

Collaborative Review and Reform of the PPD Police Board of Inquiry

Policy, Practice, and Custom Report

POLICE ADVISORY COMMISSION
CITY OF PHILADELPHIA

EXECUTIVE SUMMARY

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Until this report, the Philadelphia Police Department's (PPD) disciplinary process had been largely private. This changed in 2020 when the Police Advisory Commission (PAC) and the PPD agreed to collaborate on a project to examine civilian complaint against police across several years.

To do this work, the PAC requested the assistance of academic experts with several years of experience analyzing police data and publishing peer-reviewed findings. The PAC then created a Project Plan in conjunction with the PPD, outlining specifically what objectives this report would cover. This included a thorough review of all complaints against police as well as their conclusions. In total, the PPD forwarded 9,000 allegations from more than 3,500 civilian complaints against members of the PPD, over 130 Police Board of Inquiry (PBI) hearing transcripts, and other relevant material totaling over 80 GB of data, to the PAC and its data partners for analysis. The initial findings presented in this report are only part 1 of the review.

The findings confirmed why the PAC, and the PPD, believed this report was necessary-that the disciplinary process is in dire need of a transformative overhaul. The quantitative analysis found that out of all allegations between 2015 and 2020, 86% of the allegations did not advance beyond the initial investigation, and when Internal Affairs did find evidence of misconduct, most complaints (76%) resulted in only training and counseling—which is not considered discipline. Additionally, penalties for guilty officers were typically minimal: all in all, only 0.5% of civilian allegations resulted in any recorded consequence beyond a reprimand. This analysis found that on average it took Internal Affairs 9 days to assign an investigator, 181 days to then complete their investigation, an additional 70 days to determine charges, and lastly 197 days for the Department Advocate to hold a hearing for the matter. Unfortunately, residents waited an average of 463 days for the results of their complaints, with some waiting upwards of 637 days.

However, this initial report does more than share these statistics. The goal of this Collaborative Reform was for the PPD to be transparent about its disciplinary process so the PAC could help pinpoint exactly which processes within the Department contribute to missed opportunities for accountability. For too long the community has asked for transparency, change, and a more equitable disciplinary process. This report highlights **specifically** how we can reimagine police discipline.

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INTRODUCTION

The PPD discipline process has always been a main point of focus for the PAC. Although PAC staff was never authorized to conduct independent investigations or interview officers alone, for many years PAC staff routinely participated in the investigatory stages of complaints by referring complaints to the PPD, sitting in on interviews at Internal Affairs (IAD) and questioning officers, and attending discipline hearings when possible. In 2017 the PAC was re-established by Mayor Kenney via Executive Order 2-17, and the authority of the office was newly focused on identifying and resolving systemic problems at the PPD by reviewing PPD policy, practice, and custom.

With this new function, the PAC became empowered to help reform large-scale issues that staff had observed for years. A large-scale issue that stood out to PAC staff was the discipline hearing process at PPD, which is managed and executed by a PPD unit called the Police Board of Inquiry (PBI). Concerns about the hearings ranged from small, such as hearings appeared to routinely start at least an hour late, to large, such as officers receiving incorrect disciplinary charges. The concerns were all troubling because the discipline process is a large component of internal and external police accountability. If discipline hearings are perceived to be unfair, inefficient, or biased in any way, officers may not trust that they are treated fairly, and civilians cannot get the justice they seek when they report officer misconduct.

It is important to note that PBI is just one part of the discipline process. The PPD Internal Affairs Division (IAD) is responsible for investigating most complaints against police made by residents, as well as complaints made by other officers. Given the limited resources of the PAC, addressing all aspects of the discipline process at once was not an option. The observed problems with PBI were glaring, and the PAC wanted to ensure that when the investigative process does improve that those cases are funneled to an efficient and procedurally just charging and hearing process. In order to get to the root of the problems with PBI, the PAC decided to conduct a data analysis and qualitative review to make recommendations that could drastically improve PBI operations and, hopefully, increase officer and civilian trust in the discipline process.

Based on publicly available data about discipline and cover sheets from IAD investigations (known as Police Commissioner memos or PC Memos), the PAC created a list of initial cases to examine, listed data requests that would allow for deeper analysis of the PBI charging unit and PBI hearings, and outlined some concerns about PBI hearings (see Appendix 1).[1] The PAC submitted this initial request on February 28, 2020. PPD leadership reached out and expressed interest in turning this project into a collaborative reform effort. This broke new ground as the first collaborative reform project between the PAC and the PPD, and it signaled a willingness from the PPD to share

[1] See Appendix 1: Original Data and Information Request to PPD about PBI

resources and a commitment to driving discipline reform forward. The project plan was finalized and signed by both the PAC and the PPD in August of 2020 (see Appendix 2).[2] The PAC engaged an outside data team and forwarded a large-scale data request to the PPD on September 17, 2020 (see Appendix 3).[3]

The original project plan was divided into a series of 7 objectives related to different aspects of this discipline process. The plan directed the PAC to prepare and submit preliminary reports on findings relative to each objective. This report deviates from that plan for a couple of reasons. The delivery of some necessary data to the PAC was delayed, and because of these delays, some portions of the PAC's review and analysis cannot be delivered at this time. The PAC's data partners were able to provide some insights based on a subset of data and will provide a full analysis at a later date. Using the report from our data partners (see Appendix 4),[4] anecdotal experiences of PAC staff with the PPD discipline system, results from a survey of PBI board members (see Appendix 16),[5] audio recordings of PBI hearings (see Appendix 15 for a list of all PBI cases),[6] and oversight practices in other cities, the PAC is able to make some observations and offer recommendations. Once the full analysis is completed, it will be necessary to make additional recommendations for some of the objectives, and two of the original objectives are reserved entirely for a later report.

While it would have been possible to wait until a full analysis was completed before releasing any reports, the rapidly approaching FOP contract negotiations and the introduction of the CPOC legislation made it necessary for the PAC to pivot to the preparation of a preliminary report.

City Councilmember Curtis Jones Jr. introduced legislation that defines the powers of the new Citizens Police Oversight Commission (CPOC) (see Appendix 11).[7] The bill is in early stages, but it was the will of Philadelphia voters that civilian oversight of police be expanded, and that expansion is coming. However, after being postponed in 2020 due to Covid-19, the City's contract with the FOP is set to be renegotiated in the summer of 2021. The CPOC legislation will be voted on at some point in the next couple of months, but this may not occur before the FOP contract negotiations occur. The CPOC legislation envisions a version of complaint investigations and discipline hearings that is vastly different what is in place at the PPD now, and PPD leadership has stated that changes to any aspects of the discipline process must be negotiated.

It is therefore crucial that civilian oversight of the PPD be worked into the FOP contract negotiations. Otherwise, the CPOC will be set up for failure, as the new FOP contract will not be compatible with the version of oversight envisioned in the legislation presented by City Council.

The discipline charging and hearing process at PPD present numerous opportunities to increase accountability, efficiency, and procedural justice. Although the details of how PPD officers receive discipline charges and the inner workings of PBI hearings are not well known to the public, these processes play a very large role in police accountability overall. The data and information presented in this report, as well as the accompanying recommendations broken down by objectives from the collaborative project plan, are intended to shed light on the PPD discipline process and, ultimately, reimagine the PPD discipline process so it is more equitable for residents and officers.

[2] See Appendix 2: Collaborative Reform Project Plan signed by PAC and PPD
[3] See Appendix 3: Large-scale data request from data partners and PAC to PPD
[4] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0
[5] See Appendix 16: Survey questions submitted to PBI board members
[6] See Appendix 15: List of all PBI cases, cases reviewed for sample highlighted
[7] See Appendix 11: PHILADELPHIA, Pa., Citizens Police Oversight Commission, 210074 (2021)

THE LIFE OF A COMPLAINT AGAINST THE PPD

To understand why certain reforms are needed, it is important to understand how the PPD disciplinary process works in general (see Appendix 7).[8]

Generally, if a resident makes a complaint against a police officer (referred to as a CAP) it is assigned to an investigator at the PPD Internal Affairs Division (IAD). The investigators at IAD are all police officers and are members of the same union as the officers they investigate. They typically hold the rank of sergeant or lieutenant. Internal investigations that begin for a reason other than a complaint from a resident (referred to as internals) are also assigned to IAD investigators. Once the investigation is complete, the IAD investigator writes a report that explains the evidence, and an IAD supervisor makes the final determination about the allegations.

In any IAD investigation, there are only a few different outcomes that are possible for an allegation of misconduct. The following findings are some of the most common results of IAD investigations. Only sustained allegations move forward to the disciplinary process.

IAD FINDING	DEFINITION
UNFOUNDED	The investigation determined the alleged act did not occur.
EXONERATED	The investigation determined the alleged act did occur, but the act was lawful and within PPD policy.
NOT SUSTAINED	The investigation could not determine, based on the evidence, whether the alleged act did or did not occur.
SUSTAINED	The investigation determined the alleged act occurred and was not within PPD policy.

Once an allegation is sustained, the related IAD case is forwarded to the PPD charging unit, which reviews the case and decides which charges from the PPD disciplinary code to apply based on the specifics of the case. The PPD charging unit is led by a Captain or higher rank, with one or two support staff. The charging unit then creates the formal disciplinary charges, known as 75-18s, which are forwarded to the officer being charged and their commanding officer.

Each charge listed in the PPD disciplinary code has a pre-set range of possible discipline. If the discipline range for a charge is a 5-day suspension or less, it can result in command-level discipline. For charges that allow for command-level discipline, an officer's supervisor is permitted to offer a punishment within the discipline range in

[8] See Appendix 7: PPD Directive 8.6

exchange for the officer's guilty plea. The officer can plead guilty and accept the discipline offer from their commanding officer or plead not guilty and proceed to an administrative disciplinary hearing.

If the penalty range for a charge exceeds the command level discipline range, the officer must still plead guilty or not guilty to the charge. If the officer pleads guilty, a Commanding Officer or Deputy Commissioner makes a recommendation for discipline based on the severity of the charge and the process ends. Just as with command level discipline cases, the officer can plead not guilty and proceed to an administrative disciplinary hearing.

Administrative disciplinary hearings are heard by the PPD Police Board of Inquiry (PBI). At a PBI hearing, the PPD's Department Advocate acts as a prosecutor and presents the case against the officer to a rotating panel of three sworn PPD members of varying ranks (or civilian PPD employees if the accused is a civilian PPD employee such as a 911 dispatcher). The accused officer is represented by an attorney from the FOP, who serves as a defense attorney, and argues why the officer is not guilty and/or why they should not be disciplined. After a PBI hearing, the board members vote by 2-3 majority to determine whether the officer is guilty or not guilty of the charge brought against them. If they find the officer guilty, they must make a unanimous discipline recommendation in accordance with the penalty range for the charge. The Police Commissioner reviews the guilty/not guilty finding from the PBI board and discipline recommendation (if applicable) to make the final decision.

The Police Commissioner can also enforce discipline at any point by taking a Commissioner's Direct Action (CDA). If the Commissioner decides to utilize a CDA, the officer is not entitled to a PBI hearing.

If the PPD charging unit believes that formal charges are not appropriate based on the officer's complaint history and other factors such as their time on the force, they have the discretion to authorize "training and counseling" for an officer instead of formal charges. The charging unit prepares a counseling memo that informs the officer that a similar offense in the future will result in discipline.

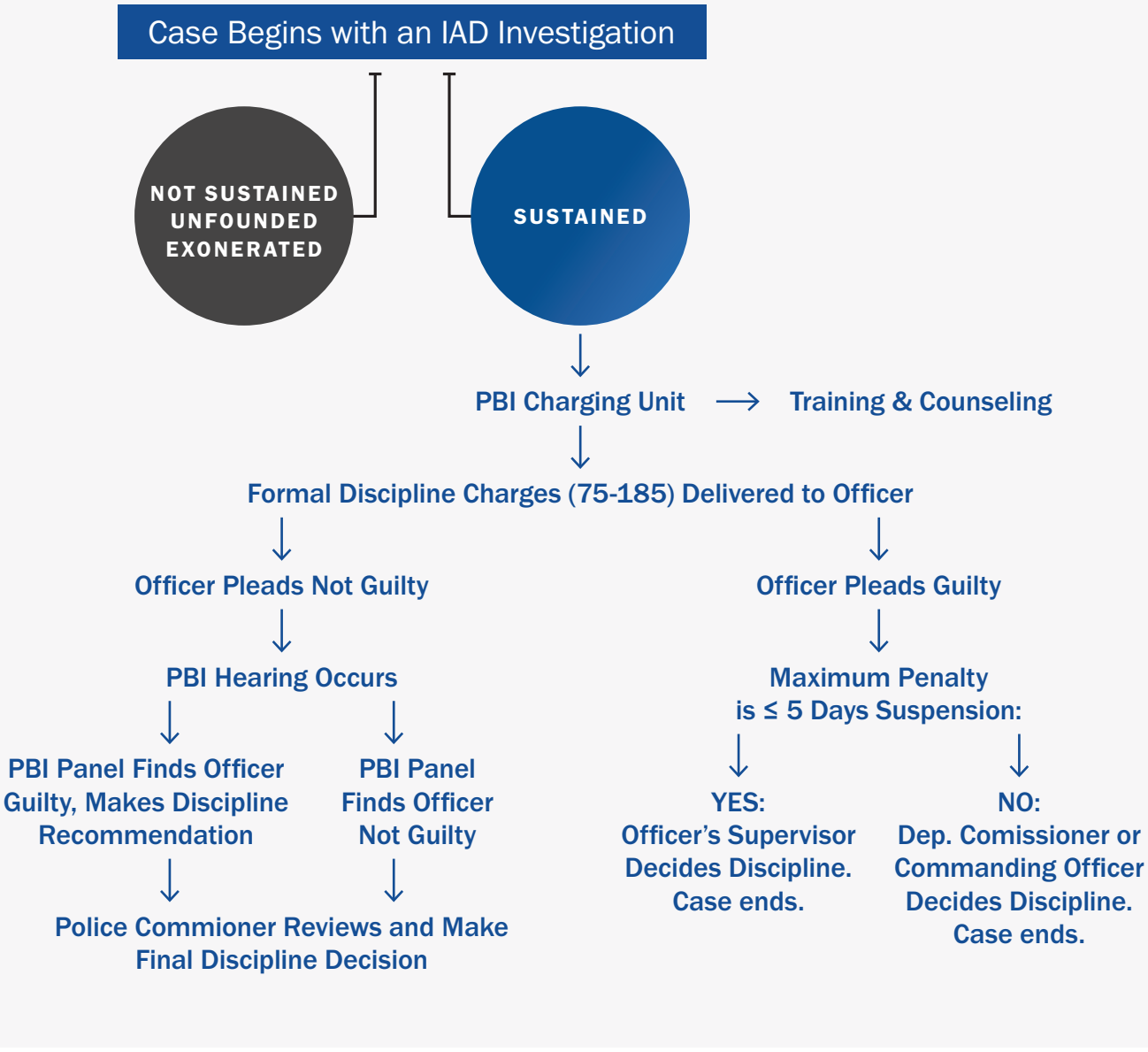


According to PPD Directive 8.9 titled "Police Department Counseling Form for Sworn Personnel",[9] training and counseling is not considered discipline. Instead, it is meant to enhance an officer's training. The charging unit sends the counseling memo to the officer and their commanding officer who review the memo together and then sign it. The signed memo gets returned to the charging unit and is maintained by the Department but does not go into the officer's personnel file. A counseling memo can be referenced later to show that an officer was put on notice about a performance issue.

[9] https://www.phillypolice.com/assets/directives/D8.9-PoliceDepartmentCounselingFormForSwornPersonnel.pdf

The following flow chart demonstrates the life of a PPD misconduct allegation, from investigation to discipline.

THE LIFE OF A PPD MISCONDUCT ALLEGATION





CONSIDERATIONS FOR INVESTIGATIONS

The focus of this report is on the end stages of the discipline process, but investigations are what funnel cases to discipline charging and discipline hearings. A deep analysis of IAD investigations is therefore crucial, and the PAC's data partners are in the process of conducting that analysis. It is not known whether some or all investigations into allegations of misconduct against the PPD will be under the authority of CPOC in the near future. Regardless of where those investigations are housed in the future, the forthcoming IAD investigation data analysis will provide a wealth of information and generate data-driven recommendations to improve the investigative aspects of the PPD discipline process.

Although a full analysis about IAD is not available now, there are some initial findings that highlight specific aspects of IAD investigations where reforms are needed. As the City proceeds with FOP contract negotiations and the authorizing legislation for CPOC, these initial points about IAD investigations should be considered in order to ensure reforms can begin where they are needed.

An analysis of all complaints against police received in 2017 found that the Department often violates the time requirements of Executive Orders 7-11 and 5-17. This analysis found that in 2017 it took Internal Affairs an average of 181 days (approximately 6 months) to complete an investigation; almost double what the Executive Order allows for which is a maximum 90-day investigation period (see Appendix 5 and 6).[10-11] Investigative delays can be unpredictable, but in order to better deliver justice to residents and officers, investigations must occur more quickly.

An analysis of all civilian-initiated complaints against police investigated by IAD from 2015 to 2020 shows that only 14% of allegations received sustained findings (see Appendix 4).[12] Without the completed data analysis, it is not possible to name all of the factors that contribute to this low rate of sustained allegations, but a survey of PBI board members conducted by the PAC hinted at some larger issues. 17 survey respondents noted that they have seen IAD investigations that were missing information, contained interviews that were not thorough, or that the findings

[10] See Appendix 5: Phila., Pa., Exec. Order No. 7-11 (June 21, 2011)
[11] See Appendix 6: Phila., Pa., Exec. Order No. 5-17 (August 1, 2017)
[12] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

were unduly influenced by IAD supervisors, as evidenced by IAD investigators testifying that they did not agree with the findings.

These initial findings point to just a few problems with IAD operations, but the problems are systemic in nature. As FOP contract negotiations, CPOC legislation revisions, and budget discussions proceed, it is crucial that decisionmakers consider all aspects of the discipline system and carve out space for unprecedented changes to be made that may help remedy these problems, such as adding civilians to various aspects of the discipline process as investigators and auditors, and granting CPOC direct access to PPD databases and information.

OBJECTIVE 1 – INVESTIGATIVE OUTCOMES AND COMMAND LEVEL DISCIPLINE

Objective 1 of the collaborative project plan states, "Review how discipline initiated from both Commanders and Internal Affairs to determine if the current processes are consistent and fair across the Department." Due to delays in data delivery, the review of data related to command level discipline is not complete and cannot be delivered at this time. This objective will be discussed in a later report, but some initial observations about the use of command level discipline are addressed in Objective 2.

OBJECTIVE 2 – PBI CHARGING UNIT

Objective 2 of the collaborative project plan states, "Review the purpose, processes, and utility of the Police Board of Inquiry Charging Unit and its interactions with Internal Affairs, which investigates and determines whether sufficient evidence exists that an employee has violated the disciplinary code."

All sustained complaints against police are forwarded to the PBI Charging Unit for review. According to Directive 8.6, the Charging Unit shall review all completed reports, statements from civilian or police complainants, all witness statements, radio logs, patrol logs, and all other pertinent information to enable the PBI Charging Unit to make appropriate charging decisions. At that time, the unit will either (a) authorize the officer to receive formal training and counseling to address the misconduct or (b) authorize formal disciplinary charges (see Appendix 7).[13]

As all sustained allegations of misconduct pass through the PBI charging unit, this unit is a critical point in the disciplinary process. The PBI charging unit currently has great influence over which cases are forwarded through the process to receive further consideration for discipline. If procedural flaws occur at the charging stage, it can greatly impact the outcome of misconduct allegations. Generally, the following recommendations speak to additional levels of review that are needed at the charging stage to ensure thorough and accurate charging, as well as create formal guidance for the use of training and counseling as a discipline diversion.

[13] See Appendix 7: PPD Directive 8.6

Recommendation 1: The PPD should draft, in collaboration with CPOC, a more comprehensive policy that narrows the circumstances in which training and counseling can be used as an alternative to formal discipline charges. Since training and counseling has been used in 76% of sustained instances of misconduct, Part 2 of this report will offer a guide for how to narrow its practice when a full data analysis is complete.

The PPD policy on training and counseling affords an abundance of unfettered discretion to the Department regarding who receives this diversion. To determine who is eligible to receive training and counseling in lieu of discipline, the policy merely states:

> "When the PBI Charging Unit deems that the violation(s) sustained in the completed investigation should be addressed through counseling, a Counseling Form memorandum will be prepared by the Commanding Officer PBI Charging Unit and sent via the 75-18 management system to the Commanding Officer of the respective employee(s)."

This does not provide guidance on who is eligible for training and counseling or what offenses for which it is appropriate, nor does it provide oversight to ensure that training and counseling is used only when necessary and appropriate. While the formal policy remains unchanged, as of the date of this report, the PPD has modified the use of training and counseling in practice. Now, each time the charging unit recommends the use of this diversion, it must be reviewed and approved by a Deputy Commissioner.

PAC staff interviewed the Inspector currently in charge of the PBI charging unit, and he provided insight into how he decides to use training and counseling in lieu of formal charges to resolve a sustained allegation. Many factors are considered, such as the degree to which the community was harmed by the misconduct, the level of neglect displayed by the officer, the officer's training or lack thereof, the amount of experience the officer has on the force, and whether the conduct was accidental. The complainant's cooperation with IAD can be a factor as well, but if the allegation is serious, this is not factored into the decision. The charging unit has wide discretion to decide which sustained complaints should be diverted away from discipline and toward training and counseling.

Training and counseling can be used as a tool to divert officers from discipline when sustained allegations relate to minor policy violations such as inaccurate paperwork or other technical matters. A review of departmental records, however, showed that training and counseling is used to resolve several types of policy violations (see Figure 2 in Appendix 4).[14] Troublingly, training and counseling has been used for more serious misconduct, such

[14] See Appendix 4 Figure 2: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

as in complaint # 17-0072, in which an officer was sustained for drawing her firearm and pointing it at an unarmed motorist. In this complaint, video evidence showed the officer pointing her firearm when the complainant did not present a threat of serious bodily injury. And also in complaint #17-0228 when an officer was sustained for punching the complainant in the face when he arrested him. Similar to #17-0072, video evidence in #17-0228 showed the officer punching the complainant.

Training and counseling has also been used for officers with repeated violations. This not only calls into question its effectiveness as a deterrent for misconduct for individual officers, but also demonstrates how it can allow repeat offenders to avoid discipline. For example, in complaint # 16-564, IAD sustained an allegation against an officer in which in November 2016 a complainant alleged that the officer stopped her double parked vehicle, threatened to call DHS for her child, used profanities at her, and wrote her a parking citation for an abandoned vehicle. Internal affairs only sustained the violation for writing an improper traffic citation, noting that there were no independent witnesses to corroborate the other allegations. The officer received training and counseling for this misconduct. Later, in complaint # 16-586, internal affairs sustained an allegation against the same officer in which in October 2016 he was recorded on video threatening to confiscate the complainant's cell phone; the complainant was recording the officer arresting another individual. The officer received training and counseling for this violation as well.

Just a few months later, in complaint # 17-0098, the officer was sustained for misconduct that occurred in February 2017 in which he did not document stopping a teenager riding a bike on his patrol log. Again, this officer received training and counseling. In complaint # 17-0580, Internal Affairs sustained the officer for misconduct for making inappropriate social media posts while on duty. The outcome of this matter was a guilty finding by the officer accepting command level discipline; he received a 1 day suspension for his conduct. Overall, this officer received numerous sustained allegations but was repeatedly diverted to training and counseling rather than discipline. Additionally, a review of a few non-sustained complaints against the officer, #17-0384, #17-0506, and #17-0587, showed that these complaints were not sustained because there were no independent witnesses or videos to prove the allegations made by the complainants - a standard of evidence problem discussed later in this report.

The review of all sustained complaints of misconduct from 2015-2020 conducted by PAC's data partners found that 76% of sustained complaints received training and counseling (see Appendix 4).[15] The PAC believes that although training and counseling can be a useful tool, it has been overused as a way to resolve cases. As training and counseling is not discipline, it means that these officers faced no consequences for the misconduct they were found to have committed, and sometimes went on to commit additional misconduct. It is therefore necessary that the PPD limit the scope of training and counseling so that it is used in more limited and appropriate circumstances.

[15] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

Recommendation 2: In bringing charges against PPD personnel for sustained misconduct, the charging authority should bring all charges that are applicable.



Once a complaint has been determined to be ineligible or inappropriate for training and counseling, the PBI Charging Unit then authorizes official charges, known as 75-18s, against the officer; a process that the PAC has found to result in inaccurate and/or insufficient charges based on the sustained conduct. Unfortunately, due to a delay in data transfer, the PAC was originally only provided 75-18s for matters forwarded to the PBI Department Advocate. This current review does not elaborate on 75-18s where an officer accepted Command Level Discipline with the PBI Charging Unit; an examination that PAC will conduct in a future report.

A review of a sample of 75-18s showed that in many of the cases, the PBI Charging Unit made insufficient charging decisions. In many cases, although the sustained conduct violated several different policies, the Charging Unit brought just one charge. For example, in PBI # 17 (PBI 14-0504 in Appendix 8),[16] a Corporal was able to plea to Command Level Discipline and receive a reprimand for the charge of failure to supervise-unspecified conduct. The conduct in question was the Corporal's failure to check on the welfare of a suspect who was left handcuffed to a wall bar in a cell room for a prolonged period of time. A PAC review found that the Charging Unit could have authorized at least 4 additional charges that more appropriately described the Corporal's misconduct, such as (1) Neglect of duty-failure to take police action, (2) Neglect of duty-failure to comply with any Police Commissioner's orders, (3) Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody, and (4) Failure to supervise-failure to take supervisory action.

Another, more alarming, example is PBI # 18 (PBI 14-0553 in Appendix 8),[17] in which the Charging Unit authorized the charge of "conduct unbecoming-unspecified" when Internal Affairs found that the officer threatened the mother of his child that he would release sensitive pictures of her; another PPD personnel. A PAC review found that the Charging Unit could have authorized several additional charges that more appropriately described the conduct, such as (1) Conduct Unbecoming-engaging in threating, or harassing, intimidating, or like conduct towards another member of the Police Department, (2) Conduct Unbecoming-any act, conduct or course of conduct, which objectively constitutes discriminating

[16] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0504)
[17] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0553)

or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity, (3) Conduct Unbecoming-inappropriate communication based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity conveyed in any matter, (4) Conduct Unbecoming-conduct or course of conduct, which objectively constitutes sexual harassment, and lastly (5) Conduct Unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one year.

The failure of PBI Charging to bring forward appropriate charges also has devastating consequences on repetitive misconduct including (1) repeated infractions being charged as a first offense since the prior infraction was not charged appropriately and (2) repeated infractions being charged as a first offense because Charging selected a charge with a very short reckoning period. Reckoning periods are described in the PPD Disciplinary Code as:

> "That period of time during which an employee is expected to have a record free of the same type of offense. All reckoning periods shall be completed from the date the first offense was committed. For subsequent violations to apply, it must be shown that the employee was provided formal notice (75-18s) of the first violation. Second and subsequent violations of the same section committed during the relevant reckoning period shall be treated as second or subsequent offenses. The same type of offenses committed after the reckoning period expires counts as a first offense. If the individual is found not guilty of a first offense at a Police Board of Inquiry hearing; then a second offense charged would be considered a first offense within the reckoning period." (see Appendix 14)[18]

A prime example of this Charging Unit practice is PBI #30 (PBI 15-0125 in Appendix 8).[19] In this investigation, the officer discovered that his wife was having an affair when he followed her vehicle to a hotel and confronted his wife and her paramour. Before leaving the area, the officer recorded the paramour's license plate number, used departmental equipment to discover the identity and address of the paramour. The officer was charged with lying during an investigation and failing to comply with the Police Commissioner's orders.

Alarmingly, this was not the officer's first infraction of using departmental equipment to discover private information unrelated to his police duties. However, the first instance happened more than 12 months

[18] See Appendix 14: PPD Disciplinary Code (July 2014)
[19] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 15-0125)

prior, and both were charged using the charge of "Neglect of Duty - failure to comply with any Police Commissioner's orders." Had the charging unit applied a charge to each case that more accurately captured the officer's misconduct, such as "Conduct Unbecoming - Abuse of Authority," a longer 5-year reckoning period would have applied and this officer's repeat offense could have been punished appropriately. Not only does the use of inappropriate or unspecific charges prevent proper discipline, it leaves the PPD unable to accurately track the misconduct that employees commit.

These examples underscore the importance of the charging unit in the discipline process. Without accurate charges, complainants cannot receive the justice they deserve, and officers who commit misconduct, sometimes repeatedly, do not face the discipline that the system is supposed to deliver. Key features of an effective discipline system are that they help change behavior and deter future acts of misconduct. The examples above show how practices in use by the PBI charging unit thwart these disciplinary goals.

Recommendation 3: Before discipline charges related to CAPS are delivered to an officer, PAC/CPOC should review the charges to ensure accuracy and completeness.

The review of PBI hearing data revealed that 9% of the time the PBI boards found an officer "not guilty" they did so because the charges were not accurate (see Appendix 4).[20] This has very real implications for accountability within the PPD discipline system.

For example, in PBI #13 (PBI 14-0432 in Appendix 8),[21] the complainant alleged that the officer Tased him while he was running and later kicked him in the face after he was handcuffed. Even though the IAD investigation found that both the officers' use of their Taser and the kick were not authorized, PBI charging documents mentioned only the kick. The charge excluded any reference to the inappropriate use of the Taser. When the Department Advocate attempted to argue to the PBI panel that the officer used the Taser inappropriately, the FOP attorney objected, arguing that the hearing was limited to the kick because that was the only conduct referenced in charging documents. The panel rendered a decision on the kick only, finding the officer not guilty because the panel believed the officer's actions were against protocol but overall reasonable. The unauthorized use of the Taser was therefore never fully addressed by the PPD discipline system. It is not known why the PBI Charging Unit prepared a charge for only the kick in this case, but by not addressing the Taser use in the charges, the Charging Unit ensured that the officer would not be held accountable for all of the force found to be excessive by the IAD investigation.

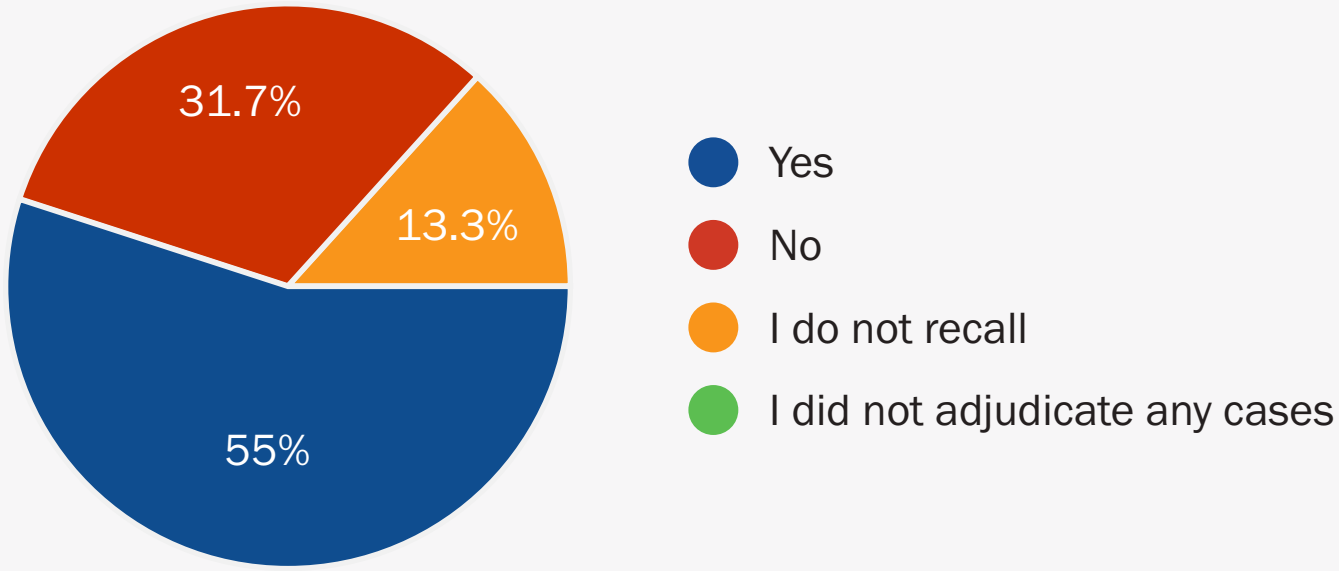
As demonstrated in the previous example, PBI board members must vote on the charges preferred by the Charging Unit, and they are not permitted to add or change the charges even if there is a clear error. The survey of PBI board members showed that 55% of respondents said they adjudicated cases for which the charges did not match the facts of the case. Note that 66% of survey respondents said they had served on 5 or more PBI boards, meaning their responses account for hundreds of individual PBI cases.

[20] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

[21] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0432)

Did the case(s) you adjudicated include any charges that you felt did not match with the facts of the case?

60 RESPONSES



Anecdotally, PAC staff members have been present at PBI hearings in recent years during which it became clear that inaccurate charges were used. Given all of this evidence that charges against officers are not always accurate, it is clear that reforms to the discipline charging process are needed. The CPOC legislation proposes empowering CPOC to jointly decide with the PPD on discipline charges.

The model for discipline charging proposed in the CPOC legislation is the preferred method, as it allows CPOC to have an active role in deciding the totality of charges brought against the officer, and specifies that if there is a disagreement between CPOC and PPD about which charges are appropriate that all charges will be brought (see Appendix 11).[22] If this is not included in the final version of the CPOC legislation, then CPOC should perform a review of charges before they are delivered to a subject officer. Accuracy of charges is crucial to successful discipline prosecution of officers and it is clear that additional levels of review are needed with the discipline charging process.

[22] See Appendix 11: PHILADELPHIA, Pa., Citizens Police Oversight Commission, 210074 (2021)

OBJECTIVE 3 – PBI DEPARTMENT ADVOCATE PROCEDURES

Objective 3 of the collaborative project plan was, "Review the processes of the Police Board of Inquiry Advocate's Office to determine compliance with existing Departmental Directives and to determine whether such Directives/ Orders remain valid, are outdated or no longer feasible." The following recommendations relate to procedures for PBI hearings, from administrative aspects such as scheduling and start times to recommendations for who should sit on PBI panels as deciders of fact and tools they should use to make their decisions. Objectives 3 and 4 of this report have some overlap, as the procedures of the Department Advocate and the procedures during PBI hearings in general are inherently linked.

Recommendation 4: Notifications to complainants and witnesses should be checked for accuracy and sent across several avenues such as text message, telephone, and email. To enhance accountability of this process, staff should sign logs attesting to accuracy review and additional investigation to locate new contact information if needed. Without a log, it would be difficult to determine which individual contributed to the faulty notification.

Notification to complainants and witnesses is critical to the success of a case at PBI. Executive Orders 7-11 and 5-17 state that not less than thirty days written notice of the hearing shall be given by certified mail to the complainant and alleged victim of misconduct. However, a review of notices provided to complainants showed that a few notices were sent to inaccurate addresses, included incorrect hearing dates, or were sent with less than 30 days' notice. For example, the notice sent for PBI #16-0346 listed the hearing date as May 31 when the hearing was scheduled May 30. Even though Department records showed a phone call to the complainant to inform her of the correct date, the phone call took place 13 days before the PBI hearing. In this matter, the accused officer was found not guilty and the PBI board noted in the not guilty memo that "the board took into account that defense counsel was unable to cross the complainant." Clerical errors have a real impact on the outcomes of discipline cases.

In PBI #17-0373, Internal Affairs sustained an allegation of physical abuse where an officer pistol-whipped the complainant; arrest photos showed significant injury to the complainant's face. However, when the PBI hearing was scheduled, notice was sent to an address listing the complainant's apartment number as "16" when the complainant stated on his complaint that his address was associated with apartment number "6". The number "6" was also reflected on police documents, hospital reports, and other Internal Affairs investigative records. The investigative file for this PBI did contain a "return to sender" notice; informing PPD that the notice was undelivered. Subsequently, after the officer was found not guilty for the conduct, notice was sent to the correct apartment number 8 months after the hearing was held. When reviewing the not guilty memo that described why the officer was found not guilty, the first reason listed was that the complainant failed to respond to the subpoena to appear.

From a review of all PBI hearings that occurred between 2015-2020, even though many notifications were sent to the original addresses that were provided on complaint forms, the PAC believes that the extended delay in investigating the complaints and scheduling hearings may have contributed to complainants inability to appear. Overall, it took an average of 463 days from the filing of a complaint to the scheduling of a PBI hearing (see Appendix 4).[23] Many factors may contribute to a complainant's inability to attend a PBI hearing. A lack of investigation regarding updated contact information, typographical errors in addresses, and other clerical errors should not be among those factors.

Recommendation 5: The Department Advocate should request continuances to ensure notice was given to complainants and witnesses and that forwarding addresses are accurate.

Departmental records do not show if the Department Advocate attempted to locate missing witnesses or confirm if the original address provided remained accurate. Executive Orders 7-11 and 5-17, however, allow the Department Advocate the ability to request a continuance for instances like this. The orders state:

> "The Board may grant a continuance of the scheduled hearing only upon written request by a member of the Board or the Department Advocate. If a continuance is granted, the hearing will be rescheduled to be held at the earliest date possible but not to exceed thirty days from the date of the first scheduled hearing, and notice shall be given to the accused officer or employee and any witnesses by certified mail, return receipt requested."

However, a review of audio transcripts and investigative documents of these hearings reveals that the Department Advocate does not request continuances when there is no contact from the complainant or witness. This could occur for several reasons including the Department Advocate believing that the complainant is no longer interested in pursuing the case. In most cases, the Department Advocate only calls the Internal Affairs investigator to testify at the PBI hearing which in some cases could be problematic, especially when the investigator informs the board that they do not believe there is enough evidence to sustain the allegation. In PBI #13 (14-0432 in Appendix 8),[24] in finding the officer not guilty of excessive use of force, the PBI board noted that "the internal affairs investigator was not supportive of the internal affairs outcome of sustaining the complaint".

[23] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

[24] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0432)

Recommendation 6: PBI hearings should begin promptly at their scheduled start times.

PBI hearing transcripts do not note the start time of the hearings, so it is not possible to generate data related to how often PBI hearings start at their scheduled start times. However, 5 survey respondents expressed frustration in open-ended responses that the hearings do not start on time (again, note that 66% of survey respondents said they have served on 5 or more boards, meaning that survey responses may represent hundreds of PBI hearings). PAC staff have also experienced these delays, and anyone who has attended a PBI hearing as a complainant, witness, or board member would likely attest to the fact that the hearings routinely start late, sometimes by 2 or more hours. This is not only inconsiderate of everyone's time but gives the impression (rightly or wrongly) that hearings are not taken seriously, or there is a lack of preparation that leaves last minute work to be done. If the delays are related to last minute plea negotiations, PBI staff should make additional efforts to complete negotiations before the hearing date so that hearings can begin on time.

Recommendation 7: All individuals with relevant information should be asked to attend hearings and at times, expert testimony should be provided.

Executive Order 5-17 states that during the processing of civilian complaints against police, "Testimony under oath shall be received from all persons who appear and purport to have information which is material to the [complaint]."

Even though the PAC understands that prosecutorial discretion is important and should not necessarily be constrained, a review of PBI hearings show that in some cases, necessary witnesses that should have testified, did not. A prime example of this is PBI # 38 (PBI # 15-0228 in Appendix 8),[25] in which a police officer was sustained for killing an unarmed resident by shooting him several times in the back. During the hearing, the Department Advocate merely called the lead detective and the assigned IAD investigator to testify before the PBI board. The medical examiner was not present to testify; their report was merely read to the panel.

The Commissioner elected to dismiss the officer, but during arbitration, the arbitrator reversed the guilty decision because he believed the officer offered "uncontroverted" testimony. Most importantly, the arbitrator noted that the lieutenant of the investigative shooting team discovered cartridge casings from the officer's firearm 10 feet from the suspect's body, but the lieutenant "had no explanation for that, other than that cartridges can land at various distances from their point of ejection, depending on weapon type and the explosiveness of the cartridge charge. He stated that he drew no inferences from that distance".

In this example, having an expert testify could have provided the PBI panel, the Police Commissioner, and the arbitrator with additional relevant information and could have answered the most relevant question that the arbitrator had; with no eye witness to the shooting, the question of whether there was enough scientific evidence to contradict the officer's account of the shooting remained. The arbitrator decided there was not. In reversing the dismissal decision, the arbitrator stated, "given the absence of anything indicating otherwise, I am constrained to accept the officer's accounts of the incident".[26] Building the strongest possible case at the PBI hearing can help safeguard against reversals at arbitration.

[25] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 15-0228)
[26] https://www.documentcloud.org/documents/5793474-154958Award-Redacted.html

Recommendation 8: The PPD should include civilians as discipline hearing adjudicators and should include this in negotiations with the FOP so that civilians can participate regardless of what provisions are included in the final CPOC legislation.

PBI boards are comprised solely of PPD personnel. Recently, PPD leadership has expressed interest in including an outside civilian perspective on PBI boards as voting members. From a civilian oversight perspective, this is intuitively a good idea because of the impact that police officers can have on the lives of the residents they police. Other cities around the country use civilians as adjudicators for police discipline cases, sometimes as sole case reviewers and adjudicators, and sometimes as co-adjudicators with sworn law enforcement:

CITY	DECIDER OF FACT AT HEARING STAGE
CHICAGO, IL	Civilian oversight board, half or more are lawyers at any given time
LOS ANGELES, CA	Board of Rights panel of 3 – accused chooses between 2 officers and 1 civilian, or 3 civilians
WASHINGTON, D.C.	1 civilian complaint examiner who is a lawyer (typically there is no hearing, but the examiner does a full case review)

As CPOC authority has not yet been determined, it is difficult to make a definitive recommendation about who should adjudicate civilian complaint hearings, because it is not clear who will investigate, charge, and prosecute once CPOC exists. The PPD should include civilians as discipline hearing adjudicators in negotiations with the FOP so that civilians can participate regardless of how the CPOC legislation looks once it is finalized.

The survey of PBI board members revealed some interesting insights into the current model in use by the PPD of having a board of 3 officers of varying ranks decide cases. A few respondents called attention to the inherent power structure of the PBI boards. Within a paramilitary organization, deference to higher ranking officers is customary and expected. This can become problematic if it unduly influences the outcomes of processes intended to be fair and unbiased. Survey respondents noted:[27]

> "The highest-ranking board member can sometimes convince other board members to vote a certain way. Their high rank can influence the voting."

> "All board members are supposed to be equal, but the lowest ranking member's opinion does not have the same weight as the higher-ranking board members."

[27] Excerpts from PBI board member survey responses included in this report are paraphrased.

Several other respondents expressed a similar concern. When lower ranking board members feel obligated to vote in accordance with superiors, the PBI hearing process cannot be called fair or procedurally just. Civilians, conversely, would not beholden to the PPD rank structure and would be able to vote without fear of repercussions or signaling disrespect to superiors.

Survey results further illustrated why resting adjudication solely with other law enforcement personnel can be problematic. Numerous respondents cited their experience as officers as the main reason why they should be the ones deciding PBI cases.

> "There are nuances to being an officer that people from outside agencies wouldn't understand. Outsiders should not vote on PBI boards for that reason."

> "Police officers deeply understand their profession and so they are the ones who should judge other officers."

These arguments for why officers should be judged by their peers, while reasonable at first glance, also make a good case for why outside perspectives are needed in the discipline process. PPD policies are straightforward and are given a great deal of consideration before they are enacted by the Department. While every law enforcement encounter has intricacies and nuances, whether an officer violated relevant PPD policies by a preponderance of the evidence is a yes or no question. Anyone, when presented with the facts of the case and the PPD policy in question, should be able to determine whether a policy violation occurred. The shared experiences that give PBI board members the ability to understand a law enforcement encounter may influence their ability to view the allegations against the accused officer objectively. Several survey respondents agreed with this sentiment and noted that adding civilians to the PBI hearing board could help eliminate perceived bias within PBI hearings and increase transparency.

Juries comprised of a variety of Philadelphia residents consider legal arguments and render verdicts every day. Further, no other City employee has the benefit of having their discipline recommendations made solely by members of their own department, nor is this practice in line with other major police departments. With proper training and clear instructions during PBI hearings, average citizens will be able to make determinations about whether officers violated PPD policies. In the rare circumstances when a policy violation may have been warranted given the specifics of the situation, this would be a matter for a higher appeal venue to decide, as well as larger policy concern to be addressed by another arm of the Department.



Recommendation 9: The PPD should work with PAC/CPOC staff to design the qualifications and specifications for the civilian PBI board member role, as well as to interview, select, and train candidates.

While the PPD has expressed interest in having one civilian on each PBI board, there are a few options used in other jurisdictions that are worth considering. As noted previously, some cities require that civilians are lawyers to serve in a role that adjudicates cases, but the PAC does not believe that this is necessary. With proper training and clear expectations for what is to be decided at hearings, Philadelphia residents with a variety of experiences and backgrounds could fill this position. It would also be important to recruit and select candidates that can judge officers' actions in an unbiased way. As the civilian oversight agency, the PAC/CPOC should be consulted as the PPD designs this civilian role, the selection process for it, and training for these individuals.

Recommendation 10: Jury verdict forms with interrogatories should be used to narrow the scope of the PBI board's review.

Currently, PBI boards are asked to decide cases as generally guilty or not guilty, instead of being asked narrow questions that relate to the disciplinary process such as (1) did the department have a relevant policy on the issue, and (2) did the departmental personnel violate that policy? After reviewing data and PBI cases, the PAC believes the use of questions such as these would help focus PBI decisions and clarify the role of PBI boards.

The review of PBI cases revealed several cases in which a directive explicitly prohibited an action or behavior but the officer who undoubtedly committed that action was found to be not guilty of misconduct.

For example, in PBI #13 (see Appendix 8)[28] an officer was found not guilty of excessive use of force when he kicked a handcuffed person in the face. Even though force directives prohibited kicks, the PBI board believed the officer appropriately used all available tools at his disposal; effectively determining that PPD Directive 10.2 regarding the use of force was not binding.

This practice is called nullification, whereby a jury might acquit an accused on the basis of conscience, bias, or some other reasons, even when the accused did commit the act. Even though this practice is most frequently discussed in a criminal law aspect, the occurrence is largely present in police disciplinary proceedings. For example, a recent New York Times article highlighted the common practice of NYPD officers being sustained of misconduct, but ultimately being found not guilty due to nullification. This New York Times review discovered that "the department regularly ignored the Civilian Review Board's recommendations, overruled them or downgraded the punishments, even when police officials confirmed that the officers had violated department regulations [...]at the same time, the city paid millions to resolve lawsuits from those very same cases."[29] Overall, the use of nullification in police discipline cases creates an accountability gap that allows some police misconduct to go unchecked.

The PBI voting sheet currently in use (see Appendix 13)[30] lists the numeric code for the charge(s) faced by the accused officer with the penalty range for that charge as specified in the PPD Disciplinary Code. Then, there is a space for each board member to write their vote of either "guilty" or "not guilty" next to the charge. A study on the use of verdict forms showed that forcing deciders of fact into this binary choice of guilty or not guilty without additional questions to narrow the focus of deliberations "facilitates and encourages flawed reasoning."[31]

Special verdict forms, however, include questions that clearly define the scope of the matter at hand. For PBI hearings, special verdict forms would ask questions such as, "Did the PPD have a policy regarding [alleged conduct] at the time of the incident?", and "By a preponderance of the evidence, did [Officer X] violate the policy?" A review of verdicts found that in trials where specific questions were asked of the jury, "jurors reported feeling better informed, more satisfied that their verdict was correct, more confident that their verdict reflected a proper understanding of the judge's instructions, and more satisfied that the prosecutor was helpful."[32] Overall, this practice could assist the PBI panel in focusing their attention on the specific policy violations alleged.

Most importantly, the use of these forms would not conflict with existing operating procedures. Generally, Directive 8.6 empowers the PBI panel to "render a recommendation to the Police Commissioner in those matters it adjudicates." The Directive, however, does not require this panel to render the ultimate decision of if the personnel is guilty or not; that power resting solely within the Commissioner's jurisdiction. The fact that the ultimate issue of guilt can only be wielded by the Commissioner, is more justification to refrain from asking the PBI panel that question. Appendix 10 reflects a sample verdict form that could have been utilized in PBI # 13.

[28] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0432)
[29] Ashley Southall, et al, *A Watchdog Accused Officers of Serious Misconduct. Few Were Punished*, New York Times, November 15, 2020, https://www.nytimes.com/2020/11/15/nyregion/ccrb-nyc-police-misconduct.html
[30] See Appendix 13: PBI existing verdict form
[31] See Charles Eric Hintz, Fair Questions: A Call and Proposal for Using General Verdicts with Special Interrogatories to Prevent Biased and Unjust Convictions, U.C. Davis L. Rev. (2021)
[32] Kate H. Nepveu, Beyond "Guilty" or "Not Guilty": Giving Special Verdicts in Criminal Jury Trials, 21 Yale L. & Pol'y Rev. (2003).

The form could have been helpful in several aspects. First, the special verdict form could have reminded the panel that the standard of proof is preponderance of the evidence, where panelists are asked if it is more likely than not that the officer violated the policy. Second, the form could have allowed the panel to focus more effectively on their role, which was to make a recommendation on if the officer violated Departmental policies. Third, it could have reduced the criminal law hearing tendency whereby jurists "place themselves in the accused's shoes" to determine if conduct is appropriate to the exclusion of conducting the accurate administrative hearing deliberation of if the officer violated Departmental policies. Fourth, eliminating the jargon of guilty/not guilty of criminal cases could have also reminded the panelists that the standard of proof was not beyond a reasonable doubt.

Lastly, the use of the verdict form could have better assisted the Commissioner in his/her responsibility of rendering the ultimate decision of whether the officer was guilty or not. Ultimately, the data review of PBI cases and the survey of PBI board members show that individual board members do not apply consistent standards of evidence and, at times, appear to rely on more emotional reactions to the facts of the case to make their decisions. The use of verdict forms for charges would encourage more objectivity at the deliberation stage of PBI hearings.

Recommendation 10-A: Unspecified charges should be authorized only if the charge is unable to be described in the existing code. When the conduct has not been described elsewhere, the charging documents should include, and the PBI panel should be reminded, that this charge specifically requires the panel to solely determine if the conduct compromised the integrity of the Department.

The charge of "Conduct Unbecoming-Unspecified" was originally offered by the Department in 2010. In explaining the necessity for this charge to the Pennsylvania Labor Relations Board, then Commissioner Ramsey stated:

> "Unspecified charges are necessary because a disciplinary code cannot possibly encompass and clearly articulate every single act that a person might do that would compromise the integrity of the Department and inhibit the effectiveness of the Department in serving the needs of citizens."

In response to this, the Pennsylvania Labor Relations Board stated that this rule does not violate the prohibition against vague rules.[33] The PPD disciplinary code was then codified with this rule, which explains:

> "The following code includes specific behaviors that have been identified as violating this standard. However, to the extent that an employee's actions are not specifically described in this code, but have the effect of impairing the employee's ability to perform his or her duties, then the employee may be charged under the "unspecified" charges.

Even with this rule, however, FOP attorneys frequently argue at PBI hearings that there was no policy that outlined the proper conduct and as such, there was no wrongdoing. Unfortunately, this has been a successful argument since many panels document this reason for finding officers not guilty of this charge specifically.

Since this charge specifically focuses on the conduct of the officer and how they placed the Department in a negative light, PBI hearings related to unspecified charges should focus on the conduct and its harm. In instances where no specific policy or directive is applicable and thus the charge of "Conduct Unbecoming-Unspecified" is utilized, the PBI board should be instructed that a concrete policy prohibiting the conduct is not only (1) not necessary as ruled by the Labor Relations Board, but also (2) impractical since the code cannot anticipate every possible conduct that may arise.

This will help remind PBI board members of the intended purpose of the "Conduct Unbecoming-Unspecified" charge (or any other unspecified charge). This is important because the review of PBI cases showed that usually when this charge is used, panelists place themselves in the accused shoes to determine if their actions were reasonable; that process is flawed. Panelists should instead ask themselves the ultimate question for this charge - **did this conduct compromise the integrity of the Department**.

[33] https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/proposed/2014/Documents/FOP%20v%20City%20of%20Phila%20PF-C-10-84-E.pdf

Recommendation 11: PBI voting sheets should require each member of a PBI board to document their reasons for their recommendations to the Police Commissioner regarding their findings and their discipline recommendations, if applicable.

Until recently, the rules of PBI hearings were that the boards may come to their finding of "guilty" or "not guilty" by a 2/3 majority, but if they find the officer "guilty", their penalty recommendation to the Police Commissioner had to be unanimous. Now, the minority voted does not participate in the penalty recommendation. Regardless of how many panel members craft the penalty recommendation, it remains just a recommendation because the Police Commissioner has the ultimate authority when it comes to the discipline decision. One survey respondent illustrated one problem with the system that requires board members to agree on a penalty:

> "I have been on boards where other board members do not vote to take serious discipline action against an officer because they don't want to be responsible for that serious discipline. The Commissioner has the final decision, so all board members should write their reasons for the penalty. The Commissioner should hear why certain choices are made."

This insight hints at the emotions that can come into play when officers are tasked with recommending discipline for their fellow officers. An emotional reaction, such as experiencing guilt for negatively impacting someone's career, is understandable to an extent, but is not necessarily a valid reason to recommend less serious discipline. Further, this emotional reaction should not outweigh the vote of another panel member who believes that serious discipline is required based on the facts of the case. Having board members account for their recommendations may help ensure that they follow the disciplinary code and the facts of the case rather than emotion. When the Police Commissioner reviews the PBI voting sheet to make a disciplinary decision, they should be able to review the opinions and reasoning that informed the board members' recommendations. As of May 10, 2021, the PPD requires PBI board members to document their reasoning for their verdicts and penalty recommendations.

Recommendation 12: The PPD should update the mission statement of the PBI to reflect the duty to provide justice not only to officers but also to residents of Philadelphia who have been victims of police misconduct.

Part of the responsibility of the PBI is to ensure that justice is served so that the residents of Philadelphia have confidence that PPD takes misconduct seriously. The mission statement for PBI, however, is focused on how the accused officer perceives their treatment within the discipline system. The current mission statement is:

> "The Mission of The Police Board of Inquiry is to provide a fair and impartial forum in which all members of the department, regardless of sex, race, religion, or sexual orientation, can have confidence that disciplinary charges will be heard and adjudicated in accordance with the Philadelphia Police Disciplinary Code.
>
> The Police Board of Inquiry will accomplish this mission by ensuring that proper decorum is maintained throughout all proceedings; by ensuring the impartiality of all sitting Board members; and by providing the accused officer with an opportunity to be heard on the charges against him/her. The Board shall render a verdict consistent with the evidence presented before it, and the provisions of the Disciplinary Code."

This mission statement appears in the training materials for new PBI panel members and may only be an internal mission statement. However, as the PPD takes steps to improve accountability and increase civilian trust in the PPD discipline process, it is important that the mission of PBI is inclusive of all parties who interact with it. Creating inclusive messaging around the discipline process is a small step toward changing the internal culture surrounding the PPD discipline process. PAC staff welcomes the opportunity to work with the PPD to amend the PBI mission statement to better reflect that is a venue for civilian complainants as well as officers.

OBJECTIVE 4 – EFFECTIVENESS OF PBI DEPARTMENT ADVOCATE

Objective 4 of the collaborative project plan was to "review the training and effectiveness of the PBI Advocate in negotiating and conducting quasi-administrative hearings."

Recommendation 13: Attorneys not affiliated with the PPD should prosecute administrative discipline cases.

Officers are always represented by FOP attorneys at PBI hearings. The PPD should ensure that they are evenly matched during PBI hearings by having trained attorneys act as prosecutors. While administrative discipline hearings are, by definition, not formal court hearings and strict rules of evidence do not apply, a trained attorney would be better suited to match the experience and strategies used by FOP attorneys.

The CPOC legislation proposes that attorneys from the Administrative Prosecution Unit of CPOC be responsible for prosecuting discipline cases at PBI hearings (see Appendix 11).[34] The PAC agrees with this reform. As the CPOC legislation is not finalized, it is unclear what powers CPOC will have, but as negotiations with the FOP proceed, the option to utilize civilian prosecutors should be included in the proposal for changes to the discipline process. If the final CPOC legislation does not include administrative prosecution powers, the PPD should utilize other non-PPD attorneys. The City of Chicago, for example, uses attorneys from the labor unit of their City Solicitor's office in this capacity.

The prosecutor at PBI hearings does not need to be a sworn member of the department. With a thorough investigation, a detailed report of investigation, and with the appropriate charges applied, any trained individual would be properly set up to administratively prosecute a discipline case.

Recommendation 14: Regardless of who is responsible for administratively prosecuting discipline cases in the future, there should be more personnel dedicated to the prosecutorial role.

[34] See Appendix 11: PHILADELPHIA, Pa., Citizens Police Oversight Commission, 210074 (2021)

Executive Orders 7-11 and 5-17 provide the Department Advocate with certain requirements surrounding the prosecution of departmental misconduct. Both Orders first require the Advocate to hold the PBI hearings at the earliest possible date, but not to exceed ninety days from the referral of the complaint. However, a review of department data found that violations of this requirement frequently occur. A review of all complaints from 2017 found that it took the Department Advocate an average of 197 days to hold a hearing after the charges were filed, and the longest time frame between charging and a PBI hearing was 376 days (see Appendix 4).[35]

As noted previously, the PPD currently has one lieutenant in the position of Department Advocate, with a very small support staff. The Los Angeles Police Department Advocate Unit has approximately 10 officers at any given time (rank of sergeant or higher) on staff who prosecute discipline cases. While it is unclear what other factors contribute to this delay in scheduling, having only one Department Advocate to prosecute cases and work out plea deals has undoubtedly contributed to the backlog of cases waiting to be resolved at PBI. 11 survey respondents mentioned that the process takes too long for officers to have their cases adjudicated.
One respondent summarized the problem:

> "Some cases take years. If an officer makes one mistakes and then has no other issues, what is the point of disciplining them 2 years after the original infraction?"

More prosecutors mean more cases can occur at one time, which will decrease the total amount of time any given case spends with the PBI unit. This impacts the civilian and the officer alike, as closure on the incident is delayed for both the complainant/victim and the accused officer.

Recommendation 15: Charges that challenge the character/credibility/ honesty of the officer should not be withdrawn in exchange for guilty pleas.

Another power of the Department Advocate is to negotiate a guilty plea by agreeing to withdraw charges; with the final approval to withdraw a charge resting solely with the Commissioner. An example of this occurred in PBI # 23 (14-0689 in Appendix 8),[36] in which in exchange for a guilty plea and 6 day suspension for the charge "Conduct Unbecoming - Unspecified," the Department agreed to withdraw the charge of "Conduct Unbecoming - Lying or attempting to deceive regarding a material fact during the course of any departmental investigation." In this investigation, the officer was sustained for smashing a lawn chair into a resident's front patio and also lying about the incident during his IAD investigation. If the officer would have been found guilty of lying by the PBI panel, the minimal penalty would have been a 10-day suspension. Further, an officer's honesty is paramount to their ability to do their job properly and without reproach. Withdrawing charges related to honesty, credibility, or character obscures the true nature of the misconduct.

[35] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

[36] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0689)

In another incident, PBI #18-0806 (not contained in Appendix 8), an officer was sustained by IAD for conducting an improper detention and giving an improper citation when he confronted a woman who while parking hit the bumper of his personal vehicle. The officer detained her, searched her belongings, and had her car live-stopped and towed, arguing that she did not have a valid driver's license. The investigation revealed that the complainant did have a valid license. The complainant subsequently had to pay a fine over $300 to recover her vehicle. Even though internal affairs reviewed the dispatch audio and heard the officer relay over radio that he was incorrect and asked for the car to be returned because he checked the wrong date of birth, IAD stated "although this oversight may have been unintentional [...] it directly related to his decision to issue the complainant a ticket and have her vehicle towed". The tow operator stated that once cars are towed, they cannot be returned.

PBI Charging authorized the charge of conduct unbecoming-abuse of authority, which the Department allowed to be withdrawn in exchange for a CLD of Neglect of Duty-Failure to conduct a proper, thorough, and complete investigation. After this negotiation, the officer's vacation days were charged 2 working days. This officer abused his authority by detaining the complainant, searching her, and authorizing her car to be towed-all due to his personal vehicle's bumper being hit while the complainant was parking. The context of this matter, however, is obstructed, when the officer was able to plead guilty to merely failing to conduct a proper investigation.

As of the publication of this report, the PPD had stopped the practice of withdrawing any discipline charges against officers, including the types of charges noted in this recommendation.

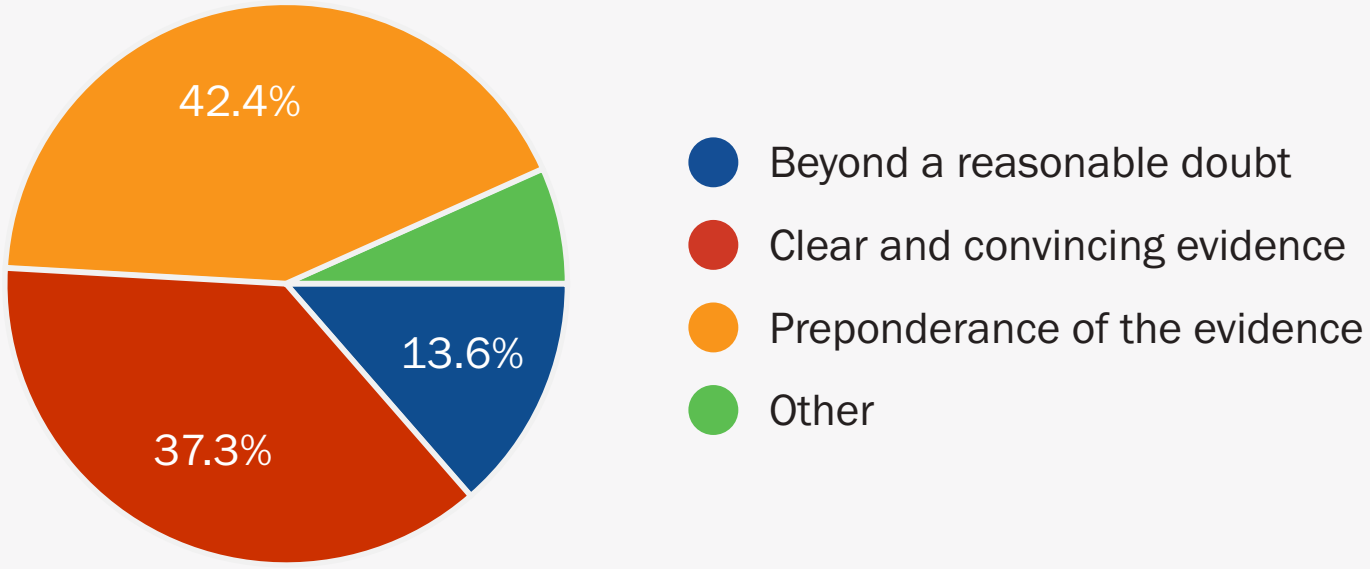
Recommendation 16: The standard of evidence for IAD investigations and PBI hearings should be clearly defined in all public and internal documents related to the discipline process including but not limited to Directive 8.6 and PBI board voting sheets, and recited to PBI board members at every PBI hearing.

The current directive does not mention that findings are decided by a preponderance of the evidence. Preponderance of the evidence is a relatively low standard of evidence. Other standards of evidence exist and are used in different sectors of the criminal justice system where higher burdens of proof must be met in order to prove guilt. In criminal cases, for example, an accused person is presumed innocent until proven guilty beyond a reasonable doubt. The standard of evidence for administrative proceedings, such as discipline hearings like those that occur via the PBI process, is preponderance of the evidence - which is significantly lower.

The standard of evidence is perhaps the most crucial thing a PBI board member must understand in order to make a fair decision about a case. If board members differ on the standard of evidence they use to make decisions, findings for similar cases may be inconsistent over time. Unfortunately, a review of not guilty memos prepared by PBI boards and the survey of PBI board members excerpted below show that there is confusion around what the standard of evidence for PBI hearings is.

What is the standard of evidence for finding an officer guilty or not guilty of misconduct at a PBI hearing?

59 RESPONSES

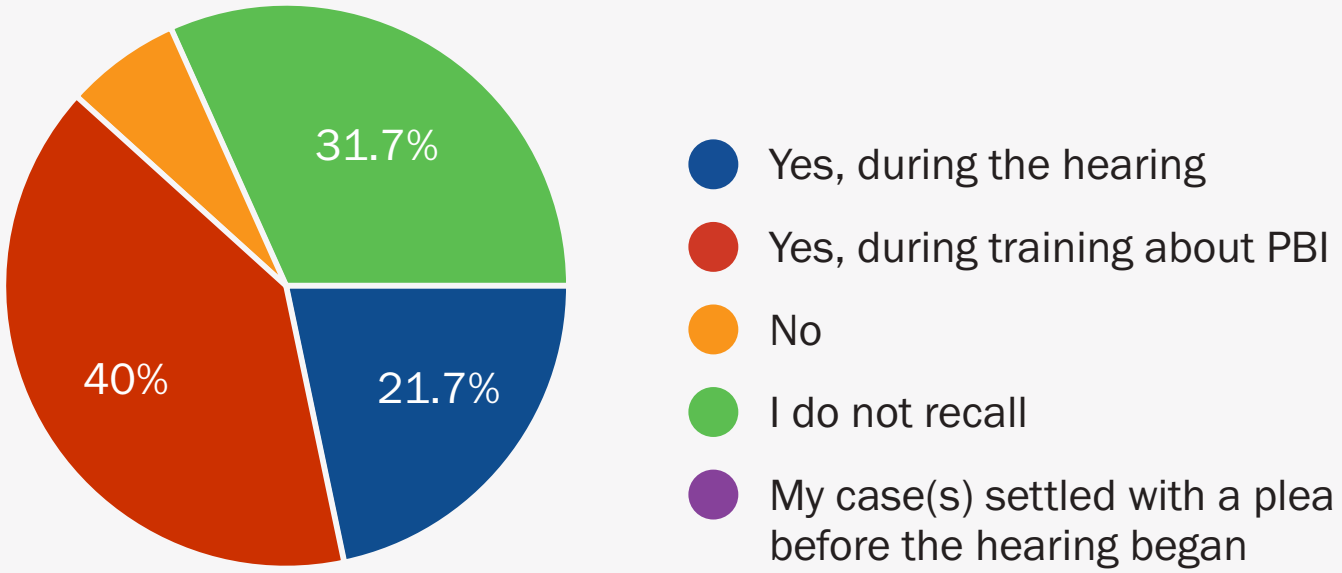


This is also evidenced in the data analysis of PBI cases, which showed that for cases that made it to a PBI hearing with sustained findings from IAD, 51% of the time the PBI board ruled "not guilty" at least in part based on a determination that there was insufficient evidence to support the allegation(s) (see Appendix 4).[37] That begs the question – insufficient based on what standard of evidence? According to the review of "not guilty" memos written by PBI boards and the PBI board member survey, board members have used an inappropriately high burden of proof to decide PBI cases. This means that some officers have skirted the justice that the PPD discipline system is supposed to deliver. There is a lack of communication surrounding the standard of evidence in PBI hearings that needs to be rectified. Only 21% of the survey respondents affirmatively recalled being instructed during the PBI hearing about the standard of evidence.

[37] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0

Did you receive instructions about the standard of evidence before deliberating the case(s) with the other PBI boarrd members?

60 RESPONSES



The following definition should be included in all written materials related to PBI proceedings, as well as in the script to be read at the start of each hearing, and before deliberations begin:

> “PBI Board Members must come to their findings by a preponderance of the evidence. This is a burden of proof that merely requires that the evidence shows that the alleged misconduct is more likely to have occurred than not.”

Recommendation 17: The PPD should utilize an employee other than the Department Advocate to manage the administrative functions of PBI hearings.

Currently, the Department Advocate is responsible for running the hearing and serving as a prosecutor. In a typical PBI hearing, an officer from the Department Advocate unit starts the recording of the hearing, and the board president reads a brief introduction from a script that states the date of the hearing. After this the Department Advocate handles all other tasks, such as administering oaths to all witnesses. In order to have the Department Advocate focused on prosecuting the case, there should be a neutral person whose job is to explain the rules and expectations for the hearing to board members and witnesses, explain the standard of evidence and give instructions to the board members about coming to findings on allegations, administer oaths to witness, and handle all the administrative duties of the hearing. Ideally, this hearing administrator would not be an employee of the PPD but would be a CPOC employee, employee of the Managing Director's Office, or be housed elsewhere in City government. Research on other administrative hearings currently held within the City could produce additional options for this position once this recommendation is accepted by PPD.

OBJECTIVE 5 – ACCESSIBILITY OF PBI HEARINGS

Objective 5 from the original collaborative reform plan states, "Evaluate the accessibility of PBI hearings and its impact on officers and civilian complainants." Some of the evaluation related to the impacts of hearing accessibility on civilians will come from the analysis of a resident and complainant survey results, which will be delivered in a later report. Although that analysis cannot be delivered at this time, PBI hearings have some obvious gaps in accessibility and the following recommendations address changes that can be made immediately to improve access to PBI hearings.

Recommendation 18: The PPD should hold PBI hearings in a room that can accommodate observers and is dedicated strictly to hearings.

Executive Order 5-17 (see Appendix 6)[38] outlines procedures for the processing of civilian complaints and states that all hearings for civilian complaints shall be open to the public except for cases that involve a minor victim or allegations of sexual misconduct, in which case the victim can request for the hearing to be open to the public.

The PPD declined to provide pictures of the PBI hearing room for this report. There are currently only a handful of seats available for observers from the public (approximately 4-5). These seats are in a tight space behind the tables where the Department Advocate and the accused officer with their FOP attorney sit. One of these observer seats is always

[38] See Appendix 6: Phila., Pa., Exec. Order No. 5-17 (August 1, 2017)

occupied by an additional FOP representative. The chairs are squeezed in next to one another, so if more than one observer from the public was in attendance, they would be sitting directly next to one another in a very small space. In the age of Covid-19, likely only one observer could safely attend due to space limitations of the room. The following images show hearing rooms in use for police discipline hearings in other cities.



Image 1 of the hearing room used by the Chicago Police Board at their office



Image 2 of the Chicago Police Board hearing room



Image of the hearing room use by the Los Angeles Police Department for Board of Rights Hearings

It is clear from these images that these rooms have space for at least a dozen observers. Further, the rooms are dedicated hearing rooms, with no filing cabinets, storage, or other items present. The austerity reflects the seriousness of the hearings held in these rooms. The PPD will move to a new administration building in summer 2021. A hearing room was including in the design and the new room will accommodate more observers. In the meantime, the PPD should identify a space in the police administration building or in another City building that can be used for this purpose. One option would be the large conference rooms located on the 18th floor of 1515 Arch Street. The rooms have seating capacity to accommodate observers with space for social distancing and the building is in a central location.

Recommendation 19: The PPD should revise the security desk policy to clearly state the circumstances in which civilians may be denied access to PBI hearings. Ease of access should be paramount upon entry to a PBI hearing.

Residents have expressed at PAC monthly meetings that they were subjected to unnecessary scrutiny when they attempted to observe PBI hearings for CAPs, and some were ultimately denied access. In response to this, the PAC raised concerns to the PPD about accessibility and the PBI Department Advocate drafted a policy in memo form for PPD headquarters security about access to PBI hearings. The PAC was under the impression that the memo clarified that the hearings were open to the public and that observers wishing to attend PBI hearings for civilian-initiated complaints should be granted access.

PAC staff requested the memo and found that it includes language that instructs front desk security to call PBI if observers, including PAC staff, wish to attend a PBI hearing (see Appendix 17).[39] The memo specifies that PBI staff will "ascertain if the civilian will be granted access" to the hearing. This is not in accordance with Executive Order 5-17. The memo does not clarify if the ascertainment by PBI staff is merely related to the whether the PBI hearing is related to a civilian complaint (and therefore open to the public) and/or special categories of victims. The front desk policy for PBI hearings should include the language from Executive Order 5-17 that requires PBI hearings for CAPS to be open to the public except if the allegations are of a sexual nature or if the victim is a minor.

[39] See Appendix 17: PPD security desk policy memo regarding PBI hearings

Recommendation 20: The PPD should utilize technology available for virtual calls to make PBI hearings more accessible to civilian complainants and witnesses.

The Covid-19 pandemic required all industries including government to turn to new modes of communication in order to continue operating. Things previously done only in-person, such as community meetings and internal meetings, were able to be moved, in whole or in part, to the online sphere. Trials and other court proceedings have also occurred virtually.

A complainant or witness may not be able to attend a PBI hearing in-person for any number of legitimate reasons, such as work or family obligations. Currently, PBI hearings can occur years after the original incident, meaning that complainants and witnesses may have moved from Philadelphia by the time their hearing is scheduled. Virtual testimony should be an option so that civilians can more easily participate in PBI hearings – especially since some PBI not guilty memos listed the absence of the complainant at the hearing as a factor in finding the officer not guilty. The importance of live testimony at PBI hearings should compel the PPD to ensure that accommodations are made for any complainant or witness who would like to provide virtual testimony.

Recommendation 21: The PPD should create standard operating procedures for PBI hearings that are accessible at all times to PPD personnel and the public.

Outside of Directive 8.6 which governs the PPD discipline process, no additional guidelines or handbooks exist that contain the rules of PBI proceedings and deliberations. In fact, there are rules in place for PBI that no one knows the origin of. For example, in an interview with PAC staff, the Department Advocate said that a PBI board can come to their findings on the allegations by a 2/3 majority vote, but the discipline recommendation for a guilty finding must be unanimous. The PAC has not been able to find where this practice originated, nor did the Department Advocate know when asked. The PPD has recently modified this practice so that if a PBI board member votes to find an officer not guilty but the other members vote guilty, the not guilty vote does not participate in the penalty discussion. This modification highlights that some rules are due for revision, and also that those rules are not formalized anywhere. Every aspect of how PBI hearings function should be included in standard operating procedures so that all members of the PPD subject to these hearings, as well as residents, can understand what to expect when they engage with this part of the PPD discipline process.

The information should be available to the panel members in a training and operations manual that is kept on the panel table in the hearing room for easy reference. For example, the current PBI training materials say the board president is supposed to rule on objections, but there is no guidance for what they should consider when they make their ruling, or how a ruling should be made. A manual could give additional information so that all board members have resources if they need assistance in fulfilling their duties. The LAPD, for example, has a 90-page manual for their analogous hearing process that provides a great deal of detailed information related to rules of the proceedings.

The details of how PBI hearings will work in the future, and thus the contents of this manual, will depend on the recommendations that the PPD moves forward with, as well as the final version of the CPOC legislation.

Recommendation 22: The PPD should record the entirety of PBI hearings including closing arguments to create a complete record of each PBI hearing.

Executive Order 5-17 outlining procedures for the processing of civilian complaints against police says, "An audio recording and transcript of the hearing shall be made." There is no caveat that the closing arguments should be excluded from the record. Anecdotally, when PAC staff has attended PBI hearings, sometimes they have been allowed to remain in the room for closing arguments, but other times they have been asked to leave for closing arguments with no explanation as to why the closing arguments were closed. Given that there is no indication in Executive Order 5-17 or PPD directive 8.6 related to the disciplinary process that any portion of the PBI hearing is exempt from being accessible to the public,[40] the PPD should immediately begin to record closing arguments and allow observers to be present when they are delivered. Note: the PPD began to record closing arguments as of May 10, 2021.

Recommendation 23: Procedural information about PBI hearings, including but not limited to rules, training materials, and a public hearing calendar should be in one place on the PPD website for easy accessibility by the public.

The PPD website does not currently include procedural information to educate residents about the PBI process. PPD Directive 8.6 describes the disciplinary process, but many of the finer points related to how PBI hearings function are left out. This leaves PBI processes generally opaque to anyone who wants to understand them. The PAC/CPOC would welcome the opportunity to help develop materials with the general public in mind that would bring more transparency to these stages of the PPD discipline process. The accountability page on the PPD website includes a feature that allows site visitors to view brief summaries of CAPs filed from 2016 to January 2021, which includes PBI findings where applicable. The data about the findings of the cases themselves is important to provide, but more information that clarifies how discipline charges are determined, how PBI boards are selected and trained, and the rules that PBI boards follow during hearings should also be available. Additionally, as PBI hearings are open to the public, a calendar for CAP PBI hearings should also be posted to the PPD website.

[40] Executive Order 5-17 notes that a PBI hearing for a civilian complaint may be closed to the public if the victim is a juvenile or if the complaint involves allegations of a sexual nature. In either instance, the victim may request the hearing be public.



OTHER OBSERVATIONS: PBI VERDICT AUDITS

Recommendation 24: To determine if ineffective Department directives contributed to the hearing outcome, a copy of all hearing transcripts, relevant evidence, witness statements and not guilty memos associated with PBI hearings should be forwarded to PAC/CPOC for post-trial audits. These audits would serve as holistic reviews of PBI cases to identify any policy or practice issues uncovered in the investigation, charging process, or PBI hearing.

PPD's disciplinary process is ineffective for several reasons and this report highlights deficiencies across several areas including Internal Affairs investigations, the PBI Charging Unit's decisions, the PBI Department Advocate's performance, and PBI panel outcomes. This initial review, however, would be incomplete if the Department's standard operating procedures and policies, which are used to determine if an officer is guilty of misconduct, were not critically examined.

After a review of a sample of PBI hearings, several Department personnel were successfully able to argue that no relevant policy existed at the time of their alleged misconduct. This lack of relevant policy allowed the officers to be found not guilty for gross conduct. In PBI #8 (13-0540 in Appendix 8),[41] a Detective was found not guilty for failing to release witnesses because the Department did not explicitly prohibit this Detective from transferring his work responsibility to another; with that person then failing to complete the assignment. In PBI #16 (14-0475 in Appendix 8),[42] an officer was found not guilty for punching a handcuffed individual because state training allowed the force and the Department directive did not explicitly elaborate on if Departmental force trainings trumped state trainings. In PBI #33 (15-0196 in Appendix 8),[43] a Detective was found not guilty for failing to go to the scene of an arrest

[41] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 13-0540)
[42] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0475)
[43] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 15-0196)

to look for exculpatory evidence because he was able to successfully argue that he did not see a new training memo that required him to do so. The larger problem is that the Department has yet to amend their operating procedures to prevent these defenses from occurring and to better protect individual rights.

Further, in PBI #3 (13-0442 in Appendix 8),[44] a Detective was found not guilty of holding a suspect in custody for five days with no bed and no toilet because the Department did not have a policy outlawing that behavior; this torturous practice is known within the PPD as icing. After PBI #3, the Department created a process for adults in custody and released Directive 5.23, prohibiting personnel from interrogating individuals longer than 36 hours. However, this new Directive violates several Pennsylvania Supreme Court holdings that ruled prolonged interrogation is psychological coercion and an unconstitutional practice. While the PPD took steps to prevent future incidences of the misconduct in PBI #3 by drafting a new policy, the new policy continues to be inconsistent with legal requirements.. A post-PBI audit system will help identify these policy issues.

OTHER OBSERVATIONS: DISCIPLINARY PENALTY IS USUALLY A REPRIMAND

Recommendation 25: An advisory disciplinary matrix should be created by the Police Commissioner, withinput from CPOC. The disciplinary matrix should state a presumptive penalty for infractions, with mitigating and aggravating factors, to determine discipline.

Data findings revealed that even if an officer is guilty for misconduct, their discipline is typically minimal. More specifically, less than 0.5% of all civilian complaints result in any discipline beyond a reprimand (see Appendix 4).[45] In PBI #12 (PBI 14-0331 in Appendix 8),[46] a Sergeant abused their authority and threatened a business owner to have their phone repaired for free. Even though the panel found the Sergeant violated policy, the panel merely recommended a reprimand for the conduct. Commissioner Ramsey at the time rejected the recommendation and imposed a 3-day suspension for the conduct, however, the City's Law Department later reverted the penalty back to a reprimand during pre-arbitration negotiations with the FOP—an act that has the appearance that the Law Department believes the panel's penalty recommendation weighs more than the ruling of the Commissioner.

In PBI # 18 (PBI 14-0553 in Appendix 8),[47] a Narcotics Strike Force officer was found guilty for conduct unbecoming when he threatened to disseminate sensitive pictures of the mother of his child. Even though the panel was informed that the penalty range was a reprimand to a dismissal, the panel imposed the least severe penalty possible-a reprimand; a penalty that was also recommended by the Department Advocate and a Deputy Commissioner and accepted by the Commissioner.

[44] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 13-0442)
[45] See Appendix 4: Ba, Bocar, Dean Knox, Rachel Mariman, Jonathan Mummolo, and Maria Aranzazu Rodriguez Uribe. (2021) Analysis of Philadelphia Police Department Civilian Complaint Process. Available at: https://www.dropbox.com/s/p1uu0g7hn7i9x42/pac_report.pdf?dl=0
[46] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0331)

There could be several reasons for this trend but one that stands out is the fact that most violations have a penalty range that allow for a reprimand, even for egregious misconduct. For example, the disciplinary code for conduct unbecoming-unauthorized and or/excessive use of force, allows for a reprimand as the punishment for a first offense, second offense, and even a third offense involving the excessive use of force. Overall, the disciplinary code allows for a reprimand in 74/107 offenses: almost three quarters of the disciplinary code.
This problem, however, has been addressed in other law enforcement departments and evaluated by researchers. In a review conducted by the National Institute of Justice, many law enforcement agencies shared that creating a disciplinary matrix helped make sanctions fair and consistent.

A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer's previous disciplinary record. The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.[48]

In another study, the findings "suggest a disciplinary sentencing matrix is more rational than the traditional discretionary method, which is largely informal and relies on best estimates".[49] The researcher reviewed the disciplinary process in Newark, New Jersey and discovered that "there was no systematic process to compare past sentences for similarly situated officers to ensure continuity, or to guide sentencing during the instant matter; 100% of the cases adjudicated relied on anecdotes and recollections from supervisors and trial board members about previous dispositions and the type and length of sentence that should be imposed".

The use of a discipline matrix could be an effective practice that enhances equity for residents and PPD personnel. Just recently, the Civilian Complaint Review Board (CCRB) and the NYPD agreed to utilize a disciplinary matrix for police discipline.[50] In preparing the matrix, NYPD Commissioner Dermot Shea stated that "the matrix turned out to be an extremely useful exercise" and he believes "the matrix with its detailed presumptive penalties for acts of misconduct will help to ensure that the NYPD discipline system does what it is intended to do: punish officers who have abused their position of trust in a fair manner and apply a consistent approach to both appropriate penalties and, in some instances, provide for remedial education and rehabilitation of offending officers that deters and prevents future wrongdoing".[51] Below is an excerpt from the NYPD's matrix related to violations of use of force policies:

[47] See Appendix 8: Sample of Civilian Complaints Against Police PBI Hearings (PBI 14-0553)
[48] Darrel Stephens, National Institute of Justice, New Perspectives in Police https://www.ojp.gov/pdffiles1/nij/234052.pdf
[49] Jon Shane, Police Quarterly, Police Employee Disciplinary Matrix: An Emerging Concept
[50] Memorandum of Understanding between the New York City Police Department and the New York City Civilian Complaint Review Board Concerning the NYPD Discipline Matrix (February 4, 2021) https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/Disciplinary-Matrix-MOU.pdf
[51] New York City Police Department Disciplinary System Penalty Guidelines (January 15, 2021) https://www1.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2021/NYPD-Discipline-Matrix-Effective-01-15-2020.pdf

PRESUMPTIVE PENALTIES FOR USE OF EXCESSIVE FORCE

MISCONDUCT	MITIGATED PENALTY[54]	PRESUMPTIVE PENALTY	AGGRAVATED PENALTY
Deadly Physical Force (incl. use of a Deadly Weapon or Dangerous Instrument) Against Another — Resulting in:			
Death/Serious Physical Injury	N/A	Termination	N/A
Physical Injury	Forced Separation	Termination	N/A
No Injury	30 Suspension Days + 30 Penalty Days + Dismissal Probation	Termination	N/A
Less Lethal Force/ Device Against Another — Resulting in:			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	15 Suspension Days	15 Suspension Days + 15 Penalty Days	Termination
No Injury	10 Penalty Days	20 Penalty Days	Termination
Non-Deadly Force Against Another — Resulting in:			
Death/Serious Physical Injury	Forced Separation	Termination	N/A
Physical Injury	10 Suspension Days	10 Suspension Days + 10 Penalty Days	Termination
No Injury	5 Penalty Days	10 Penalty Days	Termination

As seen above, the newly enacted NYPD matrix, provides guidance that considers the type of policy violation, recorded prior infractions, and most importantly, the harm to the resident. The PPD Disciplinary Code, as shown below, however, offers guidance on neither the type of policy violation, the level of force used, nor the harm suffered by residents.

SECTION	CHARGE	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	RECKONING PERIOD
1-§011-10	Abuse of authority	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§012-10	Unauthorized and/or excessive use of force in your official capacity	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

PPD Disciplinary Code as of July 2014 for Unauthorized and/or Excessive use of force in official capacity

The PAC does not believe that creating a matrix will remedy all inconsistencies and equity concerns that may exist in discipline. However, the matrix may be a tool used by the Commissioner when asked to explain her decision to a future arbitrator. In fact, there exists disciplinary cases in which the penalty was reversed by an arbitrator when it was decided that the Commissioner did not appropriately explain their decision. For example, in 2018 an officer received a one-day suspension for failure to comply with directives, which allowed for a discipline of a reprimand to 5 days. In reversing the decision, the arbitrator stated, "the City has not proven that there was just cause to give him a one-day suspension instead of a reprimand[..] the penalty should be reduced to a reprimand".[52]

Additionally, an arbitration hearing occurred in 2017 in which an officer was disciplined with a 25-day suspension for being asleep in their vehicle with their firearm visibly on their lap while off-duty. In deciding to reduce the penalty to a 10-day suspension, the arbitrator stated "the City did not present any evidence showing how it has disciplined other officers under similar circumstances. While the Grievant's misconduct was inexcusable, and worthy of serious discipline, there was no explanation provided as to how the City arrived at the 25-day unpaid suspension and transfer penalty".[53]

These few examples highlight that even though the Disciplinary Code was agreed upon by the City and the FOP, the FOP frequently argues, successfully, that the disciplinary decisions are arbitrary. Creating and utilizing a disciplinary matrix could alleviate these issues.

[52] Fraternal Order of Police, Lodge 5 and City of Philadelphia, American Arbitration Association, AAA Case No. 01-17-0005-9700 (decided April 4, 2018) (documents shared by the Inquirer, Fired, Rehired, September 12, 2019, https://www.inquirer.com/news/a/philadelphia-police-problem-union-misconduct-secret-20190912.html) https://www.documentcloud.org/documents/5783019-179700Award-Redacted.html

[53] Fraternal Order of Police, Lodge 5 and City of Philadelphia, American Arbitration Association, AAA Case No. 01-15-0003-8973 (decided August 24, 2017) (documents shared by the Inquirer, Fired, Rehired, September 12, 2019, https://www.inquirer.com/news/a/philadelphia-police-problem-union-misconduct-secret-20190912.html) https://www.documentcloud.org/documents/5783000-158973Award-Redacted.html

OBJECTIVES RESERVED FOR LATER REPORTS

Objective 6: PBI Board Selection and Training

Objective 6 was, "Review the actual board selection process, training, objectivity, and conflict of interests to identify recommendations to improve the actual and perceived fairness of the board by officers and civilian complainants and to identify alternate judicial systems that may better serve this purpose."

Some aspects of this objective are addressed in previous objectives. Recommendations related to selection and training of board members will be reserved for a later report when decisions about including civilians on PBI boards are finalized.

Objective 7: Feedback from Community

Objective 7 was, "Review community feedback concerning the PBI process to identify avenues to improve PBI transparency, complainant cooperation and overall satisfaction."

The PAC and its data partners have developed a survey that is being administered to residents of Philadelphia and individuals who have filed complaints against the PPD. That survey will allow for conclusions to be drawn about what concrete steps the PPD can take to increase resident trust in the department in general and increase complainant participation in investigations. These conclusions cannot be made until all surveys have been returned and a full analysis is completed. The results of the survey, related analysis, and recommendations will be included in a future report.

CONCLUSION

The release of this report comes at a crucial time for policing and police oversight in Philadelphia. Residents, City Council, other government officials, and PPD leadership have expressed interest in increasing police accountability and building unprecedented police oversight. This report not only demonstrates some of the longstanding and deeply entrenched problems with the PPD discipline system, but highlights that the time to start fixing these problems is now – as FOP contract negotiations occur and CPOC legislation is finalized. Part 2 of this report will include further data analysis and recommendations to improve resident participation with the discipline process and deeply understand the use of command level discipline, among other things. The PAC looks forward to working with the PPD to implement these recommendations and continuing the work of reimagining police discipline in Philadelphia.

Appendix

Pg 44. Appendix 1 – Original data and information request to PPD about PBI

Pg 50. Appendix 2 – Collaborative reform plan signed by PAC and PPD

Pg 58. Appendix 3 – Large scale data request from data partners and PAC to PPD

Pg 64. Appendix 4 – Report from data team

Pg 74. Appendix 5 – Executive order 7-11

Pg 87. Appendix 6 – Executive order 5-17

Pg 100. Appendix 7 – PPD Directive 8.6

Pg 115. Appendix 8 – Sample of Civilian Complaints Against Police PBI Hearings

Pg 185. Appendix 9 – Example of current PBI voting sheet

Pg 186. Appendix 10 – Sample proposed PBI verdict sheet

Pg 187. Appendix 11 – CPOC legislation

Pg 217. Appendix 12 – Glossary of terms

Pg 219. Appendix 13 – PPD disciplinary code

Pg 240. Appendix 14 – List of all PBI cases, cases reviewed for sample highlighted

Pg 247. Appendix 15 – Survey questions submitted to PBI board members

Pg 255. Appendix 16 – PPD security desk policy memo regarding PBI hearings

Pg 256. Appendix 17 – List of recommendations from this report

POLICE ADVISORY COMMISSION

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Commissioner Danielle Outlaw
Police Administration Building
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Dear Commissioner Outlaw,

On September 10, 2019, Philadelphia City Council held a public hearing on the Plainview Project, an online database published in June of 2019 that revealed thousands of Facebook posts made by police officers from six different police departments across the country. As you know, the PPD was the largest department implicated, and Acting Commissioner Coulter fielded numerous questions from Councilmembers about the Department's response – specifically, the disciplinary hearings held by the PPD Police Board of Inquiry (PBI).

In response to this hearing, on November 20, 2019, I sent a letter with recommendations to Acting Commissioner Coulter about the PBI process. Some of the recommendations pertained to concerns about public accessibility of PBI hearings for complaints against police (CAPs). Given that the City was actively searching for a new permanent Police Commissioner, Acting Commissioner Coulter opted to take no action on the recommendations in the letter until a hiring decision had been made.

During the transition, the concerns raised in the City Council hearing on PBI hearings have continued to be expressed by Philadelphia residents at the PAC's monthly public meetings. Their stories, in conjunction with PBI observations made by PAC staff, were the inspiration for a forthcoming PBI Policy Project. Our hope is to start an intentional conversation with PPD by advocating for an overhaul of the PBI process which could increase police legitimacy and trust in policing.

The PAC shares your desire to build trust between Philadelphia residents and the PPD. If residents can begin to trust that the process by which officers are disciplined has integrity, we can get closer to achieving our common goals. We plan, among other things, to review disciplinary hearing processes in other cities to identify best practices, analyze trends in PBI data from recent years, and measure PPD compliance with Executive Order 5-17 as it relates to PBI hearings.

In order to conduct a thorough review and make relevant, thoughtful policy recommendations, the PAC is requesting the following documents:

1. Any training documents, Department protocol, and guidelines given to officers chosen to serve as deliberating PBI panel members, including procedures for notifying panel members when they are scheduled to serve on a panel.
2. A list of all Department members who are eligible to serve on PBI panels.
3. Internal operating procedures for the PPD charging unit.
4. Internal operating procedures for the Department Advocate regarding PBI hearings.

5. For the attached list of CAPs: All investigative documents, documentation relating to witness/complainant notification, notes of testimony from hearings, PBI rulings, Department Advocate charges and discipline offers, officer guilty pleas, and overall discipline result.
6. An updated maintenance of PPD complaint disciplines on the Open Data Portal, including investigative findings and disciplinary findings; the last hearing updated was IAD #18-582. There are no hearing outcomes for all of year 2019.

We anticipate this project will take some time to complete. In the meantime, we hope that you and your leadership staff can bring a fresh set of eyes to concerning aspects of PBI that have been publicly raised but do not require thorough review in or
der to

For example, PBI hearings for CAPs are required by Executive Order 5-17 to be open to the public, unless they involve minor victims or sexual abuse allegations. However, as no publicly accessibly hearing schedule exists, the public has no way to know when CAP PBI hearings are scheduled to occur, short of calling PPD headquarters each day. Residents who have attempted to attend PBI hearings have faced barriers to entry, even if entry goes smoothly, the hearing room can accommodate no more than three or four members of the public, depending on how many FOP representatives are in attendance.
Lastly, the hearings notoriously start late. Most recently, PAC staff was present at PBI when two hearings were scheduled, one of which was a CAP. Hearings are scheduled to begin at 10:00 AM, but the first hearing did not begin until 12:05 PM. This delay appeared to be due to the lateness of a FOP attorney, but past hearings have been delayed for other reasons.

We believe taking small steps to increase transparency and accountability in this aspect of the discipline process will begin to build a bridge between the PPD and the community. We look forward to learning more about the PBI process and discussing our recommendations with you the future.

Sincerely,

Hans Menos
Executive Director
Police Advisory Commission

Cc: Brian Abernathy, Managing Director
Tumar Alexander, First Deputy Managing Director
Vanessa Garrett-Harley, Deputy Managing Director
Ronda Goldfein, Chair Police Advisory Commission

###

PAC CAP requests

The following CAPs reflect investigations in which IAD sustained PPD personnel for misconduct, however, either the PBI board disagreed with their findings and found the individuals not guilty of the sustained charges, or the individual received training/counseling.

1. **IAD # 17-0012**
   - Allegation: Complainant alleged that he was physically abused by unknown officers and his property was damaged.
   - PBI result: Not Guilty, Training/Counseling
   - Officers:
     - Officer [redacted]. **Sustained for Use of Force Directive**
     - Officer [redacted]. **Sustained for Use of Force Directive**
     - Officer [redacted]. **Sustained for Damaging Property**

2. **IAD # 17-072**
   - Allegation: Complainant alleged that an unknown police officer punched him in the face and pointed a firearm to his face.
   - PBI result: Training/Counseling
   - Officer:
     - Officer [redacted]. **Sustained for Firearms Policy. Pointing gun at unarmed motorist without reasonable belief of an immediate threat.**

3. **IAD# 17-0171**
   - Allegation: Complainant alleged that an unknown officer ignored her during a 911 call.
   - PBI result: Not Guilty
   - Officer:
     - PCD [redacted]. **Sustained for Unprofessional conduct/rude dismissive behavior**

4. **IAD # 17-191**
   - Allegation: Complainant alleged that she was treated unprofessionally by [redacted].
   - PBI result: Not Guilty
   - Officer:
     - Sgt [redacted]. **Sustained for unprofessional conduct.**
   - Additional: **between 2015 and 2017 [redacted] had 8 civilian complaints.**

5. **IAD # 17-204**
   - Allegation: Complainant alleged that they were physically abused and treated unprofessionally by a police Sergeant.
   - PBI result: Not Guilty

- Officers:
    - Sgt. [redacted]. **Sustained for unprofessional conduct and violation of directive 12.8 "Vehicle or Pedestrian Investigation"**

6. **IAD # 17-228**
    - Allegation: Witness stated that an unknown officer punched someone in the face and injured him.
    - PBI Result: Training/Counseling
    - Officer:
        - Officer [redacted]. **Sustained for violation of Use of Force**

7. **IAD # 17-288**
    - Allegation: Eyewitness stated while driving in her vehicle she witnessed unknown officers physically abusing an unknown male later identified, he sustained injuries that required 4 sutures above his eye. Officer related cause for stop was inoperable brake light, however, investigator noticed brake light was functional at impound lot.
    - PBI result: Not Guilty
    - Officers:
        - Officer [redacted]. **Sustained for Physical Abuse, Improper Stop/Detention**
        - Officer [redacted]. **Sustained for Physical Abuse, Use of Force**

8. **IAD # 17-370**
    - Allegation: Complainant alleged that he was racially profiled and verbally abused by an officer informing him during a traffic stop that he had "an itchy trigger finger."
    - PBI result: Training/Counseling
    - Officers:
        - Officer [redacted]. **Sustained for Verbal Abuse.** Since this incident was forwarded to PBI, it shows that this officer had a prior verbal abuse complaint where he was given training/counseling.

9. **IAD # 17-504**
    - Allegation: Complainant alleged that she was assaulted by an officer while at the FOP Lodge #5.
    - PBI result: Not Guilty
    - Officers:
        - Officer [redacted]. **Sustained for Assault.**
        - Sgt. [redacted]. **Sustained for Departmental Violation.**

10. **IAD # 17-551**
    - Allegation: Complainant stated she believed a PPD employee queried her license plate information and disseminated the information to an individual attempting to

date her romantically. Complainant rejected the advances of a man in a shopping center and upon investigations it was discovered that that man's cousin, a detective, supplied him with the residential address of the complainant from her license plate.

- PBI result: Not Guilty
- Officer:
  - Detective [redacted]. **Sustained for Release of Confidential information, misuse of city information, abuse of authority, and lying.**

11. **IAD#17-580**
    - Allegation: Complainant, employee with the Philadelphia Inquirer, reported that numerous officers may have violated department social media policies.
    - PBI result: Guilty, Guilty, Not Guilty
    - Officers:
      - Officer [redacted]. **Sustained Social Media**
      - Officer [redacted]. Not Sustained-was off duty at time of post.
      - Officer [redacted]. **Sustained Social Media**
      - Officer [redacted]. **Sustained Social Media**
      - Sgt [redacted]. Not Sustained-was off duty at time of post.

12. IAD # 17-612
- Allegation: Complainant stated that Officer [redacted] was unprofessional and asked her for a date while he was on duty. Evidence showed that Officer [redacted] wrote his number down on police documents and delivered it to the complainant.
- PBI result: Not Guilty
- Officer:
  - Officer [redacted]. **Sustained for unprofessional conduct/harassment by authority**
- Additional: Officer [redacted] has been the subject of five investigations involving inappropriate conduct while on duty involving his advances toward women. Previously Officer [redacted] pled guilty to the charges against him and was suspended for a period of 20 days.

13. IAD # 18-0010
- Allegation: Complainant alleges verbal and physical abuse by officer
- PBI result: Not Guilty

14. IAD # 18-210
- Allegation: Complainant and three witnesses stated that two highway patrol officers stopped their vehicle, approached with guns drawn, and took $200.
- PBI result: Training/counseling
- Officers:
  - Officer [redacted]. **Sustained for Directive 12.8 Vehicle Investigation and Directive 12.17 Patrol Activity Log.**

- Officer [redacted]. **Sustained for Directive 12.8 Vehicle Investigation and Directive 12.17 Patrol Activity Log.**

15. **IAD # 18-299**
    - Allegation: Complainants stated they were verbally abused
    - PBI result: Training/Counseling

16. IAD#18-386
    - Allegation: Complainant states he was physically abused by police. Evidence showed officer deployed his taser in violation of directives while chasing a suspect at a gas station.
    - PBI result: Training/Counseling
    - Officer:
        - Officer [redacted]. **Sustained for Use of Less Lethal Force**

17. **IAD # 18-582**
    - Allegation: Complainant alleged that they were treated unprofessionally by officers.
    - PBI result: Not Guilty
    - Additional: This officer had a prior complaint shortly before, IAD # 18-418

18. IAD # 19-111
    - Allegation: Complainant alleged physical abuse, improper stop and search by officers
    - PBI result: Training/counseling
    - Officers:
        - Officer [redacted]. **Sustained for not documenting search.**
        - Officer [redacted]. **Sustained for not documenting search.**
        - Officer [redacted]. **Sustained for not activating body worn camera.**
        - Officer [redacted]. **Sustained for not activating body worn camera.**

19. IAD # 19-199
    - Allegation: Complainant alleges that they were improperly stopped, searched, and verbally abused by officers.
    - PBI result: Training/counseling
    - Officers: 5 officers sustained for several violations.

PHILADELPHIA POLICE ADVISORY COMMISSION
&
PHILADELPHIA POLICE DEPARTMENT

COLLABORATIVE PROJECT PLAN

Case Title:	Start Date:	File Number:
PBI Collaborative Review	Ten (10) days from the signing of this Agreement	20-02
Case Type:	**Assigned Policy Analysts:**	
Policy and Practice Review	Anjelica Hendricks Janino Zajac Deputy Commissioner Benjamin Naish	

A. Background

The mission of the Philadelphia Police Department is to be the model of excellence in policing by working in partnership with the community and others to: fight crime and the fear of crime; enforce the laws while safeguarding the Constitutional rights of all people; provide quality service to all our residents, and create a work environment in which we recruit train and develop an exceptional team of employees. As such, all actions and efforts of the Philadelphia Police Department will be directed towards crime reduction and prevention, community engagement and participation, and perpetually striving for organizational excellence.

The mission of the Police Advisory Commission (PAC), in accordance with Executive Order 2-17, is to conduct investigations of PPD policy, practice, perceived patterns of conduct, and other systemic issues. The goal of these investigations is to advise the Managing Director and the Police Commissioner on proposed policy revisions, with a focus on maximizing trust between the Police and the communities that they serve.

B. Purpose

The purpose of this project is for the PPD and the PAC, as an oversight body and a representative of the community, to collaboratively review the processes involved in the charging and prosecution of sustained or founded allegations of administrative misconduct by members of the PPD. The goal of this project is to make recommendations for procedural changes or substantive restructuring that improve the overall process to ensure that a procedurally just and objectively fair system is in place that best serves the employees, the Department and the community.

C. Why this project matters

For officers: Empirical evidence supports that employees who perceive that they are mistreated due to an unfair outcome, inconsistent procedures, or a lack of respect and dignity will act to restore a fairness equilibrium, such as react adversely toward their employers. Organizational

justice is associated with increased job satisfaction, task performance, cooperation, compliance and police officer self-legitimacy.

For civilians: An expanding body of research is focused on the concept of Police Legitimacy. The most widely accepted factors affecting legitimacy are transparency and procedural justice. The research is clear, if residents are not treated in a procedurally just manner, they will view the police as illegitimate and will be less likely to report crimes or misconduct and will be less likely to cooperate with the police as a victim or while under investigation. This project can improve the procedural justice in the disciplinary process and thereby improve the legitimacy of the Police Department in the eyes of city residents.

D. Definitions:

1. Sampling: A small section of a focused area. The PAC and PPD will each select a sample to be included in the review. Samples include PBI cases, subject interviews, and all other research areas.

E. Project Objectives and Scope:

Review PPD disciplinary process from start to finish by reviewing each stage in the process as follows:

1. Review how discipline is initiated from both Commanders and Internal Affairs to determine if the current processes are consistent and fair across the Department.

2. Review the purpose, processes and utility of the Police Board of Inquiry Charging Unit and its interactions with Internal Affairs, which investigates and determines whether sufficient evidence exists that an employee has violated the disciplinary Code.

3. Review the processes of the Police Board of Inquiry Advocate's Office to determine compliance with existing Departmental Directives and Mayor's Executive Order and to determine whether such Directives/ Orders remain valid, are outdated or no longer feasible.

4. Review the training and effectiveness of the PBI Advocate in negotiating and conducting quasi-administrative hearings.

5. Review the accessibility of the PBI hearing and its impact on officers and civilian complainants.

6. Review the Board selection process, training, objectivity, and conflict of interests to identify recommendations to improve the actual and perceived fairness of the Board by officers and civilian complainants, and to identify alternate judicial systems that may better serve this purpose.

7. Review community feedback concerning the PBI process to identify avenues to improve PBI transparency, complainant cooperation and overall satisfaction.

F. Review/Assessment Methodology for each Objective

Objective 1:
Review how discipline is initiated from both Commanders and Internal Affairs to determine if the current processes are consistent and fair across the Department.

1. Interview a sampling of Commanders to discuss command level infractions and charging process.

2. Analyze the type of charges and levels of disciple for similar conduct violations among different commanders.

3. Interview investigators and supervisors from different squads at Internal Affairs regarding the level of proof necessary to sustain a disciplinary violation.

4. Analyze the outcomes of similar allegations of misconduct investigated by Internal Affairs.

5. Compare and contrast processes used by other Police Departments across the county, while considering the size and location of other Departments in these comparisons.

6. Research government information and academia to determine if best practices have been identified in this area that could be applied or implemented.

Objective 2:
Review the purpose, processes and utility of the Police Board of Inquiry Charging Unit and its interactions with Internal Affairs, which investigates and determines whether sufficient evidence exists that an employee has violated the disciplinary Code.

1. Interview Inspector in charge of PBI Charging.

2. Interview former Department Advocates and commanders responsible for PBI Charging.

3. Interview a sampling of the Internal Affairs chain of command.

4. Analyze a sampling of cases submitted by IA and the ultimate's charges made by the PBI Charging Unit.

5. Review internal PPD operating procedures and guiding operational documents that pertain to charging decisions and the use of training of counseling in lieu of formal charges.

6. Compare PBI Charging Unit discretionary powers and analogous charging procedures with other jurisdictions.

7. Review data from PBI Charging Unit related to frequency of charges, rate of diversion to training and counseling.

8. Review the use of charge 5-§011-10, Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors, also known as "Departmental Violation".

Objective 3:
Review the processes of the Police Board of Inquiry Advocate's Office procedures to determine compliance with existing Departmental Directives and Mayor's Executive Order and to determine whether such Directives/ Orders remain valid, are outdated or no longer feasible.

1. Review a sampling of audio notes of testimony.

2. Review data regarding the following.
   a. Number of times the complainant was not called to testify.
   b. Number of times witnesses were not called to testify.
   c. Start time of hearing.
   d. Inappropriate stipulations

3. Analyze PBI cases flowing through the process in the manner prescribed in the Directive and executive order.

4. Analyze PPD's compliance with executive order 5-17 and Directive 8.6 as it relates to:
   a. Timing of cases.
   b. Complainant notification of hearing place and time.
   c. Audio/written transcription of public hearings.
   d. Final PBI outcomes contained on the open data Philly initiative website.
   e. Correspondence with complainants/witnesses about PBI hearing outcomes.

5. Compare the Executive Order about complaints against police with other jurisdictions.

Objective 4:
Review the training and effectiveness of the PBI Advocate in negotiating and conducting quasi-administrative hearings.

1. Review PBI Department Advocate policies and procedures, compare and contrast materials and experience with other jurisdictions.

2. Review a sampling of audio transcripts.

3. Review PBI data regarding the following:
   a. Number of times the complainant was not called to testify.
   b. Number of times witnesses were not called to testify.
   c. Start time of hearings.
   d. Inappropriate stipulations.
   e. Inaccurate charges.
   f. Instances of inappropriate conduct by FOP attorney.

4. Interview current and former Department Advocates.

5. Seek to interview department advocates from other police agencies to identify best practices and pitfalls.

6. Review data maintained internally by PBI unit regarding plea negotiations, wins and losses for CAPS that go to hearings, wins and losses for internals, etc.

7. Review PBI data from prior years to locate trends to analyze.

8. Review "not guilty" memos prepared by PBI panels for cases in which the officer was found not guilty of the charge(s) brought against them.

9. Research the benefits and disadvantages of using civilian prosecutors.

10. Research other jurisdictions, such as the CCRB in New York regarding civilian prosecutors and benefits or pitfalls of reimagining administrative hearings.

Objective 5:
Review the accessibility of the PBI hearing and its impact on officers and civilian complainants.

1. Compare and contrast the physical and virtual facilities used by other police departments or larger. (Request a simple video walkthrough from other departments that could be forwarded)

2. Interview complainants and witness regarding their experience and perceptions of the facilities.

3. Draft policy for front desk staff at PPD HQ for individuals requesting to attend CAP hearings.

4. Draft policy for procedures within the PBI hearing space.

Objective 6:
Review the actual Board selection process, training, objectivity, and conflict of interests to identify recommendations to improve the actual and perceived fairness of the Board by officers and civilian complainants and to identify alternate judicial systems that may better serve this purpose.

1. Research how analogous hearings in different cities work. Identify best practices and pitfalls to be avoided.

2. Research benefits and disadvantages of involving civilians of involving civilians in the hearing process as adjudicators/judges.

3. Research how hearing adjudicators in other jurisdictions decide discipline, and if there are protocols or sentencing guidelines that they are bound by.

4. Analyze the training for panel adjudicators in Philadelphia as opposed to other cities police departments.

5. Interview panel members concerning their experience serving on the board and what changes they would appreciate.

Objective 7:
Review community feedback concerning the PBI process to identify avenues to improve PBI transparency, complainant cooperation and overall satisfaction.

1. Survey community members to determine knowledge level of PBI process, protocols, and discipline.

2. Survey complainants regarding their attitudes and experiences regarding the PBI process.

3. Interview civilian complainants associated with all levels of discipline/training and counseling for their understanding and perceptions.

G. Collaborative Process

Pursuant to Executive Order 2-17, it is the intent of the PPD and PAC that the PPD will make available all subject matter expert personnel, documents and data to assist in this collaborative review. PAC will undertake to conduct all interviews, research and data analysis related to each objective. The PAC will request the assistance of independent researchers to help analyze data and meet timelines. Researchers will comply with non-disclosure agreements, and will forward all findings directly to the PAC.

Step 1
PAC will prepare preliminary reports of the findings relative to each objective and they will note the agreed upon recommendations and those points for which disagreement still exists. These preliminary reports will be discussed and debated with leadership from the PPD as designated by the Police Commissioner. These discussions are intended to be among PPD Leadership and the PAC personnel. When necessary, PPD will make recommendations where additional information or clarifications are needed to accurately reflect PPD processes.

Step 2
At the concussion of step 1, the PAC's will present a written draft report to the PC and PPD Executive Team and will subsequently make a presentation to the PC and PPD Executive Team where both agencies will meet to discuss the findings and recommendations to ensure they accurately reflects the positions of the parties.

Step 3
After this discussion with the PC and the PPD Executive Team, PAC will submit the final report to the PPD and other City stakeholders. This final report will be signed by both the PC and the Executive Director of the PAC.

H. Publication of Final Report

The PAC and the PPD will issue a joint report, authored by the PAC but reviewed by the PPD as discussed above and including any points of disagreement, for public dissemination. Both agencies will collaborate on a joint public presentation.

I. Tracking and Implementation of Recommendations

The PPD Organizational Services Special Project Unit will log in all recommendations and track the implementation of those agreed upon recommendations. This information will be made publicly available on the PPD's Internet Homepage as it relates to PPD Accountability.

J. Evaluation of Implemented Recommendations

The PAC and PPD agree to collaboratively develop performance benchmarks and outcome indicators prior to the implementation of any recommendation. These performance benchmarks and outcome indicators will be documented as an addendum to the final report. PAC and PPD will conduct a collaborative review of this data six (6) months after the implementation and again after one (1) year from the date of implementation to determine if the recommendations are achieving the intended results.

K. Point of Contacts:

PAC: Anthony Frace

PPD: Staff Inspector Healy

L. Dispute Resolution

Disputes arising under or relating to this collaborative review shall be resolved only through consultations between Police Commissioner and the Executive Director of the PAC. All decisions made shall be final and shall not be referred to any outside Party for settlement without the consent of both Parties.

M. Entire Agreement

This document contains the entire understanding and agreement between the parties with respect to PBI Collaborative Review Plan and supersedes all prior agreements, written or oral, with respect thereto.

N. Modification

During this review, the PAC and/or PPD may request that the objectives, scope and/or methodology of this project be expanded to include necessary subject matters not previously anticipated. If this unforeseen subject matter is discovered, the requesting agency shall draft a modification proposal.

The modification proposal shall be discussed by the Police Commissioner and the Executive Director of the PAC. If the modification proposal is not agreed upon by both par tics, the agency requesting its inclusion in the project shall retain the right to include the proposal in an "appendix" section for areas requested to be reviewed but not included in this project.

O. Anticipated Time Frame:

It is anticipated that it will take approximately five (5) month from the start date to complete this project and publish a final report.

IN WITNESS WHEREOF, the Philadelphia Police Department and the Philadelphia Police Advisory Commission, through their respective duly authorized officers hereby approve this Collaborative Review Plan.

Date: 8/12/20

Danielle M Outlaw
Police Commissioner

Date: 8/24/20

Hans Manos
Executive Director
Police Advisory Commission

POLICE ADVISORY COMMISSION
CITY OF PHILADELPHIA

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September 17, 2020

Danielle Outlaw
Police Commissioner
Philadelphia Police Department
750 Race Street
Philadelphia, Pennsylvania 19106

Dear Commissioner Outlaw:

Pursuant to the PBI Collaborative Review Project Plan, the PAC requests the following items to review in searchable and readable documents that are not "image-only":

1. **Investigative files for complaints against police (CAPs) and internals, from 2015 to Present, including charging documents**

    a. **Objective related to this request:**
        i. **Objective 2:** To review the purpose, processes and utility of the PBI Charging Unit and its interactions with Internal Affairs.
        ii. **Objective 7:** Review community feedback concerning the PBI process to identify avenues to improve PBI transparency, complainant cooperation and overall satisfaction.
        iii. **Objective 1.2:** Analyze the type of charges and levels of discipline for similar conduct violations among different commanders.

    b. **Information specifically requesting**:
        i. Officer/complainant/witness names, addresses, and contact information.
        ii. Original complaint.
        iii. PC memos with accompanying investigative documents, including investigative findings, ie. sustained or not sustained.
        iv. PBI Charging Unit documents for cases forwarded to Charging Unit including 75-18s, counseling memos, command level discipline memos, and memos sent to Internal Affairs to reevaluate sustained findings.

    c. **Justification**: Complainant and witness contact information is necessary to survey individuals regarding their experiences with the process. Additionally, details of the complaints and investigative files are necessary to assess how proceedings and outcomes influence complainant understanding and perceptions.

Charging information is needed to understand how and when charges are applied, and evaluate whether the type of charges and levels of discipline for similar conduct violations varies among different commanders.

d. **Mode of delivery**:
   i. Spreadsheet of IAD#s, officer name, civilian names, civilian contact information.
   ii. Electronic files for IAD/PBI Charging documents, with the file names corresponding to IAD#.

e. **Deliverable work product**:
   i. Statistical analysis of survey responses containing complainants' attitudes about and experiences in complaint process. In addition to aggregating opinions, analysis will incorporate:
      1. Outcomes of individuals' complaints
      2. Level of cooperation by complainants and reasons for non/partial cooperation
      3. Obstacles encountered
      4. Circumstances of complaints
      5. Complainant demographics
   ii. Recommendations to improve complainant cooperation, understanding, and satisfaction.

2. **Information for all PBI hearings from 2015 to Present.**

a. **Objective related to this request:**
   i. **Objective 3.2:** Review data regarding the following: (a) Number of times the complainant was not called to testify. (b) Number of times witnesses were not called to testify. (c) Start time of hearing.
   ii. **Objective 3.3:** Analyze PBI cases flowing through the process in the manner prescribed in the Directive and Executive Order.
   iii. **Objective 3.4:** Analyze PPD's compliance with Executive Order 5-17 and Directive 8.6 as it relates to: (a) Timing of cases. (b) Complainant notification of hearing place and time. (c) audio/writing transcription of public hearings. (d) Final PBI outcomes contained on the open data Philly initiative website. (e) Correspondence with complainant/witnesses about PBI hearing outcomes.
   iv. **Objective 4.6:** Review data maintained internally by PBI unit regarding plea negotiations, wins and losses for CAPS that go to hearings, wins and losses for internals, etc.
   v. **Objective 4.8:** Review "not guilty" memos prepared by PBI panels for cases in which the officers was found not guilty of the charge(s) brought against them.
   vi. **Objective 7.1:** Survey community members to determine knowledge level of PBI process, protocols, and discipline.

b. **Information specifically requesting:**
   i. List of all scheduled PBI hearings from 2015 to present which include the dates, times, and any reasons for delays.
   ii. Names of all complainants, witnesses not called to testify
   iii. Names of all complainants, witnesses called to testify.
   iv. Documentation relating to efforts made to notify complainants and witnesses to prepare for hearings
   v. All records of correspondence with complainants, witnesses and other individuals related to prehearing logistics and post hearing outcome notifications.
   vi. Plea negotiations data related to each investigation.
   vii. Data related to if PBI Department Advocate requested a change in charging from PBI Charging Unit.
   viii. Outcome of cases (discipline, training/counseling/none, guilty/not guilty).
   ix. Audio recordings or transcriptions of all PBI hearings.

c. **Justification:** This information is necessary to analyze compliance with directives and the Executive Order. Additionally, this request helps achieve the overall purpose of this collaboration plan, which is to make recommendations for procedural changes or substantive restructuring that improve the overall process to ensure that a procedurally just and objectively fair system is in place that best serves the employees, the Department, and the community.

d. **Mode of delivery:**
   i. Spreadsheet of all requested case/hearing level data
   ii. Electronic files with file names corresponding to IAD numbers
      1. Electronic files for memos containing information about pleas/charges
      2. Electronic files for PBI not guilty memos
      3. Electronic files for audio recordings or transcripts

e. **Deliverable work product:**
   i. Statistical analysis of PBI process, protocols, discipline, along with community attitudes about complaint process, perceptions of police, and trust.
   ii. Evidence based recommendations to improve procedures and maximize trust between the Department and the community.

3. **PPD employee information for current and previously employed personnel.**

   a. **Objective related to this request:**
      i. **Objective 1:** Review how discipline is initiated from both Commanders and Internal Affairs to determine if the current processes are consistent and fair across the Department.

ii. **Objective 1.2:** Analyze the type of charges and levels of discipline for similar conduct violations among different commanders.
iii. **Objective 1.4:** Analyze the outcomes of similar allegations of misconduct investigated by Internal Affairs.
iv. **Objective 3.4:** Analyze PPD's compliance with executive order 5-17 and Directive 8.6 as it relates to (e) Final PBI outcome contained on the open data Philly initiative website.

b. Information specifically requesting:

i. Names, badge numbers, and payroll numbers for all employees.
ii. Demographic data (year of birth, race, gender, appointment date),
iii. Assignment and Unit history which indicates PSA assignment, time shift, tour of duty, and any supervisory responsibilities.

c. Justification: Data on all officers and personnel (not just those against whom complaints are filed) are necessary to account for contextual factors like (a) district size, (b) unit size, and (c) how different units receive different levels/types of complaints per officer/personnel. To assess fairness in charges/discipline, commanders and PBI hearings must account for context and evaluate officer behavior/performance against peers working in the same conditions. E.g., if an officer works in a high-activity neighborhood and gathers more complaints as a result, this should not be held against them in charges/discipline. Failure to account for this context makes it difficult to improve accountability without harming public/officer safety.

Officer payroll numbers, badge numbers, demographics, and unit assignments are necessary to match complaint data from the Open Data Philly website with IAD and PBI data and analyze compliance regarding accuracy of publicly posted open data. Unit assignments are required to identify which officers have the same reporting supervisor, which is necessary to compare charges/discipline decisions and fairness by different commanders. Officer demographics data is necessary in order to assess consistency and fairness across officer groups, and appointment date is necessary because seniority provides important context for comparing charging/discipline across different officers facing similar allegations.

d. **Modes of delivery**:

i. Spreadsheet of payroll and badge numbers and officer demographics
ii. PDFs or spreadsheet of assignment and unit history of each PPD personnel. For example, the document should clearly reflect that Officer John Doe started in X district on January 5, 2018 and was assigned PSA #1 during ABC tour of duty. The document should also list any other assignments or specialty units that this Officer was assigned.

e. Deliverable work product:

i. Statistical analysis of officer behavior and commander responses. Analysis will make "apples to apples" comparisons by comparing

officers/commanders working in the same locations and same times (i.e. facing same conditions) in order to credibly assess fairness in disciplinary action.
ii. Evidence based recommendations to improve Department personnel and community member satisfaction.

4. **PBI training documents and operating procedures for PBI Charging Unit, PBI Department Advocate, and PBI panel from 2015 to present.**

   a. **Objective related to this request:**
      i. **Objective 2.5**: Review internal PPD operating procedures and guiding operational documents that pertain to charging decisions and the use of training and counseling in lieu of formal charges.
      ii. **Objective 4.1**: Review PBI Department Advocate policies and procedures, compare and contrast materials and experience with other jurisdictions.
      iii. **Objective 6.4**: Analyze the training for panel adjudicators in Philadelphia as opposed to other police departments.

   b. **Information specifically requesting:**
      i. Training manuals and operating procedures
      ii. Curriculum of required classes
      iii. Documents relating to notification procedures when PBI panel members are selected to appear for a hearing.

   c. **Justification:** Reviewing these documents will be able to shed light on the day to day operations of personnel involved in the PBI process and the training received prior to being assigned these responsibilities.

   d. **Modes of delivery:**
      i. PDFs of training manuals and operating procedures
      ii. PowerPoints used during training sessions
      iii. Documents detailing curriculum of required classes

   e. **Deliverable work product:**
      i. Recommendations geared toward highlighting national recognized training and operating procedures that are effective in other jurisdictions.

5. **List of Department members eligible to serve on PBI panels from 2015 to present, with information detailing which members did serve on PBI panels and during what time frame.**

   a. **Objective related to this request:**
      i. **Objective 6.5**: Interview panel members concerning their experience serving on the board and what changes they would appreciate.

   b. **Information specifically requesting:**

i. Department members who were eligible to serve as a PBI panel member from 2015 to present.
ii. Specific hearings PBI panel members attended.

c. **Justification**: This information will allow us to interview panel members regarding their experience and select a diverse sample size of interviewees including different levels of command and the different types of hearings they participated in.

d. **Modes of delivery:**
   i. Spreadsheet of personnel including the dates they were eligible to serve on the panel.
   ii. Spreadsheet of PBI hearings with accompanying names of the PBI panel members from 2015 to present.

e. **Deliverable work product:**
   i. Recommendations to improve experiences for PBI panel members which will incorporate respondent answers.

The PAC is available to clarify any requests. With these documents, we can achieve our joint goals of improving the PBI process and working to ensure a procedurally just and objectively fair system.

Hans Menos
Executive Director
Police Advisory Commission

Analysis of Philadelphia Police Department Civilian Complaint Process

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April 14, 2021

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1 Executive Summary

This report analyzes the Philadelphia Police Department's (PPD) process for civilian complaints against police. The analysis covers over 9,000 allegations from more than 3,500 civilian complaints filed against PPD officers between 2015 and 2020, based on a content analysis of investigatory memos and disciplinary determinations obtained by the Philadelphia Police Advisory Commission (PAC), and in conjunction with public data shared by PPD through OpenDataPhilly. We follow these allegations from the point when they are initially received by PPD's Internal Affairs Division (IAD) to their final disposition. We report five main findings:

1. **Lengthy Investigations.** The average IAD investigation into a civilian complaint takes roughly 6 months from when it is first filed to when IAD reaches a conclusion about whether the alleged misconduct did in fact occur and constitute a violation of law or policy. This average investigation length is twice as long as the legally mandated maximum time limit. For complaints that are sustained and forwarded for further review by the Police Board of Inquiry (PBI), civilians can expect to wait well over one year, on average, for resolution to their case.

2. **Vague and Inconsistent Categorization of Complaints.** The PPD's public database of civilian complaints groups incidents into coarse categories that often mask the severity of alleged misconduct. For example, of all complaints publicly classified as "departmental violations," 36% are in fact serious allegations of constitutional violations such as improper search or arrest. Other departmental violations include allegations of theft, mishandling evidence, and failure to report police actions.

3. **Most Civilian Complaints are Dismissed.** In the time period we analyze (2015–2020), 86% of allegations filed by civilians do not advance beyond an initial IAD investigation. Common reasons for eliminating allegations are (i) the accused officer denies wrongdoing, (ii) investigators cannot corroborate the civilian's claims, and (iii) investigators give more weight to officer accounts than to civilian accounts. Not a single allegation of civil rights violations, which include accusations of racial profiling and racial slurs by officers, was substantiated by investigators during this period. This fact is noteworthy given that PPD

is currently operating under a consent decree arising from Bailey v. City of Philadelphia, which alleged racial bias in stops by PPD.

4. **Allegations Dismissed/Downgraded Even When Substantiated.** Even when IAD finds evidence of misconduct, most complaints (76%) result only in "training and counseling." Out of the remaining cases, many more are eliminated by "not guilty" rulings, despite being substantiated by IAD investigations that find evidence for the allegations. Over half of these "not guilty" rulings are based on evidentiary standards that are inconsistently applied and often do not adhere to PBI's own guidelines.

5. **Minimal Penalties for Officers Guilty of Misconduct.** Even in the worst cases, penalties for guilty officers are typically minimal: all in all, only 0.5% of civilian allegations result in any recorded consequences for officers beyond a reprimand, and among these, 84% were suspensions for less than a week. The average suspension was 4.2 days, and the maximum recorded penalty issued by PBI was a 30-day suspension. Some of the cases downgraded or dismissed by PBI feature acts of severe misconduct that would routinely be charged as felonies if committed by everyday civilians.[1]

2 Life of a Civilian Complaint

Civilians have an opportunity to file complaints against police through a number of channels, including IAD and PAC. Complaints are investigated by IAD after an initial screening and categorization of complaint type (see "Internal Affairs Investigation" in Figure 1). Complaints not investigated typically fall under the jurisdiction of another entity (e.g. SEPTA transit police, traffic court) or involve active criminal cases. Complaints that merit investigation are then assigned to an IAD investigator, who is tasked with interviewing the civilian who filed the complaint, collecting evidence (including witness statements) and determining whether the alleged violations in fact occurred (see "Internal Affairs Finding" in Figure 1).

If an allegation is sustained, formal charges may be filed through PBI for potential disciplinary action. If a case is not advanced to PBI, officers may instead receive training and counseling (see

[1] We note that our analysis cannot account for other penalties incurred by officers, including criminal charges brought by other city agencies.

"Police Board of Inquiry or Training / Counseling" in Figure 1). At the PBI stage, officers can plead not guilty and go through a formal hearing, in which a board of three sworn members of the police department hears their case and votes on the outcome; alternatively, they can plead guilty and receive a penalty without a hearing. All disciplinary recommendations must be reviewed and approved by the Police Commissioner. Once a penalty is assessed, the complaint process is considered complete, and the civilian is notified of the disposition of their complaint.

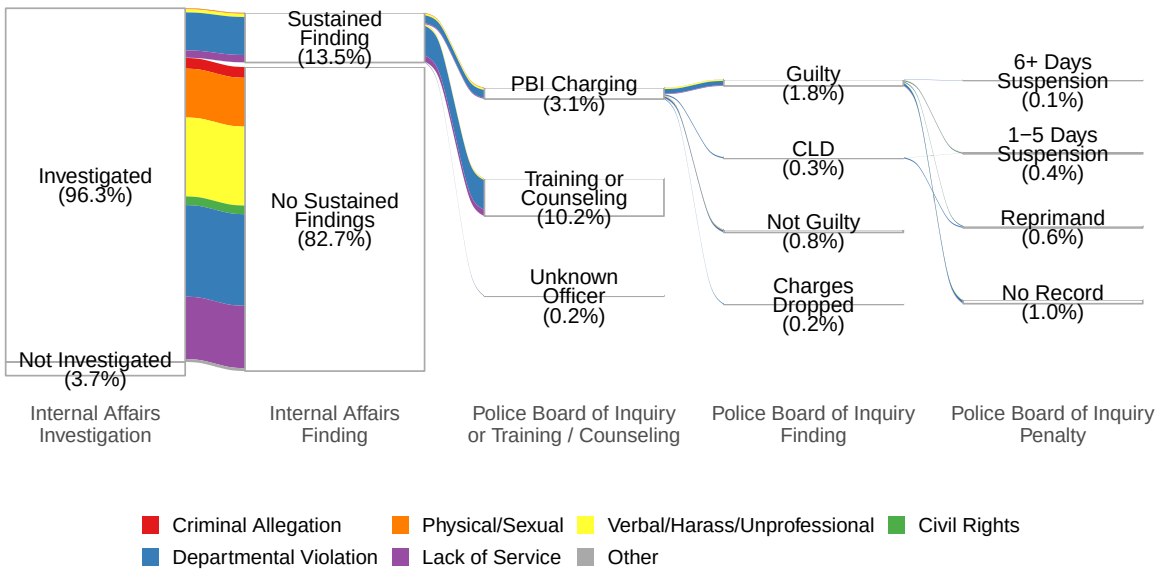

Figure 1: Civilian complaint investigatory process (2015–2020).

Figure 1 displays the flow of allegations made by civilians between 2015 and 2020 through the investigatory and disciplinary process. As the figure shows, about 4% are not investigated by PPD at all; the vast majority of allegations, 83%, are investigated but not sustained. "Not sustained" is an ambiguous category meaning that the charges can be neither proved nor disproved, but it results in no discipline for the accused officer. Those that are sustained represent 14% of allegations.

Of these sustained allegations, about three-quarters result in officers receiving only training and counseling (10% of all allegations). The remaining sustained allegations (3%) proceed to the PBI stage. By the end of the PBI process, less than 2% of allegations filed with IAD result in a guilty verdict. The most severe recorded penalty at the PBI stage in the data we analyze is a suspension of 30 days.

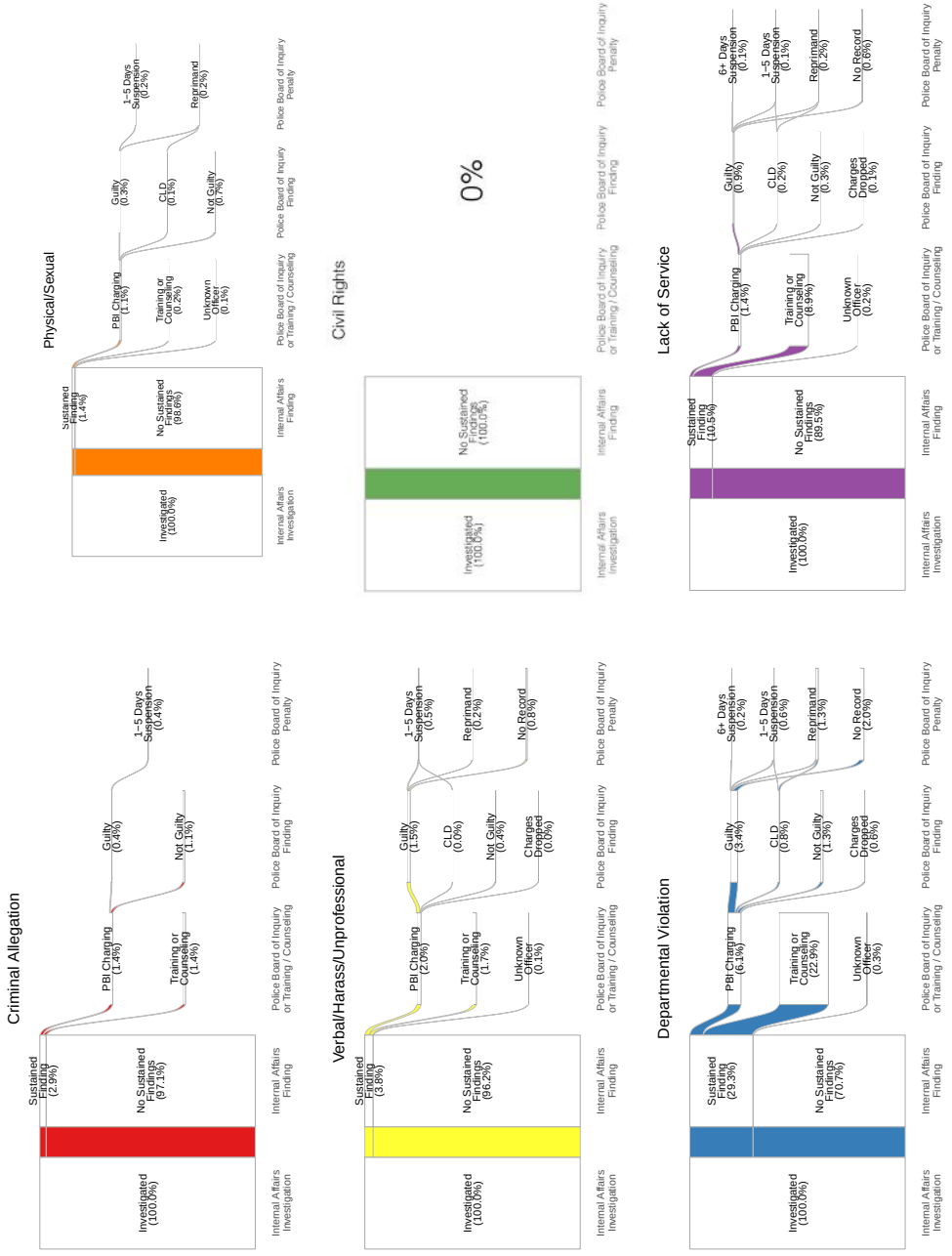

Figure 2: Civilian complaint investigatory process by allegation category (2015–2020).

Figure 2 shows that these proportions vary dramatically with the type of allegation. For example, in the entire 2015–2020 period examined, not a single civil rights allegation was sustained by PPD.

Figure 2 displays the flow of allegations through the process, broken out by type of complaint. The figure shows that the vast majority of allegations of criminal conduct, and physical and sexual abuse, are not sustained and result in no punishment of any kind. Most sustained claims are labeled "Departmental Violations," a vague descriptor that encompasses several categories of serious misconduct, as detailed in the next section.

3 A Detailed View of the Process in 2017

To characterize the civilian complaint process in more detail, we closely examined IAD memos detailing investigations into civilian complaints in 2017, the year in which IAD memos were most often available. Data from OpenDataPhilly indicate that 651 complaint investigations containing 1,708 allegations of misconduct were recorded in 2017. We obtained IAD investigation memos for 639 (98%) of these 651 cases (corresponding to roughly 1,600 allegations). We further dropped cases that were either rejected by IAD (i.e. no investigation occurred because the complaint did not meet the criteria for investigation) or was later withdrawn by the complainant. The resulting data for 2017 contain 557 IAD cases pertaining to 1,485 charges. These 557 cases form the basis of our in-depth review of civilian complaints from 2017, but, as we indicate below, the number of observations varies across analyses due to missing data on some variables.

Below, we discuss several patterns that emerge from this analysis.

3.1 Length of Investigations

By Executive Orders #07-11 and #05-17, IAD complaint investigations must be completed in 75 days (for investigations initiated prior to October 2017) or in 90 days (for investigations initiated subsequently). However, the time limit is often violated. This section analyzes civilian complaints filed in 2017 and calculates the average and maximum length of time it took to complete each stage of the investigatory process for every charge in which dates were available. The results

are displayed in Table 1.

Table 1: Length between Stages of Complaint Review in 2017

	IA filing → IA Assignment	IA Assignment → IA Report	IA Report → PBI Charge	PBI Charge → PBI Hearing	Total
Average No. of Days	9	181	70	197	463
Maximum No. of Days	373	1118	258	376	637
No. of Allegations	1443	1436	34	35	34
No. of Cases	537	536	17	17	17

In 2017, IAD took an average of 9 days to assign an investigator after a civilian filed a complaint, though it could take as long as 373 days. Once assigned a case, IAD investigators took an average of 181 days to complete investigation reports; the longest investigation took 1,118 days. Once the IAD investigation was complete, some sustained findings continued to the PBI stage. PBI took an average of 70 days (but up to 258 days) to issue new charges after IAD filed its report. PBI took an average of 197 days to hold a hearing after filing charges (at most 376 days). Complaints that made it all the way to the PBI hearing stage took an average of 463 days to do so (at most 637 days). In other words, when allegations were sustained and then reviewed by PPD's official board of inquiry—where disciplinary action is determined—civilians waited well over one year for resolution.

3.2 Inconsistency and Lack of Clarity in Allegation Categorization

PPD's current system for classifying complaints often obscures the nature of allegations. For example, allegations of physical abuse are sometimes classified as criminal assault, sometimes classified as physical abuse, and sometimes classified as a "Departmental Violation" (DV) for improper/excessive use of force.

In data posted publicly by PPD, 35% of allegations between 2015–2020 were labeled as DVs.[2] While this label seems to suggest the complaint is about minor procedural errors, a close read of 2017 IAD investigatory memos revealed that many corresponded to allegations of serious misconduct, including constitutional violations (e.g. improper stops, searches, and arrests, totaling 36%), and property crimes including theft (18%). However, while constitutional violations make

[2]In 2017, DVs represent a slightly larger share, 38% of allegations.

up a plurality of DV allegations, they were sustained by IAD less than 5% of the time, partly because investigators could not reach civilian complainants for interviews. In the following section, we discuss civilian cooperation with IAD investigations.

Table 2: "Departmental Violations" categories, based on detailed reading of 2017 IA investigations.

Category	Number	% of Dept. Violations	% of Allegations Sustained
Constitutional	207	36	4
Omission	118	21	74
Property	101	18	16
Procedure	58	10	36
Investigation/Evidence	16	3	62
Personal Conduct	16	3	75
Confidentiality	13	2	69
Violence	13	2	46
Abuse of Authority	9	2	33
Reporting/Falsification	8	1	100
Treatment in custody	8	1	25
Verbal	3	1	67

3.3 Cooperation of Complainants

IAD attempts to interview civilians while investigating their complaints. We analyzed IAD memos to determine how often investigators were able to do so in 2017. On average, IAD interviewed civilians when investigating 69% of allegations filed between 2015–2020. When civilians are not interviewed, IAD sustains allegations about 13% of the time in the 2017 data, compared to a rate of about 17% when civilians are interviewed,[3] about a 40% difference.

We caution that this analysis does not indicate causal effect of interviewing a civilian on the rates of sustaining allegations. The circumstances of allegations and subsequent investigations may differ in unobserved ways, confounding comparisons. In addition, there is insufficient data to make meaningful statistical comparisons of how often allegations are sustained depending on whether civilians were interviewed *within* complaint categories. Determining the impact of

[3]The 95% confidence interval for this difference in rates of sustaining allegations is [-0.005, 0.115]. Standard errors clustered at the case level. Estimates based on 1,483 charges for which data on civilian cooperation was available.

civilian cooperation on the outcome of investigations will require additional data collection and analysis.

4 Police Board of Inquiry (PBI)

When allegations are sustained by IAD, they are either routed to "Training and Counseling" or to the Police Board of Inquiry (PBI) for formal charging and potential disciplinary action. We analyze patterns in charging and punishment at the PBI stage below.

4.1 Penalties for Substantiated Misconduct

Out of all allegations between 2015 and 2020, less than 0.5% resulted in any recorded penalty beyond a reprimand. The majority of the time (51%), despite the fact that IAD had sustained an allegation—i.e. determined that the evidence met the burden of proof—PBI ruled "not guilty" at least in part based on a determination that there was insufficient evidence to support the claim. It should be noted that the correct standard of evidence for deciding cases at PBI is "preponderance of the evidence"—i.e. that the claim is more likely to be true than not—according to PBI board member training materials.[4] However, a thorough review of the board's reasoning shows that board members do not consistently apply the correct "preponderance of the evidence" standard. In one case, a PBI memo stated that "Based on the evidence that was put forth and Officer W—'s testimony, there is ***reasonable doubt*** (emphasis added) as to if they lied to Lt. E— of IAD when he interviewed them." Another stated, "Lastly, the video of the incident showed the incident happening very rapidly and could not ***definitively show*** (emphasis added) whether the strike was intentional or not." These alternative, more stringent standards diverge from PBI's own stated rules.

In addition, forty-four percent of the time, PBI ruled "not guilty" at least in part because they determined the officer's behavior to be acceptable and/or reasonable. Nine percent of the time, the board ruled "not guilty" because they determined that the issue was incorrectly charged, often due to avoidable errors, and despite evidence for a different, correct charge. Examples of

[4] https://www.dropbox.com/s/cznheppbml52vq4/PBILessonPlan.docx?dl=0

avoidable charging errors contributing to dismissal included citing the wrong section of the Motor Vehicle Code or charging an officer who was determined to be the wrong person.

Some cases downgraded or dismissed by PBI involve substantiated acts of severe misconduct that would routinely be charged as felonies if committed by everyday civilians. For example, in IAD case #16-0455 (PBI #17-0373), an officer struck a civilian in the mouth with a gun during an arrest, an event that was caught on security camera video. IAD found sufficient evidence to support the allegation of physical abuse. The sustained case was sent to PBI, which charged the officer with excessive use of force. However, after reviewing the video evidence, PBI board members ruled "not guilty" because they were unsure whether the officer's action was intentional. As a result, PBI did not penalize the accused officer. In another incident (IAD #15-0286, PBI #15-0894), both IAD and PBI determined an officer intentionally struck a man with an unmarked police vehicle. The officer ultimately pleaded guilty to a "motor vehicle violation" and received a reprimand. (Note: a previous version of this report described the man in this incident as a teenager. Corrected on 5/21/2021.)

EXECUTIVE ORDER NO. 7-11

PROCESSING OF COMPLAINTS ALLEGING POLICE MISCONDUCT

WHEREAS, issues relating to public safety are of primary concern to all citizens of the City of Philadelphia;

WHEREAS, it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety have the proper support from the government and its agencies; and that the citizenry have an equal degree of faith in those agencies to deal with their complaint in a fair, equitable and timely manner;

WHEREAS, Executive Orders 1-80 and 9-93 established procedures for the prompt and impartial processing of complaints against the Police Department;

WHEREAS, there is a need to broaden and codify the procedures by which citizens of the City of Philadelphia can seek redress of grievances against members of the Police Department and the Police Department can investigate police misconduct;

WHEREAS, in order to serve the best interests of the citizens of Philadelphia, the involved police officer, and the Philadelphia Police Department, it is necessary to issue a new Executive Order amending the procedures established by Executive Order 9-93 in order to more effectively and promptly address certain types of allegations of police misconduct;

WHEREAS, the prompt response to, effective investigation of, and impartial resolution of citizens' complaints of police misconduct are essential to the trust that society places in its police;

WHEREAS, numerous complaints of police misconduct have been made by the citizens against some members of the Philadelphia Police Department;

WHEREAS, the existing procedures for investigating and determining such complaints need to be broadened and made more accessible to the public, thereby permitting the public to hold the Police Department accountable for the resolution of citizens' complaints; and

WHEREAS, it is the intention of this Executive Order to preserve the autonomy of the Police Commissioner's exercise of duties, while mandating procedures equitable to both citizens and police personnel for resolving citizens' complaints of police misconduct.

NOW THEREFORE, by the power vested in me in accordance with Section 3-100(h) of the Philadelphia Home Rule Charter, the following amended guidelines for the processing of complaints of police misconduct by members of the Philadelphia Police Department, and the study, review, and disposition of said complaints, are hereby ordered.

SECTION 1. CITIZENS' COMPLAINTS

a. All citizens' complaints against a police officer shall be received, investigated, and disposed of in accordance with the procedures set forth herein, and complainants shall be notified of actions taken by the Police Commissioner.

b. Copies of complaint forms entitled "Citizen's Complaint Report" (CCR), published in English, Spanish, Chinese, Korean, and other language versions as shall be necessary to provide broad and inclusive access to this complaint procedure, shall be made available via the Philadelphia Police Department website and supplied in sufficient quantities to all police districts and units, the Philadelphia Commission on Human Relations, the Police Advisory Commission, the Mayor's Office for Community Services, the District Attorney's Office, and any community-based organization upon request. Complainants may submit completed forms to any of these offices or agencies.

   Each of the above-listed agencies or offices receiving CCRs (the "receiving agency") shall maintain a control log to track the number of forms provided to complainants and collected, as set forth in subsection d hereof. The District Attorney's office is requested to maintain such records as it deems necessary of such complaints. Interpreters and persons with needed literacy skills shall be made available, as provided in Philadelphia Police Directive No. 71 regarding access to police services for individuals with limited English language proficiency, as needed, throughout the complaint and investigation process. Such persons shall not be sworn currently employed police officers.

c. The complaint form shall contain a statement to the effect that the filing of a complaint will not necessarily result in a criminal investigation, but that an Internal Police Investigation will be initiated. The complaint form shall also include the address and telephone number of the Internal Affairs Division, and a summary of the procedures and timetable established by this Order for the conduct of investigations and notification to the complainant. Each complainant shall receive a copy of the CCR at the time it is filed with the receiving agency. Not later than twenty-four (24) hours after the CCR is filed with the receiving agency, the said agency shall send a copy of the CCR to the Police Department (if received by an agency outside the Department) and to the District Attorney's Office. If a complaint is received by the District Attorney's Office, that office is requested to forward it promptly to the Police Department.

   The control log maintained by the receiving agency shall show the name of the complainant (except in the case of anonymous complaints), the date and time the complaint form was received from the complainant, and whether the complainant left the form with the receiving agency to be officially filed. The log shall not show the name, badge number, or other descriptive information relating to any police officer(s) complained of. The Police Department shall keep a master file of

all forms received and the offices or agencies from which they were received. Such control logs and master list shall be available for viewing by the public.

d. The Internal Affairs Division of the Police Department shall be designated as the central control agency for all cases of citizens' complaints against members of the Police Department.

e. Police Department personnel shall inform any person who wishes to make a complaint against a police officer of the existence of the formal complaint procedure established by this Executive Order and shall refer such persons to the various locations, including the nearest location, where the CCR may be obtained and filed.

(1) Police Department personnel shall accept anonymous complaints and in such cases shall follow the procedures in Section 3 of this Order.

(2) Police Department personnel shall provide a CCR to anyone requesting such forms, without requesting or requiring identification.

(3) When dealing with a possible complainant, Police Department personnel shall maintain a professional demeanor and take no actions to intimidate, coerce or otherwise dissuade a complainant from submitting a CCR.

f. The Police Department shall promulgate specific procedures for the recording and processing of citizen complaints against members of the Police Department in accordance with this Executive Order by its effective date. The Police Department shall also prepare, publish and distribute CCRs in accordance with this Executive Order by its effective date.

SECTION 2. PROCEDURES FOR THE INVESTIGATION OF COMPLAINTS

All citizen complaints concerning police misconduct which are filed shall be received, investigated, and disposed of in accordance with the procedures set forth herein, except as provided in Sections 4 (relating to Complaints Lacking Any Merit), 5 (relating to Traffic or Parking Citation Complaints), 6 (relating to Right to Know Complaints), 7 (relating to Verbal Abuse or Lack of Service Complaints) and 8 (relating to Priority of Investigations) of this Executive Order. The following procedures shall govern the investigation of citizens' complaints:

a. Upon receipt of the CCR, the Commanding Officer of Internal Affairs shall promptly assign it for investigation to a member of Internal Affairs, who shall be responsible for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable, carried out by the staff of Internal Affairs. The staff of Internal Affairs shall have direct responsibility for all such investigations. No such complaint shall be referred for investigation to the commanding officer of the police office against whom the complaint has been

lodged, or to any other officer of the same command; provided however, that Internal Affairs may refer certain verbal abuse or lack or service complaints to the Inspector of the unit to which the accused officer is attached, where appropriate pursuant to Section 7 hereof. Internal Affairs shall monitor and review such investigations and, where necessary, take appropriate action.

b. The investigation of the CCR by Internal Affairs shall include, but not be limited to, the following:

- Interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the complaint form;

- Interviews with the police officer(s) against whom the complaint is lodged and all other police officers witnessing or involved in the alleged incident;

- Interviews with all other witnesses to the alleged incident who become known to the investigating officer as a result of the investigation;

- Examination of the scene of the alleged incident, when appropriate;

- Viewing, analysis, and preservation of any and all evidence submitted by the complainant or witnesses or otherwise discovered during the investigation including, but not limited to, photographs, video recordings, medical records and any reports of property damage;

- The gathering of all pertinent Police Department forms, analyses, technical reports, laboratory results, tapes and transcripts of telephone calls, and radio transmissions;

- If a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigative file compiled by the Police Department and/or the District Attorney's Office in connection with such criminal complaint, when available;

- Such other investigative steps as may appear appropriate in the discretion of the assigned investigator, whose responsibility it shall be to record each step in the investigation and the result thereof in an Investigation Report.

c. The assigned investigator shall attempt to secure written statements from all participants in, and witnesses to, the alleged incident, but where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide a summary of the oral statement, if any, provided by such participant or witness. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making the statement with a copy.

d. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.

e. All investigations shall be completed by Internal Affairs, and the Investigation Report prepared, within seventy-five (75) days from the date of filing of the CCR, except for extenuating circumstances stated in the Investigation Report and approved by the Police Commissioner or the Commanding Officer of Internal Affairs. The Investigation Report shall include the written recommendation of the investigator regarding the validity of the complaint.

f. Within fifteen (15) days of the completion of an investigation, the ranking officer of Internal Affairs shall review the Investigation Report, and upon giving approval thereof, forward the Investigation Report, the entire investigation file, and the ranking officer's written conclusion as to the occurrence and nature of the misconduct, if any, to the Police Commissioner.

g. If extenuating circumstances necessitate an extension of time, the complainant (as well as the accused police officer) shall be notified in writing of this fact and the reason therefor.

SECTION 3. ANONYMOUS COMPLAINTS

a. When a member of the Police Department is approached by a complainant wishing to make an anonymous complaint concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant that it is in the best interest of a full and complete investigation for the complainant to be identified and interviewed by the assigned investigator.

b. If the anonymous complainant nevertheless wishes to remain anonymous, the individual receiving the complaint shall attempt to elicit all facts which the complainant can provide and shall record and process the complaint pursuant to Section 2 hereof, to the extent possible.

SECTION 4. COMPLAINTS LACKING ANY MERIT

The following shall be the procedures for the disposition of complaints lacking any merit:

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), disclose no improper behavior on part of the police officer against whom the complaint is lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police

Commissioner shall cause notice of the determination to be given to the complainant and to the alleged victim of the misconduct (if other than the complainant), or to the representative designated in the CCR.

SECTION 5. TRAFFIC OR PARKING CITATION COMPLAINTS

The following shall be the procedures for the disposition of traffic or parking citation complaints:

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a complaint concerns the issuance of a traffic or parking citation, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct, disclose no improper behavior on the part of the officer against whom the complaint was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant with instructions that the proper procedure to dispute a traffic or parking violation is to appeal the citation to the appropriate forum as indicated on the complainant's copy of the citation. If any improper behavior on part of the police officer is disclosed, the complaint will be investigated according to Section 2 of this Executive Order.

SECTION 6. RIGHT TO KNOW COMPLAINTS (65 P.S. § 67.101)

The following shall be the procedures for the disposition of Pennsylvania Right to Know complaints:

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a complaint concerns the denial of or delay in a Right to Know request authorized under Pennsylvania law, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant, disclose no improper behavior on the part of the officer against whom the complaint was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant, with instructions that the proper procedure to appeal Right to Know disputes is to the appropriate forum as indicated in the Pennsylvania Right-to-Know Law, 65 P.S. § 1101. If any improper behavior on part of the police officer is disclosed, the complaint will be investigated according to Section 2 of this Executive Order.

SECTION 7. VERBAL ABUSE OR LACK OF SERVICE COMPLAINTS

a. If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the

complainant or the alleged victim of police misconduct (if other than the complainant), would constitute verbal abuse or lack of service only, and that it is the "first complaint" of such conduct against the officer(s) named, the ranking officer of the Internal Affairs Division shall refer the complaint to the Inspector of the officer against whom the complaint was lodged.

The goal of the Inspector's investigation shall be to remedy the actual or perceived offensive behavior of the police officer against whom a complaint has been lodged in the most efficient and prompt manner possible. To accomplish this goal, the Police Department shall be prohibited from taking any formal disciplinary action against a police officer for the "first complaint" received for verbal abuse or lack of service in a two (2) year period.

b. For purposes of this Order, the assigned Internal Affairs investigator shall determine the "first complaint" status by reviewing the Internal Affairs history of the officer during the two (2) years prior to the date of current complaint. If an officer has any complaints of verbal abuse or lack of service during this time period, the current complaint shall be deemed a second or subsequent complaint and shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

Prior to the Effective Date of this Executive Order, the Police Department shall implement appropriate policies and procedures to ensure that officers subject to allegations of verbal abuse or lack of service receive an in-depth review and such advice, instructions and other useful feedback regarding the complaint as will enable them to avoid similar complaints in the future.

c. The procedures for disposition of such "first complaints" shall be the following:

1. Upon receipt of a complaint from the ranking officer of the Internal Affairs Division, the Inspector of the police officer against whom the complaint was lodged shall contact and interview the complainant, and the complainant's witnesses, if possible, to confirm the facts of the case.

    i. If the Inspector determines in the initial investigation that any aspect of the complaint exceeds the scope of verbal abuse or lack of service, the complaint shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order. Additionally, if upon review the Inspector determines that the complaint states a claim of verbal abuse or lack of service motivated by racial, ethnic or sexual orientation animus, the complaint shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order.

2. The Inspector shall schedule a meeting with the police officer, his or her commanding officer and any other persons the Inspector deems necessary,

to discuss the facts of the complaint. At such meeting the officer will be able to convey his or her version of the incident.

3. At the conclusion of the meeting, the Inspector shall provide the officer with his or her opinion of the incident and the alleged conduct of the police officer. The Inspector shall then offer his or her advice, instructions and other useful feedback regarding the complaint and the officer's actual or perceived behavior, demeanor or conduct, so as to assist the officer in avoiding any similar complaints in the future.

4. The complainant shall be notified in writing that a meeting was held with the police officer against whom the complaint was lodged, at which the officer's conduct was discussed, and the case will be closed out.

d. Second or subsequent complaints alleging verbal abuse or lack of service against the same officer within the two (2) year period following the date of the complaint amounting to verbal abuse or lack of service as set forth above shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

SECTION 8. PRIORITY OF CRIMINAL INVESTIGATIONS

a. In the event that the complainant or alleged victim of police misconduct (if other than the complainant) has been arrested and charged with a criminal offense or offenses based upon the events on which the CCR is founded, the investigation and disposition of the complaint shall conform to the procedures established in this Order. However, the complainant or the alleged victim of police misconduct may elect not to give a written or oral statement either to the assigned investigator or before the Police Board of Inquiry, or both, until final disposition, including appeal, of all such criminal charges. In the event of such an election, the investigation shall remain open until such criminal charges have reached a final disposition, including appeal, and a new opportunity has been given to the complainant or alleged victim to make such a statement.

b. In the event that a prosecutorial agency notifies the Police Commissioner that the officer who is the subject of the complaint is under criminal investigation for the offense complained of in the CCR, or in the event that a police officer is arrested for the offense complained of in the CCR, the investigation and disposition of the complaint shall conform to the procedures established by this Order. Where criminal charges are not resolved or the criminal investigation is not complete prior to the Commissioner or his appointed delegate's final determination of the Citizen Complaint, the Commissioner shall reevaluate such final determination within fifteen (15) days of the resolution of the criminal charges or the closing of the criminal investigation. A criminal investigation shall be deemed closed upon written notice from the prosecutorial agency. The Commissioner may affirm, modify or reverse the prior determination in light of the outcome of the criminal charges or criminal investigation, or may reopen the departmental investigation which shall conform to

the within procedures. A brief statement by the Commissioner supporting the decision upon reevaluation shall be transmitted to the complainant or alleged victim of police misconduct (if other than the complainant), in the manner prescribed by Section 9(d) hereof.

c. If the initiation or completion of an investigation is delayed due to possible or pending criminal charges as detailed in Sections 8(a) or (b) hereof, the time period mandated by this Executive Order for the completion and disposition of the investigation may be extended for the period of the delay.

SECTION 9. REVIEW AND DISPOSITION OF COMPLAINTS

Except for those complaints handled pursuant to the provisions of Sections 4 (relating to Complaints Lacking Any Merit), 5 (relating to Traffic or Parking Citation Complaints), 6 (relating to Right to Know Complaints), or 7 (relating to Verbal Abuse or Lack of Service Complaints), upon receipt of the file and the findings and conclusions of the ranking officer of the Internal Affairs Division, the Police Commissioner or a Deputy Commissioner assigned by the Commissioner shall review the entire file and determine the appropriate disposition of the complaint in accordance with the following provisions:

a. Criminal Misconduct.

(1) In every case in which the Commissioner or his appointed delegate determines with reasonable satisfaction from the investigation report that misconduct rising to the level of a crime has occurred, the Commissioner shall impose such sanctions as the Commissioner deems appropriate, and shall refer the matter to the District Attorney or the U.S. Attorney for consideration and prosecution unless prosecution has been previously initiated. Whether misconduct rises to the level of a crime shall be determined by reference to the Pennsylvania Crimes Code, Federal criminal statutes, and/or regulations.

(2) In every case in which the Commissioner or his appointed delegate determines from the investigation report that (a) there are reasonable grounds to believe that misconduct rising to the level of a crime has occurred, and (b) there are disputed issues of fact or required credibility determinations which prevent a prosecution of the matter by the District Attorney or U.S. Attorney, the Commissioner or appointed delegate, where appropriate, shall take direct disciplinary action.

(3) In every case in which the Police Commissioner or his appointed delegate determines from the investigation, and without regard to any person's credibility, that there are no reasonable grounds to believe that criminal misconduct has occurred, the Commissioner shall proceed in accordance with Section 9(b) hereof.

b. Non-Criminal Misconduct.

In every case in which the Police Commissioner or his appointed delegate determines pursuant to Section 9(a)(3) hereof that no misconduct rising to the level of a crime has occurred, the Commissioner shall, in his discretion, (i) make a finding that non-criminal misconduct has occurred, and impose such sanctions as the Commissioner shall deem appropriate; (ii) refer the complaint to the Police Board of Inquiry for a hearing; or (iii) make a finding that no misconduct has occurred and close the file.

c. Disciplinary Action.

In every case in which the Police Commissioner or his appointed delegate determines that misconduct has occurred, the Commissioner shall impose sanctions which are commensurate with the seriousness of the misconduct, taking into account the prior history of the officer in question. Sanctions shall range from a reprimand to dismissal from service.

d. Notice

The disposition of the complaint, including any disciplinary action, shall be communicated in writing, by certified mail, to the officer against whom the complaint was lodged, the complainant and the alleged victim of police misconduct (if other than the complainant), or such person's representative as may be designated in the CCR; and a copy shall be delivered to the District Attorney's Office. The notification shall inform the person to whom it is given that the entire file is available for review.

e. Except for extenuating circumstances stated in the file, the determination of the Police Commissioner and the notice prescribed in Section 9(d) shall be made within twenty (20) days from the receipt of the file by the Police Commissioner.

f. In those instances in which the Police Commissioner determines that no misconduct has occurred, the notice to the complainant and the alleged victim (if other than the complainant) shall include a summary of the investigative findings and the reason for the Police Commissioner's actions.

SECTION 10. THE POLICE BOARD OF INQUIRY

a. Upon referral by the Commissioner of the complaint to the Police Board of Inquiry (the "Board") for hearing, the following procedures shall apply:

The Board shall schedule a hearing to be held at the earliest possible date, but not to exceed ninety (90) days from the referral of the complaint. Not less than thirty (30) days' written notice of the time and place of the hearing shall be given by certified mail, return receipt requested, to the complainant and the alleged victim of police misconduct (if other than the complainant) or to his or her attorney or other representative designated in the CCR; to material witnesses identified in the

investigation; to the police officer or employee charged with misconduct; and to all witnesses and participants whom the Commissioner or the Board believes may be helpful in resolving the question before the Board.

b. The Board may grant a continuance of the scheduled hearing only upon written request by a member of the Board or the Department Advocate. If a continuance is granted, the hearing will be rescheduled to be held at the earliest date possible but not to exceed thirty (30) days from the date of the first scheduled hearing, and notice shall be given to the accused officer or employee and any witnesses by certified mail, return receipt requested.

c. Hearings shall be informal and strict rules of evidence shall not apply. The assigned investigator and any officer or employee against whom charges have been placed shall attend. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the complaint. Any accused Police Department officer or employee may be represented by counsel or other representative and shall have the right to present evidence and to examine and cross-examine witnesses. An audio recording of the hearing shall be made and shall be made available, upon payment of costs, to any person requesting same. All hearings shall be open to the public.

d. The Board shall forward to the Police Commissioner or to the Commissioner's appointed delegate written findings of ultimate facts based on all of the evidence presented at the hearing. If the Board finds that a police officer engaged in misconduct, it shall also make a recommendation for disciplinary action against the police officer. If the Board finds that misconduct rising to the level of a crime has occurred, determined by reference to the Pennsylvania Crimes Code, federal statutes or regulations, it shall refer the matter to the District Attorney or the U.S. Attorney for consideration of prosecution, unless prosecution has been previously initiated. A copy of the Board's findings and recommendations, if any, shall be kept on file by the Department Advocate.

e. Upon consideration of the Board's findings and recommendation, if any, the Police Commissioner shall make a final determination of the complaint, which, together with a brief statement of reasons in support of or in disagreement with the findings and recommendations of the Board, shall be transmitted to the appropriate parties, in the manner provided by Section 9(d) hereof.

SECTION 11. PUBLIC ACCESS TO AND MAINTENANCE OF RECORDS

The following shall govern the maintenance and distribution of all documents created as a result of a citizen's complaint alleging police misconduct.

a. Following disposition of a complaint, two (2) copies of the entire investigation file, the written findings and recommendation of the Board, if any, and the Police Commissioner's final determination shall be maintained at a designated location in

the Internal Affairs Division, with one (1) set filed under the complainant's name and one (1) set filed under the name of the police officer who is the subject of the complaint. These records shall be made available to the public during normal working hours, except as otherwise provided below.

b. The Police Department shall provide a copy of the entire file to the District Attorney's Office or U.S. Attorney's Office within seventy-two (72) hours following receipt of a written request from the District Attorney's Office or U.S. Attorney's Office. During the investigation and upon receipt of a written request from the District Attorney's Office or the U.S. Attorney's Office, the assigned investigator shall provide to the District Attorney's Office or the U.S. Attorney's Office any requested information within twenty-four (24) hours after receipt of the request.

(1) Upon the request of third party witnesses, their names and addresses can be omitted from the public file; however, their names and addresses will be provided to the District Attorney or U.S. Attorney, and upon request, to the police officer against whom the complaint is lodged, the complainant, and the victim (if other than the complainant).

(2) The records of anonymous complaints received pursuant to Section 3(b) above, and for which an investigation has found no corroboration of the complainant's version of the facts, shall be maintained in a separate public file in chronological order and the names of all parties shall be omitted. The identities of the parties shall be provided, however, to the District Attorney or U.S. Attorney, and upon request to the police officer against whom the complaint is lodged, and the victim if other than the complainant. All other anonymous complaints shall be maintained as provided in Section 11(a) hereof.

(3) If the incident which is the subject of the Citizens' Complaint has resulted in a criminal investigation conducted by a prosecutorial agency or a criminal prosecution for any of the parties, the records of the complaint shall not be placed in the public file until such time as the criminal charges have been resolved by a verdict in the trial court or the prosecutorial agencies involved in the investigation have notified the Police Commissioner that the criminal investigation is closed. Such records may however be provided, upon request, to the District Attorney, the police officer against whom the complaint is lodged, the complainant, and the victim if other than the complainant.

(4) In order to protect the privacy interests of all parties involved in the investigation, records or information obtained in the course of an investigation which would operate to the prejudice or impairment of a person's reputation or security, as provided in the Pennsylvania Right-to-Know Law, 65 P.S. 67.708(b), shall not be included in the investigative report or made available for public access under this Section. Such documents include, but are not limited to, medical and psychiatric records, information supplied to the police with an expectation of confidentiality, and other portions of the investigative file that the Police Commissioner determines must be kept confidential in order to protect

the integrity of the investigatory process. These documents shall be retained in a separate secure, non-public file.

(5) All records maintained in the public files as described in Section 11(a) hereof shall be maintained for a period of five (5) years beyond the calendar year of the disposition of the complaint.

c. A copy of the final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved, together with the findings and recommendations of the Board, if any. In those instances in which a complaint is terminated prior to a hearing, a copy of the complaint and final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved.

d. The Police Department shall publish statistics semi-annually disclosing the number of complaints filed, the nature of the complaints, and their dispositions.

SECTION 12. The procedures provided in this Executive Order shall be in addition to and not in derogation of:

a. The procedures provided for preservation of the rights of police officers pursuant to the Civil Service Regulations of the City of Philadelphia; and

b. The responsibility of the Police Department to investigate crimes or refer cases to the proper authorities.

SECTION 13. If any section of this Order is declared to be unconstitutional or illegal, the remaining sections shall remain valid and unaffected.

SECTION 14. Executive Order No. 9-93 is hereby rescinded.

SECTION 15. This Executive Order shall be effective in sixty (60) days; provided that all preparatory steps, including those set forth in Sections 1(f) and 7(b), shall begin immediately.

6/24/11
Date

Michael A. Nutter
Mayor

EXECUTIVE ORDER NO. 5-17

PROCESSING OF CIVILIAN COMPLAINTS ALLEGING POLICE MISCONDUCT

WHEREAS, issues relating to public safety are of primary concern to all civilians of the City of Philadelphia;

WHEREAS, it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety have the proper support from the government and its agencies; and that all civilians have an equal degree of faith in those agencies to deal with their complaints in a fair, equitable and timely manner;

WHEREAS, Executive Orders 1-80, 9-93 and 7-11 established procedures for the prompt and impartial processing of complaints against the Police Department;

WHEREAS, there is a need to broaden and codify the procedures by which civilians of the City of Philadelphia can seek redress of grievances against members of the Police Department and the Police Department can investigate police misconduct;

WHEREAS, the President's Task Force on 21st Century Policing and the United State Department of Justice, through its report entitled, *Collaborative Reform Initiative: An Assessment of Deadly Force Policy and Practice in the Philadelphia Police Department*, both recommend that law enforcement agencies should establish and maintain a culture of transparency and accountability to build public trust and legitimacy;

WEREAS, the City hopes to improve public access to civilian complaint data in a form most accessible to the general public without compromising confidentialities of the parties involved and hindering or otherwise impeding the operations and resources of the Philadelphia Police Department;

WHEREAS, the prompt response to, effective investigation of, and impartial resolution of civilian complaints of police misconduct are essential to the trust that society places in its police;

WHEREAS, numerous complaints of police misconduct have been made by civilians against some members of the Philadelphia Police Department;

WHEREAS, it is the intention of this Executive Order to preserve the autonomy of the Police Commissioner's exercise of duties, while mandating procedures equitable to both civilians and police personnel for resolving civilian complaints of police misconduct.

NOW THEREFORE, by the power vested in me in accordance with Section 3-100(h) of the Philadelphia Home Rule Charter, the following amended guidelines for the processing of complaints of police misconduct by members of the Philadelphia Police Department, and the study, review, and disposition of said complaints, are hereby ordered.

SECTION 1. CIVILIAN COMPLAINTS

a. All civilian complaints against a police officer ("CCR") shall be received, investigated, and disposed of in accordance with the procedures set forth herein, and complainants shall be notified of actions taken by the Police Commissioner.

b. A CCR shall be distinguishable from an independent internal investigation initiated from within the Department. For purposes of this Order, a CCR and the subsequent investigation shall only include those complaints originated by one or more civilians, whereby the Department has not otherwise initiated an independent internal investigation. In the event a CCR, or portion thereof, is or becomes the subject of a separate internal investigation, the CCR shall be merged into the internal investigation and shall be classified as an internal investigation and the complainant shall be notified.

c. Copies of complaint forms entitled "Civilian's Complaint Report," published in English, Spanish, Chinese, Vietnamese, and other language versions as shall be necessary to provide broad and inclusive access to this complaint procedure, shall be made available via the Philadelphia Police Department website and supplied in sufficient quantities to all police districts and units, the Philadelphia Commission on Human Relations, the Police Advisory Commission, (each a "receiving agency"), the District Attorney's Office, and any community-based organization upon request. Complainants may submit completed forms to any of these offices or agencies.

Each of the receiving agencies shall maintain a control log to track the number of forms provided to complainants and collected, as set forth in subsection d of this Section 1. The District Attorney's office is requested to maintain such records as it deems necessary of such CCRs. Interpreters and persons with needed literacy skills shall be made available, as provided in Philadelphia Police Directive No. 7.7 regarding access to police services for individuals with limited English language proficiency, as needed, throughout the complaint and investigation process. Such persons shall not be sworn currently employed police officers.

d. The CCR form shall contain a statement to the effect that the filing of a complaint will not necessarily result in a criminal investigation, but that an Internal Police Investigation will be initiated. The CCR form shall also include the address and telephone number of the Internal Affairs Division, and a summary of the procedures and timetable established by this Order for the conduct of investigations and notification to the complainant. Each complainant shall receive a copy of the CCR at the time it is filed with the receiving agency. Not later than twenty-four (24) hours after the CCR is filed with the receiving agency, the said agency shall send a copy of the CCR to the Police Department (if received by an agency outside the Department) and to the District Attorney's Office. If a CCR is received by the District Attorney's Office, that office is requested to forward it promptly to the Police Department.

The control log maintained by the receiving agency shall show the name of the complainant (except in the case of anonymous CCRs), the date and time the CCR form was received from the complainant, and whether the complainant left the form with the receiving agency to be officially filed. The log shall not show the name, badge number, or other descriptive information relating to any police officer(s) complained of. The Police Department shall keep a master file of all forms received and the offices or agencies from which they were received. Such control logs and master list shall be available for viewing by the public, subject to redaction as provided in Section 11(a)(4).

e. The Internal Affairs Division of the Police Department shall be designated as the central control agency for all cases of civilian complaints against members of the Police Department.

f. Police Department personnel shall inform any person who wishes to make a complaint against a police officer of the existence of the formal complaint procedure established by this Executive Order and shall refer such persons to the various locations, including the nearest location, where the CCR may be obtained and filed.

    1. Police Department personnel shall accept anonymous CCRs and in such cases shall follow the procedures in Section 3 of this Order.

    2. Police Department personnel shall provide a CCR to anyone requesting such forms, without requesting or requiring identification.

    3. When dealing with a possible complainant, Police Department personnel shall maintain a professional demeanor and take no actions to intimidate, coerce or otherwise dissuade a complainant from submitting a CCR.

g. The Police Department shall promulgate specific procedures for the recording and processing of CCRs against members of the Police Department in accordance with this Executive Order by its effective date. The Police Department shall also prepare, publish and distribute CCRs in accordance with this Executive Order by its effective date.

SECTION 2. PROCEDURES FOR THE INVESTIGATION OF COMPLAINTS

a. All CCRs concerning police misconduct which are filed shall be received, investigated, and disposed of in accordance with the procedures set forth in this Section 2, except as provided in Sections 4 (relating to Complaints Lacking Any Merit), 5 (relating to Traffic or Parking Citation Complaints), 6 (relating to Right to Know Complaints), 7 (relating to Verbal Abuse or Lack of Service Complaints) and 8 (relating to Priority of Criminal Investigations) of this Executive Order.

b. Upon receipt of the CCR, the Commanding Officer of Internal Affairs shall promptly assign it for investigation to a member of Internal Affairs, who shall be responsible for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable, carried out by the staff of Internal Affairs. The staff of Internal Affairs shall have direct responsibility for all such investigations. No such CCR shall be referred for investigation to the commanding officer of the police officer against whom the CCR has been lodged, or to any other officer of the same command; provided however, that Internal Affairs may refer certain verbal abuse or lack or service complaints to the Inspector of the unit to which the accused officer is attached, where appropriate pursuant to Section 7 hereof. Internal Affairs shall monitor and review such investigations and, where necessary, take appropriate action.

c. The investigation of the CCR by Internal Affairs shall include, but not be limited to, the following:

    1. Interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the CCR form;

    2. Interviews with the police officer(s) against whom the CCR is lodged and all

other police officers witnessing or involved in the alleged incident;

3. Interviews with all other witnesses to the alleged incident who become known to the investigating officer as a result of the investigation:

4. Examination of the scene of the alleged incident. when appropriate:

5. Viewing. analysis. and preservation of any and all evidence submitted by the complainant or witnesses or otherwise discovered during the investigation including. but not limited to. photographs, video recordings. medical records. and any reports of property damage:

6. The gathering of all pertinent Police Department forms. analyses. technical reports. laboratory results. tapes and transcripts of telephone calls. and radio transmissions;

7. If a criminal complaint has been lodged against any witness or participant in the event. a review and analysis of the investigative file compiled by the Police Department and or the District Attorney's Office in connection with such criminal complaint. when available;

8. Such other investigative steps as may appear appropriate in the discretion of the assigned investigator. whose responsibility it shall be to record each step in the investigation and the result thereof in an Investigation Report.

d. The assigned investigator shall attempt to secure written statements from all participants in. and witnesses to. the alleged incident. but where any witness or participant is unwilling to make a signed written statement. the assigned investigator shall provide a summary of the oral statement. if any. provided by such participant or witness. Where a written statement is given and signed by a participant or witness. the assigned investigator shall provide the person making the statement with a copy.

e. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number. the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.

f. All investigations shall be completed by Internal Affairs and the Investigation Report prepared within ninety (90) days from the date of filing of the CCR. except for extenuating circumstances stated in the Investigation Report and approved by the Police Commissioner or the Commanding Officer of Internal Affairs. The Investigation Report shall include the written recommendation of the investigator regarding the validity of the CCR.

g. Within thirty (30) days of the completion of an investigation. the ranking officer of Internal Affairs shall review the Investigation Report and upon giving approval thereof forward the Investigation Report. the entire investigation file and the ranking officer's written conclusion as to the occurrence and nature of the misconduct. if any. to the Police Commissioner. If the Investigation Report is disapproved by the ranking officer of Internal Affairs it will be revised accordingly and resubmitted to such ranking officer until it receives approval.

h. If extenuating circumstances necessitate an extension of time. the complainant (as well as the accused police officer) shall be notified of this fact and the reason therefor.

SECTION 3. ANONYMOUS COMPLAINTS

a. When a member of the Police Department is approached by a complainant wishing to make an anonymous complaint concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant that it is in the best interest of a full and complete investigation for the complainant to be identified and interviewed by the assigned investigator.

b. If the anonymous complainant nevertheless wishes to remain anonymous, the individual receiving the complaint shall attempt to elicit all facts which the complainant can provide and shall record and process the CCR pursuant to Section 2 hereof, to the extent possible.

SECTION 4. COMPLAINTS LACKING ANY MERIT

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), disclose no improper behavior on part of the police officer against whom the CCR is lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant and to the alleged victim of the misconduct (if other than the complainant), or to the representative designated in the CCR.

SECTION 5. TRAFFIC OR PARKING CITATION COMPLAINTS

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a CCR concerns the issuance of a traffic or parking citation, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct, disclose no improper behavior on the part of the officer against whom the CCR was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant with instructions that the proper procedure to dispute a traffic or parking violation is to appeal the citation to the appropriate forum as indicated on the complainant's copy of the citation. If any improper behavior on part of the police officer is disclosed, the CCR will be investigated according to Section 2 of this Executive Order.

SECTION 6. RIGHT-TO-KNOW COMPLAINTS (65 P.S. § 67.101, *et seq.*)

If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that a CCR concerns the denial of or the delay in responding to a Right-to-Know request authorized under Pennsylvania law, and the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant, disclose no improper behavior on the part of the officer against whom the CCR was lodged, the ranking officer of the Internal Affairs Division may terminate the investigation. The Police Commissioner shall cause notice of the determination to be given to the complainant with instructions that the proper procedure to appeal Right-to-Know disputes is to appeal the Philadelphia Police Department's response, or lack thereof, to the appropriate forum as indicated in the Pennsylvania Right-to-Know Law, 65 P.S. § 67.1101. If any improper behavior on part of the police officer is disclosed, the CCR will be investigated according to Section 2 of this Executive Order.

SECTION 7. VERBAL ABUSE OR LACK OF SERVICE COMPLAINTS

a. If the assigned investigator of Internal Affairs, with the agreement of the ranking officer of the Internal Affairs Division, determines that the facts stated in the CCR, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), would constitute verbal abuse or lack of service only, and that it is the "first complaint" of such conduct against the officer(s) named, the ranking officer of the Internal Affairs Division shall refer the CCR to the Inspector of the officer against whom the CCR was lodged.

   The goal of the Inspector's investigation shall be to remedy the actual or perceived offensive behavior of the police officer against whom a CCR has been lodged in the most efficient and prompt manner possible. To accomplish this goal, the Police Department shall be prohibited from taking any formal disciplinary action against a police officer for the "first complaint" received for verbal abuse or lack of service in a two (2) year period.

b. For purposes of this Order, the assigned Internal Affairs investigator shall determine the "first complaint" status by reviewing the Internal Affairs history of the officer during the two (2) years prior to the date of current CCR. If an officer has any CCRs alleging verbal abuse or lack of service during this time period, the current CCR shall be deemed a second or subsequent complaint and shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

   Prior to the execution of this Executive Order, the Police Department has implemented appropriate policies and procedures to ensure that officers subject to allegations of verbal abuse or lack of service receive an in-depth review and such advice, instructions and other useful feedback regarding the complaint as will enable them to avoid similar complaints in the future.

c. The procedures for disposition of such "first complaints" shall be the following:

   1. Upon receipt of a CCR from the ranking officer of the Internal Affairs Division, the Inspector of the police officer against whom the CCR was lodged shall contact and interview the complainant, and the complainant's witnesses, if possible, to confirm the facts of the case.

      i. If the Inspector determines in the initial investigation that any aspect of the CCR exceeds the scope of verbal abuse or lack of service, the CCR shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order. Additionally, if upon review the Inspector determines that the CCR states a claim of verbal abuse or lack of service motivated by animus based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability or gender identity, the CCR shall be referred back to Internal Affairs to be investigated and disposed of pursuant to Section 2 of this Executive Order.

   2. The Inspector shall schedule a meeting with the police officer, his or her commanding officer and any other persons the Inspector deems necessary, to discuss the facts of the CCR. At such meeting the officer will be able to convey his or her version of the incident.

3. At the conclusion of the meeting, the Inspector shall provide the officer with his or her opinion of the incident and the alleged conduct of the police officer. The Inspector shall then offer his or her advice, instructions and other useful feedback regarding the CCR and the officer's actual or perceived behavior, demeanor or conduct, so as to assist the officer in avoiding any similar CCRs in the future.

4. The complainant shall be notified in writing that a meeting was held with the police officer against whom the CCR was lodged, at which the officer's conduct was discussed, and the case will be closed out.

d. Second or subsequent CCRs alleging verbal abuse or lack of service against the same officer within the two (2) year period following the date of the complaint amounting to verbal abuse or lack of service as set forth above shall be investigated and disposed of pursuant to Section 2 of this Executive Order, including possible discipline.

SECTION 8. PRIORITY OF CRIMINAL INVESTIGATIONS

a. In the event that the complainant or alleged victim of police misconduct (if other than the complainant) has been arrested and charged with a criminal offense or offenses based upon the events on which the CCR is founded, the investigation and disposition of the CCR shall conform to the procedures established in this Order. However, the complainant or the alleged victim of police misconduct may elect not to give a written or oral statement either to the assigned investigator or before the Police Board of Inquiry, or both, until final disposition, including appeal, of all such criminal charges. In the event of such an election, the investigation shall remain open until such criminal charges have reached a final disposition, including appeal, and a new opportunity has been given to the complainant or alleged victim to make such a statement.

b. In the event that a prosecutorial agency notifies the Police Commissioner that the officer who is the subject of the CCR is under criminal investigation for the offense complained of in the CCR, or in the event that a police officer is arrested for the offense complained of in the CCR, the investigation and disposition of the CCR shall conform to the procedures established by this Order. Where criminal charges are not resolved or the criminal investigation is not complete prior to the Commissioner or his appointed delegate's final determination of the CCR, the Commissioner shall reevaluate such final determination within fifteen (15) days of the resolution of the criminal charges or the closing of the criminal investigation. A criminal investigation shall be deemed closed upon written notice from the prosecutorial agency. The Commissioner may affirm, modify or reverse the prior determination in light of the outcome of the criminal charges or criminal investigation, or may reopen the departmental investigation which shall conform to the procedures set forth in this Executive Order. A brief statement by the Commissioner supporting the decision upon reevaluation shall be transmitted to the complainant or alleged victim of police misconduct (if other than the complainant), in the manner prescribed by Section 9(d) hereof.

c. If the initiation or completion of an investigation is delayed due to possible or pending criminal charges as detailed in Sections 8(a) or (b) hereof, the time period mandated by this Executive Order for the completion and disposition of the investigation may be extended for the period of the delay.

SECTION 9. REVIEW AND DISPOSITION OF COMPLAINTS

Except for those CCRs handled solely pursuant to the provisions of Sections 4 (relating to Complaints Lacking Any Merit). 5 (relating to Traffic or Parking Citation Complaints). 6 (relating to Right to Know Complaints). or 7 (relating to Verbal Abuse or Lack of Service Complaints). and not the provisions of Section 2. upon receipt of the file and the findings and conclusions of the ranking officer of the Internal Affairs Division. the Police Commissioner or a Deputy Commissioner assigned by the Commissioner shall review the entire file and determine the appropriate disposition of the CCR in accordance with the following provisions:

a. Criminal Misconduct.

In every case in which the Commissioner or his appointed delegate determines that there are reasonable grounds to believe that misconduct rising to the level of a crime has occurred. without regard to any person's credibility. the Commissioner shall refer the matter to the District Attorney or the U.S. Attorney for consideration and prosecution unless prosecution has been previously initiated. Whether misconduct rises to the level of a crime shall be determined by reference to the Pennsylvania Crimes Code. Federal criminal statutes. and or regulations. Regardless of whether the District Attorney or U.S. Attorney initiates or declines prosecution. the Commissioner or his appointed delegate shall impose such sanctions as the Commissioner deems appropriate.

b. Non-Criminal Misconduct.

In every case in which the Police Commissioner or his appointed delegate determines that there are no reasonable grounds to believe that misconduct rising to the level of a crime has occurred. the Commissioner shall. in his discretion. (i) make a finding that noncriminal misconduct has occurred. and impose such sanctions as the Commissioner shall deem appropriate; (ii) refer the CCR to the Police Board of Inquiry for a hearing; or (iii) make a finding that no misconduct has occurred and close the file.

c. Disciplinary Action.

In every case in which the Police Commissioner or his appointed delegate determines that misconduct has occurred. the Commissioner shall impose sanctions which are commensurate with the seriousness of the misconduct. taking into account the prior history of the officer in question. Sanctions shall range from a reprimand to dismissal from service.

d. Notice

The disposition of the CCR. including any disciplinary action. shall be communicated in writing. by certified mail. to the officer against whom the CCR was lodged. the complainant and the alleged victim of police misconduct (if other than the complainant). or such person's representative as may be designated in the CCR; and a copy shall be delivered to the District Attorney's Office. The notification shall inform the person to whom it is given that the entire file is available for review. subject to redaction in accordance with Section 11(a)(4).

e. Except for extenuating circumstances stated in the file. the determination of the Police Commissioner and the notice prescribed in Section 9(d) shall be made within forty-five (45) days from the receipt of the file by the Police Commissioner.

f. In those instances in which the Police Commissioner determines that no misconduct has occurred, the notice to the complainant and the alleged victim (if other than the complainant) shall include a summary of the investigative findings and the reason for the Police Commissioner's actions.

SECTION 10. THE POLICE BOARD OF INQUIRY

a. Upon referral by the Commissioner of a CCR to the Police Board of Inquiry (the "Board") for hearing, the following procedures shall apply:

The Board shall schedule a hearing to be held at the earliest possible date, but not to exceed ninety (90) days from the referral of the CCR ("Civilian Complaint Hearing"). Not less than thirty (30) days' written notice of the time and place of the hearing shall be given by certified mail, return receipt requested, to the complainant and the alleged victim of police misconduct (if other than the complainant) or to his or her attorney or other representative designated in the CCR; to material witnesses identified in the investigation; to the police officer or employee charged with misconduct; and to all witnesses and participants whom the Commissioner or the Board believes may be helpful in resolving the question before the Board.

b. The Board may grant a continuance of the scheduled hearing only upon written request by a member of the Board or the Department Advocate. If a continuance is granted, the hearing will be rescheduled to be held at the earliest date possible but not to exceed thirty (30) days from the date of the first scheduled hearing, and notice shall be given to the accused officer or employee and any witnesses by certified mail, return receipt requested.

c. Hearings shall be informal and strict rules of evidence shall not apply. The assigned investigator and any officer or employee against whom charges have been placed shall attend. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the CCR. Any accused Police Department officer or employee may be represented by counsel or other representative and shall have the right to present evidence and to examine and cross examine witnesses. An audio recording and transcript of the hearing shall be made. For those hearings that are open to the public, such transcripts shall be made available to the public upon request and payment of cost. All Civilian Complaint Hearings, shall be open to the public provided that hearings that involve minor victims or allegations of sexual misconduct shall not be open to the public unless a public hearing is requested by the victim in writing. If the victim is a minor, the hearing shall not be open to the public unless the written consent of a parent with legal custody or the minor's legal guardian is also provided.

d. The Board shall forward to the Police Commissioner or to the Commissioner's appointed delegate written findings of ultimate facts based on all of the evidence presented at the hearing. If the Board finds that a police officer engaged in misconduct, it shall also make a recommendation for disciplinary action against the police officer. If the Board finds that misconduct rising to the level of a crime has occurred, determined by reference to the Pennsylvania Crimes Code, federal statutes or regulations, it shall refer the matter to the District Attorney or the U.S. Attorney for consideration of prosecution, unless prosecution has been previously initiated. A copy of the Board's findings and recommendations, if any, shall be kept on file by the Department Advocate.

e. Upon consideration of the Board's findings and recommendation, if any, the Police Commissioner shall make a final determination of the CCR, which, together with a brief statement of reasons in support of or in disagreement with the findings and recommendations of the Board, shall be transmitted to the appropriate parties, in the manner provided by Section 9(d) hereof.

SECTION 11. PUBLIC ACCESS TO AND MAINTENANCE OF RECORDS

Records relating to or resulting in criminal investigations and records relating to a non-criminal investigation are exempt from public disclosure pursuant to the Pennsylvania Right to Know Law (65 P.S. §67.708(16) and (17)). Therefore, public access to and maintenance of these records shall be governed by this Order.

a. General procedure following the disposition of a CCR.

1. Redacted copies, as defined in subparagraph 4 below, of the complete investigation, the written findings and recommendations of the Board, if any, and the Police Commissioner's final determination shall be given by certified mail, return receipt requested, or other such manner as requested, to the Complainant or authorized representative, and victim if other than the complainant, within forty-five (45) days of the Police Commissioner's final determination.

2. To ensure openness and transparency, on a monthly basis, the Police Department shall post on the Department's website the relevant identifying information, classifications and outcomes in a format consistent with the Open Data Philly Initiative. This posting shall include a brief narrative of the complaint, investigation, investigative outcome, Police Board of Inquiry determinations. Relevant identifying information shall include district, complaint classification, finding, and reference numbers, and any other information determined by the Commissioner or his designee to be appropriate, but no portion of the posting shall include information removed from redacted copies of CCR records pursuant to subparagraph 4 below. All information posted on the Department's website shall be maintained on the website for a period of five (5) years beyond the calendar year of the disposition of the CCR.

3. The officer against whom CCR is lodged shall receive notification of the outcome of any CCR and upon request will be provided an entire, completed CCR investigative file.

4. For purposes of this Order, a "redacted copy" of any record is a record whereby certain personal information, medical/treatment information, and information that would compromise public safety or officer safety has been obscured, masked, or otherwise concealed from view. Such information shall include, but is not limited to, the following information:

A. Personal Information Redactions:

1. First and last names of complainants, witnesses. victims and Police Officers. except for initials.
2. Other names that could be used to identify witness or officers.
3. Unique information which could identify a witness or officer.
4. Home addresses or other specific non-business addresses.
5. License plate numbers and vehicle identification numbers.
6. Social Security Numbers.
7. Driver's license numbers.
8. Certified mail numbers.
9. Actual birth dates (age is acceptable).
10. District Control numbers.
11. Property receipt numbers.
12. Warrant numbers
13. Ticket or citation numbers.
14. Firearms serial numbers.

B. Public/Police Officer Safetv Information Redactions:

1. Undercover and otherwise sensitive officer assignments.
2. Police Department assigned vehicle numbers. license numbers and vehicle identification numbers (VIN).
3. Officer payroll numbers.
4. Officer shift hours.
5. Location or lack of surveillance cameras in an area.
6. Information regarding police tactics that would endanger officer or public safety if released.
7. Any other portion of the investigative file that the Police Commissioner determines must be kept confidential in order to protect the integrity of the investigative process.

C. Medical. psychiatric and other confidential information.

In order to protect the privacy interest of all parties involved in the investigations. records or information obtained in the course of an investigation which would operate to prejudice or impair a person's reputation or security shall not be included in the investigative report or made available to the complainant or public under this section. Such information includes but is not limited to the following:

1. Medical information.
2. Psychiatric information
3. Drug and alcohol treatment information
4. Information supplied to police with the express expectation of confidentiality or anonymity.
5. Any other portion of an investigative file that the Police Commissioner determines must be kept confidential in order to protect the integrity of the investigative process.

b. Procedures when a CCR is being reviewed by any prosecutorial agency.

1. The Police Department shall provide a copy of the entire, completed civilian's complainant investigative file to any local, state or federal prosecutorial agency within seventy-two (72) hours following receipt of a written request from the agency.

    a. Ongoing Investigations
    During the investigation of any CCR and upon receipt of a written request from any local, state or federal prosecutorial agency, the assigned police department investigator shall provide to the prosecutorial agency any requested information within twenty-four (24) hours after receipt of the request.

1. If the incident which is subject of the CCR has resulted in a criminal investigation conducted by a prosecutorial agency or a criminal prosecution for any of the parties, the record of the complaint shall not be posted on the Departmental website until such time as the criminal charges have been resolved by verdict in the trial court or the prosecutorial agencies involved in the investigation have notified the Police Commissioner that the criminal investigation is closed. However, upon request, records will be provided to any other prosecutorial agency, the police officer against whom the CCR is lodged, the complainant, and the victim, if other than the complainant.

c. Procedures involving anonymous CCRs.

The records of anonymous CCRs received pursuant to Section 3(b) above, including those for which an investigation has found no corroboration of the complainant's version of the facts shall be posted on the Departmental website as described in Section 11(a)(2) above. However, records will be provided, upon request, to the complainant, if later identified, and the victim, if other than the complainant, pursuant to Section 11(a)(1).

d. Procedures involving verbal abuse or lack of service CCRs.

The records of "first complaints" of verbal abuse or lack of service received pursuant to Section 7 shall be posted on the Departmental website as described in Section 11(a)(2) above and the disposition shall be recorded as " Officer Counseled."

e. A copy of the final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved, together with the findings and recommendations of the Board, if any. In those instances in which a CCR is terminated prior to a hearing, a copy of the CCR and final determination of the Police Commissioner shall be placed in the personnel file of the officer or officers involved.

SECTION 12. The procedures provided in this Executive Order shall be in addition to and not in derogation of:

a. The procedures provided for preservation of the rights of police officers pursuant to the Civil Service Regulations of the City of Philadelphia; and

b. The responsibility of the Police Department to investigate crimes or refer cases to the proper authorities.

SECTION 13. If any section of this Order is declared to be unconstitutional or illegal. the remaining sections shall remain valid and unaffected.

SECTION 14. Executive Order No. 7-11 is hereby rescinded.

SECTION 15. This Executive Order shall be effective in sixty (60) days. provided that all preparatory steps. including those set forth in Section 1(f). shall begin immediately.

8/1/17
DATE

JAMES F. KENNEY, MAYOR

PHILADELPHIA POLICE DEPARTMENT DIRECTIVE 8.6

Issued Date: 05-01-10	Effective Date: 05-01-10	Updated Date:

SUBJECT: DISCIPLINARY PROCEDURE

1. POLICY

A. The entire disciplinary procedure and outcomes shall be consistent and fair. This procedure supports the core values of the Philadelphia Police Department: Honor, Service and Integrity.

B. Only the Police Commissioner shall have the authority to suspend, demote, or dismiss a member, except as stated herein.

C. All charges and specifications for formal disciplinary action shall originate from and be approved by the Commanding Officer of the Police Board of Inquiry Charging Unit.

D. Only the Police Commissioner has the authority to withdraw disciplinary charges.

E. Police Department employees will be entitled to have a recognized bargaining unit representative present during any administrative inquiry that the employee reasonably believes might result in disciplinary action against them. However it is the employee's responsibility to notify and obtain representation, the Department representative will schedule such inquiries no less than three (3) calendar days, excluding Saturdays, Sundays, and recognized City holidays, after notifying the employee.

F. Any and all timelines are for procedural purposes only. Failures to comply with timeline shall not bar or waive any disciplinary matter.

2. INVESTIGATION AND REPORTS - CRIMINAL OFFENSES

A. The Internal Affairs Bureau will be responsible for investigating all personnel suspected of criminal violations. Under exigent circumstances, the Chief Inspector of the Office of Professional Responsibility may contact Commanding Officers directly to utilize, when necessary, any resources (including personnel), within the Department to assist in those matters requiring specialized skills, knowledge or expertise needed to complete a full and thorough investigation.

1. Except for those incidents handled by outside law enforcement agencies, personnel arrested shall be informed of the charges by the Internal Affairs Investigator along with the Internal Affairs Squad Captain. Except for Sight Arrests, the Internal Affairs Investigator will also be the arresting officer.

2. When the employee is arrested, the Chief Inspector of the Office of Professional Responsibility shall be immediately notified. The Chief Inspector of the Office of Professional Responsibility shall then notify the Police Commissioner.

3. Miranda and Gniotek Warnings must be read to the accused prior to the taking of any statements.

4. Copies of all pertinent paperwork (75-18s), warrant, affidavit of probable cause, PARS report, etc) will be distributed by the Internal Affairs Bureau.

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3. INVESTIGATIONS FORWARDED TO THE POLICE BOARD OF INQUIRY CHARGING UNIT

A. Whenever a complete and thorough investigation is conducted by Internal Affairs, EEO or a District/Unit Commander and concludes a departmental violation(s) has occurred, the completed investigation shall be forwarded to the Police Board of Inquiry Charging Unit (PBI Charging Unit) for appropriate action.

1. The forwarded investigation shall include, but not be limited to: completed reports, statements from civilian or police complainants and/or police or civilian witnesses, statements of the accused, Daily Attendance Reports, Daily Complaint Summary(s), signed court notices, KTNQ printouts, Radio Logs, Patrol Logs, and all other pertinent information.

   a. All supporting documents must be included. This is imperative in that it will enable the PBI Charging Unit to make the appropriate charging decision.

   b. Refusal of civilian complainants and/or witnesses to appear shall in no way relieve the Investigating Officer of the responsibility of conducting a thorough investigation and submitting complete reports.

2. Once the PBI Charging Unit has thoroughly reviewed the investigation, the Commanding Officer of the Charging Unit shall authorize either formal disciplinary charges or formal training and counseling to address the sustained departmental violation(s).

B. Formal Disciplinary Charges

1. The PBI Charging Unit will notify the Commanding Officer, of the charged employee(s), either sworn or civilian, of the specific disciplinary charge/s and specifications listed in the Disciplinary Package (75-18) via the 75-18 Management System.

   a. The 75-18 package will consist of the following forms:

      - Receipt of Charges and Acknowledgement of Right to Counsel (75-18B)
      - Statement of Charges Filed and Action Taken (75-18)
      - Employee Assessment (75-18A)
      - When applicable Command Level Discipline Agreement (75-18C)

   b. A copy of the 75-18 package will be forwarded to the appropriate Inspector, Chief Inspector, Deputy Commissioner and the Commissioner for their review and information.

2. The district/unit Commanding Officer will be responsible to complete the appropriate blocks on the forms making up the 75-18 package.

3. After ensuring that all appropriate information has been entered, the accused officer and their Commanding Officer will sign and date all pertinent forms.

   a. Charged officers will sign twice on the Statement of Charges Filed and Action Taken; once to indicate receipt and the second time to indicate not guilty / request hearing or guilty / waive hearing.

   b. The charged employee's supervisor will complete and sign the employee evaluation contained on the employee assessment page.

   c. The employee's Commanding Officer may make a penalty recommendation on the Employee assessment page only when an employee pleads guilty and the penalty range is ten days or less. The appropriate Deputy Commissioner may make a recommendation on a guilty plea if the penalty range is more than ten days but less than dismissal. No recommendation will be made on a guilty plea where dismissal is a possibility.

   d. The Police Board of Inquiry (PBI) requires two (2) copies of all completed packages with original signatures.

4. These three (3) or four (4) (if Command Level is applicable) forms will comprise the completed 75-18s package. The completed package will then be hand-delivered within 14 calendar days directly to the PBI Charging Unit.

a. In the event that an employee is unable to be served with the disciplinary package in a timely manner, due to an absence from the workplace, (IOD, long-term sick, training, vacation or other legitimate reason) the employee's Commanding Officer will prepare an extension memo requesting that the disciplinary package be placed on hold. This memo will be forwarded through the chain of command to the appropriate Deputy Commissioner. A copy of this memo will be faxed directly to the Charging Unit so that the disciplinary package can be placed in a hold status.

5. Once completed disciplinary packages are returned to the Charging Unit and subsequently processed, they will be submitted to the Office of the Department Advocate for prosecution and/or filing. The Office of the Department Advocate is responsible for maintaining all disciplinary records for the period outlined in the Records Retention Schedule.

C. Counseling and Internal Affairs Notification

1. When the PBI Charging Unit deems that the violation(s) sustained in the completed investigation should be addressed through counseling, a Counseling Form memorandum will be prepared by the Commanding Officer PBI Charging Unit and sent via the 75-18 management system to the Commanding Officer of the respective employee(s).

2. The Departments official Counseling Form (75-627) will only be completed and issued to sworn personnel by the employee's Commanding Officer. To document that an officer has been formally trained and counseled, the employee's Commanding Officer will prepare and forward within fourteen days, a memorandum in duplicate addressed to the Commanding Officer, PBI Charging Unit. The memorandum will detail the officer's name, rank, badge and payroll numbers along with the PBI case number, the IAB or EEO investigation number and the date the counseling took place. The Counseling Form (75-627) will not be returned to the PBI Unit.

a. Distribution of the memorandum will be as follows:

Original – to the investigative unit for their files
Copy – will be maintained by the Office of the Department Advocate.

b. Civilian employees will be issued a memorandum explaining the need for training and/or counseling. This will be issued in lieu of the Training and Counseling Form (75-627)

3. IAB Notification forms (75-630) will be used in all cases where more than one (1) employee is named in an IAB / EEO investigation and allegations are sustained on at least one person. This process will allow named employees with finding(s) other than sustained to be informed of the contents of the IAB/ EEO investigation (sustained allegations will be handled through formal discipline or counseling).

   a. After ensuring that all appropriate information has been entered, the notified officer, Commanding Officer, and supervisors, will sign and date the form.

   b. A copy will be provided to the employee and two (2) copies with original signatures will then be hand-delivered within fourteen calendar days directly to the PBI Charging Unit.

4. In the event that an employee is unable to be served with the counseling form or IA notification in a timely manner, due to an absence from the workplace, (IOD, long term sick, training, vacation or other legitimate reason) the employee's Commanding Officer will prepare an extension memo requesting that the counseling form or IA notification be placed on hold. This memo will be sent through the chain of command to the appropriate Deputy Commissioner. A copy of this memo will be faxed directly to the Charging Unit so that the matter can be placed in a hold status.

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4. FORMAL DISCIPLINARY PROCESS: GUILTY PLEA, NOT GUILTY PLEA OR COMMISSIONERS DIRECT ACTION

A. When police personnel are formally notified of disciplinary charge(s) initiated against them, upon the presentation of the 75-18's, they will be permitted to plead guilty and waive a hearing before the Police Board of Inquiry or plead not guilty and request a Police Board of Inquiry (PBI) hearing.

   NOTE: The Police Commissioner is vested with the authority to enforce discipline through a Commissioner's Direct Action (CDA) for all disciplinary violations. This action may be taken irrespective of what the employee may have plead. Personnel are not guaranteed a hearing in front of the Police Board of Inquiry should a "not guilty" plea be entered. The Police Commissioner always maintains the right to initiate a CDA at any time for any violation(s).

B. When a charged employee elects to plead guilty and waive a hearing, the Commanding Officer may include a recommendation for discipline on the Employee's Assessment Sheet if the penalty range is ten days or less. The appropriate Deputy Commissioner may make a recommendation on a guilty plea if the penalty range is more than ten days but less than dismissal. No recommendation will be made on a guilty plea where dismissal is a possibility.

1. The Police Commissioner shall not be bound by the Commanding Officer's recommendation. Commanding Officers are not authorized to guarantee charged personnel that their recommendation will be implemented if the individual pleads guilty. The recommendation is only a basis for the Police Commissioner to consider when making his final decision.

2. Commanding Officers will make recommendations based on charges, reckoning periods (if applicable), the employee's evaluation and commendations.

C. When a charged employee elects to plead "not guilty", and the Police Commissioner elects not to take direct action, the Department Advocate will be responsible for scheduling a hearing in front of the Police Board of Inquiry in a timely fashion.

1. The Police Board of Inquiry will render a recommendation to the Police Commissioner in those matters it adjudicates. The Police Commissioner shall not be bound by the Board's recommendation.

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5. POLICE DEPARTMENT EMPLOYEES ARRESTED OUT-OF-TOWN

A. Whenever any employee of the Department is arrested in another jurisdiction or is arrested locally by an agency other than the Philadelphia Police Department, he/she shall personally notify their Commanding Officer by whatever means are available or request the arresting agency to notify their Commanding Officer.

1. The notification shall include:

a. The name of the arresting agency/jurisdiction.
b. The charge or charges.
c. Date, time and location of arrest.
d. Location of initial incarceration.
e. Date, time and location of the initial judicial proceeding.

B. Commanding Officers, upon being notified of such an arrest, shall:

1. Immediately notify the Chief Inspector, Office of Professional Responsibility.

a. If after normal business hours, the notification can be made through Police Radio

2. As soon as practical take possession of the member's city issued equipment that will not be used as evidence.

6. DISCIPLINARY PROCESS FOR DETAILED PERSONNEL

A. Whenever personnel within the Department are detailed to another unit, the Commanding Officer of the detailed assignment will be responsible for all disciplinary matters surrounding the employee. This includes investigations and requests for charges through the PBI Charging Unit. All paperwork involved in discipline will be copied to the permanent Commanding Officer for their information only.

EXCEPTION: When the disciplinary infraction occurred while the employee was in their permanent assignment, the Commanding Officer of the permanent assignment will handle the disciplinary matter.

7. OUTSTANDING DISCIPLINARY CHARGES

A. In the event an employee leaves the employment of the Philadelphia Police Department, and at the time of their separation there is an outstanding disciplinary matter, should the employee be reinstated, he/she will be served with any and all outstanding disciplinary charges.

B. All investigations on an employee, who has separated from the Department, shall be completed and kept at the Internal Affairs Bureau.

BY COMMAND OF THE POLICE COMMISSIONER

APPENDIX "A"

Issued Date: 05-01-10	Effective Date: 05-01-10	Updated Date:

SUBJECT: COMMAND LEVEL DISCIPLINE

1. POLICY

A. It is the policy of this Department to authorize district / unit Commanding Officers to take consistent disciplinary action against all sworn employees for infractions of the Department's Disciplinary Code. Such infractions covered under this Appendix are limited to those with penalties ranging from a reprimand to a suspension not to exceed five (5) days.

NOTE: Command Level Discipline administered by Commanding Officers does not apply to penalties associated with violation of the Police Department's Sick Leave Policy, outlined in Directive 11.3, "Sick Leave – Sworn Personnel."

B. The district/unit Commanding Officer is authorized to offer the offending officer a penalty consistent with their actions and after taking into consideration the officer's work history, commendations, prior discipline, etc.

C. Command Level Discipline is a tool available to a Commanding Officer. A Commanding Officer is never obligated to offer Command Level Discipline to an officer.

D. Should the officer agree to the penalty offered by the commander, he/she shall waive their right to arbitration and the disposition will be final. The disposition is not subject to further command disapproval or adjustment.

E. The officer may decline the commander's offer of discipline and request to have the case heard by the Police Board of Inquiry.

F. Command Level Discipline applies to sworn members of the Police Department only.

2. PROCEDURE

A. The Commanding Officer of personnel accused of violations of departmental regulations shall conduct and submit a complete and thorough investigation to the Police Board of Inquiry Charging Unit. A cover memorandum requesting disciplinary action will be attached to the package.

1. The investigation shall include, but not be limited to: completed reports, statements from civilian or police complainants and police or civilian witnesses, statements of the accused, DAR's, Daily Complaint Summary(s), signed court notices, KTNQ printouts, Radio Logs, Patrol Logs etc.

B. In those cases where the maximum Disciplinary Code recommendation is five (5) days or less, the Commanding Officer of the charged officer shall have the discretion to offer a settlement.

C. In calculating the potential penalty, multiple charges that have an aggregate potential penalty greater than five days are still eligible under this directive if the individual charges each do not exceed five (5) days.

EXAMPLE: Two (2) separate charges that each carry a penalty of reprimands to five (5) days can still be handled at this level even though the penalty assessed on the combined charges could be ten (10) days.

D. The Commanding Officer of the charged officer is expected to make a fair and appropriate offer based on the allegations and other factors including the officer's work history, commendations, productivity measurements (arrests, summons, calls for service answered, prior discipline history, etc.).

E. If the officer accepts the recommended penalty, he/she has agreed to waive their rights to arbitration. The disposition is not subject to further command disapproval or adjustment.

F. The charged officer is also free to decline the offer conveyed by their commander and request to have the case heard by the Police Board of Inquiry. At this point, the Commanding Officer shall document the offer on the Command Level Discipline Agreement and have the package hand delivered to the PBI Charging Unit.

G. The Department Advocate shall also have the authority to settle this same category of cases. He/she shall give strong consideration to all relevant factors, including the original offer, when determining any settlement with the charged employee.

H. In situations where a Fraternal Order of Police (FOP) representative has not signed the agreement, the Commanding Officer initiating the settlement **will** strike paragraph #4 of the agreement.

I. When settling this category of cases, the officer's Commanding Officer and the Department Advocate shall also have the authority to impose the penalty in terms of vacation days in lieu of suspension days.

J. Only the district / unit Commanding Officer will sign the Command Level Agreement. In their absence, only the covering Commander will sign.

K. The Command Level Agreement will be returned directly to the PBI Charging Unit as part of the complete 75-18 package.

BY COMMAND OF THE POLICE COMMISSIONER

APPENDIX "B"

Issued Date: 05-01-10	Effective Date: 05-01-10	Updated Date:

SUBJECT: NOTICE OF SUSPENSION WITH INTENT TO DISMISS

1. POLICY

A. Whenever a sworn or civilian employee is suspended for up to thirty days with intent to dismiss as a result of the Police Commissioner's Direct Action or outcome of a Police Board of Inquiry hearing, the Police Personnel Unit will prepare dismissal forms which will be hand delivered by a Lieutenant or, in his or her absence, a Sergeant.

1. Form 73-60, Notice of Intention to Dismiss will be issued within the first twenty days of suspension.

2. Form 73-65, Notice of Dismissal will be issued ten days after service of Intention to Dismiss Form.

3. Form 73-S-64, Rejection Notice During Probationary Period, if applicable will also be issued immediately following the Police Commissioner's request.

2. PROCEDURE

A. Guideline for serving a "Notice of Intention to Dismiss" and "Notice of Dismissal"

1. Include four (4) copies of the notice
2. Ensure the employee signs ALL four copies
3. Record date, time served as well as the name, badge number and unit for employee serving the notice.
4. Distribution is as follows:

   a. Original – give to employee
   b. Three (3) copies – return to Police Personnel, Room 308, Police Headquarters
5. Do not use regular mail. Return copies of the above notice to Police Personnel, must be hand delivered.
6. ALL COPIES of the 75-48 must accompany returned papers.

B. Guidelines for serving a "Notice of Rejection during Probationary Period"

1. Include three (3) copies of the notice
2. Notice shall be personally delivered to employee.

3. Ensure the employee signs all copies
4. Record date, time served on the papers as well as the Name, Badge Number and Unit of employee SERVING the notice.
5. Retrieve the employee's Police Identification Card and any City equipment, if applicable.
6. Distribution is as follows:

   a. Original – to employee
   b. One (1) copy – to Commanding Officer
   c. One (1) copy – return to Police Personnel, Room 308, Police Headquarters
      Do not use regular police mail, must be hand delivered.

BY COMMAND OF THE POLICE COMMISSIONER

NOTICE OF INTENTION TO DISMISS

(Prepare in Triplicate)

CITY OF PHILADELPHIA

NOTICE SERVED

UPON (Employee)

☐ BY MAIL ☐ PERSONALLY

DATE SERVED

DEPARTMENT, DIVISION, ETC.

TITLE OF POSITION

Effective ten days from service of this notice, it is our intention to dismiss you from your position with the City of Philadelphia as referred to above. My reasons for intending to take such actions are:

If you believe that this intended action is unjustified, you may, under regulations of the Civil Service Commission, within ten days from service of this notice, notifiy me in writing of your reasons therefor and summarize the facts in support of your belief. A copy of your letter to me must be sent at the same time to the Personnel Director.

Your replying to this notice and sending a copy of your reply to the Personnel Director does not constitute an appeal to the Civil Service Commission. You may appeal to the Civil Service Commission only when this intended action becomes final and within thirty days thereafter.

POLICE COMMISSIONER

73-60 ORIGINAL: Employee cc: Department cc: Personnel Director

DIRECTIVE 8.6 - 3
APPENDIX "B"

NOTICE OF DISMISSAL

(Prepare in TRIPLICATE)

CITY OF *Philadelphia*

TO:

NOTICE SERVED

Upon (Employee specified)

☐ BY MAIL ☐ PERSONALLY

DATE SERVED

DEPARTMENT, DIVISION, ETC.

TITLE OF POSITION

You are hereby notified that effective _____ , you are dismissed from your position with the City of Philadelphia as referred to above for the following reasons:

You are further notified and advised that the Philadelphia Home Rule Charter provides that any employee who is dismissed after satisfactorily completing his probationary period of service may, within thirty days after such dismissal, appeal to the Civil Service Commission for review thereof.

_____

Signature of Commissioner

73-65(Rev. 1/76) ORIGINAL - Employee cc: Department cc: Personnel Director

REJECTION NOTICE DURING PROBATIONARY PERIOD (Prepare in Triplicate)	City of Philadelphia **Personnel Department**

Name of Probationer

Address

Classification of Position

Division and/or Department

Effective Date of Rejection	Date of Last Day of Probationary Period

TO THE PROBATIONER ABOVE-NAMED:

You are hereby notified that you have been rejected from further employment from the position above described, effective at the close of work on the date of rejection above indicated, which is not later than the last day of your probationary period in that position. The Philadelphia Home Rule Charter and the Civil Service Regulations do not permit an appeal from this action to the Civil Service Commission. If you had permanent civil service status in another class immediately prior to your being appointed to this position, you may have a right to return to that position.

The specific reasons for your rejection from the above position are as follows:

Date	Signature of Supervisor	Title

I ____ recommend that this probationer be placed on the eligible list for this class..
(do or do not)

APPROVED: _____ POLICE COMMISSIONER _____
Signature of Head of Office, Board or Commission — Title — Date

CONSENT OF PERSONNEL DIRECTOR

Subject to verification of the above-stated reasons. I hereby consent to the rejection during the probationary period of the above-named person on the effective date indicated.

Date	Personnel Director

73-S-64 **COPIES TO:** EMPLOYEE, DEPARTMENT, PERSONNEL DIRECTOR

Appendix: Sample of Civilian Complaints Against Police PBI Hearings

PBI hearings are administrative trials where alleged instances of police misconduct are adjudicated. At these hearings, the Department Advocate calls witnesses and presents evidence that tends to show that the accused officer has committed a violation of departmental policy. The FOP attorney is also allowed to bring forth witnesses and offer evidence that will rebut the accusation that the officer has violated policies. The PBI panel, comprised of three PPD members, will then deliberate on if the accused violated a policy that the Charging Unit claimed that individual violated. If there was a violation found, the panel would then recommend a penalty for the Commissioner to consider.

Since these hearings take place in a small room inside PPD Headquarters, usually outside of the observations of the public, the PAC included these summaries with this report in hopes to shed light on what occurred. While reviewing audio recordings of the hearings and investigative files, these summaries list what evidence was presented to the panel, reasons why accused were found not guilty, and the penalty that was imposed when personnel were found to have committed a violation.

Most importantly, these summaries include a qualitative analysis on the performance of the Department, specifically the performance of Internal Affairs in investigating the complaint, the performance of the Charging Unit in their charging decisions, the performance of the Department Advocate in prosecuting the matter, the performance of the PBI panel in making their overall decisions, and lastly, the performance of the Department's Research and Planning Unit to provide adequate and thorough directives that are in compliance with legal standards.

This qualitative analysis, along with the quantitative data report, survey results from PBI board members, best practices used in other jurisdictions, and PAC observations, in total contributed to the data-based recommendations that the PAC offers in this report to make the disciplinary process more equitable for PPD personnel, the community, and complainants.

1. PBI 13-0120, Complaint # 10-120

South Detectives Lieutenant (White/Male) was found **not guilty** for neglect of duty-failure to supervise. Disciplinary range if guilty: Reprimand to 5 days suspension and/or demotion (from verdict form).

Complainant: Black/Male 24 years old.
Officer notified of sustained charges: February 25, 2013
PBI hearing: June 11, 2015, 45 minutes long
Allegation: On March 1, 2010, an initial search of a BMW vehicle led to no contraband discovered, however, officer requested a canine unit that alerted to the presence of drugs in the vehicle. No drugs were discovered but a search warrant was subsequently secured to further search the vehicle. There was significant damage done to the vehicle during the search totaling $10,000. Lieutenant did not document damage done to vehicle, nor completed necessary paperwork on the search of the vehicle, prohibiting the complainant from receiving compensation for the damage from the Department of Finance, Risk Management Division.

Evidence Presented to Panel:

1. Department advocate argued at hearing that after several attempts to subpoena the complainant, the complainant did not appear.
2. Original investigator retired from Department; another investigator was sworn in to read the investigative findings of the retired investigator.
3. Canine Officer testified that canine alerted under the engine for drugs and other locations in the vehicle.
4. Supervisor report read to panel before finding: Lieutenant has been an excellent manager, leader, and motivator of his personnel.
5. Prior record read to panel before finding: Zero disciplinary history

Reasons why officer was found not guilty

1. Trained canine unit showed a positive hit for illegal narcotics
2. Two weeks lapsed between the search of the vehicle and the complaint to Internal Affairs
3. Complainant did not appear for hearing

Departmental Failures[1]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 3, 4, 5, 6	7, 9	11

[1] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

Charges that could have been established but were not filed

1. Neglect of duty-failure to make a required written report. (Reprimand-5 days)
2. Neglect of duty-failure to conduct a proper, thorough, and complete investigation. (Reprimand-5 days)
3. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations, or any oral or written orders of superiors. (Reprimand-5 days)
4. Disobedience-failure to follow Departmental procedures for the handling of evidence, personal effects, and all other property taken into custody except narcotics, money, explosives, firearms, hazardous materials, or forensic evidence. (Reprimand-5 days)

PAC Analysis

Unreasonable delays took place at all phases of this investigation, internal affairs did not conclude their investigation until several years later and the Department Advocate did not ensure that this trial took place in a timely fashion. Two years lapsed between the officer being informed of his charges and the actual hearing for the misconduct. This delay could have contributed to the Department Advocate's inability to send a subpoena to the complainant's current address, thereby preventing the complainant to attend the hearing.

As the list of outstanding charges makes clear, the Charging Unit only moved forward on one charge; a charge that would be very difficult to prove if the complainant was not available to testify. Charges that could have been established by the Department Advocate that directly related to the Lieutenant's actions, such as failing to complete necessary paperwork, were missing from the 75-18s.

Most alarming, this Lieutenant was mentioned in an Inquirer story in December 2012 in which it was determined that District Attorney Seth Williams did not find the Lieutenant credible and that he would not accept cases involving this Lieutenant. These credibility findings by the District Attorney were not presented by the Department Advocate to the PBI Panel for their consideration.

Overall, failures by Internal Affairs, Charging, and the Department Advocate, led to this Lieutenant being found not guilty for his violations.

2. PBI#13-0359, Complaint #12-1147

35Th District Officer (White/Male) was found **guilty** for conduct unbecoming-unspecified. Received a **reprimand** when the range available was reprimand to dismissal (from verdict form)

Complainant: Demographics Unknown
Officer notified of sustained charges: June 10, 2013
PBI hearing: February 24, 2016, 25 minutes long
Allegation: Sent threatening text messaged to girlfriend on December 2, 2012. Officer admitted to sending threatening text messages.

Evidence presented to panel:
1. Complainant did not show for hearing, Internal Affairs investigator read in her complaint to the PBI panel. In her complaint she alleges that her child's father, the officer, sent her multiple threatening text messages. Internal Affairs investigator stated that the officer admitted to sending the messages but denied physically abusing her. Internal Affairs investigator stated he saw the messages on the complainant's cell phone.
2. Supervisor report read to panel before finding: Performed his duties as a police officer in an outstanding manner. Overall, officer is a value asset to the 35th District and has earned the respect of myself and the members of our platoon.

Departmental Failures[2]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1,2	1,3	10	

Charges that could have been established but were not filed

1. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor. (30 days-dismissal)
2. Conduct unbecoming-any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department (30 days-dismissal)

[2] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

PAC Analysis

Unreasonable delays took place during all phases of this investigation; over three years elapsed between the misconduct incident and the PBI hearing. Even though the PBI panel came to a unanimous guilty finding, the PAC believes the charging decisions minimized the conduct. Conduct unbecoming "unspecified" should not be an appropriate charge when there are other relevant charges that better aligns with the conduct alleged. In this case, the act of sending the complainant threatening text messages should have not only been charged as an act that amounted to criminal behavior, but also should have been forwarded to the District Attorney's office for review.[3]

Electing to charge conduct unbecoming unspecified, instead of conduct unbecoming criminal behavior, ensured that the lowest penalty this officer could receive was a reprimand, a vastly insufficient penalty for threatening behavior.

[3] Information provided to the PAC does not reflect if this incident was forwarded to the District Attorney.

3. PBI#13-0442, Complaint #11-0172

Southwest Detective (White/Male) was found **not guilty** for conduct unbecoming-abuse of authority. Disciplinary range if guilty: Reprimand to dismissal. (from verdict form)

Complainant: Black/Male 24 years old
Officer notified of sustained charges: August 5, 2013
PBI hearing: March 30, 2015, 60 minutes long
Allegation: Interrogated a man in custody for 5 days without official charges. This man was kept in a room for five days with no bed and no toilet. Incident occurred in December 2010.

Evidence presented to panel:
1. Internal Affairs investigator stated he interviewed the complainant and the complainant stated he was taken into custody on a drug related offense, was slapped by PPD personnel and held for several days being interrogated without charges. The complainant was subsequently charged with a homicide. The allegation of physical abuse was not sustained by internal affairs, the investigator stated there was nothing to indicate that the complainant was physically abused or suffered physical injuries.
2. Special Advisor to the police department informed investigator that there was no policy in place that limited the timeframe someone could be held in a holding cell without use of toilet or official charges.
3. FOP attorney introduced court records showing the complainant plead guilty to charges unrelated to homicide.
4. FOP attorney read memo from investigator in which Special Advisor stated to investigator that he did not believe the detective was in violation of policy.
5. FOP attorney read statement from Detective's Captain at the time stating that the length of time was not unreasonable due to the facts of the case.
6. Supervisor report: He has been an effective member of this detective division. Overall, he has performed his duties in a satisfactory manner.

Reasons Detective was found not guilty
1. Panel agreed that under the circumstances the length of time held was not unreasonable.
2. At the time of the incident, there was no specific policy regarding the length of time a person could be held in custody.

Departmental Failures[4]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1, 2	1, 2	1, 3, 5	9	11

Charges that could have been established but were not filed

1. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor. (30 days to dismissal)
2. Conduct unbecoming-unauthorized and/or excessive use of force in your official capacity. (Reprimand to dismissal)
3. Conduct unbecoming-any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department. (30 days to dismissal)
4. Neglect of duty-failure to take police action while on-duty (Reprimand to 10 days)
5. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody. (Reprimand to 5 days)

PAC Analysis

This case shocks the conscience of the PAC and violates all federal, state, and local protections that individuals possess when they are held in custody. It is a failure of the Department to attempt to argue that there was no specific policy in place that relates to the conduct alleged here. The PAC is concerned that the complainant's U.S. Constitutional rights, Pennsylvania Constitutional rights, and the Pennsylvania Rules of Criminal Procedure were not addressed in this hearing. Additionally, there was no indication from the records reviewed that this matter was forwarded to the District Attorney office for review.

Most alarmingly, the Detective here was aware that he was violating the complainant's constitutional rights because he later sued the Department in a whistleblower action in which he alleged he was instructed to violate constitutional rights by his superiors. [5] The Detective alleged that there was a PPD policy to "ice" suspects in violation of their rights.

This matter shows that the problems associated with Internal Affairs and PBI do not begin there but extend to the executive offices, such as the Special Advisor's office and Research & Planning Unit, that hold the responsibility for drafting necessary directives

[4] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[5] https://www.phillymag.com/news/2016/02/11/police-whisteblowing-suit/

and operating procedures. As a bare minimum, personnel should be held accountable for the violation of constitutional protections as well as violations to the rules of criminal procedure. During this incident there was a Pennsylvania Rule of Criminal Procedure explaining what should have occurred here. Pennsylvania Rule of Criminal Procedure 519 states that "when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay".[6]. In fact, this rule has been in effect in the state of Pennsylvania for several decades; courts have reversed convictions where individuals were held for 15 hours between arrest and arraignment.[7] According to Rule 519 and related caselaw, this Detective should have filed a criminal complaint against the complainant for the reasons he was arrested and started the process to have him appear before a magistrate for his preliminary arraignment.

Additionally, the length of time it took for this hearing to begin could have contributed to the Department Advocate's inability to secure a civilian witness. The complainant was in custody and there was no indication that the Department Advocate attempted to secure his presence virtually for the hearing. Neither the Department Advocate nor the Internal Affairs investigator admitted evidence to the panel related to if the Detective informed the complainant of his Miranda warnings including his right to have an attorney present. It is apparent that the Department did not do a thorough job, at all stages, to prevent injustices and secure justice when violations occur.

Unfortunately, the facts in this case shows that this complainant was tortured and that the involved Detective was found not guilty because the Department did not have a specific policy prohibiting the torture of suspects.

After this incident, the Department created a directive outlining protocols for adult detainees in police custody, Directive 7.8 and Directive 5.23. However, this policy was not finalized until January 2014-3 years after this incident. A review of Directive 5.23, however, provides much discretion to police regarding length of custody. The process provides that after a suspect has been held for 12 hours without being charged, the investigator shall notify the supervisor on duty. The supervisor can approve the hold and review the totality of circumstances after every four hours thereafter. Once an individual has been held for 24 hours without being charged, the commanding officer can review the totality of circumstances and approve or disapprove the continued holding of the suspect. It is only after 36 hours of being held without charges, that a suspect shall be released. [8] The PAC believes Directive 5.23 does not adequately align with constitutional protections afforded to suspects in custody.[9]

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[6] Pa.R.Crim.P. Rule 519

[7] Commonwealth v. Dixon, 454 Pa. 444 (1973). Reversing a conviction where the defendant was held unreasonably. Holding that the delay between arrest and arraignment must be closely examined and that the only delay permissible is that reasonably required for the administrative processing of the accused citizen. Delay beyond that is unreasonable and constitutes a denial of a citizen's right to know the nature of the charges against him and to receive an immediate and reasonable opportunity to regain his freedom by the posting of bail.

[8] http://www.phillypolice.com/assets/directives/D5.23-InterviewsAndInterrogations.pdf

[9] See Commonwealth v. Eiland, 450 Pa. 566 (1973). Court held that statement made to police 25 hours after arrest constituted a subtle but nonetheless powerful form of impermissible psychological coercion. See also

4. PBI# 13-0443, Complaint# 11-0172

Southwest Detectives Lieutenant (Black/Male) was found **not guilty** for failure to supervise-failure to properly supervise subordinates. Disciplinary range if guilty: Reprimand to 5 days/or demotion. (from verdict form)

Complainant: Black/Male 24 years old
Officer notified of sustained charges: August 5, 2013
PBI hearing: March 30, 2015, 56 minutes long
Allegation: Man held in custody for 5 days without official charges. This man was kept in a room for five days with no bed and no toilet. Incident occurred in December 2010. As a supervisor, this Lieutenant was responsible for checking on the status of the complainant and to ensure he was processed in a timely fashion. Supervisor should have known that detective facilities are not meant to house anyone for an extended period.

Evidence presented to panel:

1. Internal Affairs investigator stated he interviewed the complainant and the complainant stated he was taken into custody on a drug related offense, was slapped by PPD personnel and held for several days being interrogated without charges. The complainant was subsequently charged with a homicide. The allegation of physical abuse was not sustained by internal affairs, the investigator stated there was nothing to indicate that the complainant was physically abused or suffered physical injuries.
2. Special Advisor to the police department informed investigator that there was no policy in place that limited the timeframe someone could be held in a holding cell without use of toilet or official charges.
3. FOP attorney introduced court records showing the complainant plead guilty to charges unrelated to homicide.
4. FOP attorney read memo from investigator in which Special Advisor stated to investigator that he did not believe the detective was in violation of policy.
5. FOP attorney read statement from Captain at the time stating that the length of time was not unreasonable due to the facts of the case.
6. Supervisor report (authored by Captain who was not interviewed by investigator referenced below): Lieutenant is a conscientious and hard working supervisor who has performed very well as a platoon commander at SWDD for nearly six years.
7. Investigator stated that he wanted to interview Captain involved but was instructed not to interview Captain, when asked why, the investigator stated “it was above his pay grade”.
8. Captain at the time was called by the Department Advocate to testify. He stated if the complainant was processed early, he would have been taken out of their interviewing jurisdiction.

Commonwealth v. Simms, 455 Pa. 599 (1974). Court held that being questioned intermittently over span of 22 hours and subjected to isolation was unconstitutional coercion.

Reasons Lieutenant was found not guilty:

1. Lieutenant's supervisor was consulted and asked if Lieutenant should be found guilty, supervisor stated that Lieutenant should be found not guilty.
2. FOP attorney stated to panel that Detective was found not guilty in prior hearing.
3. Investigation was fruitful which led to multiple clearances of burglaries, robberies, and a homicide. Defendant was found guilty on all charges.

Departmental Failures[10]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1, 2	1, 2	1, 3, 5	9	11

Charges that could have been established but were not filed

1. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor. (30 days to dismissal)
2. Conduct unbecoming-unauthorized and/or excessive use of force in your official capacity. (Reprimand to dismissal)
3. Conduct unbecoming-any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department. (30 days to dismissal)
4. Neglect of duty-failure to take police action while on-duty (Reprimand to 10 days)
5. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody. (Reprimand to 5 days)
6. Failure to supervise-failure to take supervisory action (Reprimand to 5 days and/or demotion)

PAC Analysis

Please review analysis conducted for PBI # 13-0442.

[10] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

5. PBI # 13-0444, Complaint # 11-0172

Southwest Detectives Lieutenant (Black/Male) was found **not guilty** for failure to supervise-failure to properly supervise subordinates. Disciplinary range if guilty: Reprimand to 5 days/or demotion. (from verdict form)

Complainant: Black/Male 24 years old
Officer notified of sustained charges: August 5, 2013
PBI hearing: March 30, 2015, 56 minutes long
Allegation: Man held in custody for 5 days without official charges. This man was kept in a room for five days with no bed and no toilet. Incident occurred in December 2010. As a supervisor, this Lieutenant was responsible for checking on the status of the complainant and to ensure he was processed in a timely fashion. Supervisor should have known that detective facilities are not meant to house anyone for an extended period.

Evidence presented to panel:
1. Internal Affairs investigator stated he interviewed the complainant and the complainant stated he was taken into custody on a drug related offense, was slapped by PPD personnel and held for several days being interrogated without charges. The complainant was subsequently charged with a homicide. The allegation of physical abuse was not sustained by internal affairs, the investigator stated there was nothing to indicate that the complainant was physically abused or suffered physical injuries.
2. Special Advisor to the police department informed investigator that there was no policy in place that limited the timeframe someone could be held in a holding cell without use of toilet or official charges.
3. FOP attorney introduced court records showing the complainant plead guilty to charges unrelated to homicide.
4. FOP attorney read memo from investigator in which Special Advisor stated to investigator that he did not believe the detective was in violation of policy.
5. FOP attorney read statement from Captain at the time stating that the length of time was not unreasonable due to the facts of the case.
6. Supervisor report (authored by same Captain called to testify): Lieutenant has done an outstanding job. Lieutenant provides outstanding leadership to the investigators and to his subordinate sergeants. Lieutenant is an asset to this Department.
7. Investigator stated that he wanted to interview Captain involved but was instructed not to interview Captain, when asked why, the investigator stated “it was above his pay grade”.
8. Captain at the time was called by the Department Advocate to testify. He stated if the complainant was processed early, he would have been taken out of their interviewing jurisdiction.

Reasons Lieutenant was found not guilty:
1. Lieutenant’s supervisor was consulted and asked if Lieutenant should be found guilty, supervisor stated that Lieutenant should be found not guilty.
2. FOP attorney stated to panel that Detective was found not guilty in prior hearing.
3. Investigation was fruitful which led to multiple clearances of burglaries, robberies, and a homicide. Defendant was found guilty on all charges.

Charges that could have been established but were not filed

Please review list of possible charges for PBI #03-0443

Departmental Failures

Please refer to failures listed in PBI # 13-0443.

PAC Analysis

Please review analysis conducted for PBI # 13-0442.

7. PBI # 13-0445, Complaint # 11-0172

Southwest Detectives Sergeant (Black/Male) was found **not guilty** for failure to supervise-failure to properly supervise subordinates. Disciplinary range if guilty: Reprimand to 5 days/or demotion. (from verdict form)

Complainant: Black/Male 24 years old
Officer notified of sustained charges: August 5, 2013
PBI hearing: March 30, 2015, 56 minutes long
Allegation: Man held in custody for 5 days without official charges. This man was kept in a room for five days with no bed and no toilet. Incident occurred in December 2010. As a supervisor, this Lieutenant was responsible for checking on the status of the complainant and to ensure he was processed in a timely fashion. Supervisor should have known that detective facilities are not meant to house anyone for an extended period.

Evidence presented to panel:
1. Internal Affairs investigator stated he interviewed the complainant and the complainant stated he was taken into custody on a drug related offense, was slapped by PPD personnel and held for several days being interrogated without charges. The complainant was subsequently charged with a homicide. The allegation of physical abuse was not sustained by internal affairs, the investigator stated there was nothing to indicate that the complainant was physically abused or suffered physical injuries.
2. Special Advisor to the police department informed investigator that there was no policy in place that limited the timeframe someone could be held in a holding cell without use of toilet or official charges.
3. FOP attorney introduced court records showing the complainant plead guilty to charges unrelated to homicide.
4. FOP attorney read memo from investigator in which Special Advisor stated to investigator that he did not believe the detective was in violation of policy.
5. FOP attorney read statement from Captain at the time stating that the length of time was not unreasonable due to the facts of the case.
6. Supervisor report (authored by Lt from PBI # 13-0443): Sergeant is a very conscientious and dedicated supervisor.
7. Investigator stated that he wanted to interview Captain involved but was instructed not to interview Captain, when asked why, the investigator stated “it was above his pay grade”.
8. Captain at the time was called by the Department Advocate to testify. He stated if the complainant was processed early, he would have been taken out of their interviewing jurisdiction.

Reasons Sergeant was found not guilty:
1. Lieutenant’s supervisor was consulted and asked if Lieutenant should be found guilty, supervisor stated that Lieutenant should be found not guilty.
2. FOP attorney stated to panel that Detective was found not guilty in prior hearing.
3. Investigation was fruitful which led to multiple clearances of burglaries, robberies, and a homicide.

Charges that could have been established but were not filed

Please review list of possible charges for PBI #03-0443

Departmental Failures

Please refer to failures listed in PBI # 13-0443.

PAC Analysis

Please review analysis conducted for PBI # 13-0442.

8. PBI # 13-0540, Complaint # 12-0354

East Detective (demographic unknown) was found **not guilty** for neglect of duty-failure to conduct a proper, thorough, and complete investigation. Disciplinary range if guilty: Reprimand to 5 days/or demotion. (from verdict form)

Complainant: Demographic unknown
Officer notified of sustained charges: September 30, 2013
PBI hearing: April 8, 2015, 38 minutes long. PAC personnel attended hearing.
Allegation: Detective was the assigned investigator for a stolen car arrest in June 2012. Officers had stopped a vehicle that was reported stolen 3 hours prior. The operator and two passengers (3 in total) were transferred to East Detective Division and the officers informed the detective of the custody. The driver was charged and released from custody, the passengers however remained in custody for 15 hours without being interviewed, investigated, or processed. The detective reported off work and did not notify proper individuals to release the two individuals.

Evidence presented to panel:
1. Internal affairs investigator stated that if he was the supervisor at that time, he would have brought all individuals in to the district since they were present in a stolen vehicle.
2. Internal affairs investigator stated that if the Detective informed the officers to release the passengers and prepare a memo it would then have been the responsibility of the officers to complete that task. Investigator stated that once a memo is prepared it is submitted to CCTV and CCTV will then start the release process. Investigator stated in this case the memo was not done and the Detective stated in his interview that he informed the officers to complete the memo. Investigator also stated it is not unusual for charging decisions to take some time if someone is being charged.
3. Officers involved received training and counseling for their sustained misconduct.
4. Supervisor report: Handles assignments in a professional manner at all times.

Reasons Detective was found not guilty:
1. Board agreed with Detective that he made it clear to arresting officers to immediately release the two passengers
2. Driver was properly processed and released in a timely fashion.

Charges that could have been established but were not filed

1. Neglect of duty-failure to make a required written report. (Reprimand to 5 days)
2. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations (Reprimand to 5 days)
3. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody (Reprimand to 5 days)
4. Failure to supervise-failure to properly supervise subordinates (Reprimand to 5 days and/or demotion)
5. Failure to supervise-failure to take supervisory action (Reprimand to 5 days and/or demotion)

Departmental Failures[11]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1, 2	1, 2	1, 3, 5	9	11

PAC Analysis

When PBI board members are unfamiliar with operating procedures, they ask the Department Advocate, FOP attorney, or even a PBI witness, for what the standard is. The PBI panel does not specifically request written confirmation for their questions. For example, in this case, a panel member stated that he has not been on patrol for a while and asked if there was a procedure for detaining passengers in stolen vehicles. The panel member asked the validity for such a process. Instead of taking time to research and uncover the specific rules, there was a shouting match between the Department Advocate, the FOP attorney, and even the internal affairs investigator, to answer the question.

The delay in bringing this case to a hearing could have also contributed to the Department Advocate's inability to secure a complainant. Additionally, the complainant was not given at least 30 days' notice of the hearing in violation of city executive order 7-11.[12]

After a thorough review of this case, it appears that this Detective may have given a command to officers that was not subsequently followed. However, clear guidance exists as to if Detectives are officially considered supervisors of patrol officers. If Detectives are not considered supervisors, directives should specifically state that Detectives shall not give orders to patrol officers. If Detectives are considered supervisors, then this Detective should have been charged with misconduct related to failure to supervise. The problem that arises from incidents like this is a frequent occurrence where department personnel "do not own" responsibilities and instead claim that they asked another to complete a required task.

Unless given rank of supervisor, neither Detectives nor Officers should be allowed to transfer their responsibility to another, unless documentation exists outlining the transfer of responsibility, and the acceptance of that transfer of responsibility by the receiving personnel. This common practice allows misconduct to go unclaimed due to personnel being able to argue that they asked another to perform that duty. Missing from this hearing was the officers' testimony that could have determined if the Detective did or did not instruct the officers to prepare the paperwork to release these individuals.

[11] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[12] https://www.phila.gov/ExecutiveOrders/Executive%20Orders/2011_EO07-11.pdf

9. PBI # 13-0541, Complaint # 12-0354

Police Radio Corporal (Black/Female) was found **not guilty** for failure to supervise-failure to review, approve, input, submit or distribute all required reports, forms, documents, or notifications in any medium. Disciplinary range if guilty: Reprimand to 5 days/or demotion. (from verdict form)

Complainant: Demographic unknown
Officer notified of sustained charges: September 30, 2013
PBI hearing: April 8, 2015, 38 minutes long. PAC personnel attended hearing.
Allegation: Corporal failed to inquire why vehicle passengers were not being charged or identified during tour of duty. Directive 50 stated that when prisoners arrive at the detaining unit, PDU/CCTV personnel will make sure the arrest report has been entered into the PARS system, to enable the processing to begin.

Evidence presented to panel:
1. Internal affairs investigator stated that if he was the supervisor at that time, he would have brought all individuals in to the district since they were present in a stolen vehicle.
2. Internal affairs investigator stated that if the Detective informed the officers to release the passengers and prepare a memo it would then have been the responsibility of the officers to complete that task. Investigator stated that once a memo is prepared it is submitted to CCTV and CCTV will then start the release process. Investigator stated in this case the memo was not done and the Detective stated in his interview that he informed the officers to complete the memo. Investigator also stated it is not unusual for charging decisions to take some time if someone is being charged.
3. Officers involved received training and counseling for their sustained misconduct.
4. Corporal testified that she believed the individuals were still being investigated.
5. Supervisor report: Corporal consistently monitors and corrects any problem or deficiency that may occur. If I were to rate the Corporal, the corporal would be rated satisfactory.

Reasons Corporal was found not guilty:
1. Driver was processed and released.
2. Board agreed with Corporal's assertion that Corporal believed individuals were still being investigated by East Detective Division for a stolen vehicle.

Charges that could have been established but were not filed

1. Neglect of duty-failure to make a required written report. (Reprimand to 5 days)
2. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations (Reprimand to 5 days)
3. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody (Reprimand to 5 days)
4. Failure to supervise-failure to take supervisory action (Reprimand to 5 days and/or demotion)

Departmental Failures

Please refer to failures listed in PBI # 13-0540.

PAC Analysis

The Corporal and Detective's hearings were held jointly and both individuals took similar defenses. The Detective argued that he transferred responsibility to another, and the Corporal argued that she assumed another individual was ensuring that the individuals were properly processed. The PBI panel failed to interpret inaction as a violation of department directives even though the directives stated that each of these individuals respectively had specific responsibilities. The PBI panel could have found the Corporal guilty for failing to confirm her suspicion that the individuals were being investigated. From the evidence presented, it appears as if the Corporal, during her tour of duty, noticed the individuals in the holding cell and refused to take any action. It was the Corporal's specific responsibility to ensure that individuals are processed timely. To effectively execute those responsibilities, the Corporal must stay in constant communication with Detectives and other investigative personnel regarding the status of detainees. The Corporal's failure to make this effort is a clear violation of the directives, the Department Advocate's inability to convey that to the PBI panel shows further deficiencies.

Department directives now require Operation Room Supervisors (ORS) to conduct hourly checks of cellblocks and will review the prisoner flow chart to verify information have been completed. However, a review of the prisoner flow chart[13] reveals that the flowchart method may not prevent errors, such as this complaint, from reoccurring. What remains absent on the flowchart is necessary information that reveals the time the individual was first brought to the holding cell, reason for the detention by the hour, and a confirmation signature page that the ORS has verified, not assumed, at every hour that the individual is either being investigated or awaiting processing. Overall, the updated directive and accompanying flowchart does not cure the possibility that a ORS will assume that a detainee is being investigated.

[13] https://www.phillypolice.com/assets/directives/D7.8-AdultDetaineesInPoliceCustody.pdf Directive 7.8-18 Appendix C

10. PBI # 14-0010, Complaint # 12-0591

8th District Police Officer (White/Male) was found **not guilty** for neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors. Disciplinary range if guilty: Reprimand to 5 days suspension. (from verdict form)

Complainant: Demographic unknown
Officer notified of sustained charges: January 2, 2014
PBI hearing: February 25, 2015
Allegation: After responding to an auto accident on August 17, 2012, the officer allegedly did not contact Accident investigation department (AID) appropriately to report the accident and provide AID with necessary information regarding a hit and run including description of the driver. This contributed to a delay in AID investigating the accident.

Evidence presented to panel: (based on written reports due to missing audio transcript)
1. Internal Affairs investigator informed the panel that the Officer did contact AID but did so over his personal cell phone and not police radio as department directives required.
2. Internal Affairs investigator informed the panel that the operations room supervisor, not the officer, improperly coded the accident.
3. Internal Affairs investigator confirmed via cell phone records of the Officer that he did contact AID, the length of the call was two minutes.
4. The Corporal who was the operations room supervisor received training and counseling for this incident.
5. Supervisor report: the officer is rated satisfactory because there is no higher rating, I am capable of giving.

Reasons officer was found not guilty:
1. Another officer was at fault and that individual received training and counseling.

Charges that could have been established but were not filed

1. Neglect of duty-failure to conduct a proper, thorough, and complete investigation (Reprimand to 5 days)

Departmental Failures[14]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1, 2	1, 2	1	9	

PAC Analysis

In this case, there was clear evidence presented that the officer did not use police radio to notify AID, instead using his personal cell phone. It appears as if the panel was mainly concerned with AID being notified generally and not the proper procedures taken to notify AID. Notifying AID using police radio is important because this mechanism ensures the conversation will be recorded and that future investigative units will be able to refer to the conversation to assist in their investigation. The officer using his personal cell phone to by-pass the police radio requirement allowed necessary information to go unrecorded and the complainant left feeling as if they did not receive due attention to their accident. The analysis conducted by PPD to determine which personnel would receive training/counseling and which would receive a PBI hearing was not available for this review.

[14] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

11. PBI # 14-0119, Complaint # 13-0065

25th District Sergeant (Black/Male) was found **not guilty** for conduct unbecoming-unauthorized and/or excessive use of force in official capacity. Disciplinary range if guilty: Reprimand to dismissal. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: March 5, 2014
PBI hearing: August 28, 2015
Allegation: During an encounter on January 25, 2013, the Sergeant conducted an investigatory detention for weapons and struck an individual following a verbal altercation. Hospital records indicated the individual was treated for contusions, jaw contusion, and laceration to his mouth.

Evidence presented to panel (based on written reports due to missing audio transcript)
1. Complainant swung at Sergeant and Sergeant struck complainant one time in the face. Complainant was arrested and transported for assault on police.

Reasons Sergeant was found not guilty:
1. Board found that the complainant was not credible and did not attend the hearing.
2. Independent witness was interviewed over telephone but did not attend the hearing and the board members were unable to substantiate the witness credibility.

Charges that could have been established but were not filed

Neither investigative records nor an audio recording of the hearing was available to conduct this analysis.

Departmental Failures[15]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1, 3, 4		

PAC Analysis

The time delay of this hearing could have contributed to Sergeant's not guilty finding. Additionally, this hearing was rescheduled several times, originally scheduled for May 2014,

[15] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

then rescheduled to November 2014, rescheduled a third time for January 2015, a fourth time for March 2015, a fifth time for April 2015, and lastly rescheduled for August 2015. During this rescheduling process, the records only reflect a cancellation notice to the witnesses for one change; mailing the witnesses just three days before the hearing that the hearing had been rescheduled.

Additionally, due to the extent of the complainant's injuries-multiple contusions and jaw lacerations-it appears that even if the Sergeant was authorized to use force, this level of force was excessive. Since an audio hearing was not available, the PAC was not able to determine if pictures of the complainant were shown to the panel and if a medical expert's report was utilized.

12. PBI # 14-0331, Complaint # 14-0173

17th District Sergeant (Black/Female) was found **guilty** for conduct unbecoming-abuse of authority and received a **reprimand by the panel, that was subsequently upgraded to a 3 day suspension by Commissioner Ramsey**. Later, the City of Philadelphia settled with the Sergeant to reduce the 3-day penalty to a written reprimand in lieu of arbitration.[16] Disciplinary range: Reprimand to dismissal. (from verdict form)

Complainant:
Officer notified of sustained charges: August 13, 2014
PBI hearing: April 16, 2015
Allegation: On February 17, 2014, the Sergeant took their phone to a phone repair business while on duty and in uniform. The owner of the business agreed to repair the phone for free for one time. When the phone was ready to be picked up, the owner asked for the Sergeant to sign the receipt informing the officer that their phone will not be repaired again for free in the future. The Sergeant became upset and informed the owner that they will fix it again or the Sergeant will shut down their business with the state police.

Evidence presented to the panel:
Due to missing audio recordings, the PAC was unable to determine what evidence was presented to the panel.

Charges that could have been established but were not filed

1. Conduct unbecoming-Inappropriate language conduct or gestures to the public while on-duty (Reprimand to 5 days)
2. Conduct unbecoming-Any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department. (30 days or dismissal)
3. Conduct unbecoming-Engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one (1) year. (30 days or dismissal)
4. Conduct unbecoming-Failure to officially report corruption, or other illegal acts. (10 days to dismissal)

[16] https://www.documentcloud.org/documents/5783024-Pressley-Sheila-01-16-0001-3495-SA-FOPGR15-051.html

Departmental Failures[17]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1, 2	1, 2	1, 4	10	

PAC Analysis

The PAC is alarmed and saddened that an incident with these allegations was reduced to merely a charge of abuse of authority with a discipline of a written reprimand. The facts in this case would have established a criminal charge of theft by extortion,[18] as well as other departmental violations. Due to the charging unit's failure to bring forward appropriate charges, the Sergeant in this case was confronted with merely one count of abuse of authority, with the minimal discipline of reprimand.

If the charging unit would have charged appropriately, such as conduct unbecoming-engaging in criminal activity, the panel could have had only two disciplinary options: 30 days or dismissal. Unfortunately, it appears as if the charging unit of the Department selected one of the most lenient charges available.

[17] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[18] 18 PA §3923. Theft by extortion

13. PBI # 14-0432, Complaint # 14-0024

5th District Police Officer (White/Male) was found **not guilty** for conduct unbecoming-unauthorized and/or excessive use of force in official capacity. Disciplinary range if guilty: Reprimand to dismissal.

Complainant: Black/Male 27 years old
Officer notified of sustained charges: August 21, 2014
PBI hearing: October 15, 2015, 42 minutes long
Allegation: While conducting an arrest of the complainant for disorderly conduct and resisting arrest in January 2014, the officer allegedly used excessive force and kicked the complainant in the face while he was laying on the ground.

Evidence presented to the panel:

1. Interview of complainant read to the panel: complainant stated he was tased by the officer originally and when he fell to the ground the officer kicked him. He stated he was kicked in his chin and he was not handcuffed. The complainant stated he suffered a broken nose. The complainant stated he was not running from the officer; he merely was approached by the officer and tased.
2. Arrest paperwork read to panel: officer stopped complainant for having a bulge in his pocket and having a history for possessing firearms. Officers observed the complainant toss an unknown object.
3. Interview of officer read to panel: officer stated in interview that complainant fled and had his right hand in his pocket, he stated he yelled at the complainant to stop and then tased the complainant in the back as he ran. While the complainant was on the ground, he had his hand in his waist band and the officer believed he was reaching for a firearm and kicked him. The item that was allegedly tossed was never recovered. Officer stated he wasn't sure what the object was.
4. Supervisor report read to panel: Officer has proven to be a very capable officer. He needs very little supervision when working and gets along with his peers and other supervisors.

Reasons why officer was found not guilty:

1. The Board came to a unanimous not guilty decision, the kick did occur but stated "when you take into the consideration that the officers used their tools to the best of their ability in creating a safe environment for the public and the officers".
2. The internal affairs investigator was not supportive of the internal affairs outcome of sustaining the complaint.

Charges that could have been established but were not filed

1. Conduct unbecoming-unauthorized and/or excessive use of force in official capacity; specifically for inappropriate taser use (Reprimand to dismissal)
2. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors (Reprimand to 5 days)

Departmental Failures[19]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1,2	1, 5	9	

PAC Analysis

Even though Departmental directives clearly provided that offensive kicks will not be used, [20] the PBI panel in this case carved out an exception for this officer. This kick was not a defensive kick, the officer did not claim the complainant struck him or attempted to harm him, instead, the officer stated in his interview that he kicked the complainant in the face because the complainant had his hand in his waist area, which constitutes an offensive kick, in violation of existing directives.

During the hearing, the department advocate asked the internal affairs investigator to refer to Directive 22 and read it to the panel as it relates to the use of the taser. The department advocate attempted to address the use of force incident with the taser, however, the FOP attorney objected and stated that the charging documents referred to the kick only and not the ECW (taser). The directive stated that an officer shall not use a ECW against a suspect exhibiting passive resistance, or against an unarmed suspect attempting to elude capture by fleeing that is wanted for a non-violent misdemeanor, summary, or traffic offense.

At this time, the Department Advocate agreed to stipulate with the FOP attorney that the officer had prior knowledge at the time of the incident that the complainant had a prior arrest for gun possession. On cross examination, the FOP attorney asked the internal affairs investigator was it his decision that the officer be charged with excessive force. Without an objection from the Department Advocate for the relevance of that question, the internal affairs investigator stated it was not his decision to charge the officer.

This case shows that even when there is a directive outlawing conduct and evidence that the conduct occurred, an officer can be shielded from discipline by a panel that carved out an exception and an internal affairs investigator, with the responsibility of investigating the incident, defending the officer's actions. Overall, this case highlights how the PBI panel uses nullification-finding a culpable officer not guilty because the panel disagrees with the directives.

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[19] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[20] https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569add89b20943556a8b7a88/1452989841885/Philadelphia+Use+of+Force+Policy.pdf

14. PBI # 14-0450, Complaint # 14-0184

25th District Police Officer (White/Male) was found **guilty** for neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: August 22, 2014
PBI hearing: April 14, 2016
Allegation: After a vehicle investigation conducted on March 5, 2014, the officer allegedly conducted the unauthorized practice of "hard-backing" by writing a traffic ticket after the traffic incident ended.

Due to corrupted audio files, the PAC was unable to determine which evidence was presented to the panel and conduct a thorough analysis on the Department's performance.

15. PBI # 14-0451, Complaint # 14-0184

26th District Police Officer (White/Male) was found **guilty** for neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: August 22, 2014
PBI hearing: April 14, 2016
Allegation: After a vehicle investigation conducted on March 5, 2014, the officer and his partner allegedly conducted the unauthorized practice of "hard-backing" by writing a traffic ticket after the traffic incident ended.

Due to corrupted audio files, the PAC was unable to determine which evidence was presented to the panel and conduct a thorough analysis on the Department's performance.

16. PBI # 14-0475, Complaint # 13-0741

18th District Police Officer (Black/Male) was found **not guilty** for conduct unbecoming-unauthorized and/or excessive use of force in official capacity. Disciplinary range if guilty: Reprimand to dismissal. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: August 25, 2014
PBI hearing: October 28, 2015, 90 minutes long
Allegation: While conducting a pedestrian investigation in November 2013, the officer believed the complainant possessed a firearm and began to frisk him. The complainant allegedly pushed the officer and fled on foot. When the complainant was apprehended and arrested for aggravated assault and resisting arrest, the officer was observed punching the complainant in the back. Lastly, the officer failed to report the punches on use of force reports.

Evidence presented to panel:
1. The complainant testified that his house was being held for a search warrant and that he was instructed to stay on location. He testified that he did not stay at the property and then proceeded to talk with the officer on the porch. The officer and the complainant then were involved in a verbal altercation. The complainant said the officer tried to grab him and that is when he left the porch and ran. The officer ran after the complainant and assaulted him by hitting him over the head 4 times. The complainant stated he did not cooperate with the internal affairs investigation originally because he had pending charges and his attorney informed him not to make a statement.

Reasons officer was found not guilty:
1. Officer was not appropriately charged for failing to complete necessary paperwork
2. Officer testified that he did not know the complainant was handcuffed when he punched him
3. While Department policy does not permit striking handcuffed individuals, state lesson plans regarding use of force allow for officers to use necessary force that can include kicks and punches to secure the individual under certain circumstances, particularly when an officer feels that his life may be threatened. This appeared in the eyes of the board to be one of those circumstances.

Charges that could have been established but were not filed

1. Neglect of duty-failure to make a required written report. (Reprimand to 5 days).
2. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors. (Reprimand to 5 days).
3. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody. (Reprimand to 5 days).

Departmental Failures[21]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 5	9	11

PAC Analysis

This case highlights the importance of the charging unit appropriately filing all charges. Even though the PBI panel found the officer not guilty for punching the complainant, they highlighted that the officer would have been found guilty of failing to document the force used if the charges had been appropriately filed.

As it relates to the use of force charge, the PAC finds that the panel's findings are inconsistent with the presented evidence. The directive clearly stated that officers could not use force on handcuffed individuals, however, the panel relied on state training protocols to exonerate the officer. The PAC reviewed existing use of force directives to determine if the directive now specifically state that Philadelphia police directive trumps state training protocols, most importantly, the PAC specifically looked for language that would instruct officers that if there is a contradiction between state training and department training, department training shall be the operating procedures. Unfortunately, existing directives do not state that guidance. [22] In fact, the directive states that "the application of force by a police officer should be guided by principles found in the following use of force decision chart, and the provisions of Chapter 5 of the Pennsylvania Crimes Code, state and federal court decisions, and other statutory provisions". Unfortunately, the directive **does not** state departmental rules trump state rules when there is a contradiction. PAC did not have access to training materials at this time to determine if training materials offered guidance. It could have possible, however, for the Department Advocate to call a training Inspector to clarify this information.

[21] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[22] https://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf

17. PBI # 14-0504, Complaint # 14-0021

Real Time Crime Center Corporal (Black/Female) pled to **Command Level Discipline** (CLD) for failure to supervise-unspecified and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: August 26, 2014
PBI hearing: scheduled for January 11, 2016-hearing did not occur
Allegation: Corporal was responsible for the well-being of prisoners and neglected to take action when a suspect was handcuffed in a cell to a cell room bar for a prolonged period of time-at least three hours.

Evidence:
This case was disposed of via a plea between the Corporal and the Department Advocate that is referred to as Command Level Discipline (CLD). The possible discipline for a CLD ranges from a reprimand to 5 days suspension. In this case, the Department Advocate imposed a reprimand and therefore a PBI hearing was not empaneled

Charges that could have been established but were not filed

1. Neglect of duty-failure to take police action while on-duty (Reprimand to 10 days)
2. Neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations, or any oral or written orders of superiors (Reprimand to 5 days)
3. Neglect of duty-failure to take reasonable efforts to provide for the safety of prisoners while in police custody (Reprimand to 5 days)
4. Failure to supervise-failure to take supervisory action (Reprimand to 5 days and/or demotion)

Departmental Failures[23]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 3, 10		

[23] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

PAC Analysis

In this case, the charging unit had several opportunities to charge this Corporal for their conduct, however, the charging unit decided for an "unspecified" charge. Unspecified charges are problematic for several reasons. First, unspecified charges do not provide department personnel of adequate due process rights to prepare an adequate defense. Second, unspecified charges lack transparency-it fails to adequately explain the misconduct the accused committed. Lastly, unspecified charges may be difficult to prove in front of a PBI panel.

18. PBI # 14-0553, Complaint # 14-0260

Narcotics Strike Force Officer (White/Male) was found **guilty** for conduct unbecoming-unspecified and received a **reprimand** when the range available was reprimand to dismissal. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: September 9, 2014
PBI hearing: January 19, 2016, 57 minutes long.
Allegation: In May 2014, the officer allegedly text messaged the mother of his child, who is also a department personnel, and threatened to release sensitive pictures of her, where she was either undressed or partially dressed.

Evidence presented to panel:

1. Fop attorney gave an opening statement to the panel informing the panel that he did not believe this is the proper forum for this conduct. He stated that this is merely a personal matter that is ongoing in family court.
2. The complainant appeared and stated she made several complaints against the officer. The complainant stated that the pictures showed her naked and that the officer threatened to show the pictures to other officers. The complainant supplied the department with 14 pages of text messages in which some of the text messages showed pictures that the officer sent the complainant. The complainant stated that she felt like the officer was attempting to black mail her and intimidate her. She stated that she knows his conduct was against the law and she complained to have the department do something about it.
3. Fop attorney cross examined the witness and informed the panel that her prior complaints against the officer were not sustained, and that the pictures taken of her were taken with her consent at the time. Additionally, the Fop attorney confirmed that the pictures were taken off-duty. The Fop attorney also asked the complainant if she has had any issues with the officer since the text messages, she replied that it is off and on.
4. The Fop attorney was able to testify as a witness what happened during the other complaints that were not sustained.
5. The Internal Affairs investigator read the Officer's interview to the panel.
6. A panel member later asked questions regarding who originally took the photos if it was the officer or the complainant.
7. Supervisor report read to the panel: Officer has performed his duties in a better than satisfactory manner.

Charges that could have been established but were not filed

1. Conduct unbecoming-Engaging in threating, or harassing, intimidating, or like conduct towards another member of the Police Department (Reprimand to 10 days)
2. Conduct unbecoming-any act, conduct or course of conduct, which objectively constitutes discriminating or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity. (Reprimand to dismissal)
3. Conduct unbecoming-inappropriate communication(s) based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity conveyed in any matter. (Reprimand to 15 days)
4. Conduct unbecoming-any act, conduct or course of conduct, which objectively constitutes sexual harassment. (Reprimand to dismissal)

5. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one (1) year. (30 days or Dismissal)

Departmental Failures[24]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
2	2	1, 3	10	

PAC Analysis

This case outlines the criminal charge of Sexual Extortion which occurs when an individual threatens to disseminate images depicting a complainant in a state of nudity. [25] The officer in this case used the complainant's nude images to threaten and harass her. From the records reviewed, it is not apparent if this case was referred to the District Attorney office for appropriate charging. Unfortunately, this is another case in which the charging unit selected the most lenient charge possible for this behavior. The PAC believes the officer could have been found guilty of at least 5 other charges that were not brought by the charging unit.

However, even with the sole charge that was made, the panel merely enacted a discipline of a written reprimand; the lowest discipline allowed for this conduct. The PAC believes this occurred because the FOP was able to argue to the panel that this conduct was minor and merely a "private matter", instead of the treating this matter as a serious criminal matter. The PAC also believes the charge of conduct unbecoming-unspecified is a gross misclassification of the conduct that occurred. Added to that, the panel seemed to put a misplaced emphasis on if the complainant took the pictures or not, instead of reviewing the key important matter: the officer threatened to exposed them if she did not comply with his demands.

[24] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[25] 18 PA §3133. Sexual Extortion.

19. PBI # 14-0554, Complaint # 13-0417

Narcotic Strike Force Police Officer (Hispanic-Latino/Male) was found **not guilty** for conduct unbecoming-unspecified. Disciplinary range if guilty: Reprimand to dismissal. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: September 9, 2014
PBI hearing: January 26, 2016, 48 minutes long.
Allegation: While at the FOP lounge, the officer allegedly yelled a slur towards his estranged wife. There were several witnesses that heard the slur.

Evidence presented to the panel:

1. A witness testified that at the time the complainant and the officer were divorced. During the incident at the FOP lounge, the witness stated that she saw a black suv stop at the lounge and yell out of the car. There was a female in the passenger seat and a male in the driver seat. This occurred while the witness was standing on the deck at the FOP lounge and she stated the whole deck erupted from what the was said from the car. The witness also stated it was extremely loud and crowded at the lounge.
2. Internal Affairs investigator read an interview by the officer in which he stated that night he was driving a grey chevy not a black car.
3. Internal Affairs investigator stated that he was the only one who was able to access the credibility of all the witnesses, and that it was not his decision to bring forward charges in this case. The complainant did not appear at the hearing and was in another state when originally interviewed for the complaint.
4. Supervisor report read to panel: Officer has performed his duties in a satisfactory manner

Reasons officer was found not guilty:

1. Difficult for anyone to discern who was saying specific comments since the scene was described as loud and confusing.
2. Officer had no prior disciplinary problems in his career and his current supervisor rated him well.
3. Board felt that more evidence would be needed.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[26]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
		1		

PAC Analysis

This case lacked sufficient evidence. The evidence to the panel at most described a slur yelled out of a vehicle during a crowded event at the FOP lounge. There was no evidence presented that the accused officer was the one who stated the slur. The complainant did not testify at the hearing and in her original complaint she stated she did not see her husband say the slur but simply knew it came from him. However, the PAC does disagree with the practice of internal affairs investigators informing the panel that they do not believe that the charges should have been sustained. This practice should be objected to by the Department Advocate as it creates undue bias.

[26] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

20. PBI # 14-0566, Complaint # 13-0195

Center City District Officer (White/Male) pled to **Command Level Discipline** (CLD) for failure to neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension.

Complainant: Demographics unknown
Officer notified of sustained charges: September 10, 2014
PBI hearing: scheduled for November 23, 2015-hearing did not occur
Allegation: Officer misused police department computers and ran a woman's name in the system on April 2, 2013 without a valid reason.

Evidence:
This case was disposed of via a plea between the Corporal and the Department Advocate that is referred to as Command Level Discipline (CLD). The possible discipline for a CLD ranges from a reprimand to 5 days suspension. In this case, the Department Advocate imposed a reprimand and therefore a PBI hearing was not empaneled.

Charges that could have been established but were not filed

1. Conduct unbecoming-abuse of authority (Reprimand to dismissal)
2. Disobedience- improper or unauthorized use of Departmentally owned or leased equipment (Reprimand to dismissal)

Departmental Failures[27]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 10		

PAC Analysis

The possibility that department personnel may use government systems and discover private information on civilian is terrifying. This case, however, shows how minor the department treats occurrences such as these.

Being able to receive a reprimand from engaging in this level of misconduct is reprehensible. Most concerning, is the repeated conduct of the charging unit to enforce the most lenient

[27] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

charge available. In this case, since the officer was merely charged with neglect of duty, the max penalty he could have received was 5 days suspension. The charging unit failed to charge other appropriate charges, and in doing so, tied the Department's hand and limited the type of discipline that was available.

21. PBI # 14-0584, Complaint # 14-0284

24th District Officer (Black/Male) was found **not guilty** for conduct unbecoming-unspecified. Disciplinary range if guilty: Reprimand to dismissal. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: September 25, 2014
PBI hearing: January 29, 2015, 51 minutes long
Allegation: Officer admitted that during June 2014, the officer sent threatening emails to civilians because he wanted them to stop posting lies about him on the internet.

Evidence presented to panel:
1. Complainant did not appear to testify, however, the internal affairs investigator read the interview to the panel. The complainant's interview stated that the officer threatened to release naked pictures of the complainant if the complainant did not rekindle their relationship.
2. The complainant forwarded emails to the internal affairs investigator.
3. FOP attorney objected to the investigator only reading parts of the emails without the entire context of the email explained. The investigator then read the entire email. The email allegedly depicted the officer threatening to release the complainant's status to the CDC and that the complainant could be criminal charged for having sexual intercourse without notifying partners of their status.
4. The officer's interview was read to the panel. The officer stated that he had a relationship with the complainant and the complainant cheated on the officer and also allegedly contracted a sexually transmitted disease. The officer admitted saying that if the complainant didn't give him money for a damaged door, he would help prosecute him. The officer stated that he did threaten to use a video of the complainant.
5. On cross examination, the FOP attorney confirmed from the internal affairs investigator that this matter was never forwarded to the district attorney office. The investigator also confirmed that the emails were neither sent while he was on duty, nor were the emails sent using department equipment.

Reasons why officer was found not guilty:
1. The officer and the complainant were involved in a relationship and the officer wanted to end the relationship. The board found that the phone communications were a private matter of a sensitive nature while the officer was off duty.
2. The content of the message was more in line with civil litigation regarding slanderous social medial communication and not a misconduct matter.
3. The complainant did not testify at the hearing.
4. The District Attorney did not approve charges in this matter.

Charges that could have been established but were not filed

1. Conduct unbecoming-any act, conduct of course of conduct, which objectively constitutes sexual harassment. (Reprimand to dismissal)
2. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one (1) year. (30 days or Dismissal)

Departmental Failures[28]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	10	9	

PAC Analysis

This is the second case in which an officer was accused of using sexual images in a harassing and threatening manner. Unlike PBI # 14-0553, this officer was found not guilty because the panel determined that this incident was a private matter that did not involve on duty conduct. In both matters, the officers admitted to using intimate material to threaten their intimate partners, however, in this case, the panel members believed that conduct was acceptable. Unfortunately, the complainant did not appear which documents reflect was a substantial influence on the panel's decision.

[28] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

22. PBI # 14-0634, Complaint # 14-0056

6th District Officer (White/Male) **pled guilty** for conduct unbecoming-unspecified and received a **reprimand** when the possible range was reprimand to dismissal.

Complainant: Demographics unknown
Officer notified of sustained charges: October 7, 2014
PBI hearing: scheduled for August 5, 2015, guilty plea was 5 minutes long
Allegation: During January 2013, this officer was unprofessional during his off duty interaction with a department Lieutenant by referring to him as "mister" and refused a command to call his supervisor.

Evidence:
A guilty plea colloquy was conducted on the record.

Charges that could have been established but were not filed

1. Insubordination-Refusal to promptly obey proper orders from a superior officer. (5 to 30 days)
2. Insubordination-Omitting title when addressing any superior officer. (Reprimand to 5 days)

Departmental Failures[29]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 3		

PAC Analysis

Even though the allegations in this matter appears minor to civilians, it highlights the militarized disciplinary codes.

[29] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

23. PBI # 14-0689, Complaint # 14-0096

7th District Officer (White/Male) **pled guilty** for conduct unbecoming-unspecified and received a **suspension of 6 days** when the possible range was reprimand to dismissal.

Complainant: Demographics unknown
Officer notified of sustained charges: October 29, 2014
PBI hearing: scheduled for January 26, 2015, guilty plea was conducted but the audio recording is missing.
Allegation: During February 2014, while on duty this officer broke a white plastic chair, smashing it onto a front patio.

Evidence:
This officer pled guilty to the charge of conduct unbecoming unspecified. The officer was originally notified that he was charged with conduct unbecoming-lying or attempting to deceive regarding a material fact during the course of any Departmental investigation. In exchange for his guilty plea, the Department Advocate agreed to withdraw the lying charge.

Charges that could have been established but were not filed

1. Conduct unbecoming-Failure to cooperate in any Departmental investigation. (10 days to dismissal)
2. Conduct unbecoming-unauthorized and/or excessive use of force in your official capacity (Reprimand to dismissal)
3. Conduct unbecoming-inappropriate language, conduct, or gestures to the public while on duty. (Reprimand to 5 days)
4. Conduct unbecoming-any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department (30 days or dismissal)
5. Conduct unbecoming-engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one year. (30 days or dismissal)

Departmental Failures[30]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	2	3, 10		

[30] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

PAC Analysis

The practice of allowing officers to negotiate around charges that speak to an officer's character and credibility is unacceptable. Not only is this practice concerning for this case, but it also has consequences for future cases this officer may be involved in. The original charge of lying during the course of any department investigation has a possible penalty range of 10 days to dismissal. This case highlights the failures of both the charging decision and the Department Advocate. The PAC determined that this case was grossly undercharged and should have been forwarded to the District Attorney office for review.

In 2019, the officer was involved in the Plainview Project database by allegedly posting racist, sexist, and hate centered remarks on his social media between 2013-2019. He was subsequently terminated from the department due to that investigation.

24. PBI # 14-0730, Complaint # 13-0779

19th District Officer (Black/Female) was found **not guilty** for conduct unbecoming-inappropriate language, conduct, or gestures to the public while on duty. Disciplinary range if guilty: Reprimand to 5 days. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: November 14, 2014
PBI hearing: August 26, 2015, 36 minutes long
Allegation: In December 2013, the officer allegedly was involved in a screaming argument with the driver of a double-parked vehicle.

Evidence presented to panel:
1. Internal Affairs investigator testified that he interviewed the driver and the passenger.
2. The Department Advocate informed the panel that the complainant was scheduled to be at the hearing but failed to appear.
3. The FOP attorney objected to the complainant's statement being read into the record since the complainant was not present. The FOP attorney stated that the complainant originally stated she would come but at the last minute notified the Department Advocate that she could not make it. A panel member asked the Department Advocate if this was the first time this incident was scheduled for a hearing. The Department Advocate stated that it was. The panel allowed the statement to be read. The complainant stated the officer used several curse words at her and was very rude.
4. The investigator also read the statement of a witness. The witness stated that he did not hear the officer use curse words at the complainant but that the officer was loud and rude and had the complainant stopped for 15-20 minutes.
5. The officer's statement was read to the panel and the officer stated that she had the complainant stopped for about 5 minutes but did not complete paperwork for the encounter because it was not a vehicle investigation. The officer stated that the 5 minutes was simply her advising the complainant not to block the street.
6. The officer's partner testified and stated that the driver was arguing with his partner and explaining why she was double parked. The partner also stated that the officer informed the complainant that if she was unsatisfied by how she was treated she could file a complaint at the district.
7. FOP attorney read the officer's supervisor report to the panel, it stated that the officer works very well with the community and her colleagues and that she handles assignments with professionalism and maturity.

Reasons why officer was found not guilty:
1. The complainant and witness failed to appear for the hearing.
2. Internal Affairs investigator failed to articulate any misconduct.
3. Complainant's statement was inconsistent.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[31]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1, 5		

PAC Analysis

A review of this officer's prior misconduct history shows that from 2007 to this incident, the officer was found guilty 5 times of a departmental violation, 3 of the 5 arising from a motor vehicle incident. A review of the documents does not explain why the Department needed 21 months to bring a verbal argument case for a PBI hearing. Records show that the Department Advocate anticipated three witnesses, which included department witnesses.

It is also concerning that the Department Advocate did not request a continuance for this matter. A review of the audio hearing found that the Department Advocate received a call from the complainant the morning before the hearing, informing him that she was unavailable that day. A review of other hearing documents show that hearings are rescheduled for several reasons including the unavailability of an attorney, an officer, or other necessary department witnesses. The complainant's absence at this hearing was critical and the PAC believes that if the Department Advocate would have asked for a continuance, it could have increased the likelihood that the complainant would have been available.

[31] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

25. PBI # 14-0752 & 14-0753, Complaint # 14-0302

2nd District Officer (Demographic unknown) was found **not guilty** for conduct unbecoming-unspecified and was found **guilty** for neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors and received a **reprimand**. Disciplinary range if guilty: Conduct Unbecoming-Reprimand to Dismissal; Neglect of Duty-Reprimand to 5 Days. His partner, 2nd District Officer (White/Male), was found **not guilty**.

Complainant: Demographics unknown
Officer notified of sustained charges: November 19, 2014
PBI hearing: February 17, 2016, 27 minutes long
Allegation: In May 2014, the officer conducted a vehicle investigation and issued two tickets for failure to signal and following too closely. When the complainant asked for officer's business card and badge number, the officer held the vehicle for an additional 30 minutes and issued an additional two citations. The complainant was found not guilty for every traffic citation received from the officer. The officer was also in plain clothes and the traffic stop violated department protocols that prohibit plain clothes officers from conducting traffic stops unless there is a clear danger to pedestrian or vehicular traffic.

Evidence presented to panel:
1. The Department Advocate called his only witness, which was the Internal Affairs investigator assigned to the case. The investigator stated that she interviewed both the complainant and the witness in the vehicle and both statements were read to the panel. The investigator also stated there was a video involved, however, it did not capture relevant material.
2. According to officer logs, the vehicle investigation was 45 minutes long.
3. The investigator read the officers' interview to the panel.
4. The Department Advocate informed the panel that he did send a court notice to the witnesses but they failed to appear for the hearing. The investigator stated she believed it was unprofessional to forget to write tickets and then prolong the stop and write more tickets.
5. FOP attorney cross examined the investigator and argued that there is no directive that precludes an officer from writing additional tickets that are relevant for the car stop.
6. The officer stated that the additional ticket was not punitive, it was merely the officer forgetting to write tickets for not wearing a seat belt.
7. Supervisor report was read to panel and it stated: Officer performs his duties in an outstanding manner, he is one of the most valuable officers in the 2nd district.

Reasons why officer was found not guilty:
1. The complainant and his wife were notified of the hearing and did not attend.
2. The Officer testified that he simply forgot to write up violations that he originally was going to issue to the complainant.
3. Partner was found not guilty of all charges due to his new assignment to the division and him testifying that he was unaware that he could not conduct stops in plainclothes.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[32]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1		11

PAC Analysis

This matter is another example in which the complainant's attendance was crucial for PBI panel members. A review of the records does not indicate if the Department Advocate requested a continuance to allow the complainant another opportunity to appear. The time delay of 15 months to schedule this hearing also is grossly excessive. A review of court notices showed that the Department Advocate's notice to the complainant was returned due to the post office's inability to forward the mail to the complainant's new address.

A review of current department directives on vehicle investigations does not preclude officers from writing additional tickets after prior tickets have been written.[33] Enacting this policy would prevent officers from writing additional tickets that could be based in bias created by a driver's reaction to the previous ticket(s).

[32] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[33] http://www.phillypolice.com/assets/directives/D12.8-VehicleOrPedestrianInvestigations.pdf

26. PBI # 14-0812, Complaint # 14-0250

SWAT unit Lieutenant (Black/Male) was found **not guilty** for neglect of duty-failure to comply with any Police Commissioner's order, directives, memorandums, or regulations' or any oral or written orders of superiors. Disciplinary range if guilty: Reprimand to 5 days. (from verdict form)

Complainant: Black/Female 49 years old
Officer notified of sustained charges: December 8, 2014
PBI hearing: August 19, 2015, 45 minutes long
Allegation: In April 2014, while off duty this Lieutenant violated policy by calling 911 and asking for a priority response for a minor family issue. The 911 call resulted in numerous police units responding for an incident that should have been addressed without calling 911.

Evidence presented to panel:
1. Internal Affairs investigator read the interview to the panel in which the Lieutenant stated that he was locked out of his house by his wife and that his belongings were outside. The Lieutenant called 911 for assistance for the illegal lockout.
2. Police radio call was played to the panel, the radio call was inaudible on the recording. The Department Advocate stated that the recording was of the Lieutenant relaying to 911 that he was involved in a domestic incident and requested a supervisor and night command.
3. FOP attorney cross examined the investigator and was able to show that the property was jointly owned by the Lieutenant and his wife. The FOP attorney also stated that the call to 911 was only for one car and it was not a general officer assist.
4. The investigator stated to the board that he believed the Lieutenant did the right thing.
5. The complainant, the Lieutenant's wife, testified that on the date she was involved in a verbal altercation with her husband. She stated that her husband had been gone for several months and she changed the locks because they were separated. When he appeared on this date, she didn't let him inside and he called the police. The complainant stated that officers on the scene threatened to lock her up for 72 hours if she did not give him a new key.
6. FOP attorney asked the complainant on cross examination that the Lieutenant advised the complainant not to touch his belongings and that he will pack up his own belongings.
7. Supervisor report was read to the panel and it stated this Lieutenant performs his duties in an excellent manner.

Reasons why Lieutenant was found not guilty:
1. Internal Affairs investigator believed that the Lieutenant did not violate protocols.
2. There was no PFA order in effect that precluded the Lieutenant from seeking access to the property.
3. The Lieutenant was involved in a minor domestic disturbance and called 911 to prevent the situation from escalating by requesting the presence of a supervisor.

Charges that could have been established but were not filed

1. Conduct unbecoming-abuse of authority. (Reprimand to dismissal)

Departmental Failures[34]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
	2	1, 5	9	

PAC Analysis

This case shows how expedient Internal Affairs can be with investigations. Internal Affairs was able to interview 10 witnesses, gather digital evidence, collect several pieces of evidence, totaling 180 pages of documents, and render a decision within 4 months of receiving this complaint. PBI charging unit then rendered their official charging decisions with an additional 3 months timeframe. However, the Department Advocate violated Executive Order 7-11 by scheduling the hearing beyond 90 days from the referral.

Unfortunately, a review of the Internal Affairs documents shows that there was additional evidence that should have been presented to the panel but was not. The Department Advocate failed to call a sergeant who responded to the scene that could have informed the panel that he was instructed by the Lieutenant to detain his wife. The Department Advocate also did not call two Lieutenants who were present at the scene. The PAC believes hearing from these additional witnesses could have provided more information to the panel and the panel could have heard additional evidence showing the Lieutenant attempted to influence the investigation as a department personnel, which is a violation of directives and an abuse of authority.

[34] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

27. PBI # 15-0035, Complaint # 13-0265
22nd District Officer (Black/Male) pled **guilty** for conduct unbecoming-unspecified and received a **reprimand** when the possible range was reprimand to dismissal. (from verdict form)

Complainant: White/Male 55 years old
Officer notified of sustained charges: January 20, 2015
PBI hearing: October 26, 2015, guilty plea was 5 minutes long
Allegation: On two occasions this officer allegedly prevented or interfered with the towing of parked vehicles. The internal affairs investigator also witnessed the officer interfering with the legal towing of an illegally parked vehicle.

Evidence presented to panel:
This officer pled guilty for the violation and a guilty plea colloquy was conducted.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[35]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1	9	

PAC Analysis

A review of the investigative paperwork shows that this officer interfered with the towing because he believed the tow operators should give drivers a warning before towing their vehicles and he also believed there was insufficient signage warning drivers that their vehicle would be towed if they parked in the lot. The Department found that this officer refused to write parking violation tickets which precluded the tow operators from towing the vehicles since city policy requires a parking ticket to be issued before a car can be towed. Several witnesses informed the investigator that this officer confronted tow operators and questioned them about why they would work for a company with negative business practices and accused the tow operators of "working for the white man". Records do not indicate if this officer attempted to change departmental policies on towing by using the suggestion program. [36]

[35] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[36] https://www.phillypolice.com/assets/directives/D6.8-SuggestionProgram.pdf

28. PBI # 15-0074, Complaint # 13-0033

6th District Officer (White/Male) pled to **Command Level Discipline** (CLD) for neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. (from verdict form)

Complainant: Black/ Male 27 years old
Officer notified of sustained charges: January 30, 2015
PBI hearing: May 17, 2016
Allegation: In October 2012, this officer forced entry into the complainant's property to make a warrantless arrest for a summary violation, gambling on the highway. This officer should have conducted his investigation in accordance with departmental policy regarding summary arrests.

Evidence presented to panel:
This officer pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. Conduct unbecoming-abuse of authority (Reprimand to dismissal)

Departmental Failures[37]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 10		

PAC Analysis

A review of over 200 pages of documents from Internal Affairs shows that this officer not only kicked in the complainant's front door, but also had his gun drawn and arrested the complainant for a summary gambling offense. The complainant stated that he has a history with this officer and the officer previously told him that every time he sees him, he will be arrested. The complainant stated that the officer and others took over $2000 from him in October 2012 and another $2000 in January 2013. The complainant stated he is still trying to get his money back from the forfeiture unit for his gambling arrest and loitering arrest. In the internal affairs memorandum, it concluded that the officer was in violation of several Pennsylvania Supreme Court cases for kicking in a door to make a warrantless arrest for summary violations. This officer was also named in a report identifying him as an officer

[37] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

topping the department's complaint list, totaling 17 misconduct allegations from 2013-2018; with many of them involving harassment allegations. [38] Even with this alarming credibility concerns and complaints of harassment, this officer was able to receive a mere reprimand for his actions.

[38] https://www.cityandstatepa.com/content/philly-police-identify-cops-named-hundreds-civilian-complaints

29. PBI # 15-0112, Complaint # 14-0386

15th District Officer (White/Male) pled to **Command Level Discipline** (CLD) for neglect of duty-failure to conduct a proper, through and complete investigation and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. (from verdict form)

Complainant: White/Female 38 years old
Officer notified of sustained charges: February 17, 2015
PBI hearing: May 9, 2016
Allegation: In July 2014, this officer responded to a call for person with a gun. When the officer arrived on the scene, he was informed by a witness that an individual had threatened to shoot them. The officer allegedly did not investigate the incident further and simply documented the incident as minor.

Evidence:
This officer pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[39]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1, 3		

PAC Analysis

A review of internal affairs documents shows that the officer checked to ensure that the person possessing the firearm had a permit. Once the officer confirmed that the individual had a permit to carry the firearm, the officer informed the witness that there was nothing he could do regarding the firearm. The complainant stated that she had video footage of the incident in which she was threatened with the firearm but the officer allegedly refused to view the footage or forward this incident to the Detectives division. The individual was subsequently arrested for terroristic threats, simple assault and related charges.

[39] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

30. PBI # 15-0125, Complaint # 14-0669

7th District Officer (Demographics unknown) pled **guilty** for conduct unbecoming-lying or attempting to deceive regarding a material fact during the course of any departmental investigation and neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations. The officer received a 15-day suspension for the conduct unbecoming charge and a 5 day suspension for the neglect of duty charge, for a total of **20 days suspension**. The range of discipline for conduct unbecoming is 10 days to dismissal, and the range of discipline for neglect of duty charge is reprimand to 5 days.

Complainant: Hispanic/Male 35 years old
Officer notified of sustained charges: February 18, 2015
PBI hearing: May 7, 2015, guilty plea colloquy lasted 6 minutes.
Allegation: For a second time, this officer has used his mobile data terminal (MBT) located inside his police vehicle to run a check for personal reasons that was not done for any legitimate law enforcement purpose. The incident occurred during December 2014.

Evidence:
This officer pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. Conduct unbecoming-knowingly and willfully making a false entry in any Department record or report. (5 days to dismissal)
2. Conduct unbecoming-abuse of authority. (Reprimand to dismissal)
3. Conduct unbecoming-Inappropriate language, conduct, or gestures to the public while on-duty. (Reprimand to 5 days)
4. Conduct unbecoming-repeated violations of any departmental rules or regulations (30 days or dismissal)
5. Neglect of Duty- Performing any activity on-duty which does not relate to the duty assignment and which could interfere with the duty assignment (reprimand to 5 days)
6. Disobedience- improper or unauthorized use of Departmentally owned or leased equipment. (Reprimand to 5 days)

Departmental Failures[40]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 3, 10		

[40] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

PAC Analysis

A review of internal affairs documents show that this officer informed the investigator that he received information that his wife was going to meet up with the complainant at a motel. While off duty, the officer followed his wife and noticed another vehicle following his wife. The officer followed his wife and this other vehicle to a motel and asked the front desk staff which room his wife had rented which he was unable to provide. The officer was able to locate the motel room and confronted his wife and her paramour.

The complainant, the paramour, stated that after this incident, the officer was seen at the complainant's home and has asked the complainant's wife out for a date. The officer stated during his interview that he did not use departmental equipment to discover information about his wife's paramour. An audit of the officer's MDT showed that the officer did conduct a search of the complainant's license plate for his address while the officer was on duty.

The concerning aspect of this investigation is the officer receiving more severe punishment for lying to an investigator, than using departmental technologies to stalk and harass his wife's paramour. The charging unit neglected to charge several violations that this officer committed while using the MDT to search for confidential information. When the charging unit neglects to charge appropriately, it allows officers with subsequent infractions to repeatedly be charged as a first offense, instead of the more appropriate second offense. In this matter, the department would have been justified, and the evidence would have supported a charge of repeated violations that would have carried only two penalty options, 30 days, or dismissal. Even though the Department Advocate offered this plea, it was accepted by several Deputy Commissioners and the Police Commissioner. A review of current Department personnel shows that this officer is no longer employed with the Department.

31. PBI # 15-0188, Complaint # 14-0294

25th District Officer (Black/Male) pled **guilty** for conduct unbecoming-knowing and willfully making a false entry in any Department record or report and neglect of duty-loss or damage to Police Department property resulting from negligence or from failure to properly care for same. The officer received a 15-day suspension for the conduct unbecoming charge and a 5-day suspension for the neglect of duty charge, for a total of **20 days suspension**. The range of discipline for conduct unbecoming is 5 days to dismissal, and the range of discipline for neglect of duty charge is reprimand to 5 days.

Complainant: White/Female 26 years old
Officer notified of sustained charges: March 3, 2015
PBI hearing: April 30, 2015, guilty plea colloquy lasted 7 minutes.
Allegation: An investigation revealed that this officer gave a civilian his city issued OC Spray in March 2014. Later the officer reported that he lost his OC spray, thus lying about the true circumstances regarding the whereabouts of his OC spray.

Evidence:
This officer pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. Conduct unbecoming-Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation. (10 days to dismissal)
2. Neglect of duty-Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors. (Reprimand to 5 days)

Departmental Failures[41]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	2	10		

PAC Analysis

A review of Internal Affairs investigative files show that this officer had a romantic interest in a woman he subsequently gave his OC spray to. The woman expressed concern for her safety in her neighborhood and in response to this, the officer gave her his city issued OC

[41] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

spray in March 2014. After giving the woman his city issued equipment, he later went to the 25th District and prepared a memorandum indicating that he lost his OC spray while arresting a male for narcotics; that the spray was dropped and lost during a struggle with the male he arrested. The officer completed several police documents including a 75-48 and an interview with a Detective, indicating that he lost his OC spray. The officer subsequently admitted that his story was false.

A review of current Department personnel shows that this officer is still employed with the Department but is not listed on the District Attorney's "do not call list" even though the officer admitted to lying on police paperwork, a credibility concern that should be disclosed.

Unfortunately, a review of the Internal Affairs document does not show if a further review was conducted to ensure that this officer's false statements did not contribute to a resident's prosecution. Records show that this officer was returned to street duty after his 20-day suspension.

32. PBI # 15-0195, Complaint # 14-0432

Safety Office Officer (Demographics unknown) pled **guilty** for conduct unbecoming-unspecified, and disobedience-soliciting without proper authorization, and disobedience-prohibited outside employment. The officer received a 15-day suspension for the conduct unbecoming charge, and a 5-day suspension for each of the disobedience charges, for a total of **20 days suspension**. The range of discipline for conduct unbecoming is reprimand to dismissal, and the range of discipline for both disobedience charges is 5 to 10 days suspension.

Complainant: White/Female 27 years old
Officer notified of sustained charges: March 4, 2015
PBI hearing: April 14, 2015, guilty plea colloquy lasted 6 minutes.
Allegation: The officer misused department records and obtained a 911 caller's phone number and later contacted that caller for reasons other than legitimate law enforcement purposes. This occurred during August 2014.

Evidence:
This officer pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. Neglect of duty-Performing any activity on-duty which does not relate to the duty assignment and which could interfere with the duty assignment. (Reprimand to 5 days)

Departmental Failures[42]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
	2	10		

PAC Analysis

The complainant called 911 to report her purse containing her identification and credit cards was stolen. After reporting the incident to 911, she received a call from the officer asking if she wanted to be involved in his business opportunity. While this incident was being investigated, a different 911 caller reported to internal affairs that the same officer called her in reference to a business opportunity. During the officer's interview, he admitted to being an independent contractor and sells discounted electronic services. An in-depth review of this

[42] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

officer's radio tapes show that he had an identical conversation with 7 additional individuals, all in which the officer solicited business opportunities while taking police reports. Even though this officer received a 20-day suspension for his conduct, a review of his misconduct history showed that he also received a 20-day suspension for conduct in April 2011.

A review of current Departmental personnel shows that this officer is no longer employed with the Department.

33. PBI # 15-0196, Complaint # 14-0694

Northeast Detective (White/Male) was found **not guilty** for neglect of duty-failure to conduct a proper, thorough, and complete investigation. Disciplinary range if guilty: Reprimand to 5 days. (from verdict form)

Complainant: Demographics unknown
Officer notified of sustained charges: March 4, 2015
PBI hearing: March 16, 2016, 32 minutes long
Allegation: Internal Affairs determined that this detective failed to conduct a proper and thorough investigation into a robbery. As the initial investigator, the detective failed to conduct a follow up interview, failed to show the victim photographs of possible offenders, and failed to conduct a neighborhood survey for witnesses. When the robbery investigation was turned over to another Detective 5 months after the robbery, the file only contained the initial interview of the victim, a copy of a 75-48, and a copy of the radio tape.

Evidence presented to the panel:
1. Internal Affairs investigator stated the Detective left the Department two months after being assigned the investigation. The investigator stated the only thing in the file was the victim's interview.
2. The FOP attorney cross examined the investigator regarding the interview with the next Detective who had the assignment. The attorney was able to establish that even though an arrest occurred after the investigation was reassigned, it was due to information being discovered after the accused detective was no longer the lead detective.
3. The additional information that was discovered occurred when the detective was on vacation.
4. The minor complainant was not interviewed by internal affairs because his mother did not give permission for the interview.
5. A panel member asked the investigator if any of the detective's supervisors was interviewed to see what the protocol was to transfer cases when detectives leave the department. The investigator stated she did not request that interview.
6. The Detective testified that when he interviewed the minor the minor stated that he was robbed by kids that he knew from the neighborhood but did not know their names. The Detective informed the minor that when he sees the individuals again to call 911 and tell 911. The Detective stated that he did not show a photo array because the minor knew the individuals.
7. The Detective stated that when he returned from vacation, he only worked a few days and then separated from the department for a few months and came back. He was never notified that the minor called into 911 several times relaying that he has seen the individuals and that they were threatening him.

Reasons why Detective was found not guilty:
1. During the investigation, the Detective had a scheduled vacation during the summer and upon his return from the vacation he was not informed that the victim had called multiple times with additional information.
2. Shortly after his return from vacation, the Detective retired from the Department but returned 10 months and did not know who was assigned his open investigations.
3. The complainant's mother informed internal affairs that she wanted to withdraw the complaint.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate.

Departmental Failures[43]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
		1, 5		11

PAC Analysis

A review of Department policies shows little guidance to Detectives and others how to monitor and organize their cases. Most importantly, there is no directive that dictates how investigations will be reassigned when the lead investigator is transferred or absent. The problem was also made apparent during the hearing when a panel member asked if there was any policy requiring the Detective to update his supervisors on the status of his cases and the Detective stated there was no policy. This policy was updated to Directive 4.1 in August 2018 by requiring investigators to keep detective supervisors informed of the progress and status of the investigation. [44] However, even with this update, the policy does not provide clear guidance for how frequently a detective should update their supervisors and how much detail will be shared during those discussions.

This case reflects how little supervision is given to Detectives and how cases may be impacted by lapsed organizational skills.

[43] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[44] https://www.phillypolice.com/assets/directives/D4.1-ResponsibilitiesAtCrimeScenes.pdf

34. PBI # 15-0205-206, Complaint # 14-0223

15th District Officers (Demographics unknown) were found **not guilty** for conduct unbecoming-lying or attempting to deceive regarding a material fact during the course of any departmental investigation, **guilty** for neglect of duty-failure to properly patrol area of responsibility, **guilty** for neglect of duty-failure to make required written report, and **guilty** neglect of duty-failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations. The officers received a reprimand for failure to properly patrol and failure to make a report, however, the officers received a 2-day suspension for failure to comply with any Police Commissioner's orders. In lieu of serving a 2 -day suspension, the officers were allowed to charge their vacation time for the penalty. Disciplinary range if guilty: lying is 10 days to dismissal and neglect of duty is reprimand to 5 days.

Complainant: Hispanic/Male 40 years old
Officer notified of sustained charges: March 18, 2015
PBI hearing: June 2, 2015, 2 hours long
Allegation: During April 2014, this officer and his partner were outside of their assigned patrol area and was within the confines of the 24th district without permission. While in the 24th district, the officers observed a traffic accident and failed to render any assistance to the operator whose vehicle had been struck and instead pursued the striking operator on foot. The officers neither notified police radio that they were in a foot pursuit nor documented the foot pursuit in police paperwork. The officers did not return to the scene of the original accident and the driver waited 20 minutes and then called 911.

Evidence presented to panel:
1. The complainant testified that he did not see their patrol car until after the accident and that he wanted the officers to catch the driver.
2. A responding officer testified that as soon as he got to the scene the complainant asked him "did you get him", referring to the driver that ran on foot.
3. The Internal Affairs investigator stated that after reviewing several surveillance videos he was still unable to determine who was the first patrol car on the scene and it took the IT department enlarging the images to discover the first patrol car on the scene, which was the car driven by the accused officers. The investigator showed the panel the videos he collected. The investigator read the officer's interview and they stated they did not write any paperwork on the matter because they saw other vehicles there shortly after and they assumed the other vehicles would take care of the paperwork.
4. The police radio call was played to the panel but was inaudible during the PAC's review.
5. First officer's supervisor report was read to the panel, it stated: he has an excellent work ethic.
6. Second officer's supervisor report was read to the panel, it stated: he has an excellent work ethic.

Reasons officers were found not guilty for lying:
1. Officer admitted that they were out of their assigned area "poaching" in the 24th district. Poaching means the officers were trying to find an arrest.
2. Reasonable doubts existed as to whether officers lied to internal affairs when they were interviewed.

Charges that could have been established but were not filed

1. Neglect of duty-unauthorized absence from assignment. (Reprimand to 5 days)
2. Motor vehicle violations-failure to follow Departmental procedures involving pursuit and/or emergency driving. (Reprimand to 5 days)

Departmental Failures[45]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
	2	3	8, 10	

PAC Analysis

This case shows a departure in the charging unit's prior pattern of merely charging one or two charges. The panel contemplated four charges and found both officers guilty of 3 out of the 4. However, upon reviewing the memo completed by the panel that explained why they ruled not guilty, it is apparent that the panel used an inappropriate and more stringent standard of proof-beyond a reasonable doubt. Additionally, PAC staff also heard a frequent defense used by department personnel, the assumption that another member of the department would complete necessary paperwork.

[45] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

35. PBI # 15-0209, Complaint # 12-0509

15th District Sergeant (White/Male) was found **guilty** for failure to supervise-failure to properly supervise subordinates and received a reprimand. Disciplinary range if guilty: Reprimand to 5 days/demotion.

Complainant: Black/Male 39 years old
Officer notified of sustained charges: March 18, 2015
PBI hearing: June 14, 2016, 2 hours long
Allegation: While being the supervisor during an investigation in August 2012, this sergeant's officers conducted an improper search of a resident without a consent to search or a search warrant. The owners of the property did not receive documentation related to the confiscation of over $1800 and drug paraphernalia removed from their apartment. The property receipts for the items were listed the owner as unknown. The Sergeant failed to ensure that the Forfeiture unit was notified of the seizure without an arrest. The Sergeant also did not ensure that the money was properly counted. There was only $1500 recorded on property receipt documentation.

Evidence presented to panel:
1. Internal affairs investigator testified and attempted to read in the complainant's allegation. The FOP attorney objected to the statement being admitted due to the complainant's failure to appear. In response to that the Department Advocate argued that hearsay evidence is admissible. The panel concluded that the statement would not be read into the evidence and instead the investigator would only summarize would he recalled from their conversation. The summary read stated that the complainant did not give police permission to enter her residence and search the property.
2. There was a call for person with a gun at that location, but it was undetermined who made the call.
3. The Sergeant's interview was read to the panel. He stated that when they arrived, they handcuffed a male and placed him in the back of a police car and held there during the search of the property. The male was subsequently released and not charged, and items were recovered from inside of the apartment. The Sergeant was unsure where the money was recovered in the apartment. The Sergeant also stated that it was not his responsibility to count the money, it was the confiscating officer's responsibility to count the money. When asked why he did not prepare a search warrant, the Sergeant stated it was not his responsibility and that the lead investigator should have prepared a search warrant. When asked who gave the officers permission to search the property, the Sergeant stated by time he arrived, officers were already inside and none of the occupants informed him that they did not consent to the search. Additionally, the Sergeant denied that a search occurred, he stated that there was a call for person with a gun, so the officers were merely sweeping the residence for a weapon.
4. FOP attorney asked the investigator why it took over a year to interview the Sergeant. The investigator stated that due to the several witnesses, he was unable to interview the Sergeant until later.

Charges that could have been established but were not filed

1. Neglect of duty-Failure to make a required written report. (Reprimand to 5 days)
2. Neglect of duty-Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations. (Reprimand to 5 days)

3. Disobedience-Failure to follow Departmental procedures for the handling of narcotics, money, explosives, firearms, hazardous materials, or forensic evidence. (Reprimand to 5 days)

Departmental Failures[46]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	2	1, 5	10	

PAC Analysis

Unfortunately, this case represents another incident in which a department personnel attempted to argue that it was not his responsibility to conduct certain procedures, even though he was the highest-ranking individual at the scene of this incident. As a supervisor, this Sergeant should have controlled the scene and ensured that his subordinates were acting appropriately and following departmental procedures. Available information does not reveal what discipline was imposed on the involved officers.

This Sergeant has since been promoted to the role of Lieutenant.

[46] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

36. PBI # 15-0211-213, Complaint # 13-0625

35th District Officers (White/Male, Demographic Unknown) pled to **Command Level Discipline** (CLD) for neglect of duty-failure to conduct a proper, through and complete investigation and received a **reprimand**. Disciplinary range: Reprimand to 5 days suspension. Their supervisor, 35th District Sergeant (White/Male), also pled **guilty** to failure to supervisor-failure to properly supervise subordinates and received a **reprimand**.

Complainant: Black/Male 26 years old
Officer notified of sustained charges: March 18, 2015
PBI hearing: June 15, 2016
Allegation: During a vehicle investigation during August 2013 this officer conducted a search without exigent circumstances or a search warrant and recovered a firearm. The officer alleged that he had a verbal consent to search the vehicle but a consent to search form was not prepared. When their supervisor arrived on scene, he did not verify that the officers had consent to search the vehicle and that they completed a consent to search form. The supervisor also confiscated the permit to carry and mailed it to the gun permit unit and failed to notify the lead investigator on the case that he had confiscated evidence.

Evidence:
These officers pled guilty for the violation and therefore a hearing was not held.

Charges that could have been established but were not filed

1. Neglect of duty-Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors. (Reprimand to 5 days)

Departmental Failures[47]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	1, 10		

PAC Analysis

A review of internal affairs investigative records found that the driver of the vehicle had a permit to carry the firearm, but this officer did not include the permit information on police paperwork. A passenger in the vehicle was charged with possessing the firearm but that charge was subsequently dismissed by a Philadelphia Municipal Court judge.

[47] Failure key
1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

37. PBI # 15-0214, Complaint # 13-0625

Northwest Detective (Demographic unknown) was found **not guilty** for neglect of duty-failure to conduct a proper, thorough, and complete investigation. Disciplinary range if guilty: Reprimand to 5 days. (from verdict form)

Complainant: Black/Male 26 years old
Officer notified of sustained charges: March 18, 2015
PBI hearing: October 17, 2016, 40 minutes long
Allegation: In relation to the investigation above, this Detective neither contacted the owner of the firearm nor did the Detective search the area for surveillance video or witnesses. The internal affairs investigator was able to locate video footage of the car stop from a nearby hospital.

Evidence presented to the panel:

1. Internal Affairs investigator testified that the police paperwork stated that there was another individual in the car and that the driver stated he had a permit for the firearm. The investigator stated that in the Detective's defense, the Sergeant was in the wrong and did not provide the Detective with all of the information and that the Sergeant should have forwarded all evidence to the Detective. The investigator read the Detective's statement to the panel and he stated he did not interview the driver because he was released and not taken to Northwest Detectives for an interview. The Detective stated he may have tried to call him but did not document this attempt.
2. The investigator stated that during the investigation he received a standard operating procedure for the detective bureau from an Inspector. The FOP attorney objected to the document being admitted into evidence due to the document missing its effective date and the Department Advocate failing to show if the Detective has ever seen the standard operating procedures. The Department Advocate admitted that he is unable to show if these standard operating procedures were in effect at the time.
3. On cross examination, the FOP attorney was able to confirm with the investigator that the Detective was not interviewed until over a year after this incident.
4. The Detective testified and stated that his division does not have time to read several memos and standard operating procedures. He stated that his supervisor releases memos all the time for updates but that he usually does not have time to read all of the memos.

Reasons why the Detective was found not guilty:

1. The Detective processed the VUFA arrest based on the information provided by the police officers and did not think it was necessary to look for video evidence.

Charges that could have been established but were not filed

1. The PAC did not find additional charges that could have been successfully argued by the evidence presented by the Department Advocate due to insufficient operating procedures.

Departmental Failures[48]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1	1, 5	9	11

PAC Analysis

A review of existing directives during the time of this incident fails to show specific guidelines/operating procedures for Detectives. Existing directives now state that lead investigators must interview all relevant witnesses and search the scene for video footage and other pieces of evidence. [49] Even though it is unimaginable that a Detective would not search for evidence and interview witnesses, existing Directives at that time may have given an abundance of discretion to Detectives to conduct their investigations in any matter they see fit. The new directive, however, continues to provide much discretion to lead investigators by not clearly stating when Detectives should conduct certain tasks to ensure that evidence is not tainted or loss. In this case, the internal affairs investigator stated that two months after the incident he was still able to locate video footage.

This case highlights several issues with the Research and Planning Unit. First, the PAC has repeatedly found that many directives provide little to no guidance on processes, providing a lot of discretion to personnel. Second, PPD uses several different methods to update their standing operating procedures from official directives, to training bulletins, and individual departmental standard operating procedures that are released without requiring written confirmation that departmental personnel have seen and read the new guidance. Third, FOP attorneys frequently use the lack of adequate guidance as a defense to allege misconduct, usually a successful argument. Unfortunately, updates to department directives continue to be insufficient at providing guidance.

Even though it is commonly stated that ignorance of the law is not a defense in a criminal standard, it appears here that personnel are frequently able to argue ignorance due to the Department being unable to prove that the officer knew otherwise.

[48] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[49] https://www.phillypolice.com/assets/directives/D4.1-ResponsibilitiesAtCrimeScenes.pdf

38. PBI # 15-0228, Complaint # 12-9061

35th District Officer (Black/Male) was found **guilty** for disobedience-discharging, using, displaying or improper handling of a firearm while not in accordance to Departmental Police and received a 30-day suspension. The Police Commissioner at the time then elected to dismiss the officer. Disciplinary range if guilty: Reprimand to dismissal.

Decedent: Black/Male
Officer notified of sustained charges: March 23, 2015
PBI hearing: June 4, 2015, 2 hours long
Allegation: During August 2012, this officer discharged his firearm three times killing a man who was struck multiple times in the back. The firearms discharge review board determined that this officer violated Departmental policy during the incident.

Evidence presented to the panel:

1. A Detective testified that when he arrived on the scene, this officer had his firearm in his hand and stated that he had just shot someone. The Detective said that when he saw the individual, he noticed the individual did not have a pulse.
2. The FOP attorney on cross examination was able to solicit from the Detective that it appeared that the officer was involved in a struggle even though the officer never stated originally in detail that he was involved in a struggle. The struggle later explained was that the decedent ran from a traffic stop and eventually struggled with the officer for his taser in an alley.
3. The Detective stated that the decedent was about 300 pounds which was significantly larger than the officer.
4. The panel asked the Detective if the taser was still holstered. In response to that, the Detective stated that when he arrived, his taser was holstered and in his possession. The Detective stated that when he asked the officer about the taser, the officer stated that during the struggle the decedent had possession of the taser briefly.
5. The assigned internal affairs investigator testified and showed crimes scene photos to the panel. During his testimony, the radio call of the incident was played to the panel. Due to poor audio quality, PAC staff was unable to interpret the radio call. The investigator also stated that there were no additional witnesses at the scene that could have challenged the officer's account of the events.
6. The taser was swabbed for DNA evidence and testing concluded that there was no DNA discovered on the taser.
7. Medical examiner report was read to the panel and the examiner concluded that the gun shot range on the decedent was intermediate range and the cause of death was gunshot wound to the torso.
8. On cross examination, the FOP attorney was able to solicit from the investigator that this case was submitted to the district attorney office and they declined to prosecute this matter. Additionally, on cross examination, the internal affairs investigator stated there was nothing in the evidence to dispute the officer's account of the events.
9. The officer's interview was read to the panel. The interview occurred multiple months after the shooting.
10. The panel requested to question the officer and he then took the stand and answered the panel's questions.
11. The supervisor's report was read to the panel, it stated: the officer is an exceptionally vigilant and proactive officer.

Charges that could have been established but were not filed

1. Conduct unbecoming-unauthorized and/or excessive use of force in your official capacity. (Reprimand to dismissal)
2. Conduct unbecoming-repeated violations of any Departmental rules or regulations. (30 days or dismissal)
3. Conduct unbecoming-any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department (30 days or dismissal)

Departmental Failures[50]

Internal Affairs	PBI Charging	PBI Department Advocate	PBI Panel	Research & Planning
1	1, 2	5, 6		

PAC Analysis

By the time this hearing took place, the involved officer had shot three individuals, killing one of them. With the third shooting occurring while the officer was being investigated for the second.

A review of this hearing shows that the Department Advocate neither called the medical examiner nor a ballistics expert to testify; either of these individuals could have provided more information to the panel and subsequent arbitrator who eventually overturned the panel's decision. A review of the arbitrator's ruling found that "nothing in the Department's investigation of this case challenges the officer's account..given the absence of anything indicating otherwise, I am constrained to accept the officer's accounts of the incident". [51]

Additionally, at no point during this hearing was it revealed to the panel that this officer had previously shot two other individuals. The FOP attorney was able to read the officer's supervisor report to the panel, describing him as an excellent officer. However, the Department Advocate did not refute that categorization with the officer's June 2011 conduct in which he was found guilty for the same act: disobedience-discharging, using, displaying or improper handling of a firearm while not in accordance to Departmental Policy. In the 2011 incident, the officer received a mere 4-day suspension. This officer has since regained his former position and is back on the street.

[50] Failure key

1. Unreasonable time delay
2. Insufficient charging decisions
3. Complainant was not given 30-day notice of hearing
4. Hearing rescheduled more than once
5. Department Advocate either did not call witness or only presented witness after request from PBI Panel
6. Department Advocate did not address public credibility concerns on officer
7. Split decision where Chair found personnel guilty but lower ranked members found personnel not guilty
8. Panel used inappropriate standard of proof or allowed FOP attorney to refer to an inappropriate standard of proof without correction
9. Finding does not match presented evidence
10. Penalty insufficient for conduct
11. Police directives lack clear guidance, thereby affording unreasonable discretion to PPD personnel

[51] https://www.documentcloud.org/documents/5793474-154958Award-Redacted.html

P.B.I. HEARING

Hearing Date	**PBI#**	**Investigation #**

Accused Name	**Badge #**
Payroll #	**District/Unit**

Article Section/Spec.	Penalty Range	Board President Finding/Penalty	Board Member Finding/Penalty	Board Member Finding/Penalty	**Overall Findings/ Recommendation**
				Total	
		Board President	Board Member	Board Member	
Signature Line:					

Additional recommendations (transfer, restitution, demotion)

.

Department Advocate (Signature/date/overall recommendations)	**PERSONNEL (only)**
	☐ Suspension notice prepared.
Deputy Commissioner (Signature/date/overall recommendations)	Date:
Police Commissioner (Signature /date/overall penalty)	☐

Last Updated 1/5/2009

Sample Verdict Form with Interrogatories

You, the Police Board of Inquiry, have been selected to adjudicate this matter. According to Directive 8.6, the Police Board of Inquiry will render a recommendation to the Police Commissioner in matters in adjudicates. The Police Commissioner shall not be bound by the Board's recommendation.

PBI # 14-0432
IAD # 14-0024

Count 1: Conduct unbecoming-unauthorized and/or excessive use of force in official capacity.

We, the Police Board of Inquiry, answer the questions submitted by the Department as follows:

Question 1: Did the Department have a Use of Force policy that prohibited _____kicking_____?
(describe action)

Yes ☐ No ☐

Question 2: Applying the preponderance of the evidence standard, did the prohibited conduct occur?

_Yes ☐ No ☐

If the Police Commissioner finds the accused guilty, the recommended discipline is ____

_____ _____ _____
(Board President) (Board Member) (Board Member)

The Department values your time and consideration in adjudicating this matter.

City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 210074

Introduced February 4, 2021

Councilmember Jones

Referred to the Committee of the Whole

AN ORDINANCE

Repealing Chapter 21-1200 of The Philadelphia Code, entitled "Police Advisory Board," and replacing it with a new Chapter 21-1200 that reconstitutes and renames the board as the "Citizens Police Oversight Commission," and, as authorized by the Charter, provides for the Commission's appointment, the powers and duties of the Commission and the manner in which the Commission and other officers, employees, and agencies shall fulfill their respective responsibilities with respect to the Commission, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 21-1200 of The Philadelphia Code, entitled "Police Advisory Board," is hereby repealed in its entirety, and a new Chapter 21-1200 is added, to read as follows:

CHAPTER 21-1200. CITIZENS POLICE OVERSIGHT COMMISSION.

§ 21-1201. Preliminary Matters

(1) As authorized by Sections 3-813 and 4-2501 of the Charter, this Chapter provides for the creation of the Citizens Police Oversight Commission pursuant to subsection 3-100(e) of the Charter, as a successor to the Police Advisory Board created by Executive Order 2-17 and entitled to all resources of the Board. The Commission shall be located in a facility separate from the Police Department.

§ 21-1202. Definitions

In this Chapter, the following definitions apply:

(1) Administrative prosecution. Refers to the prosecution of charges of misconduct subject to the Philadelphia Police Disciplinary Code at a Police Board of Inquiry hearing.

(2) Citizen complaints. Complaints of misconduct made by any person, who is not themselves a member of the Department, against any officers(s) of the Philadelphia Police Department, regardless of whether the misconduct occurred on or off duty, and not otherwise limited by any requirement of residency.

(3) Commission. The Citizens Police Oversight Commission.

(4) Department. The Philadelphia Police Department.

(5) Department employee. Any person employed by the City of Philadelphia at the Philadelphia Police Department, whether sworn or unsworn personnel.

(6) Internal Affairs Division. The units and employees encompassed by the Office of Professional Responsibility within the Philadelphia Police Department responsible for investigating misconduct by employees of the Philadelphia Police Department.

(7) Investigative information. Refers to all information gathered by the Commission related to any of its investigations and/or fact-finding inquiries.

(8) Leadership position. This term refers to Department-identified leadership positions, as well as positions of authority within specific or specialized Department units, such as Districts, Narcotics Bureau, Internal Affairs, and Patrol Operations, and includes, but is not limited to, the ranks of Captain, Staff Inspector, Inspector, Chief Inspector, Deputy Police Commissioner, First Deputy Police Commissioner, and Police Commissioner.

(9) Machine-readable format. Refers to a structured format of data that can automatically be read and processed by a computer such as comma-separated values (CSV) or Extensible Markup Language (XML). Machine-readable format does not include portable document format (PDF).

(10) Officer. Refers to a sworn member of the Philadelphia Police Department.

(11) Police Commissioner. The Commissioner of the Philadelphia Police Department, including acting or interim Commissioners.

(12) Unit of assignment. Refers to the unit within the Philadelphia Police Department an officer is assigned to and includes district and specialized units.

§ 21-1203. Establishment of Commission

(1) Composition of Commission. There shall be a Citizens Police Oversight Commission (hereinafter, "Commission") consisting of nine (9) voting members. Members shall be adult residents of the City of Philadelphia.

(2) Selection Panel. Voting members of the Commission shall be nominated by a Selection Panel. The Selection Panel process shall proceed as follows:

a. Within thirty (30) days of the enactment of this Chapter, the Mayor and City Council shall appoint the Selection Panel. The Selection Panel shall consist of five (5) members: two (2) appointed by the Mayor and three (3) appointed by City Council. Members of the Selection Panel must have an established background in civic and community engagement. Members of the Selection Panel may not be current City of Philadelphia or Commonwealth of Pennsylvania employees, a current or former sworn employee of the Department, a current or former member or employee of the Fraternal Order of Police, or a current officer of a political party.

b. The Selection Panel, with the assistance of the Managing Director's Office, shall solicit applications from those willing to serve on the Commission. The Selection Panel shall evaluate applicants to the Commission based on their independence, qualifications relevant to criminal justice, public safety, and the improvement of law enforcement, and a demonstrated commitment to Philadelphia citizens. The Selection Panel shall interview applicants who meet those qualifications to serve as members of the Commission in a public hearing setting that will also allow for a public comment period on each interviewee.

c. Within sixty (60) days of its formation, the Selection Panel, by a majority vote, shall select a proposed slate of nine (9) voting members of the Commission and forward that proposal to City Council. Those nominated by the Selection Panel must be reflective of the diversity of the population and geography of the City and no two nominees shall reside in the same section of the City, as determined by police district. Background checks shall be required for all nominees. Such background checks shall not be performed by the Department.

d. Proposed nominees are appointed to the Commission upon majority vote by City Council. Within thirty (30) days of receiving a proposed slate of voting members of the Commission from the Selection Panel, City Council shall require the nominees to appear before the Committee of the Whole for purposes of confirmation. If City Council does not convene this hearing within thirty (30) days of receiving a proposed slate, the slate in its entirety shall be deemed appointed to the Commission.

e. A vacancy on the Selection Panel shall be filled by the original appointing authority within sixty (60) days of a vacancy occurring.

(3) Initial Appointments. The initial appointment terms of voting members of the Commission shall be determined by the Selection Panel. Three (3) members shall serve an initial term

of two (2) years, three (3) members shall serve an initial term of three (3) years and the remaining three (3) members shall serve an initial term of four (4) years.

(4) Terms of Service. All members shall serve a regular term of four (4) years. No member shall serve for more than two (2) consecutive terms, excluding initial appointment terms.

(5) Removal. Members of the Commission may only be removed for cause. Cause for removal shall include misconduct, inability or failure to perform required duties or obligations, or a violation of City of Philadelphia or Commonwealth of Pennsylvania ethics laws. In cases that warrant removal, the Commission must provide written notice of the proposed removal to the member, the Mayor, and City Council. Upon receipt of written notice for proposed removal, City Council must convene a public hearing of the Committee of the Whole, where such Commission member shall have the opportunity to be heard, and the Commission will have the opportunity to present and explain the reasons for removal. Following the hearing, a majority vote of City Council is required before such Commission member can be removed.

(6) Vacancies. A vacancy on the Commission shall exist whenever a voting member of the Commission dies, resigns, ceases to be a resident of the City, is convicted of a felony, or is removed for cause. The Selection Panel shall reconvene within thirty (30) days of the occurrence of a vacancy for the purpose of selecting a nominee to fill the vacancy. The Selection Panel shall forward their proposed nominee to City Council for purposes of confirmation. If City Council does not convene a Committee of the Whole hearing within thirty (30) days of receiving a proposed nominee to fill a vacancy, then the nominee is deemed appointed to the Commission. A vacancy occurring before the expiration of a term shall be filled for the remainder of such term.

(7) Election of Officers. Commission members shall select a Chair and Vice-Chair by majority vote within thirty (30) days after the completion of initial appointments by the Selection Panel. Election of Commission Officers shall be held every two (2) years after the election of the Commission's initial officers. No member of the Commission shall serve as Chair of the Commission for more than two (2) consecutive terms.

(8) Training. Prior to performing any functions as a member of the Commission, each voting member shall complete the following training, including, but not limited to: use of force; stop, search and arrest; traffic enforcement; bias-based policing; the Department's internal affairs process; the Department's disciplinary procedures (including the disciplinary provisions of collective bargaining agreements and administrative processes, administrative proceedings, and burdens of proof); the Department's rules and regulations for its law enforcement officers; and constitutional law. The Law Department shall develop and conduct the training program.

(9) Rules and Procedures. The Commission shall adopt such rules and procedures as deemed appropriate for the proper administration and enforcement of this chapter. All such rules and procedures shall be adopted only after posting of the rules and procedures proposed to be adopted on the Commission's website at least thirty (30) days prior to their effective date. Upon adoption, the Commission shall maintain a copy of the rules and procedures on file at the Commission, which copy shall be made available for public inspection during regular business hours. The Commission shall also publicly post such rules and procedures on its website, subject to any limitations imposed by applicable law. A simple majority vote is required to adopt such rules or procedures.

(10) Confidentiality of Information. The Commission shall promulgate rules and guidelines, subject to applicable law, to govern the disclosure and dissemination of information related to investigations, recommendations, reviews, and performance evaluation. The Commission may authorize one of its members or the Executive Director to issue statements to the public regarding the Commission's official business, to the extent such business is not confidential or privileged under State or local law. Commissioners may publicly discuss their roles as Commissioners and the Commission's public and official business for the purpose of educating the community.

(11) Prohibited Activities. Members of the Commission may not seek or hold a position as an appointed or elected public official within the City of Philadelphia or Commonwealth of Pennsylvania or make any financial contributions to any candidate for or incumbent of a political office within the City of Philadelphia or Commonwealth of Pennsylvania.

(12) Compensation. Commission members shall be compensated for all official business at such a rate as ordained by City Council. Official business shall include meetings and hearings of the Commission.

§ 21-1204. Executive Director, Chief Counsel, and Commission Staff

(1) Executive Director. The Commission, by majority vote, shall select, and determine the compensation of, an Executive Director to oversee the day-to-day operations and staff of the Commission. The selection process shall include, at a minimum, interviews with a majority of the Commission members. Candidates for Executive Director must possess, at a minimum, the following qualifications to be eligible for hire:

a. A commitment to the improvement of policing within the City.

b. Demonstrated leadership and management skills.

c. Knowledge of relevant law and law enforcement practices.

d. Experience and expertise in conducting or supervising investigations.

e. The highest degree of integrity, independence and professionalism.

f. The ability to serve diverse constituencies including, but not limited to, people of all races, ethnicities, ages, immigrant or citizenship status, genders, sexual orientation, or gender identification; law enforcement; members of the press; and elected officials.

The Executive Director shall not be a current or former sworn employee of the Police Department, a current or former member or employee of the Fraternal Order of Police, or a current officer of a political party.

(2) Chief Counsel. The Commission, by majority vote, shall select a Chief Counsel to act on its behalf in all relevant legal matters or as otherwise necessary to carry out the duties and the function of the Commission. The Chief Counsel must have an active legal license with the Pennsylvania bar and be current on all registration requirements.

(3) Staffing. The Executive Director shall have the power to employ and supervise all employees needed to carry out the duties and responsibilities of the Commission, including civilian investigators to investigate all matters within its jurisdiction.

(4) Consultants. The Executive Director, subject to approval by the Commission, shall have the power to hire consultants as needed to carry out the duties and responsibilities of the Commission.

§ 21-1205. Powers and Duties

The Commission shall exercise the following powers and duties:

(1) Investigations

a. Investigations of Complaints.

i. The Commission shall receive and register all citizen complaints made against members of the Department. All citizen complaints received by the Department or any other City agency will be forwarded to the Commission for investigation.

ii. *The Commission shall conduct investigations into all citizen complaints against any officer of the Department and may recommend charges and discipline.*

iii. *The Commission shall receive and register any complaint received from a Department employee made against officers of the Department:*

a. *If the Commission receives a complaint from a Department employee that it determines is outside its jurisdiction, the Commission will forward the complaint to the appropriate authority only if the Department employee approves the referral;*

b. *If the Commission receives a complaint from a Department employee that includes allegations in its jurisdiction and outside of its jurisdiction, the Commission will forward the complaint to the appropriate authority after determining whether it intends to investigate the allegations within its jurisdiction and only if the Department employee approves the referral. The Commission may decide to investigate the allegations in its jurisdiction before forwarding the complaint to the appropriate authority or investigate concurrently.*

iv. *The Commission shall conduct investigations into Department employee complaints against any officer of the Philadelphia Police Department and may recommend charges and discipline regarding allegations of:*

a. *Physical abuse;*

b. *Domestic violence;*

c. *Lying;*

d. *Bribery;*

e. *Corruption;*

f. *Intimidation;*

g. *Harassment;*

h. *Any allegation that threatens the integrity of the criminal justice process.*

b. Other Investigations.

i. *The Commission may conduct investigations of, and may recommend charges and discipline for, accusations related to violations of the 4th Amendment to the U.S. Constitution and/or Article 1, Section 8 of the Pennsylvania Constitution relating to improper search and seizure violations, including those where no complaint of misconduct was made to the Commission.*

ii. *The Commission shall review, may investigate, and may recommend charges and discipline for all use of force, including the use of Electronic Control Weapon (ECW)/Taser, or the use of any other weapon or instrument applied with force, regardless of whether there was a complaint of misconduct made to the Commission.*

iii. *The Commission shall investigate, and may recommend charges and discipline for, all incidents involving the discharge of a firearm regardless of whether a complaint of misconduct was made to the Commission.*

iv. *The Commission shall review, may investigate, and may recommend charges and discipline for, all injuries of people that occur while they are detained by or in the custody of the Department, regardless of whether there was a complaint of misconduct made to the Commission.*

v. *The Commission shall review, may investigate, and may recommend charges and discipline for, incidents that involve injuries arising from police action, including, but not limited to, efforts to subdue and apprehend suspects, regardless of whether there was a complaint of misconduct made to the Commission.*

vi. *The Commission shall investigate, and may recommend charges and discipline for, all deaths of or serious bodily injury to people that occur while they are detained by or in the custody of the Department, regardless of whether a complaint of misconduct was made to the Commission.*

vii. *The Commission shall investigate, and may recommend charges and discipline for, any incident where an officer is involved in the death of another person within the City of Philadelphia, whether the officer is on or off duty, regardless of whether there was a complaint of misconduct made to the Commission.*

viii. *The Commission may investigate, and may recommend charges and discipline for, police officers whose misconduct develops during the investigation of another officer, including allegations of lying to Commission employees during their investigation.*

ix. *The Commission may conduct investigations, data analysis, and audits related to any pattern, policy, or practice of the Police Department. These investigations shall include, but are not limited to, misconduct, policy, training, practice, and customs.*

x. *In the Executive Director's discretion, the Commission may review lawsuits or claims against the Department, or one or more of its members, or against the City, alleging police misconduct that falls within the Commission's jurisdiction, for the purpose of reopening a prior investigation or opening a new investigation of police misconduct.*

xi. *In the Executive Director's discretion, the Commission may review closed Internal Affairs Division (IAD) investigations alleging police misconduct that fall within the Commission's jurisdiction for the purpose of reopening a prior investigation or opening a new investigation of police misconduct.*

c. *Where an investigation is conducted concurrently by the Commission and the Department, the Commission shall have the same access to crime scenes and investigative materials as the Department, including the right to be present at all interviews with witnesses and Department officers. It shall be the duty of the Department to timely notify the Commission of all interviews with witnesses and Department officers so that Commission staff may be present.*

d. *All statements by officers taken by the Commission shall be in accordance with all local, state, and federal law and the current labor contract.*

e. *Subject to applicable law, the Commission shall have the same access as the Department's Internal Affairs and Standards and Accountability Division to all Department files, records, and Department personnel records, in addition to all files and records of other City departments and agencies. The Commission shall have access to such records and files to enable review for, among other purposes, investigations, policy analysis, and public discipline reporting. This includes direct electronic access to Department databases that store investigative information, as defined by applicable law. If the Department databases that store investigative information cannot provide direct electronic access because the database in question does not meet applicable law's auditing standards, the Department must upgrade those electronic databases in a reasonable amount of time to allow such access. The Department will detail the budgetary allocations necessary to meet this section's requirements annually in its budget proposal to Council when applicable.*

f. The Commission may issue subpoenas and compel the attendance of witnesses or the production of documents and/or other evidence in support of any investigation as provided by section 8-409 of the Home Rule Charter.

g. The Commission, on advice of its Chief Counsel, may consult or retain additional counsel to advise and represent the Commission with respect to its investigations and to enforce and defend against subpoenas, where necessary, including for the enforcement in court of subpoenas to testify or to produce documents.

h. Nothing in this chapter shall preclude the Commission from referring a complaint or information concerning an officer of the Department to the Office of the Inspector General, or to appropriate federal, state, or local law enforcement authorities. Nothing in this chapter shall preclude the Commission from investigating within its jurisdiction concurrently with an active criminal investigation. Nor shall anything in this chapter preclude the Commission from receiving a referral or information from any federal, state or local law enforcement authority.

i. Nothing herein shall prohibit the Police Commissioner or a commanding officer from investigating the conduct of an officer under his or her command, nor shall anything herein prohibit the Police Commissioner from taking disciplinary or corrective action.

(2) Recommendations.

a. Disciplinary Recommendations.

i. Where the Commission finds an allegation falling within its jurisdiction to have been substantiated against an officer and recommends that charges be brought against such officer, the Commission shall promptly notify the Police Commissioner of its finding and recommendation.

ii. The Police Commissioner shall respond, in writing, within thirty (30) days of receiving an investigatory finding and recommendation for discipline from the Commission. The Police Commissioner's response shall include:

a. Whether the Police Commissioner intends to impose the recommended discipline;

b. Whether the Police Commissioner requires the Commission to complete further investigation, the reasons for further investigation, and what that investigation entails before making a decision;

c. Whether the Police Commissioner intends to impose discipline at a higher level;

d. Whether the Police Commissioner intends to impose discipline at a lower level;

e. For investigations substantiated by the Commission in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Commission, the Police Commissioner shall notify the Commission, with notice to the subject officer, at least ten (10) business days prior to the imposition of such discipline. Such notification shall be in writing and shall include a detailed explanation of the reasons for deviating from the Commission's recommendation, including but not limited to, each factor the Police Commissioner considered in making his or her decision. The Commission may respond to such notification within five (5) business days of its receipt, after which the Police Commissioner shall make a final determination.

iii. The Police Commissioner shall not render a final disciplinary decision regarding an act of police misconduct subject to an active investigation by the Commission until the Commission submits its findings and recommendations to them.

iv. The Chair of the City Council Committee on Public Safety may require the Commission and Police Commissioner to appear at a public hearing to explain and respond to questions concerning any disciplinary recommendations and responses.

b. Policy, Practice, Procedure and Training Recommendations.

i. The Commission may make policy, practice, procedure and training recommendations to the Department at any time. The Commission shall publish those recommendations on its website within five (5) days of submission to the Department, as well as provide a written copy to the Mayor and City Council.

ii. The Police Commissioner must issue a written response to each of the Commission's recommendations within thirty (30) days of receipt, stating whether the Department will accept the recommendations, a description of the action the Department has already taken or is planning to take, and a timeline for implementation. If the Department declines to accept one or more recommendations, a written explanation must be provided.

iii. The Chair of the City Council Committee on Public Safety may require the Commission and Police Commissioner to appear at a public hearing to explain and respond to questions concerning any policy, practice, procedure or training recommendations and responses.

(3) Performance Reviews and Audits.

a. The Commission shall conduct an annual performance review of the Executive Director and of the Police Commissioner. The Commission shall determine the criteria for evaluating the Executive Director's and the Police Commissioner's job performance and communicate those performance criteria, in addition to any other job performance expectations, to the Executive Director and the Police Commissioner. The Commission may decide, in its discretion, to solicit and consider comments and observations from the Managing Director and other City staff who are familiar with the Executive Director's or the Police Commissioner's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary. The written annual performance review of the Police Commissioner will be posted publicly by the Commission annually on its website.

b. The Commission may hold a vote of no confidence regarding the Police Commissioner at any time. The Commission must detail the reasons for holding the vote in writing and present the reasons to the Police Commissioner at least thirty (30) days before holding the vote. The Police Commissioner may respond in writing by the next regular meeting of the Commission or by appearing before the Commission at the Commission's next regular meeting. A vote of no confidence only needs a simple majority of the Commissioners to pass. At the request of the Commission or at least three members of City Council, the Chairman of the City Council Committee on Public Safety shall request that the Police Commissioner appear at a hearing of the Committee on Public Safety to explain and respond to the Commissioner's vote.

c. The Commission shall review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, practices, and priorities.

§ 21-1206. Meetings and Hearings

(1) Meetings of Commission.

a. The Commission shall meet at least bimonthly at an established time and place suitable to its purpose. Video recordings of all open sessions of Commission meetings shall be posted to the Commission's website.

(2) Public Hearings of Commission.

a. The Commission shall conduct public hearings at least once a year on Department policies, procedures, or practices. The Commission shall determine which Department policies, procedures, or practices shall be the subject of the hearing.

b. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

(3) Participation in Police Board of Inquiry Hearings.

a. The jurisdiction of the Commission shall include participation in the charging and administrative prosecution of complaints before the Police Board of Inquiry (hereinafter, "PBI") as follows:

i. The Commission and Department shall jointly decide the specific charges the accused is alleged to have violated. If the Commission and Department disagree on specific charges, then all suggested charges shall be forwarded to the PBI hearing.

ii. The Department must provide written notice to the Commission of its intent to withdraw charges. Notice shall specify the Department's reasoning for a withdrawal of charges. If the Commission does not agree with withdrawal, the Commission may submit a written objection to the Police Commissioner explaining the basis for the objection.

iii. The Department must provide written notice to the Commission of its intent to offer a guilty plea to the accused. Notice shall specify the requirements of any such plea. If the Commission does not agree with the offer, the Commission may submit a written objection to the Police Commissioner explaining the basis for the objection.

iv. The Commission shall have the jurisdiction of administrative prosecution for all complaints before the PBI for which the Commission has the power to investigate pursuant to Section 21-1205. The administrative prosecution shall include the questioning of all witnesses, including the accused, the introduction of exhibits and evidence, and closing arguments.

v. The administrative prosecution function performed by the Commission at PBI hearings shall be conducted by the Chief Counsel for the Commission, or other Commission employees as designated by the Chief Counsel or Executive Director.

vi. The Department shall provide to the Commission a copy of the entire, completed civilian complaint investigative file for any complaint investigated by the Department that the Commission has jurisdiction of administrative prosecution at the PBI hearing at least thirty (30) days prior to the scheduled hearing on the complaint.

b. As authorized by Section 4-2301 of The Philadelphia Home Rule Charter, the Commission shall have the power pursuant to Section 8-409 of the Charter to issue subpoenas to compel the attendance of persons and the production of documents. A subpoena issued shall identify the person to whom it is directed and the documents or other items sought thereby, if any, and the date, time and place for the appearance of the witness and production of documents or other items described in the subpoena. In no event shall the date for the examination or production be less than seven (7) days after service of the subpoena.

c. Publication of notice of the place, date and time of any PBI hearing the Commission will be engaging in shall be posted on the Commission's website at least seven (7) days prior to the hearing.

d. All civilian complaint hearings shall be open to the public in a location that can accommodate all members of the public who wish to attend. If the Commission or Department has knowledge that a particular hearing will draw significant public participation, overflow space shall be provided or a live-stream of the hearing shall be made available on the Commission's website. Hearings that involve minor victims or allegations of sexual misconduct shall not be open to the public unless a public hearing is requested by the victim in writing.

e. An audio recording and transcript for all complaints prosecuted by the Commission before the PBI shall be retained by the Commission and shall be made available, upon payment of costs, to any person requesting it. The Commission may authorize the audio or video recording of testimony and hearings.

f. Hearings shall be informal and strict rules of evidence shall not be applied. Testimony under oath shall be received from all persons who appear and purport to have information that is material to the complaint.

g. The Commission shall recommend discipline to the PBI and that recommendation shall be reflected in final recommendation paperwork forwarded to the Police Commissioner.

§ 21-1207. Required Reporting

(1) Reporting by Commission.

a. The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council's confirmation of the first group of Commissioners. The Commission's subsequent reports shall be submitted annually on or near the anniversary of that date.

b. The Commission shall issue an annual report to the Mayor, the City Council, and to the public to the extent permissible by law. The annual report shall include a detailed summary of the Commission's activities during the year, copies of the Police Commissioner's, the City Solicitor's, and Department of Labor's reports to the Commission, the Police Commissioner's annual performance review, and shall include the following information:

i. A summary report for each investigation completed during the applicable time frame;

ii. A summary of all activities undertaken related to community input, engagement, and outreach; and,

iii. A detailed annual statistical analysis designed to explain to the public the Commission's work. Wherever possible, the Commission must aggregate the data by investigative category and the demographics of the involved citizen and Department members. The analysis shall include, but is not limited to, data related to the following:

a. Total number of citizen complaints against police received by the Commission;

b. Total number of Department employee complaints against police received by the Commission;

c. Total number of complaints against police received by the Commission;

d. Total number of all investigations of individual officers conducted by the Commission;

e. Total number of investigations referred to the Department for discipline by the Commission;

f. Total number and type of investigations opened by the Commission;

g. Total number and type of Commission investigations completed;

h. Total number and type of Commission investigations that remain open;

i. Total number and type of Commission investigations resolved by mediation;

j. Total number of investigative outcomes for investigations completed by the Commission aggregated by type of complaint;

k. Officer disciplinary recommendations aggregated by type of investigation, level of discipline, and the demographics of involved citizens and officers;

l. A compilation of the disciplinary recommendations made by the Commission and the corresponding action taken by Police Commissioner, aggregated by type of investigation and the demographics of involved citizens and officers;

m. Total number of firearm discharges, aggregated by the demographics of involved citizens and officers, and including whether injury or death resulted;

n. Total number of non-firearm weapon use, aggregated by type of weapon, demographics of involved citizens and officers, and including whether injury or death resulted;

o. Data regarding the racial, ethnic, and gender demographics of the citizens and officers involved in each investigation, as well as the area of occurrence by police district and police service area;

p. A unit by unit analysis of investigations by type and outcome, including disciplinary and/or training recommendations;

q. A list of officers who have ten (10) or more complaints of misconduct within five (5) years of the reporting period, including the officer's name, badge number, unit of assignment, gender, race, date of appointment to the Department, and the number and types of complaints filed against the officer.

c. All investigations, audits, surveys conducted by the Commission and all policy evaluations and recommendations proposed shall be released publicly at the time of completion and published on the Commission's website where they shall remain permanently available. All data sets associated with each investigation, audit, survey, and policy evaluation and recommendation will be released publicly on the website of the Commission at the time of the publishing of the audit but will be appropriately redacted if required by applicable law. The data sets will remain on the website for at least ten (10) years from the date of publication, but in no event may they be destroyed.

d. All final reports of the Commission shall be open to public inspection, except to the extent that information contained therein is exempted from disclosure by applicable law. Nothing in this ordinance will prevent the Commission from reporting information above and beyond what is required by the Pennsylvania Right to Know Law Act insofar as that information is not prohibited from publication by other applicable law.

e. It shall be the policy of the Commission to make all its work available to the public to promote accountability and transparency. The Commission shall keep the public informed of all investigations and their progress and the Commission shall ensure transparency throughout the entire investigative process.

f. The Commission shall maintain a database containing the complete complaint and disciplinary history for each officer. The database shall include, but is not limited to, the following for each officer: 1) all police misconduct investigations; 2) complete disciplinary history; 3) all use of force reports; 4) civil lawsuits and relevant trial and motion notes of testimony in criminal and civil cases; 5) arbitration decisions; and, 6) assignment histories. The database shall be expanded to include any other relevant information.

g. The Commission shall maintain full administrative rights to an electronic database that is independent from databases used by the Department. It shall maintain the data in a format that allows efficient exporting of data. These data shall be posted live on the Commission's website in delimited machine-ready format for public inspection. The data sets shall redact the names and other identifying information of civilians, including complainants, and Department employee complainants. The database must, at a minimum, include the information described throughout this section;

h. The Commission shall post investigative information on its website within ten (10) days of its availability for each investigation conducted by the Commission. The

Commission may delay the posting of investigative information where publication would threaten or compromise the integrity of the investigation. Where posting of such information is delayed, the Commission must review for publication every thirty (30) days. The Commission will promulgate rules for identifying and monitoring such investigations but in such situations the Commission shall still publish the complaint number and the type of the investigation being withheld and the Commission shall release a summary of the open investigation after 180 days. The Commission shall otherwise post on its website the following investigative information:

i. *The complaint or investigation number;*

ii. *The police district in which the complaint incident took place;*

iii. *Location of incident reduced to hundred block;*

iv. *Date and time of the incident;*

v. *Date the incident was reported to the Commission, the Department, and/or otherwise came to the Commission's attention;*

vi. *Whether video of the incident exists;*

vii. *A summary of the allegations;*

viii. *The type of complaint or investigation;*

ix. *Date the investigation was completed;*

x. *For each officer who is a subject of the investigation:*

    a. *Initials of the officer, until any of the allegations are sustained for misconduct, when the officer name will replace the initials;*

    b. *Badge number, but only if any allegation of the complaint or investigation is sustained for misconduct;*

    c. *Race;*

    d. *Gender;*

    e. *Age;*

f. Date of appointment to the Department once any allegation of the complaint or investigation is sustained for misconduct;

g. Rank at the time of complaint;

h. On or off duty at time of incident;

i. Number of previous complaints against subject officer within ten (10) years of incident;

j. Number of previously sustained complaints against subject officer within ten (10) years of incident;

k. All misconduct category codes for the incident under investigation;

l. The Commission's or the Department's recommended outcome of the investigation for each complaint, including whether the outcome was the result of mediation or whether the investigation was referred for mediation but was unsuccessful;

m. The Commission's and/or the Department's recommended discipline;

n. The Police Commissioner's recommended outcome of the investigation of each complaint, if applicable;

o. The Police Commissioner's recommended discipline;

p. The final outcome of the investigation;

q. The final discipline imposed;

r. The date of the PBI hearing, if applicable;

s. The hearing transcript or recording of the PBI hearing, if applicable;

t. Whether a grievance was filed;

u. The date of any arbitration hearing, if applicable;

v. The result of any arbitration, if applicable;

w. The arbitrator's name, if applicable;

x. A redacted copy of the Commission's investigative memo to the Police Commissioner or the Police Commissioner's memo with investigative findings and recommended discipline in PDF or similar format;

y. A copy of any Police Commissioner's response to the Commission's recommended discipline;

z. A copy of the arbitration decision, if applicable;

aa. The hearing transcript or recording of the arbitration hearing, if applicable;

bb. The civil complaint, disposition, and verdict or settlement amount, if applicable;

xi. For each civilian involved in an incident under investigation, including all civilian complainants and/or civilian witnesses:

a. Race;

b. Gender;

c. Age at time of complaint;

xii. For each department employee complainant involved in an incident under investigation:

a. Race;

b. Gender;

c. Age at time of complaint;

i. In addition to the information detailed above, the Commission shall also post the following information within ten (10) days of its availability in every investigation of officer discharge or other use of a firearm, stun gun, Electronic Control Weapon (ECW)/Taser, or any other device, instrument, or object capable of inflicting pain or injury:

i. The type of incident;

ii. Type of weapon used;

iii. Duration and/or number of times weapon used;

iv. The Commission's investigation number and corresponding Department investigation number, if applicable;

v. For each shooting officer:

a. Make and model of weapon;

b. Number of shots fired;

c. The range at which the weapon was fired;

d. For ECW/Taser incidents, the duration that the device was deployed and the number of cycles;

e. Injuries sustained by any officer on the scene;

f. Each target or victim of the weapon:

g. If animal targeted, the type of animal targeted or victimized;

h. If animal targeted, whether injury or death resulted;

i. Where a person is targeted or victimized, the Commission shall also post the individual's:

1. Gender;

2. Race;

3. Age at time of incident;

4. Any weapon possessed;

5. The point at which any bullet impacted the subject;

6. Any medical care provided;

7. Injuries sustained;

8. Whether a person was killed.

j. Within thirty (30) days of the close of the Department's investigation, including, but not limited to, internal investigations, citizen complaints against police, use of force reviews, and police shooting investigations, the Commission shall post on its website the following information for each investigation conducted by the Department:

i. The complaint or investigation number;

ii. The police district in which the complaint incident took place;

iii. Location of incident reduced to hundred block;

iv. Date and time of the incident;

v. Date the incident was reported to the Commission, the Department, and/or otherwise came to the Commission's attention;

vi. Whether video of the incident exists;

vii. A summary of the allegations;

viii. The type of complaint or investigation;

ix. Date the investigation was completed; and,

x. For each officer who is a subject of the investigation:

a. Initials of the officer, unless any of the allegations are sustained for misconduct or it is a police shooting investigation, in which case, the officer name will replace the initials;

b. Badge number, but only if any allegation of the complaint or investigation is sustained for misconduct or the officer is subject to a police shooting investigation;

c. Race;

d. Gender;

e. Age;

f. Date of appointment to the Department;

g. Rank at the time of complaint;

h. On or off duty at time of incident;

i. Number of previous complaints against subject officer within ten (10) years of incident;

j. Number of previously sustained complaints against police within ten (10) years of incident;

k. All misconduct category codes for the incident under investigation;

l. The Department's recommended outcome of the investigation for each complaint or investigation, including whether the outcome was the result of mediation, or whether the investigation was referred for mediation but was unsuccessful;

m. The Department's recommended discipline;

n. The Police Commissioner's recommended outcome of the investigation of each complaint, if applicable;

o. The Police Commissioner's recommended discipline;

p. The final outcome of the investigation, including whether criminal charges were recommended;

q. The criminal complaint, if applicable;

r. The final discipline imposed;

s. The date of the PBI hearing, if applicable;

t. The hearing transcript or recording of the PBI hearing, if applicable;

u. Whether a grievance was filed;

v. The date of any arbitration hearing, if applicable;

w. The result of any arbitration, if applicable;

x. The arbitrator's name, if applicable;

y. A redacted copy of the arbitration decision, if applicable;

z. The hearing transcript or recording of the arbitration hearing, if applicable;

aa. The civil complaint, disposition, and verdict or settlement amount, if applicable;

xi. For each civilian involved in an incident under investigation:

a. Race;

b. Gender;

c. Age at time of complaint;

k. If the Department objects to any information regarding its investigation being posted to the Commission's website, the Department will note its objection with the Commission in writing within fifteen (15) days of the close of its investigation with the reasons for the objection and the information it objects to appearing on the Commission's website. The Commission shall review the objection and vote on the objection at its next regular meeting. The Commission may reject the objection, accept the objection, or accept or reject the objection in part. The Commission will not post any information to its website regarding the investigation until the objection is resolved.

l. The Commission shall post on its website any video of an incident that is the subject of its investigation, after redacting any parts capturing events within private areas, such as inside a person's home, or that would violate clearly established rights to personal privacy, within forty-eight (48) hours of the incident, unless the release would seriously compromise the integrity of the Commission's investigation or the complainant requests the video not be released. If the Commission withholds video, it must articulate and publish the reason that the release would seriously compromise the integrity of the investigation, and shall post the video as soon as possible after the 48-hour-period, but under all circumstances, the Commission's posting of the video must occur within fourteen (14) days of the incident.

m. Within ten (10) days of completing each investigation, the Commission must post on its website the summary report of its investigation in accordance with the reporting requirements of this Chapter and provide a copy of the summary report of investigation to any complainant.

n. Notwithstanding any other provision of this ordinance, the Commission is prohibited from releasing to the public the names and identifying information of civilians without their consent. The Commission shall provide any alleged victim in a sexual misconduct, sexual assault, rape or domestic violence investigation with the option to keep confidential the specific details of the complaint and specifics of the investigation from the summary reports made available to the public.

o. The Commission shall permanently retain and shall not destroy any records related to its investigations.

p. No later than two (2) years from the effective date of this ordinance, the City Controller shall conduct a performance audit and a financial audit of the Commission. Nothing herein shall limit the City Controller's authority to conduct future performance and financial audits of the Commission. The audit will include a review of the Commission's policies, procedures, and outcomes, and result in a public report that includes recommendations for improvement.

(2) Reports from Other Agencies.

a. The Commission shall require the Police Commissioner, City Solicitor, and Department of Labor to submit an annual report to the Commission regarding such matters as the Commission shall require;

i. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and on the anniversary of that date thereafter, the Commission shall notify the Police Commissioner regarding what information will be required in the Police Commissioner's annual public report to the Commission which shall include, at a minimum, the following:

a. The number of citizen complaints against police submitted to the Department's IAD the previous year together with a brief description of the nature of the complaints;

b. The number of internal investigations opened by IAD together with a brief description of the nature of the investigation;

c. The number of total pending investigations in IAD, the types of misconduct being investigated, and initiation date of each investigation;

d. The number of all types of investigations completed by IAD, and the results of the investigations;

e. Number of officers disciplined and the level of discipline imposed, including whether discipline was imposed pursuant to guilty plea or a finding by the PBI, the types of charges sustained, the types of charges that were pleaded to, the number of grievances filed, and the results of those grievances;

f. The number of closed investigations that did not result in discipline of the subject officer;

g. The number of training sessions provided to officers, the subject matter of the training sessions, and the number of officers who participated in each training subject;

h. Revisions made to Department directives, policies, and standard operating procedures;

i. The number and locations of police shootings;

j. The number of Use of Force Review Board hearings and the results;

k. A summary of the Department's monthly Use of Force Reports, including the number of use of force reports per month, the type of force used, whether hospitalization was required, and whether the use of force was approved; and;

l. Updates to any local, state, or federal oversight of the police department;

ii. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and on the anniversary of that date thereafter, notify the City Solicitor regarding what information will be required in the Solicitor's annual public report to the Commission which shall include, at a minimum, the following:

a. The number of lawsuits filed in state or federal court against the City involving officers in the previous year, including: the status of each suit; the type of suit (civil rights, labor, or other); the settlement or verdict amount, if applicable; declaratory judgments and the details thereof; the details of any settlement or verdict that results in agreements that affect the policies, procedures, or

operation of the police department; and, the number of suits that were settled for confidential terms. The number of lawsuits in the annual report shall include any pending lawsuits that were filed but still open or resolved during the last year;

b. The status of any federal consent decrees or other federal, state, or local oversight issues involving the Department and the City Solicitor;

c. Any risk management policies the City Solicitor has recommended be implemented by the Department in the last year and the status of those recommendations, including the status of any policies still pending or in the process of being implemented from previous years;

d. The number of arbitrations that took place the previous year, the types of grievances that went to arbitration by number, the results of those arbitrations, the cost to the City of each arbitration reversal;

e. A list of the arbitrators who heard the grievances, the rates at which each arbitrator reversed the previous finding, and the rates at which each arbitrator reversed each type of grievance;

iii. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and on the anniversary of that date thereafter, notify the head of the Department of Labor regarding what information will be required in the Department of Labor's annual public report to the Commission, which shall include, at a minimum, the following:

a. The number of labor complaints filed the previous year involving officers, the type of each complaint, how many complaints involved a superior officer, how many complaints involved an officer with a leadership position, the status of those complaints, the outcomes of those complaints, and the rate at which each type of complaint went to arbitration.

b. The Police Commissioner shall provide monthly unredacted updates to the Commission on IAD investigations, use of force reviews, police shootings, and any criminal charges brought against police. Each update will include at minimum:

i. Investigation, complaint, or court case number, as applicable;

ii. The names of the officers involved, including badge number, payroll number, and assignment;

iii. The type of investigation, complaint, or court case;

iv. A summary of the allegations or issues;

v. For an IAD investigation, the Commissioner's memo, if the investigation is completed, and a memo has been produced;

vi. For an IAD investigation, the result of the PBI hearing, if applicable, along with a hearing transcript or recording of the hearing;

vii. The status of each investigation, complaint, or criminal case, as applicable; and,

viii. Any change in circumstance that led to the update.

c. The City Solicitor shall provide monthly unredacted updates to the Commission on lawsuits and arbitration decisions involving officers. Each update shall include, at minimum:

i. Court caption and docket number;

ii. The names of the officers involved, including badge number, payroll number, and assignment;

iii. The type of lawsuit or arbitration;

iv. A summary of the allegations or issues;

v. If applicable, a copy of the complaint and/or the amended complaint;

vi. If applicable, a copy of the arbitrator's opinion;

vii. If applicable, a copy of the arbitration hearing transcript or recording;

viii. The status of lawsuit or arbitration;

ix. Verdict or settlement amount, if applicable; and,

x. Any change in circumstance that led to the update.

d. The Department of Labor shall provide unredacted monthly updates to the Commission on labor complaints involving officers. Each update shall include at minimum:

i. Investigation or number, as applicable;

ii. The names of the officers involved, including badge number, payroll number, and assignment;

iii. The type of investigation or complaint;

iv. A summary of the allegations or issue;

v. The status of each investigation or complaint; and

vi. Any change in circumstance that led to the update.

§ 21-1208. Refusal to Cooperate and Penalties

(1) It shall be the duty of every officer, employee, department, and agency of the City to cooperate with the Commission in an investigation undertaken pursuant to this chapter. The Police Commissioner shall order all officers to cooperate with an investigation with the Commission.

(2) A refusal to cooperate, and/or relating false or misleading information to the Commission, upon a lawful request by the Commission, shall be considered a violation of this Chapter. Any employee or appointed officer of the City or law enforcement agency who violates any provision of this chapter may be subject to discipline, including but not limited to a fine of $1,000 for each occurrence, and/or discharge.

(3) The Commission may bring a charge of refusal to cooperate and/or relating false or misleading information to the Commission to the Police Commissioner with a recommendation for discipline pursuant to the Department's disciplinary code.

Explanation:

Italics indicate new matter added.

BILL NO. 210074 continued

Appendix 12 - Glossary of Terms

Department Advocate – The Department Advocate is a position within PBI that is currently held by a lieutenant.

75-18s – The formal discipline charges brought against an officer for sustained allegations of misconduct. The PPD uses a number system to refer to different forms and the number of the form on which the charges are written is 75-18.

Complaint Against Police/CAP - Any complaint against a member of the PPD that is initiated by a civilian.

Citizens Police Oversight Commission/CPOC – The new civilian oversight agency for the PPD. CPOC was approved by Philadelphia voters in the 2020 election, and City Council has drafted legislation to determine the powers and authority of CPOC. The legislation will be voted on in 2021.

Not guilty memo – The memo prepared by the PBI board president that explains why the board found the officer not guilty. The memos often list what evidence they found to be compelling and reasoning for their finding.

Police Advisory Commission/PAC - The civilian oversight agency for the Philadelphia Police Department. The PAC is housed within the City of Philadelphia Managing Director's Office. The PAC will be folded into the CPOC when City Council votes on CPOC legislation.

Police Board of Inquiry/PBI – PBI is a unit at PPD that is comprised of two smaller units, PBI Charging and the Department Advocate. PBI handles discipline charging, discipline plea negotiations, discipline hearings, and discipline record retention for the entire PPD.

PBI Board – A panel of three PPD personnel comprise a PBI board during a PBI hearing. The job of the board is to hear from the PPD via the department advocate as to why the officer is guilty, hear from witnesses, and from the accused officer they choose to testify. The PBI Board then decides whether the officer is guilty or not guilty of the misconduct of which they are accused. One of the board members must be of the same rank as the accused.

PBI Board President – The highest-ranking officer on a PBI board. They are responsible for directing the hearing and writing a memo after the hearing if the board finds the accused not guilty. The board president also rules on any objections raised during the hearing.

PBI Charging Unit – This unit has 1 commanding officer and two support staff. The commanding officer is responsible for applying discipline charges from the PPD discipline code to any sustained allegations of misconduct. The commanding officer has broad discretion to offer training and counseling rather than formal discipline charges for sustained allegations.

PBI Department Advocate – The position within the PBI unit that prosecutes administrative discipline cases on behalf of the PPD. The position is currently held by a PPD lieutenant who is not an attorney. The Department Advocate also arranges administrative plea deals for discipline charges if officers choose to plead guilty.

Police Commissioner Memo/PC memo – A memo to the Police Commissioner that accompanies every completed IAD investigation. A PC memo gives a summary of the case, lists evidence, provides summaries of witness statements, and lists the findings of the case.

IAD/IAB – The Internal Affairs division of PPD. IAD has a staff of investigators, typically holding the rank of sergeant or lieutenant, who investigate allegations of misconduct brought by members of the public or by other PPD officers.

Training and Counseling – Training and Counseling is an alternative to discipline. Training and counseling is not considered discipline by the PPD. It is intended to make employees aware of strengths and weaknesses and give them an opportunity to improve. Training and counseling is delivered by an officer's supervisor in the form of a counseling memo.

PHILADELPHIA POLICE DEPARTMENT

DISCIPLINARY CODE

July 2014

Introduction

The intent of this Disciplinary Code is to instill and support the core values of the Philadelphia Police Department by establishing fair and consistent penalties for violations of Philadelphia Police Department rules, policies, and principles. The Articles herein are intended to direct the Police Board of Inquiry and all Commanders in administering such fair and uniform penalties. This code shall apply to all personnel of the Police Department. The core values of the Philadelphia Police Department are:

Honor - It is a privilege to serve as a member of the law enforcement community and especially as a member of Philadelphia Police Department. Each day when you pin on your badge, remember those who went before you and the sacrifices made in the name of this badge. Treat your badge with honor, respect, and pride. Do nothing that will tarnish your badge, for one day you will pass it to another Philadelphia Police officer to honor and respect.

Service - Service with honor means providing police service respectfully and recognizing the dignity of every person. We can demand that others respect and honor our work only when we respect them and their rights. We are in the business of providing police service with the highest degree of professionalism. Every day we come into contact with crime victims, residents afraid to enjoy their neighborhoods, and young people scared to stand up and do the right thing. Our job is to help them and to do so with courtesy and compassion.

Integrity - Integrity is the bedrock of policing and the foundation for building a successful relationship with our partners. Integrity means reflecting our values through our actions. It is not enough to espouse honor, service and integrity. Each of us must live these values in our professional and personal lives. We do this by being honest in our dealings and abiding by the laws and respecting the civil rights of all. Serving with integrity builds trust between the community and the police.

Members of the Philadelphia Police Department must be morally and ethically above reproach at all times regardless of duty status. All members shall respect the sanctity of the law and shall be committed to holding themselves to the highest standard of accountability. No member shall depart from standards of professional conduct or disobey the law.

The following code includes specific behaviors that have been identified as violating this standard. However, to the extent that an employee's actions are not specifically described in this code, but have the effect of impairing the employee's

ability to perform his or her duties, then the employee may be charged under the "Unspecified" Charges.

Penalties recommended by either the Police Board of Inquiry or commanders for offenses listed shall be within the prescribed limits. The Disciplinary Code shall in no way limit any penalty which the Police Commissioner may impose. The Police Commissioner is the final authority on all disciplinary matters.

Transfer may be imposed for all disciplinary infractions.

Demotion may be imposed for all disciplinary infractions.

The "reckoning period" as used in this code is that period of time during which an employee is expected to have a record free of the same type of offense. All reckoning periods shall be completed from the date the first offense was committed. For subsequent violations to apply, it must be shown that the employee was provided formal notice (75-18s) of the first violation. Second and subsequent violations of the same section committed during the relevant reckoning period shall be treated as second or subsequent offenses. The same type of offenses committed after the reckoning period expires counts as a first offense. If the individual is found not guilty of a first offense at a Police Board of Inquiry hearing; then a second offense charged would be considered a first offense within the reckoning period.

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ARTICLE I

CONDUCT UNBECOMING

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
1-§001-10	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§002-10	Accepting bribes or gratuities for permitting illegal acts.	Dismissal	----------	----------	----------
1-§003-10	Failure to immediately report, in writing to their Commanding Officer, offers of bribes or gratuities to permit illegal acts.	10 days to Dismissal	Dismissal	----------	2 Years
1-§004-10	Failure to officially report corruption, or other illegal acts.	10 days to Dismissal	Dismissal	----------	Duration of Employment
1-§005-10	Failure to stop, or attempt to stop, an officer using force when that force is no longer required.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§006-10	Soliciting for attorneys, bondsman, tow operators or other unauthorized persons.	30 days or Dismissal	Dismissal	----------	2 Years
1-§007-10	Knowingly lying under oath to any material facts in any proceeding.	Dismissal	----------	----------	----------
1-§008-10	Failure to cooperate in any Departmental investigation.	10 days to Dismissal	30 days or Dismissal	Dismissal	Duration of Employment
1-§009-10	Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation.	10 days to Dismissal	Dismissal	----------	Duration of Employment
1-§010-10	Knowingly and willfully making a false entry in any Department record or report.	5 days to Dismissal	15 days to Dismissal	Dismissal	5 Years

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
1-§011-10	Abuse of authority	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§012-10	Unauthorized and/or excessive use of force in your official capacity.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§013-10	Knowingly and intentionally associating, fraternizing or socializing with persons actively engaged in criminal conduct, or fugitives from justice, or others that compromises, discredits, prejudices or otherwise makes suspect an employee's authority, integrity, or credibility.	20 days to Dismissal	Dismissal	----------	Duration of Employment
1-§014-10	Fighting/quarreling with members of the Department while one or both are on-duty.	Reprimand to 10 days	10 to 20 days	20 days to Dismissal	2 Years
1-§015-10	Engaging in threatening, or harassing, intimidating, or like conduct towards another member of the Police Department.	Reprimand to 10 days	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§016-10	Inappropriate language conduct or gestures to Police Department employees while on-duty.	Reprimand to 10 days	10 to 15 days	15 to 20 days	2 Years
1-§017-10	Inappropriate language conduct or gestures to the public while on-duty.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
1-§018-10	Sexual behavior while on-duty.	30 days or Dismissal	Dismissal	----------	Duration of Employment
1-§019-10	Sexual behavior in a city, state, or federally owned or leased vehicle or facility while off-duty.	30 days or Dismissal	Dismissal	----------	Duration of Employment

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
1-§020-10	Repeated violations of any Departmental rules or regulations.	30 days or Dismissal	Dismissal	----------	5 Years
1-§021-10	Any incident, conduct, or course of conduct, which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.	30 days or Dismissal	Dismissal	----------	5 Years
1-§022-10	Any act, conduct or course of conduct, which objectively constitutes discriminating or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§023-10	Inappropriate communication(s) based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity conveyed in any manner.	Reprimand to 15 days	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§024-10	Any act, conduct or course of conduct, which objectively constitutes sexual harassment.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
1-§025-10	On-duty or job-related inappropriate sexually based communication(s) conveyed in any manner.	Reprimand to 15 days	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
1-§026-10	Engaging in any action that constitutes the commission of a felony or a misdemeanor, which carries a potential sentence of more than one (1) year. Engaging in any action that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses). Also includes any action that constitutes the commission of an equivalent offense in another jurisdiction, state or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.	30 Days or Dismissal	Dismissal	----------	Duration of Employment

ARTICLE II

ABUSE OF ALCOHOL/CONTROLLED SUBSTANCES / PRESCRIPTION DRUGS

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
2-§001-10	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	2 Years
2-§002-10	Drinking alcoholic beverages while on-duty.	30 days or Dismissal	Dismissal	Dismissal	2 Years
2-§003-10	Odor of alcohol on breath while on-duty.	Reprimand to 10 days	10 to 15 Days	30 Days or Dismissal	5 Years
2-§004-10	Impaired on-duty.	30 days or Dismissal	Dismissal	----------	2 Years
2-§005-10	Intoxicated off-duty in full or partial uniform.	5 to 10 days	10 to 20 days	25 to 30 days	2 Years
2-§006-10	"Driving under the influence" off-duty.	30 days or Dismissal	Dismissal	----------	5 Years
2-§007-10	"Driving under the influence" pleas, convictions or ARD under one of the following circumstances: (a) a second or subsequent DUI offense while employed by the City of Philadelphia within the reckoning period (regardless of whether or not off-duty); (b) involving a hit and run of a person, vehicle or property; or (c) operating, driving or physically controlling a city, state, or federally owned/leased vehicle.	30 days or Dismissal	Dismissal	----------	5 Years
2-§008-10	Operating, driving or physically controlling a city, state, or federally owned/leased vehicle after imbibing in any amount of alcohol and/or illegal substance.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
2-§009-10	Socializing or drinking in an alcoholic beverage establishment in full or partial uniform while off-duty.	Reprimand to 5 days	5 to 10 days	10 to 15 days	2 Years
2-§010-10	Constructive or actual possession of alcoholic beverages not related to the legal confiscation of same while on-duty.	Reprimand to 10 days	10 to 20 days	20 to 30 days	2 Years
2-§011-10	Any use or ingestion of any illegal substances, prohibited under 35 P.S. §780-101 et seq.(Controlled Substance, Drug, Device and Cosmetic Act), or any substance that constitutes the commission of an offense under federal law or in any other jurisdiction, state or territory, either on or off-duty.	Dismissal	----------	----------	----------
2-§012-10	Inappropriate use of a prescription drug.	10 days to Dismissal	Dismissal	----------	5 Years
2-§013-10	Constructive or actual possession of a controlled substance not legally prescribed or related to the legal confiscation of same.	30 days or Dismissal	Dismissal	----------	5 Years

ARTICLE III

ESSENTIAL REQUIREMENTS FOR DUTY

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
3-§001-10	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
3-§002-10	Inability to perform the essential duties of a sworn police officer as defined by the Municipal Police Officer Education and Training Commission (MPOETC); inability to legally operate a motor vehicle; inability to or failure to maintain state certification under the MPOETC.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
3-§003-10	Prohibited from accessing, inputting or otherwise acquiring information from any law enforcement system, database, or program.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
3-§004-10	Failure to maintain a bona fide residence in the City of Philadelphia or Commonwealth of Pennsylvania consistent with the current collective bargaining agreement/civil service regulations.	Dismissal	----------	----------	----------

ARTICLE IV

INSUBORDINATION

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
4-§-001-10	Unspecified	Reprimand to 30 days	Reprimand to 30 days	Reprimand to 30 days	2 Years
4-§-002-10	Refusal to promptly obey proper orders from a superior officer.	5 to 30 days	15 days or Dismissal	Dismissal	2 Years
4-§-003-10	Profane, insulting, or improper language, conduct, or gestures toward, in the direction of, or in relation to, a superior officer.	5 to 10 days	15 to 30 days	Dismissal	1 Year
4-§-004-10	Threatening to or using physical force against a superior officer when either is on-duty.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
4-§-005-10	Omitting title when addressing any superior officer.	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
4-§-006-10	Reporting off sick in response to receiving an assignment.	5 to 10 days	10 to 20 days	30 days or Dismissal	2 Years

ARTICLE V

NEGLECT OF DUTY

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
5-§001-10	Unspecified	Reprimand to 15 days	15 to 30 days	30 days or Dismissal	2 Years
5-§002-10	Failure to take police action while on-duty.	Reprimand to 10 days	10 to 30 days	15 days to Dismissal	2 Years
5-§003-10	Failure to properly patrol area of responsibility.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§004-10	Failure to respond to an assignment by any means transmitted. (Use of personal cell phones shall not be required by officers.)	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§005-10	Failure to make a required written report.	Reprimand to 5 days	5 to 10 days	10 to 15 days	2 Years
5-§006-10	Failure to conduct a proper, thorough, and complete investigation.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year
5-§007-10	Asleep on duty.	Reprimand to 5 days	5 to 10 days	20 to 30 days	2 Years
5-§008-10	Unauthorized absence from assignment.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§009-10	Absence without leave for less than one (1) working day.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
5-§010-10	Absence without leave for a minimum of one (1) working day, but less than five (5) consecutive working days.	2 to 10 days	10 days to Dismissal	Dismissal	1 Year

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
5-§011-10	Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
5-§012-10	Failure to comply with the Department's off-duty policy.	Reprimand to 10 days	5 to 15 days	15 to 20 days	2 Years
5-§013-10	Failure to comply with a court notice or subpoena.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
5-§014-10	Allowing prisoner to escape through carelessness or neglect.	Reprimand to 10 days	15 to 20 days	25 to 30 days	2 Years
5-§015-10	Failure to take reasonable efforts to provide for the safety of prisoners while in police custody.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
5-§016-10	Failure to remove keys from police vehicle when unattended.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§017-10	Loss or damage to Police Department property resulting from negligence or from failure to properly care for same. (Excludes city-owned weapons)	Reprimand to 5 days and restitution	5 to 10 days and restitution	15 to 20 days and restitution	2 Years
5-§018-10	Lost or stolen city-owned weapon resulting from negligence or failure to properly care for same.	Reprimand to 15 days and restitution	20 days to Dismissal and restitution	30 days or Dismissal and restitution	5 Years
5-§019-10	Failure to properly care for and maintain a police vehicle.	Reprimand to 5 days	5 to 10 days	10 to 20 days	2 Years

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
5-§020-10	Performing any activity on-duty which does not relate to the duty assignment and which could interfere with the duty assignment.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year
5-§021-10	Failing to submit form 75-350, Change of Personnel Data, as prescribed.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year

ARTICLE VI

DISOBEDIENCE

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
6-§001-10	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	2 Years
6-§002-10	Absence from official duties without proper authorization during a declared emergency in the City of Philadelphia by the Mayor, the Governor of Pennsylvania, the President of the United States or their designees.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
6-§003-10	Failure to immediately notify the Department about any involvement of which they are aware in criminal litigation as the defendant.	30 days or Dismissal	Dismissal	----------	5 Years
6-§004-10	Failure to notify the Law Department of involvement in any civil action (whether a plaintiff, defendant or witness) arising from police duty within five (5) calendar days.	Reprimand to 5 days	5 to 10 days	15 days to Dismissal	2 Years
6-§005-10	Soliciting without proper authorization.	5 to 10 days	10 to 15 days	20 to 30 days	1 Year
6-§006-10	Failure to follow Departmental procedures for the handling of evidence, personal effects, and all other property taken into custody except narcotics, money, explosives, firearms, hazardous materials or forensic evidence.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
6-§007-10	Failure to follow Departmental procedures for the handling of narcotics, money, explosives, firearms, hazardous materials, or forensic evidence.	Reprimand to 5 days	5 to 10 days	30 days or Dismissal	2 Years
6-§008-10	Discharging, using, displaying or improper handling of a firearm while not in accordance to Departmental Policy.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	2 Years
6-§009-10	Improper or unauthorized use of Departmentally owned or leased equipment.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§010-10	Communicating or imparting local, state, or federal law enforcement information without authority or to unauthorized persons.	Reprimand to Dismissal	15 days to Dismissal	Dismissal	1 Year
6-§011-10	Having or operating private vehicle on beat or driving to or from a post without authorization.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§012-10	Failure to report on or off assignment as prescribed.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§013-10	Tardiness	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§014-10	Unauthorized persons in police vehicle.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§015-10	Carrying or possessing unauthorized equipment while on-duty.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§016-10	Wearing awards or citations on the uniform that have not been awarded.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
6-§017-10	When in uniform, failure to properly salute the Police Commissioner or a uniformed superior officer.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§018-10	Failure to give prescribed identification when answering the telephone.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§019-10	Refusal to give name and badge number when requested.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§020-10	Failure to provide a member of the public with the procedure, information or form concerning a complaint against police.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§021-10	Instituting a private criminal complaint as the result of dissatisfaction with the outcome of an official police action prior to notifying the Department about the action being taken.	Reprimand to 5 days	5 to 10 days	15 days to Dismissal	2 years
6-§022-10	No one shall, without being subpoenaed and previously notifying the Chief Inspector of the Office of Professional Responsibility, appear or give testimony as a character witness for any defendant in a criminal trial or inquiry.	5 to 15 days	15 to 30 days	Dismissal	2 years
6-§023-10	Unapproved outside employment.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year
6-§024-10	Prohibited outside employment.	5 to 10 days	15 to 20 days	25 to 30 days	1 Year

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
6-§025-10	Willfully damaging Police Department owned or leased property and/or equipment.	Dismissal	----------	----------	----------
6-§026-10	Interference with Police Radio broadcasting.	Dismissal	----------	----------	----------
6-§027-10	Intentionally providing inaccurate, misleading, or deceptive information to Police Radio regardless of how communicated, on or off-duty.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

ARTICLE VII

MOTOR VEHICLE VIOLATIONS

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
7-§001-10	Unspecified	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
7-§002-10	Involved in a preventable motor vehicle accident.	Reprimand to 3 days	3 to 5 days	5 to 10 days	1 Year
7-§003-10	Failure to follow Departmental procedures involving safe operation of a police vehicle [excluding pursuits and / or emergency driving].	Reprimand to 5 days	5 to 10 days	10 to 15 days	1 Year
7-§004-10	Failure to follow Departmental procedures involving pursuit and / or emergency driving.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
7-§005-10	Failure to notify Commanding Officer in writing whenever PA Operator's License has lapsed, or expired.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years

ARTICLE VIII

FAILURE TO SUPERVISE

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
8-§001-10	Unspecified	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
8-§002-10	Failure to review, approve, input, submit or distribute all required reports, forms, documents or notifications in any medium.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§003-10	Failure to properly supervise subordinates.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§004-10	Failure to take supervisory action.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§005-10	Supervisors shall not personally solicit subordinates in any manner for any item unless authorized by the Police Commissioner or their official designee.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years

BY COMMAND OF THE POLICE COMMISSIONER

Complaint Against Police (CAP) PBI

PBI #	Rank	CHARGE	CHARGE	CHARGE	CHARGE	CHARGE	DISPOSITION	PENALTY	Date
2013-0120	Lt	8-003-10					Not Guilty		6/11/2015
2013-0359	P/O	1-001-10					Guilty	Reprimand	2/24/2016
2013-0442	Det	1-011-10					Not Guilty		3/30/2015
2013-0443	Lt	8-003-10					Not Guilty		3/31/2015
2013-0444	Lt	8-003-10					Not Guilty		3/31/2015
2013-0445	Sgt	8-003-10					Not Guilty		3/30/2015
2013-0540	Det	5-006-10					Not Guilty		4/8/2015
2013-0541	Cpl	8-002-10					Not Guilty		4/8/2015
2014-0010	P/O	5-011-10					Not Guilty		2/25/2015
2014-0119	Sgt	1-012-10					Not Guilty		8/27/2015
2014-0331	Sgt	1-011-10					Guilty	Reprimand	4/16/2015
2014-0432	P/O	1-012-10					Not Guilty		10/15/2015
2014-0450	P/O	5-011-10					Guilty	Reprimand	4/14/2016
2014-0451	P/O	5-011-10					Guilty	Reprimand	4/14/2016
2014-0475	P/O	1-012-10					Not Guilty		10/28/2015
2014-0504	Cpl	8-001-10					Guilty Plea		1/11/2016
2014-0553	P/O	1-001-10					Guilty	Reprimand	1/19/2016
2014-0554	P/O	1-001-10					Not Guilty		1/26/2016
2014-0566	P/O	5-011-10					Guilty Plea	Reprimand	11/25/2015
2014-0567	Civ	5-011-10					Withdrawn		2/5/2015
2014-0582	P/O	1-012-10					Guilty	3 Days	1/7/2016
2014-0584	P/O	1-010-10					Not Guilty		1/29/2015
2014-0634	P/O	1-001-10					Guilty Plea	Reprimand	8/5/2015
2014-0689	P/O	1-009-10					Guilty Plea	6 Days	1/26/2015
2014-0725	P/O	5-006-10					Guilty Plea	Reprimand	1/13/2016
2014-0730	P/O	1-017-10					Not Guilty		8/25/2015
2014-0752	P/O	1-001-10	5-011-10				Not Guilty Guilty	Reprimand	2/17/2016
2014-0753	P/O	5-011-10					Not Guilty		2/17/2016
2014-0812	Lt	5-011-10					Not Guilty		8/19/2015

2015-0035	P/O	1-001-10					Guilty Plea	Reprimand	10/26/2015
2015-0074	P/O	5-011-10					CLD by DA	Reprimand	5/17/2016
2015-0112	P/O	5-006-10					CLD by DA	Reprimand	5/9/2016
2015-0125	P/O	1-009-10	5-011-10				Guilty Plea	15 Days 5 Days	5/7/2015
2015-0188	P/O	1-010-10	5-017-10				Guilty Plea	15 Days 5 Days	4/30/2015
2015-0195	P/O	1-001-10	6-005-10	6-024-10			Guilty Plea	10 Days 5 Days 5 Days	4/14/2015
2015-0196	Det	5-006-10					Not Guilty		3/16/2016
2015-0205	P/O	1-009-10	5-003-10	5-005-10	5-011-10		Not Guilty Guilty Guilty Guilty	Reprimand Reprimand 2 Days	6/2/2015
2015-0206	P/O	1-009-10	5-003-10	5-005-10	5-011-10		Not Guilty Guilty Guilty Guilty	Reprimand Reprimand 2 Days	6/2/2015
2015-0209	Sgt	8-003-10					Guilty	Reprimand	6/14/2016
2015-0211	P/O	5-011-10					CLD by DA	Reprimand	6/15/2016
2015-0212	P/O	5-011-10					CLD by DA	Reprimand	6/15/2016
2015-0213	Sgt	8-003-10					Guilty Plea	Reprimand	6/15/2016
2015-0214	P/O	5-006-10					Not Guilty		10/17/2016
2015-0228	P/O	6-008-10					Guilty	30 Days	6/4/2015
2015-0230	P/O	6-008-10					Guilty Plea	1 Day	7/6/2015
2015-0231	P/O	6-008-10					Guilty Plea	Reprimand	6/29/2015
2015-0260	P/O	1-009-10					Guilty Plea	10 Days	8/1/2016
2015-0310	P/O	5-012-10					Guilty Plea	3 Days	11/9/2015
2015-0399	P/O	1-010-10	1-011-10				Guilty Plea	5 Days 15 Days	8/18/2015
2015-0411	Det	1-011-10	5-011-10				Not Guilty		5/11/2016

2015-0501	Det	1-009-10	5-006-10	6-007-10			Guilty	10 Days 5 Days 5 Days	12/17/2015
2015-0502	Lt	8-003-10					Not Guilty		12/17/2015
2015-0610	P/O	5-008-10					CLD by DA	Reprimand	10/8/2015
2015-0756	P/O	1-010-10	5-006-10				Guilty Plea	5 Days Reprimand	8/25/2016
2015-0855	P/O	5-011-10	5-012-10				Guilty Not Guilty	Reprimand	3/23/2015
2015-0882	P/O	1-008-10	1-011-10				Not Guilty		6/16/2016
2015-0883	P/O	1-001-10	5-006-10				Not Guilty		6/16/2016
2015-0894	P/O	7-004-10					CLD by DA	Reprimand	9/22/2016
2015-0898	P/O	1-009-10	5-011-10				Guilty Plea	Reprimand	1/31/2017
2015-0899	P/O	1-009-10	5-011-10				Withdrawn		1/31/2017
2015-0970	P/O	5-005-10					Guilty	1 Day	3/7/2017
2015-0982	P/O	5-011-10	6-010-10				Guilty Plea	Reprimand 3 Days	8/16/2016
2016-0004	Lt.	1-001-10	5-011-10				Guilty Plea	1 Day	11/23/2016
2016-0070	SCG	5-011-10					Guilty Plea	Reprimand	2/14/2017
2016-0082	P/O	5-011-10					CLD by DA	Reprimand	5/16/2017
2016-0115	PCD	1-001-10					Not Guilty		8/9/2016
2016-0118	P/O	5-011-10					Withdrawn		11/10/2016
2016-0229	P/O	1-001-10	1-009-10	5-008-10	6-009-10		Guilty Plea	3 Days Withdrawn 2 Days Reprimand	9/28/2016
2016-0231	P/O	5-012-10					Guilty Plea	1 Day	9/21/2016
2016-0248	P/O	1-012-10	5-011-10				Not Guilty		4/18/2017
2016-0276	P/O	1-001-10	1-009-10				Not Guilty		1/18/2017
2016-0277	Sgt.	1-001-10					Not Guilty		1/18/2017
2016-0311	P/O	5-006-10					CLD by DA	Reprimand	8/22/2017
2016-0312	P/O	5-006-10					CLD by DA	Reprimand	8/22/2017
2016-0313	Sgt.	8-002-10					CLD by DA	Reprimand	8/22/2017
2016-0346	PCO	4-003-10					Not Guilty		5/27/2017

2016-0471	P/O	5-011-10					CLD by DA	Reprimand	6/7/2017
2016-0474	P/O	1-012-10					Not Guilty		11/1/2016
2016-0486	P/O	1-001-10					Guilty Plea	1 Day	7/10/2017
2016-0499	P/O	1-001-10					Guilty Plea	4 Days	11/7/2016
2016-0555	Det.	5-006-10					Not Guilty		5/15/2017
2016-0602	P/O	1-009-10	1-010-10	6-007-10			Not Guilty Guilty Guilty	5 Days Reprimand	1/5/2017
2016-0671	Det.	6-010-10					Guilty Plea	Reprimand	8/28/2017
2017-0040	P/O	5-006-10					CLD by DA	1 Day	5/18/2017
2017-0138	P/O	6-008-10					Guilty Plea	3 Days	10/19/2017
2017-0190	Sgt.	1-017-10	8-004-10				Guilty	Reprimand Reprimand	2/6/2018
2017-0207	P/O	1-001-10					Guilty Plea	20 Days	8/21/2017
2017-0373	P/O	1-012-10					Not Guilty		1/30/2018
2017-0396	Sgt.	6-009-10					CLD by DA	Reprimand	5/30/2018
2017-0515	Sgt.	1-012-10					Guilty	Reprimand	5/1/2018
2017-0542	Sgt.	1-017-10	5-011-10				Not Guilty Guilty	Reprimand	1/17/2018
2017-0546	P/O	5-006-10					CLD by DA	Reprimand	5/16/2018
2017-0549	P/O	5-011-10					CLD by DA	Reprimand	5/23/2018
2018-0016	PCD	5-011-10					Guilty Plea	1 Day	2/21/2018
2018-0022	P/O	1-012-10	5-011-10				Guilty	3 Days 1 Day	8/15/2018
2018-0035	P/O	1-009-10	5-005-10				Guilty	10 Days Reprimand	1/22/2019
2018-0036	P/O	1-009-10	5-005-10				Guilty	10 Days Reprimand	1/22/2019
2018-0037	Sgt.	1-017-10	5-006-10	8-003-10			Not Guilty Guilty Not Guilty	Reprimand -----	4/3/2018
2018-0058	Sgt.	1-017-10					Not Guilty		8/16/2018
2018-0293	P/O	3-002-10					Guilty Plea	3 Days	10/16/2018
2018-0294	P/O	1-009-10					Not Guilty		10/25/2018

2018-0354	P/O	1-001-10					Guilty Plea	Reprimand	12/11/2018
2018-0371	P/O	5-011-10	6-010-10				Guilty Plea	Reprimand	12/13/2018
2018-0377	Sgt.	8-002-10					Guilty Plea	1 Day	11/26/2018
2018-0379	P/O	5-012-10					Guilty Plea	Reprimand	1/28/2019
2018-0380	P/O	1-017-10					Guilty	Reprimand	11/13/2018
2018-0381	P/O	1-017-10					Guilty	3 Days	11/13/2018
2018-0409	P/O	1-011-10					Guilty Plea	4 Days	2/11/2019
2018-0463	P/O	5-011-10					Not Guilty		1/17/2019
2018-0519	P/O	1-001-10					Not Guilty		4/23/2019
2018-0520	P/O	5-006-10					Not Guilty		4/23/2019
2018-0539	P/O	1-010-10	5-011-10				Guilty Plea	Reprimand 1 Day	2/28/2019
2018-0625	P/O	1-001-10	5-011-10	6-010-10			Guilty Plea	10 Days 3 Days 3 Days	4/25/2019
2018-0626	Sgt.	5-006-10					CLD by DA	Reprimand	4/25/2019
2018-0683	P/O	5-011-10					Guilty	Reprimand	6/18/2019
2018-0684	P/O	5-011-10					Guilty	Reprimand	6/18/2019
2018-0754	PCD	1-009-10	5-011-10				Guilty	10 Days Reprimand	6/11/2019
2018-0765	P/O	1-008-10	1-017-10				Guilty Plea	5 Days 3 Days	12/12/2018
2018-0799	Det.	1-009-10					Guilty	10 Days	5/2/2019
2018-0806	P/O	1-011-10					CLD by DA	1 Day 1 Day	7/10/2019
2019-0170	P/O	5-006-10	5-011-10				CLD by DA	Reprimand Reprimand	9/17/2019
2019-0171	P/O	5-006-10	5-011-10				CLD by DA	Reprimand Reprimand	9/17/2019
2019-0211	Sgt.	5-011-10					Guilty	3 Days	8/6/2019
2019-0212	Lt.	1-011-10	8-001-10				Not Guilty		8/7/2019
2019-0213	P/O	5-011-10					Withdrawn		9/26/2019
2019-0214	Sgt.	5-006-10					CLD by DA	2 Days	9/26/2019

2019-0235	Sgt.	5-011-10	8-001-10				Not Guilty Guilty	Reprimand	8/5/2019
2019-0438	Sgt.	1-012-10	5-011-10				Guilty	5 Days 1 Day	11/25/2019
2019-0624	P/O	1-017-10					Guilty	Reprimand	8/4/2020
2019-0708	Det.	3-003-10	5-011-10				Not Guilty		8/31/2020
2019-0717	PCD	5-011-10					Guilty	Reprimand	10/8/2020
2019-1197	P/O	1-001-10					Not Guilty		9/22/2020
2019-1307	Sgt.	1-012-10					Not Guilty		9/30/2020
2019-1308	P/O	5-011-10					CLD by DA	Reprimand	9/30/2020
2019-1309	P/O	5-011-10					CLD by DA	Reprimand	9/30/2020
2019-1324	P/O	5-011-10	6-006-10				CLD by DA	Reprimand Reprimand	8/25/2020
2019-1325	Det.	5-011-10					Withdrawn		3/30/2020
2019-1347	P/O	5-011-10					CLD by DA	Reprimand	3/12/2020
2019-1648	P/O	1-011-10	1-017-10	5-011-10			Guilty Not Guilty Guilty	2 Days ------- Reprimand	2/3/2020
2020-0003	Cpl.	1-011-10	4-001-10				Not Guilty		8/24/2020
2020-0128	PCD	5-011-10					Guilty	3 Days	8/13/2020
2020-0242	Sgt.	6-010-10					Guilty Plea	2 Days	9/4/2020
2020-0337	P/O	1-001-10					Guilty	Reprimand	9/23/2020

Cases reviewed in depth for Part 1 of Report

Awaiting the Police Commissioner's decision and/or final paperwork from Police Personnel

PBI Board Member Survey

The Police Advisory Commission (PAC) and the PPD are working on a collaborative review of the Police Board of Inquiry (PBI). One of the goals is to gain a deep understanding of how the PBI hearings function, and then make recommendations for reforms so that the hearings can better serve the PPD and Philadelphia residents.

In order to accomplish this goal, we feel it is important to hear from PPD personnel who have served on PBI boards. Your firsthand knowledge will be invaluable.

We want to assure you that the information you provide to the PAC will be kept confidential. Candid feedback about your experiences with PBI will inform our recommendations, but we will not share your name or reveal what you tell us to anyone outside of the PAC. Your duty to participate in this survey is outlined in Executive Order 2-17.

Please contact PAC Policy Analysts Anjelica Hendricks (anjelica.hendricks@phila.gov) and Janine Zajac (janine.zajac@phila.gov) with any questions or concerns.

Please complete this survey by Wednesday, April 7, 2021.

* Required

1. What is your rank? *

Mark only one oval.

- ◯ Chief Inspector
- ◯ Inspector
- ◯ Staff Inspector
- ◯ Captain
- ◯ Lieutenant
- ◯ Sergeant
- ◯ Corporal
- ◯ Detective
- ◯ Police Officer
- ◯ Civilian

2. Why did you choose to become part of the pool of personnel able to serve on PBI boards? *

Serving on a PBI Board

Please answer the following questions. Please answer the questions the same, regardless if you acted as the board president or as a board member.

3. Please estimate the number of PBI hearings for which you were called to sit on a board. *

Mark only one oval.

- 0
- 1
- 2-4
- 5-7
- 8+
- I do not recall

4. How much notice did you receive before you were required to serve on your most recent PBI board? *

Mark only one oval.

- 1 day
- 2-3 days
- 4-6 days
- A week or more
- I do not recall

5. Do you believe the amount of notice given to PBI members before they are scheduled to appear to serve on a board is sufficient? *

Mark only one oval.

- Yes
- No
- Sometimes

6. What is the standard of evidence for finding an officer guilty or not guilty of misconduct at a PBI hearing? *

Mark only one oval.

- Beyond a reasonable doubt
- Clear and convincing evidence
- Preponderance of the evidence
- Other

7. Did you receive instructions about the standard of evidence before deliberating the case(s) with the other PBI board members? *

Mark only one oval.

- ◯ Yes, during the hearing
- ◯ Yes, during training about PBI
- ◯ No
- ◯ I do not recall
- ◯ My case(s) settled with a plea before the hearing began

8. Would additional refresher trainings about administrative adjudication help you fulfill your responsibilities as a PBI board member? *

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ Maybe

9. Did the case(s) you adjudicated include any charges that you felt did not match with the facts of the case? *

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ I do not recall
- ◯ I did not adjudicate any cases

10. Were there any instances in which you may have come to a different finding if the charges were different? *

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ I do not recall
- ◯ I did not adjudicate any cases

11. Did you ever have any concerns about the IAD investigation related to a case you adjudicated as a board president or member? *

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ I do not recall
- ◯ I did not adjudicate any cases

12. If yes, please describe your concerns about the investigation. If you had no concerns, please write "no concerns." *

13. What stands out in your mind about your experiences serving on PBI boards? Were your experiences mostly positive or negative? *

14. Who should be responsible for prosecuting discipline cases brought against PPD personnel at PBI hearings? *

Mark only one oval.

- ◯ An officer from the PPD who is NOT an attorney acting as the Department Advocate
- ◯ An officer from the PPD who is an attorney acting as the Department Advocate
- ◯ An attorney from the City Solicitor's office
- ◯ An attorney from the Citizens Police Oversight Commission's Administrative Prosecution Unit
- ◯ Other: _____

15. Please explain your answer to the previous question. (Who should be responsible for prosecuting discipline cases brought against PPD personnel at PBI hearings?) *

16. Who should be responsible for deciding if PPD personnel are guilty or not guilty in discipline cases heard at PBI? *

Mark only one oval.

- ◯ PPD officers and/or supervisors
- ◯ Civil service commission
- ◯ Civilian hearing examiners
- ◯ A combination of two or more of the above
- ◯ Other: _____

17. Please explain your answer to the previous question. (Who should be responsible for deciding if PPD personnel are guilty or not guilty in discipline cases heard at PBI?) *

_____

_____

_____

_____

_____

18. For hearings that resulted in a guilty finding, what factors influenced the penalty you recommended? If none of your hearings resulted in a guilty finding, please enter "N/A". *

_____

_____

_____

_____

_____

19. If you could change anything about PBI hearings, what would you change and why? *

20. Please share any other information that you think would be useful as the PAC and PPD examine PBI hearings. *

21. Thank you for participating in this survey. Please provide your name and contact information below. This information will only be used by PAC staff if follow-up is needed. Your name and responses will be kept confidential. *

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MEMORANDUM

POLICE
CITY OF PHILADELPHIA
DATE: 2-10-20

TO : Police Headquarters Security Unit

FROM : Lieutenant Kenneth Michvech #91, Department Advocate, Police Board of Inquiry

SUBJECT : **ACCESS TO PBI HEARING**

1. PBI hearings are conducted Monday through Thursday for both sworn and unsworn personnel. There are many witnesses (sworn and civilian) that are necessary for these hearings. Sworn and unsworn departmental personnel will have a court notice for the listed date. Civilian witnesses will have a letter signed by myself requesting their attendance at the hearing for a listed date.

2. The procedure for civilian witnesses will be the following:

   - The civilian will be required to produce the letter requesting their attendance.
   - Civilians will need to adhere to Directive 7.3, Police Headquarters Building Security Regulations (Section 2-D).
   - Civilians with letters will need to be screened through the metal detector prior to calling PBI at 215-686-3281/3286. After they are properly screened, an officer from PBI will escort the civilian back to L-3.

3. PBI will be called for civilians that do not have a letter requesting their attendance.

   - An officer from PBI will ascertain if the civilian will be granted access to L-3.
   - This will apply to members of the Police Advisory Commission (PAC), members of the media, and any other civilian requesting access to the PBI.

_____
Kenneth Michvech
Lieutenant #91
Department Advocate
Police Board of Inquiry

COLLABORATIVE REVIEW AND REFORM OF PBI
PART 1
RECOMMENDATION LIST

OBJECTIVE 1 – INVESTIGATIVE OUTCOMES AND COMMAND LEVEL DISCIPLINE

Due to delays in data delivery, the review of data related to command level discipline is not complete and cannot be delivered at this time. This objective will be discussed in a later report, but some initial observations about the use of command level discipline are addressed in Objective 2.

OBJECTIVE 2 – PBI CHARGING UNIT

Recommendation 1: The PPD should draft, in collaboration with CPOC, a more comprehensive policy that narrows the circumstances in which training and counseling can be used as an alternative to formal discipline charges. Since training and counseling has been used in 76% of sustained instances of misconduct, Part 2 of this report will offer a guide for how to narrow its practice when a full data analysis is complete.

Recommendation 2: In bringing charges against PPD personnel for sustained misconduct, the charging authority should bring all charges that are applicable.

Recommendation 3: Before discipline charges related to CAPS are delivered to an officer, PAC/CPOC should review the charges to ensure accuracy and completeness.

OBJECTIVE 3: PBI DEPARTMENT ADVOCATE PROCEDURES

Recommendation 4: Notifications to complainants and witnesses should be checked for accuracy and sent across several avenues such as text message, telephone and email. To enhance accountability of this process, staff should sign logs attesting to accuracy review and additional investigation to locate new contact information if needed. Without a log, it would be difficult to determine which individual contributed to the faulty notification.

Recommendation 5: The Department Advocate should request continuances to ensure notice was given to complainants and witnesses and that forwarding addresses are accurate.

Recommendation 6 – PBI hearings should begin promptly at their scheduled start times.

Recommendation 7: All individuals with relevant information should be asked to attend hearings and at times, expert testimony should be provided.

Recommendation 8: The PPD should include civilians as discipline hearing adjudicators, and should include this in negotiations with the FOP so that civilians can participate regardless of what provisions are included in the final CPOC legislation.

Recommendation 9: The PPD should work with PAC/CPOC staff to design the qualifications and specifications for the civilian PBI board member role, as well as to interview, select, and train candidates.

Recommendation 10: Jury verdict forms with interrogatories should be used to narrow the scope of the PBI board's review.

Recommendation 10-A: Unspecified charges should be authorized only if the charge is unable to be described in the existing code. When the conduct has not been described elsewhere, the charging documents should include, and the PBI panel should be reminded, that this charge specifically requires the panel to solely determine if the conduct compromised the integrity of the Department.

Recommendation 11: PBI voting sheets should require each member of a PBI board to document their reasons for their recommendations to the Police Commissioner regarding their findings and their discipline recommendations, if applicable.

Recommendation 12 – The PPD should update the mission statement of the PBI to reflect the duty to provide justice not only to officers but also to residents of Philadelphia who have been victims of police misconduct.

OBJECTIVE 4 – EFFECTIVENESS OF PBI DEPARTMENT ADVOCATE

Recommendation 13 – Attorneys not affiliated with the PPD should prosecute administrative discipline cases.

Recommendation 14: Regardless of who is responsible for administratively prosecuting discipline cases in the future, there should be more personnel dedicated to the prosecutorial role.

Recommendation 15: Charges that challenge the character/credibility/honesty of the officer should not be withdrawn in exchange for guilty pleas.

Recommendation 16 – The standard of evidence for IAD investigations and PBI hearings should be clearly defined in all public and internal documents related to the discipline process including but not limited to Directive 8.6 and PBI board voting sheets, and recited to PBI board members at every PBI hearing.

Recommendation 17 – The PPD should utilize an employee other than the Department Advocate to manage the administrative functions of PBI hearings.

OBJECTIVE 5 – ACCESSIBILITY OF PBI HEARINGS

Recommendation 18 – The PPD should hold PBI hearings in a room that can accommodate observers and it dedicated strictly to hearings.

Recommendation 19 - **The PPD should revise the security desk policy to clearly state the circumstances in which civilians may be denied access to PBI hearings. Ease of access should be paramount upon entry to a PBI hearing.**

Recommendation 20 – **The PPD should utilize technology available for virtual calls to make PBI hearings more accessible to civilian complainants and witnesses.**

Recommendation 21– The PPD should create standard operating procedures for PBI hearings that are accessible at all times to PPD personnel and the public.

Recommendation 22 – **The PPD should record the entirety of PBI hearings including closing arguments to create a complete record of each PBI hearing.**

Recommendation 23 - Procedural information about PBI hearings, including but not limited to rules, training materials, and a public hearing calendar should be in one place on the PPD website for easy accessibility by the public.

OBJECTIVE 6 – PBI BOARD SELECTION AND TRAINING

OBJECTIVE 7 – FEEDBACK FROM COMMUNITY

Objectives 6 and 7 will be addressed in a later report.

OTHER OBSERVATIONS: PBI VERDICT AUDITS

Recommendation 24: To determine if ineffective Department directives contributed to the hearing outcome, a copy of all hearing transcripts, relevant evidence, witness statements and not guilty memos associated with PBI hearings should be forwarded to PAC/CPOC for post-trial audits. These audits would serve as holistic reviews of PBI cases to identify any policy or practice issues uncovered in the investigation, charging process, or PBI hearing.

OTHER OBSERVATIONS: EVEN IF FOUND GUILTY, PENALTY IS USUALLY A REPRIMAND

Recommendation 25: An advisory disciplinary matrix should be created by the Police Commissioner, with input from CPOC. The disciplinary matrix should state a presumptive penalty for infractions, with mitigating and aggravating factors, to determine discipline.