



Achieving Police Accountability in Rochester

Clarifying misconceptions and adding commentary to the report on police oversight commissioned by City Council

Enough is Enough
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1 Introduction

In February of 2017, Enough Is Enough (EIE) and the Rochester Coalition for Police Reform, jointly released *The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York* (hereafter “PAB report”). The report, authored by Barbara Lacker-Ware and Theodore Forsyth, reviewed the process for civilians to make complaints regarding police misconduct. The researchers looked at annual reports from the Professional Standards Section (PSS, the Rochester Police Department’s internal affairs division) and the Civilian Review Board (CRB) administered by the Center for Dispute Settlement (CDS) as well as reports of racial profiling and police misconduct by members of the community. According to CRB annual reports (2001-16), of the 923 civilian-generated allegations of force over 16 years, the Chief of Police sustained only 16 of them (1.7%). According to PSS annual reports (2002-16), there were only 13 instances of officer discipline stemming from such allegations. Of those, the harshest were six suspensions.¹

The PAB report as well as several high-profile cases of police brutality in the news, prompted City Council to thoroughly investigate the process used by civilians who have experienced police misconduct. City Council contracted with the Center for Governmental Research

¹The PAB report analyzed CRB reports over the period 2001-15 and PSS reports over the period 2002-16. Here we have also included the data for 2016, which has since become available.

(CGR) to conduct an independent review. Simultaneously, City Council used its subpoena power for the first time to review the PSS investigation of the claims made by Rickey Bryant Jr., a minor who was brutalized by over a dozen officers in a case of apparent mistaken identity as he was riding his bike in the summer of 2016. Although Mr. Bryant was never charged with a crime, he sustained severe injuries, for which the police were not held accountable.

On June 20, 2017, Rochester City Council approved a contract with CGR specifically to review “the functioning and outcomes related to civilian complaints about police conduct, and how they have been handled/disposed of by PSS, CRB, and the Chief of Police,” as well as “information on best practices and options to consider for civilian oversight of police, based on a review of practices in other New York cities.”

A draft of CGR’s report, *Police Oversight In Rochester: An Examination of Outcomes and Other Models* (hereafter “CGR report”), was completed by the end of September 2017, whereupon City Council requested more information. CGR then presented their report to City Council on November 30, 2017. The report was released to the public that night by the city of Rochester on their website.

Members of EIE have reviewed the CGR report and found several issues that warrant a response. Specifically:

- Contrary to common misconceptions, state law does not preclude the proposed Police Accountability Board from disciplining officers.
- Analysis of the data concerning the current civilian review process needs to focus specifically on the most serious allegations: those filed by civilians concerning use of force.
- The relevant outcomes must go beyond sustain rates and include whether allegations of misconduct ultimately result in discipline for the officers involved. Presently, civilian-initiated allegations of force rarely result in discipline (only 13 instances over the period 2002-16). Disciplinary power needs to be an essential feature of the proposed PAB.
- The Syracuse Citizen Review Board, which has independent power of investigation, sustained significantly more civilian-initiated allegations of force than Rochester’s CRB (four times more often over the period 2013-16). Independent investigatory authority needs to be an essential feature of the proposed PAB.

We are hopeful that City Council will evaluate and prioritize these concerns in the legislation that is ultimately enacted.

2 State Law Allows the Proposed PAB to Discipline Officers

The Center for Governmental Research (CGR) report misstated New York law as it relates to police accountability. Specifically, nothing in state law would prevent a public agency, such as the proposed Police Accountability Board, from disciplining officers.

Page 4 of the CGR report claims

“Discipline of police officers is governed by state civil service law^[4] and local collective bargaining agreements. State civil service law specifies that the Police Chief must make final disciplinary decisions and that discipline of specific officers cannot be publicly revealed.”

Footnote number 4 in the CGR report reads “NYS Civil Rights Law Article 50-A.” The CGR report repeats this claim, without citation, on pages 17, 37, and 41. However, §50-a does not address who can discipline officers, but rather, it limits who can get access to officer disciplinary records. Specifically, such records cannot be released to the public without a court order. NYS Civil Rights Law §50-a states:

“All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff’s department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics and such personnel records under the control of the department of corrections and community supervision for individuals defined as peace officers pursuant to subdivisions twenty-three and twenty-three-a of section 2.10 of the criminal procedure law and such personnel records under the control of a probation department for individuals defined as peace officers pursuant to subdivision twenty-four of section 2.10 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic, correction officer or peace officer within the department of corrections and community supervision or probation department except as may be mandated by lawful court order.”

Further, §50-a(4), states: “The provisions of this section shall not apply to... any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.” This provision allows public agencies, such as the New York City’s Civilian Complaint Review Board and Syracuse’s Citizen Review Board, to access officer disciplinary records as part of their official oversight functions. Thus, the proposed Police Accountability Board, as a city agency tasked with police oversight, would have full access

to officer disciplinary records under §50-a, and §50-a would not prevent the PAB from disciplining officers.

This interpretation of §50-a was confirmed by Robert Freeman, the director of the New York State Committee On Open Government. Specifically, Mr. Freeman confirmed that §50-a does not address how police officers are disciplined or who disciplines them, and he noted that §50-a was “unrelated to the authority to impose disciplinary action.”

Additionally, NYS Civil Service Law Article 75 indicates that a disciplinary hearing can be held by an officer or body:

“The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf.”

Article 75 explicitly acknowledges the possibility that a “body,” such as the proposed Police Accountability Board, could discipline officers. Further, nothing in the law gives sole discretion to the Chief to discipline officers. Corroborating this interpretation of the law, see *Perry v. Municipal Civil Service Commission of Rochester* in which the Municipal Civil Service Commission terminated an officer for making false statements during an investigation. The Appellate Division upheld the authority of the Civil Service Commission (as opposed to the Chief of Police) to issue the discipline. While *Johnson v CCRB* held that only the Police Commissioner in New York City could discipline officers, that case exclusively cited the New York City Charter, which is only applicable in New York City. *Johnson* did not cite any state laws that would prevent a body such as the Police Accountability Board from disciplining officers in Rochester. Therefore, based on the plain language in Article 75 and with corroboration from the case law, there is nothing in Article 75 that would prevent the Police Accountability Board from disciplining officers in Rochester.

While the City of Rochester would need to revise the current collective bargaining agreement with the Rochester Police Locust Club to allow for PAB discipline of officers, nothing in state law would prevent such a change.

3 Data analysis

3.1 Civilian-initiated allegations of force

Enough is Enough was formed to support those who have experienced police misconduct, and the most egregious cases have always been those involving use of force. As such, this is our primary concern in any discussion of sustain rates. In the PAB report, we noted the alarmingly low sustain rates on civilian-initiated allegations of force.

While the Center for Governmental Research (CGR) report briefly summarizes both civilian-initiated allegations² and allegations of force³ independently, it does not carry out any analysis of civilian-initiated allegations of force. This is a significant omission. The failure to sustain allegations of this kind seems to be an indication of a lack of justice for people who have experienced police violence. At the very least, it serves to erode community trust and delegitimize the public's belief in the police's ability to police themselves. A truly independent police accountability system, administered by civilians, has the potential to remedy this.

3.2 Rochester-Syracuse comparison

The comparison to the City of Syracuse's system is especially relevant, as its Citizen Review Board (henceforth, "Syracuse CRB") independently investigates civilian complaints. From Syracuse, one may attempt to draw conclusions regarding how Rochester's police accountability process might change if it had power of independent investigation. While the CGR report briefly compares Rochester's civilian review process to that of other cities⁴ including Syracuse, the comparison of sustain rates suffers from errors and omissions that make it impossible to draw any conclusions. We will focus on the comparison to Syracuse.

Firstly, the bar graph on p. 39 (the only comparison of Rochester's sustain rate to other cities in the entire document) states Syracuse's sustain rate to be 13%. CGR has confirmed⁵ that this is a mistake and that the Syracuse CRB has a sustain rate of 21% on allegations (21 sustained out of 100).

Moreover, the comparison is not accurate because Rochester's sustain rate includes both internal and civilian-initiated allegations whereas Syracuse's sustain rate is only for civilian-initiated allegations. The Syracuse CRB has confirmed⁶ that internal complaints go through the Office of Professional Standards without Syracuse Citizen Review Board involvement, so the sustain rate listed in their annual reports is for civilian-initiated complaints only.⁷ It is therefore misleading and inaccurate to compare the sustain rate on all of Rochester's allegations to Syracuse's. The correct sustain rate to compare to Syracuse's is for Rochester's *civilian-initiated allegations*. This is especially true because Rochester's CRB sustains far

²CGR report, p. 9

³CGR report, p. 10

⁴CGR report, p. 39

⁵Personal correspondence with CGR researcher Donna M. Harris (1/10/2018)

⁶Email correspondence with Ranette L. Releford, Administrator, CRB for City of Syracuse (12/22/2017)

⁷As such, no data is available on Syracuse's internal complaints.

more of its internal allegations, thus skewing the numbers toward a higher sustain rate overall. The focus should be on civilian-initiated allegations, not internal police department allegations when we compare the two cities.

If we compare only civilian-initiated allegations in 2015, Rochester’s 20% sustain rate on all allegations drops to 6% (compared with Syracuse’s 21% sustain rate).⁸ This significant drop is due to the fact that the majority of allegations sustained in 2015 were internal.⁹ As such, it is highly inaccurate to compare Rochester’s sustain rate on all allegations to Syracuse’s sustain rate (on civilian-initiated allegations), especially since 2015 was the only year that was analyzed.

A subsequent memorandum¹⁰ from CGR looked specifically at allegations of force. Again, while in 2015 Rochester had a sustain rate of 22% on all (civilian-initiated and internal) allegations of force, compared to Syracuse’s 23%, Rochester’s sustain rate is largely driven by sustained internal allegations of force. If we only compare to Rochester’s sustain rate on civilian-initiated allegations of force, as we should, then Rochester’s sustain rate in 2015 drops to 8%.¹¹

	2013	2014	2015	2016	Total
Rochester	2%	12%	8%	4%	7% (12/175)
Syracuse	24%	42%	23%	21%	28% (43/151)

Table 1: Comparison of sustain rates on civilian-initiated allegations of force

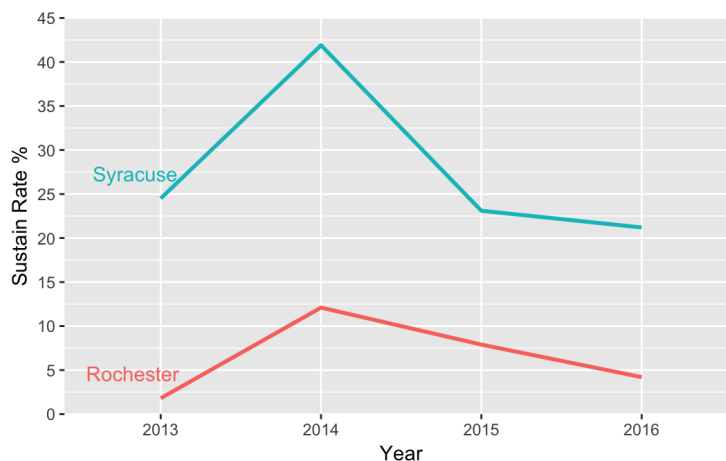


Figure 1: Civilian-generated use of force allegations

While it is hard to compare different cities, over the four years available (2013-16¹²) for both Rochester and Syracuse, Syracuse’s sustain rate on allegations of force was greater

⁸Four (4) allegations sustained out of 62 (p. 22 of Rochester CRB 2015 report).

⁹Thirteen (13) internal allegations sustained out of a total of 17 sustained allegations.

¹⁰Memorandum to Loretta Scott from Donna M. Harris (12/7/2017)

¹¹Three (3) allegations sustained out of 38, p. 22 of Rochester CRB 2015 annual report; accessed on 1/10/18 (www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=8589968487)

¹²Syracuse’s CRB has a report for 2012, but it does include sustain rates on specific types of allegations such as use of force. Thus we have not included it in our analysis.

than Rochester’s sustain rate (on civilian-initiated allegations of force) in every single year. In fact, we see in Table 1 and Figure 1 that **Syracuse’s CRB was four times more likely to sustain civilian-initiated allegations of force than Rochester over the 2013-16 period.**¹³

When we compare sustain rates on all civilian-initiated allegations between the two cities in Table 2 and Figure 2, we again see that in every year, Syracuse had a higher sustain rate.

	2013	2014	2015	2016	Total
Rochester	9%	21%	6%	9%	13% (44/350)
Syracuse	24%	29%	21%	10%	19% (118/618)

Table 2: Comparison of sustain rates on all civilian-initiated allegations

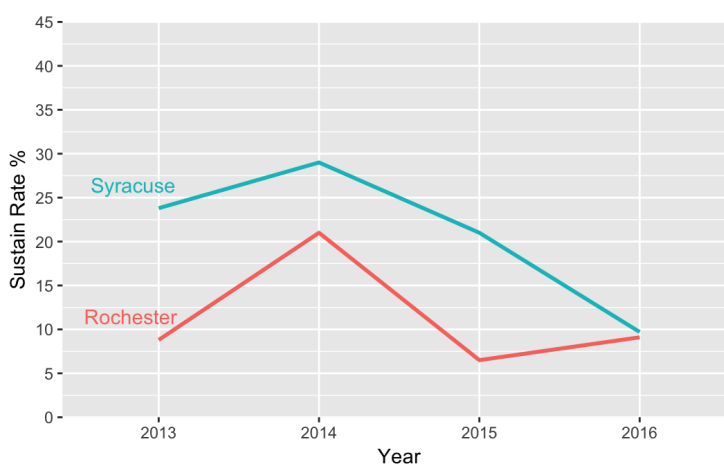


Figure 2: Civilian-generated allegations (all)

3.3 Analysis of discipline and the police review process as a whole

In its analysis of the civilian review data, the CGR report also suffers from too narrow a focus. It is not enough to look just at the sustain rates of the CRB and Chief of Police in isolation. One must follow a civilian allegation of force through the entire process, from initial filing to disciplinary action. The CGR report does not include any analysis of disciplinary outcomes—this may be related to the misinterpretation of state law regarding power of discipline discussed above.

As discussed in the introduction, over the 2001-2016 time frame, there were 923 civilian-generated allegations of use of force. The CRB sustained only 43 of them (4.7%). The Chief of Police sustained only 16 of them (1.7%)¹⁴. According to PSS annual reports¹⁵,

¹³Sources for Tables 1 and 2 and Figures 1 and 2: Rochester Civilian Review Board annual reports and Syracuse annual reports, 2013-16

¹⁴Source: CRB annual reports

¹⁵As documented in the PAB report, there are significant discrepancies in the total numbers of allegations between the PSS and CRB annual reports. However, as the CRB reports do not discuss discipline, the only data on this comes from the PSS annual reports.

there were only 13 instances of discipline stemming from civilian-generated allegations of force from 2002 to 2016. Of those, the most serious were 6 suspensions. Taken in total, the above numbers show that it is exceedingly rare for a civilian allegation of force to result in a significant disciplinary outcome.



Figure 3: Rickey Bryant

(Photo credit: Jamie Germano, Staff Photographer, Democrat & Chronicle)

This is also manifest in the devastating cases documented in the PAB report. For example, the complaint filed by Rickey Bryant in 2016 involved several allegations of force—among them that officers kicked, sprayed, tased, directed knee strikes at Mr. Bryant, that he was not provided with adequate medical treatment—and a satellite allegation, filed internally, that officers failed to use their body cameras. Of all of these allegations, only two were sustained: the use of pepper spray and failure to use a body camera. Any conclusion that Mr. Bryant’s complaint was sustained in total is deeply misleading¹⁶. Furthermore we don’t know what disciplinary actions, if any, were taken

for these. As the City Council considers new models for the police accountability process, its analysis must address the question: what sort of process would result in justice for Mr. Bryant at *every* stage of the process? The data and specific cases both show that independent power of investigation and independent power of discipline are essential.

4 Conclusion

With regard to state law and data analysis within the CGR report, we request that the Center for Governmental Research consider issuing a revised report addressing the concerns discussed above.

More broadly and significantly, public discourse regarding police reform in Rochester must move beyond a focus on public relations and individual civilian-police interactions and toward true, legitimate police accountability. Present conversations ignore the fact that there is a severe power differential between civilians and the police as an institution. Community trust will develop only with community control and oversight of the police. The standards of accountability that we apply to all public servants should be applied to the police as a taxpayer-funded agency. This can only be accomplished through a robust and independent Police Accountability Board, one that is uncompromising in the following five points (as in our proposed ordinance):

¹⁶For example Mr. Bryant’s complaint, in total, would be coded “sustained” in the Rochester Police Department-Office of Business Intelligence (RPD-OBI) dataset described on p. 13 of the CGR report. This method codes an incident or allegation sustained if just one of the actions contained within it is sustained. We believe this method of describing the data is highly misrepresentative.

1. The PAB must be an agency of the city, independent of the Rochester Police Department;
2. The PAB must have independent investigative authority;
3. The PAB must have subpoena power;
4. The PAB must have disciplinary power over officers who are found to have committed misconduct;
5. The PAB must have the authority to assess, review, and make changes to Rochester Police Department policy and procedures.

We thank the Rochester City Council for commissioning the CGR report and critically evaluating the current civilian review process. We look forward to working with City Council to bring police accountability to Rochester.