

# **Coping with Police Misconduct in West Virginia**

## **Citizen Involvement in Officer Disciplinary Procedures: A Review of Existing Law, Legislative Initiatives, and Disciplinary Models**

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**West Virginia Advisory Committee to  
The U.S. Commission on Civil Rights**

**January 2004**

This report of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements in this report should not be attributed to the Commission, but only to the participants at the town meetings, other individuals or documents cited, or the Advisory Committee.

## **The United States Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; submit reports, findings, and recommendations to the President and Congress; and issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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## Letter of Transmittal

West Virginia Advisory Committee to  
the U.S. Commission on Civil Rights

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Over the past 10 years, the West Virginia Advisory Committee produced three reports on civil rights issues in its state, each having significant portions devoted to overall police-community relations. The Committee conveyed the concerns of community advocates, former police chiefs, and citizens that various forms of police misconduct, including unnecessary force, have occurred in many areas of the state, and may regrettably continue. A concern frequently raised is whether existing police disciplinary procedures used by state and local law enforcement agencies can effectively address the problem. Persons who believe more could be done call for the creation of an independent police review board at the state and local levels that could monitor instances of brutality and misconduct and report to the public that appropriate corrective action was taken against offending officers.

In June 2003, one month after the Committee released its most recent report, *Civil Rights Issues in West Virginia*, the West Virginia legislature's Joint Select Committee on Minority Issues held a hearing. The report served as a basis for a discussion of police-community relations, and the Committee's knowledge of the topic and ongoing information collection were noted. Following the hearing, the Committee was invited to share its insights on whether review boards (or a similar entity) were feasible for West Virginia. It subsequently prepared a draft background paper describing current methods of police officer discipline and information it discovered in the course of its research. In a vote of 12 to 1, no abstentions, the Committee elected to issue a more detailed report to make the information available to police officers, public officials, and the general public.

The West Virginia Advisory Committee submits this report, *Coping with Police Misconduct in West Virginia: Citizen Involvement in Officer Disciplinary Procedures—A Review of Existing Law, Legislative Initiatives, and Disciplinary Models*. This report is based on the background paper. It summarizes the Committee's research collected to date and covers three major themes: (1) the ongoing problem of police brutality and existing disciplinary structure; (2) past legislative attempts to reform disciplinary procedures and the experience of two recent review boards established in Bluefield and Charleston; and (3) alternative models and methods used successfully in other parts of the country.

The Committee hopes this report will serve as a useful public information piece and a starting point for further discussion.

Sincerely,

Ranjit K. Majumder, *Chairperson*  
West Virginia Advisory Committee

# West Virginia Advisory Committee to the U.S. Commission on Civil Rights

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The Committee expresses its appreciation to the staff of the Commission's Eastern Regional Office for preparing this report. Marc Pentino, Eastern Regional Office, prepared the introduction and chapter 3 of the report and helped edit the document. Dawinder S. Sidhu, student intern from George Washington University Law School, contributed substantial research and prepared chapters 2 and 4. Student interns Robert Boone from Howard University and Susanna Baker from Wake Forest University researched the operation of review boards in U.S. cities and collected background material on police misconduct. Ki-Taek Chun, former director of the Eastern Regional Office, edited the report and supervised the project. Ivy Davis, acting director of the Eastern Regional Office, edited the final report draft. Dawn Sweet provided editorial services and prepared the report for publication. Dorothy Pearson-Canty and Alfreda Greene provided production and distribution services.

# Contents

<b>Chapter 1: Introduction .....</b>	<b>1</b>
<b>Chapter 2: Police Misconduct—An Ongoing Problem and the Disciplinary Procedures to Address It .....</b>	<b>2</b>
The Ongoing Problem.....	3
Current Disciplinary Procedures.....	5
State Police Officers .....	5
Municipal Police Officers, Deputy Sheriffs, and Corrections Officers .....	5
Difficulties Caused by Current Disciplinary Procedures.....	7
Financial Impact .....	7
Layers of Bureaucracy .....	8
Inadequate Disposition of Complaints of Police Brutality .....	9
<b>Chapter 3: Attempts by the West Virginia House of Delegates and the Cities of Bluefield and Charleston to Reform Existing Police Officer Review and Disciplinary Structure .....</b>	<b>11</b>
House Bill 2237.....	11
House Bill 2430.....	12
Attempts at Civilian Review Boards in Bluefield and Charleston .....	12
Bluefield.....	13
Charleston .....	13
<b>Chapter 4: Alternative Models for Police Disciplinary Procedures .....</b>	<b>15</b>
External Controls .....	15
Civilian Review Board .....	15
Independent Monitor/Auditor .....	16
Independent Investigator .....	16
Special Prosecutor.....	17
Accountability and Identification of Rogue Officers .....	18
Accountability: Incentive Strategy.....	18
Identification: Preemptive Evaluations .....	19
Improving Community Relations .....	20
Community Policing.....	20
Recruiting Minorities.....	22
Awareness and Use of Force Training.....	22
<b>Tables</b>	
1. Disposition of Allegations Against State Police Officers, 2000–2002.....	2
2. Action Taken on Sustained Allegations Against State Police Officers, 2000–2002 .....	4
<b>Appendices</b>	
1. Letter from Delegate Carrie Webster, August 2, 2003.....	23
2. House Bill 2237.....	25
3. House Bill 2430.....	30
4. Directory of Oversight Agencies in the United States and Sample Complaint Forms.....	33

## Chapter 1: Introduction

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The West Virginia Advisory Committee to the U.S. Commission on Civil Rights presents this report on citizen involvement in the disciplinary process of law enforcement officers in West Virginia.

In May 2003, the Advisory Committee released its report, *Civil Rights Issues in West Virginia*, summarizing four issues raised by public officials, community advocates, and the public at the Committee's three forums held between 1998 and 2000: (1) police-community relations, (2) treatment of minority students and students with disabilities in public schools, (3) civil rights issues related to employment, and (4) hate crimes.<sup>1</sup> Concerning police-community relations, the Committee observed that tensions between law enforcement agencies and minorities were exacerbated by incidents of police brutality, and the general public seemed to believe that existing procedures for overseeing police misconduct were ineffective.

Following the June 2003 presentation of the report's conclusions by Chairperson Ranjit Majumder to the West Virginia legislature's Joint Select Committee on Minority Issues, West Virginia

House delegate Carrie Webster, a member of the Select Committee, on August 2, 2003, invited the Committee to share further insight on the problem of police misconduct in West Virginia. She suggested that the Committee prepare a background paper describing current methods of police officer discipline, and elaborate on new approaches or models from other parts of the country that could be considered for adoption in West Virginia.<sup>2</sup> Responding to her request, the Committee prepared a background paper addressing the above topics. It also elected to issue this report, which is based on the background paper, to make the information available to police officers, public officials, and the general public.

This report describes the ongoing problem of police brutality, and existing law and structure to address disciplinary issues (chapter 2); reviews past legislative attempts to reform disciplinary procedures and the experience of two recent review boards established in Bluefield and Charleston (chapter 3); and discusses alternative models and methods, such as accountability and incentive strategies, used successfully in other parts of the country (chapter 4).

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<sup>1</sup> West Virginia Advisory Committee to the U.S. Commission on Civil Rights (USCCR), *Civil Rights Issues in West Virginia*, May 2003. In other publications, the Advisory Committee has reviewed police-community relations, police misconduct, and related issues. See *Rising Racial Tensions in Logan County, West Virginia*, August 1995, and *Police-Community Relations in Southern West Virginia*, March 1993.

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<sup>2</sup> A copy of Delegate Webster's Aug. 2, 2003, letter to chairperson Majumder is presented in appendix 1.

## Chapter 2: Police Misconduct—An Ongoing Problem and the Disciplinary Procedures to Address It

Incidents of police misconduct continue unabated in West Virginia, prompting advocates to call for improvements in existing procedures for handling citizen complaints against officers. This section describes police brutality and misconduct in West Virginia, the current procedures for dealing with the problem, and finally the difficulties that arise within these present procedures, including the inadequate disposition of previous complaints levied against West Virginia police officers.

At the outset, it is important to bear in mind that law enforcement officers are charged with the challenging duty of preserving order and protecting citizens. At times, this responsibility finds them involved in extremely unpredictable and often dangerous situations in which they risk serious injury to their lives so that other citizens may be safe. West Virginia State Police Chief Howard E. Hill Jr. aptly notes that law enforcement officers “place their lives on the line every single day and deal with the dregs of society that others avoid. . . . Many officers are injured or killed trying to protect the public.”<sup>1</sup> In order to minimize harm to others and to themselves, law enforcement officers must exercise critical and quick judgment, often when the circumstances are volatile and potentially deadly. Clearly, law enforcement officers perform a public service that is not easy to carry out.

To assist law enforcement officers in diffusing situations, apprehending alleged criminals, and protecting themselves and others, officers are legally entitled to use appropriate means, including force.<sup>2</sup> In discussing police misconduct, this report acknowledges not only the legal grant

<sup>1</sup> Howard E. Hill Jr., superintendent, West Virginia State Police, facsimile to Marc Pentino, Eastern Regional Office, USCCR, Sept. 24, 2003, p. 7 (hereafter cited as Hill Jr. facsimile).

<sup>2</sup> “Excessive or unlawful force is clearly force that is no longer used for a legitimate purpose, but instead designed to punish an individual.” Ibid., p. 4.

of such authority, but also the trying circumstances that law enforcement officers find themselves in, which necessitate use of force. Moreover, this report emphasizes one of the fundamental principles enunciated in the Commission’s seminal publication, *Revisiting Who Is Guarding the Guardians*, namely that the “adverse actions of some officers are not representative of all law enforcement professionals.”<sup>3</sup> Accordingly, there should be no doubt that “a vast majority of law enforcement officers in [West Virginia] are hard working, conscientious people”<sup>4</sup> and that improper use of force is the exception, not the norm, in West Virginia.

**TABLE 1**  
**Disposition of Allegations Against State Police Officers, 2000–2002**

	2000		2001		2002	
Sustained	169	34%	198	39%	163	38%
Not sustained	139	28%	143	28%	102	24%
Withdrawn	20	4%	24	5%	18	4%
Exonerated	38	8%	42	42%	32	7%
Unfounded	128	25%	101	20%	108	25%
Policy failure	3	1%	1	0%	4	1%
Pending	0	0%	0	0%	3	1%
Total	497		509		430	

Source: West Virginia State Police, Professional Standards Section, “2002 Report,” July 2003, p. 4.

That said, it is neither the purpose nor intent of this report to denigrate the duties of the law enforcement community in West Virginia, to suggest that the performance of these duties is easy or unworthy of respect from the public, to belittle those improvements that have been made in law enforcement training or protocol, or to insinuate that there is not a good-faith com-

<sup>3</sup> U.S. Commission on Civil Rights, *Revisiting Who Is Guarding the Guardians?* November 2000, p. 4 (hereafter cited as USCCR, *Guardians*).

<sup>4</sup> Hill Jr. facsimile, p. 7.



mitment on the part of the police to make such improvements.<sup>5</sup> However, this report does highlight the existence of police misconduct in West Virginia despite reform efforts, and offers ways in which the remaining problems may be minimized.<sup>6</sup> It is designed to *assist* the law enforcement community and ultimately those who benefit from their protection.

## The Ongoing Problem

State commentators on the subject of police misconduct noted in early 2000 that accusations against state police officers in West Virginia appeared to be “escalating.”<sup>7</sup> In Charleston, a formal complaint procedure was established because of the apparent rise in citizen complaints of police misconduct.<sup>8</sup> The continuing prevalence of misconduct could indicate that current disciplinary procedures are ineffective.

Statistics on the disposition of complaints against officers raise questions of whether allegations are investigated adequately and officers found guilty of misconduct are appropriately disciplined. State law mandates that the state police investigate every complaint from rudeness to alleged use of excessive force by state troopers.<sup>9</sup> Thus we know that although the number of complaints against state troopers decreased 13 percent from 1995 to 1998, the number of complaints filed in 1998 (343) is still significant, and

only six involving excessive force and 10 involving abuse of authority in dealing with the public were sustained.<sup>10</sup> In Charleston, in the first 11 months of 1998, 24 allegations of excessive force used by Charleston police officers were made. Only seven resulted in investigations, and of these only three charges were sustained.<sup>11</sup> By contrast, in the first six months of 2000, the Charleston Police Department used force (“displaying their firearm, using their hands to get someone to submit to handcuffs, spraying pepper spray or using a baton”) 122 times, and not once did any internal investigation reveal any wrongdoing.<sup>12</sup>

During the three-year period of 2000–2002, total complaints filed against the state police ranged from 345 to 360 annually.<sup>13</sup> Instances of police misconduct, then, have not been deterred by existing disciplinary measures. To be sure, over 30 percent of all complaints filed in 2000–2002 were sustained,<sup>14</sup> which should give the impression that the police readily, if not aggressively, police themselves (see table 1). Closer inspection, however, reveals the disciplinary action taken by police in sustained cases is often a “slap on the wrist.” As shown in table 2, of the sustained complaints filed in 2000–2002, in 46 percent of the cases, either a letter of reprimand was sent or no further action was taken.<sup>15</sup> In fact, sending a letter of reprimand was the most common disciplinary action in each of these three years.<sup>16</sup>

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<sup>5</sup> Indeed, the Charleston Police Department has taken various steps toward improving its internal investigation procedures, including “increas[ing] the size of [its internal affairs division] and purchasing a computer program for record keeping.” Jerry Pauley, chief of police, Charleston, West Virginia, e-mail to Marc Pentino, Eastern Regional Office, USCCR, Oct. 9, 2003 (hereafter cited as Pauley e-mail).

<sup>6</sup> The West Virginia Advisory Committee is required to conduct an affected agency review, where relevant portions of the draft report are forwarded to the agencies discussed in the report to solicit their feedback and ensure that no facts are in dispute.

<sup>7</sup> “Trooper Trouble, Civilian Review a Cure?” *Charleston Gazette*, Jan. 9, 2000.

<sup>8</sup> “[B]ecause it seemed like police were getting more complaints about officer conduct, [then-Charleston Police Chief Jerry] Riffe said a formal complaint procedure was drawn up.” Rusty Marks, “Police Establish Complaint Procedure for City Officers,” *Charleston Gazette*, Apr. 17, 1997. Jerry Pauley, Charleston’s current chief of police, offers an alternate (and contradictory) explanation for the complaint procedure, namely that the “complaint system was established to make it easier for citizens to complain or compliment” the department. Pauley e-mail.

<sup>9</sup> Hill Jr. facsimile, p. 2.

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<sup>10</sup> Stephen Singer, “Police Oppose Legislation to Review Cops’ Actions,” *Associated Press State & Local Wire*, Feb. 25, 1999. According to former State Police Superintendent Gary Edgell, although the “number of complaints filed against troopers has risen in recent years, the percentage of those found to be valid has remained about the same. Tom Searls, “State Police Probe Trooper’s Alleged Role in Pocahontas Assault,” *Charleston Gazette*, Jan. 5, 2000. In this context the term “sustained” means “the validity of the complaint has been established and proven by a preponderance of the evidence.” West Virginia State Police, Professional Standards Section, “2002 Report,” July 2003.

<sup>11</sup> Rusty Marks, “Police Officer Suspended for Not Reporting Excessive Force,” *Charleston Gazette*, Nov. 14, 1998.

<sup>12</sup> Carrie Smith, “City Police Taking Precautions: Cameras, Training Used to Prevent Excessive Force,” *Charleston Daily Mail*, July 22, 2000.

<sup>13</sup> West Virginia State Police, Professional Standards Section, “2002 Report,” July 2003.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

**TABLE 2**  
**Action Taken on Sustained Allegations Against State Police Officers (2000–2002)**

	2000	2001	2002
Counseled	33	47	50
Letter of reprimand	77	90	60
Suspension	35	30	43
Demotion	2	1	0
Dismissal	8	13	3
Resignation	11	7	2
Sustained-NFA*	3	10	5
Total	169	198	163

\* Sustained-NFA (no further action) may be due to the employee no longer being employed by the state police, or an employee having complied with other requirements.

Source: West Virginia State Police, Professional Standards Section, "2002 Report," July 2003, p. 5.

Understanding the need to deter police brutality requires us to look beyond a statistical analysis and grasp what is involved in each individual instance of police brutality. The following examples, presented in chronological order, are by no means exhaustive, but are representative of the seriousness of police brutality committed by West Virginia law enforcement personnel:

- In 1997, James Minghini was beaten in front of his sister and mother by state police officers during an arrest after a car chase. A former state trooper, Michael Durst, who arrived on the scene, said that the victim was "on the ground moaning after being beaten" and was pepper-sprayed while handcuffed. Durst stated that trooper abuses committed against low-income residents are common in the Eastern Panhandle (Martinsburg area), where the Minghini incident took place.<sup>17</sup>
- In September 1997, a man sued the state police after receiving permanent neurological damage, and "a skull fracture and broken

<sup>17</sup> Jennifer Bundy, "State Police Review Board Proposal Dead for This Year," *Associated Press State & Local Wire*, May 17, 2000; Randy Coleman, "State Police Fighting for Overtime Money, Against Review Board," *Associated Press State & Local Wire*, Feb. 7, 2000 (hereafter cited as Coleman, "State Police Fighting for Overtime"); "Suit Against Troopers Has No Merit, Chief Says," *Charleston Gazette*, May 6, 1998. "Ex-Trooper Backs Up Lawsuit's Abuse Charges, Former State Police Officer Says Man Was Beaten After Chase," *Charleston Daily Mail*, June 23, 1998; "Six Officers Face Two Lawsuits in Martinsburg," *Charleston Gazette*, June 23, 1998.

bones" after being "clubbed by three officers."<sup>18</sup>

- In September 1998, Robert Ellison, "a 20-year-old man was paralyzed during his arrest" by Bluefield police officers. Ellison had his neck broken and was dragged "130 feet despite his cries that he was hurt."<sup>19</sup> For several months after the incident, Ellison could only breathe with the assistance of a ventilator.<sup>20</sup> (A more detailed description of this case is provided in chapter 3).
- In October 1999, Neal Rose was beaten by allegedly drunken officers "after [Rose] complained about noise coming from a retirement party troopers were having for a fellow officer."<sup>21</sup> The beating left Rose with "three broken ribs, a punctured lung, a broken finger, a black eye, and multiple back bruises."<sup>22</sup> During the incident, Rose's pregnant girlfriend was pushed to the floor;<sup>23</sup> and Rose's 11-year-old niece was present.<sup>24</sup> One of the officers threatened to kill the unarmed Rose<sup>25</sup> (he was told that his "dead, decomposing body [would be found] in the river").<sup>26</sup> The county prosecutor noted that there was no indication of any resistance being offered by Rose during the incident.<sup>27</sup> Rose also alleged that he was "handcuffed to a chair in the middle of the floor . . . beaten, humiliated, and violently as-

<sup>18</sup> "Eastern Panhandle Man Accuses State Police of Beating," *Associated Press State & Local Wire*, May 27, 1999.

<sup>19</sup> Maryclaire Dale, "Paralyzed Man Blames Bluefield Police Brutality; Civil Rights Lawsuit Alleges Coverup, Too," *Charleston Gazette*, July 8, 1999.

<sup>20</sup> *Ibid.*

<sup>21</sup> Associated Press, "Beating Case Prompts \$20 Million Suit Against State Police; State Senator Files Lawsuit on Behalf of McDowell Man," *Charleston Daily Mail*, Dec. 22, 1999.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Dan Radmacher, "State Police Must Learn from Troopers' Beating of Unarmed Welch Man," *Charleston Gazette*, Mar. 31, 2000.

<sup>25</sup> *Ibid.*

<sup>26</sup> Tom Searls, "Criminal Probe in Beating Complete; Possible Trooper Misconduct in Kanawha, Raleigh, Mercer; Civil Lawsuit Filed," *Charleston Gazette Online*, Dec. 22, 1999 (hereafter cited as Searls, "Lawsuit Filed").

<sup>27</sup> "Ex-Trooper Indicted in McDowell Beating; Incident Recorded by 911 Operators," *Charleston Gazette Online*, Mar. 2, 2000.

saulted”<sup>28</sup> after being transported to the state police barracks.<sup>29</sup>

- In November 2001, 21-year-old Jason Smith was pepper-sprayed and beaten so badly by two Chapmanville police officers that his mother said, “It didn’t even look like him.”<sup>30</sup>
- In April 2003, a police sergeant was indicted after he allegedly “rammed the pickup truck [of Kevin Tinger, the 20-year-old driver] and fired a bullet into the truck, splattering metal fragments into the young driver. . . . [T]he officer went far outside his city jurisdiction and entered Tinger’s home, where he drew his gun on family members.”<sup>31</sup> Another indictment returned by a grand jury charged the officer with “attempting to commit voluntary manslaughter, three counts of wanton endangerment, three counts of kidnapping, one count of burglary and one misdemeanor count of destruction of property.”<sup>32</sup>

## Current Disciplinary Procedures

Former State Police Superintendent Gary Edgell claims the system “works.”<sup>33</sup> However, the Advisory Committee wonders whether the complaints of police misconduct indicate that the existing system produces questionable disciplinary outcomes and is an ineffective deterrent. State statutes and code of state rules outline disciplinary actions for law enforcement officials.

This section examines the separate systems of discipline for state police, municipal officers, corrections officers, and deputy sheriffs.

### State Police Officers

The Professional Standards Section, an internal unit within the state police, handles allegations of police misconduct committed by state police officers.<sup>34</sup> Its powers are limited—it does

not have subpoena power and can only conduct investigations in a limited fashion. The complaint procedure begins when an officer in charge (OIC) assigns an investigator to conduct an internal inquiry into the complaint. The investigator will compile and assess the evidence and recommend disciplinary action to the OIC, who then makes his own recommendation to the superintendent of police, who makes the final disciplinary determination. In response to this determination, the accused officer may present a defense at a pre-deprivation hearing. The disciplinary action may be appealed through a grievance procedure that is presided over by an administrative law judge.

Disciplinary offenses are categorized into three groups depending on severity—that is, ones that are less severe, those that are more severe, and those that are of a serious nature in which the first occurrence would warrant the superintendent to discharge the officer.<sup>35</sup> Group III offenses include using unnecessary force during an arrest/custody produce or committing conduct unbecoming an officer.<sup>36</sup>

Group III offenses that are categorized as more severe would warrant the superintendent to discharge an officer. An officer may be discharged for, among other things, threatening employees, engaging in dishonest or immoral conduct, disobeying an officer, accepting bribes, or using unnecessary force during an arrest/custody procedure. An officer may also be discharged for committing multiple offenses during a given time period.

### Municipal Police Officers, Deputy Sheriffs, and Corrections Officers

Under West Virginia law, each county is required to have a civil service system governing testing, hiring, and discipline of county employees. Individual cities in West Virginia, depend-

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<sup>28</sup> Ibid.

<sup>29</sup> Searls, “Lawsuit Filed.”

<sup>30</sup> Associated Press, “Brutality Case Turned Over to Feds,” *Charleston Gazette*, Jan. 9, 2002.

<sup>31</sup> Editorial, “Police Screening Needed,” *Charleston Gazette*, Apr. 7, 2003.

<sup>32</sup> “Police Briefs,” *Charleston Gazette*, July 9, 2003.

<sup>33</sup> Coleman, “State Police Fighting for Overtime.”

<sup>34</sup> See W. VA. CODE § 15-2-21 (2003); W. VA. CODE St. R. tit. 81, § 10-3 (2003).

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<sup>35</sup> W. VA. CODE St. R. tit. 81, § 10-11 (2003).

<sup>36</sup> Group I offenses include tardiness, disruptive behavior, damaging police equipment, abusing police time. Group II offenses include violating safety rules, refusing to work overtime, not reporting to work without notice to supervisor. Group III offenses also include possessing alcohol on duty, reporting to work drunk, stealing state property, gambling, violating safety rules where there is a threat to life, sleeping during work, threatening or coercing employees, failing to take mental or physical examinations, engaging in dishonest or immoral conduct, disobeying an officer, accepting bribes. W. VA. CODE St. R. tit. 81, § 10-11.3 (2003).

ing on their size, also may have a separate civil service commission for city employees.<sup>37</sup>

A “just cause” standard is in place for disciplining civil service employees, who include municipal police officers, deputy sheriffs, and corrections officers.<sup>38</sup> In various West Virginia Supreme Court decisions, “just cause” is defined as “a substantial cause, which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public.”<sup>39</sup> West Virginia law and state supreme court decisions provide examples of conduct for which police officers can be disciplined and removed. Offending conduct includes using excessive foul language,<sup>40</sup> excessive force while making an arrest,<sup>41</sup> drinking alcohol while on duty,<sup>42</sup> unexcused absences,<sup>43</sup> sexually harassing witnesses,<sup>44</sup> engaging in political activity,<sup>45</sup> among others.

**Municipal Police Officers.** Civil service commissions at the municipal level are generally a fairly loose board of law enforcement officers charged with investigative duties and final disciplinary authority for citizen complaints if disciplinary action is contemplated by the removing police officer.<sup>46</sup> After notice is given to an officer accused of misconduct, he will be given a hear-

ing before a hearing board, which, like the civil service commission, has subpoena power and can administer oaths. The primary duties of the hearing board are to compile evidence and recommend disciplinary action (if needed) to the civil service commission.<sup>47</sup>

Following the recommendation of the hearing board, a hearing will be granted before the civil service commission, if the officer requests one. If a hearing is granted, the removing officer has the burden of justifying the disciplinary action. Officers can be dismissed for just cause or engaging in political activity (see above).<sup>48</sup> If the removing officer fails to meet his burden, the accused officer will be reinstated; the removing officer has an immediate right of appeal to the circuit court. If the removing officer does meet his burden and the charge is sustained, the accused officer can appeal to the circuit court. Absent appeal, the commission’s decision is final.

**Deputy Sheriffs.** Deputy sheriffs are persons appointed by a sheriff as his deputies whose primary law enforcement duties are patrolling highways, performing police functions, making arrests, and safeguarding prisoners.<sup>49</sup> Deputy sheriffs are subject to their own civil service commission, composed of three commissioners who have subpoena power, and can compel production of documents and administer oaths.<sup>50</sup> The disciplinary procedure is somewhat simpler than the procedures for municipal officers, as accused officers (wishing to appeal an adverse decision) proceed directly to a hearing before the civil service commission. At the hearing, the removing sheriff has the burden to justify his disciplinary actions. If the sheriff fails in this justification, the accused will be reinstated; the removing sheriff has the right of appeal to the circuit court. If the sheriff meets his burden

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<sup>37</sup> A municipal civil service commission is required for any city or municipality with a population of 10,000 or more. Cities having fewer than 10,000 residents must elect to have a commission. W. VA. CODE § 7-14-3 (2001). Municipal police officers are any police officer employed by a city or municipality, not including (a) the highest ranking officer of the police department, or (b) any noncivil service officer who has not completed the probationary period established by the department by which he or she is employed. W. VA. CODE § 8-14A-1(d)(6) (2001).

<sup>38</sup> W. VA. CODE §§ 7-14-17, 7-14-B-17, 8-14-20 (2001).

<sup>39</sup> *Johnson v. City of Welch*, 182 W. Va. 410, 388 S.E.2d 284 (1989). See also *Logan v. Dingess*, 161 W. Va. 377, 242 S.E.2d 473 (1978).

<sup>40</sup> *Kendrick v. Johnson*, 167 W. Va. 269, 279 S.E.2d 646 (1981).

<sup>41</sup> *Id.* See also *Scott v. Ernest*, 164 W. Va. 595, 264 S.E.2d 635 (1980).

<sup>42</sup> *Johnson v. City of Welch* at 410.

<sup>43</sup> *Id.*

<sup>44</sup> *Roberts v. Greiner*, 182 W. Va. 137, 386 S.E.2d 504 (1989).

<sup>45</sup> W. VA. CODE §§ 7-14B-15, 7-14-17, 8-14-19 (2001).

<sup>46</sup> Three persons compose the commission: one appointed by the mayor, another by the local fraternal order of police, and a third appointed by either the local chamber of commerce or business association (if there are no such associations, then the third commissioner is appointed by the first two). W. VA. CODE § 8-14-7 (2001).

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<sup>47</sup> W. VA. CODE § 8-14A-3 (2001). The hearing board consists of three members: one member appointed by the department chief, one member appointed by the accused officer’s department, and the third appointed by the first and second members. All three hearing board members must be officers within the accused officer’s department or comparable department, and at least one member shall be the same rank as the accused. W. VA. CODE § 8-14A-1.4 (2003).

<sup>48</sup> W. VA. CODE §§ 8-14-19(a), 8-14-20(a) (2001).

<sup>49</sup> W. VA. CODE § 7-14-C(1) (2003).

<sup>50</sup> W. VA. CODE § 7-14B-2(a)(1) (2003). Deputy sheriffs in the state and each county are subject to a corresponding civil service commission. One commissioner is appointed by the county bar association, one by the county’s deputy sheriffs association, and the third by the county commission.

and the charge is sustained, the accused can appeal to the circuit court.

**Corrections Officers.** In counties with a population of at least 25,000, corrections officers (persons appointed by a sheriff to operate and manage a county jail)<sup>51</sup> are also subject to a separate civil service commission. The commission has five members and subpoena power, and can compel production of documents and administer oaths.<sup>52</sup> Almost indistinguishable from the procedure for deputy sheriffs, the complaint procedure requires the accused corrections officer to be given written notice of the grounds, after which the officer may request a public hearing before the civil service commission, in which the sheriff has the burden to justify her actions.<sup>53</sup> If the sheriff fails to meet her burden, the corrections officer is reinstated; and the sheriff can appeal to the circuit court. If the charge is sustained, the corrections officer can appeal to the circuit court.<sup>54</sup>

## Difficulties Caused by Current Disciplinary Procedures

### Financial Impact

Police brutality claims not only draw precious financial resources away from the police force to defray litigation costs or pay out generous settlements to aggrieved citizens, but also burden taxpayers and jeopardize other government services.

According to press accounts, a considerable amount of money has been spent on litigation and settlements. For example, the state police paid \$60,000 to settle the Minghini case,<sup>55</sup> while the city of Charleston spent \$90,000 to fight and \$20,000 to settle a case brought by a 76-year-old woman who was pepper-sprayed by police.<sup>56</sup> The city also incurred a cost of \$50,000 from a case arising out of the “beating of a suspect by two

city police officers.”<sup>57</sup> “Disciplinary action was taken, including dismissal,” against the officers.<sup>58</sup> Robert Ellison was awarded \$1 million in a settlement reached with the city of Bluefield,<sup>59</sup> while Neal Rose settled with the state for \$1 million as well.<sup>60</sup>

From 1994 to 2001, the state police had a liability loss of \$7.8 million due to wrongful arrests or settlement of police brutality cases.<sup>61</sup> State Police Superintendent Hill believes liability losses have diminished under the current police administration due to education and training of law enforcement officers, citing approximately \$700,000 in payouts for 2001, \$88,000 in 2002, and \$44,000 in 2003.<sup>62</sup>

These significant and fairly frequent costs have a two-pronged effect. First, the state police is forced to trim its own budget. Superintendent Hill responded to the need to cut costs by saying, “We’ll just have to figure out where we’re going to pull from.”<sup>63</sup> In light of the costs of settlements and the adverse impact they have on police resources, Delegate Larry Faircloth noted, “If anyone questions why the legislature can’t do more for the state police, they should look at the amount of money being spent to settle lawsuits and pay legal bills.”<sup>64</sup>

Second, in large part because of “a series of police brutality lawsuits filed against troopers,” the state police’s insurance premium soared from \$1.7 million for fiscal year 2001 to \$3.35 million for fiscal year 2002.<sup>65</sup> The funds for these premiums “come from taxpayers’ wallets.”<sup>66</sup> The state’s Board of Risk and Insurance Management (BRIM), “which insures state agencies,

<sup>51</sup> W. VA. CODE § 7-14B-2(a)(2) (2001).

<sup>52</sup> W. VA. CODE § 7-14B-3 (2001). Two commissioners are appointed by the county bar association, one by correctional officer association, and two by the county civil service commission.

<sup>53</sup> W. VA. CODE § 7-14B-17(a) (2001).

<sup>54</sup> *Id.*

<sup>55</sup> “Delegate Wants Probe of Troopers,” *Associated Press State & Local Wire*, Jan. 5, 2000.

<sup>56</sup> “Pepper-Sprayed Woman to Get \$20,000 from City,” *Charleston Gazette*, Apr. 19, 2000; this settlement was reached even though the department found “there was no wrongdoing by the officer.” Pauley e-mail.

<sup>57</sup> “Civilian Review, Genuine Scrutiny Needed,” *Charleston Gazette Online*, Aug. 12, 2000.

<sup>58</sup> Pauley e-mail.

<sup>59</sup> Malia Rulon, “Robert Ellison Meets Famed Civil Rights Attorney Who Represented Him,” *Associated Press State & Local Wire*, June 16, 2000.

<sup>60</sup> Joedy McCreary, “Family of Beaten Man Outraged by Ex-trooper’s Release,” *Associated Press State & Local Wire*, Dec. 5, 2002.

<sup>61</sup> Tom Searls, “State Police Sued Again for Excessive Force,” *Charleston Gazette*, Mar. 2, 2001.

<sup>62</sup> Hill Jr. facsimile, p. 6.

<sup>63</sup> Fanny Seiler, “Insurance, Pensions May Bring More Cuts,” *Charleston Gazette*, Dec. 19, 2002.

<sup>64</sup> “Eastern Panhandle Delegate Calls for Investigation,” *Associated Press State & Local Wire*, Jan. 4, 2000.

<sup>65</sup> Gavin McCormick, “Unpaid-Claims Estimates Send BRIM into Red,” *Charleston Gazette*, Apr. 8, 2002.

<sup>66</sup> *Ibid.*

other governmental units and nonprofit agencies,”<sup>67</sup> has a \$1 million cap on claims filed against law enforcement agencies.<sup>68</sup> If there is a jury award exceeding this cap, “[o]fficers are personally liable for the difference.”<sup>69</sup> Individual citizens and officers themselves stand to take a substantial financial hit because of police actions. According to news accounts, many cases have been settled:

- A secretary assigned to the Hinton State Police detachment sued the state police in 2000 alleging a supervisor made sexual advances toward her. The state awarded her \$95,000 in a settlement. In addition to the settlement, BRIM incurred \$12,199 in investigative expenses.
- BRIM settled for \$1 million a case for the family of a woman shot and killed in 1999 by her former boyfriend, a state trooper. Reports indicated BRIM spent \$34,491 handling the case.
- An unidentified Raleigh County woman sued state police troopers assigned to the West Virginia Turnpike in 1999. She alleged that a state trooper and two other men who were not troopers had sex with her in a park when she was too drunk to give consent. BRIM settled the lawsuit for \$75,000. Expenses were \$25,144.16, including attorneys’ fees.
- Following the death of her daughter, a mother filed a lawsuit against the state police in 1997 claiming her daughter died as the result of a car chase by a state trooper. The family was awarded \$775,000. Expenses were \$23,697.
- James Minghini, whose lawsuit alleged troopers beat him (see above), settled for \$60,000. BRIM spent \$454,519 handling the case.
- Neal Rose of Welch was awarded \$1 million after alleging that a state trooper and others broke down his apartment door and beat him. BRIM spent \$31,958 to handle the case. (The trooper resigned in October 1999 and was

convicted on both federal and state charges in the incident.)

- BRIM awarded a Logan resident \$40,000 who alleged a trooper battered him in 1998. Expenses were \$36,435.
- A Kanawha County man received a settlement of \$1 million because testimony by a former state police chemist led to his conviction in the murder of his neighbor. The state supreme court questioned the chemist’s testimony in several cases. BRIM’s expenses were \$8,006.<sup>70</sup>

The former state police superintendent has claimed that settlements have been “an economic decision,”<sup>71</sup> meaning the payment is not an admission of guilt but a means to save the state from further litigating trials or from an adverse judgment. Robert Fisher, deputy director and claims manager of BRIM, disagrees. BRIM does not simply settle cases because a settlement would be cheaper than taking a case to trial; doing so might encourage frivolous lawsuits.<sup>72</sup> As settlements are ultimately paid by taxpayer money, Fisher stressed that this money should be used wisely.<sup>73</sup>

Even so, the fact that this amount of money has to be paid in the first place not only demonstrates the existence of a police brutality problem, but also the misallocation of resources that could be going toward, among other things, training, recruitment efforts, and technological development, and which directly affects the pocketbooks of citizens and the efficacy of other government programs.

### **Layers of Bureaucracy**

Citizens who have been subject to excessive force are not satisfied with the current procedures, and neither are those in charge of the officers. Indeed, police chiefs have been outspoken against the current system because they believe

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<sup>67</sup> Associated Press, “State, McDowell Man Settle Police Brutality Suit,” *Charleston Gazette*, May 1, 2002.

<sup>68</sup> Associated Press, “Suits Against State Police Cost \$5 Million,” *Charleston Gazette*, Apr. 29, 2002.

<sup>69</sup> Ibid.

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<sup>70</sup> Ibid.

<sup>71</sup> Coleman, “State Police Fighting for Overtime.”

<sup>72</sup> Associated Press, “Suits Against State Police Cost \$5 Million.” Note, other reasons besides money are involved in the decision to resolve a case, such as the venue and judge presiding, will bad law be made by an adverse verdict that will negatively affect other actions; the players involved and their ability as witnesses; and publicity of the case and how it affects potential jurors.

<sup>73</sup> Ibid.

their authority becomes diminished and subject to the advisement of other individuals not as intimately aware of police practices and the difficulties of the officers' jobs in certain high-pressure situations.

To illustrate, former Charleston Police Chief Jerry Riffe wanted to fire a patrolman for using excessive force, but under the procedures in place for municipal police officers, the patrolman's fate rested in the hands of a civil service commission—not his own. Chief Riffe explained, "I don't think it should be in the hands of peers—fellow officers—to make that decision. . . . It should be with me. . . . When layers of bureaucracy are added, it makes the job of police chief that much harder."<sup>74</sup> Echoing these sentiments, current Charleston Police Chief Jerry Pauley noted he

cannot even issue a reprimand to an officer without having the case heard by a [review board] and them agreeing with the reprimand. . . . [T]he disciplinary decisions should be made by me, the chief, not the officer's peers. In prior law the hearing review board made a recommendation to the chief and it was the chief who had the final decision. I have been trying to work with different groups to get the state law changed.<sup>75</sup>

Similarly, Senator Jack Buckalew, a former state police superintendent, believed that a civil service commission is "an extra layer that shouldn't be there. . . . Having another layer just muddies the water."<sup>76</sup>

### ***Inadequate Disposition of Complaints of Police Brutality***

The persistence of police brutality complaints suggests the existing procedures may be insufficient to deter police misconduct. As noted above, the number of complaints filed from 1998 to 2002 remained relatively constant, despite that senior police officers claim the current disciplinary system is working properly.<sup>77</sup> In many cases, officers are not given harsh disciplinary sanctions. The following are instances where advocates have questioned the adequacy of disciplinary action imposed:

<sup>74</sup> Brad McElhinny, "Peers Will Determine Officer's Fate," *Charleston Daily Mail*, Aug. 20, 1998.

<sup>75</sup> Pauley e-mail.

<sup>76</sup> McElhinny, "Peers Will Determine Officer's Fate."

<sup>77</sup> See Coleman, "State Police Fighting for Overtime."

- The state police settled the excessive force lawsuit filed by James Minghini; however, the "internal investigation determined that the force used to subdue Minghini was appropriate."<sup>78</sup>
- In one of the most widely reported instances of police brutality, the beating of Neal Rose, one officer resigned, only one was fired; yet several others were demoted for reasons unrelated to the incident.<sup>79</sup>
- An internal investigation did not find any wrongdoing in an incident that left a Martinsburg man with permanent neurological damage, a skull fracture, and broken bones after being clubbed by police officers.<sup>80</sup>
- In the case of Robert Ellison, the 20-year-old who was paralyzed after an arrest in Bluefield, "an internal investigation found no wrongdoing by the officers."<sup>81</sup> The incident prompted an investigation by the FBI and later review by the U.S. Department of Justice's Civil Rights Division.<sup>82</sup>
- Allegations of "arresting citizens without cause [and] racist tendencies," among other things, led the U.S. Department of Justice to investigate Charleston's Street Crimes Unit, despite that an internal investigation by the Charleston Police Department found no wrongdoing.<sup>83</sup>

<sup>78</sup> "Eastern Panhandle Delegate Calls for Investigation," *Associated Press State & Local Wire*, Jan. 4, 2000.

<sup>79</sup> Dan Radmacher, "State Police Must Learn from Troopers' Beating of Unarmed Welch Man," *Charleston Gazette*, Mar. 31, 2000.

<sup>80</sup> "Eastern Panhandle Man Accuses State Police of Beating," *Associated Press State & Local Wire*, May 27, 1999.

<sup>81</sup> Brett Martel, "Bill Would Create Citizen Review Boards for Police," *Associated Press State & Local Wire*, Feb. 12, 1999; Brian Farkas, "Civil Rights Lawsuit Filed in Bluefield Police Beating Case," *Associated Press State & Local Wire*, July 7, 1999.

<sup>82</sup> The Department of Justice concluded that the evidence was not sufficient to establish a prosecutable violation of federal criminal civil rights laws. C.N. Blizzard, chief of police, Bluefield Police Department, attachment to letter to Marc Pentino, Eastern Regional Office, USCCR, May 8, 2002, in response to affected agency review request of the Committee's 2003 report, *Civil Rights Issues in West Virginia*.

<sup>83</sup> Lawrence Messina, "Feds Come to Probe for Abuses by Police," *Charleston Gazette*, Mar. 2, 1999. According to Charleston's chief of police, Jerry Pauley, the Department of Justice "did not find any wrongdoing either." Pauley e-mail.

In each of these incidents, one would expect the officers involved to be disciplined in proportion to the degree of the transgression and the severity of the injuries that ultimately resulted. The internal investigations, however, found no grounds for disciplining the officers in these cases.

While these examples should highlight the inadequacy of internal disposition of complaints, the inference should not be made that officers

should always be disciplined when force is used or where citizen injury follows. For example, two officers were found to be justified in shooting a man after they were shot at first.<sup>84</sup> These results derive from an intuitive sentiment as to when and to what extent an officer may use force, as the officers applied deadly force in clear defense of their lives.

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<sup>84</sup> Associated Press, "Police Shooting of Ritchie Bar Owner Justified," *Charleston Gazette*, Sept. 1, 1995; "Ruling in Shooting Sends Right Message, Police Say," *Charleston Gazette*, Oct. 14, 1998.



## Chapter 3: Attempts by the West Virginia House of Delegates and the Cities of Bluefield and Charleston to Reform Existing Police Officer Review and Disciplinary Structure

Faced with continuing instances of police misconduct or brutality, civil rights advocates, legislators, and citizens often express their desire to see different methods of police discipline. Some express their wish that an independent entity, such as a review board composed of citizen appointees, examine each allegation of misconduct and recommend discipline for offending officers. Reflecting this public sentiment, the West Virginia House of Delegates made attempts to enact review boards virtually every year since 1998.<sup>1</sup> All were designed to create a state police review board to hear complaints against state police personnel and provide for the disposition of citizen complaints. Each time, however, members of the law enforcement community opposed these efforts, objecting to what they perceived as an additional layer of oversight that was not needed. With lawmakers persuaded by this argument, proposed legislation often did not make it out of committee for floor vote.

This chapter describes the history and key substantive provisions of two bills introduced in the House of Delegates in 2001 and 2003 to address the problem: House bill 2237, first introduced in February and revised in April 2001, and House bill 2430, introduced on January 20, 2003. The two bills have not been brought to the floor. As far as the Committee knows, there are only two jurisdictions that have police review boards, and this chapter describes the history and performance of two boards existing in Bluefield and Charleston.

### House Bill 2237

Complaints against state police officers are filed with the department's Professional Stan-

<sup>1</sup> Bills were introduced in January 1998 (H.D. 2031), February 1999 (H.D. 2762), and January 2000 (H.D. 4179).

dards Section, which assigns the investigation to an officer in charge (OIC), who reports the facts and recommends disciplinary action. The OIC reports directly to the superintendent, who makes final disciplinary decisions. Officers found to have acted improperly have a right of appeal. House bill 2237 is identical to House bill 2430 (see below). However, legislators drafted a different version on April 1, 2001, containing three major provisions altering this process. The revised bill was never introduced. Since it represents a departure from previous attempts at creating a review board, the Advisory Committee describes revisions to the bill here.

Bill 2237 (revised version) creates a law enforcement and community relations appeal board to hear all appeals of the state police superintendent's decisions. The board would also review the procedures of other law enforcement agencies in the state and make recommendations to these agencies on methods to promote fair and timely handling of misconduct complaints.<sup>2</sup> Any person with knowledge of "discourtesy, use of excessive force, misconduct or other unlawful act caused by a state police officer" could bring a complaint to the Professional Standards Section, which is required to submit a copy of the complaint to the board.<sup>3</sup> Once a complaint is filed, the superintendent is to conduct an investigation, after which he is to notify the board of its findings. Claimants can appeal a decision by the superintendent directly to the board. The board shall review the case file and make a recommendation to the superintendent; however, the superintendent "has final decision-making responsibility for the appropriate disciplinary action in each case, but no final action may be taken disposing of any appealed complaint until the recommendation of the board is reviewed."<sup>4</sup>

<sup>2</sup> Revised House Bill 2237 (see appendix 2).

<sup>3</sup> *Id.* § 15-2E-3.

<sup>4</sup> *Id.* § 15-2E-4(f).

Bill 2237 gives greater powers than proposed in the original bill, namely that the board could initiate its own investigation in an appeal, recommend further investigation, and authorize the board's executive director to subpoena complainants, witnesses, and records.<sup>5</sup> Chaired by a governor appointee, the board would consist of four paid citizens, two of whom possess "professional experience and an educational background in law enforcement or criminal justice,"<sup>6</sup> and six nonvoting members appointed by the state's sheriffs association, deputy sheriffs association, chiefs of police association, troopers association, fraternal order of police, and conservation officers association.<sup>7</sup> The nonvoting members would assist the board in its review of state-wide law enforcement policies.

Second, under the bill, the board will promulgate citizen complaint forms for use by all law enforcement agencies in the state.<sup>8</sup> Furthermore, agencies will provide the board copies of complaints and information about their disposition. Lastly, the board's executive director (who is appointed by the governor) will semiannually compile statistics of officer conduct that result in citizen complaints and dissatisfaction, review processing procedures implemented and costs incurred resulting from claims of misconduct, and offer recommendations to the board. It should be noted that even though this collection and review of information may expose an officer's misconduct or a pattern of abusing the rights of citizens, officers could not be "penalized or adversely affected."<sup>9</sup>

Bill 2237 was introduced in the House Judiciary Subcommittee on February 15, 2001, but no hearings were scheduled on the bill and it therefore did not go forward. The revised bill described above was never introduced.

## House Bill 2430

House bill 2430, introduced in 2003, proposes a 10-member board composed of law enforcement and Human Rights Commission

personnel, and citizens to process victim or witness complaints against state police personnel with respect to discourteous treatment and use of excessive force or injury.<sup>10</sup> Persons would file their complaints with the state police internal affairs division, which will investigate the complaint and issue a report to the board within 90 days. The board will issue a statement of findings and propose a disposition of the case to the superintendent, who has 30 days to make a final ruling.<sup>11</sup> In its current form, the bill does not affect existing procedures for dismissing or suspending state police officers. The bill explicitly provides that the superintendent has final decision-making responsibility for disciplinary action after reviewing the board's recommendation.<sup>12</sup> Accused officers would still be afforded written notice and the right to a hearing. Under the bill, the board cannot compel the appearance of the complainant, witnesses, police department personnel, or documents relevant to the case. Bill 2430 was introduced in the House Judiciary Subcommittee but no hearings on the bill were scheduled, and it too did not go forward.

## Attempts at Civilian Review Boards in Bluefield and Charleston

As mentioned in chapter 2, there was strong opposition from the law enforcement community to a form of civilian review that would place additional steps for disciplining officers.<sup>13</sup> However, two cities, Bluefield and Charleston, have experience with civilian oversight of police misconduct. These are the only two cities in West Virginia that the Advisory Committee is aware of that have tried to establish boards to respond to police misconduct cases.

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<sup>10</sup> Members include the attorney general of West Virginia, the superintendent of the West Virginia State Police, the executive director of the Human Rights Commission, the executive director of the West Virginia Prosecuting Attorneys' Institute, the director of Public Defender Services, and four citizen members appointed by the governor to serve two-year terms. H.D. 2430 § 15-2F-1, Sess. (W. Va. 2003).

<sup>11</sup> *Id.* § 15-2F-2(f).

<sup>12</sup> *Id.* § 15-2F-4.

<sup>13</sup> For example, in 2000 the state legislature considered instituting a civilian review board; however, "police and state troopers said it was unnecessary, and legislators listened." Editorial, "Brutality Police Need Oversight," *Sunday Gazette Mail*, June 4, 2000. Police chiefs and sheriffs often maintain that such boards are not needed because the police departments can handle the complaints "justly and fairly" internally. Kay Michael, "NAACP Urges Civilian Review of Issues: Chief and Sheriff Shun Citizen Board Idea," *Charleston Daily Mail*, Aug. 13, 1996.

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<sup>5</sup> *Id.* § 15-2E-4(c).

<sup>6</sup> *Id.* § 15-2E-1(d).

<sup>7</sup> *Id.* § 15-2E-2.

<sup>8</sup> *Id.* § 15-2E-5.

<sup>9</sup> *Id.* § 15-2E-8.

## Bluefield

In September 1998, Robert Ellison, a 20-year-old African American, was beaten and dragged by two white Bluefield police officers outside a nightclub, leaving him paralyzed below the neck. After filing suit against the city of Bluefield, Ellison and the city reached a settlement in June 2000.<sup>14</sup> Under a consent decree, the city agreed to pay Ellison \$1 million, increase its efforts to hire more minority police officers, and establish a civilian review panel by December 1, 2000, to review police misconduct investigations.<sup>15</sup> Before the settlement, there was considerable uncertainty as to whether the city was empowered under state law to create such an entity, which calls for a civil service commission and a hearing board to process citizen complaints against municipal police officers.<sup>16</sup> However, the parties and judge created a panel consisting of five Bluefield residents appointed by the city's board of directors.<sup>17</sup> The panel can review case files and issue recommendations only after the civil service commission has completed its investigation. The panel's duties are limited to reviewing all investigations of alleged misconduct by Bluefield police officers and preparing annual reports. The reports may include general evaluations of any discipline imposed, but the panel may not make specific disciplinary recommendations.<sup>18</sup>

Since its creation on December 1, 2000, the review board has met quarterly. Civilian board members have participated in ride-alongs with police officers to gain an understanding of how the department carries out its

law enforcement duties.<sup>19</sup> According to a member of the board, no cases of misconduct have been reported to the board since its creation.<sup>20</sup> In the member's opinion, the existence of the board has made the public and officers more aware that misconduct instances can be addressed.<sup>21</sup>

## Charleston

Charleston, West Virginia's most populous city, has experienced instances of misconduct by law enforcement personnel as noted in chapter 2. The city's effort to establish an independent review body for complaints against its officers was short-lived. In August 1998, former Charleston Mayor Kemp Melton established a five-person civilian advisory review board composed of a former police sergeant, the head of the neighborhood watch, and two lawyers.<sup>22</sup> It is unclear, however, whether the board actually got started. In May 2000, pursuant to the state's Freedom of Information Act,<sup>23</sup> the ACLU requested from the city (1) information on the number of misconduct cases, and (2) information regarding the board's membership, function, and complaint processing. In response to the ACLU's subsequent lawsuit,<sup>24</sup> the city provided the ACLU with a listing of police misconduct instances and their disposition. Despite the fact that the identity of the officers was kept anonymous and that the officers were identified only by a reference number, the judge in the case denied the ACLU's request to release the information publicly. In response to the ACLU's second request, the city acknowledged that the Melton administration formed "a group of people organized as the Mayor's Civilian Review Board"; however, it stated that none of them were city council or city employees.<sup>25</sup> It further stated that it had no documentation regarding the board's membership, existence, purpose, procedures, or budget and that the board lacked any

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<sup>14</sup> Robert L. Ellison v. the City of Bluefield, U.S. Dist. Ct., Southern District of West Virginia, Consent Decree, June 5, 2000 (hereafter cited as Bluefield Consent Decree).

<sup>15</sup> "Cochran Lends Moral Support; Renowned Attorney Visits Paralyzed in Bluefield Police Brutality Case," *Charleston Gazette*, June 16, 2000.

<sup>16</sup> Rusty Marks, "City Civil-Rights Activists Still Want Citizen Review of Police," *Charleston Gazette*, Sept. 9, 1997.

<sup>17</sup> The consent decree specifies that the panel must consist of at least two minorities (one of whom must be African American), and a present or former member of the Bluefield Police Department. Bluefield Consent Decree. See also Malia Rulon, "Robert Ellison Meets Famed Civil Rights Attorney Who Represented Him," *Associated Press State & Local Wire*, June 16, 2000.

<sup>18</sup> Bluefield Consent Decree.

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<sup>19</sup> Sergeant Tyrone Miller, Bluefield Police Department, telephone interview with Marc Pentino, Eastern Regional Office, USCCR, Aug. 7, 2003.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> See Rusty Marks, "Dissolving Police Board Not a Bad Idea, Five Members Say," *Charleston Gazette*, Aug. 10, 2000; Greg Moore, "Police Review Board Not Public, City Tells Lawyer," *Sunday Gazette Mail*, June 11, 2000.

<sup>23</sup> W. VA. CODE § 29B-1-7 (2003).

<sup>24</sup> Mackay v. Jones, 208 W. Va. 569, 542 S.E.2d 83 (2000).

<sup>25</sup> Kimberly Bandi Weber, assistant city attorney, Charleston, letter to Jason Huber, Forman & Crane, L.C., June 6, 2000.

authority from Charleston's city council to make policy decisions.

The Charleston City Council dissolved the board in August 2000. As reported in the newspaper, the chairman of the board did not even know the board was disbanded until he read it in the paper.<sup>26</sup> It was reported that the board's duties, which were mainly advisory and limited to making recommendations, were transferred to the city's public safety committee. Surprisingly, some members of the board said disbanding the board was not a bad idea; yet another suggested the public safety committee could not be as impartial as a civilian

review board.<sup>27</sup> Similarly, former chief of police Jerry Riffe stated that it would be difficult for him to endorse a civilian review board given that he cannot discipline his officers because of the processes already in place.<sup>28</sup>

Notwithstanding the bureaucratic shift of responsibilities in Charleston, the city's police department has itself made improvements in the disciplinary process. As noted earlier, Charleston's police department established a formal complaint procedure, increased the size of its internal affairs division, and purchased a computer program for record keeping.<sup>29</sup>

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<sup>26</sup> Greg Moore, "Goldman Draws Fire for Board's Dismissal; City Not Interested in Police Oversight, Mayor's Critics Say," *Charleston Gazette*, Aug. 9, 2000.

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<sup>27</sup> Rusty Marks, "Dissolving Police Board Not a Bad Idea."

<sup>28</sup> Jerry Riffe, testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, West Virginia, Apr. 20, 2000, transcript, pp. 123–24.

<sup>29</sup> See footnotes 5 and 8 in chapter 2 and corresponding text.

## Chapter 4: Alternative Models for Police Disciplinary Procedures

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Previous chapters discussed difficulties with existing procedures in West Virginia and reviewed past attempts by the legislature to better deal with the police misconduct issue. Against this backdrop, the Committee reviewed academic and research literature and consulted members of the law enforcement community, state government officials, and commentators to identify successful models and programs in other jurisdictions across the nation. The Committee's motivation is to bring these worthy models and programs to the attention of the state legislature and the general public in the hopes that they may be considered for possible adoption in West Virginia. This chapter presents the results of such research under three broad categories—external controls, accountability and identification of rogue officers, and community relations—along with observations on their feasibility.<sup>1</sup>

### External Controls

Reforms and models that include external oversight or involve individuals from outside the police department render the complaint process with an aura of objectivity, as external control by definition is exercised by individuals who are not part of the police department. Implementing any one of the external control models, therefore, is likely to improve the public's faith in the fairness of the complaint process. This section reviews four models effective in other jurisdictions.

### Civilian Review Board

A civilian review board is an entity external to the police department's internal affairs, and

consists of citizens from outside the department, appointed by the mayor or other senior government officials. A civilian review board is generally charged with the duty of reviewing complaints and making recommendations as to disciplinary action after the police department has completed its own investigation and made a disciplinary recommendation.

A civilian review board is usually charged with reviewing the same materials or a redacted version of what the internal affairs division examined, although a civilian review board could be given investigative power in order to conduct its own inquiry into the complaint. Such authority could include subpoena power, and the ability to administer oaths and compel the production of documents. The sufficiency of individual case files, and thus the accuracy of a subsequent review, may depend heavily on what information the board is given and whether it can supplement these files on its own initiative.

A key concern with instituting a civilian review board has to do with how much weight the recommendation of the board is accorded by law, that is, how binding. The activities of the board may be symbolic, as it has indeed been suggested that civilian review boards end up "agreeing with the police department in almost all instances."<sup>2</sup> The importance of the civilian review board, therefore, rests on whether the disciplining officer is forced to accept or to provide a public account of why the recommendation is not accepted. For civilian review boards to be effective, they should be provided the authority to override the recommendations of the police, although such prospects are somewhat unrealistic.

A study of 17 law enforcement agencies found that citizen review boards sustain police brutality complaints at a higher percentage than do the police themselves, suggesting that such boards operate more fairly, although the "sustained" rate is only one means by which to

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<sup>1</sup> Substantial guidance has been obtained from "Civilian Oversight of the Police in the United States," written by Merrick Bobb, an independent monitor in the Los Angeles County Sheriff's Department. Merrick Bobb, *Symposium: New Approaches to Ensuring the Legitimacy of Police Conduct—Civilian Oversight of the Police in the United States*, 22 ST. LOUIS U. PUB. L. REV. 151 (2003) (hereafter cited as Merrick, *Civilian Oversight*).

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<sup>2</sup> *Ibid.*, p. 163.

measure possible success of civilian review boards.<sup>3</sup> It is important to note that it is unclear exactly what power the examined civilian review boards had, such as whether they could overrule the recommended sanctions of the internal affairs division.

The suggestion of a civilian review board will likely be met by considerable opposition from the law enforcement community in West Virginia, as it has in the past.<sup>4</sup> External recommendations will be viewed not only as an imposition from outsiders who are less knowledgeable in police affairs, but as another bureaucratic layer that does not aid in securing a final disposition with the police. Opposition or resistance will be proportionate to the power accorded to a civilian review board.

As noted above, a civilian review board has recently been set up in Bluefield, West Virginia. Its success or efficacy is yet to be determined since it has not received any complaints to date.

### ***Independent Monitor/Auditor***

An independent monitor or auditor, appointed by the mayor or other government officials, “does not investigate individual complaints, but reviews procedures for investigating” individual complaints of police misconduct.<sup>5</sup> More specifically, an independent monitor is appointed to (1) “scour and test the law enforcement agency’s policies, procedures, and practices to determine whether they are, in fact, up to the job of preventing misconduct”; (2) “propose new policies and practices where the old ones have failed”; and (3) “suggest the implementation of best practices from other law enforcement agencies.”<sup>6</sup>

An independent monitor compiles and examines data, and can produce reports that could include recommendations for improving existing procedures and deterring police brutality. The monitor may also aid in the development of “use of force” standards,<sup>7</sup> which can be very helpful in teaching officers when to exercise discretion in

dealing with suspects. Moreover, if there is an instance in which force is used, standards can be revisited and improved as appropriate.

This model was successfully used by the Los Angeles County Sheriff’s Department (LASD), where an independent monitor was instituted in part because of strained police-community relations and high-profile instances of police brutality. LASD’s monitor believes excessive force has been “substantially curbed” to some extent by having a monitor.<sup>8</sup> Indeed, the number of excessive force complaints dropped from 381 in 1992–1993 (when the independent monitor was first instituted) to 70 in 1998–1999.<sup>9</sup>

The police lobby appears to be quite strong in West Virginia, and as such this external reform measure would likely be met with considerable resistance from the police. This option, however, might not be as offensive to the police since the independent monitor reviews only procedures rather than individual case files and is therefore somewhat removed from the actual complaint process.

### ***Independent Investigator***

An independent investigator, who is not a member of the police department, oversees and directs the investigation of individual citizen complaints.<sup>10</sup> The investigator, often appointed by the mayor, is empowered to participate in the investigation process, and is permitted to interview witnesses and review evidence. These investigators could be given greater power, such as the ability to issue subpoenas and compel production of documents.

Unlike a civilian review board that conducts an external review after the police’s own investigation is complete, the independent investigator helps shape the police’s initial investigation. If an independent investigator and civilian review board were in place together, the civilian review board would review files produced by the independent investigator and the internal affairs division he directs. If an independent investigator works in concert with an independent monitor, the independent monitor would assess the

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<sup>3</sup> Human Rights Watch, “Shielded from Justice: Police Brutality and Accountability in the United States,” June 1998, <<http://www.hrw.org/reports98/police/uspo22.htm>> (last accessed Aug. 4, 2003).

<sup>4</sup> See, e.g., Editorial, “Brutality Police Need Oversight,” *Sunday Gazette Mail*, June 4, 2000.

<sup>5</sup> Human Rights Watch, “Shielded from Justice.”

<sup>6</sup> Merrick, *Civilian Oversight*, p. 161.

<sup>7</sup> *Ibid.*

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<sup>8</sup> *Ibid.*, p. 160. For more information on this model, see Kendall Stagg, “Who Should Police the Police?” *Reno News and Review*, Apr. 18, 2002, <<http://www.newsreview.com/issues/reno/2002-04-18/guest.asp>> (last accessed July 7, 2003).

<sup>9</sup> Merrick, *Civilian Oversight*, p. 160.

<sup>10</sup> *Ibid.*, p. 162.

procedures in place that the independent investigator would be using while involved in individual investigations.

The existing system in West Virginia requires police departments to conduct their own investigations. Such internal investigations may be cursory and incomplete, as some individuals in a police department may have a conflict of interest that precludes them from impartially examining a claim against a colleague. The immediate value of an independent investigator is that he or she will be free of such conflict of interest. Accordingly, an independent investigator will be more likely to produce a fair investigation, and will thus help restore the public's confidence in the integrity of the system.

An independent investigator has been operating in the Seattle (WA) Police Department and in Los Angeles County (CA) since 2001.<sup>11</sup> In Los Angeles' Office of Independent Review, "[n]o investigation can be closed unless the [independent review office] certifies that it was full, fair, and thorough."<sup>12</sup> These experiments have been said to be the most impressive alternatives to civil service commissions because of improved accountability and civilian involvement.<sup>13</sup>

This alternative is an attractive reform measure for West Virginia because investigations should be more complete and impartial due to the absence of a conflict of interest with an independent investigator. However, this reform may be the least feasible because of the radical change it would impose on internal affairs' investigative duties—the investigators would be directed by an outside investigator.

### **Special Prosecutor**

If criminal charges are sought against a police officer for police misconduct, a district attorney (DA) presents evidence to a grand jury for an indictment and argues the subsequent case. However, a central problem associated with a DA is that the DA may not want to file charges and proceed to trial against a police officer, perhaps because she does not want to either create the public impression that she is anti-police, offend the law enforcement officers to whom the DA relies on to receive evidence in other cases, or prosecute "one of her own." For this reason,

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., p. 163.

some jurisdictions have turned to a special prosecutor for cases involving police brutality and civil rights violations.<sup>14</sup>

It has been noted that with an independent or special prosecutor, the "frequency and quality" of "investigations and prosecutions" will increase.<sup>15</sup> The use of special prosecutors in police brutality cases has been successful in other jurisdictions, including New York<sup>16</sup> and Chicago,<sup>17</sup> and has been endorsed by the Human Rights Watch and the American Civil Liberties Union.<sup>18</sup> A governor, judge, or the DA, who may have recused himself from the proceedings, often appoints a special prosecutor. With the benefits of a special prosecutor in mind, there should be a permanent statutory mandate for a special prosecutor in certain cases involving police misconduct.

This alternative appears to be promising. A special prosecutor was successfully used in a December 1999 suit filed against a West Virginia state police officer.<sup>19</sup> Moreover, a special prosecutor does not have anything to do with the internal mechanisms of the police internal affairs division—a special prosecutor is merely a different prosecutor with identical powers, leaving the police's duties and functions entirely intact.

Despite the benefits of a special prosecutor, police officers may provide incomplete, inaccurate, or misleading material to him in order to minimize the allegations brought against their colleague. While a DA may face these same problems, a special prosecutor may encounter even

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<sup>14</sup> For more information on this model, see the Malcolm X Grassroots Movement, "Cop Watch," 2001 <<http://www.mxgm.org/copwatch.htm>> (last accessed July 8, 2003).

<sup>15</sup> U.S. Commission on Civil Rights, *Revisiting Who Is Guarding the Guardians?* November 2000, p. x (hereafter cited as USCCR, *Guardians*).

<sup>16</sup> Olivia Winslow, "When Call Goes Out for Special Prosecutor," *Newsday*, Oct. 3, 1995, p. A27, <[http://www.injuryassist.com/News/19951003a/body\\_19951003a.htm](http://www.injuryassist.com/News/19951003a/body_19951003a.htm)> (last accessed Aug. 5, 2003).

<sup>17</sup> Locke E. Bowman and Randolph N. Stone, "Cop Brutality Must Be Thorough, Fair; Public Confidence in Our Justice System Is at Stake," *Chicago Sun-Times*, May 16, 2002, <[http://www.law.uchicago.edu/mandel/police/news/cop\\_brutality.html](http://www.law.uchicago.edu/mandel/police/news/cop_brutality.html)> (last accessed Aug. 5, 2003).

<sup>18</sup> Human Rights Watch, "Police Brutality in the U.S." <<http://www.hrw.org/about/initiatives/police.htm>> (last accessed Aug. 5, 2003); American Civil Liberties Union, "NYCLU Launches 'Campaign to Stop Police Brutality,'" press release, Jan. 10, 1999, <[archive.aclu.org/news/1999/n011099a.html](http://archive.aclu.org/news/1999/n011099a.html)> (last accessed Aug. 5, 2003).

<sup>19</sup> Randy Coleman, "State Police Fighting for Overtime Money, Against Review Board," *Associated Press State & Local Wire*, Feb. 7, 2000.

less cooperation from the police if she solely prosecutes police officers charged with misconduct.

## Accountability and Identification of Rogue Officers

Most misconduct arguably occurs because of a handful of rogue officers.<sup>20</sup> For example, a 2001 National Institute of Justice publication found that “10 percent of . . . officers cause 90 percent of the problems,”<sup>21</sup> and investigations have revealed that approximately “2 percent of all officers are responsible for 50 percent of all citizen complaints.”<sup>22</sup> As such, measures are needed to help ensure that these officers are identified before they can harm citizens and are sufficiently deterred from misbehaving if they are on active duty.

### Accountability: Incentive Strategy

This model employs rewards for police officers (through promotions, formal recognition, commendations, and monetary awards, etc.) for nonaggressive behavior with citizens under trying conditions (e.g., an officer “avoids a shooting or talks a suspect into custody”).<sup>23</sup> If a reward system is in place and officers know there will be a direct positive consequence for their good actions, their behavior is likely to improve. Conversely, officers should be held accountable for their misconduct.<sup>24</sup> In addition, the efficacy of the system depends on whether and to what extent officers are willing to hold one another ac-

countable and whether the community is able to identify misbehaving officers.<sup>25</sup>

This model is advisable because it is an internal accountability mechanism: the police reward and punish themselves. Moreover, the police already reward officers for “actions that led to arrest(s), the capture of a dangerous felon, or some other heroic activity.”<sup>26</sup> Rewarding officers for nonviolent behavior in tough situations will merely extend the types of actions for which officers can receive recognition. More importantly, a positive reinforcement mechanism will reorient the officer’s perception as to what his role is, namely to fight crime in a citizen- and community-friendly fashion.

In West Virginia, negative behavior is not included in the performance assessment that forms the basis for an officer’s promotion. For example, for municipal police officers, “[p]romotions shall be based upon experience and by written competitive examinations,”<sup>27</sup> and there is nothing “that even intimates that, to secure promotion, any further action is required than to pass the test . . . and have eligibility of an applicant.”<sup>28</sup> The West Virginia State Police bases promotions on an applicant’s composite score that is drawn from a promotional examination, a written examination, physical fitness test, education and longevity, and a performance appraisal of the officer’s past two years of service.<sup>29</sup> However, the officer’s performance appraisal accounts for approximately 14 percent of the applicant’s overall promotion evaluation (15 out of a possible 106 points).<sup>30</sup>

A greater proportion of an officer’s composite score should be based on the officer’s performance while on duty, both positive and negative behavior. The existing statutory provisions should be amended to include consideration of negative behavior in performance evaluations. The type of disciplinary action taken or the number of complaints against an officer could measure negative behavior. Moreover, if an officer has received serious disciplinary action, frequent discipline, or a certain number of complaints in a given time period, the officer

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<sup>20</sup> USCCR, *Guardians*, p. 4 (stating that police misconduct is too “pervasive and complex” to be explained away by a few officers).

<sup>21</sup> Samuel Walker, Geoffrey P. Alpert, and Dennis J. Kenney, “Early Warning Systems: Responding to the Problem Police Officer,” *National Institute of Justice*, July 2001, <<http://www.ncjrs.org/txtfiles1/nij/188565.txt>> (last accessed July 17, 2003).

<sup>22</sup> *Ibid.* (citing “Kansas City Police Go After Their ‘Bad Boys,’” *New York Times*, Sept. 10, 1991; “Waves of Abuse Laid to a Few Officers,” *Boston Globe*, Oct. 4, 1992).

<sup>23</sup> Geoffrey P. Alpert and Mark H. Moore, “Measuring Police Performance in the New Paradigm of Policing,” <<http://www.bja.evaluationwebsite.org/html/documents/documentI.html>> (last accessed Dec. 17, 2003).

<sup>24</sup> Robert C. Trojanowicz, “Police Accountability,” *Community Policing Pages*, 1998, <<http://www.concentric.net/~dwoods/account.htm>> (last accessed July 17, 2003).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> W. VA. CODE § 8-14-17 (2001).

<sup>28</sup> *Gartin v. Fiedler*, 38 S.E.2d 352 (W. Va. 1946).

<sup>29</sup> W. VA. CODE St. R. tit. 81, § 03-4.2.2 (2003).

<sup>30</sup> *Id.*



should be precluded from consideration for promotion.

The lack of adequate accountability mechanisms to check officer misconduct could be part of the reason why police brutality has not been sufficiently deterred in West Virginia, and why the public may believe that officers cannot effectively police themselves. Improving existing accountability procedures will assist in preventing police misconduct and will provide the public with confidence that such acts of misbehavior will be documented and that officers will be disciplined accordingly.

There are two specific procedures, if implemented, that would help monitor police misconduct: computerized risk-management systems and cameras in police cars.

#### **Computerized Risk-Management System.**

A computerized risk-management system can help incentive strategies operate more effectively and accurately by recording the actual police behavior that is to be rewarded or punished. A computerized risk-management system tracks officers' "use of force, search and seizure, citizen complaints, as well as criminal charges or civil lawsuits filed against officers."<sup>31</sup> The system can also be designed to track positive behavior or the recognition of positive behavior, such as commendations or monetary awards.

The effectiveness of this strategy depends first and foremost on the accuracy of the information entered into the system,<sup>32</sup> as officers may not consistently or honestly record positive or negative conduct into the system. Second, the system's effectiveness also hinges on how often the system is checked by supervisors, and what, if any, accountability procedures are in place to appropriately reward or punish the officers who are in the system.

A computerized data-collection tool, combined with real consequences that may follow for police conduct, may deter negative or encourage positive behavior. In the least, a computerized system should be encouraged because it will serve as hard evidence of police conduct. Computerized tracking systems have been installed in various police departments across the nation,

including the Pittsburgh city police, the Los Angeles Police Department, and the New Jersey State Police, among others. In Pittsburgh, reports of police misconduct have dropped by more than half on average since the tracking system was installed.<sup>33</sup>

**Cameras in Police Cruisers.** Installing video cameras in police cars can be another means to ensure officer behavior is documented and can provide useful information for implementing incentive strategies. The use of cameras, during traffic stops for instance, permits citizens to have incontrovertible proof as to what really occurred in case they later feel aggrieved by officer conduct. The installation of cameras in patrol and traffic vehicles, while costly, can not only benefit citizens who may complain of police misconduct, but also accused officers who may refer to the videotapes when a complaint is filed against them. Indeed, according to Police Chief Jerry Pauley, in Charleston, videotape from police cruisers has exonerated officers in 99.9 percent of complaints filed.<sup>34</sup> To be sure, most of Charleston's patrol vehicles and traffic vehicles have cameras;<sup>35</sup> however, the installation of cameras in police cruisers should be a universally adopted program in all West Virginia law enforcement agencies.

#### **Identification: Preemptive Evaluations**

Because police brutality and misconduct can be traced to a handful of rogue officers, preemptive assessment evaluations can help identify those officers who are likely or may be predisposed to use unnecessary force, or who may be unable to handle high-pressure situations in a calm, resolute fashion. These evaluations may consist of medical and psychological tests, interviews, and performance assessments. Collectively, these tools could uncover behavioral issues, health problems, alcohol or drug abuse, or stress that may preclude an officer from exercising proper discretion. An officer identified under an "early warning system" may be compelled

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<sup>31</sup> Lucas Mearian and Linda Rosencrance, "Police Policed with Data Mining Engines," *Computerworld.com*, Apr. 2, 2001, <<http://www.computerworld.com/governmenttopics/government/policy/story/0,10801,59159,00.html>> (last accessed Dec. 8, 2003).

<sup>32</sup> *Ibid.*

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<sup>33</sup> *Ibid.*

<sup>34</sup> Jerry Pauley, chief of police, Charleston, West Virginia, e-mail to Marc Pentino, Eastern Regional Office, USCCR, Oct. 9, 2003 (hereafter cited as Pauley e-mail).

<sup>35</sup> Carrie Smith, "City Police Taking Precautions; Cameras, Training Used to Prevent Excessive Force," *Charleston Daily Mail*, July 22, 2000.

to undergo specialized training or may be relegated to administrative duties.

Empirical evidence compiled from three case studies (conducted in Miami-Dade, Florida, Minneapolis, Minnesota, and New Orleans, Louisiana) suggests that early warning systems “have a dramatic effect on reducing citizen complaints and other indicators of problematic police performance among those officers subject to intervention.”<sup>36</sup> It should be noted that such early warning systems were used in concert with other efforts to deter police misconduct.

The West Virginia State Police has an Early Identification System to identify troopers who have a “larger than normal” number of use of force contacts,<sup>37</sup> and a psychological assessment program, which reviews officers who have questionable duty judgment or persistent citizen complaints regarding their conduct.<sup>38</sup> Troopers identified under the system as having a larger than normal number of use of force contacts are given “additional training on the use of force to ensure the problem is not with misunderstanding or abuse of use of force.”<sup>39</sup>

The local police structure indicates that “mental defects” that may incapacitate an officer are grounds for refusing to appoint or promote an officer;<sup>40</sup> however, the statutory mandate for these evaluations should be as comprehensive and explicit for local police jurisdictions as those for the state police officers. Charleston has psychological testing, evaluations, and an employee assistance program.<sup>41</sup> Such measures should be required, by clear statutory pronouncement, for all local-level police departments.

One noticeable advantage of these evaluations is that they can be done internally by the police force’s own designated personnel. To ensure compliance with these evaluations, they should be mandatory, and officers who fail to

submit themselves to evaluation should be disciplined accordingly.<sup>42</sup>

## Improving Community Relations

Incidents of police brutality generate public fear and distrust of law enforcement, particularly among minority communities and in areas where police misconduct has occurred in the past. Police-community tension thus may exist because of previous incidents and cultural differences that stifle understanding. Improved relations between law enforcement and citizens will restore trust in these affected communities, and make police efforts more effective through enhanced cooperation. Three aspects of police-community relations are discussed here: community policing, recruiting minorities to the police force, and awareness training.

### Community Policing

Community policing is a practical solution to combat tension and improve law enforcement. It is a collaborative effort between law enforcement and citizens to identify crime and disorder and work together to solve ongoing problems and create an atmosphere in which serious crime will not occur.<sup>43</sup> If the community is more intimately involved in the law enforcement’s activities and strategies, citizens will believe they are being treated equitably. Conversely, officers will better understand all citizens and their respective cultures, and thus treat diverse citizens fairly and with requisite sensitivity. With fear dissipated and relations improved, community policing renders law enforcement more effective, as citizens will aid the police in establishing strategies and may be more forthcoming in reporting crime or their suspicions of crime being committed in their neighborhoods. Community policing is important in jurisdictions with large or multiple ethnic communities. The practice can help break down cultural and linguistic barriers in areas inhabited by groups that have been historically

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<sup>36</sup> Ibid.

<sup>37</sup> W. VA. CODE St. R. tit. 81 § 10-9 (2003); Howard E. Hill Jr., superintendent, West Virginia State Police, facsimile to Marc Pentino, Eastern Regional Office, USCCR, Sept. 24, 2003, p. 5 (hereafter cited as Hill Jr. facsimile).

<sup>38</sup> *Id.* § 81-10-10.

<sup>39</sup> Hill Jr. facsimile, p. 5. During the affected agency review process, Superintendent Hill noted that a larger than normal number of use of force contacts is correlated to the area in which the trooper is assigned as well as to the trooper’s physical size and gender.

<sup>40</sup> W. VA. CODE § 8-14-13 (2001).

<sup>41</sup> Pauley e-mail.

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<sup>42</sup> DC Watch, *Report of the Special Committee on Police Misconduct and Personnel Management of the Council of the District of Columbia*, Oct. 6, 1998, <<http://www.dccwatch.com/policy/981006b.htm>> (last accessed July 8, 2003).

<sup>43</sup> Community Policing Consortium, “About Community Policing,” <<http://www.communitypolicing.org/about2.html>> (last accessed Dec. 17, 2003).

subject to “unfair and inappropriate police behavior.”<sup>44</sup>

In Miami, Florida, for example, the county police department hosted a series of concerts, which “provided an excellent vehicle for the police to create and maintain positive contacts with members of the community they serve and to be seen in a positive light. Further, by initiating and participating in activities the youths enjoyed, the police had an opportunity to see youth in a positive light.”<sup>45</sup>

There is evidence that community policing is effective. For example, researchers from Northwestern University found that “crime, social disorder, and physical decay decreased in the community policing districts.”<sup>46</sup> Similarly, the National Criminal Justice Reference Service cited several success stories from case studies done in the early 1990s in Madison, Wisconsin (1993), Seattle, Washington (1992), and Chicago, Illinois (1995).<sup>47</sup> Community-oriented policing is endorsed by the U.S. Department of Justice,<sup>48</sup> and by the Carolinas Institute for Community Policing.<sup>49</sup>

In West Virginia, civil rights organizations, such as the NAACP, have advocated community policing as a needed reform measure, believing that state police officers target minorities and

that there is an embarrassing lack of minorities on the police force.<sup>50</sup>

The Martinsburg Police Department has adopted a community policing effort by instituting a “citizens academy,” which consists of a nine-week course aiming to “educat[e] the public on topics relative to the role of the police officers” in the community.<sup>51</sup> This program, however, appears one-sided, asking only the public to learn about the functions of the police. A more effective and prudent community-policing effort would emphasize, or at least involve, education of the police as to citizen needs and characteristics of minority communities. A firm relationship between the police and citizens cannot result through a unilateral public understanding of the police since officers are the ones who engage in acts of misconduct against the public. The attempt to educate the public is indeed a step in the right direction, but it must be in conjunction with efforts to decrease the propensity of officers to use excessive force.

Eight hours of instruction on community policing are included in both basic training and cadet training for the West Virginia State Police.<sup>52</sup> Community policing, however, is easier said than done, and the inclusion of training or a declaration from the police that they will engage in community policing may be without real effect. As a result, the West Virginia police must recruit more minorities and establish conspicuous partnerships with local minority leaders through forums and other outreach efforts.

Moreover, the existence of community-oriented policing—that is, having a symbiotic relationship between law enforcement officers and the community—will facilitate minority recruitment efforts.

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<sup>44</sup> USCCR, *Guardians*, p. 4.

<sup>45</sup> Alpert and Moore, “Paradigm.”

<sup>46</sup> Institute for Policy Research, “IPR News: Community Policing Book,” July 10, 1997, (reviewing Wesley G. Skogan and Susan M. Hartnett, *Community Policing, Chicago Style*, 1997, <<http://www.northwestern.edu/ipr/news/caps.html>> (last accessed July 17, 2003)).

<sup>47</sup> Bertus R. Ferreira, “The Use and Effectiveness of Community Policing in a Democracy,” National Criminal Justice Reference Service, 1996, <<http://www.ncjrs.org/policing/use139.htm>> (last accessed July 17, 2003).

<sup>48</sup> The Office of Community Oriented Policing Services, created in the U.S. Department of Justice as a result of the Violent Crime Control and Law Enforcement Act of 1994, “is to advance community policing in all jurisdictions of all sizes across the country.” U.S. Department of Justice, Office of Community Oriented Policing Services, “What Is Community Policing?” <<http://www.cops.usdoj.gov/default.asp?Item=36>> (last accessed July 9, 2003).

<sup>49</sup> For more information on this model, see U.S. Department of Justice, Office of Community Oriented Policing Services Web site, <<http://www.cops.usdoj.gov>> (last accessed July 8, 2003); Carolinas Institute for Community Policing, “Community Oriented Policing,” <<http://www.cicp.org/COPprogram.html>> (last accessed July 8, 2003).

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<sup>50</sup> Nathaniel Ingram, “Everyone Must Join in Attacking the Racism Problem,” *Herald Dispatch*, July 31, 1997; Philip W. Carter, testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, Aug. 22, 1997 (hereafter cited as Carter testimony).

<sup>51</sup> City of Martinsburg, “Public Safety,” <<http://www.martinsburg.com/city/pubsafe.index.htm>> (last accessed Aug. 7, 2003).

<sup>52</sup> West Virginia State Police, “Basic Curriculum,” Feb. 13, 2001, <<http://www.wvstatepolice.com/training/109thbasic.htm>> (last accessed July 18, 2003); West Virginia State Police, “Cadet Curriculum,” <[http://www.wvstatepolice.com/training/cadet\\_curriculum.htm](http://www.wvstatepolice.com/training/cadet_curriculum.htm)> (last accessed July 18, 2003).

### **Recruiting Minorities**

Minorities often do not view the police in a favorable light.<sup>53</sup> With officers of racial or ethnic backgrounds on the police force, they will be less likely to view the police as a “them” entity and their fear and mistrust may diminish. Minority officers are likely to help their fellow officers better understand any cultural and linguistic barriers that exist. Minorities should be recruited from “top to bottom,” meaning that diversity should exist at all levels within the police force<sup>54</sup>—from a cop on the beat to a senior officer directing and shaping police practices. Diversity at all levels is necessary if minorities are to have their faith restored in the police departments, and for the police themselves to better understand the concerns of various minority groups.

### **Awareness and Use of Force Training**

Police officers should receive sensitivity or diversity training no matter what the racial composition of the force. Understanding various racial and ethnic groups will aid the police in responding to the concerns of these groups respectfully and more efficiently. For example, diversity training could help officers appreciate the fact that a vast majority of turbaned males in the United States are Sikhs of Indian origin, not Muslims from the Arab world.

This training should be done early on in the officer’s career, and minorities should be involved in the training process to ensure the accuracy of the instruction.<sup>55</sup> Funding would be required to develop curriculum and solicit members from the community to oversee the curriculum. As officers are required to receive training before they are certified, adding awareness training to the existing curriculum may not be difficult once the training program is developed and approved by various affected communities.

The West Virginia State Police’s cadet training (which is required for all police officers in the state<sup>56</sup>) includes eight hours of “cultural diversity” training, and use of force utilization briefings are conducted at annual in-service training.<sup>57</sup> It is noteworthy that administrators of the training academy themselves realize the importance of and need for raising awareness in cultural diversity.<sup>58</sup> The mere existence of such training, however, is not indicative of its sufficiency, especially since it accounts for eight hours out of a total of 1,020 that cadets receive.<sup>59</sup> Awareness training should not only be increased during cadet training to ensure sufficiency, but continued throughout law enforcement officers’ careers.

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<sup>53</sup> See Ingram, “Everyone Must Join in Attacking the Racism Problem”; Carter testimony.

<sup>54</sup> USCCR, *Guardians*, p. viii.

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<sup>55</sup> *Ibid.*, p. ix.

<sup>56</sup> W. VA. CODE § 30-29-5 (2001).

<sup>57</sup> West Virginia State Police, “Cadet Curriculum”; Hill Jr. facsimile, p. 5.

<sup>58</sup> Captain Steve Cogar, former director of training for the West Virginia State Police, commented that “we know that we need to raise the awareness in these areas,” namely cultural diversity, hate crimes, and dealing with disabled citizens. Steve Cogar, testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, West Virginia, Apr. 20, 2000, transcript, p. 105.

<sup>59</sup> West Virginia State Police, “Cadet Curriculum.”

## Appendix 1

### Letter from Delegate Carrie Webster, August 2, 2003



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**Committees:**  
Banking and Insurance  
Judiciary  
Constitutional Revision

August 2, 2003

Dr. Ranjit Majumder  
Chairperson, West Virginia Advisory Committee  
U.S. Commission on Civil Rights  
624 9th Street N.W.  
Washington, DC 20425

Dear Dr. Majumder:

Thank you for your presentation on behalf of West Virginia Advisory Committee before the Joint Select Committee on Minority Issues on June 8, 2003. Your report, "*Civil Rights Issues in West Virginia*," is a very useful document, serving as a sober reminder of the many civil rights problems in our State. I found the report's section on police-community relations particularly compelling. I am certainly anxious to see improvements in the way West Virginia handles allegations of police misconduct and how citizens can become more involved in their community by working with state and local police departments.

The Joint Select Committee will likely examine potential legislative action based on the Committee's report recommendations. In this regard, I am seeking further insight from the Committee on the issue of police misconduct and brutality in West Virginia. As you recall, I have spoken with you and Marc Pentino of the Commission's Eastern Regional Office in the past about the Advisory Committee providing the legislature with additional information on this topic. Since prior bills establishing a citizen review board were introduced in the House of Delegates but did not make it out of subcommittee, the Advisory Committee's input would be a tremendous resource for the Joint Committee on Minority Issues as well as the House Judiciary and Finance Committees in which draft bills were first introduced. It would be of great use if the West Virginia Advisory Committee could provide a background paper elaborating on the problem and describing the current method of officer discipline in West Virginia. As we develop new ideas that may work in our state, we would also be interested in learning of approaches or models that have been tried in other parts of the country that incorporate citizen or outside review of police misconduct. We would find this most useful since the Select Committee will likely be considering criminal justice issues this Fall.

Once again, thank you for your presentation. I look forward to working with you and the Advisory Committee in the future to improve civil rights in West Virginia.

Sincerely,



Debrae Carrie Webster

Co-Chair, Joint Select Committee on Minority Issues

cc: Ki-Taek Chun, director, USCCR, Eastern Regional Office  
Marc Pastino, civil rights analyst, USCCR, Eastern Regional Office

## Appendix 2

### House Bill 2237

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#### Amended House Bill 2237

Final Draft, April 1, 2001

A BILL to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, relating to creating a state police review board to hear complaints against state police personnel; providing procedures and requirements for disposition of complaints; limiting public disclosure of certain information; requiring semiannual reports; and addressing effects of complaint process.

*Be it enacted by the Legislature of West Virginia:*

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-e, to read as follows:

#### **ARTICLE 2E. LAW ENFORCEMENT AND COMMUNITY RELATIONS APPEALS BOARD.**

##### **§15-2E-1. Law Enforcement and Community Relations Appeal Board created; members.**

- (a) The law enforcement and community relations appeals board is hereby created. The Legislature finds the creation of this board is intended to promote public confidence and accountability of state law enforcement agencies, and facilitate fair and complete review of citizen complaints and enhance the reporting, collection and proper analysis of citizen complaints against law enforcement officers.
- (b) The board will act as a permanent statutory agency through which a state-wide repository for the receipt of complaints lodged by members of the general public against all law enforcement agencies of the state. The board shall review policies of all other law enforcement agencies of the state, and make recommendations to the respective agencies on methods to promote fair and timely review of citizen complaints.
- (c) The board shall also provide a external review board for hearing complaint appeals only relating to the West Virginia state police.
- (d) The board is composed of the following members or their designees for the purpose of hearing complaint appeals relating to the West Virginia state police:
- (1) The attorney general of West Virginia;
  - (2) The superintendent of the West Virginia state police;
  - (3) The executive director of the human rights commission;
  - (4) The director of public defender services;
  - (5) The executive director of the West Virginia prosecuting attorneys institute; and
  - (6) Four citizen members appointed by the governor, not more than two of whom may be from any one congressional district of the state, who each serve for a term of two years. Two of these members shall have professional experience and an educational background in law enforcement or criminal justice. A vacancy in a citizen member position shall be filled in the manner of the original appointment for the remainder of the term;
  - (8) The executive director shall be an ex officio non-voting member of the commission.
- (e) The board shall meet in executive session to review West Virginia state police complaint appeals as often as necessary to perform its functions and duties. Executive session meetings shall not be open to association members appointed pursuant to section three of this article. Board meetings to review state law enforcement complaint procedures and practices shall be open to the public.

(f) In all matters where a quorum is present, a majority vote of the board prevails. A quorum consists of five members.

(g) Citizen members of the commission are entitled to receive compensation for attendance at official meetings not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. All members are entitled to actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(h) The governor shall designate a chair, who is not a public official, for a term to run concurrently with the term of office of the member designated as chair.

(i) The Governor shall appoint, with the advice and consent of the West Virginia Senate, an executive director for the board. He or she shall hold a degree and have professional experience in fields involving law enforcement or criminal justice. The executive director shall provide technical information to support the administrative work of the board, conduct complaint investigations and shall facilitate the submission and disposition of citizen complaints and analysis as provided in this article. The board may hire all necessary staff as needed to assist the executive director and otherwise effectuate the purposes of this article.

(j) The board shall continue to exist until the first day of July, two thousand five, pursuant to article ten, chapter four of this code, unless sooner terminated, continued or reestablished by act of the Legislature.

#### **§15-2E-2. Additional board members for state-wide review.**

Six ex officio non-voting members shall be appointed to the board to participate and contribute to the board's review and study of policies of all other law enforcement agencies of the state, to make recommendations to the respective agencies on methods to promote fair and timely review of citizen complaints.

The following organizations shall appoint a member, and in his absence a designee, to serve for a term of two years:

- (1) The West Virginia sheriffs association;
- (2) The West Virginia deputy sheriffs association;
- (3) The West Virginia chiefs of police association;
- (4) The West Virginia troopers association;
- (5) The West Virginia fraternal order of police; and
- (6) The West Virginia conservation officers association.

#### **§15-2E-3. Complaint procedures; state police.**

(a) Any person who claims to have been subjected to, or any person who claims to have personal knowledge of an act or acts of discourtesy, use of excessive force, misconduct, or other unlawful act caused by a state police officer, may make a complaint of the conduct at the office of professional standards division of the state police or at any state police detachment.

(b) For claims against a West Virginia state police officer, a copy of each complaint received shall be provided by the superintendent to the board. The superintendent, upon completion of an investigation, shall also provide the board a copy of the final determination regarding the complaint as provided in subsection (a). The superintendent shall also notify the person making a claim pursuant to subsection (a) of the superintendent's findings and his or her right of appeal to the board. This notice shall be provided within seven days of completion of the investigation, and describe the necessary information for submitting an appeal to the board. If the person making the claim is dissatisfied with the disposition of the case, he or she may appeal the decision to the board. The person making the claim must make the request for review by the board within thirty days of receipt of notice of disposition of the case. For good cause show, the board may consider appeals after this time period.

#### **§15-2E-4. Jurisdiction and disposition of complaints.**

(a) The board shall consider all appeals as provided in section two of this article. Upon request of the board, the superintendent shall provide all records relating to the superintendent's investigation. Upon



receipt of an appeal request, or upon recommendation of the executive director, the board may initiate an investigation into a complaint.

- (b) The board may recommend that the relevant law enforcement agency conduct a further investigation and report back to the board the results of its investigation.
- (c) The board may direct the executive director to conduct an investigation and report back to the board on the results of the investigation. For purposes of conducting an investigation, the board may also authorize the executive director to subpoena a complainant, any other witnesses and any necessary records.
- (d) Upon review of the investigative report of each case, the board shall promptly make any one of the following findings:
  - (1) That the investigation is complete and that appropriate disposition was made;
  - (2) That further investigation is warranted and the complaint is returned to the professional standards unit with recommendations on areas of further inquiry; or
  - (3) That the investigation is complete but that the wrong conclusion was drawn, in which the case is directed to the superintendent along with any recommendations resulting from the executive director's investigation.
- (e) The board must make its recommendation to the superintendent within thirty days of receipt of notice of appeal.
- (f) The superintendent has final decision-making responsibility for the appropriate disciplinary action in each case, but no final action may be taken disposing of any appealed complaint until the recommendation of the board has been reviewed. The superintendent must return responses to board recommendations to the board within thirty days. For good cause shown the board may extend this time period.

#### **§15-2E-5. Law enforcement complaint forms.**

- (a) The law enforcement and community relations appeals board shall promulgate a form to be utilized by all law enforcement agencies in the state to respond to citizen complaints. This form will include at a minimum, the following:
  - (1) The name, address and telephone number of the complainant;
  - (2) The name of the law enforcement officer, if known by the complainant;
  - (3) The name of the agency employing the law enforcement officer;
  - (4) Whether the complaint involved the arrest of the complainant;
  - (5) The date of occurrence;
  - (6) The time, county and place of occurrence;
  - (7) A full complaint summary in the words of the complainant;
  - (8) Names of any witnesses to the incident;
  - (9) Disclosure of any physical evidence relating to the incident;
  - (10) Any remedy requested by the complainant;
  - (11) An acknowledgment that giving false information to a West Virginia state police officer violates state law.
- (b) All complaints are confidential and not subject to freedom of information disclosure pursuant to chapter twenty nine-b of the code.

#### **§15-5E-6. Complaint procedure for other state law enforcement agencies.**

- (a) Every head of a state law enforcement agency or his or her designee shall provide a copy to the board of all complaints submitted within ten days of receipt, for each citizen complaint received relating to conduct of a law enforcement officer while performing his or her duties. Copies of complaints shall also be forwarded to the complainant. Disposition letters regarding these complaints shall be submitted to the board within thirty days of completion of the investigation by the law enforcement agency. The board shall send notifications to complainants and the board on the final disposition of their complaints.
- (b) For purposes of this section, "law-enforcement officer" means:

- (1) West Virginia state police officers;
- (2) municipal police officers;
- (3) County sheriff and deputy sheriffs;
- (4) campus police officers at state institutions of higher education; and
- (5) department of natural resources conservation officers.

(c) The board may also receive complaints by citizens and shall submit them to the head of the law enforcement agency for investigation. The executive director of the board shall compile statistics based on the type of and disposition of each complaint to identify officer conduct which results in citizen complaints and dissatisfaction. The executive director shall also monitor and semi-annually provide reports to the speaker of the house of delegates and president of the senate these statistics, and information on costs to the Board of Risk and Insurance Management resulting from claims made against the state based on the conduct of state law enforcement officers.

#### **§15-2E-7. Rights not abrogated.**

Nothing contained in this article abrogates any constitutional, statutory or common law right of police personnel against whom a complaint is filed, or of the complainants, investigators or witnesses who participate in the complaint procedure. \*\*\*Use of statements of a state police law enforcement officer subject to an internal investigation of the state law enforcement agency shall not be admissible in a court of law.\*\*\*

#### **§15-2E-8. Procedural requirements.**

- (a) The West Virginia state police superintendent must comply with all legislative rules of the state police on professional standards for investigations and discipline. The provisions of this article are to be construed to comport with the internal investigation and disciplinary procedures of the professional standards unit of the state police.
- (b) State law enforcement officers may not be penalized or affected adversely in any way as a result of the collection of complaints for the repository and the policy review procedures set forth in this article except through use of internal investigation procedures established for by the respective law enforcement agency.
- (c) Complaint forms must be placed in a conspicuous place and readily available to the public.

#### **§15-2E-9. Records; public disclosure.**

Records of the board containing the names or identification of police personnel, complainants, investigators or witnesses may not be disclosed or released to the general public and are exempt from disclosure. All complaint forms are confidential and not subject to freedom of information disclosure pursuant to chapter twenty nine-b of the code.

#### **§15-2E-10. Semiannual report.**

The board shall prepare and publish a semiannual statistical and analytical report regarding the complaints processed under this article and make any recommendations on how law enforcement agencies may improve internal polices to effectuate the purposes of this article.

#### **§15-2E-11. Board rules.**

The law enforcement and community relations appeals board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to effectuate the provisions of this article.

#### **§15-2E-12. Willful and unlawful disclosure of information; penalty.**

Any person who willfully and unlawfully discloses any confidential information contained in the repository or other documents or information regarding an investigation other than as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars,

or confined in the county or regional jail for not more than six months, or both. A person convicted pursuant to this section is also liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

**15-2E-13. Law enforcement agency citizen complaints policy.**

Each law enforcement agency of this state as defined in section six of this article shall establish and maintain a written policy for receipt and disposition of citizen complaints against the agency's law enforcement officers, and provide a copy of this policy to the law enforcement and community relations appeals board. Each law enforcement agency shall have this policy in place by the first day of January, two thousand two.

NOTE: The purpose of this bill is to create a police review board to hear complaints against State Police personnel.

This article is new; therefore, strike-throughs and underscoring have been omitted.

## Appendix 3

### House Bill 2430

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#### West Virginia 78th Legislature House Bill 2430

(by Delegates Manuel, Doyle and Fleischauer)  
[Introduced January 20, 2003; Referred to the Committee on the Judiciary.]

SYNOPSIS: A BILL to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to creating a state police review board to hear complaints against state police personnel; providing procedures and requirements for disposition of complaints; limiting public disclosure of certain information; requiring semiannual reports; and addressing effects of complaint process.

*Be it enacted by the Legislature of West Virginia:*

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-f, to read as follows:

#### **ARTICLE 2F. STATE POLICE REVIEW BOARD.**

##### **Section 15-2F-1. Board created; members.**

- (a) The state police review board is hereby created to provide a permanent statutory agency through which complaints lodged by members of the general public and state police personnel regarding alleged acts of discourtesy and excessive force by state police personnel are to be processed and evaluated.
- (b) The board is composed of the following members or their designees:
  - (1) The attorney general of West Virginia;
  - (2) The superintendent of the West Virginia state police;
  - (3) The executive director of the human rights commission;
  - (4) The executive director of the West Virginia prosecuting attorneys' institute;
  - (5) The director of public defender services; and
  - (6) Four citizen members appointed by the governor, who each serve for a term of two years. A vacancy in a citizen member position shall be filled in the manner of the original appointment for the remainder of the term. Citizen members may serve unlimited consecutive terms.
- (c) In all matters where a quorum is present, a majority vote of the board prevails. A quorum consists of five members.
- (d) The board shall meet in executive session as often as necessary to perform its functions and duties, but it shall meet at least once a month.

##### **Section 15-2F-2. Complaint procedures.**

- (a) Any person who claims to have been subjected to, or any person who claims to have personal knowledge of an act or acts of discourtesy, use of excessive force or injury resulting from excessive force caused by state police personnel, may make a complaint of the conduct at the office of the internal affairs division of the state police or at any state police station.
- (b) The complaint shall be reduced to writing on a special police review board form serially numbered, signed by the complainant and notarized before a duly authorized notary public.

(c) One copy of the completed form shall be retained by the recipient of the complaint and a copy given to the complainant. A copy shall be mailed within forty-eight hours to the internal affairs division and to the secretary of the board.

(d) The secretary of the board shall assign a consecutive number to each complaint and, within forty-eight hours, shall mail a copy to each member of the board. The secretary shall also maintain on file a record of each complaint.

(e) The internal affairs division shall make a comprehensive investigation of each complaint and submit its report of the investigation to the board within ninety days from the date of the complaint.

(f) The board shall review the internal affairs division's report and submit in writing to the superintendent of state police within thirty days from receipt of the report, a statement of its findings and recommendations as provided under section three of this article. The superintendent shall, within thirty days of receipt of the findings and recommendations of the board, forward to the board a statement of his or her disposition in each case. Concurrent with this, the superintendent shall also forward a copy of the board's recommendation and the superintendent's statement of disposition to the complainant and respondent police personnel.

### **Section 15-2F-3. Jurisdiction and disposition of complaint.**

(a) Jurisdiction of the board extends only to complaints against state police personnel with respect to discourtesy and use of excessive force as defined by rules of the state police.

(b) Upon review of the investigative report of each case, the board shall promptly make any one of the following four recommendations to the superintendent:

- (1) Sustain the complaint and approve, disapprove or modify the proposed internal affairs division's action against the police personnel;
- (2) Dismiss the complaint because of lack or insufficiency of evidence;
- (3) Exonerate the police personnel because of the complainant's failure to prove his or her case by clear and convincing evidence; or
- (4) Remand the case for further investigation to the internal affairs division or to the West Virginia state police.

(c) The board may request the complainant, witnesses and the police department personnel involved in a particular complaint to submit voluntarily to a polygraph test or to appear voluntarily before the board.

### **Section 15-2F-4. Final action.**

The superintendent has final decision-making responsibility for the appropriate disciplinary action in each case, but no final action may be taken until the recommendation of the board has been reviewed.

### **Section 15-2F-5. Rights not abrogated.**

Nothing contained in this article abrogates any constitutional, statutory or common law right of police personnel against whom a complaint is filed, or of the complainants, investigators or witnesses who participate in the complaint procedure.

### **Section 15-2F-6. Suspension and dismissal procedures not changed.**

This procedure does not affect or change the methods and procedures for suspension or dismissal of members of the state police.

### **Section 15-2F-7. Procedural requirements.**

Police personnel may not be penalized or affected adversely in any way as a result of the procedure set forth in this article without having been first afforded proper written notice of charges against him or her and the right to a hearing before the grievance procedure recommendation board.

### **Section 15-2F-8. Records; public disclosure.**

Records of the board containing the names or identification of police personnel, complainants, investigators or witnesses may not be disclosed or released to the general public.

**Section 15-2F-9. Rules of procedure.**

The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code to carry out the provisions of this article.

**Section 15-2F-10. Semiannual report.**

The board shall prepare and publish a semiannual statistical and analytical report regarding the complaints processed under this article.

NOTE: The purpose of this bill is to create the state police review board to hear complaints against state police personnel.

## Appendix 4

### Directory of Oversight Agencies in the United States and Sample Complaint Forms

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This list, compiled by the Omaha, Nebraska Public Safety Auditor's office, has been amended to include oversight agencies not initially listed and to improve the readability of the listings. An attempt has been made to ensure the provided links are accurate and active.

This directory should not be considered an exhaustive inventory of oversight mechanisms, but should serve as a reference guide illustrative of the many oversight agencies established throughout the United States. Web site addresses provided should permit interested readers to learn more about individual agencies.

#### Arizona

- Tucson Office of Independent Police Auditor – <http://www.ci.tucson.az.us/ia.html>

#### California

- Berkeley Police Review Commission – <http://www.ci.berkeley.ca.us/prc/>
- Los Angeles County, Office of Independent Review – <http://www.laoir.com/>
- Novato Police Advisory and Review Board – [http://www.cityofnovato.org/Boards/police\\_rev\\_brd.cfm](http://www.cityofnovato.org/Boards/police_rev_brd.cfm)
- Oakland Citizens' Police Review Board – <http://www.oaklandnet.com/government/citizens/homepage.html>
- Sacramento Office of Police Accountability – <http://206.170.172.46/cityman/monitor.html>
- San Diego Citizens' Review Board on Police Practices – <http://www.sandiego.gov/citizensreviewboard/index.shtml>
- San Diego County Citizens' Law Enforcement Review Board – <http://www.co.san-diego.ca.us/clerb>
- San Francisco Office of Citizen Complaints – <http://www.ci.sf.ca.us/occ/>
- San Jose Independent Police Auditor – <http://www.ci.san-jose.ca.us/ipa/home.html>
- University of California, Berkeley, Police Review Board – <http://bas.berkeley.edu/Resources/PoliceReview.htm>

#### Colorado

- Denver Public Safety Review Commission – <http://198.202.202.66/PoliceComplaints/default.asp>

#### Connecticut

- New Haven Civilian Review Board – <http://www.cityofnewhaven.com/govt/CivilianReviewBoard2.htm>

#### Florida

- City of Miami Civilian Investigative Panel – <http://www.ci.miami.fl.us/cip/>
- Miami-Dade Independent Review Panel – <http://www.co.miami-dade.fl.us/irp/>
- St. Petersburg Civilian Police Review Commission – <http://stpete.org/boards.htm>

#### Idaho

- Boise Community Ombudsman – [www.boiseombudsman.org](http://www.boiseombudsman.org)

**Indiana**

- Indianapolis Citizens Police Complaint Office – <http://www.indygov.org/ipd/citizencomplaint/citizencomplaint.htm>

**Iowa**

- Iowa City Police Citizens Review Board – [http://www.iowa-city.org/board\\_members.asp?id=21](http://www.iowa-city.org/board_members.asp?id=21)
- Iowa Citizens Aide Ombudsman – <http://staffweb.legis.state.ia.us/cao/>

**Massachusetts**

- Cambridge Police Review Advisory Board – <http://www.ci.cambridge.ma.us/~PRAB/>

**Michigan**

- Detroit Office of the Chief Investigator – [http://www.ci.detroit.mi.us/police\\_commissioners/office\\_chief\\_investigator.htm](http://www.ci.detroit.mi.us/police_commissioners/office_chief_investigator.htm)
- Flint Ombudsman – <http://www.ci.flint.mi.us/ombuds-old/ombuds.html>

**Minnesota**

- Minneapolis Civilian Review Authority – <http://www.ci.minneapolis.mn.us/citywork/other/cpra.html>

**Missouri**

- Kansas City Office of Citizen Complaints – <http://www.kcpd.org>

**Nebraska**

- Omaha Public Safety Auditor – [http://www.ci.omaha.ne.us/departments/public\\_safety\\_auditor/](http://www.ci.omaha.ne.us/departments/public_safety_auditor/)

**Nevada**

- Las Vegas Metropolitan Police Department Citizen Review Board – <http://www.citizenreviewboard.com/>

**New York**

- Albany Citizens' Police Review Committee – <http://www.als.edu/glc/cprb/>
- New York City Civilian Complaint Review Board – <http://www.ci.nyc.ny.us/html/ccrb/home.html>
- Rochester Center for Dispute Settlement – <http://www.cdsadr.org/>
- Syracuse Citizen Review Board – <http://www.syracuse.ny.us/deptOther.asp>

**New Mexico**

- Albuquerque Independent Review Commission of the Police Oversight Commission – [www.cabq.gov/iro](http://www.cabq.gov/iro)

**Ohio**

- Cleveland Office of Professional Standards – <http://city.cleveland.oh.us/government/departments/pubsafety/diroff/adminind.html>
- Dayton – Montgomery County Ombudsman – <http://www.dayton-ombudsman.org/>



## **Oregon**

- Portland Independent Police Review – [www.ci.portland.or.us/auditor](http://www.ci.portland.or.us/auditor)

## **Pennsylvania**

- Philadelphia Police Advisory Commission – <http://www.phila.gov/pac>
- Pittsburgh Citizens Police Review Board – <http://www.city.pittsburgh.pa.us/cprb/>

## **Tennessee**

- Knoxville Police Advisory and Review Committee – <http://www.ci.knoxville.tn.us/boards/parc/>

## **Texas**

- Austin Police Monitor – [www.ci.austin.tx.us/opm](http://www.ci.austin.tx.us/opm)

## **Washington**

- King County Ombudsman – <http://www.metrokc.gov/ombuds/>
- Seattle Office of Police Accountability – [www.ci.seattle.wa.us/police/opa](http://www.ci.seattle.wa.us/police/opa)

## **Washington, DC**

- Washington, DC, Office of Citizen Complaint Review (OCCR) – [www.occr.dc.gov](http://www.occr.dc.gov)
- Washington, DC, Office of the Independent Police Monitor – [www.policemonitor.org](http://www.policemonitor.org)

## **Sample Complaint Forms**

- Office of Independent Police Auditor, Tucson, Arizona – <http://www.ci.tucson.az.us/ia-form.html>
- Police Review Board, City of Oakland, California – [http://www.oaklandnet.com/government/citizens/joint\\_complaint\\_form.pdf](http://www.oaklandnet.com/government/citizens/joint_complaint_form.pdf)
- Office of Police Accountability, Sacramento, California – <http://206.170.172.46/cityman/citizenform.html>
- The Citizens' Review Board on Police Practices of San Diego, California – <http://www.sandiego.gov/citizensreviewboard/pdf/complaint.pdf>
- Citizens' Law Enforcement Review Board, San Diego County, California – <http://www.co.san-diego.ca.us/clerb/docs/Comp-frm.pdf>

NOTE: This list has been drawn heavily from the Public Safety Auditor, City of Omaha, Nebraska, "Other U.S. Oversight Agencies," <[http://www.ci.omaha.ne.us/departments/public\\_safety\\_auditor/Other%20U.S.%20Agencies.pdf](http://www.ci.omaha.ne.us/departments/public_safety_auditor/Other%20U.S.%20Agencies.pdf)> (last accessed Aug. 21, 2003).