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CITY OF OAKLAND



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Office of the City Administrator  
Dan Lindheim  
City Administrator

(510) 238-3301

June 23, 2009

Public Safety Committee  
Oakland City Council  
Oakland, California

Chairperson Reid and Members of the Committee:

**RE: Proposal to Transfer Intake of Citizen Generated Complaints against members of the Oakland Police Department from Internal Affairs to the Citizens' Police Review Board**

Attached are two reports concerning proposals to transfer certain "intake" functions of complaints against OPD or members of OPD to the Citizens' Police Review Board. The reports are from the Citizens Police Review Board (CPRB)/ Mayor's Task Force on Police Issues (*Attachment A*) and The Oakland Police Department (OPD) (*Attachment B*).

Given the absence of consensus on the merits of the proposal(s), both reports are being brought forward to the Committee to foster discussion on the proposal(s). Having both reports will enable Committee members to understand the views, opinions, and differences between the CPRB/Task Force and the Police.

I call the Committee's attention to the following:

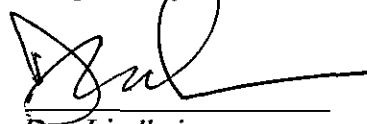
- *There are substantial financial implications to the proposal. Whatever the substantive merits of the proposal, or the relative costs of civilians vs. sworn staff, adding ten (10) new positions while not terminating ten (10) sworn positions simply adds the cost of ten (10) new civilian FTEs to City expenditures. As such, the proposal would at minimum cost the City an additional \$1.2 million in FY2009/10.*

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- The CPRB/Task Force proposal is a scaled down version compared with prior Internal Affairs Division (IAD) civilianization proposals. It calls for CPRB to handle the “intake” of civilian complaints and the hiring of additional CPRB staff to handle those complaints. OPD has little problem with passing on “intake” as defined by the CPRB/Task Force, but it is important to note the substantial difference in what constitutes “intake” between their proposal and current OPD intake functions. OPD is adamant that the CPRB/Task Force view of intake will not meaningfully reduce the workload of sworn OPD Internal Affairs staff.

It should also be noted that Task Force leaders propose pushing forward with an approval in principle now, determine the implementation details later, and draft an ordinance based on the ID card model. It is my view that this is neither timely nor appropriate.

Respectfully submitted,



Dan Lindheim  
City Administrator

Attachments A: Report from CPRB/Task Force  
B: Report from Oakland Police Department

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# CITY OF OAKLAND

## DRAFT AGENDA REPORT

Attachment A

**To:** Office of the City Administrator  
**Attn:** Dan Lindheim  
**From:** Police Department  
**Date:** June 23, 2009

**Re: Report from the Chief of Police Approving in Principle the Transfer of the Intake of Citizen Generated Complaints against members of the Oakland Police Department from Internal Affairs to the Citizens' Police Review Board.**

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### SUMMARY

It has been requested that OPD provide an analysis of the Civilianization Plan that has been prepared by the Citizen's Police Review Board (CPRB). This report will focus on the following issues:

- Fiscal Impact
- NSA Compliance
- Duplication of Work
- Training and Qualifications

### FISCAL IMPACT

The current proposal from the CPRB calls for spending \$1,272,498 to hire ten new civilian positions to work in their agency. This figure does not include figures related to recruiting or training of these personnel. It also does not cover costs associated with expanding or relocating the office space currently used by the CPRB.

The implementation plan being put forth by the CPRB initially calls for the CPRB to do all intake of civilian complaints. Those complaints would be forwarded to IAD within 24 hours. IAD would still investigate all of those complaints in a manner consistent with the provisions of OPD policy and the Negotiated Settlement Agreement. This plan does not allow for OPD to scale back devoting any resources at all in the short term. For this reason, OPD's cost to staff the Internal Affairs Division does not decrease at all and any money spent adding to the CPRB is spent at additional cost to the city.

The CPRB report mentions that the city would save costs in recruiting officers because IAD would be redeployed, thus eliminating the need for OPD to hire as many officers as are reassigned from IAD. As mentioned above, OPD will not be able to withdraw any resources from IAD until fiscal year 2010-11 at the earliest. If cost savings and a return of sworn officers to law enforcement functions was the goal of the proposal then OPD believes that adding civilian positions to the existing IAD could be done less expensively and more quickly.

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## **BACKGROUND**

Since this proposal was first presented to the Public Safety Committee on April 28th, a working group comprised of representatives of the Citizens' Police Review Board, City Administrator's Office, Oakland Police Department and Mayor's Task Force on Police Issues has met at least six times to develop an action plan to implement the proposal to civilianize the Internal Affairs Division's intake of citizen complaints. The following topics have been and are continuing to be addressed:

- Management of the Proposed Process
- Impact to the Negotiated Settlement Agreement
- Civilian Investigators Background and Training
- Timeline for Implementation
- Budget and Funding Sources

## **KEY ISSUES AND IMPACTS**

### Compliance with the Negotiated Settlement Agreement (NSA)

The current proposal to only have the CPRB take over the Intake function of IAD greatly reduces the number of compliance issues this plan will have to address if approved. The IAD is responsible for 21 of the 51 tasks of the NSA. Not all of those tasks have to do with the intake of civilian complaints. The majority of the compliance issues could be addressed through the proper training of staff at the CPRB.

There is only one compliance issue that will require some concession on the part of the plaintiff's attorneys and the Federal Court. Currently OPD is required to take all complaints made against it. It has been suggested in the meetings with the working group that OPD sergeants will continue to take complaints in the field and then forward them to the CPRB in lieu of IAD. The proposal though would call for IAD not taking of any civilian complaints. This would cause IAD staff to turn people away should they walk in the door or call with the intention of making a complaint. IAD would obviously refer them to the CPRB but experience has shown that some people quickly give up on the process when they feel they are getting the run around. If a stipulation relieving IAD of accepting citizen complaints could be obtained then this compliance issue could be resolved.

### Duplication of Work

This issue is closely related to the issue of compliance with the NSA. As mentioned above, IAD is responsible for 21 of the tasks in the NSA. There are numerous requirements for investigation of IAD cases and the IAD has spent years attempting to reach those compliance goals and is now very close to reaching compliance in all areas. It is critical that OPD not lose traction in that effort. For this reason, it is imperative that OPD continue investigating all IAD cases as it has been doing and not relinquish those responsibilities to the CPRB until the CPRB has established that they are capable of doing investigations to the proper standards.

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The current proposal of having the CPRB do only intake of complaints avoids many of the compliance problems but does not address one of the main issues that led to a desire to have a civilianization plan and that is the existence of a duplicative system. IAD will continue to do all functions of investigation with the exception of taking the intake statement from the complainant. CPRB will have a significantly larger pool of cases with which to decide which ones it wants to investigate and bring before the board for a hearing. The process, as it exists today, is duplicative and this proposal only adds to this by adding additional staff to the CPRB. This will increase the number of cases investigated by both IAD and the CPRB.

Assuming the proposed timeline can be maintained, and the CPRB would begin the intake of complaint in January 2010, then the earliest that IAD could consider relinquishing investigative responsibilities would be July of 2010 due to the 180 timeline requirement for completion of cases. At that time, assuming that investigations done by CPRB were meeting NSA standards, then OPD could begin accepting CPRB investigations in lieu of IAD investigations. This would be limited to the number of cases that could be done by the CPRB. It is not known how many cases the CPRB will be capable of investigating but based on the output they have previously demonstrated it is unlikely that even with their requested level of staffing they could handle all citizen generated complaints even with the additional staffing. IAD would still be responsible for investigating complaints that the CPRB is unable to handle due to workload demands.

#### Training and Qualifications

The OPD concurs with the CPRB report regarding the necessary background and training that would be required for prospective new investigators. OPD believes that a portion of that training could be done in IAD because the IAD has developed an expertise the requirements of the NSA and has experience in training investigators in meeting those requirements.

#### **RECOMMENDATION**

OPD recommends that the issues in this report are considered before a resolution is adopted. OPD will continue to work with the CPRB on an implementation plan if a resolution is adopted.

Respectfully submitted,

\_\_\_\_\_  
Howard A. Jordan  
Acting Chief of Police

Prepared by:  
Acting Captain Sean Whent  
Internal Affairs Division

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**CITY OF OAKLAND**  
**DRAFT REPORT**

Attachment B

**To:** Office of the City Administrator  
**Attn:** Dan Lindheim  
**From:** Citizens' Police Review Board (CPRB)  
**Date:** June 23, 2009

**Re: Report on the Transfer of the Intake of Citizen Generated Complaints against members of the Oakland Police Department from Internal Affairs to the Citizens' Police Review Board.**

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**SUMMARY**

On May 26, 2009, the Public Safety Committee requested a report on a proposal to civilianize the intake of citizens' complaints against Oakland police officers, including information on the number of CPRB staff that would be required, the associated start-up costs, potential funding sources and a timeline for implementation. This report is intended to provide a provisional framework for the transition based on current knowledge and future projections.

**FISCAL IMPACT**

At this time, the CPRB are projecting the following related personnel needs and associated costs:

- \$1.27 million to fund 8 Complaint Investigator I for intake of citizen complaints and 2 Administrative Assistant I positions to provide the necessary administrative support. Each investigator position includes a budget of \$2,000 per investigator for ongoing training.
- Two Complaint Investigator I positions are anticipated to be funded through the City of Oakland's Byrne Justice Assistance Grant (JAG) federal funding application.

Estimated Cost of Proposed Positions (includes salary, benefits and operating & maintenance)

Per Complaint Investigator I<sup>1</sup> = \$135,160

Per Administrative Assistant I = \$95,609

8 Complaint Investigator I =	\$1,081,280
<u>2 Administrative Assistant I =</u>	<u>\$ 191,218</u>
Total Est. Funding for Positions	\$1,272,498

Estimated costs for positions include operating and maintenance expenses per position and \$2,000 ongoing for training of investigators.

Anticipated Additional Expenses

Possible one-time expenses not currently estimated in this proposal include recruiting, background checks, position advertising and facility expenses. The CPRB's current location on

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<sup>1</sup> A new position classification would have to be created in the Salary Schedule for a Complaint Investigator I.

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the 11<sup>th</sup> floor of City Hall cannot house all the proposed staff or provide sufficient space for the increase in the number of walk-in complainants.

#### More Efficient Use of Staff Resources

Sworn officers can be reassigned to other policing duties including criminal investigations or Patrol by assigning civilian compliant investigators to the task of the intake of citizen complaints. This proposal offers an alternative to better use the City's staffing resources because of the difference in salary saved between sworn officers and civilian investigators. The same job functions could be performed at a fraction of the current personnel costs and sworn officers can be reassigned to other duties. Additional funds will be saved on the advertising, recruiting and training of additional officers to perform the duties sworn officers would eventually be reassigned to perform.

#### Funding Sources

Two Complaint Investigator I positions were requested in the City of Oakland's Byrne Justice Assistance Grant (JAG) federal funding application. Assuming the approval of this funding, the CPRB would still require funding for the remaining eight investigator and two administrative support positions to reach an adequate level of staffing to perform the duties of intake of citizen complaints.

#### Alternative Funding Sources

The City of Oakland can also apply to the competitive Byrne Grant for funding from State and Federal funds. The CPRB and the Mayor's Office will continue to work together to track future funding options. If this resolution is approved, an update on this application process will be reported to the Committee.

### **BACKGROUND**

Since this proposal was first presented to the Public Safety Committee on April 28th, a working group comprised of representatives of the Citizens' Police Review Board, City Administrator's Office, Oakland Police Department and Mayor's Task Force on Police Issues has met at least six times to develop an action plan to implement the proposal to civilianize the Internal Affairs Division's intake of citizen complaints. The following topics have been and are continuing to be addressed:

- Management of the Proposed Process
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- Civilian Investigators Background and Training
- Timeline for Implementation
- Budget and Funding Sources

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## KEY ISSUES AND IMPACTS

### Management of the Proposed Process

CPRB requires that the proposed intake Complaint Investigator I and administrative support positions be under the supervision of the CPRB Director. The ten intake investigators will accept all citizen complaints and forward these complaints within 24 hours to Internal Affairs. The intake investigators will receive all walk-ins, take statements, and obtain police communications, reports, and other documentary evidence. The intake investigators will be trained to identify allegations and recommend where the complaint will go in Internal Affairs for investigation. The CPRB Director will also review all complaints and determine whether or not complaints will be selected for a concur investigation by the CPRB for evidentiary hearing or referred for mediation.

### Impact of the Negotiated Settlement Agreement (NSA)

CPRB plans to expand its methods of receiving complaints to be in compliance with the NSA including taking complaints over the phone, through the complaint hotline, from the jail, via email, voicemail, Chief's Office and from the field from Sergeants receiving complaints. The intake investigators will also review legal claims, litigation, go out to interview witnesses and initiate the informal resolution process. Some IAD intake staff will remain after a full transition can occur to continue to intake complaints internally-generated against officers and non-sworn police staff.

Generally, IAD will continue to investigate all of the complaints received by the CPRB intake investigators as determined by the terms of the NSA. Only when IAD is convinced that the CPRB intake personnel are conducting preliminary investigations in compliance with the required standards of the NSA will the transfer of those preliminary investigative responsibilities from IAD to the CPRB occur. No IAD officers will be transferred to other positions in the police department until an anticipated date of July 1, 2010.

The IAD is currently responsible for 21 of 45 NSA tasks, but of those 21 tasks, 11 are specific to the intake of complaints. The CPRB intake personnel will receive at least three months of training to enable them to comply with the standards of the relevant NSA tasks. One challenge to the tasks of the NSA identified by the working group is IAD being able to turn over complainants to the CPRB by referring them to the CPRB intake officers. The working group discussed a possible legal stipulation to be created and approved by the plaintiff's attorneys before the implementation of the new process.

### Civilian Investigators' Qualifications and Training

The minimum qualifications of civilian investigators recommend by the CPRB are currently defined in the *Qualification Standards for Oversight Investigators* established by the National



Association for Civilian Oversight of Law Enforcement (NACOLE). Applicants most commonly eligible to meet these qualifications are former attorneys, licensed private investigators, former law enforcement personnel or civilian investigators of other agencies. A summary of those defined qualifications include:

- Bachelor of Arts/Science
- Three years experience conducting civil, criminal or factual investigations
- Ability to conduct detailed factual interviews
- Ability to write clear, concise, well-organized and thorough investigative reports
- Ability to conduct investigations of a highly confidential and sensitive nature
- Ability to analyze and apply relevant laws, regulations and order to the facts of the case being investigated
- Ability to conduct investigations in an objective and independent manner by adhering to high standards of ethical conduct
- Ability to evaluate evidence and make findings without personal bias

The CPRB would further seek individuals with an understanding of constitutional rights, criminal law and its application. Preferred experience would emphasize critical analysis skills in the application of the preponderance of evidence when make findings of facts and recommending discipline.

The CPRB suggests that each potential Complaint Investigator I also undergo a background check. As part of the hiring process, the applicant would be required to submit a Personal History Questionnaire with their name, address, social security number, education, previous employment, criminal background, parole and juvenile record, driver's license number, business licenses, three references, and places of residence for the last five years. The CPRB suggests this questionnaire be verified and approved by a designated investigative unit of the Oakland Police Department. The applicant's hiring process will also include finger printing.

The CPRB would provide the investigators with a variety of professional training opportunities. Funding for ongoing annual training is recommended in the budget for each Complaint Investigator I position. As funding and staffing resources permit, the CPRB would send Complaint Investigator I positions to the Peace Officer Standards and Training (POST) to receive additional training for investigators. Some required investigator POST courses could include use of force, search and seizures and laws of arrest.

Further training on the post-NSA investigative standards, OPD computer systems and departmental forms would also have to occur with current staff of IAD prior to a full transition of positions. Complaint Investigator I position will also receive training on OPD General Orders, specifically on those policies relating to the NSA and accepting of citizen complaints.

## **PROJECT DESCRIPTION**

The proposal before you would transfer the filing of citizen complaints against Oakland police officers from Internal Affairs (IAD) to the Citizens' Police Review Board (CPRB). There is agreement that the CPRB will send each complaint received to IAD within 24 hours. IAD will continue to investigate complaints in accordance with the requirements of the NSA until such time as they are confident that the CPRB is equipped to process these complaints in compliance with the NSA standards.

It is anticipated that, in time, as the funding of the CPRB is increased, the CPRB will be able to undertake responsibility for investigating a greater percentage of citizens' complaints. As the CPRB increases its capacity, Internal Affairs will be able to reduce its staffing levels and re-assign officers to duties specifically related to crime reduction and violence prevention.

## **RECOMMENDATION**

The CPRB recommends that the City Council considers the position of the CPRB and accepts this report.

Respectfully submitted,

**DRAFT**

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Prepared by:  
Patrick Caceres

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