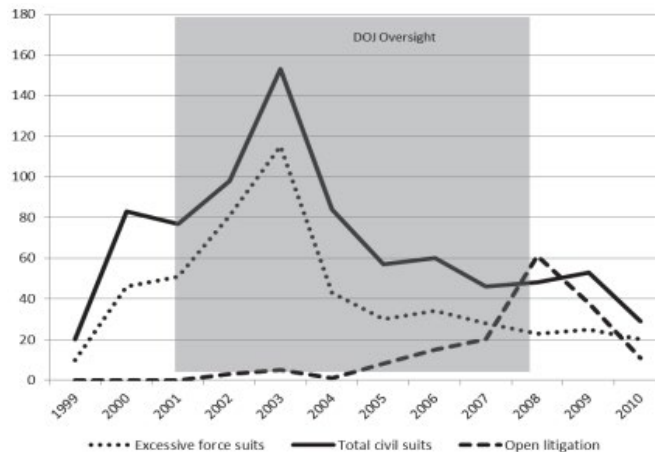


Figure 2: Civil Litigation Alleging Police Misconduct in Washington DC (1999-2010).

Recommended Actions

Again, nothing in this report should be misconstrued as suggesting that Nashville is at risk of consent decree. However, it behooves any city and any agency concerned with public safety to position itself to avoid one challenge among many that necessitate federal intervention. Repeating the advice from the DOJ³, “administrative process language is important because there is legal precedence to how standards are applied, and different definitions can have significant impact on the process”. While the different definitions from the COB and MNPD have not created significant friction as of yet, it is not difficult to imagine a scenario in which they could.

Recommendation 1:

As such, the MNCO Research Team recommends that the Board and MNPDP should meet and figure out a shared set of definitions for investigative findings. The COB and MNPDP should work to develop such standards within 60 days of the issuance of this report.

To align with best practice, MNCO recommends referencing the investigative findings of Chicago, one of the most recent cities to receive consent decrees (January 2019) and with one of the most extensive²³ decrees from the DOJ. In addition, the language outlines clear legal precedent for each finding. See the below table for comparison.

Table 6: Comparison of COB, MNPDP, and Chicago’s investigative findings.

COB Policy ²⁴	MNPDP Policy ²⁵	Chicago Consent Decree ²⁶
Sustained: The factual findings support the allegations in the complaint by the preponderance of the evidence, which conduct was inconsistent with MNPDP policy.	Sustained: The allegation is true. The action was inconsistent with established policy, procedure, or rules.	Sustained: where it is determined the allegation is supported by a preponderance of the evidence.
Not Sustained: The factual findings do not support the allegations in the complaint by the preponderance of the evidence.	Not Sustained: There is not sufficient evidence to sustain or refute the allegation.	Not Sustained: where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence.
Unfounded: The allegations in the complaint were proven false by the preponderance of the evidence.	Unfounded: The allegation was proven false.	Unfounded: where it is determined, by clear and convincing evidence, that an allegation is false or not factual.
Policy Exoneration: The factual allegations in the complaint do not violate the law or MNPDP policy; or, although the factual findings support the allegations in the complaint, the conduct proved by the preponderance of the evidence was lawful and consistent with MNPDP policy.	Exonerated: An incident did occur but the action was consistent with established policy, rules, or procedure. Policy/Training Failure: Although the action was consistent with departmental policy or training, the need to review, revise or develop departmental policy, procedure or training was identified.	Exonerated: where it is determined, by clear and convincing evidence, that the conduct described in the allegation occurred but is lawful and proper.

²³ The current state of the Chicago police consent decree: <https://bit.ly/35IVv8o>

²⁴ Per the most current version of the ‘Rules of the Nashville Community Oversight Board’: <https://bit.ly/36oCV65>

²⁵ Per the most current version of the MNPDP Manual: <https://bit.ly/3LGB2BP>

²⁶ United States District Court for the Northern District of Illinois, Eastern Division. State of Illinois v. City of Chicago: Consent Decree. January 31, 2019. <https://bit.ly/3JSYU3q>

As alluded to by the Atlanta Citizen Review Board, there is a relationship between public trust in an oversight body and the response from the police to an oversight body's investigative findings. Following the guidance²⁷ of the Atlanta Citizen Review Board, the COB and MNPDP should strive to reach a 75% acceptance rate on all findings from issued by the Board, including on sustained allegations.

As it stands, the COB and MNPDP have had mixed results in meeting this goal. While overall, MNPDP has agreed with 66.1% of the findings that the Board has issued, this is driven by a high number of 'not sustained' findings with which MNPDP has agreed. When only findings of 'sustained' or 'deficiencies identified' are considered, MNPDP has only agreed with 6.2% of the Board's findings (see Appendix A for more details). It is important to note that MNPDP has not responded to very many 'sustained' or 'deficiencies identified' findings from the Board at the time of writing²⁸, and as such it is entirely possible that this rate will significantly increase following more responses from the Chief. However, it is the opinion of MNCO staff that it would be in the best interests both of the Board and MNPDP to get ahead of this potential problem before it becomes consequential. MNCO staff believe that there could be a significant improvement in public trust if MNPDP achieves higher rates of sustained complaints from the Board, such that the Department does not only agree with findings that clear officers of wrongdoing. Conversations between the two departments are ongoing regarding this goal.

Recommendations 2-4:

As it is currently written in the Memorandum of Understanding between the COB and MNPDP²⁹,

Upon receipt of a Resolution Report, the Chief of Police agrees to review and provide a written response thereto within forty five (45) calendar days. Such response should include, but should not be limited to, acceptance, partial acceptance, or non-acceptance of the findings and/or recommendations, a statement of reasons for the Department's decision, and a description of actions taken by the Department in response to the Report, including any factual, legal, or policy issues affecting the Department's decision-making processes.

MNCO staff suggest that the Board considers the language approved by Cleveland voters when they passed Issue 24. Part of that language, which modifies Charter 115-4 of the Cleveland Code of Ordinances, reads³⁰

If the Board decides that discipline should be imposed on the officers or employees under the Chief of Police's management and control, the Board will submit its fact findings and recommendation to the Chief. The Chief and executive head of the police force **must presume to be correct and defer to the Board's fact findings and recommendations, absent affirmative proof by clear-and-convincing evidence that the findings and recommendations are clearly erroneous. Absent such proof**, within ten days after receiving the Board's fact findings and recommendation the Chief or

²⁷ Atlanta Citizen Review Board 2020 Annual Report: <https://bit.ly/3vsJHIA>

²⁸ All figures are accurate as of the time of writing, March 15th, 2022.

²⁹ Memorandum of Understanding Between the Community Oversight Board and the Metropolitan Nashville Police Department: <https://bit.ly/3hs3BVB>

³⁰ Note: Bolding not in original document. Text from Cleveland, OH Code of Ordinances: §115-4 Investigation and Disposition of Complaints. <https://bit.ly/3pw7ZHF>

executive head of the police **must impose at least the minimum discipline that the Board has recommended.**

If the Chief or executive head of the police force believes that clear-and-convincing evidence exists that would justify disregarding or modifying the Board's fact finding and disciplinary recommendations, within ten days after receiving the Board's fact findings and recommendation, **the Chief or executive head of the police force must notify the Board in writing of any refusal or lesser, alternative discipline to be imposed, detailing the reasons and providing the Board with the clear-and-convincing evidence justifying the decision.** Precedents, patterns or practices, and discipline predating this Section's effective date cannot constitute clear-and-convincing evidence justifying any decision by the Chief or executive head of the police force to impose lesser discipline than what the Board recommends, or no discipline.

While MNCO staff do not suggest immediate implementation of the language from Cleveland exactly as written, we do suggest that their language highlights several important points of contrast between Cleveland and Nashville: 1) MNPDP is not currently required to operate under a presumption of correctness regarding the Board's findings; 2) MNPDP is under no obligation to accept the Board's findings; 3) MNPDP has no burden of proof when it disagrees, and can simply choose to not accept findings from the Board so long as they give rationale.

Given these contrasts, MNCO recommends that the COB and MNPDP agree to modify Section IX.B of the Memorandum of Understanding to make three changes, each being its own recommendation:

Recommendation 2

The COB and MNPDP should agree to modify Section IX.B of the Memorandum of Understanding to require MNPDP to operate under a presumption of correctness regarding the Board's investigative findings.

Recommendation 3

The COB and MNPDP should agree to modify Section IX.B of the Memorandum of Understanding to require MNPDP meet a standard of preponderance of the evidence when it disagrees with the findings of the Board.

Recommendation 4

The COB and MNPDP should agree to modify Section IX.B of the Memorandum of Understanding to include language outlining that, absent preponderance of the evidence that the Board's findings are in error, MNPDP should implement the minimum recommended discipline from the Board. The COB and MNPDP should work to develop such standards within 60 days of the issuance of this report.

Appendix A: Chief Response Tracking

The following tables track the MNPDP’s responses to Resolution Reports issued by the Community Oversight Board. Per the Memorandum of Understanding between the COB and MNPDP, the Chief of Police is obliged to review and provide a written response to a Resolution Report within 45 calendar days of receipt.

Overall, MNPDP agrees with the investigative findings of the Board 66.1% of the time. MNPDP agrees with the Board’s investigative findings of *Sustained* or *Deficiencies Identified* 6.2% of the time.

The text for MNCO findings is red if there is disagreement between the findings of the COB and those of MNPDP.

Note that this monthly tracking report does not include ten outstanding responses from the Chief. Five of those responses fall within the Chief’s 45-day response window, and five do not.

Civilian Complaints

Case Number	Allegations	Board Disposition 1	Board Disposition 2	Board Disposition 3	Board Disposition 4	Board Disposition 5	MNPDP Disposition 1	MNPDP Disposition 2	MNPDP Disposition 3	MNPDP Disposition 4	MNPDP Disposition 5
CC2020-016	1. <i>Courtesy;</i> 2. <i>Failure to Provide Assistance</i>	1. Not Sustained	2. Policy Exoneration	NA	NA	NA	1. Not Sustained	2. Policy Exoneration	NA	NA	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
CC2020-006	1. Improper Search and Seizure	1. Not Sustained	NA	NA	NA	NA	1. Not Sustained	NA	NA	NA	NA
CC2020-006	1. Improper Search and Seizure	1. Not Sustained	NA	NA	NA	NA	1. Not Sustained	NA	NA	NA	NA
CC2020-006	1. Improper Search and Seizure	1. Not Sustained	NA	NA	NA	NA	1. Not Sustained	NA	NA	NA	NA
CC2020-006	1. Improper Search and Seizure	1. Not Sustained	NA	NA	NA	NA	1. Not Sustained	NA	NA	NA	NA
CC2020-013	1. Discourtesy; 2. Improper Search and Seizure; 3. Lack of Professionalism; 4. Excessive Use of Force	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA	1. Not Sustained	2. Exonerated	3. Not Sustained	4. Exonerated	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
CC2020-013	1. Discourtesy; 2. Improper Search and Seizure; 3. Lack of Professionalism; 4. Excessive Use of Force; 5. Official Obligation Self-Identification	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	5. Not Sustained	1. Not Sustained	2. Exonerated	3. Not Sustained	4. Exonerated	5. Exonerated
CC2020-013	1. Deficient of Inefficient Performance of Duties	1. Sustained	NA	NA	NA	NA	1. Exonerated	NA	NA	NA	NA
CC2020-018	1. Discourtesy; 2. Responsibility; 3. Profanity; 4. Self-Control	1. Sustained	2. Sustained	3. Sustained	4. Sustained	NA	Cannot Impose	Cannot Impose	Cannot Impose	Cannot Impose	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
CC2020-030	1. False Statements; 2. Failure to Appear; 3. Honesty and Truthfulness; 4. Transportation of Prisoners; 5. Use of Seatbelts and Other Safety Restraints	1. Not Sustained	2. Sustained	3. Not Sustained	4. Not Sustained	5. Not Sustained	1. Not Sustained	2. Exonerated	3. Not Sustained	4. Not Sustained	5. Not Sustained
CC2020-028	1. Dishonesty; 2. Improper Search and Seizure	1. Not Sustained	2. Unfounded	NA	NA	NA	1. Not Sustained	2. Unfounded	NA	NA	NA
CC2020-012	OPA Investigation Audit	Deficiencies Identified	NA	NA	NA	NA	Cannot Impose	NA	NA	NA	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Disposition 1	Board Disposition 2	Board Disposition 3	Board Disposition 4	Board Disposition 5	MNPD Disposition 1	MNPD Disposition 2	MNPD Disposition 3	MNPD Disposition 4	MNPD Disposition 5
CC2020-035	1. Adherence to Policy and Rules, Evidence Procedures; 2. Adherence to Policy and Rules, Follow-up Investigation Responsibility; 3. Deficient of Inefficient Performance of Duties	1. Sustained	2. Sustained	3. Sustained	NA	NA	1. Reject	2. Reject	3. Reject	NA	NA
CC2020-014	1. Excessive Use of Force; 2. Courtesy; 3. Profanity; 4. Failure to Administer First Aid	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA
CC2020-014	1. Excessive Use of Force; 2. Courtesy; 3. Profanity; 4. Failure to Administer First Aid	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
CC2020-014	1. Excessive Use of Force; 2. Courtesy; 3. Profanity; 4. Failure to Administer First Aid	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA
CC2020-014	1. Excessive Use of Force; 2. Courtesy; 3. Profanity; 4. Failure to Administer First Aid	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	NA
CC2020-014	1. Excessive Use of Force; 2. Courtesy; 3. Profanity; 4. Failure to Administer First Aid; 5. Adherence to Policy and Rules, Stop and Frisk	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	5. Sustained	1. Not Sustained	2. Not Sustained	3. Not Sustained	4. Not Sustained	5. Sustained

* Complaints may be split across multiple lines if there are allegations of misconduct against multiple officers. Text for MNCO findings is red if there is disagreement between the findings of the COB and those of MNPD.

Director Initiated Investigations

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
D2020-005	OPA Investigation Audit	No Defi- ciencies Identified	NA	NA	NA	NA	No Defi- ciencies Identified	NA	NA	NA	NA
D2020-005	OPA Investigation Audit	No Defi- ciencies Identified	NA	NA	NA	NA	No Defi- ciencies Identified	NA	NA	NA	NA
D2020-005	OPA Investigation Audit	No Defi- ciencies Identified	NA	NA	NA	NA	No Defi- ciencies Identified	NA	NA	NA	NA
D2020-005	OPA Investigation Audit	No Defi- ciencies Identified	NA	NA	NA	NA	No Defi- ciencies Identified	NA	NA	NA	NA
D2020-005	OPA Investigation Audit	Deficiencies Identified	NA	NA	NA	NA	Cannot Impose	NA	NA	NA	NA
D2020-002	1. Excessive Use of Force; 2. Adherence to Policy; Taser Deployment	1. Not Sustained	2. Sustained	NA	NA	NA	1. Reject	2. Reject	NA	NA	NA

COB EXPEDITED POLICY ADVISORY REPORT

(continued)

Case Number	Allegations	Board Dis- position 1	Board Dis- position 2	Board Dis- position 3	Board Dis- position 4	Board Dis- position 5	MNPD Disposi- tion 1	MNPD Disposi- tion 2	MNPD Disposi- tion 3	MNPD Disposi- tion 4	MNPD Disposi- tion 5
<i>D2020-002</i>	<i>1. Excessive Use of Force; 2. Adherence to Policy: Taser Testing; 3. Adherence to Policy: Taser Deployment</i>	<i>1. Sustained</i>	<i>2. Sustained</i>	<i>3. Sustained</i>	NA	NA	1. Reject	2. Reject	3. Reject	NA	NA

* Complaints may be split across multiple lines if there are allegations of misconduct against multiple officers. Text for MNCO findings is red if there is disagreement between the findings of the COB and those of MNPD.