



Portland Police Bureau: Oversight and Accountability

League of Women Voters of Portland Education Fund



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Commonly used abbreviations in this document

BIPOC	Black, Indigenous, (and) People of Color
COCL	Compliance Officer and Community Liaison
CRC	Citizen Review Committee
DOJ	Department of Justice (U.S.)
IA	Internal Affairs (IA is part of Police Bureau Professional Standards Division)
IPR	Portland City Auditor's Independent Police Review
LWVPDX	League of Women Voters of Portland
OIR Group	Consultancy firm that performs independent police reviews and investigations. Currently used by the City of Portland to provide annual analysis of use of force.
PCCEP	Portland Committee on Community-Engaged Policing
PIIAC	Police Internal Investigations Auditing Committee
PPA	Portland Police Association (Portland's police union)
PPB	Portland Police Bureau
PRB	Police Review Board
TAC	Training Advisory Council

I. INTRODUCTION

1. Background

Portland's struggle with its policing practices has a long history that is intimately intertwined with Oregon's history of overt and legalized racism. From 1859 until 1926, Oregon's Constitution explicitly banned Black people from living in the state. Oregon was slow to ratify U.S. Constitutional amendments that gave Black Americans equal rights.¹ Social, political, and legislative decisions, including the influence of the Ku Klux Klan in politics, resulted in a state and city with a white majority shaping every institution. Portland's history is thus rife with social and economic inequality. For decades the role of policing has been a prominent part of conversations about inequality and racism in Portland.

Demands for police reform have come from many segments of the population and have taken numerous forms—e.g., ballot measures, calls to reassess police department budgets, state legislation to reform police conduct, support for mental health response teams, and new oversight structures—which are almost uniformly opposed by the powerful police union, the Portland Police Association (PPA).

The public's trust has been eroded by continued shootings and violence against unarmed civilians, the inability to fire police officers, the reinstatement of those who are fired, and the difficulty of pursuing action against those who harm the community. A 2019 study conducted by a local independent consultant found 71% of community members don't have a high level of trust in the Portland Police Bureau (PPB).² That percentage was greater among Black, Asian, and Native American communities.

There is just a sense that a cop can kill somebody and never face responsibility for it.

— State Senator Lew Frederick³

The strained relationship between Portland's police and the public manifested itself in protests during the summer of 2020 over the killing of George Floyd in Minneapolis and in the focus of continued Black Lives Matter marches throughout Portland. Despite lawsuits, legislation, policy changes, and public outcry over the past several decades, incidents of police injuring and arresting peaceful protesters and impinging upon fundamental rights of individuals have remained a constant.

¹ Engeman, Richard H. [*The Oregon Companion, 49*](#). See also Camhi, Tiffany. "A racist history shows why Oregon is still so white." *Oregon Public Broadcasting*, June 9, 2020.

² *PPB Strategic Insights Report*. Coraggio Group, March 2019.

³ *OregonLive*, August 15, 2020.

As of the time of this report, the COVID-19 pandemic is still in full force, police morale is at an all-time low, public confidence is strained, and once again another ballot measure has been passed (November 2020) seeking to improve oversight and restore faith in policing in Portland.

2. Purpose and Structure of this Report

In light of the problems outlined above, League of Women Voters of Portland (LWVPDX) members identified police accountability as a problem in need of study at their January 2020 planning meeting. The study was approved at the League's May 12, 2020, Local Convention. It was noted that as of the 2020 Convention, LWVPDX's advocacy position on the PPB dated from 1982 and did not address police discipline or accountability.⁴

Two weeks after the study was approved, George Floyd was killed by police in Minneapolis, sparking Black Lives Matter protests across the nation. As public awareness of the injustices involving people of color in the justice system increased, so did the work of the study committee as it reviewed new situations, new initiatives by Portland City Council, and new demands for accountability made by individuals and advocacy groups.

This report was written and compiled by 22 LWVPDX volunteers in late 2020, after nine months of study and 22 interviews with stakeholders ranging from police leadership to city council members to state legislators to police accountability advocates.⁵ This report will be read by members of LWVPDX as the League considers its consensus position on advocacy for police accountability reforms.

In these pages, readers will find resources to inform public discussions about police accountability and discipline. We begin with actions taken by the League of Women Voters of Portland and progress made by the City and PPB. We offer a timeline of key events in Portland history that have shaped where we are today, including fatal encounters between public and police. We then detail some of the major bodies that are currently involved in police oversight and accountability, such as the Citizen Review Committee (CRC) and the Police Review Board (PRB). We raise some of the concerns around police use of force. We describe the City's Settlement Agreement with the U.S. Department of Justice (DOJ), one of the key components of the current police accountability framework. We describe the 2020 voter-approved ballot measure for a new oversight board, and possible challenges to implementing this board. Finally, we detail some opportunities for meaningful change, with a focus on the local level.

While our focus in this report is on policing in Portland, we recognize that all community members have a role to play to ensure public safety, health, and accountability for our neighbors. This report is our offering to help inform a meaningful, collaborative discussion, so that we might discern a path forward for all Portlanders, together.

⁴ LWVPDX City Government Positions. <https://lwvpdx.org/wp-content/uploads/2020/01/CITY-OF-PORTLAND-positions.pdf>.

⁵ See the Acknowledgments page at the end of this report for a list of stakeholder interviews and other contributors to this study.

3. League of Women Voters of Portland: Action for Accountability

The League's involvement in police accountability began in the early 1980s when League President Darlean Lemley served on a commission that recommended Portland's first police accountability system. She and other League members have consistently monitored the City's oversight system since then. Currently, League members regularly attend the monthly Citizen Review Committee and other police-related meetings. LWVPDX has taken action on these issues through individual member participation on public advisory committees, through written and oral testimony before Portland City Council and the Citizen Review Committee, and through educating its membership on the need for greater accountability for officer actions, more public access to the process, and greater transparency.

The League's actions are predicated on a 1982 position statement supporting civilian involvement in the functioning of the PPB including, but not limited to, budget advisory committees, precinct advisory councils, and community advisory groups. LWVPDX involvement in police accountability issues is led by the Action Committee chair, currently Debbie Aiona, and is advised by the Board.

Our long-standing engagement in civilian oversight has provided our League firsthand knowledge of the evolution and functioning of the City's police accountability system. We have witnessed the challenges community advocates face in trying to take part in this important work. On occasion, lack of transparency and lack of timely access to information scheduled for city council action have inhibited the ability of interested community members, including the League, to effectively monitor and participate in this aspect of city government. This makes it difficult to determine whether or not the accountability system is credible and effective and protects the public's right to know and be involved.

Since 2001, the League has regularly provided testimony to city council, CRC, and U.S. District Judge Michael Simon. Judge Simon provides judicial oversight for the DOJ United States of America v. City of Portland⁶ and the subsequent Settlement Agreement.

A summary of League testimony to Portland City Council as related to police oversight can be found in the online appendix to this report and at our website. The topics addressed include transparency, insufficient public involvement, rights of survivors of police violence or the families of victims to appeal their cases to the CRC, police training, and the structure and function of the CRC itself. A letter to Judge Simon and relevant documents are in the appendix, along with requests for information on contract negotiations between the City and the PPA.⁷

⁶ Case No. 3:12-cv-02265SI. The Settlement Agreement is detailed in Section III.4.

⁷ LWVPDX testimony on police oversight can be found online in the online appendix to this report and at <https://lwvpdx.org/advocate/testimony/police-oversight/>.

4. Progress Made by the City Council and the Portland Police Bureau

While this report identifies many problems in the current systems of police accountability, the League acknowledges the complexity of the situation. We know public officials and law enforcement officers work in demanding, sometimes dangerous, jobs. We wish to give credit where it is due.

Through our long experience in public oversight of the Portland Police Bureau (PPB) and Portland City Council, we have watched public servants work hard to make improvements. Here are a few areas where progress has been made:

- Portland City Council has repeatedly contracted with outside experts to provide detailed analysis of PPB operations:
 - In 2007, the City engaged independent consultant Eileen Luna-Firebaugh, who produced a lengthy report with specific recommendations. Most of her recommendations were not adopted, but they did shine light on the strengths and weaknesses of the oversight system. See the online appendix for the complete report.
 - For many years, the City has been contracting with OIR Group, a respected California research firm, to review every officer-involved shooting from 2014 to 2018. It produces clear descriptions of what officers did right, their missteps, and what alternative actions could have been taken to defuse tensions and avoid lethal use of force. It has made specific recommendations for changes in procedures, many of which were subsequently adopted by successive chiefs of police.
- After a rocky start, community engagement processes have greatly improved and feedback from advisory bodies is being heard. The Training Advisory Committee now has an effective system for making recommendations on policy to the Bureau leadership. The Portland Committee on Community-Engaged Policing (PCCEP) is also active in developing and delivering recommendations to the City and the Bureau.
- In 2010, the Albina Ministerial Alliance Coalition for Justice and Police Reform called upon the U.S. Department of Justice to investigate Portland Police Bureau patterns and practices regarding use of deadly and excessive force against communities of color. Then-police commissioner and city council member Dan Saltzman, Sen. Ron Wyden, Congressman Earl Blumenauer, the Urban League of Portland, and others joined the coalition in its request. The DOJ completed the investigation in September 2012 and found that the PPB was using excessive force against persons with a mental illness, but was unable to make the case in regards to communities of color. This ultimately led to a comprehensive agreement between the City and the DOJ to make a series of improvements in practices related to use of force, officer accountability, training, crisis intervention, documentation, data collection, and public involvement. From 2014 to 2019, the Bureau put tremendous effort and resources into meeting the specific changes mandated in the agreement. This was very difficult at first, but in 2019 the City was found to be in substantial compliance with the terms of the agreement. Unfortunately, this compliance fell apart during the massive demonstrations in the summer of 2020.

- In response to direction from the DOJ, the Bureau developed crisis intervention teams and provided opportunities for behavioral health specialists to accompany officers to some mental health calls. All officers received training on patterns in mental illness and effective communication techniques to interact with persons experiencing a mental health crisis. As primary responders to crisis calls, including calls that are determined to be related to an individual with mental illness, all Portland Police Bureau officers now receive basic Crisis Intervention Training and annual refresher training.

The City and the PPB are to be commended for this progress. The overall use of force has made a steady decline, even though lethal force has not. There were no civilian deaths at the hands of Portland police in 2020.

We know that the cases alleging flagrant misconduct are the ones that appear in the newspapers. For decades, the PPB Training Division has studied best practices nationwide and has added many themes to their curriculum.

- The Training Division's emphasis on de-escalation, proactive problem solving, understanding mental illness, and improved communication skills has increased every officer's capacity to defuse tense situations without resorting to lethal force.
- Simple policy actions like reducing the number of times a gun is pointed at a suspect has kept both our public and our officers safer. Improved policies covering foot pursuits and high-speed car chases have reduced risks.
- Recently, Chief Chuck Lovell announced that the PPB would participate in the ABLE program: Active Bystandership for Law Enforcement. This program will make it an organization-wide expectation for officers to honor their duty to intervene when they observe another officer engaged in dangerous misconduct.⁸

Many officers are putting their training to work, communicating respectfully with the public, treating suspects compassionately, and regularly keeping the public safer. The day-to-day efforts of these officers deserve support.

Most of this report focuses on places needing improvement, and the harm caused by failures in the existing accountability structure, though this is only part of the context in which violent encounters with police occur. While we focused on police discipline, we know that many factors are at work in shaping the context of violent encounters with police: state and city laws, bias on behalf of police and those who call for police help, militarized police culture, and cycles of individual and family trauma, both in the community and police. We hope to convey a fair and impartial assessment, including acknowledgement for the positive steps taken by the PPB and the City.

⁸ In June 2020, the Oregon legislature passed HB 4205, a bill stipulating that police officers have a “duty to intervene” when they observe another officer taking action that is illegal or unnecessarily dangerous. See Section V.2 for more details about the Duty to Intervene and ABLE training and other legislative action.

5. Police Accountability History in Portland

Portland has a long history of serious concerns regarding police oversight and accountability. Community advocacy for reform has been consistent over the past decades, not only as community members have continued to experience violence from police, but as public frustration has grown about a perceived lack of accountability for officers using excessive force.

In recent decades, police killings have taken the lives of many Portlanders. Victims have been disproportionately Black, and about half were experiencing mental health issues. Each death left a hole in a family and in the community, bringing up issues of systemic racism and rekindling the desire for mutual respect in a city still reckoning with its racist past.

Over the years, government leaders, community groups, and outside consultants have issued numerous reports recommending changes, but many of those changes remain to be seen. Nevertheless, the reports provide a good perspective on both the evolution of police accountability and oversight over time and the resistance to change Portland has faced when trying to improve these systems. We encourage the reader to look for patterns in recommendations through a review of these summaries and the supplementary materials listed in the online appendix.

Changes that have been made include the establishment of a Crisis Intervention Team as the result of a 1992 wrongful death settlement, the creation in 2001 of the Independent Police Review (IPR) and Citizen Review Committee (CRC), and a key intervention by the U.S. Department of Justice (DOJ). The respective roles and powers of civilian oversight bodies, city council, the Police Bureau, the auditor's office, arbitrators, and others have also changed over time. Various changes to collective bargaining agreements, Bureau policies, legislation, ballot measures, and court cases further attempted to reform policing, oversight, and accountability.

Table I-1 provides a timeline of key events in the relationship between Portland police and community members, including changes made to accountability mechanisms over time. More details can be found after the timeline.

Table I-1 Timeline of Key Events

1981	PPB officers dump dead opossums in the parking lot of a popular Black-owned restaurant. They were fired, but reinstated by an arbitrator.
1985	Tony Stevenson, a 37-year-old father and former Marine, is killed in a chokehold, after trying to stop a robbery at a 7-11 and getting in a fight with a witness in the parking lot.
1991	PPB attack protesters opposing the Iraq invasion ordered by President George H.W. Bush.
1992	Police accidentally kill 12-year-old Nathan Thomas while he is held hostage at knife-point by a mentally ill man. As part of the boy's death settlement, Crisis Intervention Training is required for certain officers.
1992	Portland Peaceworks (now known as Peace and Justice Works) launches Portland Copwatch to improve police accountability.
1996	Deontae Keller, 20, is killed by police after a routine traffic stop. Police bar medical personnel from checking on him.
1998	Dickie Dow, a 37-year-old diagnosed with paranoid schizophrenia and a developmental disorder, is killed by police when spotted on the street after a call about a fight at a doughnut shop.
October 2000	Mayor Vera Katz releases the <i>Majority Report</i> produced by a Police Internal Investigations Auditing Committee Work Group.
2001	José Mejía Poot, 29, is killed by police while a patient at a mental hospital.
March 2001	City auditor publishes <i>Addressing Complaints About Police: A Proposal for Change</i> ; IPR and CRC are established.
2000, 2002, 2003	May Day protests each of these years draw concerns about police response to protesters.
2003	Kendra James, 21, is killed at a traffic stop, catalyzing community frustration about lack of accountability process, and the launch of Albina Ministerial Alliance Coalition for Justice and Police Reform.
2004	James Jahar Perez, 28, is killed after a traffic stop based on "the kind of car that didn't belong in the neighborhood."

2006	James Chasse Jr., 42, homeless and mentally ill, is beaten to death by police after trying to run away from them; as a result, Crisis Intervention Training is required for all officers.
2008	Independent consultant Eileen Luna-Firebaugh issues a lengthy review of the IPR and the CRC. Many of her recommendations are never implemented.
2009	Police, including one of the officers who killed James Chasse, Jr., kill a teenager on a light rail platform with “bean bag” projectiles. At subsequent hearings, several PPB members protest in support of the officer.
2010	Aaron Campbell, 25, is fatally shot by police despite coming out of his house with his hands on the back of his head. Campbell was despondent over the death of his brother that day; his housemate, fearing suicide, had called police.
2010	Keaton Otis, 25, is killed after police stopped him because he “looked like a gangster.” Otis fires twice at police; police shoot him 23 times.
April 2011	Portland Copwatch publishes <i>Standard of Review</i> position paper.
December 2012	U.S. DOJ Findings and Settlement Agreement mandates specific, measurable changes.
December 2016	Short-term committee report is published about CRC appeals and public input.
2017	Quanice Hayes, 17, is killed while being apprehended as a suspect. Police say it looked like he was reaching for his waistband. No gun found, though a replica of a gun is found in the bushes.
2018	Portland police shoot John Elifritz, 48, to death inside a homeless shelter, after he threatens his own life with a knife.
2019	DOJ find Portland in substantial compliance with the Settlement Agreement.
May 2020 and beyond	Black Lives Matter movement launches months-long street protests for police reform.
Summer 2020	City of Portland and State of Oregon enact some limits on use of force and crowd control tactics.

Key Events Related to Portland Police Accountability, 1980 to 2020

Several key moments indicate the ongoing pattern that has left many community members frustrated. This pattern is one of police violence, followed by community outrage over excessive use of force or violation of policies and community trust, followed by unsatisfactory disciplinary outcomes despite recommendations for change.⁹

1981

As a so-called “prank,” some Portland police officers dumped dead opossums in the parking lot at a Black-owned business and popular hangout. Outraged residents protested the incident, demanding more civilian oversight of police misconduct and firing of the police involved. Though the officers were fired, an arbitrator later reinstated them. The City’s first civilian review mechanism was created by Portland City Council and upheld by voters in 1982 after the police union sought to repeal it.

1985

Tony Stevenson, a 31-year-old Black man and father of five, was killed after a Portland police officer put him in a “sleeper hold” and chose not to perform CPR after he passed out. Again, the community was outraged. That outrage grew when two of the officers sold T-shirts to fellow officers on the day of Stevenson’s funeral that read, “Don’t Choke ‘Em, Smoke ‘Em.” The officers were fired but reinstated by an arbitrator. Again, protests for justice and accountability spilled onto the streets of Portland.

1990s

Protests against the Gulf War erupted in the city, and a Bush administration staffer dubbed Portland “Little Beirut.” Many remember these protests as the beginning of PPB’s mass violence against and arrests of protesters.

2000

Pressure mounted for Mayor Vera Katz to strengthen the police oversight body known as the Police Internal Investigations Auditing Committee (PIIAC). On May 1, the NAACP presented a proposal to Mayor Katz on ways to strengthen civilian oversight. That same day, police aggressively reacted to May Day celebrations and parades throughout the city, attacking and arresting protesters, and even charging a parade on horseback.

⁹ Police reform advocates often argue that policing in this country has explicitly racist origins. Civil rights attorney and social justice advocate Fania Davis notes: “Throughout history, police have served as highly visible enforcers of white supremacy who brutally subjugate black communities.” (Davis, Fania E. *The Little Book of Race and Restorative Justice*, p 74.) For one view on the role of police through U.S. History, see infographic “POLICING AND RESISTANCE IN THE U.S.: AN INCOMPLETE TIMELINE,’ by SURJ PDX. Police units as they are known today, organized to serve across a city, emerged in the U.S. in the 1800s. The SURJ PDX timeline describes 1860s “Southern ‘law enforcement’” as “often indistinguishable from white supremacist vigilante groups.” As an entry point to the criminal justice system, police encounters contribute to the larger challenge of mass incarceration in the U.S., with disproportionate impact on communities of color. The timeline above is testimony to the lingering systemic racism in societal institutions such as policing, as evidenced here in Portland.

Mayor Katz appointed a volunteer work group to address concerns about Portland's civilian review process. The work group made 27 recommendations, 24 of which were approved by unanimous vote. They addressed such issues as the need for independence in the review process, types of evidence to be collected, public transparency regarding the review processes and outcomes (including discipline), provision of sufficient funding and staffing to ensure training, and support for civilian committee members. Discord remained between city council recommendations on individual cases and actions by PPB leadership.

During this time period, a police misconduct case alleging violation of civil rights was on appeal and came before the city council acting in its role as PIIAC. The council decided that the supervisor's finding failed to address the officer's misconduct, and it used its authority to change the supervisor's finding. In response, the Chief of Police chose to ignore city council and instead implemented the Bureau's finding.

2001

Mexican immigrant **José Mejía Poot** was beaten repeatedly by several officers, including with a flashlight to the head, after an altercation over bus fare with a bus driver that led the driver to flag a police officer. After being taken to the police station and later released, Mejía, who had epilepsy, was taken to a mental hospital. When he broke out of his hospital room, police were called again and they fatally shot him, allegedly believing he was holding a threatening object. The killing prompted massive demonstrations. Officers involved were retained on staff and faced no discipline; later, some even received medals and promotions.

Following a series of complaints about police misconduct, city council asked the city auditor to study other oversight systems, review recommendations of the PIIAC Work Group in 2000, and suggest changes to improve Portland's police complaint system. The auditor suggested two new bodies be created to replace PIIAC: Independent Police Review (IPR), located within the Office of the City Auditor, and a Citizen Review Committee (CRC) appointed by Portland City Council to act as an advisory board to IPR, reviewing individual reports, assessing the number and nature of complaints, and evaluating the complaint and appeals process.

2002, 2003

In May Day and other anti-Bush protests during 2002 and 2003, police followed similar tactics as in the 1990s protests against the first Gulf War, leading to further frustration among the city's residents. One police officer, Mark Kruger, was sued for using excessive force in an August 2002 anti-war protest. It came to light later that he had bragged about roughing up female protesters and that he dressed up in Nazi uniforms. Kruger was eventually suspended for two weeks for building public shrines to Nazis, but the City paid him a \$5,000 settlement after he filed a libel suit. Kruger, later promoted to captain, was the highest paid employee of the Bureau before retiring in March 2020.

2003

The death of **Kendra James** was a turning point in the Police Bureau's strained relationship with the African American community. James, a Black woman, was a passenger in a car that was pulled over by police for failing to stop at a stop sign. The two other passengers were removed from the car, but James attempted to drive away by putting the car in gear. Officers tried to pull her out of the car and used a stun gun on her. As one policeman who had reached into the car lost his footing, he shot and killed her. Despite many contradictions in police and witness testimonies, a grand jury found the officer innocent of criminal charges. The community, led by Black leaders, engaged in protests and reform efforts.

2006

James Chasse, Jr., who had schizophrenia, encountered three officers (two Portland police and a Multnomah County sheriff's deputy), who gave chase when he tried to run away from them. After a physical altercation that included a severe beating and employment of a stun gun multiple times, Chasse was restrained and arrested. Nursing staff at the jail insisted he be taken to the hospital. He died during transport there, his death ruled by the Medical Examiner as resulting from blunt force trauma and "accidental." The officers implicated had suspected Chasse of drug possession but found no drugs on him. After a three-year investigation, they were eventually disciplined and suspended for 80 hours without pay for failing to provide medical care to Chasse. Mayor Tom Potter, a former Portland police chief, responded by instituting Crisis Intervention Training for all Portland police, starting a Mental Health Task Force, and apologizing to Chasse's family.¹⁰ Arbitration in 2012 reversed the decision to suspend the officers, and the Bureau repaid them their lost wages.

2008

Portland City Council received a major report by independent consultant Eileen Luna-Firebaugh. In response to public pressure, the office of Mayor Tom Potter had engaged Luna-Firebaugh to conduct a performance evaluation of the Independent Police Review (IPR) and the Citizen Review Committee (CRC) for the years 2002–2007. The Luna-Firebaugh report recommended enhanced authority for CRC to hear appeals and identify issues, and that CRC be given sufficient staff support. Although IPR had authority to conduct independent investigations, it had not yet completed any. The report recommended that IPR gather community input to help decide which cases were priorities and then start conducting its own investigations into them. Notably, the Luna-Firebaugh report (see online appendix) was the first to mention that the creation of a new standard of review is necessary to improve police accountability.¹¹

¹⁰ Chasse's story is the centerpiece of 2013 film, "Alien Boy: The Life and Death of James Chasse." His death in custody was the subject of the OIR Group's first review of a case in Portland, a copy of which is available from the city auditor and in the online appendix to this report.

¹¹ See the Luna-Firebaugh report, January 23, 2008: <https://www.portlandoregon.gov/ipr/article/245276>. "Standard of review" is the burden of proof a case must meet in order for the committee to find an officer guilty. The current standard of review is the "Reasonable Person Standard," which asks committee members to imagine a fictional "reasonable person" making a judgment in the situation. The preferred alternative is the "Preponderance of the Evidence" standard, which is used in civil courts and other discipline investigations. Per Luna-Firebaugh, "The definition

2010

A pivotal case in the history of Portland police shootings involved **Aaron Campbell**, an unarmed Black man who was despondent over his brother's death earlier that day. Police were called because his housemate feared suicide. They negotiated with Campbell to leave the house, which he did with his hands behind his head. One officer tried to get him to put his hands in the air by shooting him in the back with a "bean bag." Another officer thought that when Campbell then reached toward his back, he was reaching for a gun, and the officer fatally shot him. Campbell was in fact unarmed, but the officer was not prosecuted. The outcry after this killing resulted in weekly marches and even the take-over of City Hall for half an hour. The City settled with Campbell's family for \$1.2 million, the largest payout associated with a deadly police shooting in Portland at that time.

Keaton Otis, a 25-year-old Black man, was driving his mother's Toyota when police followed him because they thought he looked "like a gangster."¹² They stopped him after he failed to signal a lane change. Officers ordered Otis to put his hands on his head, but Otis shot at one of the officers twice. The other officers fired 32 shots at Otis, hitting him 23 times. Officers did not realize that Otis was in the midst of a mental health crisis. A grand jury said the shooting was justified. Otis's father Fred Bryant tried appealing the Bureau's finding of "no wrongdoing" by police to the CRC, but the City would not allow it. A monthly vigil for Keaton Otis has taken place ever since his death.

On March 31, 2010, city council altered provisions governing Independent Police Review (IPR), an agency in the city auditor's office and created the Police Review Board (PRB).¹³ PRB eventually replaced the Performance Review Board and the Use of Force Review Board, after it was deemed unworkable to have multiple boards operating simultaneously.

At the request of community leaders who believed they should have been consulted about the changes to IPR and the creation of the Police Review Board, Commissioner Randy Leonard convened a Police Oversight Stakeholder Committee to recommend additional improvements to the City's oversight of the Police Bureau, with the goal of a safer city governed by effective problem-solving and mutual respect between police and community. The Stakeholder Committee's Report highlighted recommendations regarding use-of-force complaints, timing of involvement of IPR, requests for clarification of and changes to certain terminology, and clarification and expansion of the authority granted to CRC. The Stakeholder Committee also recommended changing CRC's standard of review.

of Preponderance of the Evidence is that the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not." The standard of review is also discussed in Sections II.3 and V of this report, and in a Portland Copwatch report included in the online appendix.

¹² "Keaton Otis: Race, mental illness and a city's lost son." *OregonLive*, August 4, 2014.

<https://www.oregonlive.com/projects/keaton-otis/>.

¹³ Portland Code Section 3.20.140, Ordinance No. 183657. This amendment acknowledged that the ordinance as originally passed "would mean that the Police Review Board and the existing Performance Review and Use of Force Board would have to operate simultaneously to handle complaints based on when they were filed. Simultaneous operation of the boards is unworkable."

2011

The grassroots police accountability group Portland Copwatch released its Standard of Review paper, reiterating recommendations by consultant Luna-Firebaugh (in a 2008 report) and the Police Oversight Stakeholder Committee (in its 2010 report) to update CRC's standard of review.

2012

While the City was mulling over the Police Oversight Stakeholder Committee's 2010 report and recommendations, the public continued to voice concern about the lack of accountability for officers' excessive use of force. At the request of the City and the Albina Ministerial Alliance, the U.S. Department of Justice (DOJ) conducted an investigation of the Portland Police Bureau, which found that "PPB is engaging in a pattern or practice of using excessive force in encounters involving people with actual or perceived mental illness," and filed suit against the City of Portland. The City and DOJ entered into an agreement in December 2012 that detailed requirements for changes related to use of force, training, crisis intervention, officer accountability, and community engagement. One result of this Settlement Agreement was a temporary distraction from reform of the IPR and CRC process. The DOJ Settlement Agreement is detailed further in Section III.4.

2016

The 2012 Settlement Agreement with DOJ required CRC to complete its appeal process on a case within 21 days, which knowledgeable community and CRC members said was impossible. A focus group on the issue met in secret and proposed merging PRB and CRC to create a stronger public entity. This would have ended public access to the CRC's appeal hearings. City council rejected this proposal. In September, Mayor Charlie Hales and Commissioner Amanda Fritz requested that stakeholders convene to discuss recommendations related to the size of the CRC, whether and how to allow and manage public comments during CRC Appeal Hearings, and steps needed to complete a comprehensive stakeholder review. The newly created short-term committee of stakeholders reached agreement on the number of members on the CRC (11) and the quorum requirement of at least five. It also agreed on the concept that appeals hearings should continue to be a place for accepting public comment. No agreement was reached on when public comments should be heard (whether prior to or after decision-making) and whether they should be heard at the Case File Review stage. A majority of the city council favored retaining public comments and voted to continue public comment at CRC appeals hearing.

2016–2020

Ongoing conversations between City officials and DOJ raised possible reforms for the Portland Police Bureau, with disagreements about the need for audits of the IPR and the urgency of adopting DOJ recommendations.

2017

Quanice Hayes, a Black teenager, was suspected of armed robbery and attempted carjacking. Police discovered Hayes in an alcove in front of a house and ordered him to keep his hands up but crawl toward officers on the driveway and then lie down with his hands to his side. Police said Hayes appeared to reach toward his waistband. An officer fired, killing him. Police found a replica gun in a flower bed two feet from Hayes's body. Again, the community was outraged but the officers' actions were found to be within policy. A grand jury decided not to charge the officer for the shooting.

2018

Portland police shot 48-year-old **John Elifritz** to death inside a homeless shelter after he had threatened to take his own life with a knife. The PRB review found the shooting within policy, but that de-escalation and other tactics had not been tried long enough. Elifritz was shot 35 seconds after the officers entered the room.

2019

Of the five fatal police shootings in 2019, three were people with mental illness. **Andre Gladen**, 36, a Black man from Sacramento visiting family in Portland, was legally blind with schizophrenia, and had used methamphetamine before running into a stranger's house. **Koben Henriksen**, 51, who was bipolar/schizophrenic, was walking in traffic with knives. **Lane Christopher Martin**, 31, had a psychotic break when he threatened a security guard with a knife and hatchet and swung them as he walked down a busy street.

2020

Through the summer and fall, protests filled the streets of Portland in affirmation of the Black Lives Matter movement and in protest of police violence, after the killing of George Floyd in Minneapolis. The November passage of City of Portland Ballot Measure 26-217, which amends the City Charter to authorize a new Community Oversight Board, significantly changes the dynamics around police accountability by introducing the initial steps for an oversight board with more authority vested in civilian members.

II. PORTLAND'S CURRENT POLICE ACCOUNTABILITY MECHANISMS

1. Elements of Current Oversight

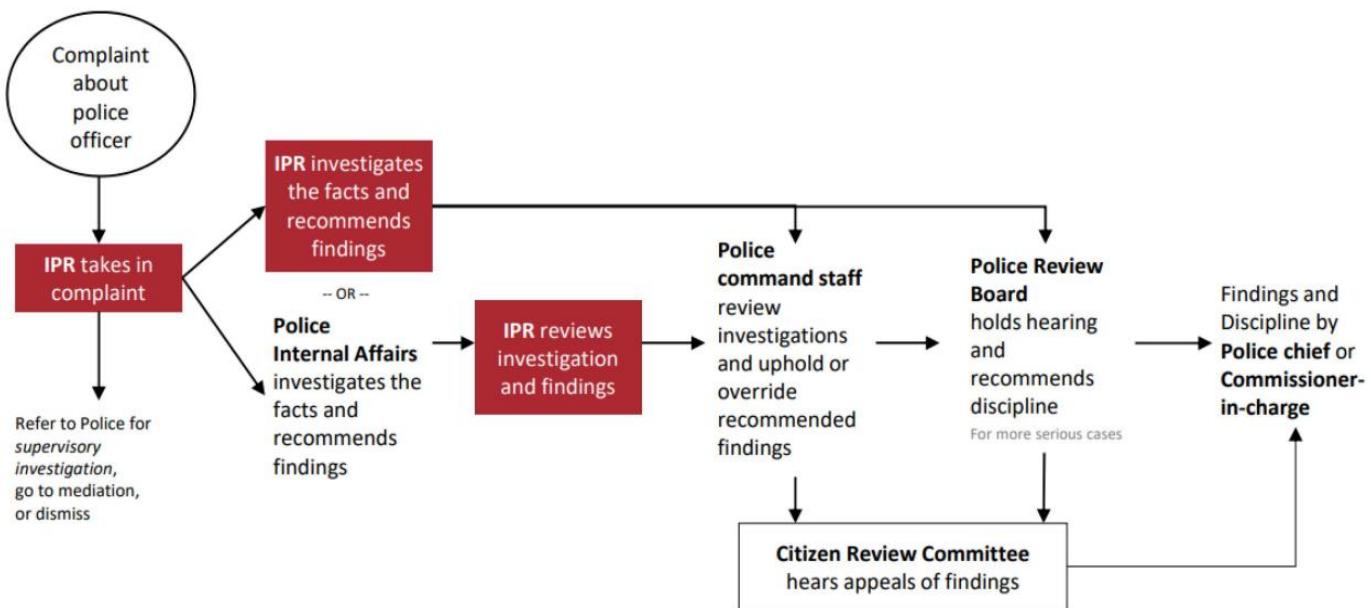
Police accountability involves holding a police bureau and its individual officers responsible for effectively providing for public safety, while treating individuals fairly and within the bounds of law. *Civilian oversight* is the organized involvement of city residents, independent of their police bureau, to review officer misconduct and/or the policies and practices of the Bureau. The City of Portland has different entities to hear appeals or review allegations of misconduct by officers of the PPB, make recommendations on policy and discipline, and impose discipline. See Table II-1 which compares a few key oversight agencies.

In addition, the Mayor, Portland City Council, the Chief of Police, the District Attorney, the Portland Police Association, and the police union arbitration process play different roles in oversight and accountability. Each of these bodies and officials will be discussed in this section.

Table II-1 Current Police Oversight Responsibilities

Independent Police Review (IPR)	Citizen Review Committee (CRC)	Internal Affairs (IA)	Police Review Board (PRB)
See Chapter II.2	See Chapter II.3	See Chapter II.4	See Chapter II.4
Est. 2001	Est. 2001	Est. 1971	Est. 2010
Under jurisdiction of city auditor	Under the auspices of the IPR	Under jurisdiction of PPB	Under jurisdiction of PPB, in the Professional Standards Division
Does investigations	Holds public hearings	Does investigations	Holds confidential hearings
All 12 positions are staffed, hired by the IPR Director	Up to 11 citizen members	Led by sworn PPB Captain; all 15 staff are members of PPB	5 members on most non-lethal matters; 7 on lethal and other serious matters
All civilian staff, no volunteers	All civilian volunteer members	No civilian representation	1 or 2 civilian members, rotating; sworn officers on all boards hearing cases
20 investigations in 2019	3 appeal hearings in 2019	70 investigations in 2019	33 hearings in 2019
Investigates complaints on non-lethal matters	Hears community or officer appeals of cases from IPR and IA (not deadly force)	Disciplinary cases referred by IPR or Bureau staff	Hears all cases in which penalty could be time off without pay or more severe; includes deadly force cases

Figure II- 1. What happens when a resident or PPB staff makes a complaint about an officer.¹⁴



2. City Auditor's Independent Police Review (IPR)

The IPR Director and staff report to the City of Portland Auditor's Office. The auditor is an independent elected official.

When the IPR was established in 2001, officer-involved shootings and deaths in custody continued to be investigated by Internal Affairs (IA) as described below.¹⁵ Shootings and deaths also undergo reviews by independent experts such as the OIR Group once the cases are closed.

The IPR's primary responsibilities include receiving community complaints about PPB officers, conducting investigations, issuing reports, and recommending policy changes. IPR also reviews IA's investigations of officer-involved shootings, sits in on the PRB hearings case of officer misconduct cases, and coordinates the appeal hearings before the CRC. IPR prioritizes the following types of cases for investigation:

- Force complaints and complaints related to crowd control
- Complaints involving officers of a rank of Captain or higher
- Allegations of disparate treatment of vulnerable populations, such as juveniles, persons experiencing mental illness, or those with disabilities

¹⁴ Infographic from Independent Police Review Website, 2020.

¹⁵ Ordinance 183995 As Amended: Clarify composition of Police Review Board and applicability of code provisions (Ordinance; amend Core Section 3.20.140 and amend Ordinance No. 183657). Filed June 11, 2010. Auditor Blackmer, in office at the time, developed the proposal leaving shootings and deaths in custody out of IPR's job description.

- Allegations of negative treatment based on race
- Other high-profile cases at the discretion of the director

a. Staff of IPR

The auditor hires the IPR director who in turn selects the rest of the IPR staff. In addition to the director, the IPR has a deputy director, two coordinator/supervisors, a management analyst, seven investigators, a support specialist, and an outreach coordinator.

b. IPR Process

After a community member files a complaint or PPB staff alleges misconduct, an IPR investigator does an initial review that takes 14 to 21 days and then determines if the actions, if true, would be in violation of PPB policy.

After the initial review, the following actions can be taken:

- *Administrative closure.* Most reviews are closed because the action, as described in the complaint, was consistent with Bureau policy. A number of other cases are dismissed at this time for a variety of reasons, such as the officer being a member of an organization other than the PPB, the investigator being unable to make contact with the complainant, inability to identify the officer, or the complaint being withdrawn.¹⁶
- *Precinct referral.* Precinct referral occurs if the officer's behavior was not out of policy, but the incident nevertheless is referred back to the precinct so it can follow up with the complainant, explain the policy implications, and perhaps have the supervisor talk to the officer about a more effective way the situation could have been handled.
- *Supervisory investigation.* Cases involving minor rule violations can be referred back to the member's supervisor for investigation. The supervisor reviews available documents, contacts the complainant, and reaches a conclusion about whether or not the officer's actions violated Bureau regulations. The supervisor submits their conclusions to their section manager, then talks to the involved officer and shares the community member's perspective. The supervisor gives suggestions for how the incident could have been handled more productively. The supervisor conveys the Bureau's expectation of compliance with rules and quality of service and follows up with the complainant to explain the resolution of the matter.¹⁷

¹⁶ Dismissals are grouped under the definition of Administrative Closures per City Code 3.21.120 C.

<https://www.portland.gov/code/3/21/120>.

¹⁷ <https://www.portlandoregon.gov/police/article/759429>.

- *Full investigation.* The initial review indicates that, if true, the action would be contrary to PPB policy. The case is assigned to an investigator in either IA or IPR.
 - If the complaint originated at IPR, the case is assigned to an IPR investigator for a full investigation.
 - If the allegation of misconduct came from a PPB staff member, then it is referred to IA for investigation, unless the complaint involves someone of the rank of captain or above. All deadly force cases automatically go to PRB for review.

A full investigation is supposed to take no longer than 70 days. The investigator talks to the complainant and interviews the officer and any witnesses. The investigator reviews reports and related documents. At the end of the investigation, the investigator can recommend one of four conclusions:

Table II-2 Possible Outcome Determinations¹⁸

Exonerated	The action of the officer was within Bureau policy
Sustained	The action happened as alleged and was out of policy
Not Sustained	The conflicting evidence available does not make it clear one way or another if the action took place as alleged
Unfounded	There is no credible evidence that the action took place as alleged

The investigator writes the findings to support their conclusion. The report and evidence are reviewed by an IPR manager. These findings then go to the officer's command staff, who can accept the recommended findings and conclusions or write their own conclusions.

At this point, the complainant and the officer are informed of the outcome of the investigation. The complainant can accept the outcome of the investigation and the case will be closed. If the allegations are sustained, the officer will receive the appropriate discipline according to the Discipline Guide. If the officer or the complainant do not agree with the outcome, they have the right to appeal the decision to the CRC.

c. Results of the IPR's work in 2019

According to the 2019 annual report,¹⁹ which represents a typical year for IPR, it received 408 complaints concerning police misconduct. Of these, 38% (155) were closed administratively. Most of them were closed because the alleged behavior, even if true, was within policy.

¹⁸ Portland Police Bureau Discipline Guide, February 28, 2014. <https://www.portlandoregon.gov/police/article/482707>.

¹⁹ 2019 IPR Annual Report. Independent Police Review, 2019.

Outcomes of IPR complaints that were not closed administratively:

- 23% (92) were investigated by IA or IPR.
- 19% (76) were sent to Precinct Referral (where the complaint is determined to not involve misconduct, but is sent to the precinct commander for his/her information).
- 18% (75) sent to Supervisory Investigation (where the complaint is determined to not involve misconduct warranting discipline, but “the officer could benefit from coaching”).
- 1% (6) were sent to Mediation.
- 1% (4) were Pending as of early 2020.

d. Evolution of the IPR

Figure II-2 Timeline of Changes at IPR from 2001 to 2019.²⁰



e. Barriers to Effectiveness of IPR

In 2016 and 2017, IPR developed the 2017–2021 Strategic Plan,²¹ which focused on creating more transparency in their operations, becoming more independent from the PPB, and developing a more efficient process for gaining data from the Bureau.

IPR’s 2019 progress update on these strategic goals noted continuing difficulties:

- IPR still does not have a system where it can look directly at PPB records. It has to request information from the Bureau and wait for a response, which contributes to the delay in completing investigations.
- IPR’s ability to directly compel officers to testify is still a challenge. Officers must be interviewed in Bureau offices. A member of IA must be present, who must tell the officer that he or she is required by the chief to answer questions.
- The authority to propose findings was given to IPR in 2018, to speed up the process. The captain still must approve of findings drafted by IPR investigators.

²⁰ One Page Info Sheet. Independent Police Review, 2020.

²¹ Strategic Plan 2017–2021. Independent Police Review, 2017.

3. Citizen Review Committee (CRC)

Created in 2001 as part of the IPR, the CRC is a civilian-populated body that hears appeals about police misconduct to determine whether a Bureau finding is supported by the evidence. According to City Code 3.21, the primary responsibilities of the CRC are to improve police accountability, promote higher standards of police services, and increase public confidence. The Committee performs four primary functions:

- Gather community concerns about police services
- Help the IPR Director develop policy recommendations to address patterns of problems with police services and conduct
- Review and advise IPR and IA on the complaint handling process
- Hear appeals from civilians and officers, and publicly report the findings

a. CRC Membership

Members appointed to the CRC must be Portland residents or business owners. They are appointed to three-year terms. Potential members apply through IPR, and from this pool, the city auditor selects names to submit to Portland City Council. The city council has final approval to appoint CRC members.²² The 11-member CRC is representative of the diverse communities in Portland. As of this writing, Candace Avalos, appointed in September 2017, chairs the committee.

In early September 2020, three board members resigned from the committee. Two resigned due to what they saw as the use of excessive force by local officers and federal agents, and the lack of accountability in the police bureau. The third moved out of Portland due to work. At his resignation, Adam Green shared:

We continue to witness excessive force used by officers on the streets. Members of the media continue to be threatened. Armed Trump supporters are allowed to parade through downtown Portland while pointing guns at people that aren't wearing Trump gear. These are just a few examples of a failed system with failed leadership. I can no longer support this system in any way.²³

CRC members become frustrated when they do not believe their recommendations are taken seriously and their hard work is not valued. The CRC is recruiting new members to fill the vacant seats.

²² *Citizen Review Committee 2020 Recruitment*. Citizen Review Committee, 2020.

²³ Ellis, Rebecca. "'Failed system ... failed leadership': 3 resign from Portland's police oversight board in 24 hours." *Oregon Public Broadcasting*, September 2, 2020. <https://www.opb.org/article/2020/09/03/police-oversight-board-portland-resign/>.

b. CRC's Appeal Process

In specified circumstances either the citizen who made the complaint or the officer who was accused of misconduct can appeal the result of the investigation to the CRC.

Complaint Process. When a community member files a complaint alleging police misconduct, the IPR or IA conducts its process described in the sections above. If the result is “Sustained,” defined as a violation of policy or procedure, the police officer can appeal that decision to the CRC. For allegations which have not been sustained, the community member can appeal the decision to the CRC. Sometimes officers appeal “Not Sustained” findings to the CRC because they believe the finding should have been exonerated.

Appeal, Hearing and Decision Process. Once notified of an appeal, the CRC sets a hearing date. Each member must read the entire case file to ensure the necessary information is ready for review. At the CRC hearing, the complainant can testify, make use of an advocate, and bring witnesses and other information. An officer has the same rights, whether responding to a community member’s appeal or appealing a sustained finding. The CRC can vote to: (1) affirm the Bureau’s findings; (2) challenge the findings; or (3) send the case back for further investigation if, in the CRC’s judgment, critical information was not covered in the investigation.

If the CRC challenges the findings, it notifies the Chief of Police. If the chief accepts the conclusion, the officer receives notification of the new finding, which if “Sustained” includes a disciplinary action. If the chief disagrees with the CRC’s conclusions, the CRC schedules a conference hearing with the chief. At the conference hearing, the chief and the CRC discuss their views about the case and try to persuade each other as to their point of view. If the two sides can’t agree, the case will go to Portland City Council for a final decision. This is rare. Most cases are resolved at the conference hearing.

CRC hearings contribute to transparency, they increase the public’s understanding of the workings of the Bureau and the IPR, and CRC’s policy recommendations can improve Bureau policies and processes.

Since the creation of the CRC, the community has continuously recommended strengthening its role. In 2014, under the DOJ Settlement Agreement, the CRC received authority to require further investigation be done by IPR or IA, with the results expected in ten days. Previously, CRC’s votes for further investigation were considered recommendations.

c. Results of the CRC’s Work in 2019

In 2019, CRC heard three appeals, and affirmed the findings in all three cases, thus ending the complainant’s appeal of those findings.²⁴

Other work of the CRC includes policy recommendations. The CRC has recently revived its workgroups, which include the following:

²⁴ 2019 IPR Annual Report. Independent Police Review, 2019.

- *Policy and Outreach*'s mission is to engage the community to raise awareness about the CRC, gather concerns about police services and accountability, and identify issues for the CRC to address.
- *Recurring Audit* seeks to improve accountability of the IPR and PPB by reviewing closed cases and other relevant data to ensure procedures, policies and protocols are appropriate and followed, and that recommendations for improvements are made based on emerging evidence and analysis.
- *Crowd Control and Use of Force* examines existing use of force policies, training, and tactics of the PPB, reviews best practices, legal standards and other information, and makes recommendations.

Over the years, such workgroups have published recommendations on policies (such as towing cars, use of profanity, bias-based policing, crowd control), on IPR functions (mediation, case handling), and on the structure of the oversight system itself.

d. Barriers to Effectiveness of CRC

Portland City Council is under tremendous pressure to improve police accountability. CRC Chair Candace Avalos has been open to improving CRC, and there are many avenues available. She recommends “that accountability be within every system connected with policing. The culture of letting officers get away with misconduct over and over again needs to change. Accountability *first* is the only way to change the current culture. All of the internal systems need to be lined up around this concept to make positive change happen.”²⁵

Some conditions hamper the effectiveness of the CRC:

- *Poor Annual Reporting by the IPR of CRC Actions.* On May 7, 2020, the IPR released its 2019 Annual Report, which was only five pages with minimal data and coverage of police accountability.²⁶ Community advocates from Portland Copwatch noted various reasons for disappointment: CRC activities were misrepresented, such as the number of hearings CRC held, and the report omitted the CRC's May 2019 appeal which led to its first-ever sustained finding by Portland City Council. This was not the first time IPR mis-reported on the CRC. In the last several years, the IPR Annual Reports have been less than 20 pages and do not have the kind of analysis of trends expected from a vibrant police oversight body.²⁷
- *CRC Membership Turnover.* At the time of writing this report, the CRC is short three members due to recent resignations. Prior members have resigned throughout CRC's existence, often due to frustration with the powerful systems that stand in the way of the CRC making substantive changes. The transition to a new civilian oversight board creates new ambiguity about the CRC's role.

²⁵ Candace Avalos interview, August 26, 2020.

²⁶ *The People's Police Report #81.* Portland Copwatch, September 2020.

²⁷ *Ibid.*

- **Standard of Review.** Since day one, the CRC has been burdened by a narrow “standard of review,” which is the standard used for finding that an officer violated Bureau policy. The CRC has tried unsuccessfully to change this from the “reasonable person” standard to the less subjective “preponderance of the evidence,” which is used by most other oversight bodies. This is an important point of distinction, which merits further explanation.²⁸

The “reasonable person” standard asks whether a reasonable person, in light of the evidence, could make the same finding as the commanding officer did, regardless of whether the CRC agrees with the finding. This standard is more deferential to the commanding officer’s viewpoint and does not give the CRC the ability to use its independent judgment.

The “preponderance of the evidence” standard would give CRC the ability, after weighing the evidence, to determine whether it is more likely than not that the officer’s actions were out of policy and whether it should challenge the commanding officer’s findings.

The Luna-Firebaugh 2008 report strongly recommended the change from “reasonable person” to “preponderance of the evidence” standard. After months of study in 2017, the CRC brought a formal proposal to change the standard of review to the city council. Individual city commissioners had voiced support for the change in conversations with CRC members and community advocates. However, when the proposal for the change came up for a formal vote at a city council meeting, the city auditor and the PPA voiced strong opposition, and at that point the council was not willing to make the change in the face of the opposition. This defeat was a major disappointment and source of frustration for CRC members.

The reasonable person standard is part of the Settlement Agreement, but it is buried in the definitions section. Some opponents to the change have said there is no way the City can change the standard of review because it is confirmed in the Settlement Agreement. However, representatives of the DOJ have said they would have no objection if the City wanted to alter the standard of review.

In our interview with CRC Chair Avalos she expressed concerns about how decisions are made because it “has become increasingly clear that the police have a different idea of what behavior is acceptable than members of the community.”

One case heard in 2020 and 2021 illustrates the ways the CRC helps civilians navigate their interactions with police—and frustrations they may face. A woman brought a complaint against an officer who failed to help her recover her stolen car, refusing to accept a stamped DMV “Notice of Transaction Submitted” as evidence that she had just bought it. The CRC recommended a finding of misconduct. The CRC held a conference hearing with the Bureau to discuss why the Police Bureau refused to accept the Committee’s recommendation... [continued]

²⁸ Recommendations related to the Standard of Review can be found in Section V. In 2011, an analysis of the standard of review problem was completed by Dan Handelman of Copwatch. His full summary is included in the online appendix.

...A reading of the Bureau's directives regarding stolen vehicles led the CRC to once again ask for a sustained finding of misconduct on an original 4–3 vote. Chief Chuck Lovell disagreed, saying the finding should have been "not sustained with a debriefing." The case is scheduled to be heard by city council in April 2021.

4. Police Review Board and Internal Affairs (PRB & IA)

As shown in the chart at the beginning of Section II, two other city government agencies also conduct investigations and hearings on police misconduct cases. While the IPR and CRC function under the auspices of the City Auditor's Office, the Police Review Board (PRB) and Internal Affairs (IA) are under the direction of the Professional Standards Division of the Portland Police Bureau.

The PRB hears deadly force cases and other cases where the expected discipline would be time off without pay or more severe discipline if the allegation is sustained. Most of the cases it hears are initiated by Bureau staff, although it does hold hearings on a smaller number of community complaints.

a. Internal Affairs

Internal Affairs investigates complaints and refers a subset of them to PRB for hearings. Community complaints are referred to IA from IPR.

When an allegation of misconduct comes in, it is assigned to an investigator and a sergeant oversees the investigation. Most allegations of misconduct come to IA from PPB staff, but it also accepts a smaller number of community complaints about officer behavior. When the investigation is complete, the report is sent to the lieutenant who reviews it to make sure it is complete, thorough, and unbiased. Next, it goes to the Responsible Unit (RU) manager, who approves or revises the draft findings. The completed investigation is also reviewed by IPR staff.

IA is led by a sworn PPB Captain who reports to the commander of the Professional Standards Division. The Captain has a staff of eight investigators, two sergeants, three clerical workers, and a lieutenant.

b. PRB Membership

The PRB was established formally in city code on August 13, 2010. The PRB has five voting members when hearing non-lethal matters: (1) an officer who is a peer of the accused officer; (2) the officer's commander who wrote the findings based on the investigation; (3) an assistant chief of police (whichever one of three oversees the officer involved); (4) a representative of IPR; and (5) a civilian member chosen from a pool of 15 community persons maintained by city council.

When hearing officer-involved shooting or other high-stakes cases, the PRB has seven voting members who include, in addition to the members named above, an additional peer officer and a CRC member. The civilian members get extensive training about the process before participating in a case review. Several other PPB staff members are in the room to observe the process and answer questions. Civilians involved in the case are not allowed to attend the hearing and cannot have their representatives present their side of the story.

c. PRB Process for Resolving Cases

All deadly force cases (and other serious cases) are scheduled for hearings before the PRB. All voting members must read the file, which can include recordings of interviews with witnesses, reports of various kinds, and the proposed findings based on the investigation. Often cases will involve several allegations, each of which is considered and voted on separately. There are four possible outcomes for each allegation, the same outcomes as in IPR cases, which are detailed in Table II-2: Exonerated, Sustained, Not Sustained, Unfounded.

At the hearing, the staff presents a summary of the investigative process and the basis for coming to the conclusions in the findings. PRB members may ask questions. Observers are not allowed to ask questions, but they can respond if they are asked for factual information from a PRB participating member.

After the group has voted on each allegation and determined a result, the group recommends a discipline for each sustained allegation, based on the Bureau's Discipline Guide.²⁹ For each alleged misconduct, there are three levels of discipline:

Table II-3 Possible Levels of Discipline³⁰

Presumptive	This discipline level would be expected to follow a sustained allegation of prohibited behavior.
Mitigated	This level identifies a lower level of discipline because mitigating factors are identified, such as an exemplary conduct record, letters of commendation, or other factors showing that the action was accidental rather than intentional.
Aggravated	This indicates a higher level of discipline because of aggravating factors such as similar misconduct in the past, other procedural mistakes, or disregard for the wellbeing of the civilian who is the target of the misconduct.

²⁹ PPB Directive #332.00.

³⁰ *Ibid.*

After the hearing, the PRB Discipline Coordinator, who is responsible for ensuring discipline is carried out, writes up a detailed summary for the Chief of Police giving the votes on the allegations and discipline. Board members will often be split on the recommended discipline, even if they agree the allegation was sustained. The chief can raise or lower the discipline the officer will receive and has on occasion altered the proposed findings.

There are different levels of discipline for officer misconduct, listed here in order of increasing severity:³¹

- Command Counseling
- Letter of Reprimand
- Suspension Without Pay (SWOP)
- Demotion
- Termination

PRB Transparency. The PRB releases reports on the results of their hearings about twice a year. The reports tell little about the events themselves, and all the names and genders of the officers, the witnesses, and the victims are blacked out. Often the division they work in is redacted, and participants in the incident are referred to as Officer 1, Witness B, and so on. The public receives results of the voting count but does not know how the civilian members voted or if their votes differed from the votes of Bureau members. This lack of transparency is an ongoing source of frustration for community advocates trying to determine if this part of the accountability system is effective.

d. Challenges to PRB Decisions

The officer or the community member can appeal the decision of the PRB to the CRC, if the PRB received the initial complaint from a community member. This does not apply to deadly force cases or to allegations initiated by PPB personnel.

The PPA can contest the chief's discipline decision and the case goes to arbitration, which is detailed in a later chapter of this report. The PPA usually does not contest the results of lower-level misconduct cases but almost always contests discipline in deadly force cases. The City has not won an arbitration case in officer-involved shootings in many years.

e. Results of the PRB's Work in 2019

The PRB is required to produce two reports a year on the results of their hearings. We will summarize the discipline actually imposed in 2019 based on the PRB's published reports, to provide the scope of this agency's work as compared to IPR and CRC.

³¹ *Portland Police Bureau Discipline Guide*, February 28, 2014. <https://www.portlandoregon.gov/police/article/482707>.

In 2019, the PRB held a total of 33 hearings. Often the hearings cover a number of different allegations and may involve more than one officer. Of these hearings, the discipline ultimately imposed included 14 command counselings, nine letters of reprimand, five one-day suspensions without pay (SWOP), one two-day SWOP, two one-week SWOP, one three-week SWOP, and one demotion.

Three officers retired and two resigned during the course of their investigations. One officer was exonerated at the end of the process. All eight officers involved in deadly force cases were found to be acting within policy.

The Chief of Police receives recommendations for levels of discipline from the PRB. In theory, the Police Commissioner (who is usually the mayor) approves all final decisions on discipline. In practice, the mayor accepts the chief's decisions in all but a few high-profile cases. The chief raised some levels of discipline, lowered others, and in one case changed the finding from a truthfulness violation to a "performance issue," to avoid the required automatic termination for untruthfulness.³² The one actual termination of an officer following an investigation was the result of an officer falsely claiming his police car had been struck by a civilian's vehicle.³³

Under the leadership of Danielle Outlaw, who served as Chief of Police from 2017 to 2019, we observed the use of less severe discipline: more command counseling and letters of reprimand and fewer suspensions. It is not possible to tell whether this is a change in the chiefs' philosophy or the different nature of the cases that came before the PRB that year.

In the one case that went to the city council from the CRC, the community member alleged that an officer ticketed her for jaywalking in retaliation for taking photographs of police training vehicles. The city council voted in the complainant's favor, but the PRB continued to disagree and recommended the lowest level of discipline, command counseling. The chief ultimately imposed a letter of reprimand. This was the first time that the city council had ever sided with the CRC against the recommendation of the Chief of Police.

f. Barriers to Effectiveness of the PRB

- *Lack of transparency.* Because the reports from the PRB hearings have so many facts redacted, it is impossible for an ordinary Portlander to understand what happened. The reports do not give the date of the incident, the names of officers, witnesses, or victims. The genders of participants and the division name involved are blacked out. The descriptions of the event itself are brief, often eliminating critical details. As Portland police reform advocate Dan Handelman of the

³² Case #2018-C-0061.

³³ Case #2016-B-0003.

group Portland Copwatch³⁴ says, “We got a clause put into the city code saying that if the officers’ names were used in the media, that they can use their names in the PRB report. They are still not doing this. They have never done this.”

- *Absence of victim representation.* Neither the victim nor their representative is allowed to attend the PRB hearings, or to present facts to support their assessment of events. The PRB members hear only one side of the story.
- *Imbalance of community and Bureau power.* In most cases there is only one community member participating as a voting member of the five-person board. In addition, there is one civilian IPR staff member. In deadly force cases, the seven-person panel is made up of four sworn PPB staff, one civilian IPR representative, and two community members, one from the CRC and one from the city council list of those approved for participation.
- *Lack of consistency in civilian perspectives.* The civilian participating in PRB hearings is a rotating member drawn from a 15-member roster, who is required to keep all discussions confidential. When a CRC member is added in deadly force cases, members also are required to keep all deliberations confidential. They have no opportunity to confer with one another or to report to the public their observations of the PRB process and whether it is fair and balanced.
- *The process misses core concerns.* In cases of deadly encounters, the emphasis at the hearing is on whether the officer’s actions were within policy, rather than considering all the actions that led up to the deadly encounter. Members of the Police Review Board panel might fail to explore alternate courses of action that could have made it possible to avoid using fatal force, even if the officer’s actions fell within Bureau policy.³⁵
- *The process takes too long.* Multnomah County Sheriff Mike Reese (previous Portland chief of police) noted that the lengthy process before discipline is imposed undermines its effectiveness. Within six months of the event, the officers have moved on with their lives and discipline would not have the same effect in modifying their behavior in the field, as it would if the response to the action had come more promptly.
- *Serial employment allows evasion of accountability.* Officers can avoid termination by resigning or retiring before the discipline is imposed. This is a serious concern because these officers

³⁴ Copwatch is a community-run private non-profit that has been monitoring PPB activities for almost 30 years. It issues in-depth newsletters three times a year explaining events that PPB publications gloss over. While they are often critical of police actions, they are accurate in their descriptions of events and policy violations.

³⁵ The hearing deliberation does not focus on whether options were available that could have made it possible to avoid the use of deadly force. The OIR Group, a third-party consultant that conducts independent reports and recommendations on police shootings, released a report in April 2020 noting four examples where evaluations of decision-making were cut short. It stated, “The problem may be rooted in a tension between two fundamental questions: was the shooting in policy? And what could we do better next time? The bureau’s model emphasizes the first question, but does not impose any requirement to explore the second question. The question about policy compliance is, of course, vital to determine whether discipline, remedial training or other action is called for, but the question of ‘next time’ is how a learning organization completes a truly internal analysis.” OIR report 2020.

may be hired by another law enforcement organization without the new employer knowing of the allegation of misconduct or results of the investigation.³⁶

An officer was driving home from a gathering at a friend's house in a city-issued vehicle when the car crashed, knocking over a light pole and hitting a tree. The impact totaled the police vehicle. After a field sobriety test, the officer was taken into custody. He later pleaded no contest in Multnomah County Court on the charge of driving under the influence of intoxicants. The PRB recommended termination and the chief agreed, but the officer resigned, successfully avoiding an official termination on his record.³⁷

5. The Mayor, City Council, Chief of Police, and District Attorney

In addition to the existing oversight and accountability bodies described so far, other public officials have important roles to play: setting and reforming policies, reinforcing or changing police culture, and weighing in directly on decisions about individual officers' behavior. Several of these key figures and their powers are described in this section.

a. Mayor and Chief of Police

Since its establishment in 1851, the City of Portland has elected 53 mayors, who are the public face and voice for the city. They are also responsible for assigning the City's departments to commissioners, who appoint and oversee their department directors. Mayors almost always assign themselves the position of police commissioner.³⁸ For purposes of this report, we refer to the police commissioner as the mayor. The chief of police is appointed by and serves at the discretion of the mayor in an at-will position. Since 1870, there have been 47 chiefs of police, six in the last ten years.

The mayor and the chief work in tandem to ensure the Bureau operates effectively to maintain the safety and security of the city. The mayor responds publicly to community concerns about law enforcement actions. The mayor is responsible for directing policy at the Bureau and for proposing solutions for the city council to consider when problems arise.

The chief is responsible for day-to-day operations of the Bureau, which must be in line with city code, state statutes, and adopted PPB directives (the Bureau's operating procedures and policies). The chief receives recommendations for discipline from the PRB and can alter the level of discipline using the discipline guide, but in most cases accepts the PRB's recommendations.

³⁶ Recent state legislation seeks to establish a database of police employment records, to prevent this problem. See Section V.4 for details about legislative solutions.

³⁷ Case # 2018-B-0039.

³⁸ In 2008, Mayor Sam Adams assigned the PPB to Commissioner Dan Saltzman for a short time period. City Commissioner Charles Jordan was Police Commissioner from 1977 to 1981.

The mayor and the chief confer about the appropriate response in high-profile discipline cases. When the chief recommends termination of an officer, and the mayor agrees, the union can contest the firing. Then the mayor and the chief have to decide whether to go to arbitration or resolve the matter in some other way. If the mayor believes that the City is likely to lose at arbitration, one option is for the City to offer the officer a monetary settlement in return for the officer's willingness to retire.³⁹ While the City occasionally wins at arbitration in lower-level misconduct cases, the City has never won in deadly force cases.

If the case goes to arbitration and the City loses, the mayor consults with the city attorney and then decides whether to appeal the ruling. The one time the City took an arbitration decision regarding a firing to the Oregon Court of Appeals, in 2015, the City lost after a long delay and had to pay the officer four years of back pay.⁴⁰

The mayor and the City Attorney also play a role when a victim or the victim's family sues the City seeking a wrongful death determination by the courts. The City must decide whether to let the matter go to trial or to try to settle with the family out of court. In most instances from 2010 to 2020, the City chose to settle rather than go to trial.

b. Chief of Police and the Citizen Review Committee

The chief of police may become involved in the CRC process if the committee challenges the Bureau's findings and the chief disagrees with them. In that case, the chief attends a follow-up "conference hearing" with CRC members to discuss the basis of the disagreement. Usually, one side accepts the other's position and the controversy is resolved. If they are unable to arrive at a mutually agreeable finding, the matter goes to city council for a final determination.

c. Portland City Council

Portland City Council is a five-member team, including the mayor. The commissioners are elected city-wide for unlimited four-year terms. The council votes on any change to the city code that affects the PRB, the IPR, or the CRC. The council appoints the pool of civilians who periodically sit as members of the PRB when it holds hearings. In addition, the council appoints the members of the CRC from names submitted by the city auditor, as described in Section II.3.⁴¹

³⁹ In 2019, the City paid former PPB sergeant Gary Lewis over \$100,000 to retire, after he was fired for making racist remarks during a staff roll call. See Harriot, Michael. "Portland Police Sergeant to Cops: 'If You Come Across a Black Person, Just Shoot Them.'" *The Root*, January 31, 2019.

⁴⁰ Jaquiss, Nigel and Tess Riski. "For Nearly 80 Years, the Portland Police Association Has Wielded Power in a Town That Doesn't Like Cops. That Power Is Now Under Siege." *Willamette Weekly*, June 24, 2020.

⁴¹ *Citizen Review Committee 2020 Recruitment*. Citizen Review Committee, 2020.

The CRC has urged the city council to change the standard of review from "reasonable person" to the more widely used "preponderance of the evidence" standard. The council has refused to make the change.⁴²

In 2015, the auditor took a proposal to city council to merge the PRB and the CRC and discontinue public testimony at hearings. City council rejected these recommendations. In fall 2020, Portland City Council referred Ballot Measure 26-217 to the voters to establish a new stronger civilian oversight process, which passed at the November 2020 election. This measure is discussed in Section IV; city council will be instrumental in formulating this new body.

The council also must hold hearings when the chief of police and the CRC cannot agree on whether an officer's actions were within policy or not. From 2002 to 2020, this has only happened three times. Hearings were held in 2003, 2017, and 2019; another is scheduled for 2021. These are open hearings where the CRC, the complainant, and the chief or a representative explain their positions to Portland City Council; IA and others from the PPB may also present. In the first two hearings, city council sided with the Bureau's findings. In the latest case, the council accepted the CRC's conclusion that the officer acted in retaliation, which is forbidden by Bureau policy. This was seen by the CRC and many observers as a victory for the civilian oversight system.

d. District Attorney

Many criminal justice advocates point out that the District Attorney is one of the most powerful people in the legal system⁴³—and one of the few who is elected. Though competitive races for District Attorney are rare, this is one spot where voters can play a role in shaping who is in the position to decide what crimes are prosecuted and to hold police accountable for misconduct.

In Multnomah County, all fatal shootings by officers are automatically referred to the District Attorney's office, which is responsible for determining if the officer committed a crime. This investigation is completely separate from the administrative investigation carried out by IA, whose task is to determine if the action of the officer is consistent with Bureau policy as spelled out in PPB's directives.

In Multnomah County, almost all officer-involved shootings are sent to a grand jury. This was the established practice put in place many years ago. The rationale behind this is that the grand jury is a group of citizens who would provide a check if law enforcement were trying to cover up criminal intent by a Bureau member. Since 1969, a Multnomah County grand jury has returned only one criminal indictment in an officer-involved shooting, in 2011.⁴⁴

⁴² See Sections II.3 and V for discussion of the standard of review. Proposal available at <https://www.portlandoregon.gov/lpr/article/688984>.

⁴³ See platforms of the Pacific Northwest Family Circle or the Oregon DA For the People campaign.

⁴⁴ Officer Dane Reister accidentally shot a suspect, injuring him. Officer Reister was charged with assault but died by suicide before the trial. Smith, Marty. "Has a grand jury ever indicted a Portland police officer for an on-duty shooting?" *Willamette Week*, October 3, 2016.

6. Portland Police Association and Collective Bargaining Agreement

The PPA was established 1942 and is the longest continuously operating police union in the United States.

a. PPA Membership and Objectives

The PPA represents 880 staff within the PPB and remains a powerful force in the actions of the Bureau. The strong, stable leadership of the union and the more dynamic changes in City management (namely, the chief of police and mayor) from 2010 to 2020 have made it difficult to maintain a healthy balance of power between the two entities. While the PPA has had the same president during this period, there have been eight police chiefs and three mayors. In October 2020, the long-term PPA President announced his retirement and his long-term Vice President was elected to take the helm. In March 2021, leadership changed again, and the former president is now back on the job as an interim leader.

Efforts to achieve transparency and accountability in Portland policing can be blocked by actions of the union because of the role it plays in representing members in discipline cases and in protecting officer interests in union contracts. Given that the union functions as the advocate for its members, those members have a vested interest in a powerful union. Changes that involve organizational cultures and attitude modification are challenging if faced with union opposition.

b. Collective Bargaining Agreement (Union Contract)

Under state law, public safety unions are not able to strike. Therefore, state statutes have created other tools for resolving disputes between management and a labor union. During contract negotiations, the adversarial roles of union and management can be intense and competitive.

For Portland City Council to successfully implement the 2020 ballot measure in support of a new civilian oversight board—Measure 26-217—it must make changes to state statutes and city code, as well as the current language of the Portland Police Department's collective bargaining agreement, the “Union Contract.”⁴⁵

The current PPA contract with the City of Portland was scheduled to expire on June 30, 2020. However, due to the impact of the pandemic and the public outcry over the killing of George Floyd, the parties agreed to extend the current contract through June 30, 2021. Negotiations for a new PPA contract began in January 2021.

The City must negotiate in good faith with the PPA and must follow current state law covering collective bargaining, known as the Public Employee Collective Bargaining Act⁴⁶ (PECBA), which lays out established procedures for both parties in the negotiating process and provides for binding arbitration when the parties cannot reach agreement.

⁴⁵ <https://www.ppavigil.org/wp-content/uploads/2017/04/PPA-CBA-Nov-16-June-20-searchable.pdf>.

⁴⁶ ORS 243.650-243.782.

c. Ways in Which the Union Contract Hinders Accountability

Several local groups⁴⁷ have identified language in the PPA contract that inhibits accountability for police officers, including the following challenges:

- Provisions in the current contract severely limit the scope of misconduct investigations and restrict how discipline is handled.
- The contract limits civilian jurisdiction in deadly force cases.
- The contract grants the officer being investigated privileges the public does not have.
- The contract does not allow civilians to file a complaint against an officer and have their identity and personal information protected from the offending officer.
- The “embarrassment clause” has been used to block transparency in reporting on how complaints from community members are resolved. The union contract currently states that “if the city has reason to reprimand or discipline an officer, it shall be done in a manner that is least likely to embarrass the officer before other officers or the public.”⁴⁸

This is not an exhaustive list of possible contract issues, some of which Ballot Measure 26-217 addressed. The PPA has opposed the city charter changes and will likely oppose changes to state statutes or contract language that it perceives will weaken the union or negatively affect members.

7. Arbitration and the Portland Police Bureau

Officers facing discipline may, through the PPA, request to have a finding of misconduct and proposed discipline adjudicated through arbitration. The right to request arbitration arises from the PECBA and Article 22 of the Union Contract, which is used because officers do not have the right to strike because of the nature of their work.⁴⁹

a. Arbitration Process

The arbitration process is launched when the PPA, defending an officer, contests a decision on discipline by the chief and requests arbitration to settle the conflict. A list of qualified arbitrators is provided by the Oregon Employment Relations Board. Both sides alternate in striking names from the list. The selected arbitrator has 30 days from the date of the hearing to submit an award. The arbitrator's decision is final, but the arbitrator has no power to "alter, modify, amend, add to or detract from the terms of the contract."⁵⁰

⁴⁷ See, e.g., <http://albinaministerialcoalition.org/>; https://www.uniteoregon.org/ppa_contract_letter.

⁴⁸ “City’s Top Proposals in Contract Negotiations Put Police Union on Defense.” *Portland Mercury*, January 14, 2021.

⁴⁹ ORS 243.736.

⁵⁰ Section 22.5 of the Portland–Portland Police Association Collective Bargaining Agreement (Nov 11, 2016–June 30, 2020).

b. Ways the Arbitration Process Hinders Accountability

An arbitrator must have a background in labor law, and so the existing pool of arbitrators used in Portland come to the work leaning toward technical protections for employees. This results in arbitration decisions that focus on process and may ignore how community members were harmed in a given incident.

Arbitrators can and do rely on prior decisions (precedent) regarding misconduct and discipline. Concerns about the reliance on precedent and the "just cause" legal standard have arisen in Portland, particularly relating to the use of deadly force. Complaints include improper and inconsistent decisions about what constitutes misconduct and what discipline should be imposed. Arbitrators also point out errors the City made in the investigation or firing process and use that as a reason to overturn the City's recommendation of termination.

The following story from the *Portland Mercury* illustrates these issues:

Portland police officers have been fired for sending threatening emails, lying about crashing a patrol car, and for having sex while on duty. But cops who are accused of committing far worse offenses—from fatally shooting an unarmed man in the back, to refusing to take a man who officers had beat nearly unconscious to a hospital—have kept their jobs, even after mayors and chiefs of the PPB have wanted to remove them from the force.... In Portland, every time a police chief or mayor has decided to discipline or fire an officer for inappropriate use of deadly force, the PPA has challenged the decision, thus sending the matter to arbitration. And every time, the arbitrator has overturned the police chief or mayor's decision.⁵¹

Arbitrators claim that their role is to conduct an independent review. But the current system allows no effective way to challenge the arbitrator's decision, no matter how flawed it appears.

The City's recent history of rarely winning in the arbitration process has made the City more likely to seek settlements than to rely on arbitration for recourse after violent incidents.

In 2020, Oregon modified the arbitration process in an effort to address these concerns.⁵² An arbitrator must now follow the disciplinary action recommended by a law enforcement agency if the arbitrator agrees that misconduct had occurred as charged and the discipline is consistent with disciplinary matrices. House Bill 2930 has been filed for consideration during the 2021 Legislative Session. It provides that an arbitrator cannot overturn a police agency's determination of misconduct and resulting punishment if there is evidence to support it. It also creates a Commission on Statewide Law Enforcement Standards of Conduct and Discipline and proposes to eliminate discipline guides or matrices from the collective bargaining process.

⁵¹ Zielinski, Alex. "Can State Legislation Fix Portland's Police Accountability Problem?" *Portland Mercury*, Feb 27, 2020.

⁵² Senate Bill 1604 was signed into law by the Governor on July 7, 2020.

The death of Aaron Campbell. In 2010, police were called for a welfare check on Campbell, who was grieving the death of a family member. The call was prompted by fears that Campbell was at risk of dying by "suicide by police."⁵³ Officers believed Campbell to be in possession of a gun that day, but he was unarmed when he was shot. A responding Portland Police Officer, Ronald Frashour, fatally shot Campbell in the back. The Police Chief, with the support of Mayor Adams, fired Frashour. But an arbitrator found the shooting "objectively reasonable" and reversed the firing. Mayor Adams' attempts to challenge the arbitrator's decision failed twice. Adams said, "[i]t broke my heart and burst a blood vessel in my brain.... The whole thing was sad and infuriating and proof positive that the civilians who run the City of Portland do not have control over their Police Bureau."

III. IN-CUSTODY DEATHS AND USE OF FORCE

1. Introduction and Background

The matter of police accountability is never more poignant and painful than when it entails community members dying. It is the deaths of loved ones and neighbors that bring people into the streets and city council chambers, raising their voices of grief and outrage. It is these deaths that prompt officials and police leadership to look deeper at the policies and practices that result in lethal harm. This chapter raises some concerns about lethal use of force and identifies some collective impacts of these losses. Previous sections have described existing mechanisms for investigating and addressing these deaths.

Since 2000, there have been 102 police shootings and 51 deaths caused by Portland Police officers.⁵⁴ Community members of color and those experiencing mental health issues are disproportionately represented in the list of victims of these shootings. African Americans have been disproportionately targeted by Portland police violence. From 2003 to 2020, 28% of those who were killed by police were Black, although African Americans make up only 6% of Portland's population. The use of deadly force by officers has often inspired massive outcries, public demonstrations, and a call for discipline of police.

A second population experiencing disproportionate numbers of police-involved shootings is people with mental illnesses. Between 2003 and 2020, at least half of the victims of fatal police shootings were mentally ill or experiencing a mental health crisis.⁵⁵ The DOJ Settlement Agreement identified the particular disparity in treatment for those in crisis due to mental illness at the time of a police encounter:

⁵³ Oregon Court of Appeals. *Portland Police Assn. v. City of Portland*, 2015.

⁵⁴ *Portland Police Shootings and Deaths in Custody: 1992-June 2020*. Portland Copwatch, July 2020. One more police shooting happened in December 2020. <http://www.portlandcopwatch.org/listofshootings.html>.

⁵⁵ *Ibid.*

Encounters between the PPB officers and persons with mental illness too frequently result in a use of force when it is unnecessary or higher than necessary, up to and including deadly force. We found instances that support a pattern of dangerous uses of force against persons who posed little or no threat and who could not as a result of their mental illness comply with officers' commands.⁵⁶

Another area of concern is in-custody deaths. The Portland Copwatch newsletter revealed that from 1998 to 2018, seven people died while in custody, in an article entitled "Portland Police Shootings and Deaths in Custody 1992–June 2020."

Table III-1 In-Custody Deaths⁵⁷

YEAR	NUMBER
2018	1
2011	1
2006	2
1999	1
1998	2
TOTAL	7

2. Use of Force Concerns and Criticisms

Use of force is a term applied to actions taken by police officers to compel compliance with their directives. "Use of force" spans a range of actions, from "force against resistance," to "less lethal force" which is not intended or expected to cause death or serious injury, to "serious use of force," which can be expected to risk death, disfigurement, or injury. On the farthest end of the spectrum lies "use of deadly force," also known as "lethal force." Lethal force is any use of force likely to cause death or serious physical injury, including the use of a firearm, carotid neck hold, or strike to the head, neck or throat with a hard object.

One of the greatest frustrations of the public after an officer-involved shooting is the lack of accountability for the officers. The *Oregonian/OregonLive* published a report on police killings on August 15, 2020: "From Kendra James to now, 40 dead in shootings by Portland Police: Here's what happened." The identities of the victims reflect the known disparities in police treatment: "Those fatally shot were disproportionately Black. At least half of the cases involved people with mental illness."

⁵⁶ DOJ Settlement Agreement. United States District Court, December 2012. The Settlement Agreement is detailed in Section III.4.

⁵⁷ "From Kendra James to now, 40 dead in shooting by Portland Police: Here's what happened." *Oregonian*, August 15, 2020.

Since 2003, per the report, “None of the more than five dozen policemen who fired on victims were ultimately disciplined or indicted by a grand jury, despite attempts to fire or suspend some of them.” In that time period, three officers were disciplined, but those actions were later overturned in arbitration with the police union. All told, 20 of the 65 officers who used deadly force in the shootings eventually earned promotions, and 55 of them currently work as police officers in Portland or the metro area.

3. Monetary Costs of Wrongful Deaths

One of the possible remedies a family may seek after the death of a loved one is a settlement with the City of Portland. These are monetary awards granted to survivors of a person who has died due to a police officer’s misconduct or negligence. Settlements are independent of internal discipline processes.

A July 2020 Portland Copwatch publication, “Top 25 Settlements: Portland Police Incidents Settled 1993–2020 (revised) Totaling roughly \$10.5 Million,” details the financial costs to Portlanders from the legal settlements, jury awards, and other judgments resulting from police officers’ lethal actions. The summary in the table below lists shooting deaths that resulted in wrongful death suits from 1995 to 2010.

Table III-2 Wrongful Death Settlements⁵⁸

YEAR	VICTIM/FAMILY OF	SETTLEMENT
2010	James Chasse, Jr.	\$1,600,000
2008	James Jahar Perez	\$350,359
2008	Dennis Young	\$200,000
2007	Raymond Gwerder	\$500,000
2005	Damon Lowrey	\$600,000
2002	Peter Gilbaugh	\$150,000
2002	Dickie Dow	\$380,000
1996	Janice M. Aichele	\$90,000
1995	Duane Anthony Shaw	\$100,000
TOTAL		\$3,970,359

⁵⁸ “Top 25 Settlements: Portland Police Incidents Settled 1993–2020 (revised) Totaling roughly \$10.5 Million” report. *Portland Copwatch*, July 2020.

There have been 66 shooting deaths by Portland police from 1992–2019, but none in 2020.

The Portland Copwatch “Top 25 Settlements” report noted that these 25 cases in total cost the City of Portland roughly \$12 million, which does not include other settlements from 1993 to 2020. An additional \$4.5 million was paid for two negligence cases, counted separately from active misconduct cases.

4. U.S. DOJ Settlement Agreement

a. DOJ Investigation and Findings

In 2012 the U. S. Department of Justice (DOJ) completed an investigation into the PPB to determine whether the Bureau used excessive force against people with mental illnesses.⁵⁹ The investigation had been urged by the Albina Ministerial Alliance Coalition for Justice and Police Reform and others. It issued a detailed report of findings that outlined deficiencies in responding to persons with mental illness or in a mental health crisis, inadequate reviews of officers who use force, and inadequate investigations of officer misconduct. The investigation found that the PPB did use excessive force against people experiencing mental health crises and identified areas which exacerbated these problems at a systemic level.

Subsequently, the DOJ and the City of Portland entered into a Settlement Agreement (the DOJ Settlement Agreement) that went into effect in December 2012. The agreement specified detailed actions in the following areas related to accountability:

- Use of force policy
- Training
- Crisis intervention
- Officer accountability
- Community engagement
- Agreement implementation and enforcement

Two sentences in the introduction to the Settlement Agreement set the tone for a cooperative relationship in working together to meet the requirements of the agreement:

The United States and the City of Portland recognize that the vast majority of the city's police officers are honorable law enforcement professionals who risk their physical safety and wellbeing for the public good... Specifically this agreement is targeted to strengthen the initiatives already begun by the PPB to ensure that encounters between the police and persons with perceived or actual mental illness

⁵⁹ While the DOJ investigation focused on disparities in force used on persons experiencing mental illness, this focus should not be interpreted as indicating a lack of racial disparities in police treatment. The evidence and impact of racial biases in policing in Portland are detailed elsewhere in this report.

or are experiencing a mental health crisis do not result in the unnecessary excessive use of force.⁶⁰

Under the terms of the agreement, the Bureau must remain compliant by meeting specific requirements for one continuous year before the agreement will be lifted.⁶¹ ⁶²

b. Compliance Officer and Community Liaison

Compliance is assessed by the auditing body, the Compliance Officer and Community Liaison (COCL). The COCL was created within the Settlement Agreement and exists independently from City offices.⁶³ Members of COCL are responsible for collecting and synthesizing data provided by PPB along with soliciting community input regarding the PPB's progress in complying with the terms outlined in the Settlement Agreement. The City hired Rosenbaum & Associates of Chicago to serve as the COCL in 2015.⁶⁴ This body provides quarterly written reports summarizing the PPB's compliance under the major categories outlined in the Settlement Agreement. The Settlement Agreement requires that COCL members be given access to all resources necessary to complete these reports. The reports must be made available to the public through the City's website and may also be accessed on the Portland COCL's website.⁶⁵

c. Results of Changes to Policies, Procedures, and Training

It appears that the City's efforts to comply with the requirements of the agreement have indeed produced positive change in a number of areas. Practices around use of force are one example.

The Settlement Agreement included a number of required changes to the Use of Force Directives (PPB's operating procedures and policies). The requirements emphasized de-escalation techniques along with more rigorous reporting procedures when an officer uses force, and discipline for unacceptable use of force. The DOJ investigation found that PPB officers were using their Electronic Control Weapons (ECWs, commonly known as Tasers) excessively, so there is a set of requirements specifically around the use of these devices.

In response to these requirements, the training division provided more scenario components to help officers develop skills in proactive problem solving, slowing down, looking for strategies to reduce tensions, and seeking alternatives to use of force. The Bureau provided quality instruction on how to respond to a person suffering from mental illness and increased the use of behavioral health specialists to assist in calls originating from a mental health crisis. It developed and delivered bureau-wide anti-bias training.

⁶⁰ Case 3:12-cv-02265-SI Document 4-1 filed 12/17/12 page 4 of 77, page ID# 37.

⁶¹ *Compliance and Outcome Assessment Report: Quarter 2 Updates & Analysis*. COCL, August 24, 2020.

⁶² *DOJ Settlement Agreement*. United States District Court, December 2012.

⁶³ *Ibid.*

⁶⁴ *About the COCL*. <https://www.portlandcocl.com/about-the-cocl>.

⁶⁵ *COCL Reports*. <https://www.portlandcocl.com/reports>.

The Portland Training Advisory Council (TAC) is a group of civilians who advise the PPB Training Division and Chief of Police on how to improve training on various issues, including how to reduce use of force. The Bureau reports to the TAC as part of the DOJ Settlement Agreement. In September 2020, the TAC received a report from PPB analyzing PPB's use of force from 2015 to 2019.⁶⁶ The report found that, after controlling for changes in how certain types of force were reported over the years, PPB's use of force rate (calculated by taking the number of people experiencing use of force per thousand arrests) decreased by 31 percent. The TAC attributes this change to a decrease in the following types of use of force: pointing of firearm, electronic control weapon, strikes/kicks, aerosol restraint, and control holds with injury. The analysis showed that this decline in use of force applied across gender, race, and perceived mental state.

The rate of force experienced by Black community members during this period declined by 35%, although compared to whites they still account for three times the proportion (by population) of deadly use of force. For community members perceived to be experiencing a mental health crisis, the study suggests the rate of force declined 45% compared to the rate in the previous five years. After 2019 became one of the deadliest years of police shootings in the last decade, no one died in a confrontation with Portland police in 2020.

While the overall rates of use of force might have decreased, African American Portlanders still experience use of force at a disproportionate rate. A July 2020 report by the TAC states that Black subjects are more likely than white subjects to experience force, at a rate of 44.8 force events per 1,000 custodies, compared to the rate of 30.6 for white subjects.⁶⁷ Under the DOJ Settlement Agreement, PPB must make data available to the public on use of force and misconduct complaints. In the third quarter of 2020, Black people comprised 26.1% of all use of force incidents and 23% of misconduct complaints while comprising approximately 6% of Portland's population.^{68 69}

d. Community Engagement

The Settlement Agreement mandated the establishment of a Community Oversight Advisory Board (COAB) to assess the implementation of the agreement, make recommendations to the Chief of Police and mayor, advise on strategies to improve community relations, and develop a community outreach plan. Sadly, the first COAB was doomed to failure. Its role was not clearly defined, meetings were contentious, the Bureau did not respond to any of its recommendations, members quit in disgust, and the mayor finally dissolved the group to start over.

A new group founded in 2018, the PCCEP, is demonstrating a practical process for developing solid recommendations. The City and the Bureau now are committed to taking the proposals seriously.

⁶⁶*Changes Over Time in Force Utilization by the Portland Police Bureau.* Training Advisory Council, September 9, 2020.

⁶⁷*Patterns in Portland Police Bureau Force Data Summary Reports.* Training Advisory Council, July 8, 2020.

⁶⁸*PPB Use of Force Report.* Portland Police Bureau, accessed January 16, 2021.

⁶⁹*Police Misconduct Complaints.* Independent Police Review, accessed January 16, 2021.

Advocates are hopeful that the PCCEP and TAC will be successful mechanisms for citizens to learn what is going on within the Bureau and have a way to give meaningful advice from a civilian point of view.

As an example, the TAC sent a letter dated July 8, 2020, to the mayor and city council titled “The Five Pillars of Public Safety Structural Reform.” It outlines how public safety could be improved by modifications in several areas: accountability, officer wellness, public safety specialization, procedural justice, and restorative justice. The full document outlining practical actions that could improve the Bureau’s performance is included in the online appendix to this report.

e. 2020 Compliance with Settlement Agreement and Black Lives Matter Protests

In January 2020, the U.S. DOJ found the City in substantial compliance with the requirements of the Settlement Agreement, meaning that if Portland could stay in compliance until January 2021, the Settlement Agreement would end. However, protests over the death of George Floyd and others dominated the summer of 2020, with protests ranging in size from dozens to thousands of protesters, held in various locations throughout the city. The federal government sent agents to downtown Portland in July, which exacerbated tensions, as federal officers were subject to different policies than local police.

While thousands protested peacefully in Portland, a small number broke windows, set fires, or threw objects at police. Portland Police shut protests down with force, claiming such action was necessary to protect the officers. They defended their unprecedented amount of chemical and impact munitions and other force against thousands of protesters. Protesters argued that the police response only fueled the protests, and that the police force was excessive and violated their constitutional rights. According to numbers released by the PPB, the police used force at protests over 6,000 times from April 2020 through September 2020, including a minimum of 216 baton strikes, 433 uses of pepper spray, and firing impact munitions 1,566 times.⁷⁰

While crowd control and police tactics are outside the scope of this study, the nature and ongoing duration of these protests impacted policing across the city. The extra hours used to staff protests impacted the overall workforce, and the widely broadcasted actions of officers (both local and federal) widened the gulf of distrust between public and police. In understanding the 2020 protests, it is important to recognize that Portland is no stranger to protest, and protest is a critical part of our national and local history. Additionally, as pointed out by the COCL, the actions taken by the PPB during its response to these protests are considered use of force, despite crowd control falling under a separate directive.

⁷⁰ Bernstein, Maxine. “Portland police report 6,283 uses of force during protests in 2020, but data has significant gaps.” *The Oregonian*, November 17, 2020.

The COCL addressed this issue in its October 2020 Quarterly Report:⁷¹

Although we still do not have all of the information needed, at this time, we feel compelled to comment on the protests and unrest in Portland and assess the impact of these events on the City's ability to maintain substantial compliance with the Settlement Agreement. Clearly, our nation is entering an important moment in history, where the systemic racial injustice that has occurred over the past 400 years throughout our nation is being called out and the public is demanding corrective action. Longstanding racial injustice in our country's criminal justice system is being exposed, including discrimination and excessive force by the police against people of color. Let us be absolutely clear about our position: The nonviolent protests in Portland and elsewhere around the country, demanding social justice, are an extension of the civil rights movement that has been the cornerstone of our democracy for many decades. Civil disobedience and public demonstrations are designed to be painful and uncomfortable to those who embody the status quo and fail to recognize the problem or the need for change. When John Lewis revisited the Edmund Pettus Bridge in Selma, Alabama on March 1, 2020, he advised those who care about racial equality to "Get in good trouble, necessary trouble, and help redeem the soul of America."

COCL's October 2020 report⁷² acknowledged that PPB faced unprecedented strain amidst a pandemic, historic protests, and budget cuts, but found that the PPB had failed to provide documentation to assess compliance (or was no longer in compliance) with obligations relating to Section III of the DOJ Settlement Agreement (Use of Force) and Section IV (Training). Specifically, COCL found that the PPB failed to properly document, report, and review uses of force. COCL reviewed a number of videos from the protests, including one where an officer struck a protester in the head with a baton. COCL stated concerns that PPB had not met the requirements of PPB Directive 1010.10, which governs use of force in protests. COCL also noted that the actual delivery of training in 2020 was problematic enough to bring PPB out of compliance. This was partly due to the pandemic, but PPB did not prepare a make-up plan to fill these training gaps until late August.

In early 2021, the U.S. DOJ found Portland to be out of compliance, resetting the clock; the Settlement Agreement will continue until the City has been in substantial compliance for a full year.⁷³

5. OIR Group Reports

The City has regularly contracted with outside experts to review the functioning of the Portland Police Bureau. The most important analysis of community members' deaths at the hands of

⁷¹Compliance and Outcome Assessment Report: Quarter 3 Updates & Analysis. COCL, October 6, 2020, p 3.

⁷²Ibid. p 4.

⁷³ Levinson, Jonathan. "After violent summer, Portland police once again out of compliance with federal oversight." Oregon Public Broadcasting, February 10, 2021.

police has been the long-standing contract with OIR Group, a California-based consulting firm that provides independent review of policing and other governmental agencies. OIR Group first started reviewing officer-involved shootings in Portland in 2004 and has issued seven reports since then, each covering several shootings by Portland police. The reports describe each event in detail, identifying actions officers took that were sound, as well as missteps that increased the likelihood of officers using lethal force.

Each of the seven reports includes a section titled "Common Themes and Issues." Reading these sections sequentially gives a sense of the progress made (or not) by the Portland Police Bureau in addressing problems identified by OIR Group. PPB has focused as much on improving officer safety and protection of the public as on limiting use of force against suspects. OIR Group made some suggestions repeatedly:

- Provide prompt medical attention to injured persons.
- Increase training in the use of tools such as ballistic shields and less lethal weapons.
- Make changes in directives covering foot pursuits, high speed chases, boxing in suspects' cars, and pointing guns at community members; these policy initiatives reduce risks to the officers and the public.
- Consider alternative courses of action to reduce tensions and hopefully lessen the use of force. These include slowing down, waiting for back-up, finding better cover before confronting a suspect, waiting for behavioral health staff, and re-evaluating the risks associated with trying to take the suspect into custody.
- Address communication breakdowns.
- End the practice of sergeants stepping out of their supervisory role and taking part in tactical engagement.
- End delays in completing investigations.
- Impose discipline for actions that were out of policy in the time leading up to the shooting.
- Follow through on issues brought up in investigations or training analysis that could possibly identify lessons to be learned from officers' faulty decision-making.

In each of its reports OIR Group gives detailed recommendations about how the functioning of officers in high-risk situations could be improved. Many of the specific recommendations have been adopted by successive chiefs of police over the years.

However, a concern remains that the Bureau's process focuses more on whether the use of force was within policy than on decision-making in the period leading up to the use of force, to determine what could have been done differently. There is currently no clear process for determining if a particular chief (a) considered OIR Group's recommendations for changes in policy, or (b) took steps to instruct staff to implement the new ideas. This makes it harder to assess the Bureau's progress in implementing OIR Group recommendations.

Additional information about OIR and links to all seven of its reports are available in the online appendix.

IV. CIVILIAN OVERSIGHT IN VOTER-APPROVED BALLOT MEASURE 26-217

In the summer of 2020, Commissioner Jo Ann Hardesty led Portland City Council in referring Measure 26-217 to the ballot in the wake of the police killing of George Floyd in Minneapolis and nationwide protests against police brutality. Voters approved the measure with 81.6% of the vote.⁷⁴ The measure adds a section to the city charter, authorizing the creation of a new police oversight board based on national best practices in police accountability. The board will be responsible for investigating:

- deaths in custody
- uses of deadly force
- complaints of force causing injury
- discrimination against protected classes
- constitutional rights violations
- other complaints of misconduct

The new board would have the authority, to the full extent of the law, to investigate complaints and to issue disciplinary action against sworn police officers and their supervisors. It would also have a budget guarantee to assure resources are available to complete the board's work. The oversight board would be authorized to directly influence the Police Bureau's policies and directives, operating independently from elected offices and City bureaus.

The measure passed by a clear majority. However, the measure only created a framework in the city charter for the new oversight board and several steps must be completed before the board may begin operations.

As one step, city council will adopt an implementing ordinance creating a commission charged with fleshing out the new board's operations. After incorporating community feedback and compliance with the framework in the city charter, that commission would complete a variety of tasks, including drafting administrative rules, an organizational chart, and a plan to transition from the City's existing IPR to the new board. These efforts are expected to take 12 to 18 months to complete. The commission would then summarize its work in a series of proposed city code changes and send those changes to the city council for adoption. The commission would then be dissolved.

Once the City adopts the necessary ordinances and complies with any other legal requirements it has, the new police oversight board will begin operations. During the board development period there may also be efforts in the Oregon Legislature to update state arbitration laws that, if left unchanged, will mean that state arbitrators and not the community oversight board would have final decision-making authority for some disciplinary cases.

⁷⁴ The final vote was 301,527 (81.6%) in favor and 68,088 (18.4%) in opposition, per the Oregon Secretary of State election report. The LWVPDX board formally endorsed this ballot measure.

The PPA opposed the measure, arguing that it violates the union's contract which has restrictions on how the City can discipline its police officers.⁷⁵ At the time of writing this report, the City of Portland has asked an Oregon state senator to draft a bill that would let the City move forward with a new oversight board without having to negotiate with the union over discipline.⁷⁶

It may take two years to implement a new police oversight board. In the interim, there is tension within the CRC and IPR. Auditor Mary Caballero opposed many aspects of the ballot measure. CRC Chair Avalos is supportive of the ballot measure and sees it as a positive step toward police reform, yet others have reservations. The complaint process remains uncertain through this transition period, as the roles and membership of CRC and IPR are in flux while the commission develops the new oversight system.

V. OPPORTUNITIES FOR CHANGE

When researching this report, we heard calls for improvement to our police systems. People on all sides believe that change is needed. From new and longtime community activists, to current and former elected officials, to PPB staff: everyone we spoke with recognizes opportunities for better policing in Portland. What improvements are needed is where views diverged. Some envision a Portland with fewer law enforcement officers, shifting responsibilities and resources to other entities that could provide services currently done by police. Other respondents point to culture changes and additional training. Some believe accountability and oversight should be prioritized. Some advocate for defunding police departments. Still others desire more officers and more community support for them.

What follows are selected concepts and themes from across our many interviews that paint a picture of what our community sees as the most pressing needs.

1. Improve Accountability for Officers Who Violate Public Trust

Local community groups are frustrated by the lack of accountability for officers. As evidenced in the History section earlier in this report, the frustration is not new.⁷⁷ The Urban League of Portland is one group that pro-actively engages the police as part of its work representing and serving Portlanders. It names the exasperation felt by many community members:

The excessive use of police force—such as officer-involved shootings that result in death—and the lack of police accountability are paramount concerns in our community. When community and police relations are poor, senseless shootings

⁷⁵ Bernstein, Maxine. "Portland police union files grievance, challenging voter-approved measure to overhaul police oversight system." *The Oregonian*, November 5, 2020.

⁷⁶ Ellis, Rebecca. "To avoid fight with Portland police union over new oversight board, City Hall pushes new bill in Salem." *Oregon Public Broadcasting*, November 18, 2020.

⁷⁷ At least as far back as the early 1980s, Portland advocates have urged police reforms. Jenning, Steve. "Crowd marches on City Hall to protest police shifts." *The Oregonian*, June 5, 1981.

occur in escalated situations—and too often, police rely on the legal defense of ‘I feared for my life.’ When there’s no accountability for those actions, it exasperates any community. When this scenario results in death the health and well-being of our community are threatened and nervous energy begins to rise, sometimes to an explosive point. Feeling unsafe in your own community makes people afraid to be near officers—seeing them as dangerous and uncaring.⁷⁸

The Portland Chapter of The Links, Incorporated, is a non-profit committed to enriching and sustaining African American culture. Reform for police accountability is an essential part of this work:

We seek sweeping federal legislation regarding police reform mandating a zero-tolerance approach in prosecuting police officers who kill unarmed, non-violent, and non-resisting individuals during an arrest.⁷⁹

There are many components of fair, just, and timely accountability. Some policy ideas related to public engagement are included here and built upon in later sections.

a. Investigate Misconduct Via an Independent Entity with Authority to Impose Discipline

Advocates for police accountability emphasize the need for enhanced independent oversight: oversight conducted by civilians and not only by sworn officers; oversight endowed with the power to subpoena and discipline officers, and the ability to have that discipline carried out. With the 2020 passage of Measure 26-217, in support of a new civilian board, Portland voters also weighed in, indicating a strong preference for a new oversight system that is now part of the city charter. As discussed previously, there are numerous steps required before that board would be fully operable. See Section IV for details about this measure.

A long-time community demand is that misconduct investigations be handled by an independent investigator. Independent investigation of use of force incidents is one of the TAC’s Five Pillars of Public Safety Structural Reform, a document included in this report’s online appendix. Advocates point out that when the police are the primary agents in investigating police misconduct, they are less likely to find that their colleagues have done anything wrong.

b. Change the Standard of Review to “Preponderance of the Evidence”

As discussed in Portland Copwatch’s Standard of Review analysis⁸⁰ and earlier in this document in Section II.3, the current standard under which the CRC operates is the “reasonable person” standard. Advocates in Portland and across the country argue that the “reasonable person”

⁷⁸ *State of Black Oregon 2015*. Urban League of Portland, 2015.

⁷⁹ *Joint Statement by Women Leaders of 13 African-American Organizations*. Alpha Kappa Alpha Sorority, Incorporated. June 6, 2020.

⁸⁰ http://www.portlandcopwatch.org/preponderance_analysis_0411.pdf. This analysis is included in the online appendix to this report.

standard allows exoneration if an officer states he or she feared for his or her life, regardless of whether that fear was justified. This discrepancy—between what the public witnesses and what it expects accountability to look like—can erode trust in police.

Advocates' preferred "preponderance of the evidence" standard would give the oversight entity the ability, after weighing the evidence, to determine whether it is more likely than not that the officer was out of policy. Historically, the PPB and PPA have opposed changing the standard and the city council has not yet made this change. Changing the standard of review would be a strong sign of confidence in civilian oversight.

c. Do Not Let Collective Bargaining and Arbitration Insulate an Officer from Discipline

Though most community members we interviewed support unions, they expressed concerns that accountability mechanisms are distorted by the power of the PPA and the state arbitrators who side with them. The concern seems mostly that the power of this particular union is out of balance with the power of other parties.

Arbitration, after an investigation and assignment of discipline, is one of the key ways the police union exerts influence, as discussed in Section II.7. Such arbitration has often been used as a mechanism to avoid public accountability for police officers. The Reimagine Oregon Project, which advocates to dismantle systemic racism, argues that arbitration should not be allowed to reduce discipline. It points out that in order for investigative bodies to maintain authority, the discipline imposed must not be subject to reversal by an arbitrator, assuming the discipline was within policy. State legislation has been proposed to make some changes to the arbitration process, by not allowing arbitrators to reverse discipline where misconduct occurred.

It is not only arbitrators, but the police union that can impede the discipline process. Advocates identify various changes they believe are needed:

- The police union should not be able to keep investigations and hearings secret.
- Legislative action or changes to the police union contract should allow removing problem officers.
- Arbitrators should not be able to overrule discipline judgments.
- The union contract should not prohibit officer testimony or limit the jurisdiction of independent bodies over certain cases.

2. Change Officer Behavior and Police Culture

A pervasive theme of community discussions involves changing officer behavior, so as to diminish bias and to prevent escalation to violent encounters. The key to this change is seen as examining and transforming the culture of policing. Imagine Black (formerly known as the Portland African American Leadership Forum) summarized the behavioral changes it believes are needed in the Bureau:

Portland Police, like police in other cities, have an integrated subculture of officers who disregard human rights and are verbally and/or physically abusive of members of the Black community and those experiencing mental illness and homelessness, and other vulnerable populations.⁸¹

Tom Potter, who served as Portland Police Chief and later as Mayor, highlighted the centrality of culture change in police reform:

I would start with what I believe to be the primary issue, the culture under which the department works. We can continue to create and change laws; without a cultural change, the ways in which we interpret and carry out those laws will remain the same. Changing the culture will change the values and the behavior. It is where we must begin. We should view the officer not as a ‘Law Enforcer’ but as a ‘Peace Officer;’ renaming the system to the ‘Community Justice System.’⁸²

Changing Bureau culture is difficult, but remains a goal for many community groups, elected officials, and other stakeholders. Some key policy proposals from community groups related to changing officer culture and behavior are detailed below.

a. Impose an Official Duty to Intervene and Report Misconduct

The duties to report and intervene mandate that police who use or witness excessive force must report it, and an officer who sees an excessive use of force must intervene and de-escalate the situation.

The Active Bystander for Law Enforcement (ABLE) Program is a national program through Georgetown Law’s Innovative Policing Program. It seeks to make the duty to intervene an accepted part of all officer behavior on a bureau-wide basis. PPB stated in September 2020 that it planned to implement the program. “The duty to intervene is something we have in our policy, but we don’t really teach people how to do that,” Chief Lovell said. In June 2020, the Oregon legislature passed HB 4205, a bill stipulating that police officers have a “duty to intervene” when they observe another officer taking action that is illegal or unnecessarily dangerous. The goal is to make this an accepted organization-wide mandate.⁸³

The Training Advisory Committee also included “developing a culture of reporting officer actions that violate policy” in its Five Pillars of Public Safety Structural Reform (see the online appendix).

⁸¹ Portland African American Leadership Forum, The People’s Plan, 2017.

<https://www.portlandoregon.gov/oehr/article/713241>.

⁸² Tom Potter interview, 7/27/2020.

⁸³ See Section V.4 for more details on legislative action.

b. Demilitarize the Police Force

Community outcries to “demilitarize” the police commonly follow protests, where the militarized police force is on display. Demilitarization includes changing the physical weapons police use and addressing the militant culture among officers, which can create a gulf between police and the public.

On the level of equipment, demilitarization includes banning the use of weapons such as impact munitions, tear gas, and other chemical weapons, and banning the receipt of militarized equipment from the federal government. Campaign Zero, a national organization, argues that militarized police departments are significantly more likely to kill civilians.⁸⁴ Advocates call for wide-ranging changes:

- Develop effective management tactics for large demonstrations that do not depend on use of tear gas or other dangerous and indiscriminate uses of force.
- Provide more training for staff on alternate responses to protests that reduce tensions.
- Utilize methods that protect free speech but limit property damage or attacks on officers.

On July 28, 2020, the PCCEP joined House Speaker Tina Kotek, Senator Lew Frederick, and City Commissioner Jo Ann Hardesty in “denouncing the unwarranted excessive use of force by the Portland police.... None of their actions justifies the blanket use of munitions against peaceful protestors.” PCCEP also called for “an end to the use of chemical agents and other munitions against protestors.”⁸⁵

A community concern is that the militarization of policing creates a “warrior” mentality that treats community members as the enemy.⁸⁶ Former officer Seth Stoughton described this mentality in *Harvard Law Review*, “Officers learn to treat every individual they interact with as an armed threat and every situation as a deadly force encounter in the making.... Everyone is a threat until conclusively proven otherwise.”⁸⁷ Such a “warrior” mindset, constantly attuned to potential threats, is the opposite of what de-escalation training seeks to instill.

c. Discipline or Fire Officers for Racist Behavior

In examining PPB directives related to officer behavior,⁸⁸ the Bureau has clear and extensive requirements covering behavior of officers in interactions with the public and with

⁸⁴ *Demilitarization*. Campaign Zero.

⁸⁵ *PCCEP Statement Condemning the Excessive Use of Force Against Peaceful Protestors*. PCCEP, July 28, 2020. <https://www.portlandoregon.gov/pccep/article/764297>.

⁸⁶ Lawson, Edward, Jr. “TRENDS: Police Militarization and the Use of Lethal Force.” *Political Research Quarterly*, vol 72, issue 1, 2019.

⁸⁷ Stoughton, Seth. “Law Enforcement’s ‘Warrior’ Problem.” *Harvard Law Review*, April 10, 2015. Much about the culture of policing draws from military parallels, from terminology to chain-of-command structures to distinctive uniforms.

⁸⁸ The following PPB Directives relate to these elements of officer behavior:

310.00 Professional Conduct & Courtesy

310.20 Discrimination, Harassment, and Retaliation Prohibited

suspects. Suspects and other civilians are to be consistently treated with respect; derogatory statements, racial slurs, name calling, and profanity are prohibited except in very narrow and carefully defined circumstances. For example, profanity can be used in reports or testimony when it is important to accurately repeat what someone else said.

However, it is less clear what types of statements or attitudes are unacceptable in conversations between peers in the workplace. What kind of inappropriate racial comments go too far? Are officers allowed to talk about members of the public they have interacted with in a derogatory manner, making reference to their race and making fun (or light) of how they acted or what they said? It is unclear if supervisors have the authority to take action to address behavior that reveals an underlying pattern of prejudice against Black, Indigenous, and People of Color (BIPOC) members of the community. There is also concern about officers who are sympathetic to white supremacist views.⁸⁹

According to Michael German, an expert speaking at a state legislative committee,⁹⁰ officers who are heard making derogatory racial statements sometimes use their free speech right as a defense in order to avoid discipline. Managers are frustrated with their inability to respond strongly to the uses of offensive language that reveals the person's underlying prejudice. PPB has directives in place addressing biased-based policing and racial profiling. German contends that it is essential that an organization be consistent in holding staff accountable for violating these policies that erode community trust.

d. Train Officers to Treat Community Members Appropriately

Because most community members expect police officers to treat them with respect and without bias, advocates for changing police culture believe that such treatment must be part of the training and a prerequisite for leadership. Tom Potter identified a need for culture change within policing, rooted in training:

I believe training for new officers should focus on involvement with, and understanding of, the local community. This should also be the focus when an officer is being evaluated and certainly when an officer is being considered for a higher leadership position. The department must hold staff accountable to this community-centered approach.

311.40 Personal Use of Social Media

313.70 General Conduct – Associations

344.05 Bias-Based Policing/Profiling Prohibited.

⁸⁹ Bernstein, Maxine. "[Portland police panel finds Capt. Mark Kruger brought ‘discredit and disgrace’ upon the city by erecting a memorial to Nazi soldiers.](#)" *OregonLive*, October 8, 2010; Updated January 10, 2019.

⁹⁰ Michael German, fellow at the Brennan Center for Justice at New York University Law School. "Balancing First Amendment Rights and Law Enforcement Duties and Obligations." Full testimony available in meeting materials of July 8, 2020, meeting of the Joint Committee on Transparent Policing and Use of Force Reform.

The Urban League of Portland and Imagine Black recommend updates to training, including the following:

- Apply a race equity lens and culturally competent strategies in police training.
- Require training on implicit bias, involving interaction with youth, de-escalation, and cultural competency in communications, for all officers at all levels.
- End the use of any militarized tactic training that teaches officers to escalate interactions and begin training on de-escalation and dealing with people in mental health crises.
- Involve the community in the delivery and design of training.

However, there is no single way to change officer behavior. Systemic change that aims to modify the culture of today's Bureau would require commitment by top management of the Bureau, acceptance by rank-and-file officers, and support from the union.

3. Guarantee Public Participation, Access, and Transparency

a. Ensure Public Participation is More than Advisory

There is concern that oversight processes that seek or allow input from members of the public do not give genuine weight to that input. In Police Board Review hearings community members are always a minority of the panel deciding the case. These members of the public can ostensibly participate in overseeing the police, but their role often is structurally minimized and becomes functionally advisory. We heard some common suggestions around community oversight:

- Allow victims or their representatives to be present at hearings and allow them to present their perception of events.
- If the present system of the PRB is continued, add more civilian members.
- Treat anyone under investigation equally, whether a sworn officer or a community member. In misconduct cases, the officer being investigated should not have special privileges that the public does not have.⁹¹

b. Enhance Transparency, Record Keeping, and Documentation

A prerequisite for real public participation and review is a commitment to transparency. Dan Handelman, a local police reform expert with Portland Copwatch, expressed frustration with how Internal Affairs redacts officer names in PRB and CRC hearings:

⁹¹ *Police Accountability*. Unite Oregon Community Letter, 2020. <https://www.uniteoregon.org/policing>.

IA posts their investigations for public review and then lists the names of the officers and yet when we are in CRC hearings, we have to keep the names of the officers out of it because of the embarrassment clause. When it is a high-profile incident like that, I don't think it is fair to claim that it is a violation of the embarrassment clause. I think this is something that is in the public's interest.

Advocates for greater transparency have suggested many ways the PPB could enhance transparency:

- Remove the embarrassment clause from the PPA contract to make sure that officer accountability is visible to the community.⁹²
- Follow the procedures laid out in the DOJ Settlement for documenting and following up on use of force events.
- When in public, officers should be clearly identified by name or at least by unit and number.
- Increase transparency with police officer personnel and disciplinary records to the greatest degree possible.⁹³
- Provide more transparency at every step of the oversight process. At hearings, give clear explanations of the events, including the actions and decisions that took place in the time period leading up to use of force.
- Make more results of investigations public: report all results including charges of misconduct, and not just cases of sustained allegations.
- Report annually on information essential to the public interest: the number of complaints received; percentage of complaints dismissed, investigated, sustained, or exonerated; the types of discipline recommended and what was actually imposed; the outcomes of cases that went to arbitration; how many officers resigned before their investigation was complete.

The Bureau has already made progress and seen benefits from increasing data collection and analysis of that information. Shawn Campbell, Chair of the TAC noted, “before [the Bureau was] not collecting data or really looking at the data they had. If you never measure anything it is hard to see how much something is happening or if you are moving toward your goal.” The Bureau could build on collecting data and analyzing it, so it can measure progress toward its goals.

⁹² The current union contract for Portland police includes an “embarrassment clause” stating that “if the City has reason to reprimand or discipline an officer, it shall be done in a manner that is least likely to embarrass the officer before other officers or the public.”

⁹³ Former IPR staff member Andrea Damewood published an article about the frustrations she felt in the job: “The system is flawed for two reasons: The first is that the yardstick by which police actions are measured makes it extremely difficult to find fault. The second is that the entire process is enveloped in secrecy.” “I Was an Investigator of Portland Police Conduct. Here’s Why It Doesn’t Work.” *Willamette Week*, June 17, 2020.

c. Resolve Misconduct Cases in a Timely Manner

Portland Police Chief Chuck Lovell and Multnomah County Sheriff Mike Reese agree that the process for investigating misconduct and imposing discipline takes too long. The process and resources must be aligned to conduct a thorough and fair investigation. They should be done within a reasonable timeline for the community and officers involved, to connect the outcome of the investigation to the original act. Chief Lovell stated that “the biggest issue with the discipline is the time it takes for the process... Everybody talks about it.”⁹⁴

4. Support and Implement Statewide Legislative Reforms

In response to worldwide demonstrations demanding police reform in 2020, the Oregon Legislature called a special summer session to address reforms applying to police forces statewide. It passed the following bills:

- **SB 1604:** Modifies the arbitration process used to resolve cases when there is a challenge to the disciplinary action imposed by law enforcement agencies.
- **HB 4203:** Bans chokeholds by prohibiting using force that impedes normal breathing or circulation of blood of another person by applying pressure on the throat or neck.
- **HB 4205:** Duty to Intervene: Requires officers to report another officer's misconduct and outlines the reporting process.
- **HB 4207:** Establishes a statewide database on investigations and allegations of misconduct. Requires law enforcement agencies considering hiring an officer to review the charges of misconduct on file with the previous employer. The objective is to assure that officers cannot jump to another organization without the new employer being aware of previous allegations of misconduct. Monitoring officer behavior and maintaining records of complaints and discipline are methods of improving accountability and transparency, to ensure that problem officers are re-trained, not hired, or let go. This law achieves what would be hard to implement on a city-by-city scale.⁹⁵
- **HB 4208:** Limits the use of tear gas and other crowd control measures against peaceful protesters.

These bills were passed quickly with the expectation that some refinement would be needed later to address concerns that various stakeholders had raised. The Legislature established a special committee, the Joint Committee on Transparent Policing and Use of Force Reform. This committee held several substantial informational hearings on the topics covered in the bills it had passed and other areas of concern. It recruited experts from Oregon and across the country to address the specifics of possible legislation.

⁹⁴ Chief Chuck Lovell interview, November 16, 2020.

⁹⁵ Some organizations, including Protect Our Stolen Treasures, call for a nationwide database to provide background checks on police officers: <https://protectourstolentreasures.mystrikingly.com/>.

Several bills are under consideration in the 2021 Legislative Session, including requirements for better identification of officers, efforts toward a uniform statewide discipline standard, clearer expectations about allowable crowd control methods, publicly available database of investigations of misconduct of public safety employees.

Through such legislation, elected officials and community advocates are trying to help transform police accountability across Oregon.

5. Reimagine Public Safety

Support for advancing racial equity across society has been reflected by the Black Lives Matter movement and the overwhelming voter support for a strengthened civilian oversight body for Portland police. This moment offers a chance to acknowledge racial disparities and to invoke a more collaborative vision of public safety, involving the community as well as law enforcement.

One way the public and elected officials could transform the current context is by analyzing the encounter between police and public from the ground up. As an example, CRC Chair Candace Avalos invited civilians to seek conflict resolution when possible: “Stop calling the police and start calling on your neighbors to build the community relationships that will go way further in changing our systems and making our communities safer.”⁹⁶

Portland City Commissioner Jo Ann Hardesty launched a project in 2020 called Rethink Portland, consisting of public meetings and an agenda for using the council to shift budgets and priorities in public safety. Rethink Portland argues in favor of investing in alternatives to armed officers responding to conflicts and crises in the community. Another way civilians could take over some duties of sworn officers is by having civilian City staff review traffic camera footage.⁹⁷

A possible transformation in emergency response is diversifying the options available for persons experiencing mental health crises. Police officers themselves have pointed out that they are not trained to respond to mental health needs as well as other professionals are. Part of this work is already underway with the new Portland Street Response Team, an alternative of non-police responders for lower acuity emergency calls. These teams, consisting of a mental health counselor, a paramedic firefighter, and a community health worker, are being piloted in 2021 in the Lents neighborhood. Alternative responders have been suggested by members of the houseless community and voiced through such entities as *Street Roots* and the Portland State University Homelessness Research and Action Collaborative. Their models include the CAHOOTS program in Eugene.⁹⁸

⁹⁶ Avalos, Candace. “[Stop calling the police and call your neighbors instead.](#)” *Oregonian*, March 14, 2021.

⁹⁷ Jaquiss, Nigel. “Police Unions Will Oppose Changing Law to Allow Civilians to Review Fixed Speed Camera Tickets.” *Willamette Week*, March 14, 2021.

⁹⁸ CAHOOTS, Crisis Assistance Helping Out On The Streets, is a project staffed by [White Bird Clinic](#) and funded by a contract with the [City of Eugene](#). This project diverts roughly 5-8% of calls from police.

VI. CONCLUSION

Policing is a complicated issue, interwoven with some of the biggest struggles our country faces: racism, inequality, human and civil rights, mental healthcare, violence, power, peace, and safety. This report does not touch on every issue of policing or its complicated history, nor does it purport to have solutions to all these problems. There are however a cluster of issues that came up repeatedly during our study of accountability: increasing transparency of investigations, opening hearings to the public, altering the arbitration process, eliminating the embarrassment clause in the union contract, changing the standard of review to “a preponderance of the evidence,” fighting systemic racism inside the organization, establishing an effective civilian oversight body, and changing the culture to move toward community policing. While change is never easy, there is optimism that progress could be made in each of these areas if practical proposals are brought forward that are supported by City leadership and PPB management. Meaningful citizen involvement and support from the community will be critical to the success of any new initiatives.

Our focus in this study was on police accountability, which is appropriate not only because it has been lacking but because the principle is fundamental to the very concept of policing. There is a dangerous disconnect if enforcers of law are seen as above it. If officers do not model accountability for excessive use of force, their authority to charge others for violent behavior is diminished. Trust is eroded. Accountability for individual officers, transparency of the system, and meaningful civilian involvement are core elements of the reform many advocates lift up. When officers are granted special powers, it is not for their own sake, but to achieve a goal for society; if they abuse those powers, society must have a right to retract them.

We should be held to a higher standard because we have the ability to take freedoms away and as well use deadly force. You'll never get me to disagree with that, that the standard is higher and should be higher.

— Officer Daryl Turner, President of the PPA, 2019⁹⁹

The information presented in this study shows that the current accountability system is still seriously flawed. At the same time, we commend the progress that has been made over the last several years, such as the efforts to meet the requirements of the DOJ Settlement Agreement. At all levels in the City and PPB, individuals have worked to make changes in policy and practices a reality. These efforts should be applauded. Data show that the use of force has steadily decreased and in 2020 there were no fatal shootings at the hand of Portland officers.

⁹⁹ Turner was the president of the PPA at the time of this quote. Quoted in *People's Police Report #79*, January 2020, p. 4.

Police reform cannot be achieved with a single tool. Restoring and preserving community trust in part depends on the Bureau reducing biased or racist policing and holding accountable both individual officers and the Bureau for violations. Whenever possible, giving the community access to information about both the Bureau's failures and progress could help build trust.

Portland's police and City officials have work ahead to improve police accountability structures and authentic community engagement. The relationship between the public and the police is necessarily a two-way street, demanding mutual participation and investment, to build mutual respect and trust. The League stands ready to continue upholding our part in advancing a public safety environment that is fair, healthy, and just for all.



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Candace Avalos, Chair, Citizen Review Committee, August 26, 2020
Cliff Bacigalupi, Captain, Internal Affairs, Portland Police Bureau, June 11, 2020
Janelle Bynum, Representative, State of Oregon, November 10, 2020
Mary Hull Caballero, City Auditor, City of Portland, August 31, 2020
Ross Caldwell, Director, Independent Police Review, June 10, 2020
Shawn Campbell, Chair, Training Advisory Council, Portland Police Bureau, October 13, 2020
Lew Frederick, Senator, State of Oregon, July 13, 2020
Jo Ann Hardesty, Commissioner, City of Portland, August 20, 2020
Dan Handelman, Portland Copwatch, August 21 and October 30, 2020
Brian Hunzeker, Portland Police Association President, December 3, 2020
K. C. Jones, Policy Analyst, Independent Police Review, June 10, 2020
Chuck Lovell, Chief of Police, Portland Police Bureau, November 16, 2020
Bryan Parman, Commander, Professional Standards Division, Portland Police Bureau, June 11, 2020
Tom Potter, former Mayor of Portland and former Chief of Police, July 27, 2020
Floyd Prozanski, Senator, State of Oregon, December 2, 2020
Michael Reese, Multnomah County Sheriff, August 13, 2020
Carmen Rubio, Executive Director, Latino Network, (now Commissioner, City of Portland), June 24, 2020
Mike Schmidt, Multnomah County District Attorney, August 24, 2020
Greg Stewart, Acting Captain, Training Division, Portland Police Bureau, September 11, 2020
Daryl Turner, Portland Police Association President, September 25, 2020
Ted Wheeler, Mayor, City of Portland, November 6, 2020

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Link to Online Appendix

Please see the online appendix available at www.lwpdx.org/learn/studies for many of the source materials cited in this report.

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