

*AN ORDINANCE
ESTABLISHING AN
ALL-CIVILIAN
REVIEW BOARD*

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Introduction

There has been an ongoing, far-reaching community process to develop a workable model for an All-Civilian Complaint Review Board in New Haven for approximately twenty years. This has been a long and careful journey in which we have tried to involve all facets of the community. This issue continues to be a very sensitive matter, and although we are still in the midst of very delicate community-wide discussions and negotiation, our position has remained constant. Malik E. Jones and many others have lost their lives at the hands of police officers. We cannot pretend that we do not have emotions about this issue; of course, we do.

While we admit that our emotions run high, we have nevertheless taken a measured and rational approach to address what is one of the single most devastating, decisive and traumatizing issues confronting America today. We realize that police officers have concerns as to whether or not an All-Civilian Review Board will be fair to them. We certainly hope so. It is not now, nor has it ever been our intention to put in place another unjust institution.

The New Haven community has expressed an urgent need for an All-Civilian Review Board. In November of 1995, Alder Dawson submitted an ordinance to the Board of Aldermen that would have created an All-Civilian Review Board. That ordinance was a response to a conversation held in New Haven on the necessity of such a panel by Michael Jefferson, now attorney Jefferson. That measure is still pending before the Board of Alders. After the brutal police shooting of her son Malik in April 1997, Emma Jones became more deeply involved in this issue. Emma, the M.A.L.I.K. Organization, community activists, and Alder Dawson joined forces to bring the issue of an All-Civilian Review Board to the forefront of public discussions.

Following the awful tragedy of Malik's shooting in 1997, there was a resurgence of interest in creating the All-Civilian Review Board, as the cause attracted local, state, and even national attention. Indeed, interested parties and organizations from all across the nation sent us their input, and we sought the involvement of all segments of the New Haven community. The community has shown and continues to demonstrate serious concern about this issue.

Soon after, in 1998, Alderman Dawson introduced a Resolution to the Board of Alders that called for a two-day conference to examine the disturbing circumstances and larger issues raised by the fatal police shooting of Malik E. Jones. As a result of this conference, Alders Anthony B. Dawson, Alvin Brooker, and Ron Gattison came together with Emma Jones and M.A.L.I.K. supporters to model an All-Civilian Review Board with subpoena power. We also hoped to establish a statewide review board with subpoena power within three to five years.

Later, in 1999, what had grown into a broad coalition of citizens and organizations got behind the NAACP as it sponsored a citywide referendum on this vitally important issue. Testimony was taken on this referendum from Roger Vann, Emma Jones and Cliff Pettaway. Then by an overwhelming 4-to-1 margin the people of New Haven voted in favor of creating an All-Civilian Review Board that was independent of the police commission. The issue was coming to a head, so we intensified our efforts to listen to and take into consideration the views of individuals from all segments of our community. The M.A.L.I.K. Organization continued to hold forums, conferences, public meeting and strategy session on the matter.

At this time, we called on Board of Alders President Jorge Perez, Public Safety Committee Chair Robin Kroogman, and Legislative Committee Chair Carl Goldfield to encourage Mayor John DeStefano not to issue his Executive Order, which would eventually stall our progress. We then pleaded to the Board of Alders to urge Mayor DeStefano to allow the Board's committee process to play out in regards to the All-Civilian Review Board ordinance that was pending before them.

We called on President Perez and committee chairs Kroogman and Goldfield to insist that the Mayor back off and allow the dialogue to continue on this critical issue. At the time that the Mayor made his announcement regarding his executive order, The M.A.L.I.K. Organization was in the process of finalizing a proposed ordinance to be presented to the joint committee on legislation and public safety. The M.A.L.I.K. Organization pledged to have that final plan ready by the first week of March of that year. The M.A.L.I.K. Organization also made a plea to the full Board of Alders for support of its All-Citizen Review Board ordinance. Finally, we respectfully requested that we all work together to ensure that this process was transparent.

Nevertheless, Mayor John DeStefano issued executive order 01-0 on March 21, 2001. As expected, it did not work. It established a "paper tiger" board that lacked any ability to hold the police accountable to their oaths to "protect and serve". It had no subpoena power, and it was incapable of conducting independent investigations of police misconduct. In 2013, after ten years of struggle, the Charter Review Commission amended the Charter to allow for an independent All-Citizen Review Board with subpoena power. In addition, the Civilian Review Board established by DeStefano's executive order was dissolved. During this time, the New Haven community continued to demand the implementation of the Malik-Dawson All-Civilian Review Board.

On April 14, 1997, the Jones family suffered the worst form of police brutality when East Haven, Connecticut police officer Robert Flodquist murdered Malik E. Jones. Twenty years later, we are still struggling for justice. Police violence, specifically against communities of color, remains a serious problem in New Haven, the State of Connecticut, and throughout the country. Police brutality is both a national epidemic and a national emergency. What is most troubling is the denial on the part of the government and some segments of the country that this problem is real.

Across the country, African-Americans and other oppressed people live under the constant threat of police violence, murder, harassment and negative intervention into their lives. Many mothers, wives, sisters, and aunts, especially those of African descent, live in fear of the awful nightmare that their sons, daughters, nieces, nephews or husbands might end up beaten, arrested, or even killed by the police. By the time African children reach the age of twelve they become targets for police brutality and abuse. Some families and young children already recognize the police as armed enemies. They watch television, read reports and listen to stories about victims of police violence in the United States.

People in New Haven, East Haven and other parts of the State of Connecticut are extremely concerned about the safety and welfare of their families. They recognize the necessity of continuing to struggle for justice for Malik E. Jones, and of seeking reforms that will prevent similar injustices. The creation of an All-Civilian Review Board has been a primary topic of advocacy for supporters of the M.A.L.I.K. Organization. It is incumbent upon advocacy groups

like People Against Brutality, Black Lives Matter New Haven, CT-CORE, the Yale Black Law Students Association and Yale's chapter of the National Lawyers Guild to continue to wage this struggle. We must begin now to pursue preventative measures to help ensure that what happened to Malik E. Jones doesn't happen to anyone else.

Preamble

Whereas: Friday, April 14th, 2017 will be the twentieth anniversary of the murder of Malik Jones; and,

Whereas: In 1998 the Board of Alders passed a unanimous resolution calling for a two-day conference to analyze police shootings, the use of excessive force, the murder of Malik Jones and to discuss strategies for resolution; and,

Whereas: As a result of this two-day conference, the Board of Alders, along with community members, came together with Emma Jones and the M.A.L.I.K. organization to develop and implement an independent All-Civilian Review Board with subpoena power; and,

Whereas: In 1999, a broad coalition of citizens and organizations sponsored a citywide referendum in which the City of New Haven voted by an overwhelming 4-to-1 margin in favor of creating an independent All-Civilian Review Board with subpoena power; and,

Whereas: The Charter for the City of New Haven mandates that the City of New Haven have a Civilian Review Board; and,

Whereas: The Charter for the City of New Haven mandates that the Civilian Review Board ensures that investigations concerning misconduct by police officers be “thorough and impartial” and be “conducted fairly and independently, and in such a manner that the public has confidence;”¹ and,

Whereas: The Internal Affairs Department is a dependent department of the New Haven Police Department, and is thus not capable of conducting investigations of police misconduct that are, in any sense, fair, independent or impartial; and,

Whereas: Public confidence in law enforcement is undermined by secret, non-transparent and unaccountable investigations into police misconduct, and the Police Department generally conducts internal reviews of civilian complaints in secret proceedings; and,

Whereas: The New Haven community has, for decades, expressed its profound lack of confidence in Internal Affairs; and,

Whereas: The New Haven Community did, in 2001, demand an All-Civilian Review Board with the power to conduct independent investigations; and,

Whereas: The New Haven Community did, in 2013, demand that the City Charter include a mandate for an All-Civilian Review Board with the power to conduct independent investigations; and,

Whereas: The New Haven Community did, in 2015, demand that the Board of Alders implement an All-Civilian Review Board with the power to conduct independent investigations;

¹ New Haven City Charter, Article VII., Sec. 4, B. (2).

Now, therefore, be it ordained that:

The City of New Haven hereby establishes an independent All-Civilian Review Board for the purposes of conducting fair, independent, thorough, impartial, and transparent investigations of alleged police misconduct; recommending appropriate disciplinary action against police officers; and, ensuring substantive public oversight of the police by collecting and reporting data, and reviewing policing policy and recommending necessary changes. This Board shall serve as a three-to-five-year pilot program allowing for an assessment of its effectiveness and for the creation of an independent, statewide All-Civilian Review Board with subpoena power.

Ordinance of the City of New Haven Establishing an All-Civilian Review Board

1) Definitions

As used in this ordinance the terms below shall have the following meaning:

- a. “Appeal” refers to a request for further investigation by a civilian who is not satisfied with the initial resolution of a complaint of police misconduct.
- b. “Civilian complaint” means a complaint of police misconduct from any person who is not a sworn officer of a police department within the City of New Haven.
- c. “Demographic information” refers to information regarding persons including at least, but not limited to, the following: age, race/ethnicity, and gender.
- d. “Internal Affairs complaint” means a complaint or investigation of police misconduct from any person who is a sworn officer of a police department within the City of New Haven, or such a complaint or investigation otherwise initiated within a police department within the City of New Haven.
- e. “Police chief” means the chief executive of the New Haven Police Department, Yale University Police Department, or any other police department operating within the city of New Haven.
- f. “Police Department” refers to the New Haven Police Department, the Yale Police Department, and any other police department that derives its policing authority from the city of New Haven.²
- g. “Police misconduct” refers to the inappropriate use of deadly force, use of excessive force, harassment, inappropriate violence, false arrest, intimidation, racial profiling, abusive language, neglect of duty, disrespect, failure to cooperate with a police department or All-Civilian Review Board investigation, or any other violation of police department policy or law by an employee of a police department.
- h. “Police officer” or “officer” refers to any individual employed by the city of New Haven or Yale University who is granted the powers conferred upon municipal police officers for the city of New Haven.

2) Independence

The All-Civilian Review Board (ACRB) shall be entirely independent of the New Haven Police Department (NHPD) and the Yale University Police Department (YPD):³

² The Yale Police Department derives its policing authority from Section 3 of Public Act No. 83-466, which allows the city of New Haven to appoint individuals, employed by Yale University, to act as Yale Police Officers. These University employees are then sworn in by the city of New Haven and granted all the powers conferred upon municipal police officers for the city of New Haven.

³ New Haven City Charter, Article VII., Sec. 4, B. (2).

- a. There shall be no members of the ACRB or investigators employed by the ACRB who are current or former police officers of any police department within the state of Connecticut.⁴
- b. The ACRB may consult with a retired police officer, if the need arises, in order to understand more clearly police orders and procedures.
- c. The ACRB shall have an office that is entirely independent from, and housed in a different location than the Police Department and all related law enforcement entities.

The ACRB shall be entirely independent of the New Haven Office of the Corporation Council (OCC):⁵

- a. The ACRB shall not have any staff or office space in common with the OCC.

3) Membership

- a. The ACRB shall consist of thirteen voting members, including a representative from each of the ten communities in which there is a police substation in addition to three at-large members.
- b. The President of the Board of Alders will serve as an “at large,” non-voting member of the ACRB.
- c. All members of the ACRB shall be residents and electors of the City New Haven.
- d. No elected official shall be a voting member of the ACRB.
- e. All voting members shall be appointed by the Mayor, subject to the approval of the Board of Alders.
- f. The Mayor shall select said appointees exclusively from a list of recommended members who shall be recommended by the following community organizations:
 - i. The Greater New Haven National Association for the Advancement of Colored People (NAACP).
 - ii. Junta for Progressive Action.
 - iii. Community Mediation, Inc.
- g. The above-mentioned community organizations shall deliver an initial list of recommended members no later than three months from the date this ordinance is signed, and shall deliver future lists of recommended members no later than three months before the expiration of a current member’s term.
- h. Said lists shall be submitted to the ACRB prior to final appointment and approval procedures at which time the ACRB shall make public all individuals recommended by said community organizations.
- i. The Board of Alders final approval of ACRB members appointed by the Mayor shall take place at a special public hearing during which the Board of Alders shall take public testimony on the proposed appointees. The Board of Alders and the

⁴ *Getting it Right: Building Effective Civilian Review Boards to Oversee Police*, Udi Ofer, Seton Hall Law Review (2016).

⁵ New Haven City Charter, Article VII., Sec. 4, B. (2).

ACRB shall make every effort to ensure that the New Haven community is aware of the date, time and place of said hearing.

- j. The term of office for ACRB members shall be two (2) years and such terms shall be staggered.

4) Powers and Duties

- a. Duties to receive and review complaints:

- i. The ACRB shall have the following authority, and such other authority as may be set forth by ordinance:

1. To examine civilian complaints of alleged police misconduct against any police officer employed by a police department within the city of New Haven.
2. To monitor and review the processing of Internal Affairs complaints by any police department within the city of New Haven.
3. To receive a copy of any complaint of alleged police misconduct filed against any police officer employed by a police department within the city of New Haven within 48 hours of the filing of said complaint, including but not limited to civilian and all Internal Affairs complaints.
4. To receive, in writing, a copy of any findings of fact and/or recommended disposition of a complaint at the same time it is forwarded to Internal Affairs and before it is submitted for final action to the relevant chief of police, and to interview the officer(s) preparing such proposed findings of fact and/or recommended disposition.
5. To hear appeals from any civilian complainant within ninety (90) days of the completion of an Internal Affairs investigation by any police department within the City of New Haven.
6. To require any police department within the City of New Haven to investigate civilian complaints of alleged police misconduct in the event no investigation has been commenced after an initial complaint.
7. To develop policies and procedures for the filing and processing of civilian complaints to the ACRB, for the operations of said Board, and for the training of members of said Board and the community-based agencies and organizations designated by said Board.
8. Nothing in this section will prevent police departments within the city of New Haven from investigating civilian complaints of misconduct through their Internal Affairs departments.

- b. Duties to Investigate, Make Findings of Fact, and Recommend Disciplinary Action:

- i. The ACRB shall have the following authority, and such other authority as may be set forth by ordinance:
 1. To investigate any complaints of alleged police misconduct.
 2. To hold hearings, administer oaths, and take the testimony of any person under oath.
 3. To issue interrogatories and require written answers to interrogatories under oath in relation to any complaint of alleged police misconduct under investigation by the Civilian Review Board.
 4. To conduct interviews, obtain evidence, and conduct any field investigations necessary to make complete and accurate findings of fact.
 5. To develop written findings of fact, which shall be made public when permitted by State law.
 6. To recommend disciplinary action to be taken by the Chief of Police of the police department where the alleged misconduct has occurred.
 7. To recommend a grand jury investigation and appointment of an independent prosecutor when the ACRB finds evidence that a police officer has committed a criminal offense.
 - ii. The ACRB shall complete any investigation within ninety (90) days unless there exists good cause to extend the investigation.
- c. Memorandum of Understanding (MOU) with the Police Departments and the Chief of Police:
- i. To ensure consistent and transparent discipline for police misconduct, the Chief of Police of any police department within the City of New Haven will enter into a MOU with the ACRB agreeing to at least but not limited to the following:
 1. The Police Department shall develop a “discipline matrix” specifying the discipline to be applied for substantiated accusations of police misconduct, categorized by the category and severity of misconduct, within ninety (90) days of the establishment of the ACRB.
 2. The ACRB shall have the opportunity to review the discipline matrix before it is finalized.
 3. The ACRB shall make public the discipline matrix once it is finalized.
 4. When a substantiated accusation of police misconduct falls within the discipline matrix, the Chief of Police must impose discipline in accordance with the discipline matrix.
 5. Where the ACRB has conducted an investigation of alleged misconduct and made findings of fact, the Chief of Police will

accept these findings of fact, absent clear error.⁶ Clear error exists when the Civilian Review Board's findings are based upon obvious and indisputable errors and cannot be supported by any reasonable interpretation of the evidence. The Chief of Police may request further investigation or development of the record to make a final disciplinary determination.

6. Any police departments in the City of New Haven will cooperate fully with the requests of the ACRB, including providing records, policies, and any other resources and information required for the ACRB to fulfill its duties.
7. Any police departments within the City of New Haven will ensure that their officers and employees appear before and respond to inquiries of the ACRB and its civilian investigators in connection with the investigation of complaints.
8. The provisions of this section shall not be construed to limit the rights of members of police departments within the City of New Haven with respect to disciplinary action, including but not limited to the right to notice and a hearing.
9. The processing and review of civilian complaints shall not be deferred because of any pending or parallel disciplinary proceeding or criminal investigation.

d. Subpoenas:

- i. Until and unless the ACRB gains the power to subpoena witnesses and seek legal enforcement of such subpoenas, the Board of Alders will exercise its subpoena power on behalf of the ACRB as follows:
 1. The President of the Board of Alders will serve as an "at large," nonvoting member of the ACRB
 2. To ensure that witnesses provide all information required by the ACRB, the President of the Board of Alders will use her statutory power to subpoena witnesses, if and when they refuse to testify before the ACRB, on behalf of the ACRB.⁷
 3. The President of the Board of Alders will not unreasonably refuse to subpoena a witness when required for purposes of an ACRB investigation.
 4. When a witness testifies under a subpoena obtained by the President

⁶ For the All-Civilian Review Board to achieve its mission, its findings must carry weight. New York City's All-Civilian Review Board provides clear evidence of this principle. In 2012, the New York Police Department imposed discipline in only 40% of cases where such discipline was recommended by its Civilian Review Board, and only followed the Board's recommendation in 9.7% of such recommendations.

⁷ The New Haven Board of Alders was granted subpoena power under an 1899 Special Law, which remains valid and has never been repealed. See Connecticut Sp. L. 1899, p. 425, § 131.

of the Board of Alders on behalf of the ACRB, such testimony will be public. The ACRB may use such testimony as evidence in making factual determinations and disciplinary recommendations.

5. The provisions of this section shall not be construed to infringe upon the rights granted to any individual by the 5th Amendment of the U.S. Constitution.

e. Speedy resolution of complaints:

- i. Any aggrieved person who believes their civil rights have been violated by an act of alleged police misconduct may file a complaint with the Review Board by submitting such complaint to the Civilian Review Board. Such complaints may be received by writing, email, text message, telephone call, or any other method of communication.
- ii. Any person who has witnessed an act by a police officer that they believe to constitute police misconduct may also submit a complaint to the Civilian Review Board. Such complaints may be received by writing, email, text message, telephone call, or any other method of communication.
- iii. Employees of the ACRB may assist a complainant in developing their submission, including helping the complainant to classify the alleged conduct as falling under a specific civil right or policy violation.
- iv. Employees of the ACRB will have discretion to determine whether to investigate a complaint of police misconduct, however, the ACRB shall explain, in writing, any decision not to investigate a given complaint. This written decision shall be sent to the complainant within five (5) days of the ACRB's decision.

f. Policy Recommendations:

- i. The ACRB will have power to audit police policies and practices, and to recommend revisions to policies, the manner of processing civilian complaints, training protocols, and/or provisions of general orders or departmental standards, to any police department within the City of New Haven.
- ii. The ACRB may require any police department operating within the City of New Haven to provide records, policies, and other information requested to assist the Board in making policy recommendations. Police departments will comply with such request as described above in Section 4 (c).

g. Data Collections and Reporting Requirements:

- i. The ACRB shall publish quarterly reports containing the following information⁸:

⁸ *Getting it Right: Building Effective Civilian Review Boards to Oversee Police*, Udi Ofer, Seton Hall Law Review (2016).

1. The total number of complaints received, disaggregated by the demographic information of the complainant.
2. An exhaustive list of the types of complaints received, disaggregated by the demographic information if the complainant.
 - a. The name of the officer against whom a complaint has been filed shall not be withheld.
3. An exhaustive report of the basic facts of said complaints with personal identifying information redacted.
4. An exhaustive list of dispositions and discipline issued.
5. An analysis of trends concerning, but not limited to, the demographic information of complainants, the geographic breakdown of complainants, an exhaustive list of any officer of the Police Department who had two (2) or more complaints filed against them, the types of complaints that are most common, and any other analysis that will aid the public in understanding the complaint review process and allow the public the opportunity to assess the fairness and effectiveness of the ACRB's procedures.
6. An exhaustive report of every stop, vehicular, pedestrian and otherwise, made by police officers during the previous quarter, disaggregated by date, time, location, demographic information of the person stopped, and the reason for and disposition of the stop.
7. An exhaustive report of every instance in which the police used force on civilians, disaggregated by date, time, location, demographic information of the person against whom the officer used said force, a description of the force used, the reason for the use of force, and whether any injuries resulted.
8. An exhaustive report of every arrest effectuated by the police, disaggregated by date, time, location, demographic information of the arrestee, the basis of the arrest, and the offense charged.
9. An exhaustive report of the dollar amount that the city of New Haven expended in settlements of judgments to resolve claims filed against the police department or an officer of said department. Said report shall include a summary of the basic facts associated with the aforementioned claims.
10. All of the above reports shall be made publically available in print and on a website maintained on behalf of the ACRB. All data shall be collected and stored in machine readable formats.
11. The Police Department shall provide the ACRB with any and all data required to fulfill the aforementioned reporting requirements.

h. Public meetings

- i. The ACRB shall meet once every month at a regularly scheduled time and date and at an appropriate public facility determined by the chairperson of the board.

- ii. The ACRB shall hold meetings in different neighborhoods to facilitate community participation and awareness of the Review Board's work.
 1. In addition to holding regular meetings, the ACRB shall hold at least two informational meetings per year, in different neighborhoods, to educate the public about their rights to pursue police complaints through the Civilian Review Board.

5) Staff

- a. The ACRB shall hire a complaint administrator, at least two (2) investigators, and an administrative assistant.
- b. The ACRB shall contract with a data analysis consultant in order to fulfill its data collection and reporting requirements.
- c. These staff shall report only to the Civilian Review Board, not to the Office of Corporation Counsel or any other branch of the City of New Haven.
- d. The ACRB shall have the power to seek legal advice and counsel from a pro bono attorney.

6) Office and Location

- a. The City of New Haven shall furnish the ACRB with publicly accessible office space.
- b. The ACRB office will be open and accessible to the public. Members of the public will be able to submit complaints in person at the ACRB office.

7) Funding and Budget

- a. The City of New Haven shall provide sufficiently robust funding that the ACRB has the capacity to train, support, and pay its staff; contract with trained investigators and data analysts; secure supplies and equipment; maintain its facilities; and effectuate its enumerated duties.
- b. The CRB's budget shall be at least 1.5% of the NHPD's non-capital budget.⁹

8) Confidentiality of records

- a. The members, staff, and contractors of the ACRB shall comply with all provisions of applicable State law relating to public records and disclosure or nondisclosure of public records and personnel records. Accordingly, police departments within the City of New Haven and the City of New Haven will provide all members, staff, and contractors of the ACRB the same legal protection that any other agent or employee of the City receives in the course of their employment. Additionally, any police department within the City of New Haven, and the City of New Haven, must not

⁹ *Getting it Right: Building Effective Civilian Review Boards to Oversee Police*, Udi Ofer, Seton Hall Law Review (2016).

deny access to records, policies, and other relevant materials to members, staff and contractors of the Civilian Review Board, except as required by law.

9) Severability

- a. The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion thereof, or the invalidity of the application of any portion of this chapter to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

Conclusion

For all the reasons stated herein, we respectfully request that you consider these issues as outlined. We urge you to take the steps necessary to establish an All-Civilian Review Board in the city of New Haven and join us in our campaign to establish a statewide All-Civilian Review Board.