

Understanding Civilian Review Board Investigatory Authority: Comparative Models

County Board Work Session June 10th, 2021 (CRB Subcommittee's Comments added 7/1/21 & Modified 7/7/21)

Scenario / Fact Pattern	Process Under...				Comments from Commonwealth's Attorney	Comments from Public Defender	Areas for Further Study / Resolution
	County Manager Proposal	County Board Advertised Alternative	Alexandria City CRB Ordinance	Police Practices Group Rec.			
<p>Resident or Visitor Complaint or Allegations of Bias, Discrimination or Non-Criminal Misconduct</p> <p><i>e.g. Foxcroft Heights complaint</i></p> <p><i>Complaints may originate with:</i></p> <ul style="list-style-type: none"> • 911 call • ACPD dispatched or makes a traffic stop; other police interaction. • Media or social media <p><i>Complaints may be filed with:</i></p> <ul style="list-style-type: none"> • Police Department Office of Professional Responsibility (OPR) • Civilian Review Board (CRB) or Auditor Monitor <p><i>Civil litigation may be threatened, but is not filed or served</i></p>	<p>Complaint filed. OPR investigation is pursued. Once completed, the full report is provided to CRB for review and possible follow up.</p> <p>CRB has full access to records and if records / access is denied by ACPD, may pursue a subpoena.</p>	<p>For complaints against an officer, CRB will only have authority to conduct its own investigation if the alleged action falls under definition of "severe misconduct."</p> <p>Otherwise, Review Board can only review completed ACPD investigation.</p>	<p>Complaint may be filed. §2-4-227(b). CRB determines whether to refer to Police or keep for investigation.</p> <p>Under §2-4-227(d)(3)(i), it appears that the CRB maintains jurisdiction over the complaint, and Police would not pursue any steps until the CRB decides.</p>	<p><i>At the discretion of the auditor/monitor + COB, the auditor/monitor conducts an investigation concurrently with ACPD OPR's investigation. This investigation may include investigative steps taken jointly with ACPD OPR but does not preclude ACPD's review.</i></p>			<p>Main Question: How are investigations sequenced?</p> <p>If complaints are referred first to OPR (either in Manager Proposal, or at the discretion of CRB in Alexandria Ordinance), does it improve trust if the auditor / monitor participates in the OPR investigation?</p> <p>Also: Police are required to share information about potential constitutional violations with the Commonwealth's Attorney per §19.2-201(c) of Code of Virginia; need to clarify who has jurisdiction over the complaint in these instances.</p>

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<p>Potential Criminal Liability, including Death or Use of Force by Law Enforcement Officer (definitions in §69-9(d) and §9.1-601, Ch 29 of Code of Virginia)</p> <p><i>e.g. Police involved shooting</i></p> <p><i>Process:</i></p> <ul style="list-style-type: none"> • 911 call • Crime scene secured. • Critical Incident Response Team called and conducts investigation. • This is a criminal investigation. • Commonwealth's Attorney decides whether charges are pursued; if yes: Judicial process begins. • If no criminal case or it concludes, then ACPD begins use of force review (required by policy) relying on material gathered during criminal investigation. ACPD is apprised of interviews while criminal investigation is occurring. • Disciplinary action then determined by ACPD chief 	<p>Under §69-8(c), the CRB will not receive the files if it is an active criminal investigation.</p> <p>Once the criminal investigation concludes, the CRB under §69-9(c) receives the completed file and can ask questions and insist on follow up to be done by ACPD. If follow up were refused, the CRB can use its subpoena authority to gain materials.</p> <p>MOU to be negotiated between the CRB and Police Chief to define "severe misconduct"</p>	<p>Under §69-9(d)(i), CRB may conduct concurrent investigation with no exclusions during the pendency of a criminal investigation. 69-8(c)(i) does not apply, and records must be provided even if pending criminal investigations are ongoing.</p> <p>§69-9(d)(ii) provides subpoena authority: states CRB will not "unreasonably disagree" with a protective order to protect confidential information and information related to pending matters.</p>	<p>Under §2-4-229(iii), no CRB investigation is possible until criminal investigation concludes. Under §2-4-221(d), records requested that are part of a criminal investigation may be shared with the Auditor but not the CRB.</p> <p>Once criminal investigation concludes, the Auditor can begin the investigation.</p> <p>Conclusions of the investigation are handled under 2-4-227(c)(iii) and the CRB makes recommendations regarding disciplinary action; the Police Chief must state why s/he does or does not agree.</p>	<p>At the discretion of the auditor/monitor + COB, the auditor/monitor conducts an investigation concurrently with ACPD OPR's investigation. This investigation may include investigative steps taken jointly with ACPD OPR. In light of challenges of conducting an independent investigation of potentially criminal conduct, the auditor/monitor may be precluded from completing all necessary investigative steps, but these challenges should not</p>			<p>Main question: How to avoid undermining prosecutions and creating conflicting witness statements during criminal investigations? (In CM proposal, investigation jurisdiction remains with ACPD/CIRT and Commonwealth's Attorney; in Alexandria version, no CRB investigation until after conclusion of criminal investigation).</p> <p>Potential resolution: Allow the Auditor Monitor to sit in on briefings and questioning to the same degree ACPD is allowed by Commonwealth's Attorney; Auditor Monitor can suggest inquiries to investigative authorities. Auditor/Monitor can share information with the CRB once the investigation is completed.</p>

				preclude the auditor/monitor from beginning an investigation and gathering whatever evidence it can so it can be preserved.			
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<p>Potential Civil Liability</p> <p><i>e.g. ACPD involvement in Lafayette Park on 6/1/20</i></p> <p><i>Process</i></p> <ul style="list-style-type: none"> • Deployment, in response to Mutual Aid request or locally, or officer action • Use of pepper spray (tasers, use of batons) by ACPD or other agencies present • ACPD does use of force review as a matter of policy – does not wait for a complaint or civil suit • Civil litigation: Actual suit filed 	<p>Complaint filed. OPR investigation is pursued.</p> <p>If civil litigation is pursued, under §69-8(c), no files are to be provided to the CRB.</p> <p>Police conduct investigation.</p> <p>Once completed, the full report is provided to CRB for review and possible follow-up.</p>	<p>Under §69-9(d)(i), CRB may conduct concurrent investigation with no exclusions during the pendency of civil litigation. 69-8(c)(i) does not apply, and records must be provided even if pending civil matters are ongoing.</p> <p>§69-9(d)(ii) provides subpoena authority: states CRB will not “unreasonably disagree” with a protective order to protect confidential</p>	<p>Complaint may be filed. §2-4-227(b).</p> <p>Unclear what would happen with the threat of civil litigation, and whether it stays the CRB proceedings envisioned.</p> <p>Appears that civil litigation does NOT stop concurrent investigation.</p>	<p>At the discretion of the auditor/monitor + COB, the auditor/monitor conducts an investigation concurrently with ACPD OPR's investigation. This investigation may include investigative steps taken jointly with ACPD OPR. In light of challenges of conducting an independent investigation of conduct that could result in</p>			<p>Main question: As with criminal investigations, how to avoid creating conflicting records, witness statements, etc. between civil litigation and CRB investigation?</p> <p>As with criminal investigations, possible that the Auditor/Monitor participants in OPR investigation and suggest additions. Once the OPR investigation is completed, the CRB receives materials to review and ask for further follow-up.</p>

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