



December 12, 2020

VIA EMAIL

The Albany Common Council
City Hall
24 Eagle Street, Room 206
Albany, NY 12207

Re: Third Set of Recommendations for Policy Reforms

Dear Members of the Common Council:

As you know, the Community Police Review Board (CPRB), has made several recommendations for changes to the City Code relating to the powers and responsibilities of the CPRB and the Albany Police Department (APD). Previous recommendations made in letters of June 22 and July 5, 2020, can be found on the CPRB's webpage at <https://www.albanycprb.org/home/minutes-and-reports/> (scroll to "2020" and select "Letter to Common Council" or "Policy Recommendations").

On December 10, 2020, the CPRB voted unanimously to approve the following additional recommendations:

- I. **Authorize CPRB to have independent disciplinary power apart from APD.**
 - a. *Motivation:* It is clear to CPRB that one source of distrust of community in CPRB is that Board is largely seen as having no power, no "teeth". Other police oversight boards have independent authority to issue disciplinary actions.

- b. *Considerations:* There are several legal implications that stem from giving CPRB this independent disciplinary authority, including labor implications related to collective bargaining agreements (CBA). However, new CBA could be negotiated, or any existing CBA could be renegotiated, with CPRB's independent disciplinary authority as part of discussion.
- c. Separately, if CPRB gets independent disciplinary authority, it will be important for CPRB and the Office of Professional Standards (OPS) to continue working together closely, collaboratively, and transparently even if CPRB is imposing a disciplinary action autonomously from OPS. This would help maintain trust between OPS and CPRB, and more broadly between police and CPRB. For instance, OPS would continue its own investigations and reviews, along with other components of police oversight (e.g., monitors). The only thing that would change is that, in cases where OPS findings and CPRB findings diverge, then CPRB would have authority to impose discipline rather than simply make recommendations to OPS and APD. Still, OPS and CPRB would need to continue working together as they do now, and it would be important for CPRB to be transparent with OPS when CPRB is considering imposing its own discipline, for CPRB to clearly explain its reasoning when doing so, and for there to be some opportunity to respond.

II. Authorize CPRB to express judgment about appropriateness of disciplinary action prior to imposition of discipline. APD via OPS shall inform CPRB of disciplinary action to be imposed prior to its imposition, so that CPRB can have opportunity to review proposed disciplinary action and express a judgment about whether such discipline is appropriate. This section shall apply to all disciplinary actions (including internal administrative inquiries), regardless of whether there is a formal, public complaint. Within 30 days of initiating an investigation, or when initial investigation is complete, whichever is sooner, OPS shall provide CPRB with information regarding (1) nature of misconduct being investigated and (2) nature of disciplinary action(s) being considered for that misconduct. Within 10 days of receiving this information, CPRB shall communicate its assessment of the appropriateness of proposed discipline to OPS so that CPRB position can be considered prior to imposition of any discipline by APD.

- a. *Motivation:* Distrust appears to be everywhere, and CPRB wants to help build trust all around – of community in police, of police in community, of community in CPRB, and of police in CPRB. In spirit of its mission to build trust between police and community, it would be

beneficial for CPRB to be aware of all misconduct that comes to the attention of OPS. This misconduct includes internal administrative inquiries, not just misconduct that comes to attention of CPRB due to public, community complaints.

- b. *Considerations:* CBA gives OPS one year from time of incident (or time at which APD becomes aware of incident) to reach a disciplinary decision. OPS usually takes less than a year. When officer becomes aware that discipline may be forthcoming, a 10-day window becomes active. So, generally speaking, role of CBA is important regarding discipline and timelines. It may be necessary to attach an MOU to CBA to make this provision effective. Also, chief may impose discipline on own timeline, even before OPS investigation is complete.

- III. **Authorize CPRB to conduct full inspection/audit of police officer's disciplinary history when that officer is subject to internal misconduct investigation and/or public complaint.** These disciplinary histories shall include all information relevant to alleged misconduct, whether this misconduct was discovered internally within APD (e.g., during routine audit of recordings or other records) or alleged in a complaint by a member of community. What information is considered "relevant" shall be decided by CPRB, and shall include a history of prior complaints, a history of prior misconduct (even if there was no complaint), a history of use of force, and any action taken by APD, including investigations and any disciplinary actions, in response to alleged misconduct, complaints, or use of force.

If officer transferred or was hired from another law enforcement agency, and if disciplinary history from that agency is available to OPS, then disciplinary history shared with CPRB shall also include a history of prior law enforcement agencies where the officer was employed and any history of complaints, misconduct, discipline, or use of force at that agency or agencies.

These records shall also include any audio or video recordings pertaining to the incident of alleged misconduct (including, but not limited to, body camera footage and dashboard-camera footage). The Department shall make that footage available for viewing by any member of the CPRB upon request.

APD shall be required to provide, via OPS, these records to CPRB as a matter of routine practice at the time of case review when the review is related to a formal complaint from member of community. If misconduct is discovered internally by APD, these records shall be shared with CPRB,

even if there is no complaint from member of community, for the purposes of transparency and to help build trust between police and community. These records shall exclude any protected health information except such information that is related to the misconduct, e.g., mental health or substance abuse.

It shall be within the discretion of the CPRB whether to discuss in a public meeting, or include in the CPRB's findings, or otherwise make public, information contained in any of the records above related to alleged misconduct in prior disciplinary history.

- a. *Considerations:* CPRB and OPS are already practicing part of this arrangement since OPS has been including the disciplinary histories of officers in materials during complaint review process since September 2020. CPRB requests these changes so that what is now an informal practice becomes a formal requirement that will survive beyond any personnel changes at either APD or CPRB. Also, the requested changes expand CPRB's access to disciplinary histories for officers subject of misconduct investigations, even if those investigations are internal, administrative inquiries rather than the cases that usually come to CPRB's attention via public, community complaints.

IV. Ensure CPRB is representative of community.

City should appoint or allow citizens to elect at least one member that is a victim of police brutality and at least one member that resides in a neighborhood or district with disproportionate police activity/arrests (e.g., Arbor Hill, South End). This measure serves to put in place more diversity of experience.

- V. Authorize and fund CPRB to conduct annual survey of police-community relations.** This can be done in partnership with both other community organizations (e.g., Center for Law and Justice) and academic institutions (e.g., Albany Law School, University at Albany). The survey would aim to include participation from both community and police.

VI. Require that a racial-bias audit like the one conducted in 2020 be conducted at least once every five years.

- a. *Considerations:* One contracted to CNA in 2020 cost city \$80,000.

Respectfully submitted,

/s/

Ivy Morris

Chair

Community Police Review Board