

Staff Report

January 10, 2006

TO: Davis City Council

FROM: James W. Antonen, City Manager

SUBJECT: Report on Ongoing Changes to the Police Department

Recommendation

Informational

Fiscal Impact

Several of the initiatives listed below have no cost (except staff time) to the Police Department or the City. However, initiatives #1, #2, and #5 have minor costs. Initiative #1 has an estimated cost of \$17,000, #2 has an estimated cost of \$15,000, and #5 costs have not been determined as the stipend paid to participants mentioned has not been determined. The funding source for these programs has not been determined.

Council Goal

Public Safety

Background and Analysis

In democratic societies, the police are accountable for many things. Most significantly, the police are held responsible for the efficiency and effectiveness with which they deal with crime and disorder, as well as for the manner in which they use lethal and non-lethal force, and for the legality, professionalism, and respect with which they treat people.

But to whom are police accountable? While police in authoritarian societies are answerable only to themselves, police in democratic societies are accountable to an array of bodies. These include the legislature, the courts, federal and state grand juries, and society as a whole through the media and organizations of citizens. In the case of our city, there no fewer than 19 separate local, state and federal police review systems currently in place. Examples of those systems include:

LOCAL

- City Council
- City Manager
- Police Chief
- Police Managers and Supervisors
- Professional Standards Unit
- District Attorney
- Criminal Court
- Civil Court
- Media
- County Grand Jury
- Special interest groups

STATE

- State Attorney General's office
- California Department of Justice
- Department of Motor Vehicles
- State Appellate Courts

FEDERAL

- FBI
- US Attorney
- Federal Courts
- Federal Grand Jury

Clearly, police in our community already submit to overlapping and elaborate legal structures intended to support the fundamental right of all residents to be free from misuse of police power. The legal system provides mechanisms to enforce basic rights and to provide redress for those whose rights have been violated. Remedies for the abuse of police power abound throughout the legal system and are applied in both criminal and civil law contexts. An independent judiciary is meant to be the guarantor in the enforcement of fundamental rights.

There are some who argue that civilian oversight should reach even farther into policing. There are debates today about whether, and to what degree, the discretion of police departments to impose discipline on officers who abuse power should be subject to oversight or control by persons or groups outside the current review systems. Similarly, there is debate concerning the degree to which the power to direct local police affairs should be surrendered by local government in favor of independent boards, monitors, commissions, or quasi-judicial bodies like some citizen review boards.

One oversight mechanism often referenced in discussions of these topics is a Police Review Commission (PRC). Proponents maintain a PRC exercises meaningful authority over police agencies and improves community satisfaction with, and trust in, its police department.

Proponents have stated there are 100-150 cities around the country with some type of civilian review. If that number is accurate, it amounts to less than 1 percent of the approximately 19,000 local law enforcement agencies across the country. Most of those are in major metropolitan areas like New York, Los Angeles, Seattle, and Chicago. The

National Association of Civilian Oversight of Law Enforcement (NACOLE) currently lists 14 police oversight bodies in the State of California.

In order to fully consider this method of oversight, I have examined the performance of PRCs in a number of cities where they operate and taken into consideration a number of other factors related to their effectiveness. This examination revealed important reasons for concern regarding the appropriateness of this model for our community:

- The PRC is the most costly of all oversight options. For example, the Berkeley PRC has an annual budget of approximately \$525,000; Berkeley pays an administrative law judge \$60,000 annually for hearing reviews, and the police department spends another approximately \$25,000 per year in overtime for officers to participate in the PRC process. The New York Civilian Complaint Review Board (CCRB) has a budget of \$11.2 million and has 173 employees.
- In many cases, the PRC duplicates existing efforts since the department also is required to investigate the complaint.
- A PRC process does not necessarily insure a fair, thorough, timely, and quality product. In fact, the establishment of a PRC likely would increase, rather than shorten the time required to resolve complaints. For example, the New York Civilian Complaint Review Board (CCRB) takes an average of 249 days to complete an investigation. The median time for a Davis Police Department investigation is 45 days. In the City of Berkeley, the PRC is frequently much slower than the police department in their investigations. Often the police department has investigated and imposed discipline before the PRC has even begun its investigation.
- The establishment of an investigation mechanism outside current structures raises difficult questions regarding the city's ability to comply with the Peace Officers' Bill Of Rights. Likewise, the establishment of a PRC creates compliance issues with the current MOU between the City of Davis and the police officer's union.
- Since the PRC may have access to confidential/restricted information, managing improper release of this information could well become problematic for the City.
- The establishment of a PRC cannot be expected to create a dividend in terms of greater satisfaction on the part of complainants. In fact, there is evidence to suggest the opposite is true. Research from UC Berkeley Professor Douglas Perez has shown that 89 percent of complainants are just as unhappy with an unfavorable finding from a PRC review as with an unfavorable finding from a police department.

Additionally, the head of the New York CCRB wrote in the Ohio Law Review that her experience in New York showed that “64% of complainants were not satisfied with their experiences with citizen review and most believed the process was biased against them. Significantly, moreover, complainants’ dissatisfaction with CCRB rose *the further they pursued their complaints*- with 84% of those who had their complaints fully investigated expressing dissatisfaction with the complaint review procedure.”

- There is evidence suggesting the findings of PRCs often are overturned upon further review. In many cases, civilian commissioners are not trained in police procedures or in the realities of the profession. As a result, those decisions that differ from police department findings often must be reversed.

The Berkeley PRC, for example, has had 18 appeals to their sustained findings in the last 3 years. According the City of Berkeley, 17 of those 18 findings were overturned by the administrative law judge who hears these appeals. The one employee who had the one unsuccessful appeal had already been found responsible by the Berkeley Police Department.

- Further, these disparities in findings between a PRC and a police department have been credited with eroding, rather than enhancing, the trust a community places in its police force.

Fortunately, methods of ensuring adequate civilian oversight are not limited to this troubled PRC model. To ensure our community achieves an adequate level of civilian input into police operations and to ensure that our police department remains an example of effective and responsible policing, I will implement the following changes:

1. Increased Training

I have directed all city departments to increase their training in areas of diversity and inclusion. In the police department, an effort to develop “Inclusion Training” has been in progress for almost a year. This program should go into effect at the beginning of 2006. “Inclusion Training” emphasizes understanding and appreciating people with different views and belief systems and includes topics beyond diversity issues.

The “Inclusion Training” program is modeled after similar programs in Sacramento and San Diego.

Cost: This will cost \$17,700 for program to train those who will in turn train department personnel. This figure includes consulting fees.

2. CALEA (Commission on Accreditation for Law Enforcement Agencies)

CALEA seeks to develop a set of law enforcement standards and to establish and administer an accreditation process through which law enforcement agencies could demonstrate voluntarily that they meet professionally-recognized criteria for excellence in management and service delivery.

The commission was created in 1979 through the combined efforts of four major law enforcement organizations: the International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Sheriffs' Association, and Police Executive Research Forum. These organizations continue to serve in an advisory capacity to the Commission and are responsible for appointing members of the Commission.

Approximately four years ago the Police Department began exploring CALEA as a means to focus its time, energy, and efforts. However, it was at this same time Chief Ruiz announced his retirement, so the effort was put on hold. In the past two and half years that Chief Hyde has been with the City, the Police Department has focused a lot of attention on community outreach and getting the department shifted towards a Community Oriented Policing and Problem Solving (COPPS) approach.

There has been tremendous success in this community policing effort. The Chief and I now feel that the police department is ready to begin the significant and rewarding effort of getting CALEA certification.

More information can be founded on CALEA's website at <http://www.calea.org/>

Cost: The cost of the program is approximately \$15,000, plus the staff time, which at times can be considerable. Many agencies have at least one full time person assigned to this task.

3. Citizen Advisory Board (CAB)

A board of 12 people representing a cross-section of the community based on race, religion, gender, representation (e.g., business community) and other factors has been formed under the Police Chief. The members are selected by the Police Chief with the City Manager's approval and serve at the will of the Chief and the City Manager.

This board meets with the Chief on a monthly basis to provide input to the Chief regarding constituent concerns. Additionally, the CAB members will take information away from the police department back into the community. This Board has broad public representation and input into the police department. Most importantly, CAB opens and sustains on-going dialogue with key members of the community on issues of mutual concern.

It is worth noting that this Board achieves a recommendation made as part of the 2000 Arroyo Report and was a previously stated police department 2005-2008 Strategic Plan goal.

The Citizen Advisory Board has no review power over complaint investigations

Cost: This program has no direct additional monetary cost to the City, as the citizens will be volunteers.

4. Annual Report to City Council

The Police Chief made a presentation to Council on critical issues facing the Police Department in December 2005. Council provided feedback that they found this information enlightening and useful. Therefore, I have directed the Police Department to annually (in December) make a similar report to Council. This report would include information on crime, citizen's complaints (e.g., how many and the nature of the complaints), training completed by the police department, and enforcement data (e.g., number of citations and arrests).

Cost: This program has no cost, except staff time.

5. Police Advisory Committee (PAC)

I consider the establishment of a Police Advisory Committee to be an important extension of the significant progress the Police Department has made toward becoming a truly community-oriented agency.

The PAC is a panel of 3 people appointed by the City Manager who serve as a liaison to the City Manager on police issues. The PAC is a hybrid model incorporating many themes and best practices in policing. The commission serves as an advisory body, operating outside of the police department. Panel members are selected to represent a cross section of the interests and could even come from outside of Davis. They are considered "leaders" in the justice system. The members of the committee serve wholly at the will of the City Manager. The PAC will meet on a quarterly basis, but could meet more frequently if needed.

While the Committee will review fully adjudicated police complaints/investigations and make recommendations to the City Manager, they will not be part a formal part of the disciplinary process. That role is reserved for the City Manager. Their primary function in reviewing citizen complaints is to look for trends and for the thoroughness of the investigations.

Additionally, like the CAB, the PAC will dialogue with the City Manager on any issues of concern regarding the police. This includes, but is not limited to issues of policies and procedures, use of force and community outreach. Unlike the CAB, as set forth above, the PAC has the specific responsibility to review of citizen complaints against the police department.

Cost: Commensurate with this responsibility, the Committee members will receive a reasonable stipend.

Conclusion

In the last three years the Davis Police Department has responded to over 160,000 calls for service and received 72 citizen complaints, of which three citizen complaints were sustained. These three complaints involved two complaints for rudeness and one complaint for improper disposal of a found knife.

The Police Department has made great strides in community outreach over the last 2 ½ years. Examples of this can be seen in the quarterly neighborhood meetings, website revisions to provide crime mapping information, neighborhood e-mail access to officers, community workshops on cyber crime, adult and youth academies, rape awareness defense, community education forums, robbery prevention, party management, and bar safety for businesses.

I am convinced that the Davis Police Department and the Police Chief are fully committed to treating all individuals in a fair and professional manner. They are also understanding and responsive to community concerns. A good example of that can be seen in the department's response to community concerns on hate crimes. They assigned an investigator full time to investigate hate crimes when they occur; they created an innovative website reporting hate crimes to the community, and they created a community hate crime response committee to advise the Chief on hate crime issues. The department is now recognized as a leader in sharing information and investigation of hate crimes. This is a clear indication of their pledge to constant improvement and community policing.

Additionally, the police department has demonstrated its willingness for openness when they implemented an in-car camera program. The finishing touches to that program are taking place now, with full implementation expected by February 2006. The video of these cameras will be available for the PAC to review when part of a citizen's complaint.

In conclusion, the Davis Police Department is an ethical police department that does not tolerate biased-based policing in any form, from any employee. I believe the changes listed will make an already excellent police department even better.

References and Sources

- *1. City of Berkeley's PRC policies and procedures and the website for their PRC
<http://www.ci.berkeley.ca.us/prc/ords®s.htm>
- *2. Review of National Police Oversight Models for The Eugene Police Commission, Police Assessment Resource Center, February 2005.
- *3. Best Practices Review – Police Complaint Investigations and Civilian Review, City and County of San Francisco, April 2003.
- *4. "The Unfulfilled Promise of Citizen Review", Debra Livingston, Ohio State Journal of Criminal Law, 2004.
5. National Association for Civilian Oversight of Law Enforcement (NACOLE) website
<http://www.nacole.org/>
6. Perez, Douglas W. Perez, Common Sense About Police Review. Philadelphia: Temple University Press, 1994
7. US Department of Justice, "Principles for Promoting Police Integrity, January 2001

*information included with Council packet